

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

BOARD MEETING AGENDA

February 11, 2010

9:00 a.m.

A regular meeting of the Board of Directors will be held at 9:00 a.m. on Thursday, February 11, 2010, 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.

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, at the Office of the District Secretary, 23rd Floor, 300 Lakeside Drive, Oakland, California.

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.

Kenneth A. Duron
District Secretary

Regular Meeting of the
BOARD OF DIRECTORS

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

1. **CALL TO ORDER**

- A. Roll Call.
- B. Pledge of Allegiance.

- C. Introduction of Special Guests.
 - 1. Station Agent Angela Fields. (Director Murray's request.)
 - 2. Mr. Duirmuid Philpott, United Irish Societies. (President Fang's request.)

2. CONSENT CALENDAR

- A. Approval of Minutes of the Meetings of September 17, 2009 (Special), and September 24, 2009 (Regular).* Board requested to authorize.
- B. Award of Contract No. 15IE-110, Union City BART Station Modernization Project.* Board requested to authorize.
- C. Fiscal Year 2010 Second Quarter Financial Report.* For information.

3. ADMINISTRATION ITEMS
Director Blalock, Chairperson

- A. Ohlone Greenway Pedestrian/Bike Path Revocable License Agreements with the Cities of Berkeley, Albany, and El Cerrito.* Board requested to authorize.

4. ENGINEERING AND OPERATIONS ITEMS
Director Keller, Chairperson

- A. Award of Contract No. 15CQ-217, Procurement of Running Rail.* Board requested to authorize.
- B. Earthquake Safety Program Update.* For information.

5. PLANNING, PUBLIC AFFAIRS, ACCESS, AND LEGISLATION COMMITTEE ITEMS
Director Ward Allen, Chairperson

- A. Approval of Final Environmental Impact Report for the MacArthur Transit Village.* Board requested to authorize.

6. GENERAL MANAGER'S REPORT

NO REPORT.

7. BOARD MATTERS

- A. Roll Call for Introductions.

8. GENERAL DISCUSSION AND PUBLIC COMMENT

EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL:		GENERAL MANAGER ACTION REQ'D:			
<i>Hamed Tafaghoul for D. Dugger</i> DATE:		Approve and Forward to the February 11, 2010 E & O Committee Meeting BOARD INITIATED ITEM: No			
Originator/Prepared by: John Gee Dept: TSD Stations Capital Program Ext. 4928 <i>John Gee</i> Signature/Date: 2/1/10	General Counsel <i>Andrew Kavan</i> Signature/Date: 2/1/10	Controller/Treasurer <i>[Signature]</i> Signature/Date: 2/1/10	District Secretary []	BARC <i>CSA</i> Signature/Date: 2/1/10	[]
Status: Approved		Date Created: 01/19/2010			

Award of Contract No. 15IE-110 Union City BART Station Modernization

NARRATIVE:

PURPOSE: To obtain Board authorization for the General Manager to award Contract No. 15IE-110 Union City BART Station Modernization Project.

DISCUSSION: The Union City Station is one of the stations selected as part of the Station Modernization Program, Phase 1. The scope of work includes new energy saving lighting modifications, new wayfinding signage, new benches, painting, and other improvements to the site and station to enhance the overall appearance of the station.

On December 3, 2009, the Advance Notice to Bidders was mailed to 157 prospective bidders and contract documents were sent to 21 plan rooms. The Contract was advertised on December 7, 2009 in local publications. A total of 25 firms purchased copies of the contract documents. A pre-bid meeting and site tour was conducted on December 15, 2009 with 21 prospective bidders attending. Bids were publicly opened on January 12, 2010. The Bids received and the Engineer's Estimate are shown below:

<u>BIDDER</u>	<u>LOCATION</u>	<u>TOTAL AMOUNT</u>
Taber Construction, Inc.	Martinez, CA	\$931,500
Arntz Builders, Inc.	Novato, CA	\$1,006,871
Rodan Builders, Inc.	Burlingame, CA	\$1,035,000
West Bay Builders, Inc.	Novato, CA	\$1,128,125
BHM Construction, Inc.	Vallejo, CA	\$1,178,453
Calstate Construction, Inc.	Fremont, CA	\$1,249,500
LC General Engineering	San Francisco, CA	\$1,367,220
River View Construction, Inc.	W. Sacramento, CA	\$1,497,520
Jonas & Associates, Inc.	Martinez, CA	\$1,609,900

Engineer's Estimate: \$1,375,464

The apparent low Bid submitted by Taber Construction, Inc. of \$931,500 is 32.3% below the Engineer's Estimate of \$1,375,464.

After review by District staff, the Bid has been deemed to be responsive to the solicitation. Furthermore, staff review of the apparent low bidder's business experience and financial capabilities has resulted in a determination that the bidder is responsible and the Bid of \$931,500 submitted by Taber Construction, Inc. is fair and reasonable.

Staff has determined that there will be no significant effect on the environment from this action and that it is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15301.

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 0% 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 of \$931,500 for award of Contract 15IE-110 is included in the total project budget for the FMS#15IE Union City BART Station Modernization Project. The Office of the Controller/Treasurer certifies that funds are currently available to meet this obligation. Funds for this contract will come from the following source:

F/G55S – Prop 1B PTMISEA

\$931,500

As of month ending 1/3/10, \$2,400,297 is available for commitment from this fund source for this project and BART has committed \$743,735 to date. There is a pending commitment of \$5,025 in BART's financial management system. This action will commit \$931,500 leaving an uncommitted balance of \$720,037 in this fund source.

There is no fiscal impact on available unprogrammed District Reserves.

ALTERNATIVES: The alternative is not award the Contract, cancel the grant and leave the station in its current condition.

RECOMMENDATION: It is recommended that the Board adopt the following motion:

MOTION: The General Manager is authorized to award Contract No. 15IE-110 Union City BART Station Modernization Project to Taber Construction, Inc. for the bid price of \$931,500, pursuant to notification to be issued by the General Manager, subject to the District's protest procedures.

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

MEMORANDUM

TO: Board of Directors

DATE: February 11, 2010

FROM: General Manager

SUBJECT: FY10 Second Quarter Financial Report

The FY10 second quarter financial report (October – December 2009) is attached. The net operating result for the quarter was unfavorable to budget by \$2.4M, and year-to-date is unfavorable by \$9.6M, primarily because of the poor results in sales tax. Expenses for the quarter were close to budget, with labor on budget and a slight unfavorable variance in non labor. The continued unprecedented decline in revenue, particularly in sales tax, is clearly a major concern as the recession continues to negatively affect current operating results. The FY10 Budget Revision, effective January 2010, will be reflected in the next report.

Operating Sources

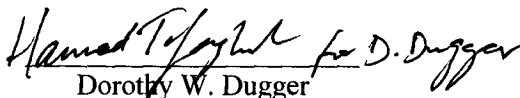
Ridership, when compared to the same quarter in the prior year, slowed from the losses seen in the first quarter of FY10. Transbay ridership was the strongest market segment, due in part to the week-long Bay Bridge closure in October and early November. Transbay trips, on average, have a higher net fare than other market areas (East Bay or West Bay) and helped keep passenger revenue close to budget for the second quarter. Both Bridge closures generated \$1.8M in extra fare revenue. Of concern, however, was that December ridership was down 9.3% compared to December 2008, the largest drop since ridership bottomed out at -11% to -12% last summer.

Sales Tax (for taxable sales from July to September) declined 14.2% compared to same quarter FY09. In the past year, sales tax has dropped 12%, 20%, 19% and now 14%, or \$32M over the last four quarters. Going forward, we expect the declines to narrow, but with no real growth for at least the next year.

Operating Uses

Expenses were 1.7% over budget, or \$2.1M unfavorable. Labor expenses for the quarter were essentially on budget, primarily due to the selective hiring freeze instituted in October 2008. However, year-to-date labor remains slightly unfavorable. Non labor expenses were slightly over budget for the quarter, but for the year, these expenses are close to budget. Overall, mid-way through the year, the District is within 1% of budget, and it is essential we continue to control expenses to help address the uncertain revenue picture.

The overall net financial results for the second quarter of FY10 were \$2.4M unfavorable to budget, due in large part to the sales tax revenue decline. This was an improvement over the first quarter, which was unfavorable by \$7.3M. It appears the worst of the recession may be behind us, but a great deal of uncertainty regarding the economy remains, and the recovery is likely to be slow. Experience tells us that it will be years before we get back to the same level of revenue we had prior to the downturn in the economy. The expense reductions implemented in the budget revision provide the foundation for ongoing lower expenses for next year and beyond, but a significant challenge remains.


Dorothy W. Dugger

cc: Board Appointed Officers
Deputy General Manager
Executive Staff

Second Quarter FY10 BUDGET PERFORMANCE REPORT EXECUTIVE SUMMARY

M=million

REVENUE

●Average weekday ridership was 341,762, 1.2% under budget. The emergency Bay Bridge closure contributed to the higher ridership for Oct and Nov, with the core loss compared to 2QFY09 at -3% in Oct and -6% in Nov. SFO's loss was -4% in Oct and -3% in Nov. Dec worsened to -10% (core) and -7% (SFO). Net Passenger Revenue was over budget for the quarter due to the Bridge closure and longer trips.

●Other Operating Revenue was \$0.7M under budget, with over-budget advertising offset by lower parking and interest revenue.

EXPENSE

●Net Labor was essentially on budget for the second quarter; overtime was offset by savings from the selective hiring freeze.

●OPEB shown as an expense and offset, with no bottom line impact.

●Electric Power was \$0.2M unfavorable to budget for the quarter. YTD, Power is slightly favorable, by \$0.4M, and is expected to end the year close to budget.

●Other Non Labor is \$1.2M unfavorable this quarter largely due to over-budget expenses for maintenance in Operations. YTD, non-labor expenses are essentially on budget.

●The Lakeside building lease is recognized over the life of the lease, which is a non-cash book entry and not budgeted; budget includes actual cash outlay for lease payments.

● Total operating expense for the quarter and YTD were both over budget.

EXTRAORDINARY ITEMS

● The Rail Car Fund Swap grant is behind schedule but does not affect the bottom line, as the favorable variance in expense is offset by the unfavorable financial assistance. Grant will be on budget by year-end.

OPERATING DEFICIT

●The Operating Deficit, for the quarter, is \$8.9M better than budget due to the Rail Car Fund Swap timing.

TAX & FINANCIAL ASSISTANCE

● Sales tax declined 14% (\$7M) from 2QFY09 - the 4th consecutive quarter of double-digit losses. The January Revised Budget expects the next two quarters to be down 7% and 5% respectively.

● Property tax is holding steady, down just 2% compared to FY09 YTD, with revenues based upon assessed values as of January 2009.

● Rail Car Fund Swap will be on budget at year end.

NET OPERATING RESULT

● The net operating result for the quarter was \$2.4M unfavorable, primarily because of over-budget expenses and under-budget sales tax.




SYSTEM OPERATING RATIO/RAIL COST PER PASSENGER MILE

●The operating ratio (revenue divided by expense) was slightly favorable for the quarter due to better than budget revenues. Rail cost per passenger mile was slightly unfavorable due to expense.

CURRENT QUARTER			(\$Millions)*	FISCAL YEAR-TO-DATE		
Budget	Actual	Var.		Budget	Actual	Var.
			REVENUE			
81.7	84.1	3.0%	Net Passenger Revenue	171.2	171.9	0.4%
7.8	7.3	-6.1%	Other Operating Revenue	14.8	14.2	-4.6%
89.5	91.4	2.2%	Total Net Operating Revenue	186.1	186.1	0.0%
			EXPENSE			
87.7	87.7	0.0%	Net Labor	183.1	184.9	-0.9%
3.8	4.7	-24.7%	OPEB Unfunded Liability**	7.5	8.9	-17.7%
8.5	8.7	-2.8%	Electric Power	18.3	17.9	2.0%
4.4	4.5	-1.3%	Purchased Transportation	8.9	8.7	1.5%
0.0	(0.3)		Lakeside Lease Accrual	0.0	(0.6)	
21.4	22.6	-5.5%	Other Non Labor	40.0	40.6	-1.6%
125.8	127.9	-1.7%	Total Operating Expense	257.8	260.4	-1.0%
			EXTRAORDINARY EXPENSES			
9.0	0.0	100.0%	Rail Car Fund Swap	9.0	0.0	100.0%
9.0	0.0		Net Extraordinary Items	9.0	0.0	
(45.3)	(36.4)	24.5%	OPERATING DEFICIT	(80.7)	(74.3)	8.6%
			TAX & FINANCIAL ASSISTANCE			
46.2	42.6	-7.7%	Sales Tax	90.7	83.6	-7.9%
17.7	17.0	-3.8%	Prop Tax, Other Assistance	19.8	19.3	-2.5%
2.8	2.8	0.0%	Federal Stimulus	2.8	2.8	0.0%
9.0	0.0	-100.0%	Rail Car Fund Swap	9.0	0.0	-100.0%
(21.1)	(19.9)	5.8%	Debt Service	(40.0)	(40.4)	-1.1%
(6.0)	(6.0)	-0.2%	Capital and Operating Allocations	(14.8)	(14.8)	0.2%
0.0	(0.1)		Other Reserve Allocations	0.0	(0.2)	
3.8	4.7	24.7%	OPEB Unfunded Liability Offset**	7.5	8.9	17.7%
52.4	41.2	-21.5%	Net Financial Assistance	75.2	59.1	-21.3%
7.1	4.7		NET OPERATING RESULT	(5.6)	(15.2)	
71.1%	71.5%	0.4%	System Operating Ratio	72.2%	71.5%	-0.7%
35.9 ¢	36.0 ¢	-0.4%	Rail Cost Per Passenger Mile	35.1 ¢	35.1 ¢	-0.1%

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

**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 bottom line.

 No Problem
 Caution: Potential Problem/Problem Being Addressed
 Significant Problem



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Hamed Tafaghodi for D. Dugger</i>		GENERAL MANAGER ACTION REQ'D: Approve and forward to the Board		
DATE: c		BOARD INITIATED ITEM: No		
Originator/Prepared by: Susan Shaffer Dept: Real Estate x8936 <i>Susan Shaffer</i> Signature/Date: 1/28/10	General Counsel <i>Rudolph Kasper</i> 1/28/10 []	Controller/Treasurer <i>William Gilman</i> 1-29-10 []	District Secretary []	BARC <i>Barbara</i> 2-2-10 []

TITLE:

Ohlone Greenway Pedestrian/Bike Path

NARRATIVE:

PURPOSE: To request Board authorization for the General Manager or her designee to execute three separate revocable License Agreements with the City of Berkeley, the City of Albany and the City of El Cerrito in connection with the Ohlone Greenway Pedestrian/Bike Path ("Ohlone Greenway"). The three revocable License Agreements are for twenty-seven (27) years each with the Cities of Berkeley, Albany and El Cerrito to enable each city to construct, operate and maintain a pedestrian/bike path along the BART right-of-way within each city's jurisdictional boundaries of the Ohlone Greenway.

DISCUSSION: The Ohlone Greenway is a linear pedestrian and bike path that begins in the City of Berkeley, passes through the City of Albany and terminates at the north city limit of the City of El Cerrito for a distance of over five miles. For most of its length, the Ohlone Greenway extends along and beneath the elevated tracks of the BART Richmond line, and is part of each of the three cities' General Plans. For much of this stretch, the Ohlone Greenway is divided into two paths, one for pedestrians and one for bicyclists. It connects with other green spaces and parks along its length in varying degrees. The Ohlone Greenway can be accessed from the North Berkeley, El Cerrito Plaza, and El Cerrito del Norte BART Stations. The Ohlone Greenway is a highly used public pathway and much of it has been in place since the 1960s.

BART owns or has easement rights to much of the property on which the Ohlone Greenway is located. Over the past several years the old agreement with one city has expired and the other two initial agreements which are still in place do not adequately protect BART. The City of Berkeley does not have formal permission to use and maintain the Ohlone Greenway within BART right-of-way as all past landscape maintenance agreements with the City have expired. The landscape agreement with the City of Albany lacks sufficient language that addresses the current use and maintenance of the Ohlone Greenway within BART right-of-way. The bike path agreement with the City of El Cerrito will expire in early November 2011, and a new agreement must be in place soon. All three new License Agreements will expire at the same time allowing ease of Agreement maintenance and renewals.

The License Agreements will include clear, concise language that states that the Cities will assume responsibility for all maintenance and liability obligations in connection with the BART property used for the Ohlone Greenway except for specific BART facilities, will provide revocable rights by

BART which allow BART to reserve the right of way for mass transit purposes, and will require that the Ohlone Greenway within BART right of way is to be used solely as a bicycle and pedestrian pathway.

In addition, the License Agreements will clearly state that for purposes of Section 4(f) of the Department of Transportation Act, codified at 49 U.S.C. § 303(c) ("DOT Act Section 4(f)"), said pathway is designated by the Cities as primarily non-recreational in nature, and that said pathway is not significant for recreational purposes and will be utilized primarily as an integral part of the local transportation system, as well as other important language to preserve BART's rights and limit liability upon its own property.

The Office of the General Counsel will approve the License Agreements as to form.

FISCAL IMPACT: There is no new fiscal impact from the proposed action. Savings are realized as a result of the Cities assuming all maintenance and liability for the BART property to be used for the Pedestrian/Bike Path.

ALTERNATIVES: Failure to enter into the License Agreements would result in either or both of:

1. BART having to maintain and assume the liability for the properties currently being used for the Ohlone Greenway Pedestrian/Bike Path. The expense to maintain the Pedestrian/Bike Path within BART right-of-way through the three cities would be considerable to BART.
2. The three Cities would continue to use BART property without an agreement in place. If the Cities continue to use and maintain the Greenway without an agreement, BART is susceptible to increased liability and associated costs.

RECOMMENDATION: Adoption of the following motion:

MOTION: The General Manager or her designee is authorized to execute three separate revocable License Agreements between BART and the Cities of Berkeley, Albany and El Cerrito in connection with the construction, operation and maintenance of Ohlone Greenway Pedestrian/Bike Path for twenty-seven (27) years.

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

MEMORANDUM

TO: Board of Directors **DATE:** February 5, 2010

FROM: General Manager

SUBJECT: Administration Committee Item 3A: Ohlone Greenway Pedestrian/Bike Path
Revocable License Agreements with the Cities of Berkeley, Albany, and El
Cerrito

At the February 11, 2010 Board of Directors Meeting, the Real Estate Department will present an item requesting authorization for the General Manager, or her designee, to execute three separate license agreements with the cities of Berkeley, Albany, and El Cerrito in connection with the continuing use of BART right-of-way for the existing Ohlone Greenway Pedestrian/Bike Path.

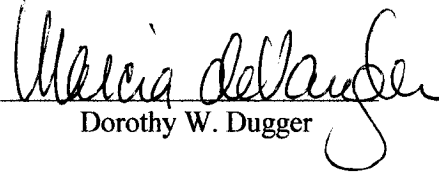
The key objective of these license agreements is to better define the relationship between BART's right-of-way and use by the cities for pedestrian and bike path purposes. During the environmental phase of Segment 2 of BART's Earthquake Safety Program (ESP) in 2005, staff review of BART's documentation covering the uses of BART's right of way for the Ohlone Greenway identified deficiencies in the level of protection of BART's interests in use of the property and inconsistencies between the varying types of agreements and interests BART had conveyed to each of the cities. The proposed license agreements, which are modeled from the recent City of South San Francisco Bike Path and Linear Park permit, will provide consistency across the District for use of District right-of-way for bike paths and similar uses.

The ESP will begin to use the subject right-of-way to perform seismic retrofit work later this year; use of the Ohlone Greenway will be interrupted for approximately two and one-half years. ESP has entered into Letter Agreements with each of the cities of Berkeley, Albany, and El Cerrito to coordinate continuing and alternative pedestrian/bike routes to serve the public, as well as post-construction restoration of the Ohlone Greenway. Each of the cities have contributed consideration to the District and have worked closely with ESP staff to design a restoration plan that will ultimately provide an improved greenway and pedestrian and bike paths for the public. Some of the new amenities will include widened and consolidated pedestrian and bicycle pathways in locations where they currently are separated, new benches, new bike racks and trash receptacles, and new drought-resistant landscaping.

Also on February 11th, ESP staff will present an Earthquake Safety Program Update to the Board as part of the E&O Committee agenda. The Ohlone Greenway restoration work to be performed by ESP falls within the Program's environmental exemptions as well as environmental clearances separately obtained by each of the cities. Specific questions about the restoration of the Ohlone Greenway can best be addressed during the ESP presentation.

If you would like additional information about the proposed license agreements prior to the Board Meeting, please contact Bernadette Lambert at (510) 464-6131 or via e-mail at

blamber@bart.gov. For information about the ESP work and restoration of the Ohlone Greenway, please contact Shirley Ng at (510) 287-4927 or via e-mail at sng@bart.gov.


Dorothy W. Dugger

cc: Board Appointed Officers
Deputy General Manager
Executive Staff
Real Estate Department
Earthquake Safety Program



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Harriet Tafari</i> for D. Duggan		GENERAL MANAGER ACTION REQ'D: Approve and Forward to the Board		
DATE: 02/02/10		BOARD INITIATED ITEM: No		
Originator/Prepared by: Michael O Brown Dept: Maintenance & Engineering <i>Michael O Brown</i> Signature/Date: 02/02/10	General Counsel <i>Andrew Kew</i> 2/3/10	Controller/Treasurer <i>[Signature]</i> 2/3/10	District Secretary []	BARC <i>[Signature]</i> 2/3/10

TITLE:

Contract No. 15CQ-217, Procurement of Running Rail

NARRATIVE:

PURPOSE:

To obtain Board authorization for the General Manager to award Contract No. 15CQ-217 for the Procurement of Running Rail to Progress Rail Services Corporation, Albertville, Alabama.

DISCUSSION:

This Contract will provide running rail for the District's maintenance replacements on existing track, the Warm Springs Extension and the reconfiguration of the existing BART tracks to facilitate the eBART Extension. The rail for these items is included in the Base Price Bid. This Contract also contains Options, exercisable at the District's sole discretion, for additional running rail that may be utilized for other purposes as needed. The rail procurement for these varied District needs was combined to reduce rail costs, reduce contract management overhead, and reduce the execution time of the extension projects.

This is an estimated quantities contract. Estimated quantities are provided on the Bid Schedule and are used solely for determining the lowest Bidder. This is done to ensure that the methodology used to determine the lowest Bidder is fixed prior to the Bid opening. This Contract provides that the District can then adjust the quantities based upon need and available funding when the Notice of Award is issued. In the case of this Contract the District can adjust the quantities ordered up to plus or minus 50%. Because of this, the amount used for determining the award (Base Bid of low Bidder of \$4,574,725.04) differs from the amount being requested for authorization (\$6,099,209.90). The lowest Bidder still provided the lowest price of the three Bidders based upon the adjusted quantities of the various Bid Items selected by staff.

Pre advertisement notices were mailed to 14 potential Bidders on November 2, 2009. The contract was advertised on November 6, 2009. A total of 4 firms purchased copies of the Contract Documents. A Pre-Bid Meeting and site tour was conducted on November 19, 2009, with 3 potential Bidders attending. Site tours were also conducted on December 1, 2009, December 3, 2009 and December 17, 2009. The following Bids were opened and publicly announced on January 12, 2010:

<u>BIDDER</u>	<u>TOTAL BASE BID</u> (exclusive of taxes)	<u>OPTIONS</u> (exclusive of taxes)
Progress Rail Services Corp., Albertville, Alabama	\$4,574,725.04	\$2,091,546.83
L. B. Foster Co., Pittsburgh, Pennsylvania	\$5,033,464.50	\$2,208,435.24
Atlantic Track & Turnout Co., Bloomfield, New Jersey	\$5,658,306.00	\$2,405,272.70
Engineer's Estimate	\$6,023,000.00	\$3,117,827.89

Bids were evaluated and staff determined that the base bid price of \$4,574,725.04, submitted by Progress Rail Services, is fair and reasonable based upon adequate price competition. Staff also determined that the Bid, submitted by Progress Rail Services, is responsive to the Bid submittal requirements. A review of the business experience and financial capabilities resulted in a determination that Progress Rail Services is a responsible entity.

This Contract was advertised pursuant to the revised Disadvantaged Business Enterprise (DBE) Program requirements. The Office of Civil Rights reviewed the scope of work for this Contract and determined that there were no subcontracting opportunities, therefore, no DBE participation goal was set for this Contract.

FISCAL IMPACT:

The Contract allows for the District to order up to 150% of the estimated quantity bid. Therefore, staff is seeking authority for an award amount not to exceed \$6,099,209.90 to which applicable sales tax will be applied for a total of \$6,605,385.

Funding for this \$6,605,385 contract award is included in the project budget for the following projects:

15CQ – Rail, Tie & Fastener Rehabilitation	\$3,945,336
02EE – Warm Springs Extension	\$2,564,856
04SE – eBART	\$ 95,193
TOTAL	\$6,605,385

The Office of the Controller/Treasurer certifies that funds are currently available to meet this obligation. The total cost of \$6,605,385 will be funded by Federal, State and local sources.

As of the month ending January 3, 2010, the following funding is available for commitment from these sources:

Project	Fund Grant	Funds Available	Committed	Pending Commitments	Funds For This EDD	Funds Remaining
15CQ	53G-FTA-CA-05-0 224 FY08 Cap Impr	\$13,130,720	\$7,658,635	\$1,526,706	\$3,945,336	\$43
02EE	63K - Warm Springs Ext RM2/ACTIA Blend	\$7,163,000	\$933,763	\$894,194	\$2,564,856	\$2,770,187
04SE	55X - Prop 1B State Bond	\$6,000,000	\$2,276,619	\$50,000	\$95,193	\$3,578,188
Total					\$6,605,385	

There is no fiscal impact on available unprogrammed District Reserves.

ALTERNATIVES:

1. Reject all Bids and re-bid another contract. A re-bid is estimated to take an additional 3 to 6 months to award another contract. This is not likely to lead to more competition or a lower price. Further, this could cause delays in the projects for which the rail is being procured and impact on-going maintenance work.
2. Reject all Bids and re-bid separate contracts for each projects' needs. A re-bid of separate contracts would take an additional 6 to 9 months and is not likely to lead to more competition and would probably result in a higher price since the quantities would be reduced. Contract administration costs would also be increased.
3. Reject all Bids and do not re-bid another contract. With this alternative, the various projects for which the rail is being procured would likely be delayed and possibly halted since it is unlikely that there would be enough maintenance stock to loan to the projects. Also, the District would be forced to introduce speed restrictions on revenue trains as the rail wears beyond defined limits.

RECOMMENDATIONS:

On the basis of analysis by staff, it is recommended that the Board adopt the following motion:

MOTION:

The General Manager is authorized to award Contract No. 15CQ-217 for the Procurement of Running Rail, an estimated quantities contract, to Progress Rail Services Corporation, Albertville, Alabama, in the amount not-to-exceed \$6,099,209.90 to which applicable sales tax will be applied, pursuant to notification to be issued by the General Manager, and subject to the District's protest procedures and Federal Transit Administration's (FTA's) requirements related to protests.

FUNDING SUMMARY - WARM SPRINGS EXTENSION PROGRAM

PROJECT ELEMENT	Baseline Budget	Current Forecast 9/14/09	REMARKS
ENVIRONMENTAL, ENGINEERING AND CONSTRUCTION MANAGEMENT			
Design	\$59,312,460	\$64,217,810	
Construction Management	\$30,045,000	\$30,045,000	
Environmental Clearance	\$3,600,715	\$3,724,199	<i>Completed</i>
TOTAL E, E & CM	\$92,958,175	\$97,987,009	
CONSTRUCTION			
Fremont Subway	\$282,000,000	\$164,100,660	
Line, Track, Station & Systems	\$376,000,000	\$362,100,000	
Misc. Construction Contracts	\$0	\$12,000,000	
TOTAL CONSTRUCTION	\$658,000,000	\$538,200,660	
BART SERVICES			
District-Furnished Materials	\$0	\$8,000,000	
BART Force Account Work	\$0	\$7,000,000	
TOTAL BART SERVICES	\$0	\$15,000,000	
PROGRAM COSTS			
Program Costs (HazMat, Consulting, Staff, Insurance, Financing Costs and Environmental Mitigation)	\$55,871,020	\$71,560,822	Includes budget for QA Oversight consulting for \$1M and Environmental Monitoring services for \$2M.
Right-Of-Way Acquisitions	\$80,394,486	\$79,202,672	
Contingency	\$2,776,319	\$88,048,837	
TOTAL PROGRAM COSTS	\$139,041,825	\$238,812,331	
TOTAL FUNDING	\$890,000,000	\$890,000,000	



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Hamed Tafaghuchi for D. Dugger</i>		GENERAL MANAGER ACTION REQ'D: Approve and Forward to PPAAL Committee		
DATE: c		BOARD INITIATED ITEM: No		
Originator/Prepared By: Jeffrey P Ordway Dept: Property Development <i>Jeffrey P Ordway</i>	General Counsel <i>Andrew Rivas</i> 2/2/10	Controller/Treasurer <i>[Signature]</i> 2/2/10	District Secretary []	BARC <i>[Signature]</i> 2/2/10
Signature Date: 2/1/10				

TITLE:

Environmental Certification of MacArthur Transit Village Environmental Impact Report (EIR)

NARRATIVE:

PURPOSE: To have the Board of Directors review and approve the Final Environmental Impact Report which consists of the Draft Environmental Impact Report, responses to comments on environmental issues and modifications to the Draft EIR, a Mitigation Monitoring and Reporting Plan (MMRP), the Findings and Statement of Overriding Considerations prepared by the City of Oakland in accordance with the California Environmental Quality Act ("CEQA") for the development of the MacArthur Transit Village.

DISCUSSION: On June 12, 2008, the BART Board of Directors authorized execution of an Option Agreement with MacArthur Community Transit Partners, LLC (MCTP) for the sale of approximately 4.8 acres of land, the receipt of approximately 0.53 acres, and the lease of approximately 1.48 acres of land at the MacArthur BART Station.

The Option Agreement establishes conditions precedent to the sale, acquisition and lease of land, including an evidentiary and administrative record enabling the BART Board to make independent finding of CEQA compliance of its action with MCTP. On January 31, 2008 the City of Oakland released a Draft EIR on the MacArthur Transit Village Project. On May 23, 2008, the City published a Final EIR. On June 4, 2008 the Oakland Planning Commission certified that the Final EIR was completed in compliance with the California Environmental Quality Act, approved the Project, and adopted the MMRP, the Findings and Statement of Overriding Considerations.

The Oakland Planning Commission found that the following impacts of the Project remain significant and unavoidable, notwithstanding the imposition of all feasible mitigation measures:

1. Impact TRANS-4 finds that the addition of Project traffic would cause a significant impact at the Telegraph Avenue/51st Street intersection under Cumulative Year 2030 Baseline Plus Project conditions. The Project-generated traffic increases critical movement average delay by more than 4 seconds during the AM peak hour and would increase intersection average delay by more than 2 seconds during the PM peak hour.
2. Impact TRANS-9 finds that the addition of Project traffic would cause a significant impact at the Broadway/MacArthur Boulevard intersection under Cumulative Year 2030 Baseline Plus

Project conditions. The Project would contribute to LOS F operations and would increase intersection average delay by more than 2 seconds during the AM peak hour.

The City of Oakland has provided evidence to BART staff adequate for use by BART as the Responsible Agency that the City has complied with CEQA with respect to the MacArthur Transit Village Project and that all periods to challenge or appeal any action taken by the City of Oakland with respect to CEQA have passed without challenge or appeal. BART staff has reviewed the Final EIR and concurs with the Planning Commission's findings.

The Project will receive federal funding for the Project's transit-related improvements, including renovation of the entry plaza, shuttle bus transfer area, signalization reconfiguration of the Frontage Road, and exclusive transit use of 400 parking spaces and is therefore subject to the National Environmental Policy Act (NEPA). The federal funding agency, the Federal Transit Administration (FTA), has concurred that implementation of these project improvements will not have a significant impact on the environment and qualifies for a categorical exclusion as defined under 23 CFR 771.111 (d) (10), for construction of bus transfer facilities.

Staff are requesting that the BART Board of Directors adopt a motion that would complete the CEQA process and enable the property exchange to occur.

FISCAL IMPACT: There is no new fiscal impact from the proposed action.

ALTERNATIVES: If the BART Board determines that evidence of CEQA compliance is inadequate, additional analyses would be required to address any deficiencies identified by the Board.

RECOMMENDATION: It is recommended that the following motion be adopted:

MOTION: After review and consideration of the Final EIR and environmental Findings, Statement of Overriding Considerations and Mitigation Monitoring and Reporting Plan adopted by the City of Oakland on June 4, 2008, the Board: 1) Adopts the City of Oakland's Findings, Statement of Overriding Considerations and Mitigation Monitoring and Reporting Plan for the Project, and 2) Finds that for the sale, acquisition and lease of the BART property at the MacArthur BART Station, there are no significant environmental effects which have not been mitigated to insignificance and no further environmental review is required.