

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

Board of Directors  
Minutes of the 1,585th Meeting  
November 19, 2009

A regular meeting of the Board of Directors was held November 19, 2009, convening at 9:05 a.m. in the Board Room, 344 20<sup>th</sup> Street, Oakland, California. Vice President Fang presided; Kenneth A. Duron, District Secretary.

Directors present: Directors Fang, Franklin, Keller, McPartland, Murray, and Ward Allen.

Absent: None. Directors Radulovich, Sweet, and Blalock entered the meeting later.

Consent Calendar items brought before the Board were:

1. Approval of Minutes of the Meeting of October 22, 2009.
2. Renewal of Five Station Retail Permits and Increase of Permit Fees.
3. Station Retail Permit for Nematode Holdings, LLC.
4. Pass-Through Agreement for Federal Funds between BART and the City of Alameda for Transit and Access Study and Shuttle Service Improvements to BART Stations.
5. Award of Invitation for Bid No. 8856, Coverboard Brackets and Clamps.

Consent Calendar motions, as follow, were moved as a unit by Director Keller. Director Murray seconded the motions, which carried by unanimous electronic vote. Ayes – 6: Directors Fang, Franklin, Keller, McPartland, Murray, and Ward Allen. Noes – 0. Absent – 3: Directors Radulovich, Sweet, and Blalock.

1. That the Minutes of the Meeting of October 22, 2009, be approved.
2. That the General Manager, or her designee, be authorized to issue new station retail permits to Antojitos San Miguel (Permit No. F106-08), Pacific Coast Farmers' Market Association (Permit No. M319-09), Overnite Express (Permit No. M320-08), Mission Community Council (Permit No. M319-08), and Contra Costa County (Permit No. M318-09), each for terms of up to five years, plus two one-year options; to increase existing fees three percent after the first year of the permit; to increase fees at three percent per year for the remaining non-option years; and to increase rents three percent to five percent for each option year.
3. That the General Manager, or her designee, be authorized to issue a new station retail permit to Nematode Holdings LLC (Permit No. N218-07) for a term of up to 33 months.

4. That the General Manager be authorized to execute the Transit and Access Study and Fund Pass-Through Agreement with the City of Alameda in connection with access transit improvements to the 12<sup>th</sup> Street/Oakland City Center and/or Fruitvale BART Stations.
5. That the General Manager be authorized to award Invitation for Bid No. 8856, to L.B. Foster Co., in the amount of \$172,280.06, including applicable taxes, pursuant to notification to be issued by the General Manager, subject to compliance with the District's protest procedures and Federal Transit Administration's requirements related to protest procedures.

Consent Calendar report brought before the Board was:

1. Fiscal Year 2010 Budget: First Quarter Financial Report.

The Board Meeting recessed at 9:08 a.m.

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The Board reconvened at 12:03 p.m.

Directors present: Directors Fang, Franklin, Keller, McPartland, Murray, Radulovich, Sweet, Ward Allen, and Blalock.

Absent: None.

President Blalock brought the matter of Change Order to Contract No. 03CK-110B, Alameda County Two Underground Stations Electrical Construction, with LINC Lighting and Electrical, for Additional Lighting Improvements (C.O. No. 1) before the Board. Director Murray moved that the General Manager be authorized to execute Change Order No. 1 to Contract No. 03CK-110-B-1, 12<sup>th</sup> Street Station Electrical Construction, for additional lighting improvements at both North Berkeley Station and 12<sup>th</sup> Street/Oakland City Center Station, in the amount of \$803,186.00, to LINC Lighting and Electrical, LP. Director McPartland seconded the motion, which carried by roll call vote. Ayes – 7: Directors Fang, Franklin, Keller, McPartland, Murray, Radulovich, and Blalock. Noes – 1: Director Ward Allen. Abstain – 1: Director Sweet.

The Board Meeting recessed at 12:05 p.m.

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The Board reconvened at 1:34 p.m.

Directors present: Directors Fang, Franklin, Keller, McPartland, Murray, Radulovich, Sweet, Ward Allen, and Blalock.

Absent: None.

President Blalock called for the report of the Administration Committee.

President Blalock brought the matter of Condemnation of Real Property for the Warm Springs Extension Project before the Board.

Director Fang moved adoption of Resolution No. 5113, Resolution of Necessity to Condemn Real Property; Make Findings and Determinations; Authorize Eminent Domain Proceedings and Application for Possession Prior to Judgment for BART Parcels J-2035-1A and J-2035-3A; Draw and Deposit Warrant. Director Ward Allen seconded the motion, which carried by roll call vote by the required two-thirds majority. Ayes – 9: Directors Fang, Franklin, Keller, McPartland, Murray, Radulovich, Sweet, Ward Allen, and Blalock. Noes – 0.

Director Fang moved adoption of Resolution No. 5114, Resolution of Necessity to Condemn Real Property; Make Findings and Determinations; Authorize Eminent Domain Proceedings and Application for Possession Prior to Judgment for BART Parcels J-2038-1A and J-2038-3A; Draw and Deposit Warrant. Directors Franklin and Sweet seconded the motion, which carried by roll call vote by the required two-thirds majority. Ayes – 9: Directors Fang, Franklin, Keller, McPartland, Murray, Radulovich, Sweet, Ward Allen, and Blalock. Noes – 0.

President Blalock brought the matter of Free Transportation Passes for Military Personnel on Leave before the Board. Director Murray moved adoption of Resolution No. 5115, In the Matter of Adopting Modified Fare Rates: Demonstration Project for the Issuance of Free Tickets for Military Personnel on Leave. Director McPartland seconded the motion, which carried by roll call vote by the required two-thirds majority. Ayes – 8: Directors Fang, Franklin, Keller, McPartland, Murray, Sweet, Ward Allen, and Blalock. Noes – 1: Director Radulovich.

President Blalock brought the matter of Director Contribution Options to Reduce Budget Deficit before the Board, and moved that the Board of Directors forgo acceptance of its scheduled stipend increase during calendar year 2010. Director Sweet seconded the motion, which carried by roll call vote. Ayes – 8: Directors Fang, Franklin, Keller, McPartland, Murray, Sweet, Ward Allen, and Blalock. Noes – 1: Director Radulovich.

President Blalock moved that the annual expense limit of \$7,500 for Director attendance at conferences and meetings, contained in Board Rule 5-3.2(a)(2), be reduced to \$5,000 for fiscal year 2010. Director Fang seconded the motion, which carried by roll call vote. Ayes – 9: Directors Fang, Franklin, Keller, McPartland, Murray, Radulovich, Sweet, Ward Allen, and Blalock. Noes – 0.

Director Murray, Chairperson of the Administration Committee, brought the matter of Resolution Fixing the Employer's Contribution to Non-California Public Employee Retirement System Medical Premium for Active and Former Members of the Board of Directors before the Board, and moved adoption of Resolution No. 5116, In the Matter of Premium Contributions for Active and Eligible Former Directors for Non-CalPERS' Health Plans. Director Fang seconded the motion, which carried by roll call vote. Ayes – 9: Directors Fang, Franklin, Keller, McPartland, Murray, Radulovich, Sweet, Ward Allen, and Blalock. Noes – 0.

Director Murray brought the matter of Ratification of Collective Bargaining Agreement with BART Police Officers' Association before the Board, and moved adoption of Resolution No. 5117, In the Matter of Ratifying the 2009 – 2013 Collective Bargaining Agreement between the District and BART Police Officers' Association. Director Fang seconded the motion, which

carried by unanimous acclamation. Ayes – 9: Directors Fang, Franklin, Keller, McPartland, Murray, Radulovich, Sweet, Ward Allen, and Blalock. Noes – 0.

Director Murray reported that the Committee had received and discussed a report on Fiscal Year 2010 – 2011 Operating Budget Revision.

The Board Meeting recessed at 1:40 p.m.

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The Board reconvened at 1:41 p.m.

Directors present: Directors Fang, Franklin, Keller, McPartland, Murray, Radulovich, Sweet, Ward Allen, and Blalock.

Absent: None.

Director Ward Allen, Chairperson of the BART Police Department Review Committee, gave a brief report on the Committee meeting of November 4, 2009.

The Board Meeting recessed at 1:45 p.m.

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The Board reconvened at 1:50 p.m.

Directors present: Directors Franklin, Keller, McPartland, Murray, Radulovich, Sweet, Ward Allen, and Blalock.

Absent: Director Fang.

President Blalock called for the report of the Engineering and Operations Committee.

Director Keller, Chairperson of the Engineering and Operations Committee, brought the matter of Change Orders to Contract No. 15PM-110, Earthquake Safety Program Parking Structures Retrofit for the Concord, Daly City, El Cerrito del Norte, Hayward, Pleasant Hill and Walnut Creek BART Parking Structures, with West Bay Builders, for Differing Site Conditions before the Board, and moved that the General Manager be authorized to execute change orders for schedule impacts due to differing site conditions, in an aggregate amount not to exceed \$2 million, to Contract No. 15PM-110, BART Earthquake Safety Program Parking Structures Retrofit, with West Bay Builders. Director Murray seconded the motion, which carried by roll call vote. Ayes – 8: Directors Franklin, Keller, McPartland, Murray, Radulovich, Sweet, Ward Allen, and Blalock. Noes – 0. Absent – 1: Director Fang.

Director Keller brought the matter of Award of Contract No. 09DJ-120A, Installation of Anode Cables and Anode Array Assemblies for Cathodic Protection System before the Board, and moved that the General Manager be authorized to award Contract No. 09DJ-120A, for Installation of Anode Cables and Anode Array Assemblies for Transbay Tube Cathodic Protection System, to Manson Construction Company, for the bid price of \$2,252,850.00, pursuant to notification to be issued by the General Manager, subject to compliance with the

District's protest procedures, and Federal Transit Administration's requirements related to protest procedures. President Blalock seconded the motion, which carried by roll call vote. Ayes – 8: Directors Franklin, Keller, McPartland, Murray, Radulovich, Sweet, Ward Allen, and Blalock. Noes – 0. Absent – 1: Director Fang.

Director Keller reported that the Quarterly Performance Report, First Quarter Fiscal Year 2010 - Service Performance Review had been continued to a future meeting.

President Blalock noted that the sole item on the Planning, Public Affairs, Access, and Legislation Committee agenda had been continued to a future meeting.

President Blalock called for the General Manager's Report. General Manager Dorothy W. Dugger had no report.

President Blalock brought Roll Call for Introductions before the Board.

Director Radulovich requested an update on the District's graffiti programs.

President Blalock called for General Discussion and Public Comment.

Mr. Jerry Grace addressed the Board.

President Blalock noted that the Asian American Architects and Engineers had presented the District with an award recognizing the District's efforts in 2009 on the Disadvantaged Business Enterprise Program.

President Blalock announced that the Board would enter into closed session under Item 8-A (Conference with Labor Negotiators – Public Employee Performance Evaluation) of the regular meeting agenda, and that the Board would adjourn upon conclusion of the closed session.

The Board Meeting recessed at 1:55 p.m.

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The Board reconvened in closed session at 2:08 p.m.

Directors present: Directors Franklin, Keller, McPartland, Murray, Radulovich, Ward Allen, and Blalock.

Absent: Directors Fang and Sweet.

Director Ward Allen exited the meeting.

The Board Meeting adjourned at 2:25 p.m. in honor of Jim Jefferson and Cynthia Flores

Kenneth A. Duron  
District Secretary