

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

BOARD MEETING AGENDA

July 22, 2010

9:00 a.m.

A regular meeting of the Board of Directors will be held at 9:00 a.m. on Thursday, July 22, 2010

This meeting shall consist of a simultaneous teleconference call at the following locations:

BART Board Room Kaiser Center 20 th Street Mall – Third Floor 344 – 20 th Street Oakland, CA 94612	SilverCreek Lodging Mountainside Center 96 Mountainside Drive, Unit 87 Granby, CO 80446	Embassy Suites 1345 Treat Boulevard Walnut Creek, CA 94597
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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.
 - i. Station Agent Angela Fields.

2. CONSENT CALENDAR

- A. Approval of Minutes of the Meetings of June 10, 2010, and July 8, 2010.* Board requested to authorize.
- B. Subsequent Resolution of Project Compliance and Initial Project Report for Regional Measure 1, Regional Measure 2, and AB1171 Funds for the Warm Springs Extension Project.* Board requested to adopt.
- C. Fund Pass-Through Agreement between BART and the City of Oakland for the Oakland Public Library West Oakland Shuttle.* Board requested to authorize.
- D. Amendment of District Code of Conduct.* Board requested to authorize.
- E. Award of Contract No. 15EL-210, Procurement of Negative Ground Device (NGD) Controllers.* Board requested to authorize.
- F. Award of Contract No. 15SZ-130, Parking Lot Lighting Improvements.* Board requested to authorize

3. ENGINEERING AND OPERATIONS ITEMS

Director Keller, Chairperson

- A. Re-Affirm Award of Two Contracts for the Design-Build and Operation and Maintenance of the Oakland International Airport Connector (Contracts No. 01ZK-110 and No. 01ZK-120).* Board requested to authorize.

4. ADMINISTRATION ITEMS

Director Blalock, Chairperson

- A. Fiscal Year 2011 Budget Follow Up.*
 - i. Resolution for Temporary Fare Reduction. Board requested to adopt. (TWO-THIRDS VOTE REQUIRED.)
 - ii. Customer Appreciation Initiatives. Board requested to authorize.

- B. (CONTINUED from May 13, 2010, Board Meeting)
Resolution for East Bay Paratransit Fare Increase and Fare Program
Modifications.* Board requested to adopt. (TWO-THIRDS VOTE
REQUIRED.)

5. ENGINEERING AND OPERATIONS ITEMS (cont.)

Director Keller, Chairperson

- A. Cost Reimbursement Agreement with the City and County of San Francisco
for Central Subway Project Costs.* Board requested to authorize.
- B. (CONTINUED from July 8, 2010, Board Meeting)
Memorandum of Understanding Regarding Operations and Maintenance of
Clipper Fare Collection System.* Board requested to authorize.

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

Director Ward Allen, Chairperson
NO ITEMS.

7. GENERAL MANAGER'S REPORT

NO ITEMS.

8. BOARD MATTERS

- A. Report of the Sustainability/Green Committee. For information.
- B. Roll Call for Introductions.

9. GENERAL DISCUSSION AND PUBLIC COMMENT

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

A. CONFERENCE WITH REAL PROPERTY NEGOTIATORS.

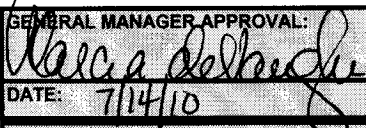

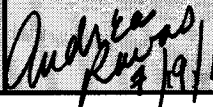
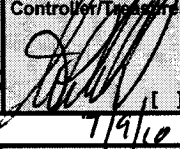
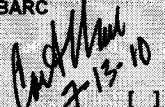
Property:	Property located at the Fruitvale BART Station bounded by 35 th and 37 th Avenues and East 12 th Street and the BART Aerial Structure
District Negotiators:	Carter Mau, Executive Manager, Planning & Budget; and Jeffrey P. Ordway, Manager, Property Development
Negotiating Parties:	San Francisco Bay Area Rapid Transit District, Spanish Speaking Unity Council, City of Oakland Redevelopment Agency, and Signature Properties
Under Negotiation :	Price and Terms
Gov't. Code Section:	54956.8

11. BOARD MATTERS

- A. Fruitvale Transit Village Project.*
- Approve Environmental Certification of Phase 2.
 - Approve Modification of Option Agreement with the Spanish
Speaking Unity Council for Phase 2.
- Board requested to authorize.



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: 		GENERAL MANAGER ACTION REQ'D:		
DATE: 7/14/10		BOARD INITIATED ITEM: No		
Originator/Prepared by: Todd Morgan Dept: Capital Development & Control Signature/Date:  7-6-2010	General Counsel  7/9/10	Controller/Treasurer  7/9/10	District Secretary []	BARC  7-13-10
Status: Routed		Date Created: 05/04/2010		

TITLE:

Approval of a Subsequent Resolution of Project Compliance and Initial Project Report for Regional Measure 1, Regional Measure 2, and AB1171 Bridge Toll Funds for the Warm Springs Extension (WSX) Project - Stage 2 Construction

NARRATIVE:

PURPOSE:

To obtain approval of a Subsequent Resolution of Project Compliance ("Resolution") and Initial Project Report ("IPR") based on the attached IPR Summary for Regional Measure 1 ("RM1"), Regional Measure 2 ("RM2"), and Assembly Bill No. 1171 (AB1171) bridge toll funds for the Warm Springs Extension Project ("WSX" or "Project"). The IPR includes an allocation request for a total of \$139.8 million for planned project expenditures.

DISCUSSION:

BART preliminary engineering of the design-build Line, Track, Station and Systems ("LTSS") contract is complete. Contractor prequalification commenced April 6, 2010 and a Request for Proposals is anticipated to be released in July 2010, with Notice to Proceed ("NTP") anticipated for Spring 2011. The RM1, RM2, and AB1171 funding included in this IPR and Resolution are part of the funding for the LTSS contract.

MTC does not have guidelines for RM1 or AB1171 bridge toll funds. However, MTC does have guidelines for RM2 funds and is applying those guidelines in connection with RM1 and AB1171 bridge toll funds. MTC Resolution No. 3636, the Policies and Procedures for Implementation of the Regional Traffic Plan of Regional Measure 2, requires that the BART Board approve a Resolution and IPR each time the project sponsor requests an allocation of RM2 funds. In this case, with the concurrence of MTC staff, BART is requesting a total allocation of \$139.8 million for the construction phase activities of the Project.

The WSX Project, a 5.4-mile extension south of the existing Fremont Station, will significantly improve the regional transit network by bringing BART further into southern Alameda County. It will also better balance current local and regional transportation demand and will provide increased transportation capacity for future growth in employment and population. In addition, the extension will help relieve increasing congestion on highways and local streets by offering people a high-quality alternative to driving. It will also support the region's efforts to meet state and federal air quality standards.

FISCAL IMPACT:

Approval of the Resolution and IPR is a requirement for BART to receive an allocation of RM1, RM2, and AB1171 funds from MTC. This action will have no fiscal impact on unprogrammed District Reserves.

ALTERNATIVES:

Do not approve the Resolution and IPR. This will result in the loss of RM1, RM2, and AB1171 funds, with resulting schedule delays and/or cost increases for the Project.

RECOMMENDATION:

Adoption of the following motion.

MOTION:

Approve the attached Subsequent Resolution of Project Compliance and Initial Project Report Summary for Regional Measure 1, Regional Measure 2, and AB1171 Funds for the Warm Springs Extension Project.

FUNDING SUMMARY - WARM SPRINGS EXTENSION PROGRAM

PROJECT ELEMENT	Baseline Budget	Current Forecast 6/22/10	REMARKS
ENVIRONMENTAL, ENGINEERING AND CONSTRUCTION MANAGEMENT			
Design	\$59,312,460	\$64,155,161	
Construction Management	\$30,045,000	\$25,078,913	
Environmental Clearance	\$3,600,715	\$3,723,715	Completed
TOTAL E, E & CM	\$92,958,175	\$92,957,789	
CONSTRUCTION			
Fremont Subway	\$282,000,000	\$150,425,605	Includes capacity for CO#2 (\$258,500)
Line, Track, Station & Systems	\$376,000,000	\$297,000,000	
Misc. Construction Contracts	\$0	\$2,750,000	
TOTAL CONSTRUCTION	\$658,000,000	\$450,175,605	
BART SERVICES			
District-Furnished Materials	\$0	\$11,963,154	
BART Force Account Work	\$0	\$5,000,000	
TOTAL BART SERVICES	\$0	\$16,963,154	
PROGRAM COSTS			
Program Costs (HazMat, Consulting, Staff, Insurance, Financing Costs and Environmental Mitigation)	\$55,871,020	\$80,410,321	
Right-Of-Way Acquisitions	\$80,394,486	\$80,019,265	
Contingency	\$2,776,319	\$169,473,866	
TOTAL PROGRAM COSTS	\$139,041,825	\$329,903,452	
TOTAL FUNDING	\$890,000,000	\$890,000,000	

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

**In the Matter of the Approval
Of a Subsequent Resolution of Project Compliance
And Initial Project Report for Regional Measure 1,
Regional Measure 2, and AB1171 Funds for the
Warm Springs Extension Project**

Resolution No. _____

Implementing Agency: San Francisco Bay Area Rapid Transit District (BART)

Project Title: BART Extension to Warm Springs (WSX)

Whereas, the Metropolitan Transportation Commission (MTC) is the regional transportation planning agency for the San Francisco Bay Area pursuant to Government Code Sections 66500 et seq.; and

Whereas, certain bridge toll revenues, commonly referred to as Regional Measure 1 (RM1) funds, approved by the voters of the San Francisco Bay Area in March 1988, provide toll revenue funds from the San Francisco Bay Bridges be used for projects that extend passenger rail service in the San Francisco Bay Area, commonly referred to as the “90 percent Rail Extension Reserves” (Streets and Highways Code Sections 30912(b) and 30914(a) (4)); and

Whereas, SB 916 (Chapter 715, Statutes 2004), commonly referred as Regional Measure 2, identified projects eligible to receive funding under the Regional Traffic Relief Plan; and

Whereas, Regional Measure 2 (RM2) was approved by the voters of the San Francisco Bay Area on March 2, 2004; and

Whereas, MTC is responsible for funding projects eligible for RM2 funds, pursuant to Streets and Highways Code Section 30914(c) and (d); and

Whereas, Streets and Highways Code Sections 30950 et seq. created the Bay Area Toll Authority (“BATA”) which is a public instrumentality governed by the same board as that governing MTC; and

Whereas, pursuant to Streets & Highways Code (SHC) Section 31010 (b), funds (generally referred to as “AB1171 funds”) generated in excess of those needed to meet the toll commitments as specified in paragraph (4) or subdivision (b) of section 188.5 of the SHC shall be available to BATA for funding projects consistent with SHC Code Sections 30913 and 30914; and

Whereas, MTC adopted Resolution 3434, Revised, which establishes commitments of AB1171 and RM1 bridge toll funds to specific projects and corridors; and

Whereas, MTC has established a process whereby eligible transportation project sponsors may submit allocation requests for RM1, RM2, and AB1171 funding; and

Whereas, allocations to MTC must be submitted consistent with procedures and conditions as outlined in RM2 Policy and Procedures; and

Whereas, BART is an eligible sponsor of transportation project(s) in RM2, Regional Traffic Relief Plan funds; and

Whereas, the BART Extension to Warm Springs (WSX) is eligible for consideration in the Regional Traffic Relief Plan of RM2, as identified in California Streets and Highways Code Section 30914(c) or (d); and

Whereas, the WSX Project is eligible for 90 percent Rail Extension Reserves RM1 funds; and

Whereas, the WSX Project is also eligible for consideration of AB1171 funds, and;

Whereas, the allocation request, set forth in the Initial Project Report, based on the Initial Project Report Summary attached hereto and incorporated herein as though set forth at length, lists the project purpose, schedule, budget, expenditure and cash flow plan for which BART is requesting that MTC allocate RM1, RM2, and AB1171 funds; and

Whereas, MTC intends to require as a condition of its allocation of RM1/AB1171 funds to the WSX Project that BART and MTC execute a funding agreement prior to award of the construction contract, and such agreement would specify the policies and procedures applicable for use of the RM1/RM2/AB1171 funds; now therefore be it

Resolved, that BART, and its agents shall comply with the provisions of the Metropolitan Transportation Commission's Regional Measure 2 Policy Guidance (MTC Resolution No. 3636); for the drawdown of AB1171 and RM1 funds; and be it further

Resolved, that BART certifies that the project is consistent with the Regional Transportation Plan (RTP); and be it further

Resolved, that all environmental clearances necessary for the project have been obtained and that the year of funding for the construction phase has taken into consideration the time necessary to obtain permitting approval for such construction; and be it further

Resolved, that the project phase or segment to be funded with RM1, RM2, and AB1171 funds is fully funded, and will result in an operable and useable segment; and be it further

Resolved, that BART approves the Initial Project Report as described in the attached Initial Project Report Summary (Summary); and be it further

Resolved, that BART approves the cash flow plan described in the Initial Project Report as described in the attached Summary; and be it further

Resolved, that BART has reviewed the project needs and has adequate staffing resources to deliver and complete the project within the schedule set forth in the Initial Project Report as described in the attached Summary; and be it further

Resolved, that BART is an eligible sponsor of projects in the RM2 Regional Traffic Relief Plan, Capital Program, in accordance with SHC Section 30914(c); and be it further

Resolved, that BART is authorized to submit an application for RM1 funds for the WSX Project in accordance with SHC Section 30912(b) and 30914 (a) (4); and be it further

Resolved, that BART is authorized to submit an application for RM2 funds for the BART Extension to Warm Springs in accordance with SHC Section 30914(c); and be it further

Resolved, that the WSX Project is eligible for receipt of AB1171 funds consistent with SHC Section 31010 (b); and be it further

Resolved, that BART certifies that the projects and purposes for which RM1, RM2 and AB1171 funds are being requested is in compliance with the requirements of the California Environmental Quality Act (Public Resources Code Section 21000 et seq.), with the State Environmental Impact Report Guidelines (14 California Code of Regulations Section 15000 et seq.) and, if relevant, the National Environmental Policy Act (NEPA), 42 USC Section 4-1 et seq. and the applicable regulations thereunder; and be it further

Resolved, that there is no legal impediment to BART making allocation requests for RM1, RM2, and AB1171 funds; and be it further

Resolved, that there is no pending or threatened litigation which might in any way adversely affect the proposed project, or the ability of BART to deliver such project; and be it further

Resolved, that BART agrees to comply with the requirements of MTC's Transit Coordination Implementation Plan as set forth in MTC Resolution 3866; and be it further

Resolved that BART indemnifies and holds harmless MTC, its Commissioners, representatives, agents, and employees from and against all claims, injury, suits, demands, liability, losses, damages, and expenses, whether direct or indirect (including any and all costs and expenses in connection therewith), incurred by reason of any act or failure to act of BART, its officers, employees or agents, or subcontractors or any of them in connection with its performance of services under this allocation of RM1, RM2, and AB1171 funds. In addition to any other remedy authorized by law, so much of the funding due under this allocation of RM2, RM1, and AB1171 funds as shall reasonably be considered necessary by MTC may be retained until disposition has been made of any claim for damages; and be it further

Resolved, that BART shall, if any revenues or profits from any non-governmental use of property (or project) are collected, that those revenues or profits shall be used exclusively for the public transportation services for which the project was initially approved, either for capital improvements or maintenance and operational costs, otherwise the MTC is entitled to a proportionate share equal to MTC's percentage participation in the project(s); and be it further

Resolved, that assets purchased with RM1, RM2, and AB1171 funds, including facilities and equipment shall be used for the public transportation uses intended, and should said facilities and equipment cease to be operated or maintained for their intended public transportation purposes for its useful life, that the MTC shall be entitled to a present day value refund or credit (at MTC's option) based on MTC's share of the Fair Market Value of the said facilities and equipment at the time the public transportation uses ceased, which shall be paid back to MTC in the same proportion that RM1, RM2, and AB1171 funds were originally used; and be it further

Resolved, that BART shall post on both ends of the construction site(s) at least two signs visible to the public stating that the WSX Project is funded with RM1, RM2, and AB1171 Bridge Toll Revenues; and be it further

Resolved, that BART authorizes its General Manager, or her designee to execute and submit an allocation request for the construction phase with MTC for RM1 funds in the amount of \$113 million, RM2 funds in the amount of \$21.8 million, and AB1171 funds in the amount of \$5 million for the project, purposes and amounts included in the Initial Project Report as described in the attached Summary; and be it further

Resolved, that the General Manager, or her designee is hereby delegated the authority to make non-substantive changes or minor amendments to the Initial Project Report as she deems appropriate; and be it further

Resolved, that a copy of this Resolution shall be transmitted to MTC in conjunction with the filing of the BART application referenced herein.

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Warm Springs Extension

Initial Project Report Summary

The Warm Springs Extension Project will add 5.4-miles of new tracks from the existing Fremont Station south to a new station in the Warm Springs District of the City of Fremont, with an optional station in the Irvington District of Fremont. The optional Irvington Station is dependent upon future funding to be secured by the City of Fremont.

Project Delivery Milestones

Phase-Milestone	Planned (Update as needed)	
	Start Date	Completion Date
Environmental Documents	January 2002	October 2006
Environmental Studies, Preliminary Eng. (ENV / PE / PA&ED)	January 2002	October 2006
Plans, Specifications & Estimates (PS&E)	April 2002	June 2010
Right-of-Way Activities /Acquisition (R/W)	April 2002	June 2012
Construction (Begin – Open for Use) / Acquisition / Operating Service (CON)	May 2009	December 2014

Total Project Budget Information

Phase	Total Amount (Thousands)
Environmental Studies & Preliminary Eng (ENV / PE / PA&ED)	8,713
Plans, Specifications and Estimates (PS&E)	36,065
Right-of-Way Activities /Acquisition (R/W)	98,300
Construction / Rolling Stock Acquisition / Operating Service (CON)	746,922
Total Project Budget (in thousands)	890,000



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Valencia Delgado</i>		GENERAL MANAGER ACTION REQ'D: Approve and forward to the Admin Committee		
DATE: c 7/15/10		BOARD INITIATED ITEM: No		
Originator/Prepared by: Sarah Syed Dept: Capital Development <i>Sarah Syed</i> 7/14/10	General Counsel <i>Andrew Rivas</i> 7/14/10	Controller/Treasurer <i>[Signature]</i> 7/15/10	District Secretary []	BARC <i>[Signature]</i> 7-14-10 []

TITLE:

Fund Pass-Through Agreement between BART and the City of Oakland

NARRATIVE:

PURPOSE:

To obtain Board authorization for the General Manager to execute the Fund Pass-Through Agreement between BART and the City of Oakland ("City") in connection with the funding of transportation shuttle services to the West Oakland Library (the "Shuttle Program"). The purpose of the Pass-Through Agreement is to provide a procedure and to set forth the conditions under which BART will pass through to the City the Lifeline Transportation Program State Transit Assistance ("STA") funds allocated to the Shuttle Program by the Metropolitan Transportation Commission ("MTC") Resolution 3881.

DISCUSSION:

MTC's Lifeline Transportation Program is intended to result in improved mobility for low-income residents of the San Francisco Bay Area. The Lifeline Transportation Program includes STA, Proposition 1B, and Federal Transit Administration Jobs Access Reverse Commute funding. In Alameda, the Alameda County Congestion Management Agency ("ACCMA") is responsible for selecting projects eligible for Lifeline Transportation Program funding. On January 28, 2009, MTC adopted Resolution 3881, a copy of which is attached hereto, in which MTC approved the Program of Projects for Lifeline Transportation Program funding developed by ACCMA, including the Shuttle Program. For fiscal years 2009/2010, 2010/2011, and 2011/2012, the Shuttle Program is allocated a total of two hundred and nineteen thousand dollars (\$219,000.00) in Second-Cycle Lifeline Program funding from STA funds.

FISCAL IMPACT:

No fiscal impact is attributable to the Pass-Through Agreement. BART will receive the funds from MTC and would then use the funds to reimburse the City for its expenditures on the Shuttle Program. BART will recognize revenue (financial assistance) for the receipt of funds from MTC and expense for its reimbursement to the City. These Lifeline Transportation Program funds are not available for BART capital or operating purposes. There will be no net remaining funds available to BART or extra funding required by BART. The City will pay a local match of \$96,000 to the STA funding of \$219,000. There is no fiscal impact on un-programmed District Reserves.

ALTERNATIVES:

Not execute the Pass-Through Agreement. The City of Oakland would not be able to receive the \$219,000 in STA funds for the Shuttle Program to provide quicker and safer transportation services to the West Oakland Library.

Fund Pass-Through Agreement between BART and the City of Oakland

RECOMMENDATION:

Adoption of the following motion.

MOTION:

The General Manager is authorized to execute the Fund Pass-Through Agreement for Lifeline Transportation Program State Transit Assistance Funds for the West Oakland Library Shuttle with the City of Oakland in connection with the funding of transportation shuttle services to the West Oakland Library.

Date: January 28, 2009
W.I.: 1311
Referred by: PAC
Revised: 05/27/09-C 10/28/09-C
12/16/09-C 02/24/10-C
04/28/10-C

ABSTRACT

Resolution No. 3881, Revised

This resolution adopts the FY 2009 through FY 2011 Program of Projects for MTC's Second-Cycle Lifeline Transportation Program, funded with State Transit Assistance (STA), Proposition 1B Transit and Job Access Reverse Commute (JARC) funds.

The evaluation criteria established in Resolution 3860 were used by the county entities administering the program to develop the program of projects.

The following attachments are provided with this resolution:

Attachment A — Second-Cycle Lifeline Transportation Program of Projects -
FY 2009-2011

This resolution was revised on May 27, 2009 to amend Attachment A to incorporate changes to STA-funded projects based on STA reductions in the final FY 09 state budget, and adds two new projects – new transit and shuttle service in Napa County and a SamTrans bus purchase in San Mateo County.

This resolution was revised on October 28, 2009 to amend Attachment A to revise and add STA funds to the Balboa Park Station entrance project in San Francisco County and to incorporate Proposition 1B-funded projects in Santa Clara County.

This resolution was revised December 16, 2009 to add the Tier 2 program of projects.

This resolution was revised February 24, 2010, to revise funding amounts of Tier 2 Proposition 1B-funded projects to reflect actual state appropriations for FY09-10 and to add four new Tier 2 projects in San Mateo County.

This resolution was revised April 28, 2010, to add Tier 2 funds to three existing projects and one new project in San Francisco County and to three existing projects in Santa Clara County.

Further discussion of this action is contained in both the MTC Executive Director's Memorandum to the Programming and Allocations Committee and the Programming and Allocations Committee summary sheet dated January 14, 2009, May 13, 2009, October 14, 2009, December 9, 2009, February 10, 2010, and April 14, 2010.

Date: January 28, 2009
W.I.: 1311
Referred by: PAC

RE: Second-Cycle Lifeline Transportation Program of Projects – FY 2009 - FY 2011

METROPOLITAN TRANSPORTATION COMMISSION
RESOLUTION NO. 3881

WHEREAS, the Metropolitan Transportation Commission (MTC) is the regional transportation planning agency for the San Francisco Bay Area pursuant to Government Code § 66500 et seq.; and

WHEREAS, MTC adopted Resolution 3860, which establishes program guidelines to be used for the funding and oversight of the Second-Cycle of the Lifeline Transportation Program, Fiscal Years 2009-2011; and

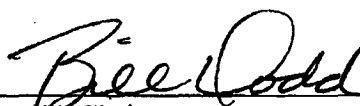
WHEREAS, MTC used the process and criteria set forth in Attachment A of Resolution 3860 to fund a Program of Projects for the Second-Cycle Lifeline Transportation Program with State Transit Assistance (STA), Proposition 1B Transit and Job Access Reverse Commute (JARC) and funds;

WHEREAS, the Second-Cycle Lifeline Transportation Program of Projects is set forth in Attachment A of this resolution, attached hereto and incorporated herein as though set forth at length; now therefore be it

RESOLVED, that MTC approves the Program of Projects for the Second-Cycle Lifeline Transportation Program, as set forth in Attachment A of this resolution; and be it further

RESOLVED, that the Executive Director shall forward a copy of this resolution, and such other information as may be required, to the Governor, Caltrans, and to such other agencies as may be appropriate.

METROPOLITAN TRANSPORTATION COMMISSION



Bill Dodd, Chair

The above resolution was entered into by the Metropolitan Transportation Commission at a regular meeting of the Commission held in Oakland, California, on January 28, 2009.

Second-Cycle Lifeline Program of Projects - Tier 1 & 2 (FY 2009-2011)

#	Project	Project Sponsor	Project Description	Tier 1 Funding Sources			Tier 1 Total	Tier 2 Funding Sources			Tier 2 Total	TOTAL Lifeline Funding	Notes
				STA	IB	JARC		STA	IB	JARC			
Alameda County													
1	San Leandro LINKS Shuttle	San Leandro Transportation Management Organization	Provide service from San Leandro BART to employment and family services in San Leandro			405,000	405,000					405,000	
2	Quicker, Safer Trip to the Library	BART/Oakland Public Library - West Oakland	Continued shuttle service for Oakland pre-school and schoolchildren, teachers and parents to the W. Oakland Library	219,000			219,000					219,000	(e)
3	AC Transit existing service preservation in communities of concern	AC Transit	Continue existing services on Lines 63, 47, 40, 91, 93 serving Alameda, Oakland, San Leandro, Ashland, Cherryland, San Leandro, and S. Hayward	4,219,210			4,219,210	989,330		830,384	1,819,714	6,038,924	revised 12/16/09
4	Neighborhood bicycle centers	East Bay Bicycle Coalition/Cycle of Change	Fund bike distribution and education programs in Oakland and Alameda			314,000	314,000					314,000	
5	WHEELS Route 14 Service Provision	LAVTA	Continue service from residential Livermore to downtown business areas and regional transit to Livermore Transit Center	89,000		67,494	156,494			21,170	177,664	177,664	(c) revised 12/16/09
6	Ashby BART Station elevator	BART	Install elevator at the Ashby BART Station in conjunction with the Ed Roberts Campus		2,000,000		2,000,000					2,000,000	(a)
7	Bus shelters	LAVTA	Install bus shelters		100,000		100,000					100,000	(a)
8	Bus purchase	AC Transit	Purchase AC Transit rolling stock buses		2,998,588		2,998,588					2,998,588	(b)
9	Meekland Avenue Transit Access Improvements	Alameda County	Bus access improvements on Meekland Avenue including sidewalk, ADA ramp, bulb outs, and lighting						2,500,000		2,500,000	2,500,000	(f) added 12/16/09
10	Hacienda Avenue Transit Access Improvements	Alameda County	Bus access improvements, including sidewalks and high visibility pedestrian crossings on Hacienda Ave between Hathaway Ave and Hesperian Blvd.						160,181		160,181	160,181	(f) added 12/16/09
11	Environmental Justice Access to BART	BART	Install secure bike parking at North Berkeley and Berkeley stations						224,749		224,749	224,749	revised 2/24/10
12	WHEELS Route 14 Civic Center Busway and Stops	LAVTA	Construct turnaround busway and two bus stops with shelters and benches at Civic Center, adjacent to housing, employment, and social services.					150,000			150,000	150,000	added 12/16/09
County Bid Target				4,527,210	5,098,588	786,582	10,412,380	1,139,330	2,884,930	851,554	4,875,814	15,288,194	
Proposed Programming				4,527,210	5,098,588	786,494	10,412,292	1,139,330	2,884,930	851,554	4,875,814	15,288,106	
Unprogrammed Balance				-	-	88	88	-	-	-	-	88	

Second-Cycle Lifeline Program of Projects - Tier 1 & 2 (FY 2009-2011)

#	Project	Project Sponsor	Project Description	Tier 1 Funding Sources			Tier 1 Total	Tier 2 Funding Sources			Tier 2 Total	TOTAL Lifeline Funding	Notes
				SIA	IB	JARC		SIA	IB	JARC			
Contra Costa													
13	Operating Funding for low income access to health care	Tri-Delta ECCTA	Maintain service on Route 201, which provides service between Bay Point, and central county destinations including medical centers, schools, BART and Sun Valley Mall	118,687		96,759	215,446	23,481		118,843	234,324	357,770	revised 12/16/09
14	Continued operation of County Connection Lifeline routes	CCCTA	Preserve frequency and coverage of Routes 114, 111 & 314 serving the Monument Corridor and BART, as well as Routes 108,116,118 and 308 serving downtown Martinez, medical clinics, County offices,	627,086		120,395	747,481	134,157		119,964	881,638	1,001,602	revised 12/16/09
15	Continued operation of WestCAT C3 Route	WestCAT	Continue C3 service, operating between the Hercules Transit Center & Contra Costa College, with timed connections to Route 11 that operates into Crockett & Rodeo	338,115		21,253	359,368	73,463		22,452	431,831	455,283	revised 12/16/09
16	Maintain existing Lifeline services in western Contra Costa County	AC Transit	Communities of Concern. These routes connect residents to employment centers, retail establishments, schools, social service agencies, and health care.	1,290,604		120,436	1,411,040	288,665		127,226	1,699,705	1,826,931	revised 12/16/09
17	Bus Shelters	Tri-Delta ECCTA	Procure and install bus shelters and related facilities such as signage, schedule holders, trash receptacles, lighting and minor site improvements in the Pittsburg/Bay Point/Antioch and Brentwood communities of concern.		200,000		200,000					200,000	
18	Rolling Stock for County Connection Lifeline routes	CCCTA	Provide funds for replacement rolling stock to preserve service on Routes 108, 111, 114, 116, 118, 308, and 314 serving communities of concern		844,805		844,805					844,805	
19	Rolling Stock for WestCAT Lifeline route	WestCAT	Vehicle replacement for Route C3 (see project 14)		69,785		69,785					69,785	
20	BART Bay Point/Pittsburg station improvements	BART	Increase lighting throughout the bus intermodal area of the station, and provide static and real time transit information for both bus and BART patrons		320,000		320,000					320,000	
21	BART Richmond Station Improvements	BART	Make improvements to the intermodal zone at the Richmond Transit Village (upgrading 13 existing bus shelters and resurfacing the intermodal area).		482,251		482,251		262,549		744,800	744,800	revised 12/16/09
22	County Connection Martinez bus stop improvements and access	CCCTA	Construct an ADA-accessible bus stop, provide bus stop seating at 15 locations, provide transit access improvements and provide two pedestrian-activated lighted crosswalks in Martinez		100,000		100,000					100,000	
23	Rolling stock replacement for AC Transit	AC Transit	Replacement buses will operate on routes in and around the Richmond area community of concern and also be interlined with other routes system wide to effectiveness of services to all AC Transit riders						458,241		458,241	458,241	revised 2/24/10
24	Hillcrest Park-and-Ride Lot Improvements	BART	Improvements to the Hillcrest Park-and-Ride Lot, including pedestrian and bicycle access improvements for predominantly low-income Tri Delta Transit patrons. New improvements will be consistent with the design and construction of the proposed eBART Project										revised 2/24/10
County Bid Target				2,374,491	2,016,841	358,843	4,749,175	519,767	1,316,118	388,485	2,224,370	6,974,545	
Proposed Programming				2,374,492	2,016,841	358,843	4,750,176	519,766	1,316,118	388,485	2,224,370	6,974,545	
Unprogrammed Balance				(1)	-	-	(1)	1	-	-	-	-	

Second-Cycle Lifeline Program of Projects - Tier 1 & 2 (FY 2009-2011)

#	Project	Project Sponsor	Project Description	Tier 1 Funding Sources			Tier 1 Total	Tier 2 Funding Sources			Tier 2 Total	TOTAL Lifeline Funding	Notes
				STA	IB	JARC		STA	IB	JARC			
Marin													
25	Marin City Transit Hub and Donohue Street ADA improvements	Marin County	Build sheltered community bus stop and transit hub with user amenities including safety lighting, landscaping, informational kiosks, seating, passenger shelter and bike racks.			77,510	77,510		75,119	83,913	159,032	236,542	(d) revised 12/16/09
26	Marin City Community shuttle loop and service to Marin General Hospital	Marin Transit	Provide hourly, day-time service from Marin City to Marin General Hospital and nearby medical offices in Greenbrae.	279,890			279,890	112,270			112,270	392,160	(d) revised 12/16/09
27	Canal Neighborhood transit & Ped Access & safety improvements - phase 2	San Rafael	Provide safe path to transit, improve nonmotorized access and improve traffic operations at 7 intersections in Canal neighborhood of San Rafael.	-	435,638		435,638		209,162		209,162	644,800	(d) revised 12/16/09
28	Ride to school for parents	San Rafael City Schools	Provide regularly scheduled shuttle service (transportation to school meetings and events) for Canal residents who currently have no transportation access to San Pedro Elementary School.	233,000			233,000					233,000	(d)
County Bid Target				512,890	435,638	77,510	1,025,038	112,270	284,281	83,913	480,464	1,506,502	
Proposed Programming				512,890	435,638	77,510	1,025,038	112,270	284,281	83,913	480,464	1,506,502	
Unprogrammed Balance				-	-	-	-	-	-	-	-	-	

Napa													
29	Rolling stock acquisition	NCTPA	Bus purchase for replacement rolling stock		274,290		274,290					274,290	
30	Napa Shuttle, FlexRIDE Shuttle and VINE Express	NCTPA	Operating assistance for the Napa Shuttle, FlexRIDE Shuttle and VINE Express. These programs provide service to low-income residents, including senior and disabled populations, and provide transportation to training, jobs and services.	322,931			322,931					322,931	added 5/27/09
31	VINE Route 11	NCTPA	Extend operation of VINE rural connector service (route 11) between Calistoga and Santa Rosa					70,688			70,688		added 12/16/09
32	Bus passenger accommodations	NCTPA	Provide for the purchase and installation of 14 bus shelters and benches, 21 stand-alone benches, and 21 up-Valley iStops with seating						178,992		178,992		revised 2/24/10
County Bid Target				322,931	274,290	84,494	681,715	70,688	178,992	-	249,680	931,395	
Proposed Programming				322,931	274,290	-	597,221	70,688	178,992	-	249,680	846,901	
Unprogrammed Balance				-	-	84,494	84,494	-	-	-	-	84,494	

Second-Cycle Lifeline Program of Projects - Tier 1 & 2 (FY 2009-2011)

#	Project	Project Sponsor	Project Description	Tier 1 Funding Sources			Tier 1 Total	Tier 2 Funding Sources			Tier 2 Total	TOTAL Lifeline Funding	Notes
				STA	IB	JARC		STA	IB	JARC			
San Mateo													
41	East Palo Alto (EPA) Youth Shuttle, Mobility Manager, Bus Shelters, Shuttle Operations	City of East Palo Alto	This project contains 4 elements - (1) Maintain East Palo Alto Youth Shuttle (2) Maintain funding for EPA Mobility Manager (3) Improve up to 4 EPA bus stop shelters, benches and amenities (4) Plan for shuttle operations for the Dumbarton Rail station area plan	207,454	72,000	139,393	418,847			80,912	80,912	499,759	revised 12/16/09
42	Bayshore Shuttle Service	Daly City	Implement a free circulator shuttle service connecting Daly City's Bayshore neighborhood with transit and essential destinations in western Daly City. The shuttle will operate 10 hours on weekdays, expanding in the second year to add 6 hours of service on weekends.	368,929			368,929	(19,841)		131,926	131,926	481,014	(g) revised 12/16/09
43	Route 280	Samtrans	Maintain Route 280, which serves CalWorks clusters and essential destinations for the residents of East Palo Alto.	415,935			415,935					415,935	
44	Route 17	Samtrans	Maintain Route 17, which serves the Half Moon Bay area, to add service during the peak commute period, new Sunday service and extended evening hours.	356,393			356,393	72,029			72,029	428,422	revised 12/16/09, 2/24/10
45	Van purchase and operations for shelter resident transportation	Shelter Network	Purchase van and provide on-demand service for residents of four homeless shelters in San Mateo County.		28,000	64,430	92,430			7,820	7,820	100,250	
46	Fixed-Route 17 Bus Procurement	Samtrans	Bus purchase for Route 17		900,000		900,000					900,000	added 5/27/09
47	Senior Service bus/van purchase	Pacifica	Purchase of a replacement, 20 passenger wheel chair accessible bus to transport seniors (majority are low-income) and disabled adults to/from the Senior Center, for local outing, shopping trips and medical appointments.					6,000	56,221		62,221	62,221	(h) added 12/16/09
48	Belle Air Parking Lot modification	San Bruno	Curve correction and street elevation adjustments to accommodate public transit bus service near Belle Air Elementary School. Additional improvements include parking lot reconfiguration, sign installations, striping, sidewalk installation, driveway improvements, curb ramps, and bus shelters to accommodate pedestrians.					6,000	151,251		157,251	157,251	(h) added 12/16/09
49	Senior shuttle bus	San Bruno	Purchase of a replacement, 20 passenger wheelchair accessible bus to improve low-income elderly transportation to the Senior Center. This bus will also be used to provide low-income children transportation to the Recreation Center.					6,000	100,000		106,000	106,000	(h) added 12/16/09
50	Sidewalks, solar bus shelters, curb ramps	San Bruno	The project involves the installation of wider sidewalk, solar powered lighted bus shelters and accessible curb ramps adjacent to and leading to SamTrans bus stops in the City of San Bruno. The project intends to improve access for people with disabilities and improve safety and the physical environment at bus stops.					6,000	201,600		207,600	207,600	(h) added 12/16/09
51	Countywide Low-Income Bus Tickets	San Mateo County HSA	Provide bus tokens, bus tickets and bus passes for low-income families, and individuals participating in self-sufficiency and family strengthening activities.					109,520			109,520	109,520	(h) added 2/24/10
52	Transportation for Low Income Seniors TRIPS	Family Service Agency of San Mateo	Continue the Transportation Reimbursement Independence Program (TRIP), providing mileage reimbursement to volunteer drivers transporting low-income seniors.					109,520			109,520	109,520	(h) added 2/24/10
53	Bayshore Bus Stop Improvements	Daly City	Provide a new bus shelter and access improvements for the SamTrans southbound bus stop on Bayshore Boulevard, just south of Geneva Avenue.						187,181		187,181	187,181	(h) added 2/24/10
54	Bus Stop Improvements in Communities of Concern	SamTrans	Provide for the improvement of bus stops in select locations throughout communities of concern.						196,867		196,867	196,867	(h) added 2/24/10
County Bid Target				1,348,711	1,145,565	203,823	2,698,099	295,228	747,555	220,658	1,063,441	3,961,540	
Proposed Programming				1,348,711	1,000,000	203,823	2,552,534	295,228	893,120	220,658	1,408,906	3,961,540	
Unprogrammed Balance				-	145,565	-	(145,565)	-	(145,565)	-	(145,565)	-	

Second-Cycle Lifeline Program of Projects - Tier 1 & 2 (FY 2009-2011)

#	Project	Project Sponsor	Project Description	Tier 1 Funding Sources			Tier 1 Total	Tier 2 Funding Sources			Tier 2 Total	TOTAL Lifeline Funding	Notes
				STA	IB	JARC		STA	IB	JARC			
Santa Clara County													
55	Bus Lines 17 & 14 in Gilroy	SCVTA	Improve community bus services on Lines 14 & 17 in Gilroy by operating as two-way routes	984,982			984,982	216,556			216,556	1,201,538	revised 12/16/09
56	Family Transportation Services	Outreach & Escort	Maintain funding to the Family Transportation Services (FTS) Program (Guaranteed Ride Home & Vehicle Repair). A new program will be added - Reach Out, which will expand the FTS to include demand-response transportation regardless of income or employment status	998,292		632,276	1,630,568	218,360			218,360	1,848,928	(b) revised 04/28/10
57	Together We Ride	Outreach & Escort	Provide transportation to homeless families, veterans, emancipated foster youth, political refugees and other vulnerable populations. Transit capital funds to purchase hybrid sedans and small wheelchair-lift equipped buses for multiple rider groups	887,785	2,100,741		2,988,526	193,998	1,374,908		1,568,906	4,557,432	revised 04/28/10
58	Senior Transportation	Outreach & Escort	Maintain funding for program providing seniors with a menu of transportation options, such as demand-response rides, individualized transportation plans and a volunteer driver program	1,251,057			1,251,057	273,402			273,402	1,524,459	revised 04/28/10
59	Hybrid Bus Purchase	SCVTA	Purchase hybrid transit buses to replace aging models in order to prevent service delays and run cancellations and reduce fuel consumption and greenhouse gas effects		1,400,494		1,400,494		909,873		909,873	2,310,367	revised 12/16/09
County Bid Target				4,122,116	3,501,235	632,276	8,255,627	902,316	2,284,781	647,477	3,834,574	12,090,201	
Proposed Programming				4,122,116	3,501,235	632,276	8,255,627	902,316	2,284,781	-	3,187,403	11,442,724	
Unprogrammed Balance				-	-	-	-	-	-	647,477	647,477	647,477	

Second-Cycle Lifeline Program of Projects - Tier 1 & 2 (FY 2009-2011)

[illegible]

Second-Cycle Lifeline Program of Projects - Tier 1 & 2 (FY 2009-2011)

#	Project	Project Sponsor	Project Description	Tier 1 Funding Sources			Tier 1 Total	Tier 2 Funding Sources			Tier 2 Total	TOTAL Lifeline Funding	Notes
				STA	IB	JARC		STA	IB	JARC			
Sonoma County													
74	Bus purchase	Santa Rosa CityBus	Bus purchase for Roseland service improvements on Routes 9 and 14		483,744		483,744		331,662		331,662	815,406	revised 2/24/09
75	Route 19	Santa Rosa CityBus	Sustain and enhance Route 19 in Roseland	394,117		130,872	524,989	120,555		147,538	268,096	793,082	revised 12/16/09
76	Natural gas coach purchase	Sonoma County Transit	Purchase of 14 natural gas coaches for high-density routes (60, 22, 42 and 20) serving low-income areas		483,744		483,744		331,661		331,661	815,405	revised 2/24/10
77	Existing bus service	Sonoma County Transit	Sustain existing service on Routes 20/22, 30, 42, 44/48 and 60	632,389			632,389	113,823			113,823	746,212	revised 12/16/09
78	Existing bus service	Petaluma Transit	Sustain existing city-wide service	141,365			141,365					141,365	
79	Bus replacement	Healdsburg Transit	Funds to replace the old fixed-route mini bus		49,000		49,000					49,000	
80	Existing bus service	Healdsburg Transit	Sustain existing city-wide service	28,872			28,872	6,366			6,366	35,238	revised 12/16/09
81	County transit plan	Sonoma County Human Services	Transit plan to promote community awareness of transit and foster collaborative efforts					21,219			21,219	21,219	added 12/16/09
County Bid Target				1,196,743	1,016,488	181,331	2,394,562	261,963	663,323	147,538	1,072,824	3,467,386	
Proposed Programming				1,196,743	1,016,488	130,872	2,343,103	261,963	663,323	147,538	1,072,824	3,416,927	
Unprogrammed Balance				-	-	50,459	50,459	-	-	-	-	50,459	
Regional Grand Totals													
Lifeline Program Revenue Sources				18,318,253	16,812,399	3,175,176	28,305,828	4,158,139	10,528,943	2,808,913	17,492,995	55,801,823	
Total Proposed Programming				18,318,254	16,666,834	3,040,135	28,025,223	4,158,138	10,674,507	2,161,436	16,992,001	55,019,304	
Unprogrammed Balance				(1)	145,565	135,041	290,605	1	(145,564)	647,477	501,914	782,519	

Notes

- (a) Alameda County received a \$5,098,588 advance of their Tier 1 Prop 1 B funds in FY08. The funds and projects shown here were applied for in April 2008.
- (b) Includes \$57,977 in Small Urbanized Area JARC funds administered by Caltrans
- (c) Tier 1 JARC funds are part of the Small Urbanized Area program administered by Caltrans
- (d) Golden Gate Transit will claim the funds for these projects. Totals include administration costs
- (e) moved from Tier 2 to Tier 1, May 2009
- (f) AC Transit will claim the funds for these projects.
- (g) Tier 1 STA amount partially backfilled with Tier 2 JARC to meet sponsor's original funding request and make additional Tier 2 STA available to other projects
- (h) SamTrans will claim the funds for these projects. Tier 2 STA amounts are for SamTrans' administration costs.
- (i) MTA will claim the funds for this project. Approval of this project is subject to project sponsor securing the necessary easements.



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: 		GENERAL MANAGER ACTION REQ'D: Approve and Forward to Board of Directors		
DATE: c 7/15/10		BOARD INITIATED ITEM: No		
Originator/Prepared by: RICHARD WIECZOREK Dept: Procurement Department Signature: 7/15/10	General Counsel 7/14/10	Controller/Treasurer 	District Secretary []	BARC 7-15-10 []
TITLE:				

Adopt Revised District Code of Conduct

NARRATIVE:

PURPOSE: To adopt a revised District Code of Conduct.

DISCUSSION: The District has had an Employee Code of Conduct since 1993. The Code of Conduct covers such issues as conflicts of interest, political activity, solicitation and acceptance of gifts, use of confidential information, use of District facilities for private gain, affirmative action, incompatible activities, and whistleblowing. FTA Circular 4220.1F requires the District, as a recipient of FTA funds, to maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. Accordingly, the District's Code of Conduct incorporates FTA's rule concerning real or apparent conflicts of interest, which prohibits employees, officers, or Board members from participating in the selection, award, or administration of a contract if a real or apparent conflict of interest would be involved. Such a conflict would arise when, among other circumstances, an employee, officer or Board member, or an immediate family member thereof, has a financial or other interest in an entity selected for award of a contract supported by federal funds.

During a recent Procurement System Review of the District, FTA found that the District's Code of Conduct was deficient because it did not expressly apply to Board members and did not expressly refer to conflicts of interest arising from the financial interests of immediate family members. Staff has therefore revised the Code of Conduct to conform to these requirements. Staff has committed to FTA to submit a revised Code of Conduct to the District's Board of Directors for adoption by August 1, 2010, and to FTA by August 31, 2010. The attached Code of Conduct includes revisions to the following sections: "Declaration of Policy," "Scope," "Responsibilities of Public Service," "Conflict of Interest," "Political Activity," "Solicitation or Acceptance of Gratuities and Favors," "Use of Confidential Information," "Use of District Employment and Facilities for Private Gain," and "Affirmative Action." Additionally, the title of the Code has been changed from "Employee Code of Conduct" to "Code of Conduct." After adoption by the Board and submittal to FTA, Staff will distribute the revised Code of Conduct to all employees, officers, and Board members.

FISCAL IMPACT: None.

ALTERNATIVE: The Board could decline to adopt the revised Code of Conduct. Doing so would impair the District's commitment to FTA to adopt a revised Code of Conduct by August

Adopt Revised District Code of Conduct

1, 2010 and to submit the revised Code of Conduct to FTA by August 31, 2010.

RECOMMENDATION: Adoption of the following motion:

MOTION: The attached Code of Conduct is adopted.

Declaration of Policy

District officers, employees, and Board members are public servants and, as such, are expected to be impartial and responsible in fulfilling the public trust placed in them. The public expects and must receive the highest standard of ethical conduct from all those in public service, regardless of personal considerations. District officers, employees, and Board members are expected to demonstrate the highest standards of personal integrity, honesty, and truthfulness in all their public activities in order to inspire public confidence and trust in the District.

Scope

This policy is for use by and applicable to all District officers and employees, and to members of its Board of Directors where noted.

Responsibilities of Public Service

District officers, employees, and Board members are bound to observe, in their official acts, the highest standards of integrity and to discharge faithfully the duties of their offices, recognizing that the lives, safety, health, and welfare of the general public must be their primary concern. Their conduct in both their official and private affairs should be above reproach to assure that their public office is not used for personal gain.

Conflict of Interest

The Code of Conduct incorporates the prohibitions of California law concerning conflicts of interest. Among them is the prohibition against officers, employees, and Board members being “financially interested in any contract made by them in their official capacity” (Government Code Section 1090, *et seq.*) and the prohibitions and reporting requirements of the Political Reform Act of 1974. This includes the prohibition against officers, employees, and Board members making, participating in, or using their position to influence governmental decisions in which they have a reason to know they have a financial interest. The Code of Conduct also incorporates the Federal Transit Administration’s (FTA) prohibitions concerning real or apparent conflicts of interest on the part of officers, employees, and Board members who participate in the selection, award, or administration of contracts supported by federal funds. Such a conflict would arise when any of the following parties has a financial or other interest in an entity selected for award of a contract supported by federal funds: the officer, employee, or Board member, or any immediate family member, partner, employer, or organization that intends to employ the officer, employee, or Board member.

Further, the Code of Conduct requires that Department Managers as well as officers and employees involved in the award and administration of contracts review the proposed scope of work of their contracts and bring any potential “organizational conflicts of interest” to the attention of the Contract Management Division. An organizational conflict of interest occurs when any of the following circumstances arise: (1) the contractor is unable, or potentially unable, to provide impartial and objective assistance or advice to the District due to other activities, relationships, contracts, or circumstances; (2) the contractor has an unfair competitive advantage

through obtaining access to non public information during the performance of an earlier contract; (3) during the conduct of an earlier procurement, the contractor has established the ground rules for a future procurement by developing specifications, evaluation factors, or similar documents.

Political Activity

The prohibitions of California law pertaining to political activity applicable to public employees, officers, and elected officials, including the prohibitions of California Government Code Section 3201, et seq., apply to all District employees, officers, and Board members.

Solicitation or Acceptance of Gratuities and Favors

Gifts or favors received by or promised to District officers and employees may trigger the reporting, disclosure, and abstention requirements of this Code (see the Conflict of Interest provisions). Gifts or favors received by or promised to Board members may trigger the reporting and disclosure requirements of this Code, and may also prevent the Board from authorizing the award or execution of contracts. In addition, the prohibitions contained in the FTA's third party contracting guideline concerning receipt by officers, employees, and Board members of favors and gratuities from contractors, potential contractors, or parties to subagreements are incorporated herein and by this reference made part of this Code of Conduct.

Use of Confidential Information

No current or former employee, officer, or Board member shall use or disclose, other than in the performance of his or her official duties and responsibilities (or as may be required by law), confidential information gained in the course of or by reason of his or her position or employment, nor shall any current or former employee, officer, or Board member permit such use or disclosure.

Use of District Employment and Facilities for Private Gain

District employees, officers, and Board members shall not use District time for activities other than District business which is within their scope of duties, unless, in the case of employees, such activities have the prior approval of their supervisor or higher supervision in their department or are otherwise authorized under a collective bargaining agreement, or written rule or procedure of the District.

No employee, officer, or Board member shall engage in or permit the unauthorized use of District-owned property, including but not limited to facilities, materials, equipment, and information. Use of District property for purposes other than District business shall be considered an unauthorized use unless an employee has received prior approval for such use by his or her supervisor or higher supervision in his/her department. Use of District property for non-District business will only be authorized when District management determines it is in the best interest of the District to do so.

Affirmative Action

District employees, officers, and Board members shall not, in the performance of their District responsibilities, engage in unlawful discrimination of any sort, including discrimination against any person on the basis of race, sex, color, national origin, religion, handicap, age, marital status, sexual orientation, or veteran status, and they shall make good faith efforts to support and comply with the District's equal opportunity and affirmative action goals and objectives.

Incompatible Employment, Activities, and Enterprises

District employees shall not engage in employment, activities, or enterprises for compensation which are inconsistent with, incompatible to, or in conflict with their duties as employees. The outside activities inconsistent with, incompatible to, or in conflict with an employee's duties include those which:

- (1) involve the use for private gain or advantage of an employee's District time, facilities, equipment and supplies; or the badge, uniform, prestige, or influence of his or her District office or employment; or
- (2) involve receipt or acceptance by the employee of any money or other consideration from anyone other than the District for the performance of an act which the employee, if not performing such an act, would be required or expected to render in the regular course or hours of his or her District employment or as a part of his or her duties as a District employee; or
- (3) involve the performance of an act in other than his or her capacity as a District employee which act may later be subject directly or indirectly to the control, inspection, review, audit, or enforcement of any other District employee; or
- (4) involve the time demands as would render performance of his or her duties as a District employee less efficient.

An employee's supervisor or higher level supervisor will notify him or her of disciplinary actions arising from a violation of these procedures, and existing grievance procedures will be utilized to resolve all grievances.

Discussion of Future Employment

All offers or negotiations concerning offers to District employees of future employment outside of District service must be reported immediately to the employee's supervisor once such discussions occur with, or when such offers are made by, any person, firm, or organization who foreseeably may have a financial interest in decisions in which the employee participates or provides input or would normally do so within his or her scope of work. Under such circumstances, the employee may be relieved of responsibilities which foreseeably may impact such a person, firm, or organization.

Activities Incompatible with Official Duties and the Reporting of Improper Government Activities

District employees are encouraged to serve the public interest by disclosing to District management (to his/her supervisor or next higher supervisor) to the extent not in conflict with the attorney-client privilege or the physician-patient privilege, information concerning District activities where the employee has a reasonable cause to believe that the information discloses a violation of state or federal statute, or violation or non-compliance with state or federal regulation. No employee of the District shall use or attempt to use his or her authority to interfere with the disclosure or to retaliate against an employee for such disclosure.

Penalties for Non-Compliance

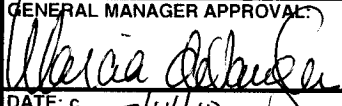
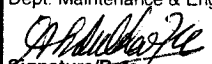
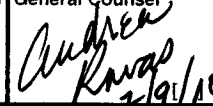
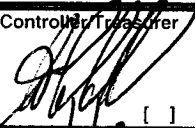
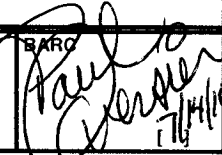
In addition to any other penalty as provided by law, employees who violate the guidelines are subject to discipline up to and including discharge.

Questions about this Code

This brochure is not intended to address specific situations which may be unique to individual employees. Employees who have questions or need further guidance should contact their assigned supervisor or manager.



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: 		GENERAL MANAGER ACTION REQ'D:		
DATE: c 7/14/10		BOARD INITIATED ITEM: No		
Originator/Prepared by: Abdulhaque Shaikh Dept: Maintenance & Engineering  Signature/Date: 7/9/2010	General Counsel  7/9/10	Controller/Treasurer  7/9/10	District Secretary []	BART  7/14/10

Award Contract No. 15EL-210 for Procurement of Negative Grounding Device (NGD) Controllers

NARRATIVE:

PURPOSE:

To obtain Board authorization for the General Manager to award Contract No. 15EL-210, for Procurement of Negative Grounding Device (NGD) Controllers to VG Controls, Inc., Vernon, NJ

DISCUSSION:

Contract No. 15EL-210 will procure twenty four (24) NGD controllers kits. Twenty (20) of these kits will be used to replace existing NGD controllers under a separate future public works contract. NGDs are located at and are connected to traction power substations. The Controller of NGDs provides switching controls and reporting features for the NGD which in turn limits stray currents and clamp running rail voltages to a preset safe level. Several existing controllers which were installed during DPX, PAX, WSX and SFOX extensions have failed and need repairs. Replacement parts for the existing controllers are no longer available. The new NGD controllers will be consistent with the latest BART requirements for better field sensors, more efficient controls, better reporting features and will fit in the existing controller cabinet. This upgrade will enhance performance of the existing NGDs for better stray current control capability and provide better trouble shooting tools for BART Maintenance.

The District sent advance notices to 12 prospective Bidders. The Contract was advertised on May 10, 2010.

A pre-bid meeting was held on Tuesday, May 26, 2010. Two (2) addenda were subsequently issued. The following two (2) Bids were received and publically opened on June 22, 2010.

Bidder

Total Bid Price

1. VG Controls, Inc., Vernon, NJ	\$380,000
2. Powell Electrical Systems, North Canton, OH	\$1,309,989

Engineer's Estimate \$437,000

Bids were evaluated and staff determined that the apparent low Bid submitted by VG Controls, Inc., Vernon, NJ, is responsive to this solicitation. Furthermore, examination of the low Bidder's business experience and financial capabilities has resulted in a determination that this Bidder is responsible and that the Bid of \$380,000 submitted by VG Controls, Inc., is fair and reasonable based upon adequate market information of such equipment.

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

FISCAL IMPACT:

Funding of \$417,050 (\$380,000 bid plus \$37,050 estimated tax) for the award of Contract 15EL-210 is included in the total project budget for FMS #15EL – Traction Power Controls/Protection. 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 47X - FTA-CA-05-0211 FY06 Capital Improvement \$417,050

As of the month ending 5/30/2010, \$4,000,000 is available for commitment from this fund source for this project and BART has committed \$3,158,052 to date. There is a pending commitment of \$372,308 in BART's financial management system. This action will commit \$417,050 leaving an uncommitted balance of \$52,590 in this fund source.

There is no fiscal impact on available unprogrammed District Reserves.

ALTERNATIVE:

If the Contract is not awarded, the District will be unable to repair and upgrade the existing NGD Controllers on L,C and W lines, resulting in increased safety and environmental risks to the District.

RECOMMENDATIONS:

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

MOTION:

The General Manager is authorized to award Contract No. 15EL-210 for Procurement of Negative Grounding Device (NGD) Controllers to VG Controls, Inc., for the Bid price of \$380,000, to which will be added all applicable taxes, subject to the District's protest procedures and FTA's requirements related to protest procedures.



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>[Signature]</i>		GENERAL MANAGER ACTION REQ'D: Approve and forward to the Board	
DATE: 7/15/10		BOARD INITIATED ITEM: No	
Originator/Prepared by: Ersten Y Imaoka Dept: M & E <i>[Signature]</i> for E. Imaoka 7-14-10	General Counsel <i>[Signature]</i> 7/15/10	Controller/Treasurer <i>[Signature]</i> 7/15/10	District Secretary <i>[Signature]</i> 7/15/10
Status: Routed		Date Created: 06/30/2010	

TITLE:

Award Contract No. 15SZ-130, Parking Lot Lighting Improvements

NARRATIVE:

PURPOSE: To authorize the General Manager to award Contract No. 15SZ-130, Parking Lot Lighting Improvements, to Angelo Utilities.

DISCUSSION: The Work of this Contract includes furnishing all labor, equipment, materials and services required to improve parking lot lighting at five BART stations located in Alameda and San Francisco counties. The scope of work is to install new light poles and fixtures in parking lot areas with low lighting, install missing light fixtures and replacement of lenses on bus shelter fixtures that have deteriorated.

Advance Notice to Bidders was mailed on May 28, 2010, to 27 prospective Bidders. Contract Books were mailed to 22 plan rooms and minority assistance organizations. The Contract was advertised on May 27, 2010. A Pre-Bid meeting was conducted on June 15, 2010, with 14 prospective Bidders attending the meeting. The following nine Bids were received on June 29, 2010:

BIDDER	LOCATION	TOTAL BID
Amland Corp	San Jose	\$157,499
Angelo Utilities	Sacramento	\$186,900
Triple S Electric Co.	Alameda	\$188,800
Reliance Engineering, Inc.	San Francisco	\$206,533
Steiny and Company	Vallejo	\$212,958
Tennyson Electric, Inc.	Livermore	\$218,200
B-Side, Inc.	Oakland	\$242,000
BEST Contracting Services	Hayward	\$284,100
NEMA Construction	Albany	\$307,000
ENGINEER'S ESTIMATE		\$240,000

Five (5) Station Parking Lots

1. Hayward Station
2. San Leandro Station
3. Coliseum Station
4. MacArthur Station
5. Glen Park Station

The apparent low Bidder, Amland Corp, did not sign its Bid Bond, making the Bid Bond unenforceable. Amland's Bid was therefore deemed non-responsive. After review by District staff, the Bid submitted by the second low Bidder, Angelo Utilities, was found to be responsive. Furthermore, a review of this Bidder's license, business experience, and financial capabilities has resulted in a determination that the Bidder is responsible. Staff has determined that the Bid of \$186,900, which is approximately 22% under the Engineer's Estimate, is fair and reasonable.

Staff has determined that the Work of this Contract is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Title 14 California Code of Regulations Section 15301, Existing Facilities, because it consists of the repair and minor alterations of existing facilities involving no expansion of use.

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 subcontracting opportunities; therefore, a DBE participation goal of 6% was set for this contract. The low bidder, Angelo Utilities, committed to subcontracting 11.5% to DBEs.

FISCAL IMPACT: Funding of \$186,900 for award of Contract No. 15SZ-130 is included in the total project budget for the Project 15SZ, Parking Relamping FY 04/05. The Office of the Controller/Treasurer certifies that funds are currently available to meet this obligation.

F/G 47V

FTA CA-03-0675

\$186,900

As of the month ending 5/30/10, \$1,003,742 is available for commitment from this fund source for this project, and BART has committed \$737,978 to date. There is a pending commitment of \$12,000 in BART's financial management system. This action will commit \$186,900, leaving an uncommitted balance of \$66,864 in this fund source.

There is no fiscal impact on available unprogrammed District Reserves.

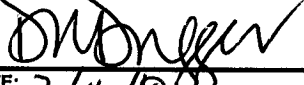
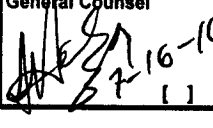
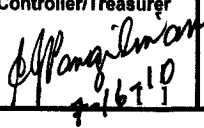
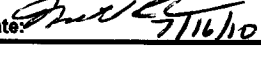
ALTERNATIVE: The alternative is to reject all Bids, which will result in the deferral of lighting improvements that will correct substandard lighting levels at these five BART station parking lots.

RECOMMENDATION: Adoption of the following motion:

MOTION: The General Manager is authorized to award Contract No. 15SZ-130, Parking Lot Lighting Improvements, to Angelo Utilities, for the Bid price of \$186,900, pursuant to notification to be issued by the General Manager and subject to the District's protest procedures and FTA's requirements related to protest procedures.



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: 		GENERAL MANAGER ACTION REQ'D: Approve and forward to the Board of Directors for Action		
DATE: 7/16/10		BOARD INITIATED ITEM: No		
Originator/Prepared by: Mike Forte Dept: TSD	General Counsel  7/16/10	Controller/Treasurer  7/16/10	District Secretary []	BARC []
Signature/Date:  7/16/10				
Status: Approved		Date Created: 05/24/2010		

TITLE:

RE-AFFIRM AWARD OF TWO CONTRACTS FOR THE DESIGN-BUILD AND OPERATION AND MAINTENANCE OF THE OAKLAND INTERNATIONAL AIRPORT CONNECTOR

NARRATIVE:

PURPOSE

To present a revised funding plan and obtain Board re-affirmation of its authorization for the General Manager to award two contracts for the Oakland International Airport Connector (OAC, or OAC Project) Project, based on the revised funding plan. The Design-Build Contract (Contract No. 01ZK-110) pertains to the construction of the OAC Project using a design-build method, and the Operations and Maintenance (O&M) Contract (Contract No. 01ZK-120) pertains to the operation and maintenance of the completed system to be performed over a twenty-year period.

DISCUSSION

Introduction

The procurement for the 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 and Doppelmayr Cable Car, Inc. concurrently, subject to certain conditions based on the availability of American Recovery and Reinvestment Act (ARRA) and Small Starts funds.

On December 11, 2009, the District issued a Notice of Intent to Award, notifying the Proposers that the District intended to award Contract No. 01ZK-110 to Flatiron/Parsons, JV, and Contract No. 01ZK-120 to Doppelmayr Cable Car – DCCCA1, Inc., subject to the above Board conditions being satisfied.

The subsequent withdrawal by the Federal Transit Administration (FTA) of \$70 million in ARRA funds resulted in a significant gap in the OAC full funding plan presented to the Board on

December 10, 2009. However, 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.

Price Adjustment for Inflation

On May 27, 2010, the Board authorized the General Manager to extend the Proposal Validity Date for Contract No. 01ZK-110 with a price adjustment for inflation, beginning in April 2010 and based on the CCI_{sf}, in an amount not to exceed \$2,888,177. The price adjustment would be issued as a change order after award.

Revised OAC Funding Plan

As a result of efforts by BART and its funding partners, the OAC funding plan has been revised and updated to include new sources of funding as well as a slight decrease in the Project's overall estimated cost. Staff recommends that the Board re-authorize the General Manager to award the Contracts for the OAC Project based on the revised OAC funding plan detailed below.

FISCAL IMPACT

OAC Project Costs

The OAC Project budget has been updated, and is comprised of the following elements:

BART Spent to Date	\$ 39M
Construction Cost	\$364M
BART Delivery Cost	\$ 40M
Construction Contingency	<u>\$ 33M</u>
Subtotal Project Capital Cost	\$476M
Financing Cost (construction)	<u>\$ 8M</u>
Project Cost during construction	\$484M

[Note: Some figures have been rounded]

In the OAC Project Costs table above, the following terms are used and explained as follows:

- "BART Spent to Date" is the amount already expended by the OAC Project in environmental development, preliminary engineering, real estate acquisition, and other procurement phase costs.
- "Construction Cost" is the contract award amount for the Design-Build Contract No. 01ZK-110. Construction Cost also includes the Inflationary Price Adjustment of \$2.88M (maximum) as approved by the Board on May 27, 2010.
- "BART Delivery Cost" is the amount anticipated for related construction phase activities, including construction management oversight, BART administrative costs, installation of the Contractor-supplied fare collection equipment, several follow-on contracts, and Owner Controlled Insurance Program (OCIP) costs.
- "Construction Contingency" is the amount set aside for unforeseen circumstances during the

- construction phase and for operations start-up costs.
- "Financing Cost (construction)" is the amount of loan risk fund subsidy, up-front and annual financing fees, and interest during construction.

OAC Project Construction Funding

The Full Funding Plan for the OAC Project is shown below:

OAC Sources and Uses (\$ millions)

<u>Local</u>		
Alameda County Transportation Improvement Agency (ACTIA) Measure B	89.1	Committed
Port of Oakland [1]	29.3	Pending
Regional Measure 1 (1988 Bridge Toll)	31.0	Committed
Regional Measure 2 (2004 Bridge Toll)	115.2	Committed
BART SFO Reserve Account	10.0	Pending
Total Local	274.5	
<u>State</u>		
State Transportation Improvement Program (STIP)	20.7	Committed
CMIA/RTIP Funding Exchange	10.0	Programmed
SHOPP/RTIP Funding Exchange	10.0	Programmed
MTC/State-Local Partnership Program (SLPP) Prop 1B	20.0	Committed
PTMISEA (Prop 1B)	12.8	Committed
High-Speed Passenger Train Bond	5.4	Pending
Total State	78.9	
<u>Federal</u>		
Federal Transit Administration - Small Starts	25.0	Pending
Total Federal	25.0	
Sub-total agency/public grant funding	378.4	
Debt draws [2]	105.7	Requested
Total sources of funds	484.1	
<u>Development and Construction Costs</u>		
BART costs spent and reimbursed to date	39.2	
Capital construction and civil cost	363.9	
Delivery and construction contingency	73.0	
Total Development and Construction Costs	476.1	
<u>Financing Costs</u>		
TIFIA interest expense [2]	0.9	
Upfront financing costs and fees	5.4	
Annual rating agency fees	0.1	
Reserves for other financing costs	1.5	
Total Financing Costs	8.0	
Total uses of funds	484.1	

[1] \$16.1M of Port funding received during operations. Borrowing is increased to bridge this delay in funding.

[2] TIFIA interest expense is capitalized during construction and added to TIFIA loan balance

Funding Sources.

A total of \$288.8 million has already been received or committed to the OAC Project. Seven funding sources are not finalized at this time: 1) \$43.9 million in Passenger Facility Charges

(PFCs) from the Port of Oakland that is pending "Use" approval from the Federal Aviation Administration (FAA); 2) \$10 million in new State funding received via a Corridor Mobility Improvement Account (CMIA/Regional Transportation Improvement Program (RTIP) funding exchange; 3) an additional \$10.0 million in new State funding received via a State Highway Operation and Protection Program (SHOPP)/RTIP funding exchange; 4) \$10.0 million in BART SFO Reserve Account funds; 5) \$5.4 million in State High Speed Passenger Train Bond funds; 6) \$24.99 million in a Small Starts grant from the Federal Transit Administration (FTA); and 7) a pending TIFIA loan of \$105.7 million. The seven funding sources that have not been finalized at this time are described in detail below.

Port of Oakland (\$29.5 million)

The Port of Oakland has committed \$45.4 million of funding to the OAC Project. The Port has received the FAA's approval to impose PFCs for the OAC Project, and the Port's submittal of an application to the FAA to use \$43.9 million (Application for Use) of said PFCs for the OAC Project is pending the BART Board's approval of a full funding plan. The Port's commitment is subject to the FAA's approval of the Application for Use. While it is not known whether the FAA will approve the Application for Use, staff expects that it will do so. The airlines serving the Oakland Airport unanimously support use of PFCs for the OAC Project, and the FAA previously approved the Port's 2007 applications to impose and use PFCs for the OAC Project. Moreover, out of 1,813 applications received by FAA since inception of the PFC Program in 1992, 1,808 applications have been approved or partially approved as of July 1, 2010.

Of the \$45.4 million Port contribution amount, \$1.5 million has previously been received by BART. A further \$27.8 million of the Port's contribution is expected to be received during the construction phase of the OAC Project, with the remaining \$16.1 million expected to be received during the first two years of the operations phase.

Should the Port of Oakland not receive FAA approval for the "Use" of PFCs, the Port funding contribution would be eliminated. The District assumes the risk of up to \$43.9 million in PFC fees should the FAA decline to approve. The District also assumes the risk that the rate of receipt of PFC funds and the disbursement schedule agreed upon by the Port and the District would not keep pace with BART's anticipated construction costs. In any of these scenarios, BART would have to borrow additional funds from TIFIA or other sources to fill the funding gap, potentially reducing the District's financial flexibility on its outstanding capital program.

New State funding via a CMIA/RTIP Funding Exchange (\$10.0 million)

BART and its OAC funding partners, the Metropolitan Transportation Commission (MTC), the California Transportation Commission (CTC), the California Department of Transportation (Caltrans), the Alameda County Transportation Authority (ACTIA), and the Alameda County Congestion Management Authority (ACCMA) have proposed a funding exchange whereby the OAC Project would receive \$10 million in new funding via a CMIA/RTIP funding exchange. On July 1, 2010 the CTC in a unanimous vote programmed \$10.0 million in CMIA funds for the OAC Project. At the CTC meeting, a member of the public expressed concern that the action had not been adequately noticed. While the CTC staff believes the matter to have been properly noticed, they are recommending the exercise of an abundance of caution and have calendared this

item for another vote at the August CTC meeting.

New State funding via a SHOPP/RTIP Funding Exchange (\$10.0 million)

BART and our funding partners listed above have proposed a second funding exchange where OAC would receive an additional \$10 million in new funding via a SHOPP/RTIP exchange. On July 1, 2010 the CTC in a unanimous vote programmed \$10.0 million in SHOPP funds for the OAC Project. This matter has also been calendared for another vote at the August CTC meeting.

BART SFO Reserve Account (\$10.0 million)

In February 2007, BART, MTC and San Mateo County Transit District (SamTrans) signed a Three Party Financial Agreement regarding the SFO Extension whereby MTC would contribute an up-front amount of \$24.0 million and SamTrans \$32.0 million to fund any operating deficit on the SFO Extension and to contribute to SamTrans' funding commitment of \$145.0 million to the Warm Springs Extension. The funds received are being placed in an SFO/WSX Reserve account. The cash contribution of both MTC and SamTrans has been received more slowly than was originally anticipated. Therefore, as a prudent measure, in FY07 and FY08, BART redirected capital allocations from its operating General Fund to establish a \$24.0 million SFO Reserve account in advance of receipt of MTC's contribution. In lieu of the up-front cash contribution, MTC is fulfilling its contribution commitment by reimbursing BART for some capital project expenditures from two RM2 grants totaling \$24.0 million allocated by MTC to the District in FY08. As capital grant reimbursements on the \$24.0 million are received from MTC, an equivalent amount must be transferred from the BART-funded SFO Reserve account to the SFO/WSX Reserve account. If there are insufficient funds in the SFO Reserve account to cover the required transfer of funds to the SFO/WSX Reserve account, the District's general fund will need to cover the funding gap until such time as the SFO surpluses are adequate to backfill the \$10 million.

The SFO Extension has experienced substantial ridership increases since FY07, and the annual operating deficit has markedly decreased. With small, regular fare increases, the SFO Extension net operating result is projected to turn positive in FY18.

In FY07, \$5.5 million of the \$24.0 million SFO Reserve account was drawn down as an operating subsidy for the SFO Extension, leaving a balance of \$18.5 million in the SFO Reserve account. There is a pending commitment of \$2.4 million short term loan for the West Dublin Station Project, scheduled to be repayed this fiscal year. The proposed action will commit \$10.0 million of District funds currently in the SFO Reserve account to the Oakland Airport Connector Project, leaving a balance of \$6.1 million in the SFO Reserve account.

High-Speed Passenger Train Bond (\$5.4 million)

On March 11, 2010, the BART Board of Directors adopted Resolution No. 5128, approving the List of Projects for the BART High-Speed Passenger Train Bond Program for consideration for programming by the CTC. This action would revise the List of Projects reducing the Traction Power/Train Control Reliability Improvements line item amount from \$17.4 million to \$12.0 million and add a new line item of \$5.4 million for the OAC Project. Of the remaining \$12.0 million in the Traction Power/Train Control Reliability Improvements line item, the CTC on

May 19, 2010 programmed \$3.0 million for Third Rail Cover Board Enhancements. This action would leave a balance of \$9.0 million in the Traction Power/Train Control Reliability Improvements line item eligible for programming by the CTC in FY 11/12 and beyond.

FTA Small Starts Grant (\$24.99 million)

An FTA grant is pending to fund \$24.99 million of construction costs. On December 4, 2009, the FTA approved the OAC Project to enter the preliminary engineering (PE) and final design (FD) phases of the FTA Small Starts program. Also in December 2009, certain Title VI issues were identified in the course of an FTA audit. BART submitted a corrective action plan to the FTA to address all the issues identified, and in April 2010, the FTA approved the action plan. It is anticipated that BART will have completed all items within the action plan by July 2011 and, at that time, that BART will be allowed to draw down the FTA grant funds committed to the Project. Other grant funding is sufficient to meet the Project's funding needs prior to FTA funding.

TIFIA Loan (\$105.7 million including accrued interest during construction)

The Transportation Infrastructure Finance and Innovation (TIFIA) program application process changed in FY2010, and BART resubmitted a letter of interest for TIFIA credit assistance on March 1, 2010. BART requested a loan for up to \$139 million from the U.S. Department of Transportation (USDOT) to complete the funding package for the OAC Project, shortly after \$70 million of ARRA funding was pulled from the Project. At the same time, efforts continued to reduce the Project's funding gap. Since then, the TIFIA financing requirement has been reduced to \$105.7 million. This amount assumes that BART pays for the TIFIA loan subsidy which has been estimated to be 5% of the loan proceeds; if BART does not have to pay for the subsidy, the Project cost and loan requirements would decrease by approximately \$5.3 million.

The loan proceeds are not needed for several years, but staff is pursuing receipt of an invitation to apply for a TIFIA loan and then negotiating loan terms in the second half of 2010. The currently requested loan amount assumes a TIFIA interest rate of 4.13% which was the TIFIA rate as of June 22, 2010; the TIFIA loan will be subject to interest rate risk until financing is closed, but will then be fixed for the duration of the loan.

Principal and interest payments are expected to be deferred during the Project's operating ramp-up period; in the 11th year of operations (when full interest and principal payments are expected, estimated to be in 2024), annual debt service will start at approximately \$6.1 million (\$4.6 million interest and \$1.5 million principal) and increase by 1.5% per year until the loan is fully repaid in the 35th year of operations. Fare revenues, projected to be \$13.9 million in that same year, are expected to be sufficient to cover operating costs of \$10.5 million, but will not be sufficient to cover debt service until approximately the 21st year of operations (estimated to be at 2034). Therefore, from the start of operations until approximately 2034, the General Fund will subsidize the project's negative cash flows. The maximum subsidy to the Project in any one year is expected to be \$2.7 million, and the maximum cumulative subsidy over the life of the Project is expected to be \$23.5 million. As a point of comparison, the funding plan approved by the Board in May 2009 included a TIFIA loan where the maximum annual subsidy was expected to be \$3.7 million, and the maximum cumulative subsidy was expected to be \$21.6 million.

In the event the TIFIA loan application is unsuccessful, BART will pursue the most advantageous financing alternative amongst other debt sources, such as Build America Bonds (BABs) or sales tax revenue bonds. Given BART's strong AA credit rating and 2.89 projected debt coverage ratio well above the required 1.5 minimum debt coverage ratio, BART does not anticipate any problems issuing additional debt. However, issuing alternative financing is estimated to increase financing costs during construction by approximately \$10 million. Indebtedness will be increased to cover the additional cost, and debt service during operations will increase, requiring additional support from the General Fund. Under such a scenario, the maximum subsidy to the Project in any one year is expected to increase to \$3.7 million, and maximum cumulative subsidy over the life of the Project is expected to increase to \$46.3 million.

The District will fulfill its obligations to repay the TIFIA loan by pledging revenues from the OAC Project, backed by sales tax revenues. In the case of an alternative financing, sales tax revenues would become the primary revenue stream supporting the debt. To the extent that the Project's budgeted \$33 million contingency is not fully needed, the savings will reduce the TIFIA draw downs.

Contract Award

Funding to (a) award Contract No. 01ZK-110 to Flatiron/Parsons, JV, for the Design-Build of the Oakland International Airport Connector, for the not to exceed price of \$361,022,150; (b) funding for two separate Stipend Agreements with Walsh Construction Company and Shimmick/Skanska/Herzog, JV in the amount of \$500,000 each (\$1,000,000 total); and (c) funding to pay the inflation adjustment in the not to exceed amount of \$2,888,177, will come from the committed sources of \$288.8 million described above, plus either \$105.7 million in TIFIA loan or other debt draws, or \$76.1 million of the \$89.7 million in pending grants. Because the actions identified in this EDD will commit an amount greater than the funding committed to date, the Controller/Treasurer cannot certify that these funds are currently available. However, the expenditures for these actions are scheduled over the next forty-two months, and sufficient funds to meet these expenditures from the committed and/or pending sources identified above are expected to be in place to meet cash flow needs. If any of the expected funding sources do not materialize, the District assumes the risk of providing the additional funds needed to cover any cash shortfall. Funding for the Price Adjustment of \$2,888,177 will come from the committed sources described above; however, this cost will only be realized if Contract No. 01ZK-110 is awarded.

Funding to (a) award Contract No. 01ZK-120 to Doppelmayr Cable Car, Inc. 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, and (b) repay the TIFIA loan, will come from the amount of the Port Contribution expected to be received during the operations phase (\$16.1 million) and annual revenues generated by operation of the OAC Project. While the projections for ridership revenue have been modeled at a conservative level, there is the potential that revenue may fall short of projections necessitating supplementation from the General Fund, which would be reimbursed in future years from any surplus OAC revenues. The conservative

modeling approach reduces a ridership forecast prepared and updated by Wilbur Smith Associates in May 2009. As stated previously, BART currently estimates that using the conservative ridership forecast, the maximum cumulative subsidy over 35 years from the General Fund should not exceed \$23.5 million (\$46.3 million if TIFIA financing is not obtained).

The award of Contract Nos. 01ZK-110 and 01ZK-120 will be issued only after the Controller-Treasurer has certified that sufficient Small Starts funds have been obligated by the Federal Transit Administration and \$20M in State funds have been committed for the Project and are available for Contract No. 01ZK-110.

ALTERNATIVE

There is no meaningful alternative procurement methodology available; therefore the only alternative action would be to not proceed with the Project at this time. This would entail the loss of \$288.8 million in funding currently available and committed to the Project and the loss of favorable committed bid pricing. Not proceeding with the Project would also eliminate any subsidies from and associated risks to the General Fund, which are estimated to range from \$24 million to \$115 million, pending commitment of the uncommitted funds identified above.

RECOMMENDATION

Adoption of the following motions:

MOTIONS:

1. The Board hereby re-affirms that, upon certification by the Controller/Treasurer that, 1) \$20M in State funds have been committed, and; 2) sufficient Small Starts funds have been obligated by the Federal Transit Administration for the Project and are available for Contract No. 01ZK-110, the General Manager is authorized to award Contract No. 01ZK-110 to Flatiron/Parsons, JV, for the Design-Build of the Oakland International Airport Connector, for the not to exceed price of \$361,022,150.
2. Concurrent with the award of Contract No. 01ZK-110, the General Manager is authorized to award Contract No. 01ZK-120 to Doppelmayr Cable Car, Inc., 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.
3. The Board hereby authorizes the reallocation of \$10,000,000 from the BART SFO Reserve account to the Oakland International Airport Connector Project.
4. The Board hereby authorizes the revision of the List of Projects for the BART High-Speed Passenger Train Bond Program, thereby reducing the Traction Power/Train Control Reliability Improvements line item amount from \$17.4 million to \$12.0 million and adding a new line item of \$5.4 million for the OAC Project.



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL <i>Malcolm Delancey</i>		GENERAL MANAGER ACTION REQ'D: Place on the July 22, 2010 Board of Directors Agenda		
DATE: c 7/16/10		BOARD INITIATED ITEM: No		
Originator/Prepared by: Robert Umbrell Dept: Operating Budgets & Analysis	General Counsel	Controller/Treasurer	District Secretary	BARC
Signature/Date: <i>Robert Umbrell 7/16/10</i>	<i>[Signature] 7-16-10</i>	<i>[Signature] 7-16-10</i>	<i>[Signature]</i>	<i>[Signature] 7-16-10</i>
TITLE:				

Fiscal Year 2011 Operating Budget: Customer Appreciation Follow-Up Items

NARRATIVE:

PURPOSE

To approve the implementation of a package of customer appreciation initiatives to be part of the Fiscal Year 2011 (FY11) operating budget.

DISCUSSION

On June 10, 2010 the Board of Directors adopted the FY11 operating budget, including a number of customer appreciation initiatives. The Board requested that all of these initiatives be approved in a separate vote prior to implementation, as some of the items required further details to be finalized.

The budget included a proposal to use \$4.5M of available funding for the following customer appreciation programs: \$0.2M to defer the planned ADA Paratransit fare increase for four months, \$0.1M for a frontline personnel customer service improvement program, \$0.075M for real-time monitors, \$0.062M to convert four part-time utility workers to full-time, \$0.75M for seat cushion replacement and interior maintenance for 50 cars, \$1.0M to increase operating reserves, \$0.15M to be allocated to capital to fund the Emergency Operations Center, and \$2.3M to be put into reserves for a potential temporary passenger fare reduction until Title VI public outreach and analysis was complete.

The ADA Paratransit fare increase deferral will be voted on in a separate Board action, and requires a two-thirds majority vote. The proposed temporary fare reduction requires a two-thirds majority vote and the adoption of the attached resolution. The remaining items require a simple majority and a separate motion is included.

Additional information is provided below regarding proposed programs for frontline personnel customer service improvement program, real-time monitors and funding for the Emergency Operations Center. Descriptions of these programs are as follows:

Front Line Personnel Customer Service Improvement Program

This program is intended to tap the insights of train operators and station agents, employees whose jobs involve frequent customer interfaces, on how to improve their work and the customer experience. It is anticipated that this program, budgeted for \$100,000 in one-time funds, will run for a period of several months, beginning with the solicitation of ideas, and concluding with an

awards ceremony for the winning participants. While details of the program remain fluid, the outline is to be as follows: ideas and suggestions would be solicited, and acknowledged; selection of the several ideas that best fit specific program criteria would be made by a committee including Board members, managers and union officials and members; the winning ideas would be adopted for implementation using the funds identified in the FY11 budget for this purpose, and the employees who submitted them would receive an award, as well as other recognition.

Real-Time Information Displays Program

A plan and criteria will be developed to expand the existing real-time information displays program beyond the current establishments, which are now located close to the 12th Street/City Center and Rockridge stations. The goal of the program is to provide an additional 20 to 30 locations around the District with equipment to display real-time train departure information. Criteria will be developed to identify which establishments are best suited to meet BART's mission to provide useful real-time information about train departures to current and potential BART customers. The program will use this one-time funding source to assist the establishments in setting up the real-time display equipment and provide the establishments with instructions on how to obtain the necessary data to continuously display the real-time information. Finally, the District will explore the possibility of leveraging this one-time funding source to create an on-going revenue stream so that the program may be self-sustaining or expand to additional locations. The program is budgeted for \$75,000 in one-time funds for FY11.

Emergency Management and Police Facilities

A new Emergency Operations Center (EOC) is presently under construction. The proposed funding in the amount of \$150,000 would allow for an expansion in the size of the under-construction EOC. The funding would also be utilized to provide alternative office space for the BART Police personnel who would be displaced by the EOC expansion; namely members of the Internal Affairs Unit and the Special Enforcement Team. Any remaining funds would be used to address other identified BART Police facility needs as well as to acquire (or begin the acquisition process) for a joint BART Police/Operations Mobile Command Post.

Temporary 3% Passenger Fare Reduction

This proposal would reduce rail fares across the board by 3% for four months, reducing fare revenue by an estimated \$2.3M. The temporary fare reduction would become effective on October 1, 2010 in order to allow time to program BART's automated fare equipment and the Clipper system, and last through January 31, 2011. The District conducted Title VI outreach to gather community input regarding this proposal, which consisted of 18 community meetings held throughout the District's service region, where comments were solicited and participants completed a survey. The District also posted the survey on the BART website, and there were a large number of unsolicited emails sent directly to the Board. The report summarizing the survey results and public comment is attached.

FISCAL IMPACT

The adopted FY11 Annual Budget is balanced, and includes the customer initiatives discussed above. The deferral of the proposed ADA Paratransit fare increase for four months will be voted

on by the Board in a separate action. The \$2.3M estimated cost of the temporary fare reduction was put into reserves; if the Board approves the fare reduction, the budget will be revised at a later date, bringing the funds to cover the fare reduction out of reserves and lowering the passenger revenue budget.

ALTERNATIVES

The Board of Directors may approve a different package of customer appreciation options than those outlined in this document; if that is the case then the budget will be revised accordingly at a later date.

RECOMMENDATION

In order to proceed with the customer appreciation initiatives identified by the Board on June 10, 2010, except for the Paratransit fare increase deferral, the Board would adopt the following motions; the first to adopt the resolution providing for a temporary fare reduction (two-thirds vote required) and the second to approve the customer initiative items as described (simple majority vote required).

MOTION

First motion:

Adopt the attached resolution, "In the Matter of Adopting a Temporary Fare Reduction of 3% for Four Months." Two-thirds vote required.

Second motion:

Approve implementation of customer appreciation items included in the FY11 Budget Adopted by the Board on June 10, 2010, for: a frontline personnel customer improvement program, real-time monitors, conversion of four part-time utility workers to full-time, seat cushion replacement and interior maintenance for 50 cars, allocation to capital to fund the Emergency Operations Center, and an increase to operating reserves of \$1.0 million.

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

In the Matter of Adopting a
Temporary Fare Decrease of 3% for
Four Months

Resolution No. _____

WHEREAS, pursuant to Public Utilities Code Section 29038, it is the duty and responsibility of the Board of Directors of the San Francisco Bay Area Rapid Transit District ("District") to fix the rates and charges for rapid transit service to be furnished by the District; and

WHEREAS, Fiscal Year 2011 (FY11) projections indicate that approximately \$4.5 million in funding is available due to the District's unexpected receipt of State Transit Assistance funding for FY11; and

WHEREAS, the Board of Directors has expressed a desire to show appreciation for District customers by implementing a temporary reduction in all rail passenger fares and charges for Fiscal Year 2011 consisting of three percent (3%) for four months; and

WHEREAS, the District staff has studied the Board proposal concerning a temporary reduction in fares and estimates the cost of the temporary fare reduction at \$2.3 million; and

WHEREAS, the District staff has analyzed the proposed temporary decrease in fares, and has determined that there are no adverse impacts to low-income or minority populations; and

WHEREAS, the District staff has conducted a variety of public participation processes including a series of 18 community meetings to solicit feedback from the public regarding temporary fare reduction options; and

WHEREAS, the fare decrease is to be implemented on October 1, 2010; and

NOW, THEREFORE, the Board hereby makes the following findings:

- (1) The temporary reduction to the rates and charges for service set forth in Exhibits A and B does not constitute a "project" under the California Environmental Quality Act (CEQA) and is therefore exempt from CEQA pursuant to the "common sense" exemption for actions that do not have the potential for causing a significant effect on the environment (CEQA Guidelines section 15061(b)(3)). Notices of Exemption shall be filed in the four affected counties.
- (2) After careful study of staff recommendations, public comment, and due deliberations, the Board determines, as required by Public Utilities Code Section 29038, that the rates and charges for service, as modified by this Resolution, are reasonable; and that insofar as practicable, these rates and charges are calculated to result in revenue which will:
 - (a) Pay for the operating expenses of the District;

- (b) Provide repairs, maintenance and depreciation of works owned and operated by the District;
 - (c) Provide for purchases, lease, or acquisition of rolling stock, including provisions for the interest, sinking funds, reserve funds, or other funds required for the payment of any obligations incurred by the District for the acquisition of rolling stock; and
 - (d) After making any current allocation of funds for the foregoing purposes and by the terms of any indebtedness incurred under Public Utilities Code Articles 6 (commencing with Section 29240) and 7, (commencing with Section 29250) of Chapter 8, provide funds for any purpose the Board deems necessary and desirable to carry out the purposes of Part 2 of Division 10 of the Public Utilities Code.
- (3) The modification to the rates and charges set forth in Exhibits A and B are for the purposes of demonstrating appreciation to District customers by temporarily reducing all fares and charges by 3% for four months beginning October 1, 2010 through January 31, 2011.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the San Francisco Bay Area Rapid Transit District that:

- (1) The temporary modifications to the rates and charges for BART service set forth in Exhibit A are hereby adopted.

#

EXHIBIT A—MODIFIED FARE RATES AND CHARGES: Temporarily decrease all Customer Fares by 3% for four months from October 1, 2010 through January 30, 2011

For the period October 1, 2010 through January 31, 2011, the new fare rates and charges for BART rail service shall be as follows:

3% FARE REDUCTION

- Effective October 1, 2010 through January 31, 2011, a decrease of all fares and charges by 3%. Actual percentage decreases to fare rates and charges may vary slightly due to rounding to the nearest nickel.
- Effective February 1, 2011, fares will return to the prior level.

The basic fare schedules for current fares and for the temporary fare decrease are attached.



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Marcia delBorda</i>		GENERAL MANAGER ACTION REQ'D: Forward to Board for Approval		
DATE: c 7/16/10		BOARD INITIATED ITEM: No		
Originator/Prepared by: Laura Timotny Dept: Customer Access	General Counsel <i>[Signature]</i> 7-16-10 []	Controller/Treasurer <i>[Signature]</i> 7/16/10 []	District Secretary []	BARC <i>[Signature]</i> 7-16-10 []
Signature/Date: <i>[Signature]</i> 7/16/2010				
TITLE:				

Proposed Fare Increase and Fare Modifications for East Bay Paratransit

NARRATIVE:

Purpose

Adopt the proposed paratransit fare structure, which includes fare increases and modifications, for the East Bay Paratransit Consortium (EBPC) following appropriate review and analysis, as well as consideration of public comment received; and defer implementation of new fares until January 1, 2011.

Background

The EBPC is a partnership of BART and AC Transit to provide paratransit service, as required under the Americans with Disabilities Act (ADA), in the overlapping service areas of the two agencies. The EBPC operates East Bay Paratransit which provides paratransit services to riders. BART and AC Transit share the costs of East Bay Paratransit with BART contributing 31% of the funding and AC Transit contributing 69% of the funding.

The federal regulations that implement the ADA specify the fares that transit agencies may charge for ADA paratransit service. Acknowledging the significant cost of providing paratransit, these ADA regulations allow transit agencies to charge up to twice the undiscounted adult fare of a comparable journey by fixed route, including all transfers and all segments. In addition, if transit agencies provide additional paratransit services not required by the ADA, they may impose additional charges for such services. These paratransit fare policies stand in contrast to a federal law requirement to provide people with disabilities and seniors a discount of 50% or more when they use the fixed route service.

The paratransit fare increase and fare modifications currently proposed were developed by staff from AC Transit and BART as part of an overall series of strategies to increase revenue and reduce costs on East Bay Paratransit. Starting last summer, staff worked with EBPC's rider advisory committee, the Service Review Advisory Committee (SRAC) to refine the proposals and gain rider acceptance of them. Increased fares were discussed with the SRAC at several meetings, resulting in a staff report with several options for their review. The attached proposal was reviewed by the SRAC on December 1, 2009 and selected based on its simplicity and the equity of charging more for very long trips. The SRAC endorsed the concept of a fare proposal, acknowledging the length of time since the last paratransit fare increase and the immediate fiscal

needs of the two agencies.

The agreement of both the AC Transit Board and the BART Board is necessary to adopt the fare increase and fare modifications. The AC Transit Board approved this proposal at their meeting on July 14, 2010. This item requires a 2/3 vote of the BART Directors. If approved, the new fares would take effect January 1, 2011.

Discussion

The fares for East Bay Paratransit were last increased in 2005. The EBPC has historically had a fare structure which "blended" the fixed route fares of both agencies. This proposal was developed by analyzing the fares that would be charged for a paratransit trip, were it taken by BART and/or AC Transit fixed route transit. A journey includes the complete trip from the rider's origin (e.g. home), to their final destination (e.g. work, school, etc.). Over 650 randomly selected actual paratransit trips were analyzed using the 511.org system to calculate fixed route fares. This analysis allowed for the determination of appropriate fare break points to combine AC Transit's flat rate fare with BART's distance based fares. In developing the proposal, it was also necessary that the fare structure be easy to understand and easy for the disabled and senior riders of East Bay Paratransit to use. As in the past, East Bay Paratransit will accept either coupons or exact change cash payments for service. Following is a comparison of the current and proposed fares. All fares are for one-way trips.

Current East Bay Paratransit Fare--For All Parts of Service Area		Proposed Paratransit Fare--For Service in the East Bay	
<i>Fare</i>	<i>Distance</i>	<i>Fare</i>	<i>Distance</i>
\$3.00	0 to 8 miles	\$4.00	0 to 12 miles
\$4.00	>8 to 12		
\$5.00	>12 to 20	\$6.00	>12 to 20
\$6.00	>20	\$7.00	>20
Travel to and from San Francisco charged at \$6.00 for trips as far as Civic Center and \$7.00 for trips beyond Civic Center. San Francisco travel is approximately 2% of trips.		Travel to and from San Francisco to be based on an origin/destination zone system described in the table below.	

Proposed Paratransit Fare for Service to/from the East Bay and San Francisco in the BART Corridor			
If the trip starts or ends in:	And the pick-up or drop-off is		
	Up to Civic Center BART	Beyond Civic Center BART in San Francisco	Any Daly City Address
Zone 1: Alameda, Berkeley, Emeryville, Piedmont, Oakland	\$6.00	\$7.00	\$8.00
Zone 2: Albany, Castro Valley, El Cerrito, El Sobrante, Kensington, Orinda BART, San Leandro, San Lorenzo, Richmond, San Pablo	\$7.00	\$8.00	\$9.00
Zone 3: Fremont, Hayward, Hercules, Milpitas, Newark, Pleasanton BART, Pinole, Union City	\$8.00	\$9.00	\$10.00

In addition to the fares above, under a reimbursement agreement with SF Muni Paratransit, East Bay Paratransit carries riders to and from the East Bay to any destination in San Francisco, beyond the BART/AC Transit service territory. For the Muni share of the trip, the Muni Paratransit fare of \$2 is collected from the passenger and retained by East Bay Paratransit. In addition, East Bay Paratransit bills Muni for the remainder of the true cost of the trip.

In addition to the proposed fare increase, two policy changes are also proposed, both of which modify the fare structure of East Bay Paratransit. Both policy changes were endorsed by the SRAC. First, staff recommends developing and implementing a system which would allow for charging a fare to those riders who fail to take their ride through their own actions within their control or who fail to cancel the ride in a timely fashion, provided that such a fare is confirmed to be permissible by the FTA. The "no-show fare" would not be charged if a rider missed a trip through circumstances beyond their control, such as sudden illness. Although the amount of revenue from this source will be very small, it will be part of a program to discourage no-shows which are a significant waste of resources.

Second, staff recommends charging premium fares for group trips (e.g. field trips) of which East Bay Paratransit provides a limited number. Group trips are not required by the ADA. However, East Bay Paratransit provides a few each month as a courtesy to group living facilities. Group trips are more complex to arrange than our required individual trips. Staff recommends charging

a premium of two times the regular paratransit fare for individuals on a group trip. This will encourage agencies and facilities to look at the many other resources for group trips such as city paratransit programs or charter

Information about the proposed fare increase and modifications was extensively circulated for public comment. A variety of formats for receipt of public comment were made available to accommodate users with all types of disabilities. Two public hearings were held. The first public hearing on April 14, 2010 was before the AC Transit Board of Directors. The second public hearing on April 22, 2010 was at the regular meeting of the BART Board of Directors. A summary of all the public comments received was sent separately to the members of the Board. In addition to the public hearings, the Board considered this fare increase at the meeting of May 13, 2010. At that time the Board delayed taking an action on this fare proposal pending completion of a Title VI analysis on the fare change. That analysis has been completed and it has been determined that there is no disproportionately high and adverse effect on minority and/or low income riders from the imposition of these fare increases.

Fiscal Impact

Total costs for the EBPC are estimated to be \$32.7 million in Fiscal Year 2011. Fare revenue for Fiscal Year 2011 is projected to be a total of \$2.1 million without this fare increase. Staff estimates that the new fares would generate approximately an additional \$580,000 in fare revenue per fiscal year. The low farebox recovery ratio of about 6.7% is typical of paratransit nationally. BART's share of both the cost and fare revenue for EBPC is 31%. In addition to its share of paratransit fare revenue, BART funds EBPC from general funds, an allocation from Alameda County Measure B sales tax for paratransit in Alameda County, and a very small allocation from Contra Costa County's Measure J.

As part of the FY11 budget discussion, the Board of Directors requested staff to explore opportunities to defer implementation of this fare increase. AC Transit will be compensated for their lost revenue by receiving all paratransit fares until an amount equal to their share from September 1, 2010 to December 31, 2010, has been collected, which is estimated to be approximately \$132,000. Thereafter, BART and AC Transit will resume sharing the fare revenue according to the normal formula of 31%/69% respectively.

Alternatives

Do not adopt the proposed fare structure. Board could instruct staff to work with AC Transit staff to develop an alternative structure.

Recommendation

After review of the attached material and other relevant information including the public hearing held on April 22, 2010, adopt the following motion.

East Bay Paratransit Proposed Fare Structure

Motions

Adopt the attached resolution "In the Matter of Adopting Paratransit Fare Increases and Modifications". (2/3 VOTE REQUIRED)

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

In the Matter of Adopting Paratransit
Fare Increases and Modifications

Resolution No. _____

WHEREAS, the San Francisco Bay Area Rapid Transit District ("District") and the Alameda-Contra Costa Transit District (AC Transit) comprise the membership of the East Bay Paratransit Consortium (Consortium) which provides complementary paratransit services to qualifying disabled passengers of these agencies, as required by the Americans with Disabilities Act (the ADA);

WHEREAS, under the regulations implementing the ADA, the Consortium may charge a maximum of twice the undiscounted adult fare of a comparable journey by fixed route, including all transfers and all segments;

WHEREAS, the current Consortium fares have been in effect since January 2005;

WHEREAS, the proposed paratransit fare structure, which includes paratransit fare increases and modifications, is set forth in the attached Exhibit A;

WHEREAS, the proposed paratransit fare structure was reviewed by the Consortium's rider advisory committee, the Service Review Advisory Committee, on December 1, 2009 and the Service Review Committee on January 5, 2010, with both committees endorsing the proposed proposed fare structure;

WHEREAS, a public hearing was held on April 14, 2010 in front of the AC Transit Board of Directors and a public hearing was held on April 22, 2010 at the regular meeting of the Board of Directors;

WHEREAS, the Consortium commissioned a Title VI evaluation of the proposed paratransit fare structure and the final report, dated June 2010, determined that the proposed fare adjustments do not have a disproportionately high and adverse effect on minority and/or low income riders;

WHEREAS, the Board of Directors has expressed a desire to show appreciation for District customers by deferring implementation of the fare increases until January 1, 2011;

WHEREAS, Public Resources Code Section 21080(b)(8) and 14 California Code of Regulations Section 15273 exempts from the provisions of the California Environmental Quality Act (CEQA) the establishment, modification, structuring, restructuring or approval of rates, tolls, fares or other charges which are for the purpose of meeting operating expenses, purchasing or leasing supplies, equipment, or materials, meeting financial reserve needs and requirements, or for obtaining funds for capital projects necessary to maintain service within existing service areas, provided written findings are made; and

WHEREAS the impact of rising operating expenses, such as fuel and employee/provider compensation, the impact of state budget reductions, the loss of revenues from the economic downturn in the economy since the fall of 2008, and the fact that paratransit fares have not been adjusted since 2005 necessitate the consideration of the proposed fare structure;

WHEREAS, at its meeting of July 14, 2010, AC Transit's Board of Directors approved the proposed paratransit fare structure;

NOW, THEREFORE, the Board hereby makes the following findings:

- (1) After careful study of staff recommendations, public comment, and due deliberations, the Board determines that the proposed paratransit fare structure set forth in Exhibit A to this Resolution, which includes paratransit fare increases and modifications, is exempt from the California Environmental Quality Act pursuant to Section 21080(b)(8) of CEQA and Section 15273 of the CEQA Guidelines. Section 15273 of the CEQA Guidelines provide as follows:
 - (a) CEQA does not apply to the establishment, modification, structuring, restructuring, or approval of rates, tolls, fares or other charges by public agencies which the public agency finds are for the purpose of:
 - (1) Meeting the operating expenses, including employee wage rates and fringe benefits,
 - (2) Purchasing or leasing supplies, equipment or materials,
 - (3) Meeting financial reserve needs and requirements,
 - (4) Obtaining funds for capital projects, necessary to maintain service within existing service areas, or
 - (5) Obtaining funds necessary to maintain such intra-city transfers as are authorized by city charter.
- (2) The Board finds that proposed paratransit fare structure set forth in Exhibit A to this Resolution, which includes paratransit fare increases and modifications, is exempt from CEQA for the following reasons:
 - (a) Total costs for the East Bay Paratransit Consortium are estimated to be \$32.7 million in Fiscal Year 2011 and fare revenue for Fiscal Year 2011 is projected to only be a total of \$2.1 million without this fare increase. It is estimated that the new fares would generate an additional \$580,000 in fare revenue per fiscal year.
 - (b) The East Bay Paratransit has a low farebox recovery of about 6.7%, which is typical of paratransit nationally.
 - (c) The Consortium fares have been in effect since January 2005.

- (d) The District has ongoing operating expenses, which include, but are not limited to, costs for providing and maintaining the District's portion of the paratransit service, etc.
- (e) The District needs to continue to purchase parts, supplies and equipment for the direct and indirect functioning of the organization.
- (f) The District is responsible for thirty-one percent (31%) of the East Bay Paratransit's expenses, most of which are contracted to outside providers and schedulers.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the San Francisco Bay Area Rapid Transit District that:

- (1) The proposed paratransit fare structure set forth in Exhibit A to this Resolution, which includes paratransit fare increases and modifications, is hereby adopted.
- (2) The Board approves the implementation of the fares on January 1, 2011 and the allocation of BART's share of fare revenue to AC Transit until AC Transit has achieved income from paratransit fares equal to an amount which would have been achieved if the fare increase had been implemented on August 1, 2010.
- (3) The proposed paratransit fare increases and modifications set forth in Exhibit A to this Resolution are statutorily exempt from the California Environmental Quality Act (CEQA) pursuant to Public Resources Code § 21080(b)(8) and CEQA Guidelines, 14 Cal. Code Regs. § 15273 since the fares are for the purpose of meeting operating expenses and purchasing or leasing supplies, equipment or materials and Staff is authorized to file such documents that may be required by CEQA based on the actions authorized by the Board.

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Attachment A
July 22, 2010

East Bay Paratransit Fares, in the East Bay

Distance	Fare
From 0 up to and including 12 miles	\$4
Greater than 12 miles, up to and including 20 miles	\$6
More than 20 miles	\$7

East Bay Paratransit Fares into and out of San Francisco

If the trip starts or ends in:	And the pick up or drop off is:		
	Up to Civic Center BART	Beyond Civic Center BART in SF	Any Daly City Address
The fare is:			
Zone 1: Alameda, Berkeley, Emeryville, Piedmont, Oakland	\$6	\$7	\$8
Zone 2: Albany, Castro Valley, El Cerrito, El Sobrante, Kensington, Orinda BART, San Leandro, San Lorenzo, Richmond, San Pablo	\$7	\$8	\$9
Zone 3: Fremont, Hayward, Hercules, Milpitas, Newark, Pleasanton BART, Pinole, Union City	\$8	\$9	\$10

Fare Modification

1. For rider-fault no-shows, the rider who makes a reservation and fails to take the ride or cancel within one hour of the pick-up time, the normal fare will be charged provided that such a fare is confirmed to be permissible by the FTA. Riders who no-show for circumstances beyond their control, such as sudden illness, will not be charged a fare.
2. For group trips organized under the East Bay Paratransit group trip program, a non-ADA program, all participants traveling on the East Bay Paratransit vehicle will pay a fare of two times the regular paratransit fare for that trip.



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Marcia de la Cruz</i>		GENERAL MANAGER ACTION REQ'D:		
DATE: c 7/14/10		BOARD INITIATED ITEM: No		
Originator/Prepared by: Pepe Vallenias Dept: <i>Pepe Vallenias</i>	General Counsel <i>Andy K...</i> 7/14/10	Controller/Treasurer <i>[Signature]</i> 7/14/10	District Secretary <i>[Signature]</i> 7/14/10	BART <i>[Signature]</i> 7/14/10
Signature/Date: 7/14/2010				
TITLE:				

**Cost Reimbursement Agreement
between the
City and County of San Francisco and the
San Francisco Bay Area Rapid Transit District**

NARRATIVE:

PURPOSE:

To authorize the General Manager to execute the "Cost Reimbursement Agreement between the City and County of San Francisco and the San Francisco Bay Area Rapid Transit District" (Agreement).

DISCUSSION:

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

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

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

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

BART's involvement in support of CSP engineering and design efforts officially started on December 1, 2008. Lacking a Compensation Agreement since that time, BART had been working with no compensation. This Agreement rectifies that situation by including compensation for BART's prior costs to date. The term of this Agreement is from December 1, 2008 through November 30, 2018.

Highlights of compensation to be received by BART as per the Agreement include:

Amount of Agreement not to exceed	\$5,000,000
Billing Rate for staff	1.995 x base hourly rate
Mark –up for direct costs or outside expenses	none
Estimated budget for support during design	\$1,690,000
BART support during construction	TBD
Prior Project Costs (to July 12, 2010)	\$107,782.98

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

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

The Agreement establishes a dispute resolution process in the event BART does not approve a permit for work within the BART Facilities, or if BART believes that the City's plans or proposed work in the vicinity of the BART Facilities may adversely affect the BART Facilities. In such cases, the parties shall meet to resolve the dispute and, if the dispute cannot be resolved, will submit the dispute to a mediator. The City agrees that, during mediation, SFMTA shall reasonably refrain from advancing the disputed item provided that such delay does not affect critical activities of the Project.

The indemnification terms are summarized as follows:

City Indemnification of BART: the City shall indemnify BART for claims arising out of the performance of work on the CSP. (This indemnity does not apply to losses caused by the sole or gross negligence or willful misconduct or unlawful acts of BART). The City shall be responsible for tenant claims incurred by BART, and shall hold BART harmless for loss of rental or lease revenue to the extent such losses are a result of physical damage or obstruction to the BART Facilities caused by the CSP.

BART Indemnification of City: BART shall indemnify the City from losses arising out of BART's gross negligence, unlawful acts or willful misconduct in connection with its Project Activities (work pursuant to the Agreement) that occur on or in the vicinity of the BART Facilities. Further, BART shall hold the City harmless for losses to BART Facilities arising from the City's reliance on BART's construction standards. (This indemnity does not apply to losses caused by the sole or gross negligence or willful misconduct or unlawful acts of City).

The Agreement requires the City to require its prime construction contractors for the CSP to comply with specified minimum insurance requirements with respect to losses arising out of the Project, as follows:

-) Worker's Compensation coverage with limits not less than \$1,000,000 each accident, injury,

or illness.

-) Commercial General Liability insurance with limits not less than \$100,000,000 each occurrence.
-) Commercial Automobile Liability Insurance with limits not less than \$2,000,000 each occurrence.
-) Builder's Risk Insurance for 100 percent of the completed value of the Work.
-) Environmental Pollution Liability insurance with limits not less than \$10,000,000.
-) Railroad Protective Liability Insurance with limits not less than \$10,000,000.

In the alternative, the Agreement allows the City to provide Owner Controlled Insurance Coverage for all or a portion of the above-listed coverages.

Additionally, the City agrees to provide or require its prime consultant architects and engineers working on the CSP to provide Professional Liability Insurance with limits not less than \$20,000,000 each claim. The City further agrees to endeavor to obtain an excess liability policy to protect against its consultants' errors and omissions in excess of this coverage.

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

FISCAL IMPACT:

Per the Agreement, BART is to be reimbursed an amount not to exceed \$5,000,000 for all reasonable project costs including costs attributable to BART staff time, outside counsel, third-party consultants and direct expenses. The amount to be reimbursed includes BART's prior years' (through July 12, 2010) project expenditures amounting to \$107,782.

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

ALTERNATIVES:

The Board may reject the Agreement. Rejecting the Agreement will compromise the ability of BART staff to support the project and adequately ensure that BART's safety and operations are fully maintained. Renegotiation of the Agreement is not likely to result in any more advantages for BART.

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

RECOMMENDATION:

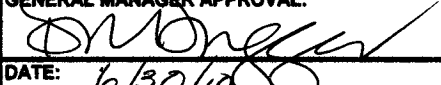
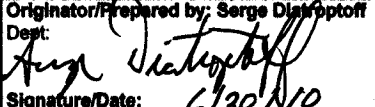
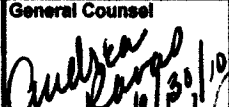
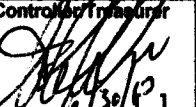
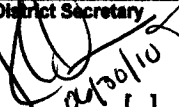
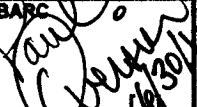
Adoption of the following motion:

MOTION:

The General Manager is authorized to execute the "Cost Reimbursement Agreement between the City and County of San Francisco and the Bay Area Rapid Transit District".



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: 		GENERAL MANAGER ACTION REQ'D: General Manager's signature		
DATE: 6/30/10		BOARD INITIATED ITEM: No		
Originator/Prepared by: Serge D'Amico Dept: 	General Counsel 	Controller/Treasurer 	District Secretary 	BART 
Signature/Date: 6/30/10		6/30/10		
Status: Approved		Date Created: 05/24/2010		

TITLE:

MEMORANDUM OF UNDERSTANDING REGARDING OPERATIONS AND MAINTENANCE OF CLIPPER FARE COLLECTION SYSTEM

NARRATIVE:

PURPOSE: To obtain Board authorization for the General Manager to execute the Memorandum of Understanding (MOU) Regarding Operations and Maintenance of Clipper Fare Collection System.

DISCUSSION: In September 2003, the Board authorized BART to proceed with the Phase II systemwide rollout of the regional TransLink fare collection system, and to execute the TransLink Interagency Participation Agreement (IPA). The Agreement was executed between MTC and BART, Alameda Contra Costa Transit District (AC Transit), Golden Gate Bridge Highway and Transportation District (GGT), the City and County of San Francisco, acting by and through its Municipal Transportation Agency (SFMTA), Santa Clara Valley Transportation Agency (VTA), and San Mateo County Transit District (SamTrans).

The IPA created a consortium governed by a TransLink Management Group (TMG) comprised of the general managers of the six above named operators (Charter Member Agencies), the Executive Director of MTC, and one General Member Agency representative for all other transit operators in the region who choose to join TransLink. The IPA defined responsibilities of members, decision-making procedures, voting rights, governance structure, and terms of participation. The IPA also included a cost allocation and revenue sharing method, designation of MTC as the Contracting Agency for provision of TransLink equipment and services, establishment of an Operating Group to oversee day-to-day operations of the consortium, and TransLink Operating Rules.

In 2009, with MTC's approval, the TransLink contract was assigned by Motorola/ERG to Cubic Transportation Systems, Inc. At that time, MTC asked the TMG to reconsider the consortium governance structure to address concerns about efficiency and effectiveness. The TMG researched options for reorganization and decided to proceed with a Memorandum of Understanding (MOU) to replace the existing IPA.

MTC and the TransLink Operators then negotiated a new MOU intended to serve as the successor agreement to the IPA. The MOU defines the basic agreements among MTC and the

Operators, carrying forward the primary elements of the IPA that include commitment to the regional program, financial responsibilities, operating rules and dispute resolution, while modifying the governance structure to allow MTC to reassume its original role as managing agency over the TransLink program. The MOU also reflects the transition of the name of the program from TransLink to Clipper.

The proposed MOU defines high level responsibilities of the Operators and MTC, cost and revenue allocation formulae carried forward from the IPA, a process for dispute resolution, modified operating rules based on the TransLink Operating Rules initially established in the IPA, amendment procedures, a process for new operator participation, and the MOU term. The MOU will be effective on the date when all parties have signed the MOU and will terminate at conclusion of the TransLink/Clipper contract (November 2, 2019), unless otherwise terminated by the parties. Attachment A, prepared by MTC staff, provides additional details on the MOU principles.

The Office of General Counsel has approved the MOU as to form.

FISCAL IMPACT: Approval of the proposed MOU does not alter the District's financial obligations that were established in the IPA; therefore, there will be no fiscal impact as a result of this action.

The MOU will not change the current cost allocation formula. In summary, Operating costs for the Clipper system are split between MTC and Operators by type, as defined in MOU Appendix B. The allocation of operating costs to each Operator is based on a combination of revenue collected and transaction quantities. One-third (1/3) of Clipper operating costs are allocated to Operators based on each Operator's share of total revenue collected by the Clipper Clearinghouse. Two-thirds (2/3) of Clipper operating costs are allocated to Operators based on each Operator's share of total fee payment transactions processed by the Clipper clearinghouse.

Applying the cost allocation formula above, BART's Clipper transaction fees for FY11 will ultimately be determined by the number and rate of customers who convert to Clipper. Conversion of customers to Clipper will be affected by timing considerations of High Value Discount (HVD), Red and Green ticket transitions, including any transition plan changes that may result from MTC's Clipper Title VI analysis. MTC expects to have draft results of their Title VI analysis by September 2010. Any Clipper Clearinghouse failures to remit disputed funds in a timely manner could also affect BART's cost.

MTC's Clipper incentive fund provides \$2.1 million for BART to offset Clipper transaction fees. Based upon current usage patterns and assumptions, it is estimated that BART's incentive fund will last through May 2011 and possibly as late as August 2011. However, depending on the outcome of the items above, it is possible that fees of about \$0.5 million could be incurred in the last few months of FY11. Beyond FY11, when all fare media transitions are complete as defined in the Fare Media Transition Plan, BART's Clipper annual operating costs are estimated at about \$5 million. Over time, we expect some operating cost savings associated with the reduction of magnetic ticket use, which have not been estimated to date.

The MOU contains provisions for allocation of revenues that accrue through the Clipper program. Fare revenues are to be distributed to each Operator based on usage. Any other revenues that might be generated during the life of the Clipper contract will be used first to offset MTC's bank fees, then to reduce the Operators' Clipper operating costs.

ALTERNATIVES: Do not approve the MOU, which would result in the District being left without the protections offered by the MOU in its implementation of the Clipper program.

RECOMMENDATION: Adoption of the following motion:

MOTION: The General Manager is authorized to execute the Memorandum of Understanding Regarding Operations and Maintenance of Clipper Fare Collection System.

**Attachment A
Principles of MOU**

The recommended MOU defines:

1. *High level responsibilities of MTC and the Operators.* Items of note include:

For MTC:

- confirm existing obligations under the ClipperSM Contract to collect and disperse revenues to the participating agencies, according to the stated cost and revenue sharing formula;
- acknowledge responsibility for management of bank accounts and fiduciary duty to the cardholders;
- notify Operators of changes to Operating Rules, participate in consultation process on Rules changes, and provide regular reports to the Operators;
- pay fixed operating costs, specified variable costs and other lump sum and capital costs, and operator incentive fees; and
- make project records available to the operators (exact terms not yet agreed-upon).

For the Operators:

- implement and operate ClipperSM ;
 - pay specified variable operating costs; and
 - accept ownership of equipment one year after acceptance.
2. *Cost and revenue allocation formula.* The formula first adopted in the IPA is carried with minor revisions. Operating costs allocated to MTC and the Operators are specified described, and any changes require an amendment to the MOU. Operators agree to periodic reviews of the cost allocation formula to support fairness among Operators and accommodate changes.
 3. *Process for dispute resolution.* The TransLink[®] IPA called for, but never defined such a process. The proposed process first calls for informal dispute resolution and then allows escalation to mediation or arbitration, binding or nonbinding, as agreed by the parties.
 4. *Process for Operator input on MTC-proposed changes to Operating Rules.* MTC will provide at least 90 day notice for any changes impacting Operators' Roles and Responsibilities, and consult further with Operators, if requested. Disagreement about changes impacting Operators are subject to the dispute resolution process in the MOU, if the consultation process fails to result in agreement.
 5. *Process for new operator participation.* To implement ClipperSM, an agency must sign a supplemental agreement with MTC, agreeing to the terms of the MOU. MTC will not sign a supplemental agreement until Cubic and the operator are ready to implement Clipper.
 6. *Term of the MOU.* The MOU is effective on the date when all parties have signed the MOU and will terminate at conclusion of the ClipperSM Contract (November 2 2019), unless otherwise terminated by the parties.



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Walter Delaune</i>		GENERAL MANAGER ACTION REQ'D: Approve and Forward to the Board		
DATE: c 7/14/10		BOARD INITIATED ITEM: No		
Originator/Prepared by: Jeffrey P Ordway Dept: Property Development <i>Jeffrey P Ordway</i>	General Counsel <i>Andrew Paine</i> 7/14/10	Controller/Treasurer <i>[Signature]</i>	District Secretary <i>[Signature]</i>	BARC <i>[Signature]</i>
Signature/Date: 7/9/10				

TITLE:

Environmental Certification of Fruitvale Transit Village Phase 2

NARRATIVE:

PURPOSE: To have the Board of Directors review and approve the Final Environmental Impact Report which consists of the Draft Environmental Impact Report, responses to comments on environmental issues and modifications to the Draft EIR, a Standard Conditions of Approval/Mitigation Monitoring and Reporting Program ("SCAMMRP"), the Findings and Statement of Overriding Considerations prepared by the City of Oakland in accordance with the California Environmental Quality Act ("CEQA") for the development of Phase 2 of the Fruitvale Transit Village.

DISCUSSION: On October 26, 2006, the BART Board of Directors authorized execution of an Option Agreement with the Spanish Speaking Unity Council of Alameda County, Inc. ("Unity Council") for the sale of approximately 3.4 acres of land at the Fruitvale BART Station.

The Option Agreement establishes conditions precedent to the sale of land, including an evidentiary and administrative record enabling the BART Board to make independent finding of CEQA compliance of its action with the Unity Council. On January 14, 2010 the City of Oakland released a Draft EIR for Phase 2 of the Fruitvale Transit Village Project that focused on potential impacts related to noise, air quality and transportation/traffic. In April 2010, the City published a Final EIR. On May 19, 2010, the Oakland Planning Commission certified that the Final EIR was completed in compliance with the California Environmental Quality Act, approved the Project, and adopted the Standard Conditions of Approval/Mitigation Monitoring and Reporting Program, the Findings and Statement of Overriding Considerations.

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

1. Impact TRANS-18 finds that the addition of Project traffic would cause an increase in the overall intersection average delay by more than two seconds during AM and PM peak hours at the San Leandro/High Street intersection, which would operate at Level of Service ("LOS") F under 2035 Baseline conditions. The addition of Project traffic also would cause an increase in the average delay during PM peak hours by more than four seconds for the critical northbound (High Street) through movement.
2. Impacts TRANS-21 and TRAN-22 find that construction of the proposed Project would

contribute to 2015 and 2035 impacts on traffic conditions on the regional and local roadways. Mitigation of the Project's significant impact on eastbound San Leandro Street west of 35th Avenue or west of High Street is not feasible. An additional lane on eastbound San Leandro Street would require removal of the parking lane or widening of San Leandro Street. However, such measures are considered infeasible due to physical constraints caused by on-street parking demand and existing right-of-way.

The City of Oakland has provided evidence to BART staff adequate for use by BART as the Responsible Agency that the City has complied with CEQA with respect to the Fruitvale Transit Village Phase 2 Project and that all periods to challenge or appeal any action taken by the City of Oakland with respect to CEQA have passed without challenge or appeal. BART staff has reviewed the Final EIR and concurs with the Planning Commission's findings.

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

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

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

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

MOTION: After review and consideration of the Final EIR, Standard Conditions of Approval/Mitigation Monitoring and Reporting Program, the Findings and Statement of Overriding Considerations adopted by the City of Oakland on May 19, 2010, the Board: 1) Adopts the City of Oakland's Findings, Statement of Overriding Considerations and Standard Conditions of Approval/Mitigation Monitoring and Reporting Program for the Project, and 2) Finds that for the sale of the BART property at the Fruitvale BART Station, all significant environmental effects either have been mitigated to insignificance or found significant and unavoidable, and no further environmental review is required.