

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

BOARD MEETING AGENDA

December 2, 2010

9:00 a.m.

A regular meeting of the Board of Directors will be held at 9:00 a.m. on Thursday, December 2, 2010. This meeting shall consist of a simultaneous teleconference call at the following locations:

BART Board Room Kaiser Center 20 <sup>th</sup> Street Mall – Third Floor 344 – 20 <sup>th</sup> Street Oakland, CA 94612	Union City Council Chambers 34009 Alvarado-Niles Road Union City, CA 94587
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Members of the public may address the Board of Directors regarding any matter on this agenda. Please complete a “Request to Address the Board” form (available at the entrance to the Board Room) and hand it to the Secretary before the item is considered by the Board. If you wish to discuss a matter that is not on the agenda during a regular meeting, you may do so under General Discussion and Public Comment.

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

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

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

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

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

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

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

Kenneth A. Duron  
District Secretary

Regular Meeting of the  
BOARD OF DIRECTORS

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

1. CALL TO ORDER

- A. Roll Call.
- B. Pledge of Allegiance.
- C. Introduction of Special Guests.
  - 1. Lea Rubio, Oakland Police Department

2. CONSENT CALENDAR

- A. Approval of Minutes of the Meeting of November 18, 2010.\* Board requested to authorize.
- B. Cost-Sharing Agreement between BART and the City and County of San Francisco for Paratransit Services.\* Board requested to authorize.
- C. Leases on BART-Owned Properties.\* Board requested to authorize.
- D. Independent Auditor's Report on Basic Financial Statements and Internal Control for the Fiscal Year Ended June 30, 2010.\* Board requested to accept.

3. ADMINISTRATION ITEMS

Director Blalock, Chairperson

- A. Approval of Non-CalPERS (California Public Employees Retirement System) Medical Plan Structure and Rates for Calendar Year 2011.\* Board requested to authorize.
- B. Condemnation of Real Property for the Warm Springs Extension Project: BART Parcel Nos. J-2060-1A and J-2060-3A.\* Board requested to authorize. (TWO-THIRDS VOTE REQUIRED.)

4. ENGINEERING AND OPERATIONS ITEMS

Director Keller, Chairperson  
NO ITEMS.

5. GENERAL MANAGER'S REPORT

NO REPORT.

6. BOARD MATTERS

- A. Training Session: Training in General Ethics Principles and Ethics Laws Relevant to Public Service, in Accordance with California Government Code Section 53235.\* For information.

B. Report of the BART Police Department Review Committee. For information.

C. Roll Call for Introductions.

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

Director Ward Allen, Chairperson

A. MacArthur Station Transit Village Development Project Access Strategies.\* For information.

8. GENERAL DISCUSSION AND PUBLIC COMMENT



## EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Marcia delBueno</i>		GENERAL MANAGER ACTION REQ'D: Forward to Board for 12/2/2010 Meeting		
DATE: c <i>11/24/10</i>		BOARD INITIATED ITEM: No		
Originator/Prepared by: Laura Timothy Dept: Customer Access <i>Laura Timothy</i>	General Counsel <i>Andrew Reeves</i> <i>11/23/10</i>	Controller/Treasurer <i>[Signature]</i> <i>11/23/10</i>	District Secretary [ ]	BARC <i>Carl Mauer</i> <i>11-23-10</i> [ ]

TITLE:

### Cost-Sharing Agreement for Paratransit Services between BART and the City and County of San Francisco

NARRATIVE:

#### Purpose:

To obtain Board authorization for the General Manager to execute a Cost-Sharing Agreement between BART and the City and County of San Francisco (the City) for the provision of ADA Paratransit Service within the parties' joint service areas for a period of up to ten years.

#### Discussion:

The Americans with Disabilities Act of 1990 (ADA) requires that BART and the City provide paratransit services within their service areas to individuals who are unable because of their disability to use fixed route transit service. In 1995, BART and the City entered into an original cost-sharing agreement pursuant to which the City, through the San Francisco Municipal Transportation Agency (Muni), agreed to provide ADA-required paratransit services to eligible individuals in the BART service area within the City and BART, in return, agreed to pay a portion of the City's costs for such services. This cost-sharing agreement was based on a study completed in 1994 which analyzed a random sample of paratransit trips in San Francisco to determine whether the costs of the trips were the responsibility of BART or the City.

In 2001, BART and the City entered into a second, similar cost sharing agreement, based on the same study results, which was in effect until June 30, 2010. BART and the City have continued to share costs without a formal agreement since that time.

Staff has reviewed the original 1994 study methods and results and finds no substantial changes in BART or Muni fixed route or paratransit services which would invalidate the results of that study. Therefore, staff from the BART Paratransit Program, as well as staff from Muni, recommend approval of the attached Cost-Sharing Agreement, which would continue the general terms of the previous agreements with a few clarifications. The Cost-Sharing Agreement would have an initial term of one year with automatic renewals for up to ten years.

The Muni Board approved the Cost-Sharing Agreement on November 16th, 2010 and it is expected to go to the San Francisco Board of Supervisors for approval in January 2011.

The Office of the General Counsel has approved the Cost-Sharing Agreement as to form.

**Fiscal Impact:**

The Cost-Sharing Agreement provides for BART to pay 8.8% of the annual net operating expenses of providing paratransit services to eligible individuals in the City's service area. The cost to BART was \$1,250,000 in FY 2009 and \$1,306,271 in FY 2010 and is estimated at \$1,480,000 for FY 2011. These funds are included in the Customer Access budget.

**Alternatives:**

Not execute the Cost-Sharing Agreement and negotiate to provide the paratransit services under a separate contract which would prevent BART from benefiting from substantial economies of scale and efficiencies of program achieved by SF Muni Paratransit.

**Recommendation:**

Adoption of the following motion:

**Motion:**

The General Manager is authorized to execute the Cost-Sharing Agreement for Paratransit Services between the City and County of San Francisco and the San Francisco Bay Area Rapid Transit District.



**AGREEMENT No.  
COST-SHARING AGREEMENT FOR PARATRANSIT SERVICES**

**BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO**

**AND THE SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT**

This Agreement is entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2010, between the City and County of San Francisco ("CITY"), a municipal corporation, acting through its Municipal Transportation Agency ("SFMTA"), and the San Francisco Bay Area Rapid Transit District ("BART"), a rapid transit district established pursuant to California Public Utilities Code, Sections 28500 *et seq.*

**RECITALS**

**A.** The CITY is a municipal corporation chartered under the Constitution of the State of California and empowered by the Constitution and the CITY Charter to operate the Municipal Railway ("MUNI").

**B.** The SFMTA is empowered by the CITY Charter to manage and control all public transportation functions of MUNI.

**C.** BART operates in Alameda, Contra Costa, San Francisco and San Mateo Counties.

**D.** Section 223 of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. § 12143, requires that BART and the CITY provide paratransit services within their service areas to individuals who are unable because of their disability to use regular transit service.

**E.** The SFMTA administers a Paratransit Program for ADA paratransit-eligible individuals in San Francisco through a Paratransit Broker. Since 1994, the SFMTA has provided paratransit services in San Francisco, through its Paratransit Broker, to all certified ADA paratransit eligible users in areas where MUNI and BART service areas overlap.

**F.** The CITY has applied for and received from the Metropolitan Transportation Commission ("MTC") State Transit Assistance ("STA") funds and Transportation Development Act ("TDA") funds to assist in funding paratransit services in San Francisco.

**G.** In 1994, BART commissioned a study of the CITY's Paratransit Program, which included paratransit services provided by taxi, lift van, group van and the Commission on Aging to determine how much of the costs of the CITY's Paratransit Program would be attributable to BART. The results of the study indicated that approximately 8.8% of the CITY's overall costs for ADA paratransit should be borne by BART.

I. The CITY and BART are in accord with the results of the study and are entering into this Agreement to memorialize (1) SFMTA's agreement to cover BART's obligation under the ADA to provide paratransit services, and (2) BART's agreement to share in the costs of SFMTA's Paratransit Program.

**FOR AND IN CONSIDERATION** of the mutual promises contained herein, the parties agree as follows:

**I. COST SHARING FORMULA**

A. BART shall pay 8.8% of the "Net Operating Expenses" of providing services to eligible paratransit individuals in the CITY's service area, as calculated below.

B. Calculation of Net Operating Expenses.

1. On or about February 1, the CITY shall estimate the annual operating budget for SFMTA's Paratransit Broker Contract for the following fiscal year (July 1 through June 30) ("Total Operating Expenses").
2. The Total Operating Expenses shall be reduced by the following to arrive at the Net Operating Expenses:
  - a. an estimate of STA population based revenue allocated to the CITY for paratransit as approved by MTC,
  - b. an estimate of TDA Article 4.5 funds allocated to the CITY as approved by MTC,
  - c. an estimate of paratransit fare revenues for the fiscal year, as submitted in the revenue line items in MUNI's budget request,
  - d. except for trips on paratransit taxi service, the difference between estimated fare revenues as calculated in SFMTA's budget request and the amount that would be generated if maximum fares were charged, if the fare charged for ADA SF Access services is less than the maximum amount allowed under ADA rules (i.e., twice the undiscounted fixed route fare).

C. Billing of Net Operating Expenses

1. SFMTA shall bill BART for one quarter of 8.8% of the estimated Net Operating Expenses for each of the following three fiscal year quarters: Quarter 1 (July through September) ("Q1"), Quarter 2 (October through December) ("Q2"), and Quarter 3 (January through March) ("Q3"), as provided in Section II.B below.
2. Following the end of each fiscal year SFMTA shall calculate the actual amount of Net Operating Expenses according to the formula in Section I.B above. For Quarter 4 (April through June) ("Q4"), BART shall be billed an amount equal to 8.8% of actual Net Operating Expenses less amounts

already billed for Q1, Q2, and Q3. The amount may be more or less than the amounts billed in the previous three quarters depending whether actual Net Operating Expenses were more or less than the estimated Net Operating Expenses.

- D. Notwithstanding the above, if for any fiscal year SFMTA's annual budget contribution is less than 91.2% of the total "Net Operating Expenses," BART's share of the costs would also be reduced proportionally so that the cost sharing between BART and SFMTA would remain the same.

## II. RESPONSIBILITIES

### A. BART shall:

1. Pay to the SFMTA its annual monetary contribution for the paratransit services as described in Section I in quarterly payments. BART's payments shall be due on August 1 for Q1, on November 1 for Q2, on February 1 for Q3, and on August 15 for Q4.

### B. City shall:

1. By February 1 of each year, submit an estimate to BART for 8.8% of the Net Operating Expenses for the following fiscal year.
2. Prior to the beginning of Q1, Q2, and Q3 of each fiscal year, submit an invoice to BART in the amount of one quarter of 8.8% of the estimated Net Operating Expenses, for a total of three invoices for Q1, Q2, and Q3.
3. Following the end of the fiscal year and calculation of the Actual Net Operating Expenses, submit a final invoice to BART for the fiscal year for the difference between 8.8% of the Actual Net Operating Expense and the amount billed in Q1, Q2, and Q3.
4. Provide paratransit services in the CITY and fulfill BART's obligation to ADA Paratransit in the limits of MUNI's service area and in Daly City in compliance with ADA requirements.
5. Apply for, and administer, all forms of grants or revenues, including but not limited to, TDA and STA funds, to fund the paratransit services in the CITY.
6. Credit the amount of STA and TDA funds for which BART is eligible for paratransit in the City and County of San Francisco to BART's 8.8% share of the cost of the provision of services to ADA paratransit eligible individuals.
7. Provide an annual report of service level statistics.
8. Provide an annual report of all funds received and disbursed under this Agreement in accordance with generally accepted accounting principles upon request by BART.



### III. TERM OF AGREEMENT; AMENDMENT

- A. The term of this Agreement shall be for one year from its Effective Date, with automatic renewals for up to ten (10) years unless terminated by either party with a 180-day notice of termination.
- B. This Agreement may not be amended except by mutual written agreement of the parties.

### IV. STUDY OF PARATRANSIT DEMAND; AUDIT OF PARATRANSIT COSTS

- A. BART or SFMTA may commission a study of paratransit services and costs at any time for the purpose of determining the continuing validity of the cost-sharing percentage contained in Section I, above. The study shall employ the same or better methodology, as mutually determined by staff, as that used in determining the original cost-sharing percentage (see Exhibit A, Allocation of Local ADA Paratransit Costs in San Francisco County, Final Report, September 29, 1994). If the results of the study determine that the percentage should change, either upward or downward, the parties shall amend this Agreement to reflect the new percentage. Such Amendment shall be approved by BART and by the SFMTA on behalf of the CITY. The cost of the study shall be borne equally by the CITY and BART. Charges to the CITY for the cost of the study will accrue only after prior written authorization certified by the CITY's Controller, and the amount of the CITY's obligation for such study shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization.
- B. BART shall have the right to inspect and audit all accounts, records and data relating to the CITY's paratransit program, including the records of the CITY's paratransit broker. The records shall be made available for any such inspection or audit during normal business hours. BART's rights hereunder are expressly made subject to confidentiality and disclosure provisions of applicable Federal and State statutes and regulations. The CITY shall preserve and maintain such records for a period of three (3) years after the fiscal year for which such payments are made. The Auditor General of the State of California under California Government Code Section 8546.7 shall have the same rights conferred upon BART by this Section.

### V. LIABILITY

- A. Neither BART nor any officer, director, agents, or employees thereof, shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by the CITY, its Paratransit Broker or any subcontractor in connection with providing the paratransit service pursuant to this Agreement. It is also agreed that pursuant to Government Code Section 895.4, the CITY shall indemnify, defend and hold BART harmless from any liability imposed for injury (as defined in Government Code

Section 810.8) occurring by reason of anything done or omitted to be done by the CITY, its paratransit broker or any subcontractor in connection with providing the paratransit service pursuant to this Agreement.

- B. Neither the CITY nor any officer, employee or agent thereof, shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by BART in connection with this Agreement. It is also agreed that pursuant to Government Code Section 895.4, BART shall indemnify, defend and hold the CITY harmless from any liability imposed for injury (as defined in Government Code Section 810.8) occurring by reason of anything done or omitted to be done by BART in connection with this Agreement.

## VI. GENERAL PROVISIONS

- A. This Agreement shall be deemed to be made in, and shall be construed in accordance with the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.
- B. The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.
- C. All captions are for reference only and shall not be considered in construing this Agreement.
- D. This Agreement sets forth the entire agreement between the parties, and supersedes all other oral or written provisions. This Agreement may be modified only as provided in Section III.B.
- E. Should any part of this Agreement be declared invalid by a court of law, such decision shall not affect the validity of any remaining portion which shall remain in full force and effect. Should the severance of any part of this Agreement materially affect any other rights and obligations of the parties hereunder, the parties will negotiate in good faith to amend this Agreement in a manner satisfactory to the parties.
- F. The CITY and BART shall each bear its own internal costs associated with administration of this Agreement, including, without limitation, reporting, billing, accounting and auditing costs.
- G. This Agreement shall bind and benefit the parties hereto and their assignees, successors, and permitted assigns.

- H. This Agreement and any documents supplied hereunder are subject to public inspection under the California Public Records Act and the City's Sunshine Ordinance (see San Francisco Administrative Code §67.24(e)) unless exempted by law.

## VII. NOTICES

All notices to be given by the parties hereto shall be in writing and delivered or mailed, postage prepaid, as follows:

To CITY: San Francisco Municipal Transportation Agency  
1 South Van Ness Ave, 7<sup>th</sup> floor  
San Francisco, CA 94103

Attn: Annette Williams, Manager  
Accessible Services Program

To BART: BART  
800 Madison Street  
P.O. Box 12688  
Oakland, CA 94604-2688

Attn: Laura Timothy, Manager of Access and Accessible Services

## VI. EFFECTIVE DATE OF AGREEMENT

This Agreement is effective as of July 1, 2010.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed, in triplicate, by their duly authorized officers, on the day and year first hereinabove written.

**CITY AND COUNTY OF SAN FRANCISCO**

Municipal Transportation Agency

By: \_\_\_\_\_  
Nathaniel P. Ford Sr.  
Executive Director/CEO

Municipal Transportation Agency  
Board of Directors  
Resolution No.  
Dated: \_\_\_\_\_

Board of Supervisors  
Resolution No.  
Dated: \_\_\_\_\_

ATTEST:

ATTEST:

\_\_\_\_\_  
Secretary, SFMTA Board of Directors

\_\_\_\_\_  
Clerk of the Board

**APPROVED AS TO FORM:**

Dennis J. Herrera  
City Attorney

By: \_\_\_\_\_  
Robin M. Reitzes  
Deputy City Attorney

**SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT**

By: \_\_\_\_\_  
Dorothy Dugger, General Manager

**APPROVED AS TO FORM:**

Office of the General Counsel

By: \_\_\_\_\_  
BART Attorney

32651.2





## EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Valeria Delgado</i>		GENERAL MANAGER ACTION REQ'D: Approve and Forward to the Board		
DATE: 11/23/10		BOARD INITIATED ITEM: No		
Originator/Prepared by: Gary Sue Dept: Real Estate ext. 7502 Signature/Date: <i>Gary Sue</i> 11/18/10	General Counsel <i>[Signature]</i> 11-18-10 [ ]	Controller/Treasurer <i>[Signature]</i> 11/19/10 [ ]	District Secretary [ ]	BARC <i>[Signature]</i> 11-22-10 [ ]
Status: Routed		Date Created: 11/16/2010		

TITLE:

### Leases on BART-Owned Properties

NARRATIVE:

**PURPOSE:** To obtain Board approval for the General Manager to issue eleven new leases for terms of up to five years, plus an option for up to five additional years, and to increase existing lease fees to tenants currently leasing BART-owned property.

**DISCUSSION:** The rental program has been successful in providing a return on District-owned real property and reducing the burden and cost of maintaining these properties. Income is derived from excess land wherever possible until the property can be sold. Some of these accounts provide income from parcels that are in the operating right of way, such as land under aerial transit structures or from parcels that may be required for future BART needs.

The District currently has seven month-to-month leases on holdover from term leases and four leases that will expire within the next nine months. Attachment A lists these accounts, income derived, uses, and respective locations.

Board approval is required for any leases, or extensions of leases, that would provide a total tenancy beyond two years. Staff is seeking approval for the issuance of new term leases for the eleven described accounts. By issuing new leases, staff will be able to standardize lease provisions and track the leases more consistently. All the leases will have a specific termination date. Board authorization will provide staff with the authority to execute the leases; however, staff may not enter into all of the leases if there are lease compliance issues.

Staff evaluated the current rental rates for these accounts and will raise rents by 3% on nine of the accounts and will raise rents to market rates on two of accounts. BART is currently receiving revenues of approximately \$67,373 annually. It is anticipated that these revenues will increase to \$72,864 annually during the first year of these leases. Thereafter, rents will automatically increase 3% per year for each of the remaining non-option years. For the option years, staff is proposing increases of 3% to 5% for each year. Staff will continue to evaluate whether the current uses of and income from the described properties are the best attainable for the District.



The Office of the General Counsel has approved as to form the standard leases that will be entered into with the tenants.

**FISCAL IMPACT:** BART anticipates receiving annual lease payments from the tenants listed in Attachment A totaling approximately \$72,864 for the first year and a total of approximately \$930,329 over a ten-year term. The latter figure assumes lease terms of five years (with annual increases each year as discussed above) plus a five-year option term (with a 5% annual increase each year). The payments will be deposited into the General Fund Account 030.

**ALTERNATIVES:** Continue the existing rental agreements on a month-to-month basis or terminate them with notice. After termination, the District would be responsible for maintenance expenses until it entered into agreements with new tenants.

**RECOMMENDATIONS:** Adoption of the following motion.

**MOTION:** The General Manager or her designee is authorized to issue new leases to San Pablo Property Investments – Richmond (Parcel Number O-RA73); Tri Valley Quarter Midget - Livermore (Parcel Numbers L-5003 & L-5004); Joseph Welch – Daly City (Parcel Number D-1020); Cintas - San Leandro (Parcel Number O-A713); Pacific Supermarket – So. San Francisco (Parcel O-M370); John Gandolfo - Livermore (Parcel Number L-4002); Robert Faussner - Richmond (Parcel Number O-R802); Sylvia Figueroa – El Cerrito (Parcel Number O-R807); Peninsula Pines – So. San Francisco (Parcel Number D-3152); The Hignell Companies – South San Francisco (Parcel (D-3151); and Park Lane Apartments – South San Francisco (Parcel D-3152), for terms of up to five years, plus an option term for up to five years; to increase existing fees 3% or to market rates; to increase fees at 3% for the remaining non-option years; and to increase rents 3% to 5% for each option year.

Attachment A

<u>RENTAL ACCOUNT</u>	<u>PARCEL NUMBER</u>	<u>NAME OF TENANT &amp; CITY</u>	<u>TENANCY START DATE</u>	<u>ANTICIPATED MONTHLY RENT</u>	<u>ANTICIPATED ANNUAL RENT</u>	<u>PARCEL SIZE</u>	<u>TENANT USE</u>	<u>PARCEL ADDRESS</u>
1371	O-RA73	San Pablo Property	1/1/2005	\$258.00	\$3,096.00	7,500 sq. ft.	parking	north of Richmond yard
1342	L-5003	Tri Valley Quarter Midget	6/1/1994	\$150.00	\$1,800.00	6 acres	car track weed abatement	6978 Northfront Rd., Livermore
1353	D-1020	Joseph Welch	3/1/2002	\$2,510.00	\$30,120.00	13,600 sq. ft.	parking	Washington St., Daly City
1374	O-A713	Cintas	9/1/2008	\$900.00	\$10,800.00	9,100 sq. ft.	parking	139th Ave., San Leandro
1379	O-M370	Pacific Supermarket	1/1/2009	\$106.00	\$1,272.00	466 sq. ft.	storage	2900 Alemany Blvd., So. San Francisco
1378	L-4002	John Gandolfo	6/1/2009	\$177.00	\$2,124.00	10 acres	farming weed abatement	200 E. Airway Blvd., Livermore
1301	O-R802	Robert Faussner	6/1/1982	\$342.00	\$4,104.00	8,454 sq. ft.	parking	11866 San Pablo Ave., El Cerrito
1377	O-R807	Sylvia Figueroa	9/1/2009	\$330.00	\$3,960.00	8,122 sq. ft.	parking	11916 San Pablo Avenue, El Cerrito
1370	D-3152	Peninsula Pines	10/1/1976	\$21.00	\$254.00	3,000 sq. ft.	landscape maintenance	842 Antoinette Lane, So. San Francisco
1347	D-3151	Hignell Companies	5/1/1979	\$705.00	\$8,460.00	4,245 sq. ft.	parking	1107 Mission Road, So. San Francisco
1368	D-3152	Park Lane Apartments	9/1/1980	\$572.00	\$6,864.00	4,572 sq. ft.	parking	800 Memorial Drive, So. San Francisco



## EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Marisa DeVander</i>		GENERAL MANAGER ACTION REQ'D: Approve and forward to the Board on December 2, 2010.		
DATE: 11/24/10		BOARD INITIATED ITEM: No		
Originator/Prepared by: Ed Pangilinan Dept: Finance Ext. 6929 <i>EPP</i>	General Counsel <i>Dudley Rasco</i> 11/24/10	Controller/Treasurer <i>[Signature]</i> 11/23/10	District Secretary [ ]	BARC <i>Carsten M...</i> 11-24-10 [ ]
Signature/Date:				
Status: Routed		Date Created: 11/17/2010		

TITLE:

### INDEPENDENT AUDITOR'S REPORTS ON BASIC FINANCIAL STATEMENTS AND INTERNAL CONTROL FOR THE FISCAL YEAR ENDED JUNE 30, 2010

NARRATIVE:

#### PURPOSE

To present the Independent Auditor's Reports on Basic Financial Statements and Internal Control for the fiscal year ended June 30, 2010.

#### DISCUSSION

The San Francisco Bay Area Rapid Transit District Act provides that an annual audit be made of all books and accounts of the District by an independent public accountant (Public Utilities Code Section 28769). The independent certified public accounting firm of Macias, Gini and O'Connell conducted the audit for fiscal year 2010. The District's basic financial statements provide information on the District's Enterprise Fund and Fiduciary Fund. The Enterprise Fund includes all revenues, expenses, assets, liabilities and net assets related to the District's operations. The Fiduciary Fund shows all financial transactions of the Retiree Health Benefit Trust, which was created by the District to administer and account for assets which are restricted for the payment of retiree health premiums, as well as payments by the District for current medical premiums for retirees and surviving spouses (pay-as-you-go). Their audit concluded that the District's basic financial statements for the year ended June 30, 2010 present fairly, in all material respects, the financial position of the Enterprise Fund and the Fiduciary Fund, and are in conformity with accounting principles generally accepted in the United States of America.

As part of the examination, the auditors performed a review and evaluation of the District's internal accounting controls. The results of the evaluation are discussed in the Independent Auditor's Report on Internal Control. There are no findings in the Report. The Report however, included a recommendation, as in the prior year's audit, for the District to perform a comprehensive risk assessment analysis related to its internal controls over financial reporting during the implementation of its new information technology system.

#### FISCAL IMPACT

None.

#### ALTERNATIVE

None. The District is required by law to have its books and accounts audited every year by an independent certified public accountant.



## EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Marcia DeBenedictis</i>		GENERAL MANAGER ACTION REQ'D: Board Approval and Authorization		
DATE: 11/24/10		BOARD INITIATED ITEM: No		
Originator/Prepared by: Elaine M. Kurtz Dept: Human Resources <i>Peter H. Donker</i> Signature/Date: 11/24/10	General Counsel <i>Andrew Karas</i> 11/24/10	Controller/Treasurer <i>[Signature]</i> 11/24/10	District Secretary [ ]	BARC <i>[Signature]</i> 11/24/10
Status: Routed		Date Created: 11/22/2010		

### Non-CalPERS Medical Plan Structure and Rates for CY2011

#### NARRATIVE:

To obtain Board approval of a resolution approving changes to the plan design and premium/contribution schedules for non-CalPERS medical plans that are available to active members of the Board of Directors, eligible former members of the Board, eligible survivors of BART employees and Board members, and eligible domestic partners of employees and Board members. The proposed plan design changes to the Principal Financial Group medical plan (Principal) and the Kaiser HMO are intended to align the plan benefits more closely to the CalPERS PERS Choice option, administered by Anthem Blue Cross, and the CalPERS Kaiser HMO plan. However, the Principal plan would continue to be provided with an unrestricted panel of doctors through Principal as at present, while the PERS Choice plan is a Preferred Provider Plan (PPO Plan). Participants' share of the monthly premium for either of the two plans in 2011 would be the HMO cap amount of \$86.95, which is identical to the amount employees will pay for either the PERS Choice or the PERS Kaiser HMO.

#### DISCUSSION:

Pursuant to its collective bargaining agreements or District policy, in 1996, the District provided health benefits through non-CalPERS plans for several categories of individuals who, when the District initially contracted with CalPERS for employee medical, were ineligible for CalPERS coverage. Specifically, these are survivors of employees who died before retirement, same and opposite gender domestic partners, active Board members and former Board members who are eligible for District provided benefits under State law and District policy. This coverage has continued to be provided as an option between either a District self-insured indemnity plan provided by Principal, or a fully insured HMO plan provided by Kaiser. Neither plan design is the same as any current plan offered by CalPERS, although both plans have rough counterparts in the CalPERS program; the Principal Plan most nearly resembles the PERS Choice plan, and the Kaiser HMO most nearly resembles the CalPERS Kaiser plan. The number of individuals currently in the non-PERS plans is small. A total of 43 individuals participate in these plans. 35 of them are in the Principal plan, and eight are in Kaiser. All of the participants in the Kaiser plan are either current or former Directors; 22 of the Principal participants are domestic partners of current or former BART employees, eight of the



Principal participants are active or retired Directors, and the remaining five are survivors.

The Non-CalPERS plans have given rise to a number of concerns. Plans of this size cannot be fully insured except through an HMO, and stop loss insurance is likewise not available, so the District remains at risk for the full cost of the Principal plan participants' expenses each year. Last year, the District first implemented a new premium cost-sharing formula which capped the District's maximum contribution to the cost of the available Kaiser HMO, and found that the Principal plan, having been priced at a single rate regardless of level of coverage, proved difficult to fit into the new formula.

In addition, State law imposes restrictions on health benefits that may be provided by the District to the current and 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. (Public Utilities Code Section 99157.) 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. (Gov. Code Section 53201.) 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. (Gov. Code Section 53201.) 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 a tiered benefit structure for former directors, depending upon when they first served on the Board and how long they served. These provisions mean, among other things, that the District must compare the benefits and other costs, terms and conditions of its medical plans for members of the governing board to those provided to employees. The attached spreadsheet provides a visual display of the impact of the restrictions.

Staff believes it would be preferable to have all medical insurance provided through the CalPERS plans. This would ensure comparability of plans, where required. Alternative plans have been carried only because the CalPERS plans were not available to all those for whom the District had committed to provide medical coverage. Research over the past months suggests that changes in CalPERS practices and procedures may now permit many of the individuals who are enrolled in the non-CalPERS plans to participate in CalPERS medical coverage. The District is continuing to examine and seek clarification on the applicable statutory and regulatory rules governing enrollment of these groups in CalPERS. In the meantime, staff has negotiated plan design and premium contribution changes with Principal and Kaiser, the two non-CalPERS carriers, to provide benefits that more closely align the non-CalPERS plans with PERS Choice and CalPERS Kaiser for calendar year 2011. Under the rate structures proposed for these plans, and consistent with the methodology for applying the HMO cap that was approved by the Board in 2010, the non-CalPERS participants would all be paying the



minimum premium contribution of \$86.95 monthly in 2011.

#### Plan Design Modifications.

It is difficult to characterize the differences between the current non-CalPERS plan designs and those that are proposed, because some benefits are more favorable in the 'old' plan, and others are more favorable as proposed. The implications for individual participants will vary depending on their individual patterns of use. The attached spreadsheets, prepared by Keenan, the District's medical broker, provide a detailed comparison of the current non-CalPERS plans and the 2011 CalPERS plan provisions. The 2010 Principal plan is compared to the 2011 PERS Choice plan as it would be applied to network providers. The 2010 non-PERS Kaiser HMO is compared to the 2011 PERS Kaiser HMO plan. If participants in the non-CalPERS plans believe they are likely to experience an increase in out of pocket expense under the modified plan design, they may have the opportunity to minimize the impact by setting aside pre-tax funds in their 2011 flexible spending accounts. Communications and outreach have been prepared to assist all non-CalPERS medical plan participants in understanding the plan changes.

#### Participant Cost.

Last year, the Board approved a cost allocation for the non-CalPERS plans that tracks the HMO cap the District has put in place for its CalPERS participants. The non-CalPERS Kaiser rates would be 'the cap' for the District contribution. This year, the Kaiser rates are higher than the Principal rates for all levels of coverage. Therefore, the District will pay the full premium for either plan at the selected tier of coverage, less the indexed participant contribution of \$86.95 for medical coverage in 2011.

In summary, the proposed modification to the non-CalPERS medical plans is consistent with our collective bargaining agreements, which call for domestic partner medical coverage to be substantially equivalent to the plans provided spouses. The modification also aligns Board members coverage more closely to that provided to other employees and retirees.

#### FISCAL IMPACT:

While the fiscal impact of plan design changes is not fully foreseeable, it appears that any fiscal impact to the District directly attributable to the plan design changes discussed in this document is de minimus.

#### ALTERNATIVES:

Maintain the current plan design for non-CalPERS medical coverage, notwithstanding disparities with benefits available to most employees and retirees. Seek to contract for plans that align even more closely with the plans offered by CalPERS.

RECOMMENDATION:

Approve the attached resolution. The Office of the General Counsel will approve any agreements or modifications to agreements with plan providers as to form.

MOTION:

To adopt the attached resolution "In the Matter of Non-CalPERS Medical Plan Structure and Rates for CY 2011."

**Directors, Former Directors and Their Survivors  
Eligibility and Premium Contributions for Health Benefits—2011**

Length of Service on Board	Category	Date First Served on Board		
		1/01/81-01/01/89	1/02/89-12/31/94	1/1/95 or Later
12 Years (3 Full Terms)	Active Director	None in Category	Employee Rate* plus \$15/mo. Survivor Contribution if enrolled	Employee Rate*
	Survivor of Active Director	None in Category	\$15/mo. Survivor Contribution if enrolled	Fully Self Paid
	Former Director	\$0.0/mo. Health Benefit Contribution plus \$15 Survivor Benefit if enrolled.	Employee Rate * plus \$15/mo. Survivor Benefit Contribution if enrolled	Fully Self Paid
	Survivor of Former Director	\$15/mo. Survivor Contribution if enrolled.	\$15/mo. Survivor Contribution if enrolled	Fully Self Paid
At Least 1 Full Term But Less Than 12 Years	Active Director	None in Category	Employee Rate* plus \$15/mo. Survivor Benefit Contribution if enrolled	Employee Rate*
	Survivor of Active Director	None in Category	\$15/mo. Survivor Contribution if enrolled	Fully Self Paid
	Former Director	Not Eligible	Fully Self-Paid	Fully Self Paid
	Survivor of Former Director	Not Eligible	Fully Self-Paid	Fully Self Paid
Less Than 1 Term	Active Director	None in Category	Employee Rate* plus \$15/mo. Survivor Benefit Contribution if enrolled	Employee Rate
	Survivor of Active Director	None in Category	\$15/mo. Survivor Benefit if enrolled	Not Eligible
	Former Director	Not Eligible	Not Eligible	Not Eligible
	Survivor of Former Director	Not Eligible	Not Eligible	Not Eligible

Note: The Employee Premium Contribution Rates for 2011 are attached.

Premium Contributions for Non-CalPERS Health Plans  
Calendar Year 2011

<b>Kaiser HMO</b>	Single	2 Party	“Family”
Total Premium	\$863.18	\$1,726.35	\$2,442.79
District Contribution	776.23	1,639.40	2,355.84
Employee Contribution	86.95	86.95	86.95

<b>Principal Indemnity</b>	Single	2 Party	“Family”
Total Premium	\$579.02	\$1,158.03	\$1,505.44
District Contribution	492.07	1,071.08	1,418.49
Employee Contribution	86.95	86.95	86.95

Directors who are actively serving on the Board are eligible to participate in the non-CalPERS Health Plans at the Employee 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.



**Bay Area Rapid Transit (BART)**

**2011 Renewal Principal Indemnity Compared to 2011 PERSChoice Plan**

Effective Date	01/01/2011	01/01/2011
Renewal Date	01/01/2012	01/01/2012
Carrier Name	Principal Financial	Anthem Blue Cross
Plan Name	Indemnity	PERSChoice

**In-Network Benefits**

General Plan Information	Schedule of Benefits	In-Network Benefits
Annual Deductible/Individual	\$100	\$500 (not transferable between plans)
Annual Deductible/Family	\$300	\$1,000 (not transferable between plans)
Coinurance	80% of first \$2,000 in excess of deductible then 100% deductible then 100%	80%
Office Visit/Exam	100% up to \$15; 80% of first \$2,000 in excess of deductible then 100%	\$20 copay
Outpatient Specialist Visit	100% up to \$15; 80% of first \$2,000 in excess of deductible then 100%	\$20 copay
Annual Out-of-Pocket Limit/Individual	No limit	\$3,000
Annual Out-of-Pocket Limit/Family	No limit	\$6,000
Lifetime Plan Maximum	None	None
<b>Outpatient Services</b>		
<b>Preventive Services</b>		
Well-Child Care	100%	100% - deductible waived (some restrictions apply; see EOC)
Immunizations	100%	100% - deductible waived (some restrictions apply; see EOC)
Well Woman Exams	100%	100% - deductible waived (some restrictions apply; see EOC)
Mammograms	100% covered for Preventive Screenings	100% - deductible waived - for Preventive screenings
Adult Periodic Exams with Preventive Tests	100%	100% - deductible waived (some restrictions apply; see EOC)
Diagnostic X-Ray and Lab Tests	100% covered for Preventive Screenings	80%
<b>Maternity Care</b>		
Pregnancy and Maternity Care (Pre-Natal Care)	100% up to \$15; 80% of first \$2,000 in excess of deductible then 100%	80%





**Bay Area Rapid Transit (BART)**

**2011 Renewal Principal Indemnity Compared to 2011 PERSChoice Plan**

Effective Date	01/01/2011	01/01/2011
Renewal Date	01/01/2012	01/01/2012
Carrier Name	Principal Financial	Anthem Blue Cross
Plan Name	Indemnity	PERSChoice
	Schedule of Benefits	In-Network Benefits
<b>Inpatient Hospital Services</b>		
Inpatient Hospitalization	100% up to \$5 for physician visit; 80% of first \$2,000 in excess of deductible then 100%	80%
Pre-Authorization of Services Required	No	Yes
Semi-Private Room & Board; Including Services and Supplies	80% of first \$2,000 in excess of deductible then 100%	80%
<b>Surgical Services</b>		
Outpatient Facility Charge	100% up to defined surgical schedule	80%
<b>Emergency Services</b>		
Emergency Room	80% of first \$2,000 in excess of deductible then 100%	\$50 copay waived if admitted; 80% for other services
<b>Ambulance</b>		
Air	100% up to \$100; 80% of first \$2,000 in excess of deductible then 100%	80%
Ground	100% up to \$50; 80% of first \$2,000 in excess of deductible then 100%	80%
<b>Urgent Care</b>		
Urgent Care Facility	80% of first \$2,000 in excess of deductible then 100%	\$20 copay
<b>Mental Health Benefits</b>		
Inpatient Care	80% of first \$2,000 in excess of deductible then 100%	80%
Outpatient Care	50%	\$20 copay
<b>Substance Abuse</b>		
<b>Inpatient Care</b>		
Inpatient Hospitalization	Not Covered	80%
Inpatient Detoxification Services	Not Covered	
<b>Outpatient Care</b>		
Outpatient Services	Not Covered	80%



**Bay Area Rapid Transit (BART)**

**2011 Renewal Principal Indemnity Compared to 2011 PERSChoice Plan**

Effective Date	01/01/2011	01/01/2011
Renewal Date	01/01/2012	01/01/2012
Carrier Name	Anthem Blue Cross	
Plan Name	PERSChoice	
	Principal Financial Indemnity	In-Network Benefits
	Schedule of Benefits	
<b>Prescription Drug Benefits</b>		
Generic	\$5 copay	\$5 copay (\$1,000 copay max per person per calendar year)
Brand (Formulary/Preferred)	\$15 copay	\$15 copay (\$1,000 copay max per person per calendar year)
Brand (Non-Formulary/Non-preferred)	\$15 copay	\$45 copay; \$30 copay (medical necessity) (\$1,000 copay max per person per calendar year)
Number of Days Supply	30 days	30 days
<b>Mail Order</b>		
Generic	\$10 copay	\$10 copay (\$1,000 copay max per person per calendar year)
Brand (Formulary/Preferred)	\$25 copay	\$25 copay (\$1,000 copay max per person per calendar year)
Brand (Non-Formulary/Non-preferred)	\$25 copay	\$75 copay; \$45 copay (medical necessity) (\$1,000 copay max per person per calendar year)
Number of Days Supply for Mail Order	90 days	90 days
<b>Other Services and Supplies</b>		
Durable Medical Equipment & Prosthetic Devices	80% of first \$2,000 in excess of deductible then 100%	80%; \$6,000 benefit max/ calendar year
Home Health Care	Only after hospital confinement; 80% of first \$2,000 in excess of deductible then 100%	80%; \$6,000 benefit max/ calendar year
Skilled Nursing or Extended Care Facility	100% of prevailing charge	80% first 10 days; 70% next 90 days (pre-certification required; Up to 100 days/calendar year)
Hospice Care	Not Covered	80% \$10,000 lifetime max
Chiropractic Services	80% of first \$2,000 in excess of deductible then 100%	80% Up to 15 visits/calendar year combined with Acupuncture
Acupuncture	Not Covered	80% Up to 15 visits/calendar year combined with Chiropractic



**Bay Area Rapid Transit (BART)**

**2011 Renewal Principal Indemnity Compared to 2011 PERSChoice Plan**

Effective Date	01/01/2011	01/01/2011
Renewal Date	01/01/2012	01/01/2012
Carrier Name	Principal Financial	Anthem Blue Cross
Plan Name	Indemnity	PERSChoice
	<b>Schedule of Benefits</b>	<b>In-Network Benefits</b>
Hearing		
Screening	Not covered	80%
Aid(s)	Not covered	80% \$1,000 max in a 36-month period
Infertility		
Diagnosis	Not covered	Not covered
Treatment	Not covered	Not covered
<b>Outpatient Rehabilitative Therapy Services</b>		
Physical	80% of first \$2,000 in excess of deductible then 100%	80% \$3,500/ calendar year; combined with Occupational therapy
Occupational	80% of first \$2,000 in excess of deductible then 100%	80% \$3,500/ calendar year; combined with Physical therapy
Speech	80% of first \$2,000 in excess of deductible then 100%	80% \$5,000 lifetime max

*\*Disclaimer: The information described on this page is only intended to be a summary of your benefits. It does not describe or include all benefit provisions, limitations, exclusions, or qualifications for coverage. Please review your Summary Plan Description (SPD) for a complete summary of your benefits. If the information on this page conflicts in any way with the Summary Plan Description (SPD), the contract provisions of the appropriate policy or plan document (available with your employer) will prevail.*



**Bay Area Rapid Transit District (BART)  
Current Kaiser Plan Compared to CalPERS Kaiser**

	01/01/2010	01/01/2010
	Current - Kaiser Permanente	Kaiser HMO
Carrier Name	CalPERS	CalPERS
Plan Name	Kaiser HMO	Kaiser HMO
Effective Date	01/01/2010	01/01/2010
Renewal Date	01/01/2011	01/01/2011
<b>General Plan Information</b>		
Annual Deductible/Individual	\$0	\$0
Annual Deductible/Family	\$0	\$0
Coinsurance	100%	100%
Office Visit/Exam	\$5 copay	\$15 copay
Outpatient Specialist Visit	\$5 copay	\$15 copay
Annual Out-of-Pocket Limit/Individual	\$1,500	\$1,500
Annual Out-of-Pocket Limit/Family	\$3,000	\$3,000
Lifetime Plan Maximum	Unlimited	Unlimited
Primary Care Physician Election Required	Yes	Yes
<b>Outpatient Services</b>		
<b>Preventive Services</b>		
Well-Child Care	\$5 copay	100%
Immunizations	100%	100%
Well Woman Exams	\$5 copay	100% ; \$15 copay for Gynecological Exam
Mammograms	100%	100% (some procedures may require a copay)
Adult Periodic Exams with Preventive Tests	\$5 copay	100%
Diagnostic X-Ray and Lab Tests	100%	100% (some procedures may require a copay)
<b>Maternity Care</b>		
Pregnancy and Maternity Care (Pre-Natal Care)	\$5 copay	100%
<b>Inpatient Hospital Services</b>		
Inpatient Hospitalization	Yes	Yes
Pre-Authorization of Services Required	100%	100%
Semi-Private Room & Board; Including Services and Supplies	Yes	100%
<b>Surgical Services</b>		
Outpatient Facility Charge	100%	\$15 copay
<b>Emergency Services</b>		
Emergency Room	\$5 copay waived if admitted	\$50 copay waived if admitted
Ambulance	100%	100%
Air	100%	100%
Ground	100%	100%
<b>Urgent Care</b>		
Urgent Care Facility	\$5 copay	\$15 copay





**Bay Area Rapid Transit District (BART)  
Current Kaiser Plan Compared to CalPers Kaiser**

	01/01/2010	01/01/2011
<b>Effective Date</b>	01/01/2010	01/01/2011
<b>Renewal Date</b>	01/01/2011	01/01/2011
<b>Carrier Name</b>	Current - Kaiser Permanente	CalPERS
<b>Plan Name</b>	Kaiser HMO	Kaiser HMO
<b>Mental Health Benefits</b>		
Inpatient Care	100% Up to 45 days per calendar year	100%
Outpatient Care	\$5 copay individual, \$2 copay group	\$15 copay/indiv; \$5 copay/group
<b>Substance Abuse</b>		
<b>Inpatient Care</b>		
Inpatient Hospitalization	100%	100%
Inpatient Detoxification Services	100%	100%
<b>Outpatient Care</b>		
Outpatient Services	\$5 copay	\$15 copay/indiv; \$5 copay/group
<b>Prescription Drug Benefits</b>		
Prescription Drug Deductible	0	\$0
Generic	\$5 copay	\$5 copay
Brand (Single-source)	\$15 copay	\$15 copay
Brand (Multi-source)	100 days	30 days
Brand (Formulary/Preferred)	\$5 copay	\$5 copay for 30 day supply; \$10 copay for 31 - 100 day supply
Brand (Non-Formulary/Non-preferred)	\$15 copay	\$15 copay for 30 day supply; \$30 copay for 31 - 100 day supply
Number of Days Supply	100 days	100 days (30-day supply for certain drugs)
<b>Mail Order</b>		
Generic	100% up to 100 visits per calendar year	100%
Brand (Single-source)	100% up to 100 days per benefit period	100% (prior authorization required; custodial care not covered)
Brand (Multi-source)	Not covered	100% Up to 100 days/benefit period
Brand (Formulary/Preferred)	Not covered	Not covered (discounts available)
Brand (Non-Formulary/Non-preferred)	Not covered	\$15 copay (when medically necessary)
Number of Days Supply for Mail Order	\$5 copay	100%
<b>Other Services and Supplies</b>		
Durable Medical Equipment & Prosthetic Devices	100% up to 100 visits per calendar year	100%
Home Health Care	100% up to 100 days per benefit period	100%
Skilled Nursing or Extended Care Facility	100%	100%
Hospice Care	Not covered	Not covered (discounts available)
Chiropractic Services	Not covered	\$15 copay (when medically necessary)
Acupuncture	Not covered	
<b>Vision</b>		
<b>Copay</b>	\$5 copay	100%
Examination		



**Bay Area Rapid Transit District (BART)  
Current Kaiser Plan Compared to CalPers Kaiser**

Effective Date	01/01/2010	01/01/2010
Renewal Date	01/01/2011	01/01/2011
Carrier Name	Current - Kaiser Permanente	CalPERS
Plan Name	Kaiser HMO	Kaiser HMO
<b>General Plan Information</b>		
Annual Deductible/Individual	\$0	\$0
Annual Deductible/Family	\$0	\$0
Coinurance	100%	100%
Office Visit/Exam	\$5 copay	\$15 copay
Outpatient Specialist Visit	\$5 copay	\$15 copay
Annual Out-of-Pocket Limit/Individual	\$1,500	\$1,500
Annual Out-of-Pocket Limit/Family	\$3,000	\$3,000
Lifetime Plan Maximum	Unlimited	Unlimited
Primary Care Physician Election Required	Yes	Yes
<b>Outpatient Services</b>		
<b>Preventive Services</b>		
Well-Child Care	\$5 copay	100%
Immunizations	100%	100%
Well Woman Exams	\$5 copay	100%; \$15 copay for Gynecological Exam
Mammograms	100%	100% (some procedures may require a copay)
Adult Periodic Exams with Preventive Tests	\$5 copay	100%
Diagnostic X-Ray and Lab Tests	100%	100% (some procedures may require a copay)
<b>Maternity Care</b>		
Pregnancy and Maternity Care (Pre-Natal Care)	\$5 copay	100%
<b>Inpatient Hospital Services</b>		
Inpatient Hospitalization	Yes	Yes
Pre-Authorization of Services Required	100%	100%
Semi-Private Room & Board; Including Services and Supplies		
<b>Surgical Services</b>		
Outpatient Facility Charge	100%	\$15 copay
<b>Emergency Services</b>		
Emergency Room	\$5 copay waived if admitted	\$50 copay waived if admitted
Ambulance		
Air	100%	100%
Ground	100%	100%
<b>Urgent Care</b>		
Urgent Care Facility	\$5 copay	\$15 copay

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

In the Matter of the  
Non-CalPERS Medical Plan  
Structure and Rates for  
CY 2011

Resolution No. \_\_\_\_\_

\_\_\_\_\_/

WHEREAS, Board Resolution 4981, adopted April 13, 2006 sets forth at length the applicable law and history of District provided medical benefits for active members and former members of the Board and their eligible survivors and further sets forth required premium contributions by active members and former members, with the latter dependent on when the former Director first served and his/her length of service.

WHEREAS, by Resolution 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 there indexed to the lowest premium contribution among the employee groups.

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 (single, two-party, family) and the same Medicare status as elected by the eligible employee or retiree for the most costly HMO Plan offered to the employee by CalPERS, less the indexed employee contribution (\$86.95 for calendar year 2011).

WHEREAS, after contracting with CalPERS for medical benefits for employees under the Public Employees Medical and Hospital Care Act (PEMHCA), the District has maintained two health plans outside of CalPERS for those individuals who are eligible for District provided coverage under collective bargaining agreements or District policy, but are not eligible under the District's contract with CalPERS, including members of the Board of Directors (Board), domestic partners and some survivors of employees, retirees and former Board members.

WHEREAS, by Resolution 5116, adopted November 19, 2009, the Board approved a premium structure for the non-CalPERS' plans with a cap similar to the negotiated structure for the CalPERS' plans that capped the District contribution for active members and those former members who are eligible for benefits on the same terms as employees at an amount up to the applicable level of plan participation (single, two-party, family) for the non-CalPERS HMO, less the indexed employee contribution.

WHEREAS, as more fully set forth in Resolution No. 4981, State law imposes restrictions on health benefits that may be provided by the District to the current and most former members of its governing board. For those 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; and

WHEREAS, in order to align its non-CalPERS plans more closely with its CalPERS plans (specifically the PERS Choice and Kaiser HMO), the District has negotiated revisions to the benefit and premium structures with its non-CalPERS medical providers, Principal Financial Group (Principal) and Kaiser ;

NOW, THEREFORE BE IT RESOLVED that, the General Manager or her designee is authorized to enter into amended agreements, effective January 1, 2011, with Principal and Kaiser for the provision of health benefits to eligible Directors, former Directors, domestic partners and survivors that more closely match the benefits and premium structure provided under the CalPERS PERS Choice Plan and the Kaiser HMO Plan, and

BE IT FURTHER RESOLVED THAT, the rate structure and premium contribution for these plans for Calendar Year 2011 shall be as follows:

<b>Kaiser HMO</b>	Single	2 Party	"Family"
Total Premium	\$863.18	\$1,726.35	\$2,442.79
District Contribution	\$776.23	\$1,639.40	\$2,355.84
Participant Contribution	\$86.95	\$86.95	\$86.95

<b>Principal Indemnity</b>	Single	2 Party	"Family"
Total Premium	\$579.02	\$1,158.03	\$1,505.44
District Contribution	\$492.07	\$1,071.08	\$1,418.49
Participant Contribution	\$86.95	\$86.95	\$86.95

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: \_\_\_\_\_





## EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Wanda del Mundo</i>		GENERAL MANAGER ACTION REQ'D:		
DATE: 11/23/10		BOARD INITIATED ITEM: No		
Originator/Prepared by: Joseph Basuino Dept: Real Estate <i>Joseph Basuino</i> Signature/Date: 11/22/2010	General Counsel <i>Andrya Rawas</i> Signature/Date: 11/22/10	Controller/Treasurer <i>[Signature]</i> Signature/Date: 11/22/10	District Secretary [ ]	BARC <i>[Signature]</i> Signature/Date: 11-22-10
Status: Routed		Date Created: 11/17/2010		

TITLE:

### Condemnation of Real Property for the Warm Springs Extension Project (WSX) BART Parcel #J-2060-1A and J-2060-3A

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 2211 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 136 square feet in fee and of approximately 67 square feet in temporary easement of a 42,586 ± square foot property owned by Richard Freeman, Fernando Velasco and Micha S. Freeman as Trustee of the Micha S. Freeman Living Trust dated September 17, 2009. It is located at 2211 Warm Springs Court, Fremont, California 94539 (BART Parcel J-2060-1A and J-2060-3A 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 secondary access to the station site from Warm Springs Court. Project features proposed on and 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 station site access, 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 12, 2009. The estimated market value of the Subject Parcel is \$3,800.00.

To date, negotiations appear to be at an impasse. The property owners have been notified of the Board hearing on December 2, 2010.

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:**

Funding of \$3,800 required for the acquisition of Parcel # J-2060-1A and J-2060-3A is proposed to come from Project 02EC, ROW Acquisition. The Office of the Controller/Treasurer certifies that funds are currently available to meet this obligation. Funds for the purchase will come from the following source:

CTC Traffic Congestion Relief Program (TCRP) –WSX	55N:	\$3,800
---	------	---------

As of month ending 10/31/10, \$44,389,516 is available for commitment from this fund source for this Project, and \$25,093,501 has been committed by BART to date. There are \$770,187 pending commitments in BART's Financial Management System. This action will commit an additional \$3,800, leaving an uncommitted balance of \$18,522,028 in this fund source.

There is no fiscal impact on available un-programmed 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:** Adoption of the attached resolution, 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-2060-1A AND J-2060-3A; DRAW AND DEPOSIT WARRANT. (Two-thirds vote required.)

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

RESOLUTION OF NECESSITY TO CONDEMN  
REAL PROPERTY; MAKE FINDINGS AND  
DETERMINATIONS; AUTHORIZE EMINENT  
DOMAIN PROCEEDINGS AND APPLICATION  
FOR POSSESSION PRIOR TO JUDGMENT FOR  
BART PARCELS J-2060-1A AND J-2060-3A;  
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 Richard Freeman, Fernando Velasco and Micha S. Freeman as Trustee of the Micha S. Freeman Living Trust under Trust Agreement dated September 17, 2009 (the "Freeman 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 Freeman Parties, as its interests appear of record, which real property, or interests in property, is located at 2211 Warm Springs Court, Fremont, California, 94539, and is identified as BART Parcel Numbers J-2060-1A and J-2060-3A (Assessor's Parcel Number 519-1702-043), 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-2060-1A is to be acquired in fee, together with any improvements thereon. Parcel J-2060-3A is to be acquired as a temporary construction easement.

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

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

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

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

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

San Francisco Bay Area Rapid Transit District, Office of the General Counsel, is 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  
FREEMAN ET AL  
PORTION OF APN 519-1702-043  
ALAMEDA COUNTY  
CITY OF FREMONT, CALIFORNIA**

**November 19, 2010**

Being a portion of Parcel 1 as shown on that certain map entitled "Parcel Map No. 4762" recorded May 1, 1986 in Book 159 of Parcel Maps at page 96 Official Records in the Office of the Recorder Alameda County, State of California being more particularly described as follows:

**BEGINNING** at the most northwesterly corner of said Parcel 1 (159 PM 96); thence along the northerly line of said Parcel 1 (159 PM 96) North  $77^{\circ} 24' 28''$  East 36.81 feet; thence through the interior of said Parcel 1 (159 PM 96) South  $21^{\circ} 29' 15''$  East 11.53 feet to a point on the southwesterly line of said Parcel 1 (159 PM 96) being a point of non-tangency of a curve concave southwesterly to which a radial line bears North  $19^{\circ} 24' 47''$  East; thence along the southwesterly line of said Parcel 1 (159 PM 96) along said non-tangent curve concave southwesterly having a radius of 75.00 feet westerly through a central angle of  $31^{\circ} 07' 26''$  an arc length of 40.74 feet to the **POINT OF BEGINNING**.

Containing 136 square feet of land (0.003 acres) more or less.

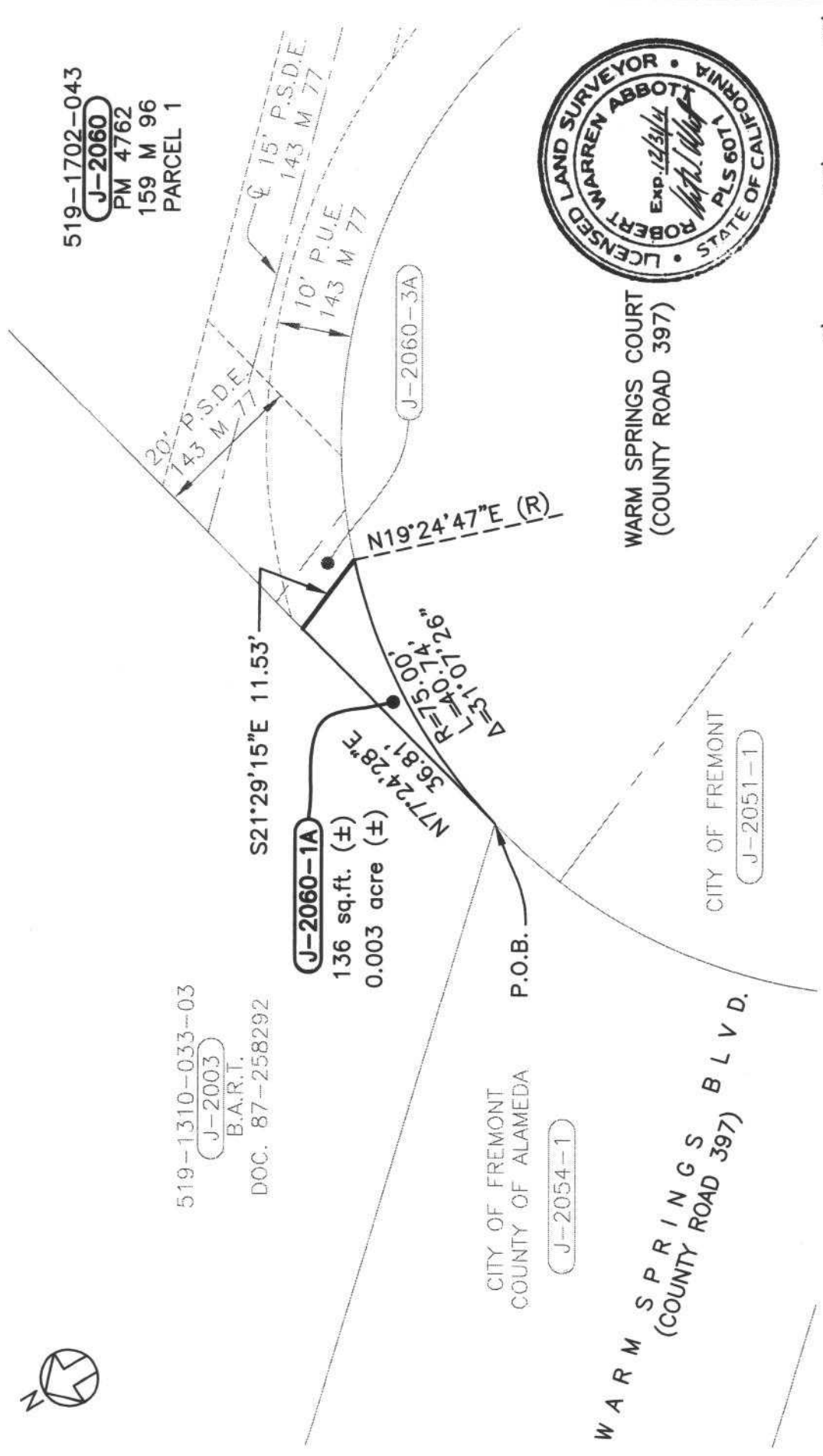
A Plat Map is attached hereto and made a part hereof.

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

Date of signature and seal: November 19, 2010







519-1702-043  
**J-2060**  
 PM 4762  
 159 M 96  
 PARCEL 1

519-1310-033-03  
**J-2003**  
 B.A.R.T.  
 DOC. 87-258292

**J-2060-1A**  
 136 sq.ft. (±)  
 0.003 acre (±)



WARM SPRINGS COURT  
 (COUNTY ROAD 397)

CITY OF FREMONT

CITY OF FREMONT  
 COUNTY OF ALAMEDA

W A R M S P R I N G S B L V D.  
 (COUNTY ROAD 397)



PLAT MAP	
CO. ALA.	RTE. WSX
DR.NO.	WSX_J-2060-1

BART	
SCALE: 1"=20'	DATE: 11-19-10

CAD FILE NO. WSX\_J-2060-1.DWG

FREEMAN ET. AL. (PM 4762, 159 M 96, PARCEL 1)  
 FEE

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

**LEGAL DESCRIPTION  
FREEMAN ET AL  
PORTION OF APN 519-1702-043  
ALAMEDA COUNTY  
CITY OF FREMONT, CALIFORNIA**

**November 19, 2010**

Being a portion of Parcel 1 as shown on that certain map entitled "Parcel Map No. 4762" recorded May 1, 1986 in Book 159 of Parcel Maps at page 96 Official Records in the Office of the Recorder Alameda County, State of California being more particularly described as follows:

**COMMENCING** at the most northwesterly corner of said Parcel 1 (159 PM 96); thence along the northerly line of said Parcel 1 (159 PM 96) North 77° 24' 28" East 36.81 feet to the **POINT OF BEGINNING**; thence continuing along the northerly line of said Parcel 1 (159 PM 96) North 77° 24' 28" East 5.06 feet; thence through the interior of said Parcel 1 (159 PM 96) South 21° 29' 15" East 15.50 feet to a point on the southwesterly line of said Parcel 1 (159 PM 96) being a point of non-tangency of a curve concave southwesterly to which a radial line bears North 24° 41' 03" East; thence along the southwesterly line of said Parcel 1 (159 PM 96) along said non-tangent curve concave southwesterly having a radius of 75.00 feet northwesterly through a central angle of 05° 16' 26" an arc length of 6.90 feet; thence through the interior of said Parcel 1 (159 PM 96) North 21° 29' 15" West 11.53 feet to the **POINT OF BEGINNING**.

Containing 67 square feet of land (0.002 acres) more or less.

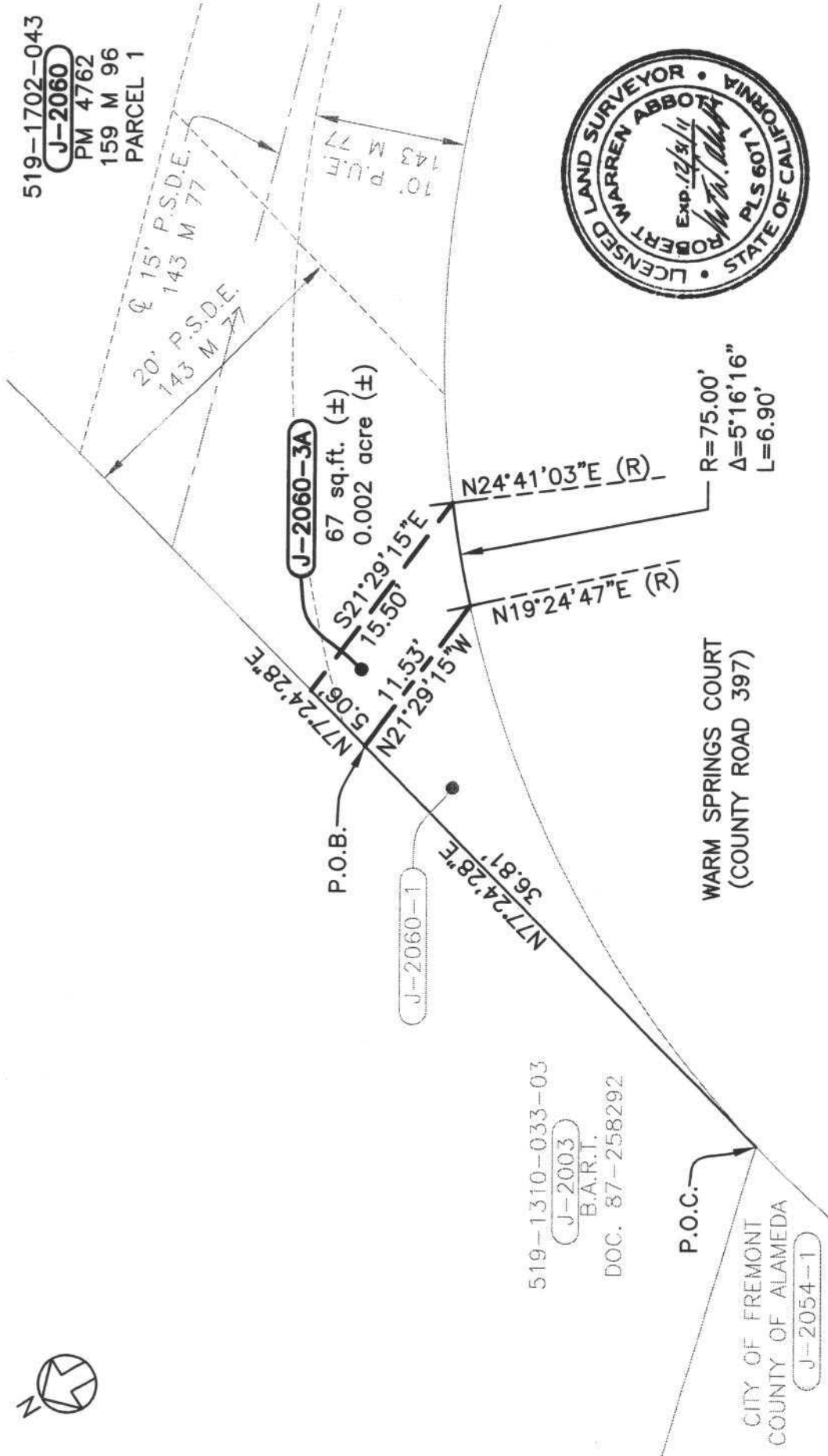
A Plat Map is attached hereto and made a part hereof.

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

Date of signature and seal: November 19, 2010



519-1702-043  
**J-2060**  
 PM 4762  
 159 M 96  
 PARCEL 1



PLAT MAP	
CO. ALA.	RTE. WSX
DR.NO.	WSX_J-2060-3A

**BART**

SCALE: 1"=10'      DATE: 11-19-10

CAD FILE NO. WSX\_J-2060-3A.DWG

FREEMAN ET. AL. (PM 4762, 159 M 96, PARCEL 1)  
 TEMPORARY CONSTRUCTION EASEMENT

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

519-1310-033-03  
**J-2003**  
 B.A.R.T.  
 DOC. 87-258292

P.O.C.  
 CITY OF FREMONT  
 COUNTY OF ALAMEDA  
**J-2054-1**

WARM SPRINGS COURT  
 (COUNTY ROAD 397)

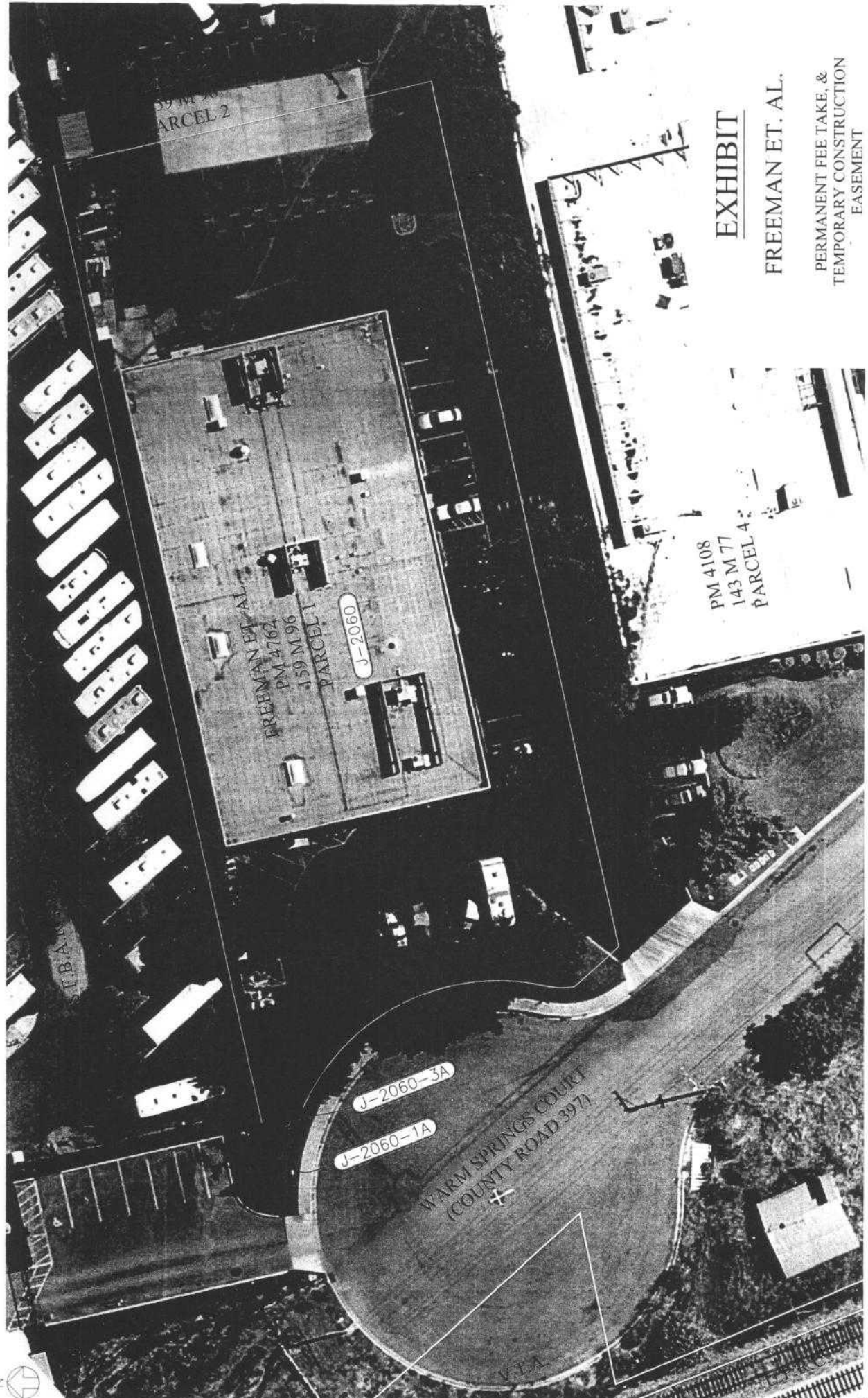


TEMPORARY CONSTRUCTION EASEMENT

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 one (1) year after BART delivers the Commencement Notice or on December 31, 2015, whichever occurs first.





EXHIBIT

FREEMAN ET. AL.

PERMANENT FEE TAKE, &  
TEMPORARY CONSTRUCTION  
EASEMENT

**SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT**

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MEMORANDUM

**TO:** Board of Directors

**DATE:** October 11, 2010

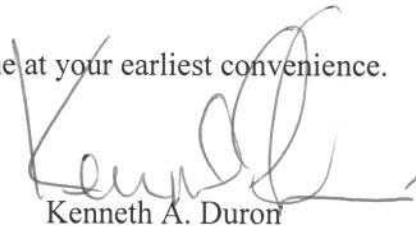
**FROM:** District Secretary

**SUBJECT:** State Mandated Ethics Training (AB1234)

Assembly Bill 1234 was passed by the State legislature and signed by the Governor in late 2005. The statute requires that all local agencies provide no less than two hours of training in general ethics principles and ethics laws to local agency officials by January 1, 2007 and every two years thereafter. Our 2010 training session is scheduled for November 18.

As in 2006 and 2008, the law firm of Liebert Cassidy Whitmore has been retained to provide the training. Liebert Cassidy Whitmore was involved in the development of the training program with the California Special Districts Association (CSDA), and in compliance with the requirements of the statute, has consulted the Fair Political Practices Commission and State Attorney General regarding the sufficiency of the course content. Liebert Cassidy Whitmore has conducted training for municipalities and local agencies and conducts courses for the CSDA and its members. The District has successfully utilized the legal services of Liebert Cassidy Whitmore in the past.

Should you have any questions, please contact me at your earliest convenience.



Kenneth A. Duron

cc: Board Appointed Officers  
Deputy General Manager  
Executive Staff

**SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT**

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**MEMORANDUM**

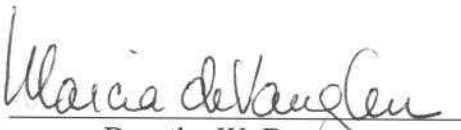
**TO:** Board of Directors

**DATE:** November 24, 2010

**FROM:** General Manager

**SUBJECT:** Information Item on MacArthur Transit Village Access Strategy

At the December 2, 2010 Board meeting staff will provide the Board with a status report on the Access Strategy program for the MacArthur Station transit-oriented development (TOD) program. This is the first BART TOD project that had an Access Study prepared as part of the environmental impact report process.

  
Dorothy W. Dugger

cc: Board Appointed Officers  
Deputy General Manager  
Executive Staff