



**BAY AREA TOLL AUTHORITY**  
JOSEPH P. BORT METROCENTER  
101 EIGHTH STREET, OAKLAND, CA 94607-4700  
TEL 510.817.5700  
TTY/TDD 510.817.5769  
FAX 510.817.5848  
EMAIL [info@mtc.ca.gov](mailto:info@mtc.ca.gov)  
WEB [www.mtc.ca.gov](http://www.mtc.ca.gov)

AMY REIN WORTH, CHAIR  
Cities of Contra Costa County

DAVE CORTESE, VICE CHAIR  
Santa Clara County

ALICIA C. AGUIRRE  
Cities of San Mateo County

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

TOM BATES  
Cities of Alameda County

DAVID CAMPOS  
City and County of San Francisco

BILL DODD  
Napa County and Cities

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  
Association of Bay Area Governments

JAKE MACKENZIE  
Sonoma County and Cities

JOE PIRZYNSKI  
Cities of Santa Clara County

JEAN QUAN  
Oakland Mayor's Appointee

BIJAN SARTIPI  
State Business, Transportation  
and Housing Agency

JAMES P. SPERING  
Solano County and Cities

ADRIENNE J. TISSIER  
San Mateo County

SCOTT WIENER  
San Francisco Mayor's Appointee

STEVE HEMINGER  
Executive Director

ANDREW B. FREMIER  
Deputy Executive Director

November 8, 2013

**REQUEST FOR QUALIFICATIONS  
for BOND COUNSEL and PUBLIC FINANCE COUNSEL**

Dear Counsel:

The Bay Area Toll Authority (“BATA” or “Authority”) invites your firm to submit a Statement of Qualifications (SOQ) to provide legal services to BATA, Metropolitan Transportation Commission (“MTC”) and their related agencies. This Request for Qualification (“RFQ”) is intended to result in the selection of a law firm to assist BATA and MTC’s General Counsel in providing legal services to BATA, MTC, and their related agencies as Bond Counsel and Public Finance Counsel for a variety of agency projects on an as-needed basis. BATA is undertaking this procurement on behalf of itself, MTC, and their related agencies, including the MTC Service Authority for Freeways and Expressways (“MTC SAFE”), the Bay Area Headquarters Authority (“BAHA”), and the Bay Area Infrastructure Financing Authority (“BAIFA”); references in this RFQ to BATA also refer to MTC and their related agencies.

Depending on the SOQs received, BATA may select one firm to serve as both Bond and Public Finance Counsel or separate firms to serve as Bond and Public Finance Counsel.

This letter, together with its enclosures, comprises the RFQ for this project. Responses to the RFQ should be submitted according to the instructions outlined herein.

**I. Statement of Qualifications Due Date**

Interested firms must submit an original and two hard copies of their SOQs in a sealed envelope and an electronic copy by 4 p.m., Friday, December 13, 2013. Submission of an electronic copy only will not satisfy the submission requirement. ***SOQs received after that time and date will not be considered.***

**II. BATA Point of Contact**

SOQs and all inquiries relating to this Request shall be submitted to BATA’s General Counsel, who is the Project Manager, at the address shown below. For telephone inquiries call (510) 817-5700. Email inquiries may be addressed to [<aweil@mtc.ca.gov>](mailto:aweil@mtc.ca.gov).

Adrienne D. Weil  
General Counsel  
Bay Area Toll Authority  
Joseph P. Bort MetroCenter  
101 8th Street  
Oakland, CA 94607-4700

### III. Description of Agencies

BATA was created by California state legislation passed in 1997, codified at California Streets & Highways Code § 30950 *et seq.*, effective January 1, 1998, to help administer toll revenues collected from the San Francisco Bay Area's seven state-owned toll bridges, namely, the Antioch Bridge, the Benicia-Martinez Bridge, the Carquinez Bridge, the Dumbarton Bridge, the Richmond-San Rafael Bridge, the San Francisco-Oakland Bay Bridge, and the San Mateo-Hayward Bridge. BATA is governed by the same board as that governing MTC.

MTC was created in 1970 by the California State Legislature pursuant to Government Code § 66500 *et seq.*, for the purpose of creating a regional transportation planning agency for the San Francisco Bay Area counties of Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano and Sonoma.

MTC SAFE was created by California state legislation passed in 1985, codified at Streets and Highways Code § 2550 *et seq.*, effective January 1, 1986, to identify and respond to freeway incidents to increase the reliability of the freeway system and better manage traffic flow. MTC SAFE is governed by the same board that governs MTC.

BAHA is a joint powers authority created in 2011 by BATA and MTC. BATA's Bond Counsel also serves as Public Finance Counsel to BAHA. Its governing board consists of six members of BATA and MTC.

BAIFA is a joint powers public authority created in 2006 by BATA and MTC. BATA's Bond Counsel also serves as BAIFA's Bond Counsel and Public Finance Counsel. Its governing board consists of six members of BATA and MTC.

### IV. Project Description

BATA's current Bond Counsel/Public Finance Counsel was selected in 2009 for a five-year term. The current Bond/Public Finance Counsel has assisted BATA with general finance questions and with drafting new bridge toll legislation. The Bond/Public Finance Counsel contract is due to expire on February 28, 2014.

There are currently outstanding \$8,600,750,000 of senior and subordinate BATA bonds, comprised of 29 issues. In addition, BATA is party to 17 qualified swap agreements. BATA is also a party to a reimbursement agreement with three banks, set to expire October 31, 2014. Twelve series of senior bonds that bear interest at a term or index rate are not supported by a letter of credit or liquidity facility. For additional information on BATA and its debt portfolio, see: [emma.msrb.org](http://emma.msrb.org)

BATA may need to restructure the existing portfolio if market conditions or other factors warrant doing so. There will be no further 2013 issuances.

MTC and related agencies may explore certain financing techniques over the next five years.

**V. Scope of Work, Period of Performance, and Compensation**

The successful law firm(s) will provide BATA's General Counsel with services as Bond Counsel and Public Finance Counsel for a variety of BATA and related agency projects on an as-needed basis. The Public Finance Counsel provides services, as requested by the General Counsel, on matters outside of the context of a specific bond issuance related to financial, governance, project or legislative issues. Your firm may submit a SOQ requesting to be considered as only Bond Counsel, or Public Finance Counsel, or may submit a SOQ indicating that it is qualified and wishes to be considered for both roles.

Services will be required for a five (5) year period commencing March 1, 2014 and continuing through February 28, 2019, subject to the termination provisions in the engagement agreement, the form for which is attached hereto as Appendix C.

Compensation of Bond Counsel for work associated with each debt issuance will be negotiated contingent upon the success of the issuance or agreement, and payable from the proceeds of the issuance or agreement. At the discretion of BATA, the compensation amount for Bond Counsel may either be computed on the hourly rate of the particular attorneys and paralegal staff assigned to the issuance or agreement, or on a negotiated fixed or percentage basis based on the monetary size of the issuance or agreement. Work performed as Public Finance Counsel will be compensated based on an hourly rate, a negotiated fixed fee basis or out of bond proceeds (if a single firm is selected as Bond Counsel and Public Finance Counsel), at the discretion of the Project Manager.

**VI. Pre-SOQ Questions and Exceptions and Addenda**

Any requests for clarification, questions, or requests for exceptions to or modifications of RFQ provisions must be received by BATA in writing (via e-mail to the Project Manager) no later than 4 p.m. on November 22, 2013 in order to guarantee a response or consideration.

Any addenda to this RFQ will be posted on MTC's website. Interested firms are responsible for checking the website for any addenda.

**VII. Form of Statement of Qualifications**

In furtherance of BATA's resource conservation policy, proposers are asked to print proposals back to back and are encouraged to use recycled paper.

Proposal content and completeness are most important. Clarity is essential and will be considered in assessing the proposers' capabilities. Each SOQ should include:

1. A transmittal letter signed by a partner or official of the firm authorized to solicit business and enter into contracts for the firm indicating the legal services your firm is interested in providing: Bond Counsel and/or Public Finance Counsel. The transmittal letter should include the name and telephone number of a principal contact person.

2. A detailed statement of the firm's qualifications, including resumes of those attorneys likely to work on the resulting contract and the designation of the lead attorney(s). A description of any similar work performed for government agencies or other related work by the attorneys listed should be included.
3. A statement whether your firm has served as bond counsel for the California State Treasurer's office within the last ten years or is currently pre-qualified by the California State Treasurer's office to serve in such capacities.
4. References attesting to your firm's previous experience in performing work substantially similar to the services requested, either as bond counsel or public finance counsel. If possible, provide the names of clients for whom your firm has done similar work, along with the names and telephone numbers of client contact person(s) for each reference.
5. List any public debt issuance that your firm has provided legal assistance on within the last ten years specifically related to transportation projects and/or bridge tolls and describe the debt issuance.
6. List any public agency that your firm has served to provide legal assistance on general finance or governance questions and/or legislative issues within the last ten years and describe the work performed.
7. If your firm plans to associate another firm to assist your firm in carrying out the responsibilities as Bond Counsel or Public Finance Counsel, list the names of the firm(s) and the names of the specific attorney(s) who would be assigned from that firm(s).
8. List your firm's hourly rates for public agency work of the attorneys and paralegal staff who will be performing work for BATA and/or a blended rate, if applicable, and a description of the other charges that would be passed on to BATA, and when rates are due to change.
9. List and describe examples of fixed fee arrangements your firm has entered into with other public agencies for both bond counsel and ongoing general legal advice.
10. Pursuant to the California Political Reform Act, list any campaign contributions exceeding \$250 made to any BATA commissioners listed on the BATA letterhead during the preceding year, and a description of any other potential conflict of interest with BATA. Complete California Levine Act Statement (*Appendix A*) and include it with your firm's Statement of Qualifications submission.
11. Submit a signed acknowledgement that your firm agrees to provide the required insurance certificates verifying the minimum insurance requirements listed in *Appendix B*, Insurance Requirements.

### **VIII. SOQ Evaluation**

The primary evaluation factors will be a firm's overall experience and qualifications serving either as bond counsel or public finance counsel for public agencies, and specifically the qualifications of the particular attorneys to be assigned, and references. Hourly rates and the firm's description of prior fixed fee agreements will also be considered.

BATA's General Counsel and Executive Staff will evaluate responsive SOQs and may interview those firms determined by the interview panel to be reasonably likely to be selected for award of contract(s), based on the evaluation criteria set forth above. MTC reserves the right not to convene oral interviews and to make an award on the basis of written SOQs and references only.

Subject to the concurrence of BATA's Executive Director, the General Counsel will recommend the firm(s) to be selected as BATA's Bond Counsel and/or Public Finance Counsel to the BATA Oversight Committee for approval.

### **IX. Selection Disputes**

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

- 1) No later than three (3) working days prior to the date SOQs are due, for objections to RFQ provisions on the grounds that they are arbitrary, biased or discriminatory; or
- 2) No later than three (3) working days after the date on which a contract award is authorized by the BATA Oversight Committee or the date the firm is notified that it was not selected, whichever is later, for objections to firm selection.

The BATA Executive Director will respond to the protest in writing, based on the recommendation of a staff review officer. Authorization to award a contract to a particular firm shall be deemed conditional until the expiration of the protest period or, if a protest is filed, the issuance of a written response to the protest by the Executive Director.

Should the Proposer wish to appeal the decision of the Executive Director, it may file a written appeal with the BATA Oversight Committee, no later than three (3) working days after receipt of the written response from the Executive Director. The BATA Oversight Committee's decision will be the final agency decision.

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

**X. Selection Timetable**

4 p.m. (PST), November 22, 2013	Deadline for pre-proposal questions and exceptions
4 p.m. (PST), December 6, 2013	Deadline for protests of RFQ provisions
4 p.m. (PST), December 13, 2013	Closing date and time for receipt of SOQ at BATA offices
January 15, 2014	Interviews
February 12, 2014	Recommendations to BATA's Oversight Committee
February 22, 2014	Execution of Contract (approximate)

**XI. General Provisions**

All materials submitted by proposers are subject to public inspection under the California Public Records Act (Government Code § 6250 *et seq.*), unless exempt.

BATA's standard contract provisions are enclosed as *Appendix C, BATA's Standard Legal Services Agreement*. Any objections to any provision of the standard agreement or to the insurance requirements in *Appendix B* must be brought to BATA's attention no later than the date set for pre-proposal questions and exceptions set out above.

**XII. Authority to Commit BATA**

The BATA General Counsel, with the concurrence of the MTC/BATA Executive Director, will provide a recommendation for one or more law firms to serve as Bond Counsel and Finance Counsel to the BATA Oversight Committee, which will commit BATA to the expenditure of funds in connection with the RFP. (Specific engagements of the selected firm(s) by MTC or related agencies will be subject to the appropriate agency committee approval processes.)

Thank you for your interest.

Sincerely,



Adrienne D. Weil  
General Counsel

AW:rc

J:\CONTRACT\Procurements\Finance\BATA\FY 13-14\FinanceAtty 13-14\_final.doc

**APPENDIX A  
CALIFORNIA LEVINE ACT STATEMENT**

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

BATA’s commissioners include:

Alicia C. Aguirre	Federal D. Glover	Joe Pirzynski
Tom Azumbrado	Scott Haggerty	Jean Quan
Tom Bates	Anne W. Halsted	Bijan Sartipi
David Campos	Steve Kinsey	James P. Spering
Dave Cortese	Sam Liccardo	Adrienne J. Tissier
Bill Dodd	Mark Luce	Scott Weiner
Dorene M. Giacomini	Jake MacKenzie	Amy Rein Worth

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

YES  NO

If yes, please identify the commissioner: \_\_\_\_\_

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

YES  NO

If yes, please identify the commissioner: \_\_\_\_\_

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

\_\_\_\_\_  
DATE

\_\_\_\_\_  
(SIGNATURE OF AUTHORIZED OFFICIAL)

\_\_\_\_\_  
(TYPE OR WRITE APPROPRIATE NAME, TITLE)

\_\_\_\_\_  
(TYPE OR WRITE NAME OF COMPANY)

### Appendix B Insurance Requirements

Minimum Insurance Coverages. BOND COUNSEL 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 box below that required coverages will be provided within five (5) days of BATA's notice to firm that it wishes to contract with the firm.</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 BOND COUNSEL's employees as may be required by applicable law. Such policy shall contain a Waiver of Subrogation in favor of BATA (or the applicable agency). Such Workers Compensation & Employers Liability may be waived, if and only for as long as BOND COUNSEL is a sole proprietor or a corporation with stock 100% owned by officers with no employees.
—	<u>Commercial General Liability Insurance</u> for Bodily Injury and Property Damage liability, covering the operations of BOND COUNSEL and BOND COUNSEL'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 (or related agency, as applicable) 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 BOND COUNSEL's operations.
—	<u>Business Automobile Insurance</u> for all automobiles owned (if any), used or maintained by BOND COUNSEL and BOND COUNSEL'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 \$1,000,000 providing excess limits over Employer's Liability, Automobile Liability, and Commercial General Liability Insurance. Such umbrella coverage shall be following form to underlying coverage including all endorsements and additional insured requirements.
—	<u>Professional Liability Insurance</u> for errors and omissions and the resulting damages,

	<p>including, but not limited to, economic loss to BATA and having minimum limits of \$1,000,000 per claim.</p> <p>The policy shall provide coverage for all work performed by BOND COUNSEL and any work performed or conducted by any subcontractor/consultant working for or performing services on behalf of the BOND COUNSEL. No contract or agreement between BOND COUNSEL and any subcontractor/consultant shall relieve BOND COUNSEL of the responsibility for providing this Professional Liability coverage for all work performed by BOND COUNSEL and any subcontractor/consultant working on behalf of BOND COUNSEL on the project.</p>
—	<p><u>Property Insurance.</u> Property Insurance covering BOND COUNSEL’s own business personal property and equipment to be used in performance of this Agreement. Coverage shall be written on a "Special Form" policy that includes theft, but excludes earthquake, with limits at least equal to the replacement cost of the property. Such policy shall contain a Waiver of Subrogation in favor of BATA.</p>

BATA, MTC, MTC SAFE, BAHA and BAIFA, as applicable 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 BOND COUNSEL’s operations.

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

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

Consultant shall be responsible for payment of any deductible or retention on Consultant’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 BOND COUNSEL insurance policy that contains a deductible or self-insured retention, BOND COUNSEL 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 BOND COUNSEL, subconsultant, subcontractor, or any of their employees, officers or directors, even if BOND COUNSEL 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, BOND COUNSEL 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, BOND COUNSEL 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 BOND COUNSEL’s personnel, subcontractors, and equipment have been removed from BATA’s property, and the work or services have been formally accepted. BOND COUNSEL must notify BATA if any of the above required coverages are non-renewed or cancelled. The failure to procure or maintain required insurance and/or an adequately funded self-insurance program will constitute a material breach of this Agreement.

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

**By signing below you acknowledge and agree to provide the required certificate of insurance providing verification of the minimum insurance requirements listed above within five (5) days of BATA’s notice to firm that it wishes to contract with the firm.**

Representative Name and Title	
Name of Authorizing Official	
Authorized Signature	
Date	

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

**APPENDIX C**  
**BATA STANDARD LEGAL SERVICES AGREEMENT**

THIS AGREEMENT is made and entered into as of the **xx** day of **Month**, 20\_\_\_\_, by and between the Bay Area Toll Authority (herein called "BATA"), established pursuant to Streets and Highways Code § 30950 *et seq.* and **INSERT NAME OF BOND COUNSEL**, (herein called "**BOND COUNSEL**", a **PICK ONE OF THE FOLLOWING**: partnership, \_\_\_\_\_ [state of incorporation] corporation organized under the laws of the State of \_\_\_\_\_. BATA is entering into this agreement on behalf of itself, the Metropolitan Transportation Commission ("MTC"), the MTC Service Authority for Freeways and Expressways ("MTC SAFE"), the Bay Area Headquarters Authority ("BAHA"), and the Bay Area Infrastructure Financing Authority ("BAIFA"); all references to BATA shall be deemed to apply to all aforementioned agencies, as applicable.

**RECITALS**

WHEREAS, BATA intends to contract for \_\_\_\_\_ (herein called "the Project");  
and

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

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

NOW, THEREFORE, the parties hereto agree as follows:

1. **SCOPE OF SERVICES**

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

BOND COUNSEL's point of contact and the individual authorized to communicate to BATA on behalf of BOND COUNSEL is \_\_\_\_\_ ("BOND COUNSEL Project Manager"). A change in the BOND COUNSEL Project Manager requires BATA written approval.

2. PERIOD OF PERFORMANCE

BOND COUNSEL's services hereunder shall commence on or after March 1, 2014, and shall be completed no later than February 28, 2019, unless extended by duly executed amendment or earlier terminated, as hereinafter provided. Funding after June 30, 2014 is subject to BATA's annual agency budget approval process.

3. COMPENSATION AND METHOD OF PAYMENT

A. Compensation to Finance Counsel. BOND COUNSEL shall be compensated for services as FINANCE COUNSEL based on the hourly rates for the key personnel set forth in Attachment B, Key Personnel and Billing Rates, attached hereto and incorporated herein by this reference, which include all applicable surcharges such as taxes, insurance and fringe benefits as well as indirect costs, overhead and profit allowance, materials and supplies; provided, however, that the Project Manager and BOND COUNSEL may agree in writing to lump sum deliverable amounts for work requested by BATA. Such authorization shall be signed by the Project Manager and BOND COUNSEL and shall contain a description of the work requested in sufficient detail to define the deliverable for which payment shall be made. [Notwithstanding the above, IF BOND COUNSEL AND FINANCE COUNSEL are the same entity, work performed as FINANCE COUNSEL may be paid out of bond proceeds pursuant to subarticle B below, at the discretion of the BATA Project Manager.]

BATA will reimburse BOND COUNSEL for all expenses deemed reasonable and necessary by BATA incurred by BOND COUNSEL in the performance of this Agreement. Reimbursable expenses shall include long-distance telephone calls, outgoing facsimile transmission, duplicating, filing fees, special deliveries, messengers, expert witnesses, consulting services, external duplicating and imaging, pre-approved travel, lodging, meals, and online legal research (not to exceed \$100 without prior approval).

B. Compensation for Bond Counsel. Prior to starting work on a bond issuance or transaction, BATA shall, in its sole discretion, elect to compensate BOND COUNSEL either in the same manner as for work performed under A above, or in an amount based on a predetermined percentage of the proceeds of any BATA issuance or transaction. If BATA elects the predetermined percentage, such fixed percentage shall be negotiated by the Project Manager

and BOND COUNSEL, taking into consideration the size of the issuance or transaction, the hourly rates of and estimated time to be spent by key personnel, and estimated expenses.

C. Maximum Payment to Finance Counsel [if applicable]. Subject only to duly executed amendments, it is expressly understood and agreed that the total compensation and reimbursement for expenses to be paid BOND COUNSEL under A above (Finance Counsel) shall not exceed the sum of \_\_\_\_\_ (\$\_\_\_\_) per fiscal year or partial fiscal year ending on June 30. Unspent funds shall expire at the end of each fiscal year. Work by BOND COUNSEL during each fiscal year after June 30, 2014 shall not be initiated without pre-authorization from the Project Manager or her designee.

D. Method of Payment. BOND COUNSEL shall submit invoices for services rendered as Finance Counsel (or as Bond Counsel, if so agreed pursuant to B above) on a monthly basis, identifying the work for which payment is requested; the hours worked or the deliverable completed; any authorized expenses, together with receipts for such expenses, if requested; the total amount requested; and the cumulative amount billed and paid under this Agreement. Where BATA has elected to compensate BOND COUNSEL for its services based on a predetermined percentage of proceeds, pursuant to B above, BOND COUNSEL shall submit documents to support work performed concurrent with completion of the issuance or transaction.

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 made in writing and delivered or mailed to BATA as follows:

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

#### 4. KEY PERSONNEL

The key personnel to be assigned to this work by BOND COUNSEL and their hourly rates are set forth in Attachment D, Key Personnel, attached hereto and incorporated herein by this reference. The BATA Project Manager may approve rate changes by written notice, without an amendment to the Agreement. BOND COUNSEL agrees that all personnel assigned to this work will be professionally qualified for the assignment to be undertaken.

5. AMENDMENTS

BATA reserves the right to request changes in the services to be performed by BOND COUNSEL. 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 BOND COUNSEL and specifically identified as amendments to the Agreement. The BATA Project Manager is not a designated representative, for purposes of approving an amendment.

6. TERMINATION

A. Termination for Convenience. BATA may terminate this Agreement, in whole or in part, at any time by written notice to BOND COUNSEL. Upon receipt of notice of termination, BOND COUNSEL shall stop work under this Agreement immediately, to the extent provided in the notice of termination, and shall promptly submit its termination claim to BATA. [Revise the following as applicable:] BOND COUNSEL shall be reimbursed for hours worked as Finance Counsel (and as Bond Counsel, if applicable), plus expenses, up to the time of termination, not to exceed the maximum amount payable under the Agreement for such work or, for deliverables-based payment, not to exceed the maximum payable for the deliverable. If BATA has elected to compensate BOND COUNSEL based on a percentage of proceeds, BOND COUNSEL shall receive no compensation if, at the time of termination, BATA elects to not proceed with an issuance or transaction on which BOND COUNSEL has done work requested by BATA. However, if at the time of termination, BATA elects to proceed with an issuance or transaction on which BOND COUNSEL has performed work, BOND COUNSEL shall be paid the negotiated fixed fee agreed to unless the termination is for cause. Cause is defined as professional malpractice.

BOND COUNSEL may withdraw from representation of BATA, and terminate this Agreement, at any time, as required or permitted by Rule 3-700 of the California Rules of Professional Conduct, on "Termination of Employment," operative May 27, 1989 (and as those Rules may be amended from time to time).

7. INSURANCE AND FINANCIAL SECURITY REQUIREMENTS

BOND COUNSEL 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 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. STATUS OF BOND COUNSEL

BOND COUNSEL is an independent contractor retained through this Agreement to provide legal services in a specific area of law, and not to participate in or advise BATA on general ongoing transportation decisions. It is not an employee of BATA, and has no authority to contract or enter into any other agreement in the name of BATA. BOND COUNSEL has, and hereby retains, full control over the employment, direction, compensation and discharge of all persons employed by BOND COUNSEL who are assisting in the performance of services under this Agreement. BOND COUNSEL 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. BOND COUNSEL shall be responsible for its own acts and those of its agents and employees during the term of this Agreement.

BOND COUNSEL shall conduct research and arrive at conclusions with respect to its rendition of information, advice, recommendations or counsel independent of the control and direction of BATA or any BATA official, other than normal contract monitoring, and shall possess no authority with respect to any BATA decision beyond rendition of information, advice, recommendations or counsel. The authority of BOND COUNSEL to make representations or statements on behalf of BATA shall be limited to representations or statements which reflect or convey agency decisions of BATA, and which are of a type that outside counsel normally makes in the context of representation of a client.

The Executive Director of BATA has determined that BOND COUNSEL has been hired to perform a range of duties that are limited in scope, and thus is not required to comply with the requirements of the BATA Conflict of Interest Code (MTC Resolution No. 1198), and of the Political Reform Act, Government Code 81000 *et seq.*, and related regulations.

#### 9. INDEMNIFICATION – PROFESSIONAL MALPRACTICE

BOND COUNSEL is skilled in the professional calling necessary to the services and duties agreed to be performed, and BATA relies upon the skills and knowledge of BOND COUNSEL. BOND COUNSEL shall perform such services and duties in conformance to, and consistent with, the standards generally recognized as being employed by professionals in the same discipline in the State of California. BOND COUNSEL agrees to maintain insurance sufficient to cover professional malpractice of BOND COUNSEL, its partners, employees,

agents or subcontractors determined by a court of law to have occurred in the performance of services under this Agreement.

BOND COUNSEL's obligations hereunder will not include representation of BATA in any legal action challenging the validity of the proceedings and bonds, unless such legal action arises out of, or results from, some act of professional malpractice by BOND COUNSEL. BOND COUNSEL shall have no obligation to defend BATA in any action so challenging the validity of the transaction unless there is a determination by a court of law of professional malpractice by BOND COUNSEL. Upon such determination, BOND COUNSEL shall reimburse BATA for all attorneys' fees, costs and expenses incurred by BATA in defending said legal action, and shall assume all costs of defense until said legal action is concluded.

#### 10. WORK PRODUCTS CONFIDENTIAL

Work products prepared or assembled by BOND COUNSEL, obtained from others by BOND COUNSEL, or made available to BOND COUNSEL by BATA in connection with the services under this Agreement shall be treated as confidential by BOND COUNSEL, and subject to the Attorney Work Product Doctrine and the Attorney-Client Privilege, and BOND COUNSEL agrees that they shall not be made available to any individual or organization without prior approval of BATA.

#### 11. SUBCONTRACTS

A. Subconsultants approved by BATA for subcontract work under this Agreement are listed in Attachment \_\_, Subconsultant List, attached hereto and incorporated herein by this reference. Any subconsultants must be engaged under written contract with the BOND COUNSEL with provisions allowing the BOND COUNSEL to comply with all requirements of this Agreement. Failure of a subconsultant to provide insurance in accordance with Article 7, INSURANCE REQUIREMENTS, shall be at the risk of BOND COUNSEL.

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



BOND COUNSEL's name  
BOND COUNSEL's address  
BOND COUNSEL's address  
Email: X  
Fax: X

16. SOLICITATION OF CONTRACT

BOND COUNSEL warrants that it has not employed or retained any company or persons, other than a bona fide employee working solely for BOND COUNSEL, 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 BOND COUNSEL, 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 BOND COUNSEL's maximum payment the full amount of such fee, commission, percentage, brokerage fee, gift or contingent consideration.

17. PROHIBITED INTERESTS

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, BOND COUNSEL 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.

BOND COUNSEL covenants that it has a duty to disclose any potential conflicts of interest and has disclosed any potential conflicts of interest existing at the time of execution of the Agreement. BOND COUNSEL will otherwise act in accordance with its ethical obligations in performing its work for BATA.

## 18. ROLE OF BOND COUNSEL

The role of BOND COUNSEL, generally, is to prepare or review the procedures for issuance of the bonds, notes or other evidence of indebtedness, and to provide an expert legal opinion with respect to the validity thereof and other subjects addressed by the opinion. Consistent with the historical origin and unique role of bond counsel, and reliance thereon by the public finance market, BOND COUNSEL's role as bond counsel under this Agreement is to provide an opinion and related legal service that represents an objective judgment on the matters addressed rather than the partisan position of an advocate.

In performing its services as bond counsel in connection with the bonds, BOND COUNSEL will assist BATA General Counsel in representing BATA with respect to issuance of the bonds; i.e., Bond Counsel will assist BATA General Counsel in representing BATA, but only with respect to validity of the bonds and the major legal documents and tax status of interest on the bonds, and in a manner not inconsistent with the role of bond counsel described in the first paragraph of this section.

BATA acknowledges that BOND COUNSEL regularly performs legal services for many private and public entities in connection with a wide variety of matters. For example, BOND COUNSEL has represented, is representing or may in the future represent other public entities (such as \_\_\_), underwriters, trustees, rating agencies, insurers, credit enhancement providers, lenders, contractors, suppliers, financial and other consultants/advisors, accountants, investment providers/brokers, providers/brokers of derivative products and others who may have a role or interest in the bond financing or the project or that may be involved with or adverse to BATA in this or some other matter. BOND COUNSEL agrees not to represent any such entity in connection with BATA bond financing, during the term of the Agreement, without the consent of the Project Manager or his designee.

## 19. LAWS AND REGULATIONS

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

20. DISPUTE RESOLUTION

All disputes between BATA and BOND COUNSEL regarding the terms of this Agreement or performance under the Agreement that cannot be resolved by the parties shall be submitted to arbitration in accordance with Sections 1280 through 1294.2 of the Code of Civil Procedure. The arbitrator's award shall be final and binding on the parties, and judgment may be entered upon it by a court of competent jurisdiction. Either party may demand arbitration by filing a written demand with the other party within sixty (60) days after occurrence of the event giving rise to the dispute. The costs of arbitration shall be borne by the losing party or in such proportion as the arbitrator determines. Pending resolution of any dispute hereunder, BOND COUNSEL shall continue diligently to perform the services under the Agreement, and in accordance with BATA's decision or position concerning the disputed matter.

21. 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.

22. 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.

23. BENEFIT OF AGREEMENT

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

24. NO THIRD PARTY BENEFICIARIES

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

25. 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. BOND COUNSEL 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 BOND COUNSEL 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 BOND COUNSEL

---

Steve Heminger, Executive Director

---

Insert Appropriate Name, Title