

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

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

AGENDAS FOR BOARD AND COMMITTEE MEETINGS

April 9, 2009

9:00 a.m.

A regular meeting of the Board of Directors and regular meetings of the Standing Committees will be held on Thursday, April 9, 2009, commencing at 9:00 a.m. All meetings will be held 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 and Standing Committees regarding any matter on these agendas. Please complete a “Request to Address the Board” form (available at the entrance to the Board Room) and hand it to the Secretary before the item is considered by the Board. If you wish to discuss a matter that is not on the agenda during a regular meeting, you may do so under General Discussion and Public Comment.

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

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

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

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

Kenneth A. Duron
District Secretary

**Regular Meeting of the
BOARD OF DIRECTORS**

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

1. CALL TO ORDER

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

2. CONSENT CALENDAR

- A. Approval of Minutes of the Meeting of March 26, 2009.* Board requested to authorize.

RECESS TO STANDING COMMITTEES

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

ALL COMMITTEES ARE ADVISORY ONLY

ADMINISTRATION COMMITTEE

Immediately following the Board Meeting recess

Director Murray, Chairperson

- A-1. Availability and Utilization Study Findings.* Board requested to adopt.
- A-2. Consolidation of Transportation Clerks and Lost and Found Clerk into One Classification.* Board requested to authorize.
- A-3. Fiscal Year 2010 Preliminary Budget Overview.* For information.
- A-4. Fiscal Year 2010 Budget: Consider Motion to Release Budget Pamphlet and Motion to Set Date for Public Hearing.* Board requested to authorize.
- A-5. Business Advancement Plan Update.* For information.
- A-6. General Discussion and Public Comment.

ENGINEERING AND OPERATIONS COMMITTEE

Director Keller, Chairperson

NO REPORT.

PLANNING, PUBLIC AFFAIRS, ACCESS, AND LEGISLATION COMMITTEE

Immediately following the Administration Committee Meeting

Director Sweet, Chairperson

- C-1. Issuance of Concession Permit to Administer the District's Parking Permit Programs.* Board requested to authorize.
- C-2. General Discussion and Public Comment.

RECONVENE BOARD MEETING

3. CONSENT CALENDAR ADDENDA

Board requested to authorize as recommended from committee meetings above.

4. REPORTS OF STANDING COMMITTEES

A. ADMINISTRATION COMMITTEE

- A-1. Availability and Utilization Study Findings.* Board requested to adopt.
- A-2. Consolidation of Transportation Clerks and Lost and Found Clerk into One Classification.* Board requested to authorize.
- A-3. Fiscal Year 2010 Preliminary Budget Overview.* For information.

A-4. Fiscal Year 2010 Budget: Consider Motion to Release Budget Pamphlet and Motion to Set Date for Public Hearing.* Board requested to authorize.

A-5. Business Advancement Plan Update.* For information.

B. ENGINEERING AND OPERATIONS COMMITTEE

NO REPORT.

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

C-1. Issuance of Concession Permit to Administer the District's Parking Permit Programs.* Board requested to authorize.

5. GENERAL MANAGER'S REPORT

NO REPORT.

6. BOARD MATTERS

A. Report of the BART Police Department Review Committee. For information.

B. Roll Call for Introductions.

7. GENERAL DISCUSSION AND PUBLIC COMMENT

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

A. CONFERENCE WITH LABOR NEGOTIATORS:

Designated representatives: Dorothy W. Dugger, General Manager; Teresa E. Murphy, Assistant General Manager – Administration; M. Carol Stevens, Burke, Williams & Sorensen, LLP

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

Government Code Section: 54957.6



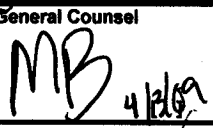

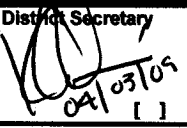
B. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION

Name of Case: Johnson et al. vs. BART

Government Code Section: Subdivision (a) of Government Code Section 54956.9



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: 		GENERAL MANAGER ACTION REQ'D: Approve and forward to the Administrative Committee		
DATE: 4/3/09		BOARD INITIATED ITEM: No		
Originator/Prepared by: Don Demer Dept: 	General Counsel 	Controller/Treasurer 	District Secretary 	BARC
Signature/Date: 4/3/09	4/2/09	4/3/09	04/03/09	
Status: Approved		Date Created: 02/17/2009		

TITLE:

ADOPT THE FINDINGS OF THE AVAILABILITY AND UTILIZATION STUDY AND MODIFY THE DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

NARRATIVE:

PURPOSE:

The Board is requested to adopt the Availability and Utilization Study conducted by Mason Tillman Associates (MTA), to adopt findings with respect to the underutilization of minorities and women in BART's construction contracting, to approve reinstatement of race-and gender - conscious goals for minorities and women in BART's construction contracting, and to approve modification of the Disadvantaged Business Enterprise (DBE) Program accordingly.

DISCUSSION:

In May 2007, the Board approved award to MTA of a contract to perform an Availability and Utilization Study in support of BART's DBE Program. The Study was to satisfy the requirements established by the Ninth Circuit Court of Appeals in the case of Western States Paving Co., Inc. vs Washington State Department of Transportation, et al. (Western States) and DOT regulations promulgated in response thereto.

MTA's Study found substantial evidence of underutilization of African-American, Asian-Americans, Hispanic-Americans, Native-Americans and women in BART's construction subcontracting, thereby supporting the re-establishment of a goal-based program for construction.

The revised DBE Program, a copy of which is attached, reflects the results of the Study. The key changes to the DBE Program are as follows:

- a. The District will re-establish race and gender conscious goals on construction contracts.
- b. These goals will only benefit those DBE firms that are located in the District's market area or do business or have attempted to do business in the District's market area.

FISCAL IMPACT

None.

ALTERNATIVES

The alternative would be not to adopt the Resolution and Findings, to not reinstate race-and gender-conscious subcontracting goals in construction and to continue to use exclusively race-neutral efforts.

RECOMMENDATION

It is recommended that the Board adopt the attached Resolution and Findings.

MOTION

That the Board adopts the attached Resolution and Findings.

April 3, 2009

Final

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM AMENDMENT

The following amendment modifies BART's Disadvantaged Business Enterprise (DBE) Program and is consistent with the requirement of 49CFR Part 26 as amended.

Modifications made by this Amendment are set forth below:

IV. Responsibility for DBE Program Implementation and Administration

C. Office of Civil Rights

No. 17 Delete

V. Administrative Requirements

B. CUCP DBE Directory (revised)

DBE Certification

The UCP directory is available to the contractors and the public electronically on the internet as well as in print. The UCP updates the electronic version by including additions, deletions, and other changes as soon as they are made. The DBE directory includes the firms name, address, telephone number and types of work (utilizing the North American Industry classification System (NAICS) for which the firm is certified as a DBE. Additionally, the DBE directory may include, when ever possible, the date the firm was established, the legal structure of the firm, the percentage owned by disadvantaged individuals, capacity, previous work experience and a contact person. The DBE directory will not in any way pre-qualify the identified DBE firms with respect to licensing, bondability, competence or financial responsibility.

BART is a member of the CUCP which maintains a unified DBE directory pursuant to 49CFR 26.81 that identifies all firms that are eligible to participate as DBEs in this program.

The District will use the DBE Directory as a resource in developing overall and contract specific DBE participation goals and conducting outreach and other programs for DBEs.

D. Revised title to read DBE Outreach and Mentor-Protégé Programs (revised)

One method of providing race-neutral efforts for DBE participation will be through the District's DBE outreach program. Each year, the DBE Liaison Officer will facilitate Business Opportunity and contract specific outreach meetings for DBEs. The DBE Liaison Officer will partner with other agencies to present other regional business opportunities. Companies will meet with District DBE, procurement and project management staff; and conversely District staff will have the opportunity to become acquainted with qualified business owners who may supply services and products. In addition, the DBE Liaison Officer will provide information on DBE certification and DBE program requirements and procedures. These events will include procedures explaining how to do business with the District and explore best business practices which may be used to market small businesses at the District. In addition, the DBE Liaison Officer will maintain a web site containing information on DBE certification, DBE Program procedures and a link to the CUCP database of DBE firms.

VII. Contract- Specific DBE Goals (revised)

In accordance with the procedures expressed in Appendix C, the District will establish contract-specific DBE goals on construction contracts with subcontracting opportunities to the extent that the District cannot achieve its annual overall DBE goal with race-neutral measures. Where a contract-specific DBE goal has been established, the bidder or proposer must meet the contract-specific goal or demonstrate that it made good faith efforts to do so. The bidder shall be entitled to a hearing if the bidder fails to show either that it met the goal or that it made good faith efforts to meet the goal. All proceedings by the District in connection with good faith efforts will be made by an outside independent hearing officer selected in accordance with District procedures. A bidder or proposer will be ineligible for award if it does not meet the goal or demonstrate good faith efforts. Contract specifications will provide that contract award is conditioned on meeting these requirements.

B. Small Business Concern (revised)

A small business concern is an existing small business, as defined by Section 3 of the Small Business Act and the Small Business Administration regulations implementing it (13 CFR Part 121), whose average annual gross receipts for the previous three years does not exceed **\$20.41 million** (or as adjusted for inflation by the Secretary of DOT) pursuant to 49 CFR Section 26.65(b).

E. Non Residence Certification

In order for a firm with a principal place of business outside of Alameda, Contra Costa, San Francisco and San Mateo to be eligible to benefit from the race and gender conscious program, the firm has to show that it has done business or has attempted to do business in the four counties. The showings may include but is not limited to:

- Currently or previously a party to a construction contract to do work in the four counties.
- Attendance at a BART sponsored outreach meetings, including pre-bid meetings, town hall meetings and Board of Director meetings.
- Any form of communication with BART.

Firms with principal places of business located in the four counties do not have to meet any of the above requirements.

XII Public Participation and Outreach (revised)

Prior to finalizing the Annual Overall Goal(s) Analysis Report, the District will consult with minority, women's and general contractor groups community organizations, U S DOT agencies or grantees (to the extent necessary) or other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs and the District's efforts to establish a level playing field.

XIII Miscellaneous

13 - C Expiration (revised)

The DBE Program will expire on August 31, 2019, unless prior to that date the Board of Directors finds that the DBE Program continues to be necessary in order to offset the effects of prior discrimination in the industries relevant to the District's contracting activities.

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

In the Matter of Adopting Findings and Modifying
BART'S Disadvantaged Business Enterprise Program /

Resolution No. _____

Introduction:

As a recipient of federal funds, the San Francisco Bay Area Rapid Transit District (BART) is required to follow federal statutes and Department of Transportation (DOT) regulations governing participation by Disadvantaged Business Enterprises ("DBEs") on federally funded projects. (As used in this Resolution, the term "DBE" includes both minority and women-owned enterprises.) Consistent with DOT requirements, the program has attempted to remedy the effects of discrimination against minority and women-owned businesses in the industries in which BART does business, to prevent future discrimination on BART projects in those industries, and to provide meaningful opportunities for minority-owned and women-owned businesses to participate in BART projects.

History:

Pursuant to DOT regulations, BART instituted a DBE program for federally funded contracts in the late 1970's. The program was reaffirmed and revised by the Board of Directors on October 1, 1992, on December 15, 1992, and on March 4, 1993, and further modified on February 13, 1997, in the wake of the Supreme Court decisions in Richmond v. J. A. Croson Corp. (1989) and Adarand Constructors v. Peña (1995). On February 2, 1999, DOT issued rules and regulations revising DOT's DBE Program in response to the 1995 Adarand decision and recent Congressional action related to DOT's DBE program. On August 12, 1999, the Board adopted a revised DBE program in accordance with the new DOT regulations.

Under the current DBE Program, an overall DBE participation goal has been developed annually by BART's Office of Civil Rights. These goals are based upon a review of the District's contracting record over previous years; the availability of certified or certifiable DBEs; the estimated dollar volume of contract activity; opportunities for DBE subcontractors, vendors and suppliers; and DBE goals being applied in the BART service area by other governmental and transit agencies. Until 2006, the Program also set goals for individual contracts on a case-by-case basis, and evaluated good faith efforts on a case-by-case basis when the specific contract goal is not attained. Quotas and set-asides are not used.

Present Status of DBE Program:

On May 9, 2005, in the Western States Paving Co. case, the Ninth Circuit Court of Appeals held that Washington State Department of Transportation's DBE Program was not narrowly tailored and was therefore unconstitutional because the State's evidence of discrimination supporting the use of race-conscious measures was inadequate. DOT issued guidance on August 21, 2006, concerning the effects of the decision. In response, in May 2006, the District suspended the race- and gender-conscious ("race-conscious") elements of its DBE Program.

In May 2007, the Board approved award of an Availability and Utilization Study to be conducted by Mason Tillman Associates ("MTA") to conduct a study to determine if there is evidence of discrimination against African-Americans, Asian-Americans, Hispanic-Americans, Native Americans and women in BART's market area in the three industries in which BART contracts, i.e., the construction, professional services and procurement industries.

The MTA Study analyzed availability, utilization and disparity in BART's market area which, for purposes of the Study, consisted of the counties of Alameda, Contra Costa, San Mateo and San Francisco. The Study included anecdotal and statistical evaluation (including a regression analysis) and a public hearing held in April 2008.

Summary of Proposed Board Action:

The Board will be asked to take the following actions: 1) adopt Findings; 2) approve a revised DBE Program containing the elements described in Attachment A attached hereto; 3) delegate to the General Manager, with approval of the General Counsel, the authority to implement a revised DBE Program consistent herewith.

THE BOARD HAS NOW CONSIDERED THE FOLLOWING EVIDENCE:

The Board has considered the expert qualifications of Dr. Eleanor Ramsey, Ph. D., of MTA, as described in her testimony on April 9, 2009.

The Board has considered the findings and conclusions of the report prepared by MTA for the District dated January, 2009, regarding the statistically significant under-utilization of African-Americans, Asian-Americans, Hispanic-Americans, Native Americans and women in the construction industry in BART's four-county market area, as presented to the Board in testimony by Dr. Ramsey on April 9, 2009, and submitted into evidence on that day.

The Board has considered a report on various race and gender-neutral measures considered and implemented by the District to reduce discrimination in District contracts, as presented to the Board in testimony by Mr. Wayne Wong, the Department Manager for the Office of Civil Rights, on April 9, 2009, and submitted into evidence on that day. These measures include the following:

- a. The District continues to schedule and hold pre-bid conferences and out-reach meetings (including some with other agencies) to inform contractors of upcoming contracts.
- b. The District has developed and currently utilizes for all contracts a wide mailing list for distribution of notices of contracting opportunities and, in addition, widely publicizes the availability of such opportunities in the press, trade journals and other publications.
- c. The District has implemented an owner-controlled insurance program for the certain construction contracts. This program provides most insurance for contractors and their subcontractors.
- d. The District has considered, and continues to examine, ways in which to waive or relax bonding requirements on competitively bid contracts consistent with State law.
- e. The District has implemented a Contractor's Information Program, targeted toward small contractors, that provides training for contractors with respect to BART-specific contract requirements.
- f. The Board adopted in December 1997 a Non-Discrimination Program for Subcontracting that is designed to ensure there is no discrimination by bidders in subcontracting for District contracts.

The Board considered a report prepared for the Santa Clara Valley Transportation Authority (VTA) by Charles River Associates (CRA) in December 2007 that found in most instances statistically significant evidence of discrimination against construction firms owned by African-Americans, Hispanics, Asian-Americans and women, and further considered VTA's action to adopt race-conscious goals for these groups in VTA's construction contracts.

The Board considered a report prepared for the California Department of Transportation (Caltrans) by BBC in June, 2007, adopted by Caltrans and approved by the Federal Highway Administration, and further considered Caltrans' implementation of a DBE Program consisting of both race-neutral and race-conscious measures, the latter applicable to underutilized African Americans, Asian Americans, Native Americans and women.

NOW, THEREFORE, THE BOARD HEREBY MAKES THE FOLLOWING FINDINGS:

1. Based on the evidence (statistical and anecdotal) presented in the Availability and Utilization Study and considered by the Board, the Board hereby makes findings

with respect to the under-utilization of minority and women firms in BART's market area in the construction industry.

A. The Study analyzed Construction subcontracts during two (2) periods:

(1) July 1, 2002 to June 30, 2006, during which time BART used race- and gender- conscious ("RC") goals:

Underutilization was found for African Americans and Hispanic Americans, and statistically significant underutilization was found for Asian Americans. Native Americans were also underutilized.

(2) July 1, 2006 to December 31, 2008, during which BART used race- and gender neutral ("RN") goals:

Statistically significant underutilization was found for African Americans, Asian Americans and Hispanic Americans. A disparity in utilization was found for Women, and Native Americans were also underutilized.

B. The Study analyzed prime construction contracts under \$500,000 during one period:

(1) July 1, 2002 and June 30, 2007, during which BART used both race- and gender-conscious and race- and gender-neutral goals:

Statistically significant underutilization was found for African Americans and Hispanic Americans, and Native Americans were also underutilized.

2. According to the Study, the difference between the availability and the utilization of African-American, Hispanic-American, Asian-American, Native American and women firms is generally statistically significant, i.e., the level of utilization is not attributable to chance, but instead indicates that a factor, other than chance, is responsible for the difference. The Study supports a finding that discrimination based on ethnicity and gender is a factor that accounts for the underutilization of these firms in BART construction subcontracting.
3. Given the significant infusion of tax dollars into the construction industry generated by District contracting activities, and in particular by the Earthquake Safety Program, System Rehabilitation and Extension programs, there is a real potential that public funds will be used by BART's prime contractors in a discriminatory manner in their award of subcontracts and that discrimination will

continue generally against minority- and women-owned firms in the area of construction.

4. Consistent with applicable DOT regulations, BART engages in extensive race- and gender-neutral efforts to meet the annual overall DBE goal and to ensure participation by minorities and women. Based on the MTA findings, these race- and gender-neutral efforts have not been sufficient to ensure participation by DBE subcontractors in BART construction contracts.
5. Based upon the evidence of continuing discrimination against minority- and women-owned firms in BART's construction subcontracting, the Board hereby finds that the purpose for which the District's current DBE Program was adopted have not been fulfilled with respect to construction contracting and that it is necessary to adopt a revisions to the DBE Program. In particular, the Board finds that the evidence in the MTA Study supports re-establishment of race- and gender-conscious elements of its DBE Program, including race- and gender-conscious contract goals, for firms owned African-Americans, Hispanic-Americans, Asian-Americans, Native Americans and women in BART's market area in the construction industry.
6. It is necessary that availability and utilization studies be conducted on a regular basis in order maintain reliable information, including pertinent statistical data, to determine if there is continuing evidence of discrimination which justifies the continuation of the race- and gender-conscious elements of the Program under applicable legal principles.
7. It is necessary for BART to comply with DOT's DBE regulations (49 CFR Part 26) as a condition for eligibility for receipt of federal funds.

NOW, THEREFORE, BE IT RESOLVED that the Disadvantaged Business Enterprise Program applicable to BART's federally funded contracting activities, revised as shown in Exhibit A attached hereto is hereby approved and adopted in accordance with the Department of Transportation regulations (49 C.F.R. Part 26).

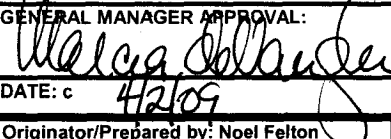
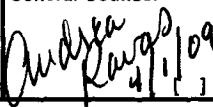
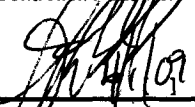
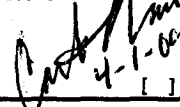
NOW, THEREFORE, BE IT FURTHER RESOLVED that the Board delegates to the General Manager the authority to approve DBE Program documents consistent with this Resolution.

NOW, THEREFORE BE IT FURTHER RESOLVED that the Board directs that availability and utilization studies be conducted on a regular basis in order maintain reliable information, including pertinent statistical data, to determine if there is continuing evidence of discrimination which justifies the continuation of the program under applicable legal principles.

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EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: 		GENERAL MANAGER ACTION REQ'D:		
DATE: c 4/2/09		BOARD INITIATED ITEM: No		
Originator/Prepared by: Noel Felton Dept: Labor Relations	General Counsel  4/1/09	Controller/Treasurer  4/1/09	District Secretary []	BARC  4-1-09
Signature/Date: []				

TITLE:

RECLASSIFICATION OF TRANSPORTATION CLERKS AND LOST AND FOUND CLERK INTO ONE CLASSIFICATION

NARRATIVE:

PURPOSE:

To authorize the General Manager or her designee to enter into an agreement with ATU Local 1555, Side Letter, ATU/SL-1-09, a true and correct copy of which is attached, to modify the 2005-2009 ATU Collective Bargaining Agreement for the purpose of consolidating all existing transportation clerks into a single classification designated Transportation Administration Specialist. The new consolidated classification will perform all work currently being performed by Senior Transportation Clerks, Transportation Clerks and the Lost and Found Clerk. The new classification will be paid at the current Senior Transportation Clerk rate of pay.

DISCUSSION:

Currently the terms of the ATU Collective Bargaining Agreement specify that there are three transportation clerk classifications, Senior Transportation Clerk, Transportation Clerk and Lost and Found Clerk. The agreement also contains provisions related to the transportation clerk duties and staffing including staffing of the Crew Office 24/7. The District and ATU also entered into a Clerical Extra Board Stipulated Decision and Memorandum of Understanding on or about June 21, 2005, which agreement contains specific provisions related to minimum clerical staffing.

In June 2008 various disputes arose between the District and ATU resulting in multiple complaints under the terms of the MOU and grievances under the contract related to staffing and bidding for ATU clerical positions. The District had, through attrition, reduced the total number of transportation clerks from 21 to 16 and developed a schedule to provide complete coverage for the Crew Office, as required by the terms of the Collective Bargaining Agreement. In so doing the District had used a combination of clerical classifications. Issues arose between ATU and the District concerning distinctions between the duties of each classification and appropriate staffing levels. The Union asserted that four (4) additional Transportation Clerks were required to comply with all provisions of the CBA.

On December 19, 2008, the District and ATU Local 1555 entered into a Stipulated Decision and Memorandum of Understanding, subject to execution of the Side Letter modifying the terms of the contract, which resolved these various complaints and grievances. A copy of the Stipulated Decision and Memorandum of Understanding is also attached. The primary element of the

agreement is the consolidation of all ATU clerical classifications. All clerks are to perform all clerical functions, which will provide the District with increased flexibility in scheduling and staffing. A job description will be created to consolidate the duties of the three classifications into one. This consolidation in effect allows every transportation clerk the flexibility to perform all clerical functions thus meeting the District's needs more efficiently while reducing staffing levels and the potential for overtime. The Office of the General Counsel has approved the Side Letter as to form. ATU ratified the side letter on February 11, 2009.

FISCAL IMPACT:

All clerks are to receive the current salary rate for the previous Senior Transportation Clerk classification resulting in salary increase for the incumbents in the previous Transportation Clerk and the Lost & Found Clerk classifications. In addition the three positions previously classified as Sr. Transportation Clerks are to be designated as lead positions, which will receive lead person premium pay. The reduction of 6 FTEs pursuant to the MOU between BART and ATU dated December 19, 2008 will save the District a net of approximately \$ 177,000 this fiscal year, and \$354,000 in FY 10.

ALTERNATIVE:

Maintain the current classifications thus losing the benefits of the proposed consolidation and staff reductions. If the side letter is not approved then various complaints and grievances arising from the original June 2005 Clerical Extra Board Stipulated Decision and Memorandum of Understanding will proceed to arbitration. If that occurs there is a significant risk that the penalties specified in that Memorandum of Understanding would be imposed on the District. Those penalties are estimated to be approximately \$152,000.00. In addition, the District could potentially be required to hire a minimum of three additional Transportation Clerks to meet the staffing set forth in the June 2005 Memorandum of Understanding.

RECOMMENDATION:

Adoption of the following motion:

MOTION

That the General Manager is authorized to execute the Side Letter of Agreement with ATU Local 1555, ATU/SL-1-09 RE: Senior Transportation Clerk, Transportation Clerk and Lost and Found Clerk Classifications consolidating those classifications into a single classification designated Transportation Administration Specialist and modifying the ATU Collective Bargaining Agreement as specified therein.

SIDE LETTER OF AGREEMENT
ATU/SL 1-09

RE: TRANSPORTATION ADMINISTRATION SPECIALIST, SENIOR
TRANSPORTATION CLERK, TRANSPORTATION CLERK, AND LOST AND
FOUND CLERK CLASSIFICATIONS

Upon signing by the parties, this letter shall constitute a Side Letter of Agreement which has been reached by the San Francisco Bay Area Rapid Transit District ("District") and Amalgamated Transit Union Local 1555 ("Union") (hereinafter jointly referred to as "Parties") regarding the Transportation Administration Specialist, Senior Transportation Clerk, Transportation Clerk and Lost and Found Clerk classifications.

1. The Parties agree that the Senior Transportation Clerk (Clerk IV), Transportation Clerk (Clerk III) and Lost and Found Clerk classifications shall be consolidated into a single classification designated Transportation Administration Specialist, which shall perform the work of the Senior Transportation Clerks, Transportation Clerks and Lost and Found Clerks.
2. The Parties agree that the Transportation Administration Specialist classification shall be paid at a rate of pay equal to the Senior Transportation Clerk wage schedule as set forth in Section 47.0 of the Contract.
3. As a result of this Agreement, the Labor Agreement shall be amended as follows:
 - (a) Section 12.B:
Add: "4. Transportation Administration Specialist"
Delete: "4. Senior Transportation Clerk", "3. Transportation Clerk", and "15. Lost and Found Clerk"
 - (b) Section 15.0, including 15.1-15.15:
Replace "Senior Transportation Clerk" and "Transportation Clerk" with "Transportation Administration Specialist"
 - (c) Section 15.11 should be modified as follows:
§15.11 LEAD POSITIONS

The Transportation Administration Specialist who bids a position designated on the bid as a lead position shall be required to provide working leadership to the overall staff in the crew office in addition to performing all regular duties of a Transportation Administration Specialist.
 - (d) Section 15.12:

Delete the following: "Senior Transportation Clerks who as a result of a reduction in force or disqualification shall be allowed to revert to Transportation Clerk without loss of seniority. The Senior Transportation Clerk shall not have voluntary reversion rights to Transportation Clerk."

- (e) Section 15.30
Delete Sections 15.30, 15.31, 15.33 and 15.35.
- (f) Section 15.36
Sections 15.36 shall be re-designated Section 15.16 and modified as follows: Sections S29.0, S29.1, S29.2, S29.3, S29.4 and S29.5 shall apply to the Transportation Administration Specialist assigned to work in the Lost and Found.
- (g) Section 47.0(D)
Delete wage rates for Transportation Clerk and Lost and Found Clerk and Replace "Senior Transportation Clerk" with "Transportation Administration Specialist"
- (h) All other provisions of the Labor Agreement, including Side Letters and MOUs, Grievance Resolution Project, Clerical Stipulated Decision/MOU: Replace "Senior Transportation Clerk", "Transportation Clerk", "Lost and Found Clerk", and "Clerk" with "Transportation Administration Specialist"

This Side Letter of Agreement shall be deemed part of the Collective Bargaining Agreement between the parties.

CONCUR FOR THE
DISTRICT

CONCUR FOR THE
UNION

BART AND ATU, LOCAL 1555
STIPULATED DECISION / MEMORANDUM OF UNDERSTANDING
RE: TRANSPORTATION ADMINISTRATION SPECIALIST,
SENIOR TRANSPORTATION CLERK, TRANSPORTATION CLERK, AND LOST
AND FOUND CLERK STAFFING

December 19, 2008

The Bay Area Rapid Transit District ("District") and the Amalgamated Transit Union, Local 1555 ("Union") (jointly "the Parties") have agreed to the following Stipulated Decision/Memorandum of Understanding:

- (1) Pursuant to §12.0 (B) of the Collective Bargaining Agreement ("Labor Agreement") between the Union and the District there are, among others, classifications for Senior Transportation Clerks (Clerk IV), Transportation Clerks (Clerk III) and Lost and Found Clerks. The Parties agree that these positions shall be consolidated into one classification designated Transportation Administration Specialist. All Transportation Administration Specialists shall perform the work of Senior Transportation Clerks, Transportation Clerks, and Lost and Found Clerks, and the functionally equivalent work of these classifications.
- (2) All Senior Transportation Clerks, Transportation Clerks and Lost and Found Clerks shall, effective December 21, 2008, be upgraded and grandfathered into permanent Transportation Administration Specialist positions, with no probationary period, and be paid the Senior Transportation Clerk rate of pay.
- (3) Subject to the provisions set forth herein, three (3) Transportation Administration Specialist positions shall be designated lead positions. In addition to performing all duties required of the Transportation Administration Specialists, the lead positions shall provide working leadership, review of the work of the Transportation Administration Specialists and shall administer the extra board and overtime for all Transportation Administration Specialists. All Lead positions/shifts shall be in the Crew Office, and shall be designated and posted for bid. The lead positions shall be paid the lead worker premium as set forth in §28.8 of the Labor Agreement. Said premium will be paid for the entire designated and bid shift even if there are no other Transportation Administration Specialists to lead and /or the District has designated overlapping lead shifts.

Current Senior Transportation Clerks shall have priority in bidding the lead positions and the current Lost and Found Clerk shall have priority in bidding the Lost and Found position. If a Senior Transportation Clerk does not bid a lead position or attrits, the number of lead positions may, at the discretion of the District, be reduced to two (2) in subsequent bids. There will be a minimum of at least two (2) lead positions provided that the requirement for 24/7 crew office staffing as set forth in Section 15.9 remains unchanged.

- (4) There shall be a total of at least seventeen (17) Transportation Administration Specialists as follows: six (6) in the Crew Office which shall, pursuant §15.9 of the Labor Agreement remain staffed 24 hours/day, 7 days a week; one in each yard and TM zone for a total of seven (7); one in Lost and Found; and three (3) Extra Board.
- (5) Staffing shall remain at the level described in Section 4 until ninety (90) days following ratification of a Collective Bargaining Agreement between the Union and the District. The Med-Arbiter, with input from the parties, has the authority to order that the minimum staffing level remain in effect for additional periods of time, to order the parties to engage in appropriate dispute resolution processes including but not limited to mediation and/or arbitration, and/or to issue other orders she deems appropriate, (a) at the request of either party if the Med-Arbiter concludes that such order(s) will effectuate timely resolution of staffing level issues, or (b) at the parties' mutual request. Nothing in this agreement circumvents or alters the District's right to transfer work in the event of an emergency or the de minimus transfer of work. The parties preserve their contractual rights regarding changes or modifications to staffing.
- (6) All Transportation Administration Specialists bidding on the extra board (night or day) must be Crew Office qualified. All shift vacancies shall be filled by the Extra Board, if available. The Extra Board will be utilized to fill vacancies in the priority order listed below:
1. Crew Office
 2. Yard/Line Transportation Offices
 3. Training Center
 4. Lost and Found Center
- In the event the Extra Board is exhausted, the District will fill the vacancy with overtime, offering this opportunity to the Transportation Administration Specialist(s) on the RDO overtime list in accordance with Section S28.4. Transportation Administration Specialists working a lead position while on the Extra Board or overtime shall receive the leadworker premium.
- (7) All Transportation Clerks, Senior Transportation Clerks and Lost and Found Clerks shall be trained and qualified to perform all job functions, duties and responsibilities of the Transportation Administration Specialists, including all job functions, duties and responsibilities of the Senior Transportation Clerks, the Transportation Clerks and the Lost and Found Clerks.
- (8) A current Senior Transportation Clerk shall be upgraded to a temporary EDS and shall conduct the necessary Senior Transportation Clerk training. A current Transportation Clerk shall be upgraded to a temporary EDS and shall conduct the necessary Transportation Clerk training. The current Lost and Found Clerk shall be upgraded to a temporary EDS and shall conduct the necessary Lost and Found Clerk training.

- (9) Training shall continue until all Transportation Clerks, Senior Transportation Clerks and Lost and Found Clerks receive certification that they have achieved the necessary training level.
- (10) All Transportation Clerks, Senior Transportation Clerks and Lost and Found Clerks shall also be trained and certified or recertified, if required, to work in the Crew Office pursuant to Section 15.13 of the Labor Agreement, by a current Transportation Clerk who is upgraded to a temporary EDS.
- (11) The district shall immediately following execution of this agreement seek and select temporary EDSs and training shall commence no later than ten (10) days following selection of the temporary EDSs and shall continue until each Transportation Administration Specialist has been fully trained, qualified and certified to perform all job functions, duties and responsibilities of the Transportation Administration Specialist position. After all Transportation Administration Specialists have been fully trained, qualified and certified, future temporary EDSs for Transportation Administration Specialist training, if required, shall be selected from among that classification, consistent with Section 21.0 of the Labor Agreement.
- (12) All questions pertaining to the application of seniority among the Transportation Administration Specialists shall be resolved by the Union.
- (13) The Parties have developed a mutually agreed upon bid configuration for the bid effective January 2009, attached as Exhibit A. Because the Parties have mutually agreed upon the January 2009 bid configuration, the Union will not file a complaint/grievance regarding the January 2009 bid configuration. The Parties agree to work with one another toward development of the bid configurations for the bids effective June 2009 and September 2009. Upon mutual agreement regarding each bid configuration, no grievance or complaint regarding that bid configuration will be filed. The Parties retain their rights in the event that an agreement cannot be reached.
- (14) This agreement is intended to be consistent with the Clerks Stipulated Decision/MOU and shall not circumvent or alter any terms or provisions of that agreement. Transportation Administration Specialists shall perform all "work which has been historically and traditionally performed" by the Transportation Clerk, Senior Transportation Clerk, and Lost and Found Clerk job classifications, "consistent with the current Labor Agreement, so long as such work, or its functional equivalent continues to exist." References to "Senior Transportation Clerk", "Transportation Clerk", "Clerk" and "Clerical" in the Clerks Stipulated Decision/MOU shall refer to the "Transportation Administration Specialists" upon execution of this agreement.
- (15) The Parties agree to work together to create a job description for the Transportation Administration Specialist consistent with this agreement. The parties agree to evaluate the work which Transportation Administration Specialists could potentially perform and agree to continue to evaluate and consider other potential job functions that may assist in the orderly and efficient administration of work. To the extent that

additional functions are determined to be appropriate by the Parties, the Parties shall jointly modify the job description to reflect any modified job duties.

- (16) This decision includes Side Letter of Agreement (09-01) Re: Transportation Administration Specialist, Senior Transportation Clerk, Transportation Clerk and Lost and Found Clerk Classifications and constitutes a full and final resolution of the following:

- Complaint Nos. 22 and 23 submitted to the Implementation committee Regarding Crew Office Extra Board Staffing;
- Grievance Nos.: 08-139, 08-132, 08-195, 08-196 and 08-197

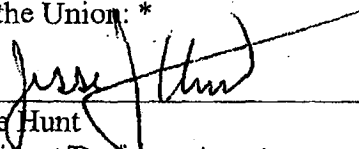
The Parties expressly preserve their rights with respect to those outstanding complaints and grievances not specifically resolved herein, including but not limited to those regarding the bargaining unit work for Transportation Clerks, Senior Transportation Clerks, Lost and Found Clerks, Senior Transportation Clerk – Training, and those which are the subject of the pending arbitration before Barbara Chvany. The Parties also preserve their rights related to the work performed and which can in the future be performed by the Transportation Administration Specialist positions.

- (17) This Stipulated Decision/MOU is intended to be consistent with all provisions of the Labor Agreement, and the Parties preserve their contractual rights.

- (18) Any disputes arising from this decision shall be resolved through the implementation and dispute resolution procedure in the Clerks Stipulated Decision/MOU.

Dated: 12/19/08

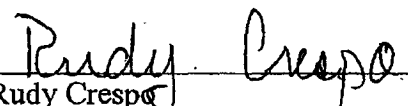
For the Union: *



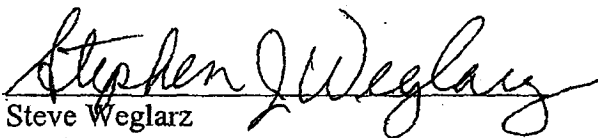
Jesse Hunt
President/Business Agent

Dated: 12/19/08

For the District:



Rudy Crespo
Chief Transportation Officer



Steve Weglarz
Department Manager, Labor Relations

IT IS SO ORDERED

Dated: _____

Luella Nelson, Arbitrator

* Subject to approval of Side Letter of Agreement

BART AND ATU, LOCAL 1555

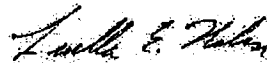
INTERIM ORDER

RE:

STIPULATED DECISION/MEMORANDUM OF UNDERSTANDING
RE: TRANSPORTATION ADMINISTRATION SPECIALIST,
SENIOR TRANSPORTATION CLERK, TRANSPORTATION CLERK, AND LOST
AND FOUND CLERK STAFFING

December 19, 2008

Pending approval of Side Letter of Agreement (09-01) Re: Transportation Administration
Specialist, Senior Transportation Clerk, Transportation Clerk and Lost and Found Clerk
Classifications, **it is hereby ordered** that the Stipulated Decision/Memorandum of
Understanding Re: Transportation Administration Specialist, Senior Transportation Clerk,
Transportation Clerk, and Lost and Found Clerk Staffing shall be immediately implemented.



Luella E. Nelson, Med-Arbiter

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

MEMORANDUM

TO: Board of Directors

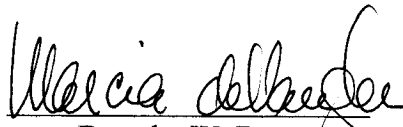
Date: April 3, 2009

FROM: General Manager

SUBJECT: Fiscal Year 2010 Preliminary Budget

At the April 9th meeting of the Board of Directors, staff will give a brief presentation providing an overview of the Preliminary Budget. We will also provide copies of the annual Resource Manual, containing the Preliminary Budget Memo, Department Organization Charts and Goals & Objectives. A copy of the FY10 Preliminary Budget Memo was mailed to the Board earlier this week.

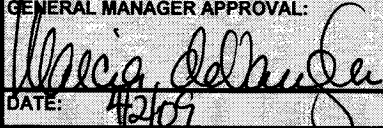
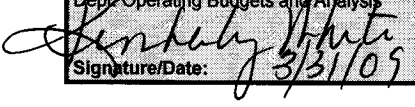
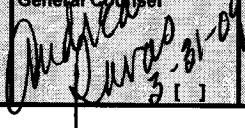
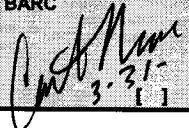
If you have any questions, please call Carter Mau at (510) 464-6194.


Dorothy W. Dugger

cc: Board Appointed Officers
Deputy General Manager



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: 		GENERAL MANAGER ACTION REQ'D: Place on the Administration Committee Agenda for April 9, 2009		
DATE: 4/2/09		BOARD INITIATED ITEM: No		
Originator/Prepared by: Kimberly White Dept. Operating Budgets and Analysis  Signature/Date: 3/31/09	General Counsel  3-31-09	Controller/Treasurer []	District Secretary []	BARC  3-31-09
Status: Approved		Date Created: 03/31/2009		
TITLE:				

Fiscal Year 2010 Preliminary Budget Procedural Actions

NARRATIVE:

PURPOSE:

To formally direct staff to publish a pamphlet containing a copy of the Fiscal Year 2010 Preliminary Budget.

To set a public hearing on the Fiscal Year 2010 Preliminary Budget.

DISCUSSION:

The rules of the Board of Directors provide that the Board direct a Preliminary Budget Pamphlet to be prepared no later than the first day of June (Rule 5-1.2). Staff's schedule calls for this pamphlet to be available by April 10, 2009. The rules of the Board of Directors also provide that a public hearing on the budget be held on or before June 20 (Rule 5-1.3). Staff proposes that this hearing be held on May 28, 2009.

FISCAL IMPACT:

According to Board Rules, the FY10 Preliminary Budget must be adopted on or before June 30, 2009.

ALTERNATIVES:

Under Board Rules 5-1.2 and 5-1.3, publishing a budget pamphlet and holding a public hearing are required steps to adopt the Fiscal Year 2010 annual budget. The Board could suspend rules 5-1.2 and 5-1.3 or postpone the hearing to another date prior to June 20.

RECOMMENDATION:

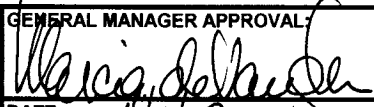
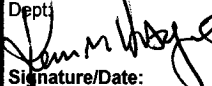
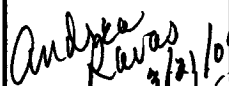


That the Board adopt the following motions:

Motions:

1. That the staff be directed to publish a Budget Pamphlet for Fiscal Year 2010 to be available for distribution no later than April 10, 2009.
2. That a public hearing on the Fiscal Year 2010 Preliminary Budget be set for Thursday, May 28, 2009 at 9:00 am in the Board Room.



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: 		GENERAL MANAGER ACTION REQ'D: Approve the EDD and Forward to the PPAAL Committee		
DATE: c 4/26/09		BOARD INITIATED ITEM: No		
Originator/Prepared by: Kevin Hagerty Dept: Signature/Date:  3/30/09	General Counsel  3/21/09	Controller/Treasurer  3/15/09	District Secretary []	BARC  4/1/09

AUTHORITY TO ISSUE CONCESSION PERMIT TO ADMINISTER THE DISTRICT'S PARKING PERMIT PROGRAMS

NARRATIVE:

NARRATIVE:

PURPOSE:

To authorize the General Manager or her designee to issue Concession Permit No. M321-09 to joint venture Pacific Park Management/Parking Carma to administer the District's Parking Permit Programs. The Concession Permit is for a three-year term with an option by the District to extend for up to two additional one-year periods.

DISCUSSION:

BART currently operates three parking permit programs: Monthly Reserved, Single Day Reserved and Airport Long Term. The permit programs are currently administered under a concession permit by professional parking vendor, Clancy Systems International, who was selected using a competitive selection process. The concession permit expired on February 28, 2009 but has been extended on a month-to-month basis, pending issuance of a new permit.

The primary work performed under the Concession Permit consists of selling Internet based monthly reserved, single day reserved and airport long term parking permits for designated station parking, using a connection from BART's web page to the Permittee's web page and supporting customer services. Most patrons purchase the permits using their credit cards. The Permittee is compensated a fee for processing each parking permit. BART does not have the resources or the equipment to operate this program in-house.

On January 9, 2009, BART issued a request for qualifications and proposals (RFQ/P) for Concession Permit No. M321-09 to operate the District's Parking Permit Programs. The District advertised the RFQ/P in four local newspapers and mailed RFQ/P documents to ten potential vendors. Four companies, Clancy Systems International Inc., iParq, Pacific Park Management/Parking Carma and T2 Systems Inc. submitted proposals prior to the February 3, 2009 deadline.

AUTHORITY TO ISSUE CONCESSION PERMIT TO ADMINISTER THE DISTRICT'S PARKING PERMIT PROGRAM

A six-person Selection Committee representing BART's Civil Rights, Customer Access, Information Technology, Marketing, Police and Transportation Departments reviewed the proposals. A best value approach was used that combined technical qualifications and price analysis to determine the proposal most advantageous to the District. The proposals from iParq and T2 Systems Inc. were determined by the Selection Committee to be non-responsive and those vendors were disqualified from proceeding further in the selection process.

The Selection Committee evaluated and scored the qualifications and technical proposals and conducted and scored oral interviews of the two finalists, Clancy Systems International and Pacific Park Management/ Parking Carma. Finally, price proposals were scored. The points from the technical evaluation, oral interview and price proposals were totaled. The proposal from Pacific Park Management/Parking Carma was rated the highest. Pacific Park Management/Parking Carma's proposed fees for processing monthly reserved, single day reserved and airport long term permits were 10% below those submitted by Clancy Systems International. Pacific Park Management/ Parking Carma's proposed fees are set forth in Attachment A.

The proposal submitted by Pacific Park Management/Parking Carma has been determined to be responsive to the solicitation and the price offered is fair and reasonable. The Office of General Counsel will approve the concession permit as to form.

FISCAL IMPACT:

Under the existing and proposed permits, the Permittee deducts authorized fees from monies collected, and forwards the balance to the District. Estimated authorized Permittee expenses for FY10 are \$436,000, for FY11, \$443,000 and for FY12, \$449,000.

During FY 2008 Parking Permit Program generated \$5.3 million in net revenue to the District. The Program is estimated to generate \$5.5 million in net revenue to the District during FY09. During FY10, FY11, and FY12, respectively, the Program is estimated to generate \$5.6 million, \$5.7 million, and \$5.8 million in net revenue.

ALTERNATIVES:

Reject the Pacific Park Management/Parking Carma proposal and reissue the Parking Permit Vendor RFQ/P.

RECOMMENDATION:

Adoption of the following motion

MOTION:

The General Manager is authorized to issue Concession Permit No M321-09 to Pacific Park Management/ Parking Carma, a joint venture, to administer the District's Parking Permit Programs, for a three-year period, with an option by the District to extend for up to two additional one-year periods.

Attachment A

Pacific Park Management/Parking Carma Concession Fees

1. One- Time Fees

- | | |
|---|---|
| a) Systems integration, installation, setup and training | \$0 |
| b) Initial process and mailing of monthly reserved permit | \$4.95 to be paid by customer when permit is first issued |

2. Monthly fee (monthly reserved parking program)

- | | |
|--|-----------------------------|
| a) Monthly reserved permit process fee | \$2.70 per permit per month |
|--|-----------------------------|

3. Other (monthly reserved parking program)

- | | |
|---|---|
| a) Telephone permit processing fee | \$ 2.70 per permit/transaction |
| b) Provide parking permits | \$ 900.00 per 1,000 |
| c) Remail (lost, replacement processing charge) | \$ 4.46 mailing /processing charge to be paid by customer |

4. Airport/Long-Term parking program

- | | |
|---|----------------|
| a) Airport/long-term parking permit fee | \$.90 per day |
|---|----------------|

5. Single-day reserved parking program

- | | |
|---|---------------------------|
| a) single day reserved parking permit fee | \$.55 per permit per day |
|---|---------------------------|

6. Other

- | | |
|-----------------------------------|--|
| a) Telephone customer service fee | \$ 0 per hour (with documentation) |
| b. Other permittee tasks TBD | \$ 68.00 per hour (as requested by the District) |

7. Optional

- | | |
|---|------------------------------|
| a) Lease of parking enforcement equipment | \$ 125.00 per unit per month |
|---|------------------------------|