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

REVISED

AGENDAS FOR SPECIAL BOARD AND COMMITTEE MEETINGS
December 10, 2009
9:00 a.m.

Please note: The first item on the agenda is closed session. The open session portion of the Meetings will begin at 10:00 a.m.

A special meeting of the Board of Directors will be held on Thursday, December 10, 2009, at 9:00 a.m., 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 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.

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

Special 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. A. Public Comment on Item 2-B only.

   B. CONSENT CALENDAR

   B-1. Amendment to the Money Purchase Pension Plan Regarding Suspension of 1.627% Payments for Non-represented Employees.* Board requested to authorize.

3. A. Public Comment on Item 3-B only.

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

   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

10:00 a.m. OPEN SESSION (BART Board Room)

4. A. Public Comment on Items 4-B and 5-A only.

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

   CONFERENCE WITH REAL PROPERTY NEGOTIATOR.

Property:	Oakland Airport Connector
District Negotiators:	Teresa E. Murphy, Assistant General Manager – Administration; and Laura Giraud, Department Manager, Real Estate
Negotiating Parties:	Port of Oakland and San Francisco Bay Area Rapid Transit District
Under Negotiation:	Price and Terms
Government Code Section:	54956.8

5. BOARD MATTERS

A. Oakland Airport Connector Project: Port of Oakland Agreements.*
   i. Development Agreement.
   ii. Use, Operation and Maintenance Agreement.
   Board requested to authorize.

B. Public Comment on Item 5-C only.

C. Oakland Airport Connector Project.*
   i. Award of Contract No. 01ZK-110, Design-Build Contract.
   ii. Award of Contract No. 01ZK-120, Operations and Maintenance Contract.
   iii. Execution of Two Stipend Agreements.
   Board requested to authorize.

D. Public Comment on Item 5-E only.

E. Adoption of Resolution of Intention to Amend California Public Employees Retirement System (CalPERS) Contract to Add Fourth Level of Survivor Benefits for Safety Members.* Board requested to adopt.

6. GENERAL MANAGER'S REPORT

NO REPORT.

7. A. Public Comment on Items 7-B and 8-A only.

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

CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION.
Significant exposure to litigation pursuant to subdivision (b) of Government Code Section 54956.9: one potential case.

8. A. Amendment to Agreement No. 6M7066, Poster Advertising Franchise Services, with Titan Outdoor LLC. Board requested to authorize.

* Attachment available

ba

EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: [signature]		GENERAL MANAGER ACTION REQ'D:		
DATE: c 12/4/09		BOARD INITIATED ITEM: No		
Originator/Prepared by: Peter Y Horikoshi Dept: Human Resources [signature] Signature/Date: 12/4/09	General Counsel [signature] 12/4/09	Controller/Treasurer [signature] 12/4/09]	District Secretary [ ]	BARC [ ]

TITLE:

Amendment to Money Purchase Pension Plan to Suspend Certain Payments on Behalf of Non-Represented District Employees

NARRATIVE:

PURPOSE

To obtain Board approval of an amendment to the San Francisco Bay Area Rapid Transit District Money Purchase Pension Plan ("MPPP") to suspend certain payments for non-represented employees and to authorize the Board President to sign the amendment on behalf of the Board.

DISCUSSION

In 1981, the District established, and has continued to sponsor, a defined contribution plan, i.e., the Money Purchase Pension Plan (MPPP). This supplemental retirement plan is intended to be a qualified plan under 401(a) of the Internal Revenue Code of 1986. The MPPP is funded on an individual employee account basis through District contributions and voluntary after-tax employee contributions.

Currently, the District contributes a percentage of compensation (6.65%) for all eligible employees, with such contributions capped at $1868.65 per year per employee. (The formula provides for 6.65% of each employee's compensation up to a maximum compensation of $29,700 excluding the first $133.33 per month of compensation.) In addition, the District currently contributes 1.627% of normal earnings with no cap on behalf of <u>non-represented employees</u>.

Non-represented employees were informed that the District's contribution to the MPPP based on 1.627% of their normal earnings would be suspended through June 30, 2013 as one of several benefit reductions to help to address the District's projected financial shortfall. In order to implement this change it is necessary to amend the MPPP.

FISCAL IMPACT

Operating Budgets has estimated that this will save the District $0.2 Million for FY10 and $1.5 Million through June 2013.

RECOMMENDATION

RECOMMENDATION

Adopt the following motion:

MOTION

That the Board authorizes the Board President to execute an amendment to the 2006 Restatement of the San Francisco Bay Area Rapid Transit District Money Purchase Pension Plan (MPPP) on behalf of the Board that suspends the District's contributions of 1.627% of payroll as defined in the MPPP, for non-represented employees effective with each payroll on or after Jan. 1, 2010 and before July 1, 2013. The Office of the General Counsel will approve the amendment as to form.

ba

EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL:		GENERAL MANAGER ACTION REQ'D: Approve and forward to the BART Board for Action		
DATE:		BOARD INITIATED ITEM: No		
Originator/Prepared by: Tom Dunscombe Dept: Transit System Development Signature/Date: 12/4/2009	General Counsel MB 12/4/09	Controller/Treasurer 12/4/09	District Secretary [ ]	BARC [ ]

Status: Approved	Date Created: 08/12/2009

TITLE:

AGREEMENTS WITH THE PORT OF OAKLAND FOR THE OAKLAND AIRPORT CONNECTOR PROJECT

NARRATIVE:

Purpose:

To authorize the General Manager or her designee to enter into two separate agreements with the Port of Oakland (Port) for the on-Airport portion of the OAC Project (OAC, or Project): 1) the Development Agreement (Development Agreement) and 2) the Use, Operation and Maintenance Agreement (Use Agreement).

Discussion:

On March 28, 2002, the BART Board of Directors (Board) certified the Final Environmental Impact Report/Final Environmental Impact Statement (FEIR/FEIS) and adopted the BART-Oakland International Airport Connector Project. The Project consists of an Automated Guideway Transit (AGT) system connecting the Coliseum BART Station to Oakland International Airport (OAK) by a 3.2-mile long exclusive guideway. On February 22, 2007, the BART Board of Directors adopted an Addendum to the FEIR/FEIS. The alignment consists of aerial guideway primarily in the median of Hegenberger Road from the Coliseum Station to Pardee Drive, then shifting toward 98th Avenue where it descends into a subway under Doolittle Drive and enters the Airport property, which is owned by the Port. From there, the guideway transitions to grade along Airport Drive until approximately Ron Cowan Parkway where it returns to aerial guideway. The aerial guideway continues above the Airport parking lot until it reaches the Airport BART Station, situated above the parking lot adjacent to the Airport terminal curbside roadway. The on-Airport portion of the OAC guideway is approximately 7400 feet (1.4 miles).

After several years of negotiations between BART and Port staff, the parties have now reached agreement on all terms for a Development Agreement (which addresses construction and funding related matters) and a Use Agreement (which addresses matters relevant to the long-term operation of the OAC).

The highlights of these agreements are included below:

Development Agreement Terms and Discussion

Key Development Agreement Terms:

1. Port's financial contribution to the Project (Port Contribution) will be capped at $45.4 million in 2009 dollars. All but $1 million of the Port Contribution (to be used for the Port's expenses) will be used to reimburse BART for its expenses related to construction of on-airport civil facilities that will be owned (in whole or in part) by the Port. (Port has already paid BART $1.5 million of the Port Contribution for preliminary design activities, leaving $43.9 million). The $45.4 million Contribution is comprised of $34.9 million based on an initial Port Contribution of $25 million in 2001, escalated to 2012, the estimated midpoint of construction, plus an additional $10.5 million.

2. The source of funding for the Port Contribution is based solely on Passenger Facility Charges (PFCs) collected on a per passenger basis, as authorized by the Federal Aviation Administration (FAA). The Port has requested the FAA to authorize a $3.00 per passenger PFC, which would be assessed on the majority of enplaning passengers at OAK. It is anticipated that the FAA will allow the Port to assess this charge, that would result in approximately $1.73 per passenger to be used for the Port Contribution. Depending on the number of enplaning passengers at OAK, this could result in the generation of payments slower than costs associated with construction of the OAC Project, and the Port has no obligation to finance payments, pay BART's finance costs or use cash. Moreover, payments are only obligated if and to the extent the use of PFCs is authorized by the FAA. If the Port determines, at its sole discretion, that financing the payments to BART is in the Port's best interests, and doing so is acceptable to the FAA, the Port may elect to do so.

3. Port's payment of the Port Contribution to BART is conditioned on several key factors, including:

   - final approval, by the FAA, of the Port's applications to collect and use PFCs. The Port has no obligation to use non-PFC funds, use other monies or raise alternative financing; and
   - the eligibility of costs consistent with FAA-administered requirements for the use of PFC funds (i.e. PFC Eligible).

   Port payments will be for on-Airport fixed facilities that are PFC Eligible and will be made as on-Airport civil facilities are verified complete. The annual sum of Port payments to BART would be limited by annual payout amounts listed in a negotiated distribution schedule attached as part of the Agreement. Actual disbursement would depend upon the amount of PFCs actually collected by Port over time, until cumulated additional contributions reach $43.9 million. Port payments will also be used to reimburse Port staff costs incurred for design, engineering and inspection (as applicable) of the OAC Project, not to exceed $1 million.

4. All OAC Project elements paid for with Port Contribution will be owned by the Port, free and clear of all liens. In general, these items will consist of civil structures. All OAC Project elements not paid for with Port Contribution will be owned by BART.

5. In general, BART will be responsible for the Port's costs attributable to activities related to construction and operation of the OAC Project that impact Port's security, safety or compliance with laws, or that have a material adverse impact on the Port operations or an adverse impact on Port costs.

6. Port will be liable to BART for its direct damages (e.g., amounts payable by BART to its Design-Build (DB) Contractor and consultants, and in some cases BART's direct administrative and management costs) for situations resulting from certain Port actions identified in the Agreement, or if the Port causes physical damage or destruction to the Project. Such Port actions generally include delays resulting from Port imposition of inappropriate site access constraints during construction, delayed review and comment for construction related matters, adoption of an ordinance which discriminates solely against BART in relation to the Project, and voluntary or accidental interference that delays construction or operations Contractor.

7. In certain circumstances, if the Port takes certain actions such as delaying access for construction or intentionally or voluntarily interfering with or suspending construction or operation of the Project for reasons other than addressing a threat to safety or security, Port's compliance with laws, or other circumstances which if unaddressed could have an adverse effect on Port's costs or material adverse effect on its operations, the Port may be liable for additional damages. This additional liability could arise if the Port delays the construction for more than 90 days, in which case Port would be liable for increased payments to BART's DB Contractor and scheduled interest and principal on any BART loan (such as a TIFIA loan.) If such adverse action continues for an additional 275 days, the Port would be liable for significantly greater damages, including accrued and default principal and interest on any BART loan, and potentially for repayment of Federal, State, and local grant monies.

8. Port and BART each waive, with respect to each other only, consequential damages and punitive or exemplary damages, with the exception of (i) damages for extended BART use of the allotted parking space-days described below; (ii) damages for Port actions as described in paragraph 7, above; and (iii) obligations under the environmental provisions. The waiver does not apply to either BART or Port contractors or to the extent damages are covered by insurance.

9. If requested by Port, BART will evaluate any Port-proposed changes to the Project in good faith, and approve the requested change if BART can design, build, operate and maintain the Project consistent with: (i) its other obligations under the Port Agreements, the DB and Operations and Maintanance (O&M) Contracts and other applicable agreements (including without limitation those of BART's funding partners; (ii) all laws; (iii) the operational requirements of the OAC Project; and (iv) the financial feasibility of the OAC Project, provided that BART and Port have reached a written agreement on the cost of the

Port-Proposed Change and the amount the Port shall pay for the change.

10. BART is obligated to comply with all environmental laws and indemnify Port for certain environmental-related claims. In addition, BART is responsible for clean-up of pre-existing contamination it disturbs during the term of the Development Agreement to the boundary of the construction area which includes the land on which BART will be constructing and laydown areas. BART is not responsible if pre-existing contamination extends beyond the construction and laydown areas, so long as BART did not cause the contamination. BART is responsible for clean up of its own spills and releases and of releases by third parties in areas controlled by BART.

11. The Development Agreement shall terminate within two years of execution unless BART executes the DB and O&M Contracts. Additionally BART must complete construction of the on-Airport portion of the OAC Project within 7 years of signing the Development and Use Agreements.

General Development Agreement Terms:

1. The Development Agreement allows BART access to the Airport property for the purposes of constructing the OAC Project. The parties have agreed regarding general on-Airport work requirements and restrictions, including black-out dates and work-hour parameters, and guidelines for traffic and staging plans, including specific requirements applicable to work over and around roadways, and other access areas on the Airport property.

2. During the construction term, BART will be allowed to occupy, without charge, up to 300 parking spaces in the Hourly and Daily parking lots. A limitation of the total number and duration of parking spaces used by BART has been set at 130,000 space-days (or 300 parking spaces for a period of approximately 13 months), after which BART will be required to pay liquidated damages at the going rate for parking. (The DB Contract assigns the responsibility for these liquidated damages to the DB Contractor.)

3. BART has implemented the Owner Controlled Insurance Program (OCIP) with liability limits up to $100 million per each occurrence (including coverage for earthquake, terrorism and flood) for both BART and Port-owned facilities. BART is obligated to maintain such insurance during the construction of the Project for 10 years following final acceptance of the OAC Project.

Use Agreement Terms and Discussion

Key Use Agreement Terms and Discussion

1. The Use Agreement allows BART the use of and access to the Property for the purposes of the operation and maintenance of the OAC System. The Property is specifically defined in the Use Agreement, and is generally the Airport land which is occupied by the OAC System,

including: a) the Airport land within the OAC right-of-way fence; and b) Airport land which is occupied by OAC fixed facilities such as the traction power substation and the Airport Station. The parties have agreed regarding general procedures concerning access over Airport property for purposes of system and facility maintenance.

2. BART is obligated to pay a Use Payment of $1/year as consideration for the use of the Property.

3. The commencement of the term of the Use Agreement will be the first date of the term of BART's O&M Contract with the OAC O&M Contractor. The initial term of the Use Agreement is 25 years. During the last 5 years of the initial term, as long as both Parties wish to continue OAC service, Port and BART may consider entering into another use agreement for an extended term, for $1/year or other nominal amount.

4. Throughout the term of the Use Agreement, BART is obligated to operate the OAC System in accordance with published operating schedules. Initially, the schedule will be 4:45am through 1:00am during weekdays and holidays, 6:00am through 1:00am on Saturday, and 8:00am through 1:00am on Sunday (to match the BART Coliseum Station and BART's operating schedule). The initial frequency of trains shall not be less than once every 20 minutes. Thereafter, BART is not permitted to operate less than two trains per hour as long as BART and the Airport are engaged in regular operations.

5. Port has reserved the right to build a garage or other structures over or around the OAC System, provided that the Port stays outside of an "envelope" around the system determined by methods used by BART for its existing rail transit system.

6. Should the Port construct a new terminal building or renovate an existing terminal, the Port will provide a connection which assures a minimum service level between the Airport BART Station and the airport terminals by maintaining an average maximum walk time of six minutes. Walkways must be weather protected and separated from vehicular traffic.

7. The Port agrees to not operate or invest in competing bus or shuttle service or any other similar service between the Airport and the Coliseum BART Station. Port agrees to maintain minimum daily parking rate of $12 (starting in July 1, 2013 escalating per CPI-0.5%) for all on-airport parking within walking distance of the passenger terminals (e.g. the current Hourly, Daily, and Economy parking lots).

8. BART will be allowed customary advertising rights within the Airport Station and on the AGT vehicles. BART will not be permitted to sell, lease or advertise any product or service from any on-Airport portion of the OAC System, other than BART fare media and pay telephones.

9. Port will be liable to BART for its direct damages (e.g., amounts payable by BART to its O&M Contractor and consultants, and in some cases BART's direct administrative and management costs) for situations resulting from certain Port actions identified in the

Agreement, or if the Port causes physical damage or destruction to the Project.

10. In certain circumstances, if the Port intentionally suspends operations of the Project or voluntarily interferes so as to restrict access of operations, for reasons other than addressing a threat to safety or security, Port's compliance with laws, or other circumstances which if unaddressed could have an adverse effect on Port's costs or material adverse effect on its operations, the Port may be liable for additional damages. This additional liability could arise if the Port interference lasts for more than 90 days, in which case Port would be liable for increased payments to BART's O&M Contractor and scheduled interest and principle on any BART loan (such as a TIFIA loan.) If such adverse action continues for an additional 275 days, the Port would be liable for significantly greater damages, including accrued and default principal and interest on any BART loan, and potentially for repayment of Federal, State, and local grant monies.

11. In general, BART will be responsible for Port's costs attributable to activities related to operation of the OAC Project that impact Port's security, safety or compliance with laws, or that have a material adverse impact on Port operations or an adverse impact on Port costs.

12. BART will be liable for damages to Port in the event of breach or violation of the Use Agreement by BART or the O&M Contractor.

13. BART will maintain all risk or special form property insurance on all BART-owned OAC facilities for full replacement cost, including terrorism, earthquake and flood coverage, and at least one year of business interruption insurance. Port will insure Port-owned OAC facilities. Claims regarding the OAC Project will be covered by the same BART liability insurance and self-insurance that covers other BART operations, provided BART maintains at least $100 million of this insurance.

Fiscal Impact:
Port Contribution will be capped at $45.4 million for on-Airport AGT civil facilities which will be owned by the Port. $1.5 million of the $45.4 million Port Contribution has already been received. $28 million of the Port Contribution is expected to be received during the Construction phase of the OAC Project, and $15.9 million is expected to be received during the O&M phase. Those contributions are subject to FAA approval to collect and use PFCs. The District assumes the risk of up to $43.9 million should the FAA decline to approve the PFCs. This would eliminate any Port funding contribution and require the District to increase the amount of borrowing needed to fund the Project construction. The increased amount to be financed would still be within the funding plan approved by the Board in May, 2009. However, increased borrowing could potentially reduce the District's financial flexibility on its outstanding capital program or its ability to reduce planned OAC fares.

BART is obligated to pay $1/year for its rights under the Use Agreement.

None of these impacts would be realized until the Design-Build and O&M Contracts are awarded by separate Board Action.

Alternatives:
Do not authorize the General Manager to execute these Agreements. BART would have no authority to construct and operate the OAC Project on the Port property. The Project would also forego the revenue source listed above to assist in funding the OAC Project.

Recommendation:
Adoption of the following motion. The Office of the General Counsel will approve the Development and Use Agreements as to form.

Motion:
That the General Manager or her designee be authorized to execute, consistent with the terms summarized above: 1) the Development Agreement with the Port of Oakland in connection with the Oakland Airport Connector Project and 2) the Use, Operation and Maintenance Agreement with the Port of Oakland in connection with the Oakland Airport Connector Project.

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EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL:		GENERAL MANAGER ACTION REQ'D: Approve and forward to the Board of Directors for Action		
DATE:		BOARD INITIATED ITEM: No		
Originator/Prepared by: Mike Forte Dept: Transit System Development Signature/Date: 12/4/09	General Counsel 12/4/09	Controller/Treasurer 12/4/09	District Secretary [ ]	BARC [ ]
Status: Routed		Date Created: 11/20/2009		

TITLE:

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

NARRATIVE:

PURPOSE

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

DISCUSSION

Introduction

On March 28, 2002, the BART Board of Directors (Board) certified the Final Environmental Impact Report/Final Environmental Impact Statement (FEIR/FEIS) and adopted the BART-Oakland International Airport Connector Project. On February 22, 2007, the BART Board of Directors adopted an Addendum to the FEIR/FEIS.

The OAC Project consists of the design, construction, operation and maintenance of a 3.2 mile Automated Guideway Transit System ("AGT System") connecting the BART Coliseum Station to the Oakland International Airport ("OAK"). The OAC will provide improved access to the Oakland International Airport using a direct and convenient connection to the existing regional BART rail transit system. The AGT System will operate on an exclusive right-of-way without drivers or on-board attendants. The OAC Project will be implemented through two contracts: 1) Contract No. 01ZK-110 for the design and construction/installation, testing and startup of the AGT system and associated fixed facilities, and 2) Contract No. 01ZK-120 for the operation and maintenance of the completed OAC system for twenty years. The O&M Contract includes two options to be exercised by the District during the course of the Contract, one option for training of District personnel, and the other option for elevator and escalator training, both at a fixed price. The intent of the solicitation is to award the two contracts to the proposing team providing the best value to the District while meeting affordability constraints.

Pursuant to California Public Contract Code Sections 20209.5 through 20209.14 (the "Design-Build statute"), a Request for Qualifications and Proposals ("RFQ/P") was issued on May 20, 2009 by the District to prequalify firms prior to submittal of proposals. The Design-Build statute requires the awarding agency to establish a procedure to prequalify the proposing teams, or "design-build entities", using a standard questionnaire developed by the California State Department of Industrial Relations. A Pre-submittal Conference was held on May 27, 2009 and another on June 5, 2009 prior to submission of the Qualification Statements. On June 17, 2009, Qualification Statements were received from six (6) Design-Build Entities and were reviewed by the District's Evaluation Committee in accordance with the approved Source Selection Plan. Each Design-Build Entity consisted of a Design-Builder, a Core Construction Subcontractor, Heavy Civil Subcontractors, a Core AGT Supplier, a Core Fixed Facilities Designer and a Core Operations and Maintenance Service Supplier. On July 15, 2009, the Board was notified of the General Manager's decision to approve four Design-Build Entities listed below as prequalified to submit proposals.

1. Flatiron/Parsons, a Joint Venture of Oakland, California
2. Kiewit Pacific Company of Concord, California
3. Shimmick/Skanska/Herzog, a Joint Venture of Oakland, California
4. Walsh Construction Company of Benicia, California

Proposal Addenda, Comments, Questions and Alternate Concept Review and Discussions

The RFQ/P allowed proposers to submit comments, questions, and alternate concepts regarding changes to the commercial and technical portions of the RFQ/P in accordance with specified procedures and on specified forms. The RFQ/P authorized the District to enter into Discussions with proposers at its sole discretion, although the District retained the right to make an award without any prior Discussions. The RFQ/P stated that a proposer must prepare its proposal on the basis of the RFQ/P and all addenda, that the proposal should contain the proposer's best terms, and that the proposer must be prepared to execute the contracts without amendment. The RFQ/P did not provide for a Best and Final Offer process.

A Pre-proposal Conference was held on August 20, 2009, that was attended by all Prequalified Design-Build Entities. Discussions were held regarding a variety of topics, including the Project scope, the District's DBE Program, a Project Stabilization Agreement and the RFQ/P procurement process. Face-to-face and teleconference meetings were held with each of the Prequalified Design-Build Entities. In response to some of the comments or questions submitted by the Prequalified Design-Build Entities, the District issued twelve (12) Addenda and reviewed and addressed in writing 30 alternate concepts and 309 questions prior to submittal of proposals. As stated in the RFQ/P, and reiterated during both the Pre-submittal and the Pre-proposal Conferences and during the face-to-face meetings, Prequalified Design-Build Entities were notified that the District had a schedule to award the contract no later than December 2009 due to funding constraints. The proposal due date was originally September 10, 2009; however due to requests from the Prequalified Design-Build Entities, the date was extended to September 22, 2009, together with the deadlines to submit additional alternate concepts and questions.

All four Prequalified Design-Build Entities submitted proposals on September 22, 2009.

Responsiveness of Proposals

The RFQ/P reserved to the District the right to reject and eliminate a Proposer whose Proposal was found to be non-responsive for any reason, including failure to provide all the required elements of the Financial submittal requirements, and significant irregularities that make the proposal incomplete, indefinite or ambiguous.

Proposal Evaluation Criteria and Methodology

The RFQ/P required the District to evaluate Proposals based on a Best Value process to determine which proposal would be the most advantageous and of greatest value to the District. The Best Value process allows the District to evaluate price in addition to other criteria. Consistent with the Design-Build statute, and in accordance with the pre-approved Source Selection Plan, criteria used in the evaluation included the proposed design approach, initial cost, life-cycle costs, project features and project function. The four primary evaluation criteria identified in the RFQ/P and generally described below were weighted as follows:

Evaluation Criteria	**Weighting Value**
Financial: • Proposed Total Price • Reliability of the Offer	50%
Technical: • Technical Expertise • Operating System Requirements	20%
Management and Qualifications • Project Team Organization • Management Program • Past Performance	10%
Operations and Maintenance • O&M Past Performance • O&M Plan • Capital Asset Replacement Program (CARP) • Safety Record	20%

The Proposals were rated in accordance with a descriptive method: 1) Exceptional, 2) Good, 3) Acceptable, 4) Potential to Become Acceptable, and 5) Unacceptable. A Proposal would be excluded from the Competitive Range if it was rated "Potential to Become Acceptable" or lower.

With regard to the Financial evaluation criteria, the RFQ/P specified the following Affordability Targets:

- Construction Affordability Target of $435 million
- Operations Affordability Target of $8.5 million
- Total Price Affordability Target of $480 million.

The District reserved the right to reject any Proposal as Unacceptable if its price components failed to meet any of the above three affordability targets.

Findings

In accordance with the District's evaluation and procurement procedures, the OAC Proposal Evaluation Committee (Committee), determined that the Proposal from Kiewit Pacific Company was non-responsive. The Committee found that the Kiewit Proposal failed to provide all the required elements of the Financial submittal requirements including the insurance coverage and premiums reflecting the minimum insurance requirements set forth in the specifications. The Proposal further contained significant irregularities resulting in a Proposal that is incomplete, indefinite and ambiguous. Therefore the Committee deemed the Proposal from Kiewit Pacific Company non-responsive to the requirements of the RFQ/P, and the Proposal was not considered further.

The three other Proposals were evaluated using the criteria in the RFQ/P and in accordance with the approved Source Selection Plan.

As required by the Design-Build statute, the price proposals and the combined ratings achieved for all Proposers are identified and shown in the table below.

Proposer	Design-Build Price	Annual Base Service Payment	Annual Base CARP Payment	Total Price *	Combined Rating	Ranking
Flatiron / Parsons JV	**$361,022,150**	**$4,906,865**	**$768,396**	**$440,475,810***	**Good**	**1**
Walsh Construction Company	$404,315,174	$7,173,848	$1,056,929	$519,546,052*	Acceptable+	2
Shimmick/Skanska/Herzog JV	$421,200,000	$6,450,306	$400,000	$517,104,284*	Acceptable-	3
Total Price Affordability Target				$480,000,000*		

*Proposals were evaluated on Total Price, a calculated value, which includes the Design-Build Price plus the adjusted present value of 20 years of O&M payments and Capital Asset Replacement (CARP) costs.

Two Proposals exceeded the Total Price Affordability Target of $480 million set forth in the RFQ/P and were determined to be outside of the Competitive Range for affordability reasons. The price components of the third Proposal from Flatiron/Parsons, JV were found to be within the Total Price Affordability Target and, moreover, based on the requirements of the RFQ/P and the results of the evaluation performed in accordance with the Source Selection Plan, all in conformance with the Design-Build statute, the Committee determined the Proposal demonstrated an approach that offered the Best Value to the District.

District staff recommends award to Flatiron/Parsons, JV. The Design-Build Entity consists of Flatiron West, Inc. as the Core Construction Contractor, Dopplemayr Cable Car – DCCCA1, Inc. as the Core AGT Supplier and Core O&M Service Supplier, and Parsons Transportation Group as the Core Fixed Facility Designer.

Buy America Compliance

As required by the Federal Transit Administration (FTA), a pre-award Buy America audit was conducted by the District's consultant, Lea+Elliott, and determined that the rolling stock proposed by the Flatiron/Parsons JV to be manufactured by Doppelmayr Cable Car, (DCCCA1) meets the domestic content, the final assembly location, and final assembly activity requirements specified by FTA. The District will conduct a post-delivery/construction review of the rolling stock as required by FTA during the final inspection and acceptance.

Disadvantaged Business Enterprise Discussion (Design-Build Phase)

The Design-Build Contract is subject to the District's Disadvantaged Business Enterprise (DBE) Program. In accordance with the Program, a goal of 18% was established for the construction-only element (including trucking). Because the nature of a design-build contract is such that the detailed scope of work for many subcontractors is not known at the time proposals are submitted, proposers were not required to submit the usual DBE participation data proving that they had in fact met the goal for the entire Design-Build Contract or had made good faith efforts to do so. Proposers were instead required to commit in their Proposals that they either would meet the goal of 18% for construction, including trucking, or demonstrate that they could not meet the DBE goal despite their good faith efforts. As the design is completed and subcontracts are issued during the construction period, the District's Office of Civil Rights will verify that the contractor is meeting its goal commitments, or that sufficient good faith efforts are being made. The Contract includes mechanisms for monitoring and enforcing the DBE participation requirements, including an on-going obligation for the contractor to list new DBEs prior to commencement of work; separate DBE cost-loaded schedule activities, with monthly updates; submittal of names of DBE firms and dollar values for DBE's contracted after the proposal due date; requirement for good faith efforts to achieve DBE goals on change orders; maintenance of DBE participation records; liquidated damages for failure to meet DBE goals; and withholding or retention of funds for noncompliance with DBE participation requirements.

The Proposal submitted by Flatiron/Parsons, JV contained a DBE participation commitment for construction, including trucking, of 20.21%. The proposal also listed DBE firms that were not currently certified as DBEs. The District did not count participation of these DBE firms whose certifications were not current, but the firms will have the opportunity during contract performance to renew their DBE certifications and be counted towards the Design-Build contractor's DBE participation achievement. The Office of Civil Rights determined that Flatiron/Parsons, JV exceeded the DBE goal by committing to a goal of 20.21%. In addition, although there is no DBE goal for professional services, Flatiron/Parsons, JV has committed to achieving a DBE participation level of 33.10% for professional services.

FTA also requires that as a condition of being authorized to propose on FTA-assisted transit vehicle procurements, transit vehicle manufacturers must certify that they have complied with the requirements of 49 CFR Part 26, Section 26.49(b) and (c) regarding separate DBE requirements for transit vehicle manufacturers. Doppelmayr Cable Car, Inc. (DCCCA1) the Core AGT

Supplier that is part of the Flatiron/Parsons Design-Build Entity, has complied with these requirements and is listed on the FTA approved list.

Non-Discrimination Program
No Federal funds will be utilized in the Operations and Maintenance Contract. The Contract is subject to the District's Non-Discrimination in Subcontracting Program.

Follow-on Contracts
It is expected that the OAC Project will require three additional contracts that will be brought to the Board as necessary and awarded separately. The scope of the three contracts is as follows:

1. Demolition of the former Teamsters Union Hall to clear BART-owned property to make room for the OAC Project maintenance facility.
2. Hegenberger Corridor Landscape Restoration to restore landscaping disturbed by the OAC Project construction.
3. Bike Path Restoration (if required) to restore and landscape the bike path along Airport Drive that may be redesigned or damaged during the OAC Project construction.

Project Stabilization Agreement (Design-Build Phase)
A Project Stabilization Agreement (PSA) to which the District is a party has been incorporated into the Design-Build contract and binds all of the contractors performing work on the Project. The PSA includes no strike-no lockout provisions, defines local hiring goals, and includes a local hiring program to encourage and support the utilization of local area residents.

Stipend
The RFQ/P includes a Stipend Agreement in the amount of $500,000 to be paid by the District under certain stated conditions to the responsive proposers who were not selected for award. The responsive proposals from Walsh Construction Company and Shimmick/Skanska/Herzog JV entitle each of these firms to receive the stipend in the amount of $500,000 each ($1M total) which is reflected in the District's budgeted costs.

FISCAL IMPACT

OAC Project Costs

The OAC Project budget has been adjusted to reflect the amounts proposed by Flatiron/Parsons, JV, and is comprised of the following elements:

Construction Cost	$361M
BART Spent to Date	$ 34M
BART Delivery Cost	$ 46M
Construction Contingency	$ 43M
Subtotal Project Capital Cost	$484M
Financing Cost (construction)	$ 9M
Project Cost during construction	**$492M**

[Note: Some figures have been rounded]

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

- "Construction Cost" is the contract award amount for the Design-Build Contract No. 01ZK-110.
- "BART Spent to Date" is the amount already expended by the OAC Project in environmental development, preliminary engineering, real estate acquisition, and other procurement phase costs.
- "BART Delivery Cost" is the amount anticipated for related construction phase activities, including construction management oversight, BART administrative costs, installation of the Contractor-supplied fare collection equipment, several follow-on contracts (explained above), and Owner Controlled Insurance Program (OCIP) costs.
- "Construction Contingency" is the amount set aside for unforeseen circumstances during the construction phase and for operations start-up costs.
- "Financing Cost (construction)" is the amount of loan risk fund subsidy, up-front and annual financing fees, and interest during construction.

<u>OAC Project Construction Funding</u>
The Full Funding Plan for the OAC Project is shown below:

OAC Sources ($ millions, in Year-of-Expenditure Dollars)			
Funding Source	**Amount**	***Share***	***Status***
Federal			
American Federal Recovery Act (ARRA)	70.0	*14.2%*	*Grant Pending*
FTA Small Starts (formerly "P5")	25.0	*5.1%*	*Grant Pending*
Total Federal	95.0	*19.3%*	
State			
State Transportation Improvement Program (STIP)	20.7	*4.2%*	*Received*
MTC/State Local Partnership Program (SLPP) Prop 1B	20.0	*4.1%*	*Committed*
MTC/PTMISEA (Prop 1B)	12.8	*2.6%*	*Committed*
Total State	53.5	*10.9%*	
Local			
Alameda County Measure B ½ cent sales tax	89.1	*18.1%*	*Committed*
Port of Oakland Passenger Facility Charges (PFCs) [1]	29.5	*6.0%*	*Pending*
MTC Regional Measure 1 & 2 Bridge Tolls	146.2	*29.7%*	*Committed*
Total Local	264.8	*53.8%*	
Sub-total agency/public grant funding	**413.2**	*84.0%*	
TIFIA draws [2]	78.8	*16.0%*	*Requested*
Total sources of funds	**492.1**	***100.0%***	
Sub-total Received or Committed	**288.8**	***58.7%***	
Sub-total Pending or Requested	**203.3**	***41.3%***	

[1] Assumes that an additional $15.9 million from Port is received during the first 2-3 years of operations for a total of $45.4 million of Port funding, which will be used to reimburse the funds advanced from TIFIA to cover delayed receipt of the Port construction contribution.
[2] TIFIA interest expense is capitalized during construction and added to TIFIA loan balance
Note: Some figures have been rounded

Funding Sources.

A total of $288.8 million has already been received or committed to the OAC Project. Four funding sources are not finalized at this time: 1) $70 million in American Recovery and Reinvestment Act (ARRA) funds; 2) a $24.99 million Small Starts grant from the Federal Transit Administration ("FTA"); 3) $43.9 million in PFCs from the Port of Oakland that is pending approval from the FAA ($1.5 million of the $45.4 million Port Contribution has already been received, $28 million is expected to be received during construction, and $15.9 million is expected to be received during operations); and, 4) a pending TIFIA loan. The four funding sources that have not been finalized at this time are described in detail below.

ARRA Grant with Metropolitan Transportation Commission (MTC) ($70 million)
The MTC allocated $70 million of ARRA funds in July, 2009. Although the MTC's allocation is determinative for the region, it is subject to FTA's approval of an ARRA grant in this amount. BART's application with FTA is pending.

FTA Grant ($24.99 million)
An FTA grant is pending to fund $24.99 million of construction costs. The OAC Project has passed a major milestone in the FTA process, in that the FTA Administrator Peter Rogoff has sent a 10 day notification to Congress of the FTA's intent to approve the OAC Project to enter preliminary engineering (PE) and final design (FD) phases of the FTA New Starts program.

Port of Oakland ($29.5 million)
The Port of Oakland has committed $45.4 million of funding to the OAC Project. Of this amount, $1.5 million has previously been received by BART. A further $28 million of the Port's contribution is expected to be received during the construction phase of the OAC Project, with the remaining $15.9 million expected to be received during the operations phase. The Port's commitment is subject to Federal Aviation Administration (FAA) approval for the collection and use of Passenger Facility Charges (PFCs) for the OAC Project. Should the Port of Oakland not receive FAA approval for the collection and use of PFCs, the Port funding contribution would be eliminated. The District assumes the risk of up to $43.9 million in PFC fees should the FAA decline to approve. The District also assumes the risk that the rate of receipt of PFC funds and the disbursement schedule agreed upon by the Port and the District would not keep pace with BART's anticipated construction costs. In any of these scenarios, BART would have to borrow additional funds from TIFIA or other sources to fill the funding gap, potentially reducing the District's financial flexibility on its outstanding capital program.

The Port has submitted to FAA the application to impose PFCs. FAA published it in the Federal Register, and the notification period expired on December 2, 2009. Following FAA approval to impose PFCs, the Port will submit an application to use $43.9 million of said PFCs for the OAC Project, action on which is expected in the spring of 2010, and staff expects that this application will be approved. The airlines unanimously support use of PFCs for the OAC Project. While it is not known if the FAA will approve the application to use, the FAA previously approved the Port's 2007 application to impose and use PFCs for the OAC Project. Moreover, out of 1,764 applications received by FAA since inception of the PFC Program in 1992, 1,760 applications for use have been approved or partially approved.

TIFIA Loan ($78.8 million)
BART applied on September 14, 2009 for a Transportation Infrastructure Finance and Innovation (TIFIA) Loan for approximately $105 million from the U.S. Department of Transportation (USDOT) to complete the funding package for the OAC Project. Since then, the financing requirement has been reduced to $78.8 million. The loan proceeds are not needed for several years, but staff expects to receive a response and negotiate loan terms in the first half of 2010. In the event the TIFIA loan application is unsuccessful, BART will pursue the most advantageous

financing alternative amongst other debt sources, such as Build America Bonds (BABs) or sales tax revenue bonds. Given BART's strong AA credit rating and 3.26X debt coverage ratio well above the required 1.5X minimum, BART does not anticipate any problems issuing additional debt. The District will fulfill its obligations to repay the TIFIA Loan by pledging revenues from OAC Project, backed by sales tax revenues. To the extent that the Project's budgeted $43 million contingency is not fully needed, the savings will reduce the TIFIA draw-downs.

Contract Award

Funding to award Contract No. 01ZK-110 to Flatiron/Parsons, JV, for the Design-Build of the Oakland International Airport Connector, for the not to exceed price of $361,022,150, and funding for two separate Stipend Agreements with Walsh Construction Company and Shimmick/Skanska/Herzog, JV in the amount of $500,000 each ($1,000,000 total) will come from the committed sources of $288.8 million described above, plus $94.99 million in pending federal grants. Because the actions identified in this EDD will commit an amount greater than the funding committed to date, the Controller/Treasurer cannot certify that these funds are currently available. However, the expenditures for these actions are scheduled over the next forty-two months, and sufficient funds to meet these expenditures from the committed and/or pending sources identified above are expected to be in place to meet cash flow needs. If any of the expected funding sources do not materialize, the District assumes the risk of providing the additional funds needed to cover any cash shortfall.

Funding to (a) award Contract No. 01ZK-120 to Doppelmayr Cable Car, Inc. to Operate and Maintain the Oakland International Airport Connector for the not to exceed price of $4,906,865 and Capital Asset Replacement Program (CARP) costs of $768,396, both paid annually for a period of twenty (20) years and subject to escalation, and (b) repay the TIFIA loan will come from the amount of the Port Contribution expected to be received during the operations phase ($15.9 million) and annual revenues generated by operation of the OAC Project. While the projections for ridership revenue have been modeled at a conservative level, there is the potential that revenue may fall short of projections necessitating supplementation from the General Fund, which would be reimbursed in future years from any surplus OAC revenues. The conservative modeling approach reduces a ridership forecast prepared and updated by Wilbur Smith Associates in May 2009. BART currently estimates that using the conservative ridership forecast, the maximum cumulative subsidy over 35 years from the General Fund should not exceed $1.9 million.

The award of Contract Nos. 01ZK-110 and 01ZK-120 will be issued only after the Controller-Treasurer has certified that sufficient ARRA and Small Starts funds have been committed by the Federal Transit Administration for the Project and are available for Contract No. 01ZK-110. Should the Notifications to Proposers of the Recommended Awards be issued prior to such certification, the Notifications will specifically provide that the Notices of Award shall not be issued prior to the certification of the Controller-Treasurer.

ALTERNATIVE

There is no meaningful alternative procurement methodology available, therefore the only alternative action would be to not proceed with the Project at this time. This would entail the loss of $70 million in ARRA funding and the probable loss of other funding currently available.

RECOMMENDATION

Adoption of the following motions:

MOTIONS:

1. Upon certification by the Controller/Treasurer that sufficient ARRA and Small Starts funds have been committed by the Federal Transit Administration for the Project and are available for this contract, the General Manager is authorized to award Contract No. 01ZK-110 to Flatiron/Parsons, JV, for the Design-Build of the Oakland International Airport Connector, for the not to exceed price of $361,022,150, pursuant to notification to be issued by the General Manager and subject to the District's protest procedures and FTA's requirements related to protest procedures.

2. Concurrent with the award of Contract No. 01ZK-110, the General Manager is authorized to award Contract No. 01ZK-120 to Doppelmayr Cable Car, Inc., to Operate and Maintain the Oakland International Airport Connector, for the not to exceed price of $4,906,865 and Capital Asset Replacement Program (CARP) costs of $768,396, both paid annually for a period of twenty (20) years and subject to escalation, pursuant to notification to be issued by the General Manager and subject to the District's protest procedures.

3. The General Manager is authorized to execute two separate Stipend Agreements with Walsh Construction Company and Shimmick/Skanska/Herzog, JV in the amount of $500,000 each ($1,000,000 total).

ba

EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL:		GENERAL MANAGER ACTION REQ'D:		
DATE: c 12/4/09		BOARD INITIATED ITEM: No		
Originator/Prepared by: Peter Y Horikoshi Dept: Human Resources Signature/Date: 12/4/09	General Counsel 12/4/09	Controller/Treasurer 12/4/09	District Secretary [ ]	BARC [ ]

TITLE:

Amendment to Contract between CalPERS and the District to add 4th Level of Survivor Benefits for Safety Employees

NARRATIVE:

The Board is requested to take the first of two steps in the process to amend the District's contract with CalPERS to include the option called "4th Level of Survivor Benefits for Safety Employees," under California Government Code Section 21574. The addition of this benefit, on a self-pay basis, was agreed upon by the BART Police Officers' Association and the BART Police Managers' Association in their recently negotiated collective bargaining agreements. This benefit will be available to all safety members (sworn police), including any Non-Represented employees. These employees are currently eligible for the 3rd Level of Survivor Benefits. The 4th Level offers higher payments to surviving family members of sworn BART police officers in the future. Once the Board's Resolution has been properly recorded by CalPERS' staff, CalPERS will send the amended contract including this added benefit so that the District can implement it in January, 2010.

This item is being raised at today's meeting to satisfy State law. These changes specify that prior to authorizing certain changes to retirement benefits or other post employment benefits, local legislative bodies, including the District, must undertake preliminary steps. Specifically, California Government Code Section 7507 requires that the legislative body have "secure[d] the services of an actuary to provide a statement of the actuarial impact upon future annual costs, including normal costs and any additional accrued liability," and that the future costs of changes in retirement benefits or other postemployment benefits, as determined by the actuary be made public at a public meeting.. An actuary from CalPERS will be present at the meeting to provide information as needed as the Board considers the adoption of the benefit change. Additionally, California Government code Section 20471 requires a 20 day period between the adoption of the Resolution of Intention at today's meeting and the adoption of the final Resolution amending the CalPERS contract to add this benefit. If approved, staff will return for the second action.

Actuarial Analysis and Cost/Savings

The CalPERS actuarial valuation discusses the costs of amending the CalPERS contract by adding the option of the 4th Level of Survivor's Benefits for safety employees. It estimates that there will be no change in cost over the next five years as compared with the current 3rd level of Survivor Benefits. CalPERS' actuaries predict that there will likely be an increase after the five year period. However, the collective bargaining agreements provide that all costs of this benefit will be borne by the employees so the District will not incur any future liability for adopting this benefit. This actuarial valuation has been made available to the public for today's meeting.

Recommendation: To adopt the attached Resolution

Motion: The Board approves the attached "Resolution of Intention to Approve an Amendment to Contract between the Board of Administration, California Public Employees' Retirement System and the Board of Directors, San Francisco Bay Area Rapid Transit District" for safety members.

Attachments

- CalPERS Valuation of 4th Level of Survivor Benefits for Safety Employees
- CalPERS Resolution of Intention to Approve an Amendment to Contract between the Board of Administration California Public Employees' Retirement System and the Board of Directors San Francisco Bay Area Rapid Transit District for Safety Members

CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
ACTUARIAL AND EMPLOYER SERVICES BRANCH
CONTRACT AMENDMENT COST ANALYSIS
Valuation Basis: June 30, 2008

Employer Name: SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT | Employer #: 393 | Coverage Group(s): 75001, 75002

Section 21574 -The Fourth Level of 1959 Survivor Benefit Program for Local Members

The table on the following page shows the change in the liabilities and costs for adopting the Fourth Level 1959 Survivor Benefit for the coverage group(s) indicated above. The amounts are determined using the Term Insurance Method. Under this method, the accrued liability is equal to the present value of benefits to survivors currently receiving payments *and* deferred benefits payable to a spouse of a deceased member when the spouse attains age 60. The normal cost is equal to the present value of benefits for expected deaths during the upcoming year.

The assets and liabilities for public agencies in the program are pooled for each Level. When a group contracts for the Fourth Level, the cost to the agency is the unfunded liability *plus* five years of normal cost, both calculated at the Fourth Level. The five-year normal cost requirement is necessary to prevent inequitable depletion of the pool's current surplus by agencies who have not contributed to the surplus. For the Fourth Level 1959 Survivor Benefit, the CalPERS Board of Administration approved a fiscal year 2009-2010 employer normal cost rate of $5.40 per covered active member, per month. The assets used to determine the unfunded liability are allocated in accordance with a formula based on various factors, including the coverage group's accrued liability and length of time in the current level pool, and the current level pool's total assets and liabilities. Agencies will be allowed to amortize this unfunded liability over a period of five years. If there are excess assets rather than an unfunded liability, the excess will be used to offset the normal cost payments to the extent possible. **Your agency's first-year payment (normal cost plus amortization of unfunded liability/excess assets) is $0.** Payments for years two through five will be recalculated each year, and will vary according to the number of covered active members and the pool's revised normal cost.

At the end of five years, the group(s) become part of the pool and the employer's cost will be the pool's net cost. Currently the Fourth Level pool has a modest surplus, and the pool's net cost is $2.10 per member, per month. Please note, however, that the pool's net cost will vary from year to year, depending on actual experience and the rate at which the existing surplus is used to pay ongoing normal costs.

Should you choose to amend and payments are due, annual payments will be in level dollar amounts and will not be expressed as a percentage of your covered payroll. **If payments are due, your agency will be set up on a five-year amortization payment schedule. The first invoice will be sent in June, and your first payment is due by July 15.**

The valuation has been performed in accordance with standards of practice prescribed by the Actuarial Standards Board, and the assumptions and methods are internally consistent and reasonable for this plan, as prescribed by the CalPERS Board of Administration according to provisions set forth in the California Public Employees' Retirement Law. The valuation has been prepared in accordance with generally accepted actuarial practice.

This valuation is valid until June 30, 2010.

David Du Bois

David Du Bois, FSA, MAAA
Senior Pension Actuary, CalPERS

BART
Benefits
AUG 28 2009
Received

CalPERS

Actuarial & Employer Services Division
P.O. Box 942709
Sacramento, CA 94229-2709
Telecommunications Device for the Deaf - (916) 795-3240
FAX (916) 795-3005

CONTRACT AMENDMENT REQUEST

To initiate an amendment to contract, complete and return this form to the address above. The necessary documents will be prepared and mailed to you within 30 days of the date this request is received in our office.

Employer Name: SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

Employer Number: 393

Coverage Group(s) affected by the Amendment : 75001, 75002

Description of Benefit Provisions and Section(s): Section 21574, 1959 Survivor Allowance – Fourth Level – Local Member

Please initiate the amendment to this employer's contract with CalPERS:

Name and Title: (Please Print): ______________________________

Signature: ______________________ Date: __________

Mailing Address: ______________________________

Street Address: ______________________________

City/State/Zip: ______________________________

Telephone Number: ______________ Fax Number: __________

E-mail Address: ______________________________

CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
ACTUARIAL AND EMPLOYER SERVICES BRANCH
CONTRACT AMENDMENT COST ANALYSIS
Valuation Basis: June 30, 2008

Employer Name: SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT | Employer #: 393 | Coverage Group(s): 75001, 75002

Impact of Amendment

The table below shows the impact of an amendment to the Fourth Level 1959 Survivor Benefit for the specified coverage group(s).

		Pre-Amendment	Change Due to Plan Amendment	Post-Amendment
1.	Accrued Liability	$59,830	$102,565	$162,395
2.	Plan's Market Value of Assets(1)	$275,947		$275,947
3.	Pool's Actuarial Value of Assets as a percentage of Market Value of Assets (2)	96.390%	-0.550%	95.840%
4.	Plan's Actuarial Value of Assets (2) x (3)	$265,985	($1,517)	$264,468
5.	Unfunded Liability / (Excess Assets) (1) – (4)	($206,155)	$104,082	($102,073)
6.	Unfunded Liability / (Excess Assets) projected forward to June 30, 2010	($235,924)	$143,828	($92,096)
7.	Pool's Funded Ratio (3)	363.60%	-223.70%	139.90%
8.	Employer Normal Cost, Per Member, Per Month	$ 0.70	$ 4.70	$ 5.40
9.	Number of Members	189		189
10.	First-Year Employer Normal Cost (8) x (9) x 12	N/A	N/A	$12,247
11.	Five –Year Amortization of Unfunded Liability / (Excess Assets)	N/A	N/A	($21,266)
12.	First-Year Total Employer Cost (10) + (11), not to be less than zero	N/A	N/A	$0
13.	Current Employee Monthly Cost	$ 2.00	$ 0.00	$ 2.00

(1) Assets are allocated as a share of the pool's assets.
(2) This is the AVA/MVA percentage for the entire pool as of the most recent valuation date.
(3) The Funded Ratio, total actuarial value of assets as a percent of total liability, for the entire pool as of the most recent valuation date.

CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
Actuarial and Employer Services Branch
Contract Maintenance Unit
P.O. Box 942709
Sacramento, CA 94229-2709
(888) CalPERS (225-7377) FAX (916) 795-3005

SCHEDULE OF AGENCY ACTIONS FOR PLANNING YOUR AMENDMENT TO CONTRACT

CalPERS will prepare the documents necessary to amend your contract and provide them to you within 30 days of receipt of the Contract Amendment Request in our office. The contracting agency must have a current Amendment Cost Analysis before proceeding with an amendment to the contract.

1.________ ENTER A DATE THAT IS 30 DAYS FROM THE DATE YOU EXPECT CalPERS TO RECEIVE THE CONTRACT AMENDMENT REQUEST FORM YOU SUBMITTED OR WILL BE SUBMITTING. This is the date you may expect to receive the documents from CalPERS that you will need to amend the Contract.

2.________ THE DATE AN ACTUARY WILL BE PRESENT TO PROVIDE INFORMATION REGARDING THE ACTUARIAL IMPACT UPON FUTURE ANNUAL COSTS. (The presence of an actuary is required if future costs of the benefit changes exceed ½ of 1% of the future annual costs of the existing benefits.)

3.________ ENTER THE DATE THE GOVERNING BODY WILL ADOPT THE RESOLUTION OF INTENTION DOCUMENT. Allow the necessary time after the date you expect to receive the needed documents from CalPERS (#1 above) to include adoption of the Resolution of Intention on the Governing Body's meeting agenda.

4.________ ENTER THE DATE THE EMPLOYEE ELECTION WILL BE HELD. An employee election is required only if the employee contribution rate will change. If required, this election must follow the Governing Body's adoption of the Resolution of Intention (#3 above) and must be prior to the Adoption of the Final Resolution (#5 below).

5.________ ENTER THE DATE THE GOVERNING BODY WILL ADOPT THE FINAL RESOLUTION. This date must be at least 20 days after the date the Governing Body adopts the Resolution of Intention (#3 above).

6.________ ENTER THE EFFECTIVE DATE OF THE AMENDMENT TO CONTRACT. If there is no change in the employee or the employer contribution rates this date may be as early as the day after the date the final Resolution is adopted (#5 above). If there is a change in the employee and/or the employer contribution rates, this date must be the first day of a payroll period and may not be earlier than the day after the date the final Resolution is adopted (#5 above).

THIS FORM IS USED FOR PROPERLY PLANNING AND SCHEDULING THE AGENCY ACTIONS TO AMEND THE CONTRACT WITH CalPERS. CAREFULLY FOLLOWING THE GUIDELINES IN THIS FORM CAN PREVENT THE NEED TO RESCIND ACTIONS TAKEN BY YOUR GOVERNING BODY AND REPEATING THE PROCESS AS WELL AS AVOIDING UNNECESSARY DELAYS IN THE AMENDMENT EFFECTIVE DATE. THIS FORM SHOULD BE COMPLETED AND A COPY RETURNED TO THIS OFFICE WITH THE CONTRACT AMENDMENT REQUEST. PLEASE CALL YOUR CONTRACT ANALYST AT (888) 225-7377 IF YOU HAVE QUESTIONS.

CalPERS
Actuarial & Employer Services Branch
P.O. Box 942709
Sacramento, CA 94229-2709
Telecommunications Device for the Deaf - (916) 795-3240
(888) CalPERS (225-7377) FAX (916) 795-3005

May 13, 2009

AGENDA ITEM 14

TO: MEMBERS OF THE BOARD OF ADMINISTRATION

I. SUBJECT: Impact of Economic Environment on Employer Rates and Possible Smoothing Modifications (First Reading)

II. PROGRAM: Retirement

III. RECOMMENDATION:

That the full CalPERS Board approves as a first reading the following smoothing changes:

- Increase the corridor limits for the actuarial value of assets from 80%-120% of market value to 80%-140% of market value on June 30, 2009
- Reduce the corridor limits for the actuarial value of assets to 80%-130% of market value on June 30, 2010
- Return to the 80%-120% of market value corridor limits for the actuarial value of assets on June 30, 2011 and thereafter
- Isolate and amortize all gains and losses during fiscal year 2008-2009, 2009-2010 and 2010-2011 over fixed and declining 30 year periods (as oppose to the current rolling 30 year amortization)

IV. ANALYSIS:

This agenda item discusses the impact of the recent investment market decline on employer contribution rates and possible smoothing modifications.

On October 21, 2008, the Board was presented with an agenda item providing the impact of what various investment return scenarios for fiscal year 2008-2009 would have on both the funded status and the employer contribution rates. These scenarios had returns that ranged from -20% to +20%. Following that agenda item, a circular letter was mailed to all public agencies and school employers providing them with the same information.

After October 2008, investment markets declined further. The decline in assets has changed on a daily basis and for the last 2 months it has ranged from -25% to as low as -31%. As of April 27, 2009, the CalPERS fund had lost more than 25% of its value since July 1, 2008. While there are still 2 months left in the fiscal year, a significant market turn around does not appear to be imminent.

Such a decline will have a significant impact on the funded status of plans at CalPERS and on the contribution rates that employers will have to pay in the future.

In 2005, the CalPERS Board adopted rate stabilization methods to mitigate the impact of fluctuations in the investment return on employer rates. The smoothing methods adopted by the Board consisted of the following features:

- Rolling 15 year smoothing of investment gains and losses subject to a 80%-120% corridor around the market value of asset
- Rolling 30 year amortization of all unamortized gains or losses
- Minimum contribution rate computed by amortizing surplus, if any, over 30 years

The current method has done an excellent job for gains and losses that remain within the 20% corridor around the market value of assets. However, the current market declines moves the unrestricted actuarial value of assets about 44% away from the market value of assets and the current methods do not handle this unique market downturn very well.

Impact on Employer Rates Under the Current Method

Under the current method, the actuarial value of assets hits the 120% of market value of assets corridor with a return of about -13%. At that point the 15 year smoothing stops and all asset losses beyond the -13% are amortized over 30 years without further smoothing. The consequences are dramatically different increases in employer rates depending on each plan's ratio of market value of assets to covered payroll (the "Ratio"), also known as the Volatility Index.

Plans with relatively larger benefits and earlier retirement ages need to accumulate assets at a faster rate than their counterparts. Such plans tend to have a higher Ratio and are more susceptible to larger asset gains or losses. These asset gains or losses are amortized over 30 years and converted into a percentage of pay by dividing the payment by the projected payroll. Thus larger Ratios combined with large asset gains or losses translate into larger contribution changes relative to payroll.

The Actuarial Office calculates employer contribution rates for over 2000 plans each year. As of June 30, 2007, most public agency miscellaneous plans have ratios between 4 and 8 and public agency safety plans have ratios between 6 and 10. 49 public agency plans had an asset to payroll ratio greater than 10. From these 49 plans, 1 plan had a ratio of 20 and 4 plans had a ratio near 15. For the State plans, the ratios varied from 3 for the State Safety plan, 7 for the State Miscellaneous plan and to almost 10 for the California Highway Patrol plan. The ratio for the Schools pool on June 30, 2007 was about 5.

The table below shows the estimated impact of several 2008-2009 investment returns on employer rates combined with varying asset to payroll ratios under the current smoothing method. These employer contribution rate changes (as a percentage of payroll) would occur in fiscal year 2010-2011 for the State and Schools plans and for fiscal year 2011-2012 for local public agency employers. Because safety plans tend to have higher asset to payroll ratios, safety plans will be impacted more severely by the economic downturn.

Current Method

Projected Change in Rates (as a Percentage of Payroll) in 2010-2011 for the State and Schools and in 2011-2012 for Public Agencies

Asset/Payroll Ratio On June 30, 2007	2008-2009 Investment Return		
	-30%	-25%	-20%
4	4.6%	3.3%	2.0%
6	6.9%	5.0%	3.0%
8	9.3%	6.6%	4.0%
10	11.6%	8.3%	5.0%
15	17.4%	12.5%	7.6%
20	23.1%	16.6%	10.1%

As said previously, staff feels that the global market decline that has taken place in fiscal year 2008-2009 is a unique event. For this reason, we believe that this year should be handled differently. Staff has studied alternative smoothing approaches that could be used in a way to help mitigate some of the impact of this unique and catastrophic event.

<u>The Proposed Approach and Its Impact</u>

The approach that we recommend to respond to this unique event is as follows:

- Increase the corridor to 140% of market value of assets on June 30, 2009
- Reduce the corridor to 130% of market value of assets on June 30, 2010
- Return to the 80%-120% corridor on June 30, 2011 and thereafter
- Isolate and amortize all gains and losses during fiscal years 2008-2009, 2009-2010 and 2010-2011 over fixed and declining 30 year period (as oppose to the current rolling 30 year amortization)

Such a change in method would phase in the impact of the investment loss in 2008-2009 over 3 fiscal years. Below is a table showing the estimated impact of the same 2008-2009 investment return scenarios on employer rates for varying asset to payroll ratios under the proposed smoothing method change. These employer contribution rate changes (as a percentage of payroll) would occur in fiscal year 2010-2011 for the State and Schools plans and for fiscal year 2011-2012 for local public agency employers.

Proposed Approach

Projected Change in Rates (as a Percentage of Payroll) in 2010-2011 for the State and Schools and in 2011-2012 for Public Agencies

Asset/Payroll Ratio On June 30, 2007	2008-2009 Investment Return		
	-30%	-25%	-20%
4	1.6%	0.4%	0.4%
6	2.4%	0.7%	0.5%
8	3.2%	0.9%	0.7%
10	4.0%	1.1%	0.9%
15	5.9%	1.6%	1.4%
20	7.9%	2.2%	1.8%

An important aspect of this proposed change in the smoothing method is that it will prevent employer rates from increasing dramatically in subsequent fiscal years if the investment markets were to rebound in 2009-2010 or 2010-2011. To the extent CalPERS earns its assumed 7.75% investment return in the next two years, the employer rates are going to increase to levels we would see under the current methods but two years later. It is important to note that unless the investment markets recover, delaying increases in contribution rates only means that more money will have to be collected in the future.

This can be illustrated by looking at the two tables below showing the potential increases in employer rates under the current method and the proposed change for various returns in 2008-2009 and assuming a return of 7.75% for fiscal years 2009-2010 and 2010-2011.

Projected Change in Rates (as a Percentage of Payroll) in 2011-2012 for the State and Schools and in 2012-2013 for Public Agencies

Asset/Payroll Ratio On June 30, 2007	-30% in FY 08-09 and 7.75% in FY09-10		-25% in FY 08-09 and 7.75% in FY09-10		-20% in FY 08-09 and 7.75% in FY09-10	
	Current	Proposed	Current	Proposed	Current	Proposed
4	0.2%	1.6%	0.2%	1.3%	0.2%	0.4%
6	0.3%	2.4%	0.3%	2.0%	0.4%	0.5%
8	0.4%	3.2%	0.5%	2.6%	0.5%	0.7%
10	0.5%	4.0%	0.6%	3.3%	0.6%	0.9%
15	0.8%	6.0%	0.9%	4.9%	0.9%	1.3%
20	1.1%	7.9%	1.1%	6.5%	1.2%	1.8%

Projected Change in Rates (as a Percentage of Payroll) in 2012-2013 for the State and Schools and in 2013-2014 for Public Agencies						
Asset/Payroll Ratio On June 30, 2007	-30% in FY 08-09, 7.75% in FY09-10, and 7.75% in FY10-11		-25% in FY 08-09, 7.75% in FY09-10, and 7.75% in FY10-11		-20% in FY 08-09, 7.75% in FY09-10, and 7.75% in FY10-11	
	Current	Proposed	Current	Proposed	Current	Proposed
4	0.2%	1.7%	0.2%	1.8%	0.2%	1.4%
6	0.3%	2.5%	0.3%	2.7%	0.4%	2.1%
8	0.4%	3.3%	0.4%	3.6%	0.5%	2.9%
10	0.5%	4.1%	0.6%	4.4%	0.6%	3.6%
15	0.8%	6.2%	0.8%	6.7%	0.9%	5.3%
20	1.0%	8.3%	1.1%	8.9%	1.2%	7.1%

Beyond fiscal years 2012-2013 for the State and Schools and 2014-2015 for public agencies, under both the current and proposed method employer rates will continue to rise slowly over time at a pace of less than 1% of payroll even if CalPERS continues to earn its anticipated 7.75% return. It would take returns well in excess of 7.75% to prevent a steady rise in employer rates.

A projection of future employer contribution rates under the -25% scenario shown above can be found in Attachments 1 thru 4. These attachments compare the future rates for the current and proposed method as well as two other methods later described in the agenda item for a plan with an asset to payroll ratio of 7.

Impact on Funded Status

Whenever changes to smoothing are considered, one of the most important risk measures to look at is the funded status of the plan. As was done back in 2005, the proposed change in the smoothing method was tested by developing the probability that the funded status will drop below certain levels and or increase above certain levels.

Other than the temporary change in method, staff looked at other alternatives. As a starting point, staff looked at what other Retirement Systems in California were currently doing to smooth employer rates.

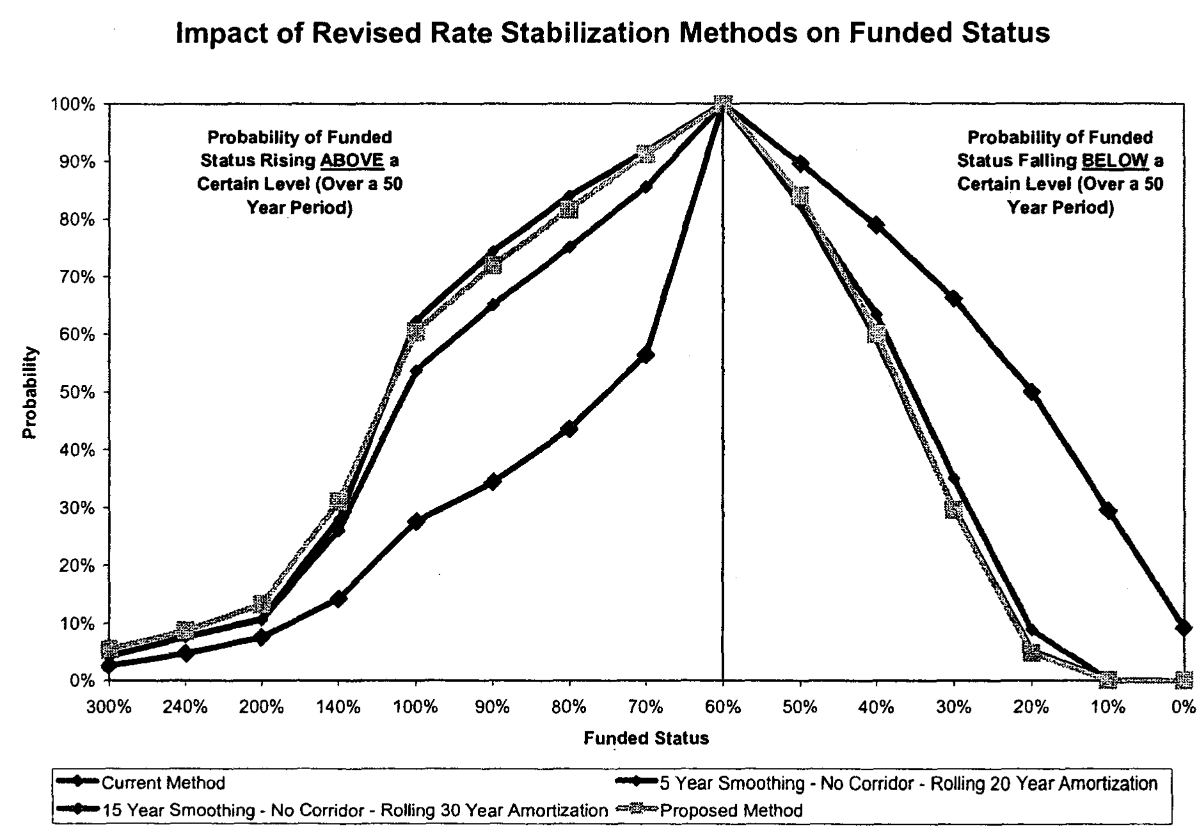
Staff gathered information related to smoothing methods implemented by other retirement systems within California. There are 58 counties in California of which 36 contract with CalPERS. The other 22 counties operate under the '37 Act Counties Retirement Law. All but 2 systems utilize 5 year smoothing while the other two use 3 and 10 year smoothing. About half use an 80% to120% corridor, while the others use no corridor. The amortization period of the unfunded liability ranged from 15 to 30 years.

Based on this information, staff first looked at eliminating the use of a corridor but keeping the current 15 year smoothing. This method was quickly dropped since it led to a probability of about 10% of the fund running out of money at some point over the next 50 years.

The method used by almost half of the 1937 County Act system consists of a 5 year smoothing period without the use of a corridor. Such method would produce greater fluctuation in rates than our method except in years when the corridor comes into play like this fiscal year.

We compared the risk to the funded status of using such method in combination with our existing practice of amortizing gains and losses over a rolling 30 year period. Under such method, the risk of seeing the funded status dropping to low levels was greater than our existing methods. Only by amortizing the gains and losses over a 20 year period instead of 30 did the risk become lower. However, the risk was not lower than the risk associated with the proposed temporary change in smoothing primarily due to the use of the fixed 30 year amortization. Having a fixed 30 year declining amortization of gains and losses for the next three year adds conservatism to the proposed method over the existing method.

Below is a graph showing the probability of the funding status either falling below or increasing above the current level. Note that this graph was prepared assuming a -28% return for 2008-2009 which would result in CalPERS having a funded status slightly below 60% on June 30, 2009.



Actuarial Standards of Practice

Certain standards of practice apply to most professions. Actuaries are guided by the Actuarial Standards of Practice (ASOP). ASOP 44, Selection and Use of Asset Valuation Methods for Pension Valuations, gives guidance in regards to the actuarial value of assets.

There are two main requirements under ASOP 44. First, the asset values must fall within a reasonable range around the corresponding market values, i.e. the corridor. Second, any differences between the actuarial value and the market value are recognized within a reasonable period of time, i.e. the smoothing period.

ASOP 44 does not specify what would fall outside the standard of practice but based on our professional opinion, the proposed change in method would continue to meet the standard of practice based on the risk shown on the graph on the previous page.

V. STRATEGIC PLAN:

This item is not a specific product of the Strategic or Annual Plans but is part of the regular and ongoing workload of the Actuarial & Employer Services Division.

VI. RESULTS/COSTS:

See Above.

David Lamoureux
Supervising Pension Actuary
Actuarial Office

Ron Seeling
Chief Actuary
Actuarial & Employer Services Branch

BART
Benefits

NOV 03 2009

Received

RESOLUTION OF INTENTION

TO APPROVE AN AMENDMENT TO CONTRACT

BETWEEN THE

BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

AND THE

BOARD OF DIRECTORS
SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

WHEREAS, the Public Employees' Retirement Law permits the participation of public agencies and their employees in the Public Employees' Retirement System by the execution of a contract, and sets forth the procedure by which said public agencies may elect to subject themselves and their employees to amendments to said Law; and

WHEREAS, one of the steps in the procedures to amend this contract is the adoption by the governing body of the public agency of a resolution giving notice of its intention to approve an amendment to said contract, which resolution shall contain a summary of the change proposed in said contract; and

WHEREAS, the following is a statement of the proposed change:

To provide Section 21574 (Fourth Level of 1959 Survivor Benefits) for local safety members only.

NOW, THEREFORE, BE IT RESOLVED that the governing body of the above agency does hereby give notice of intention to approve an amendment to the contract between said public agency and the Board of Administration of the Public Employees' Retirement System, a copy of said amendment being attached hereto, as an "Exhibit" and by this reference made a part hereof.

By:______________________________
Presiding Officer

____
Title

____
Date adopted and approved

CalPERS

EXHIBIT

California
Public Employees' Retirement System

AMENDMENT TO CONTRACT

Between the
Board of Administration
California Public Employees' Retirement System
and the
Board of Directors
San Francisco Bay Area Rapid Transit District

The Board of Administration, California Public Employees' Retirement System, hereinafter referred to as Board, and the governing body of the above public agency, hereinafter referred to as Public Agency, having entered into a contract effective December 1, 1958, and witnessed November 14, 1958, and as amended effective January 1, 1961, August 26, 1969, January 31, 1972, July 1, 1976, October 1, 1976, July 1, 1978, January 1, 1981, December 11, 1989, August 31, 1992, January 13, 1995, April 26, 1996, July 16, 1998, September 13, 2002, November 22, 2002, July 1, 2004 and October 19, 2009 which provides for participation of Public Agency in said System, Board and Public Agency hereby agree as follows:

A. Paragraphs 1 through 13 are hereby stricken from said contract as executed effective October 19, 2009, and hereby replaced by the following paragraphs numbered 1 through 13 inclusive:

1. All words and terms used herein which are defined in the Public Employees' Retirement Law shall have the meaning as defined therein unless otherwise specifically provided. "Normal retirement age" shall mean age 55 for local miscellaneous members and age 50 for local safety members.

2. Public Agency shall participate in the Public Employees' Retirement System from and after December 1, 1958 making its employees as hereinafter provided, members of said System subject to all provisions of the Public Employees' Retirement Law except such as apply only on election of a contracting agency and are not provided for herein and to all amendments to said Law hereafter enacted except those, which by express provisions thereof, apply only on the election of a contracting agency.

3. Public Agency agrees to indemnify, defend and hold harmless the California Public Employees' Retirement System (CalPERS) and its trustees, agents and employees, the CalPERS Board of Administration, and the California Public Employees' Retirement Fund from any claims, demands, actions, losses, liabilities, damages, judgments, expenses and costs, including but not limited to interest, penalties and attorneys fees that may arise as a result of any of the following:

   (a) Public Agency's election to provide retirement benefits, provisions or formulas under this Contract that are different than the retirement benefits, provisions or formulas provided under the Public Agency's prior non-CalPERS retirement program.

   (b) Public Agency's election to amend this Contract to provide retirement benefits, provisions or formulas that are different than existing retirement benefits, provisions or formulas.

   (c) Public Agency's agreement with a third party other than CalPERS to provide retirement benefits, provisions, or formulas that are different than the retirement benefits, provisions or formulas provided under this Contract and provided for under the California Public Employees' Retirement Law.

   (d) Public Agency's election to file for bankruptcy under Chapter 9 (commencing with section 901) of Title 11 of the United States Bankruptcy Code and/or Public Agency's election to reject this Contract with the CalPERS Board of Administration pursuant to section 365, of Title 11, of the United States Bankruptcy Code or any similar provision of law.

   (e) Public Agency's election to assign this Contract without the prior written consent of the CalPERS' Board of Administration.

(f) The termination of this Contract either voluntarily by request of Public Agency or involuntarily pursuant to the Public Employees' Retirement Law.

(g) Changes sponsored by Public Agency in existing retirement benefits, provisions or formulas made as a result of amendments, additions or deletions to California statute or to the California Constitution.

4. Employees of Public Agency in the following classes shall become members of said Retirement System except such in each such class as are excluded by law or this agreement:

   a. Local Police Officers (herein referred to as local safety members);

   b. Employees other than local safety members (herein referred to as local miscellaneous members).

5. In addition to the classes of employees excluded from membership by said Retirement Law, the following classes of employees shall not become members of said Retirement System:

   a. FIRE FIGHTERS.

6. The percentage of final compensation to be provided for each year of credited prior and current service for local miscellaneous members shall be determined in accordance with Section 21354 of said Retirement Law, subject to the reduction provided therein for service on and after January 1, 1960, the effective date of Social Security coverage, and prior to December 31, 1980, termination of Social Security, for members whose service has been included in Federal Social Security (2% at age 55 Full and Modified).

7. The percentage of final compensation to be provided for each year of credited prior and current service as a local safety member shall be determined in accordance with Section 21362.2 of said Retirement Law (3% at age 50 Full).

8. Public Agency elected and elects to be subject to the following optional provisions:

   a. Section 20042 (One-Year Final Compensation).

   b. Section 21024 (Military Service Credit as Public Service).

c. Section 21027 (Military Service Credit for Retired Persons).

d. Section 20692 (Employer Paid Member Contributions Converted to Payrate During the Final Compensation Period) for local safety members.

e. Section 20692 (Employer Paid Member Contributions Converted to Payrate During the Final Compensation Period) for local miscellaneous members in the following group:

BART Police Officers' Association
BART Police Management Association

f. Section 20965 (Credit for Unused Sick Leave).

g. Section 21574 (Fourth Level of 1959 Survivor Benefits) for local safety members only.

9. Public Agency, in accordance with Government Code Section 20790, ceased to be an "employer" for purposes of Section 20834 effective on July 1, 1978. Accumulated contributions of Public Agency shall be fixed and determined as provided in Government Code Section 20834, and accumulated contributions thereafter shall be held by the Board as provided in Government Code Section 20834.

10. Public Agency shall contribute to said Retirement System the contributions determined by actuarial valuations of prior and future service liability with respect to local miscellaneous members and local safety members of said Retirement System.

11. Public Agency shall also contribute to said Retirement System as follows:

a. Contributions required per covered member on account of the 1959 Survivor Benefits provided under Section 21574 of said Retirement Law. (Subject to annual change.) In addition, all assets and liabilities of Public Agency and its employees shall be pooled in a single account, based on term insurance rates, for survivors of all local safety members.

b. A reasonable amount, as fixed by the Board, payable in one installment within 60 days of date of contract to cover the costs of administering said System as it affects the employees of Public Agency, not including the costs of special valuations or of the periodic investigation and valuations required by law.

c. A reasonable amount, as fixed by the Board, payable in one installment as the occasions arise, to cover the costs of special valuations on account of employees of Public Agency, and costs of the periodic investigation and valuations required by law.

12. Contributions required of Public Agency and its employees shall be subject to adjustment by Board on account of amendments to the Public Employees' Retirement Law, and on account of the experience under the Retirement System as determined by the periodic investigation and valuation required by said Retirement Law.

13. Contributions required of Public Agency and its employees shall be paid by Public Agency to the Retirement System within fifteen days after the end of the period to which said contributions refer or as may be prescribed by Board regulation. If more or less than the correct amount of contributions is paid for any period, proper adjustment shall be made in connection with subsequent remittances. Adjustments on account of errors in contributions required of any employee may be made by direct payments between the employee and the Board.

B. This amendment shall be effective on the _____ day of _______________, ______.

BOARD OF ADMINISTRATION
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

BY_______________________________
LORI MCGARTLAND, CHIEF
EMPLOYER SERVICES DIVISION
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

BOARD OF DIRECTORS
SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

BY_______________________________
PRESIDING OFFICER

____
Witness Date

Attest:

____
Clerk

AMENDMENT ER# 0393
PERS-CON-702A