



**RELOCATION PLAN**

**FOR THE**

**Hayward Maintenance Complex Project**

**SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT**

**October 25, 2013**

## TABLE OF CONTENTS

<b>PROJECT DESCRIPTION</b>	<b>Page</b>
1.0 Description of Project .....	1
1.1 Description of Project Area .....	1
1.2 Project Map .....	2
<b>PROJECT DATA</b>	
2.0 Summary of Project Impact .....	3
2.1 Discussion of Findings.....	3
2.2 Number of Displacements .....	3
2.3 Types of Displacements .....	4
2.4 Characteristics of Displaced Businesses .....	4
2.5 Owner/Renter Mix .....	4
2.6 Effect on Businesses .....	4
2.7 Number of Employees Impacted.....	5
2.8 Condition of Properties Acquired .....	5
2.9 Summary of Survey Data.....	5
2.10 Summary of Replacement Sites .....	5
2.10.1 Available Sites for Radiation Sterilization Company .....	5
2.10.2 Available Sites for Specialty Logistics Company .....	6
2.10.3 Available Sites for Stairway Supply Company.....	6
2.10.4 Available Sites for Moving Company and Cargo Distribution Company .....	7
2.10.5 Available Sites for Wholesale Food Distributor .....	7
2.10.6 Available Sites for Environmental Recycling Company .....	8
2.11 Statement on Concurrent Displacements .....	8
2.12 Availability Analysis .....	8
<b>RELOCATION PLANNING</b>	
3.1 Narrative on Identified Problems.....	8
3.1.1 Problems Associated with Replacement Sites .....	9
3.1.2 Problems Associated with the Cost to Relocate .....	9
3.2 Summary of BART's Relocation Assistance Program.....	9
3.2.1 Relocation Payments for Traditional Businesses .....	9
3.2.3 Relocation Payments for Owners of Rental Property .....	12
3.2.4 Cumulative Move Cost Estimate .....	12
3.3 Relocation Advisory Plan.....	13
3.3.1 Programs Assurances, Standards and Objectives .....	13
3.3.2 Relocation Advisory Assistance .....	13
3.3.3 Citizen Participation .....	15
3.4 General Information on Relocation Payments.....	15
3.5 Relocation Tax Consequences .....	16
3.6 Eviction Policy .....	16
3.7 Right to Appeal.....	16
3.8 Projected Dates of Displacement.....	16

### **Appendix A: Business Relocation Brochure for Federally Funded Projects**

## **Project Description**

### **1.0 Description of project**

The San Francisco Bay Area Rapid Transit District (BART) operates and maintains 104 miles of track in revenue service and 44 stations, serving an average of 390,000 passenger trips every weekday in the counties of San Francisco, Alameda, Contra Costa, and San Mateo. The Hayward Yard is one of four BART maintenance facilities serving the BART system. Over the next 30 years, BART will require additional vehicles to meet future demand associated with regional population growth, system expansions for the Warm Springs and Silicon Valley/San Jose Extension projects, and additional riders from the Oakland Airport Connector and eBART projects. Accordingly, BART requires expanded maintenance and storage facilities to serve the expanded operations. The proposed Hayward Maintenance Complex project (proposed project) would consist of acquisition of and improvements to three properties on the west side of the existing Hayward Yard and the construction of additional storage tracks for a maximum of 250 vehicles on undeveloped BART property on the east side of the Hayward Yard. The project site is zoned for industrial uses and the proposed activities would be consistent with this zoning designation.

The project will require the acquisition of three properties under one ownership that is operated as a warehouse/manufacturing facility. BART is currently negotiating with the property owner in an effort to secure possession of the property by early 2014.

There are a total of nine business entities that would be required to move from the site if BART were to acquire the property and proceed with project development. The entity leasing the space is considered to be an impacted business occupant. There are an additional eight businesses that lease space in the warehouses. BART also leases and occupies 48,000 square feet of the property on a month to month basis.

The project may be funded with both federal and local funds. When a project that displaces individuals is funded with federal funds, the displacing agency is required to provide relocation advisory assistance and relocation benefits in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act) and applicable relocation regulations (49 CFR Part 24). In addition to the requirements of the Uniform Act, public agencies in California must comply with Government Code 7260, *et seq.* and applicable regulations (CCR 25, Chapter 6). Since this BART project will displace businesses, this Relocation Plan (Plan) was prepared to meet the relocation planning obligations under applicable law.

### **1.1 Description of Project Area**

The Hayward Maintenance Complex Project will be developed in the cities of Hayward and Union City in Alameda County, California. The maintenance complex will lie west of one existing Union Pacific Railroad rail line (Oakland Subdivision) and west of and immediately adjacent to BART's existing Hayward Yard Facility, east of a second rail line (Niles Subdivision), south of Industrial Parkway (in Hayward) extending south of Whipple Road to about D Street (in Union City).

BART is attempting to acquire three adjacent parcels that are operated as one warehouse facility. The warehouse facility is located in the city of Hayward and is comprised of four buildings:

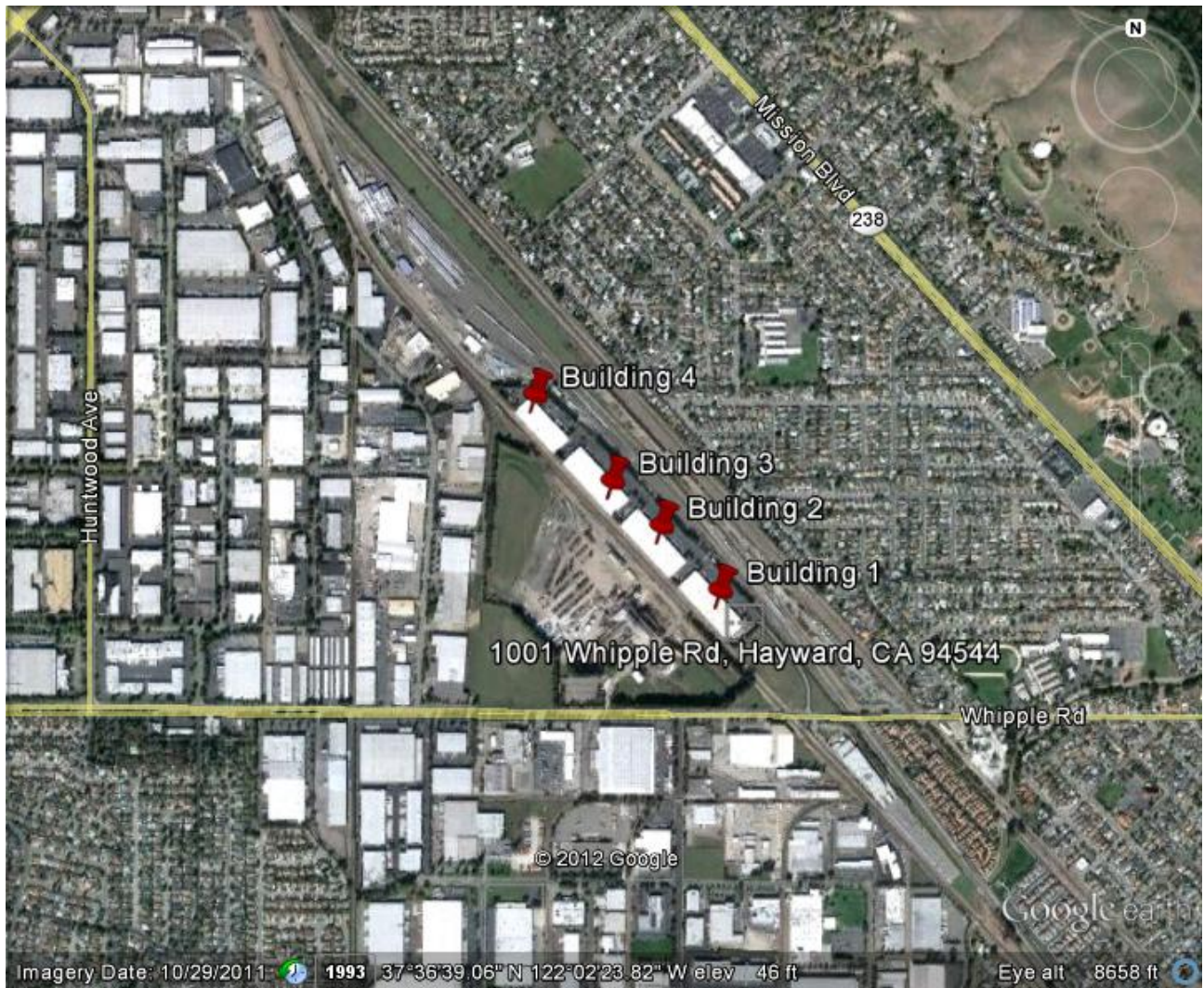
Building One  
1001, 1011 and 1029 Whipple Road

Building Two  
1035, 1037 and 1055 Whipple Road

Building Three  
Vacant and partially leased by BART

Building Four  
1093 Whipple Road

## 1.2 Project Map



## **Project Data**

### **2.0 Summary of Project Impact**

As with all projects, the individuals that will be directly impacted by the project will suffer some disruption. Their normal business activities will be interrupted to plan, prepare for and complete a move. Relocation advisory services and payment of relocation benefits will minimize some of the disruption to the displaced businesses. Relocation advisory assistance and relocation benefits will be discussed later in this document. The project will have minimal impact on the adjacent businesses and residents. None of the businesses being required to move employ a large number of local residents. None of the businesses being required to move provide a basic service or product to the residents in the neighborhood.

### **2.1 Discussion of Findings**

Based on the survey interviews, the observation of the interviewers and the analysis of the data collected the following are the most significant findings:

1. There are no residents that will be displaced by the project.
2. There are nine businesses that will be displaced.
3. There are not a substantial number of employees that will be impacted by the project.
4. A high level of advisory assistance is required to mitigate problems of the businesses impacted by the project.
5. The time frame for vacation of the property is reasonable to mitigate the problems of most of the businesses; but there is little flexibility in the time schedule. Advisory services have already begun to ensure successful relocation of the businesses.

### **2.2 Number of Displacements**

Individuals, families, businesses and non-profit organizations that are eligible to receive relocation benefits are collectively known as displaced persons. As it applies to the definition of a displaced person for an acquisition project, federal and California relocation regulations are similar. The term displaced person means any person who moves from the real property or moves his or her personal property from the real property as the direct result of the acquisition of the property. A person who initially enters into occupancy of the property after the date of its acquisition for the project is specifically excluded from consideration as a displaced person. These individuals are referred to as post acquisition occupants in this plan.

There are nine entities that meet the definition of displaced business and, therefore, each entity is now eligible to receive relocation benefits and advisory assistance. The first business is the property owner who rents the warehouse facilities. The remaining eight businesses are light industrial or warehouse use businesses that lease space. Most of the businesses reportedly have written leases and have occupied the spaces for a number of years. One business moved in recently and is reportedly on a month to month rental agreement.

There are approximately five additional entities who may be determined to be displaced persons as a result of the project activities. If that determination is made after BART has an opportunity to review their contracts and understand what personal property they may have on site, then those entities will receive advisory assistance and assistance with the cost of the move to a replacement site.

### 2.3 Types of Displacements

This section addresses parties that are displaced, meaning parties eligible for both relocation benefits and advisory assistance. All potential displacees are considered traditional businesses.

In order to protect the business interests of the impacted occupants, no business names are being identified in this planning document. However, their general characteristics and needs have been identified in meetings with BART staff and their Relocation Advisor and are presented below for planning and information purposes.

### 2.4 Characteristics of Displaced Businesses

One of the displaced businesses is the property owner who leases warehouse space. The remaining eight occupants are business entities operating from the warehouse facility. There are no residential households that will be impacted by the project. The property is zoned as a Mixed Industrial district with primarily Warehouse or Industrial uses.

<i>Business Address Whipple Road Hayward, CA</i>	<i>Type of Business</i>	<i>Monthly Rent</i>	<i>Occupied Space</i>	<i>Years at This Location</i>
1001-1093 Whipple Road	Property Owner/Manager	N/A	None	
1001 Whipple Road	Radiation Sterilization	\$0.475/sf	36,000 sf	7 years
1011 Whipple Road	Moving Company	Unknown	24,000 sf	4 months
1029 Whipple Road	Specialty Logistics	\$0.50/sf	60,000 sf	4 years
1029 Whipple Road	Trucking Company	Unknown	500 sf	4 years
1035 Whipple Road	Stairway Supply	Unknown	17,000 sf	Unknown
1037 Whipple Road	Cargo Distribution	Unknown	31,000 sf	Unknown
1055 Whipple Road	Wholesale Food Distributor	Unknown	24,000 sf	6 years
1093 Whipple Road	Environmental Recycler	Unknown	84,400 sf	6 years

### 2.5 Owner/Renter Mix

The property owner leases space to occupants and may have personal property on site to relocate. The eight remaining businesses lease space. BART has not received copies of all of the leases so a summary of those leases cannot be included herein.

### 2.6 Effect on Businesses

The project will have minimum effect on businesses adjacent to the project area. The businesses being displaced will be impacted in that they will be required to move from the property and reestablish their businesses. Though our preliminary site search revealed that there were replacement sites available for each of the businesses, they may have to pay substantially higher rents at replacement locations.

At least two of the businesses may have a more limited selection of replacement sites due to the nature of their business, parking and yard requirements. One of the businesses also has requirements related to certification of a new facility. These businesses in particular will need extraordinary advisory assistance to successfully relocate due to the nature of their businesses.

## 2.7 Number of Employees Impacted

Approximately 25 to 35 persons are employed on site. Some business owners noted that location was a factor for their employees. If those businesses choose to relocate to available sites in the area, their employees should experience no significant impact.

## 2.8 Condition of Property Acquired

The subject property is in good condition and is adequately maintained. There is no visible evidence of significant deferred maintenance or of any blatant health or safety code violations.

## 2.9 Summary of Survey Data

The data collected during the survey indicates that the businesses impacted by the project are viable businesses. BART has not had access to lease information for the majority of the businesses. At least one business has renewed its lease during BART's negotiations for the property. One other tenant moved into the facility recently after BART initiated negotiations. The information that is available indicates that occupants are paying between \$0.475 and \$0.50 per square foot per month for the property on Whipple Road.

## 2.10 Summary of Replacement Sites

Following are comparable replacement sites for lease. This information has been forwarded to each business for consideration. The one trucking company that subleases office space from the specialty logistics company is considering options for another sublease situation.

### 2.10.1 Available Sites for Lease for Radiation Sterilization Company

This business currently occupies 36,000 square feet of office and warehouse space. Their current lease rate is \$0.475/sf.

<i>Site Address</i>	<i>Size</i>	<i>Lease Rate</i>	<i>Property Detail</i>
2305 Lincoln Avenue, Hayward	36,000 sf	For Discussion	24' clearance, two grade level doors, 5,000 sf of office space, 850 amps, 480 volts, full sprinkler system, good freeway access.
Decoto Road at 7 <sup>th</sup> Street, Union City	36,200 sf	\$13,500/mo	35' clearance, four roll up doors, 4,000 to 6,000 amps, 480 volts, large yard, ample parking.
1950 Alpine Way, Hayward	42,711sf building on 4.32 acres	Building: \$0.48/sf Yard: \$0.16/sf	Building and yard can be leased together or separately, 24' clearance, four dock high doors, two drive in doors, 600 amps, 480 volts, fully sprinkler system, large paved yard.
3455 Arden Road, Hayward	36,872 sf	\$0.39/sf	24' clearance, six dock high doors, one drive in door, good freeway access.
3455 Arden Road, Hayward	40,232 sf	\$0.39/sf	24' clearance, 12 dock high doors, three grade level doors, heavy power, skylights, pallet racking available for purchase, good freeway access.
47650 to 47654 Kato Road, Fremont	34,272 sf	\$0.48/sf	24' clearance, six dock high doors, three grade level doors, full sprinkler system, good freeway access.

### 2.10.2 Available Sites for Lease for Specialty Logistics Company

This business currently occupies 60,000 square feet of office and warehouse space. Their current lease rate is approximately \$.50/sf NNN. This business subleases a portion of its office space to a trucking company. If possible, the two businesses will establish a similar relationship in a replacement site.

<b>Site Address</b>	<b>Size</b>	<b>Lease Rate</b>	<b>Property Detail</b>
1950 Alpine Way, Hayward	42,711 sf on 4.32 acres	Building: \$0.48/sf Yard: \$0.16/sf	Building and yard can be leased together or separately. 24' clearance, 4 dock high doors, two drive in doors, 600 amps/480 volts. Fully sprinkler system. Large, paved yard.
25864 Clawiter Avenue, Hayward	54,560 sf	\$0.39/sf	20' clearance, two dock high doors, good visibility, ample parking, good freeway access.
3343 Arden Road, Hayward	60,000 to 119,149 sf	\$0.39/sf	24' clearance, 26 dock high doors, one drive in door, large side yard.
48664 Milmont Drive, Fremont	68,441 sf	\$0.55/sf	24' clearance, dock level loading, office space, ample parking.
31101 Wiegman Road, Hayward	35,000 to 71,600sf	\$0.44/sf	22' clearance, 12 dock high doors, three grade level doors, heavy power, skylights, pallet racking available for purchase, good freeway access.
45101 Industrial Drive, Fremont	58,508 to 125,501 sf	\$0.49/sf	24 to 28' clearance, 32 dock high doors, three grade level doors, full sprinkler system, ample parking, good freeway access.

### 2.10.3 Available Sites for Lease for Stairway Supply Company

This business currently occupies 17,000 square feet of office and warehouse space. Their current lease rate is unknown.

<b>Site Address</b>	<b>Size</b>	<b>Lease Rate</b>	<b>Property Detail</b>
2901 Bayview Drive, Fremont	16,073 sf	Negotiable	24' clearance, four dock high doors, two grade level doors, 1,607 sf of office space.
3115 San Benito Street, Hayward	23,642 sf	\$0.69/sf	22' clearance, three dock high doors, 2,364 sf of office space, building is divisible, good freeway access.
41454 Christy Street, Fremont	21,120 sf	Negotiable	22' clearance, four dock high doors, good freeway access.
2671 McCone Avenue, Hayward	21,053 sf	\$0.52/sf	25' clearance, nine dock high doors, drive in loading, paved yard, good freeway access.
2245 National Avenue, Hayward	16,918 sf	\$0.55/sf	18' clearance, one dock high door, three drive in doors, full sprinkler system, ample parking.
3395 Arden Way, Hayward	19,968 sf	\$0.42/sf	22' clearance, two dock high doors, four drive in doors.
790 Sandoval Way, Hayward	13,500 sf	\$0.55/sf	24' clearance, two dock high doors, two drive in doors.
45897 Hotchkiss Street, Fremont	17,376 sf	\$0.48/sf	24' clearance, two dock high doors, one grade level door.



### 2.10.4 Available Sites for Lease for Moving Company and Cargo Distribution Company

There are two businesses that would need to relocate into approximately 24,000 to 31,000 square feet of warehouse space. The first is a professional moving company and the second is a cargo distribution company. No information is available on their lease rates.

<b>Site Address</b>	<b>Size</b>	<b>Lease Rate</b>	<b>Property Detail</b>
26511 Danti Court, Hayward	30,321 sf	\$0.44/sf	28' clearance, 48 dock high doors, ten grade level doors, 400 amps, 480 volts, good freeway access.
2305 Lincoln Avenue, Hayward	36,000 sf	For Discussion	24' clearance, eight dock high doors, two grade level doors, 850 amps, 480 volts, full sprinkler system, ample parking, good freeway access.
Decoto Road at 7 <sup>th</sup> Street, Union City	36,200 sf	\$13,500/mo	35' clearance, four roll up doors, 4,000 to 6,000 amps, 480 volts, large yard, ample parking.
26545 Danti Court, Hayward	30,321 sf	\$0.44/sf	28 to 30' clearance, eight dock high doors, one grade level door, full sprinkler system, good freeway access.
47650-47654 Kato Road, Fremont	34,272 sf	\$0.48/sf	24' clearance, six dock high doors, three grade level doors, full sprinkler system, good freeway access.
31101 Wiegman Road, Hayward	35,000 – 71,600 sf	\$0.44/sf	22' clearance, 22 dock high doors, three grade level doors, heavy power, skylights, pallet racking available for purchase, good freeway access.
47315 Mission Falls Court, Hayward	33,017 sf	\$0.39/sf	22' clearance, one dock high door, three grade level doors, ample parking.

### 2.10.5 Available Sites for Lease for Wholesale Food Distributor

This business currently occupies 24,000 square feet of office and warehouse space. Their current lease rate is unknown.

<b>Site Address</b>	<b>Size</b>	<b>Lease Rate</b>	<b>Property Detail</b>
30840 San Clemente, Hayward	25,920 sf	\$0.50/sf	24' clearance, eight dock high doors, three drive in doors, office can be added, full sprinkler system.
2305 Lincoln Avenue, Hayward	36,000 sf	For Discussion	24' clearance, eight dock high doors, two grade level doors, 850 amps, 480 volts, full sprinkler system, ample parking, good freeway access.
42425 Christy Street, Fremont	21,705 sf	\$0.49/sf	23 to 25' clearance, three dock high doors, one grade level door, office can be added, ample parking, good freeway access.
47650-47654 Kato Road, Fremont	34,272 sf	\$0.48/sf	24' clearance, six dock high doors, three grade level doors, full sprinkler system, good freeway access.
2671 McCone Avenue, Hayward	21,053 sf	\$0.52/sf	25' clearance, nine dock high doors, drive in loading, paved yard, good freeway access.
3115 San Benito Street, Hayward	23,642 sf	\$0.69/sf	22' clearance, three dock high doors, 2,364 sf of office space, building is divisible, good freeway access.
41454 Christy Street, Fremont	21,120 sf	Negotiable	22' clearance, four dock high doors, good freeway access.
1747 Atlantic Court, Union City	23,556 sf	\$0.44/sf NNN	1,848 sf of office area with five private offices, three dock doors, one grade level door, 24' clearance, 225 amp, 277/480v, 3PH electrical service, full sprinkler system.

### 2.10.6 Available Sites for Lease for Environmental Recycler

This business currently occupies 84,400 square feet of office and warehouse space. Their current lease rate is unknown.

<i>Site Address</i>	<i>Size</i>	<i>Lease Rate</i>	<i>Property Detail</i>
1950 Alpine Way, Hayward	42,711 sf on 4.32 acres	Building: \$0.48/sf Yard: \$0.16/sf	Building and yard can be leased together or separately. 24' clearance, 4 dock high doors, two drive in doors, 600 amps/480 volts. Fully sprinkler system. Large, paved yard.
25864 Clawiter Avenue, Hayward	54,560 sf	\$0.39/sf	20' clearance, two dock high doors, good visibility, ample parking, good freeway access.
3343 Arden Road, Hayward	60,000 to 119,149 sf	\$0.39/sf	24' clearance, 26 dock high doors, one drive in door, large side yard.
31101 Wiegman Road, Hayward	35,000 to 71,600sf	\$0.44/sf	22' clearance, 12 dock high doors, three grade level doors, heavy power, skylights, pallet racking available for purchase, good freeway access.
45101 Industrial Drive, Fremont	58,508 to 125,501 sf	\$0.49/sf	24 to 28' clearance, 32 dock high doors, three grade level doors, full sprinkler system, ample parking, good freeway access.
31775 Hayman Street, Hayward	128,640 sf	\$0.39/sf	25 to 30' clearance, grade level loading, 4.19 acres of outdoor space, heavy distribution power, truck scale can be negotiated with lease.
3525 Arden Road, Hayward	75,000 to 151,389 sf	\$0.38/sf	28' clearance, 14 dock high doors, two drive in doors, racks can be negotiated with lease, motion control lighting, good freeway access.

### 2.11 Statement of Concurrent Displacements

There are no known significant projects in close proximity to the BART Hayward Maintenance Complex project area that would compete for available warehouse space.

### 2.12 Availability Analysis

Review of all of the collected data regarding the availability of replacement sites indicate that there are available replacement sites for each of the businesses that will be impacted by the project. BART has determined that displacement will be staggered which will allow a greater amount of time and sites for the businesses to choose from.

## RELOCATION PLANNING

### 3.1 Narrative on Identified Problems

The most significant problems associated with this project are the issues that will be confronted by the businesses that must move from the property as a result of the project. Those problems can best be classified into two separate areas; securing replacement locations and costs associated with relocating to replacement sites.

### **3.1.1 Problems Associated with Replacement Sites**

There are sufficient replacement sites to accommodate the businesses that will be displaced by the project. However, the cost for the replacement properties may be higher than the costs currently paid by the businesses. Some of the businesses will require use permits that could be difficult to obtain. BART has been able to work with the businesses to provide a minimum of eleven months to identify and secure replacement sites. The property impact will be staggered by building and required displacement dates reflect the actual date the area is needed for construction. BART also modified its schedule to accommodate a business that requires significant permitting and certifications. That business will be able to remain on site through May of 2016.

BART's modifications to its schedule will allow a greater number of replacement sites to be available for the businesses to choose from.

### **3.1.2 Problems Associated with the Cost to Relocate**

BART's Relocation Assistance Program provides for certain monetary assistance for business relocation costs. However, reimbursement for those costs is limited in some cases. A Relocation Advisor is attempting to work closely with each business to identify eligible and ineligible costs prior to those costs being incurred. The goal is to help the businesses successfully relocate by using the Relocation Assistance Program and the assistance that is available under BART's acquisition program to mitigate costs as much as possible.

## **3.2 Summary of BART's Relocation Assistance Program**

BART has adopted federal and state relocation assistance guidelines for the implementation of this federally and locally funded project. Therefore, each of the eight eligible occupants may receive assistance as outlined in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act) and applicable relocation regulations (49 CFR Part 24), and California Government Code 7260, *et seq.* and implementing regulations found in Title 25, California Code of Regulations Chapter 6, Article 1, Section 6000, *et seq.*

### **3.2.1 Relocation Payments for Traditional Businesses**

Traditional businesses are entitled to the entire bundle of relocation entitlements. Since there are federal funds in this project the bundle or entitlements required under federal relocation regulations were used in estimating relocation costs.

1. Transportation of the displaced person and personal property.
2. Packing, crating, unpacking, and uncrating of the personal property.
3. Disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances, and other personal property. For businesses, farms or nonprofit organizations this includes machinery, equipment, substitute personal property, and connections to utilities available within the building; it also includes modification to the personal property, including those mandated by Federal, State or local law, code or ordinance necessary to adapt it to the replacement structure, the replacement site or the utilities at the replacement site, and modifications necessary to adapt the utilities at the replacement site to the personal property.
4. Storage of the personal property for a period not to exceed 12 months, unless the Agency determines that a longer period is necessary.

5. Insurance for the replacement value of the property in connection with the move and necessary storage.
6. The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.
7. Any license, permit, fees, or certification required of the displaced person at the replacement location. However, the payment may be based on the remaining useful life of the existing license, permit, fees or certification.
8. Professional services as the Agency determines to be actual, reasonable and necessary for:
  - (a) Planning the move of the personal property;
  - (b) Moving the personal property; and
  - (c) Installing the relocated personal property at the replacement location.
9. Re-lettering signs and replacing stationery on hand at the time of displacement that are made obsolete as result of the move.
10. Actual direct loss of tangible personal property incurred as a result of moving or discontinuing the business or farm operation. The payment shall consist of the lesser of:
  - (a) The fair market value in place of the item, as is for continued use, less the proceeds from its sale. (To be eligible for payment, the claimant must make a good faith effort to sell the personal property, unless the Agency determines that such effort is not necessary. When payment for property loss is claimed for goods held for sale, the market value shall be based on the cost of the goods to the business, not the potential selling price.); or
  - (b) The estimated cost of moving the item as is, but not including any allowance for storage; or for reconnecting a piece of equipment if the equipment is in storage or not being used at the acquired site. (If the business is discontinued, the estimated cost of moving the item shall be based on a moving distance of 50 miles.)
11. The reasonable cost incurred in attempting to sell an item that is not to be relocated.
12. Purchase of substitute personal property. If an item of personal property, which is used as part of a business or farm operation is not moved but is promptly replaced with a substitute item that performs a comparable function at the replacement site, the displaced person is entitled to payment of the lesser of:
  - (a) The cost of the substitute item, including installation costs of the replacement site, minus any proceeds from the sale or trade-in of the replaced item; or
  - (b) The estimated cost of moving and reinstalling the replaced item but with no allowance for storage. At the Agency's discretion, the estimated cost for a low cost or uncomplicated move may be based on a single bid or estimate.
13. Searching for a replacement location. A business or farm operation is entitled to reimbursement for actual expenses, not to exceed \$2,500, as the Agency determines to be reasonable, which are incurred in searching for a replacement location, including:
  - (a) Transportation;

- (b) Meals and lodging away from home;
  - (c) Time spent searching, based on reasonable salary or earnings;
  - (d) Fees paid to a real estate agent or broker to locate a replacement site; exclusive of any fees for commissions related to the purchase of such sites;
  - (e) Time spent in obtaining permits and attending zoning hearings; and
  - (f) Time spent negotiating the purchase of a replacement site based on reasonable salary or earnings.
14. Low value/high bulk. When the personal property to be moved is of low value and high bulk, and the cost of moving the property would be disproportionate to its value in the judgment of the displacing Agency, the allowable moving cost payment shall not exceed the lesser of: The amount which would be received if the property were sold at the site or the replacement cost of a comparable quantity delivered to the new business location.
15. Other moving-related expenses that are not listed as ineligible and that BART determines to be reasonable and necessary.
16. Related nonresidential eligible expenses. The following expenses, in addition to those provided above for moving personal property, shall be provided if the Agency determines that they are actual, reasonable and necessary:
- (a) Connection to available nearby utilities from the right of way to improvements at the replacement site.
  - (b) Professional services performed prior to the purchase or lease of a replacement site to determine its suitability for the displaced person's business operation including but not limited to, soil testing, feasibility and marketing studies (excluding of any fees or commissions related to such site. BART must pre-approve hourly rates.
  - (c) Impact fees or one-time assessments for anticipated heavy utility usage, as determined necessary by BART.
17. Reestablishment expenses. In addition to the payments stated above, displaced businesses in the HMC project area may be entitled to receive a payment, not to exceed \$10,000, for expenses actually incurred in relocating and reestablishing at a replacement site. Reestablishment expenses must be reasonable and necessary, as determined by BART. They include, but are not limited to, the following:
- (a) Repairs or improvements to the replacement real property as required by Federal, State or local law, code or ordinance.
  - (b) Modifications to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business.
  - (c) Construction and installation costs for exterior signing to advertise the business.
  - (d) Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, paneling, or carpeting.
  - (e) Advertisement of replacement location.
  - (f) Estimated increased costs of operation during the first two years at the replacement site for such items as:
    - i. Lease or rental charges,

- ii. Personal or real property taxes,
  - iii. Insurance premiums, and
  - iv. Utility charges, excluding impact fees.
- (g) Other items that BART considers essential to the reestablishment of the business.

Alternatively, a business may choose to receive a fixed payment for moving expenses-non-residential moves (In Lieu Payment) in lieu of the payments for actual moving and related expenses, and actual reasonable reestablishment expenses provided described above. Such fixed payment, except for payment to a nonprofit organization, shall equal the average annual net earnings of the business, as computed in accordance with paragraph (e) of this section, but not less than \$1,000 nor more than \$20,000. The displaced business is eligible for the payment if the Agency determines that:

1. The business owns or rents personal property which must be moved in connection with such displacement and for which an expense would be incurred in such move; and, the business vacates or relocates from its displacement site;
2. The business cannot be relocated without a substantial loss of its existing patronage (clientele or net earnings). A business is assumed to meet this test unless the Agency determines that it will not suffer a substantial loss of its existing patronage;
3. The business is not part of a commercial enterprise having more than three other entities which are not being acquired by the Agency, and which are under the same ownership and engaged in the same or similar business activities.
4. The business is not operated at a displacement dwelling solely for the purpose of renting such dwelling to others;
5. The business is not operated at the displacement site solely for the purpose of renting the site to others; and
6. The business contributed materially to the income of the displaced person during the 2 taxable years prior to displacement.

### **3.2.3 Relocation Payments to Owners of Rental Property**

Owners of rental property are entitled to all moving actual and reasonable moving expenses of any traditional business including reestablishment expenses with the exception that they are not entitled to a fixed payment.

### **3.2.4 Cumulative Move Cost Estimate**

The total estimated relocation cost for five of the displaced occupants is \$10,000,000. Estimated relocation costs will be updated as further information is obtained. It is important to understand that this cost does not include any cost for the acquisition of tenant owned improvements, the cost for payment of any loss of goodwill claims, the cost for leasehold interest or the payment of any relocation or associated costs to post acquisition occupants.

### **3.3 Relocation Advisory Plan**

BART is continuing its efforts to negotiate for the purchase of the properties. Five of the eight businesses are working with BART and its relocation consultants to plan for their move from the building. The remaining three entities have not responded to repeated requests for meetings to plan for the relocation effort.

#### **3.3.1 Program Assurances, Standards and Objectives**

The relocation program to be implemented by BART will conform to the standards and provisions of the California Government Code Section 7260 et. seq., Title 25, Chapter 6 of the California Code of regulations, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended and 49 Code of Federal Regulations part 24.

Pursuant to applicable guidelines, program objectives will be as follows:

1. To fully inform eligible Project area occupants of the nature of and procedures for obtaining relocation assistance and benefits.
2. To determine the needs of each business and non-profit organization displacee eligible for assistance.
3. To classify as soon as possible the reality and personal property of the displaced businesses.
4. To estimate the number, type and size of businesses to be displaced with the approximate number of employees that may be affected.
5. An estimate of the availability of replacement business sites.
6. To provide whatever assistance is required to ensure that the relocation process does not result in different or separate treatment on account of race, color, religion, national origin, sex, marital status or other arbitrary circumstances.
7. To supply information concerning federal and state business programs and other governmental programs providing assistance to displaced persons.
8. To insure that each displaced business receives the maximum relocation benefits they are entitled to receive in accordance with all aforementioned guidelines, as applicable.
9. To assist each eligible person to complete claims for payments and benefits.
10. To inform all eligible persons subject to displacement of BART's policies with regard to eviction and property management.
11. To establish and maintain a formal grievance procedure for use by displaced persons seeking administrative review of BART's decisions with respect to relocation assistance.
12. In addition, before being required to move all occupants, including post acquisition occupants will receive: 1) all required information regarding the BART's Relocation Advisory Assistance Program at least ninety days prior to the date they must move, and 2) ninety days' written notice prior to the date they must move.

### 3.3.2 Relocation Advisory Assistance

**General.** BART shall carry out a relocation assistance advisory program which satisfies the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), and Executive Order 11063 (27 FR 11527, November 24, 1962). If BART determines that a person occupying property adjacent to the real property acquired for the project is caused substantial economic injury because of such acquisition, it may offer advisory services to such person.

**Services to be provided.** The advisory program shall include such measures, facilities, and services as may be necessary or appropriate in order to:

1. Determine, for non-residential (businesses, farm and non-profit organizations) displacements, the relocation needs and preferences of each business (farm and non-profit organization) to be displaced and explain the relocation payments and other assistance for which the business may be eligible, the related eligibility requirements, and the procedures for obtaining such assistance. This shall include a personal interview with each business. At a minimum, interview with displaced business owners and operators should include the following items:
  - a. The business's replacement site requirements, current lease terms and other contractual obligations and the financial capacity of the business to accomplish the move.
  - b. Determination of the need for outside specialists in accordance with applicable regulations.
  - c. For businesses, an identification and resolution of personal property/realty issues.
  - d. An estimate of the time required for the business to vacate the site.
  - e. An estimate of the anticipated difficulty in locating a replacement property.
  - f. An identification of any advance relocation payments required for the move, and the Agency's legal capacity to provide them.
2. Coordination of relocation activities. Relocation activities shall be coordinated with project work and other displacement-causing activities to ensure that, to the extent feasible, persons displaced receive consistent treatment and the duplication of functions is minimized.
3. Provide all displaced occupants with a general information notice, and as applicable a letter of eligibility or a letter that they are not eligible for relocation benefits.
4. Any person who occupies property acquired by an agency, when such occupancy began subsequent to the acquisition of the property, and the occupancy is permitted by a short-term rental agreement or an agreement subject to termination when the property is needed for a program or project, shall be eligible for advisory services, as determined by the agency.



### **3.3.3 Citizen Participation**

BART has encouraged citizen participation and comments in the preparation of this Relocation Plan. Consistent with obligations under Section 6012 (Citizen Participation) of the California Code of Regulations, Title 25, Chapter 6 the District will provide:

1. Full and timely access to all documents relevant to the Relocation Assistance Program.
2. Technical assistance necessary to interpret elements of the Relocation Plan and other pertinent materials.
3. Copies of this Relocation Plan shall be submitted for review (30) days prior to final approval by BART to the following:
  - a. Interested parties who desire to comment will be invited to submit written or oral comments and objections, and such written comments shall be attached to the Relocation Plan when it is forwarded to the District for final approval.
  - b. A general notice concerning the availability of this Relocation Plan shall be distributed to all occupants of the Project site. This Plan will be available for review by interested citizen groups, state and county agencies, and by the general public.

Since this plan does not anticipate the necessity to displace any residents and there are not a significant number of businesses being displaced, it is arguable that this plan, in accordance with applicable state regulation, need not be approved by the local legislative body.

### **3.4 General Information on Payment of Relocation Benefits**

Relocation benefit payments will be made in a timely manner following the submission of appropriate claims. Claims and supporting documentation for claims must be filed with BART within eighteen (18) months from: the date the claimant moves from the acquired property **or** the date on which final payment for the acquisition of real property is made, whichever is later.

The procedure for the preparation and filing of claims and the processing and delivery of payments will be as follows:

1. Claimant(s) will provide all necessary documentation to substantiate eligibility for assistance and payments.
2. Assistance amounts will be determined and required claim forms prepared by relocation staff in consultation with claimant(s).
3. Original signed claims supported by appropriate documentation and a Relocation staff recommendation will be submitted to BART.
4. BART will review and approve claims for payment.
5. BART warrants will be prepared and issued to Relocation staff for distribution.
6. Payments will be delivered personally by Relocation staff unless circumstances dictate otherwise. When payments cannot be personally delivered, they will be sent by certified mail, return receipt requested.
7. Receipts of payment will be obtained by Relocation staff and maintained in the case file.
8. Unless otherwise instructed by BART, Relocation staff will not deliver final payments until the Project area premises of the claimant(s) have been vacated and actual occupancy at new quarters is verified.

### **3.5 Relocation Tax Consequences**

In general, relocation payments are not considered income for tax purposes. Benefit payments are made subject to the provisions of Title 24 of the code of Federal Regulations and Chapter 16 of the California Government Code Section 7269. The previous statements on tax consequences are not intended to be tax advice by BART. Displacees are encouraged to consult with their own tax advisors concerning the tax consequences of relocation payments.

### **3.6 Eviction Policy**

Under State guidelines, eviction is permissible only as a last resort. Relocation records must be documented to reflect the specific circumstances surrounding the eviction.

Eviction shall be undertaken only for one or more of the following reasons:

1. Failure to pay rent, except in those cases where the failure to pay is due to the lessor's failure to keep the premises in habitable condition, is the result of harassment or retaliatory action or is the result of discontinuation or substantial interruption of services;
2. Performance of a dangerous, illegal act in the unit;
3. Material breach of the rental agreement and failure to correct breach within 30 days of notice;
4. Maintenance of a nuisance and failure to abate within a reasonable time following notice; or
5. The eviction is required by State or local law and cannot be prevented by reasonable efforts on the part of the public entity.

Those who remain in the project area will be obliged to honor the terms and conditions of rental agreements provided by BART. Failure to abide by the terms of the rental agreement may result in eviction.

### **3.7 Right to Appeal**

Any person who has been refused a relocation payment or who disagrees with the amount of their relocation payment has the right to appeal. Information about the appeal procedure is available from the Relocation Advisor. The Relocation Advisor will also help a displacee to file an appeal.

A displacee must file an appeal within eighteen (18) months of the time the property is vacated.

### **3.8 Projected Dates of Displacement**

BART presented an offer to the property owner in May of 2013. It has continued its efforts to negotiate for the property purchase. The current schedule for construction would require BART to take possession of the properties in early 2014. One business would be required to relocate by April of 2014 and the majority of the businesses would be required to relocate by June of 2014 to accommodate the current construction schedule. BART will work with the radiation sterilization company for a later vacate date in mid-2016.

## Appendix A

# Relocation Assistance Brochure

Rights and Benefits  
Under the Federal Relocation Assistance Program for Affected Businesses  
and Non-Profit Organizations



Summarizing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, including 49 Code of Federal Regulations (CFR) Part 24 dated January 4, 2005. Much of the content of this brochure was provided by The United States Department of Transportation, Federal Highway Administration, Office of Real Estate Services, Publication Number FHWA-HEP-05-031.

## **BART TITLE VI NON DISCRIMINATION POLICY**

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**Title VI of the Civil Rights Act of 1964 requires that no person in the United States, on the grounds of race, color or national origin be excluded from, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. Presidential Executive Order 12898 addresses environmental justice in minority and low-income populations. Presidential Executive Order 13166 addresses services to those individuals with limited English proficiency.**

**Any person who believes that they have been excluded from, denied the benefits of, or been subjected to discrimination may file a written complaint with the San Francisco Bay Area Rapid Transit District's Office of Civil Rights. Federal and State law requires complaints be filed within one-hundred eighty (180) calendar days of the last alleged incident.**

**To request additional information on BART's non-discrimination obligations or to file a Title VI Complaint, please submit your request to:**

**San Francisco Bay Area Rapid Transit District (BART)  
ATTN: Office of Civil Rights  
300 Lakeside, Suite 1800  
Oakland, CA 94612  
(510)874-7333 Fax (510) 464-7587  
officeofcivilrights@bart.gov**

**Complaint Forms can also be obtained on BART's website at [www.bart.gov/titlevi](http://www.bart.gov/titlevi)**

# Federal Relocation Assistance Program

## TABLE OF CONTENTS

Introduction	1
Important Terms Used In This Brochure	2
<b>Section 1: Relocation Advisory Services</b>	4
<b>Section 2: Available Relocation Payments</b>	5
• Actual, Reasonable and Necessary Moving Costs	5
• Reestablishment Expenses	8
• Fixed Payment For Moving Expenses (“In Lieu Payment”)	9
<b>Section 3: Important Information</b>	10
• Filing of Claims for Payment	10
• Relocation Payments Are Not Considered To Be Income	10
• Right to Appeal	10
<b>Section 4: Loss of Goodwill</b>	11
<b>General Information</b>	12



# **Federal Relocation Assistance Program for Business and Non-profit Organizations**

## **Introduction**

Government programs designed to benefit the public as a whole often result in the acquisition of private property, and sometimes in the displacement of people from their businesses and nonprofit organizations. When Congress passed the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and amended it in 1987 ("Uniform Act") it recognized the need to balance the right of a public agency's right to acquire property with the rights of the occupants of the property being affected. The Uniform Act provides for the rights of person affected by public and publicly assisted project. As a federally funded agency, the Bay Area Rapid Transit District ("BART") must comply with the policies and provisions set forth in the Uniform Act and the regulation. The Code of Federal Regulations (CFR), Title 49, Part 24, outline a public agencies rights and responsibilities to acquire property and to provide Relocation Assistance.

This brochure is an attempt to provide you with a summary of those laws and regulations. Certainly, the information provided in this brief brochure cannot provide you with answers to all of the specific questions and situations that might arise in the relocation of your business or nonprofit organization.

Please review this brochure carefully and present any questions to your Relocation Advisor. Section 1 of this brochure provides information about Relocation Advisory Assistance. Section 2 contains information concerning payments that are available to affected businesses and nonprofit organizations. Section 3 provides additional information that is important to understand regarding the Relocation Assistance Program. Section 4 provides information regarding loss of business goodwill.

Your Relocation Advisor will answer your specific questions and will provide you with additional information you may need to help you to understand the Relocation Assistance Program. If you have any questions regarding this brochure, please contact your Relocation Advisor.

**Associated Right of Way Services, Inc.  
2300 Contra Costa Boulevard, Suite 525  
Pleasant Hill, California 94523  
(800) 558-5151 toll free  
(925) 691-8500 direct line  
(925) 691-6505 fax**

# **Important Terms Used in This Brochure**

## **Bay Area Rapid Transit District (“BART”)**

The Bay Area Rapid Transit District (“BART”) will administer Relocation Advisory Assistance and Relocation Payments and will be responsible for the acquisition of real property and/or the displacement of persons from property to be used for the project. BART is responsible for the implementation of its Relocation Assistance Program.

## **Alien Not Lawfully Present**

The law provides that if a displaced person is an alien not lawfully present in the United States such person is not eligible for relocation payments or assistance under the Uniform Relocation Assistance and Real Property Acquisition Policies Act, unless ineligibility would result in exceptional and extremely unusual hardship to the alien's spouse, parent or child, and such spouse, parent or child is a citizen or an alien lawfully admitted for permanent residence.

## **Business**

Any lawful activity, with the exception of a farm operation, conducted primarily for the purchase, sale, lease, and rental of personal or real property; or for the manufacture, processing, and/or marketing of products, commodities, or any other personal property; or for the sale of services to the public; or solely for the purpose of the Uniform Relocation Assistance Act, an outdoor advertising display or displays, when the display(s) must be moved as a result of the project.

## **Displaced Person**

Any person (individual, family, partnership, association or corporation) who moves from real property, or moves personal property from real property as a direct result of the BART's written notice of intent to acquire, the initiation of negotiations for, or the acquisition of real property in whole or in part for the project.

## **Nonprofit Organization**

A public or private entity that has established its nonprofit status under applicable Federal or State law.

## **Project**

Construction of Operations and Maintenance Facility.

## **Small Business**



A business having not more than 500 employees working at a site which is the location of economic activity and which will be acquired or is displaced by a program or project. A site occupied solely by an outdoor advertising signs, displays, or devices does not qualify for purposes of the reestablishment expense benefit.

### **Unlawful Occupancy**

An occupant is considered to be in unlawful occupancy if the occupant has been ordered to move by a court of competent jurisdiction or if the occupant's tenancy has been lawfully terminated by the owner for cause, the tenant has vacated the premises, and the termination was not undertaken for the purpose of evading relocation assistance obligations.

## Section 1 – Relocation Advisory Assistance

A Relocation Advisor will work with each eligible displaced business and non-profit organization in order to guide them through the Relocation process and to help them to locate a suitable replacement property. Relocation services are provided by Associated Right of Way Services, Inc. It is their goal and desire to be of service to you, and to assist you in any way possible to help you to successfully relocate. Your Relocation Advisor is available to help and to advise you, so please make full use of their services. Do not hesitate to ask questions to ensure that you fully understand all your rights and benefits.

An individual with a disability will be provided the assistance needed to understand their rights under this program and assistance to locate and to move to a replacement site. Please notify your Relocation Advisor if you need any additional assistance to understand your rights or to secure a replacement site.

When your Relocation Advisor initially contacts you, they will interview you in order to explain the Relocation Program and to understand your current operation, facility and operating costs. Your Advisor will also ask you to describe the type of replacement site you are interested in finding. Your Advisor will explain the assistance and payments that you may claim in accordance with your eligibility. It is important that you explain any anticipated relocation problems to your Relocation Advisor. During the initial interview your Relocation Advisor will ask many questions to determine your specific relocation needs. After the initial interview, your Relocation Advisor will deliver written information regarding your rights as a displaced person and will forward information on available replacement sites as that information becomes available.

Your Relocation Advisor will continue to work with you to help you to plan your relocation to a replacement site. Your Relocation Advisor will help you to understand which costs are compensable under the Relocation Assistance Program and which costs are not. Your Relocation Advisor will also help to determine the need for outside specialists to plan for the move and the reinstallation of your personal property.

A representative of BART will work with you and the owner of the real property (if you are a tenant) to help to identify and to resolve any issues regarding what is real estate and what is personal property that can be relocated. You will be asked to provide a copy of your lease agreement (if applicable) to help to determine the ownership of the furniture, fixtures and equipment.

BART's goal is for you to achieve a successful relocation back into the community. Therefore, it is important that you do everything a prudent business owner would do to maintain your business. This includes working closely with your Relocation Advisor to evaluate and to prepare for the move and searching out leads to available replacement sites.

Your Relocation Advisor is also available to provide information to possible sources of funding and assistance from other local, State, and Federal agencies. If you have special problems, the Relocation Advisor will make every effort to secure the services of those agencies with trained personnel who have the expertise to help you. Please make your needs known so that your Relocation Advisor can provide you with the help you need.

## Section 2 – Available Relocation Payments

An eligible business or non-profit organization may request reimbursement on the basis of actual, reasonable moving costs and related expenses or, under certain circumstances, a fixed payment. Actual, reasonable moving expenses may be paid when the move is performed by a professional mover or if you move yourself. Related expenses, such as personal property losses, expenses in finding a replacement site, and reestablishment expenses may also be reimbursable.

You must provide your Relocation Advisor with an inventory of the personal property to be moved and advance notice of the approximate date of the move. Your Relocation Advisor will need to inspect the personal property at the displacement and replacement sites, and to monitor the move in order to assess your eligibility for certain moving payments.

### Actual, Reasonable and Necessary Moving Costs

You may be paid the actual, reasonable and necessary cost of your move when the move is performed by a professional mover or when you elect to move yourself, however, all your moving costs must be supported by paid receipts or other evidence of expenses incurred. In addition to the transportation costs of your personal property, certain other expenses may be reimbursable, such as packing, crating, unpacking and uncrating, and the disconnecting, dismantling, removing, reassembling, and reinstalling relocated machinery, equipment and other personal property.

Other expenses such as professional services necessary for planning and carrying out the move, temporary storage costs, and the cost of licenses, permits and certifications may also be reimbursable. Such costs may include:

- Transportation of persons and property not to exceed a distance of 50 miles from the site from which the business or non-profit organization was displaced, except where relocation beyond 50 miles is justified;
- Packing, crating, unpacking and uncrating personal property;
- Storage of personal property for a period generally not to exceed 12 months, as determined by the public agency to be necessary in connection with relocation. These expenses must be preapproved.
- Insurance of personal property while in storage or transit; and
- The reasonable replacement value of property lost, stolen or damaged (not through the fault or negligence of the displaced person, his agent or employee) in the process of moving, where insurance covering such loss theft or damage is not reasonable available.
- The cost of disconnecting, dismantling, removing, reassembling, reconnecting and reinstalling machinery, equipment, substitute personal property, and other personal property (including goods and inventory kept for sale) and connection to utilities available within the building; it also includes modification to personal property, including those mandated by Federal, State or local law, code or ordinance, necessary to adapt it to the replacement structure, replacement site or the utilities at the replacement site and modification necessary to adapt the utilities at the replacement site to the personal property.
- The cost of any license, permit, fee or certification that is required to the extent such cost is necessary to the reestablishment of the operation at a new location. However, payment shall be based on the remaining useful life of the existing license, permit or certification.
- The reasonable cost of any professional service (including, but not limited to, architects', attorneys' or engineers' fees, or consultants' charges) necessary for the planning of the move of personal property, moving the personal property, or installation of relocated personal property at the replacement site. These expenses must be preapproved.
- Professional services in connection with the purchase or lease of a replacement site, including feasibility surveys, soil testing and marketing studies.
- Relettering signs and replacing stationary on hand at the time of displacement that is made obsolete as a result of the move.
- Impact fees or one-time assessment for anticipated heavy utility usage.

All costs claimed under this section must be reasonable and necessary. The costs will only be considered if the costs could not have been avoided or substantially reduced at an alternate available site.

This is not an inclusive list of moving related expenses. Your Relocation Advisor will provide you with a complete explanation of reimbursable expenses.

## **Estimated Cost Move**

If you agree to take full responsibility for all or part of the move of your operation, BART may approve a payment not to exceed the lower of two acceptable bids or estimates obtained from qualified moving firms, or moving consultants. A low cost or uncomplicated move may be based on a single bid or estimate at BART's discretion. The advantage of this moving option is that it relieves you from documenting all moving expenses because the payment is limited to the amount of the lowest acceptable bid or estimate. BART may make the payment without additional documentation.

## **Direct Loss of Tangible Personal Property**

Displaced businesses may be eligible for a payment for the actual direct loss of tangible personal property which is incurred as a result of the move or discontinuance of the operation. This payment is based on the lesser of (1) the value of the item for continued use at the displacement site less the proceeds from its sale, or (2) the estimated reasonable cost of moving the item. Your Relocation Advisor will explain this procedure in detail if this is a consideration for you.

## **Substitute Personal Property**

Where an item of personal property which is used in connection with any business is not moved but is replaced with a comparable item, the business may request reimbursement in an amount not to exceed the lesser of (1) the replacement cost, minus any net proceeds from its sale, or (2) the estimated cost of moving the original item.

## **Low Value High Bulk Property**

If BART considers a personal property item to be of low value and high bulk, and moving costs are disproportionate to its value (such as minerals, metals, rock, or topsoil), the allowable moving cost payment shall not exceed the lesser of the amount which would be received if the personal property were sold at the site, or, the replacement cost of a comparable quantity delivered to the new business location.

## **Searching Expenses for Replacement Property**

Displaced businesses are entitled to reimbursement for actual, reasonable expenses incurred in searching for a replacement property, not to exceed \$2,500. Expenses may include transportation, meals, and lodging when away from home; the reasonable value of the time spent during the search. Fees paid to real estate agents or brokers to locate a replacement site may be reimbursed, related time obtaining permits and attending zoning hearing, and time spent negotiating of the rent/purchase of replacement site and other expenses determined to be reasonable and necessary by BART.

Commission and fees related to the purchase of a replacement site are not eligible relocation expense and will not be reimbursed.

## Reestablishment Expenses

A small business or non-profit organization may be eligible for a payment, not to exceed \$10,000, for expenses actually incurred in relocating and reestablishing the enterprise at a replacement site. To qualify, the business or non-profit organization must have not more than 500 employees working at the site who will be displaced by a program or project.

Reestablishment expenses may include, but are not limited to:

- Repairs or improvements to the replacement real property required by Federal, State, and local laws, codes or ordinances.
- Modifications to the replacement real property to accommodate the business operation or to make the replacement structures suitable for the operation.
- Construction and installation costs of exterior signs to advertise the business.
- Redecoration or replacement of soiled or worn surfaces at the replacement site such as painting, wallpapering, paneling, or carpeting.
- Advertising the replacement location.
- Estimated increased costs of operation at the replacement site during the first two years for items such as: lease or rental charges; personal or real property taxes; insurance premiums; utility charges (excluding impact fees).
- Other items that BART considers essential for reestablishment.

The following is a nonexclusive listing of reestablishment expenditures not considered to be reasonable and necessary, or otherwise eligible:

- Purchase of capital assets, such as office furniture, filing cabinets, machinery, or trade fixtures.
- Purchase of manufacturing materials, production supplies, production inventory, or other items used in the normal course of the business operation.
- Interior or exterior refurbishments at the replacement site which are for aesthetic purposes.
- Interest on money borrowed to make the move or purchase the replacement property.
- Payment to a part-time business in the home which does not contribute materially to the household income.

## Fixed Payment for Actual Moving Expenses (“In Lieu Payment”)

Displaced businesses and non-profit organizations may be eligible for a fixed payment in lieu of (in place of) actual moving expenses, personal property losses, searching expense, and reestablishment expenses. The fixed payment may not be less than \$1,000 nor more than \$20,000.

For a business to be eligible for a fixed payment, BART must determine the following:

- Business owns or rents personal property that must be moved due to the displacement.
- Business cannot be relocated without a substantial loss of its existing patronage.
- Business is not part of a commercial enterprise having more than three other businesses engaged in the same or similar activity which are under the same ownership and are not being displaced by BART.
- Business contributed materially to the income of the displaced business operator during the two taxable years prior to displacement.

Eligibility requirements for non-profit organizations are slightly different than business requirements. The computation for non-profit organizations differs in that the payment is computed on the basis of average annual gross revenues less administrative expenses for the two year period specified. If you are interested in a fixed payment, please consult your Relocation Advisor for additional information.

### **Computation of the Fixed Payment**

The fixed payment for a displaced business is based upon the average annual net earnings of the operation for the two taxable years immediately preceding the taxable year in which it was displaced, or a two-year period deemed more representative by BART. You must provide BART with proof of net earnings to support your claim. Proof of net earnings can be documented by income tax returns, certified financial statements, or other reasonable evidence acceptable to BART.

<b>Example of a Fixed Moving Payment Computation</b>		
2008	2009	2010
Annual Net Earnings \$16,500	Annual Net Earnings \$18,500	Year Displaced
Average annual net earnings $\$16,500 + \$18,500 = \$35,000 / 2 = \$17,500$ Fixed Payment = \$17,500		

## Section 3 – Important Information

### Filing of Claims for Payment

All claims filed with BART shall be submitted within 18 months of the later of (1) the date on which the claimant receives final payment for the property or, (2) the date on which the property is vacated. Most claims will be paid within three weeks of submission of a fully documented claim for payment.

If it is a hardship for your business to pay for relocation costs and to wait for reimbursement of those costs by BART, you may petition for hardship assistance. If BART approves your petition for a hardship payment, then it will attempt to advance certain funds for your relocation based on fully documented claims for payment. It is important that you work closely with your Relocation Advisor if you intend to file for hardship assistance.

### Relocation Payments are not Considered to be Income

No relocation payment received will be considered as income for the purpose of the Internal Revenue Code, Personal Income Tax Law, Part 10 (commencing with Section 17001) of Division 2 of the Revenue and Taxation Code, or the Bank and Corporation Tax Law, Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code.

No relocation payment received will be considered income or resources to any recipient of public assistance and such payments shall not be deducted from the amount of aid to which the recipient would otherwise be entitled under any other provisions of law.

Payments made by BART to a third party can be considered to be a taxable event. As a result, all third party payments will be subject to completion of a W-9 Form.

### Right to Appeal

Any aggrieved person may file a written appeal with the head of BART if the person believes BART has failed to properly determine his or her eligibility for relocation assistance advisory services or the amount of a relocation payment.

If you have a grievance, you will be given a prompt and full opportunity to be heard. You will also have the right to be represented by legal counsel or other representative in connection with the appeal, but solely at your own expense.

BART will promptly review your appeal and consider all pertinent justification and information available to ensure a fair and full review. BART will provide you with a written determination as well as an explanation of the decision. If you are still dissatisfied with the relief granted, BART will advise you of your right to seek judicial review of BART decision.



## Section 4 – Loss of Business Goodwill

You may or may not be eligible to claim a loss of business goodwill. California law provides that under the circumstances detailed below, a business owner may be compensated for a loss of goodwill. Section 1263.510 of the California Civil Code of Procedure states:

(a) The owner of a business conducted on the property taken, or on the remainder if such property is part of a larger parcel, shall be compensated for loss of goodwill if the owner proves all of the following:

1. The loss is caused by the taking of the property or the injury to the remainder.
2. The loss cannot reasonably be prevented by relocation of the business or by taking steps and adopting procedures that a reasonably prudent person would take and adopt in preserving the goodwill.
3. Compensation for the loss will not be included in payments under Section 7262 of the Government Code.\*

*\*Section 7262 of the Government Code refers to compensation to displaced persons for moving and related expenses as a part of the cost of the acquisition of real property for a public use. Compensation for the loss of goodwill under Section 1263.510 of the California Civil Code of Procedure will only be made to the extent such loss is not compensated for under Section 7262.*

4. Compensation for the loss will not be duplicated in the compensation otherwise awarded to the owner.

(b) Within the meaning of this article, "goodwill" consists of the benefits that accrue to a business as a result of its location, reputation for dependability, skill or quality and any other circumstances resulting in probable retention of old or acquisition of new patronage.

### General Information

This brochure is provided to assist you in understanding your rights and benefits. If you have questions regarding your relocation please contact your Relocation Advisor. Additional information on relocation and acquisition requirements, the law, and the regulation can be found at [www.fhwa.dot.gov/realesate](http://www.fhwa.dot.gov/realesate).

*This brochure has been provided to you as a courtesy by the Bay Area Rapid Transit District and Associated Right of Way Services, Inc. It is intended to provide general information concerning the Relocation Assistance Program. Further details regarding relocation assistance and benefits are set forth in the Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs, 49 Code of Federal Regulation, part 24, and the Federal Highway Administration website. Please contact your Relocation Advisor for additional information regarding the Relocation Assistance Program.*



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