

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

AGENDAS FOR SPECIAL BOARD AND COMMITTEE MEETINGS

September 17, 2009

9:00 a.m.

A special meeting of the Board of Directors and special meetings of the Standing Committees will be held on Thursday, September 17, 2009, commencing at 9:00 a.m. All meetings will be held in the BART Board Room, Kaiser Center 20th Street Mall – Third Floor, 344 – 20th Street, Oakland, California.

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

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

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

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

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

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

Kenneth A. Duron
District Secretary

Special Meeting of the
BOARD OF DIRECTORS

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

1. **CALL TO ORDER**

- A. Roll Call.
- B. Pledge of Allegiance.
- C. Introduction of Special Guests.

2. CONSENT CALENDAR

- A. Approval of Minutes of the Meetings of July 16, 2009 (Special), July 23, 2009 (Regular), and July 30, 2009 (Special).* Board requested to authorize.
- B. Employee Recruitment and Relocation for the Position of Executive Manager, Transit System Development, and the Position of Chief of Police.* Board requested to authorize.

RECESS TO STANDING COMMITTEES

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

ALL COMMITTEES ARE ADVISORY ONLY

SPECIAL ADMINISTRATION COMMITTEE

Immediately following the Special Board Meeting recess

Director Murray, Chairperson

- A-1. Condemnation of Real Property for the Warm Springs Extension Project: BART Parcel Nos. J-2004-1A, J-2004-2A, and J-2004-3A.* Board requested to authorize. (TWO-THIRDS VOTE REQUIRED.)
- A-2. Resolution Ratifying Collective Bargaining Agreement with the Amalgamated Transit Union, Division 1555.* Board requested to authorize.
- A-3. (CONTINUED from August 27, 2009, Board Meeting)
Resolution Ratifying Collective Bargaining Agreement with the American Federation of State, County and Municipal Employees, Local 3993.* Board requested to authorize.
- A-4. General Discussion and Public Comment.

SPECIAL ENGINEERING AND OPERATIONS COMMITTEE

Immediately following the Special Administration Committee Meeting

Director Keller, Chairperson

- B-1. Earthquake Safety Program: Report of the Citizens' Oversight Committee.* For information.
- B-2. General Discussion and Public Comment.

PLANNING, PUBLIC AFFAIRS, ACCESS, AND LEGISLATION COMMITTEE

Director Sweet, Chairperson

NO REPORT.

RECONVENE BOARD MEETING

3. CONSENT CALENDAR ADDENDA

Board requested to authorize as recommended from committee meetings above.

4. REPORTS OF STANDING COMMITTEES

A. SPECIAL ADMINISTRATION COMMITTEE

A-1. Condemnation of Real Property for the Warm Springs Extension Project: BART Parcel Nos. J-2004-1A, J-2004-2A, and J-2004-3A.* Board requested to authorize. (TWO-THIRDS VOTE REQUIRED.)

A-2. Resolution Ratifying Collective Bargaining Agreement with the Amalgamated Transit Union, Division 1555.* Board requested to authorize.

A-3. (CONTINUED from August 27, 2009, Board Meeting)
Resolution Ratifying Collective Bargaining Agreement with the American Federation of State, County and Municipal Employees, Local 3993.* Board requested to authorize.

B. SPECIAL ENGINEERING AND OPERATIONS COMMITTEE

B-1. Earthquake Safety Program: Report of the Citizens' Oversight Committee.
For information.

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

NO REPORT.

5. GENERAL MANAGER'S REPORT

NO REPORT.

6. BOARD MATTERS

A. Report of the Sustainability/Green Committee. For information.

B. Roll Call for Introductions.

7. GENERAL DISCUSSION AND PUBLIC COMMENT

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

A. CONFERENCE WITH LABOR NEGOTIATORS:

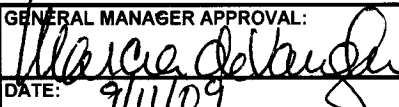
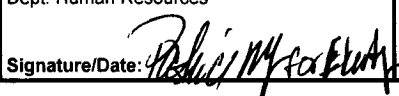

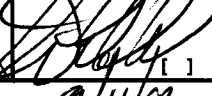
Designated representatives: Dorothy W. Dugger, General Manager; Teresa E. Murphy, Assistant General Manager – Administration; M. Carol Stevens, Burke, Williams & Sorensen, LLP

Employee Organizations: (1) Amalgamated Transit Union, Division 1555;
(2) American Federation of State, County and Municipal Employees, Local 3993;
(3) BART Police Officers Association;
(4) BART Police Managers Association

Government Code Section: 54957.6



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: 		GENERAL MANAGER ACTION REQ'D: Board Approval and Authorization		
DATE: 9/11/09		BOARD INITIATED ITEM: No		
Originator/Prepared by: Elaine M. Kurtz Dept: Human Resources	General Counsel	Controller/Treasurer	District Secretary	BARC
Signature/Date:  9/11/09	 9/11/09	 9/11/09	[]	[]
Status: Approved		Date Created: 09/11/2009		

TITLE:

EMPLOYEE RECRUITMENT AND RELOCATION FOR THE POSITIONS OF EXECUTIVE MANAGER, TRANSIT SYSTEM DEVELOPMENT & POLICE CHIEF

NARRATIVE:

PURPOSE:

To obtain Board authorization for national recruitment and relocation agreements for filling the positions of the Executive Manager, Transit Systems Development and the District's Police Chief.

DISCUSSION:

On March 11, 1993, the board adopted Resolution 4487, requiring Board approval prior to certain recruiting activities to employ a person who is not a current District employee for any annual salary of \$50,000 or more. The resolution also states that the District should confine its recruiting to the State of California, consistent with provisions of the law, and that no relocation or moving expenses are to be offered to new employees without prior Board Approval.

The Executive Manager, Transit System Development and Police Chief are senior management positions that require specialized skills derived from unique managerial/technical experience and education. Both incumbents have announced their retirements effective prior to the end of 2009.

The Executive Manager, Transit System Development requires extensive knowledge and skill in managing and directing a comprehensive public rail transportation system and new development programs in the areas of structures and systems engineering, construction, as well as new rail car acquisitions and rehabilitation. The Police Chief is a highly visible public safety officer position that requires a unique mix of complex public safety skills. Identifying qualified applicants with the necessary skills for these positions requires specialized recruiting efforts that can most effectively be conducted by third party resources.

By adopting this motion, the Board will authorize staff to use an executive search firm for the recruitments. This will enhance the District's access to the strong candidate pools needed in order to appropriately make a selection for these key position. The District will conduct an informal request for proposals from at least three (3) national search firms for each position. The District's intent is to enter into two search agreements, one for each position. The services for

both firms will be procured in accordance with the District's policies and procedures. The selected consultants will be required to focus their efforts on individuals within California, specifically the San Francisco Bay Area. However, the recruitments will not be confined to California.

Proposals will be solicited from executive search firms that have:

- Expertise in transit and/or public sector recruitment for executive level management positions.
- Expertise in public safety executive level management positions.
- An ability to provide timely customized searches on a national scale.
- Acceptable business references.
- The ability to meet the terms of agreement
- Acceptable price and fee structure.

Interested firms will be required to provide a search plan summary document that outlines their search tasks, proposed fee structure and estimated time of completion.

The Board's action will also allow for the execution of a relocation agreement with a selected employee within the parameters of current District practice as provided in Management Procedure 70. This procedure allows a maximum reimbursement amount of \$18,000 for relocation, and does not include financial participation by the District in the purchase or sale of real estate.

The General Manager has previously requested authorization to use executive search firms for seven positions since 2001. Relocation expenses were involved in only two of these cases, although the search for the Department Manger, Labor Relations, is still in process.

Separate requests for relocation reimbursement expenses without any related executive search agreements were requested three times within that same timeframe, and used only once.

FISCAL IMPACT:

The cost for search firm fees are estimated at \$65,000 and any subsequent relocation agreement would be capped at \$18,000. The funding for the recruitment and relocation expenses will come from the FY10 operating budget of each sponsoring department.

ALTERNATIVE:

Identify an incumbent for the position using the District's in-house recruitment resources.

RECOMMENDATION:

Adopt the following motion:

MOTION:

That the General Manager or her designee is authorized, in conformance with established District procedures governing the procurement of professional services, to obtain executive search services to identify qualified candidates both inside and outside of California, for the positions of the Executive Manager, Transit System Development and the Police Chief. In addition, the General Manager is authorized to enter into a relocation agreement, if necessary, in an amount not to exceed \$18,000 for each position, in accordance with Management Procedure Number 70 – New Employee Relocation Expense Reimbursement.

Summary Job Description – Executive Manager, Transit System Development

The Executive Manager, Transit System Development plans, directs, manages and oversees the activities and operations of the Executive Office of Transit System Development including extension projects, finance and administration and the new vehicle systems integration, station, shops and structures capital program areas; coordinates assigned activities with other executive staff, departments and outside agencies; provides highly responsible and complex management and policy support to the General Manager; and performs related duties as assigned.

This position is responsible for multiple development projects in areas such as field services, maintenance, engineering or specialized project areas including elevator/escalator rehabilitation, new rail car acquisition and rehabilitation. The incumbent is accountable for accomplishing departmental goals and objectives, and for furthering District goals and objectives within general policy guidelines.

Subject to Board Approval, the search activity will focus on candidates who possess the desired skill set. If viable candidates do not appear to be readily available in the “local” market, the search activities will be expanded to a national level.

Pay Band & Salary Range:

Pay Band (14) \$136,560 - \$211,672

Summary Job Description – Police Chief

The Police Chief plans, directs, manages and oversees the activities and operations of the Police Department including uniformed patrol, investigations and crime prevention; coordinates assigned activities with other departments and outside agencies; provides highly responsible and complex administrative support to the General Manager; and performs related duties as assigned.

This position manages, through subordinate management and supervisory staff, all law enforcement activities conducted in and around District properties and facilities. The incumbent is accountable for accomplishing department goals and objectives and for furthering District goals within general policy guidelines.

Subject to Board Approval, the search activity will focus on candidates who possess the desired skill set. If viable candidates do not appear to be readily available in the “local” market, the search activities will be expanded to a national level.

Pay Band & Salary Range: Pay Band (14) \$136,560 - \$211,672

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

MEMORANDUM

TO: Board of Directors

DATE: September 14, 2009

FROM: General Manager

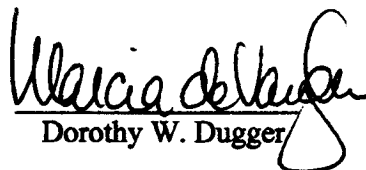
SUBJECT: September 17 Board Agenda Item 2.B: Employee Recruitment and Relocation for the Position of Executive Manager, Transit System Development, and the Position of Chief of Police

This is to clarify the fiscal impact language that was included in the EDD for the above referenced item. The fiscal impact statement should read as follows:

FISCAL IMPACT:

The cost for search firm fees is estimated at \$65,000 for each position. Any subsequent relocation agreement would be capped at \$18,000 each. The funding for the recruitment and relocation expenses will come from the FY10 operating budget of each sponsoring department.

If you need additional information, please contact Terry Murphy at (510) 464-6231.


Dorothy W. Dugger

cc: Board Appointed Officers
Deputy General Manager
Executive Staff



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL <i>Patricia Delaney</i>		GENERAL MANAGER ACTION REQ'D: Approve and forward to the Board		
DATE: 9/9/09		BOARD INITIATED ITEM: No		
Originator/Prepared by: Joseph Basulino Dept: Real Estate ext. 6852 <i>Joseph Basulino</i> Signature/Date: 8/28/09	General Counsel <i>MB</i> 9/1/09	Controller/Treasurer <i>[Signature]</i> 9/1/09	District Secretary []	BARC <i>[Signature]</i> 9/1/09
Status: Routed		Date Created: 08/28/2009		

TITLE:

Condemnation of Real Property for WSX Project BART Parcel # J-2004-1A, J-2004-2A and J-2004-3A

NARRATIVE:

PURPOSE:

To adopt by a two-thirds vote of the entire Board the attached Resolution of Necessity to Condemn fee simple, permanent and temporary easement interests in real property located at 2878 Prune Avenue, Fremont, California 94539-6743. This property is required for the Warm Springs Extension Project.

DISCUSSION:

The San Francisco Bay Area Rapid Transit District ("BART") proposes to purchase certain real property for the purpose of constructing a rail extension from the existing Fremont Station site south to Warm Springs ("WSX" or the "Project"). The Project requires the acquisition of approximately 2,976 square feet in fee, approximately 7,412 square feet in permanent easement and approximately 15,851 square feet in temporary easement of a 1.953± acre property owned by Patricia Snow, Trustee of The Patricia Snow Trust Agreement dated August 7, 1986, Charles B. Snow, Trustee of The Charles B. Snow Family Trust, Karl H. Hueken and Alayne D. Hueken, Trustees of The Karl H. and Alayne D. Hueken Trust dated August 16, 1994 and Karl Fries, Trustee of The Karl Fries separate property trust UDT dated may 1, 1995 (the "Snow Parties"). It is located at 2878 Prune Avenue, Fremont, CA 94539-6743 (BART Parcel #J-2004-1A, J-2004-2A and J-2004-3A or the "Subject Parcel").

The Board certified a California Environmental Quality Act ("CEQA") Final Environmental Impact Report ("FEIR") on September 15, 1992, and a Supplemental Environmental Impact Report ("SEIR") on June 26, 2003, adopting the Project on those respective dates. Thereafter, the Federal Transit Administration ("FTA"), as lead federal agency, and BART released a Final Environmental Impact Statement ("FEIS") for the Warm Springs Extension Project in July 2006. The FTA issued a Record of Decision on October 24, 2006.

During the environmental process, Patricia Snow submitted a letter, 31A, dated April 9, 2003 in connection with certain information listed in Appendix L- Potential Displacement Tables from the 1992 EIR. That letter together with BART's response is contained in the Final Supplemental

Environmental Impact Report, Response to Comments.

The proposed use of the Subject Parcel is for BART system trackway and appurtenances, a storm drain culvert and temporary construction purposes. Project features proposed on or near this parcel have been specifically planned and located in an attempt to meet Project needs in the most beneficial and least environmentally harmful way possible. The storm drain easement, BART Parcel J-2004-2A, is being acquired to replace Alameda County Flood Control and Water Conservation District's open drainage ditch that will be filled in for the trackway. By letter dated July 29, 2009, the Alameda County Flood Control and Water Conservation District confirmed that it will accept BART Parcel J-2004-2A as substitute property pursuant to California Code of Civil Procedure Sections 1240.320 and 1240.330.

In the immediate vicinity of the Subject Parcel, the BART alignment is constrained by industrial land uses to the east and highly constrained by Union Pacific operating right of way to the west. The Project facilities and uses to be located on the Subject Parcel, particularly the trackway and drainage elements, are necessary for the successful construction of the Project and the safe and efficient operation of the BART system. The parcel is uniquely suited to support these Project purposes.

The offer required by Section 7267.2 of the Government Code has been made to the owners of record of the Subject Parcel on December 12, 2008. The estimated market value of the Subject Parcel is \$486,800.00.

To date, negotiations appear to be at an impasse. After receiving notice of the Hearing on the Resolution of Necessity, counsel for the property owners submitted a letter to be made part of the record. That letter, together with the response of BART's condemnation counsel to the points raised therein and follow up correspondence between counsel are attached to this EDD for inclusion in the record. The property owners have been notified of the Board hearing on September 17, 2009.

In order to proceed with the recommended condemnation, the Board must determine each of the following:

1. The public interest and necessity require the proposed project.
2. The proposed project is planned or located in a manner that will be most compatible with the greatest public good and the least private injury.
3. The proposed property acquisition is necessary for said project.
4. Whether the offer required by Government Code section 7267.2 has been made to all owners of record, or the offer has not been made because the owner cannot be located with reasonable diligence.

FISCAL IMPACT:

Funding of \$486,800 for acquisition of Parcel J-2004-1A, J-2004-2A, and J-2004-3A is included in

Project 02EC, ROW Acquisition. The Office of the Controller/Treasurer certifies that funds are currently available to meet this obligation. Funds for the purchase will come from the following sources:

California Transportation Commission (CTC) Traffic Congestion Relief Program (TCRP)-WSX
Fund 55N: \$486,800

As of month end, June 30, 2009, \$42,631,543 is available for commitment from Fund Source 55N for Project 02EC, and \$13,812,114 has been committed by BART to date. There are \$4,121,783 in pending commitments in BART's financial management system. This action will commit an additional \$486,800, leaving an uncommitted balance of \$24,210,846 in this fund source.

There is no fiscal impact on available unprogrammed District reserves.

ALTERNATIVES: Withdraw the condemnation action and proceed with negotiations without the backing of eminent domain. Withdrawal of the condemnation action may result in the property not being available for Project construction when required and exposing BART to additional escalation on the capital cost of the WSX Project.

RECOMMENDATIONS: It is recommended that the Board adopt the attached Resolution of Necessity to condemn the Real Property.

MOTION: Adopt the attached, "Resolution of Necessity to Condemn Real Property; Make Findings and Determination; Authorize Eminent Domain Proceedings and Application for Possession Prior to Judgment for BART Parcels J-2004-1A, J-2004-2A and J-2004-3A; Draw and Deposit Warrant." (Two-thirds vote required.)

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

RESOLUTION OF NECESSITY TO CONDEMN
REAL PROPERTY; MAKE FINDINGS AND
DETERMINATIONS; AUTHORIZE EMINENT
DOMAIN PROCEEDINGS AND APPLICATION
FOR POSSESSION PRIOR TO JUDGMENT FOR
BART PARCELS J-2004-1A, J-2004-2A AND
J-2004-3A; DRAW AND DEPOSIT WARRANT /)

Resolution No.

Recitals

1. The San Francisco Bay Area Rapid Transit District ("BART or District") is undertaking the construction of the Warm Springs Extension Project (the "Project"). The BART Board of Directors ("Board") certified a California Environmental Quality Act ("CEQA") Final Environmental Impact Report ("FEIR") on September 15, 1992. The District prepared a Supplemental Environmental Impact Report ("SEIR") for the purpose of updating the 1992 FEIR due to changed circumstances and certain revisions to the Project since 1992. On June 26, 2003, following a public hearing, the Board certified the SEIR and adopted the Project.

2. The Federal Transit Administration ("FTA") and BART released a Final Environmental Impact Statement ("FEIS") for the Warm Springs Extension Project in July of 2006. The FTA issued a Record of Decision on October 24, 2006 which determined that the National Environmental Policy Act ("NEPA") requirements and other federal requirements for the Project have been satisfied.

3. The Project requires the acquisition of certain property owned by Patricia Snow, Trustee of The Patricia Snow Trust Agreement dated August 7, 1986, Charles B. Snow, Trustee of The Charles B. Snow Family Trust, Karl H. Hueken and Alayne D Hueken, Trustees of The Karl H. and

Alayne D Hueken Trust dated August 16, 1994 and Karl Fries, Trustee of The Karl Fries separate property trust UDT dated may 1, 1995 (the “Snow Parties”) that is defined in paragraph 5 of these Recitals as the Subject Property.

4. The District has complied with all requirements of CEQA and NEPA for the Project.

5. The District desires to acquire for public use, by exercise of the power of eminent domain, property interests, to wit, fee title, permanent easement and temporary construction easement together with all improvements situated thereon and together with all rights appurtenant thereto, to certain real property owned in fee simple by the Snow Parties, as its interests appear of record, which real property, or interests in property, is located at 2878 Prune Avenue, Fremont, California, 94539-6743, and is identified as BART Parcel Numbers J-2004-1A and J-2004-2A and J-2004-3A (Assessor’s Parcel Number 519-1310-007-05), and is more particularly described and shown in Exhibits A, B and C, attached hereto and incorporated herein by this reference (the “Subject Property”). Parcel J-2004-1A is to be acquired in fee, together with any improvements thereon. Parcel J-2004-2A is to be acquired as an easement in favor of Alameda County Flood Control and Water Conservation District and Parcel J-1027-3A is to be acquired as a temporary construction easement.

6. The Board of Directors constitutes the governing body of the District and is authorized by Sections 28953, 29010, and 29031 of the California Public Utilities Code to acquire the Subject Property by eminent domain.

7. The District has tendered a written offer to the owner or owners of record to purchase the Subject Property for the fair market value, and has sent to the owner or owners written notice of the intent to adopt this resolution of necessity.

8. The Board of Directors has given due consideration to all oral and documentary evidence presented and has found that the acquisition of the Subject Property is required by the public interest

and necessity for rapid transit purposes, more particularly to construct the Project and all incidents thereto.

Now, therefore, by vote of two-thirds or more of its members, the Board of Directors of the San Francisco Bay Area Rapid Transit District does find and resolve that:

1. The public interest and necessity require the proposed Project;
2. The proposed Project is planned and located in the manner which will be most compatible with the greatest public good and the least private injury;
3. The Subject Property is necessary for the proposed Project;
4. The offer required by Section 7267.2 of the California Government Code has been made to all owners of record of the Subject Property, or the offer has not been made because the owner cannot be located with reasonable diligence;
5. The District has complied with all conditions and statutory requirements, including those prescribed by CEQA, that are necessary to exercise the power of eminent domain to acquire the Subject Property;
6. The Subject Property is being acquired for a compatible use under California Code of Civil Procedure Section 1240.510 in that the District's use of the Subject Property will not interfere with or impair the continued use of the Subject Property for public utilities as they now exist or may reasonably be expected to exist in the future;
7. The Subject Property is being acquired for a more necessary public use under California Code of Civil Procedure Section 1240.610 in that the District's use of the Subject Property is a more necessary public use than the use to which the property is appropriated; and

8. The portion of the Subject Property identified as BART Parcel Number J-2004-2A is being acquired as substitute property for the Alameda County Flood Control and Water Conservation District pursuant to California Code of Civil Procedure Sections 1240.320 and 1240.330 and is necessary for the purposes specified in those sections. By letter dated July 29, 2009, the Alameda County Flood Control and Water Conservation District confirmed that it will accept BART Parcel Number J-2004-2A as substitute property.

Special counsel, Erickson, Beasley & Hewitt, are hereby AUTHORIZED AND EMPOWERED:

To acquire in the name of the San Francisco Bay Area Rapid Transit District, by condemnation, the Subject Property in accordance with the provisions of the Eminent Domain Law, the Code of Civil Procedure and the Constitution of California;

To prepare and prosecute in the name of the San Francisco Bay Area Rapid Transit District such proceedings in the proper court as are necessary for such acquisition; and

To deposit the probable amount of just compensation, based on an appraisal, and to apply to said court for an order permitting the San Francisco Bay Area Rapid Transit District to take immediate possession and use the Subject Property for said public uses and purposes.

The General Manager of the San Francisco Bay Area Rapid Transit District is hereby AUTHORIZED AND EMPOWERED:

To draw a warrant in the amount as determined by an appraisal of the fair market value of the Subject Property, made payable on California Transportation Commission (CTC) Traffic Congestion Relief Program (TCRP)-WSX Fund 55N, said warrant to be made payable to State of California--Condemnation Deposits Fund, and deliver said warrant to said special counsel or wire said sum

directly to the State of California Treasurer's Office, to be deposited with said payee as security for the order for possession hereinbefore authorized.

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**LEGAL DESCRIPTION
SNOW, SNOW, HEUKEN & FRIES
PORTION OF APN 519-1310-007-05
ALAMEDA COUNTY
CITY OF FREMONT, CALIFORNIA**

September 4, 2009

Being a portion of that certain real property as described in those certain Grant Deeds to Patricia Snow recorded December 17, 1987 as Document No. 87336258, Charles B. Snow recorded April 13, 1992 as Document No. 92111476, Karl H. and Alayne Heuken recorded September 06, 1994 as Document No. 94297585 and Karl Fries recorded May 26, 1995 as Document No. 95117587 Office of the Recorder of Alameda County, State of California being more particularly described as follows:

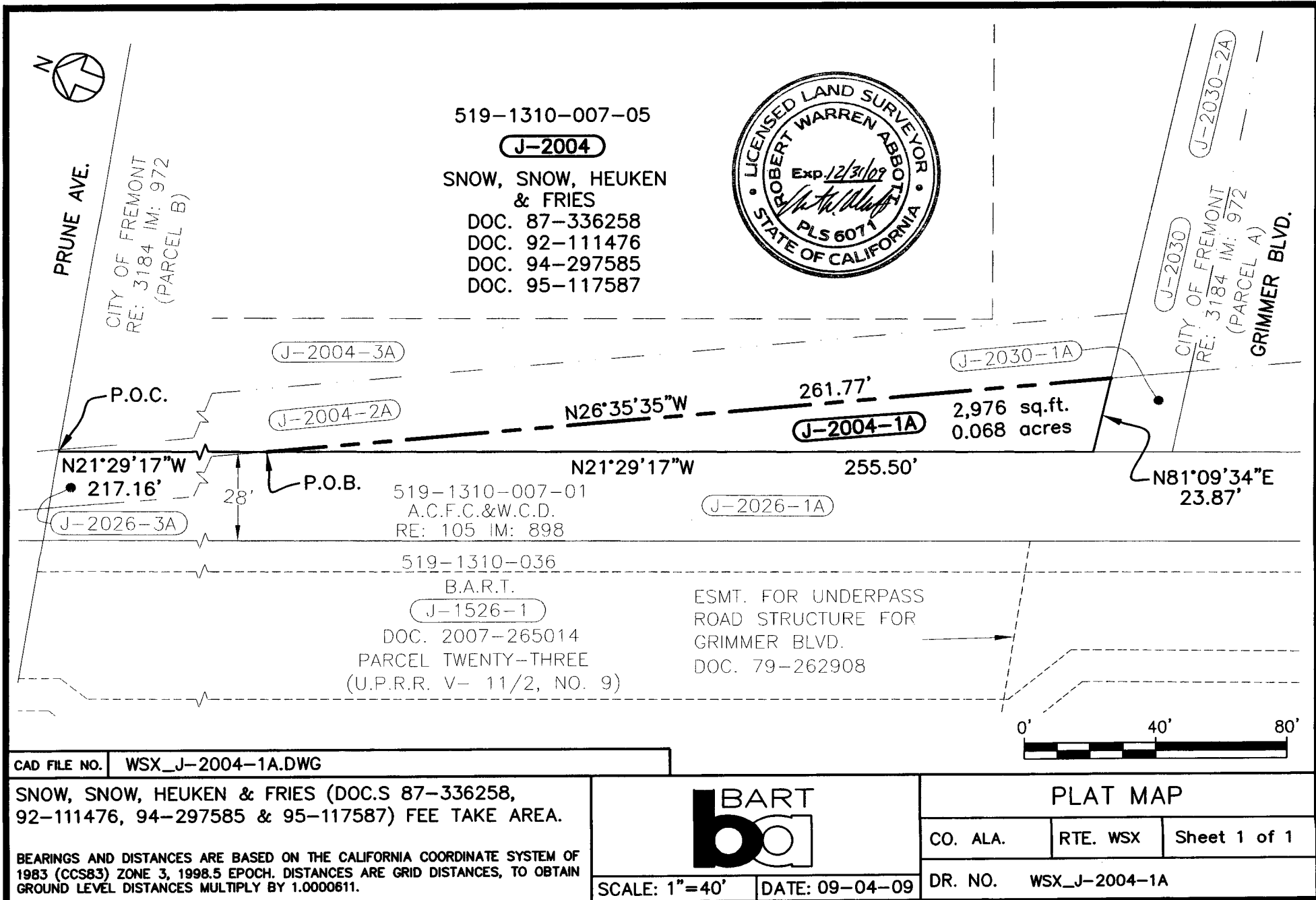
COMMENCING at the northeasterly corner of that certain 28 foot strip of land as described in that certain Grant Deed to Alameda County Flood Control and Water Conservation District recorded June 14, 1960 in Reel 105 Image 898 Office of the Recorder of Alameda County, State of California; thence along the easterly line of said 28 foot strip of land South $21^{\circ} 29' 17''$ East 217.16 feet to the **POINT OF BEGINNING**; thence leaving said easterly line South $26^{\circ} 35' 35''$ East 261.77 feet to a point on the northerly line of Parcel A recorded July 19, 1972 as described in Reel 3184 Image 972 Office of the Recorder of Alameda County, State of California; thence along said northerly line South $81^{\circ} 09' 34''$ West 23.87 feet to a point on the easterly line of said 28 foot strip of land; thence along said easterly line North $21^{\circ} 29' 17''$ West 255.50 feet to the **POINT OF BEGINNING**.

Containing 2,976 square feet of land (0.068 acres) more or less.

A Plat Map is attached hereto and made a part hereof.

This description is based on record, on file documents and field survey measurements. Bearings and distances are based on the California Coordinate System of 1983 (CCS83) Zone III, 1998.5 Epoch. Distances are grid distances, to obtain ground level distances multiply by 1.0000611.





**LEGAL DESCRIPTION
SNOW, SNOW, HEUKEN & FRIES
PORTION OF APN 519-1310-007-05
ALAMEDA COUNTY
CITY OF FREMONT, CALIFORNIA**

September 4, 2009

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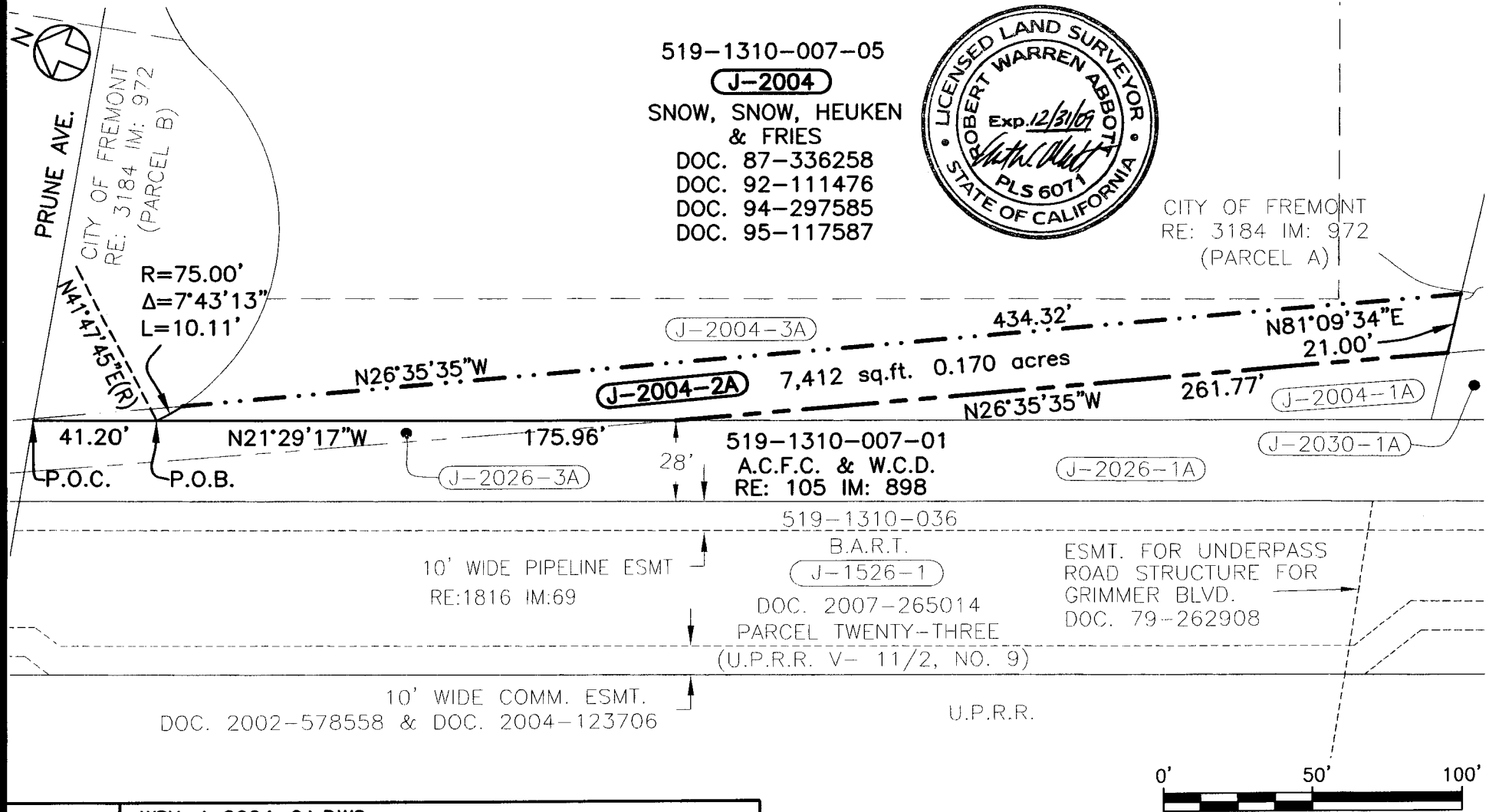
COMMENCING at the northeasterly corner of that certain 28 foot strip of land as described in that certain Grant Deed to Alameda County Flood Control and Water Conservation District recorded June 14, 1960 in Reel 105 Image 898 Office of the Recorder of Alameda County, State of California, being also the northwesterly corner of Parcel B recorded July 19, 1972 as described in Reel 3184 Image 972 Office of the Recorder of Alameda County, State of California; thence along the easterly line of said 28 foot strip of land South $21^{\circ} 29' 17''$ East 41.20 feet to the southwesterly corner of said Parcel B being a point of non-tangency of a curve concave northeasterly to which a radial line bears South $41^{\circ} 47' 45''$ West said point of non-tangency being the **POINT OF BEGINNING**; thence along said curve concave northeasterly having a radius of 75.00 feet southeasterly through a central angle of $07^{\circ} 43' 13''$ an arc length of 10.11 feet; thence South $26^{\circ} 35' 35''$ East 434.32 feet to a point on the northerly line of Parcel A recorded July 19, 1972 as described in Reel 3184 Image 972 Office of the Recorder of Alameda County, State of California; thence along said northerly line South $81^{\circ} 09' 34''$ West 21.00 feet; thence leaving said northerly line North $26^{\circ} 35' 35''$ West 261.77 feet to a point on the easterly line of said 28 foot strip of land; thence along said easterly line North $21^{\circ} 29' 17''$ West 175.96 feet to the **POINT OF BEGINNING**.

Containing 7,412 square feet of land (0.170 acres), more or less.

A Plat Map is attached hereto and made a part hereof.

This description is based on record, on file documents and field survey measurements. Bearings and distances are based on the California Coordinate System of 1983 (CCS83) Zone III, 1998.5 Epoch. Distances are grid distances, to obtain ground level distances multiply by 1.0000611.





CAD FILE NO. WSX_J-2004-2A.DWG

SNOW, SNOW, HEUKEN & FRIES (DOC.S 87-336258, 92-111476, 94-297585 & 95-117587), PERMANENT EASEMENT.

BEARINGS AND DISTANCES ARE BASED ON THE CALIFORNIA COORDINATE SYSTEM OF 1983 (CCS83) ZONE 3, 1998.5 EPOCH. DISTANCES ARE GRID DISTANCES, TO OBTAIN GROUND LEVEL DISTANCES MULTIPLY BY 1.0000611.



SCALE: 1"=50'

DATE: 09-04-09

PLAT MAP

CO. ALA.

RTE. WSX

Sheet 1 of 1

DR. NO. WSX_J-2004-2A

PERMANENT EASEMENT

A permanent non-exclusive storm drain easement (the "Storm Drain Easement") to construct, build, install, repair, reconstruct, and perpetually use, maintain and operate a storm drain with appurtenances and improvements thereto (collectively, the "Storm Drain Facilities") over, under, across, and through that portion of the real property described in this Exhibit B located in the city of Fremont, County of Alameda, State of California, identified as Assessor's Parcel Number 519-1310-007-05, together with the right of vehicular and pedestrian ingress and egress to and from the Storm Drain Easement at all times for the purpose of constructing, reconstructing, installing, operating, inspecting, repairing, maintaining, removing and replacing the Storm Drain Facilities.

**LEGAL DESCRIPTION
SNOW, SNOW, HEUKEN & FRIES
PORTION OF APN 519-1310-007-05
ALAMEDA COUNTY
CITY OF FREMONT, CALIFORNIA**

September 4, 2009

Being a portion of that certain real property as described in those certain Grant Deeds to Patricia Snow recorded December 17, 1987 as Document No. 87336258, Charles B. Snow recorded April 13, 1992 as Document No. 92111476, Karl H. and Alayne Heuken recorded September 06, 1994 as Document No. 94297585 and Karl Fries recorded May 26, 1995 as Document No. 95117587 Office of the Recorder of Alameda County, State of California being more particularly described as follows:

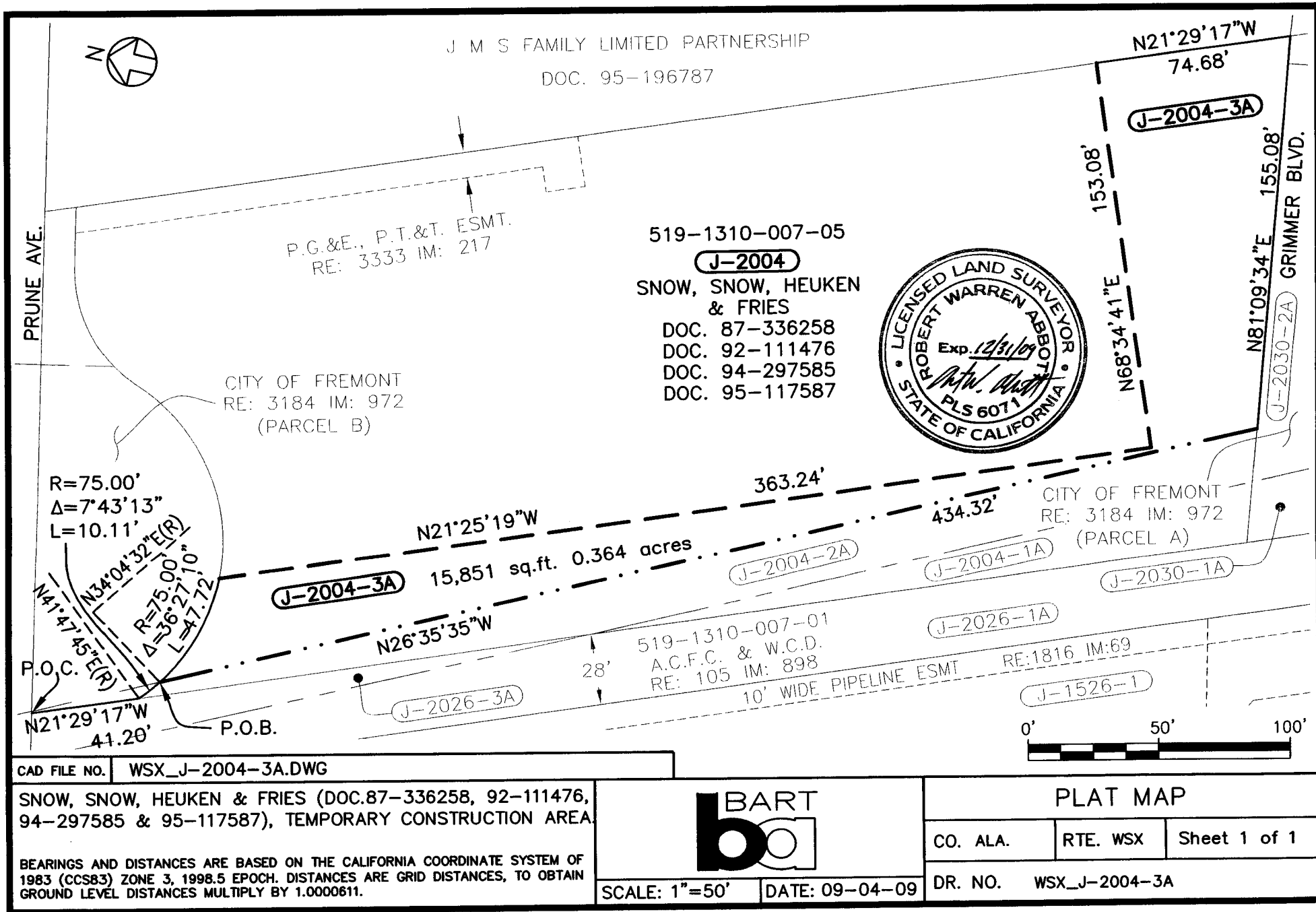
COMMENCING at the northeasterly corner of that certain 28 foot strip of land as described in that certain Grant Deed to Alameda County Flood Control and Water Conservation District recorded June 14, 1960 in Reel 105 Image 898 Office of the Recorder of Alameda County, State of California, being also the northwesterly corner of Parcel B recorded July 19, 1972 as described in Reel 3184 Image 972 Office of the Recorder of Alameda County, State of California; thence along the easterly line of said 28 foot strip of land South $21^{\circ} 29' 17''$ East 41.20 feet to the southwesterly corner of said Parcel B being a point of non-tangency of a curve concave northeasterly to which a radial line bears South $41^{\circ} 47' 45''$ West; thence along the southerly line of said Parcel B and along said non-tangent curve concave northeasterly to which a radial line bears South $41^{\circ} 47' 45''$ West having a radius of 75.00 feet through a central angle of $07^{\circ} 43' 13''$, an arc length of 10.11 feet to the **POINT OF BEGINNING**; thence continuing along said southerly line and said curve through a central angle of $36^{\circ} 27' 10''$ an arc length of 47.72 feet; thence leaving said southerly line South $21^{\circ} 25' 19''$ East 363.24 feet; thence North $68^{\circ} 34' 41''$ East 153.08 feet to a point on the easterly line of said Snow, Snow, Heuken and Fries; thence along said easterly line South $21^{\circ} 29' 17''$ East 74.68 feet to the northeasterly corner of Parcel A recorded July 19, 1972 as described in Reel 3184 Image 972 Office of the Recorder of Alameda County, State of California; thence along the northerly line of said Parcel A South $81^{\circ} 09' 34''$ West 155.08 feet; thence leaving said northerly line North $26^{\circ} 35' 35''$ West 434.32 feet to the **POINT OF BEGINNING**.

Containing 15,851 square feet of land (0.364 acres), more or less.

A Plat Map is attached hereto and made a part hereof.

This description is based on record, on file documents and field survey measurements. Bearings and distances are based on the California Coordinate System of 1983 (CCS83) Zone III, 1998.5 Epoch. Distances are grid distances, to obtain ground level distances multiply by 1.0000611.

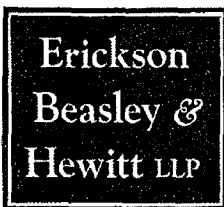




TEMPORARY CONSTRUCTION EASEMENT

This temporary construction easement is for a period during construction as part of the San Francisco Bay Area Rapid Transit District's Warm Springs Extension Project in the city of Fremont, County of Alameda, State of California.

BART will provide the property owner six (6) months written notice prior to commencing any activities in the temporary construction easement area ("Commencement Notice"). The temporary construction easement will expire eighteen (18) months after BART delivers the Commencement Notice or on December 31, 2015, whichever occurs first.



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Allison D. Daniels
adaniels@ebhw.com

August 19, 2009

Michael G. Thornton, Esq.
Nossaman LLP
50 California Street, 34th Floor
San Francisco, CA 94111

RE: San Francisco Bay Area Rapid Transit District / Snow Property

Dear Mr. Thornton:

I am in receipt of your letter dated August 17, 2009 in response to my letter of August 12, 2009.

Unfortunately, we do not agree with your interpretation of Code of Civil Procedure section 1263.025 and, as you know, no case law is available for either of us to establish our respective views with certainty. That being said, we stand by our position and take issue with your contention that our interpretation penalizes the property owner. Based on our view, the statute simply encourages early resolution so that both parties can avoid the expense of litigation, including attorney fees, which will substantially exceed the \$5,000 you requested if this matter proceeds to trial.

Although it appears at this time that we cannot agree as to how section 1263.025 should be interpreted, we would like to re-iterate that BART remains committed to continue to try to work with you and your client to resolve this matter and is willing to meet with you at your earliest convenience at a mutually convenient time.

Finally, per your request, we will include your letter as part of the record and will consider it to be equivalent to your appearing at the hearing and making the same comments contained therein.

Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in cursive script that reads "Allison D. Daniels".

Allison D. Daniels

ADD:di

Q:\BART\Snow 1574\Letter\Thornton 081909 reply 0817 lt.wpd



VIA FACSIMILE & U.S. MAIL

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Michael G. Thornton
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mthornton@nossaman.com

Refer To File #: 400170-0001

August 17, 2009

Ms. Allison D. Daniels Esq.
Erickson, Beasley, Hewitt & Wilson
483 Ninth St.
Oakland, CA 94607

Re: San Francisco Bay Area Rapid Transit District v. Snow
Snow Property Located at 2878 Prune Ave., Fremont, CA

Dear Ms. Daniels:

This letter responds to your correspondence to me of August 12, 2009. Your client BART has sent a new Notice of Hearing Regarding Adoption of Resolution of Necessity to Acquire Property by Eminent Domain ("Notice") setting the hearing for September 10, 2009. I hereby request that this letter be placed in the record of the hearing that occurs on September 10 and that it be provided to the BART Board Members for their consideration. Please let me know immediately if you will not permit this letter to become part of the record of this matter. Also, please let me know immediately if you will not consider this letter to be equivalent to my appearing at the hearing and making the same comments contained in this letter.

Your letter asserts that BART's December 12, 2008 Summary Statement Relating to Purchase of Real Property or Interest Therein ("Summary Statement") contained an offer to reimburse reasonable appraisal costs up to \$5,000 incurred by the property owners that complied with Code of Civil Procedure § 1263.025. Your letter notes, however, that: "BART's agreement to reimburse the owner for an appraisal was subject to certain conditions, including a time limit for reimbursement. BART placed this time limit on its offer to pay appraisal fees in order to insure that the appraisal would be used for pre-condemnation negotiation purposes rather than litigation."

First, the offer to reimburse reasonable appraisal expenses incurred by the owners up to \$5,000 set forth in the Summary Statement did not comply with Section 1263.025. Instead, BART unilaterally imposed conditions on the offer that are not found in the statute and that are inconsistent with the intent of the statute. BART's attempt to include such conditions in its supposed "offer," and its claim that a property owner who does not comply with those conditions has no further rights under that section, is wrong. Your argument to the contrary is faulty. You claim that "section 1263.025 only requires that the offer be made at the time the public entity makes an offer to purchase the property." While that is true, § 1263.025 actually defines an offer to purchase property under threat of eminent domain to include an offer to purchase property "following an adoption of resolution of necessity for the property pursuant to section

Ms. Allison D. Daniels Esq.
August 17, 2009
Page 2

1240.040." (C.C.P. § 1263.025(b)(2).) Your letter dismisses without comment that and other provisions of § 1263.025. It is impossible to reconcile the language of § 1263.025 with your tortured interpretation of it.

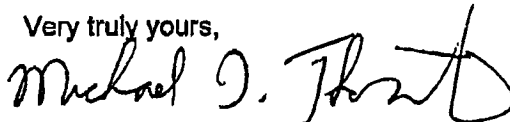
Second, your contention that § 1263.025 "was intended to facilitate the purchase of property without the need for a condemnation trial," is inconsistent with the statutory language. That indeed may have been one purpose of the section, but clearly not its only purpose. You state that "once it becomes clear that negotiated purchase is impossible and an eminent domain action is necessary, it is not for the public agency to pay the cost of an owner's trial appraiser." This is inconsistent with the clear intent of the section to reimburse a property owner for reasonable appraisal costs up to \$5,000. The statute does not limit the use of that appraisal as you suggest. BART has to comply with § 1263.025 even if a property owner is not inclined to negotiate with BART for the purchase of its property. Moreover, your letter disturbingly suggests that a property owner who is not willing to use the appraisal to negotiate with BART is not entitled to any reimbursed appraisal fee under § 1263.025. This penalizes a property owner who does not play ball with BART and instead insists that BART take the property under eminent domain. It also seems coercive in nature: negotiate with BART or you will not get the \$5,000. See Government Code section 7267.5. In my client's case such a policy is especially unfair because they did not intend to nor, as explained in my prior letter, could they have, negotiated with BART in December 2008.

Third, and perhaps most disturbingly, your letter suggests that BART's offer of reimbursement is not subject to meaningful judicial review. To the contrary, BART's failure to comply with § 1263.025 is not immune from judicial review. Nor is BART's attempt to penalize property owners who chose not to negotiate with BART. I suspect the court, and the jury, will see through BART's attempt to evade its obligations under § 1263.025.

In summary, BART has unilaterally added conditions to reimbursement that are not in § 1263.025 and that are unreasonable and unfair to property owners. In addition, your letter makes clear that BART intends to penalize property owners who don't play ball with BART by denying them the benefit of § 1263.025. BART's interpretation of that section is the antithesis of what the statute clearly intended to accomplish.

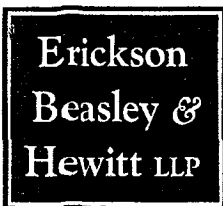
Please let me know if you have any questions or comments regarding this letter. I trust that you will make sure that this letter becomes part of the record of the hearing on September 10, 2009.

Very truly yours,



Michael G. Thornton
of Nossaman LLP

MGT/cte



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www.ebhw.com

Allison D. Daniels
adaniels@ebhw.com

Transmitted by Fax and U.S. Mail

August 12, 2009

Michael G. Thornton, Esq.
Nossaman LLP
50 California Street, 34th Floor
San Francisco, CA 94111

RE: San Francisco Bay Area Rapid Transit District / Snow
Snow Property Located at 2878 Prune Ave., Fremont, CA

Dear Mr. Thornton:

This letter is in response to your correspondence to Mr. Foronda dated July 23, 2009.

As you may know by now, the hearing on the Resolution of Necessity originally scheduled for August 13, 2009 has been continued to September 10, 2009. Per your request, your July 23, 2009 correspondence will be placed in the record at the time of the continued hearing. Also, please note that we will consider your letter to be the equivalent of your appearing at the hearing and making the same comments contained in your letter.

Additionally, we would like to respond to your claim that BART failed to comply with Code of Civil Procedure section 1263.025, and that its lack of compliance constitutes a challenge to BART's right to take the subject property.

As you know, on or about December 12, 2008, BART offered to purchase the subject property for \$486,100.00, which was the amount an independent appraiser determined to be just compensation. The offer package included a Summary Statement Relating To Purchase of Real Property Or An Interest Therein, which stated that BART would pay actual reasonable costs up to \$5,000 should the owner elect to obtain an independent appraisal. BART's agreement to reimburse the owner for an appraisal was subject to certain conditions, including a time limit for reimbursement. BART placed this time limit on its offer to pay appraisal fees in order to ensure that the appraisal would be used for pre-condemnation negotiation purposes rather than litigation.

Your letter asserts that Code of Civil Procedure section 1263.025 requires that the offer to pay appraisal fees should be extended until such time a Resolution of Necessity on the subject property is adopted and an eminent domain action is filed, and that BART's failure to extend this offer constitutes a viable right to take challenge. We do not believe your position has merit for the following reasons:

First, Code of Civil Procedure section 1263.025¹ only requires that an offer be made at the time the public entity makes an offer to purchase the property. BART has complied with this provision.

Second, Code of Civil Procedure section 1245.230 merely provides that the Board make a finding that the offer required by Section 7267.2 of the Government Code was made to the owner or owners of record. Section 7267.2 concerns only an offer for just compensation for the subject property.² BART has complied with this provision. Therefore, BART's unwillingness to continue to reimburse the owner for appraisal fees after a resolution of necessity is adopted (assuming it is passed) cannot constitute a right to take challenge.

Third, Code of Civil Procedure section 1263.025 was intended to facilitate the purchase of property without the need for a condemnation trial. The ability to obtain an independent appraisal at no cost allows a property owner to negotiate knowledgeably with the public agency. If a purchase price can be negotiated without condemnation, this serves the public policy goal of reducing the overall cost of public projects. For a public agency, payment of up to \$5,000 for an independent appraisal, if it leads to a purchase, is far less expensive than a condemnation action. Therefore, once it becomes clear that negotiated purchase is impossible and an eminent domain action is necessary, it is not for the public agency to pay the cost of an owner's trial appraiser.

Finally, once litigation commences and proceeds, an established statutory scheme as to pre-trial offers and demands comes into play, and property owners may recover litigation expenses, including reasonable appraiser's fees, through the existing statutory framework. Code Civ. Proc. § 1250.410. Nothing in the language of section 1263.025 indicates that it is intended to supplant these existing provisions once litigation is initiated.

¹ Code of Civil Procedure section 1263.025 states in pertinent part:

(a) A public entity shall offer to pay the reasonable costs, not to exceed five thousand dollars (\$5,000), of an independent appraisal ordered by the owner of a property that the public entity offers to purchase under a threat of eminent domain, **at the time the public entity makes the offer to purchase the property**. The independent appraisal shall be conducted by an appraiser licensed by the Office of Real Estate Appraisers. (Emphasis added.)

² Government Code section 7267.2 states in pertinent part:

(a) Prior to adopting a resolution of necessity pursuant to Section 1245.230 of the Code of Civil Procedure and initiating negotiations for the acquisition of real property, the public entity shall establish an amount which it believes to be just compensation therefore, and shall make an offer to the owner or owners of record to acquire the property for the full amount so established....

Michael G. Thornton, Esq.
August 12, 2009
Page 3

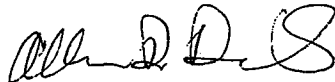
Snow Property Located at 2878 Prune Ave., Fremont, CA

Accordingly, based on the foregoing, BART has complied with the applicable law and its alleged lack of compliance cannot constitute a right to take challenge.

I also would like to address the statement in your letter that provides that BART failed to provide information to your client regarding BART's construction plans. Given that this is a design build project, the only plans that have been prepared are preliminary construction plans. It is our understanding that BART has made those plans available to your client and has provided all additional information requested by your client that BART has available.

Please advise if you have further questions regarding this matter. Thank you for your courtesy and cooperation.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Allison D. Daniels', with a stylized flourish at the end.

Allison D. Daniels

ADD:di



VIA FACSIMILE & U.S. MAIL

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JUL 24 2009

E. B. H. & W.

Refer To File #: 400170-0001

July 23, 2009

Mr. Dante Foronda Esq.
Erickson, Beasley, Hewitt & Wilson
483 Ninth St.
Oakland, CA 94607

Re: San Francisco Bay Area Rapid Transit District v. Charles Snow, et al.

Dear Mr. Foronda:

Your client BART has sent a Notice of Hearing Regarding Adoption of Resolution of Necessity Authorizing the Commencement of Eminent Domain Proceedings ("Notice") to acquire property described in attachments to the Notice. The Notice indicates the Board will consider the adoption of the Resolution at its meeting on August 13, 2009 at 9:00 a.m.

As you know, I represent the landowners whose property is at issue in this matter. I hereby request that this letter and its contents be placed in the record of the hearing that occurs on August 13, 2009 and that it be provided to the BART Board Members for their consideration. This request is *in lieu* of a property owner or one of their representatives appearing at the hearing to be heard on this issue. Please let me know immediately if you will not permit this letter to become part of the record of this matter, or if you deem that this request to have this letter become part of the record is not sufficient to preserve the objection contained in this letter as an affirmative defense that can be raised at trial. I look forward to hearing from you on this issue.

Section 1263.025 of the Code of Civil Procedure provides as follows:

"(a) A public entity shall offer to pay the reasonable costs, not to exceed five thousand dollars (\$5,000), of an independent appraisal ordered by the owner of a property that the public entity offers to purchase under a threat of eminent domain, at the time the public entity makes the offer to purchase the property. The independent appraisal shall be conducted by an appraiser licensed by the Office of Real Estate Appraisers.

(b) For purposes of this section, an offer to purchase a property 'under a threat of eminent domain' is an offer to purchase a property pursuant to any of the following:

- (1) Eminent domain.
- (2) Following adoption of a resolution of necessity for the property pursuant to Section 1240.040.
- (3) Following a statement that the public entity may take the property by eminent domain."

The owners of the parcel that BART seeks to acquire pursuant to its Notice hereby object that BART has not made the offer required by § 1263.025. The property owners hereby demand that BART immediately make an offer that complies with § 1263.025 and will deem any failure to do so as an objection to BART's right to take their property. It is the sincere hope of the property owners that BART will comply with its obligations under the law and that they will not be forced to raise such an objection as an affirmative defense in answer to a complaint that BART may subsequently file. If you disagree, and believe BART has made an offer for reimbursement that complies with § 1263.025, I would appreciate a prompt response from you setting forth your position in that regard.

On April 8, 2009, I wrote a letter to Diane New, in response to a letter from her stating that the property owners "have not made any request for reimbursement of appraisal costs nor will they be inclined to make a request for reimbursement until BART moves forward and adopts a Resolution of Necessity. If BART in fact adopts a Resolution, BART will need to comply with § 1263.025(b)(3) at that time." A copy of my April 8, 2009 letter to Ms. New is attached hereto as Exhibit A and should also be included as part of the record for the hearing on August 13, 2009. No representative from BART has ever responded to, much less disagreed with, any of the assertions in my April 8 letter to Ms. New.

In any event, even if BART made an offer for reimbursement of an independent appraisal that complied with § 1263.025, prior to the announcement of its intent to adopt a Resolution of Necessity in this matter, it would have been premature and my clients would not have been in a position to accept it at that time for a variety of reasons, including, but not limited to the following:

1. BART had not irrevocably committed itself to condemning their property and the interests therein, and my clients did not wish to negotiate with BART, or sell the property or any interests therein to BART;
2. My clients have attempted to find out BART's plans for the construction on the property and for the construction immediately surrounding the property, but have been unable to get access to much of the information they need in order to do a reasoned analysis of severance damages in this part take situation; and
3. My clients had not been informed until recently about when BART might be inclined to adopt a Resolution of Necessity to acquire their property and, under the circumstances, they did not have enough information about a purported date of value for the property to have an appraiser do meaningful work.

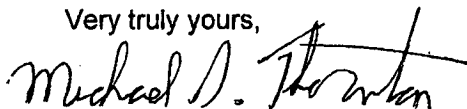
For these and other reasons, had an offer for reimbursement under § 1263.025 been made by BART at a previous time, my clients would not have been able to accept it prior to the Notice that they recently received. Given that it is clear that one intent of § 1263.025 is to attempt to level the playing field and allow a property owner to negotiate with a public agency at the time a public agency indicates it will be acquiring property by eminent domain, at least under the unique circumstances of this case, and for the reasons set forth above, BART must make the offer contemplated by § 1263.025 at this time.

I realize there is no case law construing § 1263.025 but the plain language of the statute strongly supports this interpretation and the Legislature obviously concluded that property owners must be treated fairly under the statute by public agencies and therefore put in various times when such an offer under § 1263.025 must be made by a public agency. Because of this, we believe that the appropriate affirmative defense would be an objection to the right to take should an offer complying with § 1263.025 not be made prior to the commencement of a lawsuit. Such a defense would be particularly justified in this case given the fact that BART has been on notice of this position since at least April 8, 2009 and has now had ample opportunity to either make such an offer or explain its failure to do so. It has done neither. This letter merely requests that BART do what is required and sensible and make an offer under § 1263.025 to reimburse my clients for an independent appraisal in the manner required by that statute as soon as possible.

Please let me know if you have any questions or comments about this matter. If you disagree with this analysis, I would request that you send me a letter setting forth your reasons. Also, if you do not agree that this letter can become a part of the record of the hearing scheduled for August 13, 2009, but will instead insist that property owners personally appear at the hearing, please let me know that also in writing.

Thank you for your courtesy and cooperation in this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael G. Thornton". The signature is fluid and cursive, with a large, stylized initial "M".

Michael G. Thornton
of Nossaman LLP

MGT/cte
Enc. (Exh. A – 4/8/09 letter to Ms. New)



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Michael G. Thornton
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mthornton@nossaman.com

Refer To File #: 400170-0001

VIA E-MAIL & U.S. MAIL

April 8, 2009

Diane New
Senior Right of Way & Acquisition Agent
Universal Field Services, Inc
325 April Way
Campbell, CA 95008

Re: San Francisco Bay Area Rapid Transit District v. Charles Snow, et al.

Dear Ms. New:

This responds to your April 7, 2009 letter regarding California Code of Civil Procedure § 1263.025. I am writing to you since you did not give me the name of any BART counsel working on this. Please let me know if I should send this to BART's counsel rather than you.

First, you reference a "written request for reimbursement" made on March 23, 2009. I do not know what you mean by this since my March 23, 2009 letter to you does not request any reimbursement under Section 1263.025. Please let me know what "written request for reimbursement" you are referring to.

Second, we did have a discussion on or around March 18, 2009, in which we discussed the reimbursement issue. I merely inquired as to BART's position regarding its obligations under Section 1263.025 to make the offer for reimbursement called for in that section. You stated that BART has the policy you refer to in your letter and that it would stick to it. Under the circumstances, it would have been pointless to, and I did not, make any "request for reimbursement" in that telephone call.

Third, C.C.P. § 1263.025 is clear about when such offers must be made. To date, in our view, BART has not made an offer that complies with Section 1263.025. We expect BART will comply with its obligations under that statute. Should BART fail to comply, however, we will raise the issue at the appropriate time. If a lawsuit is subsequently filed, we will raise that issue as an objection to BART's right to take the property. BART is now on fair notice that we will raise any failure to comply with C.C.P. § 1263.025 as a defense to its right to take the property. Moreover, based on that defense, among other possible reasons, we would oppose any attempt by BART to obtain prejudgment possession of the property or any interests in it.



At this point, the property owners have not made any request for reimbursement of appraisal costs nor will they be inclined to make a request for reimbursement until BART moves forward to adopt a resolution of necessity. If BART in fact adopts such a resolution, BART will be required to comply with Section 1263.025(b)(3) at that time.

Once again, if you believe a written request for reimbursement was made on March 23, 2009, please let me know what you are referring to. Thank you for your continued cooperation in this matter.

Very truly yours,


Michael G. Thornton
of Nossaman LLP

MGT/cte

FUNDING SUMMARY - WARM SPRINGS EXTENSION PROGRAM

PROJECT ELEMENT	Baseline Budget	Current Forecast 8/4/09	REMARKS
<u>ENVIRONMENTAL, ENGINEERING AND CONSTRUCTION MANAGEMENT</u>			
Design	\$59,312,460	\$63,958,436	
Construction Management	\$30,045,000	\$30,045,000	
Environmental Clearance	\$3,600,715	\$3,724,199	<i>Completed</i>
TOTAL E, E & CM	\$92,958,175	\$97,727,635	
<u>CONSTRUCTION</u>			
Fremont Subway	\$282,000,000	\$164,100,660	
Line, Track, Station & Systems	\$376,000,000	\$362,100,000	
Misc. Construction Contracts	\$0	\$12,000,000	
TOTAL CONSTRUCTION	\$658,000,000	\$538,200,660	
<u>BART SERVICES</u>			
District-Furnished Materials	\$0	\$8,000,000	
BART Force Account Work	\$0	\$7,000,000	
TOTAL BART SERVICES	\$0	\$15,000,000	
<u>PROGRAM COSTS</u>			
Program Costs (HazMat, Consulting, Staff, Insurance, Financing Costs and Environmental Mitigation)	\$55,871,020	\$71,560,822	
Right-Of-Way Acquisitions	\$80,394,486	\$79,474,747	<i>Expended \$48,552,112 as of end of Jul09.</i>
Contingency	\$2,776,319	\$88,036,136	
TOTAL PROGRAM COSTS	\$139,041,825	\$239,071,705	
TOTAL FUNDING	\$890,000,000	\$890,000,000	

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

MEMORANDUM

TO: Board of Directors

DATE: September 9, 2009

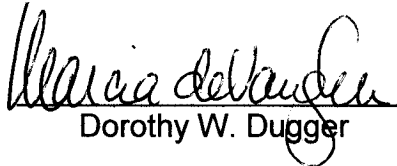
FROM: General Manager

SUBJECT: Ratification of 2009-2013 Labor Agreement with ATU

The Board is scheduled to vote on whether to approve the recently negotiated labor agreement with ATU Local 1555 at the September 17, 2009 Board Meeting.

The District's Negotiator has prepared the attached overview of changes to highlight the revisions to the agreement resulting from the tentative agreement reached on August 9, 2009. Also attached is the Resolution that will be put before the Board at the Meeting.

If you have any questions, please contact me or Carol Stevens, Chief Negotiator, at (650) 327-2672.


Dorothy W. Dugger

cc: Board Appointed Officers
Deputy General Manager
Executive Staff
Carol Stevens

Attachment

2009-2013 District-ATU Tentative Agreement

Summary of Changes from 2005-2009 Agreement

This document represents a summary of the changes negotiated with the Union. As the specific contract language is not presented, it should not be relied on as providing every detail. It is merely descriptive. In the event there is any inconsistency between this summary and the labor agreement, it is the language and intent of the labor agreement which governs.

Section 1.2 – Term of Agreement: The agreement shall take effect July 1, 2009 and terminate June 30, 2013 (four years).

Section 1.5 – Beneficial Practices: The Beneficial Practices provision was revised and provides that a past practice cannot become a term of the Labor Agreement, unless it has been accepted by management and is unequivocal, clearly enunciated and acted upon.

Section 5.2 – PERS – Medical & Prescription Drug Benefits
Bay Area Blue Shield or Bay Area Kaiser Plan, whichever is greater, is established as Maximum District Contribution towards CalPERS Health Plans for employees and retirees.

Employees who opt-out of District paid medical coverage will receive \$100 per month as “Medical Opt-out in lieu” payment.

The District will suspend the anticipated FY 12 and FY 13 contribution of 1.627% of wages into the Money Purchase Pension Plan.

Section 8.2 – Cost of Living/Wage Adjustment

A Cost of Living Adjustment shall be granted to the wages and salaries of all employees at the conclusion of the contract in 2013.

Section 9.0 – Sick Leave & Disability

The Retirement Sick Leave Buy-Back program was eliminated. The District, through an amendment of its PERS contract, will convert unused sick leave into PERS Service Credit at the time of retirement. Employees will continue to have the option to “buy-back” sick leave on a yearly basis. Employees also have the one-time option to convert current sick leave, either accrued or banked into PERS credit. If that option is not exercised, all sick leave accrued before October 19, 2009 will be preserved and distributed in accordance with prior provisions.

Section 12.0 – Seniority: Pursuant to side letters executed before bargaining commenced, the Transportation Clerk title was changed to Transportation Administration Specialist and a Senior Scheduling Analyst position added.

Section 13.2 – Lunch/Rest Break Eight (8) Hour Shifts: District shall maintain rest/lunch break facilities at all stations and to the extent that it is financially feasible, upgrade facilities to meet minimum standards.

Section 13.4 – Choice of Shifts/Sign-Ups: Shift assignments for Station Agents may require report locations anywhere on lines that they have bid.

Section 13.7 – 4-10 Work Week/Station Agents: The District may establish 4-10 work shifts at any station.

NEW Section 13.8 – Station Agent/Parking: The District will designate one (1) parking space in each lot for working agents at that station up to a limit of four (4) spaces,

Effective September 1, 2009, the District will provide three (3) parking spaces for Agents in the downtown San Francisco, Oakland, and Berkeley stations and one (1) space at the 16th and 24th Street stations in San Francisco.

Section 14.0 – Special Provisions – Train Operators:

Section 14.1 – General Rules: Train Operators can operate “Shuttle Service” at stations designated by the District. “Shuttle Service” must be less than thirty (30) minutes in length. Shuttle operators are provided breaks between 70 and 100 minutes of continuous shuttle operation.

Section 14.3 – 4-10 Work Week/Train Operators: The lunch break window will be between the beginning of the fourth (4th) hour and before the end of the seventh (7th) hour of a ten (10) hour shift.

Section 15.0 – Special Provisions – Transportation Clerks: Reference to Transportation Clerks changed to Transportation Administration Specialist.

Section 17.0 – Special Provisions – Scheduling Analyst and Senior Budget Clerk: Senior Scheduling Analyst position created.

Section 19.5 – Choice of Shifts – Zone/Terminal Zone/Yard/Tower – Foreworkers: One (1) additional day added to perform the Foreworker system bidding.

Section 21.0 – Special Provision – Employee Development Specialists, Senior Transportation – Training Clerks, Senior Transportation Clerks and Temporary Employee Development Specialists: All references to Transportation Clerk changed to Transportation Administration Specialist.

Section 23.0 – Systemwide Extra Board: Station Agents on the M-line will have report locations at two (2) segments, Embarcadero – Daly City and Daly City – Millbrae stations.

Station 26.0 – Available Vacations/Vacation Increments: The District will allow one (1) employee to take vacation in a one (1) day increment for each increment of thirty (30) employees in a classification and location (line/yard).

Section 27.1 – Holidays: Martin Luther King's Birthday changed to the 3rd Monday in January.

Section 27.2 – Employee's Birthday: Employees may elect to work on their birthday and convert it into a floating holiday.

Section 27.3 – Scheduling: The District shall determine the level of service to the public on all holidays.

Section 27.4 – Holiday Pay: On holidays, employees will not receive double time (2) for hours worked beyond their regularly scheduled shift. All additional hours will be paid at one and one-half (1-1/2) times regular rate of pay.

Section 34.1 – Health and Safety: The District will provide proper equipment for moving heavy objects and other assistive devices to accommodate employees.

Section 34.2 – Joint/Union Management Safety Committee: An Accommodation Sub-Committee will be designated.

NEW Section 34.6 – Closing Agent/End of Revenue: Station Agents may leave stations after properly securing and closing the station without loss of pay after the last revenue train has left and all patrons have left the station.

Section 35.0 – Union Representatives: Total District paid Union Business Leave shall not exceed 8320 hours per fiscal year. This total excludes the time allotted for conducting bids, for Joint District/Union Committees and the paid time provided to the Union Vice President.

Section 40.0 – Grievance Procedures

Section 40.2 – Grievance Filing: When grievances are filed with the immediate supervisor, a simultaneous copy shall be sent to Labor Relations.

Section 40.5 – Grievance Committee: Grievance or discipline not resolved within sixty (60) calendar days of referral to the committee shall be automatically moved to 3-3-1 Arbitration or forward arbitration.

Section 41.1 – Request for Arbitration: The parties will strike for an arbitration within ten (10) days after a request for arbitration is made.

Section 42.0 – Non-Discrimination, Affirmative Action: Title of section changed to "Non-Discrimination, Equal Employment Opportunity".

Section 44.0 – Special Provisions – Part-Time Train Operators and Station Agents: Bereavement Leave made available to Part-Time Employees. Part Time Train Operators and Station Agents given option to purchase dental and vision insurance at their own expense.

NEW Section 44.24 – Special Provisions Part Time Station Agents: Part Time Station Agents may exchange shifts.

Section 46.0 – Side Letters and Memoranda of Understanding (MOU): All memoranda of Understanding, Side Letters of Agreement or any other agreement existing prior to ratification of this Agreement, unless mutually extended, are null and void.

Section 47.0 – Base Wage Schedule: Employees will receive the following lump sum payments that will not be added to the wage schedule:

FY 10 \$0

FY 11 \$500

FY 12 \$1000

FY 13 \$1500

Also provides for the potential of a 1% wage increase at the conclusion of the contract if certain criteria are met.

MOU #03-94 – Part Time Station Agent Bidding Procedures: The District may schedule ten (10) hour shifts on weekends at multi-centroid stations.

Station Agent Stipulated Decision/MOU: The District shall determine the number of Station Agents on the Extra Board. The Extra Board shall not be less than twenty-one (21%) of the number of full-time Agents.

Section 7B4 concerning the filling of Flexible Core Shift Vacancies shall be suspended for the period July 1, 2009 – June 30, 2013.

The Station Agent Implementation Committee shall be comprised of at least two (2) Union members and two (2) but not more than four (4) management members.

Foreworker MOU: : For the period July 1, 2009 to June 30, 2013, three (3) Line Foreworker positions will change from grave shift to the Extra Board. One (1) graveyard Foreworker will fill the Senior Operations Foreworker Office position. The total line positions will change from 21.4 to 17.4. The Foreworkers Extra Board staffing level will change from 8 to 11.

Side Letter – Retiree Medical Eligibility and Cost Savings:

All interested bargaining units and the District will jointly seek legislation to amend relevant Government Code Sections and permit BART to adopt a 15-year eligibility schedule for retiree medical. If the all parties agree to the 15-year eligibility schedule and the schedule saves the District money, the parties agree to discuss allocation of savings, including allocation to wage increases.

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

In the matter of Ratifying the 2009 - 2013

Collective Bargaining Agreement between the

District and ATU, Division 1555 / Resolution No. _____

BE IT RESOLVED that the Board of Directors of the San Francisco Bay Area Rapid Transit District hereby ratifies the 2009 - 2013 Collective Bargaining Agreement between the District and Amalgamated Transit Union, Division 1555, as generally described in the attached Summary of Changes; and

BE IT FURTHER RESOLVED that the General Manager is authorized to execute the Agreement on behalf of the District.

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Adopted _____

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

MEMORANDUM

TO: Board of Directors DATE: September 9, 2009

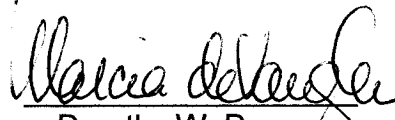
FROM: General Manager

SUBJECT: Ratification of 2009-2013 Labor Agreement with AFSCME

The Board is scheduled to vote on whether to approve the recently negotiated labor agreement with AFSCME Local 3993 at the September 17, 2009 Board Meeting.

The District's Negotiator has prepared the attached overview of changes to highlight the revisions to the agreement resulting from the tentative agreement reached on July 31, 2009. Also attached is the Resolution that will be put before the Board at the Meeting.

If you have any questions, please contact me or Carol Stevens, Chief Negotiator, at (650) 327-2672.


Dorothy W. Dugger

cc: Board Appointed Officers
Deputy General Manager
Executive Staff
Carol Stevens

Attachment

2009-2013 District-AFSCME Tentative Agreement

Summary of Changes from 2005-2009

This document represents a summary of the changes negotiated with the Union. As the specific contract language is not presented, it should not be relied on as providing every detail. It is merely descriptive. In the event there is any inconsistency between this summary and the labor agreement, it is the language and intent of the labor agreement which governs.

Section 1 – Duration of Agreement: The agreement will take effect July 1, 2009 and terminate June 30, 2013, (four years).

Section 3.2A – Classification: The following classifications have been added, (based on prior assignment to AFSCME);

District Right-of-Way Supervisor
Facilities/utilities Location Coordinator
Logistics Program Administrator
Maintenance Support Administrator
Manager of Access Programs
Manager of Credit/Debit Fare Programs
Senior Right-of-Way Officer
Supervisor, Business Systems Operations
Technical Maintenance Support Administrator

Section 3.2F – Contracting out work normally performed by an AFSCME classification: AFSCME does not have exclusive jurisdiction over work performed by its classifications. However, the Union President will be given advance notice, via the usual Contract Notification form, when work normally performed by an AFSCME classification is being considered for contracting. The President will have seven (7) days to give input to the responsible Department Head. Thereafter, the Department Head's decision is final.

Section 3.2.1A – Evaluation, Assessment and Revision of Job Descriptions and Classifications: The parties will meet in an effort to reach mutual agreement regarding the status of the 2007 Segel Classification Study. The meetings must be completed by December 31, 2009.

Section 8 – Union Representatives: The Union President will have two (2) designated full-release days per week. The Union President shall receive grave shift differential. The Union's negotiating team shall consist of no more than twelve (12) members.

Section 18 – Parenting Leave: Date correction.

Section 24 – Pass Privileges: An employee must notify the District when his/her marriage is dissolved so that the spouse's pass privileges can be terminated.

Section 33 – PERS Medical and Prescription Drug Benefits: Bay Area Blue Shield or Bay Area Kaiser Plan, whichever is greater, is established as Maximum District Contribution towards CalPERS Health Plans for employees and retirees.

Employees who opt-out of District paid medical coverage will receive \$100 per month as “Medical Opt-out in lieu” payment.

The District will suspend the anticipated FY 13 contribution of 1.627% of wages into the Money Purchase Pension Plan.

Section 35 – Sick Leave: The Retirement Sick Leave Buy-Back program was eliminated. The District, through an amendment of its PERS contract, will convert unused sick leave into PERS Service Credit at the time of retirement. Employees will continue to have the option to “buy-back” sick leave on a yearly basis. Employees also have the one-time option to convert current sick leave, either accrued or banked into PERS credit. If that option is not exercised, all sick leave accrued before October 19, 2009 will be preserved and distributed in accordance with prior provisions.

Section 43 – Safety Shoes: The District will pay each employee required to wear safety shoes \$125 per year, payment made in September.

Section 44 – Lost Articles: If possible, employees must turn in lost articles on the day they are found.

Section 47 – Compensation: Employees will receive the following lump sum payments that will not be added to the wage schedule:

FY 10 \$0

FY 11 \$500

FY 12 \$1000

FY 13 \$1500

Also provides for the potential of a 1% wage increase at the conclusion of the contract if certain criteria are met.

Section 48 – Holidays / Section 49 - Vacations: Each employee will donate 16 straight time hours of new vacation accrual in FY 10; each employee will donate 24 straight time hours of new vacation accrual or floating holiday accrual in FY 11.

NEW Section 56.1: AFSCME represented employees will have access to the Elapsed Time page to enter their time. They will not be permitted to make base line schedule changes.

Section 58 – Beneficial Practices: The General Manager and Union President will meet within sixty (60) days after receipt of a beneficial practice claim at the GM level.

Section 59 – Grievance Procedure: Formal grievances may be processed only by an AFSCME designee and must be submitted to the District's Labor Relations Office. The parties will establish a permanent arbitration panel. Arbitration appeals will be scheduled and heard within specified time limits. The "immediate arbitration" process has been eliminated.

NEW Section 61 – Workdays and Workweek: The District will conduct a pilot Alternative Work Program, permitting an employee to telecommute part or all of their workweek. Participation by an employee is voluntary, and must be approved by both the Department and Executive Manager. The program will be overseen and evaluated by the District's Manager of Human resources.

Section 66 – Job Postings: Job vacancies may be posted on the internet in lieu of a paper posting, at the District's option.

Section 72 – Special Provisions Applicable to Operations Control Center - Rest Periods: Clarifies but does not change compensation for Train Controllers working alone with no more than *de minimus* assistance.

Section 74 – Special Provisions Applicable to Operations Control Center - Extra Board: Establishes a forty (40) hour "bank" each quarter to compensate extra board Train Controllers for working sixth and seventh days.

Section 77 – Special Provisions Applicable to Operations Control Center - Vacation Allocation: Operations Control Center employees may only bid for vacations based on accrued vacation leave on the book at the time of the bid.

Section 78 – Special Provisions Applicable to Operations Control Center - Overtime Allocation: Establishes a specific "pecking order" for involuntary overtime assignments in the Operations Control Center.

Section 80 – Special Provisions Applicable to Operations Control Center - Performance Incentives: Already established Operations Control Center incentives will be paid based on weekday, Monday - Friday, performance.

Section 82 – Special Provisions Applicable to Power and Way Controllers (P&W) - Scheduling: Changes "Division Manager, Maintenance Support," to "OCC Scheduling Manager."

Section 83 – Special Provisions Applicable to Power and Way Controller Supervisor (P&W) - scheduling: Changes "Division Manager, Maintenance Support" to "OCC Scheduling Manager."

Section 84 – Special Provisions Applicable to Line/Yard Senior Operations/Line Operations Supervisors - Clothing Maintenance Allowance: Section has been deleted.

Section 85 – Special Provisions Applicable to Line/Yard Senior Operations/Operations Supervisors - Uniforms: The Chief Transportation Officer will have the exclusive right to fund the uniform program each year, based on the recommendation of the Uniform Committee. The uniform maintenance allowance shall be \$25 per month.

Section 86 – Special Provisions Applicable to Line/Yard Senior Operations Supervisors and Operations Supervisors - Scheduling: Supervisors shall bid once each year, system-wide. If the District decides that it is necessary to realign the bid, the Union will assist in developing and scheduling the realignment.

Section 89 – Special Provisions Applicable to Yard and Line Senior Operations/Operations Supervisors - Vacation Allocation: The vacation period shall be year-round.

Section 91 – Probationary Period: For employees in classifications requiring certification, the probationary period shall cover the entire certification period.

Side Letter #AFSCME/SL-1 – Train Controllers On-the-Job Instructor Program (OJI): Temporary OJI's will be paid 1.5 hours of overtime for each day or portion of a day they perform the temporary assignment.

NEW Side Letter – Retiree Medical Eligibility and Cost Savings: All interested bargaining units and the District will jointly seek legislation to amend relevant Government Code Sections and permit BART to adopt a 15-year eligibility schedule for retiree medical. If the all parties agree to the 15-year eligibility schedule and the schedule saves the District money, the parties agree to discuss allocation of savings, including allocation to wage increases.

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

In the matter of Ratifying the 2009 - 2013

Collective Bargaining Agreement between the

District and AFSCME, Local 3993 /

Resolution No. _____

BE IT RESOLVED that the Board of Directors of the San Francisco Bay Area Rapid Transit District hereby ratifies the 2009 - 2013 Collective Bargaining Agreement between the District and AFSCME, Local 3993, as generally described in the attached Summary of Changes; and

BE IT FURTHER RESOLVED that the General Manager is authorized to execute the Agreement on behalf of the District.

###

Adopted _____

Memorandum

cc: Board Appointed Officers
Deputy General Manager
Executive Staff