

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

BOARD MEETING AGENDA

November 15, 2012

9:00 a.m.

A regular meeting of the Board of Directors will be held at 9:00 a.m. on Thursday, November 15, 2012, in the BART Board Room, Kaiser Center 20<sup>th</sup> Street Mall – Third Floor, 344 – 20<sup>th</sup> Street, Oakland, California.

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

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

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

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

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

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

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

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

Kenneth A. Duron  
District Secretary



Regular Meeting of the  
BOARD OF DIRECTORS

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

1. CALL TO ORDER

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

2. CONSENT CALENDAR

- A. Approval of Minutes of the Meeting of October 25, 2012.\* Board requested to authorize.
- B. Request for Withdrawal of Funds from BART/MTC Railcar Replacement Reserve Account.\* Board requested to authorize.

3. ADMINISTRATION ITEMS

Director Sweet, Chairperson

- A. Grant of Easement Agreement with the Port of Oakland for Transition Structure Emergency Generator Project.\* Board requested to authorize.

4. ENGINEERING AND OPERATIONS ITEMS

Director Fang, Chairperson

- A. Change Orders to Contract No. 15PC-110, Earthquake Safety Program Aerial Structures – A-Line South, with Robert A. Bothman, Inc., for Differing Site Conditions.\* Board requested to authorize.
- B. Change Order to Contract No. 15PP-110A, BART Earthquake Safety Program Station Structures - C Line, with Proven Management, Inc., for Differing Site Conditions.\* Board requested to authorize.
- C. Authorization to Execute Agreements with Union Pacific Railroad, Utilities and Others to Support the Hayward Maintenance Complex Project.\* Board requested to authorize.

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

Director Blalock, Chairperson

- A. Change Order to Agreement No. 6G4544, Central Processing Services for the Regional Transit Discount Card Program, with Cordoba Corporation, for Extension of Time and Funding.\* Board requested to authorize.
- B. BART Metro: Sustainable Communities Operational Analysis.\* For information.

6. GENERAL MANAGER'S REPORT

NO REPORT.

7. BOARD MATTERS

- A. Board Member Reports. For information.  
(An opportunity for Board members to provide brief reports on meetings attended at District expense.)
- B. Roll Call for Introductions.  
(An opportunity for Board members to introduce a matter for consideration at a future Committee or Board Meeting or to request District staff to prepare items or reports.)

8. GENERAL DISCUSSION AND PUBLIC COMMENT

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

- A. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION  
Name of Case: BART Police Officers' Association vs. San Francisco  
Bay Area Rapid Transit District  
Government Code Section: 54956.9(a)
- B. CONFERENCE WITH LABOR NEGOTIATORS - PUBLIC EMPLOYEE  
PERFORMANCE EVALUATION  
Agency Negotiators: Directors McPartland, Radulovich, and Sweet  
Titles: General Manager, General Counsel, Controller/Treasurer,  
District Secretary, and Independent Police Auditor  
Government Code Sections: 54957 and 54957.6

10. OPEN SESSION



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

Board of Directors  
Minutes of the 1,665th Meeting  
October 25, 2012

A regular meeting of the Board of Directors was held October 25, 2012, convening at 9:06 a.m. in the Board Room, 344 20<sup>th</sup> Street, Oakland, California. President McPartland presided; Kenneth A. Duron, District Secretary.

Directors present: Directors Blalock, Fang, King, Raburn, Sweet, and McPartland.

Absent: Director Keller. Directors Murray and Radulovich entered the Meeting later.

President McPartland introduced and welcomed BART Accessibility Task Force members, Randall Glock, Chairperson and Alan Smith, Vice Chairperson who addressed the Board.

The topic was discussed.

Directors Murray and Radulovich entered the Meeting.

Consent Calendar items brought before the Board were:

1. Approval of Minutes of the Meeting of September 13, 2012.
2. Agreement with Environmental Systems Research Institute for Enterprise Geographic Information System Enterprise License Agreement.

Director Blalock made the following motions as a unit. Director Murray seconded the motion, which carried by unanimous voice vote. Ayes – 8: Directors Blalock, Fang, King, Murray, Raburn, Radulovich, Sweet, and McPartland. Noes – 0. Absent – 1: Director Keller.

1. That the Minutes of the Meeting of September 13, 2012, be approved.
2. That the General Manager be authorized to execute a 3 year Enterprise License Agreement with Environmental Systems Research Institute (ESRI) in an amount not to exceed \$450,000 to enable unlimited access to ESRI software.

Director Sweet, Chairperson of the Administration Committee, brought the matter of Approval of a Memorandum Solar Photovoltaic (PV) Canopy Systems at Lafayette and Orinda Stations, before the Board. Mr. Frank Schultz, Manager of Energy Programs, presented the item. The item was discussed. Director Murray moved that the District's representative on the Northern California Power Agency (NCPA) Commission is authorized to vote to approve twenty-five (25) year power purchase agreements (PPA's) between NCPA and LightBeam Energy, Inc. to purchase electrical power generated from solar PV canopy systems at Lafayette and Orinda



Stations when they are brought for a vote at the NCPA Commission meeting, and (2) the General Manager is authorized to execute twenty-five (25) year real property lease agreements with LightBeam at the District's Lafayette and Orinda station parking lots to permit the installation and operation of PV canopy systems. Director Blalock seconded the motion, which carried by unanimous voice vote. Ayes – 8: Directors Blalock, Fang, King, Murray, Raburn, Radulovich, Sweet, and McPartland. Noes – 0. Absent – 1: Director Keller.

Director Sweet, brought the matter of the 2013 BART Plus Agreement for the term January 1, 2013 through December 31, 2013 before the Board. Ms. Pamela Herhold, Manager of Financial Planning, presented the item. The item was discussed. Director Murray moved that the General Manager is authorized to execute a new BART Plus Agreement for the term January 1, 2013 through December 31, 2013 with the Central Contra Costa Transit Authority, City of Union City, Western Contra Costa Transit Authority, and the City of Rio Vista, and to exercise options to extend the agreement annually in one-year increments for up to three years. President McPartland seconded the motion, which carried by unanimous voice vote. Ayes – 8: Directors Blalock, Fang, King, Murray, Raburn, Radulovich, Sweet, and McPartland. Noes – 0. Absent – 1: Director Keller.

Director Sweet, Chairperson of the Administration Committee, brought the matter of the District's Response to US Department of Transportation 49 Code of Federal Regulations Part 26 Disadvantaged Business Enterprise (USDOT 49 CFR Part 26 DBE): Program Implementation Modifications; Proposed Rule. Wayne Wong, Department Manger of Office of Civil Rights presented the item. The item was discussed.

Director Fang, Chairperson of the Engineering and Operations Committee, brought the matter of Award of Contract No. 79LR-110, Installation of Radio Distributed Amplifier System in BART Underground, before the Board. Mr. Paul Oversier, Assistant General Manager of Operations, introduced Mr. Thomas Herold, Manager of Communications Engineering, who presented the item. The item was discussed. Director Murray moved that the General Manager is authorized to award Contract No. 79LR-110 – BART Underground Radio System Equipment Installation to Rodan Builders, Inc. for the Bid price of \$1,184,526.00, pursuant to notification to be issued by the General Manager and subject to the District's protest procedures.

Director Fang brought the matter of Quarterly Performance Report, Fourth Quarter Fiscal Year 2013 - Service Performance Review, before the Board. Mr. Paul Oversier, Assistant General Manager, Operations, and Mr. Kenton Rainey, Chief of Police, presented the item. The item was discussed.

Director Blalock, Chairperson of the Planning, Public Affairs, Access, and Legislation Committee, brought the matter of Resolution of Support for the Tanforan Assembly Center Committee Grant Application to the National Parks Service before the Board. Ms. Laura Timothy, Manager of Access and Accessible Services, presented the item.

The following individuals addressed the Board.

Mr. Dan Delcollo

Mr. Bill Sugaya

Mr. Tom Graves

Mr. Richard OBA



The item was discussed. Director Fang moved that the Board adopt Resolution No. 5203, In the Matter of Supporting the Tanforan Assembly Center Committee Grant Application to the National Parks Service. Director Sweet seconded the motion, which carried by unanimous voice vote. Ayes – 8: Directors Blalock, Fang, King, Murray, Raburn, Radulovich, Sweet, and McPartland. Noes – 0. Absent – 1: Director Keller.

President McPartland called for the General Manager's report.

Ms. Grace Crunican, General Manager, introduced Mr. David Kutrosky, Managing Director of Capitol Corridor, who briefly presented the Review of the Draft Agenda for the Capitol Corridor Joint Powers Board Meeting of November 14, 2012.

Director Fang exited the meeting.

Ms. Crunican introduced Mr. Wayne Wong, Department Manger of Office of Civil Rights, who presented an update on the Small Business Opportunity Plan.

President McPartland called for Board Member Reports and Roll Call for Introductions.

Director Blalock reported he attended the Asian American Architects and Engineers Annual Dinner; that he had attended a meeting of the Dumbarton Rail System and the Metropolitan Transportation Commission (MTC) 35<sup>th</sup> year of recognition event.

Director Blalock requested the District evaluate infusing San Bruno Station glass artworks with photos like artworks on Warm Springs Extension. (OPB)

Director Sweet reported she attended the San Francisco Redevelopment Oversight Board meeting, the Asian American Architects and Engineers Annual Dinner, Small Business Advisory Committee meeting and Small Business Advisory Outreach meeting in Richmond, as well as the Silver Spur Luncheon.

Director Radulovich requested that the District ensure its inclusion in the MUNI E line proposal transit planning process for service to the South of Market area (AT&T Park and proposed Warriors arena).

President McPartland reported he attended the Asian American Architects and Engineers Annual Dinner, the Transbay Tube Tour-Inspection , the Great California Shake Out Event and the Mandela Cypress Labor Council meeting.

President McPartland requested personal quarterly briefings of the Earthquake Safety Program.

Director Murray reported that she attended the Asian American Architects and Engineers Annual Dinner; that she had attended the Metropolitan Transportation Commission (MTC) 35<sup>th</sup> year of recognition event; Walnut Creek Transit Village approval; the Contra Costa Transportation Authority meeting; UC Berkeley Transportation Sustainability Research meeting and that she registered voters at the Walnut Creek Station.

Director Raburn reported he Chaired the Oakland Airport Connector Joint Advisory Committee; attended ABAG Fall General Assembly; attended U. C. Berkeley's Talk by Congressman Oberstar and attended the Metropolitan Transportation Commission (MTC) 35<sup>th</sup> year of recognition event.

Ms. Crunican reported that Director Blalock was the keynote speaker for the Warm Springs Extension Milestone event commemorating the completion of the tunnel under Lake Elizabeth in Fremont that would be held October 26, 2012. She also reported attending a partnering meeting with Bombardier Transportation.

President McPartland called for General Discussion and Public Comment.

The Board Meeting was adjourned at 12:00 p.m

Kenneth A. Duron  
District Secretary





## EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Marcia Edwards</i>		GENERAL MANAGER ACTION REQ'D:		
DATE: 11/7/12		BOARD INITIATED ITEM: No		
Originator/Prepared by: Stacey Perkins Dept: Capital Development & Control <i>Stacey Perkins for</i>	General Counsel <i>Andrew Raczko</i> 11/7/12 [ ]	Controller/Treasurer <i>[Signature]</i> [ ]	District Secretary [ ]	BARC <i>Carol Mann</i> 11-7-12 [ ]
Signature/Date: <i>11.6.2012</i>				
Status: Routed		Date Created: 10/23/2012		

TITLE:

### Approve a Request for Withdrawal of Funds from the BART/MTC Car Replacement Reserve Account

NARRATIVE:

#### Purpose:

To request from MTC the withdrawal of up to \$15.5 million from the BART/MTC Car Replacement Reserve Account to be used as a portion of the required funding for a major milestone progress payment and other project expenses for the BART Car Replacement Project.

#### Discussion:

In May, 2006 BART and MTC executed a funding exchange agreement ("Agreement") to establish a restricted account ("Account") to set aside future MTC regional funds to accumulate and earn interest for the BART Car Replacement Project ("Project"). MTC agreed to set aside future regional funds dedicated to transit capital rehabilitation projects for the Project. These included Surface Transportation Program ("STP") and Federal Transit Administration ("FTA") formula funds, which were to be directed to the Project through separate programming actions.

Because federal guidelines do not allow for federal funds to be set aside and "banked" for future use, MTC and BART established a process by which MTC directed federal funds to ready-to-go BART projects and BART deposited an equal amount of local funds into the Account for the Project. This funding exchange has resulted in a balance of approximately \$120 million, including interest earnings, to be used exclusively for Project cash flow needs.

The Agreement requires prior MTC Commission and BART Board approval for withdrawal of funds from the Account. This item is expected to be approved at the November 14 MTC Programming and Allocations Committee and the November 28 Commission meeting.

It is anticipated that the Project will need approximately \$95 million in December 2012, primarily for a major milestone payment to Bombardier Transit Corporation ("Bombardier"), BART's Supplier under Contract No. 40FA-110, Procurement of Transit Vehicles. BART staff, in conjunction with MTC staff, has developed a funding plan for these expenses that includes a withdrawal of up to \$15.5 million from the Account. Other funding sources include \$8 million remaining balance available from the FY 2012 capital allocation to the Project; this year's \$47 million FTA formula grant awarded in September; and the first \$24.5 million from the total



\$45.7 million FY2013 capital allocation to the Project. Costs of any expansion cars would not be funded with Account funds or other regional funds programmed by MTC. Additionally MTC has indicated that an updated Phase I funding plan and scheduled cashflow analyses may be a requirement of future Account withdrawals. BART staff will also work with MTC to insure that deposits of local funds into the Account are made as scheduled to maximize project interest earnings.

Attached for reference are the following documents: Agreement between the Metropolitan Transportation Commission and the San Francisco Bay Area Rapid Transit District for BART Car Replacement Funding Exchange, dated May 24, 2006; Amendment 1 to that agreement; and MTC Resolutions 3918 and 3738.

**Fiscal Impact:**

The up to \$15.5 million withdrawal from the Account will be used to meet cashflow needs towards paying the milestone payment due to Bombardier in December 2012 and project management and vehicle engineering costs. The Account has a current balance of approximately \$120 million, including the interest earnings. Following this action, there will be a remaining balance of approximately \$104.5 million in the Account.

**Alternatives:**

Do not approve the request to MTC to withdraw up to \$15.5 million from the Account. This would result in a delayed payment to Bombardier and would increase Project costs and delay the Project schedule.

**Recommendation:**

Adoption of the following motion.

**Motion:**

Approve the request to MTC to withdraw up to \$15.5 million from the BART/MTC Car Replacement Account for the purpose of meeting BART Car Replacement Project cashflow needs.



Date: May 24, 2006  
W.I.: 1512  
Referred By: PAC  
Revised: 11/15/06-ED  
09/26/07-C  
12/15/10-C

ABSTRACT

Resolution No. 3738, Revised

This resolution approves the principles, process, and schedule for exchanging federal, state, and local funds and the criteria for reserving these funds for BART's A, B, C1, and C2 cars until the cars are eligible for replacement, beginning in 2013, and the funds are needed by BART.

This resolution was revised through administrative action by the Executive Director on November 15, 2006 to include the final version of the agreement between MTC and BART. The revisions specify that the amount of local funds BART agrees to deposit into the Account is equal to 100% of the federal reimbursement less any BART principal previously withheld for retention in the Account, delete a reference to early termination of the agreement, and made a few other terminology changes.

This resolution was revised by the Commission on September 26, 2007 to make a minor correction in Attachment B to the amount programmed in FY 2006-07, and to include in Attachment B a reference to \$45 million in Third Cycle STP funds that were programmed to the BART Car Replacement project by the Commission in MTC Resolution 3723, Revised.

This resolution was revised by the Commission on December 15, 2010 to incorporate references to FTA funds programmed to the BART Car Replacement Project in conjunction with MTC Resolution 3918.

Further discussion of the BART car fund exchange and reserve account is contained in the "Executive Director" memorandum and the Programming and Allocations Summary Sheet dated May 10, 2006, and the Programming and Allocations Summary Sheets dated September 12, 2007 and November 10, 2010.



Date: May 24, 2006  
W.I.: 1512  
Referred By: PAC

RE: BART Car Replacement Funding Exchange and Reserve Account

METROPOLITAN TRANSPORTATION COMMISSION  
RESOLUTION NO. 3738

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

WHEREAS, MTC has adopted a 25-year regional transportation plan (RTP), entitled the Transportation 2030 Plan, (MTC Resolution No. 3681, approved February 23, 2005); and

WHEREAS, the Transportation 2030 Plan identifies a funding shortfall of \$1.3 billion over the next twenty-five years for high priority transit capital projects; and

WHEREAS, the Bay Area Rapid Transit District's (BART) fleet replacement program, which is scheduled to begin in 2013, comprises a significant portion of the region's high priority transit capital shortfall; and

WHEREAS, MTC and BART staff have been in discussions over the development of a program to fund the BART A, B, C1, and C2 car replacement program, hereinafter called "Project", set to begin in 2013, by exchanging federal, state, and local funds for BART local funds and establishing a reserve for such funds, and propose that MTC and BART enter into an agreement articulating the principles for accomplishing such fund exchanges and establishing a reserve capital funding account for the Project; and

WHEREAS, MTC as the regional planning agency has facilitated discussions about financing the Project, including exchanging regional funds and reserving funds for this purpose in coordination with members of the Bay Area Partnership and have afforded opportunity for comment; and

WHEREAS, MTC and BART have specified the terms and conditions of the Project in an agreement which is set forth in Attachment A to this Resolution, attached hereto and incorporated herein as though set forth at length; now, therefore be it

RESOLVED, that MTC approves Attachment A; and, be it further



RESOLVED, that Attachment B, Programmed Amounts, attached hereto and incorporated herein as though set forth at length, sets forth the agreed-upon funding amounts for the fund exchange, which may be amended from time to time by amendment to this Resolution; and, be it further

RESOLVED, that the Executive Director is authorized to execute Attachment A on behalf of MTC, and to make non-substantive changes or minor amendments as deemed appropriate subject to review by MTC's Office of General Counsel for form; and, be it further

RESOLVED, that upon execution of Attachment A by the signatory agencies, MTC staff shall commence implementing the fund exchange and establishing the BART Car Replacement Restricted Account.

METROPOLITAN TRANSPORTATION COMMISSION



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Jon Rubin, Chair

The above resolution was entered into by the Metropolitan Transportation Commission at a regular meeting of the Commission held in Oakland, California on May 24, 2006.



Date: May 24, 2006  
W.I.: 1512  
Referred By: PAC  
Revised: 11/15/06-ED  
12/15/10-C

Attachment A  
Resolution No. 3738, Revised.

**AGREEMENT**  
**between THE METROPOLITAN TRANSPORTATION COMMISSION**  
**and the SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT**  
**For BART CAR REPLACEMENT FUNDING EXCHANGE**



**AGREEMENT**  
**between THE METROPOLITAN TRANSPORTATION COMMISSION**  
**and the SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT**  
**For BART CAR REPLACEMENT FUNDING EXCHANGE**

This Agreement is entered into this 24th day of May 2006 by and between the Metropolitan Transportation Commission (hereinafter "MTC") and the San Francisco Bay Area Rapid Transit District (hereinafter "BART").

RECITALS

1. MTC has adopted a 25-year regional transportation plan (RTP), entitled the Transportation 2030 Plan, (MTC Resolution No. 3681, approved February 23, 2005) that identifies a funding shortfall of \$1.3 billion over the next twenty-five (25) years for transit capital rehabilitation projects. BART's fleet replacement program consisting of construction for the A, B, C1 and C2 fleet replacement, hereinafter referred to as "PROJECT," comprises a significant portion of the region's transit capital shortfall.
2. MTC, through discussions with the Bay Area Partnership, has agreed to set aside regional funds that are dedicated to transit capital rehabilitation projects for PROJECT. The amount of Surface Transportation Program or Federal Transit Administration funds hereinafter referred to as "FEDERAL FUNDS" directed to the PROJECT will be established through separate programming actions by MTC.
3. MTC is responsible for programming FEDERAL FUNDS.
4. The PROJECT is scheduled to begin in 2013, requiring that a restricted account, hereinafter referred to as the "ACCOUNT", be established to set aside funding for this future need.
5. MTC and BART desire to establish a funding exchange program under which MTC will program FEDERAL FUNDS to ready-to-go BART projects and BART will deposit an equal amount of local funds into the ACCOUNT for PROJECT; and
6. The BART Board of Directors has approved the funding exchange program, as well as authorized the General Manager to execute a funding agreement for the BART Car Replacement Funding Exchange, specifying the terms and conditions under which MTC is to provide FEDERAL FUNDS to BART, in exchange for BART's deposit of local unrestricted funds into the ACCOUNT for future use to cover expenses for PROJECT; and
7. Pursuant to MTC Resolution No. 3738, a copy of which is attached hereto and incorporated herein as Attachment A, MTC approved the funding exchange program, as well as this Agreement specifying the terms and conditions under which MTC is to provide FEDERAL FUNDS to BART, in exchange for BART's deposit of local unrestricted funds into the ACCOUNT for future use to cover expenses for PROJECT.

Now, therefore, MTC and BART hereto agree as follows:



**ARTICLE I**  
**MTC RESPONSIBILITIES**

1. MTC agrees to program federal funds to eligible BART projects that are ready to be delivered within the year of MTC's programming action, as set forth in Attachment B of MTC Resolution No. 3738, Programmed Amounts, which details the specific agreed to federal fund sources and funding amounts. The programmed amounts and corresponding year of programming may be amended from time to time by MTC, as set forth in Resolution No. 3738.
2. MTC agrees to establish and manage the ACCOUNT to receive deposits of BART local funds, which will be held in reserve for PROJECT. Procedures for administration of the ACCOUNT are detailed in Article III, Paragraph 4 below.

**ARTICLE II**  
**BART RESPONSIBILITIES**

1. In exchange for MTC programming funds for BART projects as set out in Article I, Paragraph 1 above, BART agrees to concurrently set aside an equal amount of its local funds for PROJECT. BART agrees that the local funds will be unencumbered funds from fare revenues or an equivalent source that does not have spending restrictions.
2. BART agrees to deposit its local funds into the ACCOUNT consistent with the requirements set forth in Article III, Paragraph 1.

**ARTICLE III**  
**MUTUAL AGREEMENT**

The parties agree:

1. MTC agrees to approve BART federal grant applications consistent with Attachment B of MTC Resolution No. 3738, as it may be amended from time to time. Approval by MTC shall be evidenced by the execution of the federal grant.
  - A. For FY 2005-06, MTC shall approve BART's federal grant within two (2) business days after MTC receives notification from FTA that it has approved BART's grant and BART has deposited local funds in the amount of 50% of the funding amount shown for FY 2005-06 in Attachment B of Resolution No. 3738, whichever comes later. BART agrees to notify MTC in advance of depositing said funds. Following MTC's grant approval, BART shall request reimbursement from the federal agency within two (2) business days. BART agrees to deposit the remaining balance of local funds into the ACCOUNT so that the amount therein equals the federal reimbursement within five (5) business days after reimbursement of the federal funds has been made. If BART does not receive federal reimbursement within five (5) business days of submitting its request for reimbursement, it shall promptly notify MTC. Within one (1) business day of receiving such notice, MTC agrees to return BART's local funds deposited in the ACCOUNT. Interest, minus any fees, will be retained in the ACCOUNT. At no time will the balance therein be less



than the minimum amount necessary to maintain the ACCOUNT. Accordingly, should interest, minus fees, be insufficient to meet the minimum amount, MTC may withhold the necessary portion of the principal of the deposit for retention in the ACCOUNT. Thereafter, when federal reimbursement funds are received, BART agrees to deposit local funds into the ACCOUNT in an amount equal to 100% of the federal reimbursement, less any BART principal previously withheld for retention in the Account, within five (5) business days after it receives the grant monies.

- B. For FY 2006-07, and any subsequent years, MTC agrees to approve BART's federal grant as soon as reasonably possible if BART is current on all prior year transfers of local funds to ACCOUNT as outlined in Article 2, Paragraph 2. BART agrees to request reimbursement from the federal agency as soon as reasonably possible after the grant has been executed. Within five (5) business days after reimbursement of the federal funds has been made, BART agrees to deposit local funds into the ACCOUNT in an amount equal to the amount of the federal reimbursement up to the amount shown in Attachment B of Resolution No. 3738.
  - C. If BART receives any FEDERAL FUNDS in advance of depositing local funds and thereafter fails to transfer local funds to the ACCOUNT, MTC may reprogram money from BART's annual FTA programming apportionment, or other funding sources, as appropriate.
- 2. BART will not draw down funds from the ACCOUNT to fund project expenses prior to the year 2013. Preliminary planning and engineering expenses incurred by BART for PROJECT that occur prior to the year 2013 will be funded by regional funds programmed to the project as part of the Phase 1 Funding Plan established by MTC Resolution No. 3918, and by BART through other fund sources and counted as part of the local match requirement for any federal grant monies.
  - 3. If BART fails to accomplish the fleet replacement project, in whole or in part, abandons PROJECT at any stage, or fails to transfer local funds to the ACCOUNT as required by this Agreement, monies remaining in the ACCOUNT may be used at MTC's discretion to fund any transportation needs in the region.
  - 4. The ACCOUNT shall be administered in accordance with the following procedures:
    - A. MTC shall be the exclusive administrator of the ACCOUNT. MTC shall follow the established investment procedures as outlined in MTC Resolution No. 3241, Revised, as may be further revised or superseded, for administering the ACCOUNT.
    - B. All interest earned on the ACCOUNT balance will be retained in the ACCOUNT and reinvested, subject to the same conditions of the deposited funds. Investment and management fees will be assessed by the bank and deducted from the account.
    - C. Withdrawal of funds from the ACCOUNT will require prior MTC Commission and BART Board approval. BART will submit a formal request for each reimbursement of



funds from the ACCOUNT that will outline specific project details, including but not limited to copies of invoices that include defined costs associated with the PROJECT. MTC may withdraw funds from the ACCOUNT without BART Board approval if MTC is withdrawing funds under those circumstances specified in Paragraph 3 of this Article III.

#### ARTICLE IV GENERAL PROVISIONS

1. The term of this Agreement shall commence when jointly executed and shall terminate sixty (60) days after September 30 of the fiscal year that all monies have been drawn from the ACCOUNT.
2. Prior to the initiation of any legal proceedings, the parties of this Agreement agree to submit all claims, disputes or controversies arising out of or in relation to the interpretation, application or enforcement of this Agreement to non-binding mediation. Such mediation shall be conducted under the auspices of the American Arbitration Association or such other mediation service or mediator upon which the parties agree. The party seeking to initiate mediation shall do so by submitting a formal, written request to the other party to this Agreement. This section shall survive completion or termination of this Agreement, but under no circumstances shall either party call for mediation of any claim or dispute arising out of this Agreement after such period of time as would normally bar the initiation of legal proceedings to litigate such claim or dispute under the laws of the State of California.
3. BART shall retain all documents, working papers, records, accounts, and other materials relating to its performance under this Agreement for four years following the termination date of this Agreement defined in Paragraph 1 of this Article IV.
4. BART shall indemnify and hold harmless MTC, its Commissioners, officers, agents, and employees from any and all claims, demands, suits, loss, damages, injury, and/or liability, direct or indirect (including any and all costs and expenses in connection therewith), incurred by reason of any act or omission of BART, its Directors, officers, agents, and employees, or any of them, under or in connection with any work, authority or jurisdiction delegated to BART under this Agreement, including but not limited to BART's obligation to deposit unencumbered funds that do not have spending restrictions into the ACCOUNT; and BART agrees at its own cost, expense and risk to defend any and all claims, actions, suits, or other legal proceedings brought or instituted against MTC, its Commissioners, officers, agents, and employees, or any of them, arising out of such act or omission, and to pay and satisfy any resulting judgments.
5. MTC shall indemnify and hold harmless BART, its Directors, officers, agents, and employees from any and all claims, demands, suits, loss, damages, injury, and/or liability, direct or indirect (including any and all costs and expenses in connection therewith), incurred by reason of any act or omission of MTC, its Commissioners, officers, agents, and employees, or any of them, under or in connection with any work, authority or jurisdiction delegated to MTC under this Agreement; and MTC agrees at its own cost, expense and risk

to defend any and all claims, actions, suits, or other legal proceedings brought or instituted against BART, its Directors, officers, agents, and employees, or any of them, arising out of such act or omission, and to pay and satisfy any resulting judgments.

6. This Agreement and any attachments or documents incorporated herein by inclusion of reference constitute the complete and entire understanding between MTC and BART. Amendment or termination of this MOU shall be in writing and signed by both parties.

METROPOLITAN TRANSPORTATION  
COMMISSION

SAN FRANCISCO BAY AREA RAPID  
TRANSIT DISTRICT

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Steve Heminger, Executive Director

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Dorothy Dugger, General Manager



Date: May 24, 2006  
W.I.: 1512  
Referred By: PAC  
Revised: 11/15/06-ED  
09/26/07-C  
12/15/10-C

Attachment B  
Resolution No. 3738  
Page 1 of 1

ATTACHMENT B  
PROGRAMMED FEDERAL FUNDING AMOUNTS

<u>Ready-to-go Project Title</u>	<u>Transportation Improvement Program</u>	<u>Fund Source</u>	<u>Amount</u>	<u>Fiscal Year Programming</u>
Preventive Maintenance	REG050020	Surface Transportation Program	\$22,680,000	FY 2005-06
Preventive Maintenance	REG050020	Surface Transportation Program	\$22,681,000	FY 2006-07
Preventive Maintenance	REG050020	Surface Transportation Program	\$22,682,000	FY 2007-08
Preventive Maintenance	REG050020	Surface Transportation Program	\$22,683,000	FY 2008-09
Preventive Maintenance	REG050020	FTA Section 5307	\$33,224,866	FY 2010-11

**AMENDMENT NO. 1 TO AGREEMENT**  
**Between THE METROPOLITAN TRANSPORTATION COMMISSION**  
**And the SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT**  
**For BART CAR REPLACEMENT FUNDING EXCHANGE**

This Amendment No. 1, effective as of December 15, 2010 ("Amendment No. 1"), is to the Agreement between the Metropolitan Transportation Commission and the San Francisco Bay Area Rapid Transit District for BART Car Replacement Funding Exchange, dated May 24, 2006 (the "Agreement"). The Agreement is incorporated by reference herein.

The parties agree to modify Agreement as follows:

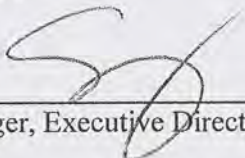
1. Subarticle 2 of Article III, Mutual Agreement, is deleted in its entirety and replaced with the following:

BART shall not draw down funds from the ACCOUNT to fund project expenses prior to the year 2013. Preliminary planning and engineering expenses incurred by BART for PROJECT that occur prior to the year 2013 will be funded by regional funds programmed to the project as part of the Phase 1 Funding Plan established by MTC Resolution No. 3918, a copy of which is attached hereto and incorporated herein as Attachment B, and by BART through other fund sources. These other fund sources shall be counted as part of the local match requirement for any federal grant monies.

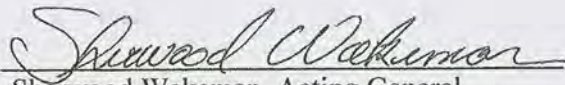
2. Except as provided herein, all other terms and conditions of the Agreement remain unchanged.

IN WITNESS WHEREOF, this Amendment No. 1 has been executed by the parties hereto as of the day and year first written above.

METROPOLITAN TRANSPORTATION  
COMMISSION

  
\_\_\_\_\_  
Steve Heminger, Executive Director

SAN FRANCISCO BAY AREA RAPID  
TRANSIT DISTRICT

  
\_\_\_\_\_  
Sherwood Wakeman, Acting General  
Manager



**ATTACHMENT B**  
**Resolution No. 3918**

Date: December 15, 2010  
W.I.: 1512  
Referred By: PAC

ABSTRACT

Resolution No. 3918

This resolution establishes a funding framework for the BART Rail Car Replacement Program (Phases I and II) and a policy-level commitment of approximately \$780 million in funding toward the Phase 1 Funding Plan for the project in fiscal years 2011 through 2019.

Further discussion of the BART Rail Car Replacement Program is contained in the Programming and Allocations Summary Sheet dated December 8, 2010.

Date: December 15, 2010  
W.I.: 1512  
Referred by: PAC

Re: BART Rail Car Replacement Program

METROPOLITAN TRANSPORTATION COMMISSION  
RESOLUTION NO. 3918

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

WHEREAS, the San Francisco Bay Area Rapid Transit District (BART) is a rapid transit district providing heavy rail transit service in the San Francisco Bay Area; and

WHEREAS, BART wishes to replace 669 rail cars through its Rail Car Replacement Program (PROJECT); and

WHEREAS, BART and MTC wish to establish a funding framework and understanding for the PROJECT; and

WHEREAS, BART and MTC wish to establish a policy-level commitment of funding toward a PHASE 1 FUNDING PLAN in fiscal years 2011 through 2019 in order for BART to award a contract for the PROJECT; and

WHEREAS, BART has approved Resolution No. 5134 regarding the BART Rail Car Replacement Program; and

WHEREAS, MTC previously adopted MTC Resolution No. 3866, the Transit Coordination Implementation Plan, which includes requirements for transit operators participating in the Clipper<sup>SM</sup> program (previously the TransLink<sup>®</sup> Program) to transition certain pre-paid fare media to Clipper<sup>SM</sup>. Appendix B-3 of Resolution No. 3866 establishes the dates by which BART and the other four participating Clipper<sup>SM</sup> operators are expected to transition to Clipper<sup>SM</sup>-only availability; and



WHEREAS, pursuant to Resolution No. 3866, MTC may, at its discretion, withhold, restrict or re-program funds and allocations to an operator that has not made reasonable efforts to implement the requirements of Appendix B-3; now be it therefore,

RESOLVED, that BART and MTC have agreed to the Principles for Funding Framework BART Car Replacement Program set forth in Attachment A and incorporated herein; and be it further

RESOLVED, that BART and MTC have agreed to and approve the PHASE 1 FUNDING PLAN ASSUMPTIONS set forth in Attachment B-1 and incorporated herein; and be it further

RESOLVED, that BART and MTC have agreed to and approve the PHASE 1 FUNDING PLAN set forth in Attachment B-2 and incorporated herein; and be it further

RESOLVED, that BART and MTC agree that MTC's commitment of funding for the PHASE 1 FUNDING PLAN for the PROJECT is limited to the total amount of MTC Funding shown in the PHASE 1 FUNDING PLAN ; and be it further

RESOLVED, that MTC agrees to program Federal Transit Administration (FTA) and Federal Highway Administration (FHWA) funds as set forth in Attachment B-2, subject to Congressional authorization and appropriation, availability of funds, and other critical regional transit capital needs in a timely manner in order to meet PHASE 1 FUNDING PLAN cash flow needs and minimize financing costs; and be it further

RESOLVED, that MTC may substitute other MTC-controlled funds in place of available FTA and FHWA funds specified in the PHASE 1 FUNDING PLAN; and be it further

RESOLVED, that BART agrees to use the funds as shown in Attachment B-2 to meet the local match requirements of federal funds for the PHASE 1 FUNDING PLAN; and be it further

RESOLVED, that BART agrees to comply with all applicable local, state, and federal requirements for funds programmed by MTC; and be it further



RESOLVED, that BART and MTC agree to work with the Bay Area Partnership to ensure that the PROJECT funding plan will be developed and programmed in agreement with the region's overall approach to the Transit Capital Priorities program; and be it further

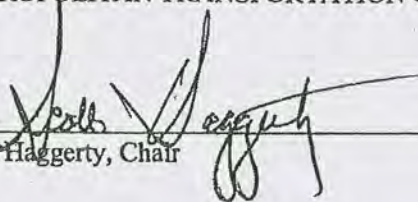
RESOLVED, that BART acknowledges that it has received regional funds from MTC to extend the life of some of its current fleet of rail cars so that they will remain in service while the replacement cars are being procured and delivered, and agrees to maintain its current fleet of rail cars so that they will remain in service while the replacement cars are being procured and delivered; and be it further

RESOLVED, that BART agrees that it will not request regional funds from MTC for a rehabilitation of its current fleet of railcars; and be it further

RESOLVED, that MTC may withhold amending annual PHASE 1 FUNDING PLAN funds in the Transportation Improvement Program if the Commission finds that BART is not in compliance with MTC Resolution No. 3866 including Clipper implementation requirements; and be it further

RESOLVED, that BART and MTC will work with the FTA to ensure the federal funds are available to the PROJECT; and be it further

METROPOLITAN TRANSPORTATION COMMISSION

  
\_\_\_\_\_  
Scott Haggerty, Chair

This resolution was entered into by the Metropolitan Transportation Commission at a regular meeting of the Commission held in Oakland, California, on December 15, 2010.





## EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Marcia Delaney</i>		GENERAL MANAGER ACTION REQ'D: Approve and forward to the Board		
DATE: c <i>11/7/12</i>		BOARD INITIATED ITEM: No		
Originator/Prepared by: Susan Shaffer Dept: Real Estate and Property Development Ext. 6936 <i>Susan Shaffer</i>	General Counsel <i>[Signature]</i>	Controller/Treasurer <i>[Signature]</i>	District Secretary [ ]	BARC <i>[Signature]</i> 11-5-12 [ ]
Signature/Date: <i>11/5/12</i>		[ ]	[ ]	[ ]

TITLE:

### Transition Structure Emergency Generator Grant of Easement Agreement with the Port of Oakland

NARRATIVE:

**PURPOSE:** To authorize the General Manager to execute a Grant of Easement Agreement between BART and the Port of Oakland in connection with an exchange of easements at the BART Oakland transition structure (the "Transition Structure") located within Port property for the purposes of constructing, operating and maintaining an emergency generator to service the Transbay Tube.

**DISCUSSION:** The Oakland Transition Structure Emergency Generator Project (the "Project") will provide a stationary emergency diesel generator and ancillary system at the Transition Structure for lifeline services to be used by BART passengers for relief access from the Transbay Tube tunnel in the event of a man-made or natural catastrophe. The lifeline services will provide power for all emergency loads such as ventilation fans, fire pumps, drain pumps, lighting and other necessary loads during an emergency condition when existing power systems from the utility fail to operate.

In order to construct, operate and maintain the emergency generator, the Project requires additional property at the Transition Structure. The District currently holds approximately 13,191 square feet in exclusive easements at the Transition Structure, including Parcel D-1 as shown on attached Exhibit "A." Parcel D-1 is approximately 4,800 square feet and is located on the north side of the Transition Structure. Although there is potentially enough space for the Project to be located on Parcel D-1, the parcel is too close to the bay side of the Port where large loading/unloading cranes are located, and Parcel D-1 is situated right below the cranes. Geotechnical test data on the soil in this location indicates that the Port's crane area is subject to liquefaction in the event of an earthquake. In such an event, a crane could tip over or drop a load onto the emergency generator, rendering it useless. Thus, the Project requires an alternative location for the generator at the Transition Structure.

The new location for the Project was carefully and closely analyzed and Project staff made the determination that the Project should be constructed on the west side of the Transition Structure, which is far enough away from the cranes and the Port's high traffic areas to ensure that the generator will be functional at all times. As a result, BART must acquire an exclusive easement of approximately 4,976 square feet from the Port, shown as Parcel D-2 on Exhibit "B." The Port



and the Port's shipping tenant have agreed to convey this new exclusive easement to BART in exchange for BART's conveyance of its interest in a portion of Parcel D-1 to the Port.

Parcel D-2 will be an exclusive access and utility easement in favor of BART, and BART will be permitted to use the surface and subsurface of this parcel for ingress and egress to the Transition Structure and to construct, maintain and operate the generator and its ancillary equipment. BART will also be permitted to install a security fence and associated electrical equipment along the property line.

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

**FISCAL IMPACT:** There is no fiscal impact to the District in connection with the exchange of the easements, except for the staff time required to negotiate and finalize this transaction.

**ALTERNATIVES:** Not proceed with the exchange of easements and cancel the Project until another suitable site can be found. Delay in carrying out the Project could result in a serious condition in the event of loss of electrical service within the tube.

**RECOMMENDATION:** Adoption of the following motion:

**MOTION:** The General Manager or her designee is authorized to execute the Grant of Easement Agreement between the San Francisco Bay Area Rapid Transit District and the Port of Oakland in connection with the Oakland Transition Structure Emergency Generator Project.



S.F.B.A.R.T.D  
 Doc. 2004376927  
 Parcel "D"-1"  
 Exclusive Surface Esmt., only for  
 "ingress and egress"  
 (includes subsurface for facilities)

S.F.B.A.R.T.D  
 RE: 3305 IM: 536  
 Parcel Three  
 (Subsurface Esmt.)

S.F.B.A.R.T.D  
 RE: 3305 IM: 536  
 Parcel One  
 (Fee Title)

S.F.B.A.R.T.D  
 Doc. 99202839  
 Parcel "D"  
 (Exclusive Access Esmt.)

S.F.B.A.R.T.D  
 RE: 3305 IM: 536  
 Parcel Four  
 (Subsurface Esmt.)

CAD FILE NO. POO\_VentStructure\dwg\POO\_VS.dwg

EXISTING S.F.B.A.R.T.D. FACILITIES

PORT OF OAKLAND



SCALE: 1" = 50' DATE: 04-17-12

PLAT MAP

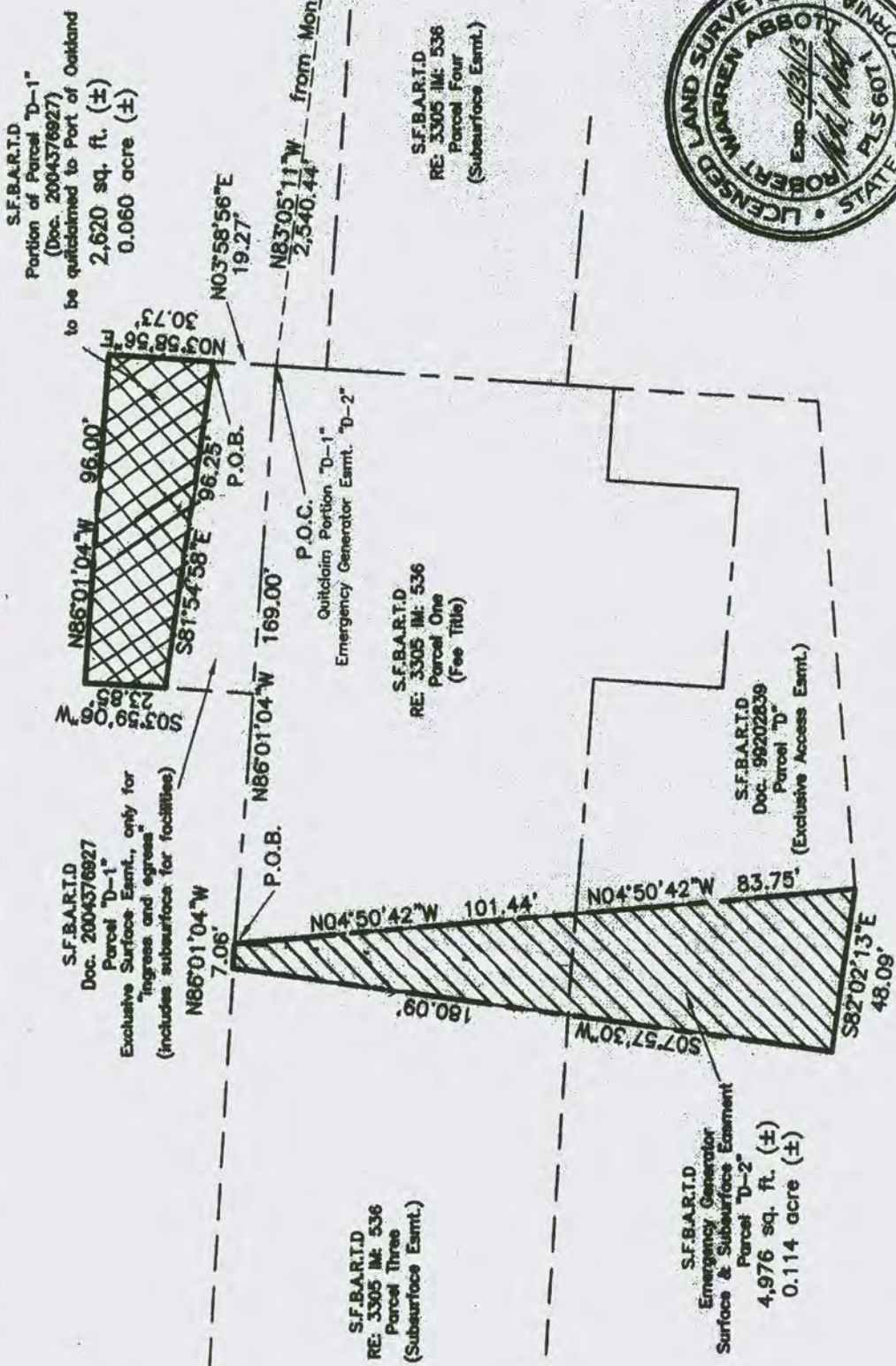
CD. ALA

RTE. M

Sheet 1 of 1

DR.NO. POO\_VS.dwg





CAD FILE NO.   <b>POD_VentStructure\dwg\POD_VS.dwg</b>			<b>FLAT MAP</b>	
			CD. ALA	RTE. M
<b>EMERGENCY GENERATOR FACILITIES AND IMPROVEMENTS WITH SURFACE AND SUBSURFACE EASEMENTS PARCEL "D-2".</b>			DR. NO.	POD_VS.dwg
			SCALE: 1" = 50'	
<b>PORT OF OAKLAND</b>				





## EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Walter DeLeon</i>		GENERAL MANAGER ACTION REQ'D: Approve and forward to Board of Directors		
DATE: 11/7/12		BOARD INITIATED ITEM: No		
Originator/Prepared by: Shirley J Ng Dept: TSD	General Counsel	Controller/Treasurer	District Secretary	BARC
Signature/Date: <i>[Signature]</i> 11/2/12	<i>[Signature]</i> 11/2/12	<i>[Signature]</i> [ ]	[ ]	<i>Rudy P.D.</i> 11/5/12 [ ]
Status: Routed		Date Created: 10/26/2012		

TITLE:

### Contract No. 15PC-110, BART Earthquake Safety Program, Aerial Structures - A Line South, Change Orders for Differing Site Conditions

NARRATIVE:

#### PURPOSE:

To authorize the General Manager to execute Change Orders in an amount not to exceed \$1,200,000 to Contract No. 15PC-110, BART Earthquake Safety Program, Aerial Structures - A Line South.

#### DISCUSSION:

The Board of Directors authorized award of Contract No. 15PC-110 to Robert A. Bothman, Inc. on January 13, 2011. The Contract work involves the retrofit of various bridges and aerial structures including adding reinforced concrete on existing pier foundations and pier caps as well as fiber and steel encasement of pier columns. Two of the bridges to be retrofitted are in Fremont; one crossing over Alameda Creek and the other crossing over Union Pacific Railroad (UPRR) tracks. The work at each of these two bridges consists of retrofitting two abutments and five girders. Upon commencing work on the bridge crossing over Alameda Creek, the Contractor encountered pre-stressed tendons and rebar which did not match the as-built drawings and interfered with the designed retrofit. To avoid damage to the bridge, additional scanning was conducted and based on the information collected, a new design was created. Upon commencing work on the bridge crossing over UPRR tracks, the Contractor again encountered pre-stressed tendons and rebar congestion that required a new design for this bridge. These changes may delay the Contractor's ability to complete the Work within the Contract completion time; the changes have already revised the Contractor's planned work sequence.

The Contract includes an Allowance for Differing Site Conditions in the amount of \$1,000,000 to address unforeseen issues. The Contract is approximately 75% complete. Other differing site conditions such as unforeseen utilities, differing rebar layout in foundations and obstructions underground were encountered utilizing the majority of the Differing Site Conditions Allowance. Staff is requesting authority to negotiate Change Orders in an amount not to exceed \$1,200,000 to compensate the Contractor for current and future additional work and compensable delays created by the differing site conditions at the two bridges. This authority includes amounts for



possible delays caused by differing site conditions, if such delays are determined by staff to be compensable.

Pursuant to Board Rule 5-2.4, Change Orders involving expenditures greater than \$200,000 require Board approval.

The Office of the General Counsel will approve these Change Orders as to form prior to execution. The Procurement Department will review these Change Orders prior to execution for compliance with procurement guidelines.

**FISCAL IMPACT:**

The total not-to exceed amount of \$1,200,000 for these Change Orders is included in the total project budget for the FMS #15PC000, ESP- Aerial Structures - A Line. The Office of the Controller/Treasurer certifies that funds are currently available to meet this obligation.

As of 10/29/12 \$14,430,902 is available for commitment to this project from the following sources:

F/G 801F - ESP GO Bond	\$9,891,320
F/G 801J - ESP GO Bond	\$1,206,044
F/G 3839 & 5352 FHWA	\$3,333,538
Total	<b>\$14,430,902</b>

BART has expended \$7,896,536 and committed \$4,859,188, and reserved \$0.00 to date for other actions. This action will commit \$1,200,000 leaving an available fund balance of \$475,178.

There is no fiscal impact on available unprogrammed District Reserves.

**ALTERNATIVES:**

The Board can elect not to authorize the execution of these Change Orders. The District will likely receive a claim from the Contractor for costs related to addressing the differing site conditions at the two bridges and the retrofits may not be completed without additional funds.

**RECOMMENDATION:**

Recommend that the Board approve the following motion:

**MOTION:**

The General Manager is authorized to execute Change Orders to Contract No. 15PC-110, BART Earthquake Safety Program, Aerial Structures - A Line South, for differing site conditions and related, compensable delays at the bridge crossing over Alameda Creek and the bridge crossing over UPRR tracks in an amount not to exceed \$1, 200,000.



**EXECUTIVE DECISION DOCUMENT**

**ATTACHMENT #1  
CONTRACT NO. 15PC-110**

**CO No: XX**

**CHANGE ORDER SUMMARY**

**BACKGROUND**

Name of Contractor: Robert A. Bothman, Inc.  
Contract No./NTP: 15PC-110 / June 9, 2011  
Contract Description: A Line South Aerial Structures Retrofit  
Percent Complete as of 10/30/12 - Dollars 75%  
Percent Complete as of 10/30/12 – Time 83%

<b><u>COST</u></b>	<b><u>% of Award</u></b>	<b><u>CO Totals</u></b>	<b><u>Contract Amount</u></b>
Original Contract Award Amount			\$8,580,915.00
Change Orders:			
Other than Board Authorized C.O.s	3.00 %	\$ 257,660.23	
Board Authorized Change Orders	0%		
These Change Orders	14.00%	\$1,200,000.00	
Subtotal of all Change Orders	17.00%	\$1,457,660.23	
Revised Contract Amount: _____			\$10,038,575.23

**SCHEDULE**

Original Contract Duration: 616 days  
Time Extension to Date: 0 days  
Time Extension Due to Approved Cos: 0 days  
Est. Time Extension Due to these COs: 74-95 days  
Revised Contract Duration 690-711 days

**SUMMARY REASON FOR THIS CHANGE ORDER**

Differing Site conditions and Redesign of Bumper Brackets at Alameda Creek and Union Pacific Railroad and Time Extension associated with the related Work.





## EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>[Signature]</i>		GENERAL MANAGER ACTION REQ'D: Approve and forward to Board of Directors		
DATE: c <i>11/7/12</i>		BOARD INITIATED ITEM: No		
Originator/Prepared by: Shirley J Ng Dept: TSD	General Counsel	Controller/Treasurer	District Secretary	BARC
Signature/Date: <i>[Signature]</i> <i>11/2/12</i>	<i>[Signature]</i> <i>11/2/12</i>	<i>[Signature]</i> [ ]	[ ]	<i>[Signature]</i> <i>11/5/12</i>

TITLE:

### Contract No. 15PP-110A, BART Earthquake Safety Program, Station Structures - C Line, Change Order No. 33, Increase Allowance for Differing Site Conditions

NARRATIVE:

#### PURPOSE:

To authorize the General Manager to execute Change Order No. 33 for Differing Site Conditions and related, compensable delays on Contract No. 15PP-110A, in an amount not to exceed \$3,000,000, for the Earthquake Safety Program, Station Structures - C Line.

#### DISCUSSION:

The Board of Directors authorized award of Contract No. 15PP-110A to Proven Management, Inc. on May 26, 2011. The scope of the Contract was to seismically strengthen the Orinda, Walnut Creek and Pleasant Hill Stations. Upon commencing the work at Pleasant Hill, the Contractor encountered numerous differing site conditions mostly related to unidentified utilities and a deteriorated grounding system. As a result of these issues, portions of the retrofit at the Pleasant Hill Station are being redesigned and a new grounding system has been installed at Pleasant Hill, with another planned at Walnut Creek. These changes may delay the Contractor's ability to complete the Work within the Contract completion time; the changes have already revised the Contractor's planned work sequence.

The Contract included an Allowance for Differing Site Conditions in the amount of \$1,000,000 to address issues such as those the Contractor has encountered. Work related to differing site conditions at Pleasant Hill will exceed that amount. To date, approximately 30% of the Contract work has been completed and it is anticipated that unforeseen conditions will continue to occur at the remaining two stations where work has begun. Based on a staff evaluation of differing site conditions likely to occur and associated delays, staff requests authorization for an additional \$3,000,000 for current and future additional work and compensable delays created by differing site conditions at the three stations. This authority includes amounts for possible delays caused by differing site conditions, if such delays are determined by staff to be compensable.

Pursuant to Board Rule 5-2.4, Change Orders involving expenditures greater than \$200,000 require Board approval.

The Office of the General Counsel will approve this Change Order as to form prior to execution.



The Procurement Department will review this Change Order prior to execution for compliance with procurement guidelines.

**FISCAL IMPACT:**

The total not-to exceed amount of \$3,000,000 for Change Order No. 33 is included in the total project budget for the FMS #15PP000, ESP- Orinda to Pleasant Hill - C Line. The Office of the Controller/Treasurer certifies that funds are currently available to meet this obligation.

As of 10/9/12, \$27,241,800 is available for commitment to this project from the following sources:

F/G 801F - ESP GO Bond	\$22,778,982
F/G 801J - ESP GO Bond	\$ 4,462,818
Total	<b>\$27,241,800</b>

BART has expended \$8,056,581 and committed \$13,750,725, and reserved \$36,124 to date for other actions. This action will commit \$3,000,000 leaving an available fund balance of \$2,398,370.

There is no fiscal impact on available unprogrammed District Reserves.

**ALTERNATIVES:**

The Board can elect not to authorize the execution of this Change Order. The District will likely receive a claim from the Contractor for costs related to addressing the differing site conditions and the retrofits may not be completed without additional funds.

**RECOMMENDATION:**

Recommend that the Board approve the following motion:

**MOTION:**

For Contract No. 15PP-110A, BART Earthquake Safety Program, Station Structures - C Line, the General Manager is authorized to execute Change Order No. 33 for differing site conditions and related, compensable delays in an amount not to exceed \$3,000,000.



**EXECUTIVE DECISION DOCUMENT**

**ATTACHMENT #1  
CONTRACT NO. 15PP-110A**

**CO No: 33**

**CHANGE ORDER SUMMARY**

**BACKGROUND**

Name of Contractor: ProVen Management, Inc.  
Contract No./NTP: 15PP-110A / July 5, 2010  
Contract Description: C Line Station Structures Retrofit  
Percent Complete as of 9/30/12 - Dollars 25%  
Percent Complete as of 9/30/12 – Time 42%

<b><u>COST</u></b>	<b><u>% of Award</u></b>	<b><u>CO Totals</u></b>	<b><u>Contract Amount</u></b>
Original Contract Award Amount			\$13,773,800.00
Change Orders:			
Other than Board Authorized C.O.s	1.05%	\$144,753.55	
Board Authorized Change Orders			
This Change Order No. 33	21.78%	\$3,000,000.00	
Subtotal of all Change Orders	22.83%	\$3,144,753.55	<u>\$3,144,753.55</u>
<u>Revised Contract Amount:</u>			\$16,918,553.55

**SCHEDULE**

Original Contract Duration: 1080 days  
Time Extension to Date: 0 days  
Time Extension Due to Approved COs: 0 days  
Revised Contract Duration 1080 days

**SUMMARY REASON FOR THIS CHANGE ORDER**

Differing site conditions and delays at Pleasant Hill, Walnut Creek and Orinda.





## EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Marcia delBueno</i>		GENERAL MANAGER ACTION REQ'D: Authority to Execute Agreements for the Hayward Maintenance Complex Project		
DATE: c <i>11/7/12</i>		BOARD INITIATED ITEM: No		
Originator/Prepared by: Olga Perez Dept: Transit System Development <i>Elaine Cartwright</i> Signature/Date: <i>11/5/2012</i>	General Counsel <i>Approved</i> <i>11/6/12</i>	Controller/Treasurer <i>[Signature]</i>	District Secretary <i>[ ]</i>	BARC <i>Ready for P.D. 11/6/12</i>

TITLE:  
**AUTHORITY TO EXECUTE AGREEMENTS WITH UPRR, UTILITIES AND OTHERS TO SUPPORT THE HAYWARD MAINTENANCE COMPLEX PROJECT**

NARRATIVE:

### PURPOSE

To obtain Board authorization for execution of agreements, including permits, with Union Pacific Railroad (UPRR) and various public or private utilities, including Alameda County, cities, agencies and special districts, in order to support the Hayward Maintenance Complex Project (HMC Project). The agreements will provide for support services, including, but not limited to: design, relocation and rearrangement and fees in connection therewith, minor construction and field investigation, for the HMC Project.

### DISCUSSION

In connection with the HMC Project and consistent with the California Environmental Quality Act, on May 26, 2011, the BART Board adopted the Initial Study/Mitigated Negative Declaration and Mitigation, Monitoring and Reporting Plan, and adopted the HMC Project. On September 21, 2011, the Federal Transit Administration (FTA) found the HMC Project to qualify for a categorical exclusion under the National Environmental Policy Act. During preliminary engineering for the HMC Project, staff is in the process of identifying utilities that may require relocation and/or rearrangement to implement the HMC Project. Staff is now seeking Board authority for the General Manager to execute agreements with public and private utilities and UPRR for the HMC Project in an amount not to exceed \$1,000,000. The Office of the General Counsel will approve such agreements as to form prior to execution.

### FISCAL IMPACT

District financial obligations will be subject to Work Authorizations (WAs.) Each WA will have a defined scope of services and separate schedule and budget. Any WA assigned for funding under a State or Federal grant will include State or Federal requirements.

The aggregate amount of all WAs pursuant to this authority shall not exceed \$1,000,000 for project support services from project budget number 01RQ000, HMC Program. The Controller/Treasurer certifies that funds are currently available to meet this obligation.

As of 10/19/12, \$2,798,545 is available for this project from the following sources:

Fund No.	Source	Fund Description	Amount
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Authority to Execute Agreements with UPRR, Utilities & Others for HMC Project

656E	VTA	VTA Traffic Congestion Relief	\$ 5,000,000
8524	BART Allocation	FY12 Operating Capital Allocation	\$ 7,301,042
		Total	\$12,301,042

BART has expended \$4,075,133, encumbered \$5,427,364, and pre-encumbered \$0 to date. This action may encumber up to an additional \$1,000,000.

There is no fiscal impact on available unprogrammed District Reserves.

ALTERNATIVE

If the Board does not grant the requested authorization, staff will be required to obtain individual Board authorization for execution of each agreement for HMC Project support services. This will require multiple Board actions and could affect the HMC Project schedule.

RECOMMENDATION

It is recommended that the Board adopt the following motion:

MOTION

The General Manager or her designee is authorized to execute agreements, including permits, with UPRR and various public or private utilities, including Alameda County, cities, agencies and special districts, including authority to expend a total not to exceed amount of \$1,000,000 (One Million Dollars) for support services, including, but not limited to: design, relocation and rearrangement and fees in connection therewith, minor construction and field investigation, for the HMC Project.





## EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: 		GENERAL MANAGER ACTION REQ'D: Approve and forward to Board		
DATE: 11/7/12		BOARD INITIATED ITEM: No		
Originator/Prepared by: Carol Walb Dept: 	General Counsel  11/6/12	Controller/Treasurer  [ ]	District Secretary [ ]	BARC  11-6-12 [ ]
Signature/Date: 11/6/12		[ ]	[ ]	[ ]
Status: Routed		Date Created: 11/02/2012		

TITLE:

### Change Order No. 5 to Agreement 6G4544 Central Processing Services for the Regional Transit Discount Card Program

**NARRATIVE:**

**Purpose:**

To obtain authorization for the General Manager to execute Change Order No. 5 to Agreement No. 6G4544, Central Processing Services for the Regional Transit Discount Card Program (Agreement), with Cordoba Corporation, to add \$336,787.75 to the Agreement and to extend the term of the Agreement to June 30, 2013.

**Discussion:**

BART is the lead agency for the Regional Transit Connection (RTC) Discount Card Program that certifies eligibility for reduced transit fares for seniors and customers with disabilities. BART entered into the Agreement with Cordoba Corporation in 2004, to have Cordoba Corporation perform Central Processing services for the RTC Discount Card Program. To date, BART has issued 4 change orders, the most recent of which was to effect transition of lead agency responsibilities from BART to AC Transit. The current not-to-exceed amount of the Agreement is \$3,242,461.00, and the expiration date is December 15, 2012.

The transition of lead agency responsibilities has been delayed by AC Transit's procurement process. AC Transit expects to release a RFP for Central Processing Services within 60 days and to complete the procurement process within 5 months. Change Order No. 5 will increase the not-to-exceed amount of the the Agreement by \$336,787.75 to \$3,579,248.75, and extend the term of the Agreement to June 30, 2013, to allow sufficient time to complete the transition.

The Office of General Counsel will approve Change Order No. 5 as to form.

**Fiscal Impact:**

The \$336,787.75 amount of Change Order No. 5 to the Agreement is completely funded by the participating transit agencies and would therefore have no impact on BART's Operating Budget beyond BART's annual allocation (\$69,400) of RTC Program expenses included in the Customer Services Department budget.

**Recommendation:**

Adoption of the following motion.

**Motion:**

That the General Manager is authorized to execute Change Order No. 5 to Agreement No. 6G4544, Central Processing Services for the Regional Transit Discount Card Program, with Cordoba Corporation, in an amount not to exceed \$336,787.75, and to extend the term of the Agreement to June 30,2013.



# SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

## Memorandum

**TO:** Board of Directors

**DATE:** November 8, 2012

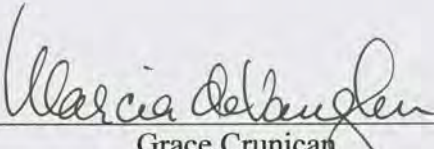
**FROM:** General Manager

**SUBJECT:** PPAAL Item 5.B: BART Metro: Sustainable Communities Operational Analysis

At the Board of Directors meeting on November 15, 2012, staff will present an informational update on advanced planning for the BART Metro Sustainable Communities Operational Analysis.

At the May 24<sup>th</sup> Board meeting, staff presented an initial overview of the study, that is being linked with the long-term regional land use vision, as guided by SB375 and expressed by the Metropolitan Transportation Commission (MTC) and Association of Bay Area Government's (ABAG) emerging *Plan Bay Area*. The BART operational analysis seeks to better coordinate BART's longer-term service and infrastructure planning with the locally-designated growth areas. The study looks both at areas where transit is competitive for all day trips (Metro Core) and areas where transit is primarily competitive for heavy peak period trips (Metro Commute). It also seeks to balance the desire to maintain and improve operational efficiencies with a better understanding of priority capacity needs.

Staff will be seeking Board discussion/input as the study's preliminary findings and recommendations are advanced. If you have any questions, please feel free to contact Carter Mau at (510) 464-6194.

  
Grace Crunican

### Attachment

cc: Board Appointed Officers  
Deputy General Manager  
Executive Staff