

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

AGENDAS FOR BOARD AND COMMITTEE MEETINGS

November 19, 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, November 19, 2009, commencing at 9:00 a.m. All meetings will be held in the BART Board Room, Kaiser Center 20th Street Mall – Third Floor, 344 – 20th Street, Oakland, California.

Members of the public may address the Board of Directors 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.

2. CONSENT CALENDAR

- | | | |
|----|--|------------------|
| A. | Approval of Minutes of the Meeting of October 22, 2009.* Board requested to authorize. | |
| B. | Renewal of Five Station Retail Permits and Increase of Permit Fees.* Board requested to authorize. | 6 |
| C. | Station Retail Permit for Nematode Holdings, LLC.* Board requested to authorize. | 9 |
| D. | Pass-Through Agreement for Federal Funds between BART and the City of Alameda for Transit and Access Study and Shuttle Service Improvements to BART Stations.* Board requested to authorize. | 11 |
| E. | Award of Invitation for Bid No. 8856, Coverboard Brackets and Clamps.* Board requested to authorize. | 13 |
| F. | Fiscal Year 2010 Budget: First Quarter Financial Report. For information. | 15 and Pkg. A |

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. | Director Contribution Options to Reduce Budget Deficit.* Board requested to authorize. (President Blalock's request.) | 16 |
| A-2. | Resolution Fixing the Employer's Contribution to Non-California Public Employee Retirement System Medical Premium for Active and Former Members of the Board of Directors.* Board requested to adopt. | 17 |
| A-3. | Ratification of Collective Bargaining Agreement with BART Police Officers' Association.* Board requested to ratify. | 20 |
| A-4. | Condemnation of Real Property for the Warm Springs Extension Project. | |
| a. | BART Parcel Nos. J-2035-1A & 3A.* | 21 and Pkg. B |
| b. | BART Parcel Nos. J-2038-1A & 3A.* | 25 and Pkg. C |
| | Board requested to authorize. (TWO-THIRDS VOTE REQUIRED.) | |

| | Page No. |
|--|------------------|
| A-5. Free Transportation Passes for Military Personnel on Leave.* Board requested to authorize. (TWO-THIRDS VOTE REQUIRED.) | 29 |
| A-6. Change Order to Contract No. 03CK-110B, Alameda County Two Underground Stations Electrical Construction, with LINC Lighting and Electrical, for Additional Lighting Improvements (C.O. No. 1).* Board requested to authorize. | 31 |
| A-7. Fiscal Year 2010 – 2011 Operating Budget Revision.* For information. | 33 and Pkg. D |
| A-8. General Discussion and Public Comment. | |

ENGINEERING AND OPERATIONS COMMITTEE

Immediately following the Administration Committee Meeting

Director Keller, Chairperson

| | |
|---|--------|
| B-1. Change Orders to Contract No. 15PM-110, Earthquake Safety Program Parking Structures Retrofit for the Concord, Daly City, El Cerrito del Norte, Hayward, Pleasant Hill and Walnut Creek BART Parking Structures, with West Bay Builders, for Differing Site Conditions.* Board requested to authorize. | 34 |
| B-2. Award of Contract No. 09DJ-120A, Installation of Anode Cables and Anode Array Assemblies for Cathodic Protection System.* Board requested to authorize. | 39 |
| B-3. Quarterly Performance Report, First Quarter Fiscal Year 2010 - Service Performance Review.* For information | Pkg. E |
| B-4. 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. I-580/BART to Livermore Program Draft Environmental Impact Report Release.* For information. | 41 and Pkg. F |
| C-2. 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 COMMITTEESA. ADMINISTRATION COMMITTEE

- A-1. Director Contribution Options to Reduce Budget Deficit.* Board requested to authorize. (President Blalock's request.) 16
- A-2. Resolution Fixing the Employer's Contribution to Non-California Public Employee Retirement System Medical Premium for Active and Former Members of the Board of Directors.* Board requested to adopt. 17
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Pkg. B
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C. PLANNING, PUBLIC AFFAIRS, ACCESS, AND LEGISLATION COMMITTEE

- C-1. I-580/BART to Livermore Program Draft Environmental Impact Report Release.* For information. 41 and Pkg. F

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 LABOR NEGOTIATORS - PUBLIC
EMPLOYEE PERFORMANCE EVALUATION:
- | | |
|----------------------|---|
| Agency Negotiators: | Directors Blalock, Fang, and Murray |
| Titles: | General Manager, General Counsel, Controller-Treasurer, and District Secretary |
| Gov't Code Sections: | 54957 and 54957.6 |



EXECUTIVE DECISION DOCUMENT

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|--|--------------------------------|---|--------------------|-------------------------------|
| GENERAL MANAGER APPROVAL: <i>Malcolm Allen</i> | | GENERAL MANAGER ACTION REQ'D: Approve and Forward to the Board | | |
| DATE: 11/10/09 | | BOARD INITIATED ITEM: No | | |
| Originator/Prepared by: Gary Sue Dept: Real Estate ext.7502 | General Counsel | Controller/Treasurer | District Secretary | BARC |
| Signature/Date: <i>Gary Sue</i> 11/5/09 | <i>Andrea Karas</i> 11/9/09 | <i>[Signature]</i> 11/5/09 | [] | <i>[Signature]</i> 11-9-09 |
| Status: Routed | | Date Created: 10/30/2009 | | |

Station Retail Permits

NARRATIVE:

PURPOSE: To obtain authorization to issue new Station Retail Permits to five food and non-food vendors for terms of up to five years, plus two one-year options, and to increase existing permit fees.

DISCUSSION: In 1987, the Board of Directors adopted a policy permitting concessions on BART property. On October 7, 1999, the Board adopted a new policy permitting the sale of food and beverages in non-paid station areas.

There are twenty-five Station Retail Permits issued to vendors that sell primarily food products. Two food permits have recently expired. There are twenty-eight Station Retail Permits issued to vendors that sell primarily non-food items. Three of these permits have recently expired.

The vendors with expired permits have been allowed to continue operating on a month-to-month basis pending Board action on new permits. The two food and three non-food vendors are listed in Attachment A, along with their locations.

Board approval is required for any permit for a term in excess of one year. To minimize administrative costs and increase revenues, staff is seeking approval for the issuance of new permits with terms of up to five years, plus two one-year options. Board authorization will provide staff with the authority to execute the permits; however, staff may elect not to issue a permit if there are compliance or other issues.

Staff is proposing a 3% increase in current permit fees for all of the five vendors after the first year of the permit. All of these vendors will be subject to subsequent increases of 3% for each of the remaining non-option years. For the two option years, staff is proposing increases of 3% to 5% for each year.

FISCAL IMPACT: BART anticipates receiving permit fees from the vendors listed in Attachment A totaling approximately \$20,380 for the first year and totaling approximately \$157,573 over a seven-year term. The latter figure assumes permit terms of five years (with annual increases each

year as discussed above) plus two option years (with a 5% annual increase each year). The payments will be deposited into the General Fund, Account 030.

ALTERNATIVE: Continue the existing permits on a month-to-month basis or terminate them.

RECOMMENDATIONS: Adoption of the following motion.

MOTION:

The General Manager, or her designee, is authorized to issue new Station Retail Permits to Antojitos San Miguel (Permit Number F106-08), Pacific Coast Farmers' Market Association (Permit Number M319-09), Overnite Express (Permit Number M320-08), Mission Community Council (Permit Number M319-08), and Contra Costa County (Permit Number M318-09), each for terms of up to five years, plus two one-year options; to increase existing fees 3% after the first year of the permit; to increase fees at 3% per year for the remaining non-option years; and to increase rents 3% to 5% for each option year.

FOOD CONCESSIONS

Antojitos San Miguel

STATION

16th St. Mission
(Located on Plaza)

Pacific Coast Farmers' Market Association

South San Francisco

NON-FOOD CONCESSIONS

Overnite Express

STATION

Montgomery St.

Mission Community Council

24th St. Mission
(Located on Plaza)

Contra Costa County
(Go Library)

Pittsburg/Bay Point



EXECUTIVE DECISION DOCUMENT

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|--|-----------------------------------|--|----------------------------------|----------------------------|
| GENERAL MANAGER APPROVAL: | | GENERAL MANAGER ACTION REQ'D: Approve and Forward to the Board | | |
| DATE: 11/10/09 | | BOARD INITIATED ITEM: No | | |
| Originator/Prepared by: Gary Sue Dept: Real Estate ext. 7502 Signature/Date: 11/9/09 | General Counsel 11/9/09 | Controller/Treasurer 11/9/09 | District Secretary [] | BARC 11-9-09 [] |
| Status: Routed | | Date Created: 10/30/2009 | | |

TITLE:

Station Retail Permit for Nematode Holdings, LLC

NARRATIVE:

PURPOSE: To obtain authorization to issue a new Station Retail Permit to Nematode Holdings LLC, for a term of thirty-three months.

DISCUSSION: In July 2007, BART, the Metropolitan Transportation Commission (MTC), and the San Francisco Municipal Transportation Agency (SFMTA) initiated a pilot program to create a transportation resource kiosk, using an existing retrofitted San Francisco Chronicle newspaper kiosk

located at the Embarcadero Station. Through a one-year station retail permit, BART allowed Nematode Holdings LLC (Nematode) permission to set up and operate a kiosk, providing a convenient way for their staff to impart quality transportation information for BART patrons, San Francisco Municipal Railway (Muni) riders, and for tourists. The kiosk has played an integral role during the development phase of the 511 Regional Real Time Transit Program by hosting the program's first multi-agency Real Time sign showing BART and Muni train schedules on high resolution video display screens. The vendor also sells Muni tickets, TransLink cards, Fastrak toll transponders, newspapers and magazines and provides free transit brochures as supplied by the MTC.

A one-year trial permit between BART and Nematode began on July 1, 2007 and expired on June 30, 2008. Nematode has been operating on a month-to-month basis since the permit expired, pending MTC awarding a new agreement to a vendor.

MTC issued a Request for Proposals (RFP) for the operation of the kiosk at the Embarcadero BART station on April 10, 2009 and they received two proposals. An evaluation panel, consisting of representatives from MTC, BART and SF MTA reviewed the two proposals and awarded a new agreement to Nematode as they were determined to be the highest qualified party to provide the transit information.

On September 11, 2009, MTC approved additional funding of \$795,300 to continue the operation of the kiosk with Nematode. MTC has entered into an agreement with Nematode, which will provide Nematode with adequate funding to operate the kiosk for thirty-three additional months, from October 1, 2009 through the end of June 2012.

Nematode is currently paying \$500 per month to BART and the fees will increase after the first year of the new permit by 3%. Fees will increase by 3% each following year during the remaining term. Staff is requesting approval to issue a permit for thirty-three months, from October 1, 2009 through June 30, 2012.

Board approval is required for any permit for a term in excess of one year.

FISCAL IMPACT: BART anticipates receiving permit fees from the vendor totaling \$6,000.00 for the first year and totaling \$16,950.00 over a thirty-three month-term. The payments will be deposited into the General Fund, Account 030.

ALTERNATIVE: Continue the existing permit on a month-to-month basis or terminate it.

RECOMMENDATIONS: Adoption of the following motion.

MOTION:

The General Manager, or her designee, is authorized to issue a new Station Retail Permit to Nematode Holdings LLC (Permit Number N218-07) for a term of up to thirty-three months.



EXECUTIVE DECISION DOCUMENT

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|--|---|---|---------------------------|---|
| GENERAL MANAGER APPROVAL: <i>[Signature]</i> | | GENERAL MANAGER ACTION REQ'D: Approve and forward to the Admin Committee | | |
| DATE: 11/10/09 | | BOARD INITIATED ITEM: No | | |
| Originator/Prepared by: Alan Lee Dept: Capital Development <i>Alan E. Lee</i> Signature/Date: 9/10/09 | General Counsel <i>[Signature]</i> 11/10/09 | Controller/Treasurer <i>[Signature]</i> 11/10/09 | District Secretary [] | BARC <i>[Signature]</i> 11-10-09 [] |
| Status: Routed | | Date Created: 11/06/2009 | | |

TITLE:

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

NARRATIVE:

PURPOSE:

To obtain Board authorization for the General Manager to execute the Transit and Access Study and Fund Pass-Through Agreement between BART and the City of Alameda (the "City") in Connection with Access Transit Improvements to the 12th Street and/or Fruitvale BART Stations (the "Pass-Through Agreement"). The purpose of the Pass-Through Agreement is to provide a procedure and set forth the conditions under which BART will pass through Federal grant funds to the City.

DISCUSSION:

The City desires to provide planning, design, construction and project management of shuttle service improvements between the new master planned transit oriented development at Alameda Point and the 12th Street and/or the Fruitvale BART Stations. There are Federal Transit Administration ("FTA") grant funds available for these purposes. The City is not an eligible direct recipient of FTA grant funds and requested that BART act as the primary grantee pass through agent for FTA funds.

In FY 08/09 and FY 09/10, BART applied for and received a total of \$1,668,154 in FTA grant funds for planning, design, construction and project management of shuttle service improvements between Alameda Point and BART Stations. The proposed work will be done in two phases. The Phase I work includes a Transit and Access Study and the preparation of design plans, cost estimates, and operations plans. Under the terms of the Pass-Through Agreement, BART will retain a portion of the grant funds, not to exceed \$475,893, to have a consultant to perform the Phase I work, in coordination with the City. Phase II includes design and construction of improvements consistent with the recommended improvements and construction priorities developed in Phase I. The Phase II shuttle improvements are to be constructed by the City and will be located in the City.

The City agrees that, as the subrecipient of the FTA grant funds, it will perform, or cause to be performed, all the work to meet each and every requirement that is imposed on BART under the BART/FTA Funding Master and subsequent Agreements.

FISCAL IMPACT:

No fiscal impact is attributable to the Pass-Through Agreement. These Federal grant funds are not available for BART capital or operating purposes. There will be no net remaining grant funds available to BART or extra funding required by BART after the expenditure of grant funds to have a consultant to perform the Phase I work. The City will pay the 20% local match of \$417,039 to the Federal funding of \$1,668,154.

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

ALTERNATIVES:

Not execute the Pass-Through Agreement. The City of Alameda would not be able to receive the \$1,668,154 in FTA grant funds for planning, design, construction and project management of shuttle service improvements between Alameda Point and BART Stations.

The Pass-Through Agreement will be approved as to form by the Office of the General Counsel.

RECOMMENDATION:

Adoption of the following motion.

MOTION:

The General Manager is authorized to execute the Transit and Access Study and Fund Pass-Through Agreement with the City of Alameda in connection with Access Transit Improvements to the 12th Street and/or Fruitvale BART Stations.



EXECUTIVE DECISION DOCUMENT

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|--|-----------------------------------|--|--|
| GENERAL MANAGER APPROVAL: | | GENERAL MANAGER ACTION REQ'D: Approve and forward to the Board | |
| DATE: c 11/10/09 | | BOARD INITIATED ITEM: No | |
| Originator/Prepared by: Michael Blake Dept: Maintenance & Engineering / 11/9/09 Signature/Date: | General Counsel 11/9/09 | Controller/Treasurer | District Secretary - BAC 11/9/09 |

TITLE:

Invitation for Bid No. 8856 for the Procurement of Coverboard Brackets and Clamps

NARRATIVE:

PURPOSE:

To request Board authorization to award Invitation For Bid (IFB) No. 8856 to L.B. Foster Co. in the amount of \$172,280.06 (includes all taxes) for the purchase of 5,250 coverboard brackets and clamps.

DISCUSSION:

The third rail coverboard materials procured under this IFB will be installed by maintenance staff as part of a continuous improvement program which, in tandem with the recently awarded Contract 15EM-110, Contact Rail Coverboard Reinforcements, will cover the areas that experience the highest rate of coverboard failure unrelated to train induced damage.

A notice requesting bids was published on October 2, 2009 and bid requests were mailed to four (4) prospective bidders. Three (3) bids were received and opened on October 27, 2009. They are summarized below.

| No | Bidder | Location | Total (including 9.75% Sales Tax) |
|----|--------------------------------|--------------|-----------------------------------|
| 1. | L.B. Foster Co. | Suwanee, GA | \$172,280.06 |
| 2. | MRT Track & Services Co., Inc. | Wheaton, IL | \$280,027.12 |
| 3. | Professional Plastics | San Jose, CA | \$230,475.00 |
| | Engineer's Estimate | | \$246,000.00 |

Staff has determined that the apparent low bidder, L. B. Foster Co. submitted a responsive bid, and that the bid pricing is fair and reasonable based on prior purchases.

The District's Non-Discrimination in Subcontracting Program does not apply to Emergency Contracts, Sole Source Contracts, and Contracts under \$50,000, or any Invitation for Bid. Pursuant to the Program, the Office of Civil Rights did not set availability percentages for this contract.

FISCAL IMPACT:

Funding of \$172,280.06 for the award of IFB No. 8856 is included in the total project budget for the FMS #15EM - Systemwide Coverboard Enhancement. The Office of the Controller/Treasurer certifies that funds are currently available to meet this obligation.

Funds for this Contract will come from the following source:

F/G 54K CA-96-X001 – ARRA of 2009 (Federal Economic Stimulus) \$172,280.06

As of the month ending 10/04/09, \$4,184,120 is available for commitment from this fund source for this project and BART has committed \$29,900 to date. There are pending commitments of \$3,167,275 in BART's financial management system. This action will commit an additional \$172,280 leaving an uncommitted balance of \$814,665 in this fund source.

There is no fiscal impact on available unprogrammed District Reserves.

ALTERNATIVE:

The alternative is to reject all bids. District staff does not believe that re-bidding would result in more competitive bids.

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 IFB No. 8856 to L.B. Foster Co. in the amount of \$172,280.06, including applicable taxes, pursuant to notification to be issued by the General Manager, subject to compliance with the District's Protest Procedure and FTA's requirements related to Protest Procedure.

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT**MEMORANDUM****TO:** Board of Directors**DATE:** November 13, 2009**FROM:** General Manager**SUBJECT: FY10 First Quarter Financial Report**

The FY10 first quarter financial report (July - September 2009) is attached. The net operating result was unfavorable to budget by \$7.3M, due in large part to greater declines than budgeted in passenger revenue and sales tax. Expenses were close to budget, with a small unfavorable labor variance due to overtime. The unprecedented decline in revenue, particularly in sales tax, is clearly a major concern as the recession continues to negatively affect current operating results.

Operating Sources

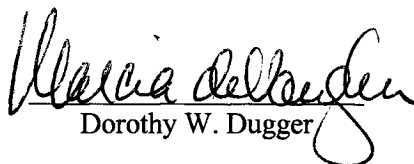
Ridership losses may have bottomed out in July, when core and SFO Extension trips were 12% and 11% below July 2008, respectively. By September, the declines had narrowed to 7% and 5% respectively, excluding the impact of the Labor Day Bay Bridge Closure, which generated approximately 200,000 additional trips. The budget for FY10 ridership counts on ridership improving as the year progresses, so it is important that this trend continues.

Sales Tax proceeds for the first quarter (reflecting taxable sales from April – June) declined 19% compared to the first quarter in FY09. This is the third large, double-digit decline in a row, and follows the 20% decline in the fourth quarter of last year. Prior to the last two quarters, the largest drop in BART's history had been the 13% drop for January – March of 2002.

Operating Uses

Expenses were 0.4% over budget. Labor and benefits were slightly unfavorable, primarily due to overtime, while non-labor was under budget. Because of continuing revenue declines, we have maintained the selective hiring freeze begun last fall, and will continue to control expenses as the year proceeds.

Although there are indications the Bay Area and the nation may be coming out of the recession, unemployment is expected to continue and economists have discussed a "jobless" recovery. Absent job growth and the addition of new riders, as well as taxable sales increases generated by an improving economy, it will be difficult for BART to regain financial stability. Our experience in prior recessions tells us it may be several years before we start to see positive growth in ridership and sales tax. Because of lower revenues, and the likelihood that revenues will be down for the foreseeable future, there is clearly a need to reduce expenses. We plan to discuss options to deal with the shortfall and to revise the annual budget at upcoming meetings of the Board.


Dorothy W. Dugger

cc: Board Appointed Officers
Deputy General Manager
Executive Staff

ADMINISTRATION COMMITTEE

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- | | | |
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ADMINISTRATION COMMITTEE MATERIAL

November 19, 2009

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

MEMORANDUM

TO: Board of Directors **DATE:** November 13, 2009

FROM: Board President

SUBJECT: Administration Committee Agenda Item #1: Director Contribution Options to Reduce Budget Deficit

Several items pertaining to Board member contributions toward reducing the FY10 deficit will be considered during the Administration Committee meeting on November 19, 2009. While the monthly stipend and limited benefits received by Directors has a very small impact on the District's operating budget, the proposed contributions will allow the Board to join with employees in helping to reduce the budget deficit.

District employees are not scheduled to receive a base wage increase during the four year life of the labor contracts, although they will receive lump sum payments in the last three years of the contracts. Therefore, I will propose that the Board forego its next scheduled annual stipend increase by keeping the monthly stipend at the same level for 2010 as it is in 2009. In 2011, the annual CPI increases would be reinstated according to the current statutory formula.

The District has made significant cuts to the operating departments' non-labor budgets. Director Franklin has suggested a way for Directors to participate in reducing the non-labor budget by cutting the Directors' annual budget for attendance at conferences and meetings from \$7,500 to \$5,000. I plan to propose this reduction in Directors' travel on November 19th as well.

The final item scheduled for consideration on November 19th is the same type of medical cap for Board members that the District's employees agreed to in labor negotiations. Because District provided medical benefits represent a significant portion of total compensation, our inclusion in this budget reduction initiative is a significant action.

I appreciate your consideration of the suggested Board contributions to the fiscal crisis facing the District.



Thomas M. Blalock, P.E.



EXECUTIVE DECISION DOCUMENT

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|---|-----------------------------|----------------------------------|---------------------------|-------------------------|
| GENERAL MANAGER APPROVAL: | | GENERAL MANAGER ACTION REQ'D: | | |
| DATE: c 11/12/09 | | BOARD INITIATED ITEM: No | | |
| Originator/Prepared by: Elaine M. Kurtz Dept: Signature/Date: 11/12/09 | General Counsel 11/12/09 | Controller/Treasurer 11/12/09 | District Secretary [] | BARC 11-12-09 [] |

Health Benefits Premiums for Active and Former Members of the Board of Directors in Non-CalPERS Health Plans

NARRATIVE:

To obtain Board approval to adopt a resolution, which will establish the District contributions for health benefit premiums for current non-CalPERS medical plans that are available to all active members of the Board as well as former members of the Board provided they first served as a member between January 1, 1989 and January 1, 1995, and whose total service at the time of termination was at least 12 years.

DISCUSSION:

As some Board members may recall, state law imposes restrictions on health benefits that may be provided by the District to the current and to most former members of its governing board. For those Directors and former Directors who first serve after January 1, 1989, such benefits may not exceed benefits provided to full-time current or retired employees and the terms, conditions, or contributions applicable to any plan provided to employees must also apply to any plan provided for members of the governing board. State law also requires that in order for former Directors to be provided paid health benefit continuation, they must have first served prior to January 1, 1995 and have a minimum of 12 years of service at termination. State law permits the District to provide former Directors who first served after January 1, 1989 and before January 1, 1995 and who have served less than 12 years at termination and former Directors who first served on or after January 1, 1995 with District benefits only if they have served one or more terms and they agree to and do pay the full costs of the health benefits. Board Resolution 4981, "In the Matter of Health and Welfare Benefits for Directors", adopted by the Board on April 13, 2006, incorporates the state law restrictions and provides for several different benefit structures for former Directors, based upon when they first served on the Board and how long they served.

Beginning in January, 2010, the District's contribution to medical benefits for all BART employees and retirees who participate in the CalPERS medical plans will be capped, by tier of coverage, at the level of the more expensive of the HMO options available to them.

It is necessary to institute a similar cap on District expenses for medical benefits provided by the District to present and some former Board members under the plans offered outside of CalPERS. This item discusses the manner of applying the cap for the non-CalPERS' plans for 2010.

Directors and eligible former Directors currently receive medical coverage through either a non-CalPERS Kaiser HMO or a non-CalPERS indemnity plan offered by Principal Medical Group.

A medical premium contribution cap that parallels the structure that is now in place for the employees enrolled in the CalPERS' plans would likewise use the relatively cost-effective HMO structure as a reference point. Since there is only one HMO currently available to eligible active and former Directors, the Kaiser plan rate structure would be 'the cap'. The non-CalPERS Kaiser rates would then be placed alongside the Principal Plan rate structure to determine the costs of that coverage to current Directors and eligible others. The result is as follows:

Active Directors and eligible former Directors who are enrolled in the Kaiser HMO would continue to pay only the indexed contribution that will be \$84.41 per month starting in January, 2010, and

Active Directors and eligible former Directors who are enrolled in the Principal indemnity plan would pay the current indexed contribution of \$84.41 per month starting in January 2010, plus any amount in excess of the Kaiser premium for their selected tier of coverage. Examples are listed in the table below for clarification.

| Kaiser HMO | Single | 2 Party | "Family" |
|-------------------|--------|----------|----------|
| Total Premium | 793.01 | 1,586.01 | 2,244.21 |
| District Share | 708.60 | 1,501.60 | 2,159.80 |
| Director Share | 84.41 | 84.41 | 84.41 |

| Principal Indemnity | Single | 2 Party | "Family" |
|----------------------------------|----------|----------|----------|
| Total Premium | 1,101.39 | 1,101.39 | 1,101.39 |
| District Share | 708.60 | 1,016.98 | 1,016.98 |
| Director Share | 84.41 | 84.41 | 84.41 |
| Additional Director Contribution | 308.38 | 0.00 | 0.00 |
| Total Director Share | 392.79 | 84.41 | 84.41 |

All Directors while actively serving on the Board will be eligible to participate in these plans at the rates above. Attached please find a table that illustrates which former Directors who first served after January 1, 1989 are eligible for participation in District plans and the cost for participation, i.e., whether at the Capped rate or only on a fully self-pay basis, depending on when the Director first served on the Board and how long they served on the Board. The premiums for survivors benefits remains at \$15.00 per month for eligible and enrolled active and former directors.

Staff recognizes that the composite premium structure - the same cost for all tiers of coverage - that is currently used for the Principal Plan, is ill suited to the new premium cap structure. Staff will work with its benefits' consultants to review the plan design and premium structures of the

current non-CalPERS' plans and develop alternative approaches before the next open enrollment period, with the objective of improving the alignment between the non-CalPERS' plans and the CalPERS' plans.

In view of the timing of the Board's consideration of this issue, staff will accommodate plan changes by members of this non-CalPERS insurance group through December 15, 2009, and will conduct a full communications and technical assistance effort prior to that time to assure that all members of the affected group are timely informed regarding their choices.

FISCAL IMPACT:

There is no fiscal impact

ALTERNATIVES:

Apply the same dollar cap on District contributions toward premiums that applies to employees and retirees eligible for the CalPERS' plans. This approach is not recommended because using the CalPERS HMO plan cap removes the option for those who are not eligible for the CalPERS plans to enroll in a plan at a cost no greater to the member than the \$84.41 indexed contribution rate.

RECOMMENDATION:

To approve the proposed premium contribution structure.

MOTION:

To adopt the attached resolution "In the Matter of Premium Contributions for active and eligible former members of the Board of Directors for Non-CalPERS Health Plans.

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

In the Matter of Premium
Contributions for Active and
Eligible Former Directors for
Non-CalPERS' Health Plans

Resolution No. _____

WHEREAS, the parties in 2009 collective bargaining agreed that the District's contribution for health insurance premiums for employees and retirees would be capped at an amount up to the applicable level of plan participation and the same Medicare status as elected by the eligible employee or retiree for the most costly HMO PERS plan available to the employee, less the indexed employee contributions (\$84.41 for calendar year 2010); and

WHEREAS, the premium structure of the non-CalPERS' Kaiser HMO Plan provides a comparable benchmark for establishing a premium cap that, like the CalPERS' program, provides individuals who do not have access to the CalPERS' plans the option to participate in District health plans with their premiums limited to the additional indexed contribution, i.e., (\$84.41 for calendar year 2010); and

WHEREAS, on April 13, 2006 by Resolution No. 4981, the Board confirmed its policy and practice with respect to the participation and contributions of active and former members of the Board in District provided health plans, with the premium contribution structure for all active directors and eligible former directors as identified therein indexed to the lowest premium contribution among the employee groups;

WHEREAS, it is necessary to establish a new premium structure that does not exceed the benefits provided to full-time active or retired District employees for active directors and those eligible former directors who, under Resolution No. 4981 are eligible for District provided benefits at the employee contribution rate,

NOW, THEREFORE BE IT RESOLVED that, effective January 1, 2010 the District's cap on its contributions under the non-CalPERS' plans for active and eligible former directors who in accordance with Resolution No. 4981, are eligible for District provided benefits at the employee contribution rates shall be as follows:

| Kaiser HMO | Single | 2 Party | "Family" |
|-----------------------|---------------|----------------|-----------------|
| Total Premium | 793.01 | 1,586.01 | 2,244.21 |
| District Contribution | 708.60 | 1,501.60 | 2,159.80 |
| Director Contribution | 84.41 | 84.41 | 84.41 |

| Principal Indemnity | Single | 2 Party | "Family" |
|----------------------------------|---------------|----------------|-----------------|
| Total Premium | 1,101.39 | 1,101.39 | 1,101.39 |
| District Contribution | 708.60 | 1,016.98 | 1,016.98 |
| Director Contribution | 84.41 | 84.41 | 84.41 |
| Additional Director Contribution | 308.38 | 0.00 | 0.00 |

| | | | |
|-----------------------------|--------|-------|-------|
| Total Director Contribution | 392.79 | 84.41 | 84.41 |
|-----------------------------|--------|-------|-------|

BE IT FURTHER RESOLVED THAT, with the exception of the new premium contribution structure applicable to active directors and those former directors who are eligible for District provided benefits at the capped contribution rate, Resolution No. 4981 "In the Matter of Health and Welfare Benefits for Directors" remains in full force and effect.

Adopted: _____

Eligibility and Premium Contributions for Health Benefits—2010
For Directors and Former Directors First Serving After 1/1/89

| Length of Service on Board | Category | Date First Served on Board | |
|--|-----------------|--|----------------------------------|
| | | 1/02/89-12/31/94 | 1/1/95 or Later |
| 12 Years (3 Full Terms) | Active Director | Director Contribution Rate* plus \$15/mo. Survivor (if enrolled) | Director Contribution Rate* |
| | Former Director | Director Contribution Rate* plus \$15/mo. Survivor Benefit (if enrolled) | Total Premium Fully Self Paid |
| At Least 1 Full Term But Less Than 12 Years | Active Director | Director Contribution Rate* plus \$15/mo. Survivor Benefit (if enrolled) | Director Contribution Rate* |
| | Former Director | Total Premium Fully Self-Paid | Total Premium Fully Self Paid |
| Less Than 1 Term | Active Director | Director Contribution Rate* plus \$15/mo. Survivor Benefit (if enrolled) | Director Contribution Rate* |
| | Former Director | Not Eligible to Participate | Not Eligible to Participate |

* The Director Premium Contribution Rates for 2010 are attached.

**Premium Contributions for Non-CalPERS' Health Plans
Calendar Year 2010**

| Kaiser HMO | Single | 2 Party | "Family" |
|-----------------------|---------------|----------------|-----------------|
| Total Premium | 793.01 | 1,586.01 | 2,244.21 |
| District Contribution | 708.60 | 1,501.60 | 2,159.80 |
| Director Contribution | 84.41 | 84.41 | 84.41 |

| Principal Indemnity | Single | 2 Party | "Family" |
|----------------------------------|---------------|----------------|-----------------|
| Total Premium | 1,101.39 | 1,101.39 | 1,101.39 |
| District Contribution | 708.60 | 1,016.98 | 1,016.98 |
| Director Contribution | 84.41 | 84.41 | 84.41 |
| Additional Director Contribution | 308.38 | 0.00 | 0.00 |
| Total Director Contribution | 392.79 | 84.41 | 84.41 |

Directors who are actively serving on the Board are eligible to participate in the non-CalPERS' Health Plans at the Contribution Rates above. Former Directors' eligibility to participate and the cost of participation is dependant upon when they first served and how long they served, as fully articulated in Board Resolution 4981, In the Matter of Health and Welfare Benefits For Directors, adopted April 13, 2006 and illustrated in the attached table.

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

MEMORANDUM

TO: Board of Directors DATE: November 10, 2009

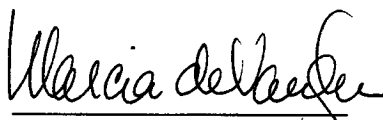
FROM: General Manager

SUBJECT: Ratification of 2009-2013 Labor Agreement with BPOA

The Board is scheduled to vote on whether to approve the recently negotiated labor agreement with the BART Police Officers' Association at the November 19, 2009 Board Meeting.

The District's Negotiator has prepared the attached overview of changes to highlight the revisions to the agreement resulting from the tentative agreement reached on October 6, 2009. Also attached is the Resolution that will be put before the Board at the Meeting.

If you have any questions, please contact, Maria Robinson, Chief Negotiator, at 510-464-6217.


Dorothy W. Dugger

cc: Board Appointed Officers
Deputy General Manager
Executive Staff
Carol Stevens

Attachment

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

In the matter of Ratifying the 2009 - 2013

Collective Bargaining Agreement between the

District and BPOA _____ /

Resolution No. _____

BE IT RESOLVED that the Board of Directors of the San Francisco Bay Area Rapid Transit District hereby ratifies the 2009 - 2013 Collective Bargaining Agreement between the District and BART Police Officers' Association (BPOA), as generally described in the attached Summary of Changes; and

BE IT FURTHER RESOLVED that the General Manager is authorized to execute the Agreement on behalf of the District.

###

Adopted _____

2009-2013 District-BPOA Tentative Agreement

Summary of Changes from 2005-2009 Agreement

This document represents a summary of the changes negotiated with the Union. As the specific contract language is not presented, it should not be relied on as providing every detail. It is merely descriptive. In the event there is any inconsistency between this summary and the labor agreement, it is the language and intent of the labor agreement which governs.

Article 1.5 – Beneficial Practices:

Language revised to reflect that before the District changes a past practice, it will provide notice and an opportunity to bargain the impact of the change.

Article 1.8 – Duration of Agreement:

The agreement shall take effect July 1, 2009 and terminate June 30, 2013 (four years).

Article 2.2 – Association Representatives:

The allowable time for Association related representation is increased from 300 to 330 hours per year.

Article 3.1 – Grievance Procedure:

Section 1.5 Beneficial Practices may no longer be the basis for filing a grievance.

New Article 3.1.B

The District will implement Progressive Discipline.

Article 3.4 – Education Assistance Program

To promote greater professionalization and education within the Police Department, enhancements were made to the Education Assistance Program increasing reimbursement for educational expenses

Article 4.1 – Vacation: Each employee will forego 100 straight hours of leave accrual over the four year period, 20 hours in each of FY10, FY11 and 30 hours in each of FY12, and FY13.

Article 4.5 – Holidays

Effective FY11, the number of floating holidays is reduced from seven (7) to four (4) per fiscal year. BPOA members will receive three (3) additional fixed holidays per fiscal year, Columbus Day, Veterans' Day, and the fourth (4th) Friday in November. The use of these three fixed holidays instead of floating holidays will reduce backfill costs.

Article 4.10 – Compensatory Time Off

The maximum amount of Compensatory Time that may be accrued is increased from 160 hours to 200 hours.

Article 5.3 – Disability Coverage

The District will contract for the enhanced Peace Officers' Research Association of California (PORAC) Group Long Term Disability policy. All additional costs will be borne by BPOA members payable to payroll deduction.

Article 5.4 – PERS – Medical & Prescription Drug Benefits

Bay Area Blue Shield or Bay Area Kaiser Plan, whichever is greater, is established as Maximum District Contribution towards CalPERS Health Plans for employees and retirees. Employees who opt-out of District paid medical coverage will receive \$100 per month as "Medical Opt-out in lieu" payment.

Article 6.4 A.1: Sworn Money Purchase Pension Plan:

The payment of \$1868.65 per fiscal year into the Money Purchase Pension Plan for FY11 – FY 13 (3 years) for sworn and non-sworn is suspended

Article 6.4 A.2:

Payment of the contribution of 1.67% of payroll into the Money Purchase Pension Plan for FY11 – FY 13 (3 years) for sworn and non-sworn is suspended.

Article 8.1 – Sick Leave & Disability

The District will amend its PERS contract, will convert unused sick leave into PERS Service Credit at the time of retirement. Employees will no longer have the option to "bank" unused sick leave or buy back sick leave upon retirement. Employees will continue to have the option to "buy-back" sick leave on a yearly basis. Employees will be provided with a one-time option to convert current sick leave, either accrued or banked into PERS credit. If that option is not exercised, all sick leave accrued before October 19, 2009 will be preserved and distributed as previously permitted.

Article 11.0 – Pay Procedure

NEW: Lump Sums (Non-Sworn)

Non-sworn employees only will receive the following lump sum payments that will not be added to the wage schedule:

FY10 \$0

FY11 \$500

FY12 \$1000

FY13 \$1500

In FY13 only, for Revenue Guards only, the twenty-eight cent (\$0.28) per hour premium for maintaining a Class A Driver's License will be a forty cent (\$0.40) per hour premium.

Summary of changes

2009-2013 District-BPOA contract

Page 2 of 3

Bi-Lingual Pay

To support community interaction and outreach with the Police Department, Sworn and Non-Sworn employees certified in specific foreign languages will receive an enhancement in bilingual pay.

Meal Allowance

Meal allowance will be increased by \$3.00 for employees who have worked twelve or more continuous hours.

NEW: Education/Skill Allowance

The District will provide educational skill incentives for Sworn and non-sworn with a combination of educational degrees and Peace Officer Standards and Training (POST), FBI or other approved law enforcement related certification and training.

Article 12.1 – Travel Allowance

Change in receipt policy.

Article 14.4 – Job Classifications Police Administration Specialist

To create greater efficiency in the administrative function of the Police Department, all Police Clerks and Senior Police Clerks will become Police Administrative Specialists and will perform all of the duties of all of the clerical and administrative classifications.

New: Side Letter

BPOA Statement of Intent on Civilian Review and NOBLE recommendations.

New: Side Letter – Retiree Medical Eligibility and Cost Savings:

All interested bargaining units and the District agree to investigate the feasibility of adopting a 15-year eligibility for retiree medical and agree, if required, will jointly seek legislation to amend relevant Government Code Sections to permit that change. If the District adopts a 15-year eligibility schedule and, as a result there is a cost savings the parties will discuss allocation of savings, including the possibility of allocation of such savings to wage increases.



EXECUTIVE DECISION DOCUMENT

| | | | | |
|--|---|--|---------------------------|--|
| GENERAL MANAGER APPROVAL: <i>Marisa delBueno</i> | | GENERAL MANAGER ACTION REQ'D: Approve and Forward to the Board | | |
| DATE: 11/10/09 | | BOARD INITIATED ITEM: No | | |
| Originator/Prepared by: Joseph Basulino Dept. Real Estate ext. 6852 <i>Joseph M. Basulino</i> Signature/Date: 11-5-2009 | General Counsel <i>Andrew Koval</i> 11/9/09 | Controller/Treasurer <i>[Signature]</i> 11/9/09 | District Secretary [] | BARC <i>Cathy Han</i> 11-9-09 [] |
| Status: Routed | | Date Created: 11/04/2009 | | |

TITLE:

Condemnation of Real Property for WSX Project BART Parcel #J-2035-1A and J-2035-3A

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 2110 and 2120 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 11,518 square feet in fee and of approximately 2,806 square feet in temporary construction easement of a 1.36± acre property owned by Bradford P. Radonich and Heidi Marie Radonich, Trustees of the Radonich Living Trust dated May 17, 1996 and Randolph W. Radonich and Sandy L. Radonich, Co-Trustees of the Radonich Living Trust dated July 26, 2001 ("Radonich"). The property is located at 2110 and 2120 Warm Springs Court, Fremont, California 94539 (BART Parcel #J-2035-1A and J-2035-3A 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 20, 2008. The estimated market value of the required property interests in the Subject Parcel is \$421,100.00.

To date, negotiations appear to be at an impasse. The property owners have been notified of the Board hearing on November 19, 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 \$421,100.00 required for the acquisition of Parcel # J-2035-1A and J-2035-3A 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 \$421,100

As of month end 10/4/09, \$44,389,516 is available for commitment from this Fund Source for this Project, and \$15,117,695 has been committed by BART to date. There are \$5,848,527 in pending commitments in BART's financial management system. This action will commit an additional \$421,100 leaving an uncommitted balance of \$23,002,194 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-2035-1A and J-2035-3A; Draw and Deposit Warrant.” (Two-thirds vote required.)

FUNDING SUMMARY - WARM SPRINGS EXTENSION PROGRAM

| PROJECT ELEMENT | Baseline Budget | Current Forecast 11/11/09 | REMARKS |
|---|----------------------|---------------------------------|---|
| ENVIRONMENTAL, ENGINEERING AND CONSTRUCTION MANAGEMENT | | | |
| Design | \$59,312,460 | \$64,269,457 | |
| Construction Management | \$30,045,000 | \$30,045,000 | |
| Environmental Clearance | \$3,600,715 | \$3,724,199 | Completed |
| TOTAL E, E & CM | \$92,958,175 | \$98,038,656 | |
| CONSTRUCTION | | | |
| 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 | |
| BART SERVICES | | | |
| District-Furnished Materials | \$0 | \$8,000,000 | |
| BART Force Account Work | \$0 | \$7,000,000 | |
| TOTAL BART SERVICES | \$0 | \$15,000,000 | |
| PROGRAM COSTS | | | |
| Program Costs (HazMat, Consulting, Staff, Insurance, Financing Costs and Environmental Mitigation) | \$55,871,020 | \$70,585,550 | |
| Right-Of-Way Acquisitions | \$80,394,486 | \$80,912,981 | Expended \$48,988,497 as of end of Sep09. |
| Contingency | \$2,776,319 | \$87,262,153 | |
| TOTAL PROGRAM COSTS | \$139,041,825 | \$238,760,684 | |
| TOTAL FUNDING | \$890,000,000 | \$890,000,000 | |

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-2035-1A AND J-2035-3A;
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 Bradford P. Radonich and Heidi Marie Radonich, Trustees of the Radonich Living Trust dated May 17, 1996 and Randolph W. Radonich and Sandy L. Radonich, Co-Trustees of the Radonich Living Trust dated

July 26, 2001 (“Radonich 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 Radonich Parties, as its interests appear of record, which real property, or interests in property, is located at 2110 and 2120 Warm Springs Court, Fremont, California, 94539, and is identified as BART Parcel Numbers J-2035-1A and J-2035-3A (Assessor’s Parcel Number 519-0850-002-09 and 519-0850-002-11), 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-2035-1A is to be acquired in fee, together with any improvements thereon. Parcel J-2035-3A 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.

#

**LEGAL DESCRIPTION
RADONICH LIVING TRUST
PORTION OF APN 519-0850-002-09
ALAMEDA COUNTY
CITY OF FREMONT, CALIFORNIA**

October 19, 2009

Being a portion of that certain real property described as Parcel 2 in Document No. 96160146 recorded July 1, 1996 and Document No. 2001309153 recorded August 20, 2001 Official Records in the Office of the Recorder of Alameda County, State of California more particularly described as follows:

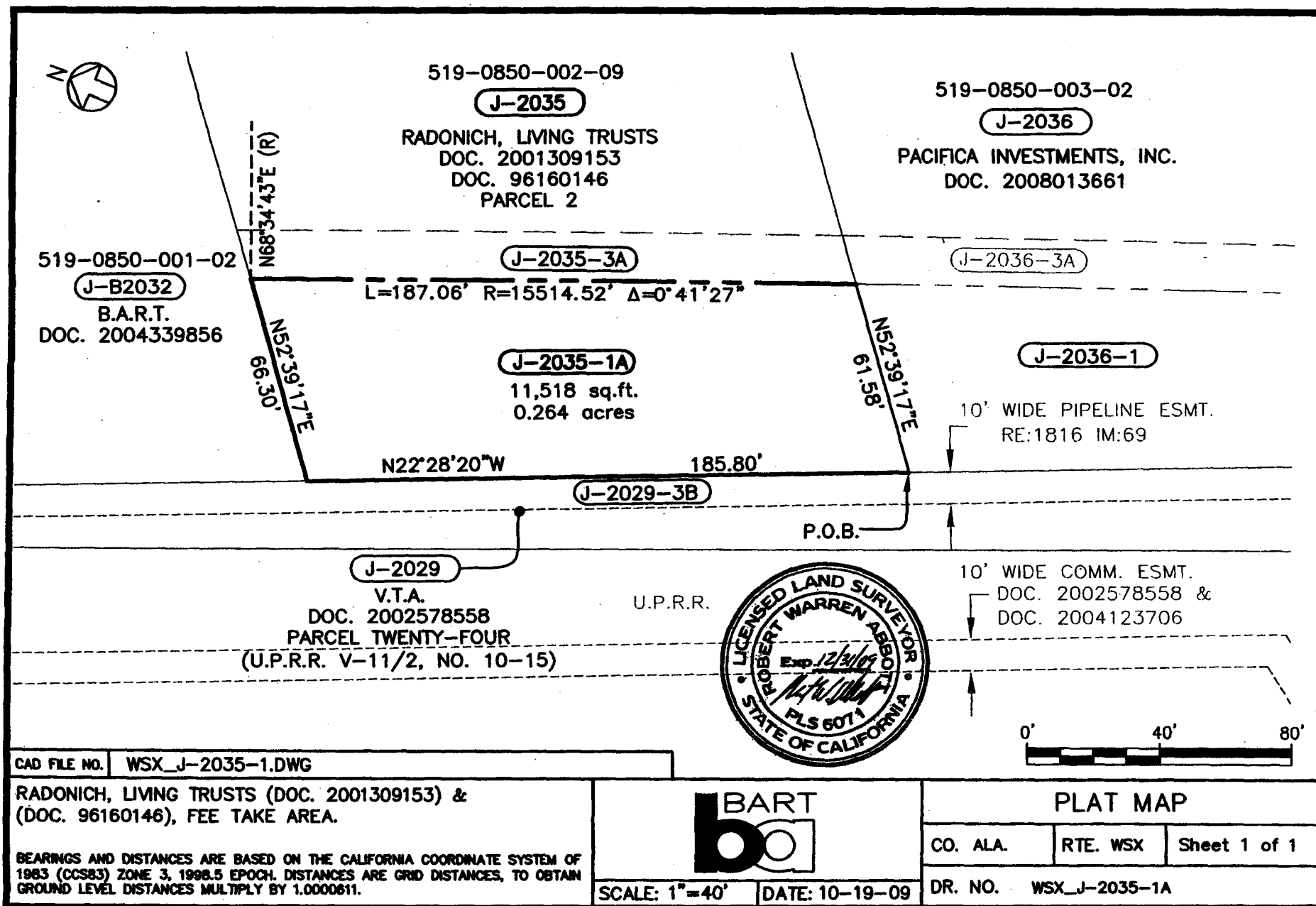
BEGINNING at the southwesterly corner of said Parcel 2 (96160146 and 2001309153) being a point on the easterly line of that certain parcel described as "Parcel 24" in that certain grant deed to the Santa Clara Valley Transportation Authority recorded December 11, 2002 as Document No. 2002578558 Official Records in the Office of the Recorder of Alameda County, State of California; thence along the westerly line of said Parcel 2 (96160146 and 2001309153) being the easterly line of said "Parcel 24" (2002578558) North 22° 28' 20" West 185.80 feet to the northwesterly corner of said Parcel 2 (96160146 and 2001309153); thence along the northwesterly line of said Parcel 2 (96160146 and 2001309153) being the southeasterly line of that certain parcel of land in that certain grant deed to the San Francisco Bay Area Rapid Transit recorded July 26, 2004 as Document No. 2004339856 Official Records in the Office of the Recorder of Alameda County, State of California North 52° 39' 17" East 66.30 feet to a point of non-tangency of a curve concave southwesterly to which a radial line bears North 68° 34' 43" East; thence through the interior of said Parcel 2 (96160146 and 2001309153) along said curve concave southwesterly having a radius of 15,514.52 feet southeasterly through a central angle of 0° 41' 27" an arc length of 187.06 feet to a point on the southerly line of said Parcel 2 (96160146 and 2001309153) being the northerly 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 said Parcel 2 (96160146 and 2001309153) South 52° 39' 17" West 61.58 feet to the **POINT OF BEGINNING**.

Containing 11,518 square feet of land (0.264 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
RADONICH LIVING TRUST
PORTION OF APN 519-0850-002-09
ALAMEDA COUNTY
CITY OF FREMONT, CALIFORNIA**

October 19, 2009

Being a portion of that certain real property described as Parcel 2 in Document No. 96160146 recorded July 1, 1996 and Document No. 2001309153 recorded August 20, 2001 Official Records in the Office of the Recorder of Alameda County, State of California more particularly described as follows:

COMMENCING at the southwesterly corner of said Parcel 2 (96160146 and 2001309153) 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 2 (96160146 and 2001309153) with the northerly 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 52° 39' 17" East 61.58 feet to the **POINT OF BEGINNING** being a point of non-tangency of a curve concave southwesterly to which a radial line bears North 69° 16' 10" East; thence through the interior of said Parcel 2 (96160146 and 2001309153) along said curve concave southwesterly having a radius of 15,514.52 feet northwesterly through a central angle of 0° 41' 27" an arc length of 187.06 feet to a point on the northerly line of said Parcel 2 (96160146 and 2001309153) being the southeasterly line of that certain parcel of land in that certain grant deed to the San Francisco Bay Area Rapid Transit recorded July 26, 2004 as Document No. 2004339856 Official Records in the Office of the Recorder of Alameda County, State of California; thence along the northerly line of said Parcel 2 (96160146 and 2001309153) North 52° 39' 17" East 15.60 feet to a point of non-tangency of a curve concave southwesterly to which a radial line bears North 68° 33' 46" East; thence through the interior of said Parcel 2 (96160146 and 2001309153) along said curve concave southwesterly having a radius of 15,529.52 feet southeasterly through a central angle of 0° 41' 24" an arc length of 187.02 feet to a point on the southerly line of said Parcel 2 (96160146 and 2001309153) being the northerly line said "Parcel One" (2008013661); thence along the southerly line of said Parcel 2 (96160146 and 2001309153) South 52° 39' 17" West 15.65 feet to the **POINT OF BEGINNING**.

Containing 2,806 square feet of land (0.064 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.



A horizontal graphic scale bar with alternating black and white segments. It is marked with '0'', '40'', and '80'' at the top.

DATE: 10-19-09

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 temporary construction easement area ("Commencement Notice"). The temporary construction easement will expire two (2) years after BART delivers the Commencement Notice or on December 31, 2015, whichever occurs first.



EXECUTIVE DECISION DOCUMENT

| | | | | |
|---|--|--|---------------------------|---|
| GENERAL MANAGER APPROVAL: <i>Walter Delaney</i> | | GENERAL MANAGER ACTION REQ'D: Approve and Forward to the Board | | |
| DATE: 11/10/09 | | BOARD INITIATED ITEM: No | | |
| Originator/Prepared by: Joseph Basulino Dept: Real Estate Department ext. 6852 <i>Joseph M. Basulino</i> Signature/Date: 11/15/2009 | General Counsel <i>Andrew Kavanagh</i> 11/9/09 | Controller/Treasurer <i>[Signature]</i> 11/9/09 | District Secretary [] | BARC <i>Carl Munn</i> 11-9-09 [] |
| Status: Routed | | Date Created: 11/05/2009 | | |

TITLE:

Condemnation of Real Property for WSX Project BART Parcel # J-2038-1A and J-2038-3A

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 45915 Warm Springs Boulevard, 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 10,692 square feet in fee and of approximately 3,410 square feet in temporary construction easement of a 2.44± acre property owned by John P. Sakkaris, as Trustee of the John P. Sakkaris Revocable Trust dated August 1, 2008 ("Sakkaris Trust"). The property is located at 45915 Warm Springs Boulevard, Fremont, California 94539 (BART Parcel #J-2038-1A and J-2038-3A 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 19, 2008. The estimated market value of the required property interests in the Subject Parcel is \$284,500.00.

To date, negotiations appear to be at an impasse. The property owners have been notified of the Board hearing on November 19, 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 \$284,500.00 required for the acquisition of Parcel # J-2038-1A and J-2038-3A 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 \$284,500.00

As of month end 10/04/09, \$44,389,516 is available for commitment from this Fund Source for this Project, and \$15,117,695 has been committed by BART to date. There is \$5,985,127 in pending commitments in BART's financial management system. This action will commit an additional \$284,500.00 leaving an uncommitted balance of \$23,002,194 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-2038-1A and J-2038-3A; Draw and Deposit Warrant.” (Two-thirds vote required.)

FUNDING SUMMARY - WARM SPRINGS EXTENSION PROGRAM

| PROJECT ELEMENT | Baseline Budget | Current Forecast 11/11/09 | REMARKS |
|---|----------------------|---------------------------------|---|
| ENVIRONMENTAL, ENGINEERING AND CONSTRUCTION MANAGEMENT | | | |
| Design | \$59,312,460 | \$64,269,457 | |
| Construction Management | \$30,045,000 | \$30,045,000 | |
| Environmental Clearance | \$3,600,715 | \$3,724,199 | Completed |
| TOTAL E, E & CM | \$92,958,175 | \$98,038,656 | |
| CONSTRUCTION | | | |
| 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 | |
| BART SERVICES | | | |
| District-Furnished Materials | \$0 | \$8,000,000 | |
| BART Force Account Work | \$0 | \$7,000,000 | |
| TOTAL BART SERVICES | \$0 | \$15,000,000 | |
| PROGRAM COSTS | | | |
| Program Costs (HazMat, Consulting, Staff, Insurance, Financing Costs and Environmental Mitigation) | \$55,871,020 | \$70,585,550 | |
| Right-Of-Way Acquisitions | \$80,394,486 | \$80,912,981 | Expended \$48,988,497 as of end of Sep09. |
| Contingency | \$2,776,319 | \$87,262,153 | |
| TOTAL PROGRAM COSTS | \$139,041,825 | \$238,760,684 | |
| TOTAL FUNDING | \$890,000,000 | \$890,000,000 | |

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-2038-1A AND J-2038-3A;
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 John P. Sakkaris, as Trustee of the John P. Sakkaris Revocable Trust dated August 1, 2008 ("Sakkaris Trust") 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 Sakkaris Trust, as its interests appear of record, which real property, or interests in property, is located at 45915 Warm Springs Boulevard, Fremont, California, 94539, and is identified as BART Parcel Numbers J-2038-1A and J-2038-3A (Assessor's Parcel Number 519-0850-006-04), 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-2038-1A is to be acquired in fee, together with any improvements thereon. Parcel J-2038-3A 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:

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
JOHN SAKKARIS
PORTION OF APN 519-0850-006-04
ALAMEDA COUNTY
CITY OF FREMONT, CALIFORNIA**

October 19, 2009

Being a portion of that certain real property described as Parcel 1 in Document No. 99112581, recorded March 16, 1999 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 1 (99112581) 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 1 (99112581) being the easterly line of said "Parcel 24" (2002578558) North 22° 28' 20" West 230.31 feet to the northwesterly corner of said Parcel 1 (99112581) being the southwesterly corner of that certain parcel of land described in a 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; thence along the northerly line of said Parcel 1 (99112581) North 76° 44' 05" East 52.88 feet; thence through the interior of said Parcel 1 (99112581) South 19° 34' 48" East 228.74 feet to a point on the southerly line of said Parcel 1 (99112581) being a point on the northerly line 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; thence along the southerly line of said Parcel 1 (99112581) South 76° 44' 56" West 41.18 feet to the **POINT OF BEGINNING**.

Containing 10,692 square feet of land (0.245 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.



40' R.O.W. ESMT.
182 D 201 -

519-0850-004

J-2037

JOHNS FAMILY TRUST
DOC. 2008362172

519-0850-006-04

J-2038

JOHN SAKKARIS
DOC. 99112581



519-0850-061

J-2039
WARM SPRINGS BLVD.
INVESTMENTS, LLC
2004322175

J-2037-3A

N19°34'48"W

J-2038-3A

228.74'

J-2039-3A

J-2037-1A

J-2038-1A

10,692 sq.ft.
0.245 acres

**-S.D.E. TO CITY OF FREMONT
DOC. 81-079957**

230.31'

N76°44'56"E
41.18'

J-2039-1

10' WIDE
PIPELINE ESMT
RE:1816 IM:69

V.T.A.

DOC. 2002578558
PARCEL TWENTY-FOUR
(U.P.R.R. V-11/2, NO. 10-15)

~~J-2029-2C~~

- P.O.B.

J-2029

J-2029-3B

| | |
|--------------|------------------|
| CAD FILE NO. | WSX_J-2038-1.DWG |
|--------------|------------------|

JOHN SAKKARIS (DOC. 99112581), FEE TAKE AREA.



PLAT MAP

CO. ALA.

RTE. WSX

Sheet 1 of 1

BEARINGS AND DISTANCES ARE BASED ON THE CALIFORNIA COORDINATE SYSTEM OF 1983 (CCS83) ZONE 3, 1988.5 EPOCH. DISTANCES ARE GRID DISTANCES, TO OBTAIN GROUND LEVEL DISTANCES MULTIPLY BY 1.0000811.

SCALE: 1"=40'

DATE: 10-19-09

DR. NO. WSX_J-2038-1A

**LEGAL DESCRIPTION
JOHN SAKKARIS
PORTION OF APN 519-0850-006-04
ALAMEDA COUNTY
CITY OF FREMONT, CALIFORNIA**

October 19, 2009

Being a portion of that certain real property described as Parcel 1 in Document No. 99112581, recorded March 16, 1999 Official Records in the Office of the Recorder of Alameda County, State of California, being more particularly described as follows:

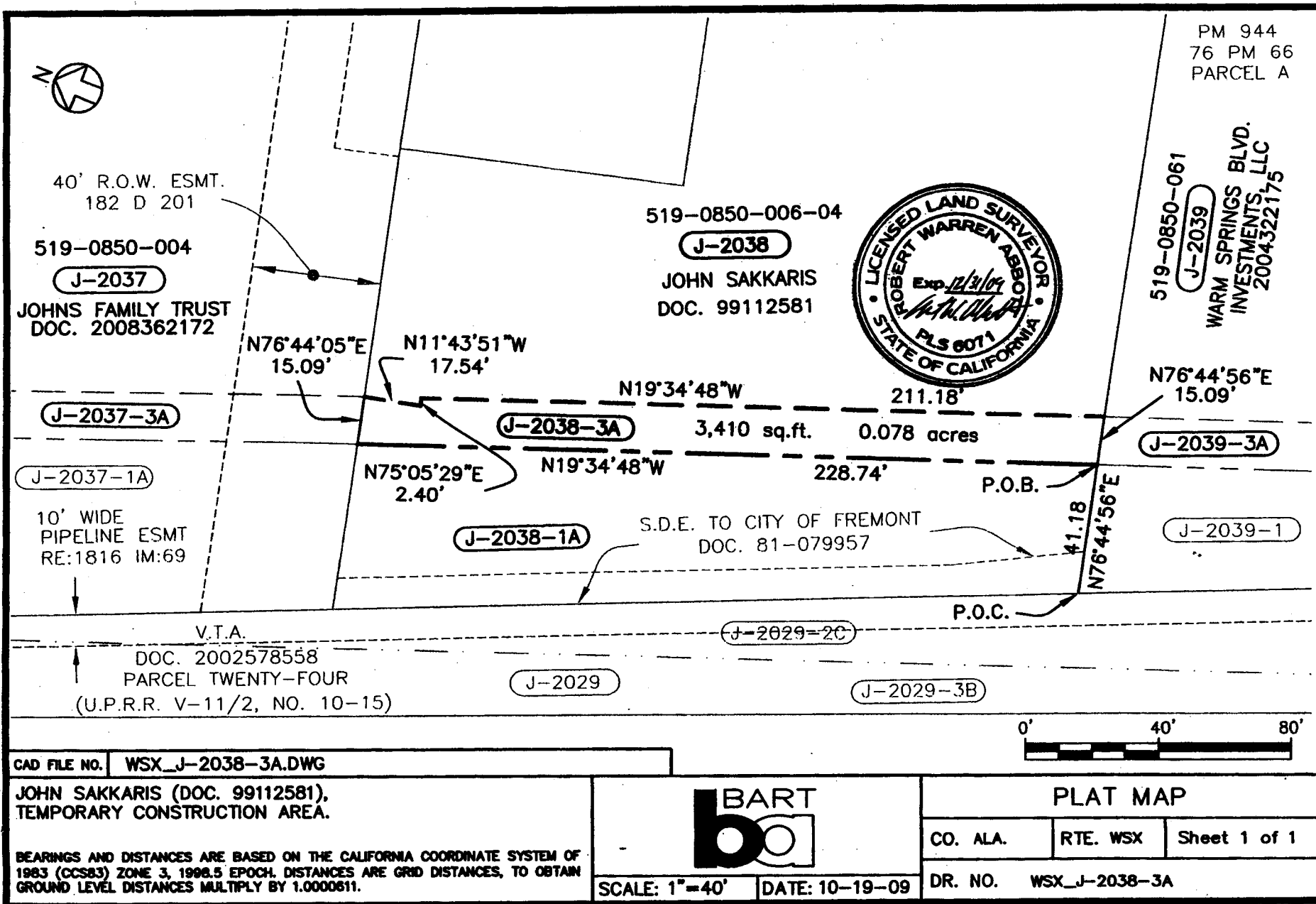
COMMENCING at the southwesterly corner of said Parcel 1 (99112581) being a point on the easterly line of that certain parcel described as "Parcel 24" in that certain grant deed to the Santa Clara Valley Transportation Authority recorded December 11, 2002 as Document No. 2002578558 Official Records in the Office of the Recorder of Alameda County, State of California; thence along the southerly line of said Parcel 1 (99112581) North 76° 44' 56" East 41.18 feet to the **POINT OF BEGINNING**; thence through the interior of said Parcel 1 (99112581) North 19° 34' 48" West 228.74 feet to a point on the northerly line of said Parcel 1 (99112581) being a point on the southerly line of that certain parcel of land described in a 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; thence along the northerly line of said Parcel 1 (99112581) North 76° 44' 05" East 15.09 feet; thence through the interior of said Parcel 1 (99112581) the following three (3) courses: South 11° 43' 51" East 17.54 feet; North 75° 05' 29" East 2.40 feet; South 19° 34' 48" East 211.18 feet to a point on the southerly line of said Parcel 1 (99112581) being a point on the northerly line 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; thence along the southerly line of said Parcel 1 (99112581) South 76° 44' 56" West 15.09 feet to the **POINT OF BEGINNING**.

Containing 3,410 square feet of land (0.078 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 temporary construction easement area ("Commencement Notice"). The temporary construction easement will expire two (2) years after BART delivers the Commencement Notice or on December 31, 2015, whichever occurs first.



EXECUTIVE DECISION DOCUMENT

| | | | | |
|---|---------------------|---|------------------------|----------|
| GENERAL MANAGER APPROVAL: | | GENERAL MANAGER ACTION REQ'D: Forward to Administration Committee for Consideration by Full Board (two-thirds vote required for passage) | | |
| DATE: 11/13/09 | | BOARD INITIATED ITEM: Yes | | |
| Originator/Prepared by: Julia A Yim Dept: Customer Services Department | General Counsel | Controller/Treasurer | District Secretary | BARC |
| Signature/Date: 11/13/09 | 11/13/09 | 11/13/09 | 11/13/09 | 11-13-09 |
| Status: Routed | | Date Created: 11/06/2009 | | |
| TITLE: | | | | |

Demonstration Project to Provide Free Tickets for Military Personnel on Leave

NARRATIVE:

Purpose: To adopt by a two-thirds vote of the entire Board the attached Resolution “In the Matter of Adopting Modified Fare Rates: Demonstration Project for the Issuance of Free Tickets to Certain Military Personnel on Leave.”

Discussion: One way the BART organization can demonstrate its support and gratitude for the men and women serving in dangerous war zones to protect the United States, is to offer a free ticket to troops on leave in the Bay Area from Operation Iraqi Freedom or Operation Enduring Freedom. Military personnel on active duty get periodic leave for respite and family reunions. The leave is documented in an "order". The order identifies the soldier, leave status, where the leave is taken from, and the duration of leave. Under the proposed program, upon presentation of the order and the person's military identification card to the Customer Services Center at Lake Merritt and upon verification of the documents, the clerk would issue one Fifty-Dollar (\$50.00) ticket to the person. Each person would be eligible to receive only one (1) ticket, which would not be refundable for cash. Staff proposes that this program be implemented beginning in January 2010 as a one-year demonstration project, with an initial cap of Fifty Thousand Dollars (\$50,000) on the value total value of tickets issued.

Under the proposed demonstration project, staff would create liaisons with the different military facilities in Northern California to communicate information about the free ticket to the soldiers before they are deployed. In addition the District would announce the program and promote it through traditional means that will target this very specific market.

Adoption of this program requires a two-thirds vote by the Board of Directors. Consistent with similar free ride promotions or ticket discounts, this action may adversely impact revenue and therefore is subject to the higher approval threshold under state law.

Fiscal Impact: It is difficult to precisely estimate the number of troops that may be on leave and in this area. There are estimates of 1,000 to 3,000 soldiers deployed from the National Guard or

Army Reserve units in California. Staff proposes that each eligible person be given one \$50.00 ticket. After one full year, staff will be able to estimate based on experience, the number of tickets needed to support the program. However, staff recommends that a cap of \$50,000 be placed on the total value of the tickets issued under this program. When the threshold is met, staff will return to the Board to modify the program as necessary.

The cost to administer the program is negligible because the verification and distribution can be done with existing staff in the Customer Services Center at the Lake Merritt Station. Outreach and creation of collateral materials to support the program may be necessary, but will not exceed \$5,000.

Alternatives:

(1) Allow military personnel with the requisite credentials to present them to a station agent for passage through the swing gates. This method is more difficult to administer because it requires training station agents about the details of an "order" and the nuances of a valid military identification card. It also requires that an agent be present to allow the soldier through the swing gate.

(2) Load a predetermined value on an E-Z Rider card and issue the card to eligible participants. This method is more expensive because a smart card costs more than ticket stock.

Use of a Translink card is not a viable option at this time. Since BART value would have to be loaded in the e-purse, the funds could be used for any transit agency that accepts Translink cards. At this time, a "Limited Use TransLink Card" does not exist.

Recommendation: Adoption of the following motion.

Motion: Adopt the attached Resolution "In the Matter of Adopting Modified Fare Rates: Demonstration Project for the Issuance of Free Tickets to Certain Military Personnel on Leave."

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

In the Matter of Adopting
Modified Fare Rates:
Demonstration Project for the
Issuance of Free Tickets
for Military Personnel on Leave

Resolution No. _____

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

WHEREAS, the District seeks to demonstrate its support and gratitude for the men and women serving in dangerous war zones to protect the United States by offering a free ticket to troops on leave in the Bay Area; and

WHEREAS, military personnel on active duty get periodic leave documented in an order, for respite and family reunions;

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

The program authorized by this Resolution is reasonable as required by Public Utilities Code Section 29038:

- (a) State law permits the District to grant free passes to persons for patriotic purposes;
- (b) Free passes will only be issued upon verification of an individual's identity and the presence of a qualifying leave order;
- (c) Each person would be eligible to receive only one (1) ticket which shall not be refundable for cash; and
- (d) The program will be of limited duration with a cap of cap of Fifty Thousand Dollars (\$50,000).

NOW, THEREFORE, BE IT RESOLVED that:

- (1) The General Manager is authorized to conduct a one (1) year demonstration project, commencing in January 2010, to issue one (1) free \$50.00 revenue ticket that would not be refundable for cash, to qualifying military personnel on leave from "Operation Iraqi Freedom" or "Operation Enduring Freedom." ("Demonstration Project")

(2) The Demonstration Project shall include a cap of Fifty Thousand Dollars (\$50,000) on the total value of tickets issued.

(3) Staff will report to the Board on the findings of the Demonstration Project before it expires.

BE IT FURTHER RESOLVED, that

Except as provided herein, Resolution No. 5082, In the Matter of Adopting Modified Fare rates and Parking Charges to Increase the Minimum Fare, Increase the SFO Premium Fare, Modify Daily Paid Parking Criteria and Approve Suspension of EZ Rider Card and Hang-tag Fees, adopted May 28, 2009, remains in full force and effect.

Adopted: _____



EXECUTIVE DECISION DOCUMENT

| | | | | |
|--|--|---|---|----------------------------------|
| GENERAL MANAGER APPROVAL: DATE: 11/13/09 | | GENERAL MANAGER ACTION REQ'D: Approve and Place on November 19, 2009 Administration Committee Agenda | | |
| Originator/Prepared by: RICHARD WIECZOREK Dept: Procurement Signature/Date: 11/13/09 | | General Counsel 11/13/09 | Controller/Treasurer 11/13/09 | District Secretary [] |
| | | BARC [] | | |
| Status: Routed | | Date Created: 11/13/2009 | | |

TITLE:

Contract No. 03CK-110-B-1, 12th Street Station Electrical Construction - Change Order for lighting improvements

NARRATIVE:

PURPOSE:

To authorize the General Manager to execute Change Order No. 1 to Contract No. 03CK-110-B-1, 12th Street Station Electrical Construction, for additional lighting improvements at both North Berkeley Station and 12th Street Station in the amount of \$803,186, with LINC Lighting and Electrical, LP.

DISCUSSION:

On October 22, 2009, the Board of Directors of the San Francisco Bay Area Rapid Transit District ("BART") authorized the General Manager to apportion and award the Work for Contract No. 03CK-110A, Alameda County Two Underground Stations Electrical Construction to the two lowest responsive firms, LINC Lighting and Electrical, LP (LINC) and Solar Eclipse/UWA Electric (Solar), a joint venture, and to do so within the established budget subject to approval as to form by the Office of General Counsel and executed on or before October 31, 2009.

Staff undertook discussions with both firms to apportion the Work in accordance with this guidance, and to award Contract No. 03CK-110-B-1 to LINC for the 12th Street Station and Contract No. 03CK-110-B-2 to Solar for the North Berkeley Station. Both contracts were subject to the requirements contained in the contract book related to the bidder's provision of appropriate insurance, bonds and licenses. LINC provided all the required documents and a contract was awarded to them on October 30, 2009. Solar was not able to provide the appropriate documents so a 'contingent' contract was awarded to them on October 30, 2009, subject to them providing the documents by 5:00 p.m., November 12, 2009. No documents were provided by that date and time and hence the contingent contract terminated and the award became null and void.

In order to maximize use of the available grant funds, Staff now requests that the General Manager be authorized to issue a change order to the LINC contract to include additional work at

both the North Berkeley Station and the 12th Street Station. The Change Order scope includes the original contract options for the platform lighting at 12th Street and North Berkeley stations presented to the Board on October 22, 2009. Discussions with LINC have determined that they will complete the Work at both stations under the original bid price of \$1,998,850, as listed in the prior EDD to the Board on October 22, 2009. It is therefore requested that the General Manager be given authority to execute a Change Order to address these lighting improvements in an amount of \$803,186.

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

FISCAL IMPACT:

Funding of \$1,998,850 for contract number 03CK-110-B-1 is included in the total project budget for FMS No.03CK, Lighting Improvements at 12th Street and North Berkeley Stations. The Office of the Controller/Treasurer certifies that funds are currently available to meet this obligation.

BART Stn Lghtg RNV Pri in Almda

55R

\$1,998,850

As of the period ending October 4, 2009, \$3,248,000 is available for commitment from this funding source for this project and \$271,739 has been committed to date. There are pending commitments of \$518,643 in BART's financial management system. This action will commit a maximum of \$1,998,850, leaving an uncommitted balance of \$458,768 in this fund. There is no fiscal impact on available un-programmed District Reserves.

ALTERNATIVE:

The Board can elect not to authorize the General Manager to issue a Change Order for the lighting improvements. In this case, the District may be required to return a portion of the grant funds associated with the work that would not be completed at the North Berkeley Station.

RECOMMENDATION:

Recommend that the Board approve the following motion.

MOTION:

The General Manager is authorized to execute Change Order No. 1 to Contract No. 03CK-110-B-1, 12th Street Station Electrical Construction for additional lighting improvements at both North Berkeley Station and 12th Street Station in the amount of \$803,186, to LINC Lighting and Electrical, LP.

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

Item No. A - 7

MEMORANDUM

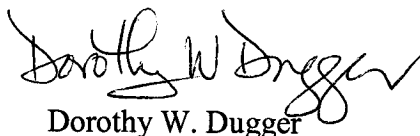
TO: Board of Directors**DATE:** November 12, 2009**FROM:** General Manager**SUBJECT:** FY10 Budget Revision

On June 11, 2009, the District adopted an "interim" Fiscal Year 10 (FY10) budget that was unbalanced and included a \$21.7 million deficit. The interim budget included a number of strategies to reduce expenses and increase revenues including: reduction of over 100 positions, reducing off-peak service, implementing a fare increase six months ahead of schedule, establishing parking fees at additional stations, increasing the minimum fare and raising the San Francisco International Airport premium fare surcharge. At the time the budget was adopted, staff advised the Board that a mid-year budget revision would be necessary to address the deficit.

Despite significant savings resulting from the recently negotiated labor contracts, the FY10 first quarter revenues available to support this reduced level of spending have come in worse than projected. Sales tax revenues, which account for about 33% of our base revenues, have fallen about 20% in each of the last two quarters compared to those time periods last fiscal year. Ridership figures were down 12% in July, 11% in August, and 7% in September, as compared to the same months last year.

The FY10 deficit is currently projected to be approximately \$26 million. Staff is developing a multifaceted approach to address the shortfall. Through a combination of expense reductions in both labor and non-labor, continuation of a selective hiring freeze process, and use of one-time funding sources, we are attempting to address the FY10 deficit while minimizing the impacts on our customers and employees. At this stage, it appears that savings from position reductions can be achieved through a combination of attrition and strategically placing impacted employees in current or soon to be vacant positions, minimizing impacts on employees in filled positions. However, if the revenue outlook worsens and more significant budget reduction actions are needed, personnel layoffs may become necessary. Initial deficit projections for FY11 amount to over \$20M, so ongoing solutions will be necessary.

At the November 19th Board meeting, staff will provide an update on the FY10 budget situation and will introduce additional deficit reduction strategies. This will be an informational presentation and the Board will not be requested to take any actions at the meeting. If you have any questions, please contact Carter Mau, Executive Manager of Planning and Budget at (510) 464-6194.



Dorothy W. Dugger

cc: Board Appointed Officers
Deputy General Manager
Executive Staff

ENGINEERING AND OPERATIONS COMMITTEE

Immediately following the Administration Committee Meeting

Director Keller, Chairperson

- | | | |
|------|--|--------|
| B-1. | Change Orders to Contract No. 15PM-110, Earthquake Safety Program Parking Structures Retrofit for the Concord, Daly City, El Cerrito del Norte, Hayward, Pleasant Hill and Walnut Creek BART Parking Structures, with West Bay Builders, for Differing Site Conditions.* Board requested to authorize. | 34 |
| B-2. | Award of Contract No. 09DJ-120A, Installation of Anode Cables and Anode Array Assemblies for Cathodic Protection System.* Board requested to authorize. | 39 |
| B-3. | Quarterly Performance Report, First Quarter Fiscal Year 2010 - Service Performance Review.* For information | Pkg. E |
| B-4. | General Discussion and Public Comment. | |

**ENGINEERING
AND
OPERATIONS
COMMITTEE
MATERIAL**

November 19, 2009



EXECUTIVE DECISION DOCUMENT

| | | | |
|--|---|---|--|
| GENERAL MANAGER APPROVAL: | | GENERAL MANAGER ACTION REQ'D: Approve and forward to Board of Directors | |
| DATE: 11/10/09 | | BOARD INITIATED ITEM: No | |
| Originator/Prepared by: Shirley J Ng Dept: TSD | General Counsel: 11/10/09 | Controller/Treasurer: 11/10/09 | District Secretary: 11/10/09 |
| Signature/Date: 11/10/09 | | | |
| Status: Routed | | Date Created: 10/27/2009 | |

Contract No. 15PM-110, BART Earthquake Safety Program Parking Structures Retrofit - Change Orders for Schedule Impacts

NARRATIVE:

PURPOSE:

To authorize the General Manager to execute Change Orders for schedule impacts due to differing site conditions in an aggregate amount not to exceed \$2 million, to Contract No. 15PM-110, BART Earthquake Safety Program Parking Structures Retrofit with West Bay Builders.

DISCUSSION:

The Board of Directors authorized the General Manager to award Contract No. 15PM-110, BART Earthquake Safety Program Parking Structures to West Bay Builders on September 25, 2008. The Contract scope provides for the retrofit of six parking structures. During construction, numerous differing site conditions were encountered, mainly related to rebar congestion and unknown utilities which required BART to redesign the retrofits. The time taken to assess the scope of the differing site condition and provide an alternative seismic retrofit design for the site has resulted in significant impacts to the schedule for the retrofit of the parking structures, with El Cerrito Del Norte being the most crucial as it is on the critical path. The schedule delay to the work on this parking structure is approximately one additional year or June 2011 for completion of the work.

Initially, the Contractor intended to start work at three parking structures and then, upon completion, start work on the next parking structures. As differing site conditions were encountered, the District and the Contractor agreed to begin work at the other parking structures to keep the work progressing while design issues were being addressed. This allowed the Contractor the flexibility to move its crews to work at available locations as the problems encountered were assessed and a revised design developed.

In order to minimize the construction duration and reduce the overall cost impacts, staff has resequenced the work at the other parking structures and intends to accelerate the schedule. However, delays due to suspending work when differing site conditions were discovered, the

direction to begin working at multiple sites concurrently and accelerating the schedule have resulted in additional costs to the Contractor. It is therefore requested that the General Manager be given authority to execute Change Orders to address schedule impacts due to differing site conditions in an aggregate amount not to exceed two million dollars.

Pursuant to Board Rule 5-2.4, Change Orders involving expenditures greater than \$200,000 require Board approval. Therefore, since some of the individual Change Orders may exceed \$200,000, staff is hereby seeking Board authority for the General Manager to execute such Change Orders.

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:

Funding for \$2,000,000 for these Change Orders are included in the total project budget for the FMS #15PM, ESP Parking Structures Retrofit. The Office of the Controller/Treasurer certifies that funds are currently available to meet this obligation.

F/G 01F - Earthquake Safety G. O. Bond:
\$2,000,000

As of the month ending 10/04/09, \$16,239,361 is available for commitment from this fund source for this project and BART has committed \$12,405,885 to date. There are pending commitments of \$213,501 in BART's financial management system. This action will commit an additional \$2,000,000 leaving an uncommitted balance of \$1,619,975 in this fund source.

There is no fiscal impact on available unprogrammed District Reserves.

ALTERNATIVE:

The Board can elect not to authorize the General Manager to issue Change Orders for the schedule impacts. This would require each Change Order for these schedule impacts to be processed separately which would cause further delays and increased costs to the District. If the Change Orders are not processed, BART would likely have claims filed by the Contractor for the differing site conditions and, among other things, costs for performing work beyond the original Contract completion date. Alternatively, BART could terminate a portion of the work affected by the differing site conditions; however, this would result in additional costs related to demobilization and redesign to recompile the construction contract.

RECOMMENDATION:

Recommend that the Board approve the following motion.

MOTION:

The General Manager is authorized to execute Change Orders for schedule impacts due to differing site conditions in an aggregate amount not to exceed \$2 million to Contract No. 15PM-110, BART Earthquake Safety Program Parking Structures Retrofit with West Bay Builders.

EXECUTIVE DECISION DOCUMENT**ATTACHMENT #1****CHANGE ORDER SUMMARY****BACKGROUND**

Name of Contractor: West Bay Builders

Contract No./NTP: 15PM-110 / November 10, 2008

Contract Description: Parking Structures Retrofit

Percent Complete as of 10/30/09 32.68%

| <u>COST</u> | <u>% of Award</u> | <u>CO Totals</u> | <u>Contract Amount</u> |
|--|--------------------------|-------------------------|-------------------------------|
| Original Contract Award Amount | | | \$7,813,181.00 |
| Change Orders: | | | |
| Other than Board Authorized C.O.s | 2.97% | \$232,538.00 | |
| Board Authorized Change Orders- Differing Site Conditions-NTE | 51.19% | \$4,000,000.00 | |
| Pending Board Authorized C.O.s | <u>25.59%</u> | <u>\$2,000,000.00</u> | |
| Subtotal of all Change Orders | 79.75% | \$6,232,538.00 | <u>\$6,232,538.00</u> |
| <u>Revised Contract Amount:</u> | | | \$14,045,719.00 |

SCHEDULE

Original Contract Duration: 540 days

Time Extension to Date: 80 days

Time Extension Due to Approved COs: 80 days

Revised Contract Duration 620 days

SUMMARY REASON FOR THESE CHANGE ORDERS

Schedule Impacts due to differing site conditions


FUNDING SUMMARY - EARTHQUAKE SAFETY PROGRAM

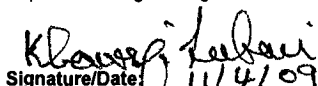
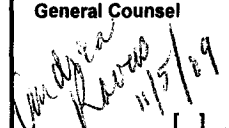
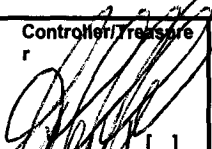
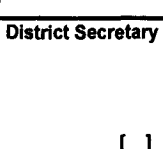

| PROJECT ELEMENT | Baseline Budget | Current Forecast as of 10/1/09 | REMARKS |
|--|------------------------|---|---------|
| ENVIRONMENTAL, ENGINEERING, AND CONSTRUCTION MANAGEMENT | | | |
| GEC (Bechtel Team) | \$105,000,000 | \$226,200,000 | |
| Other GEC | \$81,478,000 | \$0 | |
| Subtotal GEC | \$186,478,000 | \$226,200,000 | |
| CM | \$61,498,000 | \$66,570,729 | |
| Environmental | \$1,042,796 | \$2,198,237 | |
| TOTAL E, E & CM | \$249,018,796 | \$294,968,966 | |
| CONSTRUCTION | | | |
| Transbay Tube | | | |
| Oakland Ventilation Structure | \$1,033,000 | \$1,153,096 | |
| Oakland Landside | \$17,970,000 | \$10,699,433 | |
| San Francisco Ferry Plaza | | | |
| SFTS (including Tube liner) | \$73,037,000 | \$5,655,414 | |
| Marine Vibro Demo | \$101,285,000 | \$74,596,965 | |
| Stitching | \$82,962,000 | \$0 | |
| Aerial Guideways | | | |
| West Oakland/North Oakland | \$112,923,000 | \$105,902,920 | |
| Fremont | \$178,224,000 | \$124,519,000 | |
| Concord | \$36,500,000 | \$67,400,000 | |
| Richmond | \$80,155,000 | \$85,700,000 | |
| San Francisco/Daly City | \$36,590,000 | \$33,800,000 | |
| Stations (18) | \$126,961,000 | \$126,096,821 | |
| Other Structures | | | |
| LMA | \$5,529,000 | \$5,267,440 | |
| Yds & Shops | \$12,436,000 | \$23,618,000 | |
| Parking Structures | \$14,437,000 | \$14,862,500 | |
| At Grade Trackway | \$22,361,000 | \$0 | |
| Systems | \$7,066,000 | \$16,512,832 | |
| TOTAL CONSTRUCTION | \$909,469,000 | \$695,784,421 | |
| PROGRAM COSTS | | | |
| Program Costs (Hazmat, ROW, Consult, Staff) | \$159,894,204 | \$236,214,619 | |
| Contingency | \$32,104,000 | \$26,466,151 | |
| TOTAL PROGRAM COSTS | \$191,998,204 | \$262,680,770 | |
| BASELINE FUNDING | \$1,350,486,000 | | |
| REVISED FUNDING | | \$1,253,434,157 | |

ba

Item No. B – 2

EXECUTIVE DECISION DOCUMENT

| | | | |
|--|--|---|--|
| GENERAL MANAGER APPROVAL:  | | GENERAL MANAGER ACTION REQ'D: Approve and forward to the Board | |
| DATE: 11/10/09 | | BOARD INITIATED ITEM: No | |

| | | | | |
|---|---|---|---|--|
| Originator/Prepared by: Khawaja Zubair Dept: M & E Engineering  Signature/Date: 11/4/09 | General Counsel  11/5/09 | Controller/Treasurer  11/6/09 | District Secretary  | BARC  11/9/09 |
|---|---|---|---|--|

| | |
|----------------|--------------------------|
| Status: Routed | Date Created: 09/14/2009 |
|----------------|--------------------------|

TITLE:

AWARD OF CONTRACT NO. 09DJ-120A, INSTALLATION OF ANODE CABLES AND ANODE ARRAY ASSEMBLIES FOR CATHODIC PROTECTION SYSTEM AT TRANSBAY TUBE (TBT)

NARRATIVE:

PURPOSE: To obtain Board authorization for the General Manager to award Contract No: 09DJ-120A for installation of anode cables and anode array assemblies for TBT Cathodic Protection System to Manson Construction Company for the bid price of \$2,252,850.00.

DISCUSSION:

At present the steel shell of the transbay tube (TBT) is protected from corrosion by a series of cathodic protection anodes. These anodes are located at some distance away from the TBT at the bottom of the San Francisco Bay, and provide required current to charge the tube shell to a negative voltage. This negative voltage in turn protects the steel shell from corrosion. Each anode is connected to a power source located in the TBT with an armored submarine cable at the bottom of the Bay. The steel shell around the concrete tube structure is required for its structural integrity and to protect it from mechanical damage and water leakage. As the anode ages, the anode material is consumed until it no longer works. In addition, ship traffic at times damages the connecting cable between the anode and the power source requiring their replacement. As anodes become eroded, BART undertakes a program to replace them. Most of the connecting cables are over 40 years old. Some have lost their ability to carry current effectively, are beyond repair, and in need of complete replacement.

The goal under Contract No. 09DJ-120A is to replace up to 14 anode cables and replace up to 8 anode array assemblies.

Bid documents were evaluated in two steps with step one requiring evaluation of Bidders' minimum technical qualifications, followed by an evaluation of the price bids of the technically qualified bidders only. Contract 09DJ-120A is staff's second attempt to bid the work. The contract, 09DJ-120, was first advertised in August. Two bids were received in September, and both were found to be non-responsive during the technical evaluation phase.

Advance notices for the rebid (09DJ-120A) were mailed on September 23, 2009 to 74 prospective bidders. Contract No. 09DJ-120A was advertised on September 28, 2009. Three bids were received on October 13, 2009. The technical evaluations found all three bids to be technically acceptable. The following three price bids were opened on October 20, 2009.

| <u>BIDDER</u> | <u>BID PRICE</u> |
|---|-------------------------|
| Manson Construction Co., Richmond, California | \$2,252,850.00 |
| Vortex Marine Construction, Inc., Oakland, California | \$2,647,500.00 |
| Marine Holdings Co. Ballard Diving & Salvage, Vancouver, Washington | \$3,114,650.00 |
| Engineer's Estimate | \$2,750,000.00 |

Based upon staff's analysis of the itemized bids, the apparent low bidder, Manson Construction Co., has been deemed to be responsive to the solicitation. Furthermore, a review of the bidder's business experience and financial capabilities has resulted in a determination that the bidder is responsible. District staff has determined that the bid price by Manson Construction Co. is fair and reasonable.

The Office of Civil Rights reviewed the scope of work for this contract and determined that there were no subcontracting opportunities, therefore, no DBE participation goal was set for this contract.

FISCAL IMPACT:

This project is funded from Federal Economic Stimulus Fund, ARRA. Funding of \$2,252,850 for contract 09DJ-120A is included in the total project budget for the FMS#09DJ – Track Rehab (Cathodic Protection). The Office of the Controller/Treasurer certifies that funds are currently available to meet this obligation.

F/G 53J CA 56-0003 – ARRA of 2009 (Federal Economic Stimulus) **\$2,252,850**

As of 10/04/2009, \$3,497,630 is available for commitment from this fund source for this project and BART has committed \$0 to date. There are pending commitments of \$145,000 in BART's financial management system. This action will commit an additional \$2,252,850 leaving an uncommitted balance of \$1,099,780 in this fund.

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

ALTERNATIVES:

To not install and replace the anode cables and the anode array assemblies of the cathodic protection system. This will leave the Transbay Tube more susceptible to corrosion.

RECOMMENDATION:

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

MOTION:

The General Manager is authorized to award Contract No. 09DJ-120A for Installation of Anode Cables and Anode Array Assemblies for Transbay Tube Cathodic Protection System, to Manson Construction Company for the bid price of \$2,252,850.00, pursuant to notification to be issued by the General Manager, subject to compliance with the District's protest procedures, and FTA's requirements related to protest procedures.

PLANNING, PUBLIC AFFAIRS, ACCESS, AND LEGISLATION COMMITTEE
Immediately following the Engineering and Operations Committee Meeting
Director Sweet, Chairperson

- | | | |
|------|---|------------------|
| C-1. | I-580/BART to Livermore Program Draft Environmental Impact Report Release.* For information. | 41 and Pkg. F |
| C-2. | General Discussion and Public Comment. | |

**PLANNING,
PUBLIC AFFAIRS,
ACCESS, AND
LEGISLATION
COMMITTEE
MATERIAL**

November 19, 2009

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

MEMORANDUM

TO: Board of Directors **DATE:** November 12, 2009

FROM: General Manager

SUBJECT: PPAAL Committee Agenda – November 19, 2009: BART to Livermore Draft Program Environmental Impact Report (DPEIR)

At the November 19, 2009 Planning, Public Affairs, Access and Legislation (PPAAL) Committee meeting, staff will brief the Board on the BART to Livermore project. The staff presentation will provide a summary of objectives, alternatives and key findings from the DPEIR, which was released on November 5, 2009. Nine different alignment alternatives for a BART extension to Livermore are analyzed in the DPEIR. The DPEIR examines the environmental impacts and benefits of alignment alternatives, station sites and yard/maintenance facility sites at a program level.

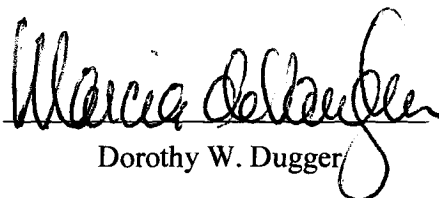
The key objectives of this current environmental effort are to:

- 1) Identify a preferred alignment;
- 2) Preserve right-of-way for a potential future extension to the City of Livermore; and
- 3) Inform current I-580 and High Speed Rail/ACE project efforts in the corridor.

The public comment period will last for 45 days and conclude on Monday, December 21, 2009. After close of the public comment period, staff will prepare the Final Program Environmental Impact Report and come before the Board in spring/summer of 2010 for two actions: certification of the environmental document and adoption of a preferred alignment.

The environmental document is available to the public for download on the Program EIR website: www.barttolivermore.org. Two public hearings will be held for the public to present their comments in person. The first public hearing will start at 2:00 p.m. on Wednesday, November 18, 2009 at the Livermore City Council Chambers. The second public hearing will start at 6:00 p.m. on Wednesday, December 2, 2009 at the Robert E. Livermore Center.

Please contact Malcolm Quint at (510) 464-7877 or via e-mail at MQuint@bart.gov, if you need additional information.



Dorothy W. Dugger

cc: Board Appointed Officers
Deputy General Manager
Executive Staff