

**SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT**

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

**BOARD MEETING AGENDA**

February 25, 2010

9:00 a.m.

A regular meeting of the Board of Directors will be held at 9:00 a.m. on Thursday, February 25, 2010, in the BART Board Room, Kaiser Center 20<sup>th</sup> Street Mall – Third Floor, 344 – 20<sup>th</sup> Street, Oakland, California.

Members of the public may address the Board of Directors regarding any matter on this agenda. Please complete a “Request to Address the Board” form (available at the entrance to the Board Room) and hand it to the Secretary before the item is considered by the Board. If you wish to discuss a matter that is not on the agenda during a regular meeting, you may do so under General Discussion and Public Comment.

Rules governing the participation of the public at meetings of the Board of Directors and Standing Committees are available for review on the District's website (<http://www.bart.gov/about/bod>), in the BART Board Room, and upon request, in person or via mail, at the Office of the District Secretary, 23rd Floor, 300 Lakeside Drive, Oakland, California.

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

Items placed under “consent calendar” 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.

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.

2. CONSENT CALENDAR

- A. Approval of Minutes of the Meetings of October 8, 2009 (Regular), and November 4, 2009 (Special).\* Board requested to authorize.
- B. Amendment to the Money Purchase Pension Plan Regarding Suspension of Certain Payments for Union-Represented District Employees.\* Board requested to authorize.
- C. Award of Invitation for Bid No. 8868, Coverboard, Contact Rail.\* Board requested to authorize.
- D. Award of Invitation for Bid No. 8870, Mile Post Signs.\* Board requested to authorize.
- E. Letter to Federal Transit Administration Administrator Rogoff (Alleged Brown Act Violation).\* Board requested to authorize.

3. ADMINISTRATION ITEMS

Director Blalock, Chairperson

- A. Fiscal Year 2011 Pro Forma Budget Review.\* For information.

4. ENGINEERING AND OPERATIONS ITEMS

Director Keller, Chairperson

- A. Award of Contract No. 15ID-110, Pleasant Hill Station Modernization.\* Board requested to authorize.
- B. Quarterly Performance Report, Second Quarter Fiscal Year 2010 - Service Performance Review.\* For information.

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

Director Ward Allen, Chairperson

- A. Amendment to Extend Permit to Enter with the Spanish Speaking Unity Council at Fruitvale Station.\* Board requested to authorize.
- B. Proposed 2010 State and Federal Advocacy Programs.\* Board requested to authorize.
  - 1. Joshua W. Shaw, Executive Director, California Transit Association (CTA): 2010 State Capitol Budget Update. For information.

6. GENERAL MANAGER'S REPORT

NO REPORT.

7. BOARD MATTERS

- A. Report of the BART Police Department Review Committee. For information.
- B. Roll Call for Introductions.

8. GENERAL DISCUSSION AND PUBLIC COMMENT



## EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Walter de la Cruz</i>		GENERAL MANAGER ACTION REQ'D:		
DATE: c <i>2/18/10</i>		BOARD INITIATED ITEM: No		
Originator/Prepared by: Peter Y. Horikoshi Dept: <i>Peter Y. Horikoshi</i> Signature/Date: <i>2/18/10</i>	General Counsel: <i>Andrew Kwan</i> <i>2/18/10</i>	Controller/Treasurer: <i>[Signature]</i> <i>2/18/10</i>	District Secretary: [ ]	BARC: <i>[Signature]</i> <i>2-18-10</i>
TITLE:				

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

#### NARRATIVE:

#### PURPOSE

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

#### DISCUSSION

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

#### 2005-2009 Collective Bargaining Agreements

Currently, the District contributes a percentage of compensation (6.65%) for all eligible employees, with such contributions capped at \$1,868.65 per year per employee. (The formula provides for 6.65% of each employee's compensation up to a maximum compensation of \$29,700 excluding the first \$133.33 per month of compensation.)

In addition, under the terms of the 2005-2009 collective bargaining agreements, the District was scheduled to resume contributing to the MPPP an additional 1.627% of normal earnings with no cap on behalf of non-sworn union-represented employees in accordance with the following schedule:

- Amalgamated Transit Union, Local 1555 (ATU) and Service Employees International Union, Local 1021 (SEIU) represented employees' payments to resume effective July 1, 2011, and
- American Federation of State, County, and Municipal Employees, Local 3993 (AFSCME) represented employees, and non-sworn employees represented by BART Police Managers' Association (BPMA) and BART Police Officers' Association (BPOA)

whose payments were to resume effective July 1, 2012.

### 2009-2013 Collective Bargaining Agreements

Under the terms of the recently ratified 2009-2013 collective bargaining agreement with BPMA, the contributions for all BPMA represented employees (sworn and non-sworn) that are based on 6.65% of compensation capped at \$1,868.65 are to be suspended from January 1, 2010 through June 30, 2013. Under the terms of the 2009 to 2013 agreement with BPOA, these contributions will be suspended for all BPOA represented employees (sworn and non-sworn) from July 1, 2010 through June 30, 2013. In addition, the terms of all five of the 2009-2013 collective bargaining agreements include suspension of the 1.627% contributions for non-sworn employees through June 30, 2013.

The actuarial impacts on future costs of these changes have previously been provided to the Board and to the public at prior Regular Meetings of the Board. The actuarial statement pertaining to the suspension of the 6.65% element was made available at the July 16, 2009 Regular Meeting of the Board. The actuarial statement pertaining to the suspension of the 1.627% contribution was made available at the August 13, 2009 Regular Meeting.

Although the parties have already agreed to these changes through ratification of the applicable collective bargaining agreements, it is necessary to amend the Money Purchase Pension Plan to incorporate these changes. The Office of the General Counsel will approve the amendment as to form.

### FISCAL IMPACT

Operating Budgets has estimated that this will save the District \$0.1 Million for FY10 and \$7.1 Million through June 2013. These figures differ slightly from the actuarial statements which were calculated using net present value.

### RECOMMENDATION

Adopt the following motion:

### MOTION

That the Board approves and authorizes the Board President to execute an amendment to the 2006 Restatement of the San Francisco Bay Area Rapid Transit District Money Purchase Pension Plan (MPPP) that provides for:

- (1) the continued suspension of the District's contributions of 1.627% of payroll as defined in the MPPP, for non-sworn union-represented employees through June 30, 2013; and
- (2) the suspension of the District's contributions of 6.65% of payroll as defined in the MPPP, for sworn and non-sworn employees represented by BPMA effective January 1, 2010 through June

30, 2013 and for sworn and non-sworn employees represented by BPOA effective July 1, 2010 through June 30, 2013.

**ATTACHMENTS:**

- Basic Money Purchase Pension Plan Contribution Analysis (Work Directive #4)
- Additional Money Purchase Pension Plan Contribution Analysis (Work Directive #6)

July 13, 2009

Mr. Peter Horikoshi  
Supervisor, Human Resources Programs, Benefits  
San Francisco Bay Area Rapid Transit District  
300 Lakeside Drive, 20<sup>th</sup> Floor  
Oakland, CA 94612

## RE: Work Directive #4 – Money Purchase Pension Plan Analysis

Dear Peter:

As you requested we have calculated the present value as of July 1, 2009 of future employer cost to the Money Purchase Pension Plan under the following scenarios:

1. Scenario I -- Suspension of employer contribution for 4 years
2. Scenario II -- Elimination of future employer contribution

Our analysis was based on the following:

- The plan document for the San Francisco Bay Area Rapid Transit District Money Purchase Pension Plan (As Amended and Restated Effective January 1, 2006)
- As you instructed, we only valued the basic contribution of 6.65% of compensation for each participant
- We included all the active employees contained in the census that you provided for the OPEB valuation (including employees who waived medical coverage)
- Assumptions are the same as those used in the OPEB valuation as shown in the Mercer report as of June 30, 2008

The following table shows the results of our analysis:

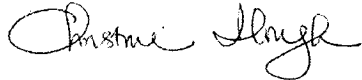
	Number of Employees	Present Value as of July 1, 2009 of Future Employer Contribution				
		Year 1	Year 2	Year 3	Year 4	All Future Years
AFS	206	354,518	304,117	260,269	222,881	2,270,972
ATU	894	1,540,571	1,327,554	1,149,934	997,872	11,000,790
BPM	48	81,426	70,550	60,673	50,966	487,514
BPO	221	378,330	336,839	298,905	264,853	2,938,838
DIR	5	4,541	3,945	3,457	3,065	28,993
NON	399	683,369	586,648	501,382	428,818	4,277,529
SEI	1,444	2,487,278	2,137,769	1,837,354	1,577,491	16,051,769
<b>Total</b>	<b>3,217</b>	<b>\$ 5,530,033</b>	<b>\$ 4,767,422</b>	<b>\$ 4,111,974</b>	<b>\$ 3,545,946</b>	<b>\$ 37,056,405</b>

*Peter Horikoshi*  
*July 13, 2009*  
*Page 2*

Please note that our analysis is based on the interpretation of the Government Code Section 7057. Keenan and the undersigned are not attorneys and BART is advised to consult their own legal counsel to confirm our interpretation as appropriate.

Please feel free to contact us with any questions.

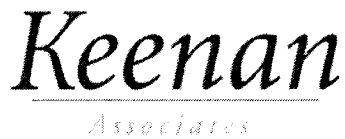
Sincerely,

A handwritten signature in cursive script, appearing to read "Christine Hough".

Christine S. Hough, FSA, EA, MAAA  
Assistant Vice President

cc: Ju Anderson, Keenan & Associates  
Jovita Juanillo, Keenan & Associates  
Peter McNamara, Keenan & Associates  
Steve Gedestad, Keenan & Associates





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Suite 200  
Torrance, CA 90501

310 212-3344  
800 444-9995  
310 212-0360 fax  
www.keenan.com  
License No. 0451271

August 7, 2009

Mr. Peter Horikoshi  
Supervisor, Human Resources Programs, Benefits  
San Francisco Bay Area Rapid Transit District  
300 Lakeside Drive, 20<sup>th</sup> Floor  
Oakland, CA 94612

**RE: Work Directive #6 -- Money Purchase Pension Plan - Additional Contribution**

Dear Peter:

We have calculated the present value of the additional Money Purchase Pension Plan (MPPP) contribution as of July 1, 2009 for the next four fiscal years ending on June 30.

The calculation was based on the following:

- Census data received on August 4, 2009
- Plan document for the San Francisco Bay Area Rapid Transit District Money Purchase Pension Plan (As Amended and Restated Effective January 1, 2006)
- Additional contribution formula of 1.627% of Payroll
- Eligible Payroll for the Union as determined under Section 3.01(b) of the Plan
- The following received salary increases:
  - Non-reps in January 2009
  - Others in July 2008
- Salary remains constant in the projection period
- Inflation rate of 3.0%, same as OPEB. This rate was used to index the salary limitation under Code Section 401(a)(17).
- All other assumptions were the same as those used in the OPEB valuation as shown in the Mercer report as of June 30, 2008

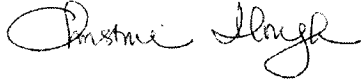
The following table shows the results of our analysis:

	Number of Employees	Present Value as of July 1, 2009 of the Additional Employer Contribution				
		FY 2009/2010	FY 2010/2011	FY 2011/2012	FY 2012/2013	TOTAL
AFS	206	-	-	-	193,894	\$ 193,894
ATU	894	-	-	614,848	539,328	\$ 1,154,176
BPM	5	-	-	-	5,980	\$ 5,980
BPO	76	-	-	-	42,844	\$ 42,844
BPMS	43	-	-	-	-	\$ 0
BPOS	145	-	-	-	-	\$ 0
NON	399	652,402	566,686	489,585	422,867	\$ 2,131,540
SEI	1444	-	-	1,116,462	971,273	\$ 2,087,735
<b>Total</b>	<b>3212</b>	<b>\$ 652,402</b>	<b>\$ 566,686</b>	<b>\$ 2,220,895</b>	<b>\$ 2,176,186</b>	<b>\$ 5,616,169</b>

*Peter Horikoshi*  
*August 7, 2009*  
*Page 2*

Please feel free to contact us with any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Christine Hough".

Christine S. Hough, FSA, EA, MAAA  
Assistant Vice President

cc: Ju Anderson, Keenan & Associates  
Jovita Juanillo, Keenan & Associates  
Peter McNamara, Keenan & Associates  
Steve Gedestad, Keenan & Associates



## EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Marisa Delaney</i>		GENERAL MANAGER ACTION REQ'D: Approve and Forward to the Board of Directors	
DATE: 2/19/10		BOARD INITIATED ITEM: No	
Originator/Prepared by: Michael Blake Dept: Maintenance & Engineering <i>Michael C. Blake</i> 2/18/10 Signature/Date:	General Counsel <i>Andrew Davis</i> 2/18/10	Controller/Treasurer <i>[Signature]</i> 2/18/10	District Secretary <i>Paul [Signature]</i> 2/18/10
Status: Routed		Date Created: 02/03/2010	

### Invitation for Bid No. 8868 for the Procurement of Contact Rail Coverboards

#### NARRATIVE:

##### PURPOSE:

To request Board Authorization to Award Invitation for Bid (IFB) #8868 to Delta Composites, L.L.C. in the amount of \$235,084.50, including applicable taxes, for the purchase of 1800 coverboards for the third rail.

##### DISCUSSION:

The third rail coverboards procured under this IFB will be placed in inventory to be used by maintenance staff to replace old, worn, or damaged coverboards. The California Public Utilities Commission requires that all third rails be protected by coverboard. Without adequate parts supply, the District would be unable to meet this requirement and be subject to fines.

This is a 36 months estimated quantity procurement. Pursuant to the terms of the District's standard estimated quantity contract, during the term of the contract the District is required to purchase from the supplier a minimum amount of fifty percent of the contract bid amount. Upon Board approval of this procurement, the General Manager will also have the authority to purchase up to one hundred and fifty percent of the contract amount at the bid price, subject to available funding.

A notice requesting bids was published on December 9, 2009 and bid requests were mailed to 6 (six) prospective bidders. Bids were opened on December 22, 2009 and 5 (five) bids were received. They are summarized below.

No	Bidder	Location	Unit Price	Total (including 9.75% Sales Tax)
1.	Delta Composites, L.L.C.	Spring, TX	\$119.00	\$235,084
2.	Liberty Pultrusions, Inc.	West Mifflin, PA	\$160.00	\$316,080
3.	L.B. Foster Co.	Suwanee, GA	\$174.00	\$343,737
4.	Enduro Systems,	Houston, TX	\$180.03	\$355,649

	Services Co., Inc.			
	BART Estimate			\$400,000

Staff has determined that the apparent low bidder, Delta Composites, L.L.C., submitted a responsive bid, and that the bid pricing is fair and reasonable based on prior purchases.

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, and Supplies Inventory build-up account (140-010).

The coverboards are scheduled to be procured over the contract duration of 36 months at the following estimated annual cost:

FY10	\$60,000
FY11	\$100,000
FY12	\$75,084

Funding for FY10 commitment of \$60,000 are currently available. Any additional orders of third rail coverboards over and above the currently available funds of \$60,000 will be placed with Delta Composites, LLC only upon certification by the Controller\_Treasurer that funds are available.

**ALTERNATIVE:**

The alternative is to reject all bids. District staff does not believe that re-bidding would result in more competitive bids.

**RECOMMENDATION:**

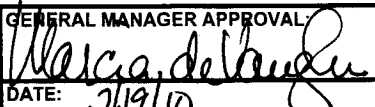
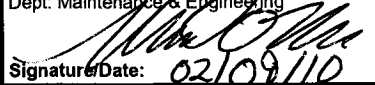
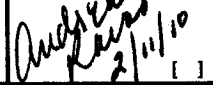
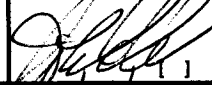
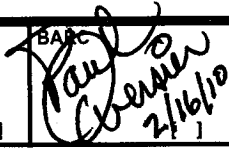
On the basis of analysis by Staff, and certification by the Controller-Treasurer that the funds are available for this purpose, it is recommended that the Board adopt the following motion:

**MOTION:**

The General Manager is authorized to award IFB No. 8868, an estimated quantities contract, to Delta Composites, L.L.C. for the Bid Price of \$235,084.50, including applicable taxes, pursuant to notification to be issued by the General Manager, subject to compliance with the District's Protest Procedure.



## EXECUTIVE DECISION DOCUMENT

<b>GENERAL MANAGER APPROVAL:</b> 		<b>GENERAL MANAGER ACTION REQ'D:</b> Approve and forward to the E & O Committee	
<b>DATE:</b> 2/19/10		<b>BOARD INITIATED ITEM:</b> No	
<b>Originator/Prepared by:</b> Michael O Brown <b>Dept:</b> Maintenance & Engineering  <b>Signature/Date:</b> 02/09/10	<b>General Counsel</b>  2/11/10	<b>Controller/Treasurer</b>  2/11/10	<b>District Secretary</b>  2/16/10
<b>TITLE:</b>			

### Award Invitation for Bid No. 8870, Mile Post Signs

#### NARRATIVE:

#### PURPOSE:

To authorize the General Manager to award Invitation for Bid (IFB) No. 8870 to Maneri Sign Company, Inc., Gardena, California, in the amount of \$167,660.69, including applicable taxes, for the purchase of two thousand nine hundred and eighty eight (2,988) mile post signs.

#### DISCUSSION:

BART uses a track designation and mile post to identify locations on its tracks. Each track has a unique alpha numeric designation. As for mile posts, the mileage distance zero origin is located at the wye in downtown Oakland and increases out each line. Wayside mounted mile post signs contain both track designation and mile post information and are placed throughout the BART system. The track and mile post locations are essential to train operations, maintenance and emergency management. The signs identify the exact location continuously throughout BART, providing a unique identifier, that all users agree upon. They are cross-referenced with emergency responders for cross streets location and for emergency access.

Two sign board materials are used for mile post signs. Lightweight aluminum is used in above-ground areas while high strength non-conductive composite materials is used in subways. In subways, the stronger and more expensive composite material is needed to withstand the wind pulses from passing trains and non-conductivity is needed to prevent electrical shorts in the event that a sign mounting fails.

This procurement will provide 2,988 new mile post signs that will replace the current mile post signs. Many of the existing mile post signs are nearly 40 years old. When the signs become dirty, the cleaning process damages the surface reducing their useful life. Above ground signs also have accelerated deterioration from sunlight. The materials used on the new signs are more reflective and require less frequent cleaning and are more resistant to deterioration from weather. The new signs have an additional coating that facilitates cleaning without damage to the sign.

Many of the original signs were installed within emergency and maintenance walkways. Current standards require that signs not foul walkway spaces. Where required, the new signs will be relocated outside of the walkways. Signs in other locations may be relocated to increase visibility. Installation of the new signs is planned to be performed by existing budgeted BART forces using capital funds.

A notice requesting bids was published on December 23 2009 and bid requests were mailed to fourteen (14) prospective bidders. Bids were opened on January 19, 2010 and two (2) Bids were received.

Bidder	Total Bid Price	Grand Total including 9.75% Sales Tax
Maneri Sign Co., Inc. Gardena, CA	\$152,766.00	\$167,660.69
Signworks, Inc. San Leandro, CA	\$160,181.52	\$175,799.22

Independent cost estimate by BART staff: \$334,000.00

Staff has determined that the apparent low Bidder, Maneri Sign Company, Inc., submitted a responsive Bid. Staff has also determined that the Bid pricing is fair and reasonable.

Pursuant to the revised DBE Program, the Office of Civil Rights is utilizing race and gender neutral efforts for procurement contracts. Therefore, no DBE participation goal was set for this contract.

**FISCAL IMPACT:**

Funding for the total amount of \$167,661, including applicable taxes is included in the project budget for 15TC, Trackway Structural Rehab. The Office of the Controller/Treasurer certifies that funds are currently available to meet this obligation.

F/G 47Z – FTA CA 05-0216                      \$167,661

As of month ending 1/3/10, \$901,197 is available for commitment from this fund source for this project, and \$342,385 has been committed by BART to date. There are pending commitments of \$9,878 in BART's financial management system. This action will commit an additional \$167,661 leaving an uncommitted balance of \$381,273 in this fund source.

There is no fiscal impact on available unprogrammed District Reserves.

**ALTERNATIVES:**

Three possible alternatives have been identified:

1. Cancel this IFB and readvertise again. Staff estimates that readvertising would take an additional three months and is not likely to lead to a lower price.
2. Cancel this IFB and continue to maintain the existing mile post signs using the operating budget.
3. Cancel this IFB and readvertise in smaller quantities over a period of time. Staff estimates that it would take an additional year before all signs could be procured. Further, this is likely to increase the price of the signs. Additionally, Staff would lose flexibility of installing signs at multiple locations depending on track accessibility since only a limited number of signs would be available for installation.

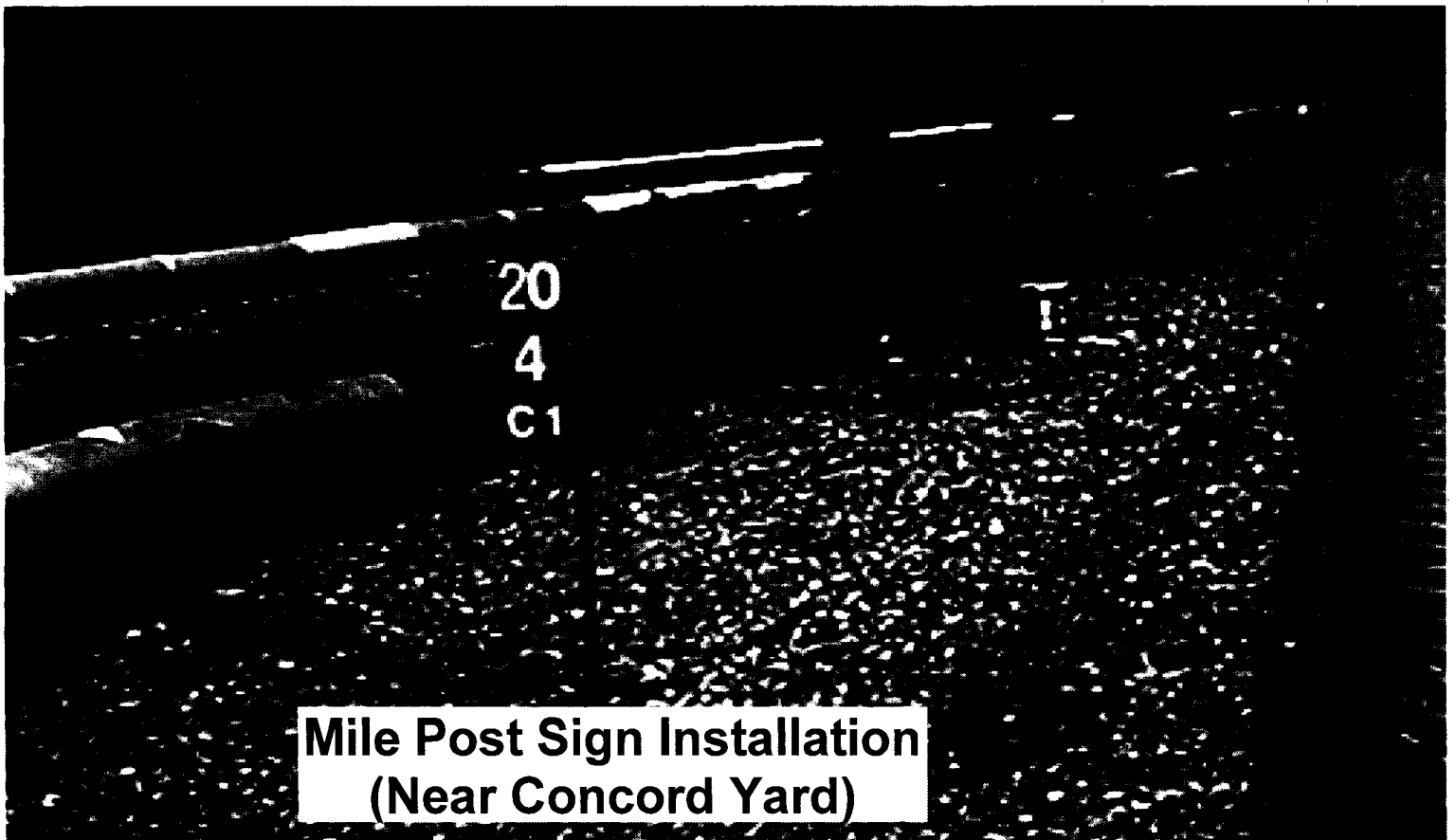
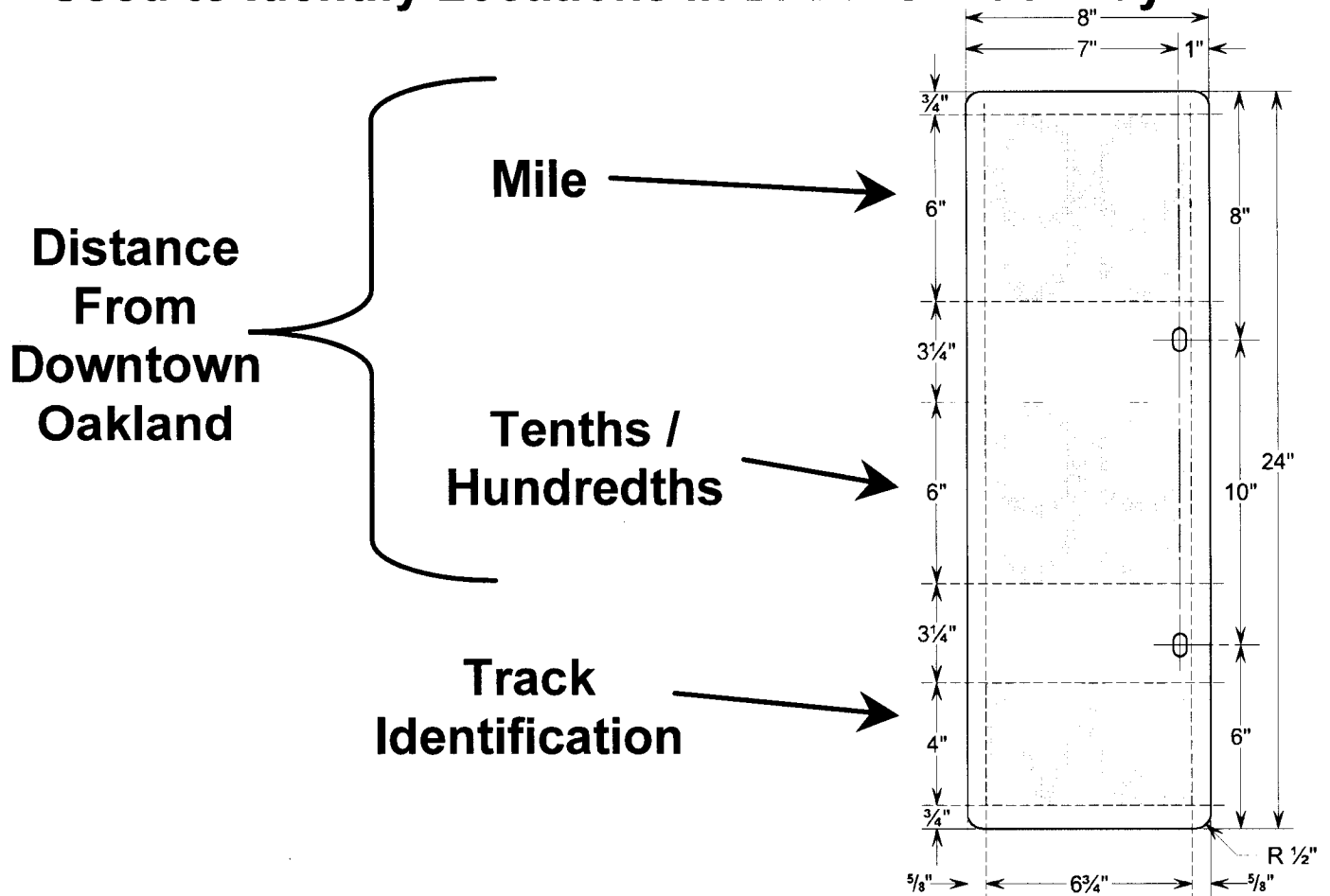
**RECOMMENDATION:**

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

**MOTION:**

The General Manager is authorized to award Invitation for Bid (IFB) No. 8870 to Maneri Sign Company, Inc., Gardena, California, in the amount of \$167,660.69, including applicable taxes, for the purchase of two thousand nine hundred and eighty eight (2,988) mile post signs, pursuant to notification to be issued by the General Manager, and subject to the District's Protest Procedures and FTA's requirements related to protest procedures.

# IFB 8870 - BART Mile Post Signs Used to Identify Locations in BART's Trackway



# SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

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## MEMORANDUM

**TO:** Board of Directors **DATE:** February 18, 2010  
**FROM:** General Counsel  
**SUBJECT:** Approval of Letter to the Federal Transit Administration

Mr. Richard McKee has filed a Petition for Writ of Mandate against the District claiming that it violated the Brown Act by sending the attached letter, signed by the General Manager and eight members of the Board. We have corresponded with Mr. McKee and his attorney, explaining our position that this letter simply restates the position taken by the Board in public session in the past. Notwithstanding those exchanges, Mr. McKee seems intent on pursuing litigation.

The District takes allegations of violation of the Brown Act seriously, as the Act serves the important purpose of ensuring that the public has access to deliberations of the Board. Generally, the Brown Act bars a lawsuit if the Board authorizes the complained of act in public session within 30 days of notice of a complaint. Although we believe that Mr. McKee's complaint would ultimately be rejected, we also believe that District resources would be better spent on other important District business, instead of engaging in litigation. As such, I suggest that the Board consider the following motion, which authorizes the creation and distribution of the complained of letter.

### MOTION:

The General Manager is authorized to send to the Federal Transit Administration the letter attached hereto as Exhibit A, with the signatures of the eight board members shown.



Matt Burrows

*Attachment*

cc: Board Appointed Officers





**SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT**

300 Lakeside Drive, P.O. Box 12688  
Oakland, CA 94604-2688  
(510) 464-6000

**EXHIBIT A**

2010

January 20, 2010

James Fang  
PRESIDENT

Bob Franklin  
VICE PRESIDENT

Dorothy W. Dugger  
GENERAL MANAGER

Peter M. Rogoff  
Administrator  
Federal Transit Administration  
1200 New Jersey Avenue, SE  
Washington, DC 20590

Dear Administrator Rogoff:

**DIRECTORS**

Gail Murray  
1ST DISTRICT

Joel Keller  
2ND DISTRICT

Bob Franklin  
3RD DISTRICT

Carole Ward Allen  
4TH DISTRICT

John McPartland  
5TH DISTRICT

Thomas M. Blalock, P.E.  
8TH DISTRICT

Lynette Sweet  
7TH DISTRICT

James Fang  
8TH DISTRICT

Tom Radulovich  
9TH DISTRICT

We write in response to your January 15, 2010 letter to inform you that the San Francisco Bay Area Rapid Transit District (BART) intends to continue to pursue federal funding for the Oakland Airport Connector Project (the OAC Project).

Our organization always has been and will continue to be committed to providing non-discriminatory, equitable, accessible and safe public transportation to the communities and residents of the San Francisco-Oakland Bay Area, and to achieving the objectives established under Title VI of the Civil Rights Act of 1964 and the other programs administered by the FTA's Office of Civil Rights. Our organization incorporates public participation in our planning process and strives to give the public ample opportunities for early and continuing participation in critical transportation projects, plans and decisions, and to provide full public access to key decisions. BART takes strong exception to the assertion in your January 15 letter suggesting otherwise and the alleged admission by BART during the compliance review conducted in December 2009.

As explained in our January Submission, because the OAC does not implement revenue service until the middle of 2013, specific outreach to address the break even fare has yet to be implemented and the rate will depend on a variety of factors, not yet known, including: (1) the actual cost of the project, (2) the cost of financing, (3) the amount of passenger traffic at the Oakland Airport at time of service. Certainly, the break even fare topic was discussed during the 17 public Hearings and the 8 public Project Presentations that were held last year. Participating organizations (to name a few) such as the East Bay Small Business Counsel, East Bay Social Justice Center, the Oakland Black Board of Trade and the Oakland Community Economic Leadership Forum attended and discussed all aspects of this important project. Notwithstanding, we remain committed to working with FTA to satisfy concerns regarding the timing and scope of the equity analysis.

Nonetheless, with regard to the "Title VI, Environmental Justice, and Limited English Proficiency Analysis of Proposed Service and Fare Changes" that is the subject of your letter, we look forward to working closely with the FTA to identify and address the specific insufficiencies you state exist in BART's January 14, 2010 submission (the Submission) and to developing an action plan that is acceptable to the FTA. BART's Submission was a good faith effort to meet the core objectives of Title VI – and BART is strongly committed to developing and implementing an action plan for the future that will identify and, if necessary, mitigate any possible discriminatory impact resulting from the project.

BART staff has been directed to immediately contact FTA Chief Counsel Dorval R. Carter, Jr. and Amber Ontiveros in the Office of Civil Rights to schedule a teleconference as soon as possible to review the BART Submission and get this process underway. Given the tight time deadlines, we ask for your assistance by directing Mr. Carter and Ms. Ontiveros to make this Project a priority in the weeks between now and the March 5, 2010 deadline.

Administrator Peter Rogoff  
Federal Transit Administration  
January 20, 2010

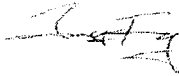
Page Two

The OAC Project has been a local priority for more than a decade because it will provide a critical link in the intermodal transportation system of the San Francisco-Oakland Bay Area. That is why the MTC allocated \$70M in ARRA funds to the OAC Project and the MTC, the BART Board of Directors, the Oakland City Council and the Port of Oakland Board of Commissioners have consistently voted in support of the Project. All are comprised of or appointed by local elected officials who seek out and represent the interests of the residents and diverse communities of the region.

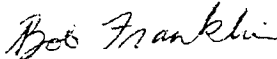
The OAC Project is a particular priority today because it will bring anywhere from 2500 to 5200 new jobs to the area that are of vital importance to our economic recovery, including jobs in the construction, electrical, steel fabrication and other building trades that are experiencing unemployment rates in excess of 30 percent. That is why the OAC Project has the strong support of the local business organizations, trade unions and community and citizen groups for the Bay Area.

I look forward to working with you and the FTA to address the important issues identified in your January 15, 2010 letter, and ask your support in helping us complete this important local priority Project.

Sincerely,



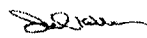
James Fang  
President



Bob Franklin  
Vice President



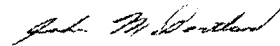
Gail Murray  
District 1



Joel Keller  
District 2



Carole Ward Allen  
District 4



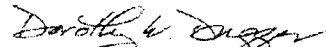
John McPartland  
District 5



Thomas M. Blalock  
District 6



Lynette Sweet  
District 7



Dorothy W. Dugger  
General Manager

cc: Scott Haggerty, Chair, Metropolitan Transportation Commission  
Steve Heminger, Executive Director, Metropolitan Transportation Commission  
Dorval R. Carter, Jr., FTA, Chief Counsel  
Amber Ontiveros, FTA, Office of Civil Rights  
Matthew Burrows, BART, General Counsel



## EXECUTIVE DECISION DOCUMENT

<b>GENERAL MANAGER APPROVAL:</b> 		<b>GENERAL MANAGER ACTION REQ'D:</b> Approve and Forward to the February 25, 2010 Board Meeting	
<b>DATE:</b> 2/17/10		<b>BOARD INITIATED ITEM:</b> No	
<b>Originator/Prepared by:</b> Joe Lipkos Dept: TSD, Stations Capital Program Ext. 4849  <b>Signature/Date:</b> 2/11/10	<b>General Counsel</b>  2/11/10	<b>Controller/Treasurer</b>  2/11/10	<b>District Secretary</b> [ ]

<b>Status:</b> Approved	<b>Date Created:</b> 12/21/2009
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**TITLE:**

### Award of Contract 15ID-110 for the Pleasant Hill Station Modernization

**NARRATIVE:**

**PURPOSE:** To obtain Board authorization for the General Manager to award Contract No. 15ID-110 for the Pleasant Hill Station Modernization to Taber Construction.

**DISCUSSION:** The Pleasant Hill Station is one of four stations selected for Phase One of the Station Modernization Program. The scope of work for this contract includes, the addition of two emergency stairs, improvements to the architectural finishes, new energy saving lighting, new way finding signage, new bicycle area, and other improvements to the station and the site to enhance the overall appearance of the station. The Contra Costa County and the Avalon Bay developer are providing additional funding for this project.

The District provided advanced notice to 172 prospective bidders on August 21, 2009 and Contract Documents were sent to 21 plan rooms. The Contract was advertised on August 25, 2009 in local publications. A total of twenty-nine (29) firms purchased copies of the Contract Documents. A pre-bid meeting and site tour was conducted on September 3, 2009 with nineteen (19) prospective Bidders attending the meeting and seven (7) prospective Bidders attending the site tour. Five (5) Bids were received. Bids were publicly opened on September 22, 2009. The Bids received and the Engineer's Estimate are shown below:

<u>BIDDER</u>	<u>LOCATION</u>	<u>TOTAL AMOUNT</u>
Taber Construction	Martinez, CA	\$5,240,000
Angotti & Reilly	San Francisco, CA	\$6,102,603
DL Falk Construction, Inc.	Hayward, CA	\$6,474,808
JW & Sons	Petaluma, CA	\$6,789,073
Zovich Construction	Hayward, CA	\$8,635,000
<b><u>Engineer's Estimate:</u></b>		\$4,894,000

The apparent low bid submitted by Taber Construction of \$5,240,000 is seven (7) percent above the Engineer's Estimate of \$4,894,000.

After review by District staff, the Bid has been deemed to be responsive to the solicitation.

Furthermore, staff review of the low Bidder's business experience and financial capabilities has resulted in a determination that the Bidder is responsible and the Bid of \$5,240,000 submitted by Taber Construction is fair and reasonable.

Pursuant to the District's Non-Discrimination in Subcontracting Program, the availability percentages for this contract are 23% for MBEs and 12% for WBEs. The Bidder committed to 39% MBE and 0% WBE. Since the Bidder did not meet the WBE percentage, the District requested that the Bidder provide information to determine if it had discriminated. Based on the review of the information submitted by the Bidder, the Office of Civil Rights found no evidence of discrimination.

The District's Environmental Compliance staff has reviewed the scope of work and determined that there will be no significant effect on the environment from this action and that it is categorically exempt from the provisions of the California Environmental Quality Act ("CEQA") pursuant to "CEQA Guidelines Section 15301; for minor modifications to existing facilities."

**FISCAL IMPACT:**

Funding of \$5,240,000 for award of Contract 15ID-110 is included in the total project budget for the FMS #15ID – Pleasant Hill Station Modernization. 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 source:

**F/G 63M – Contra Costa County Redevelopment Agency** **\$2,492,500**

As of February 1, 2010, \$2,992,500 is available for commitment from this fund source for this project and BART has committed \$0 to date. There is no pending commitment in BART's financial management system. This action will commit \$2,492,500 leaving an uncommitted balance of \$500,000 in this fund source.

**F/G 55S – Prop 1B PTMISEA** **\$2,747,500**

As of February 1, 2010, \$6,372,984 is available for commitment from this fund source for this project and BART has committed \$1,925,444 to date. There is a pending commitment of \$78,951 in BART's financial management system. This action will commit \$2,747,500 leaving an uncommitted balance of \$1,621,089 in this fund source.

There is no fiscal impact on available unprogrammed District Reserves.

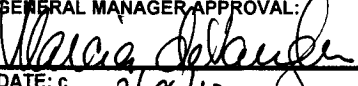

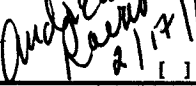


**ALTERNATIVES:** The alternative is not to award the Contract and leave the station in its current condition.

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

**MOTION:** The General Manager is authorized to award Contract No. 15ID-110 for the Pleasant Hill Station Modernization to Taber Construction for the total Bid price of \$5,240,000, including applicable taxes, pursuant to notification to be issued by the General Manager, subject to the District's protest procedures.



## EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: 		GENERAL MANAGER ACTION REQ'D: Approve and Forward to PPAAL Committee		
DATE: c 2/18/10		BOARD INITIATED ITEM: No		
Originator/Prepared by: Jeffrey P Ordway Dept: Property Development 	General Counsel  2/18/10 [ ]	Controller/Treasurer  2/17/10 [ ]	District Secretary [ ]	BARC  2/18/10 [ ]

TITLE:

### Authorize Extension of Existing Permit to Unity Council at the Fruitvale Station

#### NARRATIVE:

**PURPOSE:** To authorize the General Manager or her designee to execute an amendment for a five-year extension of the Permit to Enter with the Spanish Speaking Unity Council (Unity Council) for continuation of the Paid Parking Program on BART property between 35<sup>th</sup> and 37<sup>th</sup> Streets at the Fruitvale BART Station.

**DISCUSSION:** On April 25, 2002, the BART Board of Directors authorized the General Manager to award a contract for construction of the Fruitvale Parking Structure for either four or five levels, subject to the availability of funds. At the time BART had sufficient funds to construct only four levels. On August 15, 2002, the BART Board of Directors authorized the General Manager to enter into an Agreement with the Unity Council, developer of the Fruitvale Transit Village, which would enable BART to obtain a loan of \$1.25 million in the form of an Irrevocable Standby Letter of Credit (Letter of Credit) for the construction of the fifth level. The terms and conditions for the loan repayments, as contained in the "Agreement for Funding of the 5<sup>th</sup> Level of the Fruitvale Parking Structure" ("Garage Funding Agreement") stipulated:

- If a Phase II lease approval occurred prior to completion of the Parking Structure, the Unity Council would be repaid by a credit of \$1.25 million against Phase II ground lease rent.
- If a Phase II lease was not approved prior to completion of the Parking Structure, the Unity Council would propose a detailed paid parking proposal to BART for consideration by the BART Board of Directors.

The Garage Funding Agreement stipulated that any Board-approved Program to repay the loan would continue until the loan was paid off or the ground lease for Phase II was approved. Any parking fees paid to the Unity Council would be deducted from the ground lease rent credit for Phase II.

BART received the Letter of Credit from California Bank and Trust for a total amount of \$1,250,000, but used only approximately \$850,000. In August 2004 a Phase II ground lease had not been negotiated, and the Unity Council submitted a proposed Paid Parking Program to enable the Unity Council to repay the Letter of Credit.

On December 2, 2004 the BART Board of Directors authorized the General Manager to execute a five-year Permit to Enter to enable the Unity Council to introduce a Paid Parking Program to begin retiring the Letter of Credit, and approved the Paid Parking Program.

The Unity Council's Paid Parking Program currently includes the following elements:

1. The area covered is BART property bounded by 35<sup>th</sup> Street, East 12<sup>th</sup> Street, 37<sup>th</sup> Street and the BART trackway (refer to Exhibit 1 – Phase II Area). The area contains 481 parking spaces.
2. The Unity Council is responsible for all management, operation, maintenance and security associated with the Paid Parking Program.
3. The Unity Council is responsible for any debt service not covered by the Paid Parking Program.
4. The parking fee is \$4.00 per day. The Unity Council has the ability to increase the charge to \$5.00 per day, sufficient to cover their operating and debt service costs, plus annual surplus sufficient to recover the out-of-pocket Letter of Credit debt service costs already incurred.
5. All revenues received that exceed the amount necessary to pay operating costs and debt service are used to reduce the principal amount of the loan.

Since inception of the Paid Parking Program, the debt has been reduced from \$850,000 to \$553,091. The requested Permit extension would enable the Unity Council to continue the Program for the purpose of retiring the remaining \$553,091 credit.

The Unity Council has maintained as low a parking charge as feasible to cover both operating and debt service costs delineated above, in order to ensure maximum use of the parking spaces by BART patrons. Since inception of the Paid Parking Program in March 2005 through December 2009, utilization has been 80.9%.

On October 26, 2006, the Board approved the completion of negotiations for the sale of the Phase II parcel (there will be no ground lease). An Option Agreement (Option) based on the Board's authorization was executed on June 28, 2007. The Unity Council has been making option payments as it works through the development and environmental clearance process for the Phase II Transit Village project. However, current real estate market conditions have precluded the Unity Council from invoking its Option, and the Unity Council and the City of Oakland have approached BART with a request to modify the terms of the Option. Should discussions lead to a recommended modification, staff will request BART Board approval.

Staff is requesting that the BART Board authorize an amendment to extend the Permit to Enter to enable the Unity Council to continue to retire the Letter of Credit and reduce BART's repayment obligation until such time as the Phase II transaction is implemented. Although staff expects to complete renegotiations of the Phase II transaction within the next few months for Board consideration and approval, additional time will be required for the real estate market to sufficiently strengthen for implementation of Phase II. Therefore, a five-year extension of the

Permit is being sought.

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

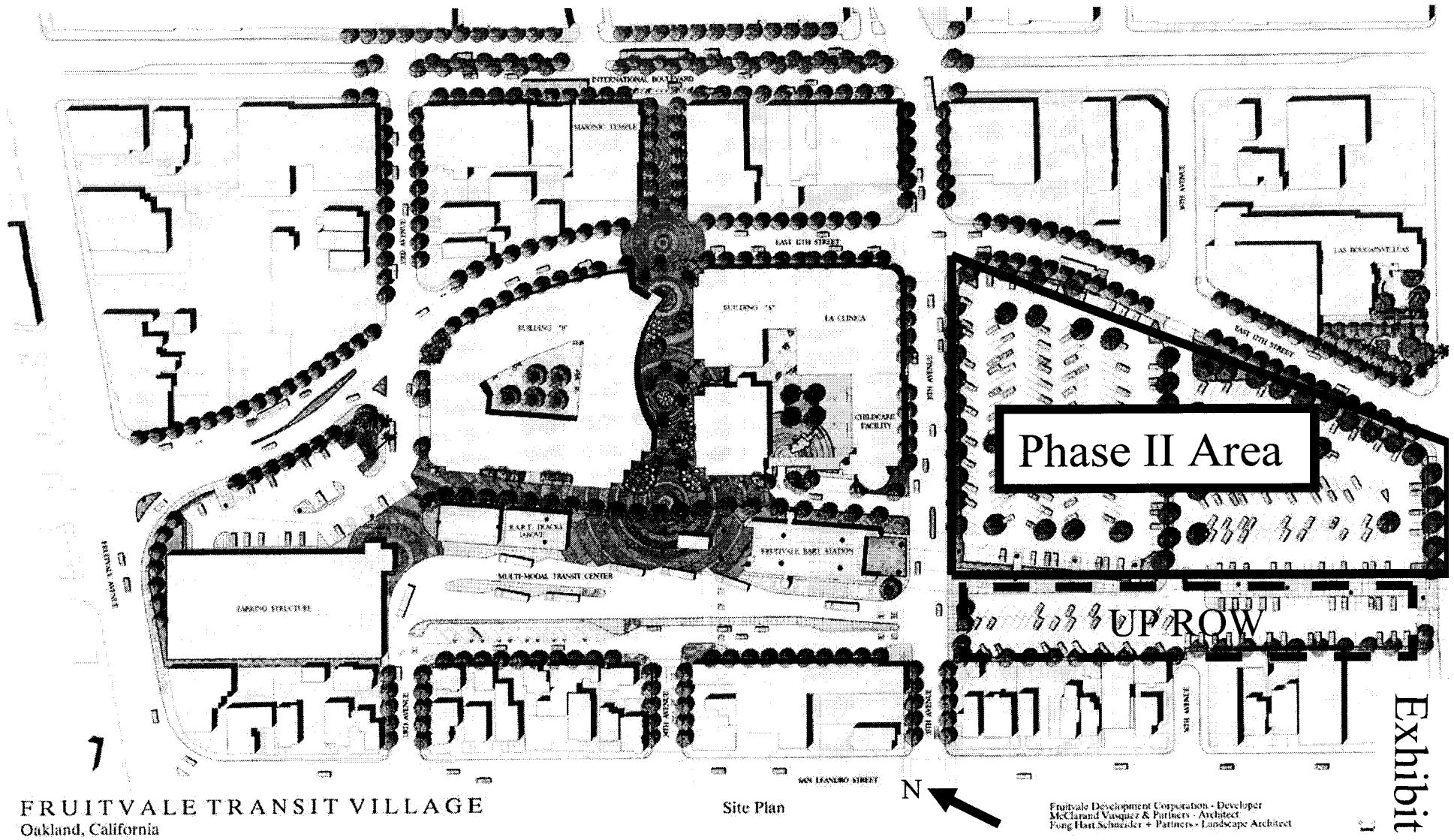
**FISCAL IMPACT:** The Garage Funding Agreement provides for the Paid Parking Program to continue until the loan is paid off (presently \$553,091), or the land transaction for Phase II is consummated, which at such time, the remaining loan balance would be applied as credit against the acquisition price of the property.

**ALTERNATIVES:** To allow the Permit to Enter to expire on February 28, 2010. BART would continue to incur additional financial obligations due to interest on the loan which could only then be addressed as part of the credit for the Phase II transaction.

**RECOMMENDATION:** Adoption of the following motion:

**MOTION:** To Authorize the General Manager, or her designee, to execute an amendment for a five-year extension of the Permit to Enter with the Unity Council for continuation of the Paid Parking Program on BART property between 35<sup>th</sup> and 37<sup>th</sup> Streets at the Fruitvale BART Station. The extended term would be from March 1, 2010 through February 28, 2015.

# Fruitvale Site Plan







## EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Hamed Tafajghani for D. Duggan</i>		GENERAL MANAGER ACTION REQ'D:		
DATE:		BOARD INITIATED ITEM: No		
Originator/Prepared by: Paul Fadelli Dept:	General Counsel <i>Andrew Kavan</i> 2/11/10	Controller/Treasurer <i>[Signature]</i> 2/16/10	District Secretary [ ]	BARC <i>[Signature]</i> 2/14/10
Status: Routed		Date Created: 01/13/2010		
TITLE:				

### 2010 State and Federal Legislative Agenda

#### NARRATIVE:

**PURPOSE:** To review and approve the District's 2010 state and federal advocacy program.

**DISCUSSION:** Staff has outlined the following state and federal legislative objectives for the year ahead.

#### A. Proposed State Advocacy Program for BART:

##### (1) General State Budget Oversight & Action.

Once again, the continuing state budget crisis will require monitoring and coordination within BART and among transit allies and the California Transit Association (CTA) in Sacramento. Transit supporters will have to articulate the benefits they provide Californians and the need to defend historic state transit funding in order to provide those benefits. With a projected state budget deficit approaching \$20 billion over the next eighteen months, BART and the other transit agencies will again have a difficult challenge to defend state support.

The 2011 budget process, however, will be impacted by the recent California Supreme Court ruling that it was illegal for the Schwarzenegger Administration and Legislature to take transit operating funds to resolve General Fund debt. BART, through CTA, continues to be involved in negotiations with the Administration to determine – going forward – how the state can best rectify its past illegal actions against transit operators in another difficult budget year.

The Governor has proposed in his newly-released Budget to eliminate the sales tax on gasoline and implement an excise tax in its place. This proposal completely eliminates the core tax revenue stream that has historically provided significant transit funding through the Public Transportation Account (PTA). The proposal threatens approximately \$1.5 billion in transit funding and is largely viewed as an end-run around state law and the recent CTA court victory.

## **(2) Secure Stable Transit Funding through a Statewide Initiative.**

BART has continued to articulate the need for a dedicated and secure funding source for transit in the state. Through CTA, BART must work with transportation, business and environmental interests to seek a dedicated stream of transit funding. After significant planning and organization, CTA's Executive Committee agreed at the end of 2009 to seek a ballot measure establishing a constitutional amendment that will protect existing transit funding programs from redirection to other state budget concerns.

CTA had initially sought a more narrow transit-only focused state initiative. Upon review of other activities in the state, however, the CTA Executive Committee initially decided to join forces with other local government and transportation groups to undertake a broader effort to not only protect all transit funding, but also funding for transportation and local government services that were recently usurped to help balance the state's General Fund deficit. When combined with these other sectors, the initiative polled much higher (than transit alone) with the general public.

Along with coalition members the *League of California Cities* and the *California Alliance for Jobs* (a coalition of business and labor groups) CTA has formed an official campaign committee called **Californians to Protect Local Taxpayers and Vital Services**. Last December the Attorney General received a favorable initiative title and ballot description, so now begins the process of collecting signatures to qualify the measure for the November 2010 ballot. BART and other CTA members will have to contribute in a variety of ways to this effort throughout this year. Whatever the success of this initiative, an on-going goal of the effort is to keep pressure on the Legislature and Governor Schwarzenegger's Administration when dealing in good faith with any negotiations on how to move forward in response to the CTA litigation victory.

## **(3) CA Government Re-Invention.**

Increasingly, elected officials, policymakers and business leaders are skeptical that funding for specific sectors of the California economy (water, transportation, education, prison reform, etc.) can ever be truly secure unless the structure and process of how the state operates is redefined. Several efforts are presently underway to explore how to fix a budget system that many consider broken. These include the Bay Area Council, which is in favor of convening a Constitutional Convention, the Legislature's Select Committee on Improving State Government (with Sen. DeSaulnier and Assemblyman Feuer as co-chairs) presently holding public hearings around the state, and several legislative proposals to change the voting requirements for the state budget and local tax increases. BART and other transit agencies in the state must participate in any efforts which seek to change how transit funding occurs.

## **(4) Greenhouse Gas/ Land Use issues.**

California has two of the most historic and innovative laws in the nation to combat greenhouse gas (GHG) emissions. BART continues to participate in the development of implementation strategies for these laws and to push for greater transit funding support. SB 375 will require regional transportation planning agencies to develop "sustainable community strategies" to help limit greenhouse gas emissions, as well as incentives for local governments to incorporate these strategies into the transportation elements of their general land use plans. In addition, BART has also been an active participant in developing the scoping plan for AB 32 (directly and through

CTA), and continuing to participate in implementation efforts that may assure greater opportunities for transit funding.

#### **(5) Specific Legislative Issues.**

BART's most important legislative priority of 2010 will continue to be working with its Bay Area Delegation, staff and other legislators to pass AB 1586 (Swanson) to amend the BART Act in ways that would allow implementation of the model plan produced for Citizen Oversight of the BART Police. Even with contentious debate in the Assembly Public Safety Committee, the bill passed out of the committee without a negative vote. Assembly Public Safety Committee Chairman Tom Ammiano also had a bill (AB 312) which passed his committee, but did not pass the Assembly Appropriations Committee. On January 25, AB 1586 passed the full Assembly by a unanimous vote and is headed for hearings in the state Senate, where efforts will be made to expedite the legislation and seek an "urgency" clause so it can go into effect immediately if passed and signed into law.

Other state legislative goals should include:

- Supporting AB 987 (Ma), which is legislation recently re-introduced to enhance local finance options for Transit Oriented Development. A similar bill (AB 338) passed the Legislature last year, but was vetoed by the Governor. It was the Assemblywoman's second attempt to pass such a BART-sponsored bill. This year BART will support but not sponsor the legislation.
- Supporting legislation to assist the goals to establish local fee-based revenue streams for transit. Last year BART supported a variety of bills to help finance local programs to combat GHG emissions and support greater transit access, like SB 83 (Hancock).
- Supporting legislative and administrative efforts to assist development of the CA High Speed Rail system so "connectivity" funding is secured that will assist BART's efforts to procure new rail vehicles and add capacity.

#### **Specific Bills Supported by BART:**

##### **ACA 9 (Huffman) Local government bonds: special taxes: voter approval.** (2-year)

Last year the BART Board *supported* this legislation, which would eliminate the two thirds voter-approval requirement for special taxes and would instead authorize a city, county, or special district to impose a special tax with the approval of 55 percent of its voters.

##### **ACA 15 (Arambula) Local government transportation projects: special taxes: Voter approval** (2-year)

The BART Board also *supported* ACA 15 to allow local governments (including special districts) to impose, extend, or increase a special tax for the purpose of providing funding for local transportation projects upon the approval of 55 percent of its voters.

##### **AB 1586 (Swanson) BART Police Oversight** (2-year)

AB 1586 would amend the BART Act to allow the BART Board to create an independent police auditor and a citizen oversight board. It would not provide authority for the BART Board to be

involved in any police discipline.

## **B. Proposed *Federal* Advocacy Program for BART**

### **(1) Pursue BART Priorities Through Federal Reauthorization Process.**

Ever-evolving discussions in the second session of the 111th Congress continue on how to proceed with the federal reauthorization legislation. With concerns raised in Congress about the growing deficit and the President's call to freeze spending to address the growing debt, the transportation sector is growing increasingly concerned that funding levels may not match growing needs. In addition to a variety of goals which must be demonstrated to our delegation, BART's most important goal is to secure a long-term funding commitment for the needed 700 new vehicles needed for the system. This will take a long-term commitment from the entire Bay Area delegation to the view that new rail vehicles for BART will assist regional goals and priorities. With only \$1 billion of the nearly \$3.4 billion funding source identified, BART will seek federal assistance at an extremely difficult economic time. In addition, BART must:

- Work with other "Old Rail" systems from around the country to support the recent FTA recommendation of greater funding for metropolitan rails systems to reach State of Good Repair (SGR) through reauthorization or other stimulus efforts. In addition this group will continue to seek ways to deal with growing paratransit costs to financially strapped transit systems.
- Support efforts which assist transit access goals, including enhancement of bicycle and pedestrian projects.
- Assure that any new safety regulation suggested by the Administration does not detrimentally impact BART.

### **(2) Pursue BART Priorities Through Possible Second Federal Stimulus (Jobs Bill).**

Last year BART benefited from passage of the American Recovery & Reinvestment Act (ARRA). At the end of last year the House quickly passed a second job-creation bill that would include \$8.4 billion for transit systems across the country. Recent political events and the stalling of the health reform legislation have increased uncertainty about the Senate's willingness to proceed in a similar direction. Initial indications are that the Senate will debate a series of smaller bills to more directly deal with job creation through tax incentives before they take on another transportation infrastructure bill. BART has established its second tier of priority shovel-ready projects and will need to continue to demonstrate job creation opportunities for the Bay Area.

### **(3) Monitor & Respond to Climate Change Legislation.**

Debate on the health care legislation last year, and concerns about adding to the federal deficit have pushed out any possible consideration of a significant Cap and Trade bill into late 2010. Transit continues to advocate that it can play a vital role in reducing greenhouse gas emissions and fulfilling the goals of a federal climate change bill. BART has supported provisions that would "invest" the proceeds in programs to reduce GHG emissions, which include a greater investment in transit as a means to reach the specified public goals. The Kerry/Boxer cap and

trade legislation (S. 1733) contains a significant increase in funding for clean transportation projects compared to the level provided in the House's Waxman-Markey bill (H.R. 2454) -- on average, 2.4% of allowances per year. In general, 1% of allowances will be worth \$1 billion. While at this time cap and trade legislation must compete with concerns about the national deficit, BART and other transit agencies will work to maintain that level for transit during any legislative markup in the Senate Environment and Public Works Committee and beyond.

**(4) Seek increased funding sources for security needs.**

With a long list of security needs left unfunded, BART must continue to work with Congressional leadership and the new Administration to assist the open transit systems most at risk of terrorist attacks. This includes pursuing greater funding through Homeland Security programs.

**(5) Address Specific BART issues.**

- If necessary, continue efforts with other transit agencies to resolve SILO/LILO transaction problems which could result in \$20 million in BART costs if AIG's rating declines. S. 1341 (Menendez) would correct this situation. With urging from BART and other state transit support, Sen. Feinstein has cosponsored legislation (*Close the SILO/LILO Loophole Act*) to levy a 100 percent excise tax on windfall proceeds that banks are demanding from these agencies.
- Prepare and coordinate BART's participation at annual APTA March Legislative conference.
- Monitor federal efforts that could impact CA High Speed Rail project.

**FISCAL IMPACT:**

N/A

**RECOMMENDATION:**

That the Board approve the following motions.

**ALTERNATIVE:**

Decline to support specific state and federal goals and/or the legislation listed for review.

**MOTION:**

The Board approves the state advocacy program, as recommended by staff.

The Board approves the federal advocacy program, as recommended by staff.