

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

BOARD MEETING AGENDA

August 9, 2012

9:00 a.m.

A regular meeting of the Board of Directors will be held at 9:00 a.m. on Thursday, August 9, 2012, in the BART Board Room, Kaiser Center 20<sup>th</sup> Street Mall – Third Floor, 344 – 20<sup>th</sup> Street, Oakland, California.

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

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 Meeting of July 26, 2012.\* Board requested to authorize.
- B. Fixed Property Tax Rates Fiscal Year 2012-2013 General Obligation Bonds.\* Board requested to authorize.

3. ADMINISTRATION ITEMS

Director Sweet, Chairperson

- A. (CONTINUED from June 28, 2012, Board Meeting)  
Agreement with Aon Risk Solutions for Insurance Brokerage Services (Agreement No. 6M2037).\* Board requested to authorize.
- B. Temporary Help Services – Agreements with Wollborg/Michelson Personnel Service, Inc., for Safety Certified Temporary Help Services (Agreement No. 6M4189) and Regular Temporary Help Services (Agreement No. 6M4191), and with SearchPros Staffing LLC for Regular Temporary Help Services (Agreement No. 6M4197).\* Board requested to authorize.
- C. Approval of American Federation of State, County, and Municipal Employees (AFSCME) Local 3993, Side Letter to Modify Article 47, “Compensation,” and Related Matters.\* Board requested to authorize.

4. ENGINEERING AND OPERATIONS ITEMS

Director Fang, Chairperson

- A. Award of Contract No. 15IJ-110, Fire Alarm Renovation Phase 1, M-Line.\* Board requested to authorize.
- B. Quarterly Performance Report, Fourth Quarter Fiscal Year 2012 - Service Performance Review.\* For information.

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

Director Blalock, Chairperson

- A. Authorize Exclusive Negotiating Agreement with TRG Pacific Development, LLC, for Development at the Lake Merritt BART Station.\*  
Board requested to authorize.

6. GENERAL MANAGER'S REPORT

NO REPORT.

7. BOARD MATTERS

- A. Board Member Reports. For information.  
(An opportunity for Board members to provide brief reports on meetings attended at District expense.)
- 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. GENERAL DISCUSSION AND PUBLIC COMMENT

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

Board of Directors  
Minutes of the 1,658th Meeting  
July 26, 2012

A regular meeting of the Board of Directors was held July 26, 2012, convening at 9:08 a.m. in the Board Room, 344 20<sup>th</sup> Street, Oakland, California. Vice President Radulovich presided; Kenneth A. Duron, District Secretary.

Directors present: Directors Blalock, Keller, Murray, Raburn, and Radulovich.

Absent: Directors Fang and McPartland. Director Sweet entered the Meeting later.

Vacant: Election District No. 3.

Consent Calendar items brought before the Board were:

1. Approval of Minutes of the Meeting of June 28, 2012.
2. Reject All Bids for Contract No. 01VM-110, Union City Intermodal Station Phase II – BART Station Improvements..

Director Murray made the following motions as a unit. Director Blalock seconded the motions.

1. That the Minutes of the Meeting of June 28, 2012, be approved.
2. That all bids for Contract No. 01VM-110, Union City Intermodal Station Phase II – BART Station Improvements, be rejected, and that the General Manager be authorized to readvertise the Contract.

Director Keller requested that the record reflect that the reason for rejecting all bids was because the City of Union City was not able to fund the amount of the sole responsive bid.

Director Sweet entered the Meeting.

The motions carried by unanimous voice vote. Ayes – 6: Directors Blalock, Keller, Murray, Raburn, Sweet, and Radulovich. Noes – 0. Absent – 2: Directors Fang and McPartland. Vacant – 1.

Vice President Radulovich announced that the order of agenda items would be changed, and brought the matter of Citizen Review Board Appointment by BART Police Managers' Association and BART Police Officers' Association before the Board. Director Blalock moved that the Board ratify the appointment of Mr. Thomas H. Minshew to the Citizen Review Board. Director Sweet seconded the motion.

Mr. Minshew addressed the Board.

The motion passed by unanimous electronic vote. Ayes – 6: Directors Blalock, Keller, Murray, Raburn, Sweet, and Radulovich. Noes – 0. Absent – 2: Directors Fang and McPartland. Vacant – 1.

Director Sweet, Chairperson of the Administration Committee, brought the matter of Disadvantaged Business Enterprise (DBE) Certification Process before the Board. Mr. Wayne Wong, Department Manager, Office of Civil Rights, presented the item.

The following individuals addressed the Board.

Ms. LaVerda Allen

Mr. Jose Duenas

The item was discussed.

Director Sweet brought the matter of Proposed Small Business Opportunity Plan before the Board. Mr. Wong presented the item.

The following individuals addressed the Board.

Mr. Victor Martinez

Ms. LaVerda Allen

Mr. Jose Duenas

Ms. Diana LaCome

The item was discussed.

Vice President Radulovich, acting in the absence of the Chairperson and Vice Chairperson of the Engineering and Operations Committee, brought the matter of Warm Springs Extension Project before the Board. Mr. Paul Medved, Project Manager, Warm Springs Extension Program, presented the Semi-Annual Project Update. The item was discussed.

Mr. Medved presented the item on Change Order to Contract No. 02ED-110, Warm Springs Extension, Fremont Central Park Subway, with Shimmick Construction Co. Inc./Skanska USA Civil West California District Inc./a Joint Venture, for Differing Site Conditions at South Tule Pond (C. O. No. 41). Director Sweet moved that the General Manager be authorized to execute Change Order No. 41, Differing Site Conditions at South Tule Pond, to Contract No. 02ED-110, Warm Springs Extension Fremont Central Park Subway, increasing Bid Item No. 58 (Excavation - Common) and Bid Item No. 80 (Aggregate Base, Class 2), by a total not to exceed amount of \$810,000.00. Director Blalock seconded the motion, which carried by unanimous electronic vote. Ayes – 6: Directors Blalock, Keller, Murray, Raburn, Sweet, and Radulovich. Noes – 0. Absent – 2: Directors Fang and McPartland. Vacant – 1.

Ms. Melena Gallagher, Manager of Capital Program – Stations, presented the item on Exercise Bid Options for Automatic Fare Collection Equipment to Contract No. 02EE-120, Warm Springs Extension, Design-Build Line, Track, Station, and Systems, with Warm Springs Constructors. Director Raburn moved that the General Manager be authorized to exercise any or all of the Options for Automatic Fare Collection (AFC) Equipment in Contract No. 02EE-120, Warm Springs Extension, Design-Build Line, Track, Station, and Systems, subject to certification by the Controller-Treasurer confirming the availability of funds. Director Sweet seconded the motion, which carried by unanimous electronic vote. Ayes – 6: Directors Blalock, Keller,

Murray, Raburn, Sweet, and Radulovich. Noes – 0. Absent – 2: Directors Fang and McPartland. Vacant – 1.

Mr. Jerry Grace addressed the Board.

Director Blalock, Chairperson of the Planning, Public Affairs, Access, and Legislation Committee, had no report.

Vice President Radulovich called for the General Manager's report. General Manager Grace Crunican reported on steps she had taken and meetings she had participated in.

Vice President Radulovich brought the matter of Proposed Process and Schedule for Filling Election District No. 3 Vacancy before the Board. Mr. Duron presented the item. The item was discussed.

The following individuals addressed the Board.

Mr. Fred Wright-Lopez

Mr. Jose Duenas

Mr. Victor Martinez

Ms. Diana LaCome

Discussion continued.

Vice President Radulovich called for Board Member Reports.

Director Raburn reported he had attended the signing of the California High Speed Rail bill; a citizen meeting on the Lake Merritt Station area; the BART Accessibility Task Force meeting; the Business Advisory Committee meeting; the Citizen Review Board meeting, the Oakland Airport Connector Joint Advisory Committee meeting; and had served on the nominating committee for the paratransit Service Review Committee.

Director Murray reported she had attended the BART Accessibility Task Force meeting; the ribbon cutting at the new farmers market at the Pleasant Hill Station; a mayors' conference; and the Pleasant Hill BART Municipal Advisory Committee meeting.

President Radulovich reported he had represented the District at a press conference.

Director Sweet reported she had attended several meetings, including the San Francisco Redevelopment Oversight Board meeting.

Director Blalock reported he had attended the Fremont City Council meeting and a meeting with Hispanic contractors.

Director Keller reported he had attended the American Public Transportation Association's Transit Board Members Seminar in Atlanta, Georgia, and an outreach meeting in Brentwood on the next phase of eBART.

Vice President Radulovich called for Roll Call for Introductions (RCI).

Director Raburn requested the District collaborate with the East Bay Regional Parks District and other local and regional parks departments in establishing standards for wayfinding access to stations.

Director Murray requested updates on aging RCI items from April 22, 2010, and November 15, 2010, addressing concerns with District policy for dogs on board trains and in stations to include a clear definition for the public of the size, type, and number of dogs an individual is allowed to bring onboard and clarification for BART staff about how to identify service dogs, which are allowed onboard by law.

Vice President Radulovich returned to the General Manager's Report. Assistant General Manager – Operations, Paul Oversier, noted progress on returning out-of-service escalators to operation.

Director Sweet requested the District review active contract, service agreement, and procurement solicitations for opportunities to integrate the District's small business program.

Director Keller requested the District develop a pilot program to evaluate the merits of relaxing the restrictions of eating and drinking on trains and in stations.

Vice President Radulovich requested the District evaluate the opportunities, process, and funding for covering and securing outdoor installations of escalators systemwide (including San Francisco's initiative for a "Better Market Street" program).

Vice President Radulovich requested the District evaluate and report on the late night service program recently enacted by the Los Angeles County Metropolitan Transportation Authority for applicability to the District's environment.

Vice President Radulovich called for General Discussion and Public Comment.

The following individuals addressed the Board.

Ms. Jean Hamilton-Gomez

Mr. Jerry Grace

Vice President Radulovich announced that the Board would enter into closed session under Item 9-A of the regular meeting agenda, and that the Board would reconvene in open session at the end of the closed session.

The Board Meeting recessed at 12:37 p.m.

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The Board reconvened in closed session at 12:43 p.m.

Directors present: Directors Blalock, Keller, Murray, Raburn, Radulovich, and Sweet.

Absent: Directors Fang and McPartland.

Vacant: Election District No. 3.

The Board Meeting recessed at 12:54 p.m.

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The Board reconvened in open session at 12:55 p.m.

Directors present: Vice President Radulovich.

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

Vacant: Election District No. 3.

Vice President Radulovich announced that the Board had concluded the closed session and there was no announcement to be made.

The Board Meeting was adjourned at 12:56 p.m.

Kenneth A. Duron  
District Secretary



## EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>[Signature]</i>		GENERAL MANAGER ACTION REQ'D:		
DATE: c 8/2/12		BOARD INITIATED ITEM: No		
Originator/Prepared by: Michaela Morales Dept: Controller-Treasurer x6075 <i>[Signature]</i> Signature/Date:	General Counsel <i>[Signature]</i> 8/2/12	Controller/Treasurer <i>[Signature]</i> [ ]	District Secretary [ ]	BARC [ ]

TITLE:

### FIXED PROPERTY TAX RATES FY 2012-13 - GENERAL OBLIGATION BONDS

NARRATIVE:

#### PURPOSE:

Fixing the rate of property taxes for BART in San Francisco, Alameda and Contra Costa Counties for Fiscal Year 2013 as required by Public Utilities Code Section 29126 to pay for the debt service on the District's General Obligation Bonds.

#### DISCUSSION:

The debt service required on the District's General Obligation Bonds for Fiscal Year 2013 is \$22, 416,997.50 as determined by a Financial Consultant.

The debt service tax rate required by the District for Fiscal Year 2013 is .0043 which equates to \$4.30 per one hundred thousand dollars of assessed valuation for the three counties within the District as determined by their Auditor-Controller's Offices.

#### FISCAL IMPACT:

Revenues collected on the basis of the above tax rate will be sufficient for the debt service requirements for the General Obligation Bonds for Fiscal Year 2013.

#### ALTERNATIVES:

None.

#### RECOMMENDATION:

It is recommended that the tax rate fixed for Fiscal Year 2013 be approved.

#### MOTION:

Adopt attached Resolution.

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

In The Matter of Fixing The Rate of Taxes  
For San Francisco Bay Area Rapid Transit  
District for Fiscal Year 2012/13

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

WHEREAS, this Board desires to fix the rate of taxes for the District, for the fiscal year July 1, 2012 to June 30, 2013, and make valid assessments of property and valid levies of taxes in accordance with Public Utilities Code Section 29126; and

WHEREAS, Section 93(c) of the Revenue and Taxation Code authorizes the District to levy an ad valorem property tax in order to produce revenues in an amount equal to the amount needed to make annual payments of principal and interest on the General Obligation Bonds which were approved by over two-thirds vote of the District's voters on November 2, 2004; and

WHEREAS, this Board has determined the tax rate for the District taxes for the counties in the District for the fiscal year 2012/13 from the budget of the District for the fiscal year 2012/13 and from the values of property transmitted to this Board by County Auditors;

NOW, THEREFORE, BE IT RESOLVED that the rate of taxes of the San Francisco Bay Area Rapid Transit District, for the fiscal year July 1, 2012 to June 30, 2013, is hereby fixed at .0043, which equates to \$4.30 per one hundred thousand dollars of assessed value of property, AND BE IT FURTHER RESOLVED that the Secretary shall immediately after the effective date of this resolution transmit to the County Auditor of the Counties in which the District is situated a statement of such tax rate. The effective date of this resolution is August \_\_\_\_, 2012.

Adopted \_\_\_\_\_



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Marisa DeLuca</i>		GENERAL MANAGER ACTION REQ'D:		
DATE: 6/20/12		BOARD INITIATED ITEM: No		
Originator/Prepared by: James Bridgeman Dept: Risk & Insurance <i>James Bridgeman</i> Signature/Date: 6/20/12	General Counsel <i>Michael Rovee</i> 6/14/12	Controller/Treasurer <i>[Signature]</i>	District Secretary [ ]	BARC <i>Carl Hume</i> 6-20-12 [ ]
Status: Routed		Date Created: 06/13/2012		

TITLE:

Insurance Brokerage Services Agreement No. 6M2037

NARRATIVE:

**PURPOSE:** To obtain Board authorization for the Controller/Treasurer to award Agreement No. 6M2037 for Insurance Brokerage Services to Aon Risk Solutions of San Francisco, CA.

**DISCUSSION:** The Risk & Insurance Department uses an insurance broker to place insurance on behalf of the District and to provide risk management consulting services. A Source Selection Plan based on the Best Value methodology was developed for this Agreement. Under this approach, the District reserves the right to award to other than the lowest cost proposal based upon a determination that certain technical advantages available from a proposal will equate to added value to the District.

On May 1, 2012, the Request For Proposals (RFP) was advertised in local publications and emailed to fifty (50) potential proposers. A pre-proposal conference was held on May 15, 2012 with six (6) firms attending. Proposals were received on June 5, 2012 from five (5) firms: Aon Risk Solutions, Merriwether & Williams Insurance Services, Wells Fargo Insurance Services, Alliant Insurance Services, Inc., and Brown, Freeman & Fryar.

An evaluation committee comprised of representatives from the Risk & Insurance Department and the Office of Civil Rights reviewed and evaluated the proposals. The committee was chaired by a representative of Contract Administration. Proposals were first reviewed for responsiveness to the requirements of the RFP. The proposal by Brown, Freeman & Fryar was found to be non-responsive. Then the proposals were reviewed and scored on the basis of the following factors: experience of staff, experience in marketing insurance for public entities, experience with rail transportation, effective team management, actuarial services, and claims management services. Following this evaluation and scoring, the Committee determined which proposals fell within the competitive range. Wells Fargo Insurance Services' proposal was found to be outside the competitive range. Alliant Insurance Services declined to participate in the oral interview. As a result of the written scoring and in accordance with the evaluation procedures established in the RFP, the two remaining proposers; Aon Risk Solutions and Merriwether & Williams Insurance Services were invited for the oral interview phase of the selection process.

Both firms participated in oral interviews on June 12, 2012. After the oral interviews were

scored, the written and oral evaluation scores were combined. The technical proposals and oral interviews of Aon Risk Solutions were ranked highest by the Selection Committee. The committee then conducted a best value analysis in which cost data for the proposer with the highest combined score was evaluated to determine if it provided the best value to the District. Aon Risk Solutions was determined to have the highest overall score and was the proposer with the lowest price, therefore, providing the best value to the District.

The Proposal submitted by Aon has been determined to be responsive to the solicitation and the prices offered are fair and reasonable. A review of the firm's financial and business data indicates that it is a responsible firm. Based on the Best Value Analysis, Aon is recommended.

Pursuant to the District's Non-Discrimination in Subcontracting Program, the availability percentages for this contract are 16% for MBE's and 20% for WBE's. The bidder 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.

This Agreement will be reviewed and approved as to form by the Office of the General Counsel.

**FISCAL IMPACT:** The maximum compensation under this Agreement will not exceed \$425,000 for the three (3) year term of the contract with two (2) one year options for \$155,000 each. The total maximum compensation will not exceed \$735,000. This Agreement will be funded by the Insurance Department Operating Budgets for FY 2013 through FY 2017.

**ALTERNATIVES:** The alternative is to not award the Agreement and re-bid the services. The current Agreement expires June 30, 2012. Failure to appoint an insurance brokerage firm may result in the District's inability to procure insurance. The Insurance Department does not have the resources to provide these services.

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

**MOTION:** The Controller/Treasurer is authorized to award Agreement No. 6M2037 to Aon Risk Solutions to provide Insurance Brokerage Services for a base period of three (3) years for a maximum amount of \$425,000 and to exercise up to two (2) one year options, each for a maximum amount of \$155,000, for a total compensation not to exceed \$735,000, subject to notification to be issued by the Controller/Treasurer and compliance with the District's protest procedures.



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Patricia DeLoe</i>		GENERAL MANAGER ACTION REQ'D: Approve for Board Action		
DATE: 8/3/12		BOARD INITIATED ITEM: No		
Originator/Prepared by: Patrice McElroy Dept: Human Resources Ext. 6885	General Counsel	Controller/Treasurer	District Secretary	BARC
Signature/Date: <i>Patrice McElroy 8/2/12</i>	<i>Andya Pava 8/2/12</i>	<i>[Signature]</i>	<i>[Signature]</i>	<i>Paul Han 8-1-12</i>
Status: Routed		Date Created: 07/30/2012		

TITLE:  
**SAFETY CERTIFIED AND REGULAR TEMPORARY HELP SERVICES AGREEMENT Nos. 6M4189, 6M4191 AND No. 6M4197**

NARRATIVE:

NARRATIVE:

**PURPOSE:**

To obtain Board authorization for the General Manager to execute three agreements for temporary help services for the District. One agreement is with Wollborg/Michelson Personnel Service, Inc. to provide safety certified temporary help services; the remaining two agreements are with Wollborg/Michelson Personnel Service, Inc. and SearchPros Staffing LLC to provide regular temporary help services for the District.

**DISCUSSION:**

The District has utilized the services of a temporary help agency to facilitate temporary staffing needs since 1986. The current temporary help services agreement, Agreement No. 6M4052, incorporating both safety certified and regular temporary help services, was awarded to Wollborg/Michelson Personnel Service, Inc. in 2007. That agreement was for a term of four years plus two separate option years. As a result of a higher than anticipated level of capital work over the period of this agreement, which resulted in a greater need for safety monitors, expenses for safety certified staff have consistently exceeded estimates. The District will exhaust the available funds approximately ten months prior to the end of the full six year period.

Accordingly, the District has initiated a new solicitation for temporary help services. In developing the RFP, staff proactively sought to optimize opportunities for a diverse pool of prospective bidders to compete successfully. The decision was made to issue two Requests for Proposal (RFPs), one for safety certified services, and the other for regular temporary services. In addition, the District proposes to award two contracts for regular temporary services in order to further increase opportunities for vendors seeking to do business with the District.

Following the required union notice process, Requests for Proposal (RFP) Nos. 6M4191 (for regular temporary services) and 6M4189 (for safety certified temporary services) were issued on March 29 and March 27, 2012, respectively. Both RFPs were

mailed to 122 prospective proposers, and advertised in eleven (11) local newspapers. Outreach and networking meetings were held for the two proposals on April 10, 2012 with seventeen (17) firms attending. A pre-proposal meeting for the two proposals was held on April 17, 2012 with twenty-five (25) firms attending. Seven (7) proposals were received by the District for each of the two RFPs in May, 2012.

Two separate Source Selection Committees were formed to review the proposals, one for each of the two solicitations. The Safety Certified Temporary Help Source Selection Committee was chaired by Contract Administration and included representatives from Human Resources, Operations Liaison and the Office of Civil Rights. The Regular Temporary Help Source Selection Committee was also chaired by Contract Administration and included representatives from Human Resources and the Office of Civil Rights. Proposals were first reviewed to determine if the Proposers were considered responsive to the requirements of the RFP. Subsequently, both committees conducted a technical evaluation of the proposals for compliance with the minimum technical requirements set forth in the RFP. Upon completion of the technical review process, proposals from three (3) vendors for the safety certified temporary help services work and four (4) vendors for the regular temporary help services were found not to have met the technical requirements and were not considered further for award.

Four proposals for the safety certified temporary help services and three proposals for the regular temporary help services were determined to have met all of the District's minimum requirements. The four proposals that met the minimum technical requirements for the safety certified temporary help services were HR Management Corp. Inc, Outsource Consulting Services, Wollborg/Michelson Personnel Services, Inc., and SearchPros Staffing LLC, a certified Disadvantaged Business Enterprise. The three proposals that met the minimum technical requirements for the regular temporary help services were HR Management Corp, Inc., Wollborg/Michelson Personnel Service, Inc. and SearchPros Staffing LLC.

Under the terms of the RFP for the safety certified temporary help services, the District is to award a single agreement to the lowest priced technically acceptable proposer. The regular temporary help services RFP specifies awards to the two lowest priced technically acceptable proposers. Pricing for these agreements is expressed as a percentage mark-up over the usual District hourly rate for the work in question. The mark-up is for fringe benefits, overhead/general and administrative costs and profit.

Wollborg/Michelson Personnel Service, Inc., of San Francisco, California, presented the lowest-priced, technically acceptable proposal for the safety certified RFP, with a total mark-up rate of 24.50%. The other three technically acceptable proposals were SearchPros Staffing LLC at a mark-up rate of 26.58%, Outsource Consulting Services, Inc., at a mark-up rate of 28.56% and HR Management Corp, Inc, with a mark-up rate of 30.95%.

Wollborg/Michelson Personnel Services, Inc., of San Francisco, California also presented the lowest priced, technically acceptable price proposal for the regular

temporary help services with a total mark-up rate of 26.47%. The other two technically acceptable bids were from SearchPros Staffing LLC, at a mark-up rate of 28.65%, and HR Management Corp, Inc., with a total mark-up rate of 29.95%.

The Source Selection Committees for both the safety certified temporary help services and regular temporary help services have determined the prices to be fair and reasonable. A further review of Wollborg/Michelson Personnel Service, Inc.'s and SearchPros Staffing LLC's financial and business data indicate that both are responsible firms. Based on the above determination, the Source Selection Committees recommend that awards be made to Wollborg/Michelson Personnel Service, Inc. to provide both safety certified and regular temporary help services, and to SearchPros Staffing LLC, for regular temporary help services to the District. Each agreement is for four years with no option years. The agreements will be approved as to form by the Office of the General Counsel.

The agreement for safety certified work is federally funded and is therefore subject to the revised DBE Program. Pursuant to the revised DBE Program, the Office of Civil Rights is utilizing race and gender neutral efforts for professional services agreements. Therefore, no DBE participation goal was set for the safety certified agreement. The regular temporary help services agreement is subject to the Non-Discrimination Program for Subcontracting. Under the Non-Discrimination Program for Subcontracting, the subcontractor availability figures are 16% MBE and 20% WBE. Neither Wollborg/Michelson Personnel Service, Inc. nor SearchPros Staffing LLC intends to subcontract any of the work for the temporary help services agreements. Therefore, the District's Non-Discrimination in Subcontracting Program does not apply.

**FISCAL IMPACT:**

The maximum compensation for safety certified temporary help services shall not exceed \$17,500,000.00 over the term of the agreement. The annual expenses associated with this agreement are largely funded through capital projects. Any assignment funded under a Federal or State grant will be initiated pursuant to a request that includes a defined scope and budget. Capital Development and Control will certify the eligibility of identified funding sources and the Controller-Treasurer will certify the availability of funding prior to incurring expenses against this agreement.

The maximum compensation for each of the two regular temporary help services agreements shall not exceed \$1,300,000 over the term of the agreement. The expenses for these agreements will be approximately \$650,000 in FY13 and are currently funded in the operating budget. Funding for subsequent years, FY14 to FY16, of the contracts, approximately \$650,000 per year will be requested in future budget cycles.

**ALTERNATIVES:**

Discontinue the use of agency temporary help services or make a determination to reissue the Request for Proposals.

**RECOMMENDATION:**

Adoption of the following motion.

**MOTION:**

The General Manager or her designee is authorized to award the below listed Agreements to provide safety certified temporary help services and regular temporary help services, pursuant to notification to be issued by the General Manager. The awards are subject to the District's protest procedures, and the award of Agreement No. 6M4189 for safety certified temporary help services is also subject to the FTA's requirements related to protest procedures.

1. Agreement No. 6M4189 in an amount not to exceed \$17,500,000 to Wollborg/Michelson Personnel Service, Inc. for safety certified temporary help services.
2. Agreement No. 6M4191 in an amount not to exceed \$1,300,000 to Wollborg/Michelson Personnel Service, Inc. for regular temporary help services.
3. Agreement No. 6M4197 in an amount not to exceed \$1,300,000 to SearchPros Staffing LLC for regular temporary help services.



## EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Marcia Delaney</i>		GENERAL MANAGER ACTION REQ'D:		
DATE: c <i>8/1/12</i>		BOARD INITIATED ITEM: No		
Originator/Prepared by: Rudolph Medina Dept: <i>Rudolph C. Medina</i> Signature/Date: <i>7/31/12</i>	General Counsel <i>MB</i>	Controller/Treasurer <i>[Signature]</i>	District Secretary <i>[Signature]</i>	BARC <i>[Signature]</i> 8-1-12

**Approval of AFSCME Local 3993, Side Letter to modify Article 47; Compensation and Related Matters and the Deferral of Base Pay Adjustments for AFSCME Represented Classifications**

NARRATIVE:

To approve a Side Letter with American Federation of State, County, and Municipal Employees, Local 3993, (AFSCME or the Union hereafter), Side Letter, AFSCME/SL-1-12, is attached. The purpose of the Side Letter is to modify the compensation provisions of the contract. These modifications have been negotiated over the past year or more, and were ratified by the AFSCME membership on April 24, 2012.

To authorize the General Manager to defer pay range adjustments for AFSCME represented classifications in light of changes authorized in Side Letter, AFSCME/SL -1-12.

This item comes to the Board for approval as the product of ongoing discussions with AFSCME about compensation for members of the bargaining unit. This language will replace existing language in the AFSCME agreement, including references to the District's Compensation Manual.

This amendment applies only to AFSCME members.

**DISCUSSION:**

**Background**

In accordance with the collective bargaining agreement ("Agreement") between AFSCME and the District, AFSCME represented classifications are currently compensated within the same pay band (or range) structure as non-represented employees. The Agreement specifies the pay band for each AFSCME represented classification. Both the 2005-2009 and 2009-2013 Agreements include language that committed both the Union and the District to further discussions relating to AFSCME job descriptions and classifications.

In February of 2011, AFSCME raised concerns regarding compensation policy, practice, and pay equity, including the District's failure to implement compensation/classification modifications that were under consideration by the District prior to 2009 bargaining. Subsequently, the General Manager wrote to the Board advising that the pay practices complained of were fully consistent with the District's Agreement with AFSCME, but also acknowledging AFSCME's frustration with salary freezes and a compensation/classification plan in need of updating. The General Manager indicated her intention to use the time between February 2011 and the next bargaining period to prepare for changes in the next bargaining cycle. The policy and

procedural changes which are before the Board for action today are the product of discussions with AFSCME regarding changes in policy and administration of compensation for its members.

### Proposed Changes

The proposed Side Letter includes substantive changes in policy and procedure, incorporates existing practices, and establishes new tools for recruitment and selection and to foster career development. Significant changes are summarized and discussed below:

- **Governing Documents.** Currently, compensation of individual AFSCME represented employees is governed by the Agreement with AFSCME and District guidelines as they are established by the District from time to time, including the Compensation Manual. This proposal incorporates procedures on matters of the type previously addressed in a Compensation Manual into the Agreement with AFSCME. References to a Compensation Manual are removed.
- **Compensation Policy.** Compensation policy, as reflected in the current AFSCME agreement, Compensation Manual, and current Board Resolution is to establish the midpoint of salary ranges at a point equal to or greater than the 75th percentile of the average of salaries paid for each covered classification among jurisdictions surveyed. (see Art. 47, D4 ). The proposed policy statement (Art. 47, 1A) provides for a midpoint "slightly above" the external market for AFSCME classifications, in lieu of the current 75th percentile of that market. It further recognizes cost-effectiveness, the District's overall financial condition, and internal equity and career development as additional considerations in establishing and modifying pay bands.

These policy changes will provide a useful foundation for modifications in pay structure and practice that will address issues in such areas as pay progression and pay band overlaps.

- **Frequency of Market Surveys.** The revised language requires a full market survey of pay ranges in comparable transit, public service, and other relevant jurisdictions at two year intervals at a minimum, rather than annual surveys of salaries paid, as currently required under both the AFSCME Agreement and the Budget Resolution. Cost and disruption may be decreased by this change.
- **Adjusting Compensation Profile of Occupations in Context of Market Studies.** Previously, market studies have only been used to adjust the overall pay band structure, without regard to anomalies in the pay of individual jobs that are revealed by the studies. The proposed language provides for the consideration of adjustments in individual job titles' pay assignments, by allocation to a different pay range or special market adjustment.
- **Special Market Adjustments.** The proposed language recognizes that the labor market sometimes rewards particular occupations in a manner that exceeds the 'value' of the job as measured against other positions requiring similar levels of skill and ability. The proposal provides a method for accommodating this phenomenon through the use of pay adjustments in the absence of a change in pay grade.
- **Career Development Opportunities and Options.** Flexibility is provided for managers to

post a competitive selection process within a limited work group for purposes of promotion, even in the absence of a vacancy. Likewise, a non-competitive promotion may be permitted when there is only one employee at the next lower level in a job series within a work group who meets minimum qualifications for a vacancy in that series.

The procedures also include the outline of a so-called "advanced placement program," which permits managers to under-fill a position under certain circumstances, and to non-competitively promote the incumbent upon completion of a prescribed development program.

The language also reserves to the District the discretion to limit recruitment for vacant AFSCME positions e.g., by department or classification, to minimize adverse impacts on employees in special circumstances, e.g., reorganizations or reductions in force.

- **Temporary Upgrade.** The waiting period for additional compensation is reduced from 45 days to 30 days.
- **Lead Worker / Instructor Premium.** A new benefit providing a \$0.50 hourly premium when employees who do not normally manage or supervise other employees are asked to direct or instruct other employees. Managers, supervisors, principal-level and senior-level professionals are not eligible for this premium.
- **Performance Management.** The proposed language incorporates certain procedural guidelines regarding the administration of the performance appraisal system.

Since 1995, the AFSCME Agreements have specified "across the board" bargained for percentage increases to base pay provided employees receive an "Effective" or higher rating on their annual performance appraisal. The proposal retains this approach, referred to as "general rate increases" negotiated by the parties, with language suggesting that such increases could include a performance or other appropriate component, as negotiated by the parties.

#### **Timing Considerations.**

In its recent Budget Resolutions, the Board of Directors directed staff to undertake a salary survey no later than October 2012, and authorized the General Manager to adjust salary ranges for AFSCME and non-represented employees in accordance with the 75th percentile policy.

Staff proposes that the next market survey to be conducted in 2012 to be used in preparation for AFSCME bargaining and pay adjustments, if any, for the period July 1, 2013 through June 30, 2017 or such alternate contract period as the parties may establish. Action based on the 2012 study that would impact pay structures and/or rates for AFSCME represented employees will not be taken except in conjunction with the 2013 bargaining.

This Side Letter does not impact existing policy or procedures for Non-Represented Employees.

**FISCAL IMPACT:** The adoption of this policy has no immediate fiscal impact.

**ALTERNATIVES:** Retain existing collective bargaining agreement provisions.

**RECOMMENDATION:** Approve the following motions. The Office of the General Counsel

Approval of AFSCME Local 3993, Side Letter to modify Article 47; Compensation and Related Matters and the Deferr:

has approved the Side Letter as to legal form.

**MOTION:**

The Board adopts the attached Side Letter between the District and AFSCME, modifying Article 47, Compensation.

The Board authorizes the General Manager to defer adjustment of the pay ranges for AFSCME represented classifications prior to the conclusion of 2013 negotiations.

**ATTACHMENTS:**

Amendment to Article 47 of the AFSCME collective bargaining agreement.

Cover letter for the AFSCME Side Letter.

August 9, 2012

Jean Hamilton-Gomez  
President  
AFSCME Local 3993  
300 Lakeside Drive, Suite 1081  
Oakland, CA 94612

Subject: Side Letter of Agreement  
Section 47: Compensation

Dear Ms Hamilton-Gomez:

This letter shall constitute a Side Letter of Agreement which has been reached by the San Francisco Bay Area Rapid Transit District and Local 3993 of the American Federation of State, County and Municipal Employees, AFL-CIO, regarding Section 47 of the 2009-2013 Collective Bargaining Agreement.

The undersigned representatives have agreed that Section 47 will be changed and modified in accordance with Attachment A. These changes and modifications will become effective upon ratification by Local 3993 and final approval by the District's Board of Directors.

Because it is understood that District employees will not receive pay increases during the 2009-2013 contract period, and no AFSCME-represented employees are currently being paid above the top of the pay range, the next market survey, conducted in the summer of 2012, will be used by the parties in preparation for bargaining for the period of July 1, 2013 through June 30, 2017, or such alternate period as the parties may establish. Action based on the 2012 study that would impact pay structures and/or rates will not be taken except in conjunction with the 2013 bargaining.

This Side Letter will be attached to the 2009-2013 Collective Bargaining Agreement. Unless the parties agree otherwise, the Side Letter will be deleted in 2013 and Section 47 of the 2013 Collective Bargaining Agreement will be changed and modified in accordance with this agreement.

Concur for the District:

Concur for Local 3993:

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Rudolph C. Medina  
Department Manager, Labor Relations

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Jean Hamilton-Gomez  
President

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Elaine Kurtz  
Department Manager, Human Resources

## 47. COMPENSATION

### 47.1 Objectives and Market Relationships

#### A. Objectives

1. The objective of the compensation program is to permit the District to recruit and retain a highly qualified workforce within the Supervisory Unit.
2. Recruitment and retention will be done:
  - a. In a cost effective manner;
  - b. In a manner that fosters internal career development; and,
  - c. In a way that maintains a balance between internal equity and the external market place. Internal equity includes consideration of the relationship between the pay of Supervisory Unit employees and non-represented employees. It also concerns the interface of these positions with those whose compensation is determined in relation to different principals and procedures.
3. In keeping with the District's commitment to a competitive posture within the relevant recruiting pools, the District's objective is to maintain the midpoints of its pay ranges slightly higher than those of the external market. Compensation objectives exist within the larger context of District fiscal priorities and realities, and these issues are among the considerations that bear on the establishment and/or periodic revision of pay scales.
4. As a matter of principal, the parties believe that job performance is a proper element in establishing compensation and we are committed to further refining performance pay programs to accomplish this objective in a manner that equitably rewards performance and advances District programs.

#### B. Market Relationships and Pay Band Structure

1. Marketplace comparisons will primarily be based on the relationship of pay ranges, rather than the actual pay, and will be adjusted to match San Francisco Bay Area cost of living.
2. Comparators primarily will be public transit agencies but will also include local public service agencies and other organizations that compete with the District for employees.
3. In general, individual jobs are compensated only in accordance with the District's job-evaluation program as it is adjusted to the external market from time to time. However, classifications and/or job titles may be singled out for marketplace adjustment when the external market considerations make it difficult to recruit and retain at the levels derived solely through job evaluation.
4. The District's job-evaluation program groups within a single pay range all classifications whose duties and responsibilities are within the specified limits. Classifications are not

differentiated for pay purposes based on whether the job-evaluation points are “high” or “low.” The entire pay range is available for all classifications within a given pay band.

#### C. Market Surveys and Procedures

1. The District will conduct a market survey of compensation in comparable transit, public service, and other relevant organizations no less than every two (2) years; an annual survey may be appropriate in a rapidly changing economic environment or when specific occupational relationships appear to be in flux in the relevant labor market(s).
  - a. A market survey may include benchmark classifications for the entire District pay plan or may isolate one (1) or more specific classifications for attention.
  - b. Prior to conducting salary surveys, representatives of the Human Resources Department shall meet with the Union President to review and discuss benchmark job descriptions or survey jurisdictions before a survey may be conducted and used to establish salary ranges.
2. While a survey of a particular classification may occasionally be warranted outside the regular survey process, studies more frequent than an annual cycle are not expected.
3. A Department Manager or the Union President have the opportunity to request that particular classifications be reviewed, either for market comparability and/or for reallocation within the job-evaluation program, subject to approval by the Human Resources Department Manager. These requests will, as a rule, be included in the statement of work for each successive market study. Such situations rarely arise on an emergency basis, and it is intended that such work will not be undertaken in an ad hoc manner. Likewise managers should assign only work that is within an employee’s classification description, so retroactive changes will not ordinarily be expected. (Classification descriptions can, of course, be developed at any time, and employees can then be moved into the resulting positions through the usual competitive process.)
4. Market surveys will assess the relationship between pay ranges assigned to the District’s benchmark classifications and their counterparts elsewhere, as adjusted to a common San Francisco Bay Area cost-of-living base. A market study will include not only market data but also recommendations to the General Manager/Board of Directors as to what – if any – changes to the pay plan are warranted in order to best carry out compensation policy objectives. All changes made in response to market surveys – whether to pay ranges, the assignment of classifications to ranges, or the institution or removal of a special market adjustment – will include documentation that articulates the analysis on which it is based, and the rationale.

#### D. Adjustments in District Pay Ranges and Employee Pay Rates

1. Range adjustments may involve either minimums, maximums, or both. Generally speaking, pay adjustments suggested by market studies will apply the same percentage adjustment to the pay plan as a whole. However, these studies may also highlight classifications that have

experienced extraordinary movement, which may require a separate market adjustment or other modifications, such as reallocation to a different pay range.

2. Adjustment to the pay plan based on market studies establish the minimum and maximum rates of pay that constitute the District's pay plan; they do not change rates of pay for employees.
3. Within the exception of circumstances involving special market adjustments, rate adjustments above the top of the range, and other special situations as designated by the General Manager, no employee will receive base pay in excess of the maximum of the pay range to which his/her classification is assigned. Similarly, no employee will receive base pay less than the minimum for the classification to which s/he is assigned.
4. Special market adjustments:
  - a. A special market adjustment to a particular occupation may be warranted when, although job duties have remained consistent with the job evaluation, positions in a classification pose persistent and severe recruitment and retention problems, which shall be documented as part of the decision process preceding the adjustment. Any such market adjustment is a temporary adjustment to the pay ranges for a classification, which does not alter its job-evaluation ranking.
  - b. A special market adjustment can be established for one or more classifications on the basis of a market study that indicates that such an adjustment is the appropriate solution for recruiting and retention issues.
  - c. A special market adjustment will generally be expressed as a percentage increase in pay range and actual base pay assumptions for the classification. Special market adjustments automatically adjust the pay of individuals in the adjusted classification by the same percentage as the range.
  - d. A special market adjustment will be applied to all occupied positions in the classification, as well as to new hires, transfers and promotions into the classification for as long as the special market adjustment is applied.
  - e. At such time as market studies indicate that the special adjustment is no longer required, the adjustment will be removed for new entrants into the classification. Individuals who have achieved a higher rate of base pay as a result of a special market adjustment to the classification will retain that rate of base pay, so long as they remain in the classification.
  - f. An employee's pay may exceed the maximum of the pay range to which the classification is assigned when a special market adjustment is applied. Once the special market adjustment has been removed, however, individuals whose pay rose above the range as a consequence of the adjustment will receive no further increases until they can be accomplished within the range of pay for the classification.
  - g. A special market adjustment has significant and lasting consequences. A special market adjustment is not warranted solely on the basis that a preferred candidate requires a greater starting pay than can be otherwise offered.

5. Rate increases in excess of the top of the pay grade:
  - a. Employees receiving performance ratings of “effective” or higher are eligible for general rate increases as negotiated by the parties. Employees whose rate increase would result in pay that exceeds the top of the assigned pay grade will be eligible to receive the full amount of such increase. The amount over the top of the pay grade will be paid over the following twelve (12) month period in equal pay-period installments. However, amounts over the top of the pay grade will be discontinued at the conclusion of the twelve (12) month period. Further, the calculation of all benefits, (except PERS) and other compensation will be based on the employee’s base pay that is the top of the range, and not any portion of salary that is above the top of the pay grade.
  - b. In the event that the top of the range is increased due to range movement prior to the conclusion of the initial twelve (12) month period, the employee’s base pay will be increased up to the full amount of the increase previously granted, but not to exceed the new top of the range.
  - c. Under appropriate circumstances, including transition to a modified pay plan, accommodating reorganization or restructuring of work, and other situations, the General Manager is authorized to establish additional exceptions to the general rule that pay cannot exceed the top of the applicable pay range. Such exceptions will be discussed with the Union President prior to implementation.

#### 47.2 Compensation Related Personnel Actions

##### A. Hiring

1. The establishment of an appropriate salary for Supervisory Unit employee includes consideration of the following:
  - a. Relevant education and experience beyond minimum qualifications;
  - b. Current compensation, (including not only base pay, but significant differences in total compensation, as appropriate);
  - c. Pay-growth prospects within the District’s compensation program; and
  - d. Equity considerations as to current incumbents of similar background and experience, including those the employee may supervise.
2. Generally, an individual who has little experience and/or education beyond minimum qualifications will be brought in at or near the entry level for the classification. New employees should be brought in above the midpoint of the salary range only in extraordinary circumstances when based on specific valid, job-related considerations, including but not limited to a special market adjustment. In such cases, these considerations will be documented as part of the decision process.

## B. Promotion

1. A “promotion” is defined as the appointment of an employee to a position in a higher classification/pay grade than the one to which s/he is presently assigned. When a promotion is made, a promotional increase should be granted within the pay grade for the new position.
2. Promotional increases should generally be limited to five (5) to ten (10) percent of the employee’s current base pay. An individual whose base pay before the promotion is above the midpoint of the higher pay grade should normally be granted a promotional increase not greater than five (5) percent. In exceptional cases, a higher promotional increase may be justified in consideration of factors enumerated for new hires, (47.2A1), and in these cases the justification should be documented.
3. Promotional increases are given without regard to their proximity to a general rate increase.
4. With rare exceptions, an employee’s gross pay should be between five (5) and ten (10) percent higher than that of the highest paid individual s/he supervises.

## C. Demotion

1. A “demotion” is defined as the appointment of an employee to a position in a lower classification/pay grade than the one to which s/he is presently assigned.
2. If the demotion is unrelated to the employee’s performance, pay will not be impacted adversely. If necessary, the employee’s pay will be maintained above the maximum of the new pay grade, although s/he will not be eligible for future pay increases until they can be accomplished within the maximum of the new pay band.
3. Where the demotion arises as a remedial effort in response to the employee’s failure to perform satisfactorily at the higher level, a pay reduction may be appropriate to avoid significant pay inequities within the new pay grade. This action is not intended to be punitive in nature.

## D. Career Development Opportunities:

1. It is anticipated and expected that employees will receive developmental opportunities in the course of carrying out their work, and specifically, that they will acquire skills that would enable them to quickly master work at a higher level when the opportunity presents itself.
2. This developmental process does not permit a manager to make a de facto change in the level of the position through a gradual accretion of duties.
3. Career growth opportunities must be decided in a manner that is open, fair, and job-related.
4. Except as otherwise provided, an individual’s career progression (movement from one job classification and grade to a higher one) must take into consideration three factors:

- a. The individual's achievement of the requisite level of skill/experience required to perform work at the next higher level,
  - b. The availability of a workload sufficient to sustain the movement of an employee into a position at the next higher level, and
  - c. The District's obligation to provide growth opportunities equitably on the basis of job-related skills and abilities.
    1. All three elements must be present in order for an employee to move to the next level in his/her field in a manner that is also appropriate and cost-effective for the District.
5. To this end, a number of staffing flexibilities are provided in addition to traditional promotional opportunities. Appropriate use of these methods remains a difficult call, as each may be viewed as advantaging some and disadvantaging others. Managers, in consultation with the Human Resources Department (HR) staff, will seek the balance that most effectively addresses the legitimate needs of both managers and employees on a case-by-case basis.
  6. Managers may request a limitation on the scope of recruiting for a vacancy to include only the immediate work group.
  7. Similarly, where only one employee at the next lower level in a job series within a particular work group satisfies the minimum qualifications for a vacancy in that series, the manager, in consultation with HR, has the option to make the Promotion non-competitively, and the Union will be notified of such a decision.
  8. Special circumstances: Reorganization, Reduction in Force, transition to modified pay plans or position alignments, etc. Where the General Manager has approved plans that will require changes in the number and/or configuration or compensation of positions in the District's workforce, HR, working with the Executive Staff, may institute extraordinary recruiting procedures designed to assist in the placement of affected, or potentially affected, employees. These procedures may include limiting recruiting to a given department or other work unit, limiting recruiting to certain classifications or departments in which positions are in jeopardy, or other special provisions consistent with the goal of minimizing adverse impact on employees. These provisions will remain in place only for so long as they may assist in the placement of employees in the new or modified structure.
  9. Advanced Placement Program: A manager of any position covered by this procedure may elect to underfill that position in the manner outlined below.

- a. Manager/HR determine the minimum qualifications for the developmental position; the period during which development will be required; the nature of training and other experiences that will be provided during the development period, and the appropriate job-evaluation value/pay band for the position.
- b. The developmental experience cannot be used to shorten years of experience required for the target position, but experiences in the developmental period can, and are intended to be, credited towards the requisite experience.
- c. The selection process, as well as any tests and other evidence of skills mastered for promotion to the target position, are selection processes within the meaning of anti-Discrimination laws and are subject to review and approval by HR and the Office of Civil Rights, as is the case with all selection processes.
- d. The position will be posted as [Title of the Target Position]; Advanced Placement. The posting will include a full description of the program.
- e. Applicants accept the terms and conditions, including increasingly more demanding work assignments, possible off-hours educational commitments, testing, and other related requirements.
- f. Individuals who accept an Advanced Placement position will serve the same Probationary Period as for any new position. Individuals whose Performance is less than satisfactory after completion of the Probationary Period will be subject to remedial measures as for any position.
- g. Upon completion of the developmental requirements of the program, the individual will be noncompetitively promoted into the target position. This Promotion will trigger a second Probationary Period.

#### 47.3 Pay Progression

- A. Employees are brought into a pay band at the time they are assigned to a position within a classification in that pay band – whether from the outside or as the result of a promotion. Pay progression within a pay band responds to the general rate increase program, as negotiated by the parties. To be eligible for a general rate increase an employee's most recent annual performance evaluation score must be "effective" or better. Eligible employees receive general rate increases as an increase in base pay, subject to the maximum of the pay band.

## B. Normal Pay Adjustment and Pay Progression

1. Employees who meet performance requirements for satisfactory work are eligible for the general rate increase amount, if any, established for that year. The increase amount will be distributed among eligible employees in accordance with the applicable guidelines agreed to by the parties. All general rate increases are effective on July 1 of the year in question.
2. Employees who have been in unpaid status for fifteen (15) calendar days or more during the twelve (12) month period will receive a pro-rated rate adjustment for that year.

## C. Timing of General Rate Increases

1. Employees who have not completed their probationary period, (either their new employee probation or their classification probation, or both), on the day a general rate increase is given, will receive their general rate increase upon the first day of the month that follows completion of their probation.
  - a. For non-represented employees and current Supervisory Unit employees transferred or promoted into Supervisory Unit positions to be eligible for a general rate increase, the employee must also have received a performance evaluation score of "effective" or higher in their prior annual performance evaluation.
2. In conjunction with the general rate increase period, any employee whose performance evaluation score is effective or better, and whose base pay after the general rate increase would exceed the maximum of the range for the pay grade assigned will be eligible to receive the full amount of such increase. The amount over the top of the pay grade will be paid over the following twelve (12) month period in equal pay-period installments. However, amounts over the top of the pay grade will be discontinued at the conclusion of the twelve (12) month period. Further, the calculation of all benefits, (except PERS), and other compensation will be based on the employee's base pay that is the top of the range, and not on any portion of salary that is above the top of the pay grade.
3. In the event that the top of the range is increased due to range movement prior to the conclusion of the initial twelve (12) month period, the employee's base pay will be increased up to the full amount of the increase previously granted, but not to exceed the new top of the range.

## 47.4 Performance Management and Evaluation

- A. The performance management and evaluation process is used to assure that employees are aware of the performance requirements for their position, to assist them in meeting those requirements and to measure and evaluate the results. The performance management and evaluation process is also used to determine an employee's eligibility for a general rate increase.

- B. The employee's immediate supervisor:
  - 1. Should develop a "performance plan" with or without the participation of the employee, but s/he must discuss the plan with the employee at the beginning of the evaluation period;
  - 2. Is responsible for assuring that documentation of the employee's review of the plan is maintained and available in the event that it is required later; and,
  - 3. May initiate discussions modifying the plan throughout the year, as may the employee – any changes to the plan should be documented.
  
- C. The performance plan:
  - 1. Should reflect major issues – either specific goals or defined work characteristics, or both – for the employee's work for the twelve (12) month period;
  - 2. Should be limited to six (6) to twelve (12) items;
  - 3. Should indicate not only what is to be done, but how it is to be measured; and,
  - 4. Should be discussed with the employee at the same time his/her future development and career directions are discussed.
  
- D. During the twelve (12) month period, the employee's immediate supervisor should provide the employee with periodic feedback concerning their performance, within the context of the plan.
  
- E. The annual evaluation:
  - 1. Should reflect the whole year's work;
  - 2. Should include specificity relative to the measures articulated in the plan; and,
  - 3. Should include a face-to-face discussion with the employee.
  
- F. The following ratings may be given:
  - 1. Outstanding – regularly exceeds performance requirements.
  - 2. Superior – regularly meets performance requirements and frequently exceeds them.
  - 3. Effective – meets all performance requirements most of the time.
  - 4. Marginal – frequently fails to meet some performance requirements.
  - 5. Unsatisfactory – frequently fails to meet many performance requirements.

#### 47.5 Performance Review Board

- A. Employees shall not have recourse to the grievance procedure to dispute their performance evaluation scores. However, employees receiving a less than "effective" score shall have recourse to the Performance Review Board, (PRB) for disputes regarding their performance evaluations in matters concerning procedural issues, and allegations of bias and/or

discrimination. However, employees shall discuss their concerns regarding performance evaluations with their immediate supervisor and the Department Manager. If dissatisfied with the results of these discussions, the employee shall present their concerns to the Union. The Union shall decide if the issue involving the performance evaluation shall be taken to the PRB.

- B. The PRB shall consist of two (2) members appointed by the District, and two (2) members appointed by the Union. The appointed members will form a standing committee with the Labor Relations Department staff's assistance.
  
- C. The PRB will convene to investigate allegations, interview pertinent witnesses and review documents. Recommendations of the PRB shall be made by consensus of all Board members and will be prepared for the General Manager's review.
  
- D. The General Manager or designee will determine what action will be implemented within twenty (20) days of receipt of the report. The General Manager's decision will be sent to the Union President and to the Labor Relations Department Manager. The General Manager shall not unreasonably overturn recommendations made by the PRB. The decision shall be final and binding on all parties involved.
  
- E. PRB Procedure:
  - 1. Purpose of PRB
    - a. The purpose of the PRB is to determine the validity of a disputed performance evaluation score, relative to matters concerning procedural and substantive issues.
    - b. Discussions regarding the meeting will be limited to the PRB members and evidence presented at the proceedings. Discussions among the PRB members will be confidential.
  - 2. Objectives of the PRB
    - a. The first objective is to determine compliance with written policies, procedures and guidelines, including but not limited to this Agreement.
    - b. If there is compliance with policies, procedures, guidelines and the Agreement, the second objective is to judge the validity of the performance evaluation score through evaluation of the testimony and evidentiary documentation incorporated as part of the evaluation.
  - 3. Convening the PRB
    - a. The PRB shall determine the date, time and location that the PRB will convene to investigate allegations, interview pertinent witnesses and review documents.
    - b. The PRB will schedule a date in which all the advocates will be available and will grant a continuance if a key witness is unavailable.
    - c. The PRB will notify the Union President and Labor Relations Department Manager in writing as to the date, time and location of the meeting.

- d. The PRB shall commence by blocking out one (1) full day, but not limited thereto, to hear the case.
4. Tape Recording the Proceedings
  - a. The PRB will tape record the proceedings.
  - b. A copy shall be made available to the Union and the District, upon request.
5. Advocates
  - a. The Union President and Labor Relations Department Manager will select the respective advocates.
  - b. Each party may have a 'second chair' attend the meeting.
6. Presentation and Marking of Evidence
  - a. Each advocate will inform the PRB as to how s/he will present or mark her/his evidence prior to the opening statement, using one (1) of the following methods:
    - All at once, at the beginning of the meeting after the PRB has convened
    - Present and mark the evidence as witnesses testify, as determined by the advocates, or
    - A combination of the above.
  - b. Each advocate will provide seven (7) copies of each exhibit (four [4] copies for the PRB, one [1] copy for the witness and two [2] copies for the opposing advocate[s]).
7. Opening Statements
  - a. The District will present its opening statement first.
  - b. The Union will then present its opening statement.
8. Presenting the Case
  - a. The District will present its case first. The Union will have an opportunity to cross examine each witness.
  - b. The Union will then present its case. The District will have an opportunity to cross examine each witness.
  - c. Both the District and the Union shall have the opportunity to rebut testimony.
  - d. The PRB will have the opportunity to ask clarifying questions at the end of the examination of each witness. The intent is to allow witnesses to testify without interruption.
9. The Grievant shall be released to attend the entire PRB.
10. Witnesses/Advocates
  - a. The Union and the District shall exchange a list of witnesses/advocates and provide said list to the PRB and Labor Relations for the purposes of scheduling the meeting and arranging release time at least one (1) week prior to the scheduled meeting.
  - b. Labor Relations shall be responsible for notifying the witness(es) supervisor for release time.
  - c. The witness(es) shall be sequestered until called by their respective advocates except for the grievant and advocate that may testify.

- d. Additional witnesses may be called by the PRB as a result of information presented at the proceedings.
- 11. Closing Statements
  - a. The District will present its closing statement first.
  - b. The Union will then present its closing statement.
- 12. Report of the PRB – Recommendations
  - a. Based on the objective(s) of the PRB, the PRB will prepare a report for the General Manager's review, including the PRB's recommended course of action.
  - b. Recommendation of the PRB shall be made with the consensus of all PRB members; however, if the PRB cannot reach consensus, then the PRB shall submit one report to the General Manager with a factual analysis containing separate recommendations.
  - c. The PRB's report and recommended course of action(s) shall be submitted to the General Manager no later than two (2) weeks from the conclusion of the proceedings. The PRB members will sign the report without identifying their respective recommendations.
  - d. The PRB's report shall indicate that the General Manager's decision will be sent to the Union President and the Labor Relations Department Manager.
  - e. Copies of the PRB's report shall also be sent to the Union President, Union Advocate, Labor Relations Department Manager and the District Advocate.
- 13. General Manager's Decision
  - a. The General Manager or designee will determine what action will be implemented within twenty (20) days after receipt of the report.
  - b. The General Manager shall not unreasonably overturn a consensus recommendation made by the PRB.
  - c. The General Manager's decision shall be final and binding on the District and the Union.
  - d. The General Manager's decision will be sent to the Union President and the Labor Relations Department Manager.

#### 47.6 Temporary Upgrade

- A. From time to time a Supervisory Unit employee may receive a temporary assignment in which s/he is directed to perform the duties regularly assigned to a higher classification. Such assignments are made in writing by the employee's supervisor or manager.
- B. Unless the temporary upgrade assignment fully replaces the work of a position that is temporarily or permanently vacant, the human Resources Department must review the proposed work assignment to determine the appropriate pay band of work.

- C. Such temporary upgrade assignments are considered career-development opportunities and are not eligible for temporary upgrade pay during the first thirty (30) calendar days of the employee's assignment.
- D. The prior approval of the Human Resources Department Manager and the affected Department Manager is required to extend any temporary assignment to a higher classification beyond thirty (30) work days. Such approval must be obtained before the thirtieth (30<sup>th</sup>) working day.
- E. Employees in an approved temporary upgrade assignment will be compensated at five (5) percent above their base pay rate, after the thirtieth (30<sup>th</sup>) consecutive calendar day of assignment to the classification.
- F. Leave taken while an employee is assigned to a temporary upgrade assignment will be paid at the employee's base pay rate – they will not receive the five (5) percent premium while on leave.

#### 47.7 Lead Worker/Instructor Premium

- A. From time to time a Supervisory Unit employee may be assigned, as their primary assignment for part or all of the work day, to instruct other employees or lead them in an assigned task or project in the absence of supervision, to conduct orientation or classroom instruction, or to prepare instruction materials.
- B. If, in the judgment of the employee's Department Manager, such an assignment is outside the scope of the employee's classification, the employee is entitled to an additional fifty (50) cents per hour, for the time actually spent in this capacity.
- C. Supervisors, managers, senior-level and principal-level professionals, (including analysts and specialists), are not eligible for lead worker premium.

#### 47.8 Salary and Lump Sum Payments

- A. Fiscal Year 2010 (first year): Effective August 1, 2009 and continuing until June 30, 2010, the base salary for Supervisory Unit employees shall remain the same as the Fiscal Year 2008 – 2009 base rate of pay.

- B. Fiscal Year 2011 (second year): Effective July 1, 2010 and continuing until June 30, 2011, the base salary rate for Supervisory Unit employees shall remain the same as the 2008 – 2009 base rate of pay.
  - 1. No later than July 1, 2010, the District shall pay each Supervisory Unit employee in active paid status on June 1, 2010, a one-time, lump sum payment of five hundred dollars (\$500). The District shall have no further obligation to make a similar payment on any future date.
- C. Fiscal Year 2012 (third year): Effective July 1, 2011, and continuing until June 30, 2012, the base salary for Supervisory Unit employees shall remain the same as the 2008 – 2009 base rate of pay.
  - 1. No later than July 1, 2011, the District shall pay each Supervisory Unit employee in active paid status on June 1, 2011, a one-time lump sum payment of one thousand dollars (\$1,000). The District shall have no obligation to make a similar payment on any future date.
- D. Fiscal Year 2013 (fourth year): Effective July 1, 2012, and continuing until June 30, 2013, the base salary rate for Supervisory Unit employees shall remain the same as the 2008 – 2009 base rate of pay.
  - A. No later than July 1, 2012, the District shall pay each Supervisory Unit employee in active paid status on June 1, 2012, a one-time, lump sum payment of one thousand and five hundred dollars (\$1,500). The District shall have no obligation to make a similar payment on any future date.

47.9 Potential One Percent (1%) Schedule Improvement

- A. Potential One-Percent (1%) Schedule Improvement
 

If all criteria set forth in Subsection 47.9B are met and no extraordinary unplanned expenses as set forth in Subsection 47.9C have occurred, then effective at the end of this Agreement on June 30, 2013, the District shall increase the salary/wage schedule by one percent (1%) over the 2008 – 2009 salary schedule. These calculations shall be made on or before March 31, 2013, and shall be effective on July 1, 2013 (FY 14). The calculations for FY 13 will be based on the data available on March 31, 2013. All references to FY 13 in Section 47.9 shall include only the period of July 1, 2012 through March 31, 2013.
- B. On or before March 31, 2013, the District shall calculate and apply the following criteria:
  - 1. Sales Tax Revenue Growth Rates:
 

Determine the FY 11, FY12 and FY 13 percentage increase in annual sales tax growth over the prior Fiscal Year. To meet this criterion, the 3-year average annual increase in sales tax growth for FY 11, FY 12 and FY 13 must be 5.0% or more growth in sales tax revenue funded and received.
  - 2. Ridership Growth Rates:

Determine the FY 11, FY 12 and FY 13 percentage increase in annual ridership growth over the prior Fiscal Year ridership. To meet this criterion, the 3-year average annual increase in ridership for FY 11, FY 12 and FY 13 must be 4.7% or more growth.

3. Specific Increased Expenses:

Determine whether the following specific District expenses have increased on annual basis greater than stated:

- a. District's Employer PERS miscellaneous pension contributions increased by an average of more than 10.5% per year over FY 11, FY 12 and FY 13; or,
- b. District contributions toward medical insurance premiums required by Section 33.B of this Agreement increased by an average of more than 10% annually during FY 11, FY 12 and FY 13.

4. If either of the average annual increases listed in Subsection 47.9B3 are exceeded, then the criterion for Section 47.9 has not been met.

C. Extraordinary, Unplanned Expenses:

On or before March 31, 2013, the District shall determine whether an extraordinary, unbudgeted and unanticipated expense exceeding 2.5% of the District's adopted operating budget has occurred during Fiscal Years FY 10, FY 11, FY 12 or FY 13, other than those specified in Subsection 47.B3 above. In the event that such an extraordinary, unbudgeted, unanticipated expense outside the control of the District has occurred during FY 10, FY 11, FY 12 or FY 13, the District shall have no obligation to increase the salary/wage schedule by one percent (1.0%) as specified above.

D. All Conditions Must Be Met:

The District shall have no obligation to increase the salary/wage schedule by one percent (1%) effective on July 1, 2013 or at any time in the future unless all of the conditions set forth in Subsection 47.9B are met and the conditions set forth in Subsections 47.9C do not occur.

E. One-Time, Non-Precedent Setting Increase/Definition of "Status Quo:"

The salary increase described in Section 47.9 is provided on a one-time, non-precedent setting basis that does not constitute a past practice. During negotiations for any successor Agreement, the salary/wage criteria described in Section 47.9 shall not define the status quo for salary/wage increases. During the negotiations for a succeeding term after June 30, 2013, the District shall not assert that the 1.0% increase is included as part of any increased wage offer made by the District for the succeeding contract.



## EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Marcia delBuden</i>		GENERAL MANAGER ACTION REQ'D: Approve and Forward to the Board		
DATE: <i>8/1/12</i>		BOARD INITIATED ITEM: No		
Originator/Prepared by: Ed Yee Dept: M&E <i>EY</i>	General Counsel <i>MB</i>	Controller/Treasurer <i>[Signature]</i>	District Secretary <input type="checkbox"/>	BARC <i>[Signature]</i> for P.O. <input type="checkbox"/>
Signature/Date: <i>7/13/2012</i>	<i>MB 7/13/12</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

TITLE:

### AWARD OF CONTRACT No. 15IJ-110, FIRE ALARM RENOVATION PHASE 1, M-LINE

NARRATIVE:

PURPOSE:

To obtain Board authorization for the General Manager to award Contract No. 15IJ-110 for Fire Alarm Renovation Phase 1, M-Line, to Blocka Construction, Inc. for the Bid amount of \$3,988,000.

DISCUSSION:

The fire alarm systems in the BART Stations provide an early life safety warning for evacuation in case of a fire in the Station. The existing thirty-five-year-old-plus fire alarm systems are old and require high maintenance. Furthermore, spare parts are no longer manufactured.

This Contract will install new fire alarm systems in seven (7) Stations on the M-Line, (Embarcadero, Montgomery, Powell, Civic Center, 16<sup>th</sup>, 24<sup>th</sup> and Daly City Stations).

The Contract work includes replacing the existing fire detection and alarm systems with new state-of-the-art fire detection and alarm annunciation systems meeting the latest fire protection codes. These upgrades include installing horns and strobe alarms to assist notification to visually and hearing-impaired patrons.

Advance Notice to Bidders was mailed on February 9, 2012 to approximately 98 prospective Bidders. The Contract was advertised on February 13, 2012. The Contract Documents were sent to 21 plan rooms. A Pre-Bid meeting and site visit was held on February 27, 2012, with 15 prospective Bidders attending the meeting. Seventeen (17) Contract Books were sold. Four (4) Addenda were issued. Four (4) Bids were received on May 8, 2012:

<u>BIDDER</u>	<u>BID PRICE</u>
Mike Brown Electric Company, Cotati, CA	\$3,827,000.00
Paganini Electric Corporation, San Francisco, CA	\$3,920,631.44
Blocka Construction, Inc, Fremont, CA	\$3,988,000.00
Vanden Bos Electric, Inc, Roseville, CA	\$4,453,300.00
<b>Engineer's Estimate</b>	<b>\$4,600,000.00</b>

This Contract was advertised pursuant to the revised DBE Program requirements. The Office of Civil Rights (OCR) reviewed the scope of work for this Contract and determined that there were subcontracting opportunities; therefore, OCR established a DBE participation goal of 4% for this Contract. The apparent low Bidder, Mike Brown Electric Company, failed to achieve the 4% DBE participation goal and failed to meet the good faith efforts requirements. Therefore, its bid was non-responsive. The second low Bidder, Paganini Electric Corporation failed to achieve the DBE participation goal and failed to meet the good faith efforts requirements. Therefore, its bid was non-responsive. The next apparent low Bidder, Blocka Construction, Inc., exceeded the DBE participation goal with a commitment to subcontract 18.9% to DBEs.

Staff has determined that the third low Bidder, Blocka Construction, Inc. submitted a responsive Bid. Staff has also determined upon review of the Bidder's business experience and financial capabilities that the Bidder is responsible and that its bid of \$3,988,000.00 is fair and reasonable.

**FISCAL IMPACT:**

Funding of \$3,988,000 for the award of Contract 15IJ-110 is included in the total project budget for FMS #15IJ100 - Station Fire Alarm Replacement - M Line. The Office of the Controller/Treasurer certifies that funds are currently available to meet this obligation.

As of May 25, 2012, \$6,606,148 is available for this project from the following sources:

Fund No.	Source	Fund Description	Amount
354G	Federal	CA-90-Y604	5,284,918
6214	Regional	Regional Measure II	300,000
8202	BART	Sales Tax Revenue Bond Fund	1,021,230
		Total	6,606,148

BART has expended \$618,575, committed \$0, and reserved \$0 to date for other actions. This

action will commit \$3,988,000 leaving an available fund balance of \$1,999,573 in this project.

There is no fiscal impact on available unprogrammed District Reserves

**ALTERNATIVES:**

The alternative is to reject all Bids and re-advertise the Contract, which will delay the District's ability to provide the updated fire alarm systems at these stations.

**RECOMMENDATION:**

Adoption of the following motion:

**MOTION:**

The General Manager is authorized to award Contract No. 15IJ-110 for Fire Alarm Renovation Phase 1, M-Line, to Blocka Construction, Inc. for the Bid price of \$ 3,988,000, pursuant to notification issued by the General Manager and subject to compliance with the District's protest procedures and FTA's requirements related to protests.



## EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Marisa Delaney</i>		GENERAL MANAGER ACTION REQ'D: Approve and Forward to PPAAL Committee		
DATE: <i>8/14/12</i>		BOARD INITIATED ITEM: No		
Originator/Prepared by: John H Rennels Dept: Real Estate & Property Development	General Counsel	Controller/Treasurer	District Secretary	BARC
Signature/Date: <i>[Signature]</i> 7/27/2012	<i>MB</i> 7/27/12	<i>[Signature]</i> [ ]	[ ]	<i>[Signature]</i> 8-1-12 [ ]
Status: Routed		Date Created: 07/25/2012		

TITLE:

### Lake Merritt Station - Recommendation for Exclusive Negotiating Agreement

NARRATIVE:

**PURPOSE:** To obtain Board authorization to enter into an Exclusive Negotiation Agreement with TRG Pacific Development, LLC for development of BART property at the Lake Merritt BART station.

**DISCUSSION:** In November 2008, the BART Board authorized execution of a Memorandum of Understanding between the District, City of Oakland and the Peralta Community College District in support of Oakland's effort to conduct an interactive community planning process and environmental document for the Lake Merritt BART Station area. In keeping with the BART TOD Policy, in September 2011, the Board of Directors authorized staff to issue a Request for Qualifications (RFQ) to identify a developer for the Lake Merritt BART station property offering. Key topics to be addressed during the developer solicitation process included:

- Financial feasibility of previous developments.
- Assessment of costs for community benefit elements contemplated for the greater station area.
- Access improvements which may eliminate the need for the existing BART parking at the station.
- Demonstrated ability of developer to raise debt and equity for the project.

An Evaluation Committee was formed, consisting of ten members: two from BART's Real Estate and Property Development Department, one from BART Planning, two from the City of Oakland, one each from Peralta College District and Laney College, and three community members. Additionally, there were observers representing Oakland City Councilmembers Kaplan, Kernighan and Nadel, along with a BART on-call property development services consultant, Economic & Planning Systems, Inc. (EPS). EPS was retained to review the qualifications and confidential financial statements of each development team, and to interview references and stakeholders involved in developers' past projects.

On January 12, 2012, more than 330 notices were mailed to interested parties advising them of the availability of the RFQ and subsequent pre-submittal conference. This information was also

advertised in several local newspapers and posted on BART's website, along with the RFQ. The pre-submittal conference was conducted on February 1, 2012. BART received submittals from five firms. One firm, Regency Centers, subsequently withdrew from the process.

The following four respondents were interviewed on April 1, 2012:

- EBALDC
- LOH Realty & Investments
- TRG Pacific Development, LLC
- UP + Ayala Land, Inc.

In response to the original submittals and interviews, further information was requested from the four development teams. On April 17, 2012, the Evaluation Committee reviewed all relevant materials. The development teams were evaluated according to the following criteria:

- 1) experience developing transit-oriented projects of comparable scale and complexity, including over transit stations;
- 2) capacity to secure financing for predevelopment efforts as well as construction;
- 3) experience engaging communities in predevelopment processes; understanding, creativity, and commitment to the on-going City/community based planning process;
- 4) experience funding and integrating community benefits (e.g. affordable housing community facilities, public space, and community art) into projects; and
- 5) experience activating ground level uses within developments (e.g. retail, lighting, signage, etc.).

The Evaluation Committee identified a short list of two development teams, TRG Pacific Development, LLC, and UP + Ayala Land, Inc. for follow-up interviews. Following the interviews and further evaluation, the Evaluation Committee unanimously agreed that TRG Pacific Development, LLC should be selected by BART for the following reasons:

- TRG's previous developments in L.A. Chinatown and New York exhibit strong sensitivity to surrounding development context and the ability to construct transit-oriented development projects over and at subway stations. The East Harlem MEC Center is a \$1 billion total development with approximately a million sq. ft. of commercial and residential space. The Balton, in New York City, is a \$100 million dollar development which was the first residential project in the U.S. to use federal stimulus funds.
- TRG and its affiliates in The Richman Group are ranked as the 8<sup>th</sup> largest apartment owner nationally; with over 115,000 units (over 5,000 in California). TRG has been one of the nation's top tax credit syndicators in the country since the inception of the program.
- TRG has overseen the completion and stabilization of over 1,100 properties across the country. They are long-term owners and managers of their developments.
- The size and success of TRG and the project management experience of TRG's Executive Vice President, Pamela Mikus, indicate the ability to assemble a very strong team with resources to implement a successful development program in concert with the community.

Staff recommends that the Board approve the execution of an Exclusive Negotiation Agreement with TRG Pacific Development, LLC for development at the Lake Merritt BART station. Any proposed development transaction will be brought back to the Board for approval.

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

**FISCAL IMPACT:** There will be staff and consultant time involved in participating in the Lake Merritt BART Station community planning effort and in negotiating with the developer. An exclusive negotiating fee will be paid by the developer to BART.

**ALTERNATIVES:** Do not pursue private development at the Lake Merritt BART station and continue to maintain and be liable for the parcel.

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

**MOTION:** The General Manager or her designee is authorized to enter into an Exclusive Negotiating Agreement with TRG Pacific Development, LLC for development at the Lake Merritt BART station, for a period of two years, with a right by BART to extend for one year.