

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

AGENDAS FOR BOARD AND COMMITTEE MEETINGS

March 12, 2009

9:00 a.m.

A regular meeting of the Board of Directors and regular meetings of the Standing Committees will be held on Thursday, March 12, 2009, commencing at 9:00 a.m. All meetings will be held 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 and Standing Committees regarding any matter on these agendas. 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” and “consent calendar addenda” are considered routine and will be received, enacted, approved, or adopted by one motion unless a request for removal for discussion or explanation is received from a Director or from a member of the audience.

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

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

Kenneth A. Duron  
District Secretary

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 February 12, 2009 (Special), and February 26, 2009 (Regular).\* Board requested to authorize.

## **RECESS TO STANDING COMMITTEES**

Immediately following the Standing Committee Meetings, the Board Meeting will reconvene, at which time the Board may take action on any of the following committee agenda items.

### **ALL COMMITTEES ARE ADVISORY ONLY**

#### ADMINISTRATION COMMITTEE

Immediately following the Board Meeting recess

Director Murray, Chairperson

- A-1. Resolution to Appoint Offices of Jay E. Powell as Special Counsel for Telecommunications Matters.\* Board requested to authorize.
- A-2. Fiscal Year 2010 Pro Forma Budget Review.\* For information.
- A-3. (CONTINUED from February 26, 2009, Administration Committee Meeting)  
2008 Customer Satisfaction Survey Results.\* For information.
- A-4. General Discussion and Public Comment.

#### ENGINEERING AND OPERATIONS COMMITTEE

Director Keller, Chairperson

NO REPORT.

#### PLANNING, PUBLIC AFFAIRS, ACCESS, AND LEGISLATION COMMITTEE

Director Sweet, Chairperson

NO REPORT.

## **RECONVENE BOARD MEETING**

- 3. CONSENT CALENDAR ADDENDA  
Board requested to authorize as recommended from committee meetings above.
- 4. REPORTS OF STANDING COMMITTEES
  - A. ADMINISTRATION COMMITTEE
    - A-1. Resolution to Appoint Offices of Jay E. Powell as Special Counsel for Telecommunications Matters.\* Board requested to authorize.
    - A-2. Fiscal Year 2010 Pro Forma Budget Review.\* For information.
    - A-3. (CONTINUED from February 26, 2009, Administration Committee Meeting)  
2008 Customer Satisfaction Survey Results.\* For information.

B. ENGINEERING AND OPERATIONS COMMITTEE

NO REPORT.

C. PLANNING, PUBLIC AFFAIRS, ACCESS, AND LEGISLATION COMMITTEE

NO REPORT.

5. GENERAL MANAGER'S REPORT

NO REPORT.

6. BOARD MATTERS

A. Report of the BART Police Department Review Committee. For information.

B. Roll Call for Introductions.

7. GENERAL DISCUSSION AND PUBLIC COMMENT

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

A. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to subdivision (b) of Government Code Section 54956.9: two potential cases.

B. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION

Name of Case: Johnson et al. vs. BART  
Government Code Section: 54956.9 (b)(1)

C. CONFERENCE WITH LABOR NEGOTIATORS:

Designated representatives: Dorothy W. Dugger, General Manager; Teresa E. Murphy, Assistant General Manager – Administration; M. Carol Stevens, Burke, Williams & Sorensen, LLP

Employee Organizations: (1) Amalgamated Transit Union, Local 1555;  
(2) American Federation of State, County and Municipal Employees, Local 3993;  
(3) BART Police Officers Association;  
(4) BART Police Managers Association;  
(5) Service Employees International Union, Local 1021; and  
(6) Service Employees International Union, Local 1021, BART Professional Chapter

Government Code Section: 54957.6



## EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Marcia DeB...</i>		GENERAL MANAGER ACTION REQ'D:		
DATE: 3/4/09		BOARD INITIATED ITEM: No		
Originator/Prepared by: Esther Low Dept: Office of the General Counsel <i>Esther Low</i> Signature/Date: 3/2/09	General Counsel <i>Audrey Raw...</i> 3/2/09	Controller/Treasurer <i>[Signature]</i> 3/3/09	District Secretary [ ]	BARC <i>[Signature]</i> 3-4-09 [ ]
Status: Approved		Date Created: 02/25/2009		

TITLE:

### Appointment of Jay Powell as Special Counsel for Telecommunications Matters

NARRATIVE:

**Purpose:** To seek Board adoption of the attached Resolution naming the Law Offices of Jay E. Powell as special counsel to the District for telecommunications matters.

**Discussion:** Jay Powell has been the District's attorney on telecommunications matters since 1994, when he was a partner with Pillsbury, Madison & Sutro. Under legal services agreements with the District, Mr. Powell continued such work after opening his own practice in 2000. Mr. Powell helped negotiate and has drafted licenses and other documents for all District telecommunications projects involving the placement of fiber optic cable and wireless transmission equipment in the District's right of way. He has provided legal services on a multi-phase expansion of the commercial underground wireless system, and modification of the District's underground radio network pursuant to radio rebanding requirements of the Federal Communications Commission. Most recently, Mr. Powell's firm helped negotiate and drafted a license agreement that provides for high-speed mobile Wi-Fi access throughout the BART system. The firm also has drafted license agreements between BART and other public agencies, such as Caltrans, MTC, and the City and County of San Francisco, and is commencing work on an agreement with the East Bay Regional Communications System Authority.

Mr. Powell is very familiar with the legal, technical and operational considerations associated with telecommunications projects involving private businesses, other governmental agencies, or both. Increasingly, there are opportunities to accommodate both types of entities in single projects. Mr. Powell's firm is uniquely qualified to provide these services for the District because of his extensive experience with telecommunications matters generally and his familiarity with the District's current telecommunications agreements. The District's agreements have been viewed as potential models for other transit agencies interested in pursuing similar programs, such as WMATA and Miami-Dade Transit.

Before coming forward with this recommendation, staff conducted a survey of attorneys specializing in telecommunications matters and determined that most are located on the East Coast and most charge higher fees than Mr. Powell. Therefore, we are confident that the appointment of Mr. Powell as special counsel will serve the District's interests well.

**Fiscal Impact:** Funding for legal services provided by the Law Offices of Jay E. Powell will continue to be provided by the Maintenance and Engineering Department, Account No. 551-010. For the remainder of FY 2009 and FY 2010, the estimate of expenditures beyond those already authorized is \$400,000 (approximately \$120,000 for FY 2009 and \$280,000 for FY 2010).

The District has derived considerable revenue from the telecommunications program, far in excess of legal services expenses. For FY 2009, the estimated revenue from all telecommunications agreements is estimated to be over \$6.1 million, which includes approximately \$810,000 reimbursement for staff support costs. For FY 2010, the estimated revenue from all telecommunications is estimated to be almost \$6.5 million, including approximately \$600,000 reimbursement for staff support costs. Also, negotiated license agreement provisions have provided for the District's ability to use the telecommunications facilities installed by other parties, resulting in a reduction of operational costs.

**Alternatives:** Continue to seek Board approval on an ad hoc basis to continue funding an agreement with Mr. Powell's firm, or to retain other counsel to provide legal services for telecommunications projects. A substantial period of time would be required for new counsel to become knowledgeable about the District's telecommunications programs and agreements and applicable laws and regulations, as well as District policies. If requested licenses are not prepared on a timely basis, opportunities for additional revenue could be delayed or lost altogether.

**Recommendation:** Adoption of the following motion.

**Motion:** Adoption of the attached Resolution.

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

In the Matter of the Appointment  
of Special Counsel for  
Telecommunications Matters \_\_\_\_\_ /

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

WHEREAS, requests from the public and private sector for telecommunications agreements with the District, including new agreements as well as extensions and expansions of existing agreements, continue to grow; and

WHEREAS, Jay Powell, since 1994, has provided legal advice, participated in negotiations, and drafted agreements and other documentation necessary for the District's telecommunications revenue program and related telecommunications matters; and

WHEREAS, the District has benefited financially and otherwise from the legal work of Jay Powell;

NOW, THEREFORE, BE IT RESOLVED, THAT the Board of Directors of the San Francisco Bay Area Rapid Transit District hereby adopts the following statement of policy concerning the Office of the General Counsel:

The Law Offices of Jay E. Powell is named special counsel for the District on telecommunications matters, subject to normal budgetary restrictions. Where direct contact by staff members with special counsel is necessary, such contact shall be pursuant to the authorization of the General Counsel on either a general or specific basis as he deems best.

Adopted: \_\_\_\_\_

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