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STEVE HEMINGER
 Executive Director

ANDREW B. FREMIER
 Deputy Executive Director

January 20, 2015

**Addendum No. 1
 TO INVITATION FOR BID
 For Electronic Toll Collection (FasTrak®) Switchable Toll Tags
 Dated January 13, 2015**

Dear Supplier:

This letter is Addendum No. 1 to the Invitation for Bid (IFB) for Electronic Toll Collection (FasTrak®) Switchable Toll Tags, dated January 13, 2015. Where existing provisions of the IFB are modified, deleted text is shown in strike-through format, added text is *italicized*. The IFB is revised as follows:

<u>Addendum Item</u>	<u>Reference</u>	<u>Change(s)</u>										
1.	IFB, Letter of Invitation, Bid Submission	Interested bidders must submit their bids in sealed envelopes by 4:00 p.m. on January 23, 2015 <i>January 26, 2015</i> . Bids received after that date and time will not be considered. All bids must be completed and submitted on the enclosed <u>Appendix B, Bid Form</u>, in order to be considered. <u>Appendix C, Reference Form</u>, and <u>Appendix E, Iran Contracting Act Certification</u>, must also be submitted with the bid. Bidders who do not complete all appendices risk being found non-responsive.										
2.	IFB, Letter of Invitation, Bidder Selection Table, Page 3	<table border="1"> <tr> <td>1:00 p.m., Thursday, January 22, 2015</td> <td>Closing date & time to submit request for clarification and exception</td> </tr> <tr> <td>4:00 p.m., Friday, January 23, 2015</td> <td>Closing date & time for protest of IFB Specifications</td> </tr> <tr> <td>4:00 p.m., Wednesday, January 23, 2015 <i>January 26, 2015</i></td> <td>Closing date & time for receipt of bids & bid opening</td> </tr> <tr> <td>Wednesday, February 11, 2015</td> <td>BATA Oversight Committee consideration of recommendation for award</td> </tr> <tr> <td>Friday, February 27, 2015 (approximate)</td> <td>Issuance of Purchase Order</td> </tr> </table>	1:00 p.m., Thursday, January 22, 2015	Closing date & time to submit request for clarification and exception	4:00 p.m., Friday, January 23, 2015	Closing date & time for protest of IFB Specifications	4:00 p.m., Wednesday, January 23, 2015 <i>January 26, 2015</i>	Closing date & time for receipt of bids & bid opening	Wednesday, February 11, 2015	BATA Oversight Committee consideration of recommendation for award	Friday, February 27, 2015 (approximate)	Issuance of Purchase Order
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<u>Addendum Item</u>	<u>Reference</u>	<u>Change(s)</u>
3.	IFB, Section II.E, page 6 and Appendix D, Section 11, page 29	<p>INDEMNIFICATION</p> <p>Supplier agrees to indemnify and hold harmless BATA, MTC, BAIFA, and each of their commissioners, directors, officers, <i>and</i> employees, and agents (<i>collectively, "BATA Indemnified Parties"</i>) from and against any and all demands, claims, suits, actions, liabilities, losses, damages or expenses (including without limitation reasonable attorneys' fees and related costs, whether or not litigation has commenced) arising out of, relating to, or in any way connected with Supplier's performance of the Contract, including without limitation any allegation that any injury or loss was caused by any breach of the Contract, negligent act or omission, or willful misconduct by Supplier or its officers, employees, subcontractors, or agents or any allegation that Supplier's work or goods delivered under the Contract, any portion thereof, or any portion thereof in combination with Supplier's work or goods delivered under any other agreement (where Supplier knew or reasonably should have known of the combination), infringes the patent, copyright, trade-secret, design, or other intellectual-property or proprietary right of any third party. Supplier further agrees to defend any and all such demands, claims, suits, actions, or other legal proceedings and to pay all charges of attorneys and all other costs and expenses of defense as they are incurred.</p> <p><i>For professional liability claims, Supplier's indemnification obligation is limited to Supplier's proportionate share of the negligence. With respect to Supplier's duty to defend professional liability claims, Supplier's reasonable defense costs (including attorney and expert fees), incurred in providing a defense for the BATA Indemnified Parties shall be reimbursed by BATA except to the extent such defense costs arise, under principles of comparative fault, from Supplier's (a) negligent acts or omissions; (b) breach of any of the provisions of this Agreement; or (c) willful misconduct.</i></p>
4.	IFB, Section II.F, page 6	<p>Assignment</p> <p>The Supplier shall not assign any right, duty or responsibility in this contract without the prior written consent of BATA thereto, <i>such consent not to be unreasonably withheld</i>; provided however, that claims for</p>

		<p>money due or to become due to Supplier from BATA under this Contract may be assigned without such approval. Notice of any such assignment shall be furnished promptly to BATA, and any such assignment shall be subject to all authorized withholdings in favor of BATA.</p>
5.	<p>Appendix A, Specifications, Section 1 General, second paragraph, page 10</p>	<p>The sealed-battery toll tags delivered as part of this IFB shall be pre-programmed and shall conform to the specifications described below. These specifications define the requirements for self-declaration toll tags. Battery <i>design</i> life shall be 8 years regardless of the number of reads or the number of times the transponder is switched to different occupancy modes. Under contract, the Supplier shall manufacture and deliver California Code of Regulations (CCR), Title 21-compliant toll tags in accordance with these specifications.</p>
6.	<p>Appendix D, Section 14, page 30</p>	<p>14. LIMITATION ON LIABILITY Supplier's cumulative liability to the BATA Indemnified Parties arising out of this Contract shall not exceed \$10,000,000. The foregoing limitation does not apply or limit any right of recovery of the BATA Indemnified Parties respecting any losses, claims, suits, controversies, breaches or damages for any cause whatsoever that are covered by the insurance requirements covering Supplier's own liability and the liability arising out of work or services performed under this Contract by any persons, firms or corporations that Supplier authorizes to work under this Contract. <i>Supplier's total liability to the BATA Indemnified Parties for any and all liabilities arising out of or related to this Agreement, from any cause or causes, and regardless of the legal theory, including breach of contract, warranty, negligence, strict liability, statutory liability, or any indemnification obligation, shall not, in the aggregate, exceed \$4,000,000.</i></p>
7	<p>Appendix D, Section 15, page 30</p>	<p>15. WAIVER OF CONSEQUENTIAL DAMAGES Neither Supplier nor any of the BATA Indemnified Parties shall be liable for lost profits, frustration of economic or business expectations, or any other consequential, indirect, incidental, or special damages arising from performance or nonperformance of the contract, even if notice is issued as to the potential for such claims. The foregoing limitation on Supplier's liability shall not apply to or limit any right of recovery BATA may have respecting the following: (a) Liquidated damages as referenced in the Invitation for Bid, Special Conditions, Article F. Liquidated Damages; and (b)</p>

		<p>Supplier's obligations to indemnify, hold harmless, and defend as set forth above and in the Invitation for Bid, General Conditions, Article E. Indemnity.</p>
<p>7.</p>	<p>Appendix F, page 33</p>	<p>APPENDIX F Insurance and Financial Security (Bond) Provisions 1. INSURANCE</p> <p>A. Minimum Coverages. The insurance requirements specified in this section shall cover SUPPLIER's own liability and the <i>contractual</i> liability arising out of work or services performed under this Agreement by any subcontractors, suppliers, temporary workers, independent contractors, leased employees, or any other persons, firms or corporations that SUPPLIER authorizes to work under this Agreement (hereinafter referred to as "Agents.") SUPPLIER 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.</p> <p>SUPPLIER 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, SUPPLIER 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 SUPPLIER's indemnity obligation as to itself or any of its Agents in the absence of coverage.</p> <p>In the event SUPPLIER 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 SUPPLIER's insurance be primary without right of contribution from BATA. Prior to beginning work under this contract, SUPPLIER shall provide BATA with satisfactory evidence of compliance with the insurance requirements of this section.</p> <p>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 SUPPLIER's employees as may be required by applicable law. Such policy shall contain</p>

		<p>a Waiver of Subrogation in favor of BATA. Such Workers Compensation & Employers Liability may be waived, if and only for as long as SUPPLIER is a sole proprietor or a corporation with stock 100% owned by officers with no employees.</p> <p>2. Commercial General Liability Insurance for Bodily Injury and Property Damage liability, covering the operations of SUPPLIER and SUPPLIER's officers, agents, and employees and with limits of liability which shall not be less than \$4,000,000 \$1,000,000 combined single limit per occurrence with a general aggregate liability of not less than \$4,000,000 \$2,000,000, and Personal & Advertising Injury liability with a limit of not less than \$4,000,000 \$1,000,000. Such policy shall contain a Waiver of Subrogation in favor of BATA.</p> <p>BATA and those entities listed in Part 3 of this Appendix F (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 SUPPLIER's operations.</p> <p>3. Business Automobile Insurance for all automobiles owned (if any), used or maintained by SUPPLIER and SUPPLIER'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>4. Umbrella Insurance in the amount of \$9,000,000 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>5. Errors and Omissions Professional Liability Insurance for errors and omissions and the resulting damages, including, but not limited to, economic loss to BATA and having minimum limits of \$1,000,000 per claim.</p> <p>The policy shall provide coverage for all work performed by SUPPLIER and any work performed or conducted by any</p>
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		<p>subcontractor/SUPPLIER working for or performing services on behalf of the SUPPLIER. No contract or agreement between SUPPLIER and any subcontractor/SUPPLIER shall relieve SUPPLIER of the responsibility for providing this Errors & Omissions or Professional Liability coverage for all work performed by SUPPLIER and any subcontractor/SUPPLIER working on behalf of SUPPLIER on the project.</p> <p>6. Property Insurance. Property Insurance covering SUPPLIER'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.</p> <p>B. Acceptable Insurers. All policies will be issued by insurers acceptable to BATA, generally with a Best's Rating of A-VIII or better.</p> <p>C. Self-Insurance. SUPPLIER's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance, upon evidence of financial capacity satisfactory to BATA.</p> <p>D. Deductibles and Retentions. SUPPLIER shall be responsible for payment of any deductible or retention on SUPPLIER'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.</p> <p>In the event that BATA seeks coverage as an additional insured under any SUPPLIER insurance policy that contains a deductible or self-insured retention, SUPPLIER 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 SUPPLIER, subcontractor, or any of their employees, officers or directors, even if SUPPLIER or subcontractor is not a named defendant in the lawsuit.</p> <p>E. Claims Made Coverage. If any insurance specified above is written on a "Claims-Made" (rather than an</p>
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		<p>“occurrence”) basis, then in addition to the coverage requirements above, SUPPLIER shall:</p> <ul style="list-style-type: none">(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, SUPPLIER shall purchase “extended reporting” coverage for a minimum of three (3) years after completion of the work. <p>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 SUPPLIER’s personnel, subcontractors, and equipment have been removed from BATA’s property, and the work or services have been formally accepted. SUPPLIER 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.</p> <p>G. Certificates of Insurance. Prior to commencement of any work hereunder, SUPPLIER 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.</p> <p>H. Disclaimer. The foregoing requirements as to the types and limits of insurance coverage to be maintained by SUPPLIER are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by SUPPLIER pursuant hereto, including, but not limited to, liability assumed pursuant to the Indemnification section of the Agreement.</p> <p>2. ADDITIONAL INSUREDS The following entities are to be named as Additional Insureds under applicable sections of this</p>
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		<p>Appendix F and as BATA Indemnified Parties, pursuant to the Indemnification section of the Agreement.</p> <ol style="list-style-type: none">1) Bay Area Toll Authority (BATA)2) Metropolitan Transportation Commission (MTC)3) Bay Area Infrastructure Financing Authority (BAIFA)4) Golden Gate Bridge, Highway and Transportation District (GGBHTD)
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The remaining provisions of the IFB, January 13, 2015, remain unchanged. In the event of a conflict between any provision of this Addendum and the previous IFB, this Addendum shall prevail.

Any questions concerning this addendum to the IFB should be directed to Beth Zelinski, BATA Project Manager, at (510) 817-5715 or bzilinski@mtc.ca.gov.

Sincerely,



Andrew B. Fremier
Deputy Executive Director, Operations

ABF: bz