

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

300 Lakeside Drive, P. O. Box 12688, Oakland, CA 94604-2688

BOARD MEETING AGENDA

February 10, 2011

8:30 a.m.

A regular meeting of the Board of Directors will be held at 8:30 a.m. on Thursday, February 10, 2011, in the BART Board Room, Kaiser Center 20th Street Mall – Third Floor, 344 – 20th Street, Oakland, California.

Members of the public may address the Board of Directors regarding any matter on this agenda. 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" 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 meetings, depending on the service requested. Please contact the Office of the District Secretary at 510-464-6083 for information.

Rules governing the participation of the public at meetings of the Board of Directors and Standing Committees are available for review on the District's website (<http://www.bart.gov/about/bod>), in the BART Board Room, and upon request, in person or via mail.

Meeting notices and agendas are available for review on the District's website (<http://www.bart.gov/about/bod/meetings.aspx>), and via email or via regular mail upon request. Complete agenda packets (in PDF format) are available for review on the District's website no later than 48 hours in advance of the meeting. Those interested in being on the mailing list for meeting notices (email or regular mail) can do so by providing the District Secretary with the appropriate address.

Please submit your requests to the District Secretary via email to BoardofDirectors@bart.gov; in person or U.S. mail at 300 Lakeside Drive, 23rd Floor, Oakland, CA 94612; fax 510-464-6011; or telephone 510-464-6083.

Kenneth A. Duron
District Secretary

Regular Meeting of the
BOARD OF DIRECTORS

8:30 a.m. CALL TO ORDER (BART Board Room)

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.
- D. General Discussion and Public Comment.

2. CONSENT CALENDAR

- A. Approval of Minutes of the Meetings of January 27, 2011 (Regular), and January 31, 2011 (Special).* Board requested to authorize.
- B. Revision to 2011 Standing Committee and Special Appointments.* Board requested to ratify. (President Franklin's request.)
- C. Fiscal Year 2011 Second Quarter Financial Report.* Board requested to accept.
- D. Extension of Interim Agreement between BART and the Alameda-Contra Costa County Transit District for Fiscal Year 2011.* Board requested to authorize.
- E. Resolution of Compliance and Authorization for State of California Public Transportation Modernization, Improvement and Service Enhancement Account (PTMISEA).* Board requested to adopt.
- F. Award of Contract No. 79HK-140, Renovation of Security Barrier at SFTS (San Francisco Transition Structure).* Board requested to authorize.
- G. Award of Contract No. 15PR-110, Earthquake Safety Program Lafayette Station.* Board requested to authorize.
- H. Reject All Bids for Contract No. 15PP-110, Earthquake Safety Program Station Structures – C Line.* Board requested to reject.

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

- A. (CONTINUED from January 31, 2011, Special Board Meeting)
PUBLIC EMPLOYMENT:
Title: Independent Police Auditor
Gov't Code Section: 54957

- B. THREAT TO PUBLIC SERVICES OR FACILITIES:
Consultation with: Chief of Police; Police Commander/Manager, Rail Security Programs; and Manager of Earthquake Safety Programs
Gov't Code Section: 54957(a)
- C. CONFERENCE WITH LABOR NEGOTIATORS - PUBLIC EMPLOYEE PERFORMANCE EVALUATION:
Agency Negotiators: Directors Fang, Franklin, and Blalock
Title: General Manager and Controller/Treasurer
Gov't Code Sections: 54957 and 54957.6
- D. CONFERENCE WITH REAL PROPERTY NEGOTIATOR.
(CONTINUED from November 18, 2010, Board Meeting)
Property: Property Located at the Millbrae BART Station
District Negotiators: Carter Mau, Executive Manager, Planning & Budget; and Jeffrey P. Ordway, Manager, Property Development
Negotiating Parties: Justin Development, Republic Urban Properties/Green Valley Corporation, TMG Partners, and San Francisco Bay Area Rapid Transit District
Under Negotiation : Price and Terms
Gov't Code Section: 54956.8

10:00 a.m. OPEN SESSION (BART Board Room)

4. ADMINISTRATION ITEMS

Director Blalock, Chairperson

- A. (CONTINUED from January 27, 2011 Board Meeting)
Agreement with Standard Insurance Company for Life and Disability Insurance for Employees.* Board requested to authorize.
- B. (CONTINUED from January 27, 2011 Board Meeting)
Fiscal Year 2011 Evaluation and Adjustment of Professional/Management Salary Ranges for Employees on the Merit Plan.* Board requested to authorize.
- C. Customer Satisfaction Survey.* For information.

5. ENGINEERING AND OPERATIONS ITEMS

Director Fang, Chairperson

- A. Award of Contract No. 79HM-110, San Francisco Transition Structure Security Barrier (SFTS SB).* Board requested to authorize.
- B. Agreement with Ghirardelli Associates, Inc., to Provide Contract Management Services for Earthquake Safety Program Station Structure C Line Lafayette Station (Agreement No. 15PR-510).* Board requested to authorize.

- C. Extension of Time for Receipt of Bids for Contract No. 15PJ-110, Earthquake Safety Program Station Structures A-Line, and Contract No. 15PB-110, Earthquake Safety Program Aerial Structures – A Line North.* Board requested to authorize.
 - D. Award of Contract No. 91CW-226, Furnishing Bicycle Lockers with Electronic Controlled Locks.* Board requested to authorize.
 - E. Cooperative Agreement between the City and County of San Francisco and the San Francisco Bay Area Rapid Transit District for the Central Subway Project.* Board requested to authorize.
 - F. Quarterly Performance Report, Second Quarter Fiscal Year 2011 - Service Performance Review.* For information.
6. PLANNING, PUBLIC AFFAIRS, ACCESS, AND LEGISLATION ITEMS
Director Murray, Chairperson
- A. Proposed 2011 State and Federal Advocacy Programs.* Board requested to authorize.
 - B. Agreements for State and Federal Advocacy Teams.* Board requested to authorize.
7. GENERAL MANAGER'S REPORT
- A. Review of the Agenda for the Capitol Corridor Joint Powers Board Meeting of February 16, 2011.* For information.
8. BOARD MATTERS
- A. Roll Call for Introductions.
9. GENERAL DISCUSSION AND PUBLIC COMMENT

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

MEMORANDUM

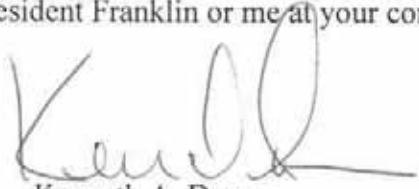
TO: Board of Directors **DATE:** February 4, 2011
FROM: District Secretary
SUBJECT: 2011 Standing Committee and Special Appointments - Revision

President Franklin is proposing the addition of Director Keller to the High Speed Rail Committee as the Millbrae Station Liaison and the designation of Director McPartland as Chairperson of the Committee.

Board Rule 3-3.2 requires the ratification by a majority vote of all members of the Board any appointment of any Committee member by the Board President. The Rule includes a provision that such appointments shall be submitted directly to the Board.

In accordance with Board Rule 3-3.2, President Franklin is bringing the 2011 Standing Committee and Special Appointments before the Board of Directors for ratification on February 10, 2011.

Should you have any questions, please contact President Franklin or me at your convenience.



Kenneth A. Duron

cc: Board Appointed Officers
Deputy General Manager
Executive Staff

Item No. 2B

RATIFICATION OF REVISION TO
2011 STANDING COMMITTEE AND SPECIAL APPOINTMENTS

MOTION:

That the Board of Directors ratifies the following proposed revision to the High Speed Rail Committee for 2011:

Joel Keller, Millbrae Station Liaison
John McPartland, Chairperson
Tom Radulovich

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

MEMORANDUM

TO: Board of Directors

DATE: February 4, 2011

FROM: General Manager

SUBJECT: FY11 Second Quarter Financial Report

The FY11 second quarter financial report (October - December 2010) is attached. The net operating result was favorable to budget by \$26.5M, due to the timing the \$19.6M of State Transit Assistance funds budgeted for the first quarter but actually received and booked this quarter (which had caused a \$17M negative variance in the first quarter). Absent timing issues, the actual result for the quarter was approximately \$7M over budget due to favorable revenue sources.

Operating Sources

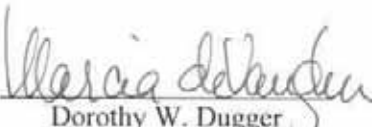
Ridership on the core system dropped slightly (-0.2%) compared to the same quarter last year, in spite of the record-breaking Giants' victory parade on November 3rd with 522,200 exits. With good results on the SFO Extension, systemwide average weekday trips for the quarter grew 0.6%, a slight slowdown from the 1.0% growth in the first quarter. Ridership is improving from the low we saw in summer 2010 but is still not growing at an appreciable rate.

Sales Tax revenue showed improvement for the third consecutive quarter. Cash receipts for the quarter (July through September sales) grew 7.4% compared to last year. This growth appears to be related to increases in gas prices, retail sales, and business-to-business sales. However, a number of key drivers for sales tax, such as the housing and construction industries, continue to lag, suggesting this rate of growth is not sustainable.

Operating Uses

Expenses were 0.7% favorable for the second quarter. Although non labor was favorable this quarter, labor and benefits were \$3.3M over budget, primarily attributed to overtime. Year to date labor expense results are \$7.4M (-4.4%) unfavorable through the first half of the year. Non-labor and electric power offset the labor variance for the quarter, but the District is slightly over budget year-to-date. The current favorable non-labor variance is likely to be absorbed as the year progresses. In general, after the budget reductions over the past several years, the expense budget is very tight.

Through the first half of FY11, the net operating result is favorable to budget by \$9.5M. This positive result is mainly due to sales tax gains, and other categories are very close to budget. Expenses, however, continue to require careful watching. Although the net result to date is encouraging, flat ridership, a tight expense budget, and the sluggish economy remain significant concerns.


Dorothy W. Dugger

cc: Board Appointed Officers
Deputy General Manager
Executive Staff

Second Quarter FY11 BUDGET PERFORMANCE REPORT EXECUTIVE SUMMARY

Million

REVENUE

- Average weekday ridership for the quarter was 343,752, 1.4% over budget. Core trips were down 0.2% and SFO trips grew 7.1% compared to 2Q10. Nov 2011 included the Giants victory parade record of 522,200 exits. Net Passenger Revenue was \$3.1M above budget.
- Other Operating Revenue was just \$0.1M unfavorable for the quarter, with interest and parking revenue running slightly under budget.

EXPENSE

- Net Labor results were unfavorable by \$3.7M (4.0%) for the quarter, primarily due to overtime. Through the first half of the year, labor expenses are \$7.4M unfavorable.
- Electric Power was essentially on budget this quarter and remains favorable year to date because market power costs are below budget.
- Other Non Labor was favorable to budget by \$3.6M primarily due to timing of actual expenses vs budget. Favorable results not expected to continue through the end of the year.
- Total expense was \$0.8M favorable to budget for the quarter, making up some of the \$2.8M negative variance for the first quarter, but leaving the District still \$2.1M over budget midway through the year.

OPERATING DEFICIT

- The Operating Deficit (Operating Revenue minus Expense) was \$3.9M favorable, due to favorable fare revenue and slightly under budget expense.

TAX & FINANCIAL ASSISTANCE

- Sales Tax was 7.4% above 2QFY10 (\$4.2M over budget). YTD, FY11 sales tax is up 7.6% over FY10, however, the first half of FY10 was BART's lowest over the past ten years.
- Property Tax is 2.3% over budget and 0.1% above FY10 through the first half of FY11.
- Other Assistance under budget YTD by \$1.1M, because lower funds than budgeted were needed from SFO Reserve due to higher SFO Ext passenger revenue.
- STA of \$19.6M received in Oct, although budgeted for Sept. Total is \$0.8M over budget due to revised State Controller Factors directing more funds to BART.

NET OPERATING RESULT

- The Net Operating Result for the quarter was \$26.5M favorable: \$19.6M due to timing of the STA payment, sales tax \$4.2M and \$3.1M due to favorable operating revenue.

SYSTEM OPERATING RATIO / RAIL COST PER PASSENGER MILE

- System Operating Ratio and Rail Cost Per Passenger Mile were slightly better than budget. Expense was slightly favorable to budget, combined with favorable fare revenue and passenger miles.

●● The Other Post Employment Benefits (primarily retiree medical) is a non-cash expense to recognize the difference between actual retiree medical funding and the full Annual Required Payment and does not affect the Net Operating Result.

CURRENT QUARTER			(\$Millions)*		FISCAL YEAR-TO-DATE		
Budget	Actual	Var.			Budget	Actual	Var.
REVENUE							
82.0	85.1	3.9%	Net Passenger Revenue		169.4	173.3	2.3%
8.1	8.0	-1.4%	Other Operating Revenue		15.8	15.4	-2.8%
90.1	93.2	3.4%	Total Net Operating Revenue		185.3	188.8	1.9%
EXPENSE							
83.1	86.4	-4.0%	Net Labor		168.8	176.2	-4.4%
1.7	1.4	13.4%	OPEB Unfunded Liability**		3.3	3.3	0.4%
8.8	8.7	0.6%	Electric Power		18.2	17.5	3.9%
3.7	3.5	6.1%	Purchased Transportation		7.5	7.2	4.5%
0.0	(0.3)	-	Lakeside Lease Accrual		0.0	(0.6)	-
20.8	17.5	16.1%	Other Non Labor		38.6	35.0	9.4%
118.1	117.3	0.7%	Total Operating Expense		236.4	238.5	-0.9%
(28.1)	(24.2)	16.0%	OPERATING DEFICIT		(51.1)	(49.7)	2.8%
TAX & FINANCIAL ASSISTANCE							
41.6	45.8	10.0%	Sales Tax		81.5	89.9	10.2%
16.5	15.9	-3.9%	Prop Tax, Other Assistance		18.5	17.9	-3.4%
0.0	19.6	0.0%	State Transit Assistance		18.8	19.6	4.6%
(19.8)	(20.1)	-1.7%	Debt Service		(40.2)	(40.7)	-1.1%
(4.9)	(4.9)	0.0%	Capital and Other Allocations		(16.9)	(16.9)	0.0%
1.7	1.4	13.4%	OPEB Unfunded Liability Offset		3.3	3.3	0.4%
35.1	57.7	64.4%	Net Financial Assistance		65.1	73.2	12.5%
7.0	33.5		NET OPERATING RESULT		14.0	23.5	
76.3%	79.4%	3.1%	System Operating Ratio		78.4%	79.1%	0.8%
33.2 ¢	32.4 ¢	2.2%	Rail Cost Per Passenger Mile		32.1 ¢	31.9 ¢	0.8%

* Totals may not add due to rounding to the nearest million.

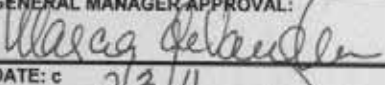
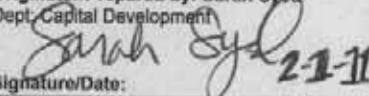
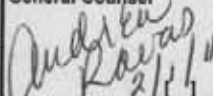

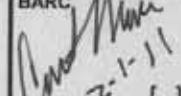
■ No Problem

■ Caution: Potential Problem/Problem Being Addressed

■ Significant Problem



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: 		GENERAL MANAGER ACTION REQ'D: Approve and forward to the Admin Committee		
DATE: c 2/3/11		BOARD INITIATED ITEM: No		
Originator/Prepared by: Sarah Syed Dept: Capital Development  Signature/Date: 2-1-11	General Counsel  Signature/Date: 2/1/11	Controller/Treasurer  Signature/Date: 2/2/11	District Secretary []	BARC  Signature/Date: 2-1-11 []

Amendment to Interim Agreement between BART and the Alameda-Contra Costa County Transit District

NARRATIVE:

PURPOSE:

To obtain Board authorization for the General Manager to execute an Amendment to the Interim Agreement Between the Alameda-Contra Costa County Transit District (AC Transit) and BART For Fiscal Year 2011 (FY11) Payment for Transit Coordination ("Interim Agreement"). The purpose of the Amendment is to extend the amount of time that BART and AC Transit have to execute a multi-year agreement to December 31, 2011.

DISCUSSION:

Since 1992, the Metropolitan Transportation Commission (MTC) has allocated a portion of BART's State Transit Assistance (STA) funds to AC Transit to support transfer or feeder transit service to BART stations. Since 2004, the amount of this allocation has been based on calculations indexed to annual sales tax receipts. BART and AC Transit are currently in the process of developing a multi-year agreement that would change the way the amount of the allocation is calculated.

With Board authorization, BART and AC Transit entered into the Interim Agreement, which was effective as of August 16, 2010, for the purpose of establishing the amount of FY11 BART STA funds that would be allocated to AC Transit while the parties worked on developing the multi-year agreement. Under the Interim Agreement, MTC made an initial allocation of \$2,460,000 to AC Transit as a first payment to support FY11 transfer services. Also, \$1,140,000 of FY11 BART STA funds were placed in reserve for use as a potential second and final payment to AC Transit. The Interim Agreement provides, however, among other things, that if the parties do not execute a multi-year agreement within six months of the execution of Interim Agreement, i.e. by February 16, 2011, that the \$1,140,000 will be taken out of reserve and given to BART for use for other purposes.

Staff at BART and AC Transit now wish to extend the amount of time that they have to execute a multi-year agreement, from February 16, 2011 to December 31, 2011, before the \$1,140,000 will be taken out of reserve. This extension will provide the parties with time to participate in a pilot project that could help them draft a multi-year agreement that delivers potential cost savings and ridership growth to BART. In addition, an extension of time will enhance the parties' ability to collect reliable data from Clipper cards to use in the development of the multi-year agreement. It will also help foster a cooperative working relationship between the parties.

Amendment to Interim Agreement between BART and the Alameda-Contra Costa County Transit District

The Office of General Counsel will approve the Amendment to the Interim Agreement as to form.

FISCAL IMPACT:

The adopted FY11 Budget includes an estimated \$3,600,000 payment to AC Transit to support feeder transit service to BART stations. Extending the term of the Interim Agreement through this Amendment would have no fiscal impact on the adopted FY11 Budget.

Under the Amended Interim Agreement, the total FY11 and future year allocations of BART STA funds depend on a multi-year agreement to be developed by December 31, 2011.

ALTERNATIVES:

Not amend the Interim Agreement. However, amending the Interim Agreement to extend the deadline for executing a multi-year agreement would give BART and AC Transit time to develop a sensible method for calculating the annual allocation. In addition, it would help preserve the working relationships between BART, AC Transit, and MTC. Further, with a time extension, BART and AC Transit could participate in a pilot project and collect more reliable Clipper data for use in the development of the multi-year agreement.

RECOMMENDATION:

Adoption of the following motion.

MOTION:

The General Manager is authorized to execute an Amendment to the Interim Agreement between the Alameda-Contra Costa County Transit District and the San Francisco Bay Area Rapid Transit District for Fiscal Year 2011 Payment for Transit Coordination to extend the amount of time that BART and AC Transit have to execute a multi-year agreement to December 31, 2011.



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>[Signature]</i>		GENERAL MANAGER ACTION REQ'D: Approve and place on Board meeting agenda		
DATE: 2/3/11		BOARD INITIATED ITEM: No		
Originator/Prepared by: Todd Morgan Dept: Capital Development <i>[Signature]</i> Signature/Date: 1.28.2011	General Counsel <i>[Signature]</i> 2/1/11	Controller/Treasurer <i>[Signature]</i> 2/1/11	District Secretary []	BARC <i>[Signature]</i> 1-28-11 []
Status: Routed		Date Created: 01/14/2011		

Approval of a Resolution of Compliance and Authorization for State of California Public Transportation Modernization, Improvement and Service Enhancement Account (PTMISEA) Bond Program

NARRATIVE:

PURPOSE:

To obtain approval of a Resolution of Compliance and Authorization ("Resolution") based on the attached PTMISEA Certifications and Assurances. The PTMISEA Bond Program provides funding to the Warm Springs Extension (WSX) & eBART projects and the Station Modernization Program.

DISCUSSION:

The Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006 (Bond Act), approved by the voters as Proposition 1B on November 7, 2006, includes a program of funding in the amount of \$4 billion to be deposited in the Public Transportation Modernization, Improvement, and Service Enhancement Account. Of this amount, \$3.6 billion in the PTMISEA is to be made available to project sponsors in California for allocation to eligible public transportation projects. Funds will be appropriated to the State Controller's Office (Controller) for allocation to eligible agencies. Senate Bill (SB) 88, Statutes of 2007 (added to Government Code (GC) as Sections 8879.55 and Section 8879.56) identified the California Department of Transportation (Department) as the administrative agency for the PTMISEA.

To meet State Auditor requirements, the Caltrans Division of Mass Transportation (DMT) has updated its guidelines and developed the attached Certifications and Assurances document. Beginning in January 2011, each PTMISEA Project Sponsor is required to sign the Certification and Assurances document prior to receiving an allocation of Fiscal Year 10/11 funds or later. The Certification and Assurances document contains general conditions of the PTMISEA program, already stated in the guidelines, as well as some additional Cost Principles and Record Retention requirements that are standard for other State funded projects. Recipient agencies only need to sign and submit the document once for the remainder of the PTMISEA program, along with the Board Resolution, to DMT by June 1, 2011.

FISCAL IMPACT:

Approval of the Resolution is a requirement for BART to receive an allocation PTMISEA funds from DMT. This action will have no fiscal impact on unprogrammed District Reserves.

ALTERNATIVES:

Do not approve the Resolution. This will result in the loss of PTMISEA funds and impede delivery of the several large capital projects.

RECOMMENDATION:

Approve the attached Resolution of Compliance and Authorization in connection with BART's application for PTMISEA Funds for the WSX & eBART Projects and the Station Modernization Program.

**Public Transportation Modernization, Improvement, and Service
Enhancement Account (PTMISEA) Bond Program**

Certifications and Assurances

Project Sponsor: San Francisco Bay Area Rapid Transit District

Effective Date of this Document: January, 2011

The California Department of Transportation (Department) has adopted the following certifications and assurances for the Public Transportation Modernization, Improvement, and Service Enhancement Account (PTMISEA) bond program. As a condition of the receipt of PTMISEA bond funds, project sponsors must comply with these terms and conditions.

A. General

- (1) The project sponsor agrees to abide by the current PTMISEA Guidelines
- (2) The project sponsor must submit to the Department a PTMISEA Program Expenditure Plan, listing all projects to be funded for the life of the bond, including the amount for each project and the year in which the funds will be requested.
- (3) The project sponsor must submit to the Department a signed Authorized Agent form designating the representative who can submit documents on behalf of the project sponsor and a copy of the board resolution appointing the Authorized Agent.

B. Project Administration

- (1) The project sponsor certifies that required environmental documentation is complete before requesting an allocation of PTMISEA funds. The project sponsor assures that projects approved for PTMISEA funding comply with Public Resources Code § 21100 and § 21150.
- (2) The project sponsor certifies that PTMISEA funds will be used only for the transit capital project and that the project will be completed and remains in operation for its useful life.
- (3) The project sponsor certifies that it has the legal, financial, and technical capacity to carry out the project, including the safety and security aspects of that project.

- (4) The project sponsor certifies that they will notify the Department of pending litigation, dispute, or negative audit findings related to the project, before receiving an allocation of funds.
- (5) The project sponsor must maintain satisfactory continuing control over the use of project equipment and facilities and will adequately maintain project equipment and facilities for the useful life of the project.
- (6) Any interest the project sponsor earns on PTMISEA funds must be used only on approved PTMISEA projects.
- (7) The project sponsor must notify the Department of any changes to the approved project with a Corrective Action Plan (CAP).
- (8) Under extraordinary circumstances, a project sponsor may terminate a project prior to completion. In the event the Project Sponsor terminates a project prior to completion, the Project Sponsor must (1) contact the Department in writing and follow-up with a phone call verifying receipt of such notice; (2) pursuant to verification, submit a final report indicating the reason for the termination and demonstrating the expended funds were used on the intended purpose; (3) submit a request to reassign the funds to a new project within 180 days of termination.
- (9) Funds must be encumbered and liquidated within the time allowed in the applicable budget act.

C. Reporting

- (1) Per Government Code § 8879.55, the project sponsor must submit the following PTMISEA reports:
 - a. Semi-Annual Progress Reports by February 15th and August 15th each year.
 - b. A Final Report within six months of project completion.
 - c. The annual audit required under the Transportation Development Act (TDA), to verify receipt and appropriate expenditure of PTMISEA bond funds. A copy of the audit report must be submitted to the Department within six months of the close of the year (December 31) each year in which PTMISEA funds have been received or expended.

D. Cost Principles

- (1) The project sponsor agrees to comply with Title 2 of the Code of Federal Regulations 225 (2 CFR 225), Cost Principles for State and Local Government, and 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

- (2) The project sponsor agrees, and will assure that its contractors and subcontractors will be obligated to agree, that (a) Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, et seq., shall be used to determine the allowability of individual project cost items and (b) those parties shall comply with Federal administrative procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. Every sub-recipient receiving PTMISEA funds as a contractor or sub-contractor shall comply with Federal administrative procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
- (3) Any project cost for which the project sponsor has received payment that are determined by subsequent audit to be unallowable under 2 CFR 225, 48 CFR, Chapter 1, Part 31 or 49 CFR, Part 18, are subject to repayment by the project sponsor to the State of California (State). Should the project sponsor fail to reimburse moneys due to the State within thirty (30) days of demand, or within such other period as may be agreed in writing between the Parties hereto, the State is authorized to intercept and withhold future payments due the project sponsor from the State or any third-party source, including but not limited to, the State Treasurer and the State Controller.

E. Record Retention

- (1) The project sponsor agrees, and will assure that its contractors and subcontractors shall establish and maintain an accounting system and records that properly accumulate and segregate incurred project costs and matching funds by line item for the project. The accounting system of the project sponsor, its contractors and all subcontractors shall conform to Generally Accepted Accounting Principles (GAAP), enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices. All accounting records and other supporting papers of the project sponsor, its contractors and subcontractors connected with PTMISEA funding shall be maintained for a minimum of three (3) years from the date of final payment and shall be held open to inspection, copying, and audit by representatives of the State and the California State Auditor. Copies thereof will be furnished by the project sponsor, its contractors, and subcontractors upon receipt of any request made by the State or its agents. In conducting an audit of the costs claimed, the State will rely to the maximum extent possible on any prior audit of the Project Sponsor pursuant to the provisions of federal and State law. In the absence of such an audit, any acceptable audit work performed by the project sponsor's external and internal auditors may be relied upon and used by the State when planning and conducting additional audits.
- (2) For the purpose of determining compliance with Title 21, California Code of Regulations, Section 2500 et seq., when applicable, and other matters connected with

the performance of the project sponsor's contracts with third parties pursuant to Government Code § 8546.7, the project sponsor, its contractors and subcontractors and the State shall each maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of such contracts, including, but not limited to, the costs of administering those various contracts. All of the above referenced parties shall make such materials available at their respective offices at all reasonable times during the entire project period and for three (3) years from the date of final payment. The State, the California State Auditor, or any duly authorized representative of the State, shall each have access to any books, records, and documents that are pertinent to a project for audits, examinations, excerpts, and transactions, and the project sponsor shall furnish copies thereof if requested.

- (3) The project sponsor, its contractors and subcontractors will permit access to all records of employment, employment advertisements, employment application forms, and other pertinent data and records by the State Fair Employment Practices and Housing Commission, or any other agency of the State of California designated by the State, for the purpose of any investigation to ascertain compliance with this document.

F. Special Situations

- (1) A project sponsor may lend its unused funds from one year to another project sponsor for an eligible project, for maximum fund use each fiscal year (July 1 – June 30). The project sponsor shall collect no interest on this loan.
- (2) Once funds have been appropriated in the budget act, a project sponsor may begin a project with its own funds before receiving an allocation of bond funds, but does so at its own risk.
- (3) The Department may perform an audit and/or request detailed project information of the project sponsor's PTMISEA funded projects at the Department's discretion at any time prior to the completion of the PTMISEA program.

I certify all of these conditions will be met.

San Francisco Bay Area Rapid Transit District

BY:

Dorothy W. Dugger, General Manager

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

**In the Matter of the Approval of a Resolution of Compliance and Authorization
for the Execution of Certifications and Assurances for the Public Transportation
Modernization, Improvement, and Service Enhancement Account Bond Program**

RESOLUTION NO. _____

WHEREAS, the San Francisco Bay Area Rapid Transit District (BART) is an eligible project sponsor and may receive state funding from the Public Transportation Modernization, Improvement, and Service Enhancement Account (PTMISEA) now or sometime in the future for transit projects; and

WHEREAS, the statutes related to state-funded transit projects require a local or regional implementing agency to abide by various regulations; and

WHEREAS, Senate Bill 88 (2007) named the Department of Transportation (Department) as the administrative agency for the PTMISEA; and

WHEREAS, the Department has developed guidelines for the purpose of administering and distributing PTMISEA funds to eligible project sponsors (local agencies); and

WHEREAS, BART wishes to delegate authorization to execute these documents and any amendments thereto to the General Manager;

NOW, THEREFORE, BE IT RESOLVED by the BART Board of Directors that the fund recipient agrees to comply with all conditions and requirements set forth in the Certification and Assurances document and applicable statutes, regulations and guidelines for all PTMISEA funded transit projects.

NOW THEREFORE, BE IT FURTHER RESOLVED that the General Manager be authorized to execute all required documents of the PTMISEA program and any Amendments thereto with the California Department of Transportation.

AGENCY BOARD DESIGNEE:

BY: _____

#



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>W. G. Delaney</i>		GENERAL MANAGER ACTION REQ'D: Approve and forward to the Board		
DATE: c 2/4/11		BOARD INITIATED ITEM: No		
Originator/Prepared by: Pepe Vallone Dept. M&E <i>Pepe Vallone</i> 2/1/11	General Counsel <i>Andrew Davis</i> 2/1/11	Controller/Treasurer <i>[Signature]</i> 2/1/11	District Secretary []	BARC <i>Paul [Signature]</i> 2/2/11
Signature/Date: [] [] [] [] []				

TITLE:

Award Contract No. 79HK-140, "Renovation of Security Barrier at SFTS"

NARRATIVE:

PURPOSE:

To authorize the General Manager to award Contract No. 79HK-140: "Renovation of Security Barrier at SFTS".

DISCUSSION:

This Contract provides for continued maintenance of the Temporary Security Barrier around the San Francisco Transition Structure (SFTS). A Security Barrier is required for safe operation and protection of the public. Adequate maintenance is needed to sustain the safety function of this facility and to mitigate the potential for failure that could endanger the general public. In general, work under this Contract consists of providing all labor, materials, equipment and other accessories necessary to maintain this facility for the next two years.

The Temporary Security Barrier has been in place since November 2006. This Temporary Security Barrier was intended to remain in place for only a couple of years, and was to be replaced by a Permanent Security Barrier by November 2008. Current schedules indicate the Permanent Security Barrier will not be in place until 2013.

Initially, the Temporary Security Barrier had severe performance problems. Accelerated corrosion and failure of different elements and connections plagued this temporary installation shortly after installation. The contractor for the initial temporary installation performed repairs of items covered by the warranty as needed, fulfilling the terms of its warranty.

A maintenance program was implemented and some design modifications were introduced. With these measures in place, the Temporary Security Barrier has been performing well. The current maintenance contract for the Temporary Security Barrier

is running out of funds. A new maintenance contract is needed in order to maintain the safety function of the Temporary Security Barrier.

Staff has determined that this work is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15301(f)-the addition of a safety protection device in conjunction with an existing structure involving negligible expansion of use.

Advance Notice to Bidders was mailed on December 3, 2010 to 62 prospective bidders and to 23 plan rooms and minority assistance organizations. The Contract was advertised on December 4, 2010. Prospective Bidders were required to complete a Security Screening before being provided with the security sensitive information pertinent to this Contract. A pre-Bid meeting was held on January 5, 2011.

Three prospective Bidders attended the pre-bid meeting. Three Bids were received on January 25, 2011 as follows:

<u>Bidder</u>	<u>Location</u>	<u>Total Bid Price</u>
DRS Marine, Inc.	Vallejo, CA	\$270,190
Underwater Resources, Inc.	San Francisco, CA	\$360,939
Vortex Marine Construction, Inc.	Oakland, CA	\$464,529
ENGINEER'S ESTIMATE		\$396,678

Staff has determined that the Bid submitted by DRS Marine, Inc. is responsive to the solicitation; and the Bidder's license, business experience, and financial capabilities indicate that the Bidder is responsible. Staff has also determined that the Total Award Price of \$270,190 is fair and reasonable and reflects current market conditions.

Pursuant to the District's Non-Discrimination in Subcontracting Program, the availability percentages for this Contract are 23% for MBEs and 12% for WBEs. The Bidder will not be subcontracting any work and will do all work with its own forces. Therefore, the District's Non-Discrimination in Subcontracting Program does not apply.

FISCAL IMPACT:

Funding of \$270,190 for the award of Contract No. 79HK-140 is included in the total project budget for the FMS #79HK – SF Vent Structure. The Office of the Controller/Treasurer certifies that funds are currently available to meet this obligation.

F/G 57F - FY08-09 CTSGP – Prop IB

\$270,190

As of month ending 01/02/11, \$682,000 is available for commitment from this fund source for this Contract and BART has committed \$8,852 to date. There is no pending commitment in BART's financial management system. This action will commit \$270,190 leaving an uncommitted balance of \$402,958 in this fund source.

There is no fiscal impact on available unprogrammed District Reserves

ALTERNATIVES:

1) The Board may reject all Bids and ask for the Contract to be re-bid. A re-bid is not likely to result in better pricing and will result in the deferral of maintenance activities vital for public safety, resulting in potential liability for the District.

2) The Board may reject all Bids and not award a Contract. If no contract is awarded and the Temporary Security Barrier is not maintained, it would have to be removed as it would become a hazard with potential liability for BART.

If the Temporary Security Barrier is removed, there would be a risk of unauthorized entry into the vicinity of the SFTS. BART facilities and public safety would be compromised.

If the Temporary Security Barrier is removed, BART would have to refund the cost of the original installation to the Federal Government.

RECOMMENDATION:

Adoption of the following motion:

MOTION:

The General Manager is authorized to award Contract No. 79HK-140, "Renovation of Security Barrier at SFTS" to DRS Marine, Inc. of Vallejo, CA, for the total Bid price of \$270,190, pursuant to notification to be issued by the General Manager, and subject to the District's protest procedures.



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Maecia Delbueh</i>		GENERAL MANAGER ACTION REQ'D: Approve and Forward to Board of Directors		
DATE: <i>2/2/11</i>		BOARD INITIATED ITEM: No		
Originator/Prepared by: Shirley J Ng Dept: TSD	General Counsel <i>Michael Ray</i> <i>1/31/11</i>	Controller/Treasurer <i>[Signature]</i> <i>1/31/11</i>	District Secretary []	BART <i>Paul [Signature]</i> <i>2/1/11</i>
Signature/Date: <i>AS 1/31/11</i>				
Status: Routed		Date Created: 01/17/2011		

Award of Contract 15PR-110, Earthquake Safety Program, Station Structure - C Line, Lafayette Station

NARRATIVE:

PURPOSE:

To obtain Board authorization for the General Manager to award Contract No. 15PR-110, for BART Earthquake Safety Program, Station Structure – C Line, Lafayette Station to L. C. General Engineering & Construction, Inc.

DISCUSSION:

Contract No. 15PR-110 will provide for the seismic strengthening of Lafayette Station as part of BART's Earthquake Safety Program. The work consists of the structural retrofit of the canopies, the track slab and the associated architectural and mechanical/electrical components impacted by the retrofits.

An Advance Notice to Bidders was mailed on November 24, 2010 to 59 firms. The Contract was advertised on November 26, 2010 and Contract Books were sent to 22 plan rooms. A total of 19 firms purchased copies of the Bid Documents. A Pre-Bid Meeting and site tour was held on December 10, 2010 with a total of 27 potential Bidders in attendance. Four bids were received. Bids were opened publicly on January 11, 2011.

After review by staff, the Bid submitted by L. C. General Engineering & Construction, Inc. was determined to be the apparent low bid. The Bids submitted by L.C. General, Nabi Construction, and GEMS Environmental were determined to have arithmetical errors in the Bid Item totals and/or in the total Bid Price. Paragraph 13.B, Evaluation, of the Instructions to Bidders in the Contract clearly states that item totals are provided by the Bidder for the convenience of the District, and that the District will independently calculate such prices based on the unit or lump sum prices bid. In the event of a discrepancy, the District's calculations shall govern. The District's calculations find that L. C. General Engineering & Construction, Inc. is the apparent low bidder. Tabulation of the corrected Bids, including the Engineer's Estimate, is as follows:

<u>BIDDER</u>	<u>LOCATION</u>	<u>TOTAL AMOUNT</u>
1. L.C. General Engineering & Construction, Inc.	San Francisco, CA	\$700,434.68
2. Nabi Construction .	San Francisco, CA	\$769,996.95
3. GEMS Environmental	Bay Point, CA	\$868,351.21
4. Rodan Builders	Burlingame, CA	\$936,820.00
<u>Engineer's Estimate</u>		\$600,000.00

The apparent low Bid submitted by L.C. General Engineering & Construction, Inc. was determined to be fair and reasonable and was deemed 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.

Pursuant to the District's Non-Discrimination in Subcontracting Program, the availability percentages for this Contract are 23% for MBEs and 12% for WBEs. The bidder committed to 21% MBE and 8% WBE. The bidder did not meet the MBE and WBE percentages, therefore the bidder was requested to provide the District with information to determine if it had discriminated. Based on the review of the information submitted by the bidder, the Office of Civil Rights found no evidence of discrimination.

FISCAL IMPACT:

Funding for \$700,435 for award of Contract No. 15PR-110 is included in the total project budget for the FMS #15PR, ESP – Lafayette Station. The Office of the Controller/Treasurer certifies that funds are currently available to meet this obligation.

F/G 01F – Earthquake Safety G.O. Bond:	<u>\$700,435</u>
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As of month ending 01/02/11, \$2,522,000 is available for commitment from this fund source for this project and BART has committed \$22,000 to date. There are pending commitments of \$1,700,000 in BART's financial management system. This action will commit an additional \$700,435 leaving an uncommitted balance of \$99,565 in this fund source.

There is no fiscal impact on available unprogrammed District Reserves.

ALTERNATIVE:

The Board may decline to authorize award of the Contract. If the Contract is not awarded, BART will be unable to implement the seismic strengthening of this station at this time. The Board may elect to reject bids and authorize staff to readvertise. Under this alternative, staff would have to reissue the contract and obtain new bids. Staff does not believe that readvertising would result in any significant lowering of prices. This would also result in additional cost and time to execute the required retrofits.

RECOMMENDATION:

It is recommended that the Board adopt the following motion:

MOTION:

The General Manager is authorized to award Contract No. 15PR-110, Earthquake Safety Program, Station Structure - C Line, Lafayette Station to L.C. General Engineering & Construction, Inc. for the Bid amount of \$700,434.68 pursuant to notification to be issued by the General Manager and subject to the District's protest procedures.

FUNDING SUMMARY - EARTHQUAKE SAFETY PROGRAM

PROJECT ELEMENT	Baseline Budget	Current Forecast as of 2/1/11	REMARKS
ENVIRONMENTAL, ENGINEERING, AND CONSTRUCTION MANAGEMENT			
GEC (Bechtel Team)	\$105,000,000	\$248,200,000	
Other GEC	\$81,478,000	\$0	
Subtotal GEC	\$186,478,000	\$248,200,000	
CM	\$61,498,000	\$91,000,000	
Environmental	\$1,042,796	\$2,198,237	
TOTAL E, E & CM	\$249,018,796	\$341,398,237	
CONSTRUCTION			
Transbay Tube			
Oakland Ventilation Structure	\$1,033,000	\$1,153,096	
Oakland Landside	\$17,970,000	\$10,699,433	
San Francisco Ferry Plaza			
SFTS (including Tube liner)	\$73,037,000	\$5,655,414	
Marine Vibro Demo	\$101,285,000	\$70,230,000	
Stitching	\$82,962,000	\$0	
Aerial Guideways			
West Oakland/North Oakland	\$112,923,000	\$72,700,485	
Fremont	\$178,224,000	\$92,117,176	
Concord	\$36,500,000	\$11,606,641	
Richmond	\$80,155,000	\$40,994,000	
San Francisco/Daly City	\$36,590,000	\$9,991,645	
Stations (18)	\$126,961,000	\$90,896,318	
Other Structures			
LMA	\$5,529,000	\$5,267,440	
Yds & Shops	\$12,436,000	\$20,300,000	
Parking Structures	\$14,437,000	\$14,600,000	
At Grade Trackway	\$22,361,000	\$0	
34.5kV Replacement		\$40,000,000	
Systems	\$7,066,000	\$9,868,000	
TOTAL CONSTRUCTION	\$909,469,000	\$496,079,648	
PROGRAM COSTS			
Program Costs (Hazmat, ROW, Consult, Staff)	\$159,894,204	\$252,559,200	
Contingency	\$32,104,000	\$163,397,072	
TOTAL PROGRAM COSTS	\$191,998,204	\$415,956,272	
BASELINE FUNDING	\$1,350,486,000		
REVISED FUNDING		\$1,253,434,157	
			\$1,221,275,376 Adopted Funding
			\$32,158,781 Outside Adopted Funding



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: 		GENERAL MANAGER ACTION REQ'D: Approve and forward to Board of Directors		
DATE: 2/2/11		BOARD INITIATED ITEM: No		
Originator/Prepared by: Shirley J Ng Dept: TSD 	General Counsel 	Controller/Treasurer 	District Secretary 	BART 
Signature/Date: 2/1/11		2/2/11		
Status: Approved		Date Created: 01/20/2011		

TITLE:

Reject All Bids For Contract No. 15PP-110, Earthquake Safety Program, Station Structures - C Line

NARRATIVE:

PURPOSE:

To reject all bids for Contract No. 15PP-110, Earthquake Safety Program Station Structures - C Line.

DISCUSSION:

Contract No. 15PP-110 will provide for the seismic strengthening of Orinda, Walnut Creek and Pleasant Hill Stations as part of BART's Earthquake Safety Program. These stations are part of the operability upgrade approved by the Board in January 2009. The work consists of the structural retrofit of pile caps, columns, and bent caps and the associated architectural and mechanical/electrical components impacted by the retrofits.

An Advance Notice to Bidders was mailed on November 12, 2010 to 59 firms. The Contract was advertised on November 15, 2010 and Contract Books were sent to 22 plan rooms. A total of 40 firms purchased copies of the Bid Documents. A Pre-Bid meeting and site tour were conducted on December 3, 2010 with a total of 20 potential Bidders in attendance. Three bids were received and publicly opened on January 11, 2011.

After review by staff, the Bid submitted by West Bay Builders, Inc. was determined to be non-responsive as they took exception to the Bid Form. It should be noted that the Bid submitted by Alten Construction, Inc. was determined to have arithmetical errors in the Bid Item totals and/or in the total Bid Price. Paragraph 13.B, Evaluation, of the Instructions to Bidders in the Contract clearly states that item totals are provided by the Bidder for the convenience of the District, and that the District will independently calculate such prices based on the unit or lump sum prices bid. In the event of a discrepancy, the District's calculations shall govern. After correction, Alten's Total Amount Bid was \$23,937,483 rather than \$12,813,685.24 as presented on its Bid Form, and was higher than that of Roebbelen Contracting, Inc., making Roebbelen the apparent low Bidder.

Tabulation of the corrected Bids, including the Engineer's Estimate, is as follows:

<u>BIDDER</u>	<u>LOCATION</u>	<u>TOTAL AMOUNT</u>
1. Roebbelen Contracting, Inc.	El Dorado Hills, CA	\$13,395,543.16
2. West Bay Builders, Inc.	Novato, CA	\$13,547,070.00
2. Alten Construction, Inc.	Richmond, CA	\$23,937,483.64
<u>Engineer's Estimate</u>		\$11,920,000.00

As the low Bid by Roebbelen is 12% above the Engineer's Estimate, staff believes more competitive bids may be obtained with a second procurement and clarification of submittal requirements.

FISCAL IMPACT:

There is no fiscal impact by this action.

ALTERNATIVE:

Award the contract to the low bidder, Roebbelen Contracting, Inc. subject to the District's evaluation procedures.

RECOMMENDATION:

It is recommended that the Board adopt the following motion:

MOTION:

All bids for Contract No. 15PP-110, Earthquake Safety Program, Station Structures - C Line are rejected and the General Manager is authorized to readvertise the work.



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Walter Dellinger</i>		GENERAL MANAGER ACTION REQ'D:		
DATE: c 2/3/11		BOARD INITIATED ITEM: No		
Originator/Prepared by: Peter Y Horikoski Dept: Human Resources <i>Peter Y. Horikoski</i> 2/2/11 Signature Date:	General Counsel <i>MB</i> 2/2/11	Controller/Treasurer <i>[Signature]</i> 2/2/11	District Secretary []	BARC <i>[Signature]</i> 2-2-11 []

TITLE:

Life and Disability Insurance Vendor

NARRATIVE:

PURPOSE:

To obtain Board approval to execute an agreement with The Standard Insurance Company (Standard) to provide life and accidental death and dismemberment insurance, long-term disability insurance, and short-term disability administrative services for District employees. The term of the Agreement is three years, with an option to extend the term for an additional two-year term.

DISCUSSION:

The District's life insurance (Life) and accidental death and dismemberment (AD&D) and disability insurance programs provide basic coverage at no cost to employees, and additional coverage at the employee's option and cost. This insurance is handled through commercial insurance carriers. The life insurance and long-term disability programs are fully insured, while the short term disability program is self-insured. The District has had an agreement with the Principal Life Insurance Company (Principal) since 1979 for Life and AD&D insurance, and since 2001 for short-term disability (STD) administrative services and long-term disability (LTD) insurance.

In the spring of 2010, the District's benefits broker, Keenan and Associates (Keenan) solicited proposals for these services at the direction of staff. In considering the universe of providers appropriate to this solicitation, Keenan has been sensitive to the District's ongoing interest in providing contracting opportunities to a broad pool of prospective providers. Keenan was directed to seek prospective providers with an established record of public sector work generally, and work with agencies contracting with CalPERS specifically, in order to provide assistance in coordinating disability benefits with CalPERS benefits. Additionally, Keenan sought prospective providers with sufficient liquidity and administrative capacity to handle fully insured accounts of the District's size. Accordingly, Keenan marketed the current plan designs to Assurant Employee Benefits, CIGNA, Guardian Life Insurance, Hartford Life Insurance, ING Life Insurance, MetLife, Minnesota Life, Mutual of Omaha, Principal, Prudential, Standard, and Unum. Keenan is not aware of minority-owned insurance companies that have the experience and capacity to handle this coverage for a public sector client of BART's size. The marketing

and acceptance of proposals was conducted between April 16, 2010 and May 17, 2010.

Of the companies invited to participate, Principal, CIGNA, Hartford, Minnesota Life, Prudential, Standard, and Unum completed a submission. The proposals from CIGNA, Standard and Unum most closely matched the current benefit design at a competitive price. As the incumbent provider, Principal was able to propose an exact match of the current program design. Although Principal's price was higher than the other three leading competitors, it was invited to join the others in the interview process. For reference, Principal's main offices are in Des Moines, Iowa; CIGNA's corporate offices are located in Bloomfield, Connecticut; Standard is headquartered in Portland, Oregon; and Unum operates from Chattanooga, Tennessee.

During the month of June, 2010, structured oral interviews were held with the four finalists – Principal, CIGNA, Standard and Unum. These interviews included standardized questions that were asked of all presenters and rating sheets to document the effectiveness of their presentations by the interview panel members. The interview panel members included District Human Resources staff and a representative from Keenan. Standard was the highest scorer for all of the interviewers.

The four finalists were also allowed the opportunity to provide the District with best and final pricing. A spreadsheet is attached that displays the estimated total premiums based on these final rates. At that point, both Standard and Unum provided the most competitive pricing and plan design packages.

In addition to its strong competitive position based on pricing and plan design, Standard's proposal includes a program of operational and administrative support that shows promise in helping the District more effectively manage absences, and facilitate early return to work by individuals who have a disabling condition. An onsite return-to-work coordinator will be working one day a week with staff from the outset of the agreement; consideration will be given to adding days based on experience. Standard has also offered to provide telephonic and web-based claims filing, in addition to hard copy, which is presently the only filing option. Human Resources staff will have online access to Standard's claims system in order to provide better quality customer service to employees and/or beneficiaries.

Standard has more than 40 offices across the nation, including a local office in Walnut Creek. The company has been in business for more than 100 years, and carries more than \$1.8 billion in coverage with more than 27,000 group insurance policies. Standard is a national leader in group STD, LTD and Life and AD&D insurances.

Staff is requesting authority to execute an agreement for three years for a not-to-exceed amount of \$7,830,960, with an option to extend the term for an additional two years, for an amount not to exceed a total of \$13,728,180 for the five year agreement. Staff expects to obtain proposed rates for the optional two-year term from Standard in advance of staff's decision whether to exercise the option. Staff estimates that Standard's proposal for the option period will not exceed \$5,897,220. Accordingly, the total amount of contract authority requested over the five years is \$13,728,180. If Standard's proposed rates for the option period bring the total amount of the agreement to more than \$13,728,180 and staff is unsuccessful in negotiating the rate to that

amount or lower, staff will either return to the Board for authority to increase the not-to-exceed amount above \$13,728,180 for the five-year term of the agreement or solicit new proposals for these services.

Approximately 20% of the cost of the agreement will be offset by employee payments for optional coverages.

The Office of the General Counsel will approve the agreement and any subsequent amendments as to form.

FISCAL IMPACT:

Based on the uniform demographic assumptions given to all proposers by the District, estimated savings to the District relative to current rates will be approximately \$340,000 a year for each of the first three years of the agreement, for a total estimated savings of more than \$1,020,000 for the first three years.

Funding for this contract will be provided from the District's operating budgets for employee fringe benefits. The estimated expenditures by fiscal year for the base three years of the contract are as follows:

FY2011	\$ 828,416	(partial year)
FY2012	2,526,256	
FY2013	2,651,328	
FY2014	<u>1,824,960</u>	(partial year)
Total	<u>\$7,830,960</u>	

The expenditures for FY 2011 are included in the District's operating budgets for FY 2011. The expenditures for FY 2012, FY 2013 and FY 2014 will be included in the future District's operating budgets for such years. Availability of funding for the option years must be confirmed with the Controller-Treasurer before the option is exercised.

ALTERNATIVE:

To extend the District's agreement with the Principal Life Insurance Company or to select another provider for these coverages.

RECOMMENDATION:

Adopt the following motion:

MOTION:

That the Board authorize the General Manager to execute an agreement for a term of three years for an amount not to exceed \$7,830,960, with the Standard Insurance Company, and to exercise an option to extend for an additional two years for an amount not to exceed a total of \$13,728,180 for the five year agreement.

Bay Area Rapid Transit 2010 Principal vs. Proposed Options

All Lines of Coverage						
Carrier	Current Principal	Renewal Principal	Proposed CIGNA	Proposed Standard	Proposed Unum	
Effective Date	1/1/2010	1/1/2011	1/1/2011	1/1/2011	1/1/2011	
Rate Guarantee	2 years	2 years	3 years	3 years	3 years	
Rate Description	All Eligible	All Eligible	All Eligible	All Eligible	All Eligible	
Combined Estimated Total Monthly Premium	\$235,476	\$214,988	\$221,622	\$207,045	\$206,481	
Combined Estimated Total Annual Premium	\$2,825,713	\$2,579,861	\$2,659,465	\$2,484,540	\$2,477,771	
Combined Estimated Total % Increase Over Current Premium	-	-8.70%	-5.88%	-12.07%	-12.31%	
Estimated Annual Dollar Savings off of Current rates		\$245,852	\$166,247	\$341,173	\$347,942	

The rates outlined above are intended as a rate comparison only. Final rates are subject to actual enrollment, plan design(s) selected, and underwriting approval.



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Elaine M. Kurtz</i>		GENERAL MANAGER ACTION REQ'D:		
DATE: c 1/21/11		BOARD INITIATED ITEM: No		
Originator/Prepared by: Elaine M. Kurtz Dept: <i>Elaine M. Kurtz</i>	General Counsel <i>MB</i>	Controller/Treasurer <i>Changilima</i>	District Secretary []	BARC <i>Changilima</i>
Signature/Date: <i>Elaine M. Kurtz</i> 1-21-11		[]		
TITLE:				

Fiscal Year 2011 Evaluation and Adjustment of Professional/Management Salary Ranges for Employees on the Merit Plan

NARRATIVE:

To obtain Board approval for the General Manager to refrain from conducting a salary survey and making adjustments in professional/management salary ranges in Fiscal Year 2011.

DISCUSSION:

In accordance with the 2009-2013 collective bargaining agreement between the District and AFSCME, base salaries for employees represented by AFSCME remain essentially fixed at Fiscal Year 2009 levels, with no scheduled increases to base salaries for the balance of the contract term (through Fiscal Year 2013). Salaries of non-represented professional/management employees similarly remain fixed at 2009 levels, with no merit increases to base salary for Calendar Years 2010 and 2011.

Although base salaries for individual professional/management employees remain essentially fixed, current District policy for merit plan employees requires that the salary ranges for professional/management employees be evaluated annually against the relevant market, and, depending upon the results of the survey/study, the ranges be adjusted. Specifically, the Board has directed the General Manager to evaluate Professional/Management salary ranges on an annual basis, and to make such adjustments as are required to establish the mid-point of the pay ranges for positions so that they approximate the 75th percentile of the average of salaries paid for similar jobs in the labor market. (Resolution 5138, adopted June 10, 2010, approving the FY'11 annual budget) The AFSCME Agreement, which contains similar language, requires an annual salary survey on which to base the range adjustment for AFSCME represented employees.

Range adjustments impact the amount of salary that employees receive under only very limited circumstances. Range adjustments impact individuals whose salary are "over the range" as a result of a merit adjustment in the prior year. There are currently no employees receiving "over the range pay." Salary range adjustments also impact the salary of employees whose salary falls below a new range minimum that is established under the policy cited above. A small number of employees are now being paid at or near the minimum of their pay ranges (a total of eight are within 4% of their respective pay range minima), and, would receive an increase if study results indicated a 4% adjustment of ranges was warranted.

The last comprehensive salary survey was completed in June 2008. By memo dated April 1, 2010, the Board was advised that staff confirmed with the consultant that performed the 2008 survey that a new survey in the then-current economic climate was not likely to yield different results. The Board was also advised that with the concurrence of AFSCME leadership, the General Manager would continue to rely on the 2008 survey results and would adjust the professional/management salary ranges 2% effective 1/1/10 so the range midpoints would more closely approximate the 75th percentile benchmark in the current policy.

For the reasons discussed below, it is recommended that the Board authorize the General Manager to refrain from conducting a salary survey in Fiscal Year 2011, and that the ranges remain fixed at current levels for the balance of Calendar Year 2011. AFSCME leadership concurs with the retention of the current pay ranges and deferral of a salary survey at this time.

This recommendation is made in consideration of the following. First, as noted above, the District's current agreement with AFSCME makes only limited provision for an across the board base pay increase during the entire contract term, i.e., a 1.0% increase effective June 30, 2013 contingent on a number of economic benchmarks. This means that regardless of what might be learned by conducting a full market survey and/or adjusting pay ranges, the vast majority of professional/management employees' base pay will remain unchanged through Calendar Year 2011.

Second, the District's Executive staff is currently reviewing in draft a comprehensive update of HR procedures and alternative compensation procedures and policy. Staff hopes to bring any recommendations for changes in policy forward to the Board in the next few months for its consideration and action, as it deems appropriate. While review of the proposals is not yet complete, the Board may well be asked to consider compensation policy alternatives, including the frequency of market studies and changes in the "yardstick" by which salary ranges are measured (currently to establish the mid-points of the ranges so that they approximate the 75th percentile of the market, as described above). Given that staff is currently considering whether such changes would better serve the District, it may be useful to delay a market study and pay range adjustment that uses the current standard.

Finally, a market survey of the type we have traditionally undertaken incurs costs, both direct and indirect, not only for staff, but for the participating jurisdictions. The Board is aware that District staffing levels, especially in the administrative support area, require careful prioritization of projects. This appears to be one that can be foregone this year without significant negative impact on employees or service.

FISCAL IMPACT:

No costs will be incurred as a result of the proposed action.

ALTERNATIVES:

Conduct a market study and adjust pay ranges accordingly with a January 1, 2011 effective date.

RECOMMENDATION:

Approve the following motion.

MOTION:

To authorize the General Manager to refrain from conducting a market salary survey for the purpose of evaluating professional/management salary ranges in Fiscal Year 2011 as previously directed in Board Resolution 5138 and to maintain the current professional/salary ranges through Calendar Year 2011.



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Margaret DeVaughn</i>		GENERAL MANAGER ACTION REQ'D: Approve and forward to Board of Directors		
DATE: 2/3/11		BOARD INITIATED ITEM: No		
Originator/Prepared by: Carl Orman Dept: <i>Carl Orman</i> Signature/Date: 2/3/11	General Counsel <i>Andrew Rivas</i> 2/3/11	Controller/Treasurer <i>[Signature]</i> 2/3/11	District Secretary []	BARC <i>[Signature]</i> 2/3/11
Status: Approved		Date Created: 01/26/2011		

TITLE

Award of Contract No. 79HM-110, SFTS SB

NARRATIVE

PURPOSE:

To authorize the General Manager to Award Contract No. 79HM-110, SFTS SB, to Taber Construction Inc. of Concord, California.

DISCUSSION:

The work to be performed under Contract No. 79HM-110 is for the permanent security standoff surface barrier at the San Francisco Transition Structure ("SFTS"). This Contract is classified as a Security Sensitive Contract. The work under this Contract is required to provide protection for the SFTS. The Contract elements consist of concrete barriers, steel bollards and a vehicle access gate allowing BART and emergency vehicles access to the SFTS. There is an option Bid Item to add architectural features to the barriers. The total Contract duration is 295 days from Notice to Proceed.

Outreach meetings were held on October 21, 2009 and June 29, 2010 to discuss BART's new procurement process for SFTS SB. The outreach notification flyer was mailed out to 84 firms. A total of 4 firms attended.

The Invitation to Bid was mailed on June 17, 2010 to 84 prospective Bidders and 22 plan rooms, and was published in 14 publications. A total of 7 firms purchased copies of the Bid Documents. Seven (7) prospective Bidders attended a mandatory Pre-Bid Meeting and mandatory site tour held on October 12, 2010. A total of four Addenda were issued.

Three (3) sealed Bids were received and opened on January 18, 2011. A tabulation of the Bids, including the Engineer's Estimate, is as follows:

Bidders	Location	Base Bid	Option Bid	Bid Price
Taber Construction Inc.	Concord, CA	\$3,434,000.00	\$1,670,000.00	\$5,104,000.00
West Bay Builders, Inc.	Novato, CA	\$3,702,000.00	\$1,590,000.00	\$5,292,000.00
Schembri Construction Co., Inc.	San Francisco, CA	\$5,200,190.00	\$1,472,100.00	\$6,672,290.00
Engineer's Estimate		\$8,583,894.00	\$638,296.00	\$9,222,190.00

After review by the District, the apparent low bid submitted by Taber Construction Inc. has been deemed to be responsive to the solicitation. Examination of this Bidder's business experience and financial capabilities has resulted in a determination that this Bidder is responsible. Staff has also determined that the Bid price of \$5,104,000.00, including the option Bid Item, is fair and reasonable.

Staff expects to execute a Cooperative Agreement with the Port of San Francisco by mid-March. Staff anticipates issuing the Contract Award following execution of the Cooperative Agreement. All necessary environmental permits will be in place before BART issues a Notice to Proceed.

This Contract is funded in part by a grant from the U.S. Department of Homeland Security (DHS) which requires the Bidders to take all necessary affirmative steps to assure that small and minority firms, women business enterprises, and disadvantaged business concerns are used whenever possible. The DHS grant does not provide for Disadvantaged Business Enterprise (DBE) goals. Taber's Bid indicated participation of small and minority firms, women business enterprises, and disadvantaged business concerns for a total of approximately \$1.8 million, which represents 35% of the Contract price.

FISCAL IMPACT:

Funding for \$5,104,000 for Award of Contract No. 79HM-110 is included in the total project budget for the FMS #79HM, Transition Barriers. The Office of the Controller/Treasurer certifies that funds are currently available to meet this obligation.

F/G 62T - ARRA 2009 RA-RI-0104:

\$5,104,000

As of month ending January 02, 2011, \$5,143,219 is available for commitment from this fund source for this Contract and BART has committed \$0 to date. There are no pending commitments in BART's financial management system. This action will commit \$5,104,000 leaving an uncommitted balance of \$39,219 in this fund source.

There is no fiscal impact on available unprogrammed District Reserves.

ALTERNATIVES:

The alternative is to decline to authorize award of the Contract. If the Contract is not awarded,

BART will be unable to adequately protect the SFTS from potential damage. The District could also readvertise the Contract, but this would result in loss of funding and additional incurred cost and time to the District. There is no assurance that if the Contract were re-bid it would result in lower prices.

RECOMMENDATION:

It is recommended that the Board adopt the following motion:

MOTION:

The General Manager is authorized to Award Contract No. 79HM-110, SFTS SB, to Taber Construction Inc., for a total Bid price of \$5,104,000.00 including the option Bid Item, and to exercise the option Bid Item, subject to notification to be issued by the General Manager and compliance with the District's protest procedures and DHS requirements related to protest procedures.



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Walter J. Blum</i>		GENERAL MANAGER ACTION REQ'D: Approve and Forward to Board of Directors		
DATE: c 2/2/11		BOARD INITIATED ITEM: No		
Originator/Prepared by: Shirley J Ng Dept: TSD	General Counsel <i>Andrew Kowalski</i> 2/1/11	Controller/Treasurer <i>[Signature]</i> 2/1/11	District Secretary <i>[Signature]</i> 2/1/11	BARC <i>[Signature]</i> 2/2/11
Signature/Date: <i>[Signature]</i> 2/1/11				

Authority to Award Professional Services Agreement No. 15PR-510 for Construction Management Services for BART Earthquake Safety Program Station Structure, C Line, Lafayette Station

NARRATIVE:

PURPOSE:

To obtain Board authorization for the General Manager to award Agreement No. 15PR-510 in an amount not to exceed \$1,700,000 to Ghirardelli Associates, Inc. for construction management services to support the BART Earthquake Safety Program Station Structure, C Line, Lafayette Station.

DISCUSSION:

The retrofit design for the Lafayette Station under the BART Earthquake Safety Program is complete and was advertised on September 17, 2010. Retrofit of this station is part of the operability upgrade approved by the Board in January 2009. This Agreement will provide the District with construction management services to monitor the Contractor and coordinate activities for the retrofit. Assignments under this Agreement will be defined by Work Plans. This Agreement will have a term of two (2) years.

On September 17, 2010, the District issued a Request for Statements of Qualifications ("RFSOQ") No. 15PR-510. Advance notices were mailed on September 15, 2010 to 88 prospective proposers. RFSOQ No. 15PR-510 was advertised locally and nationally in a total of 12 publications. A Pre-Submittal Meeting held on September 27, 2010 was attended by 55 prospective proposers.

Proposals were received on November 2, 2010, from the following eighteen (18) firms:

Firm

Location

1. 4 Leaf, Inc.
2. Anchor Engineering, Inc.
3. Anil Verma Associates, Inc.

Pleasanton, CA
Lafayette, CA
Oakland, CA

4. Aztec Consultants, Inc.	San Ramon, CA
5. C2PM	San Francisco, CA
6. Cornerstone Transportation Consulting, Inc.	San Francisco, CA
7. Don Todd Associates, Inc.	San Francisco, CA
8. Ghirardelli Associates, Inc.	Oakland, CA
9. Larkin & Associates	San Francisco, CA
10. MSE Group	Oakland, CA
11. PMA/CMC, a Joint Venture	San Francisco, CA
12. PMA/NBA, a Joint Venture	San Francisco, CA
13. RSE, Inc.	Belmont, CA
14. Swinerton Management & Consultaing	San Francisco, CA
15. Townsend Management Inc.	San Francisco, CA
16. Valley Facilities Management Corporation	San Jose, CA
17. VSCE, Inc.	Oakland, CA
18. West Bay Builders, Inc.	Novato, CA

The Proposals were evaluated by a Source Selection Committee chaired by BART Contract Administration and including representatives from BART's Transit System Development Department and the Office of Civil Rights. Proposals were first reviewed for responsiveness to the requirements of the RFSOQ. Subsequently, the Proposals were evaluated and scored on the basis of the criteria contained in the RFSOQ with respect to the qualifications of the proposing firms and the project team. In accordance with procurement requirements for architectural and engineering services, the award is based upon technical merit only, without reference to price or rates. As a result of the technical evaluation, five Proposers were short-listed to participate in the oral presentations: C2PM, Cornerstone Transportation Consulting Inc., Don Todd Associates, Inc., Ghirardelli Associates, Inc., and VSCE, Inc. Oral presentations were conducted on January 10, 2011.

The Source Selection Committee recommends the award of Professional Services Agreement No. 15PR-510 for Construction Management Services for the BART Earthquake Safety Program Station Structure, C Line, Lafayette Station to Ghirardelli Associates, Inc. based on its highest cumulative technical evaluation and oral presentation scores. Staff determined that the rate structure for a cost-plus-fixed-fee Agreement is fair and reasonable and that Ghirardelli Associates Inc. is a responsible organization. BART's Internal Audit Department has completed an audit of the Propser's provisional overhead rates, the results of which will be incorporated into the executed Agreement, as appropriate.

Pursuant to the District's Non-Discrimination in Subcontracting Program, the availability percentages for this Agreement are 16% for MBEs and 20% for WBEs. Ghirardelli Associates, Inc. is a WBE firm. Ghirardelli will not be subcontracting any work and will do all work with its own forces. Therefore, the District's Non-Discrimination in Subcontracting Program does not apply.

The Office of General Counsel will approve the final Agreement as to form.

FISCAL IMPACT:

Funding in the not to exceed amount of \$1,700,000 for award of Agreement No. 15PR-510 is included in the total project budget for the FMS #15PR, ESP – Lafayette Station . The Office of the Controller/Treasurer certifies that funds are currently available to meet this obligation.

F/G 01F – 2004 Earthquake Safety G.O. Bond: \$1,700,000

As of month ending 01/02/11, \$2,522,000 is available for commitment from this fund source for this project and BART has committed \$22,000 to date. There are pending commitments of \$800,000 in BART's financial management system. This action will commit \$1,700,000 leaving an uncommitted balance of \$0 in this fund source.

There is no fiscal impact on available unprogrammed District Reserves.

ALTERNATIVE:

The District could reject all Proposals and re-solicit new proposals, adding cost and time to the BART Earthquake Safety Program. BART could also attempt to seek other means of furnishing the required services, but this would also add cost and time to the BART Program.

RECOMMENDATION:

Staff recommends that the Board adopt the following motion:

MOTION:

The General Manager is authorized to award Agreement No. 15PR-510, for Construction Management Services for BART's Earthquake Safety Program Station Structure, C Line, Lafayette Station, to Ghirardelli Associates, Inc. in an amount not to exceed \$1,700,000 subject to notification to be issued by the General Manager and subject to the District's protest procedures.



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Marisa DeVane</i>		GENERAL MANAGER ACTION REQ'D: Forward to Board of Directors		
DATE: <i>2/2/11</i>		BOARD INITIATED ITEM: No		
Originator/Prepared By: Thomas Horton Dept: <i>TSO</i>	General Counsel <i>Angela Kopy</i>	Controller/Treasurer <i>[Signature]</i>	District Secretary <i>[Signature]</i>	BARC <i>Paul [Signature]</i>
Signature/Date: <i>[Signature]</i> <i>1/31/11</i>	<i>[Signature]</i> <i>2/1/11</i>	<i>[Signature]</i> <i>2/1/11</i>	<i>[Signature]</i> <i>1/1</i>	<i>[Signature]</i> <i>2/2/11</i>
Status: Approved		Date Created: 01/24/2011		

TITLE:

Extend Bid Periods for Contracts 15PJ-110 (Earthquake Safety Program Station Structures - A Line) and 15PB-110 (Earthquake Safety Program Aerial Structures - A Line North)

NARRATIVE:

Purpose:

To request the Board's decision on whether to extend the bidding period for Contracts 15PJ-110 (Earthquake Safety Program Station Structures - A Line) and 15PB-110 (Earthquake Safety Program Aerial Structures - A Line North) for approximately four months.

Discussion:

The Earthquake Safety Program, as approved by the Board of Directors in 2002, includes safety retrofits for aerial structures and stations on the Fremont Line (A Line). Recently the Board directed staff to conduct preliminary engineering and environmental studies for upgrading certain portions of the A Line to operability retrofits (the "Bayfair Alternative" and the "Fruitvale Alternative"). Certain members of the Board also requested that staff provide information on the possibility of performing additional operability retrofits between Fruitvale Station and Coliseum Station, including the Coliseum Station.

As part of its response to the Board's request for preliminary engineering and environmental studies for the Bayfair and Fruitvale Alternatives, staff arranged to make safety retrofits in these two areas optional (Options A and B) prior to advertising the appropriate contracts for construction. The two contracts in question are Contract 15PJ-110 (Earthquake Safety Program Station Structures - A Line) and 15PB-110 (Earthquake Safety Program Aerial Structures - A Line North). If the Board decides to proceed with either or both of the two alternatives (the Bayfair and Fruitvale Alternatives), Options A and/or B would not be exercised (i.e., the safety retrofits in these areas would be deleted from the Contracts) and BART would prepare new Contracts to construct operability retrofits as described in the appropriate Alternative.

In order to maintain the ability to upgrade the Fruitvale-Coliseum segment to operability, staff must add another option (Option C) to each Contract. Contract 15PJ-110 is scheduled to open bids on February 15, 2011, while Contract 15PB-110 will open bids on February 22, 2011.

Because of the short time frame remaining to bid opening, staff would need to issue one addendum for each Contract extending the bid period for four months. During this time, staff would prepare another addendum for each Contract to make the safety retrofits between Fruitvale and Coliseum optional (Option C). These addenda would be issued about one month prior to the new bid opening date to allow bidders time to evaluate them and incorporate their effects into bidders' bids.

Delaying the current bid dates will create a delay in Program completion of approximately four months from the current completion date of June 2014, even if the Board later decides not to implement operability upgrades in the Fruitvale-Coliseum segment. It would also add cost to our General Engineering Consultant Agreement No. 6G3975 with Bechtel Infrastructure Corporation. However, the additional contract value granted by the Board at the January 13, 2011 Board meeting will be sufficient to begin program management and design. Staff will return to the Board to obtain additional monetary authority for the agreement with Bechtel. The delay in the bid opening would allow the Board time to consider in more detail whether it wishes to proceed further with environmental study of the Fruitvale-Coliseum segment upgrade.

Should the Board decide to conduct studies of the Fruitvale-Coliseum upgrade and direct staff to issue addenda to make the safety work optional work in Contracts 15PJ-110 and 15PB-110, additional Program schedule slippage would occur. The slippage would depend upon when a decision is made to exercise the option, but could be as long as one year dependent upon completion of environmental work.

Staff's current best estimate of the effect of constructing operability upgrades for the Fruitvale-Coliseum segment is that such work would delay completion of the Program for approximately two and one half years. The current estimate of the Program's reserves indicates that reserves would be sufficient to cover the cost of such an upgrade, but would leave the Program with no contingency to address future unforeseen cost increases.

Fiscal Impact:

This action creates no fiscal impact to unprogrammed District reserves.

Alternative:

The Board can elect not to delay the bid openings for the two Contracts. If bids are opened in February 2011, there will no longer be a possibility of upgrading the Fruitvale-Coliseum segment to operability except at a prohibitive cost.

Motion:

The Board of Directors hereby directs staff to delay the bid openings for Contracts 15PJ-110 (Earthquake Safety Program Station Structures - A Line) and 15PB-110 (Earthquake Safety Program Aerial Structures - A Line North) for a period of four months.



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: 		GENERAL MANAGER ACTION REQ'D: Approve and forward to Board of Directors	
DATE: c 2/3/11		BOARD INITIATED ITEM: No	
Originator/Prepared by: Steve Beroldo Dept. Customer Access 	General Counsel: 2/3/11	Controller/Treasurer: 2/3/11	District Secretary: [] BART: 2/3/11

TITLE:

Authority to Award of Contract 91CW-226 Furnishing Bicycle Lockers with Electronic Controller Locks

NARRATIVE:

PURPOSE:

To obtain Board authorization for the General Manager to award Contract No. 91CW-226 Furnishing Bicycle Lockers with Electronic Controller Locks to eLock Technologies LLC of Berkeley, CA.

DISCUSSION:

Starting in 2007, Phase I of BART's Electronic Bicycle Locker Project was implemented wherein a new generation of shared-use, electronic bicycle lockers was introduced to supplement older, single-user keyed lockers. Phase I deployed 128 lockers at eight stations. The shared-use lockers have been well received with an average weekday occupancy exceeding 90% in some locations. This occupancy far exceeds the single-user lockers, which have an occupancy of approximately 5%. Contract No. 91CW-226 funds Phase II of BART's Electronic Bicycle Locker Program. This is a Requirements Contract with an indefinite total quantity for a five-year term that enables the District to efficiently procure lockers as additional funding becomes available over the five-year life of the Contract. Per the terms of this Contract, the minimum order is 54 quads with 216 lockers spaces. There is no obligation for the District to order any additional lockers beyond the initial, minimum order.

The District provided advance notice to 22 prospective Bidders on July 12, 2010. The Contract was advertised on July 14, 2010. A pre-Bid Conference and scheduled site inspection tour was conducted on July 27, 2010 with seven (7) prospective Bidders in attendance. Fourteen addenda were issued for the Contract to extend the bid deadline and to respond to questions and five pre-bid protests relating to the escalation provisions, bonding requirements and ownership of work product rights language in the Contract Book. On January 18, 2011 the following Bid was received:

<u>Bidder</u>	<u>Bid Price</u>
eLock Technologies, LLC	\$2,334,384
Engineer's Estimate	\$3,807,900

District staff has determined that the Bid submitted by eLock Technologies LLC is responsive to the solicitation. Furthermore, examination of the Bidder's business experience and financial

capabilities has resulted in a determination that the Bidder is responsible and that the \$2,334,384. Bid submitted by eLock Technologies LLC, which is approximately 39% below the Engineer's Estimate, is fair and reasonable. The Unit Price bid for each locker space (\$2,237.50) is 77 % of the price per space (\$2,898.44) for the previous Phase I Contract (December 2007), which used a similar product. The lower price is likely the result of purchasing directly through the manufacturer (Phase I was part of a construction contract and the lockers were purchased through a Prime Contractor, not directly from the manufacturer), and potential for purchasing a higher volume.

The Engineer's Estimate was set at a level of 25 % above the Phase I (December 2007) Bid Prices to allow for higher prices for Stainless steel (the Material Index was up 87%), Electronics Assemblies (the Index was up 5 %), and Fabricated Structural Metal Manufacturing labor costs (the Index was down 5% having been up 15 % over a year earlier). The Engineer's Estimate also allowed for the design and development, more or less from the beginning, of the locker and lock assembly by a new manufacturer.

Pursuant to the revised DBE Program, the Office of Civil Rights is utilizing race and gender neutral efforts for procurement contracts. Therefore, no DBE participation goal was set for this contract.

FISCAL IMPACT:

Per the terms of the Contract Book, a minimum value of 54 quads (216 lockers) must be purchased. Funding of \$490,511 plus applicable sales tax is included in the total project budget for the FMS# 91CW-226 -- Furnishing Bicycle Lockers with Electronic Control Locks. The Controller/Treasurer certifies that funds are currently available to meet this obligation as follows:

ACCMA (Multi-Jurisdictional) 63I \$163,504

As of January 2, 2011, \$258,562 is available for commitment from this fund source for this project and \$6,403 has been committed by BART to date. There are pending commitments of \$500 in the District's financial management system. This action will commit an additional \$163,504, leaving an uncommitted balance of \$88,155

CMAQ 54L \$63,585

As of January 2, 2011, \$146,843 is available for commitment from this fund source for this project and \$13,500 has been committed by BART to date. There are no pending commitments in the District's financial management system. This action will commit an additional \$63,585 leaving an uncommitted balance of \$69,758

MTC/TDA Fremont 63H \$81,752

As of January 2, 2011, \$138,000 is available for commitment from this fund source for this project and \$5,880 has been committed by BART to date. There are no pending commitments in the District's financial management system. This action will commit an additional \$81,752 leaving an uncommitted balance of \$50,368

Measure J (West + Central) 63L \$181,670

As of January 2, 2011, \$1,248,697 is available for commitment from this fund source for this project and \$27,000 has been committed by BART to date. There are no pending commitments in the District's financial management system. This action will commit an additional \$181,670 leaving an uncommitted balance of \$1,040,027

Funds amounting to \$490,511 are currently available to fund this Contract with a potential value of \$2,334,384. The Project Sponsor shall be required to receive advanced certification of funding availability from the Office of the Controller/Treasurer, prior to execution of all future orders under this Contract over and above the currently available \$490,511.

There is no fiscal impact on available unprogrammed District Reserves.

ALTERNATIVE:

The alternative is to not award the contract to eLock Technologies, LLC. If the contract is not awarded the District may lose the available grant funding. Moreover, not awarding this contract would delay implementation of Phase II and may impair the District's ability to secure new funding to purchase electronic bicycle lockers in the future.

RECOMMENDATIONS:

It is recommended that the Board adopt the following motion:

MOTION:

The General Manager is authorized to award Contract No. 91CW-226 Furnishing Bicycle Lockers with Electronic Controller Locks, a Requirements Contract, to eLock Technologies LLC of Berkeley, CA for the Bid price of \$2,334,384.47, plus applicable taxes, pursuant to notification to be issued by the General Manager. All future orders under this Contract over and above the currently available \$490,511, are subject to certification from the Controller/Treasurer that funds are available for such orders.



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>[Signature]</i>		GENERAL MANAGER ACTION REQ'D: Approve and forward to Board		
DATE: c 2/2/11		BOARD INITIATED ITEM: No		
Originator/Prepared by: Pepe Vallenas Dept: M&E	General Counsel <i>[Signature]</i> 1/31/11	Controller/Treasurer <i>[Signature]</i> 1/31/11	District Secretary ()	BARC <i>[Signature]</i> 2/2/11
Signature/Date: <i>[Signature]</i> 1/31/11				

TITLE:

Cooperative Agreement

between the

City and County of San Francisco and the
San Francisco Bay Area Rapid Transit District

NARRATIVE:

PURPOSE:

To authorize the General Manager to execute the "Cooperative Agreement between the City and County of San Francisco and the San Francisco Bay Area Rapid Transit District" (Agreement) and future amendments as described below.

DISCUSSION:

The City and County of San Francisco acting by and through its Municipal Transportation Agency (SFMTA) is performing the Central Subway Project (CSP).

The CSP includes construction of a tunnel crossing Market Street in San Francisco just East of the Powell Street BART Station. CSP is proposing to tunnel within as little as five feet under the Market Street BART tunnels in San Francisco utilizing a tunnel boring machine (TBM). Tunneling in such a congested urban area presents risks that BART needs to ensure are adequately addressed.

The CSP also includes a new SFMTA Muni Metro subway station under Stockton Street between Union Square and Market Street. The station design includes proposed direct concourse to concourse connectivity and interface with BART's Powell Street Station. Connecting the CSP Station to the Powell Street BART Station creates many potential impacts related to ventilation, pedestrian circulation, capacity, construction access and emergency egress that BART needs to have resolved during the final design process.

BART staff is providing support to SFMTA and the Central Subway Project. BART staff and BART consultants have been working closely with SFMTA staff in order to ensure that the BART CSP interface is optimized, and that BART's safety and operability are not compromised.

BART's involvement in support of CSP engineering and design efforts officially started on December 1, 2008, and the term of the Agreement is from December 1, 2008 through November 30, 2018. The amount of the reimbursement under the Agreement is not to exceed \$5,000,000, including reimbursement for BART's prior costs to date.

The Agreement establishes a mechanism for the issuance of Work Authorizations and monthly billings. The Agreement also includes insurance, indemnification, termination and dispute resolution clauses negotiated to the satisfaction of both parties.

The Agreement provides that SFMTA will obtain permits for Project work within the BART Facilities (defined as the BART Market Street tunnels and Powell Street Station). The Agreement also requires SFMTA to provide BART with all designs, specifications, documents, and information regarding construction activities in and around the BART Facilities, including any plans or proposed construction activities which may adversely affect BART in any manner, and provides for a procedure for BART to submit comments to SFMTA regarding its designs and specifications.

The Agreement establishes a dispute resolution process in the event BART does not approve a permit for work within the BART Facilities, or if BART believes that the City's plans or proposed work in the vicinity of the BART Facilities may adversely affect the BART Facilities. In such cases, the parties shall meet to resolve the dispute and, if the dispute cannot be resolved, will submit the dispute to a mediator.

Finally, the Agreement provides for BART and SFMTA, through the American Public Transit Association (APTA), to convene and maintain an Independent Review Panel (IRP) comprised of three experts in tunnel engineering and construction to review and monitor the design and construction of the tunnel crossing. The cost of the IRP will be shared equally by BART and SFMTA. The IRP will advise BART and SFMTA on the adequacy, safety and advisability of proceeding with tunneling at several intermediate steps preceding and during construction on the tunnel crossing. The IRP may make recommendations as to changes in construction means and methods, but the SFMTA shall have sole power to order its contractor to stop work. SFMTA agrees to require its construction contractor to meet, confer, share information, and respond to comments, questions, concerns, and requests for information of BART and the IRP.

In addition to cross-indemnification provisions, the City shall be responsible for tenant claims incurred by BART, and shall hold BART harmless for loss of rental or lease revenue to the extent such losses are a result of physical damage or obstruction to the BART Facilities caused by the CSP.

The Agreement requires the City to require its prime construction contractors for the CSP to comply with specified minimum insurance requirements with respect to losses arising out of the Project. In the alternative, the Agreement allows the City to provide Owner Controlled Insurance Coverage for all or a portion of the above-listed coverage. Additionally, the City agrees to provide or require its prime consultant architects and engineers working on the CSP to provide Professional Liability Insurance and further agrees to endeavor to obtain an excess liability policy to protect against its consultants' errors and omissions in excess of this coverage.

The parties agree to amend the Agreement as needed in the future to add provisions related to construction. Such amendment(s), that are expected to deal primarily with construction coordination issues, might also increase the amount to be reimbursed to BART under the Agreement. As part of this action, staff seeks the board authorization for the General Manager to enter into such future amendment(s) without future Board action.

The Office of the General Counsel will approve the Agreement and any future amendment(s) as to form.

FISCAL IMPACT:

Per the Agreement, BART is to be reimbursed an amount not to exceed \$5,000,000 for all reasonable project costs including costs attributable to BART staff time, outside counsel, third-party consultants and direct expenses. The amount to be reimbursed includes BART's prior project expenditures.

The Agreement establishes billing rates inclusive of base hourly BART staff rates and administrative overhead costs. There is neither profit nor mark-up for outside costs.

ALTERNATIVES:

The Board may reject the Agreement. Rejecting the Agreement will compromise the ability of BART staff to support the project and adequately ensure that BART's safety and operations are fully maintained.

Alternatively, lacking a Cooperative Agreement, BART could proceed and pay for its own staff and consultant time in order to ensure BART's interests are protected.

RECOMMENDATION:


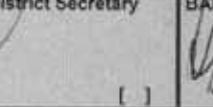
Adoption of the following motion:

MOTION:

The General Manager is authorized to execute the "Cooperative Agreement between the City and County of San Francisco and the San Francisco Bay Area Rapid Transit District" as well as any future amendment(s) dealing with construction issues.



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: 		GENERAL MANAGER ACTION REQ'D: NO		
DATE: 2/3/11		BOARD INITIATED ITEM: No		
Originator/Prepared by: Paul Fadelli Dept:  Signature/Date: 	General Counsel  Signature/Date: 	Controller/Treasurer  Signature/Date: 	District Secretary  Signature/Date: 	BARC  Signature/Date: 
Status: Routed		Date Created: 12/07/2010		

TITLE:

2011 State and Federal Legislative Advocacy

NARRATIVE:

PURPOSE: To review and approve the District's 2011 state and federal advocacy program.

DISCUSSION: Staff has outlined the following state and federal legislative objectives for the year ahead.

A. Proposed State Advocacy Program for BART:

(1) **General State Budget Oversight & Action.** The state's struggling economy and the new proposed budget will be the immediate focus of the 2011 State Legislative session. Actions by the new governor and new state legislators -- and the recent passage of new state propositions -- will all require close monitoring for possible impacts on BART. Once again coordination in Sacramento among transit allies and the California Transit Association (CTA) in Sacramento will be necessary to articulate the importance of state transit assets and to support adequate transit funding.

Secure Transit Funding in a Post-Proposition 22 World

Three successful propositions from the last election will have a direct -- but as yet unknown -- impact on any state budget resolution and the prospect for state transit funding going forward. **Proposition 22** (which BART and CTA supported) will make it more difficult for the state to shift local funds from cities, counties and special districts like BART to resolve state budget problems. It will require that the Diesel Fuel Tax directed to transit through the "gas tax swap" passed last year continue to fund projects defined as "public transit." **Proposition 25** will end the state requirement that a 2/3 vote of legislators is necessary to pass a budget, but will retain a 2/3 vote on any new tax. **Proposition 26**, which changes the definition of a "fee" in the state constitution to require a 2/3 vote for all state and local fees and taxes, could undermine several local revenue raising efforts and the "gas tax swap" provision which secured an annual amount for State Transit Assistance (STA) funding going forward.

These propositions and any resulting actions in the statehouse will directly impact prospects for transit funding going forward– with possibilities ranging from securing or undoing the “gas tax swap” to reinstating the pre-“gas tax swap” funding revenue streams for transit. BART should work with allies to assure the “gas tax swap” is reaffirmed and/or that the maximum amount of STA funding is included in the FY 2011 – 2012 state budget.

Assist appropriation of other Transit Funds.

In last year’s budget Governor Schwarzenegger blue penciled High Speed Rail (HSR) connectivity funding for those projects which did not involve Positive Train Control technology. This will likely delay delivery of BART’s connectivity funding allotment, which was previously approved by the California Transportation Commission (CTC). BART should assist with budgetary, legislative and administrative efforts that assure Proposition 1A HSR connectivity funds – already allotted by statute to transit agencies – are secured and distributed in ways that will assist BART’s new rail vehicle procurement efforts. In addition, BART should work to assure that distribution of its allotment from the Proposition 1B Public Transit Modernization, Improvement, Service Enhancement Account (PTMISEA) funds does not continue to be bogged down with a Caltrans interpretation of AB 1072 (Eng) that slows down how annual allocations are made. The BART Board had supported AB 1072 to simplify and make consistent the distribution of Prop. 1B funds.

(2) Greenhouse Gas/ Land Use issues. The failure of Proposition 23, which would have suspended implementation of AB 32, means that the nation’s most notable state law to reduce greenhouse gas (GHG) emissions will proceed in California. BART should continue to help develop strategies that would assist the planning and funding for SB 375, which aims to reduce GHG emissions through land use and transportation planning. Regional transportation planning agencies must now develop “sustainable community strategies” to help limit GHG emissions, as well as incentives for local governments to incorporate these strategies into the transportation elements of their general land use plans. Last year, legislation to allow local funding to assist this significant effort failed in the legislature. There will likely be another such effort in 2011, which BART should again support. BART has been active in developing the scoping plan for AB 32 (directly and through CTA), and should continue to support such programs to enhance public transit.

(3) Create Incentives for Transit Use. With public transit remaining at the center of state efforts to cut pollution and GHG emissions – yet dwindling state resources to support it -- BART should support efforts to increase transit ridership through incentives. First, an idea offered up by BART, and accepted by CTA as an association priority for its 2011 legislative agenda, is to work with the Department of Insurance to encourage insurance companies to voluntarily offer discounted car insurance coverage to Californians who can demonstrate they are regular users of public transit. Second, BART should support efforts in Sacramento to encourage establishment of a regional commuter benefit policy to allow employers to offer programs that pay for employee transit, bicycling and vanpooling expenses with pre-tax dollars. The Metropolitan Transportation Commission (MTC) has listed this as one its top legislative priorities for the coming legislative session.

(4) Regional Governance. On January 26, 2011 the Metropolitan Transportation Commission (MTC) voted to pursue state legislation to add two additional voting members to the commission to represent the cities of Oakland and San Jose. This proposal resulted from a request by Mayor Chuck Reed of San Jose to reexamine the commission's governance structure. If approved the mayors of the two cities would appoint the additional MTC members, with no more than three voting members of the full commission residing from the same county. BART should follow any legislation which might recast the commission, determine the impact on its four county service area and seek additional information or action if necessary.

(5) Specific Legislative Issues. Staff recommends the following specific legislative goals for BART in 2011: BART has previously worked with Assemblywoman Fiona Ma (SF) on legislative efforts to enhance the local financing for Transit Oriented Development (TOD) in the state. Last year BART supported AB 987 (Ma) which modified the definition of a "transit village district" to require inclusion of all land within 1/2 mile of the transit station (the definition previously required inclusion of all land within 1/4 mile of the transit station). AB 987 passed and was signed into law. However, other bills carried by Assemblywoman Ma which would have streamlined the establishment of infrastructure financing districts were vetoed by Governor Schwarzenegger. With a new governor, it is likely Assemblywoman Ma will seek similar legislation in 2011. BART should support other legislative efforts that assist TOD development.

B. *Proposed Federal Advocacy Program for BART*

(1) Pursue BART Priorities Through Reauthorization Process.

The results of the 2010 General Election have dramatically changed the national political landscape, and in turn the prospects for congressional reauthorization of surface transportation legislation. Last October, James Oberstar, then-Chairman of the House Transportation and Infrastructure Committee, moved a bill through the Transit Subcommittee that emphasized increased authorization funding levels for transit, supported State of Good Repair (SOGR) funding goals, pushed new rail safety standards and promoted the Administration's "Livability" goals to encourage walking, bicycling, and use of public transit. However, with the House changing to a Republican majority and Oberstar failing to get re-elected, public statements by the new Chairman, John Mica (FL) and his staff indicate he will likely push a different agenda: opposition to earmarks, less emphasis on federal rail safety standards, skepticism about High Speed Rail, less support for transit and more for highway funding, and increased interest in tolls and public-private partnerships. While Mica has indicated he wants to move a reauthorization bill this year, the problem of identifying a funding source could delay efforts into 2012 or beyond.

While the change in House leadership does not alter BART's federal goals, it may change the approach to achieving those goals and temper the possibilities for success. Following are the

proposed goals for BART to pursue in the 112th Congress reauthorization process:

New Train Cars. In 2010, BART began its outreach effort to the Bay Area Congressional delegation on the long-term goal of financing a new car procurement of nearly 700 vehicles. With only \$1 billion of the nearly \$3.4 billion total identified, BART will continue to seek federal assistance at an extremely difficult economic time. While the task may be difficult in this recession, educating all levels of government about BART's needs remains a critical task.

State of Good Repair (SOGR) & Formula Funding. BART should continue to work with the nation's largest transit systems through the "Metropolitan Rail Discussion Group" (MRDG) to support the Federal Transit Administration's (FTA) recent recommendation for greater SOGR funding for the nation's metropolitan rail systems, which carry 80 percent of the commuting public. In addition, MRDG members should continue to work with APTA and Congress members to simplify federal formula funding for Fixed Guideway systems in ways that benefit BART.

Paratransit. BART should continue to work with MRDG members to help reduce the growing paratransit costs to financially strapped transit systems.

Livability. Support the Obama Administration's "Livability" programs, which assist transit access goals, including TOD and the enhancement of bicycle and pedestrian projects.

Federal Safety. BART has a representative from System Safety on the Department of Transportation (DOT) panel that is reviewing possible changes to federal rail safety regulation. If proposals to create new rail safety regulation gain legislative momentum, BART will need to work to assure that federal funding supports any redundant or parallel regulation.

Creative financing. BART should support efforts to enhance alternative loan and financing options for federal transit projects, which should include increased funding for the Transportation Infrastructure Financing & Innovation Act (TIFIA), Build America Bonds or an Infrastructure Bank. These options for financing, however, should not shift federal emphasis from transit funding to transit lending.

(2) Continue "BART Produces Jobs" Emphasis.

BART benefited from passage of the "American Recovery & Reinvestment Act" (ARRA), which created hundreds of jobs for shovel-ready projects. While the new Congress will not likely follow suit with additional "stimulus" funds, one of the few areas where Democrats and Republicans do agree is putting people to work through infrastructure project funding. Supporting such a goal could assist the President's call to get the economy moving by investing in infrastructure projects. In order to stake out any possible job-creating infrastructure funds, BART and other transit agencies will need to demonstrate the value of *transit* projects in an

increasingly pro-highway Congress.

(3) Work with Congress to assist “Make It In America” Goals

Last year, the House Democratic leadership developed a package of bills (called “Make It In America”) to rebuild and enhance America’s manufacturing sector. Upon election as the new House Minority Leader, Nancy Pelosi reiterated that a key goal of Democrats in the 112th Congress will be to continue moving Make It In America goals forward to create more domestic jobs. BART has expressed general support for the goals of such legislation -- which includes a bill by Rep. John Garamendi (Walnut Creek) to eliminate specific waivers for transit agencies to comply with Buy America requirements when procuring vehicles. However, absent a new federal law, BART has also raised concerns about certain aspects of seeking higher percentages of American manufacturing in the middle of any existing procurement process and without any additional American manufacturing options available. BART should continue to work to support such efforts in ways that will support the best value and technology for BART Bay Area riders.

(4) Monitor & Respond to Climate Change Legislation.

The odds for a “cap and trade” bill passing in this Congress are not good. But with California voters defeating Proposition 23 -- which would have stopped the state’s GHG reduction efforts -- the nation will still be looking to California for possible progress in this area. BART and other public transit systems will continue to be important to the success of California’s cap and trade program and should continue to advocate by example at the federal level that transit can play a vital role in reducing GHG emissions and fulfilling federal climate goals. With Senator Barbara Boxer (CA) remaining as the Chair of the Senate Environment & Public Works Committee, BART should continue to advocate that transit remains part of the solution for cleaner air and warrants appropriate funding.

(5) Seek increased funding sources for security needs.

With a long list of security needs left unfunded, BART must continue to work with Congressional leadership and the Administration to assist the open transit systems most at risk of terrorist attacks. This would include pursuing greater funding through Homeland Security programs for transit security grants.

(6) Address Specific BART issues.

- Similar to efforts at the state level, BART should support federal efforts to incentivize transit use, which could include supporting insurance and tax policies that reward frequent public transit users. BART should continue its support of tax-exempt and pre-tax transportation benefits of up to \$230 a month per employee for transit expenses, the same amount as offered for qualified parking.
- Monitor federal efforts that could impact California High Speed Rail project.

- Prepare and coordinate BART's participation at annual APTA March Legislative conference.

FISCAL IMPACT:

N/A

RECOMMENDATION:

That the Board approve the following motions.

ALTERNATIVE:

The Board could decline to support the specific state and federal goals and/or the legislation listed for review.

MOTION:

The Board approves the state advocacy program, as recommended by staff.

The Board approves the federal advocacy program, as recommended by staff.



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Marcia DelBundio</i>		GENERAL MANAGER ACTION REQ'D:		
DATE: 2/4/11		BOARD INITIATED ITEM: No		
Originator/Prepared by: Kerry Hamill Dept. Government and Community Relations <i>Kerry Hamill</i> Signature/Date: 2/3/11	General Counsel <i>Debra Pava</i> 2/3/11	Controller/Treasurer <i>[Signature]</i> 2/3/11	District Secretary []	BARC <i>[Signature]</i> 2/4/11
Status: Routed		Date Created: 01/20/2011		

Authorize contract renewal for State and Federal Advocacy Agreements

NARRATIVE

Purpose:

To authorize the General Manager to execute (i) a one-year agreement with Schott and Lites, Inc. for State legislative advocacy services for a total not-to-exceed amount of \$98,387, (ii) a one-year agreement with CJ Lake LLC for Federal legislative services for a total not-to-exceed amount of \$161,539, (iii) a one-year agreement with the David Klaus for Executive Branch advocacy services for a total not-to-exceed amount of \$133,919 and (iv) a one-year supplemental agreement with Schott and Lites, Inc. for State legislative advocacy services involving the Capitol Corridor Inter-City Passenger Service for a total not-to-exceed amount of \$19,565. The effective date for all four agreements is January 1, 2011.

Discussion:

Since 1977, BART has contracted out legislative advocacy services. The existing four agreements with Schott & Lites, Inc., CJ Lake LLC (formerly CJ Strategies), and David Klaus expired on December 31, 2010.

The period of each of the three proposed agreements and the supplemental agreement is from January 1, 2011 through December 31, 2011, which will allow Government and Community Relations to issue Request For Proposals during the first half of 2011 for future State legislative, Federal legislative and Executive Branch advocacy agreements which will become effective in January 2012.

Schott & Lites, Inc.

The Government and Community Relations staff requests authority for the General Manager to execute an agreement for an amount not to exceed \$98,387, and a supplemental agreement for an amount not to exceed \$19,565, with Schott & Lites, Inc., a firm that has skillfully advocated BART's interests before the California State Legislature since 1977.

Under the proposed agreement, Schott and Lites, Inc. will continue to advocate for legislation that (a) preserves state funding for transit on a longer-term basis, (b) improves BART's ability to create transit oriented development around BART stations, (c) reduces greenhouse gases across

the state and region and (d) identifies funding for transit projects as a part of the strategy to combat global warming.

Under the proposed supplemental agreement, Schott and Lites, Inc. will continue to provide legislative advocacy services involving the Capitol Corridor Inter-City Passenger Service and will help the agency to: a) keep State Public Transit Account (PTA) funding in place for Capitol Corridor operations, marketing, and administration and prevent diversion of funds from the PTA and the State Transit Assistance (STA) funds, b) work with State agencies such as Caltrans, the state Department of Finance, and the California State Legislature to facilitate the obligation of state Proposition 1B Intercity Rail Account funds, and c) assist in securing support from Governor Jerry Brown and the State Legislature for Federal Railroad Administration FY2011 High Speed Intercity Passenger Rail grant funds to develop and implement Capital Corridor service expansion plans to Placer County and San Jose/Silicon Valley.

CJ Lake LLC

The Government and Community Relations staff requests authority for the General Manager to execute an agreement for an amount not to exceed \$161,539 with CJ Lake LLC, a firm including Jim Copeland, that has skillfully advocated BART's interests before the U.S. Congress since 1984.

CJ Lake LLC will help BART capitalize on opportunities which will arise in 2011 relating to the reauthorization of the Federal Transit Program. In addition, CJ Lake LLC will work to (a) gain significant funding commitments to reinforce the core system, (b) help identify additional funding sources to acquire a new fleet of rail cars, (c) increase funding to be directed to assist transit properties in State of Good Repair projects, and (d) work with other transit properties to increase homeland security funding levels.

David Klaus

The Government and Community Relations staff requests authority for the General Manager to execute an agreement for an amount not to exceed \$133,919 with David Klaus, who has successfully represented BART to the Federal Executive Branch since 1982.

David Klaus will help BART (a) retain the already secured \$24.99 million in Federal funds for the Oakland Airport Connector (OAC) Project, (b) seek additional federal grants and loans for the OAC, and (c) obtain DOT/FTA support for a program that could provide federal funding for the BART rail car program and system State of Good Repair. In addition, David Klaus will address other initiatives, such as (a) maximizing BART's opportunities to obtain funding and financing for its transit oriented development and energy-efficiency projects, and (b) resolving the administrative and regulatory issues that are likely to arise in connection with other BART projects that receive Federal funds.

Schott & Lites, Inc, CJ Lake LLC, and David Klaus describe their 2009-2010 accomplishments in the Attachment.

Fiscal Impact:

The total cost of the three proposed agreements and supplemental agreement is shown below

<u>Agreement</u>	<u>Amount</u>
Schott and Lites, Inc. Agreement	\$98,387
CJ Lake LLC Agreement	\$161,539
David Klaus Agreement	\$133,919
Schott and Lites, Inc. Supplemental Agreement	\$19,565
Total	\$413,410

All of the proposed agreements have a term period from January 1, 2011 through December 31, 2011, which will be funded in FY 11 and FY 12. Half of the total costs of \$206,705 is currently budgeted in the Government and Community Relations' FY 11 operating budget. The other half of the total costs is subject to the future approval of the FY 12 budget.

Due to budget constraints, the Government and Community Relations staff has negotiated a 10 percent decrease in the CJ Lake LLC and David Klaus Agreements. Each contract contains a \$1500.00 travel allowance.

Alternative:

If the proposed motion is not approved, the proposed three agreements and supplemental agreement will not be executed, which will jeopardize established relationships with the State legislature, Federal legislature and Executive Branch decision-makers and could diminish the District's prospects for accomplishing its State and Federal legislative program.

Recommendation:

Adopt the following motion. The Office of the General Counsel will approve the agreements as to form.

Motion:

The General Manager is authorized to execute the following agreements with an effective date of January 1, 2011:

- a) a one year agreement for State legislative advocacy services with Schott & Lites, Inc., for a total not-to-exceed amount of \$98,387; and
- b) a one-year agreement for Federal legislative advocacy services with CJ Strategies for a total not-to-exceed amount of \$161,539; and
- c) a one-year agreement for Executive Branch advocacy services with David Klaus for total not-to-exceed amount of \$133,919; and

d) a one-year supplemental agreement for State legislative advocacy services involving the Capitol Corridor Inter-City Passenger Service with Schott & Lites, Inc. for total not-to-exceed amount of \$19,565.

Attachments

Attachments

2009-2010 Federal Accomplishments by CJ Strategies (Now titled CJ Lake)

CJ Strategies has worked with BART Staff on a continuing education campaign for Members of Congress and staffs on rail car purchase with primary focus on the Bay area delegation and Senators Boxer and Feinstein. Representatives Lee, McNerney and Stark put forward a request for \$300 million to replace the fleet when the call for projects was made in 2009 for SAFETEA-LU reauthorization.

BART submitted a letter to the Banking Committee when it held a hearing in 2009, titled "Rail Modernization: Getting Transit Funding Back on Track". The letter addressed the backlog of State of Good Repair needs and BART's specific car needs.

Transit Security Funding – CJ Strategies supported increased funds for transit security. The FY10 Homeland Security Appropriations bill includes \$400 million for Rail and Transit Security (same amount as in FY08 and an increase over the Administration's FY09 request of \$175 million). However, this is below the \$750 million that was authorized in H.R. 1 – Implementing Recommendations of the 9/11 Commission Act of 2007. As you know, the FY11 bills were never completed and we are currently under a Continuing Resolution at existing levels.

Climate Change Legislation – CJ Strategies worked with the New Starts Working Group and APTA to ensure transit would be included as a separate entity in the substitute amendment that was brought up for debate. In addition, CJ Strategies briefed Senate Environment and Public Works Committee staff on the need for additional funds specific to transit. CJ Strategies also drafted letters to Congressional Delegation outlining the need for CLEAN TEA.

SILO/LILO – CJ Strategies participated in Delegation meetings with representatives from other California transit agencies including: LAMTA, SFMTA, Caltrain, Sacramento RTD and VTA. CJ Strategies also participated in weekly calls with other impacted transit agencies and their Washington Representatives regarding the SILO issue. We worked to engage Senator Feinstein; she ultimately co-sponsored the Close the SILO/LILO Act of 2009 (S. 1341).

Transit Benefit Extension – sent letters to BART Congressional Delegation and House Ways and Means and Senate Finance leadership supporting inclusion of transit benefit extension in year-end tax package. The benefit was ultimately extended for additional year.

Oakland Airport Connector – worked to garner Congressional support for project. CJ Strategies worked intensely with Feinstein, Lee, Stark, McNerney and Boxer on letters and inquiries to FTA through much of 2010. Most recently, we worked with Members to ensure Small Starts funding will ultimately be obligated to the project.

Make It In America – through much of 2010 we have been in discussions with Congressman Garamendi's office regarding one of his top priorities and its potential impact on BART – Buses, Rail Cars and Ferry Boats Make It In America Act of 2010. We have coordinated briefings of Garamendi staff by Dorothy Dugger and representatives of other transit properties and have discussed challenges

facing the eBART project should additional Buy America requirements be placed on the project.

Accomplishments 2009 - 2010 by David Klaus

Oakland Airport Connector (OAC) Project- Successfully worked with FTA to maintain its commitment to a \$24.99 million grant for the OAC project as BART restructured the financing for the project following the loss of economic stimulus funds, including obtaining a letter from the FTA Administrator committing to reallocate funds to the project. Successfully resolved FTA concerns related to Buy American and all other requirements for obtaining the \$24.99 million grant and \$70 million in economic stimulus funds for the OAC project prior to the FTA determination in January 2010 to withhold funds for reasons related to Title VI compliance. Provided support to BART congressional lobbying team to obtain key on-going support for the OAC Project from the congressional delegation, including drafting numerous fact sheets, talking points and letters from local and congressional supporters.

Oakland Airport Connector (OAC) Project – Port of Oakland Funds. Successfully worked with Federal Aviation Administration headquarters officials to obtain expedited approval for the Port of Oakland to impose Passenger Facility Charges (PFCs) to fund its contribution to the OAC Project.

Title VI – Provided support and coordination with the BART Office of Civil Rights, Office of the General Counsel and OAC project staff to develop and obtain FTA approval for an Action Plan to achieve full compliance with Title VI, and ongoing support related to the implementation of the Action Plan and FTA approval of BART's implementation.

Economic Stimulus Funds - Provided support for BART applications for grants from the Transit Investment for Greenhouse Gas and Energy Reduction (TIGGER), Transportation Investment Generating Economic Recovery (TIGER) 1 and TIGER 2 economic stimulus programs, including review of BART grant proposals, preparation of fact sheets and contacts with DOT and FTA officials in support of BART proposals.

Climate Change Legislation - Provided support and analysis to BART and its congressional lobbying team for amendment to climate legislation to provide funding for transit and "smart growth" initiatives as a means to reduce greenhouse gases. Provide ongoing monitoring of House and Senate climate change legislation to identify opportunities for additional transit funding in the legislation.

Federal Transit Funding Formulas - Provide expertise and analysis with regard to federal funding formulas for transit, including analysis of FTA funding formulas and options for development of BART position on Reauthorization of SAFETEA-LU.

Miscellaneous

Ongoing monitoring of US Department of Energy, DOT, HUD and other programs to identify potential opportunities for BART grant proposals.

Accomplishments by Schott/Lites 2009 - 2010

On behalf of BART, working closely with the California Transit Association (CTA) and many other

transportation interests, Schott/Lites has provided clear and consistent advocacy for continuing state support of transit and related funding before the Legislative and Executive branches of California State government.

The 2009-2010 California State Legislative Session was a difficult period, largely characterized by the continuing state budget crisis. With a structural deficit exceeding \$20 billion annually, much of the time and attention at the state level was focused on budget issues. Even the simplest of legislative proposals was scrutinized through an intense budget lens in the Capitol. Much of our efforts during this session on behalf of BART were focused on the budget crisis and limiting the related damage and fallout to transit funding.

Budget

Schott/Lites played a major role during the often contentious transit-related budgetary discussions throughout the Session, including during the process which ultimately led to the adoption of the gas tax swap. This solution, while complicated by the subsequent passage of Propositions 22 and 26, could provide a stable and reliable funding source for operations assistance and capital improvements to transit in general and BART specifically.

In addition to the gas tax swap, the efforts of Schott/Lites and those of the transportation community in general, assured that an immediate \$400 million from the balance in the Public Transportation Account was delivered to the State Transit Assistance program to cover needs during the FY 2009-10 and FY 2010-11 budget cycles. To-date, the agreement reached on the gas tax swap and related one-time funding shifts have been upheld and currently enjoy significant support.

Schott/Lites also served an instrumental role in securing allocations from the California Transportation Commission (CTC) of High Speed Rail (HSR) bond funds for rail transit improvements, and BART's identified projects, including the Car Replacement program. They were active participants in the CTC's guideline development process and in the subsequent actions taken by the CTC to allocate funds, largely as desired by BART. They were successful in assuring that both the Senate and Assembly Budget committees included appropriations for these projects in the Budget sent to the Governor in 2010. Unfortunately, then-Governor Schwarzenegger vetoed these HSR bond funds and we must now re-engage in assuring that the Legislature takes action to include these funds in the upcoming budget and that the new Governor looks favorably upon those appropriations.

On behalf of the Capitol Corridor Joint Powers Authority, Schott/Lites advocated for budgetary support of intercity rail through the gas tax swap and other efforts to assure adequate operations assistance and the availability of capital improvement funds.

Legislative Efforts

Successful BART-sponsored bills which made it through the legislative process and were signed into law by the Governor:

AB 1586 (Swanson) [Chapter 78, Statutes of 2010] – BART; Independent Police Auditor

This bill authorizes the BART board of directors to establish an office of independent police auditor that would report directly to the board and investigate complaints against district police personnel relative to on-duty misconduct and off-duty unlawful activity. As you know, this effort was an extremely high profile affair involving uncountable meetings and significant and contentious negotiations with multiple

parties. Ultimately, we were able to pass this bill as BART envisioned and stop other related legislative efforts which would have been detrimental to BART's goals.

AB 987 (Ma) [Chapter 354, Statutes of 2010] – Transit Village development Act.

This bill recasts the area included in a transit village development district to include all land within not more than 1/2 mile of the main entrance of a transit station; a change from the previous limit of 1/4 mile.

In addition to the above sponsored bills, Schott/Lites took a very active role on the following legislation:

AB 312 (Ammiano) – BART; Office of Citizen Complaints

This bill would have required the BART Board to create an Office of Citizen Complaints to investigate complaints and allegations of police misconduct by the BART police department. This bill proposed a methodology contrary to BART's goals as contained in AB 1586 (Swanson). We were able to assure that the bill did not make it through the legislative process and it died in Assembly Appropriations committee.

SB 1371 (Correa) – [Chapter 292, Statutes of 2010] – Letters of No Prejudice (LONP)

This bill allows an eligible recipient for funding for capital improvements in connection with or otherwise related to the high-speed train system under the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century to apply to the California Transportation Commission for a letter of no prejudice relating to those projects



CAPITOL CORRIDOR JOINT POWERS AUTHORITY MEETING OF THE BOARD OF DIRECTORS

Wednesday February 16, 2011

10 a.m.

City Council Chambers

Suisun City Hall

701 Civic Center Blvd., Suisun City, CA

(see attached map)

DRAFT AGENDA

- I. Call to Order
- II. Roll Call and Pledge of Allegiance
- III. Report of the Chair
- IV. Minutes of the November 17, 2010 Meeting *Action*
- V. Consent Calendar [no items] *Action*
- VI. Action and Discussion Items
 - 1. Business Plan Update (FY 2011-12 – FY 2012-13) *Action**
 - 2. Legislative Matters/Governor's Draft FY 11-12 Budget *Action*
 - 3. Status Report: Amtrak Pricing Policy for State-Funded Intercity Passenger Rail Operations *Action*
 - 4. Overview of Rail Vehicle Needs for Future Capitol Corridor Service Plans *Action*
 - 5. Davis Station Safety Fence Project – Update *Info*
 - 6. Managing Director's Report *Info*
 - 7. Work Completed *Info*
 - a. Capitol Corridor Annual Performance Report (FFY 2009-10)
 - b. CCJPA Annual Independent Audit (FY10)
 - c. Marketing Activities (November 2010 – January 2011)
 - 8. Work in Progress *Info*
 - a. FRA High Speed/Intercity Passenger Rail Capital Grant Opportunities
 - b. Yolo Causeway West Crossover Project
 - c. Wireless Network
 - d. Sacramento-Roseville 3rd Track Environmental Review/Preliminary Engineering
 - e. Track Improvement Program/Capitalized Maintenance
 - f. Proposition 1B Transit Safety/Security Improvement Projects
 - g. Proposed Extension of Capitol Corridor Trains to Salinas
 - h. Upcoming Marketing Activities
- VII. Board Member Reports
- VIII. Public Comments
- IX. Adjournment. Next Meeting Date: 10:00 a.m., April 20, 2011, at City Council Chambers, Suisun City Hall, 701 Civic Center Blvd., City of Suisun City, CA

Notes:

Members of the public may address the Board regarding any item on this agenda. Please complete a "Request to Address the Board" form (available at the entrance of the Boardroom and at a teleconference location, if applicable) and hand it to the Secretary or designated staff member 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 Public Comment. Speakers are limited to three (3) minutes for any item or matter. The CCJPA Board reserves the right to take action on any agenda item.

Consent calendar items are considered routine and will be enacted, approved or adopted by one motion unless a request for discussion or explanation is received from a CCJPA Board Director or from a member of the audience.

- * Approval of the business plan requires an affirmative vote of at least two-thirds (11) of the appointed members.

The CCJPA Board provides services/accommodations upon request to persons with disabilities who wish to address Board matters. A request must be made within one and five days in advance of a Board meeting, depending on the service requested. Call (510) 464-6085 for information.