

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

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

AGENDAS FOR BOARD AND COMMITTEE MEETINGS

July 23, 2009

9:00 a.m.

A regular meeting of the Board of Directors and regular meetings of the Standing Committees will be held on Thursday, July 23, 2009, commencing at 9:00 a.m. These meetings 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	The Portman Ritz-Carlton 1376 Nanjing Xi Road Shanghai, 200040, People's Republic of China
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Members of the public may address the Board of Directors and Standing Committees regarding any matter on these agendas. Please complete a "Request to Address the Board" form (available at the entrance to the Board Room) and hand it to the Secretary before the item is considered by the Board. If you wish to discuss a matter that is not on the agenda during a regular meeting, you may do so under General Discussion and Public Comment.

Rules governing the participation of the public at meetings of the Board of Directors and Standing Committees are available for review on the District's website (<http://www.bart.gov/about/bod>), in the BART Board Room, and upon request, in person or via mail, at the Office of the District Secretary, 23rd Floor, 300 Lakeside Drive, Oakland, California.

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

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

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

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

Kenneth A. Duron
District Secretary

**Regular Meeting of the
BOARD OF DIRECTORS**

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

1. CALL TO ORDER

- A. Roll Call.
- B. Pledge of Allegiance.
- C. Introduction of Special Guests.
Recognition of Sgt. Gerald Dominguez. (Director Murray's request.)

2. CONSENT CALENDAR

- A. Approval of Minutes of the Meetings of June 11, 2009 (Regular) and June 17, 2009 (Special).* Board requested to authorize.
- B. Award of Invitation for Bid No. 8849, Cushion and Cover Assemblies.* Board requested to authorize.
- C. Award of Invitation for Bid No. 8850, Liner Door Pockets.* Board requested to authorize.
- D. Award of Invitation for Bid No. 8851, Windscreen and Panel Assembly.* Board requested to authorize.
- E. Award of Invitation for Bid No. 8853, Fiber Optic Cable, Splice Case and Splice Tray.* Board requested to authorize.
- F. Appointment of BART Accessibility Task Force (BATF) Members.* Board requested to authorize.

RECESS TO STANDING COMMITTEES

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

ALL COMMITTEES ARE ADVISORY ONLY

ADMINISTRATION COMMITTEE

Immediately following the Board Meeting recess

Director Murray, Chairperson

- A-1. Agreement with Data Ticket Inc. for Parking Citation Processing Services (Agreement No. 6M5018).* Board requested to authorize.
- A-2. Condemnation of Real Property for the Warm Springs Extension Project.*
 - a. BART Parcel No. J-1064-1A and J-1064-2A
 - b. BART Parcel No. J-2037-1A and J-2037-3A
 - c. BART Parcel No. J-2039-1A and J-2039-3A
 - d. BART Parcel No. J-2501-1A and J-2501-3ABoard requested to authorize. (TWO-THIRDS VOTE REQUIRED.)

- A-3. General Discussion and Public Comment.

ENGINEERING AND OPERATIONS COMMITTEE

Immediately following the Administration Committee Meeting

Director Keller, Chairperson

- B-1. Award of Contract No. 6M3085, Dry Clean, Repair and Supply Replacement Transit Vehicle Passenger Seat Cushion and Cover Assemblies.* Board requested to authorize.

B-2. General Discussion and Public Comment.

PLANNING, PUBLIC AFFAIRS, ACCESS, AND LEGISLATION COMMITTEE

Immediately following the Engineering and Operations Committee Meeting

Director Sweet, Chairperson

C-1. Authorization to Execute Three-Party Agreement between the District, Western Contra Costa Transit Authority, and the City of Hercules for Operation and Maintenance of the Hercules Transit Center.* Board requested to authorize.

C-2. Exploration of State Legislation for Potential Amendments to the San Francisco Bay Area Rapid Transit District Act (Public Utilities Code Section 28500 et seq.).* Board requested to authorize.

C-3. General Discussion and Public Comment.

RECONVENE BOARD MEETING

3. CONSENT CALENDAR ADDENDA

Board requested to authorize as recommended from committee meetings above.

4. REPORTS OF STANDING COMMITTEES

A. ADMINISTRATION COMMITTEE

A-1. Agreement with Data Ticket Inc. for Parking Citation Processing Services (Agreement No. 6M5018).* Board requested to authorize.

A-2. Condemnation of Real Property for the Warm Springs Extension Project.*

a. BART Parcel No. J-1064-1A and J-1064-2A

b. BART Parcel No. J-2037-1A and J-2037-3A

c. BART Parcel No. J-2039-1A and J-2039-3A

d. BART Parcel No. J-2501-1A and J-2501-3A

Board requested to authorize. (TWO-THIRDS VOTE REQUIRED.)

B. ENGINEERING AND OPERATIONS COMMITTEE

B-1. Award of Contract No. 6M3085, Dry Clean, Repair and Supply Replacement Transit Vehicle Passenger Seat Cushion and Cover Assemblies.* Board requested to authorize.

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

C-1. Authorization to Execute Three-Party Agreement between the District, Western Contra Costa Transit Authority, and the City of Hercules for Operation and Maintenance of the Hercules Transit Center.* Board requested to authorize.

- C-2. Exploration of State Legislation for Potential Amendments to the San Francisco Bay Area Rapid Transit District Act (Public Utilities Code Section 28500 et seq.).* Board requested to authorize.

5. GENERAL MANAGER'S REPORT

NO REPORT.

6. BOARD MATTERS

- A. Report of the BART Police Department Review Committee. For information.
- B. Roll Call for Introductions.

7. GENERAL DISCUSSION AND PUBLIC COMMENT

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

A. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION

Name of Case: Johnson et al. vs. BART
Government Code Section: Subdivision (a) of Government Code Section 54956.9

B. CONFERENCE WITH LABOR NEGOTIATORS:

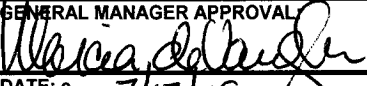




Designated representatives: Dorothy W. Dugger, General Manager; Teresa E. Murphy, Assistant General Manager – Administration; M. Carol Stevens, Burke, Williams & Sorensen, LLP

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

Government Code Section: 54957.6



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL 		GENERAL MANAGER ACTION REQ'D: Approve and Forward to the Board of Directors	
DATE: c 7/17/09		BOARD INITIATED ITEM: No	
Originator/Prepared by: John McCormick Dept: RS+S  Signature/Date: 7/15/2009	General Counsel  []	Controller/Treasurer  []	District Secretary []
BARC  7/17/09 []			

Invitation for Bid No. 8849: Procurement of Cushion and Cover Assemblies

NARRATIVE:

Purpose: To obtain Board authorization to award Invitation For Bid (IFB) No. 8849 to Sedia, Inc., in an amount not to exceed \$1,825,856, including all applicable sales tax, for the purchase of 150 carsets of cushion and cover assemblies for transit vehicles.

Discussion: As part of the District's efforts to improve the interior appearance of transit vehicles, which included the Federal Stimulus project for Floor Panel Replacement (Contract 42AH-205A), the District intends to purchase 150 carsets of seat cushion and cover assemblies.

Two years ago, BART began the process of replacing worn-out and outdated revenue vehicle carpeting with hard surface flooring. At the same time, seat cushions and fabric were replaced with new in-kind materials. To date, 280 cars have been completed. This project funds the completion of an additional 150 cars.

This is a twenty-four (24) month estimated quantity contract. Pursuant to the terms of the District's standard estimated quantity contract, during the term of the contract, the District is required to purchase from the supplier a minimum amount of 50 percent of the contract bid price. Upon Board approval of this contract, the General Manager will also have the authority to purchase up to 150 percent of the contract bid price, subject to the availability of funding.

A notice requesting bids was published on May 22, 2009 and bid requests were mailed to five (5) prospective bidders. Bids were opened on June 16, 2009 and five (5) bids were received.

<u>Bidder</u>	<u>Unit Price</u>	<u>Total Including 9.75% Sales Tax</u>
Sedia, Inc. Glendale, WI	150 carsets each \$11,091	\$1,825,856
National Transit Interiors, Inc. San Carlos, CA	150 carsets each \$11,664	\$1,920,186
Kustom Seating, Inc.	150 carsets each	\$2,104,105

Invitation for Bid No. 8849: Procurement of Cushion and Cover Assemblies

Bellwood, IL	\$12,781.20	
Fellfab Corp.	150 carsets each	\$2,263,320
College Park, GA	\$15,088.80	
Only Upholstery	50 carsets each	(*)
San Jose, CA	\$20,000	

(*) Bid from "Only Upholstery" did not bid the requested quantity, and was thus deemed "non-responsive."

Independent cost estimate by BART staff: \$2,000,000.

Staff has determined that the bidder Sedia, Inc submitted a responsive bid, and that the bid pricing is fair and reasonable based on similar purchases.

Fiscal Impact:

Funding of \$1,825,856 for contract 42AH-210 is included in the total project budget for the FMS#42AH – Car Interior Mods. The Office of the Controller/Treasurer certifies that funds are currently available to meet this obligation.

CA-05-0224 FY08

53G

\$1,825,856

As of 05/24/09, \$3,700,000 is available for commitment from this fund source for this project and BART to date has committed \$20,025. There is \$0 pending commitment in BART's financial management system. This action will commit an additional \$1,825,856, leaving an uncommitted balance of \$1,854,119 in this fund.

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

Alternatives: An alternative to awarding the bid would be to reject all bids and readvertise the Contract, which is not likely to lead to a better price or more competition.

Recommendation: On the basis of analysis by Staff, and certification by the Controller/Treasurer that the funds are available for this purpose, it is recommended that the Board adopt the following motion.

Motion: The Board authorizes the General Manager to award IFB No. 8849, an estimated quantity contract, Procurement of Cushion and Cover Assemblies, to Sedia, Inc. for the bid price of \$1,825,856.00, including all applicable sales tax, pursuant to notification to be issued by the General Manager, subject to compliance with the District's Protest Procedures and FTA's requirements related to Protest Procedure.



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Urbica Delgado</i>		GENERAL MANAGER ACTION REQ'D: Approve and Forward to the Board of Directors		
DATE: c 7-17-09		BOARD INITIATED ITEM: No		
Originator/Prepared by: John McCormick Dept: RS&S <i>John McCormick</i> Signature/Date: 7/15/2009	General Counsel <i>Andrew Pava</i> Signature/Date: 7/15/09	Controller/Treasurer <i>[Signature]</i> Signature/Date: 7/16/09	District Secretary []	BARC <i>Paul Green</i> Signature/Date: 7/17/09
TITLE:				

Invitation for Bid No. 8850: Procurement of Liner Door Pockets

NARRATIVE:

PURPOSE:

To obtain Board authorization for the General Manager to award Invitation for Bid (IFB) No. 8850 to Peterson Products, Belmont, CA in an amount not to exceed \$180,837.27, including all applicable sales tax, for the purchase of Liner Door Pockets.

DISCUSSION:

As part of the District's efforts to improve the interior capacity of revenue vehicles, this project will modify revenue vehicle interiors by adding more open space to better accommodate peak period ridership, bicycles, luggage, and strollers. The existing BART car configuration does not have a space large enough to easily accommodate a standard bicycle. The lack of a designated area for bicycles and other large items on the cars creates capacity issues, and does not allow for efficient circulation, thereby negatively impacting station dwell times.

In 2007, BART began the process of increasing the capacity of C2 cars through a Interior Reconfiguration Program. This vehicle capacity change opened space next to doors for bikes, luggage, strollers and additional standees. The project included the removal of seats and windscreens to create these open spaces. Today's request expands this reconfiguration effort to an additional 205 revenue vehicles. The interiors of the District's revenue vehicles are lined with specially formed panels on the side walls and ceilings. As part of the capacity reconfiguration project, the District intends to install liner panels in place of the removed longitudinal seats near each doorway, which will cover the side door pockets.

This is a twenty-four (24) month estimated quantity contract. Pursuant to the terms of the District's standard estimated quantity contract, during the term of the contract, the District is required to purchase from the supplier a minimum amount of 50 percent of the contract bid price. Upon Board approval of this contract, the General Manager will also have the authority to purchase up to 150 percent of the contract bid price, subject to the availability of funding.

A notice requesting bids was published on May 22, 2009 and bid requests were mailed to nineteen (19) prospective bidders. Bids were opened on June 16, 2009 and five (5) bids were received.

Invitation for Bid No. 8850: Procurement of Liner Door Pockets

<u>Bidder</u>	<u>Total Including 9.75% Sales Tax</u>
Peterson Products Belmont, CA	\$180,837.27
Hadlock Plastics, LLC Geneva, OH	\$226,450.97
Microphor Willits, CA	\$387,891.40
Professional Plastics San Jose, CA	\$408,019.77
Performance Composites, Inc. Compton, CA	\$453,001.97

Independent cost estimate by BART staff: \$380,880.00.

Staff has determined that the bidder Peterson Products submitted a responsive bid, and that the bid pricing is fair and reasonable based on similar purchases.

Fiscal Impact:

Funding of \$180,838 for contract 43KD-224 was secured through an American Recovery and Reinvestment Act of 2009 (ARRA) grant and is included in the total project budget for the FMS#43KD – Car Interior Capacity. The Office of the Controller/Treasurer certifies that funds are currently available to meet this obligation.

CA-96-X001 (ARRA) Stimulus Fed.
\$180,838

54K

As of 05/24/09, \$1,050,000 is available for commitment from this fund source for this project and BART to date has committed \$0. There is \$397,489 pending commitment in BART's financial management system. This action will commit an additional \$180,838, leaving an uncommitted balance of \$471,673 in this fund.

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

Alternatives: To reject all bids and readvertise the contract. This is not likely to lead to more



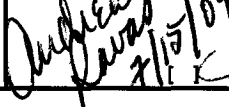

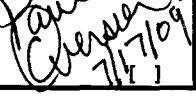
competition or a lower price. Additionally, this contract is funded through ARRA stimulus funding, which is granted under specific time constraints. Delays associated with readvertising the contract could jeopardize funding.

Recommendation: On the basis of analysis by Staff, and certification by the Controller/Treasurer that the funds are available for this purpose, it is recommended that the Board adopt the following motion.

Motion: The Board authorizes the General Manager to award IFB No. 8850, an estimated quantity contract for Liner Door Pockets to Peterson Products for the bid price of \$180,837.27, including all applicable sales tax, pursuant to notification to be issued by the General Manager, subject to compliance with the District's Protest Procedures and FTA requirements related to protests.



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: 		GENERAL MANAGER ACTION REQ'D: Approve and Forward to the Board of Directors		
DATE: c 7/17/09		BOARD INITIATED ITEM: No		
Originator/Prepared by: John McCormick Dept: RS+S  Signature/Date: 7/15/2009	General Counsel  7/15/09	Controller/Treasurer  7/16/09	District Secretary []	BARC  7/17/09

Invitation for Bid No. 8851: Procurement of Windscreen & Panel Assemblies

NARRATIVE:

PURPOSE:

To authorize the General Manager to award Invitation for Bid (IFB) No. 8851 to Professional Plastics, San Jose, CA in an amount not to exceed \$144,488.07.

DISCUSSION:

The existing BART car configuration does not have a space large enough to easily accommodate a standard bicycle. The lack of open space and designated area for bicycles and other large items on the cars creates capacity issues, and does not allow for efficient circulation, thereby negatively impacting station dwell times. As part of the District's efforts to improve the interior capacity of revenue vehicles, BART began the process of increasing the capacity of C2 cars through a Car Reconfiguration Program in 2007. This vehicle capacity change opened space next to doors for bikes, luggage, strollers and additional standees. The project included the removal of seats and windscreens to create an open space at each end of the car.

The work of this Contract expands this reconfiguration effort to an additional 205 revenue vehicles. This Contract provides reconfigured windscreen and panel assemblies near the doorways to match the new configuration.

This is a twenty-four (24) month estimated quantity contract. Pursuant to the terms of the District's standard estimated quantity contract, during the term of the Contract, the District is required to purchase from the supplier a minimum amount of fifty (50) percent of the Contract Bid Price. Upon Board approval of this Contract, the General Manager will also have the authority to purchase up to 150 percent of the Contract Bid Price, subject to the availability of funding.

A Notice Requesting Bids was published on May 22, 2009. Bid Requests were mailed to nineteen (19) prospective Bidders. Bids were opened on June 16, 2009 and the following twelve (12) Bids were received:

Invitation for Bid No. 8851: Procurement of Windscreen & Panel Assemblies

<u>Bidder</u>	<u>Total Including 9.75% Sales Tax</u>
Professional Plastics San Jose, CA	\$144,488.07
Inland Metal Hayward, CA	\$158,119.02
United Mechanical Inc. Hayward, CA	\$160,236.36
Mission Tool & Mfg. Co, Inc. Hayward, CA	\$195,376.95
John Marron & Associates Danville, CA	\$195,376.95
Microphor Willits, CA	\$198,257.62
Architectural Metal Sales Emeryville, CA	\$208,099.17
Martinek Mfg. Fremont, CA	\$246,447.58
Diamond Tool & Die, Inc. Oakland, CA	\$310,467.60
Moss Precisions Hayward, CA	\$337,138.83
Hub Associates, Inc. Oakland, CA	\$436,190.40
B.C.H. Manufacturing Oakland, CA	\$566,593.16

Independent cost estimate by BART staff: \$476,100.00.

Staff has determined that the bidder Professional Plastics submitted a responsive bid, and that the bid pricing is fair and reasonable based on similar purchases.

Fiscal Impact:

Funding of \$144,489 for contract 43KD-226 was secured through an American Recovery and Reinvestment Act of 2009 (ARRA) grant and is included in the total project budget for the FMS#43KD – Car Interior Capacity. The Office of the Controller/Treasurer certifies that funds are currently available to meet this obligation.

CA-96-X001 (ARRA) Stimulus Fed.
\$144,489

54K

As of 05/24/09, \$1,050,000 is available for commitment from this fund source for this project and BART to date has committed \$0. There is \$433,838 pending commitment in BART's financial management system. This action will commit an additional \$144,489, leaving an uncommitted balance of \$471,673 in this fund.

There is no fiscal impact on available unprogrammed District Reserves.

Alternatives: The alternative is to reject all Bids and readvertise the contract. This alternative is problematic, however, as this project utilizes ARRA stimulus funds, which are granted under specific time constraints. Delays associated with readvertising and rebidding the contract could jeopardize that funding. Moreover, readvertising this Contract is not likely to lead to a better price or more competition.

Recommendation: Adoption of the following motion.

Motion: The General Manager is authorized to award IFB No. 8851, an estimated quantity contract for Windscreen and Panel Assemblies to Professional Plastics for the Bid price of \$144,488.07, including all applicable sales tax, 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: <i>Malcolm Delander</i>		GENERAL MANAGER ACTION REQ'D: Approve and forward to the Board of directors		
DATE: c 7/15/09		BOARD INITIATED: <input checked="" type="checkbox"/> No		
Originator/Prepared by: Katy Tseng-Wong Dept: Transit System Development <i>Katy Tseng-Wong</i> Signature/Date: 7/14/09	General Counsel <i>Andres Garcia</i> 7/14/09	Controller/Treasurer <i>[Signature]</i> 7/14/09	District Secretary []	BARC <i>Paul Greiner</i> 7/14/09

TITLE:

Award of Invitation for Bid No. 8853 – Procurement of Fiber Optic Cables, Splice Case and Splice Tray

NARRATIVE:

PURPOSE:

To obtain Board authorization to award Invitation For Bid (IFB) No. 8853 to Phase 3 Communications Inc. in the amount of \$500,420.00 (includes all taxes) for the purchase of approximately 29 miles of 288-SM fiber optic cable and splices.

DISCUSSION:

The Warm Springs Extension (WSX) Project requires fiber optic communication connectivity from the Fremont Station to the Operation Control Center (OCC) at Lake Merritt. There is insufficient capacity in the existing A-line fiber backbone to support the WSX Extension. Due to the limited communication infrastructure space within BART's subways and right-of-way, any future fiber needs must consider a shared use approach. To provide the required fiber optic connectivity between Fremont and OCC, the WSX Project will furnish the fiber optic cables and associated materials, and the Telecommunications Revenue Program will be responsible for the cable installation and will determine at a later date who will install the cable. BART will own and maintain the cable under its Telecommunication Revenue Program. This new fiber optic backbone will be a 288-single mode fiber cable that has enough capacity for BART's operational requirements, the WSX Project, the future SVRT Project and the Wi-Fi Rail requirements. The Wi-Fi Rail project is managed by BART's Telecommunications Revenue Program Division.

A notice requesting bids was published on June 5, 2009 and bid requests were mailed to thirteen (13) prospective bidders. Bids were opened on June 30, 2009 and eight (8) bids were received. Realm Communications Group submitted three (3) bids, identified below by the suffixes "a", "b", and "c".

Bidder	Total Including 9.75% Sales Tax
1. Realm Communications Group-a	\$ 469,522.35
2. City Electric Supply	\$ 492,465.28
3. Phase 3 Communications Inc.*	\$ 500,420.00
4. Realm Communications Group-b	\$ 536,210.36
5. Procom Supply	\$ 538,480.03
6. Anixter Inc.	\$ 539,728.94
7. Wesco Distribution	\$ 550,340.50
8. Realm Communications Group-c	\$ 590,928.72
Independent Cost Estimate by BART Staff	\$596,651.48
*Lowest Responsive Bidder	

Staff has determined that the apparent low bidder, Realm Communications Group-a, submitted a non-responsive bid due to non-compliance with the technical specification. The second apparent low bid from City Electric Supply is also non-responsive because the bidder bid only one of the three Items rather than all three as required by General Provisions Article 8.2.

Staff has determined that the bidder Phase 3 Communications Inc. submitted a responsive bid, and that the bid pricing is fair and reasonable.

FISCAL IMPACT:

The \$500,420 required for this Contract is proposed to come from Project 02EE, Warm Springs Extension. The Office of Controller/Treasurer certifies that funds are currently available to meet this obligation. Funds for the purchase will come from the following fund source:

Warm Springs Extension RM2/ACTIA Fund: 63K \$500,420

Currently, \$5,610,000 is available for commitment from this fund source for this project and \$0 has been committed by BART to date. There are no pending allocations in BART's financial management system. This action will allocate \$500,420, leaving an available unprogrammed balance of \$5,109,580 in this fund source.

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

ALTERNATIVE:

Reject all bids and re-advertise.

RECOMMENDATION:

On the basis of analysis by staff and certification by the Controller-Treasurer that the funds are available for this purpose, it is recommended that the Board adopt the following motion.

MOTION:

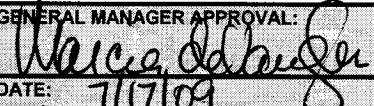
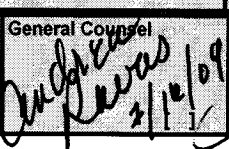
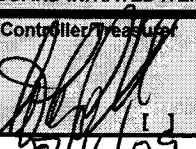
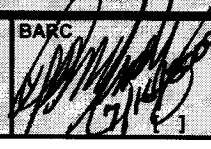
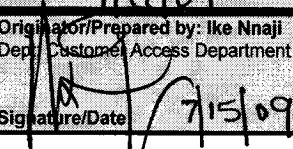
The General Manager is authorized to award Invitation for Bid No. 8853 for the Procurement of Fiber Optic Cable, Splice Case & Splice Tray to Phase 3 Communications Inc., for the amount of \$500,420.00 (including applicable sales tax) pursuant to notification to be issued by the General Manager, subject to compliance with the District's Protest Procedures.

FUNDING SUMMARY - WARM SPRINGS EXTENSION PROGRAM

PROJECT ELEMENT	Baseline Budget	Current Forecast 7/10/09	REMARKS
<u>ENVIRONMENTAL, ENGINEERING AND CONSTRUCTION MANAGEMENT</u>			
Design	\$59,312,460	\$63,958,436	
Construction Management	\$30,045,000	\$30,045,000	
Environmental Clearance	\$3,600,715	\$3,724,199	<i>Completed</i>
TOTAL E, E & CM	\$92,958,175	\$97,727,635	
<u>CONSTRUCTION</u>			
Fremont Subway	\$282,000,000	\$164,100,660	
Line, Track, Station & Systems	\$376,000,000	\$362,100,000	
Misc. Construction Contracts	\$0	\$12,000,000	
TOTAL CONSTRUCTION	\$658,000,000	\$538,200,660	
<u>BART SERVICES</u>			
District-Furnished Materials	\$0	\$8,000,000	
BART Force Account Work	\$0	\$7,000,000	
TOTAL BART SERVICES	\$0	\$15,000,000	
<u>PROGRAM COSTS</u>			
Program Costs (HazMat, ROW Acquisitions, Consulting, Staff, Insurance, Financing Costs and Environmental Mitigation)	\$136,265,506	\$151,035,569	
Contingency	\$2,776,319	\$88,036,136	
TOTAL PROGRAM COSTS	\$139,041,825	\$239,071,705	
TOTAL FUNDING	\$890,000,000	\$890,000,000	



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: 		GENERAL MANAGER ACTION REQ'D: Forward to 7/23/09 PAAL Committee		
DATE: 7/17/09		BOARD INITIATED ITEM: No		
Originator/Prepared by: Ike Nnaji Dept: Customer Access Department	General Counsel  7/16/09	Controller/Treasurer  7/16/09	District Secretary []	BARC  7/16/09
Signature/Date:  7/15/09				
Status: Approved		Date Created: 07/13/2009		

TITLE:

BART ACCESSIBILITY TASK FORCE MEMBERSHIP CONFIRMATION

NARRATIVE:

Purpose:

For the Board to confirm members to the BART Accessibility Task Force (BATF).

Discussion:

BATF has been in existence since 1975 to advise staff and the Board regarding accessibility issues at BART. In 1998 the Board voted to restructure the BATF to be an advisory body appointed by the Board. Staff and BATF subsequently developed by-laws, policies, and procedures.

The BATF by-laws adopted in 2001 provided for the BATF to be composed of up to eighteen members and five alternates who live or work in the BART service area selected by a committee of Board and BATF members.

In 2007 and 2008, members of the BATF proposed revising the by-laws to allow more flexibility in recruiting and appointing members. The changes were approved by the General Manager as provided for in the by-laws.

The BATF made the following approved revisions to the appointment process: 1) elimination of the need for alternates and also elimination of the selection committee. 2) interested individuals who have attended three out of four consecutive meetings may apply to the BATF for membership. 3) candidates for membership would be proposed by the seated BATF and confirmed by the Board.

Under the current process the BATF is composed of up to eighteen members who live in the BART District. Members must be selected from active BART users who are people with disabilities or seniors age 65 or older, with the exception that up to two non-disabled persons with technical training regarding the transportation needs of people with disabilities may be members.

Candidates for BATF Membership:

The by-laws require BATF members to be proposed by the seated BATF and confirmed by the Board. Eleven (11) people have applied and all are being proposed for membership. Seven (7) incumbents and four (4) new members are proposed by the BATF for confirmation. Their names are on Attachment 1. Prospective candidates, if confirmed by the Board, will be officially seated as members of BATF on July 23, 2009 to serve until December 31, 2011 or until the Board makes new appointments whichever occurs later.

Fiscal Impact:

No impact on the FY 10 Operating Budget. Costs for staffing and supporting BATF work are accommodated within the existing budget.

Alternatives:

Do not approve the proposed list of candidates. The BATF would continue to operate with the seven (7) incumbents.

Recommendation:

Adopt the following motion.

Motion:

That the list of proposed candidates, Attachment 1, is confirmed for membership on the BART Accessibility Task Force for a term effective July 23, 2009 to December 31, 2011 or until the Board makes new appointments whichever occurs later.

BATF Membership

Incumbent Members

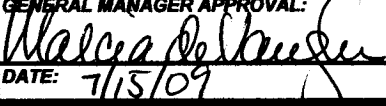
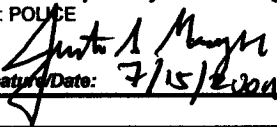
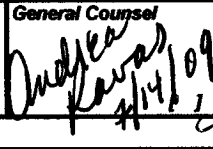

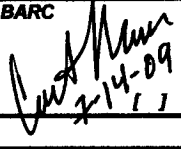
- Janet Abelson
- Emil Chizmar
- Peter Crockwell
- Mary Fowler
- Jim Gonsalves
- Don Queen
- Hale Zukas

New Members

- Linda Drattell
- Gerald Newell
- Herbert Hastings
- Randall Glock



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: 		GENERAL MANAGER ACTION REQ'D: Approve and Forward to the Board.		
DATE: 7/15/09		BOARD INITIATED ITEM: No		
Originator/Prepared by: Justin Morgan Dept: POLICE  Signature/Date: 7/15/2009	General Counsel  4/14/09	Controller/Treasurer  7/14/09	District Secretary []	BARC  7-14-09
Status: Approved		Date Created: 06/01/2009		

TITLE:

AWARD AGREEMENT NO. 6M5018 FOR PARKING CITATION PROCESSING SERVICES

NARRATIVE:

PURPOSE:

To authorize the General Manager to execute Agreement No. 6M5018 with Data Ticket, Inc. to provide parking citation processing services for citations issued by the Police Department. The agreement is for a period of five (5) years with an option to renew for one (1) additional year, for a total compensation not to exceed \$1,826,400.

DISCUSSION:

Agreement No. 6M5018 (the "Agreement") will be for the period October 1, 2009 through September 30, 2014, in an amount not to exceed \$1,520,750. In the event that an option to extend the Agreement is exercised, a one (1) year extension will be in an amount not to exceed \$305,650. The total six (6) year cost will result in an amount not to exceed \$1,826,400.

Since 1993, the District has contracted for parking citation processing services. The District currently does not have the capability in-house to provide these services. The Sponsoring Department, BART Police, has determined that these services are necessary in order to continue to provide parking citation processing services to the District, and has determined that these services are not duplicative of any duties performed by District employees. Currently, the District contracts with Data Ticket, Inc. for all District parking citation processing services, pursuant to an Agreement entered into on October 1, 2004. This Agreement terminates on September 30, 2009.

The BART Police Department currently issues only handwritten parking citations, but would like to start issuing parking citations electronically. Electronic citation processing is less expensive and more efficient than the manual processing of handwritten citations. The Request for Proposals (RFP) for this Agreement required proposers to submit pricing for the leasing of electronic ticket writers as well as the processing of up

to 140,000 citations per year: 70,000 handwritten citations and 70,000 electronic citations. This allows for an anticipated increase in issued citations as well as the flexibility to use both handwritten and electronic citation methods.

Advance Notice was mailed to nineteen (19) prospective proposers on March 16, 2009. RFP No. 6M5018 was advertised on March 24, 2009. A Pre-Proposal Meeting was held on April 16, 2009 and seven (7) firms attended. On May 5, 2009, two (2) proposals were received, from Data Ticket, Inc. and Professional Account Management, LLC. These two proposals were evaluated by a Source Selection Committee (the Committee), which was chaired by Contract Administration, and included representatives from the Police Department, Customer Access, and Office of Civil Rights. The Committee reviewed and evaluated the technical proposals for responsiveness to solicitation requirements and compliance with the eight minimum technical requirements set forth in the RFP. Both proposals met the minimum technical requirements and were determined to be responsive. Thereafter, their price proposals were opened and ranked as follows:

Proposer	Proposal Price Total for 5 Year Agreement Plus 1 Year Extension
1. Data Ticket, Inc, Newport Beach, California	\$1,826,400.00
2. Professional Account Management, LLC , Milwaukee, Wisconsin	\$2,907,190.00

Based on the above ranking, the Committee determined that the proposal submitted by Data Ticket, Inc. was the lowest-priced technically-acceptable proposal. Data Ticket, Inc.'s price is considered to be fair and reasonable based on adequate price competition. Data Ticket Inc. is a financially responsible parking citation processing services company.

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

FISCAL IMPACT:

The BART Police Department issues approximately 70,000 parking citations per year and anticipates an increase in handwritten and electronic citations in the coming years. Parking fees will be implemented at eight (8) additional stations in FY10. Staff estimates that the BART General Fund will realize an increase in annual revenue from parking fines and forfeitures resulting from the anticipated increase in issuance of citations. Currently, annual revenues from parking fines and forfeitures amount to approximately \$1,600,000. Enforcement of fee parking at the eight (8) new parking locations will yield approximately \$261,000 in additional annual revenues in FY10 and an additional \$522,000 annually thereafter to the District. The expenses and contractor's fee will be paid from shares of the parking citation revenues.

Not having this Agreement in place would result in BART foregoing current revenues estimated at \$1,600,000 per year, additional revenues of approximately \$261,000 for the additional parking locations in FY10 and \$522,000 annually thereafter.

The cost of this Agreement is not to exceed \$1,826,400 for a period of up to six (6) years. The estimated cost for services is as follows: FY2010 cost is \$303,150, FY2011 cost is \$303,650, FY2012 cost is \$304,150, FY2013 cost is \$304,650, FY2014 cost is \$305,150, and FY2015 cost is \$305,650.

ALTERNATIVES:

(1) To initiate another Request for Proposals. Staff believes this would be unlikely to result in more competitive pricing.

RECOMMENDATION:

Adopt the following motion.

MOTION:

The General Manager is authorized to execute Agreement No. 6M5018 with Data Ticket, Inc. to provide parking citation processing services for a period of five (5) years with an option to extend for one (1) additional year, under the same terms and conditions, for a total amount not to exceed \$1,826,400, pursuant to notification to be issued by the General Manager and subject to compliance with the District's Protest Procedures.



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Marcia DeLuca</i>		GENERAL MANAGER ACTION REQ'D: Approve and forward to the Board		
DATE: 7/17/09		BOARD INITIATED ITEM: No		
Originator/Prepared by: Joseph Basuino Dept: Real Estate ext. 6852 <i>Joe M B</i> Signature/Date: 7/13/09	General Counsel <i>Andrew Paves</i> 7/16/09	Controller/Treasurer <i>[Signature]</i> 7/16/09	District Secretary []	BARC <i>[Signature]</i> 7-15-09 []
Status: Routed		Date Created: 07/13/2009		

TITLE:

Condemnation of Real Property for WSX Project BART Parcel # J-1064-1A and J-1064-2A

NARRATIVE:

PURPOSE:

To adopt by a two-thirds vote of the entire Board the attached Resolution of Necessity to Condemn fee simple and permanent easement interest in real property located at 41655 Osgood Road, Fremont, California 94539-5045. This property is required for the Warm Springs Extension Project.

DISCUSSION:

The San Francisco Bay Area Rapid Transit District ("BART") proposes to purchase certain real property interests for the purpose of constructing a rail extension from the existing Fremont Station site south to Warm Springs ("WSX" or the "Project"). The Project requires the acquisition of approximately 9,041 square feet in fee and of approximately 3,666 square feet in permanent easement of a 2.03± acre property owned by Waldtraut Betchart, as Trustee of the Survivor's Trust of the Betchart 1992 Living Trust; Waldtraut Betchart, as Trustee of the Bypass Trust of the Betchart 1992 Living Trust; Rosemary Smith, Karola Betchart, Mary Platten; Ludwig K. Betchart and Herman Betchart ("Betchart Parties"). The property is located at 41655 Osgood Road, Fremont, California 94539-5045 (BART Parcel #J-1064-1A and J-1064-2A or the "Subject Parcel").

The Board certified a California Environmental Quality Act ("CEQA") Final Environmental Impact Report ("FEIR") on September 15, 1992, and a Supplemental Environmental Impact Report ("SEIR") on June 26, 2003, adopting the Project on those respective dates. Thereafter, the Federal Transit Administration ("FTA"), as lead federal agency, and BART released a Final Environmental Impact Statement ("FEIS") for the Warm Springs Extension Project in July 2006. The FTA issued a Record of Decision on October 24, 2006.

The proposed use of the Subject Parcel is for an access road to provide access to the BART right-of-way for operation and maintenance of the Project. Project features proposed on or near this parcel have been specifically planned and located in an attempt to meet Project needs in the most beneficial and least environmentally harmful way possible.

The uses to be located on the Subject Parcel, particularly the access requirement, are

necessary for the successful construction of the Project and the safe and efficient operation of the BART system. The Subject Parcel is uniquely suited to support these Project purposes.

The offer required by Section 7267.2 of the Government Code has been made to the owners of record of the Subject Parcel on February 3, 2009. The estimated market value of the Subject Parcel is \$257,000.00.

To date, negotiations appear to be at an impasse. The property owners have been notified of the Board hearing on July 23, 2009.

In order to proceed with the recommended condemnation, the Board must determine each of the following:

1. The public interest and necessity require the proposed project.
2. The proposed project is planned or located in a manner that will be most compatible with the greatest public good and the least private injury.
3. The proposed property acquisition is necessary for said project.
4. Whether the offer required by Government Code section 7267.2 has been made to all owners of record, or the offer has not been made because the owner cannot be located with reasonable diligence.

FISCAL IMPACT:

The \$257,000 required for the acquisition of Parcel # J-1064-1A and J-1064-2A is proposed to come from Project 02EC, ROW Acquisition. The Office of the Controller/Treasurer certifies that funds are currently available to meet this obligation. Funds for the purchase will come from the following source:

CTC Traffic Congestion Relief Program (TCRP) –WSX Fund: 55N \$257,000

As of month end 5/24/09, \$45,131,543 is available for commitment from this Fund Source for this Project, and \$13,416,462 has been committed by BART to date. There are \$1,170,150 pending commitments in BART's financial management system. This action will commit an additional \$257,000 leaving an uncommitted balance of \$30,287,931 in this fund source.

There is no fiscal impact on available unprogrammed District reserves.

ALTERNATIVES: Withdraw the condemnation action and proceed with negotiations without the backing of eminent domain. Withdrawal of the condemnation action may result in the property not being available for Project construction when required and exposing

BART to additional escalation on the capital cost of the WSX Project.

RECOMMENDATIONS: Adoption of the attached Resolution of Necessity to condemn the Real Property.

MOTION: Adopt the attached, “Resolution of Necessity to Condemn Real Property; Make Findings and Determination; Authorize Eminent Domain Proceedings and Application for Possession Prior to Judgment for BART Parcels J-1064-1A and J-1064-2A; Draw and Deposit Warrant.” (Two-thirds vote required.)

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

RESOLUTION OF NECESSITY TO CONDEMN
REAL PROPERTY; MAKE FINDINGS AND
DETERMINATIONS; AUTHORIZE EMINENT
DOMAIN PROCEEDINGS AND APPLICATION
FOR POSSESSION PRIOR TO JUDGMENT FOR
BART PARCELS J-1064-1A AND J-1064-2A;
DRAW AND DEPOSIT WARRANT /)

Resolution No.

Recitals

1. The San Francisco Bay Area Rapid Transit District ("BART or District") is undertaking the construction of the Warm Springs Extension Project (the "Project"). The BART Board of Directors ("Board") certified a California Environmental Quality Act ("CEQA") Final Environmental Impact Report ("FEIR") on September 15, 1992. The District prepared a Supplemental Environmental Impact Report ("SEIR") for the purpose of updating the 1992 FEIR due to changed circumstances and certain revisions to the Project since 1992. On June 26, 2003, following a public hearing, the Board certified the SEIR and adopted the Project.

2. The Federal Transit Administration ("FTA") and BART released a Final Environmental Impact Statement ("FEIS") for the Warm Springs Extension Project in July of 2006. The FTA issued a Record of Decision on October 24, 2006, which determined that the National Environmental Policy Act ("NEPA") requirements and other federal requirements for the Project have been satisfied.

3. The Project requires the acquisition of certain property owned by Waldtraut Betchart, as Trustee of the Survivor's Trust of the Betchart 1992 Living Trust; Waldtraut Betchart, as Trustee of the Bypass Trust of the Betchart 1992 Living Trust; Rosemary Smith, Karola Betchart, Mary

Platten; Ludwig K. Betchart and Herman Betchart (“Betchart Parties”) that is defined in paragraph 5 of these Recitals as the Subject Property.

4. The District has complied with all requirements of CEQA and NEPA for the Project.

5. The District desires to acquire for public use, by exercise of the power of eminent domain, property interests, to wit, fee title and permanent easement, together with all improvements situated thereon and together with all rights appurtenant thereto, to certain real property owned in fee simple by Betchart Parties, as its interests appear of record, which real property, or interests in property, is located at 41655 Osgood Road, Fremont, California, 94539-5045, and is identified as BART Parcel Numbers J-1064-1A and J-1064-2A (Assessor’s Parcel Number 525-0342-007), and is more particularly described and shown in Exhibits A and B, attached hereto and incorporated herein by this reference (the “Subject Property”). Parcel J-1064-1A is to be acquired in fee, together with any improvements thereon. Parcel J-1064-2A is to be acquired as a permanent access easement.

6. The Board of Directors constitutes the governing body of the District and is authorized by Sections 28953, 29010, and 29031 of the California Public Utilities Code to acquire the Subject Property by eminent domain.

7. The District has tendered a written offer to the owner or owners of record to purchase the Subject Property for the fair market value, and has sent to the owner or owners written notice of the intent to adopt this resolution of necessity.

8. The Board of Directors has given due consideration to all oral and documentary evidence presented and has found that the acquisition of the Subject Property is required by the public interest and necessity for rapid transit purposes, more particularly to construct the Project and all incidents thereto.

Now, therefore, by vote of two-thirds or more of its members, the Board of Directors of the San Francisco Bay Area Rapid Transit District does find and resolve that:

1. The public interest and necessity require the proposed Project;
2. The proposed Project is planned and located in the manner which will be most compatible with the greatest public good and the least private injury;
3. The Subject Property is necessary for the proposed Project;
4. The offer required by Section 7267.2 of the California Government Code has been made to all owners of record;
5. The District has complied with all conditions and statutory requirements, including those prescribed by CEQA, that are necessary to exercise the power of eminent domain to acquire the Subject Property;
6. The Subject Property is being acquired for a compatible use under California Code of Civil Procedure Section 1240.510 in that the District's use of the Subject Property will not interfere with or impair the continued use of the Subject Property for public utilities as they now exist or may reasonably be expected to exist in the future;
7. The Subject Property is being acquired for a more necessary public use under California Code of Civil Procedure Section 1240.610 in that the District's use of the Subject Property is a more necessary public use than the use to which the property is appropriated.

Special counsel, Erickson, Beasley & Hewitt, are hereby AUTHORIZED AND EMPOWERED:

To acquire in the name of the San Francisco Bay Area Rapid Transit District, by condemnation, the Subject Property in accordance with the provisions of the Eminent Domain Law, the Code of Civil Procedure and the Constitution of California.

To prepare and prosecute in the name of the San Francisco Bay Area Rapid Transit District such proceedings in the proper court as are necessary for such acquisition; and

To deposit the probable amount of just compensation, based on an appraisal, and to apply to said court for an order permitting the San Francisco Bay Area Rapid Transit District to take immediate possession and use the Subject Property for said public uses and purposes.

The General Manager of the San Francisco Bay Area Rapid Transit District is hereby AUTHORIZED AND EMPOWERED:

To draw a warrant in the amount as determined by an appraisal of the fair market value of the Subject Property, made payable on California Transportation Commission (CTC) Traffic Congestion Relief Program (TCRP)-WSX Fund 55N, said warrant to be made payable to State of California--Condemnation Deposits Fund, and deliver said warrant to said special counsel or wire said sum directly to the State of California Treasurer's Office, to be deposited with said payee as security for the order for possession hereinbefore authorized.

#

**LEGAL DESCRIPTION
BETCHART ET AL
PORTION OF APN 525-342-007
ALAMEDA COUNTY
CITY OF FREMONT, CALIFORNIA**

July 15, 2009

Being a portion of that certain real property described as Parcel Three in Document No. 2000380699 recorded December 28, 2000 Official Records in the Office of the Recorder of Alameda County, State of California being more particularly described as follows:

BEGINNING at the northwesterly corner of said Parcel Three (2000380699); thence along the northerly line of said Parcel Three (2000380699) North 87° 37' 52" East 51.39 feet; thence through the interior of said Parcel Three (2000380699) the following six (6) courses: South 09° 38' 13" East 169.06 feet to a point of curvature of a curve concave northeasterly; along said curve concave northeasterly having a radius of 2,438.00 feet southeasterly through a central angle of 04° 22' 35" an arc length of 186.22 feet; South 73° 17' 43" West 22.26 feet to a point of non-tangency of a curve concave northeasterly to which a radial line bears South 74° 43' 10" West; along said curve concave northeasterly having a radius of 1,578.50 feet northwesterly through a central angle of 06° 30' 25" an arc length of 179.27 feet; North 08° 46' 25" West 146.58 feet; South 87° 36' 28" West 35.36 feet to a point on the westerly line of said Parcel Three (2000380699); thence along said westerly line of said Parcel Three (2000380699) North 02° 24' 46" West 34.60 feet to the **POINT OF BEGINNING**.

Containing 9,041 square feet of land (0.208 acre) more or less.

A Plat Map is attached hereto and made a part hereof.

This description is based on record, on file documents and field survey measurements. Bearings and distances are based on the California Coordinate System of 1983 (CCS83) Zone III, 1998.5 Epoch. Distances are grid distances, to obtain ground level distances multiply by 1.0000611.



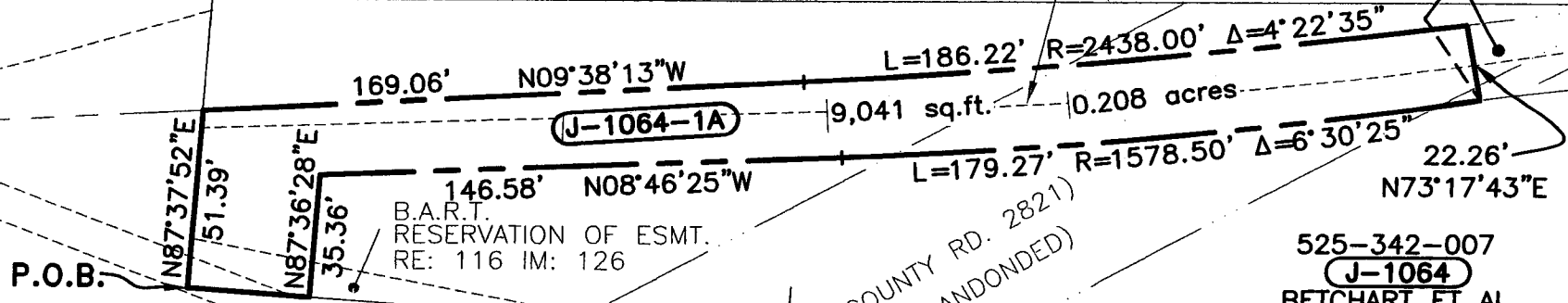


OSGOOD RD.
(FORMERLY DURHAM RD.)
(COUNTY RD. 2548)

CITY OF FREMONT
ESMT. FOR ROADWAY
PURPOSES DOC.
81-108085

J-1064-2A

S 74°43'10" W
(R)



B.A.R.T.
RESERVATION OF ESMT.
RE: 116 IM: 126

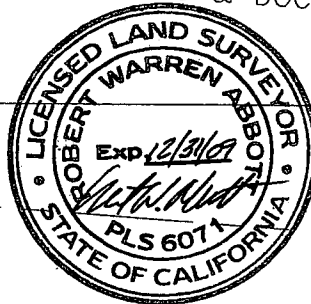
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(ABANDONED)

525-342-007
J-1064
BETCHART ET AL
PARCEL THREE
DOC. 2000380699

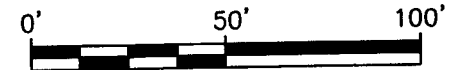
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PARCEL NINE
(U.P.R.R. V-11/1, NO. 29)

10' WIDE COMM. ESMT.
DOC. 2002578558 & DOC. 2004123706

525-0342-009
J-1513-1
B.A.R.T.
DOC. 2007265014
PARCEL TEN
(U.P.R.R. V-11/1, NO. 31)



J-1003-1



CAD FILE NO. WSX_J-1064-1A.DWG

BETCHART, ET AL, DOC# 2000380699.
FEE TAKE PARCEL.

BEARINGS AND DISTANCES ARE BASED ON THE CALIFORNIA COORDINATE SYSTEM OF 1983 (CCS83) ZONE 3, 1998.5 EPOCH. DISTANCES ARE GRID DISTANCES, TO OBTAIN GROUND LEVEL DISTANCES MULTIPLY BY 1.0000611.



SCALE: 1"=50'

DATE: 07-15-09

PLAT MAP

CO. ALA. RTE. WSX Sheet 1 of 1

DR. NO. WSX_J-1064-1A

**LEGAL DESCRIPTION
BETCHART ET AL
PORTION OF APN 525-342-007
ALAMEDA COUNTY
CITY OF FREMONT, CALIFORNIA**

July 15, 2009

Being a portion of that certain real property described as Parcel Three in Document No. 2000380699 recorded December 28, 2000, Official Records in the Office of the Recorder of Alameda County, State of California being more particularly described as follows:

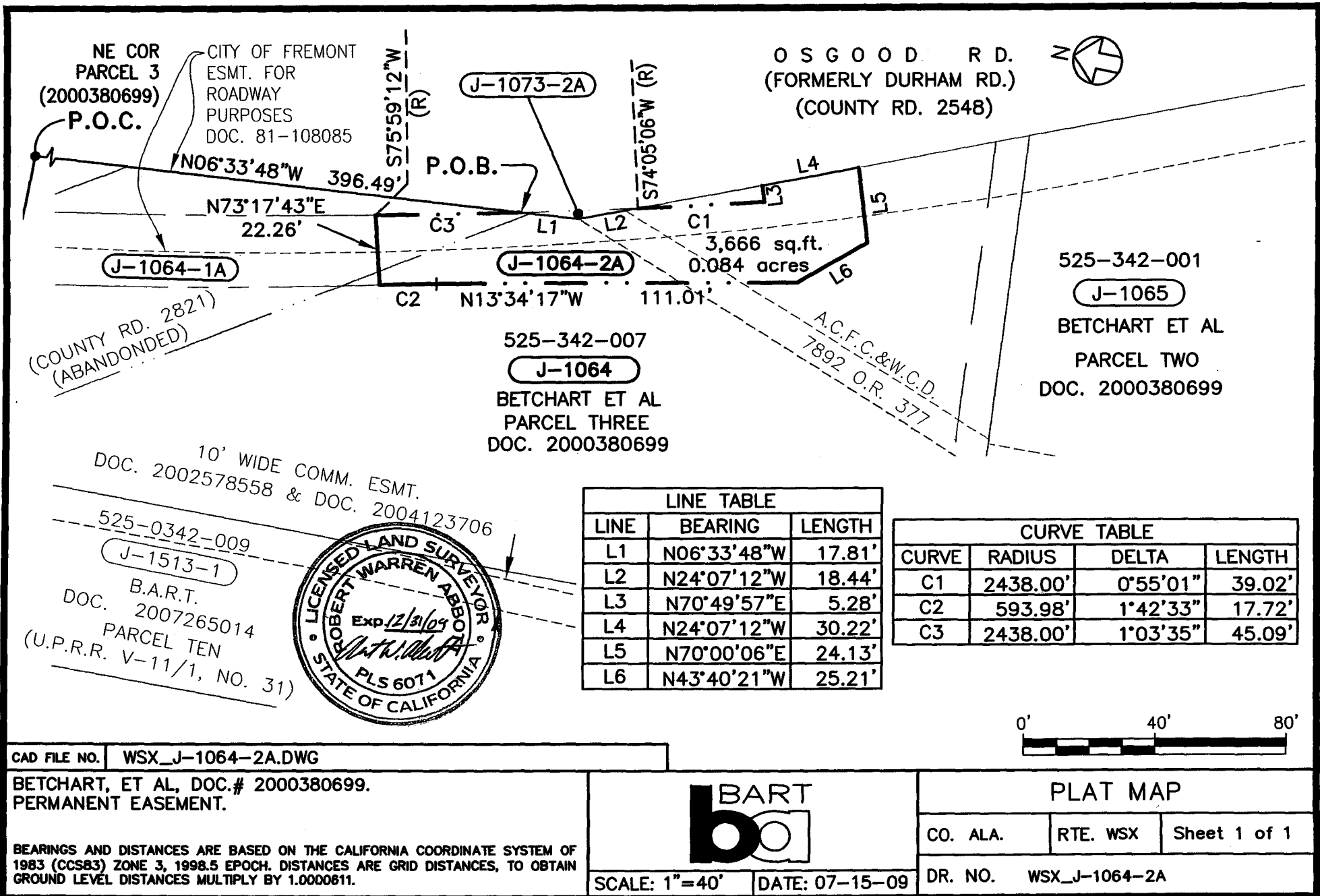
COMMENCING at the northeasterly corner of said Parcel Three (2000380699) being a point on the westerly line of Osgood Road; thence along the easterly line of said Parcel Three (2000380699) being the westerly line of said Osgood Road South 06° 33' 48" East 396.49 feet to the **POINT OF BEGINNING**; thence continuing along the easterly line of said Parcel Three (2000380699) South 06° 33' 48" East 17.81 feet; thence South 24° 07' 12" East 18.44 feet to a point of non-tangency of a curve concave northeasterly to which a radial line bears South 74° 05' 06" West; thence along said curve concave northeasterly having a radius of 2,438.00 feet southeasterly through a central angle of 0° 55' 01" an arc length of 39.02 feet; thence North 70° 49' 57" East 5.28 feet to a point on the easterly line of said Parcel Three (2000380699) being the westerly line of said Osgood Road; thence along the easterly line of said Parcel Three (2000380699) being the westerly line of said Osgood Road South 24° 07' 12" East 30.22 feet; thence through the interior of said Parcel Three (2000380699) the following six (6) courses: South 70° 00' 06" West 24.13 feet; North 43° 40' 21" West 25.21 feet; North 13° 34' 17" West 111.01 feet to a point of curvature of a curve concave northeasterly; along said curve concave northeasterly having a radius of 593.98 feet northwesterly through a central angle of 01° 42' 33" an arc length of 17.72 feet; North 73° 17' 43" East 22.26 feet to a point of non-tangency of a curve concave northeasterly to which a radial line bears South 75° 59' 12" West; thence along said curve concave northeasterly having a radius of 2,438.00 feet southeasterly through a central angle of 01° 03' 35" an arc length of 45.09 feet to the **POINT OF BEGINNING**.

Containing 3,666 square feet of land (0.084 acre) more or less.

A Plat Map is attached hereto and made a part hereof.

This description is based on record, on file documents and field survey measurements. Bearings and distances are based on the California Coordinate System of 1983 (CCS83) Zone III, 1998.5 Epoch. Distances are grid distances, to obtain ground level distances multiply by 1.0000611.



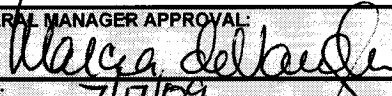
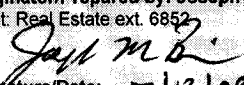
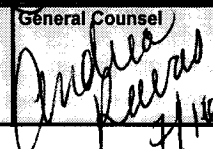
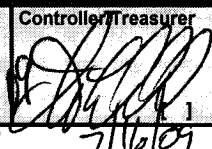
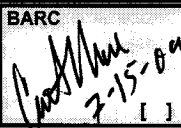


PERMANENT EASEMENT

A permanent non-exclusive access easement (the "Access Easement") and incidents thereto, for the purpose of vehicular and pedestrian ingress and egress on, over, across, and through the portion of the real property located in the City of Fremont, County of Alameda, State of California, identified as Assessor's Parcel Number 525-0342-007 and described in this Exhibit.



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: 		GENERAL MANAGER ACTION REQ'D: Approve and forward to the Board		
DATE: 7/17/09		BOARD INITIATED ITEM: No		
Originator/Prepared by: Joseph Basuino Dept. Real Estate ext. 6852  Signature/Date: 7/13/09	General Counsel  7/16/09	Controller/Treasurer  7/16/09	District Secretary []	BARC  7-15-09 []
Status: Routed		Date Created: 07/13/2009		

TITLE:

Condemnation of Real Property for WSX Project BART Parcel # J-2037-1A and J-2037-3A

NARRATIVE:

PURPOSE:

To adopt by a two-thirds vote of the entire Board the attached Resolution of Necessity to Condemn fee simple and temporary construction easement interest in real property located at 2000 Warm Springs Court, Fremont, California 94539. This property is required for the Warm Springs Extension Project.

DISCUSSION:

The San Francisco Bay Area Rapid Transit District ("BART") proposes to purchase certain real property interests for the purpose of constructing a rail extension from the existing Fremont Station site south to the Warm Springs District in Fremont ("WSX" or the "Project"). The Project requires the acquisition of approximately 23,355 square feet in fee and of approximately 6,038 square feet in temporary construction easement of a 3.704± acre property owned by James and Audrey E. Johns, Trustees, The Johns Family trust dated August 30, 1988 and W.F. Ranch, Inc., a Utah Corporation ("Johns Parties"). The property is located at 2000 Warm Springs Court, Fremont, California 94539 (BART Parcel #J-2037-1A and J-2037-3A or the "Subject Parcel").

The Board certified a California Environmental Quality Act ("CEQA") Final Environmental Impact Report ("FEIR") on September 15, 1992, and a Supplemental Environmental Impact Report ("SEIR") on June 26, 2003, adopting the Project on those respective dates. Thereafter, the Federal Transit Administration ("FTA"), as lead federal agency, and BART released a Final Environmental Impact Statement ("FEIS") for the Warm Springs Extension Project in July 2006. The FTA issued a Record of Decision on October 24, 2006.

The proposed use of the Subject Parcel is for BART system trackway and appurtenances. Project features proposed on or near this parcel have been specifically planned and located in an attempt to meet Project needs in the most beneficial and least environmentally harmful way possible.

The uses to be located on the Subject Parcel, particularly the trackway, are necessary for the successful construction of the Project and the safe and efficient operation of the BART

system. The Subject Parcel is uniquely suited to support these Project purposes.

The offer required by Section 7267.2 of the Government Code has been made to the owners of record of the Subject Parcel on November 25, 2008. The estimated market value of the required property interests in the Subject Parcel is \$841,850.00.

To date, negotiations appear to be at an impasse. The property owners have been notified of the Board hearing on July 23, 2009.

In order to proceed with the recommended condemnation, the Board must determine each of the following:

1. The public interest and necessity require the proposed project.
2. The proposed project is planned or located in a manner that will be most compatible with the greatest public good and the least private injury.
3. The proposed property acquisition is necessary for said project.
4. Whether the offer required by Government Code section 7267.2 has been made to all owners of record, or the offer has not been made because the owner cannot be located with reasonable diligence.

FISCAL IMPACT:

The \$841,850 required for the acquisition of Parcel # J-2037-1A and J-2037-3A is proposed to come from Project 02EC, ROW Acquisition. The Office of the Controller/Treasurer certifies that funds are currently available to meet this obligation. Funds for the purchase will come from the following source:

CTC Traffic Congestion Relief Program (TCRP) –WSX Fund: 55N \$841,850

As of month end 5/24/09, \$45,131,543 is available for commitment from this Fund Source for this Project, and \$13,416,462 has been committed by BART to date. There are \$585,300 pending commitments in BART's financial management system. This action will commit an additional \$841,850 leaving an uncommitted balance of \$30,287,931 in this fund source.

There is no fiscal impact on available unprogrammed District reserves.

ALTERNATIVES: Withdraw the condemnation action and proceed with negotiations without the backing of eminent domain. Withdrawal of the condemnation action may result in the property not being available for Project construction when required and exposing BART to additional escalation on the capital cost of the WSX Project.

RECOMMENDATIONS: Adoption of the attached Resolution of Necessity to condemn

the Real Property.

MOTION: Adopt the attached, "Resolution of Necessity to Condemn Real Property; Make Findings and Determination; Authorize Eminent Domain Proceedings and Application for Possession Prior to Judgment for BART Parcels J-2037-1A and J-2037-3A; Draw and Deposit Warrant." (Two-thirds vote required.)

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

RESOLUTION OF NECESSITY TO CONDEMN
REAL PROPERTY; MAKE FINDINGS AND
DETERMINATIONS; AUTHORIZE EMINENT
DOMAIN PROCEEDINGS AND APPLICATION
FOR POSSESSION PRIOR TO JUDGMENT FOR
BART PARCELS J-2037-1A AND J-2037-3A;
DRAW AND DEPOSIT WARRANT /)

Resolution No.

Recitals

1. The San Francisco Bay Area Rapid Transit District ("BART or District") is undertaking the construction of the Warm Springs Extension Project (the "Project"). The BART Board of Directors ("Board") certified a California Environmental Quality Act ("CEQA") Final Environmental Impact Report ("FEIR") on September 15, 1992. The District prepared a Supplemental Environmental Impact Report ("SEIR") for the purpose of updating the 1992 FEIR due to changed circumstances and certain revisions to the Project since 1992. On June 26, 2003, following a public hearing, the Board certified the SEIR and adopted the Project.

2. The Federal Transit Administration ("FTA") and BART released a Final Environmental Impact Statement ("FEIS") for the Warm Springs Extension Project in July of 2006. The FTA issued a Record of Decision on October 24, 2006, which determined that the National Environmental Policy Act ("NEPA") requirements and other federal requirements for the Project have been satisfied.

3. The Project requires the acquisition of certain property owned by James and Audrey E. Johns, Trustees, The Johns Family trust dated August 30, 1988 and W.F. Ranch, Inc., a Utah Corporation ("Johns Parties") that is defined in paragraph 5 of these Recitals as the Subject Property.

4. The District has complied with all requirements of CEQA and NEPA for the Project.

5. The District desires to acquire for public use, by exercise of the power of eminent domain, property interests, to wit, fee title and temporary construction easement, together with all improvements situated thereon and together with all rights appurtenant thereto, to certain real property owned in fee simple by the John Parties, as its interests appear of record, which real property, or interests in property, is located at 2000 Warm Springs Ct, Fremont, California, 94539, and is identified as BART Parcel Numbers J-2037-1A and J-2037-3A (Assessor's Parcel Number 519-0850-004), and is more particularly described and shown in Exhibits A and B, attached hereto and incorporated herein by this reference (the "Subject Property"). Parcel J-2037-1A is to be acquired in fee, together with any improvements thereon. Parcel J-2037-3A is to be acquired as a temporary construction easement.

6. The Board of Directors constitutes the governing body of the District and is authorized by Sections 28953, 29010, and 29031 of the California Public Utilities Code to acquire the Subject Property by eminent domain.

7. The District has tendered a written offer to the owner or owners of record to purchase the Subject Property for the fair market value, and has sent to the owner or owners written notice of the intent to adopt this resolution of necessity.

8. The Board of Directors has given due consideration to all oral and documentary evidence presented and has found that the acquisition of the Subject Property is required by the public interest and necessity for rapid transit purposes, more particularly to construct the Project and all incidents thereto.

Now, therefore, by vote of two-thirds or more of its members, the Board of Directors of the

San Francisco Bay Area Rapid Transit District does find and resolve that:

1. The public interest and necessity require the proposed Project;
2. The proposed Project is planned and located in the manner which will be most compatible with the greatest public good and the least private injury;
3. The Subject Property is necessary for the proposed Project;
4. The offer required by Section 7267.2 of the California Government Code has been made to all owners of record;
5. The District has complied with all conditions and statutory requirements, including those prescribed by CEQA, that are necessary to exercise the power of eminent domain to acquire the Subject Property.
6. The Subject Property is being acquired for a compatible use under California Code of Civil Procedure Section 1240.510 in that the District's use of the Subject Property will not interfere with or impair the continued use of the Subject Property for public utilities as they now exist or may reasonably be expected to exist in the future; and
7. The Subject Property is being acquired for a more necessary public use under California Code of Civil Procedure Section 1240.610 in that the District's use of the Subject Property is a more necessary public use than the use to which the property is appropriated.

Special counsel, Erickson, Beasley & Hewitt, are hereby AUTHORIZED AND EMPOWERED:

To acquire in the name of the San Francisco Bay Area Rapid Transit District, by condemnation, the Subject Property in accordance with the provisions of the Eminent Domain Law, the Code of Civil Procedure and the Constitution of California.

To prepare and prosecute in the name of the San Francisco Bay Area Rapid Transit District such proceedings in the proper court as are necessary for such acquisition; and

To deposit the probable amount of just compensation, based on an appraisal, and to apply to said court for an order permitting the San Francisco Bay Area Rapid Transit District to take immediate possession and use the Subject Property for said public uses and purposes.

The General Manager of the San Francisco Bay Area Rapid Transit District is hereby AUTHORIZED AND EMPOWERED:

To draw a warrant in the amount as determined by an appraisal of the fair market value of the Subject Property, made payable on California Transportation Commission (CTC) Traffic Congestion Relief Program (TCRP)-WSX Fund 55N, said warrant to be made payable to State of California--Condemnation Deposits Fund, and deliver said warrant to said special counsel or wire said sum directly to the State of California Treasurer's Office, to be deposited with said payee as security for the order for possession hereinbefore authorized.

#

**LEGAL DESCRIPTION
JOHNS FAMILY TRUST
PORTION OF APN 519-0850-004
ALAMEDA COUNTY
CITY OF FREMONT, CALIFORNIA**

July 15, 2009

Being a portion of that certain real property as described in that certain grant deed to James Johns and Audrey E. Johns, Trustees, The Johns Family Trust, recorded December 30, 2008 as Document No. 2008362172 Official Records in the Office of the Recorder of Alameda County, State of California, being more particularly described as follows:

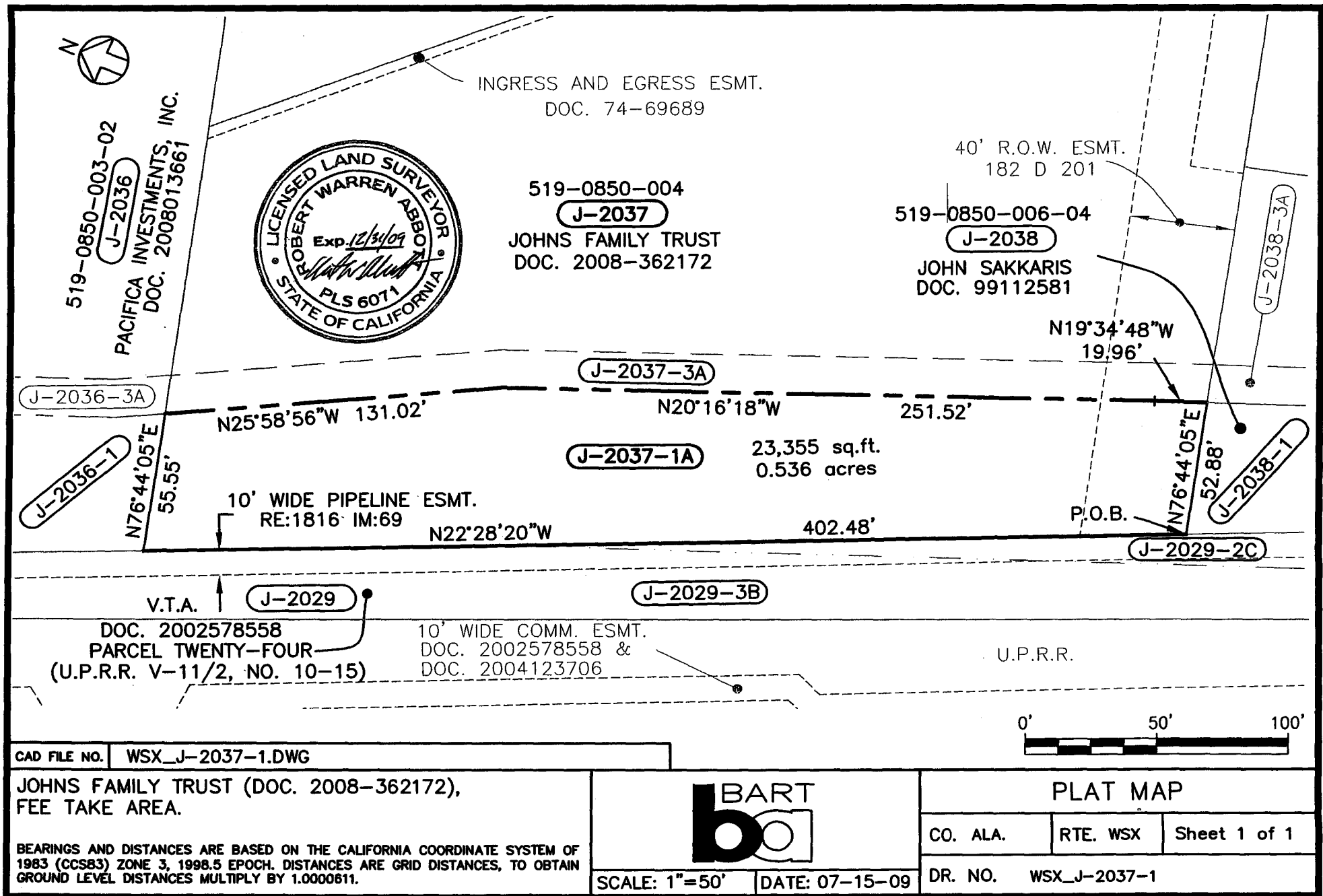
BEGINNING at the southwesterly corner of said Johns Family Trust property (2008362172) being a point on the easterly line of that certain parcel described as "Parcel 24" in that certain grant deed to the Santa Clara Valley Transportation Authority recorded December 11, 2002 as Document No. 2002578558 Official Records in the Office of the Recorder of Alameda County, State of California; thence along the westerly line of said Johns Family Trust property (2008362172) being the easterly line of said "Parcel 24" (2002578558) North 22° 28' 20" West 402.48 feet to the northwesterly corner of said Johns Family Trust property (2008362172); thence along the northerly line of said Johns Family Trust property (2008362172) being the southerly line of that certain parcel described as "Parcel One" in that certain grant deed to Pacifica Investments, Inc., recorded January 18, 2008 as Document No. 2008013661 Official Records in the Office of the Recorder of Alameda County, State of California, North 76° 44' 05" East 55.55 feet; thence through the interior of said Johns Family Trust property (2008362172) the following three (3) courses: South 25° 58' 56" East 131.02 feet; South 20° 16' 18" East 251.52 feet; South 19° 34' 48" East 19.96 feet to a point on the southerly line of said Johns Family Trust property (2008362172) being the northerly line of that certain parcel described as "Parcel 1" in that certain Grant Deed to John Sakkaris recorded March 16, 1999 as Document No. 99112581 Official Records in the Office of the Recorder of Alameda County, State of California; thence along said northerly line of "Parcel 1" (99112581) South 76° 44' 05" West 52.88 feet to the **POINT OF BEGINNING**.

Containing 23,355 square feet of land (0.536 acre) more or less.

A Plat Map is attached hereto and made a part hereof.

This description is based on record, on file documents and field survey measurements. Bearings and distances are based on the California Coordinate System of 1983 (CCS83) Zone III, 1998.5 Epoch. Distances are grid distances, to obtain ground level distances multiply by 1.0000611.





**LEGAL DESCRIPTION
JOHNS FAMILY TRUST
PORTION OF APN 519-0850-004
ALAMEDA COUNTY
CITY OF FREMONT, CALIFORNIA**

July 15, 2009

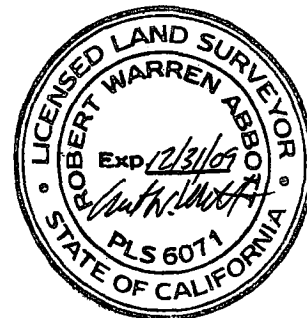
Being a portion of that certain real property as described in that certain grant deed to James Johns and Audrey E. Johns, Trustees, The Johns Family Trust, recorded December 30, 2008 as Document No. 2008362172 Official Records in the Office of the Recorder of Alameda County, State of California, being more particularly described as follows:

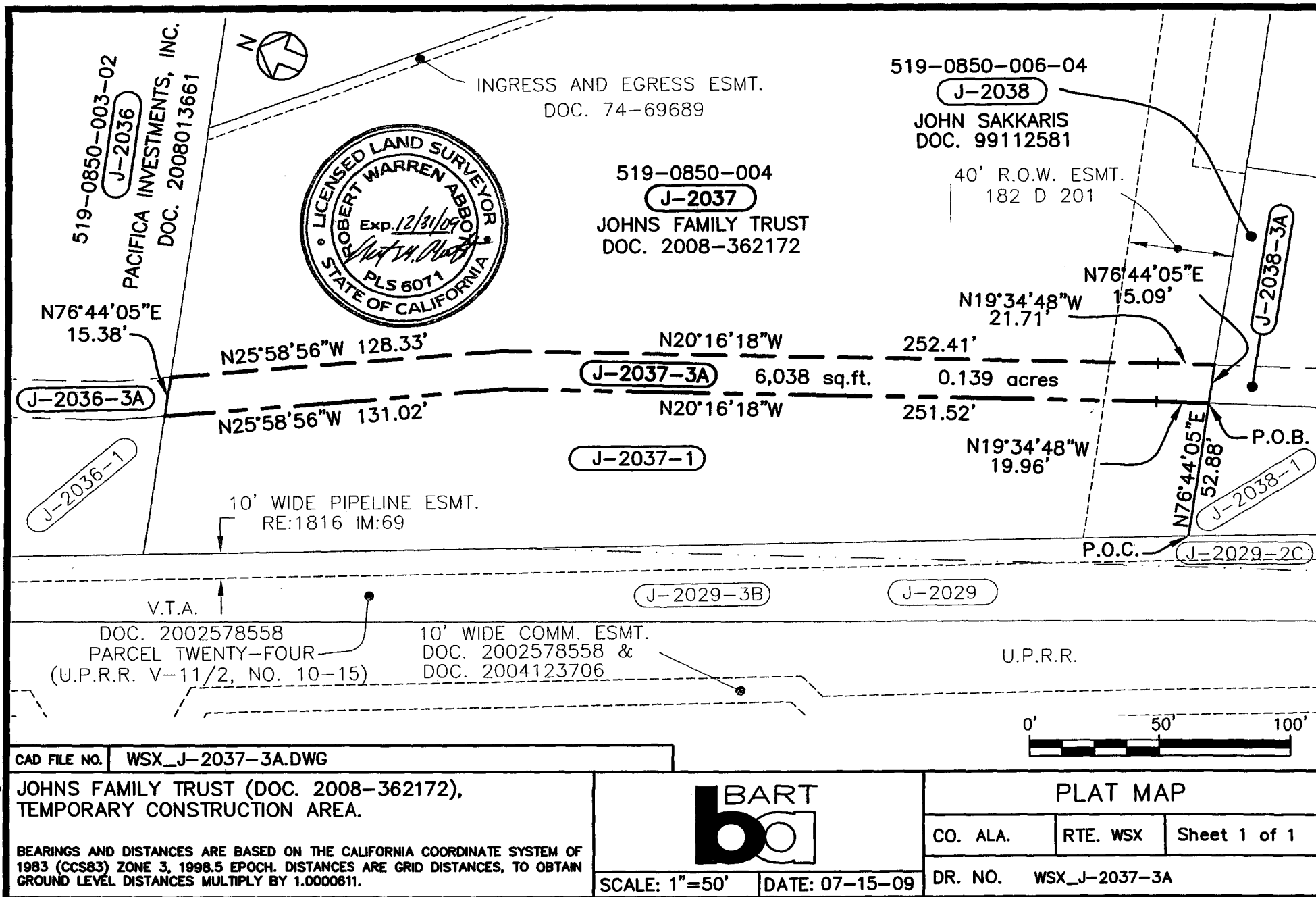
COMMENCING at the southwesterly corner of said Johns Family Trust property (2008362172) being a point on the easterly line of that certain parcel described as "Parcel 24" in that certain grant deed to the Santa Clara Valley Transportation Authority recorded December 11, 2002 as Document No. 2002578558 Official Records in the Office of the Recorder of Alameda County, State of California; thence along the southerly line of said Johns Family Trust property (2008362172) being the northerly line of that certain parcel described as "Parcel 1" in that certain Grant Deed to John Sakkaris recorded March 16, 1999 as Document No. 99112581 Official Records in the Office of the Recorder of Alameda County, State of California, North 76° 44' 05" East 52.88 feet to the **POINT OF BEGINNING**; thence through the interior of said Johns Family Trust property (2008362172) the following three (3) courses: North 19° 34' 48" West 19.96 feet; North 20° 16' 18" West 251.52 feet; North 25° 58' 56" West 131.02 feet to a point on the northerly line of said Johns Family Trust property (2008362172) being the southerly line of that certain parcel described as "Parcel One" in that certain grant deed to Pacifica Investments, Inc., recorded January 18, 2008 as Document No. 2008013661 Official Records in the Office of the Recorder of Alameda County, State of California; thence along said southerly line of "Parcel One" (2008013661) North 76° 44' 05" East 15.38 feet; thence through the interior of said Johns Family Trust property (2008362172) the following three (3) courses: South 25° 58' 56" East 128.33 feet; South 20° 16' 18" East 252.41 feet; South 19° 34' 48" East 21.71 feet to a point on the southerly line of said Johns Family Trust property (2008362172) being the northerly line of said "Parcel 1" (99112581) South 76° 44' 05" West 15.09 feet to the **POINT OF BEGINNING**.

Containing 6,038 square feet of land (0.139 acre) more or less.

A Plat Map is attached hereto and made a part hereof.

This description is based on record, on file documents and field survey measurements. Bearings and distances are based on the California Coordinate System of 1983 (CCS83) Zone III, 1998.5 Epoch. Distances are grid distances, to obtain ground level distances multiply by 1.0000611.





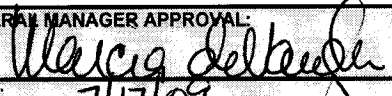
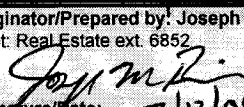
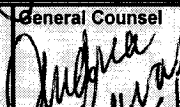

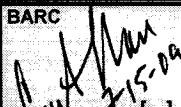
TEMPORARY CONSTRUCTION EASEMENT

This temporary construction easement is for a period during construction as part of the San Francisco Bay Area Rapid Transit District's Warm Springs Extension Project in the City of Fremont, County of Alameda, State of California.

BART will provide the property owner thirty (30) days written notice prior to commencing any activities in the easement area ("Commencement Notice"). The temporary construction easement will expire two (2) years after BART delivers the Commencement Notice or December 31, 2015 whichever occurs first.



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: 		GENERAL MANAGER ACTION REQ'D: Approve and forward to the Board		
DATE: 7/17/09		BOARD INITIATED ITEM: No		
Originator/Prepared by: Joseph Basulino Dept: Real Estate ext. 6852  Signature/Date: 7/13/09	General Counsel  7/16/09	Controller/Treasurer  7/16/09	District Secretary []	BARC  7/15/09 []
Status: Routed		Date Created: 07/13/2009		

TITLE:

Condemnation of Real Property for WSX Project BART Parcel # J-2039-1A and J-2039-3A

NARRATIVE:

PURPOSE:

To adopt by a two-thirds vote of the entire Board the attached Resolution of Necessity to Condemn fee simple and temporary construction easement interest in real property located at 45945 Warm Springs Blvd, Fremont, California 94539. This property is required for the Warm Springs Extension Project.

DISCUSSION:

The San Francisco Bay Area Rapid Transit District ("BART") proposes to purchase certain real property interests for the purpose of constructing a rail extension from the existing Fremont Station site south to the Warm Springs District in Fremont ("WSX" or the "Project"). The Project requires the acquisition of approximately 8,405 square feet in fee and of approximately 3,622 square feet in temporary construction easement of a 4.107± acre property owned by Warm Springs Boulevard Investments LLC ("WSBI"). The property is located at 45945 Warm Springs Boulevard, Fremont, California 94539 (BART Parcel #J-2039-1A and J-2039-3A or the "Subject Parcel").

The Board certified a California Environmental Quality Act ("CEQA") Final Environmental Impact Report ("FEIR") on September 15, 1992, and a Supplemental Environmental Impact Report ("SEIR") on June 26, 2003, adopting the Project on those respective dates. Thereafter, the Federal Transit Administration ("FTA"), as lead federal agency, and BART released a Final Environmental Impact Statement ("FEIS") for the Warm Springs Extension Project in July 2006. The FTA issued a Record of Decision on October 24, 2006.

The proposed use of the Subject Parcel is for trackway and appurtenances. Project features proposed on or near this parcel have been specifically planned and located in an attempt to meet Project needs in the most beneficial and least environmentally harmful way possible.

The uses to be located on the Subject Parcel, particularly the trackway, are necessary for the successful construction of the Project and the safe and efficient operation of the BART system. The Subject Parcel is uniquely suited to support these Project purposes.

The offer required by Section 7267.2 of the Government Code has been made to the owners of record of the Subject Parcel on November 25, 2008. The estimated market value of the required property interests in the Subject Parcel is \$228,300.00.

To date, negotiations appear to be at an impasse. The property owners have been notified of the Board hearing on July 23, 2009.

In order to proceed with the recommended condemnation, the Board must determine each of the following:

1. The public interest and necessity require the proposed project.
2. The proposed project is planned or located in a manner that will be most compatible with the greatest public good and the least private injury.
3. The proposed property acquisition is necessary for said project.
4. Whether the offer required by Government Code section 7267.2 has been made to all owners of record, or the offer has not been made because the owner cannot be located with reasonable diligence.

FISCAL IMPACT:

The \$228,300 required for the acquisition of Parcel # J-2039-1A and J-2039-3A is proposed to come from Project 02EC, ROW Acquisition. The Office of the Controller/Treasurer certifies that funds are currently available to meet this obligation. Funds for the purchase will come from the following source:

CTC Traffic Congestion Relief Program (TCRP) –WSX Fund: 55N \$228,300

As of month end 5/24/09, \$45,131,543 is available for commitment from this Fund Source for this Project, and \$13,416,462 has been committed by BART to date. There are \$1,198,850 pending commitments in BART's financial management system. This action will commit an additional \$228,300 leaving an uncommitted balance of \$30,287,931 in this fund source.

There is no fiscal impact on available unprogrammed District reserves.

ALTERNATIVES: Withdraw the condemnation action and proceed with negotiations without the backing of eminent domain. Withdrawal of the condemnation action may result in the property not being available for Project construction when required and exposing BART to additional escalation on the capital cost of the WSX Project.

RECOMMENDATIONS: Adoption of the attached Resolution of Necessity to condemn the Real Property.

MOTION: Adopt the attached, "Resolution of Necessity to Condemn Real Property; Make Findings and Determination; Authorize Eminent Domain Proceedings and Application for Possession Prior to Judgment for BART Parcels J-2039-1A and J-2039-3A; Draw and Deposit Warrant." (Two-thirds vote required.)

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

RESOLUTION OF NECESSITY TO CONDEMN
REAL PROPERTY; MAKE FINDINGS AND
DETERMINATIONS; AUTHORIZE EMINENT
DOMAIN PROCEEDINGS AND APPLICATION
FOR POSSESSION PRIOR TO JUDGMENT FOR
BART PARCELS J-2039-1A AND J-2039-3A;
DRAW AND DEPOSIT WARRANT /)

Resolution No.

Recitals

1. The San Francisco Bay Area Rapid Transit District (“BART or District”) is undertaking the construction of the Warm Springs Extension Project (the “Project”). The BART Board of Directors (“Board”) certified a California Environmental Quality Act (“CEQA”) Final Environmental Impact Report (“FEIR”) on September 15, 1992. The District prepared a Supplemental Environmental Impact Report (“SEIR”) for the purpose of updating the 1992 FEIR due to changed circumstances and certain revisions to the Project since 1992. On June 26, 2003, following a public hearing, the Board certified the SEIR and adopted the Project.

2. The Federal Transit Administration (“FTA”) and BART released a Final Environmental Impact Statement (“FEIS”) for the Warm Springs Extension Project in July of 2006. The FTA issued a Record of Decision on October 24, 2006, which determined that the National Environmental Policy Act (“NEPA”) requirements and other federal requirements for the Project have been satisfied.

3. The Project requires the acquisition of certain property owned by Warm Springs Boulevard Investments LLC that is defined in paragraph 5 of these Recitals as the Subject Property.

4. The District has complied with all requirements of CEQA and NEPA for the Project.

5. The District desires to acquire for public use, by exercise of the power of eminent domain, property interests, to wit, fee title and temporary construction easement, together with all improvements situated thereon and together with all rights appurtenant thereto, to certain real property owned in fee simple by Warm Springs Boulevard Investments LLC, as its interests appear of record, which real property, or interests in property, is located at 45945 Warm Springs Blvd., Fremont, California, 94539-6746, and is identified as BART Parcel Numbers J-2039-1A and J-2039-3A (Assessor's Parcel Number 519-0850-061), and is more particularly described and shown in Exhibit A, attached hereto and incorporated herein by this reference (the "Subject Property"). Parcel J-2039-1A is to be acquired in fee, together with any improvements thereon. Parcel J-2039-3A is to be acquired as a temporary construction easement.

6. The Board of Directors constitutes the governing body of the District and is authorized by Sections 28953, 29010, and 29031 of the California Public Utilities Code to acquire the Subject Property by eminent domain.

7. The District has tendered a written offer to the owner or owners of record to purchase the Subject Property for the fair market value, and has sent to the owner or owners written notice of the intent to adopt this resolution of necessity.

8. The Board of Directors has given due consideration to all oral and documentary evidence presented and has found that the acquisition of the Subject Property is required by the public interest and necessity for rapid transit purposes, more particularly to construct the Project and all incidents thereto.

Now, therefore, by vote of two-thirds or more of its members, the Board of Directors of the San Francisco Bay Area Rapid Transit District does find and resolve that:

1. The public interest and necessity require the proposed Project;
2. The proposed Project is planned and located in the manner which will be most compatible with the greatest public good and the least private injury;
3. The Subject Property is necessary for the proposed Project;
4. The offer required by Section 7267.2 of the California Government Code has been made to the owner or owners of record of the Subject Property.
5. The District has complied with all conditions and statutory requirements, including those prescribed by CEQA, that are necessary to exercise the power of eminent domain to acquire the Subject Property;
6. The Subject Property is being acquired for a compatible use under California Code of Civil Procedure Section 1240.510 in that the District's use of the Subject Property will not interfere with or impair the continued use of the Subject Property for public utilities as they now exist or may reasonably be expected to exist in the future; and
7. The Subject Property is being acquired for a more necessary public use under California Code of Civil Procedure Section 1240.610 in that the District's use of the Subject Property is a more necessary public use than the use to which the property is appropriated.

Special counsel, Erickson, Beasley & Hewitt, are hereby AUTHORIZED AND EMPOWERED:

To acquire in the name of the San Francisco Bay Area Rapid Transit District, by condemnation, the Subject Property in accordance with the provisions of the Eminent Domain Law, the Code of Civil Procedure and the Constitution of California.

To prepare and prosecute in the name of the San Francisco Bay Area Rapid Transit District

such proceedings in the proper court as are necessary for such acquisition; and

To deposit the probable amount of just compensation, based on an appraisal, and to apply to said court for an order permitting the San Francisco Bay Area Rapid Transit District to take immediate possession and use the Subject Property for said public uses and purposes.

The General Manager of the San Francisco Bay Area Rapid Transit District is hereby
AUTHORIZED AND EMPOWERED:

To draw a warrant in the amount as determined by an appraisal of the fair market value of the Subject Property, made payable on California Transportation Commission (CTC) Traffic Congestion Relief Program (TCRP)-WSX Fund 55N, said warrant to be made payable to State of California--Condemnation Deposits Fund, and deliver said warrant to said special counsel or wire said sum directly to the State of California Treasurer's Office, to be deposited with said payee as security for the order for possession hereinbefore authorized.

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**LEGAL DESCRIPTION
WARM SPRINGS BLVD. INVESTMENTS, LLC
PORTION OF APN 519-0850-061
ALAMEDA COUNTY
CITY OF FREMONT, CALIFORNIA**

July 15, 2009

Being a portion of Parcel A as shown on that certain map entitled "Parcel Map 944" recorded November 22, 1972 in Book 76 of Parcel Maps at Page 66 Official Records in the Office of the Recorder of Alameda County, State of California, said Parcel A granted to Warm Springs Boulevard Investments, LLC, a California Limited Liability Company, recorded July 14, 2004 as Document No. 2004322175 Official Records in the Office of the Recorder of Alameda County, State of California being more particularly described as follows:

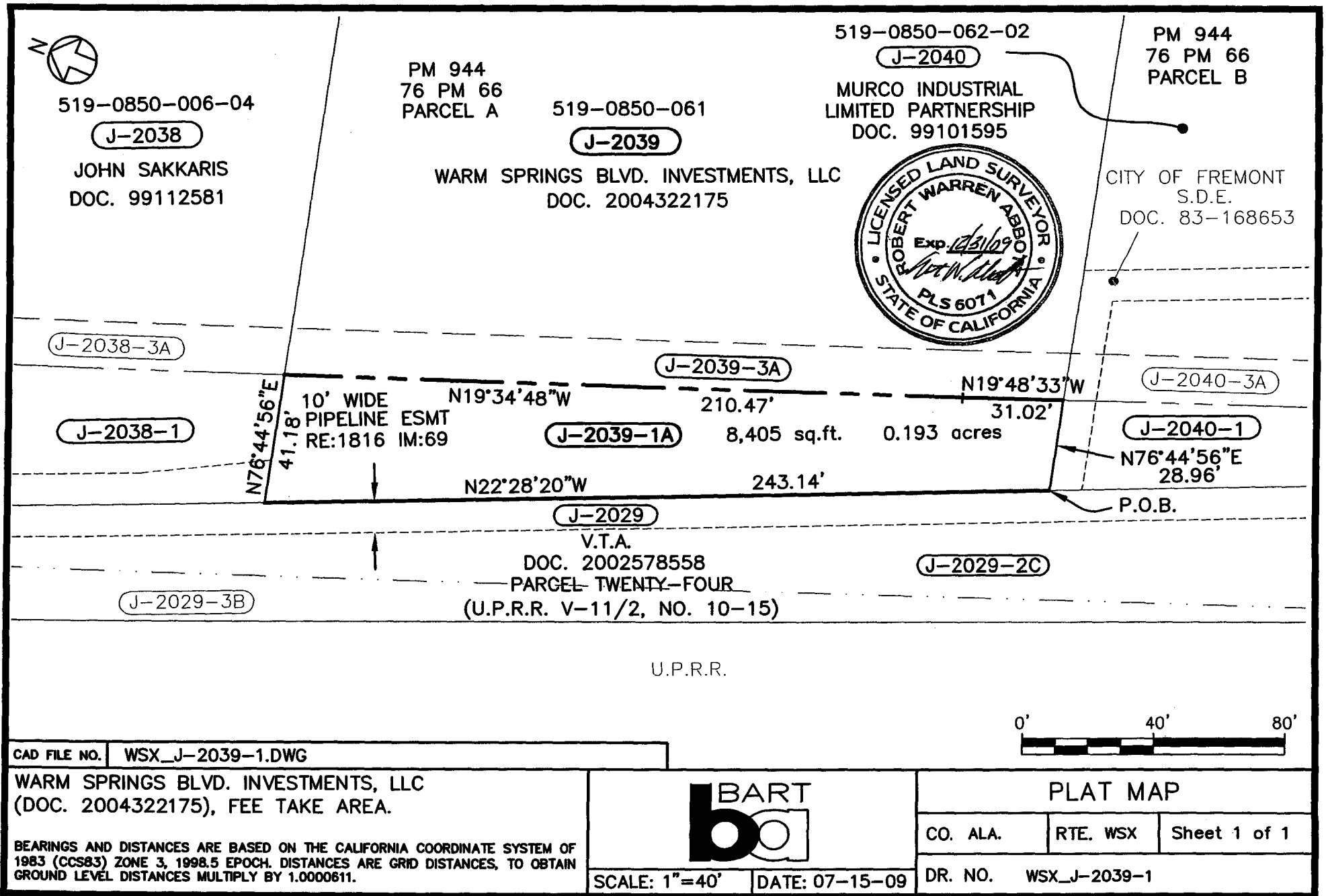
BEGINNING at the southwesterly corner of said Parcel A (76 PM 66) being a point on the easterly line of that certain parcel described as "Parcel 24" in that certain grant deed to the Santa Clara Valley Transportation Authority recorded December 11, 2002 as Document No. 2002578558 Official Records in the Office of the Recorder of Alameda County, State of California; thence along the westerly line of said Parcel A (76 PM 66) along said easterly line of "Parcel 24" (2002578558) North 22° 28' 20" West 243.14 feet to the northwesterly corner of said Parcel A (76 PM 66); thence along the northerly line of said Parcel A (76 PM 66) being the southerly line of that certain parcel described as "Parcel 1" in that certain Grant Deed to John Sakkaris recorded March 16, 1999 as Document No. 99112581 Official Records in the Office of the Recorder of Alameda County, State of California; thence North 76° 44' 56" East 41.18 feet; thence through the interior of said Parcel A (76 PM 66) the following two (2) courses: South 19° 34' 48" East 210.47 feet; thence South 19° 48' 33" East 31.02 feet to a point on the southerly line of said Parcel A (76 PM 66) being the northerly line of Parcel B as shown on said map entitled "Parcel Map 944" (76 PM 66); thence along said southerly line of Parcel A (76 PM 66) being the said northerly line of Parcel B (76 PM 66) South 76° 44' 56" West 28.96 feet to the **POINT OF BEGINNING**.

Containing 8,405 square feet of land (0.193 acre), more or less.

A Plat Map is attached hereto and made a part hereof.

This description is based on record, on file documents and field survey measurements. Bearings and distances are based on the California Coordinate System of 1983 (CCS83) Zone III, 1998.5 Epoch. Distances are grid distances, to obtain ground level distances multiply by 1.0000611.





**LEGAL DESCRIPTION
WARM SPRINGS BLVD. INVESTMENTS, LLC
PORTION OF APN 519-0850-061
ALAMEDA COUNTY
CITY OF FREMONT, CALIFORNIA**

July 15, 2009

Being a portion of Parcel A as shown on that certain map entitled "Parcel Map 944" recorded November 22, 1972 in Book 76 of Parcel Maps at Page 66 Official Records in the Office of the Recorder of Alameda County, State of California, said Parcel A granted to Warm Springs Boulevard Investments, LLC, a California Limited Liability Company, recorded July 14, 2004 as Document No. 2004322175 Official Records in the Office of the Recorder of Alameda County, State of California being more particularly described as follows:

COMMENCING at the southwesterly corner of said Parcel A (76 PM 66) being a point on the easterly line of that certain parcel described as "Parcel 24" in that certain grant deed to the Santa Clara Valley Transportation Authority recorded December 11, 2002 as Document No. 2002578558 Official Records in the Office of the Recorder of Alameda County, State of California; thence along the southerly line of said Parcel A (76 PM 66) being the northerly line of Parcel B as shown on said map entitled "Parcel Map 944" (76 PM 66) North 76° 44' 56" East 28.96 feet to the **POINT OF BEGINNING**; thence through the interior of said of said Parcel A (76 PM 66) the following two (2) courses: North 19° 48' 33" West 31.02 feet; North 19° 34' 48" West 210.47 feet to a point on the northerly line of said Parcel A (76 PM 66) being the southerly line of that certain parcel described as "Parcel 1" in that certain Grant Deed to John Sakkaris recorded March 16, 1999 as Document No. 99112581 Official Records in the Office of the Recorder of Alameda County, State of California; thence along said southerly line of "Parcel 1" (99112581) being the northerly line of said Parcel A (76 PM 66) North 76° 44' 56" East 15.09 feet; thence through the interior of said Parcel A (76 PM 66) the following two (2) courses: South 19° 34' 48" East 208.77 feet; South 19° 48' 33" East 32.71 feet to a point on the southerly line of said Parcel A (76 PM 66) being the northerly line of said Parcel B (76 PM 66); thence along said southerly line of Parcel A (76 PM 66) being the northerly line of said Parcel B (76 PM 66) South 76° 44' 56" West 15.10 feet to the **POINT OF BEGINNING**.

Containing 3,622 square feet of land (0.083 acre), more or less.

A Plat Map is attached hereto and made a part hereof.

This description is based on record, on file documents and field survey measurements. Bearings and distances are based on the California Coordinate System of 1983 (CCS83) Zone III, 1998.5 Epoch. Distances are grid distances, to obtain ground level distances multiply by 1.0000611.



J-2038

PM 944
76 PM 66
PARCEL A

J-2039

519-0850-062-02

J-2040

**MURCO INDUSTRIAL
LIMITED PARTNERSHIP
DOC. 99101595**

PM 944
76 PM 66
PARCEL B

CITY OF FREMONT
S.D.E.
DOC. 83-168653

N76°44'56"E
15.09'

J-2038-3A

J-2038-1

10' WIDE
PIPELINE ESMT
RE:1816 IM:69

N19°34'48"W

208.77'

J-2039-3A

3,622 sq.ft.

N19°34'48"W

210.47'

J-2039-1

32.71
N19°48'33"W

0.083 acres

31.02
N19°48'33"W

28.96'
N76°44'56"E

N76°44'56"E
15.10'

J-2040-3A

P.O.B.

J-2040-1

P.O.C.

J-2029

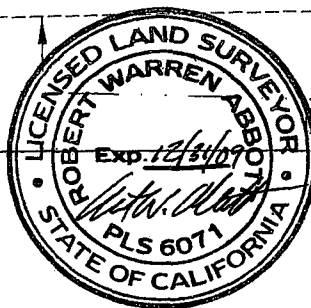
V.T.A.

DOC. 2002578558
PARCEL TWENTY-FOUR

U.P.R.R. V-11/2, NO. 10-15)

U.P.R.R.

J-2029-3B



(J-2029-2C)

CAD FILE NO. WSX_J-2039-3A.DWG

WARM SPRINGS BLVD. INVESTMENTS, LLC
(DOC. 2004322175), TEMPORARY CONSTRUCTION AREA.

BEARINGS AND DISTANCES ARE BASED ON THE CALIFORNIA COORDINATE SYSTEM OF 1983 (CCS83) ZONE 3, 1998.5 EPOCH. DISTANCES ARE GRID DISTANCES, TO OBTAIN GROUND LEVEL DISTANCES MULTIPLY BY 1.0000611.



SCALE: 1"=40'

DATE: 07-15-09

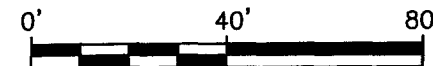
PLAT MAP

CO. ALA.

RTE. WSX

Sheet 1 of 1

DR. NO. WSX_J-2039-3A



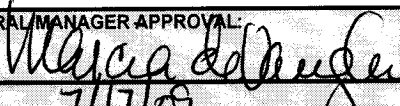
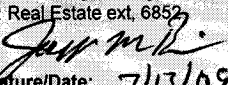
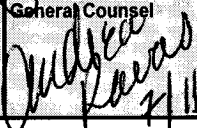

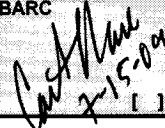
TEMPORARY CONSTRUCTION EASEMENT

This temporary construction easement is for a period during construction as part of the San Francisco Bay Area Rapid Transit District's Warm Springs Extension Project in the City of Fremont, County of Alameda, State of California.

BART will provide the property owner thirty (30) days written notice prior to commencing any activities in the easement area ("Commencement Notice"). The temporary construction easement will expire twenty-four (24) months after BART delivers the Commencement Notice or December 31, 2015 whichever occurs first.



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: 		GENERAL MANAGER ACTION REQ'D: Approve and forward to the Board		
DATE: 7/17/09		BOARD INITIATED ITEM: No		
Originator/Prepared by: Joseph Basuino Dept: Real Estate ext. 6852  Signature/Date: 7/13/09	General Counsel  7/14/09	Controller/Treasurer  7/16/09	District Secretary []	BARC  2-15-09 []
Status: Routed		Date Created: 07/13/2009		

TITLE:

Condemnation of Real Property for WSX Project BART Parcel # J-2501-1A and J-2501-3A

NARRATIVE:

PURPOSE:

To adopt by a two-thirds vote of the entire Board the attached Resolution of Necessity to Condemn fee simple and temporary easement interest in real property located at 44960 Warm Springs Blvd, Fremont, California 94539. This property is required for the Warm Springs Extension Project.

DISCUSSION:

The San Francisco Bay Area Rapid Transit District ("BART") proposes to purchase certain real property interests for the purpose of constructing a rail extension from the existing Fremont Station site south to the Warm Springs District in Fremont ("WSX" or the "Project"). The Project requires the acquisition of approximately 3,738 square feet in fee and of approximately 1,443 square feet in temporary construction easement of a 2.999± acre property owned by James W. Lopes ("Lopes"). The property is located at 44960 Warm Springs Boulevard, Fremont, California 94539 (BART Parcel #J-2501-1A and J-2501-3A or the "Subject Parcel").

The Board certified a California Environmental Quality Act ("CEQA") Final Environmental Impact Report ("FEIR") on September 15, 1992, and a Supplemental Environmental Impact Report ("SEIR") on June 26, 2003, adopting the Project on those respective dates. Thereafter, the Federal Transit Administration ("FTA"), as lead federal agency, and BART released a Final Environmental Impact Statement ("FEIS") for the Warm Springs Extension Project in July 2006. The FTA issued a Record of Decision on October 24, 2006.

The proposed use of the Subject Parcel is for road widening of Warm Springs Boulevard in Fremont to accommodate the future traffic patterns that will result from construction and operation of the Warm Springs BART Station. Project features proposed on or near this parcel have been specifically planned and located in an attempt to meet Project needs in the most beneficial and least environmentally harmful way possible.

The uses to be located on the Subject Parcel, particularly the roadway widening, are necessary for the successful construction of the Project and the safe and efficient operation of the BART system. The Subject Parcel is uniquely suited to support these Project purposes.

The offer required by Section 7267.2 of the Government Code has been made to the owners of record of the Subject Parcel on December 17, 2008. The estimated market value of the required property interests in the Subject Parcel is \$1,000.00.

To date, negotiations appear to be at an impasse. The property owners have been notified of the Board hearing on July 23, 2009.

In order to proceed with the recommended condemnation, the Board must determine each of the following:

1. The public interest and necessity require the proposed project.
2. The proposed project is planned or located in a manner that will be most compatible with the greatest public good and the least private injury.
3. The proposed property acquisition is necessary for said project.
4. Whether the offer required by Government Code section 7267.2 has been made to all owners of record, or the offer has not been made because the owner cannot be located with reasonable diligence.

FISCAL IMPACT:

The \$1,000 required for the acquisition of Parcel # J-2501 and J-2501-3A is proposed to come from Project 02EC, ROW Acquisition. The Office of the Controller/Treasurer certifies that funds are currently available to meet this obligation. Funds for the purchase will come from the following source:

CTC Traffic Congestion Relief Program (TCRP) –WSX	55N:	\$1,000
---	------	---------

As of month end 5/24/09, \$45,131,543 is available for commitment from this fund source for this Project, and \$13,416,462 has been committed by BART to date. There are \$1,426,150 pending commitments in BART's financial management system. This action will commit an additional \$1,000, leaving an uncommitted balance of \$30,287,931 in this fund source.

There is no fiscal impact on available unprogrammed District reserves.

ALTERNATIVES: Withdraw the condemnation action and proceed with negotiations without the backing of eminent domain. Withdrawal of the condemnation action may result in the property not being available for Project construction when required and exposing BART to additional escalation on the capital cost of the WSX Project.

RECOMMENDATIONS: Adoption of the attached Resolution of Necessity to condemn the Real

Property.

MOTION: Adopt the attached, "Resolution of Necessity to Condemn Real Property; Make Findings and Determination; Authorize Eminent Domain Proceedings and Application for Possession Prior to Judgment for BART Parcels J-2501-1A and J-2501-2A; Draw and Deposit Warrant." (Two-thirds vote required.)

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

RESOLUTION OF NECESSITY TO CONDEMN
REAL PROPERTY; MAKE FINDINGS AND
DETERMINATIONS; AUTHORIZE EMINENT
DOMAIN PROCEEDINGS AND APPLICATION
FOR POSSESSION PRIOR TO JUDGMENT FOR
BART PARCELS J-2501-1A AND J-2501-3A;
DRAW AND DEPOSIT WARRANT /)

Resolution No.

Recitals

1. The San Francisco Bay Area Rapid Transit District ("BART or District") is undertaking the construction of the Warm Springs Extension Project (the "Project"). The BART Board of Directors ("Board") certified a California Environmental Quality Act ("CEQA") Final Environmental Impact Report ("FEIR") on September 15, 1992. The District prepared a Supplemental Environmental Impact Report ("SEIR") for the purpose of updating the 1992 FEIR due to changed circumstances and certain revisions to the Project since 1992. On June 26, 2003, following a public hearing, the Board certified the SEIR and adopted the Project.

2. The Federal Transit Administration ("FTA") and BART released a Final Environmental Impact Statement ("FEIS") for the Warm Springs Extension Project in July of 2006. The FTA issued a Record of Decision on October 24, 2006, which determined that the National Environmental Policy Act ("NEPA") requirements and other federal requirements for the Project have been satisfied.

3. The Project requires the acquisition of certain property owned by James W. Lopes ("Lopes") that is defined in paragraph 5 of these Recitals as the Subject Property.

4. The District has complied with all requirements of CEQA and NEPA for the Project.

5. The District desires to acquire for public use, by exercise of the power of eminent domain, property interests, to wit, fee title and temporary construction easement, together with all improvements situated thereon and together with all rights appurtenant thereto, to certain real property owned in fee simple by Lopes, as its interests appear of record, which real property, or interests in property, is located at 44960 Warm Springs Boulevard, Fremont, California, 94539, and is identified as BART Parcel Numbers J-2501-1A and J-2501-3A (Assessor's Parcel Number 519-1310-034-13), and is more particularly described and shown in Exhibits A and B, attached hereto and incorporated herein by this reference (the "Subject Property"). Parcel J-2501-1A is to be acquired in fee, together with any improvements thereon. Parcel J-2501-3A is to be acquired as a temporary construction easement.

6. The Board of Directors constitutes the governing body of the District and is authorized by Sections 28953, 29010, and 29031 of the California Public Utilities Code to acquire the Subject Property by eminent domain.

7. The District has tendered a written offer to the owner or owners of record to purchase the Subject Property for the fair market value, and has sent to the owner or owners written notice of the intent to adopt this resolution of necessity.

8. The Board of Directors has given due consideration to all oral and documentary evidence presented and has found that the acquisition of the Subject Property is required by the public interest and necessity for rapid transit purposes, more particularly to construct the Project and all incidents thereto.

Now, therefore, by vote of two-thirds or more of its members, the Board of Directors of the San Francisco Bay Area Rapid Transit District does find and resolve that:

1. The public interest and necessity require the proposed Project;
2. The proposed Project is planned and located in the manner which will be most compatible with the greatest public good and the least private injury;
3. The Subject Property is necessary for the proposed Project;
4. The offer required by Section 7267.2 of the California Government Code has been made to all owners of record;
5. The District has complied with all conditions and statutory requirements, including those prescribed by CEQA, that are necessary to exercise the power of eminent domain to acquire the Subject Property;
6. The Subject Property is being acquired for a compatible use under California Code of Civil Procedure Section 1240.510 in that the District's use of the Subject Property will not interfere with or impair the continued use of the Subject Property for public utilities as they now exist or may reasonably be expected to exist in the future;
7. The Subject Property is being acquired for a more necessary public use under California Code of Civil Procedure Section 1240.610 in that the District's use of the Subject Property is a more necessary public use than the use to which the property is appropriated.

Special counsel, Erickson, Beasley & Hewitt, are hereby AUTHORIZED AND EMPOWERED:

To acquire in the name of the San Francisco Bay Area Rapid Transit District, by condemnation, the Subject Property in accordance with the provisions of the Eminent Domain Law, the Code of Civil Procedure and the Constitution of California.

To prepare and prosecute in the name of the San Francisco Bay Area Rapid Transit District such proceedings in the proper court as are necessary for such acquisition; and

To deposit the probable amount of just compensation, based on an appraisal, and to apply to said court for an order permitting the San Francisco Bay Area Rapid Transit District to take immediate possession and use the Subject Property for said public uses and purposes.

The General Manager of the San Francisco Bay Area Rapid Transit District is hereby
AUTHORIZED AND EMPOWERED:

To draw a warrant in the amount as determined by an appraisal of the fair market value of the Subject Property, made payable on California Transportation Commission (CTC) Traffic Congestion Relief Program (TCRP)-WSX Fund 55N, said warrant to be made payable to State of California--Condemnation Deposits Fund, and deliver said warrant to said special counsel or wire said sum directly to the State of California Treasurer's Office, to be deposited with said payee as security for the order for possession hereinbefore authorized.

#

**LEGAL DESCRIPTION
JAMES W. LOPES
PORTION OF APN 519-1310-034-13
ALAMEDA COUNTY
CITY OF FREMONT, CALIFORNIA**

July 15, 2009

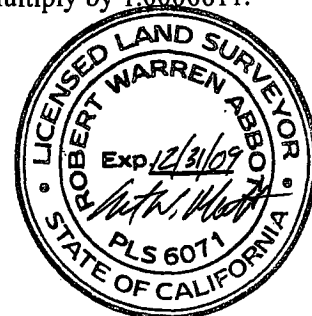
Being a portion of that certain real property described in a Trust Transfer Deed to James W. Lopes, recorded February 17, 2000 as Document No. 2000051679 Official Records Office of the Recorder of Alameda County, State of California being more particularly described as follows:

BEGINNING at the southeasterly corner of said James W. Lopes property (2000051679) being a point on the easterly line of that certain real property described in a Grant Deed to the San Francisco Bay Area Rapid Transit District recorded June 9, 1987 as Document No. 87-161032 Official Records Office of the Recorder of Alameda County, State of California, being a point on the westerly right-of-way line of Warm Springs Boulevard (County Road 397) as described in a Grant Deed to the City of Fremont, recorded November 19, 1982 as Document No. 82-176629 Official Records Office of the Recorder of Alameda County, State of California; thence along the southerly line of said James W. Lopes property (2000051679) South 66° 50' 37" West 20.12 feet to a point of non-tangency of a curve concave westerly to which a radial line bears North 65° 57' 25" East; thence along said curve concave westerly having a radius of 1,900.00 feet northwesterly through a central angle of 01° 50' 33" an arc length of 61.10 feet to a point of reverse curvature of a curve concave easterly; thence along said curve concave easterly having a radius of 250.00 northerly through a central angle of 14° 18' 19" an arc length of 62.42 feet to a point of reverse curvature of a curve concave southwesterly; thence along said curve concave southwesterly having a radius of 607.53 feet northwesterly through a central angle of 06° 43' 47" an arc length of 71.36 feet to a point of reverse curvature of a curve concave northeasterly; thence along said curve concave northeasterly having a radius of 648.40 feet northerly through a central angle of 06° 07' 03" an arc length of 69.23 feet; thence North 12° 11' 33" West 16.23 feet to a point on said westerly right-of-way line of Warm Springs Boulevard (82-176629) being the easterly line of said James W. Lopes property (2000051679); thence along said westerly right-of-way line of Warm Springs Boulevard (82-176629) along said easterly line of James W. Lopes property (2000051679) the following two (2) courses: South 19° 05' 42" East 78.32 feet; South 23° 09' 23" East 200.07 feet to the **POINT OF BEGINNING**.

Containing 3,738 square feet of land (0.086 acres), more or less.

A Plat Map is attached hereto and made a part hereof.

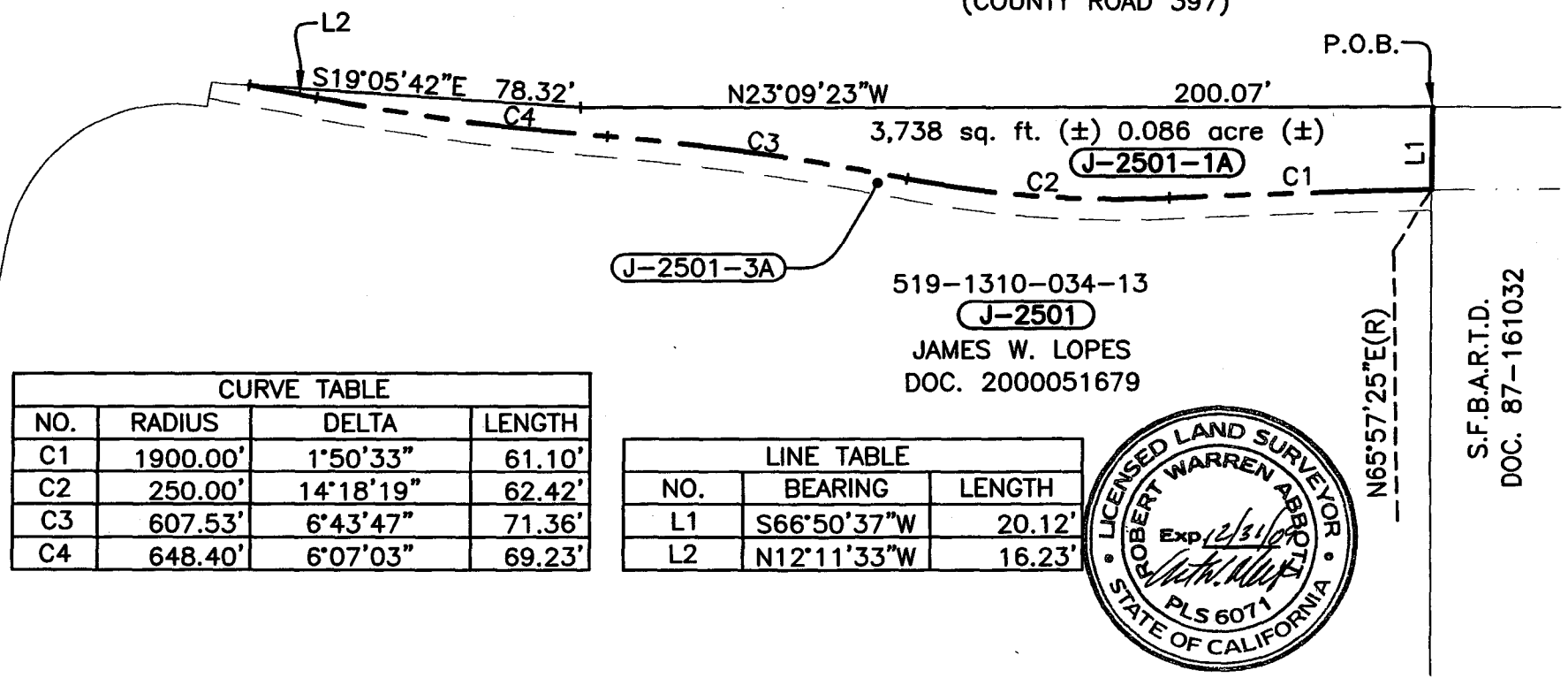
This description is based on record, on file documents and field survey measurements. Bearings and distances are based on the California Coordinate System of 1983 (CCS83) Zone III, 1998.5 Epoch. Distances are grid distances, to obtain ground level distances multiply by 1.0000611.





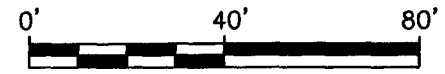
GRIMMER BLVD.

WARM SPRINGS BLVD.
(COUNTY ROAD 397)



CURVE TABLE			
NO.	RADIUS	DELTA	LENGTH
C1	1900.00'	1°50'33"	61.10'
C2	250.00'	14°18'19"	62.42'
C3	607.53'	6°43'47"	71.36'
C4	648.40'	6°07'03"	69.23'

LINE TABLE		
NO.	BEARING	LENGTH
L1	S66°50'37"W	20.12'
L2	N12°11'33"W	16.23'



CAD FILE NO.	WSX_J-2501-1A.DWG
JAMES W. LOPEZ (DOC. 2000051679), FEE TAKE AREA.	
BEARINGS AND DISTANCES ARE BASED ON THE CALIFORNIA COORDINATE SYSTEM OF 1983 (CCS83) ZONE 3, 1998.5 EPOCH. DISTANCES ARE GRID DISTANCES, TO OBTAIN GROUND LEVEL DISTANCES MULTIPLY BY 1.0000611.	
SCALE: 1"=40' DATE: 07-15-09	
PLAT MAP	
CO. ALA.	RTE. WSX Sheet 1 of 1
DR.NO. WSX_J-2501-1A	

**LEGAL DESCRIPTION
JAMES W. LOPES
PORTION OF APN 519-1310-034-13
ALAMEDA COUNTY
CITY OF FREMONT, CALIFORNIA**

July 15, 2009

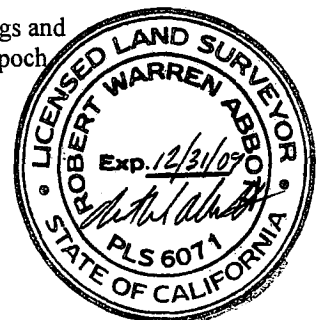
Being a portion of that certain real property described in a Trust Transfer Deed to James W. Lopes, recorded February 17, 2000 as Document No. 2000051679 Official Records Office of the Recorder of Alameda County, State of California being more particularly described as follows:

COMMENCING at the southeasterly corner of said James W. Lopes property (2000051679) being a point on the easterly line of that certain real property described in a Grant Deed to the San Francisco Bay Area Rapid Transit District recorded June 9, 1987 as Document No. 87-161032 Official Records Office of the Recorder of Alameda County, State of California, being a point on the westerly right-of-way line of Warm Springs Boulevard (County Road 397) as described in a Grant Deed to the City of Fremont, recorded November 19, 1982 as Document No. 82-176629 Official Records Office of the Recorder of Alameda County, State of California; thence along the southerly line of said James W. Lopes property (2000051679) South $66^{\circ} 50' 37''$ West 20.12 feet to the **POINT OF BEGINNING**; thence continuing along the southerly line of said James W. Lopes property (2000051679) South $66^{\circ} 50' 37''$ West 5.00 feet to a point of non-tangency of a curve concave westerly to which a radial line bears North $65^{\circ} 57' 25''$ East; thence along said curve concave westerly having a radius of 1,895.00 feet northwesterly through a central angle of $01^{\circ} 50' 25''$ an arc length of 60.87 feet to a point of reverse curvature of a curve concave easterly; thence along said curve concave easterly having a radius of 255.00 northerly through a central angle of $14^{\circ} 18' 19''$ an arc length of 63.67 feet to a point of reverse curvature of a curve concave southwesterly; thence along said curve concave southwesterly having a radius of 602.53 feet northwesterly through a central angle of $06^{\circ} 43' 47''$ an arc length of 70.77 feet to a point of reverse curvature of a curve concave northeasterly; thence along said curve concave northeasterly having a radius of 653.40 feet northerly through a central angle of $06^{\circ} 07' 03''$ an arc length of 69.76 feet; thence North $12^{\circ} 11' 33''$ West 25.01 feet to a point on the westerly right-of-way line of said Warm Springs Boulevard (82-176629); thence along said westerly right-of-way line of Warm Springs Boulevard (82-176629) being the easterly line of said James W. Lopes property (2000051679) the following two courses: North $77^{\circ} 44' 52''$ East 3.94 feet; South $19^{\circ} 05' 42''$ East 8.85 feet; thence through interior of said James W. Lopes property (2000051679) the following five (5) courses: South $12^{\circ} 11' 33''$ East 16.23 feet to a point of curvature of a curve concave northeasterly; along said curve concave northeasterly having a radius of 648.40 feet southerly through a central angle of $06^{\circ} 07' 03''$ an arc length of 69.23 feet to a point of reverse curvature of a curve concave westerly; along said curve concave westerly having a radius of 607.53 southerly through a central angle of $06^{\circ} 43' 47''$ an arc length of 71.36 feet to a point of reverse curvature of a curve concave northeasterly; along said curve concave northeasterly having a radius of 250.00 feet southeasterly through a central angle of $14^{\circ} 18' 19''$ an arc length of 62.42 feet to a point of reverse curvature of a curve concave southwesterly; along said curve concave southwesterly having a radius of 1900.00 feet southeasterly through a central angle of $01^{\circ} 50' 33''$ an arc length of 61.10 feet to the **POINT OF BEGINNING**.

Containing 1,443 square feet of land (0.033 acres), more or less.

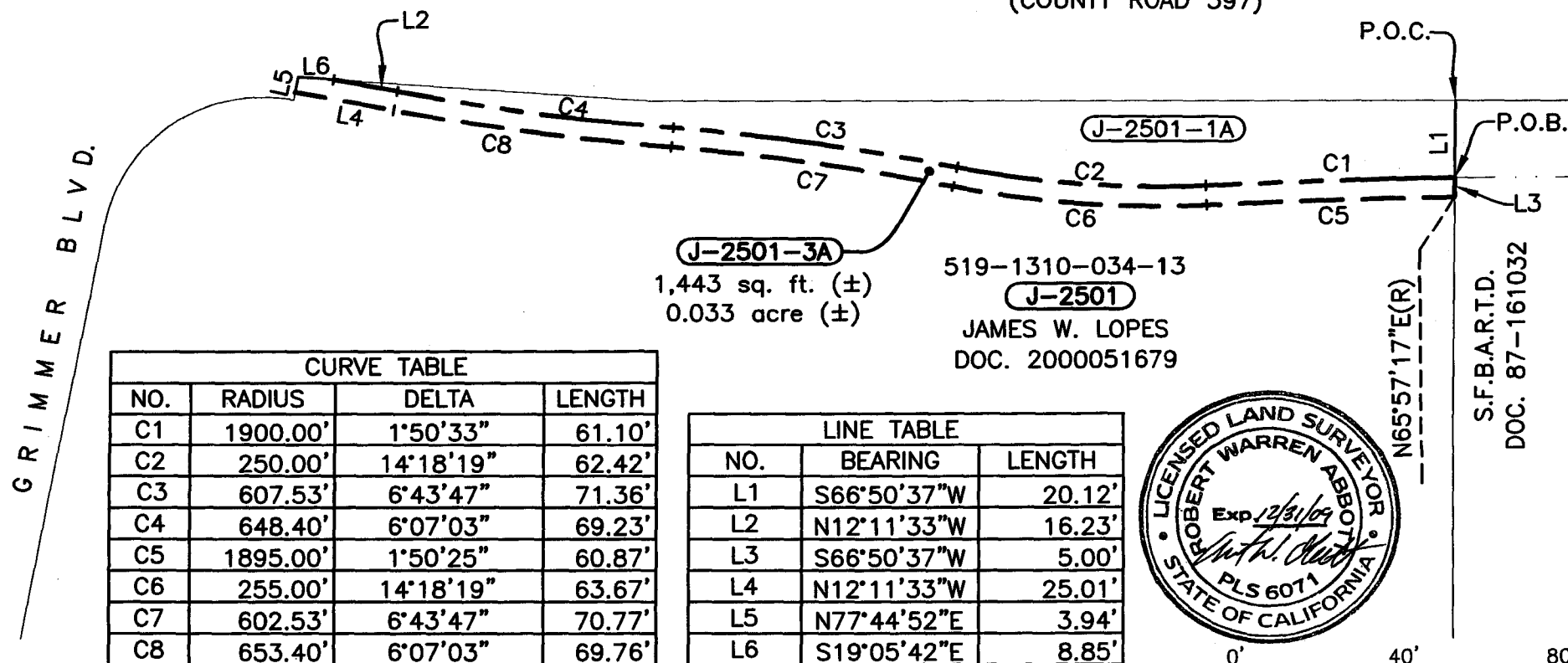
A Plat Map is attached hereto and made a part hereof.

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WARM SPRINGS BLVD.
(COUNTY ROAD 397)



CURVE TABLE			
NO.	RADIUS	DELTA	LENGTH
C1	1900.00'	1°50'33"	61.10'
C2	250.00'	14°18'19"	62.42'
C3	607.53'	6°43'47"	71.36'
C4	648.40'	6°07'03"	69.23'
C5	1895.00'	1°50'25"	60.87'
C6	255.00'	14°18'19"	63.67'
C7	602.53'	6°43'47"	70.77'
C8	653.40'	6°07'03"	69.76'

LINE TABLE		
NO.	BEARING	LENGTH
L1	S66°50'37"W	20.12'
L2	N12°11'33"W	16.23'
L3	S66°50'37"W	5.00'
L4	N12°11'33"W	25.01'
L5	N77°44'52"E	3.94'
L6	S19°05'42"E	8.85'



CAD FILE NO. WSX_J-2501-3A.DWG

JAMES W. LOPEZ (DOC. 2000051679),
TEMPORARY CONSTRUCTION AREA.

BEARINGS AND DISTANCES ARE BASED ON THE CALIFORNIA COORDINATE SYSTEM OF 1983 (CCS83) ZONE 3, 1998.5 EPOCH. DISTANCES ARE GRID DISTANCES, TO OBTAIN GROUND LEVEL DISTANCES MULTIPLY BY 1.0000611.



SCALE: 1"=40'

DATE: 07-15-09

PLAT MAP

CO. ALA.

RTE. WSX

Sheet 1 of 1

DR.NO. WSX_J-2501-3A

TEMPORARY CONSTRUCTION EASEMENT

This temporary construction easement is for a period during construction as part of the San Francisco Bay Area Rapid Transit District's Warm Springs Extension Project in the City of Fremont, County of Alameda, State of California.

BART will provide the property owner thirty (30) days written notice prior to commencing any activities in the easement area ("Commencement Notice"). The temporary construction easement will expire one year after BART delivers the Commencement Notice or December 31, 2015 whichever occurs first.



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Marcia Selander</i>		GENERAL MANAGER ACTION REQ'D: Approve and forward to the Board of Directors		
DATE: c 7-15-09		BOARD INITIATED ITEM: No		
Originator/Prepared by: Jeffrey Baker Dept: Rolling Stock & Shops Ext 7574 <i>Jeffrey Baker</i>	General Counsel <i>Cynthia...</i>	Controller/Treasurer <i>[Signature]</i>	District Secretary <i>[Signature]</i>	BARC <i>Paul...</i>
Signature Date: 6/29/09	6/29/09 []	[]	[]	7/14/09 []

Award Contract No. 6M3085 for Dry Clean, Repair and Supply Replacement Transit Vehicle Passenger Seat Cushion and Cover Assemblies

NARRATIVE:

PURPOSE:

To authorize the General Manager to award Contract No. 6M3085, an estimated quantities contract, for dry cleaning, repairing and supplying replacement transit vehicle passenger seat cushions and cover assemblies, to National Transit Interiors.

DISCUSSION:

This is a four-year agreement to clean, repair, and provide replacement transit vehicle seat cushion and cover assemblies. Activities under this contract include dry cleaning, applying stain resistant treatment, repairing or replacing fabric upholstered panels, and supplying replacement cushion and cover assemblies as needed. The contract requires pickup and delivery of complete assemblies to four (4) primary Rolling Stock and Shop locations. The seat covers are upholstery fabric composed of 90% wool and 10% nylon blend, treated with a fire retardant. A passenger seat consists of 4 bolster panels, 2 center panels, 1 front flap and 1 rear filler. An assembled seat back consists of 1 metal stiffener with neoprene foam body and cover with fasteners. An assembled seat bottom consists of neoprene foam with cover and fasteners. Approximately 2,500 seats require service or replacement each month out of a total of 46,830 Transit Vehicle Seats to be maintained.

Advance Notice to Bidders was sent out to 77 potential Bidders. Contract No. 6M3085 was advertised on April 9, 2009 using a two-step sealed bid contracting process. A pre-bid meeting was held on April 22, 2009, to review the submittal procedures and the District's procedure for evaluation of the Qualification Bid and the Price Bid. Eight (8) prospective Bidders attended. Each Bidder was required to concurrently submit a separate Qualification and Price Bid. One Qualification Bid and sealed Price Bid package was received on May 12, 2009 from National Transit Interiors.

The Qualification Bid submitted by National Transit Interiors was reviewed by the District's Selection Committee, which is comprised of representatives from Rolling Stock and Shops Engineers, Inspectors, and Transit Vehicle Cleaning. The Bid was reviewed on the basis of criteria set forth in the Instruction to Bidders as to the firm's experience, equipment, and capability to dry clean, repair, replace and deliver transit vehicle seat assemblies. The

Qualification Bid review was completed on May 15, 2009. The basis for award is the Grand Total Bid set forth in the Price Bid of the sole bidder who passed the Qualification Bid review.

The Price Bid was opened on May 19, 2009, result follows.

1. National Transit Interiors, Belmont, CA	\$2,262,081.60
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The proposal submitted by National Transit Interiors is responsive, and an examination of that firm's experience, facility, and financial status shows a satisfactory condition. Staff has determined that the Price Bid is fair and reasonable, based on the Engineer's Estimate (\$2,082,553.92).

This is an estimated quantities contract with a four-year term. Pursuant to the terms of the contract, the District may purchase a quantity of up to 150% of the contract bid price, subject to the availability of funding.

FISCAL IMPACT

The Office of the Controller-Treasurer certifies that funds are currently available to meet the District's obligation under the contract for Fiscal Year 2010 planned expenditures of \$565,520.40. Funding will be provided from the District's Vandalism Insurance (50%) and Rolling Stock and Shops Operating Budget (50%), Cost Center 636, Account 680-300. Funding for future years will be provided from the operating budgets of the Departments as follows: Fiscal Year 2011, \$565,520.40; Fiscal Year 2012, \$565,520.40; and Fiscal Year 2013, \$565,520.40.

ALTERNATIVE

The District does not have the in-house capacity to clean, repair, and replace seat assemblies. This contract is therefore the only alternative to maintain acceptable seat cleanliness and appearance. This program protects the investment of the District's car interior seating acquired through capital expenditures.

RECOMMENDATION


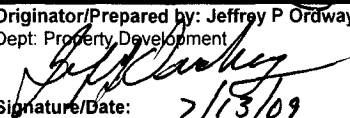
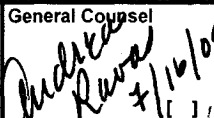
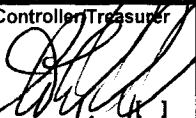

Based upon this analysis, staff recommends adoption of the following motion.

MOTION

The General Manager is authorized to award Contract No. 6M3085, an estimated quantities contract, for Dry Clean, Repair and Supply Replacement Transit Vehicle Passenger Seat Cushion and Cover Assemblies, to National Transit Interiors for the bid amount of \$2,262,081.60, plus applicable taxes, pursuant to notification issued by the General Manager, subject to compliance with the District's Protest Procedures.



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL 		GENERAL MANAGER ACTION REQ'D: Approve and Forward to PPAAL Committee		
DATE: c 7/17/09		BOARD INITIATED ITEM: No		
Originator/Prepared by: Jeffrey P Ordway Dept: Property Development 	General Counsel  7/16/09	Controller/Treasurer  7/17/09	District Secretary []	BARC  7/16/09
Signature/Date: 7/13/09 []				

TITLE:

Maintenance and Reimbursement Agreement with the Redevelopment Agency of the City of Hercules and the Western Contra Costa Transit Authority for the Hercules Transit Center

NARRATIVE:

Purpose: To seek Board authorization for the General Manager or her designee to complete negotiations and execute a Maintenance and Reimbursement Agreement (the "Agreement") with the Redevelopment Agency of the City of Hercules (the "Agency") and the Western Contra Costa Transit Authority ("WestCat") for the Hercules Transit Center.

Discussion: In December 2004 the Board authorized execution of an Exchange Option Agreement with the Agency to exchange BART's current Park-and-Ride parcel for a comparable parcel owned by the Agency approximately one-half mile east of Highway 4, to which the park and ride function would be relocated. Attachment 1 depicts both properties. In September 2005 the Board authorized parking charges at the Hercules Park-and-Ride lot and entering into a revenue sharing agreement with WestCat regarding the parking fees. In February 2008 the Board, after consideration of the environmental findings for the exchange of the BART Park-and-Ride parcel for the parcel owned by the Agency, found that there were no significant environmental effects of the exchange which had not been mitigated to insignificance under CEQA.

As a result of the Exchange Option Agreement, BART has received:

- \$950,000 in cash
- An 8.67 acre parcel of land in exchange for a 6.8 acre parcel of land
- A completed intermodal facility and parking lot with an increase of 174 spaces over the current 248 spaces, all paid for by the Agency
- City concurrence to technically and financially assist in engineering and technical studies, as well as creating a funding mechanism for the provision of extending BART rail services

The newly constructed Hercules Transit Center (the "Center") is essentially ready for use. Given the remoteness of the Center from BART's core transit system, staff from the Agency, BART and WestCat have determined that the Agency could more effectively manage and operate the Center. In addition, the Agency's management of the Center would enable the parking charges and revenue sharing agreement approved by the Board in September 2005 to be implemented as the lot opens. Were BART to implement the parking charge program, it would not be implemented until after the Center began operation. BART staff believe it would be more

appropriate and effective to have the parking charges implemented at the same time as the Center begins operation, expected to be August 3, 2009.

In order to effectuate the Agency's management and operation of the Center, including implementing the paid parking program and revenue-sharing agreement with WestCat, a Maintenance and Reimbursement Agreement (the "Agreement") needs to be executed by all parties. The key terms and conditions of the Agreement include:

- A one-year term, from August 1, 2009 to July 31, 2010.
- Agency to retain a vendor to implement the parking charge program and revenue-sharing agreement with WestCat, all to the BART Customer Access Department's approval and in sufficient time to become operational when the Center opens.
- Maintenance, operation and repair to be performed by contractors to the Agency. The Agency is to prepare an annual budget to perform these functions, with all parties reviewing and approving the annual budget. The Agency has estimated the first year's cost to be approximately \$37,000.
- The Hercules Police Department will be responsible for enforcement of parking violations and police services at the Center. The BART Police Department has concurred with this approach.
- Parking revenue collected at the Center will be allocated:
 - First, to WestCat per the approved revenue-sharing agreement,
 - Second, to the Agency for management, maintenance and operation of the Center, and
 - Third, to BART.
 - Should costs incurred by the Agency exceed revenue collected, the Agency, BART and WestCat would confer on how most effectively to resolve the shortfall.

BART staff believe this is an equitable and effective approach to ensure hands on operation of the remote Hercules Transit Center. First, BART would no longer incur any expenses related to maintaining and operating the Center. Note that BART's current costs could increase due to the expanded size of the Center compared with BART's existing lot. Second, the Agency has a vested interest in operating and maintaining the Center in its recently adopted Hercules New Town Center (area encompassing both the current BART lot and the new Hercules Transit Center). Finally, the Agreement is for one year, enabling all parties to re-examine the arrangement before establishing a longer term solution.

On July 14, 2009 the Agency Board of Directors took the following actions:

- Authorized their staff to execute the Agreement with BART and WestCat,
- Authorized expenditure of \$37,000 as working capital for the first year's operation of the Center,
- Authorized execution of a contract with Clancy Systems, Inc. to implement and operate a paid parking program, and
- Authorized execution of a contract with Fernandez Commercial Cleaning Services, Inc. to

provide maintenance services at the Center.

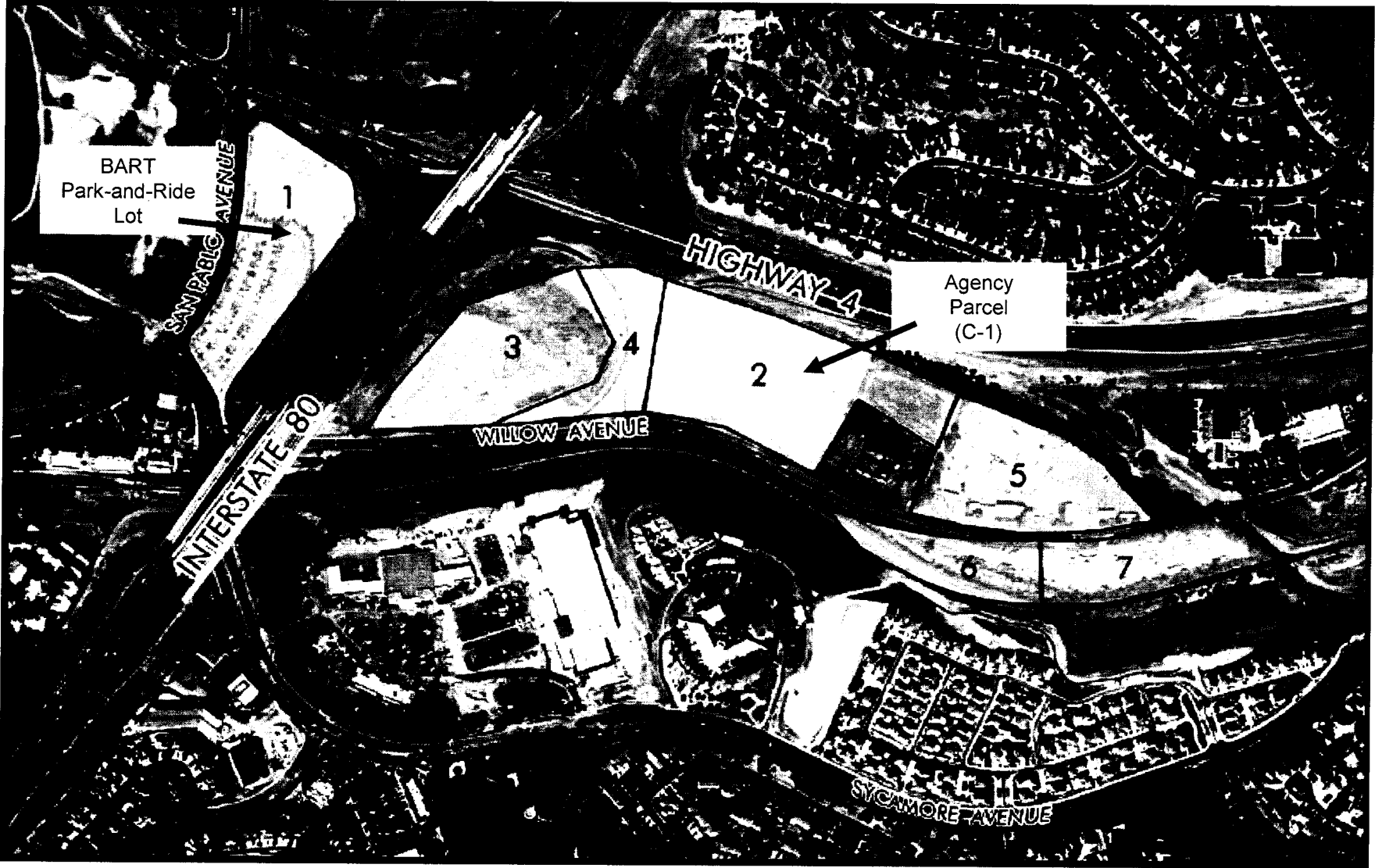
Staff is recommending that the Board authorize execution of the Agreement with the Agency and WestCat for the Hercules Transit Center. The Office of the General Counsel will approve the Agreement as to form.

Fiscal Impact: There would be an operating budget savings to the District from no longer having to maintain the facility. Based on current annual estimates, the Center is expected to generate approximately \$218,000, with \$110,000 going to WestCat and \$94,300 to the Agency to cover operating and maintenance costs. This would generate net revenue to the District of approximately \$13,700 per year. Note that in response to citizen and commuter concerns in recent years, both the Agency and WestCat have informally augmented BART's site maintenance effort by funding additional maintenance of the existing facility.

Alternatives: Not approve the Agreement and require BART to maintain and operate the new, expanded Hercules Transit Center, thereby increasing the District's operating and maintenance costs.

Recommendation: It is recommended that the Board adopt the following motion.

Motion: The General Manager or her designee is authorized to execute a one-year Maintenance and Reimbursement Agreement with the Redevelopment Agency of the City of Hercules and the Western Contra Costa Transit Authority for the Hercules Transit Center.



Attachment 1

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

MEMORANDUM

TO: Board of Directors
FROM: Matthew Burrows, General Counsel
SUBJECT: Legislative Changes to BART Act

DATE: July 16, 2009

Staff seeks Board authority to immediately explore legislative vehicles in Sacramento that could be utilized to make changes to the BART Act required for adoption of a citizen review model for BART police, once such a citizen review model has been approved by the BART Board.

As has been reported regularly at BART Board meetings, the BART Police Department Review Committee (BPD Review Committee) has made substantial progress in the design of a draft model for citizen review of BART police. A public meeting of the BART Board and members of the citizen oversight subcommittee to the BPD Review Committee, where the latest version of the draft model will be presented to the public, is being planned for July 30th.


With this year's State legislative session drawing to a close in mid September, it is important that staff identify legislative vehicles by which changes to the BART Act can be implemented, to the extent any such changes are required by the final model of citizen review adopted by the Board.

The current draft model of citizen review encompasses two major areas where legislative change would be required to meet its stated purpose.

The first area involves adding language to the Public Utilities Code that permits the creation of the position of independent police auditor, as contemplated by the draft model of citizen review, with a structure permitting that position to report directly to the Board of Directors.

The second area requires amending the General Manager's statutory authority to provide for a role in disciplining of members of the police department by the citizen review board, the independent auditor and the Board of Directors, as contemplated by the draft model of citizen review.

Following the public meeting to discuss the draft model and depending on the feedback received, staff will return to the Board for approval of the final model of citizen review and the specific statutory framework for implementation of any approved citizen review model.


Matt Burrows

cc Board Appointed Officers
Deputy General Manager
Associate General Counsel
Executive Staff