



Bay Area Metro Center  
375 Beale Street  
San Francisco, CA 94105

## Meeting Agenda

### Bay Area Toll Authority

Scott Haggerty, Chair    Alfredo Pedroza, Vice Chair

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Wednesday, March 25, 2020

9:30 AM

Board Room – 1st Floor (Remotely)

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The Bay Area Toll Authority (BATA) will be meeting on Wednesday, March 25, 2020 at 9:30 a.m. in the Bay Area Metro Center (Remotely). In light of Governor Newsom's State of Emergency declaration regarding the COVID-19 outbreak and in accordance with Executive Order N-29-20 issued by Governor Newsom, and the Guidance for Gatherings issued by the California Department of Public Health, the meeting will be conducted via webcast and teleconference for Authority members. Some Authority members will participate in the meeting from individual remote locations, which is in accordance with the Governor's Executive Orders. Members of the public are encouraged to watch remotely.

Persons who wish to address the Authority on an item to be considered at this meeting are asked to submit comments in writing to the Authority at [info@bayareametro.gov](mailto:info@bayareametro.gov) by 5:00 PM, March 24th, 2020. Due to the current circumstances there may be limited opportunity to address comments during the meeting. All comments will be submitted into the record.

#### 1. Call to Order / Roll Call / Confirm Quorum

*Quorum: A quorum of this Authority shall be a majority of its voting members (10).*

#### 2. Pledge of Allegiance

#### 3. Compensation Announcement (Commission Secretary)

#### 4. Chair's Report (Haggerty)

#### 5. Consent Calendar

- 5a. [20-0370](#) Minutes of the February 26, 2020 meeting.

Action: Authority Approval

Attachments: [5a 02-26-2020 BATA Draft Meeting Minutes v1.pdf](#)

- 5b. [20-0266](#) BATA Resolution No. 135 - Adoption of the Updated Small Business Enterprise (SBE) Program. A request for the Authority to approve BATA Resolution No. 135, the updated Bay Area Toll Authority (BATA) Small Business Enterprise (SBE) Program, which updates and combines the SBE Program for Civil Construction and the Pilot SBE Program for Professional Services.

Action: Authority Approval

Presenter: Edward Phillips

Attachments: [5b BATAO 5a 20-0266 BATA SBE Program.pdf](#)

## 6. Authority Approval

- 6a. [20-0562](#) BATA-Department of Transportation Master Cooperative Agreement #4-2078-A2

Toll Bridge Emergency Operations-Amendment to BATA-Department of Transportation Master Cooperative Agreement #4-2078-A2.

Action: Authority Approval

Presenter: Andrew Fremier

Attachments: [6a BATA-Department of Transportation Master Cooperative Agreement #4-207](#)

## 7. Public Comment / Other Business

## 8. Adjournment / Next Meeting

The next meeting of the Bay Area Toll Authority is scheduled to be held on Wednesday, April 22, 2020 at the Bay Area Metro Center, 375 Beale Street, San Francisco, CA 94105.

**Public Comment:** The public is encouraged to comment on agenda items at Authority meetings by completing a request-to-speak card (available from staff) and passing it to the Authority secretary. Public comment may be limited by any of the procedures set forth in Section 3.09 of MTC's Procedures Manual (Resolution No. 1058, Revised) if, in the chair's judgment, it is necessary to maintain the orderly flow of business.

**Meeting Conduct:** If this meeting is willfully interrupted or disrupted by one or more persons rendering orderly conduct of the meeting unfeasible, the Chair may order the removal of individuals who are willfully disrupting the meeting. Such individuals may be arrested. If order cannot be restored by such removal, the members of the Authority may direct that the meeting room be cleared (except for representatives of the press or other news media not participating in the disturbance), and the session may continue.

**Record of Meeting:** Authority meetings are recorded. Copies of recordings are available at a nominal charge, or recordings may be listened to at MTC offices by appointment. Audiocasts are maintained on MTC's Web site ([mtc.ca.gov](http://mtc.ca.gov)) for public review for at least one year.

**Accessibility and Title VI:** MTC provides services/accommodations upon request to persons with disabilities and individuals who are limited-English proficient who wish to address Commission matters. For accommodations or translations assistance, please call 415.778.6757 or 415.778.6769 for TDD/TTY. We require three working days' notice to accommodate your request.

**可及性和法令第六章:** MTC 根據要求向希望來委員會討論有關事宜的殘疾人士及英語有限者提供服務/方便。需要便利設施或翻譯協助者，請致電 415.778.6757 或 415.778.6769 TDD / TTY。我們要求您在三個工作日前告知，以滿足您的要求。

**Acceso y el Titulo VI:** La MTC puede proveer asistencia/facilitar la comunicación a las personas discapacitadas y los individuos con conocimiento limitado del inglés quienes quieran dirigirse a la Comisión. Para solicitar asistencia, por favor llame al número 415.778.6757 o al 415.778.6769 para TDD/TTY. Requerimos que solicite asistencia con tres días hábiles de anticipación para poderle proveer asistencia.

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Attachments are sent to Authority members, key staff and others as appropriate. Copies will be available at the meeting.

All items on the agenda are subject to action and/or change by the Authority. Actions recommended by staff are subject to change by the Authority.



# Metropolitan Transportation Commission

375 Beale Street, Suite 800  
San Francisco, CA 94105

## Legislation Details (With Text)

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**File #:** 20-0370      **Version:** 1      **Name:**

**Type:** Minutes      **Status:** Consent

**File created:** 2/21/2020      **In control:** Bay Area Toll Authority

**On agenda:** 3/25/2020      **Final action:**

**Title:** Minutes of the February 26, 2020 meeting.

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** [5a\\_02-26-2020\\_BATA\\_Draft\\_Meeting\\_Minutes\\_v1.pdf](#)

Date	Ver.	Action By	Action	Result
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**Subject:**  
Minutes of the February 26, 2020 meeting.

**Recommended Action:**  
Authority Approval



Bay Area Metro Center  
375 Beale Street  
San Francisco, CA 94105

## **Meeting Minutes**

### **Bay Area Toll Authority**

*Scott Haggerty, Chair    Alfredo Pedroza, Vice Chair*

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**Wednesday, February 26, 2020**

**10:00 AM**

**Board Room – 1st Floor**

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#### **1. Call to Order / Roll Call / Confirm Quorum**

- Present:** 16 - Chair Haggerty, Vice Chair Pedroza, Commissioner Bruins, Commissioner Connolly, Commissioner Cortese, Commissioner Dutra-Vernaci, Commissioner Glover, Commissioner Halsted, Commissioner Liccardo, Commissioner Mackenzie, Commissioner Papan, Commissioner Rabbitt, Commissioner Ronen, Commissioner Schaaf, Commissioner Spering and Commissioner Worth
- Absent:** 2 - Commissioner Josefowitz and Commissioner Slocum

Non-Voting Commissioner Present: Commissioner Giacomini

Non-Voting Commissioners Absent: Commissioner Stracner and Commissioner Tavares

#### **2. Pledge of Allegiance**

#### **3. Compensation Announcement (Commission Secretary)**

#### **4. Chair's Report (Haggerty)**

#### **5. Consent Calendar**

**Upon the motion by Commissioner Worth and the second by Vice Chair Pedroza, the Consent Calendar was unanimously approved by the following vote:**

- Aye:** 16 - Chair Haggerty, Vice Chair Pedroza, Commissioner Bruins, Commissioner Connolly, Commissioner Cortese, Commissioner Dutra-Vernaci, Commissioner Glover, Commissioner Halsted, Commissioner Liccardo, Commissioner Mackenzie, Commissioner Papan, Commissioner Rabbitt, Commissioner Ronen, Commissioner Schaaf, Commissioner Spering and Commissioner Worth

**Absent:** 2 - Commissioner Josefowitz and Commissioner Slocum

- 5a.**     [20-0234](#)     Minutes of the January 22, 2020 meeting.

**Action:** Authority Approval

## 6. Authority Approval

6a. [20-0252](#) Closed Session - CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

The Authority met in closed session pursuant to Government Code Section 54956.9(a) and paragraph (1) of subdivision (d) of Government Code Section 54956.9 to confer with counsel regarding Michael Saliani, et al., v. BATA, et al., San Francisco Superior Court Case No. CGC-14-540384; Pamela Moore, et al. v. BATA, et al., San Francisco Superior Court Case No. CGC-15-549048; and Kristen Freeland and Michael Jefferson, et al., v. BATA, et al., San Francisco Superior Court Case No. CGC-16-550947.

Meeting went into Recess

Meeting Reconvened

6b. [20-0253](#) Open Session

Action: Authority Approval

The Authority reconvened in open session. Deputy General Counsel, Cynthia Segal, reported that the Authority met pursuant to Government Code Section 54956.9(a) and paragraph (1) of subdivision (d) of Government Code Section 54956.9 to discuss the above litigation and there were no reportable actions.

## 7. Public Comment / Other Business

## 8. Adjournment / Next Meeting

The next meeting of the Bay Area Toll Authority is scheduled to be held on Wednesday, March 25, 2020 at the Bay Area Metro Center, 375 Beale Street, San Francisco, CA 94105.



# Metropolitan Transportation Commission

375 Beale Street, Suite 800  
San Francisco, CA 94105

## Legislation Details (With Text)

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**File #:** 20-0266      **Version:** 1      **Name:**  
**Type:** Contract      **Status:** Consent  
**File created:** 1/30/2020      **In control:** Bay Area Toll Authority Oversight Committee  
**On agenda:** 3/11/2020      **Final action:** 3/25/2020  
**Title:** BATA Resolution No. 135 - Adoption of the Updated Small Business Enterprise (SBE) Program. A request for the Authority to approve BATA Resolution No. 135, the updated Bay Area Toll Authority (BATA) Small Business Enterprise (SBE) Program, which updates and combines the SBE Program for Civil Construction and the Pilot SBE Program for Professional Services.

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** [5b BATAO 5a 20-0266 BATA SBE Program.pdf](#)

Date	Ver.	Action By	Action	Result
3/11/2020	1	Bay Area Toll Authority Oversight Committee		

**Subject:**

BATA Resolution No. 135 - Adoption of the Updated Small Business Enterprise (SBE) Program. A request for the Authority to approve BATA Resolution No. 135, the updated Bay Area Toll Authority (BATA) Small Business Enterprise (SBE) Program, which updates and combines the SBE Program for Civil Construction and the Pilot SBE Program for Professional Services.

**Presenter:**

Edward Phillips

**Recommended Action:**

Authority Approval

**Bay Area Toll Authority  
Oversight Committee**

March 11, 2020

Agenda Item 5a

**BATA Resolution No. 135 – Adoption of the Updated  
Small Business Enterprise (SBE) Program**

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**Subject:** A request to refer BATA Resolution No. 135, the Bay Area Toll Authority (BATA) Small Business Enterprise (SBE) Program, which updates and combines the SBE Program for Civil Construction and the Pilot SBE Program for Professional Services, to the Authority for approval.

**Background:** Currently BATA has two SBE Programs: an adopted Construction Project SBE Program (adopted in September of 2015 under Resolution No. 116, Revised) and a Professional Services SBE Pilot Program (approved by the BATA Oversight Committee in February of 2017).

The current SBE Programs:

- Apply to non-federally funded and non-Architectural & Engineering (A&E) contracts with a budget in excess of \$25,000;
- Only accept firms that are certified by the State of California as SBEs through the Department of General Services (DGS); and
- Allow for a Bid/Proposal Evaluation Preference discount of 5% or 5 points to the total amount of a bid/proposal submitted by a Bidder/Proposer for a contract solely for the purpose of bid/proposal comparisons when determining the lowest responsive and responsible bid/proposal. The Bid/Proposal Evaluation Preference applies when a Proposer meeting specifications is a certified SBE performing at least 40% of the work, or when a non-SBE Proposer is subcontracting at least 40% of the work to an SBE.

The objectives of the proposed SBE Program include:

- To increase the number of certified SBEs participating in non-federally funded and non-A&E contracts;
- To increase overall competition on non-federally-funded and non-A&E contracts potentially allowing for the completion of projects at a lower overall cost;
- To create a level playing field on which SBEs can compete fairly on non-federally funded and non-A&E contracts;
- To ensure that only SBE firms meeting the Program's eligibility requirements are eligible for the Bid/Proposal Evaluation Preference allowed under the SBE Program;
- To help remove barriers to the participation of SBEs in non-federally funded and non-A&E contracts; and



- To identify business enterprises that are qualified as SBEs and are qualified to provide BATA with required materials, equipment, supplies and services.

To further the objectives of the SBE Programs, the proposed SBE Program being submitted to this Committee for referral to the Authority combines the two current SBE programs into one SBE program covering all non-federally funded and non-A&E procurements, broadens the acceptable certifications and expands the SBE Preference into a two-tiered program. The proposed SBE Program will create one comprehensive SBE program that would cast a wider net to SBE firms in the nine county Bay Area and would increase the number of contracts with the SBE Preference being applied.

The proposed SBE Program:

- Applies to all non-federally funded and non-A&E contracts with a budget in excess of \$25,000;
- Broadens the acceptable certifications. To be eligible for the Bid/Evaluation Preference allowed under the SBE Program, firms (prime Contractor or Subconsultant/Subcontractor/Vendor) must be certified under any of the programs outlined below:
  - California Certified Small Business as certified by the California Department of General Services (DGS)
  - A Disadvantaged Business Enterprise (DBE) as certified by the California Unified Certification Program (CUCP)
  - City and County of San Francisco Local Business Enterprise (LBE) as certified by the Contract Monitoring Division (CMD)
  - Alameda County Small Local and Emerging Business (SLEB) program as certified by the Alameda County SLEB Certification Unit; or
  - LBE/MBE/SBE/WBE certification from a formal certifying agency in the nine county Bay Area, provided that the certification can be verified through a searchable database and meets the requirements of the State of California Small Business Program.
- Allows for a two-tiered Bid/Proposal Evaluation Preference to the total amount of a bid/proposal submitted by a Bidder/Proposer for the purpose of bid/proposal comparisons when determining the lowest responsive and responsible bid or most advantageous proposal.
  - A Bid/Evaluation Preference of five percent (5%) or five (5) points will be added to the total evaluation percentage or points, when the Proposer meeting specifications


commits to at least twenty-five percent (25%) SBE participation for the work (which can be achieved by the prime, by a sub(s), or a combination of prime and sub(s) who meet the requirements).

- A Bid/Evaluation Preference of 10 percent (10%) or ten (10) points will be added to the total evaluation percentage or points, when the Proposer meeting specifications commits to forty percent (40%) or more SBE participation for the work (which can be achieved by the prime, by a sub(s), or a combination of prime and sub(s) who meet the requirements).

**Issues:** None identified.

**Recommendation:** Staff recommends that the Committee refer BATA Resolution No. 135 Small Business Enterprise (SBE) Program, to the Authority for approval.

**Attachments:** BATA Resolution No. 135, Bay Area Toll Authority (BATA) Small Business Enterprise (SBE) Program; and PowerPoint presentation

  
\_\_\_\_\_  
Therese W. McMillan

Date: March 25, 2020  
W.I.: 1251, 1252, 1253, 1254, 1255  
Referred by: BATA Oversight Committee

ABSTRACT

BATA Resolution No. 135

This resolution adopts BATA's Small Business Enterprise (SBE) Program ("Program") to increase the number of certified SBEs participating in non-federally funded and non-architectural and engineering contracts. The Program is intended to increase overall competition, provide a level playing field on which SBEs can compete fairly, provide economic opportunity for the residents and businesses, and stimulate economic development in the San Francisco Bay region.

Resolution No. 135 supersedes Resolution No. 116, Revised.

Discussion of this action is contained in the BATA Oversight Committee Summary Sheet dated March 11, 2020.

Date: March 25, 2020  
W.I.: 1251, 1252, 1253, 1254, 1255  
Referred by: BATA Oversight Committee

Re: Adoption of BATA's Small Business Enterprise (SBE) Program

BAY AREA TOLL AUTHORITY  
RESOLUTION NO. 135

WHEREAS, the Bay Area Toll Authority (BATA) was established pursuant to Section 30950 *et seq.* of the Streets and Highways Code; and

WHEREAS, BATA currently has a Construction Project Small Business Enterprise Program adopted through Resolution No. 116 in September of 2015, as well as a Professional Services Small Business Enterprise Pilot Program that was approved by the BATA Oversight Committee in February of 2017, and

WHEREAS, this SBE Program combines the previous programs into one revised and comprehensive SBE Program; and

WHEREAS, BATA wishes to increase the number of certified Small Business Enterprise (SBE) firms participating in BATA materials, equipment, supplies, services and construction contracts, help remove barriers to the participation of SBEs, provide economic opportunity for the residents and businesses, and stimulate economic development in the San Francisco Bay Area Region; and

WHEREAS, providing assistance to SBE firms could increase the number of certified SBEs participating, and increase competition on non-federally-funded contracts potentially allowing for the completion of projects at a lower overall cost; and

WHEREAS, BATA has developed a Small Business Enterprise (SBE) Program ("Program") that applies to non-federally funded, non-architectural and engineering (A&E) materials, equipment, supplies, services and construction contracts with a budget in excess of \$25,000; and

WHEREAS, the Program would apply to any firm that is certified under any of the following certifications: State of California Department of General Services (DGS) SBE Program, California United Certification Program DBE certification; City and County of San Francisco Contract Monitoring Division Local Business Enterprise (LBE) certification; Alameda County Small Local and Emerging Business (SLEB) certification; **Disadvantaged Veteran Business Enterprise (DVBE) / LBE / Lesbian, Gay, Bisexual, Transgender Business Enterprise (LGBTBE) /** Minority Business Enterprise (MBE) / SBE / Women's Business Enterprise (WBE) certifications from a formal certifying agency in the nine county Bay Area provided that the certification can be verified through a searchable database and meets the requirements of the State of California Small Business Program; and

WHEREAS, the Program allows for a two-tiered bid evaluation preference to be applied to materials, equipment, supplies, services and construction contracts when the requirements for participation are met; and

WHEREAS, the SBE Program describes the monitoring, compliance, oversight and enforcement requirements to ensure that SBE participation is achieved; now, therefore, be it

RESOLVED, that BATA hereby adopts the SBE Program set forth in Attachment A; and be it further

RESOLVED, that adoption of this SBE Program supersedes the Construction Project Small Business Enterprise Program adopted through Resolution No. 116, Revised, as well as the Professional Services Small Business Enterprise Pilot Program; and be it further

RESOLVED, that the Executive Director is hereby authorized to revise the SBE Program set forth in Attachment A as may be required from time to time due to changes in law, regulation or procedures relating to the SBE Program and to take such actions as may be necessary or appropriate to implement the SBE Program; and be it further

RESOLVED, that this resolution supersedes Resolution No. 116, Revised; and be it further

RESOLVED, that this resolution shall take effect from and after its adoption.

BAY AREA TOLL AUTHORITY

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Scott Haggerty, Chair

The above resolution was entered  
into by the Bay Area Toll Authority at  
a regular meeting of the Authority held in  
San Francisco, California, on March 25, 2020.



**BAY AREA TOLL AUTHORITY**

BAY AREA METRO CENTER  
375 BEALE STREET  
SAN FRANCISCO, CA 94105

TEL 415.778.6700  
WEB [www.mtc.ca.gov](http://www.mtc.ca.gov)

# **Bay Area Toll Authority**

## **Small Business Enterprise (SBE) Program**

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## **OBJECTIVES/POLICY STATEMENT**

In order to provide economic opportunity for residents and businesses, and stimulate economic development in the San Francisco Bay Area Region, the Bay Area Toll Authority (BATA) hereby establishes a Small Business Enterprise (SBE) Program (“SBE Program” or “Program”) to assist SBE firms in participating in BATA non-federally funded, non-architectural and engineering (A&E) materials, equipment, supplies, services and construction contracts. This Program is aimed at using the power of the public purse to stimulate economic development.

The objectives of the SBE Program include:

1. To increase the number of certified SBEs participating in non-federally funded, non-A&E contracts;
2. To increase overall competition on non-federally funded, non-A&E contracts potentially allowing for the completion of projects at a lower overall cost;
3. To create a level playing field on which SBEs can compete fairly on non-federally funded contracts;
4. To ensure that only SBE firms (prime Consultant/Contractor or Subconsultant/Subcontractor/Vendor) meeting the Program’s eligibility requirements are eligible for the Evaluation Preference allowed under the Program;
5. To help remove barriers to the participation of SBEs in non-federally funded contracts; and
6. To identify business enterprises that are qualified as SBE’s and are qualified to provide BATA with required materials, equipment, supplies and services.

The Director of Administration & Facilities Services Section (AFS) has been designated as the SBE Liaison Officer (SBELO). In that capacity, the AFS Director is responsible for implementing all aspects of the Program. Implementation of the SBE Program is intended to be consistent with the MTC Disadvantaged Business Enterprise (DBE) Program.

## **SUBPART A – GENERAL REQUIREMENTS**

### **A.1 Objectives**

The objectives are found in the policy statement on the first page of this Program.

### **A.2 Applicability**

BATA is a recipient of state and local funds. As a condition of this assistance, and in compliance with Proposition 209, BATA shall implement this Program without consideration of race, sex, or ethnicity. This Program sets forth the policies and procedures to be implemented by BATA to confirm that small businesses have the maximum opportunity to participate in BATA non-federally funded materials, equipment, supplies, services and construction contracts.

When a non-federally funded, non-A&E contract is awarded to a Consultant/Contractor/Vendor based on the Evaluation Preference described in C.1 of this Program, the Consultant/Contractor/Vendor must adhere to all the requirements included in this Program.

This Program applies solely to non-federally funded, non-A&E materials, equipment, supplies, services and construction contracts.

### **A.3 Definitions**

BATA adopts the following definitions listed below for this SBE Program:

1st Tier Subconsultant/Subcontractor/Vendor – A subconsultant or subcontractor to a Consultant or Contractor.

2<sup>nd</sup> Tier Subconsultant/Subcontractor/Vendor – A subconsultant or subcontractor to a 1<sup>st</sup> Tier subconsultant or subcontractor.

AFS – Administrative and Facilities Services Section.

BATA – Bay Area Toll Authority

Bid – The offer of the bidder for the construction project when completed and submitted in response to an IFB on the prescribed bid form.

Bid Preference – The application of a percentage discount to the total amount of a bid submitted by a Bidder for a contract solely for the purpose of bid comparisons when determining the lowest and best bid, or lowest responsible bid. The use of a bid preference for bid comparison does not alter the total amount of the bid submitted by a bidder or the contract executed based on a bid.

Business Suppliers – An individual or business entity that makes available a certain commodity for meeting demand or for purchase at a given price.

Civil Construction – Civil Construction is a segment of the broader construction industry focused on building core infrastructure such as highways, roads, bridges, telecommunications, subway

tunnels, light rail transit lines and public buildings.

Commercially Useful Function (CUF) – An SBE performs a commercially useful function when it is responsible for the execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. An SBE does not perform a CUF if it does not perform or exercise responsibility for at least 60 percent of the total cost of its contract that would be expected on the basis of normal industry practice for the type of work involved. If, in BATA's judgment, the SBE does not perform a CUF in the transaction, no Evaluation Preference will be awarded.

Community Based Organization (CBO) – A non-government agency created to provide training, employment or community assistance.

Consultant/Contractor/Vendor – The individual, partnership, corporation, joint venture or other legal entity entering into a contractual agreement with BATA.

Evaluation Preference – The application of a percentage or point preference to the total evaluation score of a Proposer for a procurement or solicitation, solely for the purpose of Proposal or SOQ comparisons when determining the highest ranked Proposal or SOQ. The use of an Evaluation Preference for Proposal or SOQ comparison will alter the total percentage or points allotted to the Proposer.

Invitation for Bid (IFB) – Invitation for Bid issued by BATA for construction services.

Manufacturer – A firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies purchased.

MTC - Metropolitan Transportation Commission.

Monitoring – The system established to measure compliance with the Program.

Post Award – The meeting held between BATA and Consultants/Contractors/Vendors after the award of a Professional Services or civil construction project and before contract execution. Post award meetings occur at the request of either BATA or Consultant/Contractor/Vendor.

Professional Services – any non-public works service(s). Professional Services contracts may contain a minor public works component.

Proposer – Consultant/Contractor/Vendor submitting a Proposal or SOQ in response to a RFP or RFQ.

Proposal – An offer of a Proposer to provide Professional Services, in response to an RFP.

Request for Proposal (RFP) – RFP issued by BATA for Professional Services.

Request for Qualifications (RFQ) – RFQ issued by BATA for Professional Services.

SBE Program – The BATA SBE Program.

Small Business Enterprise (SBE) – A firm that meets the requirements set forth in Section B.3 Certification Standards and SBE Directories.

SBE Broker – An SBE Broker is a firm that is not a vendor but is providing assistance in the procurement of required materials or supplies.

SBE Dealer – An SBE Dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the Agreement are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. The firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.

SBE Directory – The list of firms certified under any of the programs outlined in Section B.3 Certification Standards and SBE Directories, which is used by BATA and its Consultants/Contractors/Vendors to identify potential SBE Consultants/Contractors/Vendors and Subconsultants/Subcontractors/Vendors and suppliers.

SBELO – Small Business Enterprise Liaison Officer.

SOQ – A statement of qualifications submitted by a Proposer in response to an RFQ.

Subcontract – A contract entered into between a Consultant/Contractor/Vendor with a Subconsultant/Subcontractor/Vendor.

Subconsultant/Subcontractor/Subvendor – The individual, partnership, corporation or other legal entity that contracts to perform part of or all of the obligations of another's contract.

Subrecipient – Any agency that receives funds from BATA via statute, an interagency, cooperative or funding agreement.

Utilization – Percentage of total dollars of a type of work going to SBEs.

Web-based Diversity Tracking System – The diversity tracking software provided by BATA to Consultants/Contractors/Vendors accessible from any internet browser on any platform or operating system.

## **SUBPART B - ADMINISTRATIVE REQUIREMENTS**

### **B.1 Program Updates**

The SBELO or designee will provide the appropriate authorizing board with updates representing significant changes in the Program.

### **B.2 SBELO and Program Implementation**

BATA has designated the following individual as its SBE Liaison Officer (SBELO):

Director of Administration and Facilities Section (AFS)  
Metropolitan Transportation Commission 375 Beale St, Suite 800  
San Francisco, CA 94105  
Phone: (415) 778-6700  
Email: [contracts@bayareametro.gov](mailto:contracts@bayareametro.gov)

In that capacity, the SBELO is responsible for implementing all aspects of the SBE Program and ensuring that BATA complies with all provisions of the SBE Program. The SBELO has direct, independent access to the Executive Director concerning SBE Program matters.

The SBELO is responsible for developing, implementing and monitoring the SBE Program, in coordination with other appropriate officials. The SBELO has staff to assist in the administration of the SBE Program. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required.
2. Reviews third party contracts and purchase requisitions for compliance with the SBE Program.
3. Works with AFS staff to determine if a Proposer/Bidder has achieved the requirements for the Evaluation Preference.
4. Confirms that notices of procurement and solicitations are available to SBEs in a timely manner.
5. Identifies qualified contracts and procurements so that SBE preferences are included in all applicable procurements.
6. Analyzes BATA's progress toward SBE attainment and identifies ways to improve progress.
7. Participates in pre-proposal/pre-bid meetings.
8. Advises the Executive Director and/or the appropriate authorizing board on SBE matters and achievement.
9. Provides outreach to SBEs and CBOs to advise them of opportunities and technical assistance to SBEs to assist in Proposal, SOQ and/or bid preparation and obtaining bonding and insurance.

### B.3 Certification Standards and SBE Directories

BATA does not administer an SBE certification program. To be eligible for the Bid/Evaluation Preference allowed under the SBE Program, firms (prime Contractor or Subconsultant/Subcontractor/Vendor) must be certified under any of the programs outlined below:

- 1) *California Certified Small Business as certified by the California Department of General Services (DGS) -Procurement Division (PD) - Office of Small Business and Disabled Veteran Business Enterprise Services (OSDS)*

The State of California SBE Directory can be accessed at:

<https://caleprocure.ca.gov/pages/PublicSearch/supplier-search.aspx>

- 2) *A Disadvantaged Business Enterprise (DBE) as certified by the California Unified Certification Program (CUCP)*

The CUCP Directory can be accessed at:

<https://dot.ca.gov/programs/business-and-economic-opportunity>

- 3) *City and County of San Francisco Local Business Enterprise (LBE) as certified by the Contract Monitoring Division (CMD) Directory Certification Unit*

The Directory of Certified LBEs can be accessed here:

<https://sfgov.org/cmd/directory-certified-lbes>

- 4) *Alameda County Small Local and Emerging Business (SLEB) program as certified by the Alameda County SLEB Certification Unit*

The SLEB Supplier Query System Database can be accessed at:

[https://www.acgov.org/sleb\\_query\\_app/gsa/sleb/query/slebresultlist.jsp?smEmInd=C](https://www.acgov.org/sleb_query_app/gsa/sleb/query/slebresultlist.jsp?smEmInd=C)

- 5) **DVBE/LBE/LGBTBE/MBE/SBE/WBE** certification from a formal certifying agency in the nine county Bay Area, provided that the certification can be verified through a searchable database and meets the requirements of the State of California Small Business Program<sup>1</sup>. **(Disadvantaged Veteran Business Enterprise (DVBE), Local Business Enterprise (LBE), Lesbian, Gay, Bisexual, Transgender Business Enterprise (LGBTBE), Minority Business Enterprise (MBE), Small Business Enterprise (SBE), Women Business Enterprise (WBE))**

Note:

<sup>1</sup> Per Title 2, California Code of Regulations, § 1896.12. Eligibility for Certification as a Small Business.

To be eligible for certification as a small business, a business must meet all of the following qualifying criteria:

- (1) It is independently owned and operated; and
- (2) Its principal office is located in California; and
- (3) The officers of the business (in the case of a corporation); officers and/or managers, or in the absence of officers and/or managers, all members in the case of a limited liability company; partners in the case of a partnership; or the owner(s) in all other cases, are domiciled in California; and
- (4) It is not dominant in its field of operation(s), and
- (5) It is either:

(A) A business that, together with all affiliates, has 100 or fewer employees, and annual gross receipts of fifteen million dollars (\$15,000,000) or less as averaged for the previous three (3) tax years, as biennially adjusted by the Department in accordance with Government Code § 14837(d)(3) (If the business or its affiliate(s) has been in existence for less than three (3) tax years, then the GAR will be based upon the number of years in existence); or

(B) A manufacturer as defined herein that, together with all affiliates, has 100 or fewer employees.

#### **B.4 Record Keeping Requirements**

When a non-federally funded, non-A&E contract is awarded to a Consultant/Contractor/Vendor based on the Evaluation Preference listed in Subpart C, Section C.1 of this SBE Program, AFS will monitor the contract per Subpart D, to confirm that the Consultants/Contractors/Vendors are in compliance with the requirements of the SBE Program. AFS staff will report SBE participation to the appropriate authorizing board via reports generated from the web-based diversity tracking system.

BATA will require Consultants/Contractors/Vendors to maintain records and documents of payments to all Subconsultants/Subcontractors/Vendors (SBEs and non-SBEs) for four (4) years following the completion of the contract. BATA will perform interim reviews of contract payments to SBEs. Payments to SBE Subconsultants/Subcontractors/Vendors will be reviewed to verify that the actual amount paid to SBE Subconsultants/Subcontractors/Vendors equals or exceeds the dollar amounts stated in the schedule of SBE participation included in the contract.

#### **B.5 Public Outreach**

BATA will participate in outreach events with other San Francisco Bay Area transportation agencies and CBOs to leverage its efforts to assist SBE firms. BATA will also participate in Caltrans' CalMentor Protégé Program for small business development.

## **SUBPART C – EVALUATION PREFERENCE AND SBE PARTICIPATION**

### **C.1 Evaluation Preference**

BATA will allow an evaluation preference to be applied as a percentage discount to the total amount of a proposal/bid submitted by a Proposer/Bidder for a contract solely for the purpose of bid comparisons when determining the lowest and best bid, or lowest responsible bid. The use of an evaluation preference for Proposal, SOQ, or Bid comparison does not alter the total amount of the bid submitted by a bidder or the contract executed based on a bid. The SBE Program evaluation preference will be applied to all locally-funded solicitations when issued.

The Evaluation Preference applied as a percentage or point preference to the total evaluation percentage or points of a Proposal, SOQ, or Bid submitted by a Proposer/Bidder for a contract will be solely for the purpose of evaluation comparisons when determining the highest ranked Proposal or SOQ. The use of an Evaluation Preference for Proposal, SOQ or Bid comparison will alter the total evaluation percentage or points allotted to a Proposer/Bidder.

The Evaluation Preference will be applied to all non-federally funded solicitations. The Evaluation Preferences will be applied as follows after BATA verifies that the responsiveness requirements have been met:

- An Evaluation Preference of five percent (5%) or five (5) points will be added to the total evaluation percentage or points, when the Proposer meeting specifications commits to twenty-five percent (25%) SBE participation for the work (which can be achieved by the prime, by a sub(s), or a combination of prime and sub(s) who meet the requirements set forth in Section B.3 of this SBE Program), or
- An Evaluation Preference of 10 percent (10%) or ten (10) points will be added to the total evaluation percentage or points, when the Proposer meeting specifications commits to forty percent (40%) SBE participation for the work (which can be achieved by the prime, by a sub(s), or a combination of prime and sub(s) who meet the requirements set forth in Section B.3 of this SBE Program).

AFS staff will monitor BATA's SBE Program to confirm that the Consultants/Contractors/Vendors are in compliance with the requirements of the SBE Program. The report of SBE awards, commitments and payments will be generated from the web-based diversity tracking system.

### **C.2 Maintaining Participation**

Once a project begins, it is important to achieve and maintain the level of SBE participation that allowed the Evaluation Preference. Prime Consultants/Contractors/Vendors must maintain the SBE percentages indicated in the Proposal, SOQ or Bid documents at the time of Proposal, SOQ or Bid submittal throughout the term of the contract.



If BATA modifies the original scope of work, the Consultant/Contractor/Vendor must make reasonable efforts to maintain the SBE participation that allowed the Evaluation Preference. In the event of amendments, AFS staff may use their discretion to allow adjustments to SBE percentages for the amended portion of the work. Upon request, BATA staff will help firms to determine methods of maintaining percentages.

Should the prime Consultant/Contractor/Vendor fail to maintain the SBE participation listed at the time of Proposal, SOQ or Bid submittal, BATA reserves the right to enforce Consultant/Contractor/Vendor compliance with this SBE Program through one or more of the remedies included in Section D.3 of this SBE Program.

### **C.3 Substitution of Listed Subcontractors**

Substitution of listed Subconsultants/Subcontractors/Vendors shall generally be made in accordance with Public Contracts Code Section 4107. In addition, the SBELO must concur in any decision to permit substitution of a SBE Subconsultant/  
Subcontractor/Vendor when the award was made on the basis of the Evaluation Preference listed in Section C.1 above.

### **C.4 Joint Venture Agreements**

A business that is competing for BATA contracts may associate with a certified SBE business to compete for contracts as a Joint Venture (JV). JVs receive an Evaluation Preference depending upon the SBE percentage of participation as set forth in Section C.1 of Subpart C, Evaluation Preference and SBE Participation. The parties must agree to enter into the relationship for at least the term of the project.

#### **Basic Elements of the Joint Venture Agreement**

A JV must submit a JV Management Plan and/or a JV Agreement in their Proposal or SOQ. Each agreement or management plan must include, but is not limited to the following:

- Detailed explanation of the financial contribution of each partner;
- List of the personnel and equipment used by each partner;
- Detailed breakdown of the responsibilities of each partner;
- Explanation of how the profits and losses will be distributed;
- Description of the bonding capacity of each partner; and
- Management or incentive fees available for any one of the partners (if any).

#### **Commercially Useful Functions (CUF) Performed by Joint Venture Partners**

Each JV partner must perform a “commercially useful function” as that term is

defined herein. A SBE that relies on the resources and personnel of a non-SBE firm will not be deemed to perform a CUF.

#### Joint Venture License Requirements

Each JV partner must possess qualifications, certifications, accreditations, or licenses appropriate for the discipline for which a Proposal, SOQ or Bid is being submitted. If a JV is proposing/bidding on a project requiring license or certification, at the time of Proposal, SOQ or Bid submittal, each of the JV partners must hold a JV License or Certification and possess the requisite specialty license or certification for that profession.

#### Delineation of Joint Venture Work

The SBE partner must clearly define the portion of the work to be performed during the project. This work must be of the similar type of work the SBE partner performs in the normal course of its business. The Proposal, SOQ or Bid must specify the portions of the project to be performed by each individual JV partner. Lump sum JV participation is not acceptable.

#### Responsibilities of the SBE Joint Venture Partners

The SBE partner must share in the ownership, control, management responsibilities, risks, and profits of the JV in proportion with level of participation in the project; the SBE partner must perform work that is commensurate with its experience. The SBE partner must use its own employees and equipment to perform its portion of the project. Only the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the SBE performs with its own forces will be counted toward SBE participation

#### Application of Evaluation Preference for Joint Venture Agreements

To be eligible for an Evaluation Preference, at the time of Proposal, SOQ or Bid submittal, each JV partner must each have the qualification, certification, accreditation, or license that is appropriate for the project as required in the contract document of the contract award authority. Unless permission is granted by the SBELO or designee for good cause shown, based on sudden and unexpected necessity, the following actions are not permitted: i) the non-SBE partner performing work for the SBE partner; ii) leasing of equipment or property by the SBE partner from the non-SBE partner; and iii) the hiring of the non-SBE partner's employees by the SBE partner.

### Other Joint Venture Conditions

The SBELO or a designee must first approve the SBE JV Agreement/Management Plan before the JV is eligible for an Evaluation Preference. Any changes must also receive the prior approval of the SBELO or designee. In addition to any other information required by conditions specified herein, each SBE JV must provide upon request, cancelled checks and any other financial records to BATA.

### **C.5 Counting SBE Participation**

SBEs may perform as Consultants/Contractors/Vendors, 1<sup>st</sup> tier Subconsultants/Subcontractors/Vendors, or 2<sup>nd</sup> tier Subconsultants/Subcontractors/Vendors. Only the value of the work to be performed by the SBE, including materials and supplies, will be counted toward SBE participation.

A SBE must perform a commercially useful function, i.e., must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work. If an SBE 1<sup>st</sup> Tier or 2<sup>nd</sup> Tier Subconsultant/Subcontractor/Vendor does not perform or exercise responsibility for at least sixty percent (60%) of the total cost of its contract with its own work force, or if the SBE subcontracts a greater portion of work of a contract than would be expected on the basis of normal industry practice, then it will be presumed that the SBE is not performing a CUF.

Credit for an SBE Dealer of materials or supplies is limited to sixty percent (60%) of the amount to be paid to the vendor for the materials or supplies unless the vendor manufactures or substantially alters the goods. Credit for SBE Brokers is limited to only the fees and commissions portion of the amount paid. All other firms receive 100% credit, less work subcontracted by the SBE to non-SBE firms.

During the term of a contract, work performed by SBE firms whose certification has expired will continue to be counted toward the SBE participation.

## **SUBPART D – COMPLIANCE AND ENFORCEMENT**

### **D.1 Monitoring**

When a contract is awarded to a Consultant/Contractor/Vendor based on the Evaluation Preference listed in Subpart C, Section C.1 of this Program, AFS will monitor the contract per Subpart D, to confirm that the Consultants/Contractors/Vendors comply with the requirements of the Program. AFS staff will report SBE participation to the appropriate authorizing board via reports generated from the web-based diversity tracking system.

BATA will require Consultants/Contractors/Vendors to maintain records and documents of payments to all Subconsultants/Subcontractors/Vendors (SBEs and non-SBEs) for four years following the performance of the contract. BATA will perform interim reviews of contract payments to SBEs. Payments to SBE Subconsultants/Subcontractors/Vendors will be reviewed to verify that the actual amount paid to SBE Subconsultants/Subcontractors/Vendors equals or exceeds the dollar amounts stated in the schedule of SBE participation included in the contract.

Subrecipients may be required to submit verification of their eligibility for participation in the SBE Program and to provide annual reports of SBE utilization on Professional Services or Civil Construction projects achieved under the SBE Program.

BATA has implemented the following monitoring mechanisms to monitor Consultant/Contractor/Vendor compliance with Program requirements:

1. The SBELO or designee will verify that work committed to SBEs at contract award is actually performed by the SBEs.
2. The SBELO or designee will keep a running tally of actual payments to SBE firms for work committed to them at the time of contract award with the use of BATA's web-based diversity tracking system.

If a Professional Services or Construction project has a public works portion of work valued over \$1,000.00, the State's Labor Code requires Consultants/Contractors/Vendors to pay their employees in accordance with general prevailing wages that apply to that portion of the work. The prime Contractor and all Subconsultants/Subcontractors/Vendors including, if applicable, truckers and owner/operators are required to submit certified payroll records in accordance with Labor Code section 1776 upon request from BATA. Failure to submit certified payroll records could result in withholding of progress payment(s).

Upon request, Consultants/Contractors/Vendors will provide BATA with executed copies of its Subconsultant/Subcontractor/Vendor agreements to verify dollar amounts stated for all SBEs.

## **D.2 SBE Utilization Report**

Consultants/Contractors/Vendors are required to submit monthly SBE Utilization Reports electronically to MTC AFS. The Consultant/Contractor/Vendor will document the dollar value of payments to SBE firms and the percentage of the contract completed. BATA will monitor the contract for compliance with SBE requirements.

This system is web-based, accessible from any computer via the internet. Each Consultant/Contractor/Vendor and Subconsultant/Subcontractor/Vendor will receive an email providing them with Log On identification, a temporary password and instructions on how to use the system. Training will also be provided upon request. Consultant/Contractor/Vendor will include this requirement in all of its subcontracts and purchase orders when required to provide or verify SBE utilization documentation.

If the SBE Utilization Reports indicate potential problems, such as a failure to comply with the contract SBE participation, the Consultant/Contractor/Vendor shall meet with the BATA SBELO or designee to address any deficiencies and discuss appropriate corrective actions. When the Contract completion reaches 50% and the SBE participation completed is less than 50%, a detailed report of the reasons why must be submitted to BATA stating a plan to reach the SBE participation by Contract completion.

Prior to final payment, Consultant/Contractor/Vendor will be required to submit a final SBE Utilization Report by selecting the "Final Audit" reporting designation within the web-based diversity tracking system. In addition to payments to the SBEs, the final report must include payments to and other information about all other businesses, including non-SBE Subconsultants/Subcontractors/Vendors, suppliers of materials and others.

## **D.3 SBE Program Enforcement**

BATA has available several remedies to enforce compliance of the SBE Program requirements contained in its contracts, including, but not limited to, the following:

1. Breach of contract action, resulting from a violation of the terms of the RFP, RFQ or IFB and contract.
2. Assessment of a penalty of up to one and one half times the amount that should have been awarded to SBE(s).
3. Termination of Contractor's performance of work under the contract.
4. Any other remedy available to BATA in the contract or the relevant RFP, RFQ or IFB.

# Updated Small Business Enterprise (SBE) Program

Staff is proposing to combine the current two SBE programs into an updated combined program

# Current SBE Programs

## Construction Project SBE Program (adopted in September 2015)

<i><b>Applicable to:</b></i>	<i><b>Acceptable Certifications:</b></i>	<i><b>Bid/Evaluation Preference:</b></i>	<i><b>Statistics:</b></i>
Non-Federally Funded and Non-Architectural & Engineering Contracts	State of California Department of General Services (DGS) SBE Program	<b>5% bid discount</b> applied if the lowest responsive, responsible bidder is a certified SBE and is performing at least forty percent (40%) of the work or commits to subcontract with certified SBE firm(s) for at least 40% of the work	7 Civil Construction IFBs have been issued with the SBE Program applied, 3 of which were awarded based on the SBE Preference resulting in commitments to SBEs of \$6,250,726

## Professional Services SBE Pilot Program (BATA Oversight Committee approval in February 2017)

<i><b>Applicable to:</b></i>	<i><b>Acceptable Certifications:</b></i>	<i><b>Bid/Evaluation Preference:</b></i>	<i><b>Statistics:</b></i>
Non-Federally Funded and Non-Architectural & Engineering Contracts	State of California Department of General Services (DGS) SBE Program	<b>5% bid discount</b> applied if the lowest responsive, responsible bidder is a certified SBE and is performing at least forty percent (40%) of the work <b>OR</b> commits to subcontract with certified SBE firm(s) for at least 40% of the work	13 RFP/RFQs have been issued with the SBE Pilot Program applied, 6 of which were awarded based on the SBE Preference resulting in commitments to SBEs of \$21,623,124.83



## Updated / Combined SBE Program

- Combine the Pilot Professional Services SBE program and the Construction Project SBE Program into one comprehensive SBE Program that applies to construction and professional services non-federally funded and non-Architectural & Engineering (A&E) procurements.
- Broaden the acceptable SBE certifications in order to cast a wider net to SBE firms in the Bay Area, including Disadvantaged Business Enterprise (DBE), Local Business Enterprise (LBE), Minority Business Enterprise (MBE) and Women Business Enterprise (WBE).
- Allows the bid/evaluation preference to be met by a combination of prime/subcontractor participation
- Revise the bid/evaluation preference into a two-tiered program, which allows:
  - **5% bid/evaluation** applied if the lowest responsive, responsible bidder or proposer commits to at least twenty-five percent (25%) SBE Participation, or
  - **10% bid discount** applied if the lowest responsive, responsible bidder or proposer commits to at least forty percent (40%) SBE Participation

## The benefits of the updated program are:

- Increase opportunity for SBEs to participate in contracts by broadening the acceptable certifications allowed in the program to remove bureaucratic certification barriers
- Providing a two-tiered Bid/Evaluation Preference
- Allowing SBE participation levels to be met by prime SBEs, subconsultant SBEs or a combination of the two

## Next Steps

- Staff will present resolutions for adoption of the updated SBE Program to the appropriate committees and/or authorities including MTC, BATA, BAIFA, BAHA and MTC SAFE
- Collaborate with stakeholders, including the Equity and Access subcommittee of the Policy Advisory Council, to identify and implement outreach strategies
- Staff training and inclusion of the program in MTC's policies and procedures

Staff recommends that the Authority refer BATA Resolution No. 135 Small Business Enterprise (SBE) Program, to the Authority for approval.

# Questions



# Metropolitan Transportation Commission

375 Beale Street, Suite 800  
San Francisco, CA 94105

## Legislation Details (With Text)

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**File #:** 20-0562      **Version:** 1      **Name:**  
**Type:** Contract      **Status:** Authority Approval  
**File created:** 3/20/2020      **In control:** Bay Area Toll Authority  
**On agenda:** 3/25/2020      **Final action:**  
**Title:** BATA-Department of Transportation Master Cooperative Agreement #4-2078-A2  
Toll Bridge Emergency Operations-Amendment to BATA-Department of Transportation Master Cooperative Agreement #4-2078-A2.

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** [6a\\_BATA-Department of Transportation Master Cooperative Agreement #4-2078-A2.pdf](#)

Date	Ver.	Action By	Action	Result
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**Subject:**

BATA-Department of Transportation Master Cooperative Agreement #4-2078-A2

Toll Bridge Emergency Operations-Amendment to BATA-Department of Transportation Master Cooperative Agreement #4-2078-A2.

**Presenter:**

Andrew Fremier

**Recommended Action:**

Authority Approval

# Bay Area Toll Authority

March 25, 2020

Agenda Item 6a

## BATA-Department of Transportation Master Cooperative Agreement #4-2078-A2

**Subject:** Toll Bridge Emergency Operations-Amendment to BATA-Department of Transportation Master Cooperative Agreement #4-2078-A2.

**Background:** Last week, federal, state and local officials declared a State of Emergency to slow the spread of COVID-19 and minimize the risk to public health. After the shelter-in-place order began on March 17<sup>th</sup> traffic volumes during the week substantially decreased but have been remaining steady at an average of 44% below normal. BATA is convening regular web ex meetings with Caltrans Department of Transportation (Department) management and staff, along with California Highway Patrol (CHP) to jointly monitor traffic volumes on the bridges and discuss operational contingency strategies in the event that COVID-19 impacts toll collection staff or staff at the bridge plazas.

Caltrans directly employs those staff, and ultimately makes decisions relative to their status. Should the State decide in the future to remove those employees from toll taking responsibilities, cash collection would have to be suspended. BATA is prepared to immediately deploy emergency cashless tolling using existing system functions with little to no modification. Note that permanent implementation of all-electronic tolling on BATA bridges is currently anticipated to require approximately two years to deploy system modifications and conduct significant testing.

**Recommendation:** The Department and BATA have entered into a Cooperative Agreement (dated April 25, 2006, as amended and restated in 2011 and amended in 2015, attached.) regarding the seven Bay Area toll bridges (Antioch, Benicia-Martinez, Carquinez, Dumbarton, Richmond-San Rafael, San Francisco-Oakland Bay, and San Mateo-Hayward.) The Cooperative Agreement is comprised of eight sections, including, for example:

- Electronic and Manual Toll Collection,
- Toll Bridge Operations and Maintenance,
- Toll Bridge Capital Improvement Program,
- Program/Project Financial Management and Financing, and
- Toll Program Project Funding.

The Cooperative Agreement related to manual toll collection, primarily in Section I – Electronic and Manual Toll Collection.

That section requires the Department “to provide staffing and supervision for the manual collection of toll revenues.” As the Department is currently engaged in considerations related to the appropriate staffing levels at the toll bridges attached to managing the COVID-19 pandemic, which could result in changes very rapidly, BATA staff requests approval to work with the Department to anticipate the suspension of cash collections should that arise with State decisions to remove toll collectors from BATA facilities. Attendant negotiated language to accommodate that circumstance, including appropriate shared responsibility to mitigate financial impacts arising from that decision, would be amended into the Cooperative Agreement, and would be reported back to BATA at the earliest possible date.

**Action:** Staff seeks Authority approval for the Executive Director or designee to enter into negotiations with the State Department of Transportation to amend the Cooperative Agreement Relating to the Bridges, as needed to respond to the COVID-19 pandemic.

**Attachments:** Attachment A: Cooperative Agreements Between the California Department of Transportation and the Bay Area Toll Authority Relating to the Bridges, as amended; and  
Request for Authority Approval

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Therese W. McMillan



## REQUEST FOR AUTHORITY APPROVAL

### Summary of Proposed Negotiations

Work Item No.:	1252
Work Project Title:	<b>BATA-Department of Transportation Master Cooperative Agreement #4-2078-A2</b>
Brief Scope of Work:	Pursue negotiations to amend Master Cooperative Agreement as needed to address COVID-19 emergency response
Project Cost Not to Exceed:	Unknown
Funding Source:	BATA Operating Budget
Fiscal Impact:	Unknown
Motion by Authority:	That the Executive Director or designee is authorized to enter into negotiations with the California Department of Transportation as described above and in the Bay Area Toll Authority summary sheet dated March 25, 2020.
BATA:	
	<hr/>
	Scott Haggerty, Chair
Approved:	March 25, 2020

**RESTATED AND AMENDED  
COOPERATIVE AGREEMENT BETWEEN  
THE CALIFORNIA DEPARTMENT OF TRANSPORTATION  
AND THE BAY AREA TOLL AUTHORITY  
RELATING TO THE BRIDGES**

THIS AGREEMENT, IS MADE ENTERED INTO AND EFFECTIVE ON April 25, 2006, the date of the defeasance of the existing bonds secured by the toll bridge seismic retrofit surcharge imposed under subdivision (a) of SHC section 31010, and is amended and restated as of June 12, 2011, between the STATE OF CALIFORNIA, acting by and through its Department of Transportation, hereinafter referred to as "DEPARTMENT," and the BAY AREA TOLL AUTHORITY (BATA), hereinafter referred to as "AUTHORITY."

**RECITALS**

1. AUTHORITY was created pursuant to Section 30950, *et seq.* of the California Streets and Highways Code (SHC), which transferred certain California Transportation Commission (CTC) and DEPARTMENT responsibilities for the disposition of toll revenues collected from toll bridges owned and operated by DEPARTMENT in the San Francisco Bay Area.
2. Department's toll bridges subject to this AGREEMENT (identified in SHC section 30910) are the Antioch Bridge, Benicia-Martinez Bridges, Carquinez Bridges, Dumbarton Bridge, Richmond-San Rafael Bridge, San Francisco-Oakland Bay Bridge and San Mateo-Hayward Bridge, hereinafter individually referred to as "BRIDGE" and collectively referred to as "BRIDGES".
3. The respective statutory geographic limits of certain of the BRIDGES and the approaches to the BRIDGES are found in the SHC and others are established by post mile or other locators as defined in original project documents. The extent of the San Francisco-Oakland Bay Bridge is defined in SHC section 30600 as the bridge and its approaches; the limits of the Carquinez and Benicia-Martinez Bridges are found in SHC section 30750; the extent of the Antioch Bridge is defined in SHC section 30760; the limits of the San Mateo-Hayward and Dumbarton Bridges are defined in SHC section 30790 (the Dumbarton Bridge limits are redefined in SHC section 30792.2); and the limits of the Richmond-San Rafael Bridge are not statutorily defined. The respective statutory geographic limits of certain of the BRIDGES and the approaches to the BRIDGES, and those limits established by agreement as to the Richmond-San Rafael Bridge, are delineated in Exhibit "A", attached hereto and made an express part of this AGREEMENT.
4. SHC sections 30150 and 30952 provide that DEPARTMENT shall collect tolls, operate, maintain, and provide rehabilitation of the BRIDGES, including all related toll facilities, and shall be responsible for the design and construction of eligible projects which may include, without limitation, capital improvements, seismic retrofit, emergency repairs and restorations, rehabilitation, Regional Measure One and Category B Maintenance (as defined in SHC section 188.4) projects, which are hereinafter collectively referred to as

"Eligible Projects", affecting the BRIDGES in accordance with programming and scheduling requirements of the CTC and AUTHORITY.

5. SHC section 30952 further provides that DEPARTMENT and AUTHORITY shall enter into a cooperative agreement, upon mutually agreed terms and conditions, setting forth the methodology by which DEPARTMENT will operate the BRIDGES and be responsible for the planning, design, and construction of improvements, repairs or alterations to the BRIDGES to be funded from the AUTHORITY'S toll bridge revenues.
6. DEPARTMENT and AUTHORITY first entered into a cooperative agreement pursuant to SHC section 30952 in 1998, which agreement was subsequently superseded by a new cooperative agreement on July 1, 2003, and amended on December 15, 2004.
7. Pursuant to Assembly Bill No. 144 ("AB 144"), enacted and made effective on July 18, 2005, certain project oversight and control responsibilities relative to the construction of the Benicia Martinez Bridge and the state Toll Bridge Seismic Retrofit Program projects (hereinafter referred to as "Seismic Projects") were given to AUTHORITY. The Seismic Projects are more particularly described in SHC section 188.5.
8. As part of AB144, SHC section 30950.2, gives AUTHORITY the responsibility for administering all toll revenues from the state-owned toll bridges within the jurisdiction of the Metropolitan Transportation Commission, once the obligations of the California Infrastructure and Economic Development Bank secured by the seismic retrofit surcharge imposed pursuant to subdivision (a) of SHC section 31010 are no longer outstanding (as defined by the constituent instruments), currently the Bay Area Toll Bridges Seismic Retrofit Revenue Bonds Series 2003A First Lien Bonds and Seismic Retrofit Revenue Notes Series 2005A Second Lien Commercial Paper.
9. AB 144 further added section 30952.05 to the SHC requiring DEPARTMENT and AUTHORITY to amend their cooperative agreement to incorporate the project oversight and control responsibilities described therein relative to the Benicia Martinez Bridge and the Seismic Projects.
10. In accordance with SHC Sections 30952 and 30952.05, AUTHORITY and DEPARTMENT now set forth herein the terms of a revised and amended AGREEMENT to set forth the parties respective obligations.

This AGREEMENT supersedes and replaces the prior amended Cooperative Agreements entered into on July 1, 2003, as amended on December 15, 2004, and any prior agreements or memoranda of understanding between the parties relating to the BRIDGES.

## **SECTION I - ELECTRONIC AND MANUAL TOLL COLLECTION**

### **DEPARTMENT AGREES:**

1. To cooperate with the AUTHORITY and its vendors, consultants and contractors regarding oversight and management of the operations of the electronic toll collection system customer service center (CSC) for the BRIDGES. The DEPARTMENT's tasks in support of the AUTHORITY's operation of the CSC shall include, but not be limited to, establishing and maintaining DMV access for processing violation notices.
2. That the AUTHORITY is granted all the DEPARTMENT'S right, title and interest in and to the Advanced Toll Collection And Accounting System (ATCAS) application software as defined in Purchase Orders 25154, as amended, and Purchase Order 57042, as amended, provided however, the DEPARTMENT shall likewise retain a non-exclusive, unlimited, irrevocable right to use, transfer, and distribute all ATCAS application software as defined above. In the event the AUTHORITY shall enhance the ATCAS application software through modification, amendment and /or additions thereto, the DEPARTMENT shall have the royalty free, non-exclusive, irrevocable right to use, transfer, distribute and modify for its purposes such enhancements, including all associated source code and source code documentation.
3. To provide staffing and supervision for the manual collection of toll revenues related to the BRIDGES; including, but not limited to, management of toll collectors and all related personnel and reviewing disputes related to the manual collection of tolls. The DEPARTMENT will staff and operate manual toll collection operations in accordance with state law and consistence with the AUTHORITY's adopted budgets.

### **AUTHORITY AGREES:**

4. To operate, manage and maintain the operations of the electronic toll collection CSC, including, but not limited to, maintenance of the electronic toll collection customer accounts, administering service contracts in relation to these operations, the identification of toll violators and the processing of toll violations, processing of customer and violation disputes, financial management including procurement of credit card processing services, reciprocal relationships with other California toll operators, the procurement of electronic toll collection transponders, and the integration of these operations with other transportation related operations.
5. To provide management oversight of DEPARTMENT's manual toll collections operations, including, but not limited to, reviewing procedures for the manual collection, handling and reconciliation of cash toll revenues, reviewing staffing plans for the manual toll collection operations, and reviewing training and training procedures for DEPARTMENT's manual toll collection staff.

**SECTION II - CASH COUNTING, BANKING AND TOLL ACCOUNTING**

**DEPARTMENT AGREES:**

1. To cooperate with the AUTHORITY and its vendors, consultants and contractors in the AUTHORITY'S financial oversight and management of the toll revenues collected on the BRIDGES, including, but not limited to, toll accounting, armored car, vault and bank services.
2. To transfer to the AUTHORITY equipment used for toll accounting acquired solely with toll revenue funds and to fully assist the AUTHORITY in the operation and relocation of the host toll collection equipment and systems from the DEPARTMENT's District offices to the AUTHORITY's offices or other location as determined by the AUTHORITY.

**AUTHORITY AGREES:**

3. To provide armored car, vault and bank services for cash toll revenues collected by the Department on the BRIDGES.
  4. To provide toll accounting services, including, but not limited to, accounting for toll revenues, preparing toll revenue and traffic reports, reconciliation of manual and electronic toll revenues, and toll auditing.
-

### **SECTION III - TOLL BRIDGE OPERATIONS AND MAINTENANCE**

#### **DEPARTMENT AGREES:**

1. To maintain (Category A Maintenance), and operate the bridge structures and maintain (Category B Maintenance) and operate the toll plaza buildings and facilities in a safe and efficient manner in accordance with applicable DEPARTMENT policies and standards for the BRIDGES, excepting for those items identified in Article 7 of Section III, 7 which the AUTHORITY will own, maintain, repair, and operate. Operational and maintenance tasks shall include but are not limited to, managing maintenance staff and all related personnel and contracts and contract employees, maintaining bridge infrastructure and equipment, obtaining necessary permits for the operation and maintenance of the BRIDGES, and generating and maintaining proper records relating to the BRIDGES. Excepting tasks related to emergency repairs performed pursuant to Article 5, of Section III all tasks will be planned to be consistent with the annually adopted AUTHORITY operations and capital budget and long-range plans of toll related costs to be reimbursed to DEPARTMENT from the bay area toll account by AUTHORITY. Category A expenditures shall include, but are not limited to, the following: maintenance of the BRIDGES and related structures, roadbeds, pavement, drainage, debris removal, landscaping, traffic guidance systems, ice control, dedicated bridge maintenance stations, maintenance training, electrical maintenance and electrical energy other than the architectural lighting. Category B operational and maintenance expenditures shall include, but are not limited to, toll administration building and toll facilities, toll system related energy, architectural lighting energy, booth maintenance and repair, reconstruction and replacement of mechanical and electronic toll equipment.
2. To cooperate with the AUTHORITY and its vendors in the Authority's maintenance, repair and replacement services for the toll lane, plaza and host toll collection equipment and systems for the BRIDGES, including, but not limited to, providing the AUTHORITY staff and its contractors (a) access to toll lane, plaza and host toll collection equipment and systems; (b) processing requests for all necessary encroachment permits; (c) administering or facilitating the transfer of any service or equipment contracts related to the maintenance of the toll lane, plaza and host toll collection equipment and systems; (d) assisting the AUTHORITY or its contractors with the closure of lanes and management of traffic to carryout maintenance activities for the toll lane, toll plaza and host toll collection equipment and systems; and (f) assisting the AUTHORITY and its contractors in the development of processes and procedures for the reporting of problems related to toll lane, plaza and host toll collection equipment and systems.
3. To provide AUTHORITY a detailed anticipated fiscal year budget, description of work activities and charges for Category A and Category B Maintenance expenditures as defined in SHC section 188.4, and an annual report of actual expenditures upon completion of each fiscal year.

4. To inform AUTHORITY of any non-emergency activities undertaken by DEPARTMENT that may affect the operation, appearance or safety of the BRIDGES, and to provide advance notice to AUTHORITY of any DEPARTMENT activities that would require any amendment to AUTHORITY's adopted annual operations and capital budget and Long Range Plans.
5. To take whatever immediate actions are necessary for emergency repairs to any of the BRIDGES which have been damaged or are in immediate danger and report to AUTHORITY as soon as possible, but not later than ten (10) working days, after any occurrence requiring the expenditure of toll funds for emergency repair on the BRIDGES.
6. To provide tow truck services on the BRIDGES from state-funded sources for as long as authorized by California law and budgeted in the annual State Budget Act.

AUTHORITY AGREES:

7. To own, operate, and provide maintenance services for the toll lane, plaza and host toll collection equipment and systems for the BRIDGES as a necessary component of audit, internal, and cash controls, which shall include but are not limited to software, hardware, computer equipment, lane readers, violation enforcement system, automatic vehicle classification (AVC) system, and telecommunications for these systems. These systems shall be maintained in such a manner as to provide consistent and functional interface to the CSC system.
8. To give first priority to projects and expenditures that are deemed necessary by DEPARTMENT to preserve and protect the BRIDGES as provided by SHC section 30950.3 (b).
9. To pay all of the DEPARTMENT's costs approved by the DEPARTMENT and the AUTHORITY incurred for toll operations maintenance and support provided by the DEPARTMENT. Costs will be compiled and computed in accordance with the DEPARTMENT's standard accounting practices and the State Administrative Manual.

#### **SECTION IV - TOLL BRIDGE CAPITAL IMPROVEMENT PROGRAM**

##### **DEPARTMENT AGREES:**

1. To assist AUTHORITY in connection with AUTHORITY's preparation and adoption of Long Range Plans, as required by SHC section 30950.3, and any subsequent amendments to said Plans.
2. To plan, design and construct Eligible Projects for the BRIDGES in accordance with the Long Range Plans that reflect AUTHORITY's approved long term multi-year capital outlay and capital outlay support budgets for eligible capital projects, consistent with AUTHORITY's annual operations and capital budgets, that conform to AUTHORITY's approved operations, maintenance, and capital reimbursement limits (subject to modification when required) for a given fiscal year when adopted by AUTHORITY.
3. To develop contract specifications and bid documents and invite bid and award contracts for capital improvements to the BRIDGES.
4. To provide, subject to annual State Budget Act authorization, sufficient staff resources within DEPARTMENT to assure timely implementation of projects in the Long Range Plans adopted by AUTHORITY.
5. To maintain and provide, on a monthly basis, a current schedule of Eligible Projects funded from the bay area toll account.
6. To provide AUTHORITY with complete monthly reports of costs incurred by DEPARTMENT for bridge operations, toll collections and capital projects affecting the BRIDGES for which subsequent reimbursement will be made to DEPARTMENT by AUTHORITY. These reports will be prepared for each bridge within the BRIDGES listed by SHC section 30910.
7. To provide AUTHORITY access to all project development information regarding the projects identified in the Long Range Plan and the Toll Bridge Seismic Program, including, but not limited to, project files kept in accordance with project development procedures and manuals, project initiation documents, environmental technical studies, environmental documents and plans, and specifications and estimates for the identified projects in the Capital Improvement Program.
8. To acquire property essential to complete Eligible Projects contained in the Long Range Plans. Any subsequent sale of excess land, property, equipment or any other assets that were purchased with toll funds shall be reverted to the bay area toll account. Any sale of excess land require the approval of the CTC and maybe subject to the reimbursing the federal government its proportional contribution, if any.
9. To perform all other activities necessary for the extended operation, maintenance, and protection of the BRIDGES, including, but not limited to, obtaining and maintaining all regulatory permits necessary to authorize those maintenance and construction activities.



DEPARTMENT will inform AUTHORITY of any anticipated unique or significantly unusual DEPARTMENT activities affecting the BRIDGES as they arise.

10. As required by SHC section 30952.1, to establish and participate, in conjunction with the AUTHORITY and the CTC, in a Toll Bridge Program Oversight Committee, to oversee and provide direction for the Seismic Projects and the Benicia-Martinez Bridge New Span project.

AUTHORITY AGREES:

11. To review and approve as necessary and appropriate all project initiation documents, environmental documents, right of way agreements and project bid documents for all Eligible Projects identified in the Capital Improvement Program.
12. To update the Long Range Plans, as specified in SHC section 30950.3, when necessary.
13. As required by SHC section 30952.1, to establish and participate, in conjunction with the DEPARTMENT and the CTC, in a Toll Bridge Program Oversight Committee, to oversee and provide direction for Toll Bridge Seismic Retrofit Program projects and the Benicia-Martinez Bridge New Span project.
14. To contract with and oversee one or more consulting firms to provide project oversight and control services for the Benicia-Martinez Bridge project and the Toll Bridge Seismic Retrofit Program projects as specified in subsection (d) of SHC section 30952.05. The Toll Bridge Oversight Committee shall review and approve all such contracts, as specified in subsection (d) of SHC section 30952.05.
15. To review and approve all contract specifications and bid documents prepared by DEPARTMENT prior to advertising the bid documents for the Benicia-Martinez Bridge project and the Toll Bridge Seismic Retrofit Program projects in accordance with subsection (b) of SHC section 30952.05.

**SECTION V – PROGRAM/PROJECT FINANCIAL MANAGEMENT AND  
FINANCING**

**DEPARTMENT AGREES:**

1. To cooperate with the AUTHORITY in the issuance of new or replacement bonds by AUTHORITY, including, but not limited to, developing and updating project schedules, projected cash flows and risk management plans for each of the Eligible Projects identified in the seismic or long range plan programs.
2. To cooperate with the AUTHORITY, in all actions necessary for the defeasance of the existing bonds issued on behalf of the DEPARTMENT and secured by the toll bridge seismic retrofit surcharge imposed under subdivision (a) of SHC section 31010.
3. To cooperate fully with the Toll Bridge Seismic Retrofit Account close out audit to be conducted subsequent to the defeasance of the bonds, retirement of the commercial paper, and any other outstanding seismic obligations of the California Infrastructure and Economic Development Bank.
4. Upon defeasance of the Bonds, retirement of the commercial paper, and any other outstanding seismic financial obligations of the California Infrastructure and Economic Development Bank and after satisfying the immediate cash flow requirements of the Toll Bridge Seismic Retrofit Program projects, transfer the revenues and fund balances in the Toll Bridge Seismic Retrofit Account to the AUTHORITY for deposit in the bay area toll account.
5. To work in consultation with the AUTHORITY and the CTC to adopt a schedule for the payment of the remaining state contributions identified in SHC sections 188.5 and 188.6 for the Toll Bridge Seismic Retrofit Program projects identified in SHC section 188.5.
6. To develop procedures for the timely allocation and payment of all toll bridge seismic retrofit funds due to the Toll Bridge Seismic Retrofit Program, including, but not limited to: 1) approving invoices as submitted by BATA that are consistent with CTC allocations; 2) providing best efforts to ensure that the state budget includes any necessary provisions to allow for the transfer of funds to BATA for the Toll Bridge Seismic Retrofit Program; 3) confirming that the Controller makes payments into BATA accounts in accordance with the CTC adopted allocation schedule; and 4) cooperating with the CTC in the scheduling and allocation of funds committed to the Toll Bridge Seismic Retrofit Program.

**AUTHORITY AGREES:**

7. To manage all of the toll revenues, including, but not limited to, keeping full and complete accounts for toll revenues and expenses and preparing balance sheets on an annual fiscal year basis showing the financial condition of the BRIDGES. If and when

necessary and at the AUTHORITY's discretion: (1) to increase the amount of the seismic surcharge, pursuant to SHC section 31011 for the purpose of completing the Toll Bridge Seismic Retrofit Program projects; (2) to issue toll bridge revenue bonds pursuant to SHC section 30920; and, (3) pursuant to SHC 30916(c), to increase the base toll in order to meet its obligations on any such bonds or to satisfy bond covenants.

8. To work in consultation with the DEPARTMENT and the CTC to adopt a schedule for the payment of the remaining state contributions identified in SHC Sections 188.5 and 188.6 for the Toll Bridge Seismic Retrofit Program projects in SHC section 188.5.
  9. To work cooperatively with the DEPARTMENT and CTC on the schedule and allocation of seismic retrofit funds due to the Toll Bridge Seismic Retrofit Program funds, utilizing all funds designated in AB 144 and allocated by the CTC exclusively for the Toll Bridge Seismic Retrofit Program, as defined in state law, and to establish appropriate accounts and accounting procedures for management of toll the bridge seismic retrofit funds.
-

## **SECTION VI - TOLL PROGRAM PROJECT FUNDING**

### **DEPARTMENT AGREES:**

1. To continue to budget to fund tow truck services on the BRIDGES from state-funded source until directed otherwise.
2. To continue to fund from state-funded sources the Category A BRIDGES expenditures that are part of the seismic retrofit and replacement program specified in SHC section 188.5 until the seismic retrofit or replacement work is complete on those BRIDGES and the AUTHORITY undertakes that duty using toll revenues.

### **AUTHORITY AGREES:**

3. To allocate toll revenues consistent with AUTHORITY's annual operations and capital budget for Eligible Projects conforming with AUTHORITY-approved Long Range Plans, and to pay for the DEPARTMENT's toll related costs incurred pursuant to this AGREEMENT consistent with the AUTHORITY's adopted budgets.
4. To pay for maintenance and operations of the current Transbay Transit Terminal as long as it is owned and operated by the DEPARTMENT, (a statutory part of the San Francisco-Oakland Bay Bridge, located in downtown San Francisco) from toll bridge revenues. Said costs are subject to the annual BATA budget process.
5. To fund Category A maintenance expenditures on the BRIDGES from toll revenues, except for those toll bridges that are part of the seismic retrofit program specified in SHC section 188.5 for which the seismic retrofit or replacement work is not complete. Such maintenance expenditures shall be funded by AUTHORITY from toll revenues upon completion of the seismic retrofit or replacement work.
6. To maintain self insurance of not less than \$50 million as an extraordinary loss account solely for the purpose of funding major emergency reconstruction, repair and operations of any of the BRIDGES.

## **SECTION VII – PROGRAM/PROJECT BUDGETING AND INVOICING**

### **DEPARTMENT AGREES:**

1. To provide AUTHORITY, consistent with the schedule for developing DEPARTMENT's annual fiscal year budget, information necessary for AUTHORITY to adopt an annual operations and capital budget for operations, maintenance, repairs and construction of Eligible Projects on the BRIDGES which is, to the extent possible, consistent with DEPARTMENT's statutory and contractual obligations assumed herein and AUTHORITY's approved Long Range Plans.
2. To report to the AUTHORITY the level of services that the DEPARTMENT will be able to provide if, in the judgment of the DEPARTMENT, the AUTHORITY's adopted annual operations and capital budget does not provide funding adequate for the DEPARTMENT's services as defined in this AGREEMENT.
3. To cooperate fully with AUTHORITY in the annual auditing and reporting process, as well as any other audit, financial, or internal control reports that may be undertaken by AUTHORITY or DEPARTMENT relating to the bay area toll accounts and the BRIDGES. AUTHORITY shall issue these audit reports relative to the bay area toll accounts and the BRIDGES to AUTHORITY and DEPARTMENT.
4. To provide AUTHORITY a monthly request for thirty (30) days advance funding based upon the DEPARTMENT'S estimate of the anticipated costs that it will incur by the DEPARTMENT in performance of this AGREEMENT. DEPARTMENT will provide the AUTHORITY, along with the estimate, the DEPARTMENT's published electronic fund transfer (EFT) invoice schedule. The DEPARTMENT will submit, within thirty (30) days after submission of each funding advance request, a detailed expenditure report for the charges contained therein, including project closeout adjustments within the adopted budget. Each succeeding monthly estimate will be adjusted to reflect actual costs expended and any reallocation or additional costs anticipated over that succeeding month.
5. Upon receipt of a notice of invoice discrepancy from AUTHORITY, DEPARTMENT shall review the notice and credit undisputed claims to AUTHORITY in its following invoice. If DEPARTMENT disputes any discrepancy claim, in whole, or in part, DEPARTMENT shall endeavor to notify AUTHORITY in writing within seven (7) working days of receipt of the notice of invoice discrepancy. Upon final resolution of a disputed claim, STATE shall make the appropriate credit or debit to AUTHORITY's account and notify AUTHORITY in writing of any such action.
6. To provide to AUTHORITY a detailed fiscal year-end accounting of expended and accrued costs within sixty (60) days of the end of the fiscal year with supporting information.

AUTHORITY AGREES:

7. To adopt an annual operations and capital budget by July 1st of each fiscal year, which includes DEPARTMENT's costs associated with operations, maintenance, toll collection, and the support and capital costs of Eligible Projects relating to the BRIDGES, which costs are funded from the bay area toll accounts and consistent with AUTHORITY approved Long Range Plans. Costs are defined as including all documented direct and indirect charges together with functional and administrative overhead charges authorized by the State Administrative Manual as part of DEPARTMENT's standard accounting practice, except that administrative overhead cost assessments will not be included for the Toll Bridge Seismic Retrofit Program pursuant to SHC, section 31021. Each budget shall be subject to regular review and revision during the year as appropriate and shall contain funds to cover unanticipated efforts to be undertaken by DEPARTMENT as may be required for the continued operation, maintenance, repair, protection and improvement of the BRIDGES.
8. To act promptly on requests by DEPARTMENT for actions necessary to implement Eligible Projects contained in the Long Range Plans and for urgent unbudgeted operating or maintenance requirements affecting the annual operations maintenance and capital budgets adopted by AUTHORITY.
9. On a monthly basis, and within four (4) working days of the receipt of DEPARTMENT's request for advance funding as described in Article 4 of this Section VII above, to electronically transfer (wire) to DEPARTMENT funds equal to the amount of eligible costs incurred or anticipated, subject to provisions of Articles 10 and 11 of Section VII of this AGREEMENT below.
10. Upon receipt of DEPARTMENT's detailed expenditure report, AUTHORITY will endeavor to notify DEPARTMENT in writing within thirty (30) days of those charges with which AUTHORITY disagrees by issuing a specific notice of discrepancy.
11. To adopt formal resolutions and any supplemental documents necessary to implement the requirements of SHC section 30950 *et seq.* and to establish detailed AUTHORITY policies and procedures applicable to the BRIDGES and the bay area toll accounts consistent with the terms and conditions of this AGREEMENT.
12. To act promptly on requests by DEPARTMENT for the expenditure of bay area toll account funds by DEPARTMENT in response to emergency occurrences, subject to the notification requirements of Article 5 in Section III of this AGREEMENT above.
13. To contract for annual financial audits, to be conducted by an outside independent auditor, of the bay area toll accounts, toll receipts collected on the BRIDGES, and all expenses of DEPARTMENT and AUTHORITY funded by the bay area toll accounts; and to submit all required financial statements to the Legislature in accordance with SHC section 30961(b).

## **SECTION VIII – MUTUAL PROVISIONS**

### **IT IS MUTUALLY AGREED:**

1. Nothing in this AGREEMENT is intended to affect the legal liability of either party to the AGREEMENT by imposing any standard of care with respect to the BRIDGES different from the standard of care imposed by law.
2. Neither DEPARTMENT nor any officer or employee thereof is responsible for any damage or liability occurring by reason of anything done or omitted to be done by AUTHORITY under or in connection with any work, authority or jurisdiction delegated to AUTHORITY under this AGREEMENT. It is understood and agreed that AUTHORITY shall fully defend, indemnify and save harmless DEPARTMENT, its officers and employees from all claims, suits or actions of every name, kind and description brought for or on account of injury, or any other damage sustained by a third party, occurring by reason of anything done or omitted to be done by AUTHORITY under or in connection with any work, authority or jurisdiction delegated to AUTHORITY under this AGREEMENT.
3. Neither AUTHORITY nor any Commissioner, officer or employee thereof is responsible for any damage or liability occurring by reason of anything done or omitted to be done by DEPARTMENT under or in connection with any work, authority or jurisdiction delegated to DEPARTMENT under this AGREEMENT. It is understood and agreed that, DEPARTMENT shall defend, indemnify and save harmless AUTHORITY, its Commissioners, officers and employees from all claims, suits or actions of every name, kind and description brought for or on account of injury, or any other damage sustained by a third party, occurring by reason of anything done or omitted to be done by DEPARTMENT under or in connection with any work, authority or jurisdiction delegated to DEPARTMENT under this AGREEMENT.
4. This AGREEMENT shall be amended or superseded by another agreement as necessary with the enactment of future legislation or by mutual agreement.
5. Regular meetings will be held to fulfill the intent of this AGREEMENT. More detailed working agreements and procedures may be developed and documented in operating memoranda to establish mutually supportive policies.
6. This AGREEMENT shall be subject to re-adoption as amended by the parties effective July 1, 2015, and every ten (10) years thereafter. This AGREEMENT may also be amended in writing at any time by mutual consent. Each amendment must be in writing and no alteration or variation to the terms of this AGREEMENT shall be valid unless made in writing and signed by both parties. No oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.
7. No State, DEPARTMENT, or AUTHORITY funds are encumbered or allocated under this AGREEMENT.



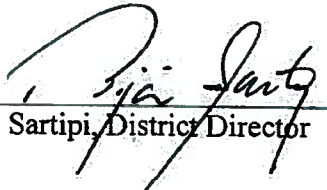
8. The transfer of funds by AUTHORITY to DEPARTMENT as advance payments for support and capital outlay for the BRIDGES shall in no way be construed as an unconditional acceptance of such actual and proposed charges. Approval of DEPARTMENT charges by AUTHORITY will occur only after complete review of detailed program and project expenditure information in a format mutually acceptable to both DEPARTMENT and AUTHORITY.
9. In the event of an emergency and/or unforeseen difficulty where DEPARTMENT is unable to obtain a construction progress payment on time, DEPARTMENT will include an estimate of such charges in DEPARTMENT's next monthly invoice, submitted pursuant to Article 4 of Section VII above and AUTHORITY agrees to pay that estimated amount subject to subsequent adjustment.
10. The AUTHORITY, upon request by the DEPARTMENT, and following review and consultation with the DEPARTMENT, will provide funds to the DEPARTMENT using toll revenues, to the extent permitted by law, for the payment of any and all costs incurred by the DEPARTMENT to indemnify the California Infrastructure and Economic Development Bank, the State Treasurer and all other indemnified parties, as such costs are required by the DEPARTMENT'S obligations set forth in the Second Amendment to the Financing Agreement dated April 25, 2006, following defeasance of the Infrastructure Bank Debt as it is defined in the Second Amendment to the Financing Agreement.
11. That the AUTHORITY and the DEPARTMENT will enter into a Fund Transfer Agreement contemporaneously herewith, for the transfer of funds from the DEPARTEMNT to the AUTHORITY in accordance with a schedule adopted by the CTC in its resolution of December 15, 2005.
12. Subject to the CTC's concurrence, if necessary, and to the Authority's acceptance, parcels of real property acquired and held by the DEPARTMENT are to be transferred by Director's Deed, or as the parties shall agree, to the AUTHORITY for its management and control as part of the BRIDGES or as needed for the support of the BRIDGES until such time as the AUTHORITY shall dispose of them by public sale at their fair market value. The costs of the DEPARTMENT to comply herewith are to be paid from toll revenues and the net proceeds of any sale or transfer to the AUTHORITY are to be deposited in the bay area toll account for use on the BRIDGES.



IN WITNESS WHEREOF, the Agreement has been executed by the parties hereto as of the day and year first written above.

STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION

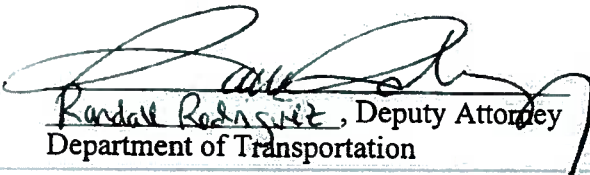
BAY AREA TOLL AUTHORITY

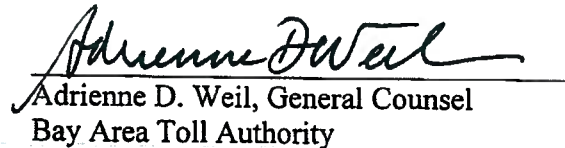
By:   
Bijan Sartipi, District Director

By:   
Steve Heninger, Executive Director


Approved as to form and procedure:

Approved as to form and procedure:


  
Randall Rodriguez, Deputy Attorney  
Department of Transportation

  
Adrienne D. Weil, General Counsel  
Bay Area Toll Authority

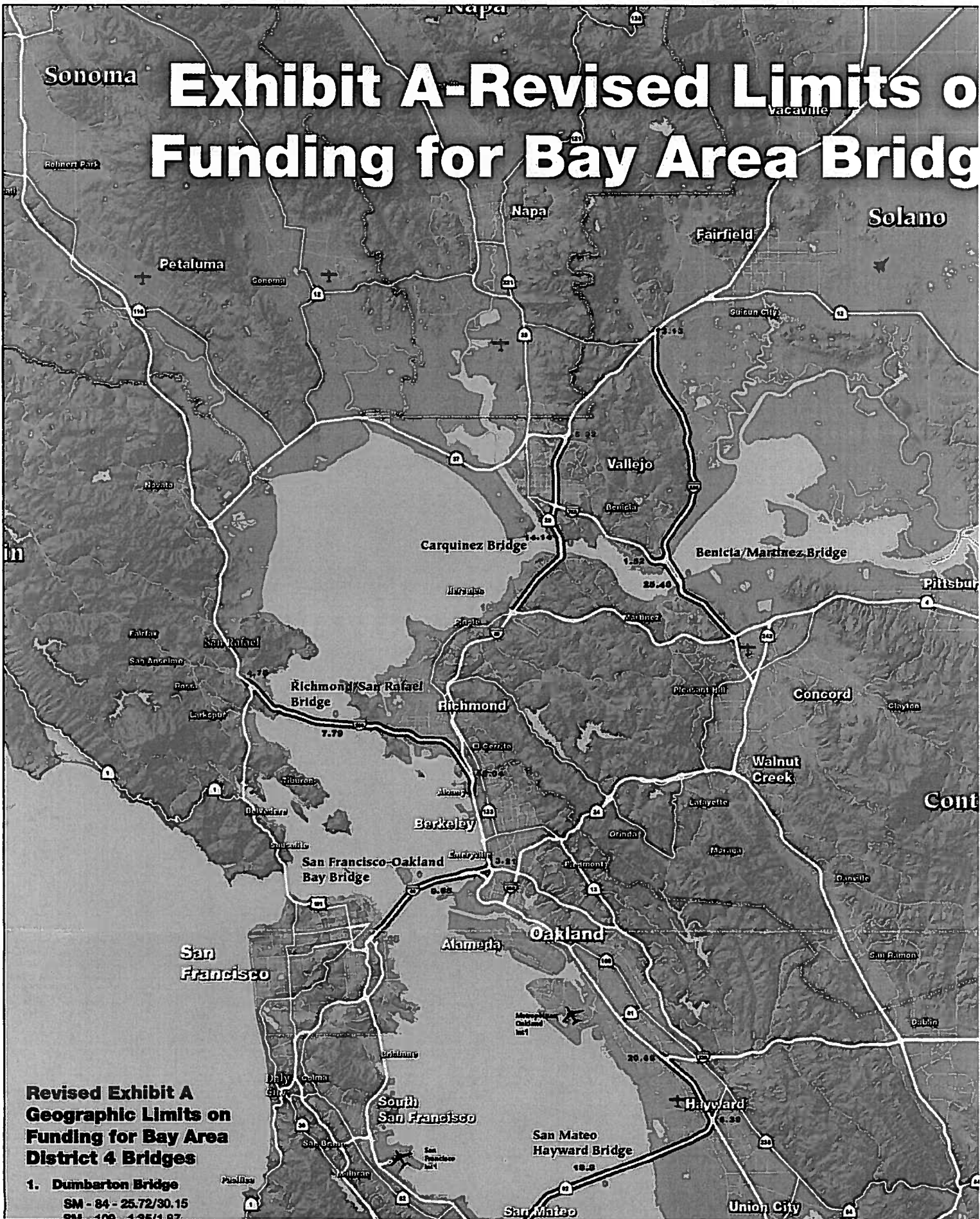
Certified as to budgeting of funds:

  
District Budget Manager  
Department of Transportation

Certified as to financial terms and  
Conditions:

  
HQ Accounting Administrator  
Department of Transportation

# Exhibit A-Revised Limits of Funding for Bay Area Bridge



Date: March 22, 2006  
Revised: April 27, 2011  
W.L.: 1253

ABSTRACT

BATA Resolution No. 62, Revised

This resolution authorizes the Bay Area Toll Authority (BATA) to enter into a cooperative agreement with the California Department of Transportation for the management and operation of the state-owned toll bridges in the Bay Area.

This resolution was revised on April 27, 2011, to revise the identification of the geographical limits of the bridges.

Further discussion of this resolution is contained in the Executive Director's memorandum to the BATA Oversight Committee dated April 6, 2011 and the Bay Area Toll Authority dated March 15, 2006.

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Date: March 22, 2006  
Revised: April 27, 2011  
W.I.: 1253

RE: Authorizing a Cooperative Agreement with the State Department of Transportation

BAY AREA TOLL AUTHORITY

RESOLUTION NO. 62, REVISED

WHEREAS, Streets and Highways Code Section 30950 creates the Bay Area Toll Authority (BATA) that is the same as the Metropolitan Transportation Commission (MTC); and

WHEREAS, Streets and Highways Code Sections 30950 *et seq.* transfers to BATA certain current California Transportation Commission and California Department of Transportation (DEPARTMENT) duties and responsibilities for the bridges owned and operated by the DEPARTMENT in the San Francisco Bay Area; and

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WHEREAS, the bridges subject to this agreement as defined in Streets and Highways Code Section 30910 are the Antioch, Benicia-Martinez, Carquinez, Richmond-San Rafael, San Francisco-Oakland, San Mateo-Hayward, and Dumbarton Bridges, and

WHEREAS, Streets and Highways Code Section 30952 provides that BATA and the DEPARTMENT shall enter into a cooperative agreement, upon mutually agreed terms and conditions, setting forth the methodology by which the DEPARTMENT shall operate the bridges and be responsible for the planning, design and construction of improvements, repairs or alterations to the bridges; and

WHEREAS, Streets and Highways Code Section 30950.2, gives BATA the responsibility for administering all toll revenues from the state-owned toll bridges within the jurisdiction of the Metropolitan Transportation Commission, once the obligations of the California Infrastructure and Economic Development Bank secured by the seismic retrofit surcharge imposed pursuant to subdivision (a) of SHC section 31010 are no longer outstanding (as defined by the constituent instruments), currently the Bay Area Toll Bridges Seismic Retrofit Revenue Bonds Series 2003A First Lien Bonds and Seismic Retrofit Revenue Notes Series 2005A Second Lien Commercial Paper.

**AMENDMENT NO. 1 TO  
RESTATED AND AMENDED COOPERATIVE AGREEMENT BETWEEN  
THE CALIFORNIA DEPARTMENT OF TRANSPORTATION  
AND THE BAY AREA TOLL AUTHORITY  
RELATING TO THE BRIDGES**

THIS AMENDMENT NO. 1 TO THE RESTATED AND AMENDED COOPERATIVE AGREEMENT BETWEEN THE CALIFORNIA DEPARTMENT OF TRANSPORTATION AND THE BAY AREA TOLL AUTHORITY RELATED TO THE BRIDGES, IS MADE, ENTERED INTO AND EFFECTIVE ON July 1, 2015 by and between the STATE OF CALIFORNIA, acting by and through its Department of Transportation, hereinafter referred to as "DEPARTMENT," and the BAY AREA TOLL AUTHORITY (BATA), hereinafter referred to as "AUTHORITY."

**RECITALS**

1. AUTHORITY was created pursuant to Section 30950, *et seq.* of the California Streets and Highways Code (SHC), which transferred certain California Transportation Commission (CTC) and DEPARTMENT responsibilities for the disposition of toll revenues collected from toll bridges owned and operated by DEPARTMENT in the San Francisco Bay Area.
2. STATE and AUTHORITY entered into an Agreement (Master Cooperative Agreement 4-2078-A1) on April 25, 2006, as amended and restated on June 13, 2011, hereinafter referred to as "AGREEMENT" to cooperatively maintain, operate, construct, rehabilitate, and retrofit the toll bridges owned and operated by DEPARTMENT in the San Francisco Bay Area.
3. Section VIII, Article 6 of AGREEMENT provides that AGREEMENT shall be subject to re-adoption as amended by the parties effective July 1, 2015, and every ten (10) years thereafter.
4. The parties hereto now intend to enter into this Amendment No. 1 to re-adopt the AGREEMENT and reduce the subsequent periods for re-adoption to five-year terms.

**IT IS THEREFORE MUTUALLY AGREED:**

1. The first sentence of Article 6 of Section VIII – Mutual Provisions, is deleted and replaced by the following: "This AGREEMENT shall be subject to re-adoption as amended by the parties effective July 1, 2020, and every five (5) years thereafter."
2. As hereby amended, the terms and conditions of the AGREEMENT shall remain in full force and effect.
3. This Amendment No. 1 to the AGREEMENT is hereby deemed to be part of Master Cooperative Agreement 4-2078-A1.

IN WITNESS WHEREOF, this Amendment No. 1 has been executed by the parties hereto as of the day and year first written above.

STATE OF CALIFORNIA  
Department of Transportation

BAY AREA TOLL AUTHORITY

By:   
Deputy District Director

By:   
Steve Heminger, Executive Director

Approved as to form:

  
Adrienne D. Weil, General Counsel  
Bay Area Toll Authority

Certified as to budgeting of funds:

  
District Budget Manager

Date: March 22, 2006  
W.I.: 1253  
Revised: 04/27/11-BATA  
06/24/15-BATA

ABSTRACT

BATA Resolution No. 62, Revised

This resolution authorizes the Bay Area Toll Authority (BATA) to enter into a cooperative agreement with the California Department of Transportation for the management and operation of the state-owned toll bridges in the Bay Area.

This resolution was revised on April 27, 2011, to revise the identification of the geographical limits of the bridges.

This resolution was revised on June 24, 2015, to re-adopt the cooperative agreement and to reduce subsequent periods for re-adoption from ten years to five-year terms.

Further discussion of this resolution is contained in the Executive Director's memorandum to the BATA Oversight Committee dated April 6, 2011 and June 3, 2015 and the Bay Area Toll Authority dated March 15, 2006.

Date: March 22, 2006  
Revised: April 27, 2011  
W.L.: 1253

RE: Authorizing a Cooperative Agreement with the State Department of Transportation

**BAY AREA TOLL AUTHORITY**

**RESOLUTION NO. 62, REVISED**

WHEREAS, Streets and Highways Code Section 30950 creates the Bay Area Toll Authority (BATA) that is the same as the Metropolitan Transportation Commission (MTC); and

WHEREAS, Streets and Highways Code Sections 30950 *et seq.* transfers to BATA certain current California Transportation Commission and California Department of Transportation (DEPARTMENT) duties and responsibilities for the bridges owned and operated by the DEPARTMENT in the San Francisco Bay Area; and

WHEREAS, the bridges subject to this agreement as defined in Streets and Highways Code Section 30910 are the Antioch, Benicia-Martinez, Carquinez, Richmond-San Rafael, San Francisco-Oakland, San Mateo-Hayward, and Dumbarton Bridges, and

WHEREAS, Streets and Highways Code Section 30952 provides that BATA and the DEPARTMENT shall enter into a cooperative agreement, upon mutually agreed terms and conditions, setting forth the methodology by which the DEPARTMENT shall operate the bridges and be responsible for the planning, design and construction of improvements, repairs or alterations to the bridges; and

WHEREAS, Streets and Highways Code Section 30950.2, gives BATA the responsibility for administering all toll revenues from the state-owned toll bridges within the jurisdiction of the Metropolitan Transportation Commission, once the obligations of the California Infrastructure and Economic Development Bank secured by the seismic retrofit surcharge imposed pursuant to subdivision (a) of SHC section 31010 are no longer outstanding (as defined by the constituent instruments), currently the Bay Area Toll Bridges Seismic Retrofit Revenue Bonds Series 2003A First Lien Bonds and Seismic Retrofit Revenue Notes Series 2005A Second Lien Commercial Paper.



WHEREAS, BATA now wishes to enter into a cooperative agreement with the DEPARTMENT; now, therefore, be it

RESOLVED, that the BATA authorizes the Executive Director, or his designee, to enter into a cooperative agreement with the DEPARTMENT, substantially as set forth in Attachment A, attached hereto and incorporated herein as though set forth at length; and, be it further

RESOLVED, that the Executive Director is delegated the authority to make modifications to Attachment A prior to its execution without further review by BATA, as long as such changes do not materially amend the terms of the cooperative agreement.

RESOLVED, that the agreement as set forth in Attachment A, supercedes and replaces all previous Cooperative Agreements between BATA and DEPARTMENT pertaining to the management and operations of the state-owned toll bridges in the Bay Area.

BAY AREA TOLL AUTHORITY



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Jon Rubin, Chair

The above resolution was entered into by the Bay Area Toll Authority at a regular meeting of the Authority held in Oakland, California on March 22, 2006.