

**SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT**  
300 Lakeside Drive, P. O. Box 12688, Oakland, CA 94604-2688

AGENDAS FOR BOARD AND COMMITTEE MEETINGS

February 26, 2009

9:00 a.m.

A regular meeting of the Board of Directors and regular meetings of the Standing Committees will be held on Thursday, February 26, 2009, commencing at 9:00 a.m. All meetings will be held in the BART Board Room, Kaiser Center 20<sup>th</sup> Street Mall – Third Floor, 344 – 20<sup>th</sup> Street, Oakland, California.

Members of the public may address the Board of Directors and Standing Committees regarding any matter on these agendas. Please complete a “Request to Address the Board” form (available at the entrance to the Board Room) and hand it to the Secretary before the item is considered by the Board. If you wish to discuss a matter that is not on the agenda during a regular meeting, you may do so under General Discussion and Public Comment.

Any action requiring more than a majority vote for passage will be so noted.

Items placed under “consent calendar” and “consent calendar addenda” are considered routine and will be received, enacted, approved, or adopted by one motion unless a request for removal for discussion or explanation is received from a Director or from a member of the audience.

Please refrain from wearing scented products (perfume, cologne, after-shave, etc.) to these meetings, as there may be people in attendance susceptible to environmental illnesses.

BART provides service/accommodations upon request to persons with disabilities and individuals who are limited English proficient who wish to address BART Board matters. A request must be made within one and five days in advance of Board/Committee meetings, depending on the service requested. Please contact the Office of the District Secretary at (510) 464-6083 for information.

Kenneth A. Duron  
District Secretary

Regular Meeting of the  
BOARD OF DIRECTORS

The purpose of the Board Meeting is to consider and take such action as the Board may desire in connection with:

1. CALL TO ORDER

- A. Roll Call.
- B. Pledge of Allegiance.
- C. Introduction of Special Guests.

2. CONSENT CALENDAR

- A. Approval of Minutes of the Meeting of February 12, 2009 (Regular).\*  
Board requested to authorize.

- B. Award of Contract No. 6M3066, Furnish and Install Replacement Glass Systemwide as Needed.\* Board requested to authorize.

### 3. BOARD MATTERS

- A. Report of the BART Police Department Review Committee.
  - i. Report on Internal Affairs Investigation Consultant, Meyers Nave Riback Silver & Wilson: Scope of Work.\*
  - ii. Report on Comprehensive Police Department Review Consultant: Scope of Work.  
For information.

### **RECESS TO STANDING COMMITTEES**

Immediately following the Standing Committee Meetings, the Board Meeting will reconvene, at which time the Board may take action on any of the following committee agenda items.

### **ALL COMMITTEES ARE ADVISORY ONLY**

#### ADMINISTRATION COMMITTEE

Immediately following the Board Meeting recess

Director Murray, Chairperson

- A-1. Fiscal Year 2009 Mid Year Budget Revision.\* Board requested to authorize.
- A-2. Agreement with Keenan & Associates to Provide Broker and On-Call Consulting Services for Employee Benefits (Agreement No. 6M4042).\* Board requested to authorize.
- A-3. 2008 Customer Satisfaction Survey Results.\* For information.
- A-4. General Discussion and Public Comment.

#### ENGINEERING AND OPERATIONS COMMITTEE

Immediately following the Administration Committee Meeting

Director Keller, Chairperson

- B-1. District Signage Program.\*
  - a. Status of District Signage Program. For information.
  - b.
    - i. Authorize Funding Agreement with Metropolitan Transportation Commission for Regional Transit Signage Improvement Pilot Project. Board requested to authorize.
    - ii. Procurement of Prototype Signage Equipment or Modifications under Public Contract Code 20226. Board requested to authorize. (TWO-THIRDS VOTE REQUIRED.)

- B-2. (CONTINUED from the February 12, 2009, Engineering and Operations Meeting)  
Change Order to Contract No. 09DJ-110, Replacement and Repairs of Anode Arrays and Cable Installations at Transbay Tube Cathodic Protection System, with Vortex Marine Construction, Inc., for Additional Cable Replacement Work (C.O. No. 3).\* Board requested to authorize.
- B-3. (CONTINUED from the February 12, 2009, Engineering and Operations Meeting)  
Quarterly Performance Report, Second Quarter Fiscal Year 2009 - Service Performance Review.\* For information.
- B-4. General Discussion and Public Comment.

PLANNING, PUBLIC AFFAIRS, ACCESS, AND LEGISLATION COMMITTEE  
Immediately following the Engineering and Operations Committee Meeting  
Director Sweet, Chairperson

- C-1. (CONTINUED from February 12, 2009, Planning, Public Affairs, Access, and Legislation Meeting)  
Proposed 2009 State and Federal Advocacy Programs.\* Board requested to authorize.
- C-2. General Discussion and Public Comment.

**RECONVENE BOARD MEETING**

- 4. CONSENT CALENDAR ADDENDA  
Board requested to authorize as recommended from committee meetings above.
- 5. REPORTS OF STANDING COMMITTEES
  - A. ADMINISTRATION COMMITTEE
    - A-1. Fiscal Year 2009 Mid Year Budget Revision.\* Board requested to authorize.
    - A-2. Agreement with Keenan & Associates to Provide Broker and On-Call Consulting Services for Employee Benefits (Agreement No. 6M4042).\* Board requested to authorize.
    - A-3. 2008 Customer Satisfaction Survey Results.\* For information.

B. ENGINEERING AND OPERATIONS COMMITTEE

B-1. District Signage Program.\*

- a. Status of District Signage Program. For information.
- b.
  - i. Authorize Funding Agreement with Metropolitan Transportation Commission for Regional Transit Signage Improvement Pilot Project. Board requested to authorize.
  - ii. Procurement of Prototype Signage Equipment or Modifications under Public Contract Code 20226. Board requested to authorize. (TWO-THIRDS VOTE REQUIRED.)

B-2. (CONTINUED from the February 12, 2009, Engineering and Operations Meeting)

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B-3. (CONTINUED from the February 12, 2009, Engineering and Operations Meeting)

Quarterly Performance Report, Second Quarter Fiscal Year 2009 - Service Performance Review.\* For information.

C. PLANNING, PUBLIC AFFAIRS, ACCESS, AND LEGISLATION COMMITTEE

C-1. (CONTINUED from February 12, 2009, Planning, Public Affairs, Access, and Legislation Meeting)

Proposed 2009 State and Federal Advocacy Programs.\* Board requested to authorize.

6. GENERAL MANAGER'S REPORT

NO REPORT.

7. BOARD MATTERS

- A. Report of the Finance, Budget, and Internal Audit Committee. For information.
- B. Roll Call for Introductions.

8. GENERAL DISCUSSION AND PUBLIC COMMENT

9. CLOSED SESSION (Room 303, Board Conference Room)

A. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to subdivision (b) of Government Code Section 54956.9: one potential case.

B. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION

Name of Case: Johnson et al. vs. BART

Government Code Section: 54956.9 (b)(1)

C. CONFERENCE WITH LABOR NEGOTIATORS:

Designated representatives: Dorothy W. Dugger, General Manager; Teresa E. Murphy, Assistant General Manager – Administration

Employee Organizations: (1) Amalgamated Transit Union, Local 1555;  
(2) American Federation of State, County and Municipal Employees, Local 3993;  
(3) BART Police Officers Association;  
(4) BART Police Managers Association;  
(5) Service Employees International Union, Local 1021; and  
(6) Service Employees International Union, Local 1021, BART Professional Chapter

Government Code Section: 54957.6



## EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Walter DeBenedictis</i>		GENERAL MANAGER ACTION REQ'D: Approve and Forward to E&O Committee		
DATE: <i>2/18/09</i>		BOARD INITIATED ITEM No		
Originator/Prepared by: Larry Fisher Dept. Maintenance and Engineering <i>Larry Fisher</i> Signature/Date: <i>2/17/09</i>	General Counsel <i>Andrew Rosen</i> Signature/Date: <i>2/17/09</i>	Controller/Treasurer <i>[Signature]</i> Signature/Date: <i>2/17/09</i>	District Secretary [ ]	BARC <i>Paul [Signature]</i> Signature/Date: <i>2/17/09</i>
Status: Routed		Date Created: 11/04/2008		

TITLE:  
**Award of Contract 6M3066 for Furnish and Install Replacement Glass Systemwide as Needed**

NARRATIVE:

**Purpose:**

To authorize the General Manager to award Contract No. 6M3066 for the purchase and installation of replacement glass for all District stations and facilities to Lon's Glass & Mirror, Inc. of San Leandro, CA.

**Discussion:**

The Scope of Work of this Contract includes furnishing all labor, materials and equipment for glass replacement systemwide as needed and as directed by the District's representative. The Representative will assign the Work by issuing Task Orders during the term of the Contract. The bid consists of twenty (20) line items of estimated quantities of glass, glazing materials and installation labor hours for the three year base contract and two additional one year extensions.

Advance Notice to Bidders was mailed on September 17, 2008 to 15 prospective bidders as well as to eighteen (18) Plan Rooms and Minority Assistance Organizations. On September 23, 2008 the 6M3066 Contract Book was advertised. A Pre-Bid Meeting was conducted on October 7, 2008. Two (2) prospective bidders attended the meeting. Two (2) firms purchased copies of the Bid Documents and subsequently the District received two bids which were opened on October 28, 2008.

Both, Lon's Glass and Best Contracting had arithmetic errors in their unit bid extensions. The Instructions to Bidders in the contract book specify that bid pricing is to be determined based on the unit price bid. After correction of the bid totals based on the bidder's unit prices for estimated quantities, Lon's Glass remains the apparent low bidder. The results are shown as follows:

<b>Bidder's Name</b>	<b>Total Bid Price</b>
Lon's Glass and Mirror, Inc., Santa Clara, CA	\$796,225.00
Best Contracting Services, Inc., Hayward, CA	\$1,543,800.00
Engineer's Estimate	\$414,000.00

The engineer's estimate was based on historical costs and previous contracts. Glass costs for raw material have increased dramatically during the last half of 2008 driving these bids for a five

year contract up. Based on analysis of these increased costs, staff has found the low bid to be fair and reasonable and to be responsive to the solicitation. Examination of the bidder's business experience and financial capabilities has resulted in a determination that this bidder is responsible.

**Fiscal Impact**

District expenditures for this contract are estimated as follows:

FY09	\$80,000
FY10	\$160,000
FY11	\$160,000
FY12	\$160,000
FY13	\$160,000
FY14	\$76,225

Funding for this contract will be provided from the FY09 through FY14 Risk Management Budget for Vandalism. Funding is currently in place for FY09 expenditures.

**Alternative:**

To not award this Contract will result in longer repair times for broken glass in District facilities with a greater number of associated customer complaints.

**Recommendation:**

Staff recommends that the Board adopt the following motion.

**Motion:**

That the General Manager is authorized to award Contract No.6M3066 for Furnish and Install Replacement Glass Systemwide as Needed to Lon's Glass and Mirror, Inc. for an initial period of three years, and to exercise the options to extend the Contract for two additional one-year periods for the total bid price of \$796,225.00, pursuant to notification to be issued by the General Manager and subject to the District's protest procedures.

# SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

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## MEMORANDUM

**TO:** Board of Directors **DATE:** February 20, 2009  
**FROM:** General Counsel  
**SUBJECT:** Scope of Work of Meyers Nave's Internal Affairs Investigation

In preparation for the report of the Police Review Committee, scheduled for the February 26<sup>th</sup>, Regular Board meeting, below please find the description of the scope of services of Meyers Nave. This description has been on the District's website since last week. Jayne Williams, Managing Principal of Meyers Nave will be available on Thursday to make a short presentation to the Board about the scope of her firm's activities.

**SCOPE OF TASK.** The firm will conduct an independent, objective and unbiased internal affairs investigation of all seven BART police officers who were present during the New Year's Day incident. While the firm will primarily focus on the actions of those officers on the platform, it will also look into the events on the train that preceded the officers' arrival, as well as investigate the tactics and actions of the command staff who directed the officers. The firm's assignment is to determine whether the officers and command staff acted within the policies, practices, and procedures of the BART Police Department. The firm will also look at whether the policies, practices, and procedures used on New Year's Day conform to both state and federal laws, as well as align with the best practices of the policing profession.

Here are some examples of what the firm will investigate:

- Whether or not the level of force used was appropriate;
- Whether or not the officers acted professionally and their contact with the public was appropriate;
- Whether they had reasonable cause to detain;
- Whether or not the officers acted reasonably.

Meyers Nave will begin by gathering and reviewing every piece of evidence that is available, including the 40 plus witness statements, platform camera video and mobile phone videos. The firm will also review relevant BART Police Department's policies, including General Orders, Operational Directives and Standard Operating Procedures. The firm will seek to interview all the officers on the platform to get a detailed understanding of what they were doing, when they did it and why.

Meyers Nave will attempt to re-interview all of the witnesses to gain a more comprehensive view of what they saw and heard, focusing on both the shooting and the actions of other officers on the platform. If they identify additional witnesses, they will interview them as well.

The firm will analyze the actions of each officer separately and decide whether each officer's actions were appropriate. If the firm finds that the officers acted outside of established policies and procedures, it will recommend appropriate actions BART should take. Additionally, the firm will:

- Retain independent "Police Practices" experts to look at use of force issues – both physical use of force and verbal commands
- Review and analyze the various citizen and BART videos of the scene
- Reconstruct a timeline of events
- Review BART's investigation thus far – and comment on whether BART conducted it properly.

Meyers Nave will turn over its findings and recommendations to BART. Those recommendations could include:

- A finding about each and every officer
- Whether there should be discipline up to and including the termination of any officers if they acted outside of BART Police Department policies, or outside of state and/or federal laws
- Training or retraining of officers and/or supervisors
- Changes to policies and procedures



Matt Burrows



## EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Valeria Dellaquila</i>		GENERAL MANAGER ACTION REQ'D: Place on the February 26, 2009 Administration Committee Agenda		
DATE: c <i>2/20/09</i>		BOARD INITIATED ITEM: No		
Originator/Prepared by: Robert Umbreit Dept:	General Counsel	Controller/Treasurer	District Secretary	BARC
Signature/Date: <i>R Umbreit 2/19/09</i>	<i>Andrew Kwiatkowski 2/20/09</i>	<i>[Signature] 2/20/09</i>	<i>[Signature] 02/20/09</i>	<i>Justin Mann 2-20-09</i>

TITLE:

### Fiscal Year 2009 Budget Revision No. 2

NARRATIVE:

**PURPOSE:** To amend the Fiscal Year 2009 (FY09) Annual Budget

**DISCUSSION:** Board approval is requested for amendments to the FY09 operating budget. This revision addresses a major decline in District operating sources caused by the economic recession and likely upcoming state budget actions to reduce State Transit Assistance (STA) funding an additional amount. The revision includes staff recommendations to produce a balanced budget. This is the second revision to the FY09 operating budget. In October, the budget was revised and lowered by \$8.4 million (M) to recognize the initial diversion of STA funding in the state budget adopted in October.

The economy has traditionally had a direct impact on the District's two major revenues, passenger revenue and sales tax, and this fiscal year is no exception. Ridership growth has slowed dramatically as the fiscal year has progressed, and sales tax is already 5% below budget. At this point, after seven months of the fiscal year, it is difficult to project the impact of the recession on year-end results. However, this revision incorporates what we believe are conservative, yet reasonable forecasts for ridership and sales tax revenues, and is designed to guide the District through FY09 with minimal impacts to our customers, service levels, or staffing. In order to do this, we are recommending using some one-time strategies, such as utilizing some of the operating reserves and reducing capital allocations.

The duration and depth of this recession is generally expected to last through at least the next two calendar years. Looking ahead to next year, the FY10 deficit is projected to be worse than FY09. Therefore, ongoing solutions to operate with a lower revenue base are critical. Several of the actions recommended for FY09, such as the non-labor reductions and the targeted hiring freeze, will carry forward and help balance FY10.

Actions to permanently address shortfalls, such as revenue enhancements, like fare increases and parking charges, or expense reductions, such as service changes and position reductions, take time to implement and have longer-term impacts. As we develop the FY10 budget, staff is looking at all possible options to carefully implement more permanent, ongoing solutions to increase revenue, reduce expenses, as well as other measures to address the budget problem.

#### FY09 Forecast

Operating sources are currently projected to end the year \$30.5M unfavorable to the revised budget and operating expenses are projected to be \$3.6M over budget, for a net operating

shortfall of \$34.2M. This projected deficit is \$0.8M lower than the \$35M shortfall presented to the Board January 22nd, due to an updated estimate for retiree medical savings resulting from lower than budgeted rates.

Operating Source shortfall of \$30.5M:

- Passenger revenue unfavorable by \$2.0M (Core revenue down by \$6.5M, offset by \$4.5M of increased SFO Extension revenue)
- Other operating revenue unfavorable by \$1.6M (\$2.0M interest revenue loss offset by positive \$0.4M in permit fees)
- Sales tax is projected to be \$15.6M (7.5%) under budget by year end
- Net STA revenue reduction of \$6.8M. The District has already received the 1st quarter payment of \$2.1M based on the adopted State budget.
- Reduced allocation from SFO Reserve Account by \$4.5M, reflecting SFO passenger growth

Operating Expense overrun of \$3.6M:

- Resumption of \$2.5M annual feeder bus payment, due to loss of STA revenue
- \$5.3M in non-labor, consisting of \$3.0M in Operations increased maintenance costs largely due to car maintenance from increased car miles, and \$2.3M for outside counsel expenses related to capital project contract litigation.
- Overruns above offset by \$4.2M in operating expense savings, consisting of reductions in the budget for employee medical insurance of \$1.1M and retiree medical insurance of \$2.3M due to lower than budgeted rates for the second half of the year, as well as power savings of \$0.8M.

### **Budget Revision**

To solve the projected \$34.2M budget deficit, the revision includes proposals for \$6.4M of expense reductions, \$21.9 M of capital and other allocations reductions, \$2.3M of decreased debt service reserve funding and \$3.6M of reserves.

Operating Expense reduction of \$6.4M:

- Net labor reductions of \$4.8 M: projected savings from the targeted hiring freeze implemented in October 2008
- Savings of \$1.6M in other non-labor from a 7% cut in non-labor expenses by selected District departments, mainly in administrative departments

Debt Service and Allocations reduction of \$21.9M:

- Reduce annual allocation to the sales tax debt service reserve to \$2.3M from \$4.5M
- Reduce allocations to capital by \$21.0M. A large portion of the reduction is covered by using a variety of one-time sources to replace the allocations. See below for additional information.
- Defer annual \$0.6M allocation to the Access Program. Also defer allocation of \$0.3M of net West Bay long term parking revenue to SFO operations reserve account.
- In addition to the budget balancing reductions above, allocate \$0.9M for Phase IIB funding of share of the Lodi Power Plant, funded by use of the power market uncertainty reserve (\$2.3M prior to allocation). This action was approved by the Board of Directors in November.

Operating Reserves usage of \$3.6M:

- Increase budgeted allocations from the Financial Stability Policy Reserve by \$3.6M, bringing the FY09 budget for use of this reserve to a total of \$12.1M, which is the amount put into the reserve last fiscal year to help fund the one-time “catch-up” (for FY06 & FY07) retiree medical trust contribution of \$14.6M. The reserve fund had a balance at the end of FY08 of \$37.1M, so the use of \$12.1M would leave a balance of \$25.0M, slightly below the goal of 5% of the operating expense budget for the reserve.

Allocations to Capital Rehabilitation reduction of \$21.0M:

- The allocation for generation of local match funds will be reduced by \$2.1M, because a portion of the next federal grant that this amount would have matched will now be directed to the FY10 operating budget as preventive maintenance, instead of to capital. The local match, therefore, will also be provided by the operating budget.
- The Stations & Facilities Renovation program, will now not receive its planned funding from allocations, which will be partially replaced by Prop 1B funds made available by savings in the 480 volt switchgear project.
- The project to replace carpeted floors in 300 vehicles will no longer receive \$900,000 from allocations, but that sum will be replaced by savings in the budgets of several older car-related projects which have been completed under budget.
- The planned allocation to continue the limited use smart card demonstration will not be made, and the demonstration will be down scoped to fit within its already funded budget.
- The allocation for consulting services for the IT Strategic Plan will be cut, and the project will be deferred.
- The new car buy project allocation will be reduced by \$800,000 which is anticipated to be supplied through grant funds as BART and MTC finalize the funding program for the initial years of the program.
- Allocations will be reduced for numerous other programs including non-revenue vehicle and capitalized equipment replacement and capitalized maintenance.
- Prior year expenses for the Earthquake Safety program, originally funded through operating to capital allocations, are eligible for reimbursement from GO Bond interest earnings. The revision proposes that \$4.6M of the total \$7.4M in eligible pre-bond expenses be refunded to the operating budget at this time by using the funds to replace the capital allocations of the same amount, leaving the balance available for future capital or operating use. This was the last piece of recommended actions to balance the FY09 operating budget.

Although we have been able to minimize impacts to the capital program through using one-time sources, substituting other grant funds, and savings from other capital projects, the infrastructure portion of the economic stimulus package signed by the president this week will provide an opportunity to mitigate at least some of the impacts of reducing operating-to-capital allocations as proposed in this EDD. The new federal stimulus funds for system renovation are expected to allow the District to backfill funding for some of the most critical capital needs which have to be cut from the capital program under the current District budget revision. In fact, the overall stimulus package will allow the District to address not only some of the current shortfalls in specific capital projects, but will allow considerable new capital activity to commence over the coming months.

**FISCAL IMPACT:**

The proposed revision would reduce operating sources and uses and increase the allocation from

reserves to balance the projected deficit and produce a balanced budget for FY09. See Attachment 1 for line item detail.

**ALTERNATIVES:**

1. Do not revise the FY09 budget.
2. Do not revise FY09 budget but implement solutions immediately.
3. Direct staff to develop other solutions and return to Board.

Failure to implement solutions as soon as possible will result in a larger deficit at fiscal year-end.

**RECOMMENDATION:** Approval of the motion below.

**MOTION:** Adoption of the attached resolution.

ATTACHMENT 1  
Fiscal Year 2009 District Operating Budget  
Sources and Uses Detail

SOURCES	FY09 REVISION #1	Increase / Decrease	FY09 REVISION #2
Rail Passenger Revenue	\$ 322,746,131	\$ (2,010,768)	\$ 320,735,363
ADA Passenger Revenue	585,000	-	585,000
Parking Revenue	11,280,055	-	11,280,055
Other Operating Revenue	21,504,311	(1,627,136)	19,877,175
<b>Sub-Total Operating Revenue</b>	<b>356,115,497</b>	<b>(3,637,904)</b>	<b>352,477,593</b>
Sales Tax Proceeds	206,777,346	(15,572,091)	191,205,255
Property Tax Proceeds	30,718,800	-	30,718,800
STA & TDA State Assistance	8,959,959	(6,810,550)	2,149,409
Measure B	2,060,688	-	2,060,688
Federal 5307 Preventive Maintenance (SMP Grant)	5,298,260	-	5,298,260
Federal 5307 Grant - Rail Car MTC Fund Swap	22,681,000	-	22,681,000
San Mateo County Financial Assistance	16,000,000	-	16,000,000
San Mateo County Measure A Sales Tax	653,700	-	653,700
San Mateo County STA Prop 42 TCRP Increment	801,024	-	801,024
Allocation from SFO Reserve Account	6,172,605	(4,503,493)	1,669,112
Millbrae Use, Operating & Maint. Agreement	721,000	-	721,000
Allocation from W. Dublin Project for Debt Service	3,130,964	-	3,130,964
Allocation from Power Reserve	-	882,353	882,353
Allocation from Operating Reserves	8,459,346	3,602,971	12,062,317
<b>Sub-Total Financial Assistance &amp; Allocations</b>	<b>312,434,692</b>	<b>(22,400,810)</b>	<b>290,033,882</b>
<b>TOTAL SOURCES</b>	<b>668,550,189</b>	<b>(26,038,714)</b>	<b>642,511,475</b>
<b>USES</b>			
Labor	387,492,982	(8,243,849)	379,249,133
OPEB Unfunded Liability	1,343,904	-	1,343,904
ADA Paratransit	11,538,678	-	11,538,678
Purchased Transportation	2,884,647	2,500,000	5,384,647
Power	38,328,000	(800,000)	37,528,000
Other Non-Labor	92,029,607	3,761,670	95,791,277
Extraordinary Expense - Rail Car Fund Swap	22,681,000	-	22,681,000
<b>Sub-Total Operating Expense</b>	<b>556,298,818</b>	<b>(2,782,179)</b>	<b>553,516,639</b>
Debt Service	63,601,999	(2,250,000)	61,351,999
MTC Loan Debt Service	6,260,000	-	6,260,000
Allocation - To SFO Reserves	17,454,724	-	17,454,724
Allocation - Capital Rehabilitation	25,373,552	(20,983,888)	4,389,664
Allocation - Lodi Power Plant	-	882,353	882,353
Allocation - Access Programs	625,000	(625,000)	-
Allocation - West Bay Long Term Parking	280,000	(280,000)	-
<b>Sub-Total Allocations</b>	<b>113,595,275</b>	<b>(23,256,535)</b>	<b>90,338,740</b>
<b>TOTAL USES</b>	<b>669,894,093</b>	<b>(26,038,714)</b>	<b>643,855,379</b>
<b>OPEB Unfunded Liability</b>	<b>(1,343,904)</b>	<b>-</b>	<b>(1,343,904)</b>
<b>NET RESULT</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>

**BEFORE THE BOARD OF DIRECTORS OF THE  
SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT**

In the matter of amending Resolution No. 5052 (as amended by Resolution No. 5061) regarding Fiscal Year 2009 Annual Budget

Resolution No. \_\_\_\_\_

RESOLVED, that Resolution No. 5052 (as amended by Resolution No. 5061) is amended by changing the following line items in Exhibit A thereof:

	<u>Current Amount</u>		<u>Increase/ (Decrease) In This Resolution</u>		<u>Amended Amount</u>
<b><u>Fund Source Line Item:</u></b>					
Operating Revenue	\$ 356,115,497	\$	(3,637,904)	\$	\$ 352,477,593
STATDA	\$ 8,959,959	\$	(6,810,550)	\$	\$ 2,149,409
1/2 ¢ Sales Tax	\$ 206,777,346	\$	(15,572,091)	\$	\$ 191,205,255
Allocation from SFO Reserve	\$ 6,172,605	\$	(4,503,493)	\$	\$ 1,669,112
Allocation from Power Market Uncertainty Reserve	\$ -	\$	882,353	\$	\$ 882,353
Allocations from Reserves	\$ 8,459,346	\$	3,602,971	\$	\$ 12,062,317
<b><u>Fund Use Line Item:</u></b>					
Net Labor Expense	\$ 388,836,886	\$	(8,243,849)	\$	\$ 380,593,037
Non Labor Expense	\$ 144,780,932	\$	5,461,670	\$	\$ 150,242,602
Revenue Bond Debt Service	\$ 63,601,999	\$	(2,250,000)	\$	\$ 61,351,999
Allocations to Capital Rehabilitation	\$ 25,373,552	\$	(20,983,888)	\$	\$ 4,389,664
Allocations - Access Fund	\$ 625,000	\$	(625,000)	\$	\$ -
Allocations to SFO Reserves	\$ 17,734,724	\$	(280,000)	\$	\$ 17,454,724
Allocations - Power Generation	\$ -	\$	882,353	\$	\$ 882,353



## EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Marcia Debraugh</i>		GENERAL MANAGER ACTION REQ'D: Board Approval and Authorization		
DATE: <i>2/20/09</i>		BOARD INITIATED ITEM: No		
Originator/Prepared by: Elaine M. Kurtz Dept: Human Resources <i>Elaine M Kurtz</i>	General Counsel <i>Andrea Kuehn</i> 2/19/09	Controller/Treasurer <i>[Signature]</i> 2/20/09	District Secretary [ ]	BARC <i>[Signature]</i> 2-19-09
Signature/Date:				
Status: Routed		Date Created: 02/09/2009		

TITLE:

### Broker and On-Call Consulting Services for Employee Benefits

NARRATIVE:

#### PURPOSE:

To obtain Board authorization for the General Manager to execute Agreement No. 6M4042 with Keenan & Associates, a California-based company, to provide employee benefit consulting and brokerage services for the District. The agreement will have a term of five (5) years (including two labor contract negotiation cycles) and maximum compensation not to exceed \$2,000,000.

#### DISCUSSION:

The District contracts for benefits consulting and brokerage services to guarantee access to the skills required to remain responsive and compliant in the increasingly regulated and technically complex area of employee benefits. The benefits consultant/broker will assist the District in ensuring that those benefits programs which are not under the CalPERS umbrella, including dental, vision, life insurance and disability insurance, and Director and domestic partner medical benefits are of the highest quality at a fair market price. In addition, the consultant/broker conducts the annual valuation of the post-employment benefits other than pensions, and provides the Annual Required Contribution (ARC) under appropriate Governmental Accounting Standards Board (GASB) standards for both the Retiree Medical Plan, as well as for other post-employment benefits. The consultant/broker also conducts special studies of benefits options and future costs, which are often in greatest demand in preparation for collective bargaining.

The value of the benefits consultant/broker is realized in such areas as the implementation of cost-containment options, expert advice on health benefits trust assumptions, regulatory and case law developments, and multi-dimensional cost modeling. These services have become critical elements of the collective bargaining process. The benefits consultant is not used for day to day benefits administration, which is handled by District staff. The consultant role is confined to those processes which are so technically complex or dependent on relationships and bargaining power in the benefits marketplace that they are most effectively done by third parties.

Request For Proposals (RFP) No. 6M4042, Broker and On-Call Consulting Services for Employee Benefits, was issued on November 17, 2008 to twenty-five (25) organizations. Fifteen (15) organizations attended the pre-proposal meeting on December 1, 2008. In response to the RFP, four (4) proposals were submitted on December 30, 2008. The proposals were from Keenan & Associates (Keenan), Mercer, Segal and Watson Wyatt Worldwide.

A Source Selection Committee (the Committee), chaired by the Procurement Department with representatives from Human Resources, Labor Relations, Office of Civil Rights and Operating Budgets, participated in the selection process. The Committee utilized the Best Value Method to assess the proposals and determine which vendor's proposal would offer the most cost-effective pairing of service capacity and cost. Initially, the Committee evaluated the four proposals to determine if all vendors met the minimum technical requirements established in the RFP. On the basis of this analysis, the Committee found Watson Wyatt Worldwide failed to meet the minimum technical requirements. Their proposal was incomplete, and they were eliminated from further consideration.

The proposals were then evaluated, scored and ranked based on project approach, organizational experience, project understanding and personnel experience. The Committee analyzed the price proposals from Keenan & Associates, Mercer and Segal, determined that all three competitors were in the competitive range and invited them to the next phase, oral presentations. The oral presentations were held on January 29 and 30, 2009. At the conclusion of the oral interviews, the Committee combined the scores for Qualifications, Technical and Oral Presentations and found that Keenan & Associates presents the best value to the District for benefits consulting and brokerage services.

Keenan & Associates is a California-based company that is focused on serving public agencies and hospitals in California, with more than 800 clients and more than 65 trusts and joint power authorities. They are the largest privately-held broker in California, the 3<sup>rd</sup> largest privately held-broker in the United States and the 17<sup>th</sup> largest broker in the United States. Their headquarters is in Torrance and their local office is in downtown Oakland. They are well versed in legislative constraints and mandates, supporting the collective bargaining process and retiree issues.

Keenan's proposal, based on BART-estimated hours, was the lowest of the three qualified vendors and less than half of the next highest vendor. Keenan submitted a price proposal of \$1,709,440, compared to \$3,706,800 from Mercer and \$3,679,760 from Segal. The average benefit review and renewal portion of their bid over the five year contract was 63% lower than the next highest bidder at \$55,000 vs. \$150,000.

Keenan's proposal was based on BART staff's estimate of the level of effort needed by the various levels of consultants in the vendor organizations. Human Resources and Labor Relations recommend setting the contract limit at \$2,000,000, which is slightly higher than our current estimates of contract cost, to provide a contingency in the event that 2009 or subsequent labor contract negotiations occurring during the term of this contract require a higher level of support

than is anticipated.

The agreement will be approved as to form by the Office of the General Counsel.

**FISCAL IMPACT:**

The maximum compensation for this five-year agreement will not exceed \$2,000,000. Human Resources and Labor Relations are the financial sponsors of this agreement. Funds are available in the FY09 Human Resources and Labor Relations operating budgets for expenses in the first four months of the contract, and these Departments will likewise be the source of funding for future years.

**ALTERNATIVES:**

Not award the agreement at this time and enter into discussions with Mercer to activate the contract extension-period.

**RECOMMENDATION:**

Adopt the following motion.

**MOTION:**

That the General Manager or her designee is authorized to execute Agreement No. 6M4042 with Keenan & Associates for Broker and On-Call Consulting Services for Employee Benefits for a term of five years and maximum compensation not to exceed \$2,000,000, pursuant to notification issued by the General Manager and subject to compliance with the District's protest procedure.



## EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Walter B. ...</i>		GENERAL MANAGER ACTION REQ'D: Approve and forward to the Board		
DATE: c <i>2/18/09</i>		BOARD INITIATED ITEM: No		
Originator/Prepared by: Tian Feng Dept. M&E <i>[Signature]</i>	General Counsel <i>[Signature]</i>	Controller/Treasurer <i>[Signature]</i>	District Secretary [ ]	BARC <i>[Signature]</i>
Signature/Date: <i>[Signature]</i> <i>2/18/09</i>	<i>[Signature]</i> <i>2/18/09</i>	<i>[Signature]</i> <i>2/18/09</i>	[ ]	<i>[Signature]</i> <i>2/18/09</i>

TITLE:

**Authorization to Execute a Funding Agreement with the Metropolitan Transportation Commission for a Regional Transit Signage Improvement Pilot Project at Embarcadero Station/San Francisco Ferry Terminal, and Authorization for Prototype Material Procurement Under Public Contract Code Section 20226**

NARRATIVE:

**PURPOSE:**

To obtain the Board authorization for the General Manager to execute a funding agreement ("Agreement") with MTC to implement the pilot project ("Project") for MTC's regional transit signage improvement efforts at Embarcadero Station/ San Francisco Ferry Terminal.

To obtain authorization, by two-thirds vote of the Board, for procurement of material for prototype signage development by the Project and for BART- funded prototype signage work at the platform level (the "Extended Project"). The extended project will involve material procurement in an amount not to exceed \$350,000, pursuant to Public Contract Code Section 20226.

**DISCUSSION:**

MTC adopted and funded a regional transit signage improvement program entitled Transit Connectivity Plan ("Program") in 2006. This Program, when fully implemented, will provide wayfinding signage, in-station transit information displays, and real-time transit information displays at major transit hubs in the Bay Area. The Program identified 24 transit hubs that need improvement to their signage systems to better serve customers using more than one transit provider. Fourteen BART stations are within the 24 hubs. MTC has provided BART with funding to jointly develop a regional signage standard and implementation strategy for the Program. The regional signage standard was completed in mid 2008. Since then MTC has offered BART additional funding to develop a prototype signage system that will be applied throughout the Program. MTC has identified the Embarcadero Station/San Francisco Ferry Terminal area as a base hub for developing the prototype signage system. The scope of the current Project before the Board includes a wayfinding needs assessment, a signage study, graphic arts, material procurement, component design, mockups and final fabrication of prototype signs, structural analyses, and field testing of the signs. The

Office of the General Counsel will approve the agreement with MTC as to form.

The Extended Project consists of three components. Completion of these three components will provide the necessary signage prototypes for BART system-wide implementation:

- A. To provide design, fabrication and field testing of prototype signage components and systems necessary for the Program.
- B. To develop a portion of BART signage prototypes for implementation at the Embarcadero Station and for future BART use system-wide.
- C. To use the BART-funded portion of the Extended Project for the completion of design, fabrication and field testing of BART-specific signage prototypes at the platform area. (The MTC Project limits its scope to the concourse area.)

This Extended Project will result in a regional signage standard for materials and methods of fabrication and installation, and will establish a baseline to ascertain costs to fully implement the Program.

The chief objective of this project is to enable the development of specifications for future competitive bidding for MTC's Transit Connectivity Plan/Hub Signage Program. The "research and development" nature of the proposed prototype work (both under the MTC funding agreement and the additional work funded by BART) makes procurement of materials by the standard sealed bid competitive bidding process authorized under Public Contract Code Sections 20221 and 20222 ineffective and impractical. The items that will be needed for fabrication are unknown at the inception of a prototype design project. Staff has determined that the method of procurement that is needed for the "research and development" of prototypes is allowed under Public Contract Code Section 20226.

Under Public Contract Code Section 20226, "Procurement of Prototype Equipment or Modifications," upon a finding by two-thirds of all members of the Board that the proposed purchase in compliance with Sections 20221 and 20222 of the Public Contract Code does not constitute a method of procurement adequate for the operation of District facilities or equipment, the Board may direct the procurement of prototype equipment or modifications in an amount sufficient to conduct and evaluate operational testing without further observance of any provisions requiring contracts, bids, or notice.

Technical consulting services and materials for the extended Project are being procured under the District's current General Engineering Services Agreement 6M8008 and current Construction Management Services Agreement 6H3138. Both agreements are with Jacobs Engineering Group, Inc.

**FISCAL IMPACT:**

The funds provided under the Agreement with MTC to implement its pilot project for the Regional Transit Signage Improvement at Embarcadero Station/San Francisco Ferry Terminal is \$635,000. BART's portion of the funding for the Extended Project is \$225,595 and is included in the total project budget for 59CS, Station Wayfinding Signs. The cost for material procurement will not exceed \$350,000 for the Extended Project and will be drawn down from each fund source based upon actual expenditures for MTC's Project and additional BART work.

The Office of the Controller/Treasurer certifies that funds are currently available to meet BART's funding share of \$225,595.

**FY06 -10 Capital Maintenance Allocation 50Z** **\$41,740**

As of the period ending 12/28/08, \$400,000 is available for commitment from fund source 50Z for this Agreement and \$358,260 has been committed to date by BART. There is \$0 in pending commitments in BART's financial management system. This action will commit \$41,740, leaving an uncommitted balance of \$0.

**FY-07 - 11 Capital Allocation 51W** **\$95,926**

As of the period ending 12/28/08, \$550,000 is available for commitment from fund source 51W for this Agreement and \$347,062 has been committed to date by BART. There is \$107,012 in pending commitments in BART's financial management system. This action will commit \$95,926, leaving an uncommitted balance of \$0.

**Joint Development Pre-Award 60A** **\$87,929**

As of the period ending 12/28/08, \$165,000 is available for commitment from fund source 60A for this Agreement and \$77,071 has been committed to date by BART. There is \$0 in pending commitments in BART's financial management system. This action will commit \$87,929, leaving an uncommitted balance of \$0.

There is no fiscal impact on available unprogrammed District capital funds.

**ALTERNATIVES:**

Do not proceed with this Agreement. Without such financial assistance from MTC, BART cannot complete the development of system-wide signage prototypes in the foreseeable future. The prototypes of signage are vital to the implementation of BART's Signage Program.

**RECOMMENDATION:** Adopt the following motions:

**MOTIONS:**

1. The General Manager is authorized to execute an Agreement with MTC to implement the pilot project ("Project") for MTC's regional transit signage improvement efforts at Embarcadero Station/San Francisco Ferry Terminal.

2. The Board, by a two-thirds majority vote, finds that compliance with Sections 20221 and 20222 of the Public Contracting Code does not constitute a method of procurement adequate for the operation of District facilities or equipment, and therefore authorizes procurement of materials not in excess of \$350,000 (partly funded by the MTC and partly funded by the District) pursuant to Public Contract Code Section 20226, "Procurement of prototype equipment or modification," for the purpose of procuring prototype equipment, materials, and supplies for the Extended Project.



## EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Waseem Akhavan</i>		GENERAL MANAGER ACTION REQ'D: Approve and forward to the Board		
DATE: 2/5/09		BOARD INITIATED ITEM: No		
Originator/Prepared by: Khawaja Zubair Dept: Engineering <i>K. Zubair 2/2/09</i>	General Counsel <i>Andrew...</i> 2/2/09 [ ]	Controller/Treasurer <i>Roberta...</i> 2/2/09 [ ]	District Secretary	BARC <i>Paul...</i> 2/2/09 [ ]

Status: Routed	Date Created: 01/23/2009
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TITLE:

### CHANGE ORDER NO. 3 TO CONTRACT NO: 09DJ-110, REPLACEMENT AND REPAIRS OF ANODE ARRAYS AND CABLE INSTALLATIONS AT TRANSBAY TUBE (TBT) CATHODIC PROTECTION SYSTEM

NARRATIVE:

PURPOSE: To obtain Board authorization for the General Manager to execute Change Order No. 3 to Contract No. 09DJ-110 for replacement and repair of Anode Arrays and Cable Installations at TBT Cathodic Protection System for an amount of \$860,000.

DISCUSSION:

Award of Contract No. 09DJ-110 to Vortex Marine Construction, Inc. in the amount of \$1,809,356.00 was authorized by the Board on June 26, 2008 following a public bidding process wherein Vortex was deemed the lowest responsive bidder. Notice to Proceed was issued on August 21, 2008.

The purpose of this Change Order No. 3 is to perform additional cable replacement work from the TBT to anode in the bay.

Presently, the transbay tube steel shell is protected from corrosion by a series of cathodic protection anodes. These anodes are located at some distance away from the TBT at the bottom of the bay, and provide the required current to charge the tube shell to a negative voltage. This negative voltage in turn protects the steel shell from corrosion. Each anode is connected to a power source located in the TBT with an armored submarine cable at the bottom of the bay. The steel shell is required around the concrete tube structure for the integrity of the tube against mechanical damages as well as against water leakage.

Under contract 09DJ-110, originally 18 inactive anodes were to be replaced along with corresponding cable connections. All the 18 anodes were found and tested; some of them can not be brought back to operation unless the entire cable is changed from the top hat. Fourteen (14) anodes already have been replaced; 12 of the 14 are operational. The remaining two of the fourteen will require cable change through the top hats. The remaining four (4) inactive anodes of the original 18 will require replacement of both the anode array and the cables through top hats. Once installation is completed, and power supply is operating, all 18 anodes will be active.

In over 40 years, there may have been only 2 occasions when full length cables were replaced all the way through top hat into the tube. Most of the 18 old cables are in need of replacement; unless they are replaced, even new anodes can be ineffective. Changing these cables through the top hat can be expensive and must be performed very carefully to protect the integrity of

the tube. With this existing contract we have successfully replaced two cables at 43 AC and 43 IC. The present contractor's freshly gained experience in changing these cables will allow them to work confidently to complete the job on time.

To elaborate on the new measures to be performed under this Change Order, the contractor will replace cables from the anodes through top hats at 5AC, 5IC, 12IC, 19AC, 19IC, 22AC, 33AC; the contractor will also replace anode arrays at locations 12IC, 19AC, 19IC and 22AC. Please note that 5IC is a working anode at this time, but has a very old cable with low impedance. This anode must be moved when the cable at the twin anode 5AC is being replaced. For this reason the old cable at 5IC will be changed.

Vortex Marine has quoted a price of \$857,018.00 for this Change Order. The requested approval is for \$860,000.00 which allows for small miscellaneous cost items during implementation. Many uncontrollable and unknown variables such as water current, weather and exact location may have an impact on the duration and cost of implementation. This Contract Price is a unit price labor contract and the exact cost is dependent on these variables. Therefore, all effort will be made to install all the cables and anodes described herein, or until the funding is exhausted.

Based on all the marine work done so far on Cathodic Protection, Vortex quote is fair and reasonable as supported by engineer's estimate. This change order will bring the total change order value to 48% of the original contract amount of \$1,809,356.00.

Pursuant to Board Rule 5-2.4, except for construction and procurement contracts greater than \$200 million, all change orders which involve an expenditure of more than \$200,000 require the approval of the Board of Directors.

The Office of the General Counsel will approve this Change Order as to form, and the Procurement department will review this Change Order for compliance with the District's procurement guidelines, prior to execution.

**FISCAL IMPACT:**

Funding of \$860,000.00 for contract 09DJ-110 change order No. 3 is included in the total project budget for the FMS#09DJ – Track Rehab (Cathodic Protection). The Office of the Controller/Treasurer certifies that funds are currently available to meet this obligation.

**CA-03-0729 FY05**

**47W**

**\$860,000**

As of month ending 12/28/08, \$4,958,891 is available for commitment from this fund source for this project and BART has committed \$3,207,953 to date. There are pending commitments of \$828,948 in BART's financial management system. This action will commit an additional \$860,000 leaving an uncommitted balance of \$61,990 in this fund source.

There is no fiscal impact on available un-programmed District Reserves.

**ALTERNATIVES:**

To not replace and repair the cables of the cathodic protection system or to replace and repair fewer cables. This will leave the Transbay Tube more susceptible to corrosion.

**RECOMMENDATION:**

Based on the analysis by Staff, it is recommended that the Board adopt the following motion:

**MOTION:**

The General Manager is authorized to execute Change Order No. 3 to Contract No. 09DJ-110 for Cable and Anode Installations at Transbay Tube Cathodic Protection System, to Vortex Marine Construction, Inc. in an amount not to exceed \$860,000.



## EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Ulrica Selinger</i>		GENERAL MANAGER ACTION REQ'D:		
DATE: <i>2/15/09</i>		BOARD INITIATED ITEM: No		
Originator/Prepared by: Paul Fadelli Dept. Government & Community Relations <i>Paul Fadelli</i> Signature Date: <i>2/15/09</i>	General Counsel <i>Andrew...</i> <i>2/3/09</i>	Controller/Treasurer <i>[Signature]</i> <i>2/4/09</i>	District Secretary	BARC <i>[Signature]</i> <i>2-4-09</i>
Status: Routed		Date Created: 01/14/2009		

TITLE:

### BART 2009 State and Federal Advocacy Programs

NARRATIVE:

**PURPOSE:** To review and approve the District's state and federal advocacy program.

**DISCUSSION:** based on BART priorities and in consideration of the dramatically changing political environment and dynamics in both Sacramento and Washington, DC, staff has outlined the following state and local legislative and advocacy objectives for the year ahead.

Proposed State Advocacy Program for BART:

**(1) General State Budget Oversight and Action.** The continuing state budget crisis will require monitoring and coordination within BART and among transit allies and the California Transit Association (CTA) to participate in the process, articulate important state transit assets and to defend adequate transit funding. With a projected state budget deficit approaching \$44 billion over the next eighteen months, BART and other transit agencies will need to work hard to resist additional cuts in the current State Transit Assistance (STA) program, in addition to convincing legislators to keep the program which has been proposed for elimination.

Part of this effort must include assuring that any available Proposition 1B funding (including the Public Transportation Modernization, Improvement, Service Enhancement Account [PTMISEA], the State and Local Partnership program and security funds) is made available in ways that benefit BART. For example, there have been discussions that should a budget deal be completed, the distribution of PTMISEA funds could be accelerated as part of the governor's "stimulus" package.

**(2) Secure Stable Transit Funding.** Following a third year of fiscal crisis in the capitol from budget deficit issues, transit funding is once again a target to fill the General Fund shortfall. In addition to educating new and continuing legislators on the importance of STA operational funding, significant strides need to be made to find a *secure* dedicated funding source for transit in the state.

To better guarantee that its system remains in a state of good repair, BART will need to work with a coalition of transportation, business and environmental interests on the difficult challenge of establishing a dedicated stream of transit funding. This may take a significant organized effort to begin planning for a ballot measure seeking a constitutional amendment, which may seek to redirect “spillover” funding from sales tax on motor fuel to flow directly through Proposition 42 to the State Transportation Improvement Program (STIP), local streets and roads and transit programs. These options are presently being discussed for action by MTC, CTA and the new transit/environmental coalition organized to secure transit funding so important new environmental legislation can be implemented.

**(3) Greenhouse Gas/ Land Use issues.** California now has two of the most historic, innovative and strict environmental laws in the nation to combat greenhouse gas (GHG) emissions. Unveiled last December by the California Air Resources Board, the "Scoping Plan" for **AB 32** (passed in 2006) will implement a sweeping climate change strategy for the state. **SB 375** passed last year and will require regional transportation planning agencies to develop "sustainable community strategies" to help limit greenhouse gas emissions. SB 375 also provides incentives for local governments to incorporate these strategies into the transportation elements of their general land use plans.

The BART Board supported SB 375 and worked with the author (now Sen. Pro Tempore Steinberg) to make the bill more amenable to BART Transit Oriented Development (TOD) needs. Senator Steinberg and the Governor have said that follow-up legislation may occur this year to fine-tune SB 375. BART should be a part of that discussion because such efforts may assure fewer hurdles to TOD development in the Bay Area.

BART has also been an active participant in helping to develop the Scoping Plan for AB 32 (directly and through CTA), and continuing our participation in any implementation effort may assure greater opportunities for transit funding. The Scoping Plan identifies several measures including a cap-and-trade system to reduce emissions.

**(4) Address Specific BART issues.** BART should work with its Bay Area Delegation, staff and the 34 new legislators in the state capitol to build key relationships and articulate specific BART needs as they arise, including:

- Responding to and working with state legislators who have introduced bills to address various aspects of the incident that took place at the Fruitvale Station on New Year’s Day. Bills may be introduced to require a public review mechanism and to mandate specific training requirements for BART Police.
- Reintroducing AB 1221 (Ma), which passed the legislature last year but was vetoed by the Governor. In addition to expanding the definition of a transit village plan to 1/2 mile, AB 1221 would have established certain requirements through the Infrastructure Financing District Act when seeking bond financing for the plan. A similar bill will again be sponsored by BART in order to enhance TOD local financing.

- Supporting legislation which could establish local fee-based revenue streams for transit. Last year BART supported a variety of bills which would have helped finance local programs to combat GHG emissions and support greater transit access. There will again be a variety of such bills this year, including one sponsored by MTC.
- Supporting legislative and administrative efforts which assist development of the CA High Speed Rail system, and connectivity of regional transit to that system.
- Supporting legislation which enhances transit access, including greater pedestrian and bicycle options.

#### Proposed **Federal** Advocacy Program for BART

##### **(1) Pursue BART Priorities Through Federal Stimulus and Reauthorization Process.**

The 111th Congress has begun in the context of a national recession, a financial crisis, and transportation authorization legislation that is expiring. Therefore, the options for funding transit are unknown at best. There may be positive funding opportunities for BART resulting from “economic recovery” (stimulus) legislation, or longer-term efforts which will need to be outlined and pushed in a contentious Reauthorization effort -- which may take years to resolve. Some of these actions to be taken by BART may include:

- Working to secure a long-term funding commitment for nearly 700 new BART cars in any stimulus and/or Reauthorization effort;
- Organizing and submitting BART project candidates for possible “Ready to Go” stimulus funding in year-one and year-two of any economic recovery effort;
- Working with other “Old Rail” systems from around the country to direct greater funding for metropolitan rails systems (capital and core capacity) through Reauthorization; and
- Supporting efforts which assist transit access goals -- including enhancement of bicycle and pedestrian projects.

**(2) Seek increased funding sources for security needs.** With a long list of security needs left unfunded, BART must work with Congressional leadership and the new Administration to assist the open transit systems most at risk of terrorist attacks. This would include pursuing greater funding through Homeland Security programs and appropriations and more flexible ways to spend that funding.

**(3) Monitor and Respond to Climate Change Legislation.** Transit can play a vital role in reducing GHG emissions and fulfilling the goals of a federal climate change bill. President Obama has signaled his preference for a cap-and-trade program over a carbon tax approach to the GHG problem, and it appears likely that Congress will favor an approach that involves

auctioning emission credits and “investing” the proceeds in programs to reduce GHG emissions. BART should be an advocate for greater investment in transit as a means to reach the specified public goals for reducing GHG emissions.

**(4) Work to Have New Administration Support Public Transit.** With increased Democratic majorities in the House and Senate, the new Obama Administration has the opportunity to provide strong leadership with the Congress on key issues involving public transit. This includes economic stimulus and climate change legislation, transit reauthorization and other legislative initiatives. BART’s federal advocacy team would in addition seek to build this support at the U.S. Department of Transportation, the EPA, the Department of Energy and within the White House.

**(5) Pursue support for BART’s seismic retrofit efforts.** BART has been successful in obtaining small amounts of funding to assist its seismic retrofit goals. While recent news indicates that the costs of retrofitting the Transbay Tube will be lower than expected, additional funds would help with plans for a wider application of necessary seismic work. This may require working to pass authorization or appropriations legislation to further this goal in the new Congress.

**(6) Address Specific BART issues.**

- If necessary, continue efforts with other transit agencies to resolve SILO/LILO transaction problems which could result in \$40 million in costs to BART if AIG's bond rating declines. This may require administrative action through the Department of Treasury or corrective legislation.
- Prepare and coordinate BART’s participation at annual American Public Transit Association (APTA) March Legislative conference.
- Monitor federal efforts that could impact CA High Speed Rail project (i.e. possible support for Senator John Kerry’s “High Speed Rail for America Act.”)
- Continue support for legislation and/or Administration support for tax or employee incentives to assist transit ridership.
- Work to assure continued federal financial support (FTA) for the Oakland Airport Connector (OAC).
- Build greater federal support for efforts to move transit toward applications which increase energy efficiency.

**FISCAL IMPACT:**

N/A.

**ALTERNATIVE:**

Decline to adopt the proposed legislative program or make changes/additions as appropriate.

**RECOMMENDATION:**

That the Board approves the following two motions:

**MOTION:**

- 1). The Board approves the described components of a BART state advocacy program.
- 2). The Board also approves the described components of a BART federal advocacy program.