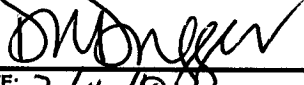
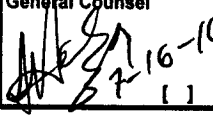
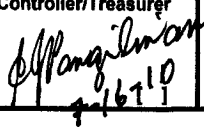
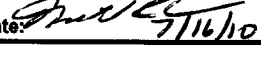




EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: 		GENERAL MANAGER ACTION REQ'D: Approve and forward to the Board of Directors for Action		
DATE: 7/16/10		BOARD INITIATED ITEM: No		
Originator/Prepared by: Mike Forte Dept: TSD	General Counsel  7/16/10	Controller/Treasurer  7/16/10	District Secretary []	BARC []
Signature/Date:  7/16/10				
Status: Approved		Date Created: 05/24/2010		

TITLE:

RE-AFFIRM AWARD OF TWO CONTRACTS FOR THE DESIGN-BUILD AND OPERATION AND MAINTENANCE OF THE OAKLAND INTERNATIONAL AIRPORT CONNECTOR

NARRATIVE:

PURPOSE

To present a revised funding plan and obtain Board re-affirmation of its authorization for the General Manager to award two contracts for the Oakland International Airport Connector (OAC, or OAC Project) Project, based on the revised funding plan. The Design-Build Contract (Contract No. 01ZK-110) pertains to the construction of the OAC Project using a design-build method, and the Operations and Maintenance (O&M) Contract (Contract No. 01ZK-120) pertains to the operation and maintenance of the completed system to be performed over a twenty-year period.

DISCUSSION

Introduction

The procurement for the OAC Project consists of two Contracts: Contract No. 01ZK-110 for the construction of the OAC Project using a design-build method; and Contract No. 01ZK-120 for the operation and maintenance of the completed system to be performed over a twenty-year period.

On December 10, 2009, the Board authorized the General Manager to award the Contracts to Flatiron/Parsons, JV and Doppelmayr Cable Car, Inc. concurrently, subject to certain conditions based on the availability of American Recovery and Reinvestment Act (ARRA) and Small Starts funds.

On December 11, 2009, the District issued a Notice of Intent to Award, notifying the Proposers that the District intended to award Contract No. 01ZK-110 to Flatiron/Parsons, JV, and Contract No. 01ZK-120 to Doppelmayr Cable Car – DCCCA1, Inc., subject to the above Board conditions being satisfied.

The subsequent withdrawal by the Federal Transit Administration (FTA) of \$70 million in ARRA funds resulted in a significant gap in the OAC full funding plan presented to the Board on

December 10, 2009. However, since then, the FTA has approved BART's Title VI Corrective Action Plan and BART has been diligently moving ahead with implementation of the Plan while simultaneously working with its funding partners to identify additional funding.

Price Adjustment for Inflation

On May 27, 2010, the Board authorized the General Manager to extend the Proposal Validity Date for Contract No. 01ZK-110 with a price adjustment for inflation, beginning in April 2010 and based on the CCI_{sf}, in an amount not to exceed \$2,888,177. The price adjustment would be issued as a change order after award.

Revised OAC Funding Plan

As a result of efforts by BART and its funding partners, the OAC funding plan has been revised and updated to include new sources of funding as well as a slight decrease in the Project's overall estimated cost. Staff recommends that the Board re-authorize the General Manager to award the Contracts for the OAC Project based on the revised OAC funding plan detailed below.

FISCAL IMPACT

OAC Project Costs

The OAC Project budget has been updated, and is comprised of the following elements:

BART Spent to Date	\$ 39M
Construction Cost	\$364M
BART Delivery Cost	\$ 40M
Construction Contingency	<u>\$ 33M</u>
Subtotal Project Capital Cost	\$476M
Financing Cost (construction)	<u>\$ 8M</u>
Project Cost during construction	\$484M

[Note: Some figures have been rounded]

In the OAC Project Costs table above, the following terms are used and explained as follows:

- "BART Spent to Date" is the amount already expended by the OAC Project in environmental development, preliminary engineering, real estate acquisition, and other procurement phase costs.
- "Construction Cost" is the contract award amount for the Design-Build Contract No. 01ZK-110. Construction Cost also includes the Inflationary Price Adjustment of \$2.88M (maximum) as approved by the Board on May 27, 2010.
- "BART Delivery Cost" is the amount anticipated for related construction phase activities, including construction management oversight, BART administrative costs, installation of the Contractor-supplied fare collection equipment, several follow-on contracts, and Owner Controlled Insurance Program (OCIP) costs.
- "Construction Contingency" is the amount set aside for unforeseen circumstances during the

- construction phase and for operations start-up costs.
- "Financing Cost (construction)" is the amount of loan risk fund subsidy, up-front and annual financing fees, and interest during construction.

OAC Project Construction Funding

The Full Funding Plan for the OAC Project is shown below:

OAC Sources and Uses (\$ millions)

<u>Local</u>		
Alameda County Transportation Improvement Agency (ACTIA) Measure B	89.1	Committed
Port of Oakland [1]	29.3	Pending
Regional Measure 1 (1988 Bridge Toll)	31.0	Committed
Regional Measure 2 (2004 Bridge Toll)	115.2	Committed
BART SFO Reserve Account	10.0	Pending
Total Local	274.5	
<u>State</u>		
State Transportation Improvement Program (STIP)	20.7	Committed
CMIA/RTIP Funding Exchange	10.0	Programmed
SHOPP/RTIP Funding Exchange	10.0	Programmed
MTC/State-Local Partnership Program (SLPP) Prop 1B	20.0	Committed
PTMISEA (Prop 1B)	12.8	Committed
High-Speed Passenger Train Bond	5.4	Pending
Total State	78.9	
<u>Federal</u>		
Federal Transit Administration - Small Starts	25.0	Pending
Total Federal	25.0	
Sub-total agency/public grant funding	378.4	
Debt draws [2]	105.7	Requested
Total sources of funds	484.1	
<u>Development and Construction Costs</u>		
BART costs spent and reimbursed to date	39.2	
Capital construction and civil cost	363.9	
Delivery and construction contingency	73.0	
Total Development and Construction Costs	476.1	
<u>Financing Costs</u>		
TIFIA interest expense [2]	0.9	
Upfront financing costs and fees	5.4	
Annual rating agency fees	0.1	
Reserves for other financing costs	1.5	
Total Financing Costs	8.0	
Total uses of funds	484.1	

[1] \$16.1M of Port funding received during operations. Borrowing is increased to bridge this delay in funding.

[2] TIFIA interest expense is capitalized during construction and added to TIFIA loan balance

Funding Sources.

A total of \$288.8 million has already been received or committed to the OAC Project. Seven funding sources are not finalized at this time: 1) \$43.9 million in Passenger Facility Charges

(PFCs) from the Port of Oakland that is pending "Use" approval from the Federal Aviation Administration (FAA); 2) \$10 million in new State funding received via a Corridor Mobility Improvement Account (CMIA/Regional Transportation Improvement Program (RTIP) funding exchange; 3) an additional \$10.0 million in new State funding received via a State Highway Operation and Protection Program (SHOPP)/RTIP funding exchange; 4) \$10.0 million in BART SFO Reserve Account funds; 5) \$5.4 million in State High Speed Passenger Train Bond funds; 6) \$24.99 million in a Small Starts grant from the Federal Transit Administration (FTA); and 7) a pending TIFIA loan of \$105.7 million. The seven funding sources that have not been finalized at this time are described in detail below.

Port of Oakland (\$29.5 million)

The Port of Oakland has committed \$45.4 million of funding to the OAC Project. The Port has received the FAA's approval to impose PFCs for the OAC Project, and the Port's submittal of an application to the FAA to use \$43.9 million (Application for Use) of said PFCs for the OAC Project is pending the BART Board's approval of a full funding plan. The Port's commitment is subject to the FAA's approval of the Application for Use. While it is not known whether the FAA will approve the Application for Use, staff expects that it will do so. The airlines serving the Oakland Airport unanimously support use of PFCs for the OAC Project, and the FAA previously approved the Port's 2007 applications to impose and use PFCs for the OAC Project. Moreover, out of 1,813 applications received by FAA since inception of the PFC Program in 1992, 1,808 applications have been approved or partially approved as of July 1, 2010.

Of the \$45.4 million Port contribution amount, \$1.5 million has previously been received by BART. A further \$27.8 million of the Port's contribution is expected to be received during the construction phase of the OAC Project, with the remaining \$16.1 million expected to be received during the first two years of the operations phase.

Should the Port of Oakland not receive FAA approval for the "Use" of PFCs, the Port funding contribution would be eliminated. The District assumes the risk of up to \$43.9 million in PFC fees should the FAA decline to approve. The District also assumes the risk that the rate of receipt of PFC funds and the disbursement schedule agreed upon by the Port and the District would not keep pace with BART's anticipated construction costs. In any of these scenarios, BART would have to borrow additional funds from TIFIA or other sources to fill the funding gap, potentially reducing the District's financial flexibility on its outstanding capital program.

New State funding via a CMIA/RTIP Funding Exchange (\$10.0 million)

BART and its OAC funding partners, the Metropolitan Transportation Commission (MTC), the California Transportation Commission (CTC), the California Department of Transportation (Caltrans), the Alameda County Transportation Authority (ACTIA), and the Alameda County Congestion Management Authority (ACCMA) have proposed a funding exchange whereby the OAC Project would receive \$10 million in new funding via a CMIA/RTIP funding exchange. On July 1, 2010 the CTC in a unanimous vote programmed \$10.0 million in CMIA funds for the OAC Project. At the CTC meeting, a member of the public expressed concern that the action had not been adequately noticed. While the CTC staff believes the matter to have been properly noticed, they are recommending the exercise of an abundance of caution and have calendared this

item for another vote at the August CTC meeting.

New State funding via a SHOPP/RTIP Funding Exchange (\$10.0 million)

BART and our funding partners listed above have proposed a second funding exchange where OAC would receive an additional \$10 million in new funding via a SHOPP/RTIP exchange. On July 1, 2010 the CTC in a unanimous vote programmed \$10.0 million in SHOPP funds for the OAC Project. This matter has also been calendared for another vote at the August CTC meeting.

BART SFO Reserve Account (\$10.0 million)

In February 2007, BART, MTC and San Mateo County Transit District (SamTrans) signed a Three Party Financial Agreement regarding the SFO Extension whereby MTC would contribute an up-front amount of \$24.0 million and SamTrans \$32.0 million to fund any operating deficit on the SFO Extension and to contribute to SamTrans' funding commitment of \$145.0 million to the Warm Springs Extension. The funds received are being placed in an SFO/WSX Reserve account. The cash contribution of both MTC and SamTrans has been received more slowly than was originally anticipated. Therefore, as a prudent measure, in FY07 and FY08, BART redirected capital allocations from its operating General Fund to establish a \$24.0 million SFO Reserve account in advance of receipt of MTC's contribution. In lieu of the up-front cash contribution, MTC is fulfilling its contribution commitment by reimbursing BART for some capital project expenditures from two RM2 grants totaling \$24.0 million allocated by MTC to the District in FY08. As capital grant reimbursements on the \$24.0 million are received from MTC, an equivalent amount must be transferred from the BART-funded SFO Reserve account to the SFO/WSX Reserve account. If there are insufficient funds in the SFO Reserve account to cover the required transfer of funds to the SFO/WSX Reserve account, the District's general fund will need to cover the funding gap until such time as the SFO surpluses are adequate to backfill the \$10 million.

The SFO Extension has experienced substantial ridership increases since FY07, and the annual operating deficit has markedly decreased. With small, regular fare increases, the SFO Extension net operating result is projected to turn positive in FY18.

In FY07, \$5.5 million of the \$24.0 million SFO Reserve account was drawn down as an operating subsidy for the SFO Extension, leaving a balance of \$18.5 million in the SFO Reserve account. There is a pending commitment of \$2.4 million short term loan for the West Dublin Station Project, scheduled to be repayed this fiscal year. The proposed action will commit \$10.0 million of District funds currently in the SFO Reserve account to the Oakland Airport Connector Project, leaving a balance of \$6.1 million in the SFO Reserve account.

High-Speed Passenger Train Bond (\$5.4 million)

On March 11, 2010, the BART Board of Directors adopted Resolution No. 5128, approving the List of Projects for the BART High-Speed Passenger Train Bond Program for consideration for programming by the CTC. This action would revise the List of Projects reducing the Traction Power/Train Control Reliability Improvements line item amount from \$17.4 million to \$12.0 million and add a new line item of \$5.4 million for the OAC Project. Of the remaining \$12.0 million in the Traction Power/Train Control Reliability Improvements line item, the CTC on

May 19, 2010 programmed \$3.0 million for Third Rail Cover Board Enhancements. This action would leave a balance of \$9.0 million in the Traction Power/Train Control Reliability Improvements line item eligible for programming by the CTC in FY 11/12 and beyond.

FTA Small Starts Grant (\$24.99 million)

An FTA grant is pending to fund \$24.99 million of construction costs. On December 4, 2009, the FTA approved the OAC Project to enter the preliminary engineering (PE) and final design (FD) phases of the FTA Small Starts program. Also in December 2009, certain Title VI issues were identified in the course of an FTA audit. BART submitted a corrective action plan to the FTA to address all the issues identified, and in April 2010, the FTA approved the action plan. It is anticipated that BART will have completed all items within the action plan by July 2011 and, at that time, that BART will be allowed to draw down the FTA grant funds committed to the Project. Other grant funding is sufficient to meet the Project's funding needs prior to FTA funding.

TIFIA Loan (\$105.7 million including accrued interest during construction)

The Transportation Infrastructure Finance and Innovation (TIFIA) program application process changed in FY2010, and BART resubmitted a letter of interest for TIFIA credit assistance on March 1, 2010. BART requested a loan for up to \$139 million from the U.S. Department of Transportation (USDOT) to complete the funding package for the OAC Project, shortly after \$70 million of ARRA funding was pulled from the Project. At the same time, efforts continued to reduce the Project's funding gap. Since then, the TIFIA financing requirement has been reduced to \$105.7 million. This amount assumes that BART pays for the TIFIA loan subsidy which has been estimated to be 5% of the loan proceeds; if BART does not have to pay for the subsidy, the Project cost and loan requirements would decrease by approximately \$5.3 million.

The loan proceeds are not needed for several years, but staff is pursuing receipt of an invitation to apply for a TIFIA loan and then negotiating loan terms in the second half of 2010. The currently requested loan amount assumes a TIFIA interest rate of 4.13% which was the TIFIA rate as of June 22, 2010; the TIFIA loan will be subject to interest rate risk until financing is closed, but will then be fixed for the duration of the loan.

Principal and interest payments are expected to be deferred during the Project's operating ramp-up period; in the 11th year of operations (when full interest and principal payments are expected, estimated to be in 2024), annual debt service will start at approximately \$6.1 million (\$4.6 million interest and \$1.5 million principal) and increase by 1.5% per year until the loan is fully repaid in the 35th year of operations. Fare revenues, projected to be \$13.9 million in that same year, are expected to be sufficient to cover operating costs of \$10.5 million, but will not be sufficient to cover debt service until approximately the 21st year of operations (estimated to be at 2034). Therefore, from the start of operations until approximately 2034, the General Fund will subsidize the project's negative cash flows. The maximum subsidy to the Project in any one year is expected to be \$2.7 million, and the maximum cumulative subsidy over the life of the Project is expected to be \$23.5 million. As a point of comparison, the funding plan approved by the Board in May 2009 included a TIFIA loan where the maximum annual subsidy was expected to be \$3.7 million, and the maximum cumulative subsidy was expected to be \$21.6 million.

In the event the TIFIA loan application is unsuccessful, BART will pursue the most advantageous financing alternative amongst other debt sources, such as Build America Bonds (BABs) or sales tax revenue bonds. Given BART's strong AA credit rating and 2.89 projected debt coverage ratio well above the required 1.5 minimum debt coverage ratio, BART does not anticipate any problems issuing additional debt. However, issuing alternative financing is estimated to increase financing costs during construction by approximately \$10 million. Indebtedness will be increased to cover the additional cost, and debt service during operations will increase, requiring additional support from the General Fund. Under such a scenario, the maximum subsidy to the Project in any one year is expected to increase to \$3.7 million, and maximum cumulative subsidy over the life of the Project is expected to increase to \$46.3 million.

The District will fulfill its obligations to repay the TIFIA loan by pledging revenues from the OAC Project, backed by sales tax revenues. In the case of an alternative financing, sales tax revenues would become the primary revenue stream supporting the debt. To the extent that the Project's budgeted \$33 million contingency is not fully needed, the savings will reduce the TIFIA draw downs.

Contract Award

Funding to (a) award Contract No. 01ZK-110 to Flatiron/Parsons, JV, for the Design-Build of the Oakland International Airport Connector, for the not to exceed price of \$361,022,150; (b) funding for two separate Stipend Agreements with Walsh Construction Company and Shimmick/Skanska/Herzog, JV in the amount of \$500,000 each (\$1,000,000 total); and (c) funding to pay the inflation adjustment in the not to exceed amount of \$2,888,177, will come from the committed sources of \$288.8 million described above, plus either \$105.7 million in TIFIA loan or other debt draws, or \$76.1 million of the \$89.7 million in pending grants. Because the actions identified in this EDD will commit an amount greater than the funding committed to date, the Controller/Treasurer cannot certify that these funds are currently available. However, the expenditures for these actions are scheduled over the next forty-two months, and sufficient funds to meet these expenditures from the committed and/or pending sources identified above are expected to be in place to meet cash flow needs. If any of the expected funding sources do not materialize, the District assumes the risk of providing the additional funds needed to cover any cash shortfall. Funding for the Price Adjustment of \$2,888,177 will come from the committed sources described above; however, this cost will only be realized if Contract No. 01ZK-110 is awarded.

Funding to (a) award Contract No. 01ZK-120 to Doppelmayr Cable Car, Inc. to Operate and Maintain the Oakland International Airport Connector for the not to exceed price of \$4,906,865 and Capital Asset Replacement Program (CARP) costs of \$768,396, both paid annually for a period of twenty (20) years and subject to escalation, and (b) repay the TIFIA loan, will come from the amount of the Port Contribution expected to be received during the operations phase (\$16.1 million) and annual revenues generated by operation of the OAC Project. While the projections for ridership revenue have been modeled at a conservative level, there is the potential that revenue may fall short of projections necessitating supplementation from the General Fund, which would be reimbursed in future years from any surplus OAC revenues. The conservative

modeling approach reduces a ridership forecast prepared and updated by Wilbur Smith Associates in May 2009. As stated previously, BART currently estimates that using the conservative ridership forecast, the maximum cumulative subsidy over 35 years from the General Fund should not exceed \$23.5 million (\$46.3 million if TIFIA financing is not obtained).

The award of Contract Nos. 01ZK-110 and 01ZK-120 will be issued only after the Controller-Treasurer has certified that sufficient Small Starts funds have been obligated by the Federal Transit Administration and \$20M in State funds have been committed for the Project and are available for Contract No. 01ZK-110.

ALTERNATIVE

There is no meaningful alternative procurement methodology available; therefore the only alternative action would be to not proceed with the Project at this time. This would entail the loss of \$288.8 million in funding currently available and committed to the Project and the loss of favorable committed bid pricing. Not proceeding with the Project would also eliminate any subsidies from and associated risks to the General Fund, which are estimated to range from \$24 million to \$115 million, pending commitment of the uncommitted funds identified above.

RECOMMENDATION

Adoption of the following motions:

MOTIONS:

1. The Board hereby re-affirms that, upon certification by the Controller/Treasurer that, 1) \$20M in State funds have been committed, and; 2) sufficient Small Starts funds have been obligated by the Federal Transit Administration for the Project and are available for Contract No. 01ZK-110, the General Manager is authorized to award Contract No. 01ZK-110 to Flatiron/Parsons, JV, for the Design-Build of the Oakland International Airport Connector, for the not to exceed price of \$361,022,150.
2. Concurrent with the award of Contract No. 01ZK-110, the General Manager is authorized to award Contract No. 01ZK-120 to Doppelmayr Cable Car, Inc., to Operate and Maintain the Oakland International Airport Connector, for the not to exceed price of \$4,906,865 and Capital Asset Replacement Program (CARP) costs of \$768,396, both paid annually for a period of twenty (20) years and subject to escalation.
3. The Board hereby authorizes the reallocation of \$10,000,000 from the BART SFO Reserve account to the Oakland International Airport Connector Project.
4. The Board hereby authorizes the revision of the List of Projects for the BART High-Speed Passenger Train Bond Program, thereby reducing the Traction Power/Train Control Reliability Improvements line item amount from \$17.4 million to \$12.0 million and adding a new line item of \$5.4 million for the OAC Project.