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Memorandum

TO: BATA Oversight Committee

DATE: April 6, 2011

FR: General Counsel

W. I. 1254

RE: Contract Amendment – Bond Counsel and Finance Counsel: Orrick, Herrington & Sutcliffe LLP

The Office of General Counsel requests this Committee's approval to enter into a contract amendment with the law firm of Orrick, Herrington & Sutcliffe LLP (Orrick), as Bond Counsel and Finance Counsel for the Bay Area Toll Authority (BATA) to provide real estate transaction and development advice to BATA and the Metropolitan Transportation Commission (MTC), in connection with a potential acquisition or lease, and development of a new regional facility, through June 30, 2012. The proposed budget for the contract amendment is \$75,000 for the remainder of this fiscal year and \$75,000 for fiscal year 2011-2012.

Background

Orrick has been BATA's bond and finance legal counsel since 1998. The most recent Request for Qualifications (RFQ) issued in November 2008 resulted in a five year contract, beginning March 1, 2009 through February 28, 2014. On August 10, 2009, BATA amended the contract to provide for litigation counsel services in connection with the Ambac v BATA suit.

Orrick has advised BATA on all finance and toll related legal issues. Orrick has also advised BATA and MTC on joint powers matters and was counsel in connection with the formation of the Bay Area Infrastructure Financing Authority, a joint powers authority. Orrick has unique, unmatched knowledge of BATA's financial operations and the rules applicable to the use of BATA revenues, including the use of revenues for real estate acquisitions/leases and development. As BATA's bond and finance counsel Orrick has unparalleled knowledge of California law pertaining to BATA, the formation of joint powers authorities, of which BATA and MTC would be a part (one of the contemplated structures for the new facility governance and operations) and the statutory authorities for potential financing of all or a portion of the facility. This expertise will efficiently inform and provide coordination with the real estate attorneys working on a potential real estate/development transaction. Michael Liever, a real estate partner in the firm, has a well-earned reputation as a respected expert in real property transactions, including negotiating acquisitions, leases and related development for public entities. Among his many representative clients are: the City & County of San Francisco, CalPERS, San Bernardino County Retirement System, the County of San Diego Retirement System, the County of Alameda Retirement System, the City of Sacramento, Los Angeles County Employees Retirement Association, and the University of California.

Orrick attorneys have consistently provided timely, high-quality work, and Mary Collins, a partner at Orrick, has been the lead attorney on the current contract and its predecessor since 1998. Ms. Collins would be coordinating with Mr. Liever. The firm regularly represents public agency clients, to whom it provides a government fee reduction of 10%.

Recommendation

Staff recommends that this Committee authorize the Executive Director or his designee to negotiate and enter into a contract amendment with Orrick, Herrington & Sutcliffe LLP to provide legal services related to real estate transactions, development and structuring to BATA and MTC, in an amount not to exceed \$75,000 through June 30, 2011 and \$75,000 for fiscal year 2011-2012, subject to approval of the fiscal year 2011-2012 annual budget.

Adrienne D. Weil

REQUEST FOR COMMITTEE APPROVAL

Summary of Proposed Contract Amendment

Work Item No.:	1254
Special Counsel:	Orrick, Herrington & Sutcliffe LLP San Francisco, CA
Work Project Title:	Bond Counsel and Finance Counsel
Purpose of Project:	To provide legal services on an as-needed basis in the area of real estate property acquisition, lease and development as it relates to BATA, BATA finance and MTC, generally, and other related matters through June 30, 2012.
Brief Scope of Work:	<ul style="list-style-type: none">• Advise the Office of General Counsel (OGC) regarding responses to requests for proposal, bids, offers, contract provisions and purchase or lease agreements pertaining the acquisition or lease, and development of a new facility;• Represent or advise BATA and MTC in negotiations with sellers, lessors, contractors, advisors, consultants, governmental entities, and other professionals and vendors related to the acquisition or lease of a new facility;• Advise on any related statutory, governmental procedural or approval issues;• Draft or review agreements between BATA and/or MTC and any entity relating to the acquisition or lease of a new facility;• Advise and draft agreements and other documents relating to joint powers authorities;• Advise OGC concerning financing options;• Provide other legal advice related to real property acquisition, lease and development, as necessary.
Project Cost Not to Exceed:	\$75,000 through June 30, 2011; \$75,000 for FY 2011-12.
Funding Source:	BATA Bridge Toll Funding
Fiscal Impact:	Funds are available in the FY 2010-11 agency budget; remaining fiscal year subject to adoption of agency budget.

Motion by
Committee:

That the Executive Director or his designee is authorized to negotiate and enter into a contract amendment with Orrick, Herrington & Sutcliffe LLP to provide legal services related to real estate transactions, development and structuring to BATA and MTC, in an amount not to exceed \$75,000 through June 30, 2011 and \$75,000 for fiscal year 2011-2012 and the Chief Financial Officer is directed to set aside funds for the contract, subject to adoption of the fiscal year 2011-2012 annual agency budget.

Bay Area Toll Authority
Oversight Committee:

Bill Dodd, Chair

Approved:

Date: April 13, 2011