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Memorandum

TO: BATA Oversight Committee

DATE: May 6, 2015

FR: General Counsel

W. I. 1253

RE: Contract Amendment – Legal Services: William E. Donovan (not to exceed \$200,000 per year)

This item recommends that this Committee authorize a three-year sole source contract extension with William E. Donovan, Attorney at Law, to continue to provide legal services related to public finance (including bonds, swaps and disclosure counsel services), use of BATA revenues, interaction with the California legislature, the California Transportation Commission (CTC), other state agencies and State Treasurer's Office, Express Lanes, and legislation. The requested budget is not-to-exceed \$200,000 per year.

Discussion

In January 2012, BATA contracted with Mr. Donovan on a sole source basis to provide legal services in the areas noted above at a maximum cost of \$200,000; that contract was amended in December 2012 to extend the period of performance to June 30, 2013. In May 2013, approval was granted by the BATA Oversight committee to extend the contract for an additional two fiscal years through June 30, 2015, with a maximum budget per fiscal year of \$200,000.

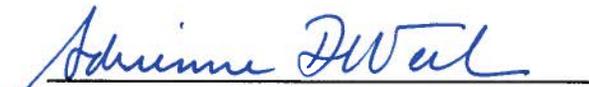
Beginning in 2004, Mr. Donovan, in an Of Counsel capacity and as a primary senior attorney in BATA's bond counsel law firm Orrick, Herrington, & Sutcliffe LLP (Orrick), advised BATA on a range of topics, which included bond counsel, disclosure counsel, swap counsel, advising on legislation and interaction with the Legislature, public finance, use of BATA revenues, establishment of joint powers authorities and their operation under law and interaction with the State Treasurer's Office and various state agencies, including the CTC. On many occasions, Mr. Donovan's comprehensive knowledge of BATA's financial operations and the laws and rules applicable to the use of BATA revenues have been unmatched by anyone in the industry and have proven invaluable to BATA. Today, Mr. Donovan still holds this unique status. Mr. Donovan's deep understanding of the legislative process and laws pertaining to toll funds and joint powers authorities has informed and guided BATA numerous times. His insights into the Express Lanes project were crucial in the CTC application process, and are currently not replicable by any of the law firms BATA uses or has previously interviewed, particularly as BAIFA faces opening of Express Lanes in 2016 and expansion thereafter.

In late 2011, Mr. Donovan began a solo practice. Entering into a sole source contract with Mr. Donovan ensured that BATA would continue to benefit from his depth of expertise, maintaining continuity and institutional knowledge on the many complex legal issues BATA faces, particularly in the areas of joint powers authorities and the Express Lanes project. Since the contract's inception, Mr. Donovan has advised BATA on bond authorization and interest rate swap documentation, municipal bond derivatives, continuing disclosures, the state audit of the

headquarters building transaction, financing alternatives for the Express Lane network, FasTrak® authority and cooperative agreements for various FasTrak® clients, gas tax legislation, SB 1149, SB 613 and other agency-related legislative bills, and various MTC, BAIFA and BAHA-related resolutions. This work is on-going, and BATA will continue to benefit from his unique expertise and knowledge as it moves forward. Although a sole-practitioner, William E. Donovan, Attorney at Law is neither a certified small business nor a disadvantaged business enterprise.

Recommendation

I recommend that the Committee authorize the General Counsel to negotiate and the Executive Director or his designee to enter into a sole source contract amendment with William E. Donovan, Attorney at Law, to provide legal services as described above, extending the current contract for three fiscal years through June 30, 2018, with a maximum budget per fiscal year of \$200,000. Funding for the first year of the extension is included in the proposed BATA budget for FY 2015-16; funding for FY 2016-17 through FY 2017-18 is subject to future budget approval process.


Adrienne D. Weil

REQUEST FOR COMMITTEE APPROVAL
Summary of Proposed Legal Services Contract Amendment

Work Item No.: 1253

Legal Counsel: William E. Donovan, Attorney at Law, Sacramento, CA

Work Project Title: Legal Services

Purpose of Project: Provide legal services related to public finance (including bonds, swaps and disclosure counsel services), use of BATA revenues, interaction with the California legislature, the California Transportation Commission, other state agencies and State Treasurer's Office, Express Lanes, and legislation.

Brief Scope of Work: As-needed

Project Cost Not to Exceed: This amendment: \$600,000 (\$200,000 per fiscal year)
Total prior contract amount: \$600,000
Total maximum contract amount after this amendment: \$1,200,000

Funding Source: Toll Bridge Program Operating Budget.

Fiscal Impact: Funds for the first year of the amendment are subject to the Authority's approval of the proposed FY 2015-16 BATA budget. Funds for the second and third year are subject to approval of future BATA budgets and availability of funds.

Motion by Authority: That the General Counsel is authorized to negotiate and the Executive Director or his designee is authorized to enter into a contract amendment with William E. Donovan, Attorney at Law, for BATA legal services, as described above and in the General Counsel's memorandum dated May 6, 2015, and the Chief Financial Officer is directed to set aside funds in the amount of \$200,000 per fiscal year for the amendment, subject to availability of funds in approved BATA budgets.

BATA Oversight Committee:

Amy Rein Worth, Chair

Approved: Date: May 13, 2015