



DAVE CORTESE, CHAIR  
Santa Clara County

ALICIA C. AGUIRRE  
Cities of San Mateo County

TOM AZUMBRADO  
U.S. Department of Housing  
and Urban Development

JASON BAKER  
Cities of Santa Clara County

TOM BATES  
Cities of Alameda County

DAVID CAMPOS  
City and County of San Francisco

DORENE M. GIACOPINI  
U.S. Department of Transportation

FEDERAL D. GLOVER  
Contra Costa County

SCOTT HAGGERTY  
Alameda County

ANNE W. HALSTED  
San Francisco Bay Conservation  
and Development Commission

STEVE KINSEY  
Marin County and Cities

SAM LICCARDO  
San Jose Mayor's Appointee

MARK LUCE  
Napa County and Cities

JAKE MACKENZIE  
Sonoma County and Cities

JULIE PIERCE  
Association of Bay Area Governments

BIJAN SARTIPI  
California State  
Transportation Agency

LIBBY SCHAAF  
Oakland Mayor's Appointee

JAMES P. SPERING  
Solano County and Cities

ADRIENNE J. TISSIER  
San Mateo County

SCOTT WIENER  
San Francisco Mayor's Appointee

AMY REIN WORTH  
Cities of Contra Costa County

STEVE HEWINGER  
Executive Director

ANDREW B. FREMIER  
Deputy Executive Director

March 3, 2015

**Addendum No. 3**  
to  
**Request for Qualifications (RFQ)**  
**Internal Project Auditing and Reporting Services**  
dated January 16, 2015, as amended on February 13, 2015

Dear Consultant:

This letter is Addendum No. 3 to the Request for Qualifications for Internal Project Auditing and Reporting Services dated January 16, 2015, as amended on February 13, 2015 and February 26, 2015. Where text is revised, deleted text is shown in strike-through format; added text is *italicized*. The RFQ is revised as follows:

<u>Addendum Item</u>	<u>Reference</u>	<u>Change</u>	
1.	RFQ, Cover letter, SOQ Due Date	Interested firms must submit an original and five (5) hard copies, as well as one (1) electronic PDF version, of their SOQs by <b>4:00 p.m. (PST), <del>Friday, March 6, 2015</del> Monday, March 9, 2015</b> in accordance with the instructions contained in the RFQ.	
2.	RFQ, <u>Submittal of SOQ</u> , Page 3	Interested firms must submit an original and five (5) hard copies, as well as one electronic PDF version, of their SOQ by 4:00 p.m. (PST), <del>Friday, March 6, 2015</del> Monday, March 9, 2015.	
3.	RFQ, Section V, Contractor Selection Timetable, Page 8	4:00 p.m. (PST), <del>Friday, March 6, 2015</del> Monday, March 9, 2015 *	Closing date and time for receipt of SOQ
4	RFQ, Appendix C, BATA Standard Consultant Contract	Appendix C, BATA Standard Consultant Contract is deleted in its entirety and replaced with Appendix C Bata Standard Contract (Addendum 3), attached hereto ( <b>deletions in strikethrough, additions in italics</b> )	
5	RFQ, Appendix D, Insurance Requirements	Appendix D, Insurance Requirements is deleted in its entirety and replaced with Appendix C Bata Standard Contract (Addendum 3), attached hereto. ( <b>deletions in strikethrough, additions in italics</b> )	

Any questions concerning this Addendum to the RFQ should be directed to BATA Project Manager, Catherine Cam at 510-817-5882, or via email at [ccam@mtc.ca.gov](mailto:ccam@mtc.ca.gov).

Sincerely,



Steve Heminger  
Executive Director

SH:CC

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**APPENDIX C**  
**BATA STANDARD CONSULTANT CONTRACT (REVISED)**

THIS PROFESSIONAL SERVICES AGREEMENT (this “Agreement”) is made and entered into as of the \_\_\_ day of \_\_\_\_\_, 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 AUDITOR**, (herein called "AUDITOR").

**RECITALS**

WHEREAS, BATA wishes to retain AUDITOR to provide internal auditing and reporting services for the Seismic Retrofit Program projects and potentially other BATA construction projects including Regional Measure 1 (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 this Agreement pursuant to which AUDITOR will render professional services in connection with the Project as hereinafter provided.

NOW THEREFORE, the parties hereto agree as follows:

**1. SCOPE OF SERVICES**

AUDITOR's services are described in Attachment A, Scope of Work, attached hereto and incorporated herein by this reference. Specific audit engagements shall be described initially in Draft Audit Orders, in the form set forth in Attachment A-1, Audit Order: Proposed Workscope, Schedule and Compensation, attached hereto and incorporated herein by this reference and then agreed to by engagement letter, signed by the parties, a sample of which is included in the Agreement as Attachment A-2, Sample BATA Project Engagement Letter. AUDITOR agrees to perform or secure the performance of all services specified in signed engagement letters attached to each Audit Order in their entirety within the maximum payment set forth in such Audit Order and engagement letter. Audit Orders and engagement letters may be approved by Brian Mayhew, BATA’s Chief Financial Officer. As BATA Project Manager, Catherine Cam is responsible for communication with AUDITOR and the administration of this Agreement. BATA’S Executive Director or designated representative may substitute a new BATA Project Manager by written notice to AUDITOR.

AUDITOR's point of contact and the individual authorized to communicate to BATA on behalf of AUDITOR is **INSERT NAME OF AUDITOR's PM** ("AUDITOR Project Manager"). A change in the AUDITOR Project Manager requires BATA's written approval.

In the performance of its services, AUDITOR represents 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 AUDITOR represents that it carries and will maintain all applicable licenses, certificates, and registrations needed for the work in current and good standing.

### **1.1 PROGRESS REPORTS**

AUDITOR shall provide BATA with progress reports as necessary according to the schedule and form approved by the BATA Project Manager.

### **2. PERIOD OF PERFORMANCE**

AUDITOR's services hereunder shall commence on or after xx day of Month, 20\_\_ and shall be completed no later than June 30, 2020, unless extended by amendment or earlier terminated, as hereinafter provided. AUDITOR's services shall be performed in accordance with the schedules included in each approved Audit Order.

### **3. COMPENSATION AND METHOD OF PAYMENT**

A. Compensation. AUDITOR shall be paid, as full compensation for the satisfactory completion of the work described in approved Audit Orders (Attachment A-1) and engagement letters (Attachment A-2) signed by the Chief Financial Officer, which includes all applicable surcharges such as taxes, insurance, and fringe benefits, as well as indirect costs, overhead and profit allowance, subcontractors costs, travel, materials and supplies.

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 AUDITOR under this Agreement exceed [**SPELL OUT AMOUNT IN WHOLE DOLLARS (\$\_\_\_\_\_)**] per fiscal year, subject to the annual budgetary approval process, and will not exceed the sum of [**SPELL OUT AMOUNT IN WHOLE DOLLARS (\$\_\_\_\_\_)**] (the "Maximum Payment") for the full term of this Agreement. Any unspent remaining balance in each fiscal year will be rolled into the following fiscal year.

C. Method of Payment. AUDITOR shall submit an invoice identifying the Audit Order number and (for deliverables-based audit engagements) the project deliverable or milestone for

which payment is sought no later than thirty (30) days after BATA's acceptance of such deliverable/milestone. For time and materials based audit engagements, AUDITOR shall specify hours worked plus authorized expenses. Payment shall be made by BATA within thirty (30) days of receipt of an acceptable invoice, approved by the Project Manager or a designated representative.

All invoices shall be submitted electronically via email to BATA at [acctpay@mtc.ca.gov](mailto:acctpay@mtc.ca.gov) or in writing to: `

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

Payment shall be made by BATA within thirty (30) days of receipt of an acceptable invoice, approved by the BATA Project Manager or a designated representative.

#### **4. KEY PERSONNEL**

The key personnel to be assigned to this work by AUDITOR and their hourly rates are set forth in Attachment D, Key Personnel Assignments, attached hereto and incorporated herein by this reference. Substitution of any of the personnel named in Attachment D, Key Personnel Assignments 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. AUDITOR shall maintain records documenting compliance with this Article, which shall be subject to the audit requirements of Article 15. AUDITOR 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 AUDITOR. 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 AUDITOR 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 thirty (30) days' prior written notice to AUDITOR. Upon receipt of notice of termination, AUDITOR shall stop work under this Agreement immediately *and have no further responsibility for incomplete deliverables*, to the extent provided in the notice of termination, and shall promptly submit its termination claim to BATA. For deliverables-based audit engagements, AUDITOR shall be reimbursed for costs incurred for incomplete deliverables up to the time of termination and a reasonable profit, plus reasonable termination costs, not to exceed the maximum amount for the Audit Order and engagement letter so terminated. For time and materials audit engagements, AUDITOR shall be paid for hours worked and authorized expenses, plus reasonable termination costs, not to exceed the maximum amount payable for the Audit Order and engagement letter so terminated. If AUDITOR has any property in its possession belonging to BATA, AUDITOR will account for the same, and dispose of it in the manner BATA directs.

B. Termination for Default. If AUDITOR 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 AUDITOR 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 AUDITOR, setting forth the manner in which AUDITOR is in default. If AUDITOR 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, AUDITOR will be entitled to be reimbursed for costs incurred, 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 AUDITOR for any costs incurred for work causing or contributing to the default.

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

## 7. INSURANCE AND FINANCIAL SECURITY REQUIREMENTS

AUDITOR 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

AUDITOR is an independent contractor and not an employee or agent of BATA and has no authority to contract or enter into any other agreement in the name of BATA. AUDITOR has, and hereby retains, full control over the employment, direction, compensation and discharge of all persons employed by AUDITOR who are assisting in the performance of services under this Agreement. AUDITOR 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. AUDITOR 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, AUDITOR 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: collectively “BATA Indemnified Parties”~~ **from and against any and all claims, demands, actions, causes of action, damages, liability, obligation, costs and expenses (including attorneys' fees and costs) of any kind whatsoever, including (without limitation) those for personal injuries (including, but not limited to death, bodily injuries, emotional or mental distresses and losses of consortium), property damages or pecuniary, financial or economic losses of any kind whatsoever (collectively “Claims and Losses”) if the Claims and Losses arise out of, pertain to, or relate to AUDITOR's recklessness, willful misconduct, or negligent services performed under this Agreement. It is understood and agreed that AUDITOR has no obligation to indemnify and hold the BATA Indemnified Parties harmless to the extent that the Claims and Losses are caused by the negligence of the BATA Indemnified Parties.**

A. ~~Any injury or death to persons or property or pecuniary, financial or economic losses that may occur, or that may be~~ ***further agrees to immediately defend the BATA Indemnified Parties with respect to any Claims and Losses if such Claims and Losses are*** alleged to have occurred, arising from the performance of this Agreement by AUDITOR caused by any breach ***arise out of, pertain to, or relate to any allegations*** of the Agreement or negligent act or omission or AUDITOR's recklessness, willful misconduct of the AUDITOR or its officers, employees, subconsultants or agents; or

B. ~~Any allegation that materials or, or negligent services provided by AUDITOR performed under this Agreement infringe or violate any copyright, trademark, patent, trade secret, or any other intellectual property or proprietary right. As part of any third party~~ ***this defense obligation,*** AUDITOR further agrees to ***either retain counsel to defend any and all such claims, actions, suits or other legal proceedings and the BATA Indemnified Parties or pay all charges of attorneys with regard to the Claims and all other Losses.***

~~AUDITOR's reasonable defense costs (including attorney and expenses of defenses as they are expert fees), incurred. If any judgment is rendered against any of in providing a defense for the BATA Indemnified Parties, AUDITOR shall, at its expense, satisfy and discharge the same extent such defense costs arise, under principles of comparative fault, from AUDITOR's~~ ***(a) negligent acts or omissions; (b) recklessness; or (c) willful misconduct.***

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 AUDITOR by BATA for use by AUDITOR 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, ~~provided that AUDITOR may retain a copy of such BATA Data or portions thereof to the extent that they are incorporated into its working papers.~~ ***Notwithstanding the foregoing, AUDITOR may retain a copy of information received, developed, or otherwise relating to this Agreement, including any BATA Data, in order to comply with its contractual obligations and applicable professional standards. Information stored on routine back-up media for the purpose of disaster recovery will be subject to destruction in due course.***

*Latent data such as deleted files and other non-logical data types, such as memory dumps, swap files, temporary files, printer spool files and metadata that can customarily only be retrieved by computer forensics experts and are generally considered inaccessible without the use of specialized tools and techniques will not be within the requirement for the return of records as contemplated by this paragraph.* No license to such BATA Data, outside of the Scope of Work of the Project, is conferred or implied by AUDITOR's use or possession of such BATA Data.

#### **10.1 PERSONALLY IDENTIFIABLE INFORMATION**

AUDITOR agrees to comply with the special provisions related to the access and protection of personally identifiable information set forth in Attachment F, 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 CONSULTANT 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 AUDITOR, 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 AUDITOR; b) AUDITOR can demonstrate to have had rightfully in its possession prior to disclosure by BATA or its contractors, vendors or licensors; c) AUDITOR rightfully obtains from a third party who has the right to transfer or disclose it; or d) is required to be disclosed by law, *applicable professional standards*, or applicable legal process.

AUDITOR 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, *or* except as authorized in writing by BATA. AUDITOR 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.~~  
*partners, principals, employees, subconsultants, and vendors who need to know such information in order to permit the AUDITOR to perform the services required under this Agreement and with respect to subconsultants who have agreed with AUDITOR to be bound by terms and conditions at least equivalent to those contained in this Section 10.2. AUDITOR further represents to BATA that each such vendor has agreed to conditions of confidentiality with respect to Confidential Information to the same or similar extent as AUDITOR has agreed to pursuant this Agreement. AUDITOR will have full responsibility to cause these vendors to comply with such conditions of confidentiality and AUDITOR shall be responsible for any consequences of their failure to comply. Promptly upon the request of BATA, at any time and for any reason, AUDITOR shall destroy or return to BATA, at BATA's option, all documents, computer files and other tangible materials that contain Confidential Information provided that AUDITOR shall be permitted to retain, and shall be obligated to return or destroy, Confidential Information to the same extent AUDITOR is permitted to retain, and or destroy BATA Data as set forth in paragraph 10 hereof. These obligations survive the termination of this Agreement, unless otherwise agreed in writing by BATA. AUDITOR uses the services of AUDITOR-controlled entities, AUDITOR member firms and/or third party service providers to provide administrative and clerical support. For purposes of this paragraph, "vendor" is defined to include any such AUDITOR-controlled entities, AUDITOR member firms and/or third-party service providers.*

## **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 *which are identified as a deliverable in an Audit order* ("Work Products") prepared or assembled and furnished to BATA by AUDITOR 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 AUDITOR or in the hands of any subconsultant upon completion or termination of the work shall be immediately delivered to BATA. *Subject to Articles 10 and 10.2*, AUDITOR 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. AUDITOR 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 AUDITOR'S pre-existing intellectual property secured,

developed, written, or produced by AUDITOR prior to the execution of this Agreement or developed concurrently with this Agreement but not specifically for this Agreement; AUDITOR shall retain all right, title and interest in any such pre-existing intellectual property.

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

AUDITOR 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. *The Auditor may maintain a copy of all Work Products in order to comply with applicable professional standards.*

## **12. SUBCONTRACTS**

A. No subconsultants are currently approved by BATA for work under this Agreement. Any subconsultants must be approved in writing by BATA's Project Manager in advance and engaged under written contract with AUDITOR with provisions allowing AUDITOR 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 AUDITOR.

B. Nothing contained in this Agreement or otherwise, shall create any contractual relation between BATA and any subcontractors, and no subcontract shall relieve AUDITOR of his/her responsibilities and obligations hereunder. AUDITOR 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 AUDITOR. AUDITOR's obligation to pay its subcontractors is an independent obligation from BATA's obligation to make payments to AUDITOR.

C. 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**

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

#### 14. RECORDS

AUDITOR ~~agrees to establish and shall maintain an accounting system conforming to Generally Accepted Accounting Principles (GAAP) that is full and adequate to accumulate books, records, and segregate reasonable, allowable, and allocable project costs. Accounts in accordance with generally accepted accounting practices.~~ AUDITOR further agrees to keep all *timekeeping and expense* 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.

#### 15. AUDITS

AUDITOR shall permit BATA and ~~BATA's~~ its authorized representatives to have access to AUDITOR's ~~books, timekeeping and expense 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~~ validating that AUDITOR's invoices comply with the Agreement during the term of this Agreement and for the period specified in Article 14. AUDITOR shall in no event dispose of, destroy, alter, or mutilate said ~~books, timekeeping and expense records, accounts, work products, materials and data~~ for that period of time.

AUDITOR 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 BATA's duly authorized representatives shall have access to and the right to examine any directly pertinent books, documents, ~~papers, timekeeping and expense records~~ of such subcontractor for the term specified above.

#### 16. NOTICES

Except for invoices submitted by AUDITOR 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:

To BATA:

Attention: Catherine Cam  
Metropolitan Transportation Commission  
101 - 8th Street  
Oakland, CA 94607-4700  
Email: ccam@mtc.ca.gov  
Fax: 510.817-5934

To AUDITOR:

**Attention: Insert Name of Appropriate Person**  
**Auditor's name**  
**Auditor's address**  
**Auditor's address**  
**Email: X**  
**Fax: X**

## **17. SOLICITATION OF CONTRACT**

AUDITOR warrants that it has not employed or retained any company or persons, other than a bona fide employee working solely for AUDITOR, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person other than bona fide employees working solely for AUDITOR, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of the Agreement. For breach or violation of this warranty, BATA shall have the right to terminate the Agreement without liability or, at its discretion, the right to deduct from AUDITOR's maximum payment the full amount of such fee, commission, percentage, brokerage fee, gift or contingent consideration.

## **18. PROHIBITED INTEREST**

AUDITOR covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree or have the potential of conflicting with the performance of services required under the Agreement or the impartial rendering of assistance or advice to BATA. AUDITOR further covenants that in the performance of the Agreement no person having any such interest shall be employed.

No member, officer, employee or agent of BATA, during his/her tenure shall have any prohibited interest as defined by California Government Code Sections 1090, *et seq.* and 87100 *et seq.*, direct or indirect, in the Agreement or the proceeds thereof. Prohibited interests include interests of immediate family members, domestic partners, and their employers or prospective employers. Accordingly, AUDITOR further covenants that it has made a complete disclosure to BATA of all facts of which it is aware upon due inquiry bearing upon any possible interest, direct or indirect, which it believes any member, officer, agent or employee of BATA (or an immediate family member, domestic partner or employer or prospective employer of such 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**

AUDITOR 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.

AUDITOR 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 AUDITOR becomes aware of an organizational conflict of interest in connection with the work performed hereunder, AUDITOR shall immediately provide BATA with written notice of the facts and circumstances giving rise to this organizational conflict of interest. AUDITOR'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 AUDITOR's performance of the work hereunder, shall similarly notify AUDITOR. In the event a conflict is presented, whether disclosed by AUDITOR or discovered by BATA, BATA will consider the conflict presented and any alternatives proposed and meet with AUDITOR 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 AUDITOR to damages incurred by BATA in addressing organizational conflicts that arise out of work performed by AUDITOR, or to termination of this Agreement for breach.

## **19. LAWS AND REGULATIONS**

AUDITOR shall comply with any and all *applicable* laws, statutes, ordinances, rules, and 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. *AUDITOR shall also comply with any procedural requirements that are explicitly identified in an Audit Order.* Those laws, statutes, ordinances,

rules, *and* regulations ~~and procedural requirements~~ which are imposed on BATA as a recipient of federal or state funds, *and that relate to the performance of the Agreement*, are hereby in turn imposed on AUDITOR.

## **20. CLAIMS OR DISPUTES**

AUDITOR 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 AUDITOR claims before AUDITOR has performed any disputed work. Therefore, AUDITOR's failure to provide timely notice shall constitute a waiver of AUDITOR's claims for additional compensation and/or time.

AUDITOR 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 AUDITOR 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 AUDITOR has started performance of the work giving rise to the potential claim for additional compensation.

If there is a dispute over any claim, AUDITOR 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. AUDITOR shall maintain cost records of all work that is the basis of any dispute.

If an agreement can be reached which resolves AUDITOR'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 AUDITOR 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 AUDITOR 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 AUDITOR 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 AUDITOR to carry out orders given or to perform any provision of the Agreement or to factors that are not the responsibility of AUDITOR. AUDITOR shall comply immediately with the written order of BATA to suspend the work wholly or in part. The suspended work shall be resumed when AUDITOR is provided with written direction from BATA to resume the work.

If the suspension is due to AUDITOR'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 AUDITOR, all costs shall be at AUDITOR's expense and no schedule extensions will be provided by BATA.

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

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

## **23. WARRANTY OF SERVICES**

A. In the performance of its services, AUDITOR represents and warrants that it has and will exercise the degree of professional care, skill, efficiency, and judgment of AUDITOR's 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, AUDITOR shall provide such specific warranties as may be set forth in specific Audit Orders as agreed upon by the parties.

B. In the event that any services provided by AUDITOR hereunder are deficient because of AUDITOR's or a subconsultant's failure to perform said services in accordance with

the warranty standards set forth above, BATA shall report such deficiencies in writing to AUDITOR within a reasonable time. BATA thereafter shall have:

1. The right to have AUDITOR re-perform such services at AUDITOR's expense; or
2. The right to have such services done by others and the costs thereof charged to and collected from the AUDITOR if within 30 days after written notice to AUDITOR requiring such re-performance, AUDITOR fails to give satisfactory evidence to BATA that it has undertaken said re-performance; or
3. The right to terminate the Agreement for default.

AUDITOR 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. AUDITOR 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 AUDITOR'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 AUDITOR, 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 (30) calendar 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 AUDITOR that 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. AUDITOR must file a government claim pursuant to Government Code section 910 *et seq.* in order to initiate a civil action.

D. Pending Resolution. AUDITOR 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 termination 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. AUDITOR 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 AUDITOR 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 AUDITOR

\_\_\_\_\_  
Steve Heminger, Executive Director

\_\_\_\_\_  
Insert Appropriate Name, Title

## **ATTACHMENT A**

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

**ATTACHMENT A-1**

**Audit Order: Proposed Workscope, Schedule & Compensation**

<b>1.</b>	<b>Audit Order No.:</b>	
<b>2.</b>	<b>Start Date:</b>	
<b>3.</b>	<b>Completion Date:</b>	
<b>4.</b>	<b>Scope of Work:</b>	
<b>5.</b>	<b>Maximum Payment</b>	\$ _____
<b>6.</b>	<b>Deliverables-Based Payment?</b>	Yes <input type="checkbox"/> No <input type="checkbox"/>

**7. Schedule and Compensation:**

<b>Initial Audit Phase</b>	<b>No. of Hours</b>	<b>Hourly Rate</b>	<b>Total Compensation</b>	<b>Personnel Assigned</b>	<b>Completion Date</b>
Planning and risk assessment					
Fieldwork					
Draft audit report					
Final report					
<b>Total</b>					

**6. Attach additional information/comments:**

BAY AREA TOLL AUTHORITY

AUDITOR

\_\_\_\_\_  
Brian Mayhew, Chief Financial Officer

\_\_\_\_\_  
Name, Title

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Insert MTC pathname on AO

**ATTACHMENT A-2**  
**SAMPLE BATA PROJECT ENGAGEMENT LETTER**

**ATTACHMENT B**

**Not Used**

**ATTACHMENT C**

**Not Used**

**ATTACHMENT D**  
**Key Personnel Assignments**

	<u>Name</u>	<u>Description</u>	<u>Rate/hour</u>	
1.				
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 AUDITOR'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 AUDITOR authorizes to work under this Agreement (hereinafter referred to as "Agents.") AUDITOR 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.

AUDITOR 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, AUDITOR 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 AUDITOR's indemnity obligation as to itself or any of its Agents in the absence of coverage.

In the event AUDITOR 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 AUDITOR's insurance be primary without right of contribution from BATA. Prior to beginning work under this contract, AUDITOR 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 AUDITOR'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 AUDITOR 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 AUDITOR and AUDITOR'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 AUDITOR's operations.

3. Business Automobile Insurance for all automobiles owned (if any), used or maintained by AUDITOR and AUDITOR'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 \$2,000,000 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. 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. Such policy shall contain cyber risk coverages including network and internet security liability coverage, privacy liability coverage and media coverage.

The policy shall provide coverage for all work performed by AUDITOR and any work performed or conducted by any subcontractor/consultant working for or performing services on behalf of the AUDITOR. No contract or agreement between AUDITOR and any subcontractor/consultant shall relieve AUDITOR of the responsibility for providing this Errors & Omissions or Professional Liability coverage for all work performed by AUDITOR and any subcontractor/consultant working on behalf of AUDITOR on the project.

6. Property Insurance. Property Insurance covering AUDITOR'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.

7. Employee Dishonesty/Crime Insurance. An Employee Dishonesty insurance policy covering AUDITOR'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.~~ AUDITOR 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. AUDITOR'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. AUDITOR shall be responsible for payment of any deductible or retention on AUDITOR'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 AUDITOR insurance policy that contains a deductible or self-insured retention, AUDITOR 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 AUDITOR, subconsultant, subcontractor, or any of their employees, officers or directors, even if AUDITOR 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, AUDITOR 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, AUDITOR 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 AUDITOR's personnel, subcontractors, and equipment have been removed from BATA's property, and the work or services have been formally accepted. AUDITOR 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, AUDITOR 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 AUDITOR are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by AUDITOR pursuant hereto, including, but not limited to, liability assumed pursuant to Article 9 of this Agreement.

2. Not Used

3. **ADDITIONAL INSURED**S

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.

CALTRANS

## ATTACHMENT F

### Special Conditions Relating to Personally Identifiable Information

AUDITOR 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 ~~MTC-BATA~~ or ~~CONSULTANT~~AUDITOR that identifies or describes a person or can be directly linked to a specific individual. Examples of PII include ~~[insert a few types of PII, tailored to the contract]~~ name, address, phone or fax, ~~Caltrans employee identification number, signature, date of birth, or credit card~~ *time records and salary 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

~~AUDITOR shall permit BATA and its authorized representatives~~ *AUDITOR shall permit BATA Project Manager and internal and external auditors, upon reasonable prior written notice and their execution of a confidentiality agreement acceptable to both parties, to audit and inspect: (i) AUDITOR’s facilities where PII is stored or maintained; (ii) any computerized systems used to share, disseminate or otherwise exchange PII; and (iii) AUDITOR’s security practices and procedures, data protection, business continuity and recovery facilities, resources, plans and procedures, provided that AUDITOR is under no obligation to permit audits or inspections of facilities, systems, practices, or procedures that are unrelated to this Agreement or that contain the confidential proprietary information of the AUDITOR or AUDITOR’s other clients.* The audit and inspection rights hereunder shall be for the purpose of verifying AUDITOR’s compliance with this Agreement, and all applicable laws.

#### 2. General Confidentiality of Data

All PII made available to or independently obtained by AUDITOR in connection with this Agreement shall be protected by AUDITOR 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.

AUDITOR 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~~ *maintaining processes such that applicable 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.*

AUDITOR is prohibited from storing *unencrypted* PII on portable media including, but not limited to, laptops, thumb drives, disks and so forth.

Notwithstanding anything to the contrary in Article 14. Records, of this Agreement, AUDITOR agrees to retain PII for no longer than necessary for AUDITOR to carry out its contractual responsibilities under this agreement. At the conclusion of this retention period, AUDITOR agrees to use Department of Defense (“DoD”) approved methods to permanently remove PII from any files. ~~Discarded PII will be unavailable and unrecoverable following the purge on any storage media including, but not limited to, magnetic disk, optical disk, and memory chips (“Storage Media”).~~ *remove PII from any files except for anything that may be stored in back up media or other electronic data storage systems, latent data and metadata.* AUDITOR agrees to destroy hard-copy documents containing PII by means of a cross-cut shredding machine. AUDITOR also agrees to use DoD approved methods to sanitize any ~~Storage Media~~ *storage media including, but not limited to, magnetic disk, optical disk, and memory chips (“Storage Media”)* prior to discarding or when useful life has ended, whichever comes first. At the conclusion of the performance period of this Agreement, AUDITOR 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 F Special Conditions Relating to Personally Identifiable Information.” These requirements shall survive termination or expiration of this Agreement.

### 3. Compliance with Statutes and Regulations

AUDITOR agrees to comply with the information handling and confidentiality requirements outlined in the California Information Practices Act (Civil Code sections 1798 *et seq.*) In addition, AUDITOR warrants and certifies that in the performance of this Agreement, it will comply with all applicable statutes, rules, regulations and *court* orders of the United States and the State of California and ~~BATA~~ *with all duly executed Audit Orders or amendments to this Agreement* relating to the handling and confidentiality of PII, ~~including the terms and conditions contained in this Attachment F, Special Conditions Relating to Personally Identifiable Information~~ and agrees to indemnify BATA against any loss, cost, damage or liability by reason of CONSULTANT’s violation of this provision.

### 4. Subconsultants

BATA approval in writing is required prior to any disclosure by AUDITOR of PII to a subconsultant or prior to any work being done by a subconsultant that entails receipt of PII. Once approved, AUDITOR 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. Consultant Guarantees

AUDITOR shall not, except as authorized or required by its duties by law, *legal process or applicable professional standards*, reveal or divulge to any *unauthorized* person or entity any PII which becomes known to it during the term of this Agreement. *Subject to the restrictions set forth in this Agreement, AUDITOR may disclose PII to its partners, principals, employees, subconsultants and vendors.* AUDITOR 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.~~

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

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

#### 6. Notice of Security Breach

AUDITOR 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 G**

**Subconsultant List**

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

**APPENDIX D, INSURANCE REQUIREMENTS (ADDENDUM 3)**

Minimum Insurance Coverages. AUDITOR 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.

Yes (√)	<b>Please certify by checking the boxes at left that required coverages will be provided within five (5) days of BATA's notice to firm that it is the successful proposer.</b>
—	<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 Auditor'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 Auditor is a sole proprietor or a corporation with stock 100% owned by officers with no employees.
—	<p><u>Commercial General Liability Insurance</u> for Bodily Injury and Property Damage liability, covering the operations of AUDITOR and AUDITOR'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 &amp; 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, officers, representatives, agents and employees are to be named as additional insureds. Such insurance as afforded by this endorsement shall be primary as respects any claims, losses or liability arising directly or indirectly from AUDITOR's operations.</p>
—	<u>Business Automobile Insurance</u> for all automobiles owned (if any), used or maintained by AUDITOR and AUDITOR'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.
—	<u>Umbrella Insurance</u> in the amount of \$2,000,000 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.
—	<u>Errors and Omissions Professional Liability Insurance</u> 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. Such policy shall contain cyber risk coverages including network and internet security liability coverage, privacy liability coverage and media coverage. The policy shall provide coverage

	<p>for all work performed by AUDITOR and any work performed or conducted by any subcontractor/consultant working for or performing services on behalf of the AUDITOR. No contract or agreement between AUDITOR and any subcontractor/consultant shall relieve AUDITOR of the responsibility for providing this Errors &amp; Omissions or Professional Liability coverage for all work performed by AUDITOR and any subcontractor/consultant working on behalf of AUDITOR on the project.</p>
—	<p><u>Property Insurance</u> covering AUDITOR'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" ("All Risk") 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><u>Employee Dishonesty/Crime Insurance.</u> An Employee Dishonesty insurance policy covering AUDITOR'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) <del>Client Property Blanket Bond - \$250,000.</del> AUDITOR 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.</p>

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

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

Auditor shall be responsible for payment of any deductible or retention on Auditor'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 Auditor insurance policy that contains a deductible or self-insured retention, Auditor 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 Auditor, subconsultant, subcontractor, or any of their employees, officers or directors, even if Auditor 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, Auditor shall:

1. Ensure that the Retroactive Date is shown on the policy, and such date must be before the date of the Agreement or the beginning of any work under the 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, Auditor 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 Auditor’s personnel, subcontractors, and equipment have been removed from BATA’s property, and the work or services have been formally accepted. Auditor 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 the Agreement.

Prior to commencement of any work hereunder, Auditor 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 Auditor are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Auditor pursuant to the Agreement, including, but not limited to, liability assumed pursuant to the Indemnification section of the Agreement.

<b>By signing below, you acknowledge and agree to provide the required certificate of insurance providing verification of the minimum insurance requirements listed above within five (5) days of BATA’s notice to firm that it is the successful proposer.</b>	
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 the date for protesting**

**RFQ provisions. If such objections are not brought to BATA's attention consistent with the protest provisions of this RFQ, compliance with the insurance requirements will be assumed.**

	RFQ REFERENCE	REQUEST	RESPONSE
<b>Request for Qualifications</b>			
1	RFQ, Page 9 – Public Records	Delete/take exception to everything in the last paragraph after the first sentence. KPMG understands that it is BATA’s sole responsibility to determine whether information is releasable to the public pursuant to applicable public records laws, and we are confident that BATA will fulfill this legal obligation fairly. Accordingly, KPMG will not indemnify BATA for any failure to release information when required by law, and KPMG does not waive any rights associated with the BATA administration of the PRA, or otherwise release BATA from any liability for, the improper or unauthorized release of this information by BATA.	BATA does not agree to this change.
<b>Appendix C, BATA Standard Consultant Contract</b>			
2	Appendix C, Bata Standard Consultant Contract, Article 1 Scope of Services	For clarification purposes, please insert the following at the end of this section: “AUDITOR is not an accounting firm and thus will not be auditing any financial statements or performing any attest procedures in the course of this engagement. AUDITOR’s services are not designed, nor should they be relied upon, to disclose internal weaknesses in internal controls, financial statement errors, irregularities, illegal acts or disclosure deficiencies.”	BATA does not agree to this change.
3	Appendix C, Bata Standard Consultant Contract, Article 4 Key Personnel	Firm would like to request modification to this provision clarifying that Auditor will not, for its convenience, replace Key Personnel without prior written approval of the Project Manager.	BATA Project Manager’s approval is required for any changes to key personnel.
4	Appendix C, Bata Standard Consultant Contract, Article 6 - Termination	Please revise the first sentence of Section 6.A. as follows in order to make the termination right mutual: “BATA or AUDITOR may terminate this Agreement, in whole or in part, at any time by thirty (30) days’ prior written notice to the other party.	Please see Article 6 of the attached Appendix C, BATA Consultant Contract (Addendum 3).
5	Appendix C, Bata Standard Consultant Contract, Article 6 – Termination subarticle A and B	A. –Auditor would request the addition of language disclaiming its further responsibility for work product delivered which is designated as incomplete as of the date of termination. B. –Auditor would request deletion of the provision regarding offset.	A. please see Article 6 of the attached Appendix C, BATA Standard Consultant Contract (Addendum 3) B. BATA does not agree to this change
6	Appendix C, Bata Standard Consultant Contract, Article 9 -Indemnification	Section A - Auditor would request modification of this provision so that the first sentence includes the term “third party” and begins: “Any injury or death to persons or property or third party financial or economic losses that may occur” Section C. –Auditor would request modification to this provision that it agree to pay all reasonable charges, etc. Also, we would request amending the last sentence to include that Auditor will not be responsible for the portion of any judgment rendered against the BATA Indemnified Parties based upon or arising from the negligent act or omission or willful misconduct of the BATA Indemnified Parties. Further, we would request the addition of	Please see Article 9 of the attached Appendix C, BATA Consultant Contract (Addendum 3).

		<p>language providing that our total liability, except for our indemnification obligations, be limited to an amount equal to the fees we receive under the Agreement, and exclude indirect, consequential, exemplary or similar such damages.6</p>	
<p>7</p>	<p>Appendix C, Bata Standard Consultant Contract, Article 9 -Indemnification</p>	<p>In the fourth line of Sec. 9, please insert “third-party” before “demands”; and please revise Section 9.A. and B. as follows:</p> <p>A. Any injury or death to persons <del>or property or pecuniary, financial or economic losses</del> that may occur, <del>or that may be alleged to have occurred</del> directly arising from the performance of this Agreement by AUDITOR <del>caused by any breach of the Agreement or</del> and involving the grossly negligent act or omission, fraud or willful misconduct of the AUDITOR or its officers, employees, subconsultants or agents; or</p> <p>B. Any <del>allegation that materials or services provided by AUDITOR under this Agreement</del> actual Infringement or violation by any materials or services provided by AUDITOR of any currently existing United States copyright, trademark, patent, trade secret, or any other intellectual property or proprietary right of any third party, to the extent that such infringement was not caused by any use or modification of any such materials or services in any manner not authorized under this Agreement or any engagement letter executed pursuant hereto or by any directions by BATA or breach by BATA of this Agreement.</p> <p>--Please replace the paragraph below subsection 9.B with the following:</p> <p>“AUDITOR further agrees to pay all reasonable charges of attorneys and all other costs and expenses of defense incurred by BATA for the above claims. No indemnification will be provided for any claims resulting from the negligence or willful misconduct of any BATA Indemnified Parties.”</p> <p>--Please also add the following as a new paragraph in Article 9 in order to incorporate a limitation on liability reasonably tied to the level of compensation paid to AUDITOR and waive consequential damages for both parties:</p> <p>“Notwithstanding any other provision, (i) the aggregate liability of the AUDITOR (and its affiliates, directors, officers, employees, agents and</p>	<p>Please see Article 9 of the attached Appendix C, BATA Consultant Contract (Addendum 3).</p>

		<p>representatives) hereunder shall be limited to the total compensation paid to AUDITOR under the engagement letter giving rise to the liability in question, without regard to the legal theory under which such liability may be imposed, and (ii) in no event shall either party, its affiliates, directors, officers, employees, agents and representatives be liable for any indirect, consequential, punitive or special damages arising out of or related to this contract or the services performed hereunder, whether in contract, tort (including negligence), strict liability or otherwise, even if such party has been advised of the possibility of such loss or damage.”</p> <p>Please insert the following as a new paragraph in this section to provide clarification regarding the scope of our services: “All services and deliverables provided by AUDITOR shall be for use solely for BATA’s internal business purposes and the purpose set forth in this Agreement and not for any other purpose. AUDITOR will have no liability to any third-parties who rely upon any such services or deliverables. In addition, BATA will provide</p>	
8	Appendix C, Bata Standard Consultant Contract, Article 9 –Indemnification, subarticle A	Insert “tangible” before “property” and delete “or pecuniary, financial or economic loses.” Also delete “breach of the Agreement or.	Please see Article 9 of the attached Appendix C, BATA Consultant Contract (Addendum 3).
9	Appendix C, Bata Standard Consultant Contract, Article 9 –Indemnification, subarticle B	Insert “in such claims, actions, suits, or other legal proceedings” after “any judgment.”	Please see Article 9 of the attached Appendix C, BATA Consultant Contract (Addendum 3).
10	Appendix C, Bata Standard Consultant Contract, Article 10 Data to be Furnished and subarticle 10.2 Non-Disclosure of Confidential Information	Data to be Furnished by BATA and 10.2. We would request modification of these provisions to address typical issues associated with information stored electronically and for compliance with applicable professional standards	Without having a more detailed description of the changes being requested, BATA cannot provide a meaningful response to this question. The form of contract will be finalized based on the RFQ, including any exceptions that are accepted and reflected in Addenda to the RFQ. BATA does not guarantee response to or consideration of requests for clarifications or exceptions that are not requested timely. Please refer to Section IV, Section VI, paragraph 7, and Section IX. B
11	Appendix C, Bata Standard Consultant Contract, Article 10 Data to be Furnished and subarticle 10.2 Non-	<p>a. In (d), insert “applicable professional standards” after “law.”</p> <p>b. In the second sentence of the second paragraph, insert “or” before “except.”</p>	Please see Article 10 and subarticle 10.2 of the attached Appendix C, BATA Consultant Contract (Addendum 3).

	Disclosure of Confidential Information	<p>c. Replace everything in the fourth sentence after “its” with: “partners, principals, employees, vendors, and subcontractors, if any, who need to know such information in order to permit the AUDITOR to perform the services. Auditor shall be fully responsible for any unauthorized disclosure or use of Confidential Information by such partners, principals, employees, vendors, or subcontractors.”</p> <p>d. Add after the penultimate sentence: “AUDITOR may retain a copy of information received, developed, or otherwise relating to this Agreement in order to comply with its contractual obligations and applicable professional standards. Information stored on routine back-up media for the purpose of disaster recovery will be subject to destruction in due course. Latent data such as deleted files and other non-logical data types, such as memory dumps, swap files, temporary files, printer spool files and metadata that can customarily only be retrieved by computer forensics experts and are generally considered inaccessible without the use of specialized tools and techniques will not be within the requirement for the return or destruction of records as contemplated by this paragraph.”</p>	
12	Appendix C, Bata Standard Consultant Contract, Article 11 – Ownership of work product	<p>a. Before the parenthetical in the third line, insert “which are identified as a Deliverable in a Project Engagement Letter.</p> <p>b.</p> <p>c. Add to the beginning of the third sentence: “Subject to sections 10 and 10.2 hereof”</p> <p>d. Add after the third sentence: “In the event of a termination for default or convenience, AUDITOR shall not have any liability to BATA as a result of BATA’s use of any unfinished, incomplete, or draft Work Product that is furnished to it, provided that AUDITOR has notified BATA of the incomplete status of such material.</p>	Please see Article 11 of the attached Appendix C, BATA Consultant Contract (Addendum 3).
13	Appendix C, Bata Standard Consultant Contract, Article 12 – Subcontracts, subarticle A	Replace “all” with “applicable” in the second sentence. Note that this is consistent with first sentence in Section C.	BATA does not agree to this change
14	Appendix C, Bata Standard Consultant Contract, Article 14 - Records	Delete the first sentence, this is not a cost based contract. In the second sentence, insert “timekeeping and expense” before “records.”	Please see Article 14 of the attached Appendix C, BATA Consultant Contract (Addendum 3).
15	Appendix C, Bata Standard Consultant Contract, Article 15 Audits	In the first sentence, please change “BATA and BATA’s authorized representatives” to instead be “BATA’s internal and external auditors, upon thirty (30) days prior written notice and their execution of a confidentiality	Please see Article 15 of the attached Appendix C, BATA Consultant Contract (Addendum 3).

		agreement acceptable to both parties,” Please insert the following at the end of the first sentence: “for the sole purpose of verifying AUDITOR’s compliance with the material provisions of this Agreement”.	
16	Appendix C, Bata Standard Consultant Contract, Article 15 Audits	Replace all of the lists of items to be inspected –there is one list in each sentence –with “timekeeping and expense records.	Please see Article 15 of the attached Appendix C, BATA Consultant Contract (Addendum 3).
17	Appendix C, Bata Standard Consultant Contract, Article 15 Audits	We would request language clarifying that these rights are limited solely to Auditor’s time, billing and expense records for services performed under the Agreement.	Please see Article 15 of the attached Appendix C, BATA Consultant Contract (Addendum 3).
18	Appendix C, Bata Standard Consultant Contract, Article 18 Prohibited Interest	<p>Please insert the following as a new paragraph to provide clarification regarding our determination and handling of conflicts:</p> <p>“Based on the names of the parties that BATA has provided, AUDITOR is not aware of circumstances that constitute a conflict of interest or that would otherwise impair AUDITOR’s ability to provide objective assistance. BATA acknowledges that AUDITOR provides a wide range of consulting services to numerous clients. In matters unrelated to the work performed hereunder, some of these clients may now or in the future have legal or economic interests that may be adverse to BATA’s interests. As independent consultants and experts, AUDITOR’s determination of whether a conflict of interest exists is based primarily on the confidential information that it obtains or develops in the course of its engagements, rather than being based solely on the parties involved. BATA agrees that the provision of work hereunder will not preclude the AUDITOR from working for other clients on unrelated matters that are, or may be adverse to BATA, provided that the AUDITOR does not make use of any of BATA’s confidential information that it may have received or had access to under this Agreement.”</p>	<p>BATA would be willing to willing to insert the following modified version upon request of the Auditor:</p> <p>Based on the names of the parties that BATA has provided, AUDITOR is not aware of circumstances that constitute a conflict of interest or that would otherwise impair AUDITOR’s ability to provide objective assistance. BATA acknowledges that AUDITOR provides a wide range of consulting services to numerous clients. In matters unrelated to the work performed hereunder, some of these clients may now or in the future have legal or economic interests that may be adverse to BATA’s interests. As independent consultants and experts, AUDITOR’s determination of whether a conflict of interest exists is based primarily on the confidential information that it obtains or develops in the course of its engagements, rather than being based solely on the parties involved. BATA agrees that the provision of work hereunder will not preclude the AUDITOR from working for other clients on unrelated matters that are, or may be adverse to BATA, provided that, where appropriate under applicable professional standards, the AUDITOR will seek the informed written consent of BATA, the other client</p>

			or both, and provided further that, the AUDITOR does not make use of any of BATA’s confidential information that it may have received or had access to under this Agreement.
19	Appendix C, Bata Standard Consultant Contract, Article 19 Laws and regulations.	Delete “and procedural requirements “from both sentences, and insert an “and” before “regulations.”	Please see Article 19 of the attached Appendix C, BATA Consultant Contract (Addendum 3).
21	Appendix C, Bata Standard Consultant Contract, Article 23 Warranty of Services	Please delete the last sentence of Paragraph A., and please insert the following at the end of Paragraph B: “, provided that in each case above BATA provides written notice to AUDITOR within one year after the services in question are provided and in no event shall AUDITOR be responsible for payment of any amount in excess of the amount which remains outstanding to AUDITOR for such defective services.”	BATA does not agree to this change.
22	Appendix C, Bata Standard Consultant Contract, Article 23 Warranty of Services	AUDITOR would propose warranty obligations and remedies typical for the provision of these types of professional services. For example, Auditor would request that Item B.2. be stricken and that Auditor’s responsibility be limited to return of fees paid to it for deficient work that was not able to be cured by Auditor as provided for under the Agreement.	BATA does not agree to this change.
23	Appendix C, Bata Standard Consultant Contract, Attachment F, Article 1	please change “BATA and its authorized representatives” to “BATA’s internal and external auditors, upon thirty (30) days prior written notice and their execution of a confidentiality agreement acceptable to both parties.	Please see the revised Attachment F included in this addendum.
24	Appendix C, Bata Standard Consultant Contract, Attachment F, Article 1	Replace first sentence with “AUDITOR shall permit BATA and its authorized representatives, approved by AUDITOR such approval not to be unreasonably withheld to inspect: (i) AUDITOR’s facilities where PII is stored or maintained and (ii) AUDITOR’s security policies, documented practices and procedures, data protection, business continuity and recovery policies, plans and procedures at AUDITOR’s IT operations location or via remote viewing technology (e.g., Webex). Insert at the end: “AUDITOR shall be under no obligation to provide BATA or its authorized representatives with access to facilities, systems, or information pursuant to this paragraph if doing so could result in a disclosure of the confidential or proprietary information of AUDITOR or AUDITOR’s other clients which is unrelated to this Agreement.”	Please see the revised Attachment F included in this addendum.

25	Appendix C, Bata Standard Consultant Contract, Attachment F, Article 2	“This Section and the other provisions of this Agreement shall apply only to the extent that AUDITOR has access to PII. To the extent that such access is provided, BATA hereby represents, warrants and covenants that: (i) BATA shall be deemed the controller of all such PII; (ii) BATA has acquired the necessary consent before providing the relevant PII to AUDITOR or instructing AUDITOR to obtain such PII on behalf of BATA, or that BATA is otherwise entitled to provide such PII to AUDITOR; (iii) BATA shall collect, process, and store or transfer PII in compliance with all applicable data privacy laws and regulations; and (iv) BATA shall not require AUDITOR to obtain or process any PII in any manner which would violate any laws or regulations.”	Please see the revised Attachment F included in this addendum.
26	Appendix C, Bata Standard Consultant Contract, Attachment F, Article 2, paragraph 1	After “observance” in the first sentence replace all with “of the procedural requirements set forth herein.” In second sentence delete the words “but is not limited to”.	Please see the revised Attachment F included in this addendum.
27	Appendix C, Bata Standard Consultant Contract, Attachment F, Article 2, paragraph 2	In last sentence delete “ensuring” and insert “maintaining processes such that applicable.”	Please see the revised Attachment F included in this addendum.
28	Appendix C, Bata Standard Consultant Contract, Attachment F, Article 2, paragraph 3	Insert at end “unless such media is encrypted”	Please see the revised Attachment F included in this addendum.
29	Appendix C, Bata Standard Consultant Contract, Attachment F, Article 2, paragraph 4	In the second sentence after “AUDITOR agrees to” replace all with “ remove PII from any files except for anything that may be stored in back up media or other electronic data storage systems, ,latent data and metadata.” Replace the fourth sentence with “AUDITOR also agrees to use Department of Defense (DoD) approved methods to sanitize any storage media including, but not limited to, magnetic disk, optical disk, and memory chips (“Storage Media”) prior to discarding such media or when useful life has ended, whichever comes first.	Please see the revised Attachment F included in this addendum.
30	Appendix C, Bata Standard Consultant Contract, Attachment F, Article 3, paragraph 1	Delete first sentence. In second sentence add “and” after rules and delete “and orders”. Also, in the second sentence, after “the State of California and BATA” add “(to the extent such have been provided to AUDITOR in writing and agreed to by the AUDITOR	Please see the revised Attachment F included in this addendum.

31	Appendix C, Bata Standard Consultant Contract, Attachment F, Article 5	Insert “legal process, applicable professional standards, or the Agreement” after “law.” Insert “unauthorized” before “person.”	Please see the revised Attachment F included in this addendum.
32	Appendix C, Bata Standard Consultant Contract, Attachment F, Article 5, paragraphs 3 and 4.	Auditor requests this section be deleted	BATA does not agree to this change.
33	Appendix C, Bata Standard Consultant Contract, Attachment F, Article 6	Replace “immediately” with “promptly”. Delete “that there may have been” and “or may have” from first sentence. In second sentence replace “two” with “24” and “discovery” with “confirmation of such a breach”	BATA does not agree to this Change
34	Appendix C, Bata Standard Consultant Contract, Attachment F, Article 6	please change “two hours” to “48 business hours”	BATA does not agree to this change.
35	Requested Additional Provision	Limitation of Liability - Notwithstanding anything else in this contract (including its attachments) to the contrary, the liability of the AUDITOR on account of any actions, damages, claims, liabilities, costs, expenses or losses in any way arising out of or relating to the services performed under the Contract shall be limited to the amount of fees paid or owing to AUDITOR under the Contract. In no event shall AUDITOR be liable for consequential, special, indirect, incidental, punitive or exemplary damages, costs, expenses, or losses (including, without limitation, lost profits and opportunity costs). This section shall apply regardless of the form of action, damage, claim, liability, cost, expense, or loss asserted, whether in contract, statute, tort (including but not limited to negligence) or otherwise, and shall survive contract expiration or termination	BATA does not agree to this contract provision
36	Requested Additional Provision	Management Decisions – BATA acknowledges and agrees that AUDITOR’s services may include advice and recommendations; but all decisions in connection with the implementation of such advice and recommendations shall be the responsibility of, and made by, BATA. The AUDITOR will not perform BATA management functions or make management decisions for BATA.	BATA does not agree to this contract provision
37	Requested Additional Provision	Third Party Usage - Any advice, recommendations, information, deliverables or other work product provided to BATA under this Contract is for the sole use of BATA, and is not intended to be, and may not be, relied upon by any third party, and all advice, recommendations, information, deliverables, or	BATA does not agree to this contract provision

		other work product may be marked to so indicate. Except for disclosures that are required by law or that are expressly permitted by this Contract, BATA will not disclose or permit access to such advice, recommendations, information, deliverables, or other work product to any third party without the AUDITOR’s prior written consent.	
38	Requested Additional Provision	California Accountancy Act –For engagements where services will be provided by the AUDITOR through offices located in California, BATA acknowledges that certain of AUDITOR’s personnel who may be considered “owners” under the California Accountancy Act and implementing regulations (California Business and Professions Code section 5079(a); 16 Cal. Code Regs. sections 51 and 51.1) and who may provide services in connection with this engagement, may not be licensed as certified public accountants under the laws of any of the various states.	BATA does not agree to this contract provision
39	Requested Additional Provision	Electronic Communications –AUDITOR may communicate with BATA by electronic mail or otherwise transmit documents in electronic form during the course of this engagement. BATA accepts the inherent risks of these forms of communication (including the security risks of interception of or unauthorized access to such communications, the risks of corruption of such communications and the risks of viruses or other harmful devices). BATA agrees that the final hardcopy version of a document, including a deliverable, or other written communication that AUDITOR transmits to BATA shall supersede any previous versions transmitted electronically by AUDITOR to BATA unless no such hard copy is transmitted	BATA does not agree to this contract provision
40	Requested Additional Provision	Active Spreadsheets and Electronic Files –AUDITOR may use models, electronic files, and spreadsheets with embedded macros created by AUDITOR to assist AUDITOR in providing the services under the Contract. If BATA requests a working copy of any such model, electronic file or spreadsheet, AUDITOR may, at its discretion, make such item available to BATA for BATA’s internal use only and such item shall be considered a deliverable (subject to the requirements herein); provided that BATA is responsible for obtaining the right to use any third party products necessary to use or operate such item.	BATA does not agree to this contract provision
41	Requested Additional Provision	Use of Vendors –BATA acknowledges that in connection with the performance of services under the Contract, AUDITOR may use the services of KPMG controlled entities and/or KPMG member firms to complete the	BATA does not agree to this contract provision.

		<p>services required by this Contract. BATA also acknowledges that in connection with the performance of services under the Contract, AUDITOR uses vendors within and without the United States to provide at AUDITOR's direction administrative and clerical services to AUDITOR. These vendors may in the performance of such services have limited access to information, including but not limited to confidential information, received by AUDITOR from or at the request or direction of BATA. AUDITOR represents to BATA that each such vendor has agreed to conditions of confidentiality with respect to BATA's information to the same or similar extent as AUDITOR has agreed to pursuant this Contract. AUDITOR will have full responsibility to cause these vendors to comply with such conditions of confidentiality and AUDITOR shall be responsible for any consequences of their failure to comply. Accordingly, BATA consents to AUDITOR disclosure to a vendor and the use by such vendor of data and information, including but not limited to confidential information, received from or at the request or direction of BATA for the purposes set forth herein.</p>	
42	Requested Additional Provision	<p>Volume Rebates –Where AUDITOR is reimbursed for expenses, it is AUDITOR's policy to bill clients the amount incurred at the time the good or service is purchased. If AUDITOR subsequently receives a volume rebate or other incentive payment from a vendor relating to such expenses, AUDITOR does not credit such payment to its clients. Instead, AUDITOR applies such payments to reduce its overhead costs, which costs are taken into account in determining AUDITOR's standard billing rates and certain transaction charges that may be charged to clients.</p>	BATA does not agree to this contract provision.
43	Requested Additional Provision	<p>State Vendors –BATA is aware that AUDITOR may be providing assurance, tax and/or advisory services to other actual or potential vendors of BATA. AUDITOR will perform an internal search for any potential client conflicts relating to any of BATA's vendors identified by BATA as having a role in connection with AUDITOR's performance of this Contract. BATA hereby agrees that a vendor's status as an AUDITOR client does not impact AUDITOR's engagement to perform this Contract. AUDITOR will advise BATA of any conflicts of interest that could prevent it from performing the Contract. However, AUDITOR is a large firm that is engaged by new clients on a daily basis and as a result it cannot guarantee that, following its conflict search, an engagement for any other related party will not be accepted somewhere else in AUDITOR's firm. Should any new information come to AUDITOR's attention, AUDITOR will promptly inform BATA. AUDITOR</p>	BATA does not agree to this contract provision.

		shall perform this Contract in accordance with applicable professional standards	
<b>Attachment E, Insurance and Financial Security (Bond Provisions)</b>			
44	Attachment E Insurance and Financial Security Provisions, Minimum Coverage	Auditor's insurance policies will cover its own liability, and where any subcontractor's are approved by BATA for work under the Agreement, Auditor will ensure that such subcontractor's maintain insurance that meets the requirements identified in the Agreement. If awarded the work, Auditor will provide Certificates of Insurance to BATA to evidence proof of coverage requirements.	BATA does not agree to this change. It is the Auditor's responsibility to verify subcontractor's insurance.
45	Attachment E Insurance and Financial Security Provisions, Professional Liability Insurance	Auditor maintains Professional Liability coverage in the amount requested, which covers errors and omissions of Auditor's employees. Cyber risk coverage, including network and internet security liability coverage, privacy liability coverage and media coverage are not provided for under the Professional Liability policy; however, Auditor does maintain those coverage's under its Privacy and Security Risk policy. Auditor will ensure that any approved subcontractors will be required to maintain their own Professional Liability coverage, as Auditor's policy does not cover subcontractors.	BATA does not agree to this change.
46	Attachment E Insurance and Financial Security Provisions, Property Insurance	We would request striking the last two sentences of this provision as this has no application to the services contemplated.	BATA does not agree to this change
47	Attachment E Insurance and Financial Security Provisions, Section A, Paragraph 3	Delete "these policies shall also satisfy all specified endorsements and stipulations, including provisions the AUDITOR's insurance be primary without right of contribution from BATA.	BATA does not agree to this change.
48	Attachment E Insurance and Financial Security Provisions, Section A-1	Delete second sentence "Such policy shall contain a Waiver of Subrogation in favor of BATA.	BATA does not agree to this change
49	Attachment E Insurance and Financial Security Provisions, Section A-2	Delete last sentence of first paragraph "Such policy shall contain a Waiver of Subrogation in favor of BATA." and all of paragraph two.	BATA does not agree to this change
50	Attachment E Insurance and Financial Security Provisions, Section A-4	Delete "including all endorsements and additional insured requirements.	BATA does not agree to this change
51	Attachment E Insurance and Financial Security Provisions, Section A-5	"Errors and Omissions Professional Liability Insurance" –Delete second paragraph and similar language in Appendix D	BATA does not agree to this change.

52	Attachment E Insurance and Financial Security Provisions, Section A-6	Delete entire section.	BATA does not agree to this change.
53	Attachment E Insurance and Financial Security Provisions, Section A-7	Delete “(b) Client Property Blanket Bond \$250,000	Please see Attachment C, BATA Standard Consultant Contract (Addendum 3), Attachment E Section A-7
54	Attachment E Insurance and Financial Security Provisions, Section G	In last sentence delete “and endorsements”.	BATA does not agree to this change
<b>Appendix D – Insurance Requirements</b>			
55	Appendix D	Make all edits requested for Appendix C, Attachment E in Appendix D	BATA does not agree to this change
56	Appendix D, Paragraph 4	Add “If Auditor is the sole reason for the loss”.	BATA does not agree to this change
57	Appendix D, Paragraph 5	Change 3 years to 1 year	BATA does not agree to this change
58	Appendix D	In the first paragraph, please change “rating of A-X” to “rating of A-VIII” in order to be consistent with other references to the rating in this Agreement	Please see Appendix D (Addendum 3)

ADDENDUM NO. 3 DATED March 2, 2015  
QUESTIONS AND ANSWERS  
INTERNAL PROJECT AUDITING AND REPORTING SERVICES RFQ DATED January 16, 2015

**Q1) What type of Audit Orders will be issued through this contract?**

A1) Audit Orders issued through this contract will be for work related to the audit of construction projects, and will be accompanied by an engagement letter

**Q2) What is the population of projects in the 11 billion dollars of expenditures?**

A2) Please refer to the seismic report on the BATA website <http://bata.mtc.ca.gov/reports.htm>.

**Q3) Will the contract include Disadvantage Business Enterprise (DBE) goals?**

A3) DBE goals are not included in this contract.

**Q4) Is the minimum qualification of requirements referring to the audit of at least one capital project in excess of \$500 million referring to the audit of a capital project which exceeds \$500 million or an audit of a company with a capital project in excess of \$500 million?**

A4) This requirement is referring to the audit of at least one capital project in excess of \$500 million

**Q5) What is the tentative plan to complete projects?**

A5) BATA intends to close out the oldest projects first.

**Q6) Will the awarded contractor be required to use past audit work that's already been complete to perform the current scope of work?**

A6) No.

**Q7) Is there a memorandum of understanding with Caltrans on what the audit report contains?**

A7) No.

**Q8) Is the Bay Area Toll Authority (BATA) requiring these project audits to be conducted under Generally Accepted Government Auditing Standards (GAGAS) (also known as the "Yellow Book" published by the U.S. Government Accountability Office)?**

A8) No.

**Q9) If BATA is not requiring these project audits to be conducted under GAGAS, under what standard, if any, does BATA require that these project audits be conducted?**

A9) BATA and the awarded contractor will agree to a standard upon award of contract.

**Q10) Has BATA awarded this type of contract in the past? If so who were the awarded Auditor's, and what have been the expenditures by firm and project audit, over the last three.**

A10) Yes, the most recent similar procurement resulted in the qualification of four firms: KPMG; Deloitte Touche, Sjoberg Evashenk; and Thompson Cobb, Bazillio. The current procurement, expiring June 30, 2015 averaged a total contract value of \$300,000 per year for the last 5 years.

**Q11) What special circumstances or events generated the need to request project audit services at this specific time?**

A11) The current contract expires June 30, 2015.

**Q12) Can the requirement for Proposers to submit their financial statements be waived if a Proposer's firm is not required to prepare financial statements for external release.**

A12) No, Financial Statements must be submitted with a firm's proposal