

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

**BOARD MEETING AGENDA**

May 27, 2010

9:00 a.m.

A regular meeting of the Board of Directors will be held at 9:00 a.m. on Thursday, May 27, 2010, in the BART Board Room, Kaiser Center 20<sup>th</sup> Street Mall – Third Floor, 344 – 20<sup>th</sup> Street, Oakland, California.

Members of the public may address the Board of Directors 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.

## 2. CONSENT CALENDAR

- A. Approval of Minutes of the Meetings of March 25, 2010, April 8, 2010, April 16, 2010 (Special), and April 22, 2010.\* Board requested to authorize.
- B. Director McPartland's Proposed Travel to Attend the American Public Transportation Association (APTA) Rail Conference in Vancouver, BC.\* Board requested to authorize.
- C. Fiscal Year 2011 Proposition 4 Appropriations Limit.\* Board requested to authorize.

## 3. PUBLIC HEARING

- A. Public Hearing on Fiscal Year 2011 Budget.\* For information.

## 4. ADMINISTRATION ITEMS

Director Blalock, Chairperson

- A. Fiscal Year 2011 Annual Operating Budget. For information.
- B. Fiscal Year 2011 Capital Budget/Capital Program Update.\* For information.
- C. Change Orders to Agreements to Provide Authorization for Additional Technical Services as Needed in Support of the Implementation of the Business Advancement Program, Phase II.\*
  - Agreement No. 65BN-402 (Sarah Jones Castro)
  - Agreement No. 65BN-403 (Robert McGowan)
  - Agreement No. 65BN-404 (Soliera, Inc.)
  - Agreement No. 65BN-405 (CC Mechling, Inc.)
  - Agreement No. 65BN-406 (Diego Enriquez Maldonado)
  - Agreement No. 65BN-407 (Pavel Kogan)
  - Agreement No. 65BN-408 (Terri Long)
  - Agreement No. 65BN-409 (Augusta Consulting Corporation)
  - Agreement No. 65BN-410 (JA Frasca & Associates)
  - Agreement No. 65BN-413 (Ontime Consulting, LLC)
  - Agreement No. 65BN-414 (Implementisense, Inc.)
  - Agreement No. 65BN-415 (TechTu Business Solutions, Inc.)
  - Agreement No. 65BN-416 (Human Resources Management Solutions Inc)
  - Agreement No. 65BN-417 (The Net Consulting Group, Inc.)
  - Agreement No. 65BN-418 (Interloc Solutions)
  - Agreement No. 65BN-419 (Shriya Systems, Inc.)
  - Agreement No. 65BN-421 (Bintelx, Inc.)
  - Agreement No. 65BK-301 (KAC, LLC / PB Consult Joint Venture)Board requested to authorize.
- D. Review of Proposed Environmental Justice Policy.\* For information.

5. ENGINEERING AND OPERATIONS ITEMS

Director Keller, Chairperson

- A. Agreement with BKF Engineers for Professional Services for Preparation of Record Drawings for BART's Earthquake Safety Program Construction Contracts (Agreement No. 6M6035).\* Board requested to authorize.
- B. Award of Contract No. 15EM-120, Contact Rail Coverboard Reinforcements, Various Locations.\* Board requested to authorize.
- C. Extension of Proposal Validity Date and Price Adjustment for Inflation to Contract No. 01ZK-110, Design-Build of the Oakland International Airport Connector.\* Board requested to authorize.
- D. (CONTINUED from May 13, 2010, Board Meeting)  
Quarterly Performance Report, Third Quarter Fiscal Year 2010 - Service Performance Review.\* For information.

6. PLANNING, PUBLIC AFFAIRS, ACCESS, AND LEGISLATION ITEMS

Director Ward Allen, Chairperson

NO REPORT.

7. GENERAL MANAGER'S REPORT

NO REPORT.

8. BOARD MATTERS

- A. Roll Call for Introductions.

9. GENERAL DISCUSSION AND PUBLIC COMMENT

**SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT**

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**MEMORANDUM**

**TO:** Board of Directors

**DATE:** May 20, 2010

**FROM:** District Secretary

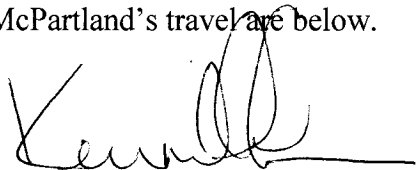
**SUBJECT:** Proposed Travel to Attend the 2010 APTA Rail Conference

Director John McPartland proposes to travel to Vancouver, British Columbia, Canada from June 5 to June 9, 2010 to attend the 2010 American Public Transportation Association (APTA) Rail Conference.

In accordance with Board Rule 5-3.2(b), this proposal will be brought before the Board for prior authorization on the May 27, 2010, regular Board Meeting agenda.

A motion and the estimated costs for Director McPartland's travel are below.

Thank you.



Kenneth A. Duron

**Estimated Costs 2010 APTA Rail Conference:**

Airfare	\$ 500
Hotel (\$260/night, for 4 nights plus 15% tax)	\$ 1,196
Registration	\$ 625
Per Diem (4 days @ \$99/day)	\$ 396
Transportation to/from airports	\$ 130
Miscellaneous	\$ 50

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Total Estimated Costs	\$ 2,897
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**MOTION:** That Director McPartland's travel to Vancouver, British Columbia, Canada from June 5 to June 9, 2010 to attend the APTA Rail Conference is approved.

cc: Board Appointed Officers  
Deputy General Manager



## EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Malca delacruce</i>		GENERAL MANAGER ACTION REQ'D:		
DATE: c 5/19/10		BOARD INITIATED ITEM: No		
Originator/Prepared by: Kimberly White Dept: Operating Budgets <i>Kimberly White</i> Signature/Date: 5/17/2010	General Counsel <i>[Signature]</i> 5-15-10 [ ]	Controller/Treasurer <i>[Signature]</i> 5/19/10 [ ]	District Secretary [ ]	BARC <i>[Signature]</i> 5-17-10 [ ]

TITLE:

### FY11 Proposition 4 Appropriations Limit

#### NARRATIVE:

**Purpose:** To approve the District's fiscal year 2011 appropriations limit, which is required by state law as a result of the Gann Initiative (Proposition 4, passed by the voters in 1979).

**Discussion:** The Gann Initiative (Proposition 4) provides for limitations on appropriations by state and local government entities. California Government Code Section 7910 requires local jurisdictions to annually adopt an appropriations limit by resolution and establishes a 45-day statute of limitations for commencement of any judicial action to challenge the appropriations limit.

Section 7910 requires the Board of Directors to establish by resolution BART's annual appropriations limit "at a regularly scheduled meeting or noticed special meeting." Further, it requires that fifteen days prior to such meeting, documentation used in the determination of the appropriations limit shall be made available to the public. On May 12, 2010, the documentation was made available to the public.

Documentation of the FY11 appropriations limit calculation is summarized in Attachment 1. The attached documentation of the FY11 appropriations limit is consistent with the Uniform Guidelines for Implementation of the Gann Initiative prepared by the League of California Cities and the information furnished by the State Department of Finance.

Attachment 2 is the calculation for the margin as it relates to the Proposition 4 limit. The margin is the difference between the appropriations limit and the expenditures subject to the limit. Based on the calculations, the District will be below the limit of \$458,873,852.

**Fiscal Impact:** There is no fiscal impact. The FY11 appropriations limit is \$458,873,852, while Operating and Capital expenditures subject to the limit are \$282,817,482. Therefore, the District is well below the limit with a margin of \$176,056,370.

**Alternatives:** None

**Recommendation:** Approval of the following motion.

**Recommendation:** Approval of the following motion.

**Motion:** That the Board adopt the attached resolution which sets the District's FY11 appropriations limit at \$458,873,852.

## Attachment 1

### Fiscal Year 2011 Appropriations Limit: Calculation

Based on the provisions in Article XIII B of the California Constitution as approved by the voters in November 1979, the appropriations limit for each succeeding year through 1987 is determined by the District's 1979 appropriations base times a cumulative composite factor. The base year was later revised to 1987. The cumulative composite factor consists of the product of:

- a.) The lesser of the relative year change in the all urban consumer price index (SF/Oakland/SJ CPI-U) or the California per capita personal income, and
- b.) At the District's discretion, the relative year-to-year change in District wide population, or the population for the District's county that has the highest assessed valuation. Election of the higher of the two growth factors results in a higher appropriations limit.

The District's appropriations limit for fiscal year 2011 is calculated on the basis of the Per Capita Income and BART District population gains. Steps in the calculations are as follows:

Relevant data, percent change:

Per Capita Income, -2.54% (applies this year per "a." above)

Population Change, BART District, 1.1058% (applies this year per "b." above)

#### District Population

	<u>As of 1/1/09</u>	<u>As of 1/1/10</u>	<u>% Change</u>
Alameda	1,557,749	1,574,857	1.0983%
Contra Costa	1,061,325	1,073,055	1.1052%
San Francisco	846,610	856,095	1.1204%
Total	3,465,684	3,504,007	1.1058%

#### 2) FY11 Cumulative Adjustment Factor:

(Per capita income) x (Population Factor) = Current Adjustment Factor

(Current Adjustment Factor) x (Prior Year Adjustment) = Cumulative Adjustment Factor

$$(1 - 2.54\%) \times (1 + 1.1058\%) = 0.9854$$

$$0.9854 \times 2.5648 = 2.5273$$

#### 3) FY11 Appropriations Limit:

(FY 87 Appropriations Base) x (FY 11 Cumulative Adjustment Factor)

$$\begin{array}{rclclcl} \$181,568,000 & & \times & 2.5273 & = & \$458,873,852 \end{array}$$

# ATTACHMENT 2

## FY11 PROPOSITION 4 APPROPRIATIONS LIMIT

Whole Dollars, as of 05/11/10

LIMIT		NOTES & COMMENTS
CPI-U	1.7754%	CPI-U for SF/OAK 2/10 vs 2/09
Per Capita Personal Income	-2.5400%	State DOF data, John Malson (916-323-4086)
District Population Growth	1.106%	Districtwide growth > The county(Ala) with the highest assessed valuation
Annual Adjustment Factor	0.9854	[1+{Per Capital Income}]*[1+(SF County population growth)]
Cumulative Adjustment Factor	2.5273	{(Current year factor)}*(prior year cumulative factor)
Appropriations Limit	\$458,873,852	{(FY 87 base appropriations) x (cumulative factor)}
<b>APPROPRIATIONS</b>		
Operating Budget	\$479,381,949	Per FY11 Preliminary operating budget
Allocation to Reserves	\$9,300,000	Per FY11 Preliminary operating budget
Other Capital Allocations:		
Miscellaneous	\$588,557	Per FY11 Preliminary operating budget
Capital Allocations	\$21,685,529	Per FY11 Preliminary operating budget
Subtotal	\$31,574,086	
Capital Allocation To Operating		
Capital Expense:		
Funded	\$777,130,411	
Unfunded	\$0	FY11 Capital Budget
Subtotal	\$777,130,411	FY11 Capital Budget
Less Funded Pass Through	(\$314,063,803)	FY11 Capital Budget
Less Unfunded Pass Through	\$0	FY11 Capital Budget
Subtotal	(\$314,063,803)	FY11 Capital Budget
Net Capital Expense	\$463,066,608	FY11 Capital Budget
Debt Service:		
Bond Debt Service	\$62,251,985	Per FY11 Preliminary operating budget
Other Debt Service	\$48,756	
Loan from MTC	\$8,870,000	
GO Seismic Bonds	\$26,481,808	Per Treasury, Roberta Collier 5/10/10
Subtotal	\$97,652,549	
<b>Total Appropriations</b>	\$1,071,675,192	
<b>EXCLUSIONS</b>		
Allocation from Reserves	\$0	Per FY 11 Operating Budget
ADA Mandated Service Expense	\$12,382,706	Per FY 11 Operating Budget
Net Operating Revenue:		
Net Passenger Revenue	\$329,466,548	Per FY 11 Operating Budget
Other Operating Revenue	\$32,736,305	Per FY 11 Operating Budget
Subtotal	\$362,202,853	Per FY 11 Operating Budget
Federal Operating Funds (SMP/Rail Car)	\$228,880	Per FY 11 Operating Budget
Federal Capital Funds:		
Funded	\$164,276,391	FY11 Capital Budget
Unfunded	\$0	FY11 Capital Budget
Subtotal	\$164,276,391	FY11 Capital Budget
Debt Service (GO Seismic Bonds)	\$26,481,808	Per retirement schedule
GO Bond Capital Funds	\$172,066,215	FY11 Capital Budget
BART Capital Funds	\$51,218,857	FY11 Capital Budget
Total Exclusions	\$788,857,710	
<b>MARGIN</b>		
Appropriations Limit	\$458,873,852	Per above
Expenditures Subject to Limit	\$282,817,482	Appropriations less exclusions, per above
<b>Margin</b>	\$176,056,370	<b>Appropriations less expenditures subject to limit</b>
<b>RESIDENT POPULATION</b>		Population is less exclusions for military and other non-residents
Alameda		
Population	1,574,857	Data received from the Department of Finance 5/3/2010
Percent Change	1.0983%	
Contra Costa		
Population	1,073,055	Data received from the Department of Finance 5/3/2010
Percent Change	1.1052%	
San Francisco		
Population	856,095	Data received from the Department of Finance 5/3/2010
Percent Change	1.1204%	
District Total		
Population	3,504,007	Sum of population for three counties
Percent Change	1.1058%	Percent increase
<b>REVISED PRIOR YEAR POPULATION</b>		
As of 1/1/09		
Alameda		
Population	1,557,749	Data received from the Department of Finance 5/3/2010
Contra Costa		
Population	1,061,325	Data received from the Department of Finance 5/3/2010
San Francisco		
Population	846,610	Data received from the Department of Finance 5/3/2010
District Total		
Population	3,465,684	Sum of three counties



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

In the Matter of the Establishment  
Of the Fiscal Year 2011  
Appropriations Limit \_\_\_\_\_ /

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

WHEREAS, Article XIIIB of the California Constitution limits the District's appropriations for Fiscal Year 1981, and subsequent years; and

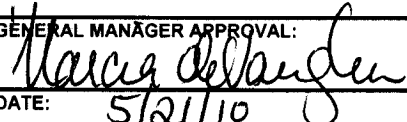
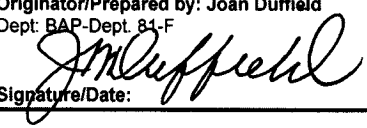
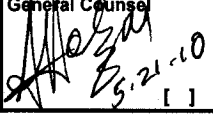
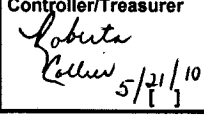
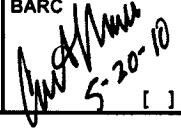
WHEREAS, Government Code Section 7910 requires the District to establish, by resolution, its appropriations limit pursuant to Article XIIIB; and

WHEREAS, documentation used in the determination of the Fiscal Year 2011 appropriations limit has been available to the public for at least fifteen days prior to the date of this resolution;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the San Francisco Bay Area Rapid Transit District that the District's appropriations limit for Fiscal Year 2011 shall be \$458,873,852.



## EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: 		GENERAL MANAGER ACTION REQ'D:		
DATE: 5/21/10		BOARD INITIATED ITEM: No		
Originator/Prepared by: Joan Duffield Dept: BAP-Dept. 81-F  Signature/Date:	General Counsel  5/21/10 [ ]	Controller/Treasurer  5/21/10 [ ]	District Secretary [ ]	BARC  5-20-10 [ ]
Status: Routed		Date Created: 05/13/2010		

TITLE:

### Change Order and Contract Authorization Requests for Project 65 BN– Phase II Business Advancement Program (BAP)

#### NARRATIVE:

**Purpose:** To authorize the General Manager or her designee to (i) execute eighteen (18) change orders as set forth in the attached list of current contracts, extending the contracts for up to an additional two years under the Business Advancement Program (BAP) and, (ii) to authorize the General Manager or her designee to execute new professional services contracts as may be required. The change orders and new contract authorizations will be in an aggregate amount not to exceed \$8.26 million, as may be required for the completion of BAP Phase II implementation.

**Discussion:** BART contracted with MAXIMUS, Inc. (MAXIMUS) in September 2004, to act as the prime contractor and Systems Integrator (SI) for BAP Phase I and Phase II. In December 2009, MAXIMUS made a decision to sell its Enterprise Resource Planning (ERP) practice, which held the BAP contract. As a result of ongoing contractual disputes and MAXIMUS' financial losses, MAXIMUS commenced negotiations with BART in order to separate the BART contract from their ERP sale and to obtain a release from any continued contractual obligations. Ultimately, BART and MAXIMUS reached a settlement that was approved by the Board on January 28, 2010. Pursuant to that agreement, MAXIMUS assigned all of its existing sub-contracts (9) to BART. MAXIMUS also had a number of personnel working on the project, the majority (11) of whom continued on the project as independent contractors to BART. MAXIMUS was released and BART retained all completed work and work in progress. BART assumed all responsibility for project completion and received a settlement payment from MAXIMUS that will fund the additional costs associated with those additional responsibilities. The BAP Project revised budget is attached as Table 1.

In order to ensure that the project work was not interrupted, BART accepted the assignment of nine (9) MAXIMUS subcontracts. Additionally, eleven (11) contracts of \$98,000 each were processed to retain the project specific technical and functional independent contractors working on BAP Phase II. This request seeks authority to execute change orders to seventeen (17) of these twenty (20) contracts. The specific changes requested are detailed in Table 2 (attached), which includes vendors, work scope, authorized contract budget, estimated cost to complete and,

vendor specific change order authorization requests.

Authorization is also being sought for a change order to the Karen Antion Consulting, LLC/PB Consult, Inc. (KAC/PB Consult) contract. The KAC/PB Consult contract was executed in 2003 to provide program management services during the implementation and transformation work performed by MAXIMUS. The KAC/PB Consult change order is needed because the project experienced significant delays, extending the BAP program by two years, and the project management team is now performing expanded project management responsibilities that were previously performed by MAXIMUS. Details of the change order for KAC/PB Consult are on line #18 of attached Table 2. The joint venture program management services have assisted in the implementation of substantial project cost saving measures and have provided the District with strong project management support through MAXIMUS' contractual disputes and project delays. The KAC/PB Consult joint venture team provided critical analytical support during the negotiations that formed the basis of the settlement agreement between BART and MAXIMUS.

This request further seeks authority to execute new contracts for additional services on an as-needed basis that would have been provided by MAXIMUS had they retained the BART contract. As the Project continues, there will be an ongoing need to add technical resources for requirements that arise later in the project during the implementation period which had not yet been brought on board by MAXIMUS at the time BART assumed responsibility for the project. The specific allowance authorization amount requested in an amount not to exceed \$1,725,200 (Table 2, Line #19), would allow for technical, functional and organizational readiness resources on an as-needed basis, including but not limited to application customizations, design/configuration, application integration, hand held device development and legacy application conversion.

The proposed funding for these change orders and new contract authorizations will be provided from three sources: funds from the MAXIMUS settlement, uncommitted funds from the Business Advancement Program and funds previously allocated to fund the MAXIMUS contract. The revised Phase II funded budget, including the settlement is \$27,612,635. As of May 2, 2010, approximately \$11,563,687 has been expended. Projections indicate that the Program is on track for completion within the adjusted budget. BART staff does not have the technical knowledge or functional experience to complete this Program without the support of these consulting services.

In summary, this request seeks:

- 1). Authorization of a package of eighteen (18) change orders to contracts requiring the approval of \$6.54 million related to both the project management contract, as well as the seventeen contracts assumed/processed as a result of the MAXIMUS settlement.
- 2). Authorization of an allowance of \$1.72 million on an as needed basis for technical, functional and organizational readiness support.

**Fiscal Impact:** Funding for these 18 change orders plus the requested allowance totaling \$8,264,372 is included in the total project budget for FMS project # 65BN, Business Advancement Plan Phase 2. The Office of the Controller/Treasurer certifies that funds are

currently available to meet this obligation.

F/G 91B – Business Advancement Plan

\$8,264,372

As of the period ending 05/02/10, \$27,577,816 is available for commitment from this fund source for this project and BART has committed \$19,313,444 to date. There are no pending commitments in BART's financial management system. This action will commit \$8,264,372 leaving an uncommitted balance of \$0 in this fund source.

There is no fiscal impact on available unprogrammed District Reserves.

**Alternatives:**

- 1). To not approve the requested change orders and the allowance, therefore, terminating the BAP project.
- 2). To not approve the requested change orders and the allowance, thereby stopping the project while the District re-bids the contracts and finds new consultants.

**Recommendation:**

Staff recommends that the Board adopt the following motions:

**MOTIONS:**

1. The General Manager or her designee is authorized to execute change orders on 18 Agreements (65BK-301 and 65BN:402 through 410, 413 through 419, 421) listed on the attached Table 2 for a total change order amount of \$6.54M. These change orders will cover a period up to two years for technical, functional and program management services in support of the District's Business Advancement Program implementation.
2. The General Manager or her designee is authorized to execute additional contracts with new vendors and/or existing vendors from within the \$1,725,200 allowance budget. This budget is set aside for securing the necessary technical, functional and organizational readiness staffing services on an as needed basis. Individual contract periods will vary but will not extend beyond two years, in support of the District's Business Advancement Program implementation.

**Table 1. Business Advancement Program - Revised Budget (Effective February 1, 2010)**

Budget Elements	Total Budget	Phase I Base Budget	Phase 1 Actuals	Phase II Budget	Phase II Actuals	Remaining Budget
MAXIMUS SI Contract	\$ 22,239,552	\$ 8,700,000	\$ 8,354,940	\$ 13,884,612	\$ 3,058,962	\$ 10,825,650
PM/BART Staffing	\$ 12,032,103	\$ 5,413,219	\$ 4,694,897	\$ 7,277,206	\$ 5,459,771	\$ 1,817,435
Other Contingencies (BAP software/Hardware/CAP, travel)	\$ 6,180,127	\$ 5,036,781	\$ 4,964,316	\$ 1,275,811	\$ 838,875	\$ 436,936
Sub-Totals	\$ 40,451,782	\$ 19,150,000	\$ 18,014,153	\$ 22,437,629	\$ 9,357,608	\$ 13,080,021
TOTAL REVISED BUDGET - FEBRUARY 1, 2010	\$ 45,626,782	\$ 19,150,000	\$ 18,014,153	\$ 27,612,629	\$ 9,357,608	\$ 18,255,021

**TABLE 2. BAP PHASE II PROJECT - PROPOSED CONTRACT CHANGE ORDER AND ALLOWANCE AUTHORIZATION REQUEST**

EDD Title		Vendor	Scope of Work	Contract #	Cost to Complete Estimate	Assigned/ Authorized Contract Amount	Change Order Amount	Total Change Order Amount	
BAP Phase II Implementation Consultant Change Orders - 65BN/BK Series	1	Sarah Jones Castro	Finance	65BN-402	\$252,000	\$98,000	\$154,000	\$6,539,172	
	2	Robert McGowan	Finance	65BN-403	\$292,320	\$98,000	\$194,320		
	3	Soliera, Inc.	Finance	65BN-404	\$302,400	\$98,000	\$204,400		
	4	CC Mechling, Inc.	Finance	65BN-405	\$252,000	\$98,000	\$154,000		
	5	Diego Enriquez Maldonado	Technical	65BN-406	\$302,400	\$98,000	\$204,400		
	6	Pavel Kogan	Technical	65BN-407	\$184,800	\$98,000	\$86,800		
	7	Terri Long	Organizational Readiness	65BN-408	\$317,520	\$98,000	\$219,520		
	8	Augusta Consulting Corporation	Organizational Readiness	65BN-409	\$438,480	\$98,000	\$340,480		
	9	J A Frasca & Associates	Finance	65BN-410	\$241,920	\$120,000	\$121,920		
	10	Ontime Consulting, LLC	Technical	65BN-413	\$438,480	\$205,610	\$232,870		
	11	Implementisense, Inc.	Technical	65BN-414	\$393,120	\$371,930	\$21,190		
	12	TechTu Business Solutions, Inc.	Technical	65BN-415	\$316,512	\$171,360	\$145,152		
	13	Human Resources Management Solutions, Inc.	Organizational Readiness	65BN-416	\$559,440	\$225,000	\$334,440		
	14	The Net Consulting Group, Inc.	Maintenance	65BN-417	\$551,880	\$416,340	\$135,540		
	15	Interloc Solutions	Materials and Maintenance	65BN-418	\$5,294,352	\$4,050,720	\$1,243,632		
	16	Shriya Systems, Inc.	Technical	65BN-419	\$262,080	\$98,000	\$164,080		
	17	Bintelx, Inc.	Technical	65BN-421	\$187,488	\$98,000	\$89,488		
	18	KAC, LLC / PB Consult Joint Venture	Project Management	65BK-301	\$9,992,940	\$7,500,000	\$2,492,940		
BAP Phase II Implementation Consultant Allowance - 65BN Series	19	To Be Determined	Technical, Functional and Organizational Readiness staffing resources to be sourced on an as needed basis during different phases of the project, including but not limited to: application customizations, design/configuration, application integration, hand held device development and legacy application conversion.		\$ 1,725,200	\$ -	\$ 1,725,200	\$1,725,200	
TOTAL PROPOSED CHANGE ORDER AMOUNT									\$8,264,372



## EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Maureen Delaney</i>		GENERAL MANAGER ACTION REQ'D: Approve and forward to Board of Directors		
DATE: 5/20/10		BOARD INITIATED ITEM: No		
Originator/Prepared by: Thomas HoNon Dept: TSD <i>Thomas HoNon</i> Signature/Date: 5/17/10	General Counsel <i>[Signature]</i> 5-17-10 [ ]	Controller/Treasurer <i>[Signature]</i> 5/18/10	District Secretary [ ]	BART <i>[Signature]</i> 5/20/10
Status: Approved		Date Created: 04/14/2010		

TITLE:

### AUTHORITY TO AWARD PROFESSIONAL SERVICES AGREEMENT NO. 6M6035 FOR PREPARATION OF RECORD DRAWINGS FOR THE EARTHQUAKE SAFETY PROGRAM

NARRATIVE:

#### PURPOSE:

To obtain Board authorization for the General Manager to award Agreement No. 6M6035 in an amount not to exceed \$2,500,000 with BKF Engineers (BKF) for services related to Preparation of Record Drawings in support of the Earthquake Safety Program (Program). The term of the Agreement will be five years.

#### DISCUSSION:

Program staff expects to complete procurement of Program construction contracts within the next year, and as construction contracts are completed the contractors will submit marked up drawings showing field changes to the original design. The ESP Program will need to have record drawings of the actual work prepared and submitted to BART's Document Control Center. Some Program contracts have already been completed, "as-built" drawings have been submitted by the contractors, and record drawings must be prepared and submitted as soon as possible. Program staff will require assistance to do the actual computer aided drafting (CAD) in a format acceptable to BART for its records.

Accordingly, RFQ No. 6M6035, to procure a consultant to provide services for the preparation of CAD record drawings, was released on January 21, 2010. Advance notices were mailed on January 22, 2010 to 538 prospective proposers. RFQ No. 6M6035 was advertised in 10 publications both locally and nationally. A pre-proposal meeting was held on February 16, 2010 that was attended by 35 prospective proposers.

Thirteen proposals were received on March 2, 2010, from the following firms:

Firm	Location
BKF Engineers	Pleasanton, CA

WRECO	Walnut Creek, CA
MGE Engineering, Inc.	Oakland, CA
HQE Incorporated	Oakland, CA
Beyaz & Patel, Inc.	Walnut Creek, CA
K. C. Pierce & Associates	Oakland, CA
YEI Engineers, Inc.	Oakland, CA
Parsons Transportation Group, Inc.	San Francisco, CA
Sierra Engineering Group	Union City, CA
Powell & Partners, Architects	Oakland, CA
AMC Consulting Engineers, Inc.	Oakland, CA
Greenwood & Moore, Inc.	Castro Valley, CA
KCA Engineers, Inc.	San Francisco, CA
Stevens & Associates	San Francisco, CA

The proposals were evaluated by a Source Selection Committee chaired by BART Contract Administration and composed of representatives from BART's Transit System Development department, Maintenance and Engineering department, Office of Civil Rights and the ESP General Engineering Consultant, Bechtel Infrastructure Corp. Proposals were first reviewed to determine if the proposals were considered responsive to the requirements of the RFQ. Subsequently, the proposals were evaluated and scored on the basis of the criteria contained in the RFQ with respect to the qualifications of the proposing firms and the project team. As a result of the technical evaluation, eight proposers were short-listed to participate in the oral presentations (BKF, WRECO, MGE, HQE, Beyaz & Patel, K. C. Pierce, YEI and Parsons). Oral presentations were conducted on April 8 and 9, 2010.

The Source Selection Committee recommends the award of Professional Services Agreement No. 6M6035 for Preparation of Record Drawing services for the Earthquake Safety Program to BKF based on its highest cumulative technical evaluation and oral presentation scores. Staff determined that the rate structure for a cost-plus-fixed-fee Agreement is fair and reasonable and that BKF is a responsible organization. BART's internal audit department is working to complete the Caltrans requirement for a pre-award audit, the results of which will be incorporated into the executed Agreement, as appropriate.

Pursuant to the District's Non-Discrimination in Subcontracting Program, the availability percentages for this contract are 15% for MBEs and 20% for WBEs. BKF committed to 19.2% MBE and 23.1% WBE. The Office of Civil Rights has determined that BKF has exceeded both MBE and WBE availability percentages for this contract.

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

#### **FISCAL IMPACT:**

Agreement No. 6M6035 has a not-to-exceed cost limit of \$2,500,000. District financial obligations under the Agreement will be subject to Annual Work Plans (AWPs). Each AWP will have a defined scope of services and separate schedule and budget. Any AWP assigned for



funding under a grant will include grant requirements. AWP's will be approved only if BART Capital Development and Control certifies the eligibility of identified funding sources and the Controller/Treasurer certifies the availability of funding prior to execution of each AWP.

**ALTERNATIVE:**

Not to authorize award of the proposed Agreement. If the Agreement is not awarded, BART would have to seek other means of furnishing the required record drawing services, adding cost and time to the Program.

**RECOMMENDATION:**

Staff recommends that the Board adopt the following motion:

**MOTION:**

The General Manager is authorized to award Agreement No. 6M6035 with BKF Engineers of Pleasanton, California for Preparation of Record Drawing services for the Earthquake Safety Program in an amount not to exceed \$2,500,000 for a term not to exceed five years, subject to satisfaction of the Caltrans pre-award audit requirements, as appropriate, and subject to notification by BART's General Manager and compliance with the District's protest procedures.



## EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Michael C. Blake</i>		GENERAL MANAGER ACTION REQ'D: Award Contract No. 15EM-120	
DATE: c <i>5/20/10</i>		BOARD INITIATED ITEM: No	
Originator/Prepared by: Michael Blake Dept: Maintenance & Engineering <i>Michael C. Blake</i> Signature/Date: <i>5/17/10</i>	General Counsel <i>[Signature]</i> <i>5/17/10</i> [ ]	Controller/Treasurer <i>[Signature]</i> <i>5/17/10</i> [ ]	District Secretary <i>[Signature]</i> [ ] BARC <i>Paul Gervier</i> <i>5/17/10</i> [ ]

TITLE:

### Award Contract No. 15EM-120 For Contact Rail Coverboard Reinforcements, Various Locations

#### NARRATIVE:

##### PURPOSE:

To obtain Board authorization for the General Manager to award Contract No. 15EM-120, Contact Rail Coverboard Reinforcements, Various Locations to L C General Engineering and Construction, Inc.

##### DISCUSSION:

Coverboard failures due to an aging infrastructure are an increasing cause of service delays throughout the District. From January 2006 to May 2010, there have been 461 recorded incidents of failed coverboard that caused a service delay.

Currently, each 10-foot coverboard section is supported at each end by a support bracket with two plastic fastening pins. This Contract will improve coverboard reliability and reduce service interruptions by providing an additional bracket assembly located at the coverboard midpoint. This will strengthen the coverboards while reducing lateral movements, which will extend the coverboard's serviceable design life. In the event of a failed pin or bracket, the enhanced coverboard assembly design will have the support redundancy necessary to allow the repair to be performed after revenue service and avoid operational delays. In addition, this project contains provisions for identifying and replacing unserviceable coverboards and for replacing all plastic fastening pins at existing support bracket locations.

This Contract encompasses 19.57 line miles of double track at various locations throughout the system. Together with Contract No. 15EM-110, which was awarded in October 2009, 44 line miles of double track will be reinforced including most of the A-line, and portions of the C-Line, R-Line, and M-Line.

This Contract was advertised pursuant to the revised 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.

Advance Notice to Bidders was mailed on April 21, 2010 to 127 prospective Bidders. The Contract was advertised on April 23, 2010. A Pre-Bid meeting was held on May 4, 2010,

with seven prospective Bidders attending the meeting. Twelve Contract books were purchased from the District Secretary. The following five Bids were received on May 11, 2010:

No	Bidder	Location	Total Bid
1.	L C General Engineering and Construction, Inc.	San Francisco, CA	\$2,300,900
2.	Angotti & Reilly, Inc.	San Francisco, CA	\$2,670,159
3.	H & H Engineering Construction, Inc.	Stockton, CA	\$2,727,300
4.	West Bay Builders, Inc.	Novato, CA	\$2,891,000
5.	Blocka Construction, Inc.	Fremont, CA	\$3,535,600
	Engineer's Estimate		\$2,901,815

The Bid submitted by the apparent low Bidder, L C General Engineering and Construction, Inc. has been deemed to be responsive to the solicitation. Staff has also determined that the Bidder is responsible based on an examination of the firm's business and financial status. The Bid Price is \$2,300,900, which staff has determined is fair and reasonable. The Engineer's Estimate is \$2,901,815.

This is an estimated quantities contract. Pursuant to the terms of the Contract, the District is obligated to purchase as a minimum materials and labor equal to 50% of the estimated quantities on the Bid Schedule. This Contract also permits the District to require additional materials and labor up to 150% of the estimated quantities on the Bid Schedule.

**FISCAL IMPACT:**

Funding of \$2,300,900 for the award of Contract No. 15EM-120 is included in the total project budget for the FMS #15EM - Systemwide Coverboard Enhancement. 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/G 54K CA-96-X001 – ARRA of 2009 (Federal Economic Stimulus)      \$2,300,900

As of the month ending 4/4/2010, \$10,184,120 is available for commitment from this fund source for this project and BART has committed \$605,557 to date. There is a pending commitment of \$3,230,613 in BART's financial management system. This action will commit \$2,300,900 leaving an uncommitted balance of \$4,047,050 in this fund source.

There is no fiscal impact on available unprogrammed District Reserves.

**ALTERNATIVES:**

The Board may choose to reject all bids. However, the time limits imposed by the ARRA funding will not permit rebidding and award at a later date. Therefore, the funding would be lost.

**RECOMMENDATION:**


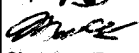
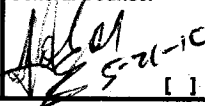
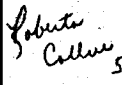

Based on the analysis by Staff, it is recommended that the Board adopt the following motion:

**MOTION:**

The General Manager is authorized to award Contract No. 15EM-120 for Contact Rail Coverboard Reinforcements, Various Locations, an estimated quantities contract, to L C General Engineering and Construction, Inc., for the Bid Price of \$2,300,900, pursuant to notification to be issued by the General Manager, subject to compliance with the District's protest procedures and FTA's requirements related to protest procedures.



## EXECUTIVE DECISION DOCUMENT

<b>GENERAL MANAGER APPROVAL:</b> 		<b>GENERAL MANAGER ACTION REQ'D:</b> Approve and forward to the Board of Directors for Action		
<b>DATE:</b> 5/21/10		<b>BOARD INITIATED ITEM:</b> No		
<b>Originator/Prepared by:</b> Mike Forte <b>Dept:</b> TSD  <b>Signature/Date:</b> 5/21/10	<b>General Counsel</b>  5-21-10 [ ]	<b>Controller/Treasurer</b>  5/21/10 [ ]	<b>District Secretary</b> [ ]	<b>BARC</b>  [ ]
<b>Status:</b> Approved		<b>Date Created:</b> 04/15/2010		

TITLE:

### AUTHORITY TO EXTEND PROPOSAL VALIDITY DATE WITH INFLATION ADJUSTMENT FOR CONTRACT No. 01ZK-110 FOR THE DESIGN-BUILD OF THE OAKLAND AIRPORT CONNECTOR PROJECT

NARRATIVE:

#### PURPOSE

To obtain Board authorization for the General Manager to include an inflation adjustment when requesting extensions of the Proposal Validity Date for Contract No. 01ZK-110 for the Design-Build of the Oakland Airport Connector (OAC) Project, which adjustment would be reflected in a change order to be issued to the Awardee of Contract No. 01ZK-110. The adjustment, to be based upon actual inflation, would be capped at 0.8% of the Design-Build Lump Sum Fixed Price.

#### DISCUSSION

##### Introduction

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

On December 10, 2009, the Board authorized the General Manager to award the Contracts to Flatiron/Parsons, JV, as follows:

- "1. Contract No. 01ZK-110 for the Design-Build of the Oakland International Airport Connector, for the not to exceed price of \$361,022,150.
2. Contract No. 01ZK-120 to Operate and Maintain the Oakland International Airport Connector for the not to exceed price of \$4,906,865 and Capital Asset Replacement Program (CARP) costs of \$768,396, both paid annually for a period of twenty (20) years and subject to escalation."

The Board authorized the General Manager to award Contract No. 01ZK-110 conditioned "upon certification by the Controller/Treasurer that sufficient ARRA and Small Starts funds have been

committed by the Federal Transit Administration for the Project and are available for this contract". The General Manager was further authorized to award contract No. 01ZK-120 concurrently with contract No. 01ZK-110. On December 11, 2009, the District issued a Notice of Intent to Award, notifying the Proposers that the District intended to award the Contracts to Flatiron/Parsons, JV, subject to the Board conditions being satisfied.

The withdrawal by the Federal Transit Administration (FTA) of \$70 million in American Recovery and Reconstruction Act (ARRA) funds resulted in a significant gap in the OAC full funding plan. Since then, the FTA has approved BART's Title VI Corrective Action Plan and BART has been diligently moving ahead with implementation of the Plan, while simultaneously working with its funding partners to identify additional funding.

#### Extensions to the Proposal Validity Date

The proposals submitted on September 22, 2009 were valid for 120 days from the proposal due date, i.e., until January 20, 2010 (Proposal Validity Date). At the end of this period, the Proposers have no obligation to continue their participation in the procurement process unless they agree to extend the Proposal Validity Date, as provided in the Instructions To Proposers (ITP) Sections 5.1.10 and 4.6.

Since January 20, 2010, the District has requested, and three Proposers have agreed to, three (3) thirty-day extensions to the Proposal Validity Date during which all of the terms and conditions of the RFQ/P and the Proposal submitted on September 22, 2009 (including pricing) remain in full force and effect. The request in April resulted in two Proposers (Flatiron/Parsons, JV, and Walsh Construction Co.) consenting to extend the Proposal Validity Date to May 21, 2010, but the Shimmick/Skanska/Herzog, JV declined to extend. The most recent request, sent to Proposers May 18, requested an extension to June 7, 2010.

More than 240 days have elapsed since the proposals were submitted on September 22, 2009, and staff needs more time to establish a full funding plan to bring to the BART Board for consideration. Neither the District nor the Proposers anticipated such a prolonged extension of the OAC procurement process. Since September 2009 and the Board action in December 2009, Proposers have borne ongoing costs associated with administering the procurement, as well as inflationary pressures which have the effect of increasing the costs of the Project, while their bids for the construction Contract do not adjust. Staff has analyzed several indices that track changes in construction pricing within California and the San Francisco Bay Area and has concluded that there has been a slight increase in construction costs during the period from January 2010 through April 2010 (approximately 0.10%) and a moderate jump in May (an additional 1.6%). It is reasonable to conclude that material and labor costs may increase over the next several months, and staff is concerned with the possibility that the remaining two Proposers may decline further no-cost extensions. If the remaining Proposers decline to agree to further extensions of the Proposal Validity Date, the current procurement process would end. The Project would need to be rebid, causing further delay of at least one year, and proposals that could exceed the project budget, likely resulting in the end of the OAC Project for the foreseeable future.

#### Inflation Adjustment to the Lump-Sum Fixed Price Construction Contract

While the process continues forward to close the gap in the full funding plan, staff recommends that future requests to the Proposers for extension of the Proposal Validity Date include a price adjustment factor to reflect escalation for delays of the Contract Award beyond April, 2010. Specifically, staff recommends that future extensions of the Proposal Validity Date include an inflation price adjustment factor (Price Adjustment) based on the Construction Cost Index for San Francisco (CCI<sub>SF</sub>) as published in the Engineering News Record (ENR), a construction industry publication which tracks trends in construction costs. (The Price Adjustment is solely for purposes of the Proposal Validity Date extension authorized by this action.) The details of the Price Adjustment calculation are set forth below, but the effect of staff's recommendation is that the Proposer will assume full responsibility for any inflation through March 2010 and, thereafter, that the Proposer and the District will equally share any inflation up to the date when the General Manager or designee issues the Notice of Award, except that the District's share will, in any and all events, be capped at 0.8%.

The Price Adjustment would be calculated based on the percentage change of the CCI<sub>SF</sub>. For purposes of the calculation, the index start point will be a value of 9730 (the CCI<sub>SF</sub> as published in April 2010) and the end point will be the latest published CCI<sub>SF</sub> value available on the date when the General Manager or designee issues the Notice of Award. Based on the foregoing index start and end points, the percentage change in index value will be computed, divided in half, capped at 0.8%, and then multiplied by the Design-Build Lump Sum Fixed Price to determine the Price Adjustment. At such time that the conditions of the December 10, 2009, Board action are satisfied, or at such time that the Board re-authorizes the General Manager to award Contract No. 01ZK-110, the Price Adjustment would be issued as a change order to Contract No. 01ZK-110. The present Board action will have no effect on the O&M Contract No. 01ZK-120.

### **FISCAL IMPACT**

The application of the inflation adjustment will result in a Price Adjustment ranging from 0.0% (minimum) to 0.8% (maximum) of the Design-Build Lump Sum Fixed Price, depending on the change in CCI<sub>SF</sub> that occurs over the time period beginning April 2010. In case of an award to Walsh Construction Co, whose proposal price is the higher of the two remaining proposals, the maximum amount of such Price Adjustment would be \$3,234,521.

The Board has previously authorized award of Contract No. 01ZK-110 to Flatiron/Parsons, JV. for the not to exceed price of \$361,022,150. In the case of Flatiron/Parsons, JV., this present Board action would authorize a Price Adjustment of up to \$2,888,177. This amount is in addition to the Design-Build Lump Sum Fixed Price of \$361,022,150. However, this cost will only be realized if Contract No. 01ZK-110 is awarded.

Funding for the Price Adjustment is not currently available. Staff continues to work with BART's funding partners to fill the gap caused by the FTA's withdrawal of \$70 million in ARRA funds, as well as to seek funding for this Price Adjustment. The issuance of the Price Adjustment change order to Contract No. 01ZK-110 would occur only after the

Controller/Treasurer has certified that sufficient funding is available.

### **ALTERNATIVE**

The alternative is to not authorize the General Manager to issue a request for an extension of the Proposal Validity Date that is conditioned on a price adjustment for inflation. This could result in future requests for extension at no cost to the District, but is likely to result in one or both remaining Proposers declining such requests, and the consequent expiration of the Proposal(s) and the end of the procurement process.

### **RECOMMENDATION**

Adoption of the following motion:

### **MOTION:**

The General Manager is authorized to extend the Proposal Validity Date for Contract No. 01ZK-110 with a Price Adjustment for inflation as described herein. The General Manager is further authorized, at such time that the conditions of the December 10, 2009, Board action are satisfied, or at such time that the Board re-authorizes award of Contract No. 01ZK-110, and upon certification by the Controller/Treasurer that sufficient funding is available, to issue the Price Adjustment as a change order to Contract No. 01ZK-110. The Price Adjustment will be based upon actual inflation since publication of the Construction Cost Index for San Francisco (CCI<sub>sf</sub>) in April 2010, and will be shared equally with the awardee, but in no event will the District's obligation exceed 0.8% of the Design-Build Lump Sum Fixed Price of Contract No. 01ZK-110.