

**SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT**

300 Lakeside Drive, P. O. Box 12688, Oakland, CA 94604-2688

**BOARD MEETING AGENDA**

January 13, 2011

9:00 a.m.

A regular meeting of the Board of Directors will be held at 9:00 a.m. on Thursday, January 13, 2011. This meeting shall consist of a simultaneous teleconference call at the following locations:

BART Board Room Kaiser Center 20 <sup>th</sup> Street Mall – Third Floor 344 – 20 <sup>th</sup> Street Oakland, CA 94612	Delta King 1000 Front Street Sacramento, CA 95814
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Members of the public may address the Board of Directors regarding any matter on this agenda. Please complete a "Request to Address the Board" form (available at the entrance to the Board Room) and hand it to the Secretary before the item is considered by the Board. If you wish to discuss a matter that is not on the agenda during a regular meeting, you may do so under General Discussion and Public Comment.

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

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

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

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

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

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

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

Kenneth A. Duron  
District Secretary

Regular Meeting of the  
BOARD OF DIRECTORS

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

1. CALL TO ORDER

- A. Roll Call.
- B. Pledge of Allegiance.
- C. Introduction of Special Guests:  
Harvard Students Eric Hendey, Class of 2014; Kerry Hammond, Class of 2014; and Elsa Kim, Class of 2009. (Director Murray's request.)

2. CONSENT CALENDAR

- A. Approval of Minutes of the Meeting of December 16, 2010.\* Board requested to authorize.
- B. 2011 Standing Committee and Special Appointments.\* Board requested to ratify.
- C. Travel Reimbursement Policy for BART Citizen Advisory Committees/Task Forces.\* Board requested to authorize.
- D. Award of Contract No. 09DJ-130, Replacement of Power Supplies for Cathodic Protection System.\* Board requested to authorize.
- E. Award of Contract No. 15EL-130A, Installation of Fiber Optic Cable for R-Line Emergency Trip System Project.\* Board requested to authorize.
- F. Award of Contract No. 15TE-130, Aerial Structures Fall Protection – West Oakland, Phase 3.\* Board requested to authorize.
- G. Award of Invitation for Bid No. 8881, Brake Lining.\* Board requested to authorize.

3. ADMINISTRATION ITEMS

Director Blalock, Chairperson

- A. Parking Fees for the West Dublin/Pleasanton Station.\* Board requested to authorize.\* (TWO-THIRDS VOTE REQUIRED.)
- B. 2010 BART/MUNI Fast Pass Agreement.\* Board requested to authorize.

4. ENGINEERING AND OPERATIONS ITEMS

Director Keller, Chairperson

- A. Sole Source Procurement with MGR Industries, Inc., for Purchase of Payment Card Industry Triple Data Encryption Standard Personal Identification Number Pad Security Devices.\* Board requested to authorize. (TWO-THIRDS VOTE REQUIRED.)

- B. Modification to Agreement No. 6G3975, General Engineering Services for the Earthquake Safety Program, with Bechtel Infrastructure Corporation, for Increase in Time and Value.\* Board requested to authorize.
- C. Award of Contract No. 15PC-110, BART Earthquake Safety Program Aerial Structures – A Line South.\* Board requested to authorize.
- D. Award of Contract No. 15SU-130, Aerial Structures West Oakland Pier – 110 to Transbay Tube Portal.\* Board requested to authorize.

5. PLANNING, PUBLIC AFFAIRS, ACCESS, AND LEGISLATION ITEMS  
Director Sweet, Vice Chairperson

- A. Station Retail Policy.\* Board requested to adopt.

6. GENERAL MANAGER'S REPORT

NO REPORT.

7. BOARD MATTERS

- A. Report of the BART Police Department Review Committee: Amendment to Resolution for Citizen Oversight of the BART Police Department.\* Board requested to authorize.
- B. Roll Call for Introductions.

8. GENERAL DISCUSSION AND PUBLIC COMMENT

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

- A. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION  
Name of Case: Johnson et al. vs. BART  
Government Code Section: 54956.9(a)
- B. PUBLIC EMPLOYMENT:  
Title: Independent Police Auditor  
Government Code Section: 54957
- C. CONFERENCE WITH LABOR NEGOTIATORS - PUBLIC EMPLOYEE PERFORMANCE EVALUATION:  
Agency Negotiators: Directors Fang, Franklin, and Blalock  
Title: District Secretary  
Government Code Sections: 54957 and 54957.6

**SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT**

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**MEMORANDUM**

**TO:** Board of Directors

**DATE:** January 7, 2011

**FROM:** District Secretary

**SUBJECT:** 2011 Standing Committee and Special Appointments

Board Rule 3-3.2 requires the ratification by a majority vote of all members of the Board any appointment of any Committee member by the Board President. The Rule includes a provision that such appointments shall be submitted directly to the Board.

In accordance with Board Rule 3-3.2, President Franklin is bringing the 2011 Standing Committee and Special Appointments before the Board of Directors for ratification on January 13, 2011.

The proposed appointments will be provided to the Board of Directors in advance of the Board Meeting.

Should you have any questions, please contact President Franklin or me at your convenience.



Kenneth A. Duron

cc: Board Appointed Officers  
Deputy General Manager  
Executive Staff





## EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Marcia E deVaughn</i>		GENERAL MANAGER ACTION REQ'D:		
DATE: c 1/6/11		BOARD INITIATED ITEM: Yes		
Originator/Prepared by: Marcia E deVaughn Dept: General Manager	General Counsel <i>Andrew Karas</i> 1/5/11	Controller/Treasurer <i>[Signature]</i> 1/6/11	District Secretary [ ]	BARC <i>[Signature]</i> 1-6-11 [ ]

TITLE:

### TRAVEL REIMBURSEMENT FOR MEMBERS OF BART CITIZEN ADVISORY COMMITTEES

NARRATIVE:

#### PURPOSE:

To establish a consistent travel reimbursement policy for members of BART citizen advisory committees.

#### DISCUSSION:

BART currently has the support of five citizen advisory committees as follows: BART Accessibility Task Force, Bicycle Advisory Task Force, Business Advisory Committee, Citizen Review Board, Earthquake Safety Program Citizens' Oversight Committee. A total of 56 individuals serve on these committees, including the yet to be seated Citizen Review Board. The number of regularly scheduled meetings per year follows: BART Accessibility Task Force - 10 meetings; Bicycle Advisory Task Force - 6 meetings; Business Advisory Committee - 12 meetings; Citizen Review Board - 12 meetings; Earthquake Safety Program Citizens' Oversight Committee - 4 meetings. Committees sometimes hold fewer meetings than scheduled or may hold an occasional additional meeting, as necessary.

Currently, the BART Accessibility Task Force (BATF) and the Earthquake Safety Program Citizens' Oversight Committee are the only committees that receive travel reimbursement to attend meetings. At the November 18, 2010 Board meeting, staff was asked to prepare an item for Board approval that would extend travel reimbursement to all BART citizen advisory committee members in a manner that could be administered efficiently. Initially, staff proposes that citizen advisory committee members receive a \$15 stipend for each meeting to offset the reasonable expense of travel on public transportation. Staff continues to explore the feasibility of providing \$15 in transit value via the regional smart card Clipper Program as an alternative to a \$15 stipend.

Within fifteen days (15) after the end of each calendar quarter, staff supporting BART citizen advisory committees will submit to the Finance Department a copy of meeting agendas and a list of the members in attendance at each meeting during the subject quarter. To receive a travel stipend check, each committee member must file an IRS Form W-9 with the District.

## TRAVEL REIMBURSEMENT FOR MEMBERS OF BART CITIZEN ADVISORY COMMITTEES

### **FISCAL IMPACT:**

The annual cost of providing a \$15 stipend or the equivalent credit on a transit fare medium to members of BART citizen advisory committees to offset the reasonable expense of travel on public transportation to meetings is estimated at \$7,890. Funding will come from the operating budgets of the sponsoring departments.

### **ALTERNATIVE:**

Do not adopt a \$15 per meeting stipend or the equivalent transit fare medium value for citizen advisory committee members to offset the reasonable expense of travel on public transportation to attend meetings or adopt a different per meeting stipend or equivalent transit value amount.

### **RECOMMENDATION:**

Adopt the following motion:

### **MOTION:**

The Controller-Treasurer or his designee is authorized to process payments, or if practicable, fare medium credits, for citizen advisory committee members in the amount of \$15 per eligible meeting to offset the reasonable expense of travel on public transportation for their attendance.



## EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>W. C. Delaney</i>		GENERAL MANAGER ACTION REQ'D: Approve and Forward to the Board		
DATE: 1/4/11		BOARD INITIATED ITEM: No		
Originator/Prepared by: Khawaja Zubair Dept: M&E <i>K. Zubair</i>	General Counsel <i>MB</i>	Controller/Treasurer <i>[Signature]</i>	District Secretary <i>[Signature]</i>	BARC <i>Paul C. [Signature]</i>
Signature/Date: 12/21/10				
Status: Routed		Date Created: 12/13/2010		

TITLE:

### AWARD OF CONTRACT No. 09DJ-130 REPLACEMENT OF POWER SUPPLIES FOR CATHODIC PROTECTION SYSTEM

#### NARRATIVE:

**PURPOSE:** To obtain Board authorization for the General Manager to award Contract No. 09DJ-130 for replacement of power supplies in the TBT for the Cathodic Protection System to Dahl Beck Electric for the bid price of \$397,713.70.

#### DISCUSSION:

At present the Transbay Tube (TBT) steel shell is protected from corrosion by a Cathodic Protection (CP) System. The existing CP power supplies are unreliable and prone to frequent failure and will be replaced with newer intelligent power supplies procured by the District under a separate contract.

The work under Contract No. 09DJ-130 is to replace thirty (30) old anode power supplies with new types of power supplies furnished by the District including wiring and switchgear replacement as necessary.

Advance notices for Contract No. 09DJ-130 were mailed in August 17, 2010 to one hundred eleven (111) prospective bidders. A Contracting Outreach Meeting was conducted on September 2, 2010 with nine (9) firms in attendance. Contract No. 09DJ-130 was advertised on September 7, 2010. Five bids were received on November 30, 2010 as follows:

#### BIDDER

#### BID PRICE

Corpro Companies Inc., San Leandro, CA	\$ 297,180.00
C.E. Harris Electric Inc, dba Harris Electric, Dublin, CA	\$ 307,990.00
Dahl Beck Electric, Richmond, CA	\$ 397,713.70
Linc Lighting & Electrical LP, San Jose, CA	\$ 505,660.00
Blocka Construction, Inc., Fremont, CA	\$ 517,300.00

#### Engineer's Estimate

\$ 300,000.00

The apparent low Bidder, Corpro Companies Inc., signed two mutually exclusive signature blocks on the Buy America Certificate rendering its Bid non-responsive. The apparent second low

Bidder, Harris Electric, submitted the wrong Bid Bond form rendering the Bid non-responsive.

Staff has determined that, the apparent third low Bidder, Dahl Beck Electric, submitted a responsive Bid. Staff has also determined, upon review of the Bidder's business experience and financial capabilities, that the Bidder is responsible and that the Bid price is fair and reasonable based on price competition.

This contract was advertised pursuant to the revised DBE Program requirements. The Office of Civil Rights reviewed the scope of work for this contract and determined that there were no subcontracting opportunities; therefore, no DBE participation goal was set for this contract.

**FISCAL IMPACT:**

Funding of \$397,714 for award of contract 09DJ-130 is included in the total project budget for the FMS#09DJ – Track Rehab (Cathodic Protection). The Office of the Controller/Treasurer certifies that funds are currently available to meet this obligation.

**F/G 53J CA 56-0003 – ARRA of 2009 (Federal Economic Stimulus)**

**\$397,714**

As of 11/28/2010, \$3,497,630 is available for commitment from this fund source for this project and BART has committed \$2,728,833 to date. There are pending commitments of \$78,683 in BART's financial management system. This action will commit an additional \$397,714 leaving an uncommitted balance of \$292,400 in this fund.

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

**ALTERNATIVES:**

One option is to reject all bids, and start a new bidding process over. This will cause a delay in installing the power supplies by several months. The second option is not to install and replace the Cathodic Protection System power supplies at this time. This will leave the Transbay Tube more susceptible to corrosion as the old supplies continues to fail.

**RECOMMENDATION:**

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

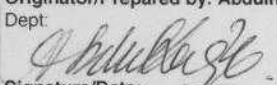
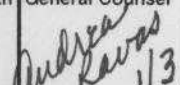

**MOTION:**

The General Manager is authorized to award Contract No. 09DJ-130 for Replacement of Power Supplies for the Cathodic Protection System in the Transbay Tube, to Dahl Beck Electric for the total bid price of \$397,713.70, pursuant to notification to be issued by the General Manager, subject to compliance with the District's protest procedures, and FTA's requirements related to protest procedures.





## EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: 		GENERAL MANAGER ACTION REQ'D: Approve and forward to the Board		
DATE: c 1/4/11		BOARD INITIATED ITEM: No		
Originator/Prepared by: Abdulhaque Shaikh Dept: 	General Counsel 	Controller/Treasurer 	District Secretary [ ]	BART 
Signature/Date:  1/3/11		[ ]		
TITLE:				

### Award Contract No. 15EL-130A for Installation of Fiber Optic Cable for R-Line Emergency Trip System Project

#### NARRATIVE:

##### PUROSE:

To obtain Board authorization for the General Manager to award Contract No. 15EL-130A for Installation of Fiber Optic Cable for R-Line Emergency Trip System Project to Phase3 Communications, Inc.

##### DISCUSSION:

The fiber optic cable installed under this contract will interconnect equipment in traction power facilities and train control rooms at 8 locations on the R-Line and will provide electrically isolated and noise free communication for Emergency and Transfer Trip System (ETTS), Supervisory Control And Data Acquisition (SCADA) and BARTNET for remote operations of the traction power facilities.

The District provided advance notice to 230 prospective Bidders and the Contract books were sent to 26 plan rooms. The Contract was advertised on October 4, 2010. Eight firms purchased a contract book for the purpose of submitting a bid. A summary of the work was also available on the District's website as an Upcoming Procurements.

A pre-Bid meeting and site tour was held on Wednesday, October 20, 2010. The following five (5) bids were received and publically opened on November 9, 2010.

BIDDER		TOTAL BID
Watson Electric, Inc.,	Concord, CA	\$212,340.00
Phase 3 Communications, Inc.	San Jose, CA	\$234,500.00
NEMA Construction	Albany, CA	\$240,000.00
Contra Costa Electric, Inc.	Martinez, CA	\$307,278.00
C.E. Harris Electric, Inc.	Dublin, CA	\$320,000.00

Engineer's Estimate

\$291,700.00

Bids were evaluated and staff determined that the apparent low Bid submitted by Watson Electric, Inc., of Concord, CA is not responsive to this solicitation because Watson Electric, Inc. did not meet the DBE goal of 5%, and was unable to submit documentation of good faith efforts to obtain the required DBE participation.

Staff determined that the second low Bid is responsive to the solicitation. Examination of the second low Bidder's business experience and financial capabilities has resulted in a determination that this Bidder is responsible and that the Bid of \$234,500.00 submitted by Phase 3 Communications, Inc. is fair and reasonable based upon adequate price competition.

This contract was advertised pursuant to the revised DBE Program requirements. The Office of Civil Rights reviewed the scope of work for this contract and determined that there were subcontracting opportunities; therefore, a DBE participation goal of 5% was set for this contract. The bidder, Phase 3 Communications, a DBE firm, achieved 100% DBE participation.

**FISCAL IMPACT:**

Funding of \$234,500 for the award of Contract 15EL-130A is included in the total project budget for FMS #15EL – Traction Power Controls/Protection. The Office of the Controller/Treasurer certifies that funds are currently available to meet this obligation. Funds for this contract will come from the following sources:

F/G 47X - FTA-CA-05-0211 - FY06 Capital Improvements \$150,488

As of the month ending 10/31/2010, \$4,000,000 is available for commitment from this fund source for this project and BART has committed \$3,405,715 to date. There is a pending commitment of \$417,050 in BART's financial management system. This action will commit \$150,488 leaving an uncommitted balance of \$26,747 in this fund source.

F/G 53K - FTA-CA-05-0236 – FG MOD – FY09 Capital Improvements \$84,012

As of the month ending 10/31/2010, \$2,000,000 is available for commitment from this fund source for this project and BART has committed \$1,045,385 to date. There is a pending commitment of \$15,000 in BART's financial management system. This action will commit \$84,012 leaving an uncommitted balance of \$855,603 in this fund source.

There is no fiscal impact on available unprogrammed District Reserves.

**ALTERNATIVE:**

Reject all Bids and readvertise the contract. It is Staffs' opinion that rejecting the Bids and readvertising the contract would not result in better pricing, would delay this capital-funded critical piece of ongoing Traction Power System renovation and would incur additional cost for readvertising.

**RECOMMENDATIONS:**

On the basis of analysis and evaluation by Staff, it is recommended that the Board adopt the following Motion.

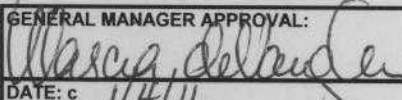
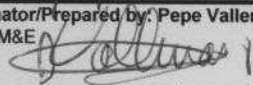
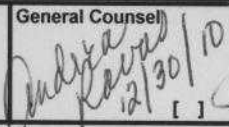

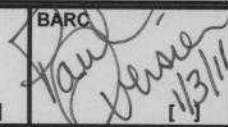
**MOTION:**

The General Manager is authorized to award Contract No. 15EL-130A, for Installation of Fiber Optic Cable for R-Line Emergency Trip System Project to Phase 3 Communication, Inc. for the Bid price of \$234,500.00 pursuant to notification to be issued by the General Manager, subject to the District's protest procedures and FTA's requirements related to protest procedures.





## EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: 		GENERAL MANAGER ACTION REQ'D:		
DATE: c 1/4/11		BOARD INITIATED ITEM: No		
Originator/Prepared by: Pepe Vallenias Dept: M&E 	General Counsel  12/30/10 [ ]	Controller/Treasurer  12/30/10 [ ]	District Secretary [ ]	BARC  1/3/11 [ ]
Signature/Date: 12/30/2010 TITLE:				

### Award Contract No. 15TE-130, Aerial Structure Fall Protection, West Oakland, Phase III

#### NARRATIVE:

#### PURPOSE:

To obtain Board authorization for the General Manager to award Contract No. 15TE-130, Aerial Structure Fall Protection, West Oakland, Phase III to Ashron Construction & Restoration, Inc. of Mountain View, CA.

#### DISCUSSION:

Elevated BART aerial structures currently have no guardrails. When performing maintenance and other work on the aerial structures, workers need to be tethered and wear full body harness fall protection devices. This affects mobility and work speed, especially since most of the maintenance work is done at night during non-revenue hours. With the installation of guard rails on the aerial structure, the workers' safety and work efficiency will be significantly improved.

Contract 15TE-130 will provide all labor, materials, equipment and other accessories necessary to install approximately 10,814 linear feet of guard rails on the aerial structure between Hwy 880 and the Oakland "Y" in West Oakland. This is the third phase of a system-wide effort to provide fall protection. Additional phases will be implemented as funds become available with the goal of eventually completing installation of fall protection for all BART aerial structures.

Advance Notice to Bidders was mailed on November 15, 2010 to 44 prospective Bidders and Contract Documents were mailed to 22 plan rooms and minority assistance organizations. The Contract was advertised on November 15, 2010. A pre-Bid meeting was held on November 29, 2010 with a total of nine (9) prospective Bidders in attendance. Eight (8) Bids were received and publicly opened on December 21, 2010.

The Bids, including the Engineer's Estimate are as follows:

<u>Bidder/Location</u>	<u>Total Bid</u>
Ashron Construction & Restoration, Inc. Mountain View, CA	\$ 846,852.00
California Engineering Contractors, Inc. Pleasanton, CA	\$ 947,273.92
T. C. Steel Petaluma, CA	\$ 949,400.00
LC General Engineering, Inc. San Francisco, CA	\$ 953,854.00
Sierra Mountain Construction, Inc. San Francisco, CA	\$1,079,331.20
Riverview Construction, Inc. West Sacramento, CA	\$1,169,192.00
Cal Pacific Construction Inc. Pacifica, CA	\$1,195,571.00
Bugler Construction, Inc. Pleasanton, CA	\$1,397,614.66
ENGINEER'S ESTIMATE	\$1,082,000.00

Staff has determined that the Bid submitted by Ashron Construction & Restoration, Inc. is responsive to the solicitation. Furthermore, examination of the Bidder's license, business experience, and financial capabilities has resulted in a determination that this Bidder is responsible and the low Bid of \$846,852.00 is fair and reasonable.

This Contract was advertised pursuant to the revised DBE Program requirements. The Office of Civil Rights reviewed the scope of work for this contract and determined that there were no subcontracting opportunities; therefore, no DBE participation goal was set for this contract.

Staff has determined that there will be no significant effect on the environment with installation of guardrails on the aerial structures at BART facilities, and that the work is categorically exempt from the provisions of the California Environmental Quality Act (CEQA), pursuant to CEQA Guidelines Section 15301(f), which exempts the addition of safety protection for existing facilities and structures. The project will receive federal funding and is therefore subject to the National Environmental Policy Act (NEPA). The federal funding agency, FTA, has concurred that implementation of the project will not

have a significant impact on the environment and qualifies for a categorical exclusion as defined under 23 CFR 771.117 (c) (18).

**FISCAL IMPACT:**

Funding for \$846,852 for award of Contract No. 15TE-130 is included in the total project budget for the FMS #15TE, Aerial Structure Fall Protection. The Office of the Controller/Treasurer certifies that funds are currently available to meet this obligation.

F/G 53G – FTA CA 05-0224

\$653,000

As of month ending 11/28/10, \$1,000,000 is available for commitment from this fund source for this project and BART has committed \$339,603 to date. There are pending commitments of \$403 in BART's financial management system. This action will commit \$653,000 leaving an uncommitted balance of \$6,994 in this fund source.

F/G 53K – FTA CA 05-0236

\$193,852

As of month ending 11/28/10, \$1,000,000 is available for commitment from this fund source for this project and BART has committed \$546,260 to date. There are no pending commitments in BART's financial management system. This action will commit \$193,852 leaving an uncommitted balance of \$259,888 in this fund source.

There is no fiscal impact on available unprogrammed District Reserves.

**ALTERNATIVES:**

The Board may elect to reject all bids and authorize staff to readvertise. Under this alternative, staff would have to reissue the bid package and obtain new bids. This will delay the guard rail installation, and is not likely to result in any significant lowering of pricing.

**RECOMMENDATION:**

It is recommended that the Board adopt the following motion:

**MOTION:**

The General Manager is authorized to award Contract No. 15TE-130, Aerial Structure Fall Protection, West Oakland, Phase III to Ashron Construction & Restoration, Inc. for the Bid Price of \$846,852.00, pursuant to notification to be issued by the General Manager, and subject to the District's protest procedures and FTA's requirements related to protests.





## EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>[Signature]</i>		GENERAL MANAGER ACTION REQ'D:	
DATE: c 1/6/11		BOARD INITIATED ITEM: No	
Originator/Prepared by: Kirtland Smith Dept: <i>[Signature]</i>	General Counsel <i>[Signature]</i> 1/5/11 [ ]	Controller/Treasurer <i>[Signature]</i> 1/5/11 [ ]	District Secretary [ ]
Signature/Date: <i>[Signature]</i> 1/05/2011			BART <i>[Signature]</i> 1/5/11

### Invitation For Bid No. 8881 Purchase of Bonded Brake Lining

#### NARRATIVE:

**Purpose:** To obtain Board authorization to award Invitation for Bid (IFB) No. 8881 to Railroad Friction Products Corp. in the amount of \$802,821.25 for the purchase of brake lining assemblies.

**Discussion:** The District has 669 revenue vehicles. Each vehicle has four axles and each axle uses two brake linings. This is a consumable item that must be replaced during preventive maintenance and as such requires a spares inventory pool to support these changeouts.

A Notice requesting Bids was published on September 8, 2010. Bid requests were mailed to twelve (12) prospective bidders. Bids were opened on September 28, 2010 and two (2) bids were received.

<u>Bidder</u>	<u>14,000 ea Unit Price</u>	<u>Total Including 9.75% Sales Tax</u>
Railroad Friction Products Corp. Laurensburg, NC	\$52.25	\$802,821.25
Ferotec Friction, Inc. Mount Joy, PA	\$34.22	\$525,790.30

The bid from Ferotec Friction was deemed to be non-responsive due to the fact that (1) they failed to bid a qualified product as specified in the BART Engineering Specifications and (2) took exception to the terms and conditions of IFB No. 8881. Specifically, Ferotec Friction indicated that they required a longer schedule for first article and first batch shipments than permitted under the terms and conditions. Vehicle Maintenance Engineering has contacted Ferotec Friction to assist them in the product qualification process which will be required for future bids of this product. Staff has determined that Railroad Friction Products Corp. submitted a responsive bid. Staff has also determined that the bid pricing is fair and reasonable, based on previous purchases of this item. BART's previous experience in the purchases of this item was in September 6, 2006 of a quantity of 14,000 units, at a unit cost of \$52.25.

Independent cost estimate by BART staff: \$820,000.00

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

**Fiscal Impact:** Funding will be provided from the General Fund, Materials & Supplier Inventory build-up account (140-010)

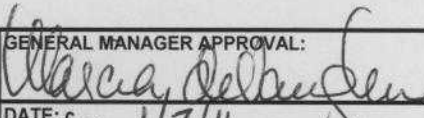
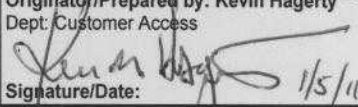
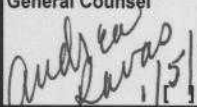

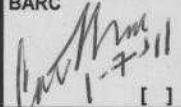
**Alternatives:** Reject all bids and readvertise the contract.

**Recommendation:** On the basis of analysis by Staff, and certification by the Controller-Treasurer that funds are available for this purpose, it is recommended that the Board adopt the following motion.

**Motion:** The Board authorizes the General Manager to award IFB No. 8881 for brake lining assemblies to Railroad Friction Products Corp, for the price of \$802,821.25 pursuant to notification to be issued by the General Manager, subject to compliance with the District's Protest Procedures.



## EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: 		GENERAL MANAGER ACTION REQ'D: Approval and forward to Administration Committee		
DATE: c 1/7/11		BOARD INITIATED ITEM: No		
Originator/Prepared by: Kevin Hagerty Dept: Customer Access  1/5/11	General Counsel  1/5/11	Controller/Treasurer  [ ]	District Secretary [ ]	BARC  1-7-11 [ ]

TITLE:

### APPROVAL OF PARKING FEES FOR THE WEST DUBLIN/PLEASANTON STATION

NARRATIVE:

#### PURPOSE:

That the Board of Directors adopt parking fees for the West Dublin/Pleasanton Station

#### DISCUSSION

On February 19, 2011, the new West Dublin/Pleasanton BART Station is scheduled to open. The West Dublin/Pleasanton Station will be served by two parking garages: a 722 space garage located on the Dublin side of the station and a 468 space garage located on the Pleasanton side of the station. BART does not currently have a parking policy regarding the implementation of parking fees at new stations. The District is proposing to charge parking fees at parking facilities at the West Dublin/Pleasanton Station which are consistent with those parking fees charged at adjacent BART stations and at most East Bay Stations.

The proposed West Dublin/Pleasanton Station parking fees are:

Monthly Reserved:	\$63.00
Single Day Reserved	\$ 4.00
Airport/Long Term Reserved	\$ 5.00
Daily	\$ 1.00

At the Board meeting on October 14, 2010, a public hearing was held on these proposed parking fees. No public comments were provided at that meeting, nor were there written comments submitted to the Board as part of the public hearing process. BART conducted a Title VI outreach and hired a consultant to perform an equity analysis on the new parking fees. The analysis revealed that the proposed parking fees will not have a disproportionately high and adverse effect on minority and/or low-income populations the station serves.

There will be designated PERMIT and FEE areas in the Station's Dublin and Pleasanton garages. BART patrons, when purchasing a Monthly Reserve, Single Day Reserved and Airport/Long Term Reserved permits, will select either the Dublin or Pleasanton garage and will be issued the appropriate permit for the garage they choose. Parking fees will be required from 4:00 am to 3:00 pm, Monday through Friday, consistent with other BART stations with parking fees. Once

the new parking fees are approved, future changes to parking fees at the West Dublin/Pleasanton Station will be governed by the parking policies previously established by the Board for BART stations in the East Bay.

### **FISCAL IMPACT**

Parking fee revenues from the West Dublin/Pleasanton Station are estimated to be \$150,000 for the balance of FY 2011 and \$450,000 for FY 2012. Projected parking permit vendor fee expenses are \$6,400 for FY 2011 and \$22,000 for FY 2012. Daily parking fee costs associated with maintenance of, and collection from, parking payment equipment at the West Dublin/Pleasanton Station is being absorbed in BART's general operating expenses.

### **ALTERNATIVES**

Not implement parking fees or implement different parking fees.

### **RECOMMENDATION**

Adopt the following motions.

### **MOTIONS**

1. The Board finds that the fees established for the West Dublin Station parking facilities are for the purpose of either a) meeting operating expenses, or b) obtaining funds for capital projects necessary to maintain services within BART's existing service areas; therefore, the following actions are exempt from review under the California Environmental Quality Act (CEQA) pursuant to the exemption set forth in the California Public Resources Code Section 21080(a)(8) and CEQA Guidelines Section 15273(a).

2. The Board approves the following parking fees: Monthly Reserved \$63.00, Single Day Reserved \$4.00, Airport/Long Term Reserved \$5.00 and Daily \$1.00. **(2/3 VOTE REQUIRED)**





## EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>[Signature]</i>		GENERAL MANAGER ACTION REQ'D:		
DATE: c 1/5/11		BOARD INITIATED ITEM: No		
Originator/Prepared by: PAM A HERHOLD Dept:	General Counsel <i>[Signature]</i> 12/30/10 [ ]	Controller/Treasurer <i>[Signature]</i> 12/30/10 [ ]	District Secretary [ ]	BARC <i>[Signature]</i> 12-29-10 [ ]
Signature/Date: PA 12-29-10				

TITLE:

### 2010 MUNI FAST PASS AGREEMENT

#### NARRATIVE:

##### PURPOSE

To authorize the General Manager to execute an Agreement with the San Francisco Municipal Transportation Agency (SFMTA) to provide for Fast Pass payments for the period January 1, 2010 through June 30, 2018.

##### DISCUSSION

###### Background

Since 1983, BART and Muni (now SFMTA) have had Agreements under which riders with monthly Muni Fast Passes may use their Fast Passes to take unlimited trips on BART within San Francisco. BART uses fare gate information to track the number of trips Fast Pass patrons make, and then bills SFMTA at a set reimbursement rate for each trip. Since the two agencies entered into the last Agreement, SFMTA has made two changes of note to its Fast Pass Program.

The first change is that, effective January 1 2010, SFMTA began to sell two types of Fast Pass as follows:

- The Adult "A" Fast Pass, priced at \$70, that is good for trips on Muni and BART within San Francisco, and
- The Adult "M" Fast Pass, priced at \$60, that is good for unlimited trips only on Muni.

The second change is that Fast Pass is now available on the Clipper (formerly TransLink) smart card. Effective November 1, 2010, as part of SFMTA's Clipper fare media transition plan, the Adult "A" Fast Pass is available only via Clipper.

###### 2010 Fast Pass Agreement

Staffs of the two agencies have reached agreement to renew the Fast Pass Agreement for eight and one-half years, from January 1, 2010 through June 30, 2018. Prior Agreements were generally one to two years in length.

The terms and conditions of the new Agreement are essentially the same as the current Agreement, except as follows:

Reimbursement Rate Increase. The BART fare charged for intra-San Francisco trips, which is equal to the minimum fare, increased by 16.7 percent to \$1.75, effective July 1,

2009. In order to account for this increase, the two agencies have agreed to increase the reimbursement rate by 16.7 percent to \$1.19, effective retroactively to January 1, 2010.

The \$1.19 rate will be in effect until it is increased by the same rate as the scheduled July 1, 2012 fare increase, which is the last fare increase that is part of the adopted Productivity-Adjusted Consumer-Price Index (CPI)-Based fare increase program. It is anticipated that staff will seek Board authorization for a similar long-term fare increase program tied to inflation to take effect after 2012. The exact details and formula for such a program will be discussed with the Board at a future date.

After the rate increase in 2012, and for the remaining term of the 2010 Agreement, the reimbursement rate will increase by the same amount as BART's anticipated inflation-based fare increases. In any one year, however, the increase to the reimbursement rate will not exceed 10 percent

Clipper Fast Pass Transaction Fees. A transaction fee is charged to the operator each time a Clipper card with a Fast Pass product is used to take a trip on BART within San Francisco. The transaction fee, currently 1.5 cents per Clipper Fast Pass trip, decreases as the number of Clipper transactions increase. BART will deduct this amount from each monthly Fast Pass invoice to Muni.

SFMTA will seek authorization to enter into this Agreement from its Board of Directors, as well as the San Francisco Board of Supervisors. BART's Office of the General Counsel will approve the new Fast Pass Agreement as to form.

#### **FISCAL IMPACT**

Under the terms of the new Agreement, SFMTA will reimburse BART at a discounted rate of \$1.19 for each Fast Pass trip taken on BART for the period January 1, 2010 until the next CPI-based fare increase, currently planned for July 1, 2012. BART estimates that Fast Pass patrons will take about 8.8M trips on BART in calendar years 2010 and 2011, generating an estimated \$10.5 million each year.

Reimbursement rate increases after 2012 are anticipated to be the same as fare increases that would be part of a long-term fare increase program tied to inflation to take effect after 2012. With regard to Fast Pass ridership after 2011, it is anticipated that future Fast Pass ridership will grow at a rate of about one to two percent per year.

Clipper transaction fees are estimated at approximately \$130,000 per year based on 8.8 million annual trips at 1.5 cents per transaction.

#### **ALTERNATIVE**

Do not authorize execution of the Fast Pass Agreement and direct staff to renegotiate the terms.

#### **RECOMMENDATION**

Adoption of the following motion.

**MOTION**

The General Manager is authorized to execute the Special Transit Fare (Fast Pass) Agreement between the City and County of San Francisco and The San Francisco Bay Area Rapid Transit District for the period January 1, 2010 through June 30, 2018.





## EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>[Signature]</i>		GENERAL MANAGER ACTION REQ'D:		
DATE: c 1/4/11		BOARD INITIATED ITEM: No		
Originator/Prepared by: Michaela Morales Dept: for Brendan Lee, System Engineering <i>Brendan Lee</i> 12/20/10 Signature/Date:	General Counsel <i>[Signature]</i> 12/20/10 [ ]	Controller/Treasurer <i>[Signature]</i> 12/20/10 [ ]	District Secretary [ ]	BARC <i>[Signature]</i> 1/3/11 [ ]

TITLE:

### Sole Source Procurement of Payment Card Industry (PCI) Triple Data Encryption Standard PIN Pad Devices (Two-thirds Vote Required)

NARRATIVE:

#### PURPOSE:

To obtain Board authorization for the General Manager, in accordance with Public Contract Code Section 20227, to negotiate and execute a contract with MGR Industries, Inc. for the purchase of PCI Triple DES PIN pad security devices - (Device No.1K12U205).

#### DISCUSSION:

Debit card capability was implemented on the District's ticket vending machines in the mid 1990's. A customer using a debit card enters his personal pin number on a pin pad installed on the ticket vending machine where, to provide a safe and secure information exchange, the number is encrypted before transmission to the processing bank and re-encrypted upon receipt of the bank clearance. Currently the encryption is done by Single Data Encryption Algorithm with a single-length key.

With the constantly expanding capabilities of electronic information processing as well as the increased usage of this medium of exchange, the industry safeguards are under constant review for improvements. Global Industry Standards Organization, whose membership is ANSI, Internal Organization for Standardization and other standards bodies developed standards for use by the entire Payment Card Industry (PCI) – Visa, MasterCard, Discover, American Express, etc. A major payment card industry standard was issued in 2004-05 identifying a need to migrate from use of Single Data Encryption Algorithm with a single-length key to Triple Data Encryption using at least a double-length key, to support secure pin-based transactions. In 2005, the Payment Card Industry announced that the industry-standard cryptographic process was changing to a Triple Data Encryption Standard usage and established July 1, 2010 as the date for compliance.

Our current ticket vending equipment was purchased from Cubic Transportation System, Inc. The software which operates the equipment including the pin pad was developed and is owned by Cubic. The pin pads installed on the vending machines were manufactured in accordance

with Cubic specifications by MGR Industries, Inc., which holds proprietary rights to their manufacturing processes. Major costs, in the neighborhood of \$1 million, would be incurred to develop/modify existing interface software if the District were to elect to use another manufacturer's encryption device.

The District began working on gaining compliance some time ago. A pin pad was purchased from MGR Industries, Inc. and the Systems Engineering Department was able to secure some basic assistance from Cubic regarding its operation. Using staff's engineering skills and Cubic limited assistance the pin pad was installed on a ticket vending machine in the Engineering Testing Lab. Thru trial and error testing and working with our processing bank, Wells Fargo, staff succeeded in transmitting transactions thru the processing cycle. As a final test, the Pin pad was relocated to a ticket vending machine located at the Lake Merritt Station and transactions were successfully processed with Wells Fargo. We have recently received bank certification that the Pin pad is functioning appropriately and can be placed into operation.

Although the mandate of full compliance and capability to use the PCI Triple DES PIN pad as of July 1, 2010 was missed, the District, due to its display of good faith effort to comply, has been granted an extension until August 1, 2012 for full compliance. Under the terms of the Bankcard Service and Security Agreement between the District and Wells Fargo Bank, the Visa and MasterCard systems may impose what are called "fines and penalties" upon Wells Fargo for violation of system rules, in this case for example, a security breach due to the District's failure to complete installation of the PCI Triple DES PIN pad. Under the terms of the Bankcard Service and Security Agreement, Wells Fargo may pass those fines on to the District. Given this provision, it is imperative that the District urgently pursue the acquisition and replacement of our existing PIN pads with the PCI Triple DES PIN pads.

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

Pursuant to Public Contract code Section 20227, the Board may direct the purchase of any supply, equipment or material without observance of competitive bidding upon the finding by two-thirds of all members of the Board that there is only a single source of procurement and that the purchase is for the sole purpose of replacing equipment currently in use.

Staff recommends that the District purchase 320 PCI Triple DES PIN pad security devices (Device No. 1K12U205) from MGR Industries, Inc. to replace our existing pin pads, to comply with the industry-wide Payment Card Industry mandate.

The Office of the General Counsel will approve the contract as to form.

**FISCAL IMPACT:**

Funding of \$131,000 for contract 47BZ-201 is included in the total project budget for the FMS#47BZ – Triple DES PIN Pad. The Office of the Controller/Treasurer certifies that funds are currently available to meet this obligation.

**F/G 50W – FY 00 – 06 Capital Allocation**

**\$131,000**

As of 11/28/10, \$400,000 is available for commitment from this fund source for this project and BART to date has committed \$140,000. There is \$0 pending commitment in BART's financial management system. This action will commit \$131,000 leaving an uncommitted balance of \$129,000 in this fund.

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

**ALTERNATIVES:**

The alternative is not to authorize the purchase, seeking instead to procure another manufacturer's encryption device. Procuring another manufacturer's encryption device would involve significantly greater cost and would further delay the District's completion of the installation of the PCI Triple DES PIN pads.

**RECOMMENDATION:**

Adoption of the following motions.

**MOTION:**

1. The Board finds pursuant to Public Contract Code Section 20227 that MGR Industries, Inc. is the sole source for procurement of the PCI Triple DES PIN Entry devices and that the purchase is for the sole purpose of duplicating or replacing equipment already in use. The Board authorizes the General Manager to enter into direct negotiations with MGR Industries, Inc. to execute a purchase in an amount not-to-exceed \$131,000 plus applicable taxes for the acquisition of 320 PIN entry devices manufactured by MGR Industries, Inc. with a device model No. 1K12U205.
2. Subject to the determination of staff of the required quantity of replacement spare parts, and certification by the Office of the Controller/Treasurer that funds are available, the General Manager is authorized to purchase a maximum of an additional 100 PIN entry devices, in an amount not-to-exceed \$50,000, manufactured by MGR Industries, Inc. with a device model No. 1K12U205.





## EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Maia delBundlen</i>		GENERAL MANAGER ACTION REQ'D: Approve and forward to Board of Directors		
DATE: 1/4/11		BOARD INITIATED ITEM: No		
Originator/Prepared by: Thomas Horton Dept: TSD <i>Thomas Horton</i> Signature/Date: 1/4/11	General Counsel <i>Audrey R. Kasper</i> Signature/Date: 1/4/11 [ ]	Controller/Treasurer <i>[Signature]</i> Signature/Date: 1/4/11 [ ]	District Secretary [ ]	BARC <i>Paul [Signature]</i> Signature/Date: 1/4/11 [ ]
Status: Approved		Date Created: 12/13/2010		

TITLE:

### Time Extension and Increase of Contract Value, Agreement No. 6G3975, Bechtel Infrastructure Corporation

NARRATIVE:

#### PURPOSE:

To obtain the Board's approval to authorize the General Manager to execute a modification to Agreement No. 6G3975, General Engineering Services for the Earthquake Safety Program, with Bechtel Infrastructure Corporation (Bechtel). The maximum value of the Agreement would increase from \$226,230,000 to \$248,230,000. The term of the Agreement would be extended by 12 months.

#### DISCUSSION:

The Board authorized award of Agreement No. 6G3975 to Bechtel in the year 2000 in an amount not to exceed \$105 million. During the first two years of the Agreement, Bechtel conducted a Vulnerability Study that established the overall scope of the Earthquake Safety Program (Program) and described options for the amount of retrofit to be done. The BART Board chose an option that would upgrade the Core System (Berkeley Hills Tunnel to Daly City Yard) to operability, while upgrading the remainder of the system to safety standards. The Board expressed its desire that staff seek additional funding to allow additional operability retrofits.

In November 2006, after the Program scope had been fully established, the Board approved an increase in the amount authorized under Agreement No. 6G3975 from \$105 million to \$186 million, with an extension in the term of the Agreement for an additional four years to September 2013. In January 2009, the Board authorized a further increase in the amount of the Agreement to \$226,230,000 and a further extension of the term of the Agreement to March 2015, for the purpose of designing additional operability retrofits in certain portions of the BART system, and for additional analysis and design for the Transbay Tube.

Staff is requesting further modifications to the Agreement to conduct preliminary engineering for a possible second round of operability retrofits in certain portions of the BART System currently designed for safety only, and to conduct final design for those retrofits should the Board later choose to pursue them.



Since 2005, staff and consultants have made extraordinary efforts to reduce Program costs, and these efforts in conjunction with a highly favorable bidding climate have resulted in substantial savings, leading to the Board's previous decision to authorize additional operability retrofits. The Program continues to experience favorable bids that present a further opportunity to upgrade portions of the system, currently designated for safety retrofits, to operability status. Currently, the Program has approximately \$150.4 million in management reserve.

Because of the need to set aside some of the management reserve to cover potential future shortfalls in other funding sources for the Program and to ensure an adequate construction contingency, not all of the management reserve is available for additional operability upgrades. Depending upon assumptions regarding future contract bid conditions, staff projects that up to \$137 million will be available for additional upgrades.

Staff has developed the following alternatives for additional upgrades. These alternatives must undergo environmental analysis and, if required, preparation of environmental documentation and public review.

#### Operability Alternatives

Alternative 1 consists of upgrading the Bayfair Station and the Ashland Avenue bridge (south of Bayfair). This alternative would allow BART to provide emergency response across the Hayward Fault between Bayfair and Dublin/Pleasanton Stations for a short duration. This Alternative 1 would not provide additional revenue service because the segment would not be connected to other operable segments of BART, and because it does not have access to a BART maintenance yard. The total cost of this alternative is estimated at \$17.4 million. If Alternative 1 is adopted, program construction completion would be anticipated by August 2014.

Alternative 2 includes upgrading 88 piers along the A Line between Lake Merritt Station and Fruitvale Station, and the Fruitvale Station itself. This would allow revenue service to be restored to Fruitvale Station more quickly after an earthquake event, similar to other operable segments. The ridership increase experienced from this alternative is likely to be small, because Fruitvale Station is not well suited to be an end of line station. The total cost of this alternative is estimated at \$69.3 million. If Alternative 2 is adopted, program construction completion would be anticipated by October 2015.

Alternative 3 combines Alternatives 1 and 2. This would provide operability between Bayfair Station and Dublin/Pleasanton Station for a short period, and full operability to Fruitvale Station. The increased level of operability provided by this Alternative would be higher than either of the other alternatives. The total cost of this alternative is estimated at \$86.7 million. If Alternative 3 is adopted, program construction completion would be anticipated by October 2015.

The "No Build" Alternative would retain the current scope of work, namely safety retrofits only for the portions of the system discussed above.

### Effect on Agreement No. 6G3975

Bechtel's support is required to conduct preliminary engineering activities in support of the environmental analysis, and to perform final design should the Board decide to proceed with additional retrofits. The amount of final design needed will depend upon the Board's decision.

The overall effect of the proposed modification on Agreement No. 6G3975 is an increase in the not-to-exceed value and an extension of time. The maximum effect would result from a future decision by the Board to pursue Alternative 3. This would result in increasing the Agreement value from \$226,230,000 to a maximum amount of \$248,230,000, with an extension of the Agreement term from March 2015 to March 2016. If the Board approves this modification of the Agreement, staff will initially authorize Bechtel to conduct preliminary engineering in support of the environmental analysis. Staff will return to the Board to seek its decision regarding the final scope of work, after which it will authorize Bechtel to conduct final design as appropriate.

The Office of the General Counsel will approve the Agreement modification as to form.

### **FISCAL IMPACT:**

After execution of this modification, Agreement No. 6G3975 would increase by a maximum of \$22,000,000. District financial obligations under the Agreement will be subject to Annual Work Plans (AWPs). Each AWP will have a defined scope of services and a separate schedule and budget. Any AWP assigned for funding under a State or Federal grant will include state or federal requirements. AWP will be approved only if BART Capital Development and Control certifies the eligibility of identified funding sources and the Controller/Treasurer certifies the availability of funding prior to execution of each AWP.

BART's Manager, Earthquake Safety Program, will have the authority to issue AWP and to administer Agreement No. 6G3975.

Funding for individual AWP will be provided from BART's Capital Budget accounts as evidenced by the issuance of related work orders.

### **ALTERNATIVES:**

The Board could decline to authorize modification of this Agreement. If the Board still desires to pursue additional operability retrofits with a new consultant, staff would need to seek a new agreement to complete preliminary and final design as required. This would entail additional time and cost to the Program, both for the cost of the additional procurement and the loss of efficiency if a new firm is required to "ramp up" to complete the analysis and designs.

The Board could also authorize a modification to Agreement 6G3975 to allow for additional time and expenditures for preliminary engineering only. Staff would either have to seek a further increase in the Agreement value at a later date to cover final design, or seek a new agreement to complete final design. Either option would add cost and time to the Program.

**RECOMMENDATION:**

Staff recommends that the Board adopt the following motion:

The Board of Directors hereby authorizes the General Manager to execute a modification to Agreement No. 6G3975, General Engineering Services for the Earthquake Safety Program, with Bechtel Infrastructure Corporation to increase the not-to-exceed value to \$248,230,000, and to extend the term of the Agreement for an additional twelve months, from March 2015 to March 2016.





## EXECUTIVE DECISION DOCUMENT

<b>GENERAL MANAGER APPROVAL:</b> 		<b>GENERAL MANAGER ACTION REQ'D:</b> Approve and forward to Board of Directors		
<b>DATE:</b> 1/4/11		<b>BOARD INITIATED ITEM:</b> No		
<b>Originator/Prepared by:</b> Shirley J Ng Dept: TSD  <b>Signature/Date:</b>	<b>General Counsel</b>  1/3/11	<b>Controller/Treasurer</b>  1/3/11	<b>District Secretary</b> [ ]	<b>BART</b>  1/3/11
<b>Status:</b> Routed		<b>Date Created:</b> 12/01/2010		

### Award of Contract 15PC-110, Earthquake Safety Program, Aerial Structures - A Line South

**NARRATIVE:**

**PURPOSE:**

To obtain Board authorization for the General Manager to award Contract No. 15PC-110, BART Earthquake Safety Program, Aerial Structures - A Line South to Robert A. Bothman, Inc.

**DISCUSSION:**

The BART Earthquake Safety Program determined that the aerial structures on the Fremont line, from I-238 in Alameda County to Fremont Station, require seismic strengthening. The work consists of additional reinforced concrete for pier foundation and pier caps; fiber or steel encasement of pier columns; coordination with the Union Pacific Railroad; and associated utilities and structural work.

Advance Notice to Bidders was mailed on October 5, 2010 to 583 firms and Bid Documents were sent to 22 plan rooms. The Contract was advertised on October 5, 2010. A total of 41 firms purchased copies of the Bid Documents. A pre-Bid meeting and site tour were conducted on October 19, 2010 with 21 potential Bidders attending. Eight bids were received and publicly opened on November 30, 2010.

Review of the Bids by District staff revealed no arithmetical errors. Tabulation of the Bids including the Engineer's Estimate, is as follows:

1. Robert A. Bothman, Inc., San Jose, CA	\$ 8,580,915.00
2. California Engineering Contractors, Inc., Pleasanton, CA	\$ 9,249,655.70
3. Zovich & Sons, Inc., Hayward, CA	\$ 9,768,970.34
4. R & L Brosamer, Inc., Walnut Creek, CA	\$ 9,971,951.00
5. Alten Construction, Inc., Richmond, CA	\$10,829,287.07
6. West Bay Builders, Inc., Novato, CA	\$11,411,873.65
7. Granite Construction Company, Watsonville, CA	\$12,061,867.80
8. RGW Construction, Inc., Livermore, CA	\$12,398,191.00

Engineer's Estimate

\$11,600,000.00



The apparent low Bidder, Robert A. Bothman, Inc. has been deemed to be responsive to the solicitation. The Bid Price has been determined to be fair and reasonable. Examination of the Bidder's business experience and financial capabilities has resulted in a determination that this Bidder is responsible.

This Contract was advertised pursuant to the California Department of Transportation (Caltrans) DBE Program requirements for Federal Highway Administration funded contracts. Under the Caltrans DBE Program requirements, only Underutilized DBEs (UDBE) can be counted towards satisfaction of the race and gender conscious DBE goal. The Office of Civil Rights reviewed the scope of work for this contract and determined that there were subcontracting opportunities; therefore, a UDBE participation goal of 5% was set for this contract. Robert A. Bothman, Inc. committed to subcontracting 6.3% to UDBEs.

### **FISCAL IMPACT:**

Funding of \$8,580,915 for award of Contract No. 15PC-110 is included in the total project budget for the FMS #15PC, ESP-Aerial A Line South. The Office of the Controller/Treasurer certifies that funds are currently available to meet this obligation. The total cost of \$8,580,915 will be funded by Federal, State and local funds.

As of month ending November 28, 2010 the following funding is available for commitment from these sources:

Fund Grant	Funds Available	Committed	Pending Commitments	Funds Allocated to this EDD	Funds Remaining
49S-Federal	\$ 6,951,376	\$ 0	\$ 0	\$ 1,900,673	\$ 5,050,703
55U-State	\$ 900,624	\$ 0	\$ 0	\$ 247,130	\$ 653,494
01F-Local	\$23,034,999	\$ 10,000	\$ 0	\$6,433,112	\$16,591,887
<b>Total</b>	<b>\$30,886,999</b>	<b>\$ 10,000</b>	<b>\$ 0</b>	<b><u>\$8,580,915</u></b>	<b>\$22,296,084</b>

There is no fiscal impact on available unprogrammed District Reserves.

### **ALTERNATIVE:**

The Board may decline to authorize award of the Contract. If the Contract is not awarded, BART will be unable to implement the seismic retrofit of the A Line South aerial structures at this time. The Board may elect to reject all bids and authorize staff to readvertise. Under this alternative, staff would have to reissue the Contract and obtain new bids. This would result in additional cost and time to execute the required retrofits.

**RECOMMENDATION:**

It is recommended that the Board adopt the following motion:

**MOTION:**

The General Manager is authorized to award Contract No. 15PC-110, Earthquake Safety Program, Aerial Structures - A Line South to Robert A. Bothman, Inc. for the Bid amount of \$8,580,915.00, pursuant to notification to be issued by the General Manager and subject to the District's protest procedures and the Federal Highway Administration's requirements related to protest procedures.

# FUNDING SUMMARY - EARTHQUAKE SAFETY PROGRAM

PROJECT ELEMENT	Baseline Budget	Current Forecast as of 12/30/10	REMARKS
<b>ENVIRONMENTAL, ENGINEERING, AND CONSTRUCTION MANAGEMENT</b>			
GEC (Bechtel Team)	\$105,000,000	\$226,200,000	
Other GEC	\$81,478,000	\$0	
<b>Subtotal GEC</b>	<b>\$186,478,000</b>	<b>\$226,200,000</b>	
CM	\$61,498,000	\$79,000,000	
Environmental	\$1,042,796	\$2,198,237	
<b>TOTAL E, E &amp; CM</b>	<b>\$249,018,796</b>	<b>\$307,398,237</b>	
<b>CONSTRUCTION</b>			
<b>Transbay Tube</b>			
Oakland Ventilation Structure	\$1,033,000	\$1,153,096	
Oakland Landside	\$17,970,000	\$10,699,433	
<b>San Francisco Ferry Plaza</b>			
SFTS (including Tube liner)	\$73,037,000	\$5,655,414	
Marine Vibro Demo	\$101,285,000	\$76,030,000	
Stitching	\$82,962,000	\$0	
<b>Aerial Guideways</b>			
West Oakland/North Oakland	\$112,923,000	\$83,700,485	
Fremont	\$178,224,000	\$100,717,176	
Concord	\$36,500,000	\$10,606,641	
Richmond	\$80,155,000	\$49,994,000	
San Francisco/Daly City	\$36,590,000	\$9,991,645	
<b>Stations (18)</b>	<b>\$126,961,000</b>	<b>\$118,896,318</b>	
<b>Other Structures</b>			
LMA	\$5,529,000	\$5,267,440	
Yds & Shops	\$12,436,000	\$17,757,437	
Parking Structures	\$14,437,000	\$13,500,000	
At Grade Trackway	\$22,361,000	\$0	
34.5kV Replacement		\$40,000,000	
<b>Systems</b>	<b>\$7,066,000</b>	<b>\$9,868,000</b>	
<b>TOTAL CONSTRUCTION</b>	<b>\$909,469,000</b>	<b>\$553,837,085</b>	
<b>PROGRAM COSTS</b>			
Program Costs ( Hazmat, ROW, Consult, Staff)	\$159,894,204	\$241,801,763	
Contingency	\$32,104,000	\$150,397,072	
<b>TOTAL PROGRAM COSTS</b>	<b>\$191,998,204</b>	<b>\$392,198,835</b>	
<b>BASELINE FUNDING</b>	<b>\$1,350,486,000</b>		
<b>REVISED FUNDING</b>		<b>\$1,253,434,157</b>	
			<b>\$1,221,275,376</b> Adopted Funding
			<b>\$32,158,781</b> Outside Adopted Funding



## EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Marjorie DeLuca</i>		GENERAL MANAGER ACTION REQ'D: Approve and forward to Board of Directors		
DATE: 1/7/11		BOARD INITIATED ITEM: No		
Originator/Prepared by: Thomas Horton Dept: TSD <i>Thomas Horton</i> Signature/Date: 12/27/10	General Counsel <i>M. Sadowski</i> 12/27/10	Controller/Treasurer <i>[Signature]</i> 12/27/10	District Secretary [ ]	BARC <i>Paul Jensen</i> 1/3/11
Status: Approved		Date Created: 11/17/2010		

TITLE:

### Award of Contract 15SU-130, Earthquake Safety Program Aerial Structures - West Oakland Pier - 110 to Transbay Tube Portal

NARRATIVE:

#### PURPOSE:

To obtain Board authorization for the General Manager to award Contract No. 15SU-130, Earthquake Safety Program Aerial Structures - West Oakland Pier - 110 to Transbay Tube to West Bay Builders, Inc.

#### DISCUSSION:

The BART Earthquake Safety Program determined that the aerial structures in West Oakland (between Interstate 880 and the eastern portal of the Transbay Tube) require seismic strengthening. Contract 15SU-130 will provide for additional reinforced concrete for pier foundations and pier caps; fiber or steel encasement of pier columns, coordination with the Union Pacific Railroad, and associated utilities and structural work.

Advance Notice to Bidders was mailed on October 4, 2010 to 44 firms and Contract Books were sent to 22 plan rooms. The Contract was advertised on October 5, 2010. A total of 37 firms purchased copies of the Contract Documents. A pre-bid meeting and site tour were held on October 15, 2010 with 45 potential Bidders attending. Ten (10) Bids were received and Bids were publicly opened on November 16, 2010.

Review of the Bids by the District staff revealed that the Bids submitted by Robert A. Bothman and Alten Construction had arithmetical errors in the Bid Item totals and in the Total Bid Price. Article 15.B, Evaluation, of the Instructions to Bidders in the Contract clearly states that item totals are provided by the Bidder for the convenience of the District, and that the District will calculate such prices based on the unit or lump sum prices bid. In the event of a discrepancy, the District's calculations govern. Tabulation of the corrected Bids, including the Engineer's Estimate, is as follows:

- |  |                 |
|--|-----------------|
| 1. West Bay Builders, Inc., Novato, CA       | \$ 9,147,122.00 |
| 2. Disney Construction, Inc., Burlingame, CA | \$ 9,240,855.00 |



3. Gordon N. Ball, Inc., Alamo, CA	\$ 9,354,100.00
4. Robert A. Bothman, Inc., San Jose, CA	\$ 9,588,670.00
5. R&L Brosamer, Inc., Walnut Creek, CA	\$ 9,615,779.00
6. Proven Management, Inc., San Francisco, CA	\$ 9,949,617.00
7. Ghilotti Construction Company Inc, Santa Rosa, CA	\$10,562,125.00
8. Alten Construction, Inc., Richmond, CA	\$10,583,261.11
9. California Engineering Contractors, Inc., Pleasanton, CA	\$10,927,489.00
10. Diablo Contractors, Inc., San Ramon, CA	\$11,943,840.00

Engineer's Estimate	\$10,960,000.00
---------------------	-----------------

The apparent low Bidder, West Bay Builders, Inc. (also the low Bidder before the arithmetical corrections) has been deemed to be responsive to the solicitation. The Bid Price has been determined to be fair and reasonable. Examination of the Bidder's business experience and financial capabilities has resulted in a determination that this Bidder is responsible.

This contract was advertised pursuant to the California Department of Transportation (CalTrans) DBE Program requirements for Federal Highway Administration funded contracts. Under the CalTrans DBE Program requirements, only Underutilized DBEs (UDBE) can be counted towards meeting the race and gender conscious DBE goal. The Office of Civil Rights reviewed the scope of work for this contract and determined that there were subcontracting opportunities; therefore, a UDBE participation goal of 8% was set for this contract. West Bay Builders, Inc. committed to subcontracting 13.4% to UDBEs.

### **FISCAL IMPACT:**

Funding for \$9,147,122 for award of Contract No. 15SU-130 is included in the total project budget for the FMS #15SX, ESP-Aerial West Oakland UPRR. The Office of the Controller/Treasurer certifies that funds are currently available to meet this obligation. The total cost of \$9,147,122 will be funded by Federal, State and Local funds.

As of month ending October 31, 2010 the following funding is available for commitment from these sources:

Fund Grant	Funds Available	Committed	Pending Commitments	Funds Allocated to this EDD	Funds Remaining
49S-Federal	\$ 1,339,004	\$ 0	\$ 0	\$ 656,763	\$ 682,241
55U-State	\$ 173,482	\$ 0	\$ 0	\$ 85,068	\$ 88,414
01F-Local	\$14,487,514	\$ 0	\$ 0	\$8,405,291	\$6,082,223
<b>Total</b>	<b>\$16,000,000</b>	<b>\$ 0</b>	<b>\$ 0</b>	<b><u>\$9,147,122</u></b>	<b>\$6,852,878</b>

There is no fiscal impact on available unprogrammed District Reserves.

**ALTERNATIVE:**

The Board may decline to authorize award of the Contract. If the Contract is not awarded, BART will be unable to implement the seismic retrofit of the West Oakland aerial structures. The Board may elect to reject bids and authorize staff to readvertise. Under this alternative, staff would have to reissue the Contract and obtain new bids. Staff does not believe that readvertising would result in any significant lowering of prices. This would also result in additional cost and time to execute the required retrofits.

**RECOMMENDATION:**

It is recommended that the Board adopt the following motion:

**MOTION:**

The General Manager is authorized to award Contract No. 15SU-130, Earthquake Safety Program, Aerial Structures - West Oakland Pier - 110 to Transbay Tube Portal to West Bay Builders, Inc. for the Bid amount of \$9,147,122.00, pursuant to notification to be issued by the General Manager and subject to the District's protest procedures and the Federal Highway Administration's requirements related to protests.

# FUNDING SUMMARY - EARTHQUAKE SAFETY PROGRAM

PROJECT ELEMENT	Baseline Budget	Current Forecast as of 12/30/10	REMARKS
<b>ENVIRONMENTAL, ENGINEERING, AND CONSTRUCTION MANAGEMENT</b>			
GEC (Bechtel Team)	\$105,000,000	\$226,200,000	
Other GEC	\$81,478,000	\$0	
<b>Subtotal GEC</b>	<b>\$186,478,000</b>	<b>\$226,200,000</b>	
CM	\$61,498,000	\$79,000,000	
Environmental	\$1,042,796	\$2,198,237	
<b>TOTAL E, E &amp; CM</b>	<b>\$249,018,796</b>	<b>\$307,398,237</b>	
<b>CONSTRUCTION</b>			
<b>Transbay Tube</b>			
Oakland Ventilation Structure	\$1,033,000	\$1,153,096	
Oakland Landside	\$17,970,000	\$10,699,433	
<b>San Francisco Ferry Plaza</b>			
SFTS (including Tube liner)	\$73,037,000	\$5,655,414	
Marine Vibro Demo	\$101,285,000	\$76,030,000	
Stitching	\$82,962,000	\$0	
<b>Aerial Guideways</b>			
West Oakland/North Oakland	\$112,923,000	\$83,700,485	
Fremont	\$178,224,000	\$100,717,176	
Concord	\$36,500,000	\$10,606,641	
Richmond	\$80,155,000	\$49,994,000	
San Francisco/Daly City	\$36,590,000	\$9,991,645	
<b>Stations (18)</b>	<b>\$126,961,000</b>	<b>\$118,896,318</b>	
<b>Other Structures</b>			
LMA	\$5,529,000	\$5,267,440	
Yds & Shops	\$12,436,000	\$17,757,437	
Parking Structures	\$14,437,000	\$13,500,000	
At Grade Trackway	\$22,361,000	\$0	
34.5kV Replacement		\$40,000,000	
<b>Systems</b>	<b>\$7,066,000</b>	<b>\$9,868,000</b>	
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		\$1,221,275,376 Adopted Funding	
		\$32,158,781 Outside Adopted Funding	



## EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>[Signature]</i>		GENERAL MANAGER ACTION REQ'D: Approve and forward to the PPAAL Committee		
DATE: c 1/7/11		BOARD INITIATED ITEM: No		
Originator/Prepared by: Jeffrey P. Ordway Dept. Property Development	General Counsel <i>[Signature]</i> 1/4/11	Controller/Treasurer <i>[Signature]</i>	District Secretary [ ]	BARC <i>[Signature]</i> 1/5/11
Signature/Date: 1/3/11		[ ]	[ ]	[ ]

TITLE:

### New Station Retail Policy

#### NARRATIVE:

**PURPOSE:** To obtain Board approval of a new Station Retail Policy.

**DISCUSSION:** On June 25, 2009, the Board of Directors authorized staff to release a Request for Qualifications (RFQ) for a Master Station Retail Vendor(s), and directed staff to return to the Board to recommend policy modifications. The Board was informed that existing retail and related policies would need to be reviewed for potential modification to address three primary topics:

- To take into account the District's transit service responsibilities with respect to its stations, including:
  - Identifying existing and future capacity and passenger flow improvements through Tier 1 analyses, and
  - Following the Tier 1 analyses, obtaining additional analyses (Tier 2) to account for impacts on station utilities, access improvements, station facility needs, station advertising, and existing station retail.
- To update existing and identify new policy principles such as the provision of quality goods and services that meet customer needs, delivering good value for money, and in keeping with sustainable principles and practices. Additional topics to be addressed include architectural/design quality, mix of national and locally owned businesses, and retail that complements development of livable, walkable, compact and mixed-use communities around BART stations, and encourages patrons to remain at concourse levels rather than wait for service on platforms.
- To identify any new policies necessary to support a Master Station Retail Vendor ("Master Vendor") program. Under such a program, one or more Master Vendors would establish multiple retail outlets and arrange for individual vendors at specified stations.

Based on the response to the RFQ, staff determined that there is interest in a Master Vendor program, and that there is a willingness to pay for Tier 1 and Tier 2 analyses.

Staff reviewed numerous District policies addressing station retail, dating back to 1963, and also examined retail policies from transit and other public agencies. Staff determined that the most



expeditious approach to adopting a new Station Retail Policy was to supersede in whole or in part only those policies that are clearly outdated, or are inconsistent with or subsumed by the proposed new Policy. There may be other station retail policies that include names of departments that no longer exist, or need other updating, but those policies are not being modified at this time because many of them cover topics in addition to station retail, such as leasing or joint development.

The proposed new Station Retail Policy is submitted for Board consideration. In addition to addressing the primary topics discussed above, the Policy includes two items that should be highlighted.

- The proposed Policy changes the term of station retail permits for which Board approval will be required. Under existing policy, any permit with a term greater than one year including renewals, requires Board approval. Under the proposed Policy, only permits with terms over five years, including options or renewals, require Board approval. Staff proposes this change because one-year permits are rarely feasible given the investment required by a vendor. Changing the Board approval threshold will allow staff to give vendors an opportunity to operate for a period of up to five years, a more reasonable period for both staff and the vendor to determine whether approval should be sought for a longer period. It will also be less burdensome for staff and the Board than the current practice of seeking approval for permits exceeding one year.
- The proposed Policy outlines an approach to vendors who operate by permits issued directly from the District ("Independent Vendors") rather than under the permit of the Master Vendor. Independent Vendors include, but are not limited to, existing vendors who have remaining terms, including options, on their existing permits at the time this Policy is adopted. Such remaining terms will be honored; however, after expiration, applications for new permits or other extensions from existing Independent Vendors will be treated the same as those from new Independent Vendors. The District will issue permits to Independent Vendors only at stations where there is no Master Vendor Agreement; or where there is an existing or pending Master Vendor Agreement, and staff has determined that there is sufficient time for an Independent Vendor permit term prior to commencement of improvements or operations by the Master Vendor; or where there is an existing or pending Master Vendor Agreement, and the Master Vendor has agreed that the issuance of a specific Independent Vendor permit is acceptable. It is anticipated, but not required, that some Independent Vendors and Master Vendors will reach agreements that will result in the operations of such Independent Vendors becoming part of the Master Vendor operations at specific stations, rather than separately permitted businesses.

The Real Estate Department shall continue to be responsible for the implementation of this Policy and the promulgation of rules and procedures related to station retail in collaboration with other BART departments.

**FISCAL IMPACT:** There is no immediate fiscal impact associated with adoption of the Station Retail Policy. Any fiscal impact from a proposed agreement with a Master Vendor will be addressed when any such agreements are brought to the Board for approval.

**ALTERNATIVES:** Do not adopt the new Station Retail Policy. Continue the current station retail program under current policies and procedures, which do not provide for a Master Vendor Program or require

that vendors perform station capacity, passenger flow and additional analyses.

**RECOMMENDATION:** It is recommended that the Board adopt the following motion.

**MOTION:** The Board adopts the attached Resolution, "In the matter of adopting a Station Retail Policy."

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

In the matter of adopting a  
Station Retail Policy \_\_\_\_\_/

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

WHEREAS, the District will be served by an updated, comprehensive and coordinated approach to station retail that generates revenues for transit, protects the core transit functions of the stations, provides a more user-friendly environment for customers, and accounts for growth in transit usage and for necessary station improvements; and

WHEREAS, a new Station Retail Policy that takes into consideration the factors listed above, and introduces the concept of Master Vendors, is in the best interests of the District,

NOW, THEREFORE, BE IT RESOLVED, that the attached policy is adopted.

###

Adopted \_\_\_\_\_



## STATION RETAIL POLICY

### VISION

The San Francisco Bay Area Rapid Transit District (BART or the District) is the steward of a large-scale public investment, which includes important real property assets essential to the District's operation. These assets also contribute to the ongoing financial viability of the transit system. By promoting the coordinated introduction and operation of commercial retail goods and services at its stations through introduction of a Master Station Retail Vendor ("Master Vendor") program, the District can generate new revenues for transit, protect the core transit functions of the stations, and provide a more user-friendly environment for customers.

### PURPOSE

The capacity and passenger flows of all BART stations are affected by recent growth in transit usage and anticipated growth due to the proposed Central Subway connection to the Powell Street Station, linkage to California High Speed Rail and the new TransBay Terminal, and ridership increases from BART extensions to East Contra Costa County, the Oakland International Airport, Warm Springs and Silicon Valley. In addition, there are numerous station facility functions that need to be considered in pursuing additional retail at BART stations, including station utilities, access improvements, signage, advertising, existing retail and special entrance agreements.

There are a number of existing policies guiding the current station retail program. The purpose of this new Station Retail Policy is to provide an updated, comprehensive and coordinated approach to station retail that takes into consideration the factors listed above, and introduces the Master Vendor Program.

For the purpose of this Policy, station retail means the sale of goods and services in the non-paid areas of stations, excluding parking lots. This Policy does not address newspaper sales, public telephones, telecommunication services, advertising, free speech, special events, direct line phone services, and other activities that are operated by the District under separate policies or programs.

### STATION RETAIL STRATEGY

The District's new strategy for introducing retail within stations is to implement a Master Vendor Program, under which one or more Master Vendors will establish multiple retail outlets and arrange for individual vendors at specified stations. The selected Master Vendors will be required to fund station capacity and passenger flow analyses (Tier 1), as well as additional analyses (Tier 2) of potential impacts of retail on station utilities, access improvements, station facility needs, advertising and existing retail, as a prerequisite to obtaining approval to implement a comprehensive retail program. These analyses will identify necessary station improvements and constraints and provide for a comprehensive approach toward retail planning. The tenant mix and selection of retail will be determined by the Master Vendors, subject to



approval processes and other limitations set forth in this Station Retail Policy, implementing rules and procedures, and the District's agreement with such Master Vendors.

Retail under the Master Vendor Program will not necessarily be the exclusive form of retail at stations. Station retail arrangements that are not within the Master Vendor Program ("Independent Vendors") may continue to be authorized by the District by permit under the following conditions:

- a. At stations in which an Independent Vendor has an existing permit with the District at the time this Policy is adopted, for the term of such existing permit, including options. After the expiration of the existing permit term, including options, an existing Independent Vendor may be issued a new permit or other form of extension only if criteria b., c., or d. below is met.
- b. At stations for which there is no Master Vendor.
- c. At stations for which there is an existing or pending Master Vendor agreement, and staff has determined that there is a sufficient period of time for an Independent Vendor permit term preceding the commencement of improvements or operations by the Master Vendor.
- d. At stations for which there is an existing or pending Master Vendor agreement, and the Master Vendor has agreed that the issuance of a specific Independent Vendor permit is acceptable.

It is anticipated that some Independent Vendors and Master Vendors will reach agreements that will result in the operations of the Independent Vendors becoming part of the Master Vendor operations at specified stations, thereby precluding the need for the District to issue separate permits to such Independent Vendors. However, this Policy does not require that Master Vendors enter into agreements with Independent Vendors.

## **STATION RETAIL POLICY**

### **A. Financial Considerations**

1. In its evaluation of any proposed Master Vendor agreement or Independent Vendor permit, staff will seek to maximize revenue to the District by evaluating the financial performance of proposed station retail based on sound financial parameters, including the ability of the proposed retail to generate both base and participation revenues. All retail agreements shall provide for appropriate escalation of such revenues to the District over time. Potential cost savings to the District that may be generated due to a vendor's provision of District improvements (e.g., utilities, faregates, and other equipment) should also be considered in deciding whether to enter into a station retail agreement.
2. The duration of any station retail agreement shall be sufficient to protect the District's interests while allowing a commercially reasonable amount of time for a vendor to finance its capital and operating investments. Performance milestones shall be included in all Master Vendor agreements, and in Independent Vendor permits as appropriate, to ensure that the anticipated retail is established within appropriate time frames and meets other specified

requirements. This is particularly important in instances in which a vendor proposes to introduce retail at multiple stations.

3. Station retail fees paid to the District shall reflect fair market value, based on what other transit and public agencies are receiving from similar retail arrangements, market competition, and/or independent financial analysis.

#### **B. Process Considerations**

1. Master Vendor and Independent Vendor proposals are to be solicited through a competitive process, except in cases where negotiations with a single source would likely result in more favorable conditions for the District. Single source negotiations may be particularly appropriate in circumstances in which no retail interest has been expressed over time. Where appropriate, staff will employ requests for qualifications rather than proposals.
2. All Master Vendor agreements, and any Independent Vendor permits that have terms exceeding five years, inclusive of options, shall require prior Board approval. This requirement is applicable whether a Vendor's form of extension is called a new permit, renewal, or extension.
3. New retail within BART stations is to be introduced only after accounting for existing and future station capacity and passenger flow needs. (Tier 1 analyses)
4. In considering station retail opportunities, staff will examine the financial and physical impacts upon existing and future station needs for utilities, access, directional and information signage, equipment such as ticket or transfer vending machines, maintenance, and construction staging areas. Staff also will consider the impact of the proposed retail on existing retail, advertising, and the District's interest in adjacent transit-oriented development retail. (Tier 2 analyses)
5. Master Vendors will be required to fund Tier 1 and Tier 2 analyses as a prerequisite to obtaining approval to implement a comprehensive retail program.
6. Each new Independent Vendor shall pay for a commensurate level of Tier 1 and Tier 2 analyses according to the level of impacts its business would have on a station, as a prerequisite to obtaining a permit. This requirement also is applicable to existing Independent Vendors who wish to obtain a new permit, renewal or other form of extension following the expiration of their existing permit terms, including options.
7. The Real Estate Department shall continue to be responsible for the implementation of this Policy and the promulgation of rules and procedures related to station retail in collaboration with other BART departments.

### **C. Physical Use Considerations**

1. Station retail shall be restricted to the non-paid areas of stations, excluding parking lots.
2. Station retail shall be implemented in such a manner to encourage passengers to wait for their trains at the concourse level of stations rather than at station platforms, thereby improving station capacity and passenger flow.
3. Station retail shall complement the development of livable, walkable, compact and mixed-use communities at and around BART stations.
4. Retail facilities shall be of high architectural and design quality and complement station architecture, informational and directional signage, and art.
5. To the fullest extent possible when designing and developing new retail, an attempt should be made to create new advertisement space and enhance existing advertisement space that may be used by either BART or its advertising contractor.
6. Station retail shall offer convenient goods and services of high quality that meet BART customer needs and deliver good value. The overall experience for BART customers should be enhanced by retail.
7. Station retail shall include a mixture of nationally and locally-owned businesses and small businesses to ensure financial sustainability and local development opportunity.
8. Where feasible, there shall be minimal or zero waste in the construction of retail facilities and in the packaging of goods and services.
9. Where feasible, station retail shall use biodegradable or recyclable food packaging, and provide separate receptacles for recyclables.
10. The sale of food and nonalcoholic beverages is permitted in non-paid station areas; however, nothing in this Policy shall affect the prohibition of eating and drinking in paid areas and on the trains.
11. The sale of tobacco products is prohibited.
12. The District reserves the right to disallow activities and/or the sale or distribution of goods or services that it deems inappropriate, including but not limited to, activities or sales that are detrimental to the safety or security of the BART system and its customers.

## **EFFECT ON EXISTING STATION RETAIL POLICIES**

The following policies are superseded in their entirety by this Station Retail Policy:

- **Resolution 1368 (7/3/69) – Policy on In-Station Customer Services**
- **Board Action 9/22/77 – Temporary expansion of the concession program**
- **Board Action 10/7/99 – Policy Permitting Sale of Food and Beverages**

The following existing policy is modified in part as follows:

- **Board Action November 17, 1983 – Policy Regarding Exercise of Free Speech, Special Event Activities, and for Commercial Activities (Concessions)** – The second sentence of the Policy is replaced with the following sentence: “No commercial use of District station area property shall be authorized for a term in excess of five (5) years, including options or renewals, without prior Board approval, except for agreements in connection with parking lot operations, news racks, public telephones, and post office boxes.”

Unless specifically superseded or modified as noted above, or except to the extent that they are inconsistent with this Policy, existing policies with provisions regarding station retail shall remain in effect.



# SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

## Memorandum

TO: Board of Directors

DATE: January 7, 2011


FROM: General Manager

SUBJECT: Amendments to the BART Citizen Oversight Model

At the BART Police Department (BPD) Review Committee meeting on January 5, 2011, the Committee discussed amendment of the BART citizen oversight model, adopted by the Board on August 13, 2009. As you will recall, AB1586 (Swanson) did not include the BART model provision that allowed the Citizen Board to appeal General Manager recommendations for corrective personnel action to the Board of Directors.

BPD Review Committee members considered the need to reconcile the BART model with the legal authority that was granted under AB1586. Additionally, the Committee discussed expanding the Citizen Board Member Qualifications section of the model, which excludes currently sworn police officers from serving on the Citizen Board, to include all persons currently employed in a law enforcement capacity, both sworn and non-sworn. I have also taken this opportunity to take out a reference to the issue of Citizen Board compensation, which was recently determined by the Board.

Based on discussions at the BPD Review Committee meeting, I am recommending that the Board consider adopting amendments to the BART Citizen Oversight Model. Attached are red-lined copies of the relevant model sections with proposed amendments for your consideration.

  
Dorothy W. Dugger

Attachment

cc: Board Appointed Officers  
Deputy General Manager  
Executive Staff

### **MOTION:**

The Board hereby amends the BART Citizen Oversight Model previously adopted on August 13, 2009, by Resolution No. 5094 to reflect the changes to Exhibit A: Chapter 1-04.B Recommendations for Corrective Action; Chapter 2-02 Appointment of Citizen Board Members; and Chapter 2-03 Citizen Board Member Qualifications, as detailed in Attachment A.

# ATTACHMENT A

## **Chapter 1-04 DUTIES AND RESPONSIBILITIES**

### **B) Recommendations for Corrective Action**

- i) Independent investigative findings made by the Office of the Police Auditor shall include recommendations for corrective action, up to and including termination where warranted and shall include prior complaints and their disposition. When the evidence does not support the allegations of misconduct, the Auditor shall recommend that the matter be dismissed.
- ii) In a confidential personnel meeting, the Auditor shall submit his/her investigative findings and recommendations to the Citizen Board for review. Should the Citizen Board agree with the findings and recommendations, the report will be submitted to the Chief of Police for appropriate action. The Chief of Police shall implement the recommended action, absent appeal.
- iii) Should the Chief of Police disagree with the findings and recommendation of the Auditor and Citizen Board, the Chief of Police, in a confidential personnel meeting, may appeal to the General Manager. The Chief of Police will submit his/her disagreements and recommendations to the General Manager. In a confidential personnel meeting, the General Manager shall make a decision and make his/her decision known to the Chief of Police, Citizen Board and the Auditor. The Chief of Police shall implement the General Manager's decision, ~~absent appeal. Appeal of decisions made by the General Manager shall follow the process outlined in Chapter 1-04(B)vi.~~
- iv) Should the Citizen Board disagree with the Auditor's findings, by simple majority, in a confidential personnel meeting, the Auditor and the Citizen Board shall attempt to come to a consensus. If the Citizen Board and the Auditor fail to come to a consensus, by simple majority, the Citizen Board may appeal. The efforts made to achieve consensus shall be documented by the Citizen Board and shall be forwarded to the Chief of Police as a part of the appeal. All appeals regarding findings and recommendations for corrective action or dismissal, between the Citizen Board and the Auditor will be initially appealed to the Chief of Police, in a confidential personnel meeting. The Citizen Board will submit their disagreements and recommendations to the Chief of Police, in a confidential personnel meeting. The Auditor will submit his/her recommendation to the Chief of Police, in a confidential personnel meeting. The Chief of Police shall make a decision on the matter and make his/her decision known to the Citizen Board and the Auditor, in a confidential personnel meeting. The Chief of Police shall implement discipline or dismissal, absent appeal.
- v) If the Citizen Board disagrees with the Chief of Police's decision and it is reflected by simple majority of its members, they may appeal to the General Manager, in a confidential personnel meeting. The Citizen Board and the

Auditor's recommendations will be submitted to the General Manager, in a confidential personnel meeting. The General Manager will render a finding and report it to the Chief of Police, ~~and Citizen Board and the Auditor,~~ in a confidential personnel meeting. The Chief of Police shall implement the General Manager's decision, which will be final, ~~absent appeal.~~

~~vi) If the Citizen Board disagrees with the General Manager with a super (2/3) majority, they may appeal to the BART Board of Directors. All reports developed as part of the investigation will be submitted to the BART Board of Directors, who will render a decision in a closed personnel session. BART Board of Directors decisions regarding discipline will require a super (2/3) majority of the BART Board of Directors for approval. In a confidential personnel session, the BART Board will notify the Citizen Board, Auditor, General Manager and Chief of Police. The Chief of Police will implement the decision of the Board of Directors, which will be final.~~

~~vi) (vi)~~ Discipline recommended herein shall be subject to an administrative hearing prior to implementation, in a manner consistent with addressing the due process rights of public employees, when applicable.

## **Chapter 2-02 APPOINTMENT OF CITIZEN BOARD MEMBERS**

The Citizen Board shall report directly to the BART Board of Directors. The Citizen Board shall consist of eleven (11) members appointed as follows: Each BART Director shall appoint one (1) member. The BART Police Associations (BPMA and BPOA) shall jointly appoint one (1) member, who will not be a current member of either Association. There shall be one (1) public-at-large member to be appointed by the BART Board of Directors. Members of the Citizen Board must reside in one of the three counties that make up the BART District and shall agree to adhere to the Code of Ethics described in Chapter 2-08. The initial appointments of Citizen Board members will be a combination of one-year and two-year terms. All subsequent appointments or re-appointments to the Citizen Board shall be for two-year terms. Service on the Citizen Board shall be voluntary. ~~(COMPENSATION TO BE DETERMINED)~~

## **Chapter 2-03 CITIZEN BOARD MEMBER QUALIFICATIONS**

Citizen Board members must reside in one of the three counties that make up the BART District. Citizen Board members must be fair minded and objective with a demonstrated commitment to community service. No person currently employed in a law enforcement capacity, either sworn or non-sworn, ~~serving as a sworn police officer~~ shall be eligible for appointment to the Citizen Board. Citizen Board members may not concurrently serve on another Citizen Board. All appointees to the Citizen Board shall be subject to background checks. No person convicted of a felony shall serve on the Citizen Board.