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STEVE HEMINGER
Executive Director

ANDREW B. FREMIER
Deputy Executive Director

November 4, 2013

REQUEST FOR PROPOSAL (RFP)

COLLECTION SERVICES

NOTICE IS HEREBY GIVEN that the Bay Area Toll Authority (BATA) invites your firm to submit a proposal to provide collection services for outstanding toll violations and delinquent FasTrak® accounts.

The Request for Proposal (RFP) documents for this project are available for download on the BATA website at <http://procurements.mtc.ca.gov/>. Proposers are responsible for checking the website for any Addenda that may be issued relative to this RFP. Responses should be submitted in accordance with the instructions set forth in the RFP.

Interested firms must submit an original and five (5) hard copies, as well as one electronic PDF version, of their proposal by 4:00 p.m., Wednesday, December 18, 2013, in accordance with the instructions contained in the RFP. Other key RFP Dates are listed in Section V, Selection Timetable of the RFP.

BATA Point of Contact
Gary Louie, Project Manager
Bay Area Toll Authority
Joseph P. Bort MetroCenter
101 Eighth Street
Oakland, CA 94607-4700
Tel: 510/ 817-5792
E-mail: glouie@mtc.ca.gov

Thank you for your interest.

Sincerely,

Steve Heminger
Executive Director

SH: gl

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I. BATA AND PROJECT DESCRIPTION

A. *Description of BATA*

BATA was created by the California Legislature in 1997 to administer the base \$1 auto toll on the San Francisco Bay Area's seven state-owned toll bridges. The bridges are Antioch, Benicia, Carquinez, Dumbarton, Richmond-San Rafael, San Francisco-Oakland, and San Mateo-Hayward. In August 2005, the California Legislature expanded BATA's responsibilities to include administration of all toll revenue and joint oversight of the toll bridge construction program with the California Department of Transportation (Caltrans) and the California Transportation Commission.

B. *Project Description*

In May 2005, an electronic toll collection (ETC) system called the FasTrak® program was opened by BATA. A regional customer service center (RCSC) was established as part of the program. BATA's contractor, Xerox State & Local Solutions, Inc. (Xerox) operates the FasTrak® program for BATA and the Golden Gate Bridge Highway and Transportation District (GGBHTD). The FasTrak® program allows toll bridge patrons to pay their tolls electronically instead of cash at eight bridges, including the seven listed above and the Golden Gate Bridge. To pay tolls electronically, patrons need to establish prepaid FasTrak® accounts which allow them to fund their accounts for future tolls. FasTrak® patrons are issued toll tags, which are placed inside their vehicles. The toll tags are read by the equipment at the tollbooths, and the tolls deducted from their accounts. Patrons replenish their accounts with cash, check, or credit card when they reach a pre-established minimum threshold. Patrons who sign up to use a credit card for automatic replenishment are not assessed tag deposits for the first three tags. Otherwise, a \$20 tag deposit is assessed for each tag. When accounts are closed and the tag(s) is returned, the tag deposit and remaining prepaid balance are refunded to the customer. If the tag is not returned, the tag deposit is forfeited. If a patron did not have a tag deposit, \$20 is assessed for each unreturned tag.

If the tags are lost or stolen, or an account has a zero or negative balance, the tags are changed to an invalid status and cannot be used for future toll crossings. FasTrak® patrons with negative account balances will be sent a notice informing them that their account is negative and the tags cannot be used to cross the bridge until the account has been replenished. After 30 days, if the account is still negative, a second notice is sent informing patrons that the account will be closed if payment is not made. After another 30 days, the account is closed if the account is still negative. The patron is charged for any unreturned tags and toll balance. If the account had a tag deposit, the deposit is forfeited. If there was no deposit, the deposit owed is added to the outstanding balance. A final notice is sent to the patron informing them their account is closed and requesting payment for the balance owed.

In March 2013, the Golden Gate Bridge converted to cashless toll collections or all electronic tolling (AET). The program allows customers to sign up for license plate accounts (LPA) or One-Time Payment Accounts, and provide their vehicle license plates. When the patron crosses the bridge, a picture of the license plate is taken and the amount deducted from their LPA or One-Time Payment Account. If a patron does not have a FasTrak®, LPA or One-Time Payment Account, they will be invoiced for the tolls. The information is retrieved from the Department of

Motor Vehicles (DMV) for the associated state. If the invoice remains unpaid for 21 days, the transactions are converted to a toll violation.

When a patron crosses a bridge without paying cash, uses an invalid toll tag, or has not paid the Golden Gate Bridge invoice, it is considered a toll violation. In addition to the toll, violators are assessed a \$25.00 penalty for each violation. Violators are sent a violation notice with an image of the license plate. After 30 days, if the violation has not been fully paid or not disputed, a second notice is sent and an additional \$45 late penalty is assessed. The second notice does not have an image of the license plate. For returned checks, a \$25 Non-Sufficient Funds (NSF) fee is assessed.

The RCSC processes and sends out toll violation notices. Customers may use cash, check, or credit card to fund and replenish their FasTrak® accounts or to pay for violations.

When toll violations remain unpaid for 90 days, the RCSC, on behalf of BATA and GGBHTD, will send violations eligible for vehicle registration hold to the California Department of Motor Vehicles.

The purpose of this RFP is to solicit collection services for:

- A. Unpaid toll violations that are not eligible for or have been released from Department of Motor Vehicle registration hold occurring on Caltrans and GGBHTD bridges. To be eligible for DMV hold, violation notices must be sent within 21 days of the violation occurrence for Caltrans bridges. For the Golden Gate Bridge, violation notices must be sent within 21 days after the due date of the invoice.

Toll violations that are not submitted to the DMV or have been released from the DMV hold and have an outstanding balance of \$45 or more will be eligible for collection services. It is estimated that the monthly violations (includes tolls, fees, and penalties) eligible for collection services are as follows:

BATA

Count: 19,600

Amount: \$1,500,000

Golden Gate Bridge

Count: 3421

Amount: \$260,000

- B. Delinquent FasTrak® accounts.

FasTrak® accounts may become delinquent for a variety of reasons including returned checks, credit card declined, credit card chargebacks, unreturned toll tags, and/or insufficient account balance to pay for outstanding tolls. The monthly average delinquent accounts eligible for collections are:

Count: 555

Amount: \$21,200

The count and amounts provided for violations and delinquent FasTrak® accounts are estimates based on historical data. They are approximate numbers to be used as guidelines only.

BATA reserves the right to require additional collection efforts for accounts not included in the descriptions above as appropriate.

II. PROPOSER MINIMUM QUALIFICATIONS

To be eligible to submit a proposal, a firm must demonstrate to BATA's satisfaction that it has performed collection services either directly as a collection agency or as a collection manager, who coordinates the collection activities for at least one public agency.

III. SCOPE OF WORK, PERIOD OF PERFORMANCE, AND BUDGET

A. Scope of Work

The scope of work for the project is provided in *Appendix A, Scope of Work*. The firm selected to enter into a contract ("Contractor") will work with the Project Manager, RCSC operator, and other BATA consultant(s) to perform all work and analysis necessary to complete the scope of work.

B. Period of Performance

The initial period of the collection services for this contract will be five (5) years, from July 1, 2014 to June 30, 2019, subject to the annual budgetary approval processes of BATA. At BATA's sole option, the contract may be renewed for up to five (5) additional years in one-year increments, subject to the annual budgetary approval processes of BATA. Continuation of the contract is subject to the BATA Project Manager's annual review and recommendation, the satisfactory negotiation of terms, as well as the concurrence of BATA and the annual appropriation of funds. BATA has the right to terminate the services at any time with 30 days written notice.

C. Budget

A firm budget has not been established for the project. The cost proposals submitted by interested firms will form the basis of the project budget.

IV. PROPOSERS' CONFERENCE AND REQUESTS FOR CLARIFICATION OR EXCEPTIONS

A Proposers' Conference will be held on November 19, 2013 at 1:00 p.m., in the Fishbowl Conference Room at the BATA offices located in the Joseph P. Bort Metro Center at 101 Eighth Street, Oakland, California (directly across Eighth Street from the Lake Merritt BART station).

Any addenda will be posted on BATA's website. All Proposers are responsible for checking the website for addenda to the bid documents.

Any requests for clarification, questions regarding RFP requirements, or requests for exceptions to or modifications of RFP provisions must be received by BATA in writing (via e-mail to the Project Manager) no later than 4 p.m. on Friday, December 6, 2013 to guarantee response or consideration. Proposers are required to submit requests for exceptions or modifications of RFP requirements on the form provided in *Appendix F, Requests for Exceptions or Modifications*. BATA reserves the right to reject any proposal that contains unauthorized conditions or exceptions.

V. SELECTION TIMETABLE

1:00 p.m., on Tuesday, November 19, 2013	Proposers' Conference, at 101 8 th Street, Oakland, CA 94607, in the Fishbowl Conference Room
4:00 p.m., on Friday, December 6, 2013	Closing time/date for receipt of requests for modifications/exceptions
No later than 4:00 p.m. on the third business day prior to the date proposals are due	Deadline for protesting RFP provisions
4:00 p.m., on Wednesday, December 18, 2013*	Closing time/date for receipt of proposals
Week of January 13, 2014*	Interviews/Discussions (if held)
February 12, 2014*	Recommendation to BATA Oversight Committee
March 14, 2014*	Execution of Contract (approximate)

**Interview, award and approval dates are approximates and are subject to change before or after the closing date of the RFP.*

VI. SUBMITTAL OF PROPOSALS

- Interested firms must submit an original and five (5) hard copies, as well as one electronic PDF version, of their proposal by 4:00 p.m., on Wednesday, December 18, 2013. **Submission of an electronic copy of the proposal without hard copies will not satisfy the submission requirement.**
- Proposals are to be addressed as follows:

Bay Area Toll Authority
Collection Service RFP
Attention: Gary Louie
101 8th Street, 3rd Floor Receptionist
Oakland, CA 94607

3. Proposer's name and return address must also appear on the envelope.
4. Proposals will be received only at the address shown above and whether delivered by an employee of the Proposer, U.S. Postal Service, courier or package delivery service, must be received and time stamped at the stated address **prior to or no later than the time designated**. The timestamp located on the 3rd floor at the receptionist desk shall be considered the official timepiece for the purpose of establishing the time of receipt of proposals.. BATA is not responsible for deliveries delayed for any reason. Any proposals received after said date and time or at a place other than the stated address cannot be considered and will be returned to the Proposer unopened.
5. No proposals submitted solely by email and no faxed proposals will be considered.
6. Proposer agrees and acknowledges all RFP specifications, terms and conditions and indicates ability to perform by submission of a proposal.
7. A signed proposal submitted to BATA in response to this RFP shall constitute a binding offer from Proposer to contract with BATA according to the terms of the proposal for a period of one hundred twenty (120) days after the proposals are due to BATA.
8. A Proposal may be withdrawn at any time before the date and time when Proposals are due by submitting a written request for its withdrawal to the BATA Project Manager.
9. This RFP does not commit BATA to award a contract or to pay any costs incurred in the preparation of a proposal in response to this RFP.
10. Only one proposal will be accepted from any one person, partnership, corporation, or other entity.
11. BATA reserves the right to accept or reject all proposals submitted, waive minor irregularities, request additional information, or revisions to offers, and negotiate with any or all proposers.
12. BATA reserves the right in its sole discretion not to enter into any contract as a result of this RFP.
13. If the selected proposer fails to enter into a contract with BATA in a timely manner as determined by BATA, in accordance with the terms and conditions of this RFP, BATA reserves the right to reject the proposal and enter into a contract with the next highest scoring firm.

VII. FORM OF PROPOSAL

Proposals must be signed in ink and include a statement that the person or persons signing the proposal is/are authorized to authorize and submit the proposal on behalf of the Proposer. Proposers are encouraged to print double-sided copies to save paper.

Proposal content and completeness are the most important. Clarity is essential and will be considered in assessing the Proposer's capabilities.

Proposers must provide the information listed below. Any material deviation from these requirements may be cause for rejection of the proposal, as determined in BATA's sole discretion.

Each proposal must include the following:

A. Transmittal Letter

Proposals must include a transmittal letter signed by an official authorized to solicit business and enter into contracts for the firm and the name and telephone number of a contact person, if different from the signatory. Indicate whether there are any conflicts of interest, actual or apparent, that would limit the Proposer's ability to provide the requested services and describe the plan for mitigating such conflicts. Acknowledge the receipt of any addendum to the RFP. Indicate that the Proposal is a firm offer to enter into a contract to perform work related to this RFP for a period of one hundred twenty (120) days from the due date for Proposals.

B. Title Page

Proposals must include a title page that includes the RFP subject, the name of the proposer's firm, address, telephone number, name of contact person, contact person's title, email address, and the date.

C. Table of Contents

Proposals must include a table of contents that includes a clear identification of the material by section and page number.

D. Overview and Summary

This section should consist of a discussion of the firm's proposed approach to the performance of the work requested and illustrate the firm's understanding of the nature of the work being requested.

E. Work Plan

This section should present a work plan for the tasks and services described in *Appendix A*, Scope of Work. The proposed work plan should:

1. Outline all services to be rendered by the firm in connection with this procurement. Discuss in details the approach, methodology, work plan, and timeline for completion of the work. To the extent that accounts described in Section I. B., Project Description require different approaches, address the proposed methodology for each account type to be collected.
2. Provide a detailed staffing plan for each task. Provide an organizational chart that shows roles and responsibilities of key personnel and reporting structure, including reporting and communication relationships between BATA, the firm's staff, and subcontractors, if any.
3. Describe payment types including credit card payment methods accepted as well as all on-line website payment processing capabilities. Proposal must include a toll free telephone number for collection services.
4. Identify all policies and methods for protecting the privacy rights of individuals targeted for collection to be utilized by contractor and any subcontractors.
5. Describe the firm's and any subcontractor's computer resources, security, and interactive capability in handling the transmission and processing of large volumes of sensitive electronic data and files. The firm will be required to receive and transmit data and files on a daily basis. This will include, but not be limited to, accounts to be sent for collections, payments made at the RCSC, cancellation and adjustment request, accounts deemed uncollectible, and account status. The Interface Control Document (ICD) is described in *Appendix B*.
6. Provide any additional information necessary for BATA to qualitatively assess the approach proposed by your firm and by any subcontractors.

F. Profile, Qualifications, and References

1. Proposer and Subcontractor Profile – Indicate whether the firm is a sole proprietorship, partnership, or corporation. For proposer and all subcontractors, state the number of years in business, number of years in collections, total number of employees, percentage of total revenue from collections, number of permanent staff assigned to collections, and number of temporary staff assigned to collections.
2. Proposer and Subcontractor Qualifications
 - a) Provide a detailed statement of the firm's and any subcontractor's qualifications and experience in performing collection services for public agencies in general and for toll facilities in particular.
 - b) Describe the firm's experience and methods in performing these services in California.
 - c) Describe the financial system used by the firm in tracking the detail of the collection receivables and the ability to report information back to BATA and GGBHD.

- d) Describe the firm’s experience in working with the California Department of Motor Vehicles (DMV), and provide proof of an active agreement with the California DMV.
 - e) Describe the firm’s experience in working with out-of-state DMVs and provide the state availability table.
 - f) Describe the firm’s experience in working with rental car agencies for collections.
 - g) Identify the Project Manager who will oversee the services under this RFP and describe the Project Manager’s experience and background.
 - h) If legal services will be used, provide the nature of the services and the background of attorneys to be used. Also, provide proof that the attorneys have performed a conflicts check relative to BATA, the Metropolitan Transportation Commission (MTC), MTC Service Authority for Freeways and Expressways (MTC SAFE), the Bay Area Headquarters Authority (BAHA), and the Bay Area Infrastructure Financing Authority (BAIFA), and a statement describing the outcome of the check. (The information provided in response to this item F.2.h will be evaluated by the BATA Office of Counsel.)
 - i) Describe in detail the financial backing and stability of the firm.
 - j) State if the firm, or any of its officers, or employees have ever been found guilty of violating procurement laws or been fined for violation of debt collection laws.
3. Reference – A summary (no longer than one page each) of at least three (3) projects similar in subject matter and scope to this project, including the client agency, the contract term and amount, and a contact person (with email and telephone number) who may be contacted as a reference. Include at least one public agency in the list of references.
4. Provide a summary of all contracts your firm (including subcontractors) has held with Metropolitan Transportation Commission (MTC), Bay Area Toll Authority (BATA), the Service Authority for Freeways and Expressways (MTC SAFE), or Bay Area Headquarters Authority (BAHA) in the past three years, including, a brief description of the scope of work, the contract amount, date of execution, and the agency.

G. Cost Proposal

Compensation to the Contractor may be on a direct commission basis based on a percentage of all sums collected or may be by a revenue sharing agreement. Provide in numeric and written form, the proposed Commission Rates for Violation Collections and FasTrak® Account Collections. All expenses must be included in the proposed rate. Format shall be as follows:

<u>Account Type</u>	<u>Commission Rates</u>
1. Violations	_____ %
2. Closed Delinquent Accounts	_____ %

H. California Levine Act Statement

Submit a signed Levine Act statement (*Appendix C*).

I. Insurance Provisions

Submit a signed acknowledgement that your firm agrees to provide the required certificates of insurance providing verification of the minimum insurance requirements listed in *Appendix D-1, Insurance Requirements*, within ten (10) days of BATA's notice to firm that it is the successful proposer.

J. Federal Requirements

Not Used

K. Iran Contracting Act

Pursuant to California Public Contracts Code Sections 2200 *et seq.*, (AB 1650, Iran Contracting Act of 2010) Proposers for contracts equal to or in excess of one million dollars (\$1,000,000) must certify, at the time of proposal submission that proposer is not identified on a list created pursuant to subdivision (b) of Section 2203 as a person engaging in investment activities in Iran described in subdivision (a) of Section 2202.5, or as a person described in subdivision (b) of Section 2202.5, as applicable. Submit a signed Iran Contracting Act Document (*Appendix E*).

L. Financial Responsibility

In a separate sealed envelope: Provide a copy of Proposer's audited financial statements for the last three (3) years. The statements will be reviewed to determine responsibility only. All statements will be returned to all proposers prior to Contractor selection.

VIII. PROPOSAL EVALUATION

A. Verification of Minimum Qualifications

The Project Manager will review proposals to ensure that each Proposal meets the Minimum Qualifications set out in Section II, Proposer Minimum Qualifications of this RFP. Proposers failing to meet the Minimum Qualifications will not be considered.

B. Review for General Responsiveness

The Project Manager, in consultation with the BATA's Office of General Counsel, will conduct an initial review of the proposals for general responsiveness and inclusion of the items requested in *Appendix D, BATA's Standard Professional Service Agreement*. Proposers failing to meet the Minimum Qualifications and Requirements listed herein this RFP will not be considered responsive. Also, any proposal that does not include enough information to permit the evaluators to rate the proposal in any one of the evaluation factors listed below will be considered non-responsive and will not be evaluated. A proposal that fails to include one or more items

requested in the Form of Proposal may be considered responsive, if evaluation in every criterion is possible. BATA reserves the right to request additional information from responsive proposers prior to evaluation.

C. Evaluation Panel and Evaluation Criteria

Responsive proposals will then be evaluated by an evaluation panel of BATA staff. The evaluation of the proposals shall be within the sole judgment and discretion of the evaluation panel.

All contact during the evaluation phase shall be through the BATA Project Manager only. Proposers shall neither contact nor lobby any evaluation panel members during the evaluation process. Attempts by proposer to contact and/or influence members of the evaluation panel may result in disqualification of proposer.

Responsive proposals shall be evaluated by a panel of BATA staff based on the following factors listed in descending order of relative importance:

1. Comprehensiveness, adequacy, and approach of detailed work plan (35%)
2. Experience and qualifications (35%)
3. Cost effectiveness (30%)

Following the initial evaluation, the evaluation panel may elect to recommend award to particular proposer (with or without interviews), or to enter into discussions with a “short list” of proposers, consisting of those proposers reasonably likely, in the opinion of the panel, to be awarded the contract.

D. Interviews

Interviews, if held, will consist of a contractor presentation and an introduction to Key Staff, who shall be expected to be present and respond to questions.

E. Proposer Discussions

The purpose of discussions with a Proposer on the “short list” will be to identify that Proposer’s specific deficiencies and weaknesses in its proposal and to provide the Proposer with the opportunity to consider possible approaches to alleviating or eliminating them. These deficiencies or weaknesses may include such things as technical issues, management approach, cost, or team composition. Discussions may take place through written correspondence (including email) and/or during face-to-face meetings. The Proposer’s project manager, as well as other key personnel identified by the evaluation panel, will be expected to participate in any discussions. A proposer on the “short list” invited to participate in discussions will be expected to provide a presentation limited to 20 minutes consisting of an overview of its approach to the Project.

F. Request for Best and Final Offer (BAFO)

Following discussions, if held, proposers on the “short list” will be given the opportunity to revise their written proposals to address the concerns raised during discussions or to make any other changes through BATA’s issuance of a Request for Best and Final Offer (BAFO). Following receipt of the BAFOs, the evaluation panel will evaluate the BAFOs against the evaluation criteria.

BATA reserves the right not to convene oral interviews or discussions, and to make an award on the basis of initial proposals. Accordingly, each initial proposal should be submitted on the most favorable terms from a price and a technical viewpoint. References may be contacted at any point in the evaluation process.

G. Recommendation for Award

The panel will recommend a Contractor to the BATA Executive Director, based on their evaluation of the written proposals or BAFOs and oral interviews or discussions (if held). The Executive Director will review the recommendation and, if he agrees, he will forward the recommendation to the BATA Oversight committee for approval.

IX. GENERAL CONDITIONS

A. Award

Any award made will be to the Contractor whose proposal is most advantageous to BATA based on the evaluation criteria defined in Section VIII. If the selected firm fails to enter into a contract with BATA in a timely manner as determined by BATA, in accordance with the terms and conditions of this RFP, BATA reserves the right to reject the proposal of the selected firm and enter into a contract with the next highest scoring firm.

B. Contract Arrangements

The selected Firm will be expected to execute a contract based on the terms and conditions in *Appendix D, BATA’s Professional Service Agreement*. If a proposer wishes to propose a change to any standard BATA contract provision must submit the provision and the proposed alternative language on or prior to the closing date for receipt of requests for clarifications/exceptions listed in this RFP. If no such change is requested, the Contractor will be deemed to accept BATA’s standard contract provisions, unless such language is protested in accordance with the procedures in Section IX, General Conditions, Paragraph C, of this RFP.

The selected Contractor will be required to maintain insurance coverage, during the term of the contract, at the levels described in *Appendix D-1, Insurance Requirements*. Contractor agrees to provide the required certificates of insurance and verification of the minimum insurance requirements listed in *Appendix D-1, Insurance Requirements*, within ten (10) days of BATA’s notice to the firm that it is the successful proposer. Requests to change BATA’s insurance requirements should be submitted on or prior to the closing date for receipt of requests for clarifications/exceptions listed above. BATA will review the requests and issue an addendum if material changes requested by a prospective proposer are acceptable. Objections to BATA

determinations on requests to change insurance requirements must be brought to BATA's attention no later than the date for protesting RFP provisions listed below in Paragraph C. If such objections are not brought to BATA's attention consistent with the protest provisions of this RFP, compliance with all material insurance requirements will be assumed.

The selected Firm from this RFP will make regular payments to BATA in the amount of gross proceeds collected, and be compensated for the services according to the terms of the Contract.

The Contract will include a provision permitting BATA to terminate the Contract with the selected Firm within one (1) year of contract execution, at its sole discretion: (a) if the selected Firm has not satisfactorily complied with the requirements of the contract's scope of work, as set forth in this RFP and (b) if the areas of noncompliance are such that by their nature are unlikely to be capable of cure. In such event, BATA will provide no less than forty-five (45) days advance notice to selected Firm of the intent to termination, and BATA will have the right to negotiate with the next highest ranked proposer under the terms of the RFP. If negotiations fail with the second highest ranked proposer, BATA reserves the right to negotiate with the third highest ranked proposer and so forth until a contract is entered. BATA also reserves the right to cancel this procurement and re-procure the Contractor for this project if it is determined to be in its best interest to do so.

C. Selection Disputes

Proposer may object to a provision of the RFP on the grounds that it is arbitrary, biased, or unduly restrictive, or to the selection of a particular Contractor on the grounds that BATA procedures, the provisions of the RFP or applicable provisions of federal, state or local law have been violated or inaccurately or inappropriately applied by submitting to the Project Manager a written explanation of the basis for the protest:

1. No later than 4:00 p.m. on the third business day prior to the date proposals are due, for objections to RFP provisions; or
2. No later than 4:00 p.m. on the third business day after the date the firm is notified that it did not meet the minimum qualifications or was found to be non-responsive; or
3. No later than 4:00 p.m. on the third business day after the date on which the firm is notified that it was not selected, or the date the appropriate committee authorizes award, whichever is later, for objections to Contractor selection.

Except with regard to initial determinations of non-responsiveness, the evaluation record shall remain confidential until the BATA Executive Director or the BATA Oversight Committee authorizes award.

Protests of recommended awards must clearly and specifically describe the basis for the protest in sufficient detail for the BATA review officer to recommend a resolution to the Executive Director.

The Executive Director will respond to the protest in writing, based on the recommendation of a staff review officer. Should a proposer wish to appeal the decision of the BATA Executive

Director, it may file a written appeal with the BATA Oversight Committee, no later than 4:00 p.m. on the third business day after receipt of the written response from the BATA Executive Director. The BATA Oversight Committee's decision will be the final agency decision.

Authorization to award a contract to a particular Contractor by the BATA Oversight Committee shall be deemed conditional until the expiration of the protest period or, if a protest is filed, the issuance of a written response to the protest by the BATA Executive Director or, if the decision of the BATA Executive Director is appealed, the issuance of the BATA Oversight Committee's decision.

D. Public Records

This RFP and any material submitted in response to this RFP are subject to public inspection under the California Public Records Act (Government Code § 6250 *et seq.*), unless exempt by law. Other than proprietary information or other information exempt from disclosure by law, the content of proposals submitted to BATA will be made available for inspection consistent with its policy regarding Public Records Act requests.

If the Proposer believes any proposal content contains trade secrets or other proprietary information that the Proposer believes would cause substantial injury to the Proposer's competitive position if disclosed, the Proposer may request that BATA withhold from disclosure such proprietary materials by marking each page containing propriety information, including financial information submitted under Section VII. L. of this RFP, as confidential and shall include the following notice at the front of its proposal:

“The data on the following pages of this proposal, including financial information submitted under Section VII. L. of this RFP, marked along the right margin with a vertical line, contain technical or financial information which are trade secrets and/or which, if disclosed, would cause substantial injury to the proposer's competitive position. The proposer requests that such data be used for review by BATA only, but understands that exemption from disclosure will be limited by BATA's obligations under the California Public Records Act. If a contract is awarded to the proposer submitting this proposal, BATA shall have the right to use or disclose the data, unless otherwise provided by law. [List pages].”

Failure to include this notice with relevant page numbers shall render any “confidential/proprietary” markings inadequate. Individual pages shall accordingly not be treated confidentially. **Any language purporting to render the entire proposal confidential or proprietary will be regarded as ineffective and will be disregarded. In addition, the Proposer may not designate any required Proposal Forms or the cost proposal as confidential or proprietary. Consequently, any language purporting to render any Proposal Forms or the cost proposal as confidential or proprietary will be regarded as ineffective and will be discarded.**

In the event properly marked data is requested pursuant to the California Public Records Act, the proposer will be advised of the request. If the Proposal requests that BATA withhold such data from disclosure and BATA complies with the Proposer's request, the Proposer shall assume all

responsibility for any challenges resulting from the non-disclosure; indemnify and defend BATA and hold it harmless from and against all claims, legal proceedings, and resulting damages and costs (including but not limited to attorneys' fees that may be awarded to the party requesting such Proposer information) and pay any and all costs and expenses relating to the withholding of the Proposer information.

If the Proposer does not mark each page containing proprietary information as confidential, does not include the statement described above at the front of its proposal, and does not request that BATA withhold information marked as confidential and requested under the California Public Records Act, BATA shall have no obligation to withhold the information from disclosure, and the Proposer shall not have a right to make a claim or maintain any legal action against BATA or its commissioners, officers, employees, or agents in connection with such disclosure.

E. Key Personnel

Key staff persons assigned to the project are expected to remain on the project throughout the contract, except employees whose change is beyond the control of the contractor. Any change in key staff persons of the proposed project team is subject to prior written approval of BATA.

F. Conflicts Of Interest

By submitting a Proposal, the Proposer represents and warrants that no commissioner, officer or employee of BATA is in any manner interested directly or indirectly in the Proposal or in the contract that may be made under it or in any profits expected to arise therefrom, as set forth in California Government Code Section 1090.

The Proposer further warrants and represents that it presently has no interest and agrees that it will not acquire any interest that would present a conflict of interest under California Government Code Sections 1090 *et seq.* or 87100 *et seq.* during the performance of services under any contract resulting from this RFP and that it will not knowingly employ any person having such an interest. Violation of this provision may result in the contract being deemed void and unenforceable.

Whenever BATA is awarding a contract that involves the rendering of advice, it will consider whether there exists the potential for bias, because of other activities, relationships or contracts of the Proposer, and if so, whether any potential bias can be mitigated acceptably by BATA and the Proposer. After award, the Contractor shall take all reasonable measures to preclude the existence or development of an organizational conflict of interest in connection with work performed under the agreement resulting from this and other BATA solicitations. An organizational conflict of interest occurs when, due to other activities, relationships, or contracts, a firm or person is unable, or potentially unable, to render impartial assistance or advice to BATA; a firm or person's objectivity in performing the contract work is or might be impaired; or a firm or person has an unfair competitive advantage in proposing for award of a contract as a result of information gained in performance of this or some other project.

Proposer shall not engage the services of any subcontractor or independent contractor on any work related to this Agreement if the subcontractor or independent contractor, or any employee of the subcontractor or independent contractor, has an actual or apparent organizational conflict of interest related to work or services contemplated under this Agreement.

G. Personally Identifiable Information

Contractor agrees to comply with the special provisions related to the access and protection of personally identifiable information set forth in Attachment G, Special Conditions Regarding Personally Identifiable Information of Appendix D, BATA Standard Contractor Contract.

APPENDIX A, SCOPE OF WORK

The selected firm shall provide, either through direct services or qualified subcontractors, collection services for toll violations and delinquent FasTrak® accounts. The following is a description of the services to be performed and duties of all parties:

1. Contractor agrees to furnish all labor, materials, equipment, account interfacing, and expertise to maximize collection(s) from toll violations and FasTrak® delinquent accounts.
2. Contractor shall adhere to and comply with the Interface Control Document (ICD) formats and processes described in Appendix B, BATA Regional CSC Violation Collection and Negative Balance Collection Interface to perform the electronic exchange of data and files with the RCSC contractor. The ICD is subject to change.
3. Contractor shall work with BATA, RCSC contractor, and other BATA consultants to test and finalize the processes and procedures for the electronic exchange of data and files necessary to perform collection services.
4. Contractor shall effect collections through, but not necessarily limited to, written communications with debtors, skip tracing for new addresses, and negotiate compromise settlements. Contractor may propose additional procedures such as the use of the California Franchise Tax Board in their collection efforts.
5. Contractor shall observe debtors' rights and shall comply with any and all applicable Federal laws and laws of the State of California, including by way of example and not as a limitation, applicable provisions of the Federal Fair Debt Collections Practices Act, Collection Agency Act, and the California Rosenthal Fair Debt Collection Practices Act. Contractor is expected to be familiar with and comply with the statutory provisions of California Vehicle Code, sections 40250 *et seq.*, regarding procedures for toll evasion violations, in addition to all other applicable sources of law that govern the scope of work under this RFP.
6. Contractor shall use diligence and professional standards to effect collections. Contractor shall only use collection methods that are reviewed and approved by BATA for conformity with BATA policies and procedures. The use of any unapproved methods of collection may result in immediate termination of the contract. BATA's approval shall not operate to waive any requirements and shall not relieve the Contractor of its obligations hereunder.
7. Contractor shall follow best practices used in the industry and adhere to all Federal and State consumer laws.
8. Any harassment or alleged harassment on the party of Contractor in carrying out the scope of work under this RFP against debtors or other individuals or entities may result in immediate termination of the contract.
9. Contractor shall have the capability to effect collections in all 50 states.
10. Contractor shall maintain records as they pertain to the services in such manner as to be auditable by BATA at any time during normal business hours for the full term of the Contract. BATA shall have the right to inspect all documents related to collection services performed pursuant to this RFP, including without limitation all notices, correspondence and

payments, sent to or received from the Contractor, toll violators, or delinquent accountholders.

11. Contractor shall not collect additional fees or charges from debtors. The Commission Rate, as proposed by the Contractor and accepted by BATA, shall be the sole source of compensation to the Contractor for services rendered pursuant to this RFP.
12. Contractor shall furnish BATA with management and financial reports, including but not limited to:
 - a. An Acknowledgement Report verifying the number of accounts, date received, and total amount referred, to be sent to BATA within 24 hours of BATA's transmittal of accounts for collection to Contractor.
 - b. A Reconciliation Report indicating monthly activity by violation or account number, name, amount referred, invoice number, amount paid, date paid, balance due, and the cumulative total for each violation account and each delinquent FasTrak® account. The Reconciliation Report shall reconcile all financial transactions to the monthly invoice and to the bank statement.
 - c. A detailed monthly Status Report showing total project activity to date, including total number of accounts, amount assigned, amount collected, accounts cancelled, accounts recalled by BATA, account uncollectible, accounts referred for legal action, and the associated financial information for each category.
 - d. Notes on collection efforts for accounts that are returned, including one of the following reasons for return:
 - Efforts exhausted
 - Bankruptcy
 - Settlement
 - Balance cancelled
 - Past statue
 - Other
 - e. Other reports that BATA may reasonably require related to the collection of accounts.
13. CONTRACTOR shall continue collection activities on each account until it is determined that an account is uncollectible. Lack of reasonable collection effort by the CONTRACTOR on any account may result in the termination of the Contract.
14. CONTRACTOR shall remit to BATA the gross proceeds collected on its behalf. CONTRACTOR will be compensated for their services according to the terms of the Contract.
15. CONTRACTOR shall not settle any account for less than the full amount owed, unless otherwise directed, in writing by BATA.
16. CONTRACTOR shall attempt to assess debtor's ability to repay the debt and, if necessary, extend time payments, which shall be subject to guidelines approved by BATA.

17. CONTRACTOR shall contact the sender of monies when there is insufficient information to identify the invoice or account to which the payment relates.
18. CONTRACTOR must stop all collection activity immediately when notified by BATA to do so. BATA reserves the rights to re-evaluate, adjust, cancel, or recall any accounts or violations assigned for collection. CONTRACTOR shall return accounts to BATA upon recall.
19. In the event BATA receives notice that the debtor of any assigned account has filed bankruptcy, CONTRACTOR shall immediately discontinue collection efforts upon notification by BATA. CONTRACTOR shall also immediately discontinue collection efforts on an assigned account if the CONTRACTOR becomes aware by any other means that the debtor has filed bankruptcy protection.
20. CONTRACTOR shall transfer back any accounts BATA may require for whatever reason at no cost to BATA.
21. CONTRACTOR shall pick up and deliver any items related to these services at no cost to BATA.
22. Subject to the requirements governing the retention period for personally identifiable information (PII) set out in Attachment G, Special Conditions Relating to Personally Identifiable Information, of Appendix D, BATA's Professional Services Agreement, CONTRACTOR shall maintain and retain all books, records, data, and other related and relevant documentation for a minimum of four (4) years after the expiration of any agreement issued as a result of this RFP.
23. CONTRACTOR shall provide notice of any planned referral for legal action and obtain prior approval from BATA. If collection attorneys were not identified in the proposal, CONTRACTOR shall submit experience and qualifications information for attorneys to be engaged as well as proof that the attorneys have completed a conflicts check with respect to BATA, MTC, MTC SAFE, BAHA, and BAIFA. Any attorneys to whom CONTRACTOR intends to refer accounts for legal action shall be subject to the prior approval of the BATA Office of General Counsel.
24. Upon request, CONTRACTOR shall provide additional low-volume collections services for BATA (e.g. returned checks, other delinquent accounts, etc.)
25. CONTRACTOR shall return all records to BATA within ninety (90) days upon request.
26. After the contract expires or is terminated, all violations and delinquent accounts submitted to the CONTRACTOR prior to the contract expiration or termination date, unless recalled by BATA, will remain with the CONTRACTOR for one (1) year or until paid, canceled, or as otherwise directed by BATA, whichever is earlier. One year after the contract expiration or termination date, all remaining outstanding accounts shall revert back to BATA and all collection efforts shall cease. All fees for service will remain under the terms stipulated in this Contract.

**APPENDIX B, REGIONAL CUSTOMER SERVICE CENTER (RCSC) INTERFACE
REQUIREMENTS**

See Attached Document

APPENDIX C, CALIFORNIA LEVINE ACT STATEMENT

California Government Code § 84308, commonly referred to as the “Levine Act,” precludes an officer of a local government agency from participating in the award of a contract if he or she receives any political contributions totaling more than \$250 in the 12 months preceding the pendency of the contract award, and for three months following the final decision, from the person or company awarded the contract. This prohibition applies to contributions to the officer, or received by the officer on behalf of any other officer, or on behalf of any candidate for office or on behalf of any committee.

BATA’s commissioners include:

Alicia C. Aguirre
Tom Azumbrado
Tom Bates
David Campos
Dave Cortese
Bill Dodd

Federal D. Glover
Scott Haggerty
Anne W. Halsted
Steve Kinsey
Sam Liccardo
Mark Luce

Joe Pirzynski
Jean Quan
Bijan Sartipi
James P. Spring
Adrienne J. Tissier
Scott Wiener

1. Have you or your company, or any agent on behalf of you or your company, made any political contributions of more than \$250 to any BATA commissioner in the 12 months preceding the date of the issuance of this request for qualifications?

YES NO

If yes, please identify the commissioner: _____

2. Do you or your company, or any agency on behalf of you or your company, anticipate or plan to make any political contributions of more than \$250 to any BATA commissioners in the three months following the award of the contract?

YES NO

If yes, please identify the commissioner: _____

Answering yes to either of the two questions above does not preclude BATA from awarding a contract to your firm. It does, however, preclude the identified commissioner(s) from participating in the contract award process for this contract.

DATE

(SIGNATURE OF AUTHORIZED OFFICIAL)

(TYPE OR WRITE APPROPRIATE NAME, TITLE)

(TYPE OR WRITE NAME OF COMPANY)

APPENDIX D, BATA'S STANDARD PROFESSIONAL SERVICES AGREEMENT

PROFESSIONAL SERVICES AGREEMENT
BAY AREA TOLL AUTHORITY
And **INSERT NAME OF CONTRACTOR**
For COLLECTION SERVICE

THIS AGREEMENT is made and entered into as of the **xx** day of **Month**, 20____, by and between the Bay Area Toll Authority (herein called "BATA"), established pursuant to Streets and Highways Code § 30950 *et seq.* and **INSERT NAME OF CONTRACTOR**, (herein called "**CONTRACTOR**", a **PICK ONE OF THE FOLLOWING**: partnership, _____ [state of incorporation] corporation/ nonprofit corporation/joint venture organized under the laws of the State of _____).

RECITALS

WHEREAS, BATA intends to contract for collection services for outstanding toll violations and delinquent FasTrak® accounts (herein called "the Project"); and

WHEREAS, the services required for the Project cannot be performed satisfactorily by the officers and employees of BATA; and

WHEREAS, the parties hereto now wish to enter into an agreement (the "Agreement") pursuant to which CONTRACTOR will render professional services in connection with the Project as hereinafter provided.

NOW, THEREFORE, the parties hereto agree as follows:

1. SCOPE OF SERVICES

CONTRACTOR's services are described in Attachment A, Scope of Work, attached hereto and incorporated herein by this reference. CONTRACTOR agrees to perform or secure the performance of all specified services within the maximum payment specified in Article 3, subject to the prior written approval of a work plan by Gary Louie, (herein called "BATA Project Manager"). As BATA Project Manager, Gary Louie is responsible for communication with CONTRACTOR and the administration of this Agreement. BATA's Executive Director or designated representative may substitute a new BATA Project Manager by written notice to CONTRACTOR.

CONTRACTOR's point of contact and the individual authorized to communicate to BATA on behalf of CONTRACTOR is **INSERT NAME OF CONTRACTOR's PM**

(“CONTRACTOR Project Manager”). A change in the CONTRACTOR Project Manager requires BATA written approval.

1.1 PROGRESS REPORTS

CONTRACTOR shall provide BATA with monthly progress reports according to the schedule and form approved by the BATA Project Manager.

2. PERIOD OF PERFORMANCE

CONTRACTOR’s services hereunder shall commence on or after _____, 201__, and shall be completed no later than _____, 201__, unless extended by duly executed amendment or earlier terminated, as hereinafter provided. CONTRACTOR's services shall be performed in accordance with the schedule included in Attachment B, Project Schedule, attached hereto and incorporated herein by this reference.

3. COMPENSATION AND METHOD OF PAYMENT

A. Compensation. CONSULANT shall be compensated for services on a solely commission basis, based on a percentages listed below:

<u>Account Type</u>	<u>Commission Rates</u>
1. Violations	<u>% of all sums collected</u>
2. Closed Delinquent Accounts	<u>% of all sums collected</u>

B. Maximum Payment. Subject only to duly executed amendments, it is expressly understood and agreed that in no event will the total compensation to be paid CONTRACTOR under this Agreement exceed the sum of _____ dollars (\$_____).

C. Monthly Statement and Submission of Collections. CONTRACTOR shall be paid on a monthly basis for all sums collected. On a monthly basis, CONTRACTOR shall remit to BATA all proceeds collected on BATA’s behalf, net of commission, and provide BATA with a detailed written statement of collections, identifying the accounts for which payment was collected, collected amount and commission deducted. CONTRACTOR shall remit all payments and statements of collections to BATA as follows:

Attention: Accounting Section, Gary Louie
Bay Area Toll Authority
Joseph P. Bort MetroCenter
101 - 8th Street
Oakland, CA 94607-4700

4. KEY PERSONNEL

The key personnel to be assigned to this work by CONTRACTOR and, if applicable, their hourly rates and the estimated hours to be supplied by each are set forth in Attachment D, Key Personnel, attached hereto and incorporated herein by this reference. Substitution of any of the personnel named in Attachment D or a decrease in the hours provided to the project by such personnel of more than 10% requires the prior written approval of the Project Manager or a designee. CONTRACTOR shall maintain records documenting compliance with this Article, which shall be subject to the audit requirements of Article 15. CONTRACTOR agrees that all personnel assigned to this work will be professionally qualified for the assignment to be undertaken. BATA reserves the right to direct removal of any individual, including key personnel, assigned to this work.

5. AMENDMENTS

BATA reserves the right to request changes in the services to be performed by CONTRACTOR. All such changes shall be incorporated in written amendments, which shall specify the changes in work performed and any adjustments in compensation and schedule. All amendments shall be executed by the Executive Director or a designated representative and CONTRACTOR and specifically identified as amendments to the Agreement. The BATA Project Manager is not a designated representative, for purposes of approving an amendment.

6. TERMINATION

A. Termination for Convenience. BATA may terminate this Agreement, in whole or in part, at any time by written notice to CONTRACTOR. Upon receipt of notice of termination, CONTRACTOR shall stop work under this Agreement immediately, to the extent provided in the notice of termination, and shall promptly submit its termination claim to BATA. CONTRACTOR shall be compensated its commission for sums collected up to the time of termination, plus reasonable termination costs, up to the maximum amount payable under this Agreement. If CONTRACTOR has any property in its possession belonging to BATA, CONTRACTOR will account for the same, and dispose of it in the manner BATA directs.

B. Termination for Default. If CONTRACTOR does not deliver the work products specified in this Agreement in accordance with the delivery schedule or fails to perform in the manner called for in the Agreement, or if CONTRACTOR fails to comply with any other

material provision of the Agreement, BATA may terminate this Agreement for default. Termination shall be effected by serving a fifteen (15) day advance written notice of termination on CONTRACTOR, setting forth the manner in which CONTRACTOR is in default. If CONTRACTOR does not cure the breach or describe to BATA's satisfaction a plan for curing the breach within the fifteen (15) day period, BATA may terminate the Agreement for default. In the event of such termination for default, CONTRACTOR will be entitled to be reimbursed for its commission for sum collected, in accordance with 6.A above, offset by any costs incurred by BATA to complete work required under the Agreement, except that in no event shall BATA be required to reimburse CONTRACTOR for any costs incurred for work causing or contributing to the default.

If it is determined by BATA that CONTRACTOR's failure to perform resulted from unforeseeable causes beyond the control of CONTRACTOR, such as a strike, fire, flood, earthquake or other event that is not the fault of, or is beyond the control of CONTRACTOR, BATA, after setting up a new delivery or performance schedule, may allow CONTRACTOR to continue work, or treat the termination as a termination for convenience.

7. INSURANCE AND FINANCIAL SECURITY REQUIREMENTS

CONTRACTOR shall, at its own expense, obtain and maintain in effect at all times during the life of this Agreement the types of insurance and financial security listed in Attachment E, Insurance and Financial Security (Bond) Provisions, attached hereto and incorporated herein, against claims, damages and losses due to injuries to persons or damage to property or other losses that may arise in connection with the performance of work under this Agreement. All insurance must be placed with insurers with a Best's rating of A-VIII or better.

8. INDEPENDENT CONTRACTOR

CONTRACTOR is an independent contractor and not an employee or agent of BATA and has no authority to contract or enter into any agreement in the name of BATA. CONTRACTOR has, and hereby retains, full control over the employment, direction, compensation and discharge of all persons employed by CONTRACTOR who are assisting in the performance of services under this Agreement. CONTRACTOR shall be fully responsible for all matters relating to the payment of its employees, including compliance with social security, withholding tax and all other laws and regulations governing such matters. CONTRACTOR shall be responsible for its own acts and those of its agents and employees during the term of this Agreement.

9. INDEMNIFICATION

To the maximum extent permitted by law, CONTRACTOR shall indemnify, keep and hold harmless BATA and those entities (if any) identified as additional insureds in Attachment E,

Insurance and Financial Security (Bond) Provisions, and their commissioners, directors, officers, agents, and employees (“BATA Indemnified Parties”) against any and all demands, claims, suits or actions arising out of any of the following:

- A. Any injury or death to persons or property or pecuniary, financial or economic losses that may occur, or that may be alleged to have occurred, arising from the performance of this Agreement by CONTRACTOR caused by any breach of the Agreement or negligent act or omission or willful misconduct of the CONTRACTOR or its officers, employees, subconsultants or agents; or
- B. Any allegation that materials or services provided by CONTRACTOR under this Agreement infringe or violate any copyright, trademark, patent, trade secret, or any other intellectual-property or proprietary right of any third party.

CONTRACTOR further agrees to defend any and all such claims, actions, suits or other legal proceedings and pay all charges of attorneys and all other costs and expenses of defenses as they are incurred. If any judgment is rendered against any of the BATA Indemnified Parties, CONTRACTOR shall, at its expense, satisfy and discharge the same. The provisions set forth in this Article are intended to be applied to the fullest extent allowed under the law and, if any portion of it is found to be void or unenforceable, the remainder is to be severable and enforceable.. This indemnification shall survive termination or expiration of this Agreement.

10. DATA TO BE FURNISHED BY BATA

All data, reports, surveys, studies, drawings, software (object or source code), electronic databases, and any other information, documents or materials (“BATA Data”) made available to CONTRACTOR by BATA for use by CONTRACTOR in the performance of its services under this Agreement shall remain the property of BATA and shall be returned to BATA at the completion or termination of this Agreement. No license to such BATA Data, outside of the Scope of Work of the Project, is conferred or implied by CONTRACTOR’s use or possession of such BATA Data. Any updates, revisions, additions or enhancements to such BATA Data made by CONTRACTOR in the context of the Project shall be the property of BATA and subject to the provisions of Article 11.

10.1 PERSONALLY IDENTIFIABLE INFORMATION

CONTRACTOR agrees to comply with the special provisions related to the access and protection of personally identifiable information set forth in Attachment G, Special Conditions Regarding Personally Identifiable Information, attached hereto and incorporated herein by this reference.

10.2 NONDISCLOSURE OF CONFIDENTIAL INFORMATION

BATA may be required to make available to CONTRACTOR certain confidential, non-public or proprietary information (“Confidential Information”) for purposes of carrying out the Project. Confidential Information may be tangible, intangible, visual, oral, written, and/or electronic information, present or future, and includes: (i) proprietary information learned through inspection of drawings, specifications or equipment; (ii) descriptions of proprietary processes, designs, functionality or know-how; (iii) proprietary software, programming data, code or information; and (iv) other information disclosed in writing and marked as “Confidential” or with a similar notice. As between BATA and CONTRACTOR, Confidential Information shall remain the sole and exclusive property of BATA, and no license or other rights to Confidential Information or any works deriving from Confidential Information is granted or implied hereby. Confidential Information does not include information that: a) is now or subsequently becomes generally available to the public through no fault of CONTRACTOR; b) CONTRACTOR can demonstrate to have had rightfully in its possession prior to disclosure by BATA or its contractors, vendors or licensors; c) CONTRACTOR rightfully obtains from a third party who has the right to transfer or disclose it; or (d) is required to be disclosed by law or applicable legal process.

CONTRACTOR agrees to take all necessary and reasonable precautions to maintain the confidentiality of Confidential Information and agrees not to use, copy, distribute or disclose such Confidential Information except for the business purpose underlying this Agreement, except as authorized in writing by BATA. CONTRACTOR further agrees to disclose Confidential Information only to its directors, officers, employees and consultants who need to know such information, and who have agreed to be bound by the terms and conditions of this Agreement. Promptly upon the request of BATA, at any time and for any reason, CONTRACTOR shall destroy or return to BATA, at BATA’s option, all documents, computer files and other tangible materials that contain Confidential Information. These obligations survive the termination of this Agreement, unless otherwise agreed in writing by BATA.

11. OWNERSHIP OF WORK PRODUCTS

All drawings, designs, specifications, manuals, reports, studies, surveys, models, software, source code and source code documentation, documentation or system architecture and any other documents, materials, data and products (“Work Products”) prepared or assembled and furnished to BATA by CONTRACTOR or its subconsultants pursuant to this Agreement shall be and are the property of BATA. BATA shall be entitled to copies and access to these materials during the progress of the work. Any such materials remaining in the hands of the CONTRACTOR or in the hands of any subconsultant upon completion or termination of the work shall be immediately

delivered to BATA. CONTRACTOR hereby assigns to BATA ownership of any and all rights, title and interest in and to such Work Products, including ownership of any copyright, patent, trademark, trade secret, or other intellectual property or proprietary rights in the Work Product. CONTRACTOR also agrees to execute all papers necessary for BATA to perfect its ownership of the rights in the Work Product. Notwithstanding the above, "Work Products" are not intended nor shall they be construed to include CONTRACTOR'S pre-existing intellectual property secured, developed, written, or produced by CONTRACTOR prior to the execution of this Agreement or developed concurrently with this Agreement but not specifically for this Agreement; CONTRACTOR shall retain all right, title and interest in any such pre-existing intellectual property.

CONTRACTOR shall be responsible for the preservation of any and all such Work Products prior to transmittal to BATA, and CONTRACTOR shall replace any such Work Products as are lost, destroyed, or damaged while in its possession without additional cost to BATA.

CONTRACTOR represents and warrants that all materials prepared under this Agreement are original or developed from materials in the public domain (or both) and that all materials prepared under and services provided under this Agreement do not infringe or violate any copyright, trademark, patent, trade secret, or other intellectual-property or proprietary right of any third party.

12. SUBCONTRACTS

A. Subconsultants approved by BATA for subcontract work under this Agreement are listed in Attachment F, Subconsultant List, attached hereto and incorporated herein by this reference. Any subconsultants must be engaged under written contract with the CONTRACTOR with provisions allowing the CONTRACTOR to comply with all requirements of this Agreement, including without limitation Article 11, OWNERSHIP OF WORK PRODUCTS. Failure of a subconsultant to provide insurance in accordance with Article 7, INSURANCE REQUIREMENTS, shall be at the risk of CONTRACTOR.

B. Nothing contained in this Agreement or otherwise, shall create any contractual relation between BATA and any subcontractors, and no subcontract shall relieve CONTRACTOR of his/her responsibilities and obligations hereunder. CONTRACTOR agrees to be as fully responsible to BATA for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by CONTRACTOR. CONTRACTOR's obligation to pay its subcontractors is an independent obligation from BATA's obligation to make payments to CONTRACTOR.

C. Any substitution of subcontractors listed in Attachment F must be approved in writing by BATA's Project Manager in advance of assigning work to a substitute subcontractor.

D. Applicable provisions of this Agreement shall be included in any subcontract or subconsultant agreement in excess of \$25,000 entered into under of this Agreement.

13. ASSIGNMENT OF AGREEMENT

CONTRACTOR shall not assign this Agreement, or any part thereof without prior express written consent of the Project Manager or a designated representative, and any attempt thereat shall be void and unenforceable.

14. RECORDS

CONTRACTOR agrees to establish and maintain an accounting system conforming to Generally Accepted Accounting Principles (GAAP) that is adequate to accumulate and segregate reasonable, allowable, and allocable project costs. CONTRACTOR further agrees to keep all records pertaining to the project being funded for audit purposes for a minimum of four (4) years following the fiscal year of last expenditure under the Agreement; or until completion of any litigation, claim or audit, whichever is longer. Any conflicting language regarding retention of records contained in Attachment H, Federally-Required Clauses, shall supersede this Article.

15. AUDITS

CONTRACTOR shall permit BATA, and its authorized representatives to have access to CONTRACTOR's books, records, accounts, and any and all work products, materials, and other data relevant to this Agreement, for the purpose of making an audit, examination, excerpt and transcription during the term of this Agreement and for the period specified in Article 14. CONTRACTOR shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, work products, materials and data for that period of time.

CONTRACTOR further agrees to include in all its subcontracts hereunder exceeding \$25,000 a provision to the effect that the subcontractor agrees that BATA, or any of its duly authorized representatives shall have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor for the term specified above.

Any conflicting language regarding audits contained in Attachment H, Federally-Required Clauses, shall supersede this Article.

16. NOTICES

Except for invoices submitted by CONTRACTOR pursuant to Article 3, all notices or other communications to either party by the other shall be deemed given when made in writing and delivered, mailed, emailed, or faxed to such party at their respective addresses as follows:

member, officer, agent or employee) presently has, or will have in the Agreement, or in the performance thereof, or in any portion of the profits thereunder. Willful failure to make such disclosure, if any, shall constitute grounds for cancellation and termination hereof by BATA.

18.1 ORGANIZATIONAL CONFLICTS OF INTEREST

CONTRACTOR shall take all reasonable measures to preclude the existence or development of an organizational conflict of interest in connection with work performed under this Agreement. An organizational conflict of interest occurs when, due to other activities, relationships, or contracts, a firm or person is unable, or potentially unable, to render impartial assistance or advice to BATA; a firm or person's objectivity in performing the contract work is or might be impaired; or a firm or person has an unfair competitive advantage in proposing for award of a contract as a result of information gained in performance of this or some other Agreement.

CONTRACTOR shall not engage the services of any subconsultant or independent contractor on any work related to this Agreement if the subconsultant or independent contractor, or any employee of the subconsultant or independent contractor, has an actual or apparent organizational conflict of interest related to work or services contemplated under this Agreement.

If at any time during the term of this Agreement CONTRACTOR becomes aware of an organizational conflict of interest in connection with the work performed hereunder, CONTRACTOR shall immediately provide BATA with written notice of the facts and circumstances giving rise to this organizational conflict of interest. CONTRACTOR's written notice will also propose alternatives for addressing or eliminating the organizational conflict of interest. If at any time during the period of performance of this Agreement, BATA becomes aware of an organizational conflict of interest in connection with CONTRACTOR's performance of the work hereunder, BATA shall similarly notify CONTRACTOR. In the event a conflict is presented, whether disclosed by CONTRACTOR or discovered by BATA, BATA will consider the conflict presented and any alternatives proposed and meet with CONTRACTOR to determine an appropriate course of action. BATA's determination as to the manner in which to address the conflict shall be final.

Failure to comply with this section may subject the CONTRACTOR to damages incurred by the BATA in addressing organizational conflicts that arise out of work performed by CONTRACTOR, or to termination of this Agreement for breach.

19. LAWS AND REGULATIONS

CONTRACTOR shall comply with any and all applicable laws, statutes, ordinances, rules, regulations, and procedural requirements of any national, state, or local government, and of any agency of such government, including but not limited to BATA, that relate to or in any manner affect the performance of the Agreement. Those laws, statutes, ordinances, rules, regulations and procedural requirements which are imposed on BATA as a recipient of federal or state funds are hereby in turn imposed on CONTRACTOR.

20. CLAIMS OR DISPUTES

CONTRACTOR shall be solely responsible for providing timely written notice to BATA of any claims for additional compensation and/or time in accordance with the provisions of the Agreement. It is BATA's intent to investigate and attempt to resolve any CONTRACTOR claims before CONTRACTOR has performed any disputed work. Therefore, CONTRACTOR's failure to provide timely notice shall constitute a waiver of CONTRACTOR's claims for additional compensation and/or time.

CONTRACTOR shall not be entitled to the payment of any additional compensation for any cause, including any act, or failure to act, by BATA, or the failure or refusal to issue a modification, or the happening of any event, thing, or occurrence, unless it has given BATA due written notice of a potential claim. The potential claim shall set forth the reasons for which CONTRACTOR believes additional compensation may be due, the nature of the costs involved, and the amount of the potential claim.

Such notice shall be given to BATA prior to the time that CONTRACTOR has started performance of the work giving rise to the potential claim for additional compensation.

If there is a dispute over any claim, CONTRACTOR shall continue to work during the dispute resolution process in a diligent and timely manner as directed by BATA, and shall be governed by all applicable provisions of the Agreement. CONTRACTOR shall maintain cost records of all work that is the basis of any dispute.

If an agreement can be reached which resolves CONTRACTOR's claim, the parties will execute an Agreement modification to document the resolution of the claim. If the parties cannot reach an agreement with respect to the CONTRACTOR claim, they may choose to pursue dispute resolution pursuant to Article 24, DISPUTE RESOLUTION, or BATA may terminate the Agreement.

21. REMEDIES FOR BREACH

In the event CONTRACTOR fails to comply with the requirements of the Agreement in any way, BATA reserves the right to implement administrative remedies which may include, but

are not limited to, withholding of progress payments and contract retentions, and termination of the Agreement in whole or in part.

The duties and obligations imposed by the Agreement and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by BATA or CONTRACTOR shall constitute a waiver of any right or duty afforded any of them under the Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

22. TEMPORARY SUSPENSION OF WORK

BATA, in its sole discretion, reserves the right to stop or suspend all or any portion of the work for such period as BATA may deem necessary. The suspension may be due to the failure on the part of CONTRACTOR to carry out orders given or to perform any provision of the Agreement or to factors that are not the responsibility of CONTRACTOR. The CONTRACTOR shall comply immediately with the written order of BATA to suspend the work wholly or in part. The suspended work shall be resumed when CONTRACTOR is provided with written direction from BATA to resume the work.

If the suspension is due to CONTRACTOR's failure to perform work or carry out its responsibilities in accordance with this Agreement, or other action or omission on the part of the CONTRACTOR, all costs shall be at CONTRACTOR's expense and no schedule extensions will be provided by BATA.

In the event of a suspension of the work, CONTRACTOR shall not be relieved of CONTRACTOR's responsibilities under this Agreement, except the obligations to perform the work which BATA has specifically directed CONTRACTOR to suspend under this section.

If the suspension is not the responsibility of CONTRACTOR, suspension of all or any portion of the work under this Section may entitle CONTRACTOR to compensation and/or schedule extensions subject to the Agreement requirements.

23. WARRANTY OF SERVICES

A. In the performance of its services, CONTRACTOR represents and warrants that it has and will exercise the degree of professional care, skill, efficiency, and judgment of consultants with special expertise in providing such services, and that it carries and will maintain all applicable licenses, certificates, and registrations needed for the work in current and good standing. In addition, CONTRACTOR shall provide such specific warranties as may be set forth in specific Task Orders as agreed upon by the parties.

B. In the event that any services provided by CONTRACTOR hereunder are deficient because of CONTRACTOR's or subconsultants failure to perform said services in accordance with the warranty standards set forth above, BATA shall report such deficiencies in writing to the CONTRACTOR within a reasonable time. BATA thereafter shall have:

1. The right to have CONTRACTOR re-perform such services at the CONTRACTOR's expense; or
2. The right to have such services done by others and the costs thereof charged to and collected from the CONTRACTOR if within 30 days after written notice to CONTRACTOR requiring such re-performance, CONTRACTOR fails to give satisfactory evidence to the BATA that it has undertaken said re-performance; or
3. The right to terminate the Agreement for default. CONTRACTOR shall be responsible for all errors and omissions and is expected to pay for all deficient work as a result of errors and omissions.

24. DISPUTE RESOLUTION

A. Informal Resolution of Disputes. CONTRACTOR and BATA shall use good faith efforts to resolve all disputes informally at the project manager level. In the event such efforts are unsuccessful, either party may request that BATA provide a written determination as to the proposed resolution of the dispute. Within twenty-one (21) calendar days of the request, BATA's Project Manager shall provide a written determination as to the dispute, which shall include the basis for its decision. Upon CONTRACTOR's written acceptance of the Project Manager's determination, the Agreement may be modified and the determination implemented or, failing agreement, BATA may in its sole discretion pay such amounts and/or revise the time for performance in accordance with the Project Manager's determination.

If the Project Manager's determination is not accepted by CONTRACTOR, the matter shall promptly be referred to senior executives of the parties having designated authority to settle the dispute. The senior executives will exchange memoranda stating the issues in dispute and their respective positions and then meet for negotiations at a mutually agreed time and place. If the matter has not been resolved within thirty calendar (30) days of commencement of senior management negotiations, the parties may mutually agree to try to settle the dispute by means of alternate dispute resolution methodologies, as set forth below.

B. Controversies Subject to Alternative Dispute Resolution. Any claim or controversy concerning the interpretation, application, or implementation of this Agreement between BATA and CONTRACTOR which cannot be resolved through the informal efforts described above, may, by specific agreement of the parties, be submitted to alternative dispute resolution (that is,

mediation or arbitration) with the parameters for such dispute resolution being agreed to by the parties at the time.

C. Other Remedies. If a dispute is not resolved through discussion or the parties do not agree to alternative dispute resolution, either party may pursue available legal remedies in a California State or Federal court of competent jurisdiction. CONTRACTOR must file a government claim pursuant to Government Code section 910 *et seq.* in order to initiate a civil action.

D. Pending Resolution. CONTRACTOR shall continue to work during the dispute resolution process in a diligent and timely manner as directed by BATA, and shall be governed by all applicable provisions of the Agreement.

E. Cost of Alternative Dispute Resolution Proceedings. Each party shall bear the costs and expenses incurred by it in connection with such alternative dispute resolution processes. The cost of any mediator or independent decision maker shall be shared equally between the parties.

F. Survival of this Article. This Article shall survive completion or terminations of this Agreement, but under no circumstances shall either party call for an alternative dispute resolution of any claim or dispute arising out of this Agreement after such period of time as would normally bar the initiation of legal proceeding to litigate such claim or dispute under the laws of the State of California.

25. CHOICE OF LAW

All questions pertaining to the validity and interpretation of the Agreement shall be determined in accordance with the laws of California applicable to agreements made and to be performed within the State.

26. ATTORNEYS' FEES

If any legal proceeding should be instituted by either of the parties to enforce the terms of this Agreement or to determine the rights of the parties under this Agreement, the prevailing party in said proceeding shall recover reasonable attorneys' fees, in addition to all court costs.

27. PARTIAL INVALIDITY

If any term or condition of the Agreement is found to be illegal or unenforceable, such term or condition shall be deemed stricken and the remaining terms and conditions shall remain valid and in full force and effect.

28. BENEFIT OF AGREEMENT

The Agreement shall bind and benefit the parties hereto and their heirs, successors, and permitted assigns.

29. NO THIRD PARTY BENEFICIARIES

This Agreement is not for the benefit of any person or entity other than the parties.

30. ENTIRE AGREEMENT; MODIFICATION

This Agreement for Services, including any attachments, constitutes the complete Agreement between the parties and supersedes any prior written or oral communications. CONTRACTOR represents that in entering into the Agreement it has not relied on any previous representations, inducements, or understandings of any kind or nature. This Agreement may be modified or amended only by written instrument signed by both the CONTRACTOR and BATA. In the event of a conflict between the terms and conditions of this Agreement and the attachments, the terms of this Agreement will prevail.

IN WITNESS WHEREOF, the Agreement has been executed by the parties hereto as of the day and year first written above.

BAY AREA TOLL AUTHORITY

NAME OF CONTRACTOR

Steve Heminger, Executive Director

Insert Appropriate Name, Title

**ATTACHMENT A,
Scope Of Work
Outline of Services**

The services to be performed by CONTRACTOR shall consist of services requested by the Project Manager or a designated representative including, but not limited to, the following:

ATTACHMENT B
Project Schedule

Task #	Work to be Performed/Deliverables (#)	Completion Date

ATTACHMENT C
Compensation and Method of Payment

A. Compensation. CONTRACTOR shall be compensated for services on a solely commission basis, based on the percentages listed below:

<u>Account Type</u>	<u>Commission Rates</u>
1. Violations	<u>% of all sums collected</u>
2. Closed Delinquent Accounts	<u>% of all sums collected</u>

B. Maximum Payment. Subject only to duly executed amendments, it is expressly understood and agreed that in no event will the total compensation to be paid CONTRACTOR under this Agreement exceed the sum of _____ dollars (\$_____).

C. Monthly Statement and Submission of Collections. CONTRACTOR shall be paid on a monthly basis for all sums collected. On a monthly basis, CONTRACTOR shall remit to BATA all proceeds collected on BATA's behalf, net of commission, and provide BATA with a detailed written statement of collections, identifying the accounts for which payment was collected, collected amount and commission deducted. CONTRACTOR shall remit all payments and statements of collections to BATA as follows:

Attention: Accounting Section, Gary Louie
Bay Area Toll Authority
Joseph P. Bort MetroCenter
101 - 8th Street
Oakland, CA 94607-4700

ATTACHMENT D
Key Personnel Assignments

	<u>Name</u>	<u>Rate/hour</u>	<u>Est. hours</u>	<u>Task Description</u>
1.		\$xx		
2.				
3.				
4.				
5.				
6.				
7.				
8.				

* Applicable to development of payment provisions in amendments only.

ATTACHMENT E
Insurance and Financial Security (Bond) Provisions

1. INSURANCE

A. Minimum Coverages. The insurance requirements specified in this section shall cover CONTRACTOR's own liability and the liability arising out of work or services performed under this Agreement by any subconsultants, subcontractors, suppliers, temporary workers, independent contractors, leased employees, or any other persons, firms or corporations that CONTRACTOR authorizes to work under this Agreement (hereinafter referred to as "Agents.") CONTRACTOR shall, at its own expense, obtain and maintain in effect at all times during the life of this Agreement the following types of insurance against claims, damages and losses due to injuries to persons or damage to property or other losses that may arise in connection with the performance of work under this Agreement.

CONTRACTOR is also required to assess the risks associated with work to be performed by Agents under subcontract and to include in every subcontract the requirement that the Agent maintain adequate insurance coverage with appropriate limits and endorsements to cover such risks. To the extent that an Agent does not procure and maintain such insurance coverage, CONTRACTOR shall be responsible for said coverage and assume any and all costs and expenses that may be incurred in securing said coverage or in fulfilling CONTRACTOR's indemnity obligation as to itself or any of its Agents in the absence of coverage.

In the event CONTRACTOR or its Agents procure excess or umbrella coverage to maintain certain requirements outlined below, these policies shall also satisfy all specified endorsements and stipulations, including provisions that CONTRACTOR's insurance be primary without right of contribution from BATA. Prior to beginning work under this contract, CONTRACTOR shall provide BATA with satisfactory evidence of compliance with the insurance requirements of this section.

1. Workers' Compensation Insurance with Statutory limits, and Employer's Liability insurance with a limit of not less than \$1,000,000 per employee and \$1,000,000 per accident, and any and all other coverage of CONTRACTOR's employees as may be required by applicable law. Such policy shall contain a Waiver of Subrogation in favor of BATA. Such Workers Compensation & Employers Liability may be waived, if and only for as long as CONTRACTOR is a sole proprietor or a corporation with stock 100% owned by officers with no employees.

2. Commercial General Liability Insurance for Bodily Injury and Property Damage liability, covering the operations of CONTRACTOR and CONTRACTOR's officers, agents, and employees and with limits of liability which shall not be less than \$1,000,000 combined single

limit per occurrence with a general aggregate liability of not less than \$2,000,000, and Personal & Advertising Injury liability with a limit of not less than \$1,000,000. Such policy shall contain a Waiver of Subrogation in favor of BATA.

BATA and those entities listed in Part 3 of this Attachment E (if any), and their commissioners, directors, officers, representatives, agents and employees are to be named as additional insureds. Such insurance shall be primary and contain a Separation of Insureds Clause as respects any claims, losses or liability arising directly or indirectly from CONTRACTOR's operations.

3. Business Automobile Insurance for all automobiles owned (if any), used or maintained by CONTRACTOR and CONTRACTOR's officers, agents and employees, including but not limited to owned (if any), leased (if any), non-owned and hired automobiles, with limits of liability which shall not be less than \$1,000,000 combined single limit per accident.

4. Umbrella Insurance in the amount of \$1,000,000 providing excess limits over Employer's Liability, Automobile Liability, and Commercial General Liability Insurance. Such umbrella coverage shall be following form to underlying coverage including all endorsements and additional insured requirements.

5. Property Insurance. Property Insurance covering CONTRACTOR'S own business personal property and equipment to be used in performance of this Agreement, materials or property to be purchased and/or installed on behalf of BATA (if any), and builders risk for property in the course of construction (if applicable). Coverage shall be written on a "Special Form" policy that includes theft, but excludes earthquake, with limits at least equal to the replacement cost of the property. Such policy shall contain a Waiver of Subrogation in favor of BATA.

6. Employee Dishonesty/Crime Insurance. An Employee Dishonesty insurance policy covering CONTRACTOR's employees for loss of or damage to money, securities or other property resulting from theft. The following limits of liability should apply: (a) Employee Dishonesty - \$250,000; and (b) Client Property Blanket Bond - \$250,000. CONTRACTOR shall reimburse BATA for any and all losses within the deductible, for insured losses, the cost to prove the loss, accountants' fees, defense costs including attorneys' fees and any other fees associated with a claim. In lieu of a Client Property Blanket Bond, the policy shall contain a Joint Loss Payee endorsement or other Third Party coverage naming BATA.

B. Acceptable Insurers. All policies will be issued by insurers acceptable to BATA, generally with a Best's Rating of A-VIII or better.

C. Self-Insurance. CONTRACTOR's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance, upon evidence of financial capacity satisfactory to BATA.

D. Deductibles and Retentions. CONTRACTOR shall be responsible for payment of any deductible or retention on CONTRACTOR's policies without right of contribution from BATA. Deductible and retention provisions shall not contain any restrictions as to how or by whom the deductible or retention is paid. Any deductible or retention provision limiting payment to the Named Insured is unacceptable.

In the event that BATA seeks coverage as an additional insured under any CONTRACTOR insurance policy that contains a deductible or self-insured retention, CONTRACTOR shall satisfy such deductible or self-insured retention to the extent of loss covered by such policy, for any lawsuit arising from or connected with any alleged act of CONTRACTOR, subconsultant, subcontractor, or any of their employees, officers or directors, even if CONTRACTOR or subconsultant is not a named defendant in the lawsuit.

E. Claims Made Coverage. . If any insurance specified above is written on a "Claims-Made" (rather than an "occurrence") basis, then in addition to the coverage requirements above, CONTRACTOR shall:

- (1) Ensure that the Retroactive Date is shown on the policy, and such date must be before the date of this Agreement or the beginning of any work under this Agreement;
- (2) Maintain and provide evidence of similar insurance for at least three (3) years following project completion, including the requirement of adding all additional insureds; and
- (3) If insurance is cancelled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Agreement effective date, CONTRACTOR shall purchase "extended reporting" coverage for a minimum of three (3) years after completion of the work.

F. Failure to Maintain Insurance. All insurance specified above shall remain in force until all work or services to be performed are satisfactorily completed, all of CONTRACTOR's personnel, subcontractors, and equipment have been removed from BATA's property, and the work or services have been formally accepted. CONTRACTOR must notify BATA if any of the above required coverages are non-renewed or cancelled. The failure to procure or maintain required insurance and/or an adequately funded self-insurance program will constitute a material breach of this Agreement.

G. Certificates of Insurance. Prior to commencement of any work hereunder, CONTRACTOR shall deliver to BATA Certificates of Insurance verifying the aforementioned coverages. Such certificates shall make reference to all provisions and endorsements referred to above and shall be signed on behalf of the insurer by an authorized representative thereof.

H. Disclaimer. The foregoing requirements as to the types and limits of insurance coverage to be maintained by CONTRACTOR are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by CONTRACTOR pursuant hereto, including, but not limited to, liability assumed pursuant to Article 9 of this Agreement.

2. NOT USED

3. ADDITIONAL INSURED

The following entities are to be named as Additional Insureds under applicable sections of this Attachment E and as BATA Indemnified Parties, pursuant to Article 9 of the Agreement.

- Bay Area Toll Authority (BATA)
- Golden Gate Bridge Highway and Transportation District (GGBHTD)

ATTACHMENT F
Subconsultant List

	<u>Name/Address of Subconsultant</u>	<u>Amount of Subcontract</u>	<u>Description of Work</u>
1.			
2.			
3.			
4.			
5.			
6.			

ATTACHMENT G

Special Conditions Relating to Personally Identifiable Information

CONTRACTOR will have access to personally identifiable information (“PII”) in connection with the performance of the Agreement. PII is any information that is collected or maintained by BATA or CONTRACTOR that identifies or describes a person or can be directly linked to a specific individual, including that individual’s account. Examples of PII include, but are not limited to, name, address, phone or fax number, signature, date of birth, or credit card information, bank account number, or travel pattern data. The following special conditions related to the confidentiality and use of PII apply to this Agreement:

1. Right to Audit

CONTRACTOR shall permit BATA and its authorized representatives to audit and inspect: (i) CONTRACTOR’s facilities where PII is stored or maintained; (ii) any computerized systems used to share, disseminate or otherwise exchange PII; and (iii) CONTRACTOR’s security practices and procedures, data protection, business continuity and recovery facilities, resources, plans and procedures. The audit and inspection rights hereunder shall be for the purpose of verifying CONTRACTOR’s compliance with this Agreement, and all applicable laws.

2. General Confidentiality of Data

All PII made available to or independently obtained by CONTRACTOR in connection with this Agreement shall be protected by CONTRACTOR from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to BATA. This includes, but is not limited to, the secure transport, transmission and storage of PII used or acquired in the performance of this Agreement.

CONTRACTOR agrees to properly secure and maintain any computer systems (hardware and software applications) that it will use in the performance of this Agreement. This includes ensuring all security patches, upgrades, and anti-virus updates are applied as appropriate to secure PII that may be used, transmitted, or stored on such systems in the performance of this Agreement.

Notwithstanding anything to the contrary in Article 14. Records, of this Agreement, CONTRACTOR agrees to retain PII for no longer than **[Project Manager should insert time-frame which should be no longer than necessary for CONTRACTOR to carry out its contractual responsibilities under the Agreement. Time-frame shall be no longer than the completion date of the Agreement.]**. At the conclusion of this retention period, CONTRACTOR agrees to use Department of Defense (“DOD”) approved software to wipe any disks containing PII. Hard drives and computers shall be reformatted and reimaged in an equivalently secure fashion. CONTRACTOR agrees to destroy hard-copy documents containing PII by means of a cross-cut shredding machine. At the conclusion of the performance period of this Agreement, CONTRACTOR shall submit a certification to the BATA Project Manager as follows: “All PII whether in electronic or hard-copy format, has been destroyed in accordance

with the requirements contained in Section 2. General Confidentiality of Data of the Attachment G Special Conditions Relating to Personally Identifiable Information.”

3. Compliance with Statutes and Regulations

CONTRACTOR agrees to comply with the information handling and confidentiality requirements outlined in the California Information Practices Act (Civil Code sections 1798 *et seq.*) and in the California Streets and Highways Code Section 31490. In addition, CONTRACTOR warrants and certifies that in the performance of this Agreement, it will comply with all applicable statutes, rules, regulations and orders of the United States, the State of California and BATA relating to the handling and confidentiality of PII and agrees to indemnify BATA against any loss, cost, damage or liability by reason of CONTRACTOR’s violation of this provision.

4. Subconsultants

BATA approval in writing is required prior to any disclosure by CONTRACTOR of PII to a subconsultant or prior to any work being done by a subconsultant that entails receipt of PII. Once approved, CONTRACTOR agrees to require such subconsultant to sign an agreement in substantially identical terms as this attachment, binding the subconsultant to comply with its provisions.

5. CONTRACTOR Guarantees

CONTRACTOR shall not, except as authorized or required by its duties by law, reveal or divulge to any person or entity any PII which becomes known to it during the term of this Agreement.

CONTRACTOR shall keep all PII entrusted to it completely secret and shall not use or attempt to use any such information in any manner which may injure or cause loss, either directly or indirectly, to BATA.

CONTRACTOR shall comply, and shall cause its employees, representatives, agents and subcontractors to comply, with such directions as BATA may make to ensure the safeguarding or confidentiality of all its resources.

If requested by BATA, CONTRACTOR shall sign an information security and confidentiality agreement provided by BATA and attest that its employees, representatives, agents, and subcontractors involved in the performance of this Agreement shall be bound by terms of a confidentiality agreement with CONTRACTOR substantially the same in its terms.

6. Notice of Security Breach

CONTRACTOR shall immediately notify BATA when it discovers that there may have been a breach in security which has or may have resulted in compromise to PII. For purposes of this

section, immediately is defined as within two hours of discovery. The BATA contact for such notification is as follows:

Privacy Officer
privacyofficer@mtc.ca.gov
(510) 817-5700

ATTACHMENT H

Not Used

ATTACHMENT I
Not Used

APPENDIX D-1, INSURANCE REQUIREMENTS

Minimum Insurance Coverages. CONTRACTOR shall, at its own expense, obtain and maintain in effect at all times the following types of insurance against claims, damages and losses due to injuries to persons or damage to property or other losses that may arise in connection with the performance of work under this Agreement, placed with insurers with a Best's rating of A-VIII or better.

<p>Yes (√)</p>	<p>Please certify by checking the box below that required coverages will be provided within five (5) days of BATA's notice to firm that it wishes to contract with the firm.</p>
<p>—</p>	<p><u>Workers' Compensation Insurance</u> with Statutory limits, and Employer's Liability insurance with a limit of not less than \$1,000,000 per employee and \$1,000,000 per accident, and any and all other coverage of CONTRACTOR's employees as may be required by applicable law. Such policy shall contain a Waiver of Subrogation in favor of BATA. Such Workers Compensation & Employers Liability may be waived, if and only for as long as CONTRACTOR is a sole proprietor or a corporation with stock 100% owned by officers with no employees. CONTRACTOR</p>
<p>—</p>	<p><u>Commercial General Liability Insurance</u> for Bodily Injury and Property Damage liability, covering the operations of CONTRACTOR and CONTRACTOR's officers, agents, and employees and with limits of liability which shall not be less than \$1,000,000 combined single limit per occurrence with a general aggregate liability of not less than \$2,000,000, and Personal & Advertising Injury liability with a limit of not less than \$1,000,000. Such policy shall contain a Waiver of Subrogation in favor of BATA.</p> <p>BATA and its commissioners, directors, officers, representatives, agents and employees are to be named as additional insureds. Such insurance shall be primary and contain a Separation of Insureds Clause as respects any claims, losses or liability arising directly or indirectly from CONTRACTOR's operations.</p>
<p>—</p>	<p><u>Business Automobile Insurance</u> for all automobiles owned (if any), used or maintained by CONTRACTOR and CONTRACTOR's officers, agents and employees, including but not limited to owned (if any), leased (if any), non-owned and hired automobiles, with limits of liability which shall not be less than \$1,000,000 combined single limit per accident.</p>
<p>—</p>	<p><u>Umbrella Insurance</u> in the amount of \$1,000,000 providing excess limits over Employer's Liability, Automobile Liability, and Commercial General Liability Insurance. Such umbrella coverage shall be following form to underlying coverage including all endorsements and additional insured requirements.</p>
	<p><u>Employee Dishonesty/Crime Insurance.</u> An Employee Dishonesty insurance policy covering CONTRACTOR's employees for loss of or damage to money, securities or other property resulting from theft. The following limits of liability should apply: (a) Employee Dishonesty - \$250,000; and (b) Client Property Blanket Bond - \$250,000. CONTRACTOR shall reimburse BATA for any and all losses within the deductible, for insured losses, the cost to prove the loss, accountants' fees, defense costs including</p>

attorneys' fees and any other fees associated with a claim. In lieu of a Client Property Blanket Bond, the policy shall contain a Joint Loss Payee endorsement or other Third Party coverage naming BATA.

Property Insurance. Property Insurance covering CONTRACTOR'S own business personal property and equipment to be used in performance of this Agreement, materials or property to be purchased and/or installed on behalf of BATA (if any), and builders risk for property in the course of construction (if applicable). Coverage shall be written on a "Special Form" policy that includes theft, but excludes earthquake, with limits at least equal to the replacement cost of the property. Such policy shall contain a Waiver of Subrogation in favor of BATA.

BATA and its commissioners, directors, officers, representatives, agents and employees are to be named as additional insureds. Such insurance shall be primary and contain a Separation of Insureds Clause as respects any claims, losses or liability arising directly or indirectly from CONTRACTOR's operations.

All policies will be issued by insurers acceptable to BATA, generally with a Best's Rating of A-VIII or better.

CONTRACTOR's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance, upon evidence of financial capacity satisfactory to BATA.

CONTRACTOR shall be responsible for payment of any deductible or retention on CONTRACTOR's policies without right of contribution from BATA. Deductible and retention provisions shall not contain any restrictions as to how or by whom the deductible or retention is paid. Any deductible or retention provision limiting payment to the Named Insured is unacceptable.

In the event that BATA seeks coverage as an additional insured under any CONTRACTOR insurance policy that contains a deductible or self-insured retention, CONTRACTOR shall satisfy such deductible or self-insured retention to the extent of loss covered by such policy, for any lawsuit arising from or connected with any alleged act of CONTRACTOR, subconsultant, subcontractor, or any of their employees, officers or directors, even if CONTRACTOR or subconsultant is not a named defendant in the lawsuit.

If any insurance specified above is written on a "Claims-Made" (rather than an "occurrence") basis, then in addition to the coverage requirements above, CONTRACTOR shall:

1. Ensure that the Retroactive Date is shown on the policy, and such date must be before the date of this Agreement or the beginning of any work under this Agreement;
2. Maintain and provide evidence of similar insurance for at least three (3) years following project completion, including the requirement of adding all additional insureds; and
3. If insurance is cancelled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Agreement effective date, CONTRACTOR shall purchase "extended reporting" coverage for a minimum of three (3) years after completion of the work.

All insurance specified above shall remain in force until all work or services to be performed are satisfactorily completed, all of CONTRACTOR's personnel, subcontractors, and equipment have

been removed from BATA's property, and the work or services have been formally accepted. CONTRACTOR must notify BATA if any of the above required coverages are non-renewed or cancelled. The failure to procure or maintain required insurance and/or an adequately funded self-insurance program will constitute a material breach of this Agreement.

Prior to commencement of any work hereunder, CONTRACTOR shall deliver to BATA Certificates of Insurance verifying the aforementioned coverages. Such certificates shall make reference to all provisions and endorsements referred to above and shall be signed on behalf of the insurer by an authorized representative thereof.

The foregoing requirements as to the types and limits of insurance coverage to be maintained by CONTRACTOR are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by CONTRACTOR pursuant hereto, including, but not limited to, liability assumed pursuant to the Indemnification section of this Agreement.

By signing below you acknowledge and agree to provide the required certificate of insurance providing verification of the minimum insurance requirements listed above within ten (10) days of BATA's notice to firm that it wishes to contract with the firm.

Representative Name and Title	
Name of Authorizing Official	
Authorized Signature	
Date	

NOTE: If you were unable to check "Yes" for any of the required minimum insurance coverages listed above, a request for exception to the appropriate insurance requirement(s) must be brought to BATA's attention no later than closing date/time for receipt of requests for modifications/exceptions. If such modifications/exceptions are not brought to BATA's attention consistent with the provisions of this RFP, compliance with the insurance requirements will be assumed.

APPENDIX E – IRAN CONTRACTING ACT of 2010
(Public Contract Code Section 2200 et seq.)

Prior to bidding on, submitting a proposal or executing a contract or renewal for a Bay Area Toll Authority (BATA) contract for goods or services of \$1,000,000 or more, a Proposer must either:
a) certify it is not on the current list of persons engaged in investment activities in Iran created by the California Department of General Services (“DGS”) pursuant to Public Contract Code section 2203(b) and is not a financial institution extending twenty million dollars (\$20,000,000) or more in credit to another person, for 45 days or more, if that other person will use the credit to provide goods or services in the energy sector in Iran and is identified on the current list of persons engaged in investment activities in Iran created by DGS; or b) demonstrate it has been exempted from the certification requirement for that solicitation or contract pursuant to Public Contract Code section 2203(c) or (d).

To comply with this requirement, please insert your Proposer or financial institution name and Federal ID Number (if available) and complete one of the options below. Please note: California law establishes penalties for providing false certifications, including civil penalties equal to the greater of \$250,000 or twice the amount of the contract for which the false certification was made; contract termination; and three-year ineligibility to bid on contracts. (Public Contract Code section 2205.)

OPTION #1 - CERTIFICATION

I, the official named below, certify I am duly authorized to execute this certification on behalf of the vendor/financial institution identified below, and the vendor/financial institution identified below is not on the current list of persons engaged in investment activities in Iran created by DGS and is not a financial institution extending twenty million dollars (\$20,000,000) or more in credit to another person/vendor, for 45 days or more, if that other person/vendor will use the credit to provide goods or services in the energy sector in Iran and is identified on the current list of persons engaged in investment activities in Iran created by DGS.

<i>Proposer Name/Financial Institution (Printed)</i>		<i>Federal ID Number (or n/a)</i>
<i>By (Authorized Signature)</i>		
<i>Printed Name and Title of Person Signing</i>		
<i>Date Executed</i>	<i>Executed in</i>	

OPTION #2 – EXEMPTION

Pursuant to Public Contract Code sections 2203(c) and (d), a public entity may permit a Proposer/financial institution engaged in investment activities in Iran, on a case-by-case basis, to be eligible for, or to bid on, submit a proposal for, or enters into or renews, a contract for goods and services.

If you have obtained an exemption from the certification requirement under the Iran Contracting Act, please fill out the information below, and attach documentation demonstrating the exemption approval.

<i>Proposer Name/Financial Institution (Printed)</i>	<i>Federal ID Number (or N/A)</i>
<i>By (Authorized Signature)</i>	
<i>Printed Name and Title of Person Signing</i>	<i>Date Executed</i>

APPENDIX F, REQUESTS FOR EXCEPTIONS OR MODIFICATIONS

RFP Section	<u>Relevant Provision</u>	Requested Action
	<u>1.</u>	
	<u>2.</u>	
	<u>3.</u>	
	<u>4.</u>	
	<u>5.</u>	