

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

BOARD MEETING AGENDA

July 11, 2013

9:00 a.m.

A regular meeting of the Board of Directors will be held at 9:00 a.m. on Thursday, July 11, 2013, 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 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.

2. CONSENT CALENDAR

- A. Approval of Minutes of the Meetings of June 13, 2013 (Regular), June 18, 2013 (Special), and June 28, 2013 (Special).\* Board requested to authorize.
- B. Agreement with MuniServices, LLC, for Sales and Use Tax (Sales Tax) Revenue Collection Services (Agreement No. 6M5059).\* Board requested to authorize.

3. ADMINISTRATION ITEMS

Director Murray, Chairperson

- A. Agreement with San Francisco Municipal Transportation Agency for Fast Pass Payments for the Period January 1, 2010, through June 30, 2014.\* Board requested to authorize.
- B. Agreement with Athens Administrators for Workers' Compensation Third Party Administration Service for the District's Workers' Compensation Program (Agreement No. 6M4257).\* Board requested to authorize.
- C. Title VI Policies: Major Service Change Policy and Disparate Impact and Disproportionate Burden Policy.\* Board requested to adopt.
- D. Draft Amendment to the District's Code of Conduct Policies.\* For information.
- E. Draft District Whistleblower Policy.\* For information.

4. ENGINEERING AND OPERATIONS ITEMS

Director Fang, Chairperson

- A. Award of Contract No. 15EK-110, Traction Power Substation Replacement ACO/KOW Installation.\* Board requested to authorize.
- B. Change Order to Contract No. 15PJ-110B, Earthquake Safety Program Four Station Structures – A Line, with Robert A. Bothman, for Seismic Retrofit of Pier P-238 (C.O. No. 2).\* Board requested to authorize.

- C. Response to Request for Proposals for Management and Administrative Services for the San Joaquin Joint Powers Authority.\* Board requested to authorize.

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

Director Blalock, Chairperson  
NO ITEMS.

6. GENERAL MANAGER'S REPORT

7. BOARD MATTERS

- A. Board Member Reports. For information.  
(Board members provide brief reports on meetings attended at District expense, as required by Government Code Section 53232.3(d).)
- B. Roll Call for Introductions.  
(An opportunity for Board members to introduce a matter for consideration at a future Committee or Board Meeting or to request District staff to prepare items or reports.)

8. PUBLIC COMMENT

(An opportunity for members of the public to address the Board of Directors on matters under their jurisdiction and not on the agenda.)

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

Board of Directors  
Minutes of the 1,679th Meeting  
June 13, 2013

A regular meeting of the Board of Directors was held June 13, 2013, convening at 6:05 p.m. in the Board Room, 344 20<sup>th</sup> Street, Oakland, California. President Radulovich presided; Kenneth A. Duron, District Secretary.

Directors present: Directors Blalock, Fang, Keller, Mallett, McPartland, Murray, Raburn, Saltzman, and Radulovich.

Absent: None.

President Radulovich announced that the order of agenda items would be changed.

Consent Calendar items brought before the Board were:

1. Approval of Minutes of the Meetings of May 9, 2013, and May 23, 2013.
2. Resolutions of Support for Metropolitan Transportation Commission One Bay Area Grant Discretionary Funding and Alameda County Transportation Commission Vehicle Registration Fee for Berkeley BART Plaza & Transit Area Improvements Project.
3. Award of Contract No. 15QJ-140, Reroof Dublin/Pleasanton Station Supervisor's Building.
4. Award of Invitation for Bid No. 8921, Motor, Condenser Fan.
5. Reject All Bids for Invitation for Bid No. 8915, Double-Ended Cleaning Carts.

Director Fang made the following motions as a unit. Director Blalock seconded the motions, which carried by unanimous electronic vote. Ayes - 9: Directors Blalock, Fang, Keller, Mallett, McPartland, Murray, Raburn, Saltzman, and Radulovich. Noes - 0.

1. That the Minutes of the Meetings of May 9, 2013, and May 23, 2013, be approved.
2. Adoption of Resolution No. 5215, In the Matter of Approving the Resolution of Local Support for Metropolitan Transportation Commission Discretionary Funding, and Resolution No. 5216, In the Matter of Approving the Resolution of Support for Alameda County Transportation Commission Measure B and/or Vehicle Registration Fee Grant Funding.

3. That the General Manager be authorized to award Contract No. 15QJ-140, Reroof Dublin/Pleasanton Station Supervisor's Building, for the Bid price of \$113,382.60, to Stronger Building Services, pursuant to notification by the General Manager and subject to compliance with the District's protest procedures.
4. That the General Manager be authorized to award Invitation for Bid No. 8921, an estimated quantity contract for procurement of motor, condenser fan, to Dahl-Beck Electric, for the Bid price of \$204,297.17, including applicable sales tax, pursuant to notification to be issued by the General Manager and subject to compliance with the District's protest procedures and Federal Transit Administration's requirements related to protests.

(The foregoing motion was made on the basis of analysis by the staff and certification by the Controller/Treasurer that funds are available for this purpose.)

5. That all Bids for Invitation for Bid No. 8915, Procurement of Vehicle, Yard, Double Ended Carts, be rejected and the General Manager be authorized to re-advertise the IFB.

President Radulovich brought the matter of Appointment of Citizen Review Board Members before the Board. Mr. Mark Smith, Independent Police Auditor, presented the item.

Ms. Gena Alexander addressed the Board.

Director Blalock moved that the Board ratify the Citizen Review Board reappointment of the following members for the term of two years, beginning on July 1, 2013, and expiring on June 30, 2015: Sukari Beshears, District 2; Peter Barnett, District 4; Les Mensinger, District 6; Ken Jones, District 8, and Thomas Minshew, BART Police Officers' Association/BART Police Managers' Association. Director Keller seconded the motion, which carried by unanimous electronic vote. Ayes - 9: Directors Blalock, Fang, Keller, Mallett, McPartland, Murray, Raburn, Saltzman, and Radulovich. Noes - 0.

Director Murray, Chairperson of the Administration Committee, brought the matter of Fiscal Year 2014 Budget before the Board. Mr. Carter Mau, Assistant General Manager, Administration and Budgets; Mr. Gregg Marrama, Department Manager of Capital Development; and Mr. Robert Umbreit, Department Manager, Operating Budget and Analysis, presented the item.

The following individuals addressed the Board.

Mr. Jeff Hobson

Mr. John O'Connor Sr.

Ms. Gena Alexander

Mr. Marty Frates

Mr. Thaddeus King

Ms. Yvonne Williams

Mr. Leo Ruiz

Ms. Maureen O'Connor  
Mr. Chris Finn  
Mr. Gary Jimenez  
Ms. Antonette Bryant  
Mr. John Arantes  
Mr. Deslar Patten  
Ms. Josie Mooney  
Ms. Eryn Yula  
Mr. Manuel Vega  
Mr. Steve Zeltzer  
Mr. Samuel Merlo  
Ms. Sarah Bump  
Mr. George Sergio Figueroa  
Ms. Yuri Hollie

The item was discussed. Director Mallett requested the change of line item language on Attachment 3, Fiscal Year 2014 District Budget Initiatives, to “Strategic Opportunity Assessment – West Contra Costa County Corridor, including a full analysis of extending off the current Richmond Station and BART to the Beach.” Director Fang moved adoption of Resolution No. 5217, In the Matter of Approving the Annual Budget for the San Francisco Bay Area Rapid Transit District and Authorizing Expenditures for the Fiscal Year July 1, 2013, to June 30, 2014. Director Mallett seconded the motion, which carried by unanimous electronic vote. Ayes - 9: Directors Blalock, Fang, Keller, Mallett, McPartland, Murray, Raburn, Saltzman, and Radulovich. Noes – 0.

Director Murray brought the matter of Agreement with Acquia, Inc., for Web Site Migration and Platform Management Services (Agreement No. 4299), before the Board. Mr. Ravi Misra, Chief Information Officer, presented the item. The item was discussed. Director Fang moved that the General Manager be authorized to execute Agreement No. 6M4299, with Acquia, Inc., for web site content management software provisioning, content migration and hosting services, for an amount not to exceed \$509,800.00, in Fiscal Year 2014, \$115,700.00 in Fiscal Year 2015, and \$125,800.00 in Fiscal Year 2016. Director Raburn seconded the motion, which carried by unanimous electronic vote. Ayes - 9: Directors Blalock, Fang, Keller, Mallett, McPartland, Murray, Raburn, Saltzman, and Radulovich. Noes – 0.

Director Murray brought the matter of Modification to Travel Reimbursement Policy for BART Advisory Committees before the Board. Ms. Julie Yim, Department Manager, Customer Services, presented the item. President Radulovich moved that the General Manager be authorized to set the program procedures and the reimbursement rate for advisory committee member travel to meetings, in an amount deemed reasonable by the General Manager. Director Saltzman seconded the motion. The item was discussed.

The following individuals addressed the Board.  
Mr. Les Mensinger  
Ms. Sharon Kidd  
Mr. Randall Glock

Discussion continued. Director Blalock made a substitute motion, that the General Manager be authorized to: 1) direct the Customer Services Department to load the nominal travel reimbursement value of \$15.00 on any Regional Transit Connection or Clipper® card designated by advisory committee members; 2) add the Title VI/Environmental Justice Advisory Committee, the Limited English Proficiency Advisory Committee, and the Transit Security Advisory Committee to the program, and 3) add additional advisory committees to the program, when appropriate, and notify the Board of other changes, including dollar amounts. Director Fang seconded the substitute motion. Discussion continued. The substitute motion carried by unanimous electronic vote. Ayes - 9: Directors Blalock, Fang, Keller, Mallett, McPartland, Murray, Raburn, Saltzman, and Radulovich. Noes – 0.

Director Murray brought the matter of Travel Pass for Attendees of the 2013 American Public Transportation Association (APTA) Sustainability and Public Transportation Workshop and Multimodal Operations Planning Workshop before the Board. Ms. Yim presented the item. The item was discussed. Director Keller moved that the General Manager be authorized to participate in the Flash Pass Program with San Francisco Municipal Transportation Agency, Golden Gate Bridge Highway & Transportation District, San Mateo County Transit District, and Peninsula Corridor Joint Powers Board, to provide complimentary rides for up to 350 attendees of the APTA 2013 Sustainability and Public Transportation Workshop and the APTA 2013 Intermodal Workshop to be held in San Francisco. Director Blalock seconded the motion.

Ms. Eryn Yula addressed the Board.

The motion carried by electronic vote. Ayes - 8: Directors Blalock, Fang, Keller, Mallett, McPartland, Murray, Saltzman, and Radulovich. Noes – 1: Director Raburn.

Directors Murray and Saltzman exited the Meeting.

Director Fang, Chairperson of the Engineering and Operations Committee, brought the matter of Change Order to Contract No. 15PB-110A, Earthquake Safety Program Aerial Structures – A Line North, with Atkinson Contractors, LP, for Seismic Retrofit of Pier P-238 (C.O. No. 25), before the Board. Mr. Thomas Horton, Manager of Earthquake Safety Programs, presented the item. Director Blalock moved that the General Manager be authorized to execute Change Order No. 25 to Contract No. 15PB-110A, BART Earthquake Safety Program, Aerial Structures – A Line North, for the retrofit of Pier P-238, in an amount not to exceed \$1,300,000.00. Director Raburn seconded the motion, which carried by unanimous electronic vote. Ayes - 7: Directors Blalock, Fang, Keller, Mallett, McPartland, Raburn, and Radulovich. Noes – 0. Absent - 2: Directors Murray and Saltzman.

Director Fang brought the matter of Cost-Sharing Agreement between San Francisco Bay Area Rapid Transit District and Santa Clara Valley Transportation Authority for the Hayward Maintenance Complex Project before the Board. Ms. Christine Quinn, Chief Extensions Officer, presented the item.

Directors Murray and Saltzman re-entered the Meeting.

The item was discussed. Director Blalock moved that the General Manager be authorized to execute a cost-sharing agreement between BART and Santa Clara Valley Transportation

Authority for the Hayward Maintenance Complex Project on terms consistent with those described in the Executive Decision Document (EDD). (The EDD is attached and hereby made a part of these Minutes.) Directors Saltzman and McPartland seconded the motion, which carried by unanimous electronic vote. Ayes - 9: Directors Blalock, Fang, Keller, Mallett, McPartland, Murray, Raburn, Saltzman, and Radulovich. Noes – 0.

Director Fang brought the matter of Oakland Airport Connector Project: Quarterly Update, before the Board. Mr. Thomas Dunscombe, Project Manager – Oakland Airport Connector, presented the item. The item was discussed.

Director Fang brought the matter of Noise Generation and Abatement Report before the Board. Mr. Carlton Allen, Chief Engineer, presented the item.

Mr. Carter Lavin addressed the Board.

The item was discussed.

Director Fang brought the matter of Quarterly Performance Report, Third Quarter Fiscal Year 2013 - Service Performance Review, before the Board. Mr. Paul Oversier, Assistant General Manager, Operations, presented the item. The item was discussed.

Director Blalock, Chairperson of the Planning, Public Affairs, Access, and Legislation Committee, brought the matter of 2013 State and Federal Legislative Advocacy Goals before the Board. Ms. Kerry Hamill, Acting Assistant General Manager, External Affairs, and Mr. Paul Fadelli, Legislative Analyst, presented the item.

Ms. Eryn Yula addressed the Board.

The item was discussed. Director Saltzman moved that the Board support state and federal legislation as recommended by staff. Director Raburn seconded the motion, which carried by unanimous electronic vote. Ayes - 9: Directors Blalock, Fang, Keller, Mallett, McPartland, Murray, Raburn, Saltzman, and Radulovich. Noes – 0.

Director Blalock brought the matter of Agreement with Alameda Park Street Bicycles, Inc., for Management Services to Operate BART's Bike Facilities (Agreement No. 6M6063) before the Board. Mr. Steve Beroldo, Manager of Access Programs, presented the item. Director Mallett moved that the General Manager be authorized to award Agreement No. 6M6063, Management Services to Operate BART's Bike Station Facilities, to Alameda Park Street Bicycles, Inc., for the Base Proposal Price not to exceed \$886,133.00, subject to the District's protest procedures, and that the General Manager be further authorized to exercise the three options for the proposal price not to exceed \$439,404.00. Director McPartland seconded the motion, which carried by unanimous electronic vote. Ayes - 9: Directors Blalock, Fang, Keller, Mallett, McPartland, Murray, Raburn, Saltzman, and Radulovich. Noes – 0.

President Radulovich brought the matter of Public Comment before the Board. No comments were received.

President Radulovich called for Board Member Reports and Roll Call for Introductions.

Director Mallett reported he had attended a West Contra Costa Transportation Advisory Committee meeting, the Capitol Corridor Joint Powers Authority Board meeting, various meetings with planning commissions, city council meetings, and met with city councilmembers.

Director Murray reported she had attended the American Public Transportation Association Rail Conference in Philadelphia.

Director Murray requested the District develop a program for communicating efforts to address the homeless on the system.

Director Keller reported he had attended the American Public Transportation Association Rail Conference in Philadelphia and made an eBART presentation to the Antioch Rotary Club.

President Radulovich requested the District develop a 'whistleblower' policy.

Director Fang requested the District address, in the near term, issues raised in media reports involving former General Manager compensation in 2012.

Director Raburn reported he had attended the Capitol Corridor Joint Powers Authority Board meeting.

President Radulovich called for the General Manager's report. General Manager Grace Crunican reported on steps she had taken and activities and meetings she had participated in. Mr. Oversier gave a brief report on the accident in the TransBay Tube on May 31, 2013. Ms. Crunican reported the District had received the Gold Standard Award from the Transportation Security Administration for excellence in security.

Director Fang exited the Meeting.

President Radulovich called for the Independent Police Auditor's report. Mr. Smith gave a report on the activities of the Citizen Review Board and the Office of the Independent Police Auditor.

Director McPartland exited the Meeting.

The Board Meeting was adjourned at 11:22 p.m.

Kenneth A. Duron  
District Secretary

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

Board of Directors  
Minutes of the 1,680th Meeting  
June 18, 2013

A special meeting of the Board of Directors was held June 18, 2013, convening at 4:30 p.m., in the Board Room, 344 20<sup>th</sup> Street, Oakland, California. Vice President Keller presided; Kenneth A. Duron, District Secretary.

Directors present: Directors Blalock, Fang, Keller, Mallett, McPartland, Murray, Raburn, and Saltzman.

Absent: None. President Radulovich entered the Meeting later.

Vice President Keller called for Public Comment on Item 3 only. No comments were received.

Vice President Keller announced that the Board would enter into closed session in the adjacent conference room under Item 3-A (Conference with Labor Negotiators) of the special meeting agenda, and that the Board would reconvene in open session at the end of that closed session.

The Board Meeting recessed at 4:31 p.m.

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The Board reconvened in closed session at 4:33 p.m.

Directors present: Directors Blalock, Fang, Keller, Mallett, McPartland, Murray, Raburn, and Saltzman.

Absent: President Radulovich.

President Radulovich entered the Meeting and assumed the gavel.

The Board Meeting recessed at 5:20 p.m.

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The Board reconvened in closed session at 5:37 p.m.

Directors present: Directors Blalock, Fang, Keller, Mallett, McPartland, Murray, Raburn, Saltzman, and Radulovich.

Absent: None.

Director McPartland exited the Meeting.

The Board Meeting recessed at 7:26 p.m.

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The Board reconvened in open session at 7:27 p.m.

Directors present: Directors Blalock, Fang, Keller, Mallett, Murray, Raburn, Saltzman, and Radulovich.

Absent: Director McPartland.

President Radulovich announced that the Board had concluded its meeting in closed session and there were no announcements to be made.

The Special Board Meeting was adjourned at 7:27 p.m.

Kenneth A. Duron  
District Secretary

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

Board of Directors  
Minutes of the 1,681st Meeting  
June 28, 2013

A special meeting of the Board of Directors was held June 28, 2013, convening at 5:13 p.m., in the Board Room, 344 20<sup>th</sup> Street, Oakland, California. President Radulovich presided; Kenneth A. Duron, District Secretary.

Directors present: Directors Blalock, Fang, Keller, Mallett, McPartland, Raburn, and Radulovich.

Absent: Director Murray. Director Saltzman entered the Meeting later.

President Radulovich announced the Meeting would be adjourned in memory of former Director Willie B. Kennedy.

President Radulovich called for Public Comment on Item 3 only. The following individuals addressed the Board.

Ms. Sarah Bump  
Mr. Phaethon Brown  
Ms. Sarah Gwaltney  
Mr. Robert Malito  
Mr. John O'Connor  
Mr. George Sergio Figueroa  
Ms. Roxanne Sanchez

Director Saltzman entered the Meeting.

Public comment continued. The following individuals addressed the Board.

Ms. Josie Mooney  
Mr. David Lyons  
Mr. Lakmin Abeygoonsekera  
Ms. Antonette Bryant  
Mr. Saul Almanza  
Mr. Nucron Avent  
Mr. Chris Finn  
Ms. Jean Gomez  
Ms. Kim Bailey  
Mr. Leo Ruiz  
Ms. April Littlefield  
Mr. David Kersten

Mr. Deslar Patten

President Radulovich announced that the Board would enter into closed session in the adjacent conference room under Item 3-A (Conference with Labor Negotiators) of the special meeting agenda, and that the Board would reconvene in open session at the end of that closed session.

The Board Meeting recessed at 6:43 p.m.

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The Board reconvened in closed session at 7:01 p.m.

Directors present: Directors Blalock, Fang, Keller, Mallett, McPartland, Raburn, Saltzman, and Radulovich.

Absent: Director Murray.

The Board Meeting recessed at 9:17 p.m.

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The Board reconvened in open session at 9:19 p.m.

Directors present: President Radulovich.

Absent: Directors Blalock, Fang, Keller, Mallett, McPartland, Murray, Raburn, and Saltzman.

President Radulovich announced that the Board had concluded its meeting in closed session and there were no announcements to be made.

The Special Board Meeting was adjourned at 9:19 p.m. in memory of Mrs. Kennedy.

Kenneth A. Duron  
District Secretary



### EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>[Signature]</i>		GENERAL MANAGER ACTION REQ'D:		
DATE: 7/3/13		BOARD INITIATED ITEM: No		
Originator/Prepared by: Hal Keiner Dept: Internal Audit <i>[Signature]</i> 6/26/13	General Counsel <i>[Signature]</i> 6/20/13	Controller/Treasurer <i>[Signature]</i>	District Secretary [ ]	BARC <i>[Signature]</i> 7-3-13 [ ]
Signature/Date:				
Status: Routed		Date Created: 06/13/2013		

TITLE:

### AWARD OF AGREEMENT No. 6M5059 FOR SALES TAX REVENUE COLLECTION SERVICES

NARRATIVE:

**PURPOSE:**

To obtain Board authorization for the General Manager to award Agreement No. 6M5059 to MuniServices, LLC to provide sales and use tax (sales tax) revenue collection services.

**DISCUSSION:**

The Agreement consists of providing sales tax revenue collection services. The Agreement is for a period of three (3) years, with options to renew for two (2) additional one (1) year periods. BART currently does not have the capability in-house to provide these services. The sponsoring department, Internal Audit, has determined that these services are necessary and are not duplicative of any duties performed by BART employees.

Many California jurisdictions do not receive all of the "sales tax" revenues to which they are entitled due to both taxpayer reporting errors and processing errors. There are many reasons for these errors, such as businesses failing to correctly report their collections to the State Board of Equalization (SBOE) and businesses misallocating tax collections among the many cities, counties, and special districts in which they operate. When businesses fail to correctly report their collections to the SBOE, the SBOE may distribute the tax it has collected in error to other jurisdictions. MuniServices, LLC will detect instances of misallocation and under reporting and correct these reporting errors for BART. The consultant will help maximize BART's income and minimize lost revenue by detecting and documenting the misallocations of "sales tax".

Since 2003, BART has contracted with MuniServices, LLC to provide sales tax revenue collection services. MuniServices, LLC has recovered approximately 2.1 million in additional sales tax dollars for the District under its current five (5) year agreement that expires on August 24, 2013.

BART issued Request for Proposals (RFP) No. 6M5059 to 24 prospective proposers. The RFP was advertised March 14, 2013 in eleven (11) newspapers. A pre-proposal meeting was held on

March 28, 2013 with representatives from (1) MuniServices, LLC and (2) Hinderliter, de Llamas and Associates (HdL) in attendance. Proposals (each consisting of a separate technical and price proposal) were subsequently received from these two firms on April 16, 2013.

The two technical proposals were reviewed by the Source Selection Committee, chaired by Contract Administration and consisting of representatives from Internal Audit, Operating & Capital Budgets, and the Office of Civil Rights. The Source Selection Committee reviewed the technical proposals for compliance with the seven (7) minimum technical requirements set forth in the RFP. Both proposals were determined by the Source Selection Committee to be technically acceptable.

The two price proposals (for the 3-year base period and 2 additional options years) were evaluated by the Source Selection Committee and ranked by price as follows:

PROPOSER	LOCATION	PROPOSED RATE	EVALUATED RATE
MuniServices, LLC	Fresno, CA	20%	20%
Hinderliter, deLlamas and Associates (HdL)	Diamond Bar, CA	25%	24%

MuniServices, LLC's 20% proposed rate (i.e., a contingency fee of 20 percent upon revenues that would otherwise have been lost due to errors) was the lower of the two proposals. However, because HdL is a certified small business contractor it is eligible for a price preference of 5 percent of the lowest responsible proposer's rate. This preference resulted in a 1 percent (5% x 20%) reduction in HdL's proposed rate used for evaluation purposes to 24% (25% - 1%).

The Source Selection Committee determined that the proposal submitted by MuniServices, LLC is technically acceptable and responsive to the RFP. It has also determined upon review of the proposer's business experience and financial capabilities that the proposer is responsible and that the proposal rate submitted by MuniServices, LLC is fair and reasonable based on competition.

As required by Section 7056 of the State of California Revenue and Taxation Code, Board Resolution No. 4891 allows the consultant to represent BART for examining tax records of the SBOE.

Pursuant to BART's Non-Discrimination in Subcontracting Program, the availability percentages for this Agreement are 16 percent for MBEs and 20 percent for WBEs. The proposer will not be subcontracting any work and will do all work with its own forces. Therefore, BART's Non-Discrimination in Subcontracting Program does not apply.

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

**FISCAL IMPACT:**

Payments to MuniServices, LLC are contingent upon the amount of revenue it collects for BART. MuniServices, LLC will perform this service on a 20 percent contingency fee basis. No fee payment will be made to MuniServices, LLC until the associated revenue has been received by BART. The cost of this Agreement is not to exceed \$400,000 for 5 years. The terms of the Agreement will commence August 2013 and end August 2018 if the two option years are exercised.

It is estimated that MuniServices, LLC's collection services will result in revenue of \$400,000 over a twelve-month period. At this estimated level of revenue collections, BART would pay MuniServices, LLC \$80,000 in fees each year and "net" \$320,000 which will be deposited in BART's General Fund. For the 5 year duration of the Agreement, the "net" estimated revenue to BART is \$1.6 million (\$2 million in collected revenue less \$400,000 in fees paid to MuniServices, LLC).

**ALTERNATIVES:**

1. To initiate another Request for Proposals (RFP) that is unlikely to result in more competitive pricing.
2. To discontinue sales tax revenue collection services that would result in BART forgoing additional annual revenue currently estimated at \$320,000.

**RECOMMENDATION:**

It is recommended that the Board adopt the following motion.

**MOTION:**

That the General Manager is authorized to award Agreement No. 6M5059 to MuniServices, LLC to provide sales tax revenue collection services, pursuant to the notice to be issued by the General Manager, and subject to the Districts's protest procedures. The Agreement covers an initial term of three years with options for two additional one-year terms. A contingency fee of 20% will be paid to MuniServices, LLC based upon the amount of tax revenue recovered.



## EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Marcus de Vries</i>		GENERAL MANAGER ACTION REQ'D:		
DATE: c <i>7/3/13</i>		BOARD INITIATED ITEM: No		
Originator/Prepared by: PAM A HERHOLD Dept:	General Counsel <i>Andrew Rosen</i> <i>7/2/13</i>	Controller/Treasurer <i>[Signature]</i>	District Secretary <i>[ ]</i>	BARC <i>[Signature]</i> <i>[ ]</i>
Signature/Date: <i>PAH 6/27/13</i>	<i>[Signature]</i>	<i>[Signature]</i>	<i>[ ]</i>	<i>[Signature]</i> <i>[ ]</i>

TITLE:

### 2010-2014 Special Transit Fare (Fast Pass®) Agreement

NARRATIVE:

#### PURPOSE

To authorize the General Manager to execute a new Special Transit Fare (Fast Pass®) Agreement with the San Francisco Municipal Transportation Agency (SFMTA) to provide for Fast Pass payments for the period January 1, 2010 through June 30, 2014.

#### DISCUSSION

##### Background

Since 1983, BART and Muni (now SFMTA) have had agreements in place by which riders with monthly Muni Fast Passes may use their Fast Passes to take unlimited trips on BART within San Francisco. SFMTA is solely responsible for setting the price of the Fast Pass. 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. Historically, the reimbursement rate has been set at an approximately 32% discount to the regular intra-San Francisco BART fare.

Fast Pass ridership on BART peaked at over 45,000 average weekday trips, or 12.7 million (M) annually, in late 2008. Since then, Fast Pass trips on BART have declined to about 25,000 average weekday trips, or about 7.7M annually. This decline is due, in part, to SFMTA's 2010 implementation of a second, Muni-only "M" Fast Pass, in addition to the "A" Fast Pass that provides BART and Muni privileges. The "A" Fast Pass is currently priced at \$76 per month, \$10 more than the "M" Fast Pass.

The Fast Pass® Agreement requires the approval of both the SFMTA Board and the BART Board, as well as the San Francisco Board of Supervisors (BOS). The last Fast Pass® Agreement by which the program operated expired on December 31, 2009. Although BART and SFMTA generally agreed to the terms for a new Fast Pass® Agreement before the expiration date, execution of the new agreement was delayed by other factors as set forth below.

A timeline of key events relating to the 2010-2014 Special Transit Fare (Fast Pass®) Agreement is as follows:

- 2009: BART and SFMTA staff initiate negotiations on a new Fast Pass® Agreement.
- December 31, 2009: The 2008-2009 Special Transit Fare (Fast Pass®) Agreement

- expires.
- 2010: Negotiations continue as the agencies discuss impact of 16.7% increase to BART's minimum fare effective July 2009.
  - January 2011: SFMTA and BART Boards approve the 2010-2014 Special Transit Fare (Fast Pass®) Agreement with the terms negotiated by agency staff.
  - May 2011: The BOS remands the agreement for renegotiation based upon a BOS budget analyst report questioning the 8.5 year length and the method for calculating future reimbursement rate increases. BART and SFMTA quickly reach agreement on revised terms likely to meet with approval from all three governing bodies.
  - July 2011: The BOS remands a separate FY10 Feeder Agreement between BART and SFMTA by which BART pays SFMTA for trips Muni brings to BART. The BOS also directs SFMTA not to bring a revised 2010-2014 Special Transit Fare (Fast Pass®) Agreement back until the Feeder Agreement payment method is linked to the number of transfer trips from SFMTA to BART.
  - 2011-2012: Staff negotiate terms of new Feeder Agreement.
  - November 2012: SFMTA Board approves the revised 2010-2014 Special Transit Fare (Fast Pass®) Agreement and the Feeder Agreement.
  - January 2013: BART and SFMTA make further revisions to the agreements based upon comments from the BOS budget analyst.
  - January 2013: BOS Budget and Finance Committee continues consideration of both agreements to a future BOS meeting.
  - June 2013: BOS approves the revised 2010-2014 Special Transit Fare (Fast Pass®) Agreement and the Feeder Agreement.

#### 2010-2014 Special Transit Fare (Fast Pass®) Agreement Terms

The terms of the 2010-2014 Special Transit Fare (Fast Pass®) Agreement approved by the SFMTA Board and BOS are as follows:

- **Term.** January 1, 2010 through June 30, 2014.
- **Reimbursement Rate.** The BART fare charged for intra-San Francisco trips, which is equal to the minimum fare, increased by 16.7% to \$1.75, effective July 1, 2009. In order to account for this increase, the two agencies agreed to increase the SFMTA reimbursement rate by 16.7% to \$1.19 from \$1.02, effective retroactively from January 1, 2010 to June 30, 2012. The \$1.19 reimbursement is a 32% discount off the \$1.75 fare, which is the discount rate BART has given SFMTA for many years. On July 1, 2012, BART fares increased by 1.4%, resulting in a \$1.21 reimbursement rate from July 1, 2012 through June 30, 2014.
- **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. Currently, SFMTA pays these fees. Under the 2010-2014 Special Transit Fare (Fast Pass®) Agreement, BART will deduct this amount, estimated at \$0.1M annually, from each monthly Fast Pass invoice to SFMTA.

The 2010-2014 Special Transit Fare (Fast Pass®) Agreement establishes the terms by which BART is reimbursed by SFMTA and does not involve changing fares or fare

products/media. As such, no Title VI analysis is required in order to renew this agreement.

The 2010-2014 Special Transit Fare (Fast Pass®) Agreement will be approved as to form by the Office of the General Counsel.

**FISCAL IMPACT**

For the term of the 2010-2014 Special Transit Fare (Fast Pass®) Agreement, the table below shows Fast Pass trips, applicable reimbursement rates, and payment owed to BART for these trips. SFMTA has paid BART \$9.6M for trips taken in 2010, based on a reimbursement rate of \$1.02; the estimated remaining payment due from SFMTA is approximately \$33M.

	Fast Pass Trips	Agreement Reimbursement Rate	SFMTA Reimbursement Owed
CY2010	8.5M	\$1.19	\$10.1M
CY2011	7.8M	\$1.19	\$9.3M
CY2012	7.7M	\$1.19/\$1.21	\$9.3M
Jan 2013 - June 2013	3.8M	\$1.21	\$4.6M
July 2013 - June 2014 *	7.7M	\$1.21	\$9.3M
* Estimated		<b>Estimated Total</b>	<b>\$42.6M</b>
		<b>2010 SFMTA Payment</b>	<b>\$9.6M</b>
		<b>Estimated Amount to be Paid</b>	<b>\$33.0M</b>

Clipper transaction fees are estimated at approximately \$115,000 per year based on 7.7M annual trips at 1.5 cents per transaction. These fees will be deducted from the amount owed to BART from SFMTA.

**ALTERNATIVES**

Do not authorize execution of the 2010-2014 Special Transit Fare (Fast Pass®) Agreement and direct staff to renegotiate the terms or initiate termination procedures.

**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, 2014.



## EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Marcia de la Cruz</i>		GENERAL MANAGER ACTION REQ'D: Approve and forward to the Board		
DATE: c <i>7/3/13</i>		BOARD INITIATED ITEM: No		
Originator/Prepared by: Elaine M. Kurtz Dept: Human Resources <i>Elaine M Kurtz</i>	General Counsel <i>Andrew...</i> 7/2/13 [ ]	Controller/Treasurer <i>[Signature]</i> [ ]	District Secretary [ ]	BARC <i>Andrew...</i> 7-3-13 [ ]

TITLE:

### AWARD AGREEMENT NO. 6M4257, THIRD PARTY ADMINISTRATION SERVICES FOR THE DISTRICT'S WORKERS' COMPENSATION PROGRAM

NARRATIVE:

**PURPOSE:** To obtain Board authorization for the General Manager to award Agreement No. 6M4257, Third Party Administration Services for the District's Workers' Compensation Program, to Athens Administrators.

**DISCUSSION:** The services to be provided are for Third Party Administration Services in support of the District's Workers' Compensation Program. These services consist of assuming overall program responsibility, processing Workers' Compensation claims in accordance with State laws and legislation, providing procedural oversight, recordkeeping, administrative functions, and coordinating all ancillary services and service providers necessary to effectively address an injured worker's claim. These service providers include, among others, utilization reviewers, bill reviewers, medical case managers, and investigative services providers, as warranted.

Advance Notices were mailed on March 27, 2013 to 121 providers. A Request for Proposals (RFP) utilizing the District's Small Business Program provisions was advertised in eleven (11) newspapers on March 29, 2013 and issued to 121 prospective proposers throughout the State of California. A Pre-Proposal Meeting was held on April 16, 2013 and was attended by 17 firms, including 4 DBE firms. Five proposals were received on May 7, 2013 from the following firms:

1. Athens Administrators, Concord, California
2. TRISTAR Risk Management, Concord, California
3. JT2 Integrated Resources, Pleasanton, California
4. Keenan Associates, Oakland, California
5. Intercare Holdings Insurance Services, Inc., Rocklin, California

The District's Selection Committee, chaired by Contract Administration, consisted of representatives from Human Resources, System Safety, Risk and Insurance Management Departments and the Office of Civil Rights. The Selection Committee evaluated the proposals

based on the best value method. The Selection Committee initially reviewed all proposals to determine which had satisfied the nine (9) minimum technical requirements. The Selection Committee determined that two proposers, Keenan Associates and Intercare Holdings Insurance Services, Inc. had failed to satisfy the minimum technical requirements. The Committee scored the remaining three (3) responsive proposals submitted by Athens Administrators, TRISTAR Risk Management, and JT2 Integrated Resources based on the experience and qualifications of the firms and their proposed key personnel in providing third party administration services, ability to perform the RFP Scope of Services, and the ability to oversee and coordinate the ancillary services and providers.

Price proposals for the three responsive proposers were subsequently opened and evaluated. The Total Proposal Price for the base 3 years plus two additional option years are as follows:

Athens Administrators	\$5,118,427.00
JT2 Integrated Resources	\$5,132,300.00
TRISTAR Risk Management	\$6,262,681.80

Pursuant to the District's Non-Federal Small Business Program, the Office of Civil Rights set a 5% prime preference for this Agreement for certified small businesses. The apparent low Proposer, Athens Administrators, is not a certified small business. The apparent second low Proposer, JT2 Integrated Resources, is a certified small business, making it eligible for the 5% reduction in its proposal price for evaluation purposes. After review by the Office of Civil Rights, and application of the 5% small business preference, the price proposal submitted by JT2 Integrated Resources was calculated to be \$4,882,300 for evaluation purposes.

Subsequent to review of pricing, the Selection Committee determined that the competitive range included all three responsive proposers. Oral Interviews were conducted with the three proposers on June 5-6, 2013 and were subsequently scored. Scores for the written statement of qualifications (firm and proposed key personnel) and oral interview scores were combined, and the ranking is shown as follows:

Proposer	Qualifications/ Experience Score	Oral Interview Score	Combine d Average Score	Technic al Proposa l Ranking
Athens Administrators	550.33	384	934.33	1
TRISTAR Risk Management	487.66	277.17	764.83	2
JT2 Integrated Resources	430.17	284.17	714.33	3

Athens Administrators ranked the highest in the technical evaluation phase but had the second lowest price for evaluation purposes after applying the 5% price preference for evaluation

purposes to JT2 Integrated Resources.

The Selection Committee conducted a best value analysis and determined that the proposal submitted by Athens Administrators represents the best value to the District. Athens Administrators demonstrated its superior level of expertise in their management and technical staffing and a creative approach to working with the cost containment needs of the District. The firm is a State licensed Third Party Administrator with 37 years' experience managing workers' compensation claims in California. Athens' staff proposed to work with the District are highly qualified, and its online claims management system is state-of-the art.

The Selection Committee determined that, even taking into account the lower price of JT2 Integrated Resources used for purposes of evaluation, the higher price of Athens Administrators would be justified based on the greater experience of the firm and greater capability of Athens Administrators to more efficiently and effectively manage the District's claims. A key factor in controlling the cost of claims is the processing and managing of claims to resolution while satisfying the goal of meeting the employee's needs for timely and effective medical care. It is important to note that while for evaluation purposes Athens Administrators' price of \$5,118,427 is \$236,127 or 5% higher than JT2 Integrated Resources' evaluated price of \$4,882,300, the Agreement is awarded for the amount actually proposed. In this case, because Athens Administrators proposed the lowest price, there is no additional expenditure in awarding to Athens Administrators.

Pursuant to the District's Non-Discrimination in Subcontracting Program, the availability percentages for this Agreement are 16% for MBEs and 20% for WBEs. Athens Administrators will not be subcontracting any work and will do all work with its own forces. Therefore, the District's Non-Discrimination in Subcontracting Program does not apply.

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

The Agreement for Third Party Administration Services is one of four related Agreements for services in support of Workers' Compensation administration. Previously, all services related to Workers' Compensation have been provided by or through the Third Party Administrator in consultation with District staff charged with overseeing the Workers' Compensation program. In response to Board's stated interest in 'unbundling' contracts in order to open up opportunities to a larger field of providers to do business with the District, the Board extended the existing Third Party Administration Agreement in order to provide an opportunity for staff to separately advertise certain of the services associated with Workers' Compensation administration. Separate Requests for Proposal for utilization and bill review, medical case management services, and investigative services have been issued, and are currently in process.

**FISCAL IMPACT:** The maximum compensation under this Agreement will not exceed \$5,118,427. The annual cost breakdown is as follows:

Year 1: \$945,000 (FY14)  
Year 2: \$982,800 (FY15)  
Year 3: \$1,022,111 (FY16)  
Option Year 1: \$1,063,000 (FY17)

Option Year 2: \$1,105,516 (FY18)

The first year cost is included in the FY14 Adopted Budget for Human Resources. The cost in future years will be included in the Human Resources' future budgets. Funding, if necessary, in out years would be requested in future preliminary operating budget cycles.

**ALTERNATIVE:** The Board may elect to re-advertise the RFP, recommend a further extension of the existing agreement, or cancel the RFP which would leave the District without the ability to meet its statutory obligations with respect to Workers' Compensation.

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

**MOTION:** The General Manager is authorized to execute Agreement No. 6M4257, Third Party Administration Services for the District's self-insured Workers' Compensation Program, to Athens Administrators for an amount not to exceed the base Proposal Price of \$2,949,911 for the base three-year period, and is authorized to exercise Option Year 1 for an amount not to exceed \$1,063,000 and Option Year 2 for an amount not to exceed \$1,105,516, pursuant to notification to be issued by the General Manager and subject to compliance with the District's protest procedures. The Agreement authorizes Athens Administrators to pay self-insured workers' compensation claims and losses out of a fund provided by the District to the amount required by law.



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Melissa DeBauge</i>		GENERAL MANAGER ACTION REQ'D:		
DATE: 7/5/13		BOARD INITIATED ITEM: No		
Originator/Prepared by: Rachel Russell Dept: Office of Civil Rights <i>Rachel Russell</i> Signature/Date: 7/5/13	General Counsel <i>Audrey E. Larson</i> 2/3/13 [ ]	Controller/Treasurer <i>[Signature]</i> [ ]	District Secretary [ ]	BARC <i>Lawrence</i> 7-3-13 [ ]
Status: Routed		Date Created: 06/24/2013		

TITLE:

**Title VI Policies:  
Major Service Change Policy  
Disparate Impact and Disproportionate Burden Policy**

NARRATIVE:

**Purpose:**

To request Board approval of the Major Service Change Policy and the Disparate Impact and Disproportionate Burden Policy.

**Discussion:**

Federal Transit Administration (FTA) Title VI Requirements Circular 4702.1B (Circular), effective October 2012, requires recipients of federal funding to develop a Major Service Change Policy and Disparate Impact and Disproportionate Burden Policy. Under the Circular, recipients must conduct an equity analysis prior to implementing either a major service change or a fare change. The equity analysis will determine whether the adverse effects of a proposed change disproportionately affect minority or low-income populations or riders. As a federally-funded recipient, BART must establish policies, after engaging the public in the policies' decision-making process, that define when adverse effects constitute a disparate impact or disproportionate burden and when service changes are "major."

The Circular requires Board consideration and approval of the Major Service Change Policy and Disparate Impact and Disproportionate Burden Policy.

**Major Service Change Policy:**

The Major Service Change Policy includes a threshold that determines what level of service change constitutes a major service change. Only service changes that meet or exceed the threshold established by the Major Service Change Policy will require an equity analysis. As part of the District's Title VI Corrective Action Plan, the major service change threshold was developed in 2010, after an extensive public comment and outreach process. BART hosted 18 multilingual community meetings through its service region to solicit feedback from the public. An online survey was also available for those who were unable to attend a public meeting. Outreach for the meetings was conducted using a variety of methods including: newsletters and communications from community based organizations, target e-mails, phone calls, web posting on bart.gov, print and online media, ethnic media, and flyer posting at BART Stations and within the community. Analysis of the survey data collected during the public meetings found that a

small contingent (26%) of those surveyed thought the proposed threshold was too high. The majority (74%) of those surveyed thought the proposed threshold was “reasonable”, “too low”, something they had “no opinion” about, or were “unclear”.

The Major Service Change Policy applies to new lines, extensions, and stations. Additionally, any increase and/or decrease of 25% or more in line length, service levels and service hours both in aggregate changes across all lines and cumulative changes within a three year period will require a Title VI equity analysis.

Exclusions to the Major Service Change Policy include any changes to service which are caused by: temporary services in effect less than 180 days, a new line “break-in” period, acts of other governmental agencies, forces of nature, competing infrastructure failure, and overlapping services.

Pursuant to new 2012 requirements of the Circular, the 2010 Major Service Change Policy must now be approved by the Board.

### **Disparate Impact and Disproportionate Burden Policy:**

The Disparate Impact and Disproportionate Burden Policy will be used to assess proposed Major Service Changes and all fare changes. The Disparate Impact and Disproportionate Burden Policy establishes thresholds that define when adverse impacts of these changes are borne disproportionately by minority and/or low-income populations or riders. A finding of disparate impact or disproportionate burden would then require that BART undertake additional steps to justify or lessen impacts.

The following summarizes the proposed definitions of disproportionate to determine Disparate Impact and Disproportionate Burden on minority or low-income (protected) populations or riders:

- **Fares.** For fare changes, a fare change will be considered to have a disproportionate impact when the difference between the changes for protected riders and non-protected riders is equal to or greater than 5%.
- For fare type changes, impacts will be considered disproportionate when the difference between the affected fare type's protected ridership share and the overall system's protected ridership share is greater than 10%. When the survey sample size of the ridership for the affected fare type is too small to permit a determination of statistical significance, BART will collect additional data.
- **Service.** Adverse effects of a Major Service Change to the existing system are borne disproportionately by protected populations or riders when either (a) the difference between the affected service's protected ridership share and the overall system's protected ridership share is equal to or greater than 5%, or (b) the difference between the percent change in travel times for protected populations or riders is equal to or greater than 5% when compared to the percent change in travel time for non-protected populations or riders.
- **New service and new fares.** New service and new fares including for new modes, media, or service, will be considered to have a disproportionate impact when the applicable difference is equal to or greater than 10%.

### **Cumulative Impacts:**

small contingent (26%) of those surveyed thought the proposed threshold was too high. The majority (74%) of those surveyed thought the proposed threshold was “reasonable”, “too low”, something they had “no opinion” about, or were “unclear”.

The Major Service Change Policy applies to new lines, extensions, and stations. Additionally, any increase and/or decrease of 25% or more in line length, service levels and service hours both in aggregate changes across all lines and cumulative changes within a three year period will require a Title VI equity analysis.

Exclusions to the Major Service Change Policy include any changes to service which are caused by: temporary services in effect less than 180 days, a new line “break-in” period, acts of other governmental agencies, forces of nature, competing infrastructure failure, and overlapping services.

Pursuant to new 2012 requirements of the Circular, the 2010 Major Service Change Policy must now be approved by the Board.

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- **Service.** Adverse effects of a Major Service Change to the existing system are borne disproportionately by protected populations or riders when either (a) the difference between the affected service’s protected ridership share and the overall system’s protected ridership share is equal to or greater than 5%, or (b) the difference between the percent change in travel times for protected populations or riders is equal to or greater than 5% when compared to the percent change in travel time for non-protected populations or riders.
- **New service and new fares.** New service and new fares including for new modes, media, or service, will be considered to have a disproportionate impact when the applicable difference is equal to or greater than 10%.

### **Cumulative Impacts:**

- The cumulative impacts of similar, major service changes or similar fare changes occurring during a three-year Title VI triennial reporting period will be analyzed as part of an equity analysis.

## **Public Participation**

In developing the Major Service Change Policy, staff conducted extensive public participation including eighteen (18) multilingual community meetings throughout the service area and separate meetings with local transportation equity advocacy groups. Staff also distributed a survey at the community meetings, requesting feedback on the proposed threshold. The survey was also available online at [bart.gov](http://bart.gov).

In developing the Disparate Impact and Disproportionate Burden Policy, staff presented the Disparate Impact and Disproportionate Burden Policy to the BART Office of Civil Rights' Title VI and Environmental Justice Advisory Committee (Advisory Committee) and held focus group meetings with local transportation equity advocacy groups. The Advisory Committee consists of members of community-based organizations that serve minority and low-income populations within the BART service area. Members represent the following community based organizations: Communities for a Better Environment, Greenlining Institute, Urban Habitat, Transform, Alameda Office of Education, Center on Race, Poverty and the Environment, West County Toxics Coalition, and San Francisco Planning and Urban Research Center. Additionally, the Disparate Impact and Disproportionate Burden Policy was posted on [bart.gov](http://bart.gov) and social media outlets such as Facebook and Twitter, and a corresponding webinar was available on BART TV via YouTube. Fourteen (14) individual comments were received in response to BART's web-based outreach.

As described in the attached report, comments from the Advisory Committee and the transportation equity advocacy groups showed support for BART's Disparate Impact and Disproportionate Burden Policy. Revisions requested by the Advisory Committee and the transportation equity advocacy groups were taken into consideration and used in the development of the Disparate Impact and Disproportionate Burden Policy. For example, the transportation equity advocacy groups suggested that BART require an analysis of cumulative impacts in its Disparate Impact and Disproportionate Burden Policy. The Policy was revised to include an evaluation of such impacts.

## **Fiscal Impact:**

There is no immediate fiscal impact associated with adoption of the Major Service Change Policy and Disparate Impact and Disproportionate Burden Policy. While the two policies will not impose a fiscal impact, implementation and support of the policies will require a financial commitment from the District.

## **Alternative:**

Do not adopt a Major Service Change Policy or a Disparate Impact and Disproportionate Burden Policy, or defer adoption of the Policies to a later date. If the District defers adoption of these Policies, it will not be able to undertake any fare changes or major service changes until these Policies are adopted. If the District does not adopt these Policies, it will not be in compliance with Title VI requirements and its related regulations and will be at risk of losing federal funding.

**Recommendation:**

It is recommended that the Board adopt the following motion.

**Motion:**

The Board approves the attached Major Service Change Policy and Disparate Impact and Disproportionate Burden Policy.

**Recommendation:**

It is recommended that the Board adopt the following motion.

**Motion:**

The Board approves the attached Major Service Change Policy and Disparate Impact and Disproportionate Burden Policy.

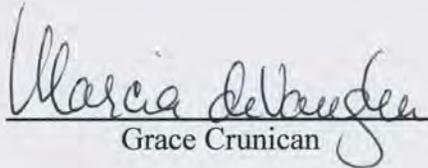
**SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT**

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**MEMORANDUM**

**TO:** Board of Directors **DATE:** July 5, 2013  
**FROM:** General Manager  
**SUBJECT:** Administration Agenda Item 3.D: District Code of Conduct Policies – For Information

At the July 11, 2013 Board meeting, staff will make an informational presentation on draft District Code of Conduct Policies. The Board will be asked consider adoption of the amended District Code of Conduct Policies at the July 25<sup>th</sup> Board of Directors meeting.

  
Grace Crunican

Attachments

cc: Board Appointed Officers  
Deputy General Manager  
Executive Staff

# Employee Code of Conduct

## **I. Declaration of Policy**

District officers and employees are public servants and, as such, are expected to be impartial and responsible in fulfilling the public trust placed in them. The public expects and must receive the highest standard of ethical conduct from all those in public service, regardless of personal considerations. District officers and employees are expected to demonstrate the highest standards of personal integrity, honesty, and truthfulness in all their public activities in order to inspire public confidence and trust in the District.

## **II. Scope**

This policy is for use by and applicable to all District officers and employees.

## **III. Responsibilities of Public Service**

District officers and employees are bound to observe, in their official acts, the highest standards of integrity and to discharge faithfully the duties of their offices, recognizing that the lives, safety, health, and welfare of the general public must be their primary concern. Their conduct in both their official and private affairs should be above reproach to assure that their public office is not used for personal gain.

## **IV. Professional Conduct**

District employees shall conduct the District's business in compliance with the law, this Code of Conduct, District policies, and good judgment.

- A. They shall not commit any act which may bring reproach or discredit upon the District.
- B. Speech or behavior that is likely to create an appearance of impropriety is to be avoided.
- C. Employees shall not involve themselves in altercations or any other act of hostility with the public or other employees, nor will they engage in acts which will subject the District to criticism or adversely affect the interests of the District.
- D. It is up to each employee to maintain a professional, safe, and productive environment.
- E. Employees shall treat each other and the public professionally and with courtesy at all times.

## V. **Conflict of Interest**

This Code of Conduct incorporates the prohibitions of California law concerning conflicts of interest. Among them is the prohibition against officers and employees being “financially interested in any contract made by them in their official capacity” (Government Code Section 1090, *et seq.*) and the prohibitions and reporting requirements of the Political Reform Act of 1974. This includes the prohibition against officers and employees making, participating in, or using their position to influence governmental decisions in which they have a reason to know they have a financial interest. This Code of Conduct also incorporates the Federal Transit Administration’s (FTA) prohibitions concerning real or apparent conflicts of interest on the part of officers and employees who participate in the selection, award, or administration of contracts supported by federal funds. Such a conflict would arise when any of the following parties has a financial or other interest in an entity selected for award of a contract supported by federal funds: the officer or employee, or any immediate family member, partner, employer, or organization that intends to employ the officer or employee.

Further, this Code of Conduct requires that department managers, as well as officers and employees involved in the award and administration of contracts, review the proposed scope of work of their contracts and bring any potential “organizational conflicts of interest” to the attention of the Contract Management Division. An organizational conflict of interest occurs when any of the following circumstances arise:

- A. The contractor is unable, or potentially unable, to provide impartial and objective assistance or advice to the District due to other activities, relationships, contracts, or circumstances;
- B. The contractor has an unfair competitive advantage through obtaining access to non-public information during the performance of an earlier contract; and/or
- C. During the conduct of an earlier procurement, the contractor has established the ground rules for a future procurement by developing specifications, evaluation factors, or similar documents.

Lastly, employees shall not communicate with Board members regarding a procurement before the staff recommendation for award of the contract, agreement, or vendor selection is made public, unless the General Manager has designated the employee to speak with the Board member before the staff recommendation for award is made public. If the procurement involves property development, the Department Manager of Real Estate and Property Development shall serve as the General Manager’s designee in relation to matters with the Board.

## **VI. Communications During Pendency of Bid or Proposal**

District employees shall comply with the terms of Section IX of the District's Contractor Code of Conduct related to communications with outside parties during pendency of a bid or proposal.

## **VII. Political Activity**

The prohibitions of California law pertaining to political activity applicable to public employees, and officers, including the prohibitions of California Government Code Section 3201, *et seq.*, apply to all District employees, and officers. Officers and employees shall not, directly or indirectly, solicit a political contribution from another officer or employee of the District, with knowledge that the person from whom the contribution is solicited is an officer or employee of the District. In addition, officers and employees shall not engage in political activities during working hours, while on District premises, or while in uniform.

California law prohibits the use of public agency resources for campaign activity. Accordingly, the District does not permit the posting of campaign materials on workplace bulletin boards, nor any campaign activities on District property, except for activities related to union elections and the posting of materials related to union elections on bulletin boards designated for union-related materials.

## **VIII. Solicitation or Acceptance of Gratuities and Favors**

This section exists to assure the public that District officers and employees are not influenced in their actions by the receipt of gifts or favors.

Officers and employees shall not solicit or accept gifts or favors of any value from persons or entities with which the District contracts or may reasonably be expected to contract. Gifts or favors include, but are not limited to, free or discounted meals, tickets, transportation, and accommodations.

Notwithstanding the above prohibition, any gifts or favors received by or promised to District officers and employees may trigger the reporting, disclosure, and abstention requirements of this Code (see the Conflict of Interest provisions). In addition, the prohibitions contained in the FTA's third party contracting guidance (FTA Circular 4220.1F) concerning receipt by officers and employees of favors and gratuities from contractors, potential contractors, or parties to sub agreements are incorporated herein and by this reference made part of this Code of Conduct.

## **IX. Use of Confidential Information**

No current or former employee or officer shall use or disclose, other than in the performance of his or her official duties and responsibilities (or as may be required by law), confidential information gained in the course of or by reason of his or her position or employment, nor shall any current or former employee or officer permit such use or disclosure.

**X. Use of District Employment and Facilities for Private Gain**

District employees and officers shall not use District time for activities other than District business which is within their scope of duties, unless, in the case of employees, such activities have the prior approval of their supervisor or higher supervision in their department or are otherwise authorized under a collective bargaining agreement, or written rule or procedure of the District.

No employee or officer shall engage in or permit the unauthorized use of District property or resources, including but not limited to facilities, materials, equipment, information, intellectual property such as trademarks and copyrighted material, and District staff time. Use of District property or resources for purposes other than District business shall be considered an unauthorized use unless an employee has received prior approval for such use by his or her supervisor or higher supervision in his/her department. Use of District property for non-District business will only be authorized when District management determines it is in the best interest of the District to do so. The prohibition on use of District intellectual property for purposes other than District business includes, but is not limited to, a prohibition on the use of District trademarks or copyrighted BART material as an element in any online identity.

This Code of Conduct incorporates the prohibitions of California law concerning use of public agency resources for campaign activity. The District does not permit the posting of campaign materials on or in District facilities, including but not limited to, workplace bulletin boards.

**XI. Official District Communications**

Officers and employees shall not claim or imply that they are speaking on behalf of the District unless approved to do so by the BART Communications Department. Officers and employees shall not publicly comment on legal matters involving the District unless they have received prior written approval from the BART Office of the General Counsel.

**XII. Affirmative Action/Sexual Harassment**

District employees and officers shall not, in the performance of their District responsibilities, engage in unlawful discrimination of any sort, including discrimination against any person on the basis of race, sex, color, national origin, religion, handicap, age, marital status, sexual orientation, or veteran status, and they shall make good faith efforts to support and comply with the District's equal opportunity and affirmative action goals and objectives. The engagement of sexual harassment in conducting District business is prohibited.

**XIII. Incompatible Employment, Activities, and Enterprises**

District employees shall not engage in employment, activities, or enterprises for compensation which are inconsistent with, incompatible to, or in conflict with their duties as employees. The outside activities inconsistent with, incompatible to, or in conflict

with an employee's duties include those which:

- A. Involve the use for private gain or advantage of an employee's District time, facilities, equipment and supplies; or the badge, uniform, prestige, or influence of his or her District office or employment; or
- B. Involve receipt or acceptance by the employee of any money or other consideration from anyone other than the District for the performance of an act which the employee, if not performing such an act, would be required or expected to render in the regular course or hours of his or her District employment or as a part of his or her duties as a District employee; or
- C. Involve the performance of an act in other than his or her capacity as a District employee which act may later be subject directly or indirectly to the control, inspection, review, audit, or enforcement of any other District employee; or
- D. Involve the time demands as would render performance of his or her duties as a District employee less efficient.

An employee's supervisor or higher level supervisor will notify him or her of disciplinary actions arising from a violation of these procedures, and existing grievance procedures will be utilized to resolve all grievances.

#### **XIV. Discussion of Future Employment**

Officers and employees shall not make, participate in, or use their position to influence any government decision relating to any person or entity with whom the officer or employee is negotiating, or has any arrangement concerning, prospective employment. Employees shall immediately report to their supervisor all interviews, discussions, offers, or negotiations concerning future employment where the employee's job duties involve making, participating in, or influencing government decisions related to the prospective employer.

#### **XV. Penalties for Non-Compliance**

In addition to any other penalty as provided by law, employees who violate this Code are subject to discipline, up to and including discharge.

#### **XVI. Compliance with other Policies and Procedures**

In addition to this Code, officers and employees may be subject to other District policies, procedures, rules, and guidelines, including but not limited to the Operations Rules & Procedures Manual, Management Procedures, employee handbook, and collective bargaining agreements. Officers and employees are required to comply with all such applicable policies, procedures, rules and guidelines in addition to this Code.

## **XVII. Questions and Advice**

This Code is not intended to address specific situations which may be unique to individual employees. Employees who have questions or need further guidance should contact their assigned supervisor or manager.

# District Contractor Code of Conduct

## I. Definitions

The following definitions shall apply to this Contractor Code of Conduct:

- A. District Official. The term “District Official” shall mean any Board member, officer, or employee of the District.
- B. Contractor. The term “Contractor” shall mean any contractor, supplier, real property developer, or consultant of the District.

## II. Application of the Contractor Code of Conduct

This section shall govern the conduct of all Contractors of the District. These standards supersede all prior written ethics policies adopted by the District which are in conflict with these standards. These standards are to be read in conjunction with applicable provisions of the District’s Procurement Manual and other applicable Board Rules, policies and procedures. All Contractors shall ensure that their subcontractors comply with this section.

## III. Conflict with Contract Terms

The terms of this Contractor Code of Conduct are not intended to limit or otherwise modify other terms contained in a contract between the District and any Contractor. In the event there is a conflict between this Contractor Code of Conduct and the terms of a contract between the District and a Contractor, the terms of the contract shall govern.

## IV. Purpose

The purpose of this section is to protect the integrity of the procurement process, and to provide a comprehensive statement of pertinent regulations and obligations governing the conduct of Contractors doing business with the District so they will be able to compete fairly and perform their work and services in an ethical manner.

This document does not purport to respond to all ethical issues which may arise in the course of doing business with the District. Each person and entity doing business with the District is expected at all times to conduct himself or herself in the manner of an ethical, reasonable person.

## V. Professional Conduct

- A. District Contractors shall conduct themselves in a manner consistent with the law, this Code of Conduct, District policies, and good judgment.

- B. They shall not commit any act which may bring reproach or discredit upon the District.
- C. Speech or behavior that is likely to create an appearance of impropriety is to be avoided.
- D. Contractors shall not involve themselves in altercations or any other act of hostility with the District employees, other contractors, or the public. Neither shall they engage in acts which will subject the District to criticism or adversely affect the interests of the District.
- E. It is up to each Contractor to maintain a professional, safe, and productive environment.

## **VI. Interpretation**

The District Ethics Officer, in consultation with the Office of the General Counsel, is charged with advising District management regarding ethical issues. Contractors and District managers may contact the Ethics Officer with questions regarding this Code of Conduct.

## **VII. Enforcement**

Violations of law or of this Code by a Contractor should be reported to the District Ethics Officer.

## **VIII. Contacts by Staff Prior to the Issuance of a Solicitation**

While informational and market research contacts by District employees with prospective Contractors can be a valuable source of data to the District, such contacts can sometimes provide an unfair advantage in a future procurement to persons contacted as part of the market research. All parties must exercise sound judgment and caution to ensure that there is no preferential treatment of any prospective Contractor and to avoid even the appearance of such preferential treatment. The District may be prohibited by law from awarding a contract to a Contractor who has received such preferential treatment or where there is an appearance of preferential treatment.

## **IX. Communication During Pendency of Bid or Proposal**

- A. "District Official". For the purpose of this section only, the term "District Official" shall mean any Board member, officer, or employee of the District, or any other person who is serving on a District selection committee for the review of bids or proposals.
- B. Requirement to Log Communications. During the period of time commencing with the submittal of a bid or proposal in response to a Request for Proposals (RFP), Request for Qualifications (RFQ), Invitation for Bid (IFB), or other District procurement solicitation, and ending with the award of the contract, District Officials shall keep a log of all communications, whether oral or written,

from any person who is not a District Official, regarding a pending bid or proposal. The log shall contain the following information for each communication:

- i. the date of the communication;
- ii. the name of the person making the communication; and
- iii. a brief statement of the topic of the communication, including the name of any bidder or proposer that is a subject of the communication.

C. Submission and Posting of Logs. The logs shall be submitted on a weekly basis to the District Ethics Officer, together with any written communications received from any person who is not a District Official regarding pending bids or proposals. The logs and any such written communications shall be maintained by the Ethics Officer and shall be subject to public inspection and copying pursuant to California Government Code Section 6250 *et seq.* Additionally, the Ethics Officer shall on a weekly basis post the logs on the District's website.

D. Exceptions. The requirement to keep a log of communications described in subsection B. above shall not apply where:

- i. The communication is required by the terms of the solicitation, such as a document submitted as part of a proposal, or the oral interview of a proposer or bidder;
- ii. The communication is made publicly at a meeting of the Board; or
- iii. In the case of negotiated procurements, the communication is initiated by a member of the District's selection committee for the purpose of negotiating the contract in accordance with the terms of the solicitation.

#### **X. Prohibition Regarding Gifts**

No bidder, proposer or Contractor, or any of their consultants or proposed subcontractors shall offer, give, or promise to offer or give, directly or indirectly, any gift or favor of any value to any District Official.

#### **XI. Financial Contribution Limitation**

All Contractors and prospective Contractors, and each of their subcontractors and proposed subcontractors, are charged with full knowledge of the requirements of Section 5 of the Rules of the Board of Directors limiting the making of campaign contributions to Board members or candidates for Director, and shall not violate or conspire with any other person to violate said Section.

#### **XII. Prohibition Regarding Offers of Employment**

No bidder, proposer, or Contractor shall offer, or promise to offer, either directly or indirectly, any future employment or business opportunity to any District Official, or member of his or her immediate family, significant other or business associates of such persons if such offer of employment is conditioned expressly or impliedly on the

awarding of a present or future contract or preference in the awarding of a contract to anyone at any time by the District. In addition, District officers and employees may be disqualified from working on District matters involving a person or entity with whom the officer or employee is negotiating, or has any arrangement concerning, prospective employment, whether or not the prospective employer has conditioned an offer of employment on the awarding of a present or future contract or preference in the awarding of a contract.

### **XIII. Prohibition Regarding Information**

Prior to a contract award, no bidder, proposer or Contractor shall solicit or obtain, directly or indirectly, from any District Official, any information relating to current or future contracts, or a specific pending procurement, unless such information is at the time a public record required to be disclosed under the California Public Records Act, or has otherwise been made available at the same time in the same form to all other bidders, proposers and Contractors.

### **XIV. Prohibitions on Use and Disclosure of Confidential Information**

At no time shall any Contractor who obtains confidential or proprietary District information in the course of doing or seeking to do business with the District disclose any such information to any person not authorized by the District to receive such information or use such information for any personal gain except as necessary to fulfill its contractual obligations to the District.

### **XV. Prohibition Regarding Participation in Procurement Development**

No Contractor who participates in the development of a scope of work, solicitation documents, contract documents or technical specifications may participate as a bidder, proposer or sub-proposer on that particular procurement or perform any work on that particular procurement or any other procurement that would constitute an organizational conflict of interest or would give that Contractor an unfair advantage over other bidders or proposers on that procurement.

### **XVI. Duty to Disclose Conflicts of Interest**

A. Each bidder, proposer and Contractor, and each of their consultants and subcontractors, seeking to do business, or doing business with the District has an obligation to promptly disclose in writing to the Department Manager of Procurement for the District, or in the case of property development projects to the Department Manager of Real Estate and Property Development for the District, any of the following potential conflicts of interest which become known to the management of the bidder, proposer or Contractor:

- i. Any financial relationship between the bidder, proposer or Contractor and a District Official;

- ii. Any financial or close personal relationship between any officers, directors or employees of the bidder, proposer or Contractor and a District Official;
  - iii. Any negotiations concerning employment with or outstanding offer of employment to, or the current or former employment of, any District Official or former District Official, by the bidder, proposer or Contractor; or
  - iv. Any campaign contributions to a Board member or candidate for the Board, whether monetary or in-kind, exceeding \$1000, made during the time period from receipt of the bidder or proposer's bid through award. The duty to disclose campaign contributions shall apply to all bidders and proposers and to all first tier subcontractors and sub-suppliers whose subcontracts exceed \$100,000.
- B. The duty to disclose potential conflicts of interest as described above exists prior to and during any employment or contract and regardless of whether the facts actually constitute a conflict of interest under any law. The District Ethics Officer shall provide advice to either the Department Manager of Procurement or the Department Manager of Real Estate and Property Development for the District and to the Board of Directors as to whether any facts disclosed under this section constitute a prohibited conflict of interest, and of the impact, if any, of that conflict on the relationship between the bidder, proposer or Contractor and the District.
- C. The District encourages good faith reporting of all suspected violations of this section. The identity of any person reporting a violation of this section shall not be disclosed except as necessary to carry out the purposes and requirements of this section or as otherwise required by law.
- D. Suspected violations of this section shall be reported immediately to either the Department Manager of Procurement or the Department Manager of Real Estate and Property Development for investigation. The Department Manager of Procurement or the Department Manager of Real Estate and Property Development shall investigate the allegations in consultation with the District Ethics Officer.
- E. In any instance where the District has determined that an allegation of a violation of this section has merit, the Department Manager of Procurement or the Department Manager of Real Estate and Property Development, or his or her designee, may take one or more of the following actions:
  - i. Meet with the Contractor to obtain an explanation of the violation;
  - ii. Direct the prime Contractor to remove the offending subcontractor from the project;
  - iii. Rescind, void, or terminate the contract; and/or
  - iv. Any other reasonable and appropriate action.

- F. In any instance where the Department Manager of Procurement or the Department Manager of Real Estate and Property Development propose a sanction under this section, he or she shall notify the Contractor in writing of the recommended action. The Contractor may request an informal hearing with the Department Manager of Procurement or the Department Manager of Real Estate and Property Development, or his or her designee, to explain the Contractor's position regarding the alleged violation and/or the proposed sanction. Any such request must be made in writing and received by the Department Manager of Procurement or the Department Manager of Real Estate and Property Development within ten (10) working days of the issuance of the notice of the recommended sanction. If no request is received within the ten (10) working day period, the sanction may be imposed forthwith. If a timely request for an informal hearing is received, the informal hearing shall take place within ten (10) working days after the Department Manager of Procurement or the Department Manager of Real Estate and Property Development receives the request. The Contractor may be represented by legal counsel at its own expense at the hearing. Within ten (10) working days after the informal hearing, the Department Manager of Procurement or the Department Manager of Real Estate and Property Development, or his or her designee, shall advise the Contractor in writing of the outcome of the hearing.
- G. Notwithstanding any other provision of these sections, in any procurement where a violation of this section has been established prior to the award of the contract, the District, at its sole discretion, shall determine whether to terminate the procurement or to proceed to award a contract with or without disqualifying the offending bidder or proposer.

## **XVII. Important Notice – Related Laws**

Also note that in addition to the District Code of Conduct, Contractors are required to comply with all applicable laws in connection with the District procurement process and the work performed pursuant to any agreement with the District.

# Board of Directors Code of Conduct

The BART Board of Directors is governed by nine elected officials from the nine BART election districts, representing specific geographic areas within the District. Board members serve a four-year term. The San Francisco Bay Area Rapid Transit District is a Special District created by the State of California consisting of Alameda County, Contra Costa County, and the City and County of San Francisco.

- I. The role of the Board as it relates to BART is as follows: The Board provides counsel and direction to management and shall not be involved in the day-to-day affairs of BART. Board members do not have individual power or authority over BART. Rather, Board action requires either a majority or two-thirds vote of the Board, depending on the action under consideration.
- II. Board members shall treat the public, staff members and each other with respect and courtesy.
- III. Board members shall refrain from conduct that they know or reasonably should know is likely to create in the minds of reasonable observers the perception that the Board member used his or her public position improperly. They shall not commit any act which may bring reproach or discredit upon the District.
- IV. Board members shall not be financially interested in any contract made by them in their official capacity. The financial interest of an individual Board member in a District contract may prevent the entire Board from authorizing the award or execution of the contract.<sup>1</sup>
- V. Board members shall not make, participate in, or use their position to influence a governmental decision in which they know or have reason to know that they have a financial interest.<sup>2</sup>
- VI. Board members shall not make, participate in, or use their position to influence any governmental decision relating to any person or entity with whom the Board member is negotiating, or has any arrangement concerning prospective employment.<sup>3</sup>
- VII. Board members shall not participate in the selection, award, or administration of contracts supported by federal funds where the Board member has a real or apparent conflict of interest as defined by FTA Third-Party Contracting Guidance.<sup>4</sup> Such a conflict would arise when any of the following parties has a financial or other interest in an entity selected for award of a contract supported by federal funds: the Board member, or any immediate family member, partner, employer, or organization that intends to employ the Board member.

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<sup>1</sup> Cal. Gov. Code 1090

<sup>2</sup> Cal. Political Reform Act

<sup>3</sup> *ibid*

<sup>4</sup> FTA Circular 4220.1F

- VIII.** Board members shall not publicly engage in personal attacks on BART employees or members of the public, or attempt to discipline or disparage any employee in any manner. They shall not involve themselves in altercations or any other act of hostility with others, nor will they engage in acts which will subject the District to criticism or adversely affect the interests of the District. Any concerns regarding an employee's performance shall be communicated to the General Manager or other Board Appointed Officer with supervisory responsibility for the employee.
- IX.** Board members shall not solicit or accept gifts of any value from persons or entities with which the District contracts or may contract. Gifts or favors received by or promised to an individual Board member may prevent the entire Board from authorizing the award or execution of a contract.<sup>5</sup>
- X.** Before the staff recommendation for an award of a contract is made public, Board members shall not communicate regarding the procurement with any District employee except the General Manager or his or her designee. The General Manager shall keep a log of those communications and shall report those communications and responses in writing at the Board meeting where action on the procurement is scheduled.<sup>6</sup>
- XI.** Board members shall comply with the terms of Section IX of the District's Contractor Code of Conduct related to communications with outside parties during pendency of a bid or proposal.
- XII.** Candidates for the Board shall not, directly or indirectly, solicit political contributions from officers or employees of the District.<sup>7</sup>
- XIII.** Board members shall not use or disclose, other than in the performance of their official duties and responsibilities (or as may be required by law), confidential District information gained in the course of or by reason of their position, nor shall any Board member permit such use or disclosure.<sup>8</sup> Board members shall not disclose confidential information that has been acquired by being present in a closed session to a person not entitled to receive it, unless the Board has authorized disclosure of that confidential information.
- XIV.** Board members shall not use or permit the use of District resources, including but not limited to facilities, materials, equipment, information, intellectual property such as trademarks and copyrighted material, and District staff time, for activities other than District business. This Code of Conduct incorporates the prohibitions of California law concerning use of public agency resources for campaign activity.<sup>9</sup>

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<sup>5</sup> Cal. Gov. Code 1090

<sup>6</sup> Adapted from the Los Angeles County Metropolitan Transportation Authority Board of Directors Code of Conduct, Section 130680(e)

<sup>7</sup> Cal. Gov. Code 3205

<sup>8</sup> Cal. Gov. Code 1098 makes use of confidential info for pecuniary gain a misdemeanor, but this is broader

<sup>9</sup> Cal. Gov. Code 8314 and others.

- XV.** Sanctions imposed for violations of this Code of Conduct may include, but are not limited to, any of the following:
- A. Public censure by the Board at a regularly scheduled meeting;
  - B. Disqualification from participating in any discussion or vote on any matter related to the violation; and/or
  - C. Removal of the Board member from one or more committees<sup>10</sup>.

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<sup>10</sup> Adapted from the Los Angeles County Metropolitan Transportation Authority Board of Directors Code of Conduct, Section 130620(c)(1-6)

# Customer Code of Conduct

It is the policy of the San Francisco Bay Area Rapid Transit District to help ensure the safety, security, comfort and convenience of all those who use its services. BART has established the following passenger conduct regulations to ensure that any one person may not adversely affect others using the system or operating the BART system. Customers shall use the BART system in a responsible manner to preserve and protect the aesthetics, and promote the longevity of this essential public resource for greater mobility in the San Francisco Bay Area. Customers shall treat other patrons and BART representatives with consideration, patience, respect and civility to allow use, operation and enjoyment of the BART system in a safe and gratifying manner for all persons.

A person is prohibited from committing the following acts on a BART vehicle, BART facility, or BART property unless otherwise specified in this Section:

- I. Smoke or expel the residue of any tobacco product including chewing tobacco.
- II. Consume any alcoholic beverage or possess an open container of any alcoholic beverage.
- III. Eat or drink in the paid areas of the stations or on the trains.
- IV. Engage in disruptive, disturbing behavior including: loud conversation, profanity or rude insults, or operating any electronic device used for sound without an earphone(s).
- V. Take any animal into the paid area of the BART system unless the animal is secured in a container sufficient to contain the animal. Exceptions will be made for service animals or service dogs in training.
- VI. Carry or possess any weapon in violation of the law.
- VII. Possess or transport any flammable liquid, combustible material or other dangerous substance such as gasoline, kerosene or propane.
- VIII. Litter.
- IX. Vandalize a BART vehicle or BART property by writing, marking, scribbling, defacing or causing destruction to the vehicle or property in any manner.
- X. Beg or solicit by accosting another person.
- XI. Spit, urinate, defecate or inappropriately expose oneself.
- XII. Possess, use or sell any controlled substance.
- XIII. Enter a paid area without proper fare payment.
- XIV. Be present after hours of operation without authorization.

- XV.** Use a BART facility or BART property for non-transportation related purposes without authorization.
- XVI.** Interfere with the operation of a BART vehicle.
- XVII.** Threaten, harm or assault a BART employee or passenger.

Any person who violates one or more of these regulations may be warned and/or ordered to immediately leave a BART vehicle, BART facility, or BART property by a BART employee. Situations where a person refuses to leave a BART vehicle, BART facility or BART property after being ordered to do so may be handled by the BART Police Department or other appropriate law enforcement agencies.

This policy does not seek to limit or conflict with any federal, state, or local law or ordinance; or to prevent any law enforcement agency or entity from taking any lawful action against any person on a BART vehicle, BART facility, or BART property.

# **Advisory Committee Member Code of Conduct**

## **I. Application of the Advisory Committee Members Code of Conduct**

District Advisory Committees provide input and advice to assist the Board and staff deliberations in the conduct of District business. Since these committees are advisory only, the actions and statements of Advisory Committee members do not necessarily reflect the official positions or policies of the San Francisco Bay Area Rapid Transit District or its Board of Directors. This Code of Conduct applies to all members of District Advisory Committees. Currently, the District's Advisory Committees are the BART Accessibility Task Force, the Bicycle Advisory Task Force, the Business Advisory Council, the Citizen Review Board, the Earthquake Safety Program Citizens' Oversight Committee, the Title VI/Environmental Justice Advisory Committee, the Limited English Proficiency Advisory Committee and the Transit Security Advisory Committee. This Code applies to these Advisory Committees as well as to any Advisory Committees which are created subsequent to the adoption hereof.

## **II. Professional Conduct**

Members of District Advisory Committees shall conduct themselves in a manner consistent with the law, this Code of Conduct, District policies, and good judgment.

Members shall not commit any act which may bring reproach or discredit upon the District.

Speech or behavior that is likely to create an appearance of impropriety is to be avoided.

Members shall not involve themselves in altercations or any other act of hostility with District employees, other Committee members, or the public. Neither shall they engage in acts which will subject the District to criticism or adversely affect the interests of the District.

It is up to each member to maintain a professional, safe and productive environment.

## **III. Conflicts of Interest**

Advisory Committee members shall not participate in providing advice or comments to the District's Board, staff or other Committee members on any matter in which they know or have reason to know that they have a financial interest. Additionally, Advisory Committee members shall not participate in the making of any District contract in which they have a financial interest. If an Advisory Committee member has a conflict of interest he/she shall disclose such conflict to the other members of the Committee and file a written statement disclosing the conflict with the District Ethics Officer.

## **IV. Confidential Information**

Advisory Committee members shall not use or disclose, other than in the performance of their official duties and responsibilities (or as may be required by law), confidential District information gained in the course of or by reason of their position.

## **V. Use of District Resources**

Advisory Committee members shall not use or permit the use of District resources, including but not limited to facilities, materials, equipment, information, intellectual property such as trademarks and copyrighted material, and District staff time, for activities other than the performance of their duties as Advisory Committee members.

## **VI. Official District Communications**

Advisory Committee Members shall not claim or imply that they are speaking on behalf of the District unless they have been specifically approved to do so by the District's Communications Department.

## **VII. Non-Discrimination/Sexual Harassment**

Advisory Committee members shall not, in the performance of their responsibilities as Committee members, engage in unlawful discrimination of any sort, including discrimination against any person on the basis of race, sex, color, national origin, religion, handicap, age, marital status, sexual orientation, or veteran status. Advisory Committee members shall not engage in sexual harassment.

## **VIII. Discussion of Future Employment**

Advisory Committee members shall not use their position to influence any District decision regarding prospective employment with the District.

## **IX. Penalties for Non-Compliance**

In addition to any other penalty as provided by law, Advisory Committee members who violate this Code are subject to removal from the Committee.

## **X. Interpretation**

The District Ethics Officer, in consultation with the Office of the General Counsel, is charged with advising District management regarding ethical issues and questions involving the interpretation and application of this Code of Conduct. Advisory Committee members and District managers may contact the Ethics Officer with questions regarding this Code of Conduct.

# SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

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## MEMORANDUM

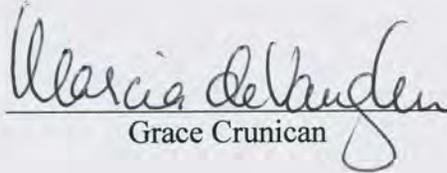
**TO:** Board of Directors

**DATE:** July 5, 2013

**FROM:** General Manager

**SUBJECT:** Administration Agenda Item 3.E: Draft Whistleblower Policy – For Information

At the July 11, 2013 Board meeting, staff will make an informational presentation on a draft Whistleblower Policy. The District Whistleblower Policy will be on the July 25, 2013 Board of Directors meeting agenda for adoption.

  
Grace Crunican

### Attachments

cc: Board Appointed Officers  
Deputy General Manager  
Executive Staff

# San Francisco Bay Area Rapid Transit District

## Whistleblower Policy

### I. Declaration of Policy

The San Francisco Bay Area Rapid Transit District (“District”) is committed to high standards of ethical, moral and legal professional conduct. The District expects its Directors, officers, and employees to observe high standards of professional and personal ethics in the conduct of their duties and responsibilities. Employees and representatives of the District must practice honesty and integrity in fulfilling their responsibilities and comply with all applicable laws and regulations.

### II. Reporting Responsibility

It is the responsibility of all Directors, officers and employees to report Misconduct in accordance with this Whistleblower Policy.

### III. Misconduct

“Misconduct” is defined in this Whistleblower Policy as any activity by a District officer, employee, or Board member, or a District consultant or contractor that violates a state or federal law or regulation or involves corruption, fraud, bribery, theft or misuse of District property, gross incompetence, or otherwise violates any applicable District Code of Conduct or District policy.

This definition of Misconduct is not intended to be an exclusive listing of the illegal or improper activity covered by the Whistleblower Policy, but is intended to serve as a guide to reporting all serious improprieties that impact the integrity and effective operation of the District.

### IV. No Retaliation

This Whistleblower Policy is intended to encourage and enable employees and others to raise serious concerns within the District before seeking resolution outside the District.

Accordingly, no Director, officer or employee who in good faith reports suspected Misconduct under this Whistleblower Policy or who cooperates in the investigation of Misconduct shall suffer harassment, retaliation or adverse employment consequence as a result of making such a report or cooperating in an investigation. An employee who retaliates against someone who has reported Misconduct in good faith or who has cooperated in the investigation of Misconduct is subject to discipline, up to and including termination of employment.

## **V. Reporting Misconduct**

The District encourages its Directors, officers and employees to share their questions, concerns, suggestions, or complaints with someone who can address them properly. In most cases, an employee's supervisor is in the best position to address areas of concern. However, if an employee is not comfortable speaking with his or her supervisor or is not satisfied with the supervisor's response, the employee is encouraged to contact the District Ethics Officer. Supervisors, Managers and the District Ethics Officer are required to report alleged violations of law to the District's Chief of Police and General Counsel. The Chief of Police will coordinate as appropriate with the District Attorney who has jurisdiction.

## **VI. Acting in Good Faith**

Anyone who reports Misconduct must be acting in good faith and have reasonable grounds for alleging the Misconduct. Any allegations that prove not to be substantiated and which were known to be false when made or were made with willful disregard for their truth or falsity will be viewed as a serious disciplinary offense. Employees who make unfounded, malicious, or knowingly false allegations of Misconduct are subject to discipline up to and including termination of employment.

## **VII. Confidentiality**

Reports of Misconduct or suspected Misconduct may be submitted on a confidential basis by the complainant or may be submitted anonymously. Reports of Misconduct or suspected Misconduct will be kept confidential to the extent possible and to the extent permitted by law. Reports of Misconduct or suspected Misconduct will be shared with other individuals, including individuals outside the District's organization, as necessary to conduct an adequate investigation.

## **VIII. Anonymous Allegations**

This Whistleblower Policy encourages individuals to put their names to allegations of Misconduct because appropriate follow-up questions and investigation may not be possible unless the source of the information is identified. Concerns expressed anonymously will be looked into appropriately, but consideration will be given to: the seriousness of the issue raised, the credibility of the concern, and the likelihood of confirming the allegation from attributable sources.

## **IX. Handling of Reported Misconduct**

The employee's supervisor or other District representative will acknowledge receipt of the reported Misconduct within five business days, unless the report was submitted anonymously. All reports will be promptly investigated and appropriate corrective action will be taken if warranted by the investigation.



## EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Carla DeBurger</i>		GENERAL MANAGER ACTION REQ'D: Approve and Place on July 11, 2013 Board Agenda	
DATE: <i>7/5/13</i>		BOARD INITIATED ITEM: No	
Originator/Prepared by: Steve Sims Dept. M&E Traction Power	General Counsel <i>Andrew Kavas 7/7/13</i>	Controller/Treasurer <i>[Signature]</i>	District Secretary <i>Paul Crespo 7/5/13</i>
Signature/Date: <i>[Signature] 7/5/13</i>			
Status: Routed		Date Created: 06/26/2013	

### Award Contract No. 15EK-110 Traction Power Substation Replacement ACO/KOW Installation

#### NARRATIVE

#### PURPOSE:

To award Contract No. 15EK-110, Traction Power Substation Replacement ACO/KOW Installation to Shimmick Construction Company, Inc. for the Bid amount of \$2,761,000.00.

#### DISCUSSION:

The scope of Contract No. 15EK-110 is part of the larger Traction Power System Renovation Program. On February 24, 2012 the Board of Directors of the San Francisco Bay Area Rapid Transit District ("BART") authorized the General Manager to award Contract No. 15EK-210, Procurement of Traction Power Substations Phase 1 to Powell Electrical Systems, Inc., for procurement of equipment for eight new traction power substations (TPSS's) to replace aging General Electric supplied substation equipment.

Contract No. 15EK-110 provides for the installation of the first two of the eight TPSS's procured under Contract No. 15EK-210. The scope includes:

1. Replacing the major electrical equipment at substations KOW (near West Oakland Station), and ACO (at Coliseum Station). This equipment includes transformers, rectifiers and DC circuit breakers and the switchgear buildings.
2. Minor site improvements at ACO and KOW substations.
3. Replacement and testing of Emergency and Transfer Trip Equipment at adjacent train control rooms and gap breaker stations KXA and KYD.

An Advanced Notice to Bidders was sent on April 26, 2013 to 14 prospective Bidders. The Contract was advertised on April 30, 2013. Twenty three plan rooms were sent, via regular mail, a copy of the 3 volume set of Bid Documents. Fourteen potential Bidders purchased plans for this Contract.

A mandatory Pre-Bid Meeting was held on May 22, 2013 and was attended by ten potential Bidders. One Addendum was subsequently issued. The District conducted a Matchmaking Session on May 29, 2013, attended by seven prime contractors and no certified DBE contractors.

BART received four Bids, listed below, that were publically opened on June 11, 2013.

<u>No.</u>	<u>Bidder</u>	<u>Location</u>	<u>Total Bid</u>
1.	Shimmick Construction Company, Inc.	Oakland, CA	\$2,761,000.00
2.	Steiny and Company, Inc.	Vallejo, CA	\$3,456,468.00
3.	Cal Electro, Inc.	Redding, CA	\$3,478,000.00
4.	Blocka Construction, Inc.	Fremont, CA	\$4,781,000.00
	<i>Engineer's Estimate</i>		\$4,932,517.00

Shimmick Construction Company, Inc. is the apparent low Bidder, and a review of the Bid by staff determined it to be responsive.

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 7% was set for this Contract. The low Bidder, Shimmick Construction Company, Inc., committed to subcontracting 7.6% to DBEs, which exceeds the DBE goal of 7%.

**FISCAL IMPACT:**

Funding of \$2,761,000 for the award of Contract No. 15EK-110 is included in the total project budget for the FMS #15EK300 – Traction/Power Substation Renovation – Installation. The Office of the Controller/Treasurer certifies that funds are currently available to meet this obligation.

As of June 19, 2013, \$16,418,054 is available for this project from the following sources:

Fund No.	Source	Fund Description	Amount
226E	BART	1998 S/T REV DEBT SERV	\$254,693
3001	Federal	FY11 Capital Improve FG MOD	\$200,000
3004	Federal	FY12- Capital Projects	\$1,600,000
347W	Federal	FTA Grant No Ca03-0729	\$435,161
353G	Federal	Ca-05-0224-FY08 Cap Improvemnt	\$1,366,770
353K	Federal	CA-05-0236 FG MOD-FY09	\$2,983,036
353M	Federal	CA-05-0248 FG MOD-FY10 CAPITAL	\$3,473,694
354R	Federal	FY10 Capital Projects	\$3,075,781
6014	Regional	Bridge Toll Alloc 09387205	\$495,759
6017	Regional	BToll FY09-10 Alloc10395402	\$768,945
6018	Regional	FY11-12 Prj Match MTC Res#4044	\$400,000
6214	Regional	RM2 - Match to 53G, 54G, 54J	\$87,000
801E	BART	INSTALLMENT RECEIVABLE	\$108,790
850X	BART	CAP ALLOC.-SEISMIC NON	\$27,221
851W	BART	FY07-11 Capital Alloca	\$32,783
8523	BART	Cap Surchrg-Statn 2 St	\$1,108,420
			<b>\$16,418,054</b>

BART has expended \$1,500,161, committed \$420,498, and reserved \$4,042 to-date for other actions. This action will commit \$2,761,000 leaving an available fund balance of \$11,732,353 in this project.

There is no fiscal impact on available unprogrammed District Reserves.

**ALTERNATIVE:**

The Board can elect not to authorize the General Manager to award Contract No. 15EK-110 to Shimmick Construction Company, Inc. In this case the District would incur costs of at least \$200,000 for storage and re-scheduling of equipment delivery. The District would also incur additional operational risk if the aging ACO and KOW traction power equipment is not replaced in a timely manner.

**RECOMMENDATION:**

Recommend that the Board adopt the motion.

**MOTION:**

The General Manager is authorized to award Contract No. 15EK-110, Traction Power Substation Replacement ACO/KOW Installation to Shimmick Construction Company, Inc. for the Bid amount of \$2,761,000.00 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: <i>[Signature]</i>		GENERAL MANAGER ACTION REQ'D: Approve and forward to Board of Directors		
DATE: 7/3/13		BOARD INITIATED ITEM: No		
Originator/Prepared by: Shirley J Ng Dept: Planning and Development	General Counsel <i>[Signature]</i> 7/2/13	Controller/Treasurer <i>[Signature]</i>	District Secretary	BARC <i>[Signature]</i> 7/3/13
Signature/Date: <i>[Signature]</i> 7/1/13	[ ]	[ ]	[ ]	[ ]
Status: Routed		Date Created: 06/24/2013		

TITLE:

### Contract No. 15PJ-110B, BART Earthquake Safety Program Station Structures - A Line, Change Order No. 2

NARRATIVE:

#### PURPOSE:

To obtain Board authorization for the General Manager to execute Change Order No. 2, for the seismic retrofit of Pier P-238 to Contract No. 15PJ-110B, Earthquake Safety Program (ESP) Station Structures - A Line, in an amount not to exceed \$1,300,000.

#### DISCUSSION:

On June 13, 2013 the Board of Directors authorized execution of Change Order No. 25 for the retrofit of Pier P-238 to Contract No. 15PB-110A, BART Earthquake Safety Program, Aerial Structures - A Line North, undertaken by Atkinson Contractors, LP. Atkinson Contractors recently decided not to take on additional work so that it could close their northern California office, after remaining base contract work for Contract No. 15PB-110A has been completed.

As BART Maintenance and Engineering has a program to upgrade the District's substation equipment, this work described in Change Order No. 25 must be completed prior to the new equipment installation, which is scheduled for January 2014. The Contractor for Contract No. 15PJ-110B, Robert A. Bothman, is mobilizing to begin its base Contract work, the retrofit of four A line stations. The scope of Contract No. 15PJ-110B includes retrofit of pier foundations, electrical work at piers, demolition, and concrete removal which is similar in nature to the Change Order work which entails the retrofit of the pier foundation, column jacketing and removal of the transformer and switchgear equipment and installation of a new grounding loop.

In order to complete the retrofit of Pier P-238 prior to the installation of the upgraded equipment by BART Maintenance & Engineering, BART staff is requesting authorization to execute a Change Order to Contract No. 15PJ-110B in an amount not to exceed \$1,300,000 for the retrofit of this pier.

Pursuant to Board Rule 5-2.4, Change Orders involving expenditures greater than \$200,000 require Board approval.

The Office of the General Counsel will approve this Change Order as to form prior to execution. The Procurement Department will review this Change Order prior to execution for compliance with procurement guidelines.

**FISCAL IMPACT:**

Funding of \$1,300,000 for award of Change Order No. 2 is included in the total project budget for the FMS #15PJ000, ESP- Aerial A-Line Stations. The Office of the Controller/Treasurer certifies that funds are currently available to meet this obligation.

As of 06/27/13, \$47,741,077 is available for commitment for this project from the following sources:

F/G 801F - ESP GO Bond	\$ 262,209
F/G 801J - ESP GO Bond	\$ 47,478,868
Total	<b>\$47,741,077</b>

BART has expended \$1,214,571 and committed \$15,204,571 and reserved \$22,761,000 to date for other actions. This action will commit \$1,300,000 leaving an available fund balance of \$7,260,935.

There is no fiscal impact on available unprogrammed District Reserves.

**ALTERNATIVE:**

The Board can elect not to authorize the execution of this Change Order; however additional costs would result as the foundation would need to be retrofitted after the newly installed substation is in service.

**RECOMMENDATION:**

It is recommended that the Board adopt the following motion:

**MOTION:**

The General Manager is authorized to execute Change Order No. 2 to Contract No. 15PJ-110B, BART Earthquake Safety Program Station Structures - A Line, for the retrofit of Pier P-238 in an amount not to exceed \$1,300,000.

**EXECUTIVE DECISION DOCUMENT**

**ATTACHMENT #1  
CONTRACT NO. 15PJ-110B**

**CO No: 02**

**CHANGE ORDER SUMMARY**

**BACKGROUND**

Name of Contractor: Robert A. Bothman, Inc.  
Contract No./NTP: 15PJ-110B / April 15, 2013  
Contract Description: Earthquake Safety Program Station Structures – A Line  
Percent Complete as of 06/27/13 - Dollars 0%  
Percent Complete as of 06/27/13 - Time 0%

<b><u>COST</u></b>	<b><u>% of Award</u></b>	<b><u>CO Totals</u></b>	<b><u>Contract Amount</u></b>
Original Contract Award Amount		\$0.00	\$10,939,000.00
Change Orders:			
Other than Board Authorized C.O.s	0%	\$ 0.00	
Board Authorized Change Orders	0%		
This Change Order	11.88 %	\$1,300,000.00	
Subtotal of all Change Orders	11.88 %	\$1,300,000.00	
<u>Revised Contract Amount:</u>			\$12,239,000.00

**SCHEDULE**

Original Contract Duration: 700 days  
Time Extension to Date: 0 days  
Time Extension Due to Approved COs: 0 days  
Est. Time Extension Due to these COs: 0 days  
Revised Contract Duration 700 days

**SUMMARY REASON FOR THIS CHANGE ORDER**

Retrofit of P-238 to an Operability standard.

**FUNDING SUMMARY - EARTHQUAKE SAFETY PROGRAM**

PROJECT ELEMENT	Baseline Budget (2004 GO Bond)	Current Forecast as of 5/23/13	REMARKS
<b>ENVIRONMENTAL, ENGINEERING, AND CONSTRUCTION MANAGEMENT</b>			
GEC (Bechtel Team)	\$105,000,000	\$257,500,000	
Other GEC	\$81,478,000	\$0	
<b>Subtotal GEC</b>	<b>\$186,478,000</b>	<b>\$257,500,000</b>	
CM	\$61,498,000	\$75,100,000	
Environmental	\$1,042,796	\$2,198,237	
<b>TOTAL E, E &amp; CM</b>	<b>\$249,018,796</b>	<b>\$334,798,237</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	\$11,000,000	
Stitching	\$82,962,000	\$0	
Additional TBT Retrofits	\$0	\$166,500,000	
<b>Aerial Guideways</b>			
West Oakland/North Oakland	\$112,923,000	\$72,300,000	
Fremont	\$178,224,000	\$45,700,000	
Concord	\$36,500,000	\$12,370,889	
Richmond	\$80,155,000	\$34,800,000	
San Francisco/Daly City	\$36,590,000	\$9,600,000	
<b>Stations (18)</b>	<b>\$126,961,000</b>	<b>\$78,700,000</b>	
<b>Other Structures</b>			
LMA	\$5,529,000	\$12,100,000	
Yds & Shops	\$12,436,000	\$19,500,000	
Parking Structures	\$14,437,000	\$14,600,000	
At Grade Trackway	\$22,361,000	\$0	
34.5kV Replacement		\$42,490,000	
<b>Systems</b>	<b>\$7,066,000</b>	<b>\$17,500,000</b>	
<b>TOTAL CONSTRUCTION</b>	<b>\$909,469,000</b>	<b>\$554,668,832</b>	
<b>PROGRAM COSTS</b>			
Program Costs ( Hazmat, ROW, Consult, Staff)	\$159,894,204	\$220,800,000	
Add Auth to Execute Agmt w/Public & Private Entities		\$5,000,000	
Contingency	\$32,104,000	\$138,073,088	
<b>TOTAL PROGRAM COSTS</b>	<b>\$191,998,204</b>	<b>\$363,873,088</b>	
<b>BASELINE FUNDING</b>	<b>\$1,350,486,000</b>		
<b>REVISED FUNDING</b>		<b>\$1,253,340,157</b>	
		Adopted Funding	
		\$1,221,275,376	
		Outside Adopted Funding	
		\$32,064,781	
<b>15PJ-110B - A-Line Stations</b>	<b>Baseline</b>	<b>Current Forecast</b>	
Total Hard Costs	\$19,245,375	\$13,729,016	
Total Soft Costs	\$8,565,270	\$11,793,253	
Soft Cost/Hard Cost Ratio	45%	86%	



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Marcia deVaughn</i>		GENERAL MANAGER ACTION REQ'D:		
DATE: 7/3/13		BOARD INITIATED ITEM: No		
Originator/Prepared by: Marcia E deVaughn	General Counsel	Controller/Treasurer	District Secretary	BARC
Dept: <i>Udell</i>	<i>Anneke Rivas</i>	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>
Signature/Date:	<i>7/3/13</i> [ ]	[ ]	[ ]	<i>7/3/13</i> [ ]
Status: Routed		Date Created: 07/02/2013		

TITLE:  
**Authority to Submit Response to Request for Proposals to Manager Operations for the San Joaquin Joint Powers Authority**

NARRATIVE:

PURPOSE:

To seek Board authorization for the General Manager to submit a management services proposal in response to a request for proposals to manage the operations of the San Joaquin Joint Powers Authority (SJJPA) on behalf of the District.

DISCUSSION:

As a result of the Governor signing Assembly Bill 1779 on September 29, 2012, the SJJPA was established to enable regional governance for the San Joaquin Intercity Passenger Rail (IPR) Service ("the San Joaquin or San Joaquins"). This legislation is similar to the law that created the Capitol Corridor Joint Powers Authority.

Among other things, AB 1779 authorizes the SJJPA to execute an Interagency Transfer Agreement with the State Department of Transportation ("Caltrans"), who currently manages Amtrak's operation of the San Joaquin IPR trains, by June 30, 2015. Under the law, the SJJPA Board (SJJPB) can be organized when at least six of the eleven county agencies which make up the SJJPA have signed the joint powers agreement. The eleven agencies represent the following counties: Sacramento, San Joaquin, Stanislaus, Merced, Madera, Fresno, Kings, Tulare, Kern, Contra Costa and Alameda. To date, ten of the agencies have signed the joint powers agreement. Kern County Council of Governments is the only agency that has not yet signed to join the SJJPA.

The SJJPA is seeking a management agency to provide it with a variety of services, for an inaugural three year term, including the following:

- Negotiate agreements (including the Administrative Services Agreement with the SJJPA and the Interagency Transfer Agreement with Caltrans);
- Manage all agreements entered into by the SJJPA;
- Perform administrative functions related to conducting meetings of the SJJPB and advisory committees;
- Provide legal services to the SJJPA;
- Implement SJJPA projects;

- Maintain and manage property owned by the SJJPA;
- Provide risk management services for the SJJPA;
- Develop and implement marketing and communications programs;
- Prepare financial reports;
- Prepare a business plan for SJJPB approval;
- Report regularly to the SJJPA regarding the San Joaquins Rail Service;
- Recommend changes in fares and schedules;
- Prepare capital and operating budgets for presentation to the SJJPA;
- Negotiate with other public or private transportation providers as necessary to ensure coordinated service.

The deadline to submit proposals to the SJJPA is July 15, 2013.

Initial important tasks for the entity selected to manage the San Joaquins will be to negotiate an Administrative Services Agreement with the SJJPA to serve as the Management Agency and represent the SJJPA in negotiations with Caltrans on the Interagency Transfer Agreement.

The SJJPA is seeking a management model that is similar to the one used by the District to manage the Capitol Corridor IPR trains for the Capitol Corridor Joint Powers Authority (CCJPA). The CCJPA governance and management model with the dedicated team at the District is held up as a national model to improve service performance and enhance the customer's experience for state IPR routes. The District has demonstrated extensive success for the Capitol Corridor route and will bring the same dedication to effectively manage and improve local advocacy for the SJJPA and the San Joaquin IPR trains. For these reasons, the District is seeking the authorization to submit a response to the RFP to be the Managing Agency to the SJJPA and its Board of Directors.

If the District is selected to be the Management Agency for the SJJPA, it is anticipated that three full-time staff positions would be necessary to support the SJJPA during an initial start-up period of approximately 14 months (Aug. 2013 - Sept. 2014).

**FISCAL IMPACT:**

The initial start-up period cost is anticipated to be approximately \$650,000. This cost is not reimbursable by the State or the SJJPA. The General Manager is exploring potential funding options with MTC to cover the initial start-up cost. As with the Capitol Corridor, the State would reimburse the District for providing management and administrative services for the San Joaquins on an on-going basis, when the Interagency Transfer Agreement is in place.

**ALTERNATIVE:**

Do not authorize the General Manager to submit a response to the Request for Proposals by the SJJPA on behalf of the District.

**MOTION:**

The General Manager is authorized to submit a response to the Request for Proposals for Management and Administrative Services for the San Joaquin intercity passenger trains, on behalf of the District, to the San Joaquin Joint Powers Authority.

**Managing Agency to San Joaquin JPA – Overview of BART Response to RFP  
(Responses Due: July 15, 2013)**

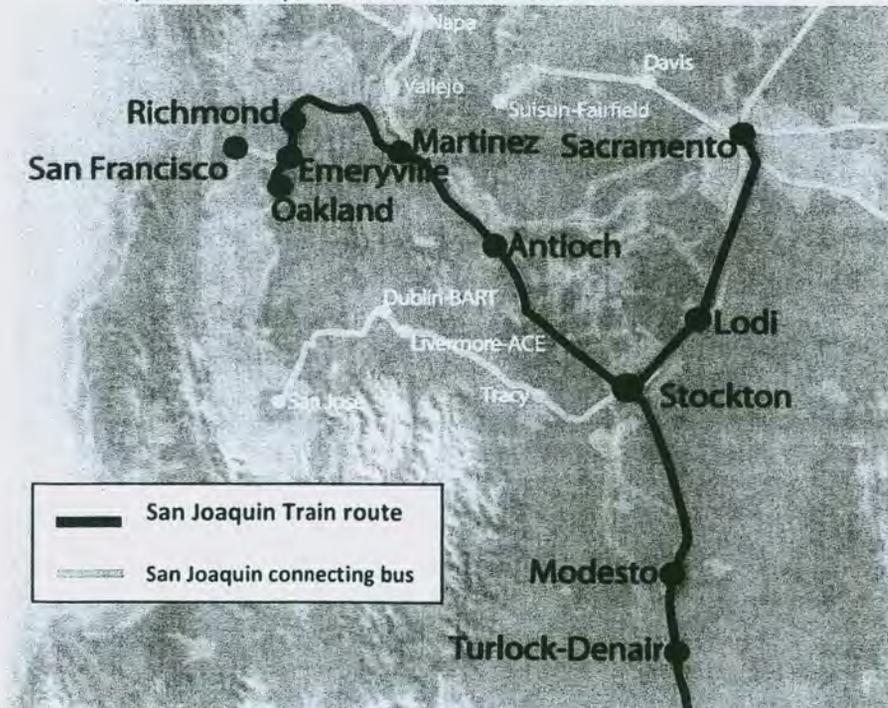
**Experience/Leadership**

- BART administrative/management support to Capitol Corridor JPA recognized as national role model
- Efficiencies gained by combining administrative/management functions into one regional agency
- Local representation and regional governance; business-based management model focus on customer/user
- Ridership/revenue growth near +300% over last 15 years; operating costs have stabilized over last 2 years
- BART CCJPA management staff bring national and state expertise: onboard wifi; lead facilitator for CA HST Blended Service Plan for Northern California; lead negotiator for new national Amtrak pricing policy (set forth by Congress, approved by STB); leading reauthorization of PRIIA and/or MAP-21 for new Rail Title with new revenue source(s); integrated with connecting transit services; first to implement e-Ticketing

**Start-Up Costs/Timeline**

- BART to add 3 staff to support San Joaquin JPA during start-up period (14 months; Aug. 2013 – Sept. 2014); provide administrative support SJJPA Board; lead negotiations on transfer of San Joaquin service from Caltrans to SJJPA; support from CCJPA team who were involved in transfer negotiations for the Capitol Corridor service
- Budget: approximately \$650,000; expense rate of \$45,000/month; these costs are NOT reimbursable by SJJPA

Map of San Joaquin Route - Northern Section



**SAN JOAQUIN ROUTE**

**Bay Area Stations:**

- Oakland/Jack London Square
- Emeryville
- Richmond/BART
- Martinez
- Antioch
- San Francisco (via motorcoach at Emeryville or BART at Richmond)

**Other Key Stations:**

- Bakersfield
- Sacramento
- Stockton
- Fresno
- Destinations served by connecting buses
  - Los Angeles
  - Palm Desert/Las Vegas
  - Paso Robles/San Luis Obispo
  - Yosemite
  - Redding
  - Eureka
  - Reno/South Lake Tahoe

**Route Length: 364 miles**

**Ridership: 1.13M**

**Revenues: \$40.87M**

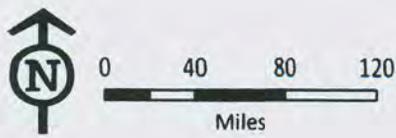
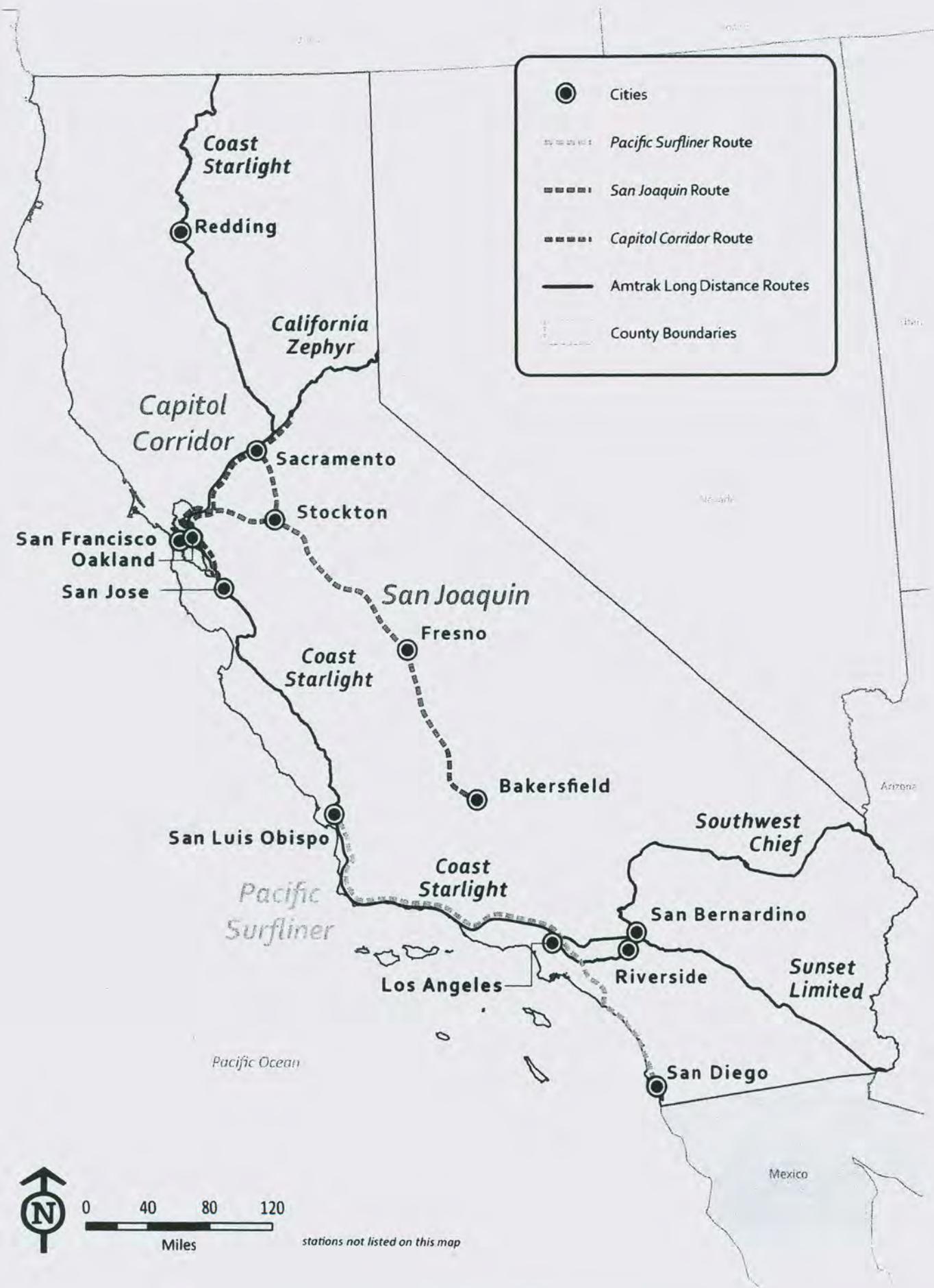
**Operating Expenses: \$74.32M**

**Net Operating Costs: \$33.46M**

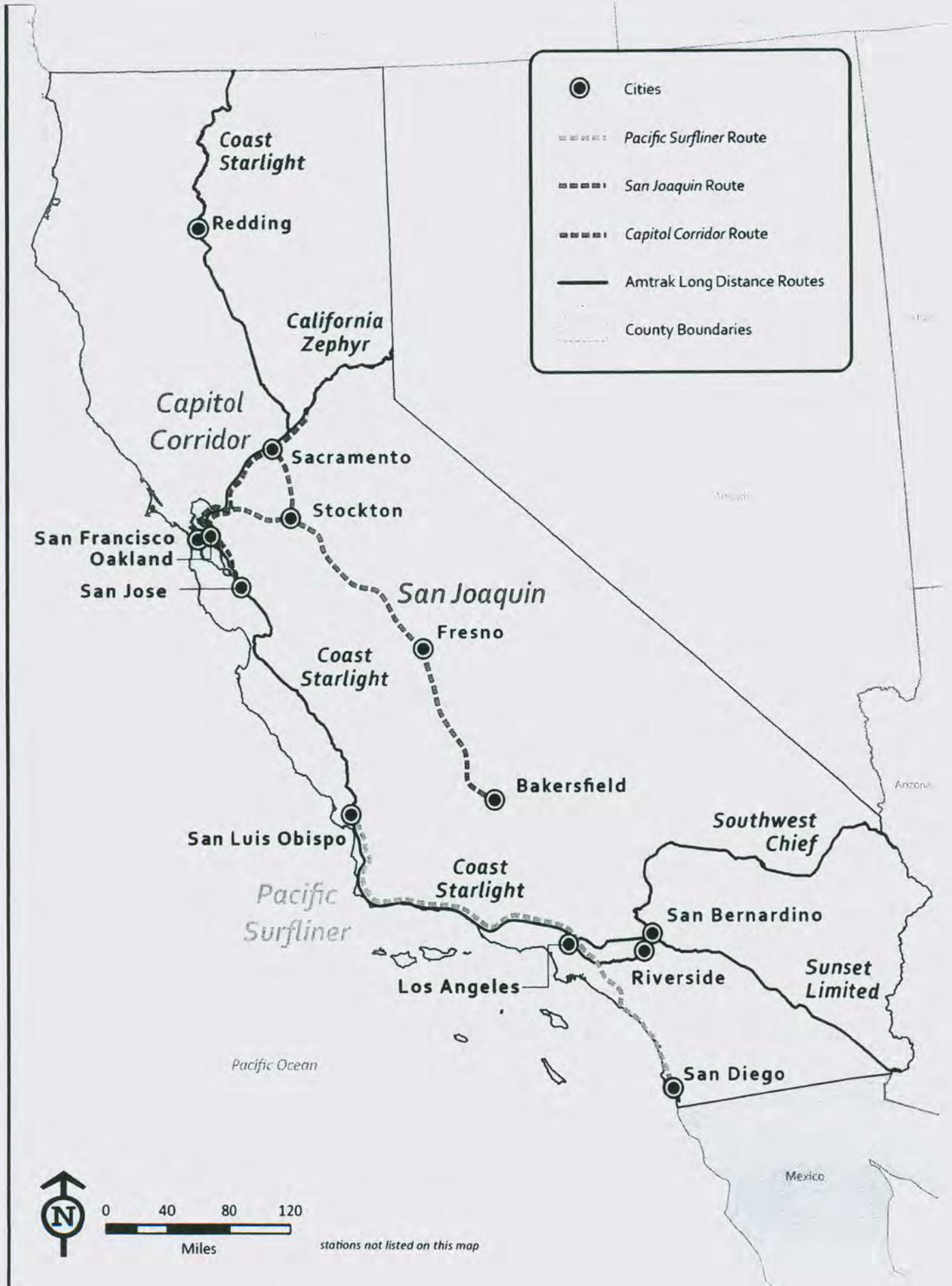
**System Operating Ratio: 55.0%**

**Counties Served: 11**

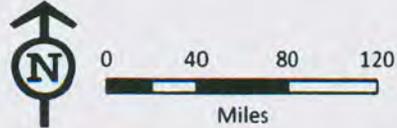
- Alameda
- Contra Costa
- Sacramento
- San Joaquin
- Stanislaus
- Merced
- Madera
- Fresno
- Tulare
- Kings
- Kern



stations not listed on this map



	Cities
	Pacific Surfliner Route
	San Joaquin Route
	Capitol Corridor Route
	Amtrak Long Distance Routes
	County Boundaries



stations not listed on this map

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(Responses Due: July 15, 2013)**

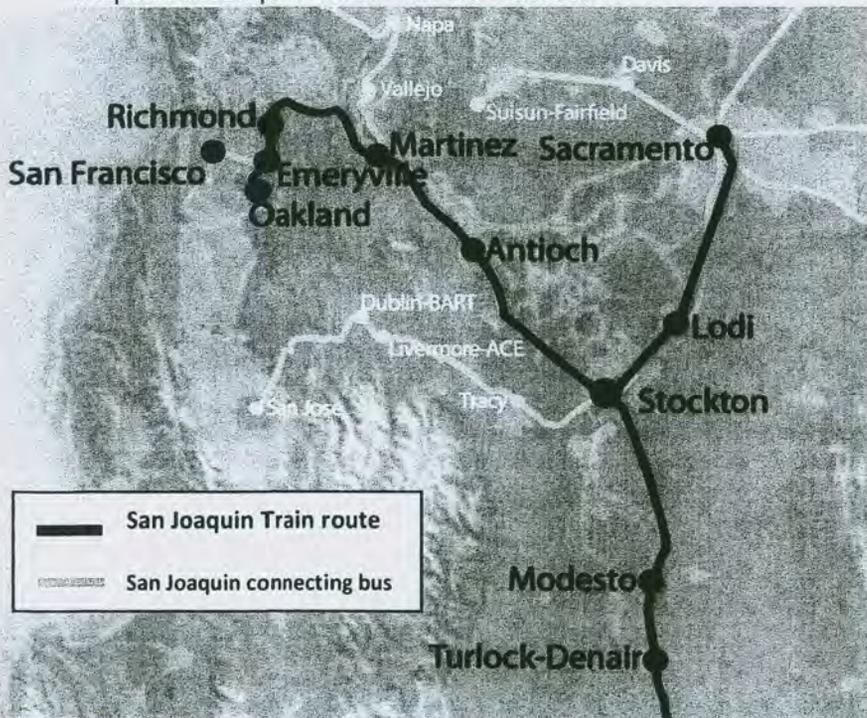
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**SAN JOAQUIN ROUTE**

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**Ridership: 1.13M**

**Revenues: \$40.87M**

**Operating Expenses: \$74.32M**

**Net Operating Costs: \$33.46M**

**System Operating Ratio: 55.0%**

**Counties Served: 11**

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- Contra Costa
- Sacramento
- San Joaquin
- Stanislaus
- Merced
- Madera
- Fresno
- Tulare
- Kings
- Kern