

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

BOARD MEETING AGENDA

June 23, 2011

9:00 a.m.

A regular meeting of the Board of Directors will be held at 9:00 a.m. on Thursday, June 23, 2011, in the BART Board Room, Kaiser Center 20th Street Mall – Third Floor, 344 – 20th Street, Oakland, California.

Members of the public may address the Board of Directors regarding any matter on this agenda. Please complete a “Request to Address the Board” form (available at the entrance to the Board Room) and hand it to the Secretary before the item is considered by the Board. If you wish to discuss a matter that is not on the agenda during a regular meeting, you may do so under General Discussion and Public Comment.

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

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

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

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

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

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

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

Kenneth A. Duron
District Secretary

Regular Meeting of the
BOARD OF DIRECTORS

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 June 9, 2011.* Board requested to authorize.

3. ENGINEERING AND OPERATIONS ITEMS

Director Fang, Chairperson

- A. Award of Contract No. 02EE-120, Design-Build of Line, Track, Station, and Systems for the Warm Springs Extension.* Board requested to authorize.
- B. Comprehensive Agreement between the San Francisco Bay Area Rapid Transit District, the City of Fremont, and the Redevelopment Agency of the City of Fremont for the Design and Construction of the Irvington BART Station.* Board requested to authorize.

4. ADMINISTRATION ITEMS

Director Blalock, Chairperson

- A. Business Advancement Program.
 - a. (CONTINUED from June 9, 2011, Board Meeting) Phase II Update.* For information.
 - b. Agreements with Various Individuals and Firms for Information Technology Consulting Support – Business Advancement Program Transitional Services.* Board requested to authorize.
- B. Proposed Late Night Service Adjustments – Public Outreach Results.* For information.
- C. First Amendment to Agreement with the San Francisco Municipal Transportation Agency for the Senior and Disabled Fast Pass Pilot Program.* Board requested to authorize. (TWO-THIRDS VOTE REQUIRED.)

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

Director Murray, Chairperson
NO REPORT.

6. GENERAL MANAGER'S REPORT

- A. Implementation of Clipper® Card on BART.* For information.

B. BART New Rail Vehicle Project.* For information. (Time permitting.)

7. BOARD MATTERS

A. Revision to Organization of Committees and Special Appointments.*
Board requested to authorize.

B. Board Member Reports. For information.

C. Roll Call for Introductions. (An opportunity for Board members to introduce a matter for consideration at a future Committee or Board Meeting or to request District staff to prepare items or reports.)

8. GENERAL DISCUSSION AND PUBLIC COMMENT

9. PUBLIC COMMENT ON ITEMS 10-A, 10-B, and 10-C ONLY

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

A. PUBLIC EMPLOYEE EMPLOYMENT

Title: General Manager
Code Section: 54957(b)(1)

B. CONFERENCE WITH NEGOTIATORS

Designated Representatives: Directors Blalock, Franklin, Keller, and McPartland
Title: General Manager
Government Code Section: 54957.6

C. CONFERENCE WITH REAL PROPERTY NEGOTIATOR

Property: Property Located at the South Hayward BART Station
District Negotiators: Carter Mau, Executive Manager, Planning & Budget;
and Jeffrey P. Ordway, Manager, Property Development
Negotiating Parties: Wittek Development, the Montana Property Group, Eden
Housing, Inc., City of Hayward, and San Francisco Bay
Area Rapid Transit District
Under Negotiation: Price and Terms
Government Code Section: 54956.8

11. OPEN SESSION

A. South Hayward Development Project.*

- i. Find that for the sale of the BART property at the South Hayward BART Station, there are no significant environmental effects which have not been mitigated to insignificance and no further environmental review is required.
- ii. Adopt the City of Hayward's Mitigation Monitoring and Reporting Program for the transit-oriented development project at the South Hayward BART Station.
- iii. Authorize sale of 1.65 acres of BART property east of Dixon Street.
- iv. Authorize a Joint Powers Agreement between BART and the City of Hayward for access improvements at the South Hayward BART Station.

Board requested to authorize.



EXECUTIVE DECISION DOCUMENT

| | | | | |
|--|---|---|---------------------------|---|
| GENERAL MANAGER APPROVAL: <i>Paul Medved</i> | | GENERAL MANAGER ACTION REQ'D: Approve and forward to the Board | | |
| DATE: c 5/18/11 | | BOARD INITIATED ITEM: No | | |
| Originator/Prepared by: Paul Medved Dept: Transit System Development <i>Paul Medved 5/16/11</i> Signature/Date: | General Counsel <i>W. Moran 5-16-11</i> [] | Controller/Treasurer <i>[Signature]</i> [] | District Secretary [] | BARC <i>Paul Medved 5/18/11</i> [] |

TITLE:

AUTHORITY TO AWARD CONTRACT NO. 02EE-120, DESIGN-BUILD OF LINE, TRACK, STATION, AND SYSTEMS FOR THE WARM SPRINGS EXTENSION

NARRATIVE:

PURPOSE: To obtain Board authorization for the General Manager to award Contract No. 02EE-120 for the Design-Build of Line, Track, Station, and Systems for the Warm Springs Extension (LTSS Contract or Contract), to Warm Springs Constructors.

DISCUSSION: The Warm Springs Extension Project (WSX Project) will extend the BART System 5.4 miles south from Fremont Station to the Warm Springs district of the City of Fremont. The WSX Project is being implemented primarily via two major construction contracts: the Fremont Central Park Subway Contract No. 02ED-110, which is presently underway, and the Design-Build of Line, Track, Station, and Systems Contract No. 02EE-120, which is the subject of this action. The LTSS Contract will provide the District with final design services and construction of the trackway, systems and station.

On October 9, 2003, the Board authorized the General Manager to implement the design-build process for the WSX Project pursuant to California Public Contract Code Sections 20209.5 et seq. (the Design-Build Statute). The Design-Build Statute requires the awarding agency to establish a procedure to prequalify the proposing teams, or prospective design-build entities (PDBEs), and ultimately to select the PDBE offering a proposal that provides the best value to the District.

The District followed the California Department of Industrial Relations (CA DIR) recommended guidelines for evaluation and prequalification of PDBEs. As a result, the Board approved the following five prequalified PDBEs on July 1, 2010:

1. Shimmick/Flatiron/Herzog, a Joint Venture, Oakland, CA
2. Stacy and Witbeck, Skanska, Steiny, a Joint Venture, Alameda, CA
3. Tutor Perini/Parsons, a Joint Venture, Sylmar, CA
4. The Whiting-Turner Contracting Company, Las Vegas, NV
5. Warm Springs Constructors, Fairfield, CA (formerly Kiewit Pacific Company)

Only the five prequalified PDBEs were invited to submit a proposal in response to the Request for Proposals (RFP) issued on September 24, 2010. A Pre-proposal conference was held on October 19, 2010, which was attended by all five prequalified PDBEs as well as numerous

potential subcontractors. In addition, several informational/outreach meetings were held with interested potential construction, architectural/engineering firms and other firms, suppliers and vendors to provide information about the LTSS Contract, review the procurement process, and answer questions. The WSX Project sponsored training sessions for potential subcontractors in areas such as estimating, scheduling, and understanding the District's contractual requirements. The WSX Project also provided opportunities for voluntary "matchmaking sessions" bringing together key personnel from the five prequalified PDBEs with potential small business subcontractors.

The RFP established the District's goals for the LTSS Contract, which include, but are not limited to, the following:

A. Quality:

1. Satisfy Contract standards for design, construction, maintainability, operability, safety and reliability;
2. Satisfy Contract standards and best practices for environmental design and sustainability;
3. Utilize a local workforce and local subcontracted firms/equipment and material suppliers, including small businesses, that reflect the diversity of the BART District;
4. Minimize adverse impacts to local residents, pedestrian and vehicular traffic, railroads, utilities, and existing BART facilities, systems and operations during and after construction; and
5. Provide seamless interfaces with existing and future BART facilities and systems.

B. Cost: Fair and reasonable Contract cost within funding limits.

C. Stakeholders: Satisfy BART commitments to all third-party stakeholders.

In accordance with the procedures established in the RFP, PDBEs were allowed to submit questions seeking explanations or clarifications of the Contract Drawings, Contract Specifications, or other RFP Documents. In response to the questions submitted, the District issued 7 Addenda and reviewed and addressed 212 questions prior to submittal of proposals.

All five prequalified PDBEs submitted proposals on January 25, 2011. The proposals were evaluated and scored by a Selection Committee (Committee), consisting of District staff from Transit System Development, Maintenance & Engineering Department, Office of Civil Rights, as well as a representative from the City of Fremont and a representative from the Alameda County Transportation Commission. The Selection Committee was chaired by the Procurement Department and included two separate evaluation teams - the Technical Evaluation Team and the Price Evaluation Team, which conducted their evaluations independently. Advisors were utilized as necessary to bring specific expertise to individual technical or price areas.

The proposals were first evaluated as to the responsiveness to the requirements of the RFP and responsibility of the Proposer. All five prequalified PDBEs were determined responsive to the

requirements of the RFP and all five are considered responsible organizations.

The proposals were then evaluated based on a best value process to determine which proposal would be the most advantageous and of greatest value to the District. The best value process allows the District to evaluate price in addition to other stated criteria. Although price was an important factor, achieving the LTSS Contract goals, including technical quality and management approach, were also major factors in determining the best value to the District.

In accordance with the District's evaluation and procurement procedures, the Selection Committee determined that the proposal submitted by Warm Springs Constructors (WSC) provides the best value to the District by achieving the highest overall ranking and offering the lowest price as shown below:

| <u>Ranking</u> | <u>PDBE</u> | <u>Price</u> |
|----------------|-------------------------------------|---------------|
| 1. | Warm Springs Constructors | \$299,050,000 |
| 2. | Tutor-Perini/Parsons | \$318,757,000 |
| 3. | Stacy and Whitbeck/Skanska/Steiny | \$348,774,000 |
| 4. | Shimmick/Flatiron/Herzog | \$312,422,000 |
| 5. | The Whiting Turner Construction Co. | \$330,268,016 |

WSC was the top ranked team in the majority of the management subfactors and presented the best technical solutions for transit facilities. WSC offered the lowest proposal price and was the only proposal within the RFP estimated range of \$250-\$300 million. A complete listing of the current WSC team is attached hereto. As this is a Design-Build Contract, after the design is complete, additional team members may be added, as required.

In accordance with the District's efforts to ensure the participation of small businesses (SBs) and avoid discrimination in the use of minority and women businesses (MBE/WBEs), the RFP provided terms and conditions for the District's Non-Discrimination in Subcontracting Program and requirements for a Subcontracting Plan and SB Participation Goal.

Pursuant to the District's Non-Discrimination in Subcontracting Program, the availability percentages for this Contract were set as follows, shown with WSC's commitment:

| Category of Work | District Availability Percentage | | WSC Commitment Percentage | |
|---|----------------------------------|-----|---------------------------|-------|
| | MBE | WBE | MBE | WBE |
| Design (Professional Services) | 16% | 20% | 16.3% | 20.6% |
| Construction | 23% | 12% | 23.9% | 12% |
| Material Procurement (Goods and Services) | 10% | 12% | 10.7% | 12.1% |

The Office of Civil Rights has determined that WSC's commitment to meet or exceed both the MBE and WBE availability percentages for this Contract satisfies the District's requirements and no evidence of discrimination was found. In this Design-Build Contract, after the design is complete, staff will monitor the Contractor to ensure that, as it finalizes its subcontracts, it complies with its commitments to meet the listed availability percentages.

WSC's Subcontracting Plan provides for a SB participation goal for the LTSS Contract of 5.7% of the total Contract Price, excluding Allowance and Option items. The District has taken WSC's commitment to award subcontracts to SBs into consideration when evaluating its proposal. In accordance with the RFP, if WSC meets or exceeds the proposed SB participation goal at the time of Substantial Completion of the Work, the District will grant WSC an incentive award in an amount equal to 1% of the eligible SB subcontracted dollars, up to a maximum amount of \$500,000. No SB subcontract incentive will be paid to WSC if the actual SB participation achieved at the time of Substantial Completion of the Work is less than WSC's commitment. Both first-tier and second-tier Subcontractors will be counted towards the SB participation goal.

Funding for this \$299,050,000 Contract is estimated to support 7,114 job years as estimated using the Capital Spending job impact assessment outlined in the April 2009 report by Economic Development Research Group, Inc. for the American Public Transportation Association. The estimate includes the total of all direct, indirect, and induced job years resulting from this award.

Accordingly, staff recommends award of Contract No. 02EE-120 to Warm Springs Constructors in the amount of \$299,050,000.

FISCAL IMPACT: The LTSS Contract will be funded with the following state and local funds:

STATE-LOCAL PARTNERSHIP PROGRAM (SLPP)

There is \$77.8 million of State 2006 Proposition 1B State-Local Partnership Program (SLPP) funding currently available to perform work on the LTSS Contract, \$8.8 million of which comprises the initial increment of BART's \$24 million contribution.

MTC BRIDGE TOLLS

On July 28, 2010 the Metropolitan Transportation Commission (MTC) approved an allocation of \$21.8 million in Regional Measure 2 (RM2) funding, \$113 million in Regional Measure 1 (RM1) funding, and \$5 million in AB1171 Bridge Toll funding for this Contract. It is expected that BART and MTC will execute a funding agreement in June 2011 for the total \$139.8 million.

ALAMEDA COUNTY MEASURE B

On January 21, 2010 the Alameda County Transportation Improvement Authority (ACTIA) Board authorized staff to negotiate and execute a Project Specific Funding Agreement (PSFA) with BART for the construction of the BART Warm Springs Extension Project. This funding agreement will encumber up to \$123.3 million of Measure B funds for the LTSS Contract. It is expected that BART and ACTIA will execute a funding agreement in June 2011. ACTIA's

functions and powers are intended to be assumed by a new government agency, the Alameda County Transportation Commission (Alameda CTC) during the term of the funding agreement.

The Notice of Award of the LTSS Contract will be issued only after the Controller/Treasurer has certified that \$299,050,000 is available for this Contract. Should the Notification to Proposers of the Recommended Award be issued prior to such certification, the Notification will specifically provide that the Notice of Award shall not be issued prior to the certification of the Controller/Treasurer.

PTMISEA

Both MTC and the Alameda CTC, as a condition of the use of their funds, have asked BART to temporarily suspend drawdown of the Bridge Toll and Measure B funds upon receipt of pending 2006 Proposition 1B Public Transportation Modernization, Improvement, and Service Enhancement Account (PTMISEA) funding in the amount of \$35.3 million. On April 18, 2011, Caltrans approved a Letter of No Prejudice (LONP) for this amount which provides for reimbursement of eligible project expenditures after this date. \$37 million of PTMISEA is included in the Warm Springs funding plan of which \$1.3 million is received and state bond sales for the balance are currently anticipated in winter 2011/2012.

| Fund Source | Grant Amount (\$ millions) | Amount Used for LTSS Contract Award (\$ millions) | Status |
|--|---------------------------------------|--|---|
| SLPP | 77.8 | 77.8 | Available |
| MTC Bridge Tolls | 139.8 | 110.65 | Agreement Pending |
| Alameda County Measure B (Alameda CTC) | 123.3 | 110.65 | Agreement Pending |
| Total | | 299.1 | |
| PTMISEA | 37.0 | 35.3 | LONP Approved. Funds subject to State Bond Sales. |

There is no fiscal impact on available un-programmed District Reserves.

ALTERNATIVES: The District could reject all proposals and solicit new proposals. Re-issuing the RFP would delay and adversely impact the funding and implementation of the WSX Project.

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

MOTION: Upon certification by the Controller/Treasurer that funds are available for this Contract, the General Manager is authorized to award Contract No. 02EE-120 to Warm Springs Constructors for Design-Build of the Line, Track, Station, and Systems for the Warm Springs Extension for the not to exceed price of \$299,050,000, pursuant to notification to be issued by the General Manager and subject to the District's protest procedures.

**Warm Springs Constructors Design-Build Team
Kiewit/Mass A Joint Venture**

Design Subcontractors

Abtahi Engineering Management Consultants (S)
Auriga Corporation (M)(S)
D&D Surveying Inc. (M)
DKS Associates (S)
ESE Consulting Engineers, Inc. (W)(S)
FMG Architects (W)
HNTB Corporation
HQE International (W)(S)
Josephine's Personnel Services, Inc. (W)(S)
Kal Krishnan Consulting Services (M)(S)
NBA Engineering (W)(S)
OLMM Consulting Engineers (M)(S)
Parikh Consultants, Inc. (M)(S)
Stevens & Associates (M)(S)
WRECO (M)(S)
YEI Engineers, Inc. (M)(S)

Construction Subcontractors

Ascent Elevator Services, Inc. (S)
Bagatelos Architectural Glass Systems, Inc.
Bay Cities Paving & Grading, Inc. (M)
Best Contracting Services, Inc.
Blocka Corporation, Inc.
California Tile Installers (S)
Coats Plumbing (M)
Cubic Transportation Systems, Inc.
Economy Trucking Services, Inc. (W)(S)
ELock Technologies LLC
Holland Engineering Rail Solutions
John Jackson Masonry
Keystone Ridge Designs
Kwan Wo Ironworks Inc. (W)
LaBat's Tree Care (W)
Landavazo Bros. Inc. (M)
Landscape Forms Inc.
Liberty Fire System (M)(S)
M.F. Maher, Inc.
Masterpiece Painting (M)
Nitta Erosion Control (W)(S)
Oliveria Fence, Inc. (W)(S)
Pacific Coast Steel
Progress Rail Services Corp.
RMT Landscape Contractors, Inc. (M)
Retaining Walls Co. (S)
San Francisco Transport Services, Inc. (W)(S)
San Jose Transportation (M)(S)
Schindler Elevator Corp.
Sierra Traffic Markings, Inc.
Watertight Restoration Inc. (S)

Material & Procurement Subcontractors

Alstom Signaling Inc.
CMC Rebar
Cal-Con Pumping, LLC (W)
Central Concrete
Costless Maintenance Services Company Inc. (W)
Cummins Central Power
EFCO, Corp.
ERICO International Corporation
Fitzgerald Formliners (S)
Geo Options Inc.
George Reed Inc.
Gonsalves & Santucci Inc. DBA: Conco Pumping
H D Supply Waterworks LTD
H.J. Skelton LTD
Hanson Aggregates
Integrity Wire Inc. (W)
J. Gosnell Sales Company (W)
Jensen Precast
LB Foster
Landavazo Bros. Inc. (M)
MAC Products Inc.
Meyers Controlled Power LLC
Municon Consultants (W)(S)
Omega Industries, Inc.
Omega Pacific Electric Supply Inc. (M)(S)
Pinnacle Petroleum, Inc. (W)(S)
Rail Services Corp.
San Diego Precast Concrete Inc. DBA: Pomeroy
Stevens Creek Quarry
The Reinforced Earth Company
Tri-C Manufacturing Inc. (S)
US Concrete Precast Concrete Group
VAE Nortrack North America, Inc.
West Coast Aggregates

Legend

(M) = Minority Business Enterprise
(W) = Women Business Enterprise
(S) = Small Business Enterprise

FUNDING SUMMARY - WARM SPRINGS EXTENSION PROGRAM

| PROJECT ELEMENT | Baseline Budget 2007 | Current Forecast 5/12/11 | REMARKS |
|---|----------------------------|--------------------------------|--|
| <u>ENVIRONMENTAL, ENGINEERING AND CONSTRUCTION MANAGEMENT</u> | | | |
| Design | \$59,312,460 | \$61,103,454 | |
| Construction Management | \$30,045,000 | \$22,986,798 | |
| Environmental Clearance | \$3,600,715 | \$3,600,715 | <i>Completed</i> |
| TOTAL E, E & CM | \$92,958,175 | \$87,690,967 | |
| <u>CONSTRUCTION</u> | | | |
| Fremont Subway | \$282,000,000 | \$150,425,605 | |
| Line, Track, Station & Systems | \$376,000,000 | \$336,225,686 | Includes LTSS Low Bid of \$299,050,000 and Contingency of \$37,175,686 (12.4%). |
| Misc. Construction Contracts | \$0 | \$2,500,000 | |
| TOTAL CONSTRUCTION | \$658,000,000 | \$489,151,291 | |
| <u>BART SERVICES</u> | | | |
| District-Furnished Materials | \$0 | \$11,374,132 | |
| BART Force Account Work | \$0 | \$5,000,000 | |
| TOTAL BART SERVICES | \$0 | \$16,374,132 | |
| <u>PROGRAM COSTS</u> | | | |
| Program Costs (HazMat, Consulting, Staff, Insurance, Financing Costs and Environmental Mitigation) | \$55,871,020 | \$81,785,613 | |
| Right-Of-Way Acquisitions | \$80,394,486 | \$65,934,385 | |
| Contingency | \$2,776,319 | \$28,492,175 | |
| Unfunded Program Reserve | \$0 | \$120,571,437 | Potential Source of Funding for Warm Springs Extension Rail Vehicle Procurement. |
| TOTAL PROGRAM COSTS | \$139,041,825 | \$176,212,173 | |
| TOTAL FUNDING | \$890,000,000 | \$890,000,000 | |



EXECUTIVE DECISION DOCUMENT

| | | | | |
|--|---------------------------------|---|--------------------|--------------------------------|
| GENERAL MANAGER APPROVAL: <i>Shirley Weberman</i> | | GENERAL MANAGER ACTION REQ'D: Approve and forward to Board | | |
| DATE: | | BOARD INITIATED ITEM: No | | |
| Originator/Prepared by: Chris Quinn Dept: | General Counsel <i>Quinn</i> | Controller/Treasurer <i>[Signature]</i> | District Secretary | BARC <i>[Signature]</i> |
| Signature/Date: <i>and 6/16/11</i> | <i>[Signature]</i> 6/16/11 [] | <i>[Signature]</i> 6/17/11 [] | [] | <i>[Signature]</i> 6/16/11 [] |
| Status: Routed | | Date Created: 06/03/2011 | | |

TITLE:

Comprehensive Agreement Among the San Francisco Bay Area Rapid Transit District, the City of Fremont and the Redevelopment Agency of the City of Fremont for the Design and Construction of the Irvington BART Station; and Resolution of Compliance with California Community Redevelopment Law (Health and Safety Code Section 33445(a)(2))

NARRATIVE:

PURPOSE:

1. Authorize the General Manager to execute the Comprehensive Agreement Among the San Francisco Bay Area Rapid Transit District ("BART"), the City of Fremont ("City") and the Redevelopment Agency of the City of Fremont ("Agency") for the Design and Construction of the Irvington BART Station (the "Irvington Comprehensive Agreement") as described below; and
2. Approve a Resolution of Compliance with California Community Redevelopment Law (Health and Safety Code Section 33445(a)(2)), finding that there are no other reasonable means of financing available to BART for the design and construction of the Irvington BART Station, except for the proposed funding by the Redevelopment Agency of the City of Fremont as provided in the Irvington Comprehensive Agreement.

DISCUSSION:

The BART Warm Springs Extension project (the "WSX Project") scope currently consists of a 5.4-mile extension of the BART system south from the existing Fremont BART Station to the southern part of Alameda County, with a terminus station in the Warm Springs District of Fremont. As contemplated in the adopted Supplemental Environmental Impact Report and the Final Environmental Impact Study for the WSX Project, the project also includes an optional BART station in the Irvington District of Fremont, midway between the existing Fremont BART Station and the new Warm Springs Station, if funding for the station is secured by the City. In addition to BART's environmental review, the optional Irvington Station is included in the City General Plan, its Consolidated Amended and Restated Redevelopment Plan for the Fremont Merged Redevelopment Project Area, the Agency's Five-Year Implementation Plan, and the Agency's Irvington Concept Plan. Pursuant to a Letter of Intent executed by BART and the City

in October 2008, BART agreed that it would design and construct the Irvington Station if the City was able to secure funding. BART would own, operate and maintain the completed station as an integral part of the BART system.

In order to further the goals of the various plans mentioned above and proceed with design and construction of the Irvington BART station, the City and Agency have decided to issue tax-exempt tax allocation bonds in the amount of \$120,000,000 to fund the entire estimated cost of the optional Irvington BART Station, and now wish to enter into a comprehensive agreement with BART to transfer the necessary funds to BART for the design and construction of the Irvington Station with the hope that the station can be completed at the same time as the work contemplated in the Line, Track, Station, and Systems contract for the WSX Project. The Irvington Comprehensive Agreement is intended to memorialize the responsibilities of BART, the City and the Agency in proceeding with design and construction of the Irvington BART Station, including project management, design execution, construction, property acquisition, community support, and general commitments. The Irvington Comprehensive Agreement also specifies that funding for the Irvington Station (estimated at \$120,000,000) is to be secured by the City and Agency.

As provided in the Irvington Comprehensive Agreement, in the event that costs for design and construction of the station exceed the total estimate of \$120,000,000 or funds become unavailable, BART will complete work on the portion of the Irvington Station for which funds are available and the City and Agency will fund all costs incurred by BART up to that amount. Any additional work to complete the Irvington Station would be contingent upon the City and Agency securing additional funds. BART would cooperate with the City and Agency in securing such additional funds. BART agrees to implement the Irvington Station project in the most cost-effective manner possible, and will provide regular accounting reports to the City to ensure adequate tracking of expenditures.

The Office of the General Counsel will approve the Irvington Comprehensive Agreement as to form prior to its execution.

FISCAL IMPACT:

In accordance with the Irvington Comprehensive Agreement, Agency will transfer net bond proceeds in the amount of \$120,000,000 to BART, and BART will deposit the money in a segregated, interest bearing Irvington Station Fund. BART will administer the Irvington Station Fund and use it to cover all of its costs associated with design and construction of the Irvington project, as well as City's costs related to the Irvington Station project. As such, there is no fiscal impact to BART in connection with the design and construction of the Irvington BART Station.

BART will own and operate the completed Irvington BART Station, and will be responsible for funding all operating and maintenance costs associated with the station once it commences revenue service. Not taking into consideration any costs of operating the WSX line, but just considering the Irvington station in isolation, the WSX Project team estimates a total annual operating cost for the Irvington Station of approximately \$3.7 to \$4.0 million for the first year of

operation. Annual station revenues of up to \$5 million are anticipated.

California Redevelopment law requires a Redevelopment Agency to make findings regarding the unavailability of funds to complete a project without redevelopment funds. In support of such findings by the Redevelopment Agency of the City of Fremont, BART has been asked to make a finding regarding the unavailability of funds for the Irvington Station from BART. The budget for the WSX Project provides for construction of the subway under Lake Elizabeth, the line, track and systems for the extension, and one station in the Warm Springs District of Fremont. There are no funds available for the design and construction of the Irvington Station.

ALTERNATIVE:

The Board may reject the Agreement and the Resolution of Compliance, which could delay or permanently preclude construction of the Irvington Station.

RECOMMENDATION:

Adoption of the following motions.

MOTIONS:

1. The General Manager is authorized to execute the Comprehensive Agreement Among the San Francisco Bay Area Rapid Transit District, the City of Fremont and the Redevelopment Agency of the City of Fremont for the Design and Construction of the Irvington BART Station; and
2. Having reviewed and considered the information contained in the attached Resolution, the BART Board approves the Resolution of Compliance with California Community Redevelopment Law (Health and Safety Code Section 33445(a)(2)), finding that there are no other reasonable means of financing available to BART for the design and construction of the Irvington BART Station, except for the proposed funding by the Redevelopment Agency of the City of Fremont as provided in the Irvington Comprehensive Agreement.

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

In the Matter of Approval
Of a Resolution of Compliance
With California Community Redevelopment Law
Health and Safety Code Section 33445(a)(2)
In Connection with Funding for the
Irvington BART Station

Resolution No. _____

WHEREAS, the Board of Directors (the "Board"), as the legislative body of the San Francisco Bay Area Rapid Transit District, desires to make the finding set forth below in this Resolution regarding the lack of availability to BART of reasonable means of financing the design and construction of the Irvington BART Station, consistent with Section 33445(a)(2) of the California Community Redevelopment Law (Health and Safety Code Section 33000 et Seq.; the "Redevelopment Law"); see also Dave Meaney v. Sacramento Housing and Redevelopment Agency (1993) 13 Cal.App. 4th 566; and

WHEREAS, the budget for the WSX Project provides for construction of the subway under Lake Elizabeth, the line, track and systems for the extension, and one station in the Warm Springs District of Fremont. There are no funds available for the design and construction of the Irvington Station.

NOW, THEREFORE, BE IT RESOLVED that, based on the information and analysis contained in the recitals to this Resolution and in the accompanying EDD, the Board hereby finds that there are no other reasonable means of financing available to BART for the design and construction of the Irvington BART Station, except for the proposed funding by the Redevelopment Agency of the City of Fremont as provided in the Comprehensive Agreement.

Adopted: _____

#



EXECUTIVE DECISION DOCUMENT

| | | | | |
|---|---|--|---------------------------|--|
| GENERAL MANAGER APPROVAL: <i>Shirwood Wakeman</i> | | GENERAL MANAGER ACTION REQ'D: Approve and Forward to the Board of Directors | | |
| DATE: | | BOARD INITIATED ITEM: No | | |
| Originator/Prepared by: Joan Duffield Dept. BAP Dept. 81F <i>J. Duffield</i> Signature/Date: 6/15/11 | General Counsel <i>Audrey Rivas</i> 6/15/11 | Controller/Treasurer <i>[Signature]</i> [] | District Secretary [] | BARC <i>[Signature]</i> 6-15-11 [] |
| Status: Approved | | Date Created: 06/13/2011 | | |

Request for Authorization to Enter into Agreements for Information Technology (IT) Consulting Support – BAP Transitional Services

NARRATIVE:

Purpose:

To authorize the General Manager or his designee to enter into professional services agreements with individuals and firms who have experience with and knowledge of the Business Advancement Program (BAP) Phase II project, as specified in Attachment A, for a period of up to one year beginning July 1, 2011 and ending June 30, 2012. These agreements are to assist the Information Technology Department (IT) in completing the transition from the Business Advancement Program (BAP) to a fully institutionalized and staff-supported program. These services will include a planned program of hands-on knowledge transfer to District technical staff as well as end users; support the District's efforts to leverage the availability of new information and tools; and the completion of several supplementary projects to optimize the capabilities of the new systems. The new contract authorizations will be in an aggregate amount not to exceed \$3.16 million, as may be required for stabilization of BAP systems.

Discussion:

In January 2010, pursuant to a settlement with MAXIMUS, Inc., the system integrator, the District assumed all responsibility for BAP Phase II implementation. Pursuant to Board authorization on January 28, 2010, the District accepted assignment of all of MAXIMUS's sub contracts and also entered into additional necessary agreements with individuals and firms that had technical and functional knowledge required for successful completion of the BAP project.

The implementation of the PeopleSoft Financial System (Accounting, Budgeting and, Procurement) is complete. The Maximo materials and maintenance management system has been rolled out to some maintenance groups and implementation for the remaining maintenance groups is planned for completion by July 2011. The support of BAP systems are being transitioned to IT as and when groups go live with new systems. IT is currently maintaining and supporting both the old mainframe-based system, as well as the new system with staff resources that are insufficient in both number and skills to meet current needs. To transition its own knowledge base and work methods, as well as to address the needs of end-users for more focused and dedicated training, IT staff must gain additional capacity and capability. The individuals and/or firms listed in Attachment A are from within the same vendors/individuals who performed

implementation services between January 2010 and the current date. With the assistance of this temporary consultant support, the District will achieve the level of technical stability necessary to realize the enhanced business process improvements for which the BAP project was designed.

The consultant expenditures that are addressed in the request are part of an investment package that also includes \$640,000 allocated for new positions in the IT Department. These positions will be part of the FY 12 knowledge transfer, and will remain with the District to assure the continuity this important transition requires.

The Office of the General Counsel will approve the consultant agreements as to form.

Fiscal Impact:

The anticipated total cost of the contracts is \$3.16 million. The proposed funding for these contracts is within the approved FY 12 Information Technology Department Budget. Specifically, the FY 12 IT budget includes a total of \$3.8 million (including \$1.1 million that will be withheld pending receipt of full STA funding) for BAP transition support services. The \$3.8 million has two parts; a \$3.16 million allocation for consultant support and \$640,000 allocated for new operating positions, which will be an on-going expense. This EDD's request for consultant support is from within the \$3.16 million approved budget. The consultant agreements, as well as the timing of hiring decisions for the positions related to the full \$3.8 million request, will be structured in such a way as to: a) assure that the last \$1.1 million of the request is not spent until and unless STA funding is received in full and b) to assure that the District retains the opportunity to reduce this expenditure if possible over the course of the year. The consultant support is limited to FY 12 and is not an on-going expense thereafter.

Alternative:

Do not authorize up to \$3.16 million and proceed without these technical services. The District's Information Technology Department does not currently have the capacity to effectively provide the user support, trouble shooting and training services that are necessary to realize the value of the BAP Phase II investment.

Recommendation:

Adopt the following motion.

MOTION:

The General Manager or his designee is authorized to execute professional services agreements with individuals and firms, as specified in Attachment A, for a period of up to one year beginning on July 1, 2011 and ending on or before June 30, 2012, for an aggregate amount not to exceed \$3.16 Million.

Attachment A – Consultants List
for
Information Technology (IT) Consulting Support – BAP Transitional Services

| |
|--|
| Interloc Solutions, Inc. |
| J A Frasca & Associates |
| Ontime Consulting, LLC |
| TechTu Business Solutions, Inc. |
| Implementisense, Inc. |
| The Net Consulting Group, Inc. |
| Augusta Consulting Corporation |
| Soliera, Inc. |
| CC Mechling, Inc. |
| VARS Consulting, Inc. |
| Bintelx, Inc. |
| Intueor Consulting, Inc. |
| Sarah Jones Castro |
| Robert McGowan |
| Diego Enriquez Maldonado |
| Plus One Professionals |
| Pavel Kogan |
| Intellisons, Inc. |
| Croy & Associates |
| Standhope Advisory Services |
| DataSplice, LLC |
| ClearBlade , LLC |
| Solufy Information Technologies |
| Suttech, Inc. |
| Robert Half Management Resources |
| Kirschenmann Systems Development Corporation |



EXECUTIVE DECISION DOCUMENT

| | | | | |
|---|----------------------------------|--------------------------------|--------------------|--------------------------------|
| GENERAL MANAGER APPROVAL: <i>Sheward Wakema</i> | | GENERAL MANAGER ACTION REQ'D: | | |
| DATE: | | BOARD INITIATED ITEM: No | | |
| Originator/Prepared by: Charlotte Barham Dept: Office of Planning & Budget | General Counsel | Controller/Treasurer | District Secretary | BARC |
| Signature/Date: <i>Charlotte Barham</i> 6/16/11 | <i>Audrea Raines</i> 6/16/11 [] | <i>[Signature]</i> 6/16/11 [] | [] | <i>[Signature]</i> 6-16-11 [] |
| Status: Routed | | Date Created: 06/14/2011 | | |

TITLE:

First Amendment to Senior and Disabled Fast Pass® Pilot Program Agreement

NARRATIVE:

PURPOSE

To authorize the General Manager to execute the First Amendment to the Senior and Disabled Fast Pass® Pilot Program Agreement with the San Francisco Municipal Transportation Agency (SFMTA).

DISCUSSION

The Senior & Disabled Fast Pass® Pilot Program, as jointly authorized by the BART and San Francisco Municipal Transportation Agency (SFMTA) Boards, began February 1, 2010. The Senior & Disabled Fast Pass® is good for unlimited rides on Muni and BART within San Francisco, just like the regular BART/Muni Fast Pass®. SFMTA is solely responsible for setting the price of the pass and reimburses BART per trip. The initial size of the pilot program was set at 2,000 Senior & Disabled Fast Passes® being made available each month to participants who pre-registered and were selected at random to participate.

As called for in the Agreement, the two agencies evaluated the pilot program after six months of operation to determine if the program should be expanded beyond 2,000 passes available per month. While participants have provided positive feedback regarding the program, demand for the pass has been low, with only 500 of the 2,000 registered participants actually purchasing a pass. This finding resulted in a joint BART/SFMTA staff recommendation, reported to the BART Board in August 2010, that the program size should remain at 2,000 passes available each month. Staffs from the two agencies also recommended exploring the possibility of transitioning the magnetic stripe pass to Clipper, with staff reporting back at a later date with the findings from that study.

The low demand for the pass may be due to SFMTA's implementing a \$5 "premium" price differential between the Muni-only Fast Passes® for seniors and people with disabilities, priced at \$20, and the Senior and Disabled Fast Pass®, which is also good on BART, priced at \$25. This price differential may have dissuaded many of the original registrants from participating, since the increase occurred after registration began. Effective July 1, 2011, SFMTA will implement a \$1 price increase for both the Senior and Disabled Fast Pass® and the Muni-only Fast Passes® for seniors and people with disabilities. Another factor in the low demand may be

the restricted number of locations (currently three) where the pass can be purchased. The locations are SFMTA Customer Service Center at 11 South Van Ness, Powell and Market Cable Car Kiosk, and SFMTA Presidio Sales Kiosk at Geary and Presidio.

To remove barriers to getting the pass in order to better measure demand, the two agencies now wish to make the Senior and Disabled Fast Pass® more available for eligible individuals. To accomplish this end, it is proposed that the Agreement be extended for an additional six months from August 1, 2011 through January 31, 2012, during which time SFMTA will provide for sale each month up to 1,000 Senior and Disabled Fast Pass® tickets to eligible individuals on a first-come, first-serve basis at retail vendors and through community-based organizations.

Once the six-month extension of the Pilot Program is over, the two staffs will present findings and recommendations to their respective Boards regarding whether demand for the Senior and Disabled Fast Pass® has grown sufficiently to warrant the investment required (estimated at approximately \$400,000) to make the pass a permanent fare product available exclusively on the regional Clipper smart card. Should the program prove to be viable and the decision made to make the pass permanent, SFMTA will conduct a Title VI equity analysis to determine the impacts on low-income and minority populations, and will submit that analysis to the Federal Transit Administration.

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

FISCAL IMPACT

SFMTA will continue to reimburse BART \$0.535 per Senior and Disabled Fast Pass® trip on BART. For the fifteen months that the pilot program has been operating, on average, a Senior and Disabled Fast Pass® is used to make 18 trips per month. For the six-month extension to the pilot program, estimated net fare revenue is \$58,000, based on 1,000 passes being sold per month, and 18 trips being taken per pass.

The estimated operating costs of \$12,500 associated with tracking and reporting trips during the six-month extension of the pilot program will be borne by the District.

ALTERNATIVES

Do not authorize execution of the First Amendment to the Senior and Disabled Fast Pass® Pilot Program Agreement.

Direct staff to bring different program parameters to SFMTA for consideration; however, staff believes that the parameters being proposed for the extension to the pilot program are the most reasonable for both agencies in order to ascertain the demand for the Senior and Disabled Fast Pass® product.

RECOMMENDATION

Adoption of the following motion.

MOTION

The General Manager is authorized to execute the First Amendment to the Senior and Disabled Fast Pass® Pilot Program Agreement with the SFMTA. (Two-thirds vote required.)

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

Memorandum

TO: Board of Directors **DATE:** June 17, 2011
FROM: Interim General Manager
SUBJECT: Clipper Implementation on BART

Since the introduction of the Clipper smart card as a fare instrument on BART in August 2009, its use by our riders has shown steady growth. Beginning February 2011, and each month thereafter, more than 30% of BART riders have used Clipper cards on an average weekday (about one-third of the patrons used them in May).

In February 2010 the Metropolitan Transportation Commission adopted Resolution No. 3866 which sets forth implementation requirements for the Translink Program (Clipper card) on BART. Resolution 3866 mandates that the District end the use of BART High Value Discount (HVD) magnetic stripe tickets by March 1, 2011, and senior (green) and disabled/youth (red) tickets by May 1, 2011. BART riders who use the HVD and green and red tickets were to transition to the Clipper card in their place. While a sizeable number of HVD ticket users have migrated to the use of Clipper cards and a lesser number of disabled, senior, and youth riders also use Clipper cards, as of this writing, the District has not replaced these magnetic stripe tickets with Clipper.

Resolution 3866 includes sanctions for the District's failure to meet the time deadlines contained in it. Specifically, MTC may withhold, restrict, or re-program funds to ensure compliance with the Clipper fare media transition program if it finds that BART has failed to meet or exhibit good faith in meeting the requirements of the Resolution.

BART and MTC staff have been meeting on a regular basis in an attempt to come to some resolution on Clipper card implementation issue and while I believe progress has been made, some issues remain. On Friday, June 10, BART staff and I met with the MTC Executive Director and his staff to discuss Clipper card implementation on BART. The Executive Director urged BART to achieve 100% Clipper usage on BART and noted that BART had failed to replace HVD, red, and green magnetic stripe tickets with the Clipper card. In a letter subsequently received from MTC dated June 14, 2011, we were advised that the funding sanctions authorized by MTC Resolution 3866 might be imposed on BART, unless we prepare a plan and schedule for transition to the Clipper card from the HVD, red, and green magnetic stripe BART tickets. MTC requested submittal of the plan by June 30, 2011.

What follows is a plan to address the requirements of Resolution 3866 regarding HVD, red and green magnetic stripe tickets, as well as a number of measures which could be implemented to increase Clipper card use by BART riders who use other types of BART magnetic stripe tickets.

High Value Discount (HVD) Magnetic Stripe Tickets

Presently, HVD magnetic stripe tickets are used to make approximately 50,000 trips on an average weekday or about 14% of all BART trips. The current Clipper BART HVD product is autoload only. Therefore, a rider who uses the Clipper card BART HVD product must register the card by providing name, address and other information. In addition, they must link that Clipper card to a credit card or bank account which will automatically load additional funds on the card once the value on the HVD product falls below \$10.00.

Elimination of the HVD magnetic stripe ticket will mean that the people who currently use the ticket will have to obtain a Clipper card and sign up for the BART HVD autoload product (providing required registration and payment source information) if they wish to continue to receive the high value discount. Admittedly, the elimination of HVD magnetic stripe tickets will not be well received by many current users; however, we believe that executing an outreach and marketing program will help to reduce adverse reaction. Therefore, I am proposing that BART implement the following measures:

- Carry out an intensive outreach and marketing program to encourage patrons who now use magnetic stripe HVD tickets to switch to Clipper card HVD. This program would start on August 1, 2011 and end December 31, 2011.
- Concurrent with the above program, administer a staged reduction of the sale of HVD magnetic stripe tickets with a goal of eliminating sales of these tickets by the end of this year.

Red (Disabled/Youth) and Green (Senior) Magnetic Stripe Tickets

On an average weekday, there are about 23,000 trips made by customers who use red and green magnetic stripe tickets or about 7% of all BART daily trips. The principle issue concerning eliminating the red and green magnetic stripe tickets is that the accessibility to the Clipper senior, disabled and youth cards is limited and the cards are not readily available in all areas that the BART system serves.

The proposed plan to deal with the transition to Clipper for our senior, disabled and youth customers is as follows:

- Expand the Clipper senior, youth and disabled card issuance network (in coordination with the regional card issuance network administered by MTC through its Clipper contractor);
- Provide intensive one-on-one outreach and training events in BART stations and other appropriate venues;
- Provide focused and intensive outreach and training to people with disabilities about how to acquire and use the Clipper discounted card.

This intensive outreach and marketing program would begin August 1, 2011 and run through December 31, 2011. It is possible that, due to state and federal regulations concerning availability of discounts to seniors and disabled persons, we may never achieve 100% elimination of green and red magnetic stripe tickets. BART will work cooperatively with MTC to reduce the distribution network for these tickets to the minimum necessary to comply with the aforesaid regulations while making major efforts to transition customers to the Clipper product.

Additional Measures to Increase Clipper Card Utilization

Although not required by MTC Resolution 3866, MTC staff recently proposed a number of additional initiatives to aid in increasing the overall usage of Clipper cards on BART. Their goal of achieving 100% Clipper utilization is very ambitious, nevertheless, a number of measures could be employed to encourage many more BART riders to use Clipper cards.

Full Fare Blue Magnetic Tickets

These tickets are used to pay for about 160,000 trips on an average weekday and thus represent a significant opportunity for transitioning fare payment transactions to Clipper. However, there are substantial capital and operating costs required to complete this transition successfully, as listed below:

- **Addfare Machine Integration**

While Addfare integration is not required for 100% conversion to Clipper, it is the only way to address the Clipper negative balance issue. At the present time, the Clipper system allows a rider to exit the system with a card that has a negative balance because BART's Addfare machines are not currently programmed to add value to Clipper cards. Addfare machine integration will require hardware and software changes to the equipment, the costs of which need further evaluation.

- **In-Station Clipper Card Dispensers**

Because BART ticket machines (TVMs) cannot issue the standard extended-use Clipper card, MTC has suggested installing dedicated Clipper card dispensers with pre-loaded cards in all BART stations. This suggestion has not been fully evaluated for necessary site preparation, system connectivity, data tracking, reconciliation, credit card gateway and servicing responsibility. Since all Clipper customers, and not just BART riders, would be able to use these dispensers, BART considers them to be a regional benefit that MTC should fund.

- **Ticket Vending Machine (TVM) Retrofit to Vend Limited Use Smart Cards**

Limited use smart cards are not only less durable than Clipper cards, but they can be encoded with restrictions limiting their dollar value or length of use. BART TVMs can be retrofitted to vend limited use smart cards. While we have concerns about the cost of the TVM modifications and other financial and operational issues, BART is willing to consider this modification pending further evaluation.

Remaining Fare Media


Resolution 3866 states that the requirements have been “waived at this time” for transitioning orange tickets (used by students at participating middle and high schools) and BART Plus tickets. These tickets, along with bulk sales which are not included in Resolution 3866, account for a small percentage of BART trips, and BART will continue to study the possible transition of these fare media.

EZ Rider Parking Program

A small number of customers who do not use Clipper for transit payment have retained their EZ Rider cards for parking payment. BART proposes transitioning all these cardholders to Clipper for parking by the end of the year.

Summary

In summary, in order to meet the requirements of MTC Resolution 3866, we are planning a staged reduction of HVD magnetic stripe tickets leading to their elimination. They will be replaced by the Clipper BART HVD product. In addition, we are preparing to implement an outreach program and other measures to transition red and green ticket users to Clipper cards. I plan to discuss these measures with MTC staff, as well as additional steps to increase Clipper card use on BART, following next Thursday’s Board meeting.


Sherwood G. Wakeman

cc: Board Appointed Officers
Deputy General Manager
Executive Staff



EXECUTIVE DECISION DOCUMENT

| | | | | |
|--|--|---|---|--|
| GENERAL MANAGER APPROVAL: <i>Shirwood Wakeman</i> | | GENERAL MANAGER ACTION REQ'D: Approve and forward to Board | | |
| DATE: 6 | | BOARD INITIATED ITEM: No | | |
| Originator/Prepared by: Jeffrey P Ordway Dept. Property Development <i>Jeffrey P Ordway</i> Signature/Date: 6/15/11 | General Counsel <i>Andryee Kavao</i> 6/15/11 | Controller/Treasurer <i>[Signature]</i> [] | District Secretary <i>[Signature]</i> [] | BARC <i>Andryee Kavao</i> 6-16-11 [] |

TITLE: Environmental Certification of the South Hayward Transit-Oriented Development Project

NARRATIVE:

PURPOSE: To have the Board of Directors review and approve the 2009 Mitigated Negative Declaration (“MND”), Mitigation Monitoring and Reporting Program and 2011 Addendum to the MND for a transit-oriented development project adjacent to the South Hayward BART Station, in the South Hayward BART/Mission Boulevard Concept Design Plan Area, prepared by the City of Hayward in accordance with the California Environmental Quality Act (“CEQA”).

DISCUSSION: On September 11, 2008, the BART Board of Directors authorized execution of an Exclusive Negotiating Agreement (“ENA”) with Wittek Development/The Montana Property Group (“Developer”) to pursue a transit-oriented development project at the South Hayward BART Station. In subsequent actions, the Board authorized the addition of Eden Housing, Inc. to the development team and extended the ENA through July 31, 2011.

In March 2009, the City of Hayward adopted a Mitigated Negative Declaration (“MND”) and Mitigation Monitoring and Reporting Program (“MMRP”) for a mixed-use project and associated Planned Development Zoning District at the South Hayward BART station consisting of 788 multi-family residential units, including 206 affordable housing units, a 58,500 square-foot grocery store and ancillary retail space, and a 910-space BART parking garage. The BART parking garage, retail uses and 447 residential units would be on BART property adjacent to the South Hayward Station. An additional 341 for-sale residential units would be built on BART and private property to the east between Dixon Street and Mission Boulevard.

In May 2011, the Developer submitted an application for a Minor Modification to the 2009-approved Preliminary Development Plan associated with the Planned Development Zoning District that primarily proposed a re-phasing of the project. In June 2011, the City of Hayward approved the Minor Modifications and an Addendum to the 2009 Mitigated Negative Declaration. Related to BART’s proposed actions, the modifications include a re-phasing of the project that will involve building portions of the project east of Dixon Street first, versus portions west of Dixon Street, as was envisioned with the original project approval in 2009. The 206 affordable housing units proposed to be built by Eden Housing that were originally envisioned to be built over the grocery store on the north portion of BART’s main parking lot are now proposed to be built as 151 units east of Dixon Street. A total of 354 units (151 affordable) in three buildings are now proposed for the project site east of Dixon Street, compared with 341 market rate units previously proposed. In addition, the re-phasing of the project will no longer

enable BART's Dixon Street lot and the Developer's property between the Dixon Street lot and Mission Boulevard to be used for replacement parking during construction on the main BART parking lot. The 172 Dixon Street lot BART parking spaces lost due to development of the first phase of the project will be accommodated along public streets within a quarter-mile of the BART Station through a cooperative agreement between BART and the City of Hayward.

The Mitigation Monitoring and Reporting Program adopted by the City of Hayward contains 15 mitigation measures addressing aesthetic/visual impacts (light and glare), air quality impacts (temporary construction impacts and impacts to sensitive receptors), geology and soil impacts, hazards and hazardous materials (demolition/grading and hazardous air emissions), hydrology and water quality impacts (erosion and drainage/flooding), noise impacts (temporary construction noise, vehicle and BART train noise, and project-generated noise), and public services. The mitigation measures adopted by the City address all potentially significant project-related impacts resulting in no significant impacts.

BART staff has reviewed the 2009 Mitigated Negative Declaration and 2011 Addendum associated with the transit-oriented development project at the South Hayward BART Station and concurs with the City's findings. BART staff has also reviewed the City of Hayward's 2009 approval of the Planned Development Zoning District, as well as the 2011 approval of the Minor Modification to the Planned Development Zoning District that primarily entails a re-phasing of the project, and concurs with the City's findings for those actions.

Staff is requesting that the BART Board of Directors adopt a motion that would complete the CEQA process and enable the transaction with the Developer to pursue construction of a transit-oriented development project at the South Hayward BART Station.

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

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

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

MOTION: After review and consideration of the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program adopted by the City of Hayward in March 2009, and the City's June 2011 approval of the Addendum to the Mitigated Negative Declaration, the Board: 1) Finds that for the sale of the BART property at the South Hayward BART Station, there are no significant environmental effects which have not been mitigated to insignificance and no further environmental review is required; and 2) Adopts the City of Hayward's Mitigation Monitoring and Reporting Program for the transit-oriented development project at the South Hayward BART Station.