

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

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

AGENDAS FOR BOARD AND COMMITTEE MEETINGS

October 8, 2009

9:00 a.m.

A regular meeting of the Board of Directors and regular meetings of the Standing Committees will be held on Thursday, October 8, 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 regular meeting, you may do so under General Discussion and Public Comment.

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

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

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

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

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

Kenneth A. Duron

District Secretary

Regular Meeting of the
BOARD OF DIRECTORS

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

1. CALL TO ORDER

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

2. CONSENT CALENDAR

- A. Approval of Minutes of the Meeting of October 1, 2009 (Special).* Board requested to authorize.
- B. Award of Contract No. 15TE-120, Aerial Structure Fall Protection – West Oakland, Phase 2.* Board requested to authorize.
- C. Award of Invitation for Bid No. 8864, Liner Panel, Lower Cover of Side Door.* Board requested to authorize.
- D. Award of Invitation for Bid No. 8867, Liner Door Pockets.* Board requested to authorize.
- E. Audit of Directors' Use of District Property for Fiscal Year 2009.* For information.

RECESS TO STANDING COMMITTEES

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

ALL COMMITTEES ARE ADVISORY ONLY

ADMINISTRATION COMMITTEE

Immediately following the Board Meeting recess

Director Murray, Chairperson

- A-1. (CONTINUED from September 24, 2009, Administration Committee Meeting)
Authority to Withdraw from Northern California Power Agency Agreement for Renewable Geothermal Power Supply.* Board requested to authorize.
- A-2. Ratification of Collective Bargaining Agreement with BART Police Managers' Association.* Board requested to authorize.
- A-3. Ratification of Side Letter Agreements with BART Police Officers' Association.* Board requested to authorize.
- A-4. Approval of Amended California Public Employees Retirement System Retirement Contract with the Addition of Service Credit for Unused Sick Leave Option.* Board requested to authorize.
- A-5. Resolutions Fixing the Employer's Contribution under the Public Employees' Medical and Hospital Care Act.* Board requested to authorize.
- A-6. General Discussion and Public Comment.

ENGINEERING AND OPERATIONS COMMITTEE

Immediately following the Administration Committee Meeting

Director Keller, Chairperson

- B-1. Award of Contract No. 42EL-210B, Procurement of C-1 Car Auxiliary Power Supply Equipment.* Board requested to authorize.
- B-2. Award of Contract No. 15IG-110, Ashby Station Modernization.* Board requested to authorize.
- B-3. General Discussion and Public Comment.

PLANNING, PUBLIC AFFAIRS, ACCESS, AND LEGISLATION COMMITTEE

Immediately following the Engineering and Operations Committee Meeting

Director Sweet, Chairperson

- C-1. Exclusive Negotiating Agreement with The Red Barn Company and the Hercules Redevelopment Agency for Development Project in the New Town Center Area.* Board requested to authorize.
- C-2. General Discussion and Public Comment.

RECONVENE BOARD MEETING

3. CONSENT CALENDAR ADDENDA

Board requested to authorize as recommended from committee meetings above.

4. REPORTS OF STANDING COMMITTEES

A. ADMINISTRATION COMMITTEE

- A-1. (CONTINUED from September 24, 2009, Administration Committee Meeting)
Authority to Withdraw from Northern California Power Agency Agreement for Renewable Geothermal Power Supply.* Board requested to authorize.
- A-2. Ratification of Collective Bargaining Agreement with BART Police Managers' Association.* Board requested to authorize.
- A-3. Ratification of Side Letter Agreements with BART Police Officers' Association.* Board requested to authorize.
- A-4. Approval of Amended California Public Employees Retirement System Retirement Contract with the Addition of Service Credit for Unused Sick Leave Option.* Board requested to authorize.

- A-5. Resolutions Fixing the Employer's Contribution under the Public Employees' Medical and Hospital Care Act.* Board requested to authorize.

B. ENGINEERING AND OPERATIONS COMMITTEE

- B-1. Award of Contract No. 42EL-210B, Procurement of C-1 Car Auxiliary Power Supply Equipment.* Board requested to authorize.
- B-2. Award of Contract No. 15IG-110, Ashby Station Modernization.* Board requested to authorize.

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

- C-1. Exclusive Negotiating Agreement with The Red Barn Company and the Hercules Redevelopment Agency for Development Project in the New Town Center Area.* Board requested to authorize.

5. GENERAL MANAGER'S REPORT

NO REPORT.

6. BOARD MATTERS

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

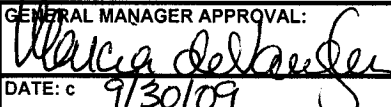
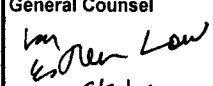

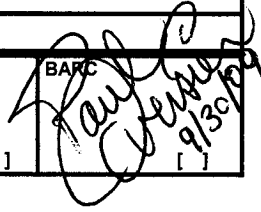

7. GENERAL DISCUSSION AND PUBLIC COMMENT

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

- A. CONFERENCE WITH LABOR NEGOTIATORS:
 - Designated representatives: Dorothy W. Dugger, General Manager; Teresa E. Murphy, Assistant General Manager – Administration; and Maria Robinson.
 - Employee Organization: BART Police Officers' Association
 - Government Code Section: 54957.6



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: 		GENERAL MANAGER ACTION REQ'D:		
DATE: c 9/30/09		BOARD INITIATED ITEM: No		
Originator/Prepared by: Pepe Vallenias Dept: Maintenance and Engineering	General Counsel  9/30/09 []	Controller/Treasurer  9/30/09 []	District Secretary []	BART  9/30/09 []
Signature/Date:  9/30/09				
TITLE:				

Award Contract No. 15TE-120, Aerial Structure Fall Protection, West Oakland, Phase II

NARRATIVE:

PURPOSE:

To authorize the General Manager to award Contract No. 15TE-120: "Aerial Structure Fall Protection, West Oakland, Phase II" to California Engineering Contractors, Inc. of Pleasanton.

DISCUSSION:

Elevated BART aerial structures currently have no guardrails. Workers need to wear full body harness fall protection devices and be tethered to perform maintenance and other work on the aerial structures. Mobility and work speed are affected, especially since most of the maintenance work is done at night during non-revenue hours. With the installation of guard rails on the aerial structure, the workers' safety and work efficiency will be significantly improved.

The work under this contract consists of providing all labor, materials, equipment and other accessories necessary to install approximately 2,200 linear feet of guard rails on the aerial structure between Trans Bay Tube and Hwy 880. This is the second phase of a system-wide effort to provide fall protection. Additional phases will be implemented as funds become available with the goal of eventually completing installation of fall protection for all BART aerial structures.

This contract was advertised pursuant to the revised DBE Program requirements. The Office of Civil Rights reviewed the scope of work for this contract and determined that there were no subcontracting opportunities, therefore, no DBE participation goal was set for this contract.

Advance Notice to Bidders was mailed out on July 17, 2009 to 44 prospective bidders. The Contract was advertised on July 21, 2009. Contract Documents were mailed to 19 plan rooms and minority assistance organizations. A Pre-Bid Meeting was held on July 31, 2009, with a total of eleven (11) prospective bidders in attendance. One addendum was issued to make revisions to the specifications. Seven bids were received as follows:

<u>Bidder</u>	<u>Location</u>	<u>Total Bid</u>
1. Golden Bay Fence Plus Iron Works, Inc.	Stockton	\$753,476
2. Taber Construction Inc.	Martinez	\$512,000
3. William P. Young Construction, Inc.	San Leandro	\$493,447
4. Summit Steel Works, Corp.	Mountain View	\$465,000
5. Bugler Construction, Inc.	Pleasanton	\$448,000
6. Beliveau Engineering Contractors, Inc.	Oakland	\$434,600
7. California Engineering Contractors, Inc.	Pleasanton	\$347,000

ENGINEER'S ESTIMATE

\$574,000

Staff has determined that the bid submitted by California Engineering Contractors, Inc. is responsive to the solicitation, and that the bidder's license, business experience, and financial capabilities indicate that the bidder is responsible. Staff has also determined that the bid price of \$347,000 is fair and reasonable.

Staff has determined that there will be no significant effect on the environment with installation of guardrails on the aerial structures at BART facilities, and that the work is categorically exempt from the provisions of the California Environmental Quality Act (CEQA), pursuant to CEQA Guidelines Section 15301(f), which exempts the addition of safety protection for existing facilities and structures. The project will receive federal funding and is therefore subject to the National Environmental Policy Act (NEPA). The federal funding agency, FTA, has concurred that implementation of the project will not have a significant impact on the environment and qualifies for a categorical exclusion as defined under 23 CFR 771.117 (c)(18).

FISCAL IMPACT:

Funding for this \$347,000 award of Contract No. 15TE-120 is included in the total project budget for the FMS #15TE, Aerial Structure Fall Protection. The Office of the Controller/Treasurer certifies that funds are currently available to meet this obligation.

F/G 53G – FTA CA 05-0224

\$347,000

As of month ending 8/30/09, \$1,000,000 is available for commitment from this fund source for this project and BART has committed \$0 to date. There is no pending commitment in BART's financial management system. This action will commit \$347,000 leaving an uncommitted balance of \$653,000 in this fund source.

There is no fiscal impact on available un-programmed District Reserves.

ALTERNATIVES:

The Board may reject all bids and re-bid the contract. Rejecting bids will delay the guard rail installation, and is not likely to result in better pricing.

RECOMMENDATION:


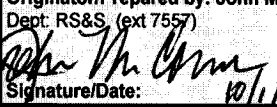
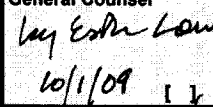

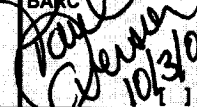
Adoption of the following motion:

MOTION:

The General Manager is authorized to award Contract No. 15TE-120: "Aerial Structure Fall Protection, West Oakland, Phase II" for the bid price of \$347,000 to California Engineering Contractors, Inc. pursuant to notification to be issued by the General Manager, and subject to the District's protest procedures and FTA's requirements related to protest procedures.



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: 		GENERAL MANAGER ACTION REQ'D: Approve and Forward to the Board of Directors	
DATE: 10/2/09		BOARD INITIATED ITEM: No	
Originator/Prepared by: John McCormick Dept. RS&S (ext 7557)  Signature/Date: 10/1/09	General Counsel  10/1/09 []	Controller/Treasurer  10/1/09 []	District Secretary  10/3/09 []
Status: Routed		Date Created: 09/25/2009	

TITLE:

Invitation for Bid No. 8864: Procurement of Liner Panel, Lower Cover of Side Door

NARRATIVE:

PURPOSE:

To authorize the General Manager to award Invitation for Bid (IFB) No. 8864 to Hadlock Plastics LLC, Geneva, OH in an amount not to exceed \$163,966.50.

DISCUSSION:

The existing BART car configuration does not have a space large enough to easily accommodate a standard bicycle. The lack of open space and designated area for bicycles and other large items on the cars creates capacity issues, and does not allow for efficient circulation, thereby negatively impacting station dwell times. As part of the District's efforts to improve the interior capacity of revenue vehicles, BART began the process of increasing the capacity of C2 cars through a Car Reconfiguration Program in 2007. This vehicle capacity change opened space next to doors for bikes, luggage, strollers and additional standees. The project included the removal of seats and windscreens to create these open spaces.

The work of this Contract expands this reconfiguration effort to an additional 205 revenue vehicles. The interiors of the District's revenue vehicles are lined with specially formed panels on the side walls and ceilings. This Contract provides fiberglass panels that the District intends to install to cover the lower section of the wall panel near the doorway.

This is a twenty-four (24) month estimated quantity contract. Pursuant to the terms of the District's standard estimated quantity contract, during the term of the Contract, the District is required to purchase from the supplier a minimum amount of fifty (50) percent of the Contract Bid Price. Upon Board approval of this Contract, the General Manager will also have the authority to purchase up to 150 percent of the Contract Bid Price, subject to the availability of funding.

A Notice Requesting Bids was published on September 9, 2009. Bid requests were mailed to eight (8) prospective Bidders. Bids were opened on September 29, 2009 and the following four (4) Bids were received.

<u>Bidder</u>	<u>Total Including 9.75% Sales Tax</u>
Hadlock Plastics LLC Geneva, OH	\$163,966.50
Professional Plastics San Jose, CA	\$239,694.00
Performance Composites, Inc. Compton, CA	\$240,352.50
Microphor Willits, CA	\$367,890.78

Independent cost estimate by BART staff: \$207,000.00.

Staff has determined that the Bidder Hadlock Plastics LLC submitted a responsive Bid, and that the Bid pricing is fair and reasonable based on similar purchases.

Fiscal Impact:

Funding of \$163,967 for contract 43KD-227 was secured through an American Recovery and Reinvestment Act of 2009 (ARRA) grant and is included in the total project budget for the FMS#43KD – Car Interior Capacity. The Office of the Controller/Treasurer certifies that funds are currently available to meet this obligation.

CA-96-X001 (ARRA) Stimulus Fed. 54K **\$163,967**

As of month ending 08/30/09, \$1,050,000 is available for commitment from this fund source for this project and BART to date has committed \$0. There is \$877,843 pending commitment in BART's financial management system. This action will commit an additional \$163,967, leaving an uncommitted balance of \$8,190 in this fund.

There is no fiscal impact on available unprogrammed District Reserves.

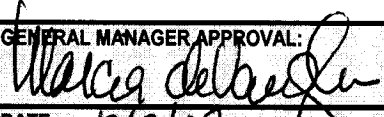
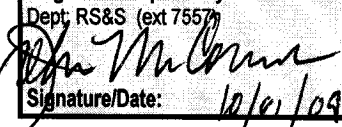
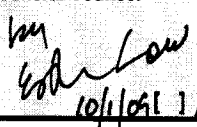
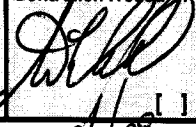
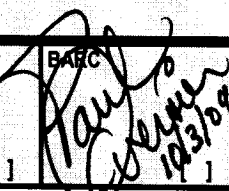
Alternatives: The alternative is to reject all Bids and readvertise the contract. This alternative is problematic, however, as this project utilizes ARRA stimulus funds, which are granted under specific time constraints. . Delays associated with readvertising and rebidding the contract could jeopardize that funding. Moreover, readvertising this Contract is not likely to lead to a better price or more competition.

Recommendation: Adoption of the following motion.

Motion: The General Manager is authorized to award IFB No. 8864, an estimated quantity contract for Liner Panel, Lower Cover of Side Door to Hadlock Plastics LLC for the Bid price of \$163,966.50, including all applicable sales tax, pursuant to notification to be issued by the General Manager, subject to compliance with the District's Protest Procedures and FTA's requirements related to protest procedures.



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: 		GENERAL MANAGER ACTION REQ'D: Approve and Forward to the Board of Directors		
DATE: 10/2/09		BOARD INITIATED ITEM: No		
Originator/Prepared by: John McCormick Dept: RS&S (ext 7557)  Signature/Date: 10/1/09	General Counsel  10/1/09 []	Controller/Treasurer  10/1/09 []	District Secretary []	BART  10/3/09 []
Status: Routed		Date Created: 09/25/2009		

TITLE:

Invitation for Bid No. 8867: Procurement of Liner Door Pockets

NARRATIVE:

PURPOSE:

To obtain Board authorization for the General Manager to award Invitation for Bid (IFB) No. 8867 to Hadlock Plastics LLC. in an amount not to exceed \$226,450.97, including all applicable sales tax, for the purchase of Liner Door Pockets.

DISCUSSION:

As part of the District's efforts to improve the interior capacity of revenue vehicles, this project will modify revenue vehicle interiors by adding more open space to better accommodate peak period ridership, bicycles, luggage, and strollers. The existing BART car configuration does not have a space large enough to easily accommodate a standard bicycle. The lack of a designated area for bicycles and other large items on the cars creates capacity issues, and does not allow for efficient circulation, thereby negatively impacting station dwell times.

In 2007, BART began the process of increasing the capacity of C2 cars through an Interior Reconfiguration Program. This vehicle capacity change opened space next to doors for bikes, luggage, strollers and additional standees. The project included the removal of seats and windscreens to create these open spaces. Today's request expands this reconfiguration effort to an additional 205 revenue vehicles. The interiors of the District's revenue vehicles are lined with specially formed panels on the side walls and ceilings. As part of the capacity reconfiguration project, the District intends to install liner panels in place of the removed longitudinal seats near each doorway, which will cover the side door pockets.

This is a twenty-four (24) month estimated quantity contract. Pursuant to the terms of the District's standard estimated quantity contract, during the term of the contract, the District is required to purchase from the supplier a minimum amount of 50 percent of the contract bid price. Upon Board approval of this contract, the General Manager will also have the authority to purchase up to 150 percent of the contract bid price, subject to the availability of funding.

This procurement was previously advertised as IFB 8850, and was authorized by the Board at the

July 23, 2009 meeting. Subsequent to that Board authorization, the low bidder was unwilling to perform. Accordingly, the bid was readvertised as this procurement, IFB No. 8867.

A notice requesting bids was published on September 9, 2009 and bid requests were mailed to six (6) prospective bidders. Bids were opened on September 29, 2009 and four (4) bids were received.

<u>Bidder</u>	<u>Total Including 9.75% Sales Tax</u>
Hadlock Plastics, LLC. Geneva, OH	\$226,450.97
Professional Plastics San Jose, CA	\$297,154.71
Microphor Willits, CA	\$387,891.40
Performance Composites, Inc. Compton, CA	\$388,482.08

Independent cost estimate by BART staff: \$380,880.00.

Staff has determined that the bidder Hadlock Plastics, LLC submitted a responsive bid, and that the bid pricing is fair and reasonable based on similar purchases.

Fiscal Impact:

Funding of \$226,451 for contract 43KD-224 was secured through an American Recovery and Reinvestment Act of 2009 (ARRA) grant and is included in the total project budget for the FMS#43KD – Car Interior Capacity. The Office of the Controller/Treasurer certifies that funds are currently available to meet this obligation.

CA-96-X001 (ARRA) Stimulus Fed. 54K **\$226,451**

As of month ending 08/30/09, \$1,050,000 is available for commitment from this fund source for this project and BART to date has committed \$0. There is \$815,359 pending commitment in BART's financial management system. This action will commit an additional \$226,451, leaving an uncommitted balance of \$8,190 in this fund.

There is no fiscal impact on available un-programmed District Reserves.

Alternatives: To reject all bids and readvertise the contract. This is not likely to lead to more

competition or a lower price. Additionally, this contract is funded through ARRA stimulus funding, which is granted under specific time constraints. Delays associated with readvertising the contract could jeopardize funding.

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

Motion: The Board authorizes the General Manager to award IFB No. 8867, an estimated quantity contract for Liner Door Pockets to Hadlock Plastics for the bid price of \$226,450.97, including all applicable sales tax, pursuant to notification to be issued by the General Manager, subject to compliance with the District's Protest Procedures and FTA requirements related to protests.

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

MEMORANDUM

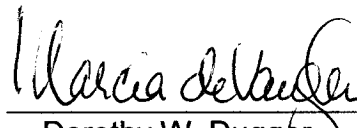
TO: Board of Directors DATE: October 2, 2009

FROM: General Manager

SUBJECT: Consent Calendar Item 2E: Audit of Directors' Use of District
Property

Attached is the Internal Audit Department's final audit report – *Audit of Directors' Use of District Property*. The subject item is calendared on the October 8, 2009 Board meeting agenda.

If you have any questions regarding the audit, please contact Darlene Cummins at (510) 464-7514.


Dorothy W. Dugger

Attachment

cc: Board Appointed Officers
Deputy General Manager
Executive Staff

*Audit of Directors' Use of District Property
for Fiscal Year 2009*

BACKGROUND

The Internal Audit Department has audited the District's compliance with the requirements of the San Francisco Bay Area Rapid Transit District's *Rules of the Board of Directors* Board Rule 5-3.5, Use of District Property Other than Automobiles. The Rules require that the Internal Audit Department shall complete an annual audit for the previous fiscal year for compliance with the requirements of Board Rule 5-3.5, and shall submit the audit report, including a list of property issued to each Director, to the next Administration Committee following September 15 for review and forwarding to the full Board.

Board Rule 5-3.5 requires that:

- Directors may have use and possession of specifically identified District property that is comparable in cost and function to equipment available to District employees;
- The property shall be returned when a Director leaves office;
- Directors request the property through the District Secretary's Office;
- The District Secretary request quarterly that the Directors review their cellular phone and calling card charges;
- Directors reimburse within 30 days of the quarterly request the costs that are not for District business; and
- The District Secretary report to the Board President or Vice President if the quarterly requests are not responded to or reimbursements not made within 30 days.

The purpose of our audit was to determine whether the District complied with the requirements of Board Rule 5-3.5 for the fiscal year ended June 30, 2009. To accomplish our purpose, we reviewed the requirements of the Board Rule, reviewed the report for the audit of compliance with the Board Rule done for the previous year, examined records maintained by the District Secretary, notified Directors of the property recorded in the District's records as issued to each Director, and conducted discussions with the staff of the District Secretary's Office.

We performed the audit in accordance with generally accepted government auditing standards and included such tests as we considered necessary in the

*Audit of Directors' Use of District Property
for Fiscal Year 2009*

**BACKGROUND
(Con'd)**

circumstances. We used the *Rules of the Board of Directors* Board Rule 5-3.5 as criteria for the audit.

We provided Kenneth A. Duron, District Secretary, with a draft copy of our audit report on September 3, 2009. We discussed the draft audit report with him on September 11, 2009, and he had no additional comments.

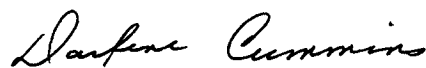
**SUMMARY OF
AUDIT RESULTS**

We found that in fiscal year 2009 the District complied in all material respects with the requirements of Board Rule 5-3.5. A list of property issued to each Director as recorded in the District's records is shown in Exhibit A.

Our review identified fiscal year 2009 Director cell phone bills that were not responded to, with any applicable reimbursements to the District, within thirty days, as required by Board Rule 5-3.5(c). The District Secretary reported these cell phone bills to the President of the Board of Directors as also required by Board Rule 5-3.5(c). The bills were still outstanding at the close of our audit:

- One Director's July, August, and September bills have been signed, but reimbursement to the District, as identified by the Director, has not been provided.
- One Director's August through February and April through June (10 bills) have been signed, but reimbursement to the District, as identified by the Director, has not been provided. The March bill has not been responded to.

Additionally, in our prior review, "Audit of Directors' Use of District Property for Fiscal Year 2008," we examined cell phone bills for the fourth quarter of fiscal year 2008 that were distributed to Directors on August 14, 2008. Directors' bills were due to the District Secretary's Office on September 13, 2008. As of our audit cutoff date on September 8, 2008, two Directors had not completed this process for fourth quarter cell phone bills. The bills are still outstanding.



Darlene Cummins, Department Manager
Internal Audit Department

*Audit of Directors' Use of District Property
for Fiscal Year 2009*

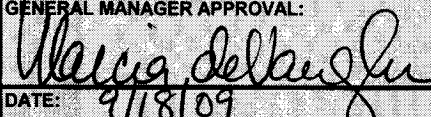
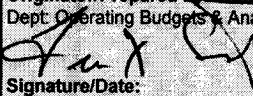
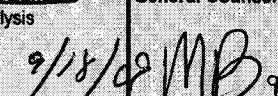

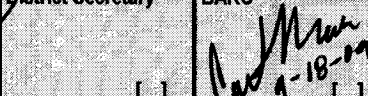
Exhibit A

Schedule of District Property in Directors' Custody
As of June 30, 2009

DIRECTOR	PROPERTY DESCRIPTION
Gail Murray 1st District	Blackberry Global Wireless Handheld
Joel Keller 2nd District	LCD Monitor Motorola Razr Cellular Telephone
Bob Franklin 3rd District	Blackberry Wireless Handheld HP Photosmart Printer iMAC Personal Computer
Carole Ward Allen 4th District	Dell Computer Dell Laptop Computer HP All-In-One Printer Blackberry Wireless Handheld
John McPartland 5th District	Blackberry Storm Wireless Handheld Dell XPSM Laptop Business Card Scanner
Thomas M. Blalock 6th District	Motorola Cellular Telephone HP Fax Machine
Lynette Sweet 7th District	Blackberry Wireless Handheld Blackberry Storm Wireless Handheld Dell XPS Laptop Computer Dell Vistro Laptop Computer HP Officejet Printer
James Fang 8th District	Apple Macbook Laptop Computer with Verizon Aircard Modem HP Color Laserjet Printer
Tom Radulovich 9th District	Apple Macbook Laptop Computer HP Deskjet Printer Motorola Cellular Telephone



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: 		GENERAL MANAGER ACTION REQ'D: Approve and Place on September 24, 2009 Administration Committee Agenda		
DATE: 9/18/09		BOARD INITIATED ITEM: No		
Originator/Prepared by: Frank Schultz Dept. Operating Budgets & Analysis	General Counsel	Controller/Treasurer	District Secretary	BARC
Signature/Date:  9/18/09 MB 9/18/09			[]	 9-18-09 []
Status: Routed		Date Created: 08/17/2009		
TITLE:				

Approval to Withdraw from Geothermal Power Supply Agreement with Northern California Power Agency

NARRATIVE:

PURPOSE

To authorize the General Manager to execute an Amended and Restated Third Phase Agreement for Western Geopower Incorporated Renewable Energy Power Purchase Agreement to permit the District to withdraw from the power purchase agreement.

DISCUSSION

The District is a member of the Northern California Power Agency (NCPA), a joint-powers agency. At its February 14, 2008 meeting, the Board authorized the General Manager to enter into a NCPA Third Phase Agreement to participate along with other NCPA members in a geothermal power purchase agreement. The original agreement was to provide the District with up to 1.5 megawatts of geothermal power for twenty years at a fixed price of \$98 per megawatt hour. This would have served approximately 3 percent of the District's electrical power load. Western Geopower, would supply the power from a new facility being constructed at the Geysers geothermal field in Sonoma and Lake Counties.

On July 23, 2009, Western Geopower informed NCPA that it is unable to provide the power at the contracted price due to increased construction and financing costs. Western Geopower is willing to provide the power at \$117 per megawatt hour, a 19 percent increase.

A principal strategy of the District's Strategic Energy Plan is to procure cost-effective renewable energy supplies. The Western Geopower supply at the original price of \$98 per megawatt hour was cost-effective because it approximated the cost of market supply over the twenty-year term of the agreement. At the new price of \$117 per megawatt hour, the Western Geopower purchase is not cost-effective. At that price, the geothermal power is more expensive than the estimated cost of market power throughout the term of the agreement.

Of the eight participants, five participants (including BART) plan to withdraw from the power supply agreement and three plan to continue at the higher price. Under the original NCPA agreement, in order for a participant to withdraw, the participant had to find another taker for its share from either the other participants or, if they decline, from another party. This process is

considerably more cumbersome and time consuming than the proposed amended agreement and would not allow the withdrawing participants to withdraw in a timely fashion. For the participants that want to continue at the higher price, time is of the essence to permit the project to continue. To expedite the process for the continuing participants, NCPA has prepared an amended and restated agreement that permits participants either to withdraw from the power supply arrangement or to continue at the higher price.

Even at the higher price, there is some question whether Western Geopower will complete this project and NCPA could take the project over. If this happens, NCPA has promised that BART and the withdrawing members will be offered their original shares at a price to be determined.

Although the recommendation is to withdraw from this renewable energy project, it is noted that the District recently started to receive renewable power supplied from the first of three solar arrays on District property. A rooftop solar system at the Richmond shop started generating power on July 9th. A larger solar facility at the Hayward shop will be completed this month and will be followed by a solar carport at the Orinda station. In addition to these efforts, staff will continue to work with NCPA members to develop other renewable energy supplies.

The District's Office of Legal Counsel will approve this amended agreement as to form.

FISCAL IMPACT

At \$117 per megawatt hour, the cost for the Western Geopower supply in the first year would be \$1,679,000. The estimated cost of market supply (currently at \$70 per megawatt hour) is \$1,123,000, or \$556,000 less. By withdrawing from the geothermal agreement and relying on market supply, the District's power supply costs will be lower by an estimated \$8.2 million over the twenty-year period.

ALTERNATIVES

The District could continue to participate in the Western Geopower agreement at a cost of \$8.2 million more than estimated market prices.

RECOMMENDATION

Staff recommends that the Board authorize the General Manager to execute the Amended and Restated Third Phase Agreement for Western Geopower Incorporated Renewable Energy Power Purchase Agreement to permit the District to withdraw from the power purchase agreement.

MOTION

That the General Manager is authorized to execute the Amended and Restated Third Phase Agreement for Western Geopower Incorporated Renewable Energy Power Purchase Agreement.

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

MEMORANDUM

TO: Board of Directors

DATE: October 2, 2009

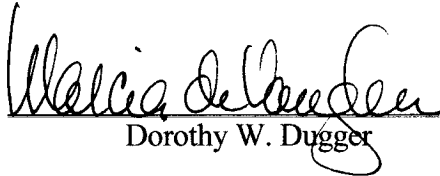
FROM: General Manager

SUBJECT: Worksheet Comparing Western Geopower Supply to Market Power Supply

The agenda for the last Board meeting on September 24, 2009 included an action item to withdraw from a power supply agreement with Western Geopower Inc. due to the increased cost of the geothermal supply. The original price under the agreement was \$98 per megawatt hour. At this price, the geothermal supply was comparable to market power supply. Citing changed circumstances, Western Geopower Inc. has increased the price to \$117 per megawatt hour. Staff has concluded that, at the higher price, the geothermal power is now substantially more expensive than market supply.

The Board deferred action on this item to the October 8th meeting due to Board questions on the calculations and assumptions used by staff in comparing the cost of market supply to the geothermal supply. The staff worksheets were not previously provided to the Board. A summary worksheet and list of assumptions are attached that will assist in understanding the staff calculations.

Please call Carter Mau at (510) 464-6194 if you have questions on this material.


Dorothy W. Dugger

Attachment

cc: Board-Appointed Officers
Deputy General Manager
Executive Staff

<i>Year</i>	<i>Market Power - Rate per Megawatt Hour</i>	<i>Geo Power - Rate per Megawatt Hour</i>	<i>Annual Market Power Cost (11,826 MWh)</i>	<i>Annual Geo Power Cost (11,826 MWh)</i>	<i>Difference</i>
1	\$95.00	\$142.00	\$1,123,000	\$1,679,000	\$556,000
2	\$90.50	\$143.50	\$1,070,000	\$1,697,000	\$627,000
3	\$92.09	\$145.09	\$1,089,000	\$1,716,000	\$627,000
4	\$93.78	\$146.78	\$1,109,000	\$1,736,000	\$627,000
5	\$95.56	\$151.56	\$1,130,000	\$1,792,000	\$662,000
6	\$101.30	\$156.64	\$1,198,000	\$1,852,000	\$654,000
7	\$107.37	\$162.01	\$1,270,000	\$1,916,000	\$646,000
8	\$136.82	\$167.71	\$1,618,000	\$1,983,000	\$365,000
9	\$143.64	\$173.76	\$1,699,000	\$2,055,000	\$356,000
10	\$150.88	\$180.16	\$1,784,000	\$2,131,000	\$347,000
11	\$158.56	\$186.95	\$1,875,000	\$2,211,000	\$336,000
12	\$166.69	\$194.15	\$1,971,000	\$2,296,000	\$325,000
13	\$175.31	\$201.78	\$2,073,000	\$2,386,000	\$313,000
14	\$184.45	\$209.87	\$2,181,000	\$2,482,000	\$301,000
15	\$194.14	\$218.44	\$2,296,000	\$2,583,000	\$287,000
16	\$204.41	\$227.52	\$2,417,000	\$2,691,000	\$274,000
17	\$215.29	\$237.16	\$2,546,000	\$2,805,000	\$259,000
18	\$226.83	\$247.36	\$2,682,000	\$2,925,000	\$243,000
19	\$239.06	\$258.19	\$2,827,000	\$3,053,000	\$226,000
20	\$252.02	\$269.66	\$2,980,000	\$3,189,000	\$209,000
AVG:	\$156.18	\$191.01	\$36,938,000	\$45,178,000	\$8,240,000

Assumptions

Market Power

- Actual power contract costs for Years 1– 5
- Trans & Dist. Costs Escalate by 6% Annually
- Power Costs Increase 6% After Year 5
- GHG Fee of \$23/MWh

Geopower

- Power at \$117/MWh
- Trans & Dist. Costs Escalate by 6% Annually
- GHG Fee of \$3/MWh

MEMORANDUM

Attachment

2009-2013 District-BPMA Tentative Agreement

Summary of Changes from 2005-2009 Agreement

This document represents a summary of the changes negotiated with the Association. As the specific contract language is not presented, this document 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 shall take effect July 1, 2009 and terminate June 30, 2013 (four years).

Section 3 – Association Recognition

The Commander Rank will become a Non-Represented position. All newly appointed or promoted Commanders will not be represented by the BPMA. Title correction for Police Administrative Supervisor to reflect title in PeopleSoft.

Section 4 – Association Representatives

The allowable time for Association related representation is increased from 100 to 120 hours per year.

Section 12 – Bulletin Board

Language was clarified to provide that the BPMA has sole control over materials placed on its bulletin board.

Section 13 – Agreements Furnished

The District will provide the BPMA with an electronic copy of the collective bargaining agreement.

Section 18 – Sick Leave & Disability

The District will amend its PERS contract to convert unused sick leave into PERS Service Credit at the time of retirement. As a result employees will no longer have the option to “bank” unused sick leave or buy back sick leave upon retirement. Employees will continue to have the option to “buy-back” sick leave on a yearly basis. Employees will be provided with a 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 as previously permitted.

Section 20 – Managerial Leave: Managerial leave will only be permitted after five (5) years of BPMA Supervisory service rather than immediately upon promotion into a BPMA classification.

Section 21 – Holidays

The number of floating holidays is reduced from six (6) to three (3) per fiscal year. BPMA members will receive three (3) additional fixed holidays per fiscal year, Columbus Day, Veterans' Day and the fourth (4th) Friday in November. The use of these three fixed holidays instead of floating holidays will reduce backfill costs.

Section 22 – Vacation

Each employee will forego 30 straight time hours of new vacation accrual per year for FY11, FY12 and FY 13.

Section 30 - Sworn Money Purchase Pension Plan

The District will suspend the payment of \$1868.65 per fiscal year into the Money Purchase Pension Plan for FY10 – FY 13 (4 years).

Section 31 – Non-Sworn Money Pension Purchase Plan

The District shall suspend the payment of \$1868.65 per fiscal year into the Money Purchase Pension Plan for FY10 – FY 13 (4 years).

Section 36 – Performance Incentive

This Program ended in January 2006 and this section is therefore deleted.

Section 38 – 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.

Section 42 – Disability Coverage

The District will contract for the enhanced Peace Officers' Research Association of California (PORAC) Group Long Term Disability policy. All additional costs will be borne by BPMA members payable by payroll deduction.

Section 48 – Pay Procedures

Language is corrected to indicate bi-weekly pay dates instead of semi-monthly.

Section 50 – Compensation- Education/Skill Allowance

Revised to add an incentive for possession of a Master's degree along with an Advanced Peace Officer Standards Training (POST) Certificate and a POST Supervisory Certificate for Sworn Members and a Master's degree along with a POST Supervisory Course for Non-sworn members. Other incentives adjusted at 10 years and 13 years of BPMA Supervisory Service.

Section 55 – Compensatory Time Off

Increase the maximum amount of Compensatory Time that may be accrued from 160 hours to 200 hours.

Section 58 – Uniform Allowance/Equipment

Payment of the uniform allowance will be made annually in the month of October instead of in four (4) quarterly payments.

Section 61 – Grievance Procedure

The language was revised to delete reference to Section 62, Beneficial Practices as a basis for filing a grievance.

New Section

District will implement Progressive Discipline.

Section 62 – Beneficial Practices

Language revised to reflect that before the District changes a past practice, it will provide notice and an opportunity to bargain the impact of the change.

Section 64 – Seniority

Newly hired Sergeants will serve a one year probationary period. Clarification of shift selection and scheduling language.

Section 66 – Initial Appointments

Postings for all BPMA classifications may be open to internal and external candidates. All individuals appointed to a BPMA classification will serve a one year probationary period.

Section 69 – Notice Periods

Employees may waive the notice period for changed assignments as a cost-saving measure for the District.

NEW: Side Letter

BPMA Statement of Intent on Board approved Civilian Review model, Progressive Discipline, and NOBLE recommendations.

NEW: Side Letter – Retiree Medical Eligibility and Cost Savings:

All interested bargaining units and the District agree to investigate the feasibility of adopting a 15-year eligibility for retiree medical and agree, if required, will jointly seek legislation to amend relevant Government Code Sections to permit that change. If the District adopts a 15-year eligibility schedule and, as a result there is a cost savings the parties will discuss allocation of savings, including the possibility of allocation of such savings 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 BPMA _____ /

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 BART Police Managers' Association (BPMA), as generally described in the attached Summary of Changes; and

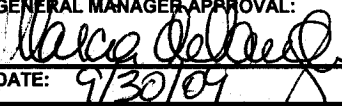
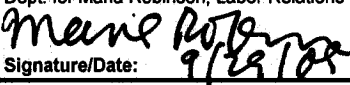
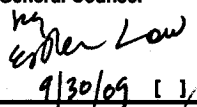
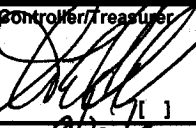
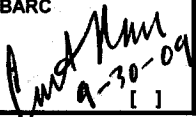
BE IT FURTHER RESOLVED that the General Manager is authorized to execute the Agreement on behalf of the District.

###

Adopted _____



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: 		GENERAL MANAGER ACTION REQ'D:		
DATE: 9/30/09		BOARD INITIATED ITEM: No		
Originator/Prepared by: Noel Felton Dept: for Maria Robinson, Labor Relations  Signature/Date: 9/29/09	General Counsel  9/30/09 []	Controller/Treasurer  9/30/09 []	District Secretary []	BARC  9-30-09 []
Status: Routed		Date Created: 09/28/2009		

TITLE:

Ratification of Side Letters with BPOA Revising Medical Benefits and Sick Leave Options

NARRATIVE:

PURPOSE

To obtain Board authorization for the District to enter into two separate side letters, BPOA Side Letter-16 and BPOA Side Letter -17, both of which modify the 2005 – 2009 BPOA Collective Bargaining Agreement. Side Letter –16 revises Section 5.4 PERS Medical & Prescription Drug Benefits and Side Letter –17 revises Section 8.1 Sick Leave.

DISCUSSION

Under the terms of Section 28850 of the California Public Utilities Code, the District entered into collective bargaining with each of its five bargaining units on April 1, 2009. During the course of those negotiations the District made a number of good faith proposals designed to reduce District costs while attempting to preserve employees' take home pay.

Several proposals were made to all bargaining units including the BPOA. These included a proposal that effective January 1, 2010, the District's contribution toward employee and retiree health insurance be no greater than the applicable level of plan participation for Bay Area Basic Premium rates for PERS HMO Blue Shield Access + or PERS HMO Kaiser Plan, whichever is greater, less the applicable employee or retiree contribution. This proposal also included an incentive to employees to "opt out" of District provided health care coverage and provided that an employee who has alternative medical coverage, may opt out of the group medical and prescription drug benefits set forth in the collective bargaining agreements. The employee who opts out of that coverage would receive \$100/month payment "in lieu of" that coverage.

Another proposal was that the current Retirement Sick Leave Buy-Back program be eliminated and that all future accrued and unused sick leave would, at the time of retirement, be converted into PERS Service Credit. Under that proposal, the current Annual Sick Leave Buy-Back options would remain in effect; however the employees

would no longer be permitted to “bank” sick leave and would no longer be paid 50% of their unused and accrued sick leave upon retirement. Employees would be given a one-time option to convert current banked sick leave and/or current available sick leave into PERS Service Credit.

The District has reached agreement and the Board has ratified contracts with ATU, SEIU, and AFSCME. Each of these units has approved and the ratified contracts include the Blue Shield Access +/-Kaiser Employer Contribution Cap with the in lieu of provision and the PERS Sick Leave Service Credit.

The District has also reached a tentative agreement with the BPMA which also includes the Blue Shield Access +/-Kaiser Cap with the medical opt out provision and the PERS Sick Leave Service Credit.

The District and the BPOA have not yet concluded negotiations; however they have reached Tentative Agreements on certain proposals including the Medical Contribution Cap and Medical Opt Out and PERS Sick Leave Service Credit.

The District began its 2009 Open Enrollment for Benefits on September 14, 2009. Open enrollment closes on October 9, 2009. This is the only time when employees may modify their medical coverage. As a result of the new Medical Cap and Opt out the District desires to provide employees with the ability to modify coverage prior to initiating any change.

Due to the start of Open Enrollment and the need to realize the District-wide cost savings associated with the change in the level of employee paid health premiums, the District and BPOA entered into a Side Letter of Agreement on September 14, 2009 regarding Medical Coverage. The District and the BPOA reaffirmed the terms of the Side Letter in greater detail on September 28, 2009. The Side Letter enables the District to offer all represented and non-represented employees the same medical benefit options during Open Enrollment.

As a result of the anticipated change in contract to allow for the PERS Sick Leave Service Credit, the District has opened the election process allowing all employees to make an election concerning their sick leave options.

Due to the start of the Sick Leave Election period and the need to realize the District-wide cost savings associated with the change, the parties entered with a Side Letter of Agreement on September 14, 2009. The District and the BPOA reaffirmed the terms of the Side Letter in greater detail on September 28, 2009. The Side Letter enables the District to offer all represented and non-represented employees the same sick leave conversion options during the October election period.

If approved, the Side Letters would become effective immediately.

FISCAL IMPACT:

The four (4) year cost savings to the District represented by the BPOA Side Letter-16 is \$2.87 million dollars and by BPOA Side Letter-17 is \$757,000 dollars.

ALTERNATIVE

Not approve BPOA Side Letter-16, maintain the entire current PERS medical plan for one unit and retirees of that unit. Not approve BPOA Side Letter-17, maintain the current sick leave options for sworn members of BPOA only. CalPERS requires that the Sick Leave Service Credit option be provided to all sworn or non-sworn employees. At a minimum to implement the PERS Sick Leave Service Credit to all bargaining units whose contracts have been ratified all non-sworn employees must participate.

RECOMMENDATION:

That the Board adopts the following Motion.

MOTION:

The General Manager or her designee is authorized to execute the attached BPOA Side Letter-16 with the BART Police Officers' Association regarding Medical Benefits and BPOA Side Letter-17 regarding Sick Leave Options.

SIDE LETTER OF AGREEMENT
BPOA /SL-16

RE: MEDICAL BENEFITS

Upon signing by the parties, this letter shall constitute a Side Letter of Agreement which has been reached by the San Francisco Bay Area Rapid Transit District ("District") and BART Police Officers' Association ("Association") (hereinafter jointly referred to as "Parties") regarding Employee and Retiree Contributions for Health Insurance, Employer Contribution for Health Insurance and Payments in Lieu of Health Insurance.

The Parties expressly agree that the provision set for the in this Side Letter shall supercede any prior agreement, whether written or oral, regarding the subject matter of this Agreement.

District and Association have met and conferred in good faith regarding the terms and conditions of this Side Letter of Agreement and its implementation and agree as follows:

1. The District's contribution toward employee and retiree health insurance shall, commencing 1/1/2010, be no greater than the applicable level if plan participation (i.e. one party, two party or family) as elected by the eligible employee or retiree equal to the Bay Area Basic Premium Rates for the PERS HMO Blue Shield Access + or PERS HMO Kaiser Plan, whichever is greater, less the applicable employee and retiree contribution provided for in the Contract. The District shall credit those saving to the benefit of the Association, retroactively to 7/1/2009.
2. Commencing with the open enrollment after 7/1/2009, any employee who has medical coverage from an alternative source may elect to opt out of the medical coverage provided by the District. Any employee that opts out of the District provided coverage the District shall receive a monthly payment of \$100.00. The District shall credit those savings resulting from this provision effective 1/1/2010.

3. As a result of this Side Letter, the Labor Agreement shall be amended as follows:

- (a) Section 5.4 B (1) shall be amended as follows:

The last sentence shall be modified to read: The Employee contribution amounts provided below shall be in addition to any costs for coverage in excess of the amounts specified in paragraph C below

- (b) Add a new Section 5.4 C entitled Employer Contributions for Health Insurance, which reads:

Beginning January 1, 2010, the District shall contribute an amount up to the applicable level of plan participation (i.e. one party, two party or family) and

the same Medicare status as elected by the eligible employee or retiree, equal to the Bay Area Basic Premium Rates for the PERS HMO Blue Shield Access + or PERS HMO Kaiser Plan, whichever is greater, less the employee and retiree contributions provided for in 5.2 B (1) above. The District contribution shall be the District's maximum payment toward employee and retiree health insurance premiums. Employees and retirees electing coverage with a cost greater than the District's maximum contribution shall have the difference automatically deducted from that employee's pay or retiree's allowance in addition to amount to be deducted in accordance with section B above.

- (c) Amend the designation of Section 5C to 5D.
- (d) Delete the current Section 5D
- (e) Add a new Section, 5H, entitled In Lieu of Medical Payments, which reads:

During any open enrollment period after July 1, 2009, an eligible employee who has medical coverage under a spousal or other alternative plan may elect, in accordance with procedures established by the District, to opt out of the group medical and prescription drug benefits provided under Section 5.4A.

The District shall make a monthly payment of \$100.00 "in lieu of medical" to each eligible employee who opts out of 5.4A coverage.

Tax treatment of these payments will be subject to applicable Internal Revenue Code ("IRC") and Internal Revenue Service ("IRS") rules. The payments will be made in a manner that will not impact the income tax status of medical premiums under IRC requirements and to allow an employee to receive the amounts as monthly cash payments.

An eligible employee who opts out of 5.4A coverage may subsequently enroll in such coverage as permitted under the terms of any applicable medical coverage plan.

This Side Letter of Agreement shall be deemed part of the Agreement between the parties.

Dated:

CONCUR FOR THE
DISTRICT

Mano T. Roam
September 28, 2009

Dated:

CONCUR FOR THE
UNION

J. Sikhan #465
9-25-09
[Signature]

SIDE LETTER OF AGREEMENT
BPOA /SL-17

RE: SICK LEAVE OPTIONS

Upon signing by the parties, this letter shall constitute a Side Letter of Agreement which has been reached by the San Francisco Bay Area Rapid Transit District ("District") and BART Police Officers' Association ("Association") (hereinafter jointly referred to as "Parties") regarding Sick Leave Options.

The Parties expressly agree that the provision set for the in this Side Letter shall supercede any prior agreement, whether written or oral, regarding the subject matter of this Agreement.

District and Association have met and conferred in good faith regarding the terms and conditions of this Side Letter of Agreement and its implementation and agree as follows:

1. The District shall amend its contract with CalPERS to provide for California Government Code Section 20965 option for service credit for unused sick leave for eligible Sworn and Non-Sworn members with an effective date of October 19, 2009.
2. Following and as a result of that amendment the District will discontinue the current retirement buy back options specified in Section 8.1 B (1) and (2) but continue the annual buy back options as set forth in Section 8.1(B) 3.
3. Sworn and Non-Sworn members shall have the right to make a one time, irrevocable election to convert sick leave accrued prior to October 19, 2009 to PERS creditable sick leave. Any sick leave which is not converted shall be preserved in accounts separate from sick leave accrued after October 19, 2009.
4. As a result of this Side Letter, the Agreement shall be amended as follows:

(a) Section 8.1B shall be deleted and replaced with the following:

B. Incentives for Sick Leave Accrued and Unused On or After October 19, 2009

To encourage maintain maximum attendance and to improve performance the District offers employees the following two (2) incentives beginning October 19, 2009:

1. Pers Retirement Credit for Sick Leave: The District will amend its contract with CalPERS to provide the California Code Section 20965 options for service credit for unused sick leave for eligible CalPERS employees with an effective date of October 19, 2009. The Public Employees Retirement Law (PERL) and CalPERS rules will govern the eligibility of unused sick leave earned on or after October 19, 2009 for

service credit. Those rules presently grant 0.004 years of service credit for each certified unused day of sick leave accrued by the employee during the normal course of employment. For employees whose effective date of retirement is within four months of separation from the District, the District shall certify to CalPERS all such unused days of sick leave that were accrued by the employee on or after October 19, 2009. For purposes of Government Code Section 20965, leave accrued prior to October 19, 2009 shall not be considered "unused" sick leave and the District will not certify such sick leave to CalPERS unless the employee has made the one time election to convert such sick leave to PERS credit as provided for herein.

2. Annual Buy Back or MPPP Incentive: The District shall give each employee a yearly options to make an irrevocable election to buy-back or to deposit into their Money Purchase Pension Plan (MPPP) accounts the dollar value of the sick leave earned within the annual accrual period less the sick leave taken during that same period on an after tax basis. Buy-Back and MPPP amounts shall be calculated at the employees base rate of pay at the end of the accrual period, less applicable tax withholding. Sick leave for which an election has been made shall not be included by the District in the certification to CalPERS under the retirement service credit plan described above. Employees may select only one option (Buy-Back or MPPP) for each accrual period.

- a. Sick Leave Accrual /Election Periods: The maximum sick which may be earned for each accrual period is ninety-six (96) hours for employees on a 5-8 Work Plan and on hundred twenty (120) hours for employees on and 4-10 Work Plan.

<u>Election Period</u>	<u>Accrual Period</u>
9/1/09-9/15/09	9/21/09-9/19/10
9/1/10-9/15/10	9/20/10-9/18/11
9/1/11-9/15/11	9/19/11-9/16/12
9/1/12-9/15/12	9/17/12-9/15/13

- b. Buy-Back/MPPP Deposit Amounts: An election to "buy-back" or to deposit into the MPPP must also include an election as to the percentage amount of the "buy-back" based on the percentage increments and maximums provide below. The maximum buy-Back percentage that will be allowed is based on the employee's attendance record during that accrual period.

<u>Days</u>	<u>Eligible Percentage of Unused Earned Sick Leave</u>
0	5% up to 50% (in 5% increments)
1-3	5% up to 40% (in 5% increments)

(d) Add a new section 8.1E as follows:

Order of Use of Sick Leave for Separate Accounts: When using sick leave with pay employee sick leave balances will be deducted in the following order:

1. Sick leave accrued on or after October 19, 2009, if any, including any sick leave accrued before October 19, 2009, which the employee has elected to convert to PERS creditable sick leave, if any;
2. If the sick leave describe in paragraph 1 is exhausted then unbanked sick leave accrued prior to October 19, 2009, if any;
3. If the accruals described in paragraphs 1 and 2, above, are exhausted banked sick leave, if any, may be used subject to the terms of paragraph D (1), above.

This Side Letter of Agreement shall be deemed part of the Agreement between the parties.

Dated:

CONCUR FOR THE
DISTRICT

Anand T. Robin
September 28, 2009

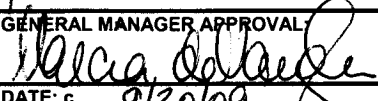
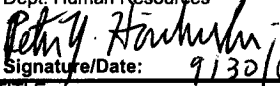
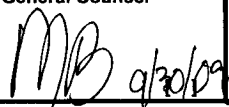
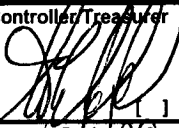
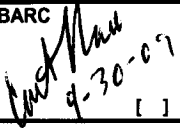
Dated:

CONCUR FOR THE
UNION

J. Sektion #465
[Signature]



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL 		GENERAL MANAGER ACTION REQ'D:		
DATE: c 9/30/09		BOARD INITIATED ITEM: No		
Originator/Prepared by: Peter Y Horikoshi Dept: Human Resources  Signature/Date: 9/30/09	General Counsel  9/30/09	Controller/Treasurer  10/1/09	District Secretary []	BARC  9-30-09 []
TITLE:				

Amendment to Contract between CalPERS and the District to add Service Credit for Unused Sick Leave Option

NARRATIVE:

Purpose:

The Board is requested to approve this amendment to the District's contract with CalPERS to add the option called "Service Credit for Unused Sick Leave," provided under California Government Code Section 20965. This option is being added for all of the District's miscellaneous and safety members of CalPERS. The proposed change was agreed to in collective bargaining agreements that have been ratified by the Board and Amalgamated Transit Union, Local 1555 (ATU), Service Employees International Union, Local 1021 (SEIU), and the American Federation of State, County and Municipal Employees, Local 3993 (AFSCME). The BART Police Officers' Association (BPOA) and the BART Police Managers' Association (BPMA) have not yet concluded labor contract negotiations, but staff has presented as a separate item for ratification by the Board an agreement with BPMA and a Side Letter of Agreement with BPOA, both agreeing to the proposed change. The proposed effective date of this contract amendment is October 19, 2009.

In order to satisfy statutory procedural requirements that require preliminary notice requirements be met before local legislative bodies, including the District, can make changes to retirement or other post employment benefits, this item was presented in the special meeting of the Board of Directors on July 16, 2009. This was for notice only and no Board action was required. Subsequently on July 30, 2009, the Board approved a resolution of intention to amend the contract as required by CalPERS. An actuarial study was presented at the July 16, 2009 meeting and the CalPERS actuary was present at the July 30, 2009 meeting to address any issues regarding the effect of the proposed change.

CalPERS Service Credit for Unused Sick Leave

The proposed change would provide for the conversion of an employee's accrued, unused sick leave to service credit towards the CalPERS pension at the time of retirement. The current conversion rate is approximately one day of service credit for each day of sick leave. To be eligible, an employee's effective date of retirement must be within four months of separation from employment with the employer which granted the sick leave credit.

The proposed change would modify the method and manner in which employees can utilize unused sick leave upon retirement. Currently, employees have four options with respect to unused sick leave:

1. Employees may, annually, elect to “bank” sick leave subject to certain rules. Banked sick leave is paid out upon termination or retirement at the employee’s final rate of pay;
2. Upon retirement, 50% of the employee’s unbanked available sick leave is paid out at the employee’s final rate of pay;
3. Employees may, annually elect to transfer the value of sick leave into the employee’s Money Purchase Pension Plan (MPPP) account, subject to IRS contribution limits and other rules; and
4. For the majority of employees, they may annually ‘buy out’ sick leave subject to certain rules, at the employee’s rate of pay as of the date of the payment.

Under the new program, sick leave can no longer be banked and the 50% pay out at retirement, would be eliminated for all sick leave earned after the effective date of the change. The annual buyout and the MPPP options will continue as in the past.

Employees will be given the opportunity to make a one-time election regarding accrued and banked sick leave earned prior to the effective date of this change. They may either:

- Preserve all banked and available hours to be paid out under the present rules; or
- Elect to have all previously earned sick leave, both banked and unbanked, converted to CalPERS service credit under the new program.

The new program only affects the disposition of unused sick leave at retirement. All current and future accrued sick leave remains available for use during a period of illness or other qualifying circumstances during his/her employment.

Costs of the new program are more than offset by savings from the prospective elimination of programs currently in effect that provide for payment of unused sick leave at the pay rate on the date of termination or retirement as applicable, rather than the pay rate on the date the leave accrued.

Actuarial Analysis and Cost/Savings

Two CalPERS actuarial valuations that discuss the costs of amending the CalPERS contract by adding the option of Service Credit for Unused Sick Leave show an increase in the Employer contribution rate will be +0.369% for miscellaneous members and +0.523% for safety members. The actuarial valuations were made available to the public at both the July 16, 2009 and the July 30, 2009 meetings.

District staff estimates that the discontinuation of Retirement Sick Leave Banking and Retirement Sick Leave 50% Buyback benefits, coupled with the adoption of the CalPERS Service Credit for Unused Sick Leave benefit effective October 19, 2009 will more than offset the increase in the CalPERS Employer rate. The first year net savings, if this option applies to all bargaining units for a full year, is \$2.2 Million for miscellaneous employees and \$0.2 Million for safety employees. The actual savings for FY10, when implemented, will be slightly less, as the change will not be implemented until October.

Recommendation: To adopt the attached contract with CalPERS and sign both original copies of the contracts to be returned to CalPERS, provided the Board has previously ratified the BPMA Agreement and the BPOA Side Letter of Agreement concerning the service credit for unused sick leave.

Alternatives: This is a negotiated benefit for represented employees which the Board approved when it ratified the 2009-2013 collective bargaining agreements with ATU, AFSCME, and SEIU, and which staff in a separate item is bringing to the Board for approval with respect to BPMA and BPOA.

Motion: The Board approves the attached Amended Contract between the Board of Administration, California Public Employees' Retirement System and the Board of Directors, San Francisco Bay Area Rapid Transit District for miscellaneous and safety members.



California
Public Employees' Retirement System

AMENDMENT TO CONTRACT

Between the
Board of Administration
California Public Employees' Retirement System
and the
Board of Directors
San Francisco Bay Area Rapid Transit District

The Board of Administration, California Public Employees' Retirement System, hereinafter referred to as Board, and the governing body of the above public agency, hereinafter referred to as Public Agency, having entered into a contract effective December 1, 1958, and witnessed November 14, 1958, and as amended effective January 1, 1961, August 26, 1969, January 31, 1972, July 1, 1976, October 1, 1976, July 1, 1978, January 1, 1981, December 11, 1989, August 31, 1992, January 13, 1995, April 26, 1996, July 16, 1998, September 13, 2002, November 22, 2002 and July 1, 2004 which provides for participation of Public Agency in said System, Board and Public Agency hereby agree as follows:

- A. Paragraphs 1 through 12 are hereby stricken from said contract as executed effective July 1, 2004, and hereby replaced by the following paragraphs numbered 1 through 13 inclusive:
1. All words and terms used herein which are defined in the Public Employees' Retirement Law shall have the meaning as defined therein unless otherwise specifically provided. "Normal retirement age" shall mean age 55 for local miscellaneous members and age 50 for local safety members.

2. Public Agency shall participate in the Public Employees' Retirement System from and after December 1, 1958 making its employees as hereinafter provided, members of said System subject to all provisions of the Public Employees' Retirement Law except such as apply only on election of a contracting agency and are not provided for herein and to all amendments to said Law hereafter enacted except those, which by express provisions thereof, apply only on the election of a contracting agency.
3. Public Agency agrees to indemnify, defend and hold harmless the California Public Employees' Retirement System (CalPERS) and its trustees, agents and employees, the CalPERS Board of Administration, and the California Public Employees' Retirement Fund from any claims, demands, actions, losses, liabilities, damages, judgments, expenses and costs, including but not limited to interest, penalties and attorneys fees that may arise as a result of any of the following:
 - (a) Public Agency's election to provide retirement benefits, provisions or formulas under this Contract that are different than the retirement benefits, provisions or formulas provided under the Public Agency's prior non-CalPERS retirement program.
 - (b) Public Agency's election to amend this Contract to provide retirement benefits, provisions or formulas that are different than existing retirement benefits, provisions or formulas.
 - (c) Public Agency's agreement with a third party other than CalPERS to provide retirement benefits, provisions, or formulas that are different than the retirement benefits, provisions or formulas provided under this Contract and provided for under the California Public Employees' Retirement Law.
 - (d) Public Agency's election to file for bankruptcy under Chapter 9 (commencing with section 901) of Title 11 of the United States Bankruptcy Code and/or Public Agency's election to reject this Contract with the CalPERS Board of Administration pursuant to section 365, of Title 11, of the United States Bankruptcy Code or any similar provision of law.
 - (e) Public Agency's election to assign this Contract without the prior written consent of the CalPERS' Board of Administration.
 - (f) The termination of this Contract either voluntarily by request of Public Agency or involuntarily pursuant to the Public Employees' Retirement Law.
 - (g) Changes sponsored by Public Agency in existing retirement benefits, provisions or formulas made as a result of amendments, additions or deletions to California statute or to the California Constitution.

4. Employees of Public Agency in the following classes shall become members of said Retirement System except such in each such class as are excluded by law or this agreement:
 - a. Local Police Officers (herein referred to as local safety members);
 - b. Employees other than local safety members (herein referred to as local miscellaneous members).
5. In addition to the classes of employees excluded from membership by said Retirement Law, the following classes of employees shall not become members of said Retirement System:
 - a. **FIRE FIGHTERS.**
6. The percentage of final compensation to be provided for each year of credited prior and current service for local miscellaneous members shall be determined in accordance with Section 21354 of said Retirement Law, subject to the reduction provided therein for service on and after January 1, 1960, the effective date of Social Security coverage, and prior to December 31, 1980, termination of Social Security, for members whose service has been included in Federal Social Security (2% at age 55 Full and Modified).
7. The percentage of final compensation to be provided for each year of credited prior and current service as a local safety member shall be determined in accordance with Section 21362.2 of said Retirement Law (3% at age 50 Full).
8. Public Agency elected and elects to be subject to the following optional provisions:
 - a. Section 21573 (Third Level of 1959 Survivor Benefits) for local safety members only.
 - b. Section 20042 (One-Year Final Compensation).
 - c. Section 21024 (Military Service Credit as Public Service).
 - d. Section 21027 (Military Service Credit for Retired Persons).
 - e. Section 20692 (Employer Paid Member Contributions Converted to Payrate During the Final Compensation Period) for local safety members in the following groups:

Police Managers' Association
Police Officers Association

- f. Section 20692 (Employer Paid Member Contributions Converted to Payrate During the Final Compensation Period) for local miscellaneous members in the following groups:

BART Police Officers' Association
BART Police Management Association

- g. Section 20965 (Credit for Unused Sick Leave).
- 9. Public Agency, in accordance with Government Code Section 20790, ceased to be an "employer" for purposes of Section 20834 effective on July 1, 1978. Accumulated contributions of Public Agency shall be fixed and determined as provided in Government Code Section 20834, and accumulated contributions thereafter shall be held by the Board as provided in Government Code Section 20834.
 - 10. Public Agency shall contribute to said Retirement System the contributions determined by actuarial valuations of prior and future service liability with respect to local miscellaneous members and local safety members of said Retirement System.
 - 11. Public Agency shall also contribute to said Retirement System as follows:
 - a. Contributions required per covered member on account of the 1959 Survivor Benefits provided under Section 21573 of said Retirement Law. (Subject to annual change.) In addition, all assets and liabilities of Public Agency and its employees shall be pooled in a single account, based on term insurance rates, for survivors of all local safety members.
 - b. A reasonable amount, as fixed by the Board, payable in one installment within 60 days of date of contract to cover the costs of administering said System as it affects the employees of Public Agency, not including the costs of special valuations or of the periodic investigation and valuations required by law.
 - c. A reasonable amount, as fixed by the Board, payable in one installment as the occasions arise, to cover the costs of special valuations on account of employees of Public Agency, and costs of the periodic investigation and valuations required by law.
 - 12. Contributions required of Public Agency and its employees shall be subject to adjustment by Board on account of amendments to the Public Employees' Retirement Law, and on account of the experience under the Retirement System as determined by the periodic investigation and valuation required by said Retirement Law.

13. Contributions required of Public Agency and its employees shall be paid by Public Agency to the Retirement System within fifteen days after the end of the period to which said contributions refer or as may be prescribed by Board regulation. If more or less than the correct amount of contributions is paid for any period, proper adjustment shall be made in connection with subsequent remittances. Adjustments on account of errors in contributions required of any employee may be made by direct payments between the employee and the Board.

B. This amendment shall be effective on the _____ day of _____, _____.

BOARD OF ADMINISTRATION
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

BOARD OF DIRECTORS
SAN FRANCISCO BAY AREA RAPID
TRANSIT DISTRICT

BY _____
LORI MCGARTLAND, CHIEF
EMPLOYER SERVICES DIVISION
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

BY _____
PRESIDING OFFICER

Witness Date

Attest:

Clerk

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

**RESOLUTION
AUTHORIZING AN AMENDMENT TO THE CONTRACT**

No. _____

WHEREAS, the Board of Administration of the California Public Employees' Retirement System and the Board of Directors of the San Francisco Bay Area Rapid Transit District entered into a contract effective on December 1, 1958 providing for the participation of said public agency in the California Public Employees' Retirement System; and

WHEREAS, it is now desirable to take advantage of certain benefits provided under said Retirement System and not included in said contract;

NOW, THEREFORE, BE IT RESOLVED, that said governing body authorized, and it does hereby authorize, an amendment to said contract, a copy of said amendment attached hereto and by such reference made a part hereof as though herein set out in full; and

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the presiding officer of said governing body is hereby authorized, empowered and directed to execute said amendment for and on behalf of said public agency.

Adopted this _____ day of _____, _____.

Presiding Officer

Attest:

Clerk/Secretary

CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

Actuarial and Employer Services Branch

Public Agency Contract Services

P.O. Box 942709

Sacramento, CA 94229-2709

(888) CalPERS (225-7377)

**CERTIFICATION
OF
FINAL ACTION OF GOVERNING BODY**

I hereby certify that the _____ of the
(governing body)

(public agency)

considered and adopted on _____, _____, by an affirmative
(date)

vote of a majority of the members of said Governing Body, **Ordinance / Resolution** No.
_____ approving the attached contractual agreement between the Governing
Body of said Agency and the Board of Administration of the California Public
Employees' Retirement System, a certified copy of said **Ordinance / Resolution** in the
form furnished by said Board of Administration being attached hereto.

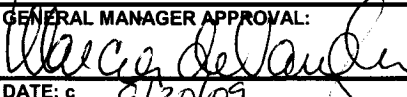
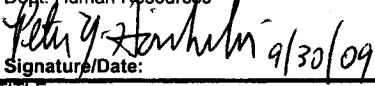
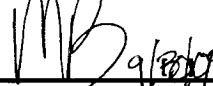

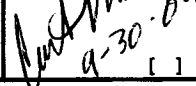
Clerk/Secretary

Title

Date _____



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: 		GENERAL MANAGER ACTION REQ'D:		
DATE: c 9/30/09		BOARD INITIATED ITEM: No		
Originator/Prepared by: Peter Y Horikoshi Dept: Human Resources Signature/Date:  9/30/09	General Counsel  9/30/09	Controller/Treasurer  9/30/09	District Secretary []	BARC  9-30-09 []

TITLE:

Resolution Fixing the Employer's Contribution to CalPERS Medical Premium - Board Requested to Adopt and Sign

NARRATIVE:

PURPOSE:

To obtain Board approval to adopt the resolutions which are required by the Public Employees' Medical and Hospital Care Act (PEMHCA) in order to implement the 2010-2013 District and Employee/Annuitant premium contribution amounts agreed to by the parties in collective bargaining agreements that have been ratified by the Board and Amalgamated Transit Union Local 1555 (ATU), Service Employees International Union Local 1021 (SEIU), and the American Federation of State, County and Municipal Employees Local 3993 (AFSCME). Board approval to adopt resolutions pertaining to the BART Police Managers' Association (BPMA) and BART Police Officers' Association (BPOA) is also requested, in the event the Board first ratifies the recommended agreement with BPMA and the recommended Side Letter with BPOA.

DISCUSSION:

The District and AFSCME, ATU and SEIU have entered into four year collective bargaining agreements, effective July 1, 2009. Each of these agreements as well as the BPMA tentative agreement and BPOA Side Letter of Agreement which are expected to be presented to the Board for ratification, provide that beginning in January 2010, the maximum that the District will contribute for employee and annuitant medical premiums will be based on the more costly of the CalPERS Bay Area HMO Blue Shield Access+ basic plan or the CalPERS Bay Area HMO Kaiser basic plan for the applicable level of plan participation for the employee, less employee/annuitant monthly contributions of \$84.41 in calendar year 2010, \$86.95 in calendar year 2011, \$89.55 in calendar year 2012, and \$92.24 in calendar year 2013. Employees and annuitants who choose more costly plans will be responsible for the additional premium cost.

The General Manager also intends to make the same medical premium contribution changes for non-represented employees and retirees as have been agreed to with the represented groups. Therefore, the board is also being asked to adopt the attached resolution pertaining to non-represented employees in order to implement that change on the same schedule.

Staff will be returning to the Board in a subsequent meeting to make similar changes to the premium contribution structure for the medical plans available to current and eligible former

Directors. Those changes will also be effective in calendar year 2010.

FISCAL IMPACT:

Capping the District's premium contributions reduces District expenses for both health insurance premium expenses and retiree medical trust contributions. The active and retiree health insurance premium savings are estimated at \$1.6M for FY10 (1/2 year), \$4.0M for FY11, \$4.4M for FY12 and \$4.7M for FY13. In addition, the cap lowers the liability for retiree medical contributions and produces annual savings in retiree trust contributions estimated at \$0.5M for FY10 (1/2 year), \$1.4M for FY11, \$2.2M for FY12 and \$3.3M for FY13. In total, the estimated savings amount to approximately \$22M over the four-year contract period.

ALTERNATIVES:

This is a negotiated benefit for represented employees which the Board approved when it ratified the 2009-2013 collective bargaining agreements with ATU, AFSCME and SEIU, and which staff in a separate item is bringing to the Board for approval with respect to BPMA and BPOA. As a matter of policy, the General Manager has recommended that medical benefits for non-represented employees be offered on the same terms.

RECOMMENDATION:

That the Board adopt the following motion, providing the Board has previously ratified the BPMA Agreement and the BPOA Side Letter of Agreement concerning medical premium contributions. If one or both have not been ratified by the Board, they should be omitted from the motion.

MOTIONS:

To adopt the attached resolutions pertaining to AFSCME, ATU, SEIU, BPMA, BPOA and non-represented employees and eligible retirees regarding "Fixing the Employer's Contributions under the Public Employees' Medical and Hospital Care Act" and authorize the Board President to sign the resolutions on behalf of the Board.

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

In the Matter of Fixing The
Employer's Contribution Under
the Public Employees' Medical
and Hospital Care Act for Employees represented
by AFSCME and annuitants represented by
AFSCME prior to retirement:

Resolution No. _____

**RESOLUTION FIXING THE EMPLOYER'S CONTRIBUTION UNDER THE
PUBLIC EMPLOYEES' MEDICAL AND HOSPITAL CARE ACT**

WHEREAS, (1) Government Code Section 22892(a) provides that a local agency contracting under the Public Employees' Medical and Hospital Care Act shall fix the amount of the employer's contribution at an amount not less than the amount required under Section 22892(b)(1) of the Act; and

WHEREAS, (2) The San Francisco Bay Area Rapid Transit District, hereinafter referred to as the Public Agency, is a local agency contracting under the Act for participation by its employees who are represented by the American Federation of State, County and Municipal Employees Local 3993 (AFSCME); now, therefore be it

RESOLVED, (a) That, effective January 2010, the employer's monthly contribution for each employee and annuitant shall be the amount necessary to pay the full cost of his/her enrollment, including the enrollment of his/her family members in a health benefits plan up to a maximum of the higher of the Bay Area Kaiser basic plan or the Bay Area Blue Shield Access+ basic plan, less \$84.41 employee/annuitant share each month for the year 2010, increasing to \$86.95 in January 2011, \$89.55 in January 2012 and \$92.24 in January 2013, plus administrative fees and Contingency Reserve Fund Assessments; and

RESOLVED, (b) That the San Francisco Bay Area Rapid Transit District has fully complied with any and all applicable provisions of Government Code Section 7507 in electing the benefits set forth above.

Adopted at a regular meeting of the Board of Directors of the San Francisco Bay Area Rapid Transit District at Oakland, California this ____ day of _____ 2009.

Signed: _____
Thomas M. Blalock, Board President

Attest: _____
Kenneth Duron, District Secretary

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

In the Matter of Fixing The
Employer's Contribution Under
the Public Employees' Medical
and Hospital Care Act for
Employees represented
by ATU and annuitants represented by
ATU prior to retirement:

Resolution No. _____

**RESOLUTION FIXING THE EMPLOYER'S CONTRIBUTION UNDER THE
PUBLIC EMPLOYEES' MEDICAL AND HOSPITAL CARE ACT**

WHEREAS, (1) Government Code Section 22892(a) provides that a local agency contracting under the Public Employees' Medical and Hospital Care Act shall fix the amount of the employer's contribution at an amount not less than the amount required under Section 22892(b)(1) of the Act; and

WHEREAS, (2) The San Francisco Bay Area Rapid Transit District, hereinafter referred to as the Public Agency, is a local agency contracting under the Act for participation by its employees who are represented by the Amalgamated Transit Union Local 1555 (ATU); now, therefore be it

RESOLVED, (a) That, effective January 2010, the employer's monthly contribution for each employee and annuitant shall be the amount necessary to pay the full cost of his/her enrollment, including the enrollment of his/her family members in a health benefits plan up to a maximum of the higher of the Bay Area Kaiser basic plan or the Bay Area Blue Shield Access+ basic plan, less \$84.41 employee/annuitant share each month for the year 2010, increasing to \$86.95 in January 2011, \$89.55 in January 2012 and \$92.24 in January 2013, plus administrative fees and Contingency Reserve Fund Assessments; and

RESOLVED, (b) That the San Francisco Bay Area Rapid Transit District has fully complied with any and all applicable provisions of Government Code Section 7507 in electing the benefits set forth above.

Adopted at a regular meeting of the Board of Directors of the San Francisco Bay Area Rapid Transit District at Oakland, California this ____ day of _____ 2009.

Signed: _____
Thomas M. Blalock, Board President

Attest: _____
Kenneth Duron, District Secretary

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

In the Matter of Fixing The
Employer's Contribution Under
the Public Employees' Medical
and Hospital Care Act for
Employees represented
by BPMA and annuitants represented by
BPMA prior to retirement:

Resolution No. _____

**RESOLUTION FIXING THE EMPLOYER'S CONTRIBUTION UNDER THE
PUBLIC EMPLOYEES' MEDICAL AND HOSPITAL CARE ACT**

WHEREAS, (1) Government Code Section 22892(a) provides that a local agency contracting under the Public Employees' Medical and Hospital Care Act shall fix the amount of the employer's contribution at an amount not less than the amount required under Section 22892(b)(1) of the Act; and

WHEREAS, (2) The San Francisco Bay Area Rapid Transit District, hereinafter referred to as the Public Agency, is a local agency contracting under the Act for participation by its employees who are represented by the BART Police Managers' Association (BPMA); now, therefore be it

RESOLVED, (a) That, effective January 2010, the employer's monthly contribution for each employee and annuitant shall be the amount necessary to pay the full cost of his/her enrollment, including the enrollment of his/her family members in a health benefits plan up to a maximum of the higher of the Bay Area Kaiser basic plan or the Bay Area Blue Shield Access+ basic plan, less \$84.41 employee/annuitant share each month for the year 2010, increasing to \$86.95 in January 2011, \$89.55 in January 2012 and \$92.24 in January 2013, plus administrative fees and Contingency Reserve Fund Assessments; and

RESOLVED, (b) That the San Francisco Bay Area Rapid Transit District has fully complied with any and all applicable provisions of Government Code Section 7507 in electing the benefits set forth above.

Adopted at a regular meeting of the Board of Directors of the San Francisco Bay Area Rapid Transit District at Oakland, California this ____ day of _____ 2009.

Signed: _____
Thomas M. Blalock, Board President

Attest: _____
Kenneth Duron, District Secretary

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

In the Matter of Fixing The
Employer's Contribution Under
the Public Employees' Medical
and Hospital Care Act for
Employees represented
by BPOA and annuitants represented by
BPOA prior to retirement:

Resolution No. _____

**RESOLUTION FIXING THE EMPLOYER'S CONTRIBUTION UNDER THE
PUBLIC EMPLOYEES' MEDICAL AND HOSPITAL CARE ACT**

WHEREAS, (1) Government Code Section 22892(a) provides that a local agency contracting under the Public Employees' Medical and Hospital Care Act shall fix the amount of the employer's contribution at an amount not less than the amount required under Section 22892(b)(1) of the Act; and

WHEREAS, (2) The San Francisco Bay Area Rapid Transit District, hereinafter referred to as the Public Agency, is a local agency contracting under the Act for participation by its employees who are represented by the BART Police Officers' Association (BPOA); now, therefore be it

RESOLVED, (a) That, effective January 2010, the employer's monthly contribution for each employee and annuitant shall be the amount necessary to pay the full cost of his/her enrollment, including the enrollment of his/her family members in a health benefits plan up to a maximum of the higher of the Bay Area Kaiser basic plan or the Bay Area Blue Shield Access+ basic plan, less \$84.41 employee/annuitant share each month for the year 2010, increasing to \$86.95 in January 2011, \$89.55 in January 2012 and \$92.24 in January 2013, plus administrative fees and Contingency Reserve Fund Assessments; and

RESOLVED, (b) That the San Francisco Bay Area Rapid Transit District has fully complied with any and all applicable provisions of Government Code Section 7507 in electing the benefits set forth above.

Adopted at a regular meeting of the Board of Directors of the San Francisco Bay Area Rapid Transit District at Oakland, California this ____ day of _____ 2009.

Signed: _____
Thomas M. Blalock, Board President

Attest: _____
Kenneth Duron, District Secretary

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

In the Matter of Fixing The
Employer's Contribution Under
the Public Employees' Medical
and Hospital Care Act for
Employees represented
by SEIU and annuitants represented by
SEIU prior to retirement:

Resolution No. _____

**RESOLUTION FIXING THE EMPLOYER'S CONTRIBUTION UNDER THE
PUBLIC EMPLOYEES' MEDICAL AND HOSPITAL CARE ACT**

WHEREAS, (1) Government Code Section 22892(a) provides that a local agency contracting under the Public Employees' Medical and Hospital Care Act shall fix the amount of the employer's contribution at an amount not less than the amount required under Section 22892(b)(1) of the Act; and

WHEREAS, (2) The San Francisco Bay Area Rapid Transit District, hereinafter referred to as the Public Agency, is a local agency contracting under the Act for participation by its employees who are represented by the Service Employees International Union Local 1021 (SEIU); now, therefore be it

RESOLVED, (a) That, effective January 2010, the employer's monthly contribution for each employee and annuitant shall be the amount necessary to pay the full cost of his/her enrollment, including the enrollment of his/her family members in a health benefits plan up to a maximum of the higher of the Bay Area Kaiser basic plan or the Bay Area Blue Shield Access+ basic plan, less \$84.41 employee/annuitant share each month for the year 2010, increasing to \$86.95 in January 2011, \$89.55 in January 2012 and \$92.24 in January 2013, plus administrative fees and Contingency Reserve Fund Assessments; and

RESOLVED, (b) That the San Francisco Bay Area Rapid Transit District has fully complied with any and all applicable provisions of Government Code Section 7507 in electing the benefits set forth above.

Adopted at a regular meeting of the Board of Directors of the San Francisco Bay Area Rapid Transit District at Oakland, California this ____ day of _____ 2009.

Signed: _____
Thomas M. Blalock, Board President

Attest: _____
Kenneth Duron, District Secretary

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

In the Matter of Fixing The
Employer's Contribution Under
the Public Employees' Medical
and Hospital Care Act for
Non-Represented Employees and annuitants
who were non-represented prior to retirement:

Resolution No. _____

**RESOLUTION FIXING THE EMPLOYER'S CONTRIBUTION UNDER THE
PUBLIC EMPLOYEES' MEDICAL AND HOSPITAL CARE ACT**

WHEREAS, (1) Government Code Section 22892(a) provides that a local agency contracting under the Public Employees' Medical and Hospital Care Act shall fix the amount of the employer's contribution at an amount not less than the amount required under Section 22892(b)(1) of the Act; and

WHEREAS, (2) The San Francisco Bay Area Rapid Transit District, hereinafter referred to as the Public Agency, is a local agency contracting under the Act for participation by its employees who are non-represented; now, therefore be it

RESOLVED, (a) That, effective January 2010, the employer's monthly contribution for each employee and annuitant shall be the amount necessary to pay the full cost of his/her enrollment, including the enrollment of his/her family members in a health benefits plan up to a maximum of the higher of the Bay Area Kaiser basic plan or the Bay Area Blue Shield Access+ basic plan, less \$84.41 employee/annuitant share each month for the year 2010, increasing to \$86.95 in January 2011, \$89.55 in January 2012 and \$92.24 in January 2013, plus administrative fees and Contingency Reserve Fund Assessments; and

RESOLVED, (b) That the San Francisco Bay Area Rapid Transit District has fully complied with any and all applicable provisions of Government Code Section 7507 in electing the benefits set forth above.

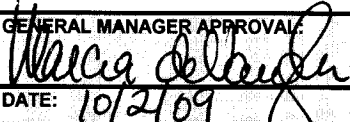
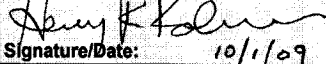
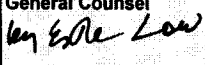

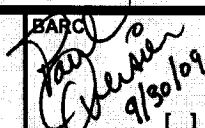
Adopted at a regular meeting of the Board of Directors of the San Francisco Bay Area Rapid Transit District at Oakland, California this ____ day of _____ 2009.

Signed: _____
Thomas M. Blalock, Board President

Attest: _____
Kenneth Duron, District Secretary



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: 		GENERAL MANAGER ACTION REQ'D:		
DATE: 10/2/09		BOARD INITIATED ITEM: No		
Originator/Prepared by: Henry Kolesar Dept: Rolling Stock & Shops  Signature/Date: 10/1/09	General Counsel  10/1/09 []	Controller/Treasurer  10/1/09 []	District Secretary []	BART  9/30/09 []
Status: Approved		Date Created: 09/01/2009		

TITLE:

Award Contract No. 42EL-210B for the Procurement of C-1 Car Auxiliary Power Supply Equipment

NARRATIVE:

PURPOSE:

To obtain Board authorization for the General Manager to award Contract No. 42EL-210B for the Procurement of 30 C-1 Car Auxiliary Power Supply Equipment (APSE) to Bombardier Transportation (Holdings) USA, Inc., in the amount of \$3,982,860, plus applicable sales tax.

DISCUSSION:

Each of the District's fleet of cars are equipped with an APSE unit that supplies 120 / 208 VAC for high power auxiliary systems and 36.5 VDC for the battery charging and low power auxiliary systems. High power auxiliary systems operating from the APSE include the HVAC system, train operator's defroster and propulsion blower motors while low power systems include main propulsion controls, automatic train control (ATC), doors, and brake control systems.

BART's fleet of revenue service cars use APSE's provided by 4 different suppliers. The original APSE units on the C-1 Car fleet represent the oldest of the 4 designs. These units are no longer readily serviceable and continue to impact car availability. The original APSE supplier, Garrett, is no longer in business and many component parts are now obsolete. There are elements of the design that make the unit difficult to troubleshoot and the unit's reliability is low and unpredictable. The Garrett APSE's are prone to output spikes that can affect the operation of the HVAC and ATC systems. The main logic boards were assembled using wirewrap technology which is intended more for stationary installations and has led to unacceptable levels of failures. The units do not have a diagnostics system to quickly and accurately troubleshoot failures.

In light of these problems, the District previously purchased and installed over 30 replacement APSE units from an alternate supplier, over a period of time starting in October 1999. The replacement program has had a positive effect on the over all reliability of the C1 fleet, while also providing the District with a limited source of specific obsolete parts taken from the removed systems. The low reliability and unpredictable availability of replacement parts, however, dictates that every funding opportunity be considered to continue this replacement program.

Advance Notice to Bidders for Contract No. 42EL-210B, a two-step Contract, was mailed on September 3, 2009 to four potential Bidders. The Contract was also advertised on September 3, 2009. One Technical Qualification Bid and one Price Bid sealed in separate envelopes were received from Bombardier Transportation (Holdings) USA, Inc.

Staff reviewed Bombardier's Technical Qualification Bid and determined that Bombardier met the minimum technical requirements. The Price Bid was therefore opened on September 22, 2009. The Bid submitted by Bombardier is responsive to the solicitation requirements, and staff has determined that the Bidder is responsible based on an examination of its business experience and financial capabilities. Staff has also determined that the total Base Bid Price of \$3,982,860 submitted by the Bidder is fair and reasonable.

The independent cost estimate by BART staff is \$4,026,007, plus applicable sales tax.

The Office of Civil Rights reviewed the scope of work for this contract and determined that there were no subcontracting opportunities, therefore, no DBE participation goal was set for this contract.

FISCAL IMPACT:

Funding of \$4,371,189 for Contract No. 42EL-210B is included in the total project budget for the FMS#42EL – Auxiliary Power Supply Equipment (APSE). The Office of the Controller/Treasurer certifies that funds are currently available to meet this obligation.

CA-96-X001 American Recovery and Reinvestment Act of 2009 (ARRA) Stimulus Fed. 54K \$4,371,189

As of the month ending 08/30/09, \$4,800,000 is available for commitment from this fund source for this project and BART to date has committed \$0. There is \$0 pending commitment in BART's financial management system. This action will commit \$4,371,189, leaving an uncommitted balance of \$428,811 in this fund.

There is no fiscal impact on available un-programmed District Reserves.

ALTERNATIVES:

An alternative to awarding the Bid would be to reject the Bid and readvertise the Contract. Stimulus funding, however, is granted under specific time constraints and delays associated with readvertising and rebidding the Contract could jeopardize that funding.

RECOMMENDATION:

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

MOTION:

The Board authorizes the General Manager to award Contract No. 42EL-210B for the Procurement of 30 C-1 Car Auxiliary Power Supply Equipment (APSE) to Bombardier Transportation (Holdings) USA, Inc., in the amount of \$3,982,860, plus applicable sales tax, pursuant to notification to be issued by the General Manager.



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: 		GENERAL MANAGER ACTION REQ'D: Approve and Forward to the October 8, 2009 E & O Committee Meeting		
DATE: 9/30/09		BOARD INITIATED ITEM: No		
Originator/Prepared by: John Gee Dept: TSD Stations Capital Program Ext 4928 Signature/Date: 9/25/09	General Counsel 9/25/09	Controller/Treasurer 9/28/09	District Secretary 	BARC 9/28/09

TITLE:

Award of Contract 15IG-110 Ashby Station Modernization

NARRATIVE:

PURPOSE: To obtain Board authorization for the General Manager to award Contract No. 15IG-110 Ashby Station Modernization.

DISCUSSION: The Ashby Station is one of the stations selected as part of the Station Modernization Program, Phase 1. The scope of work includes new energy saving lighting modifications, new way-finding signage, a new bike station, a prominent station identification sign on Adeline Street, and other improvements to the site and station to enhance the overall appearance of the station.

On July 24, 2009, the Advance Notice to Bidders was mailed to 170 prospective bidders and contract documents were sent to 23 plan rooms. The Contract was advertised on July 29, 2009 in local publications. A total of 24 firms purchased copies of the contract documents. A pre-bid meeting and site tour was conducted on August 5, 2009 with 13 prospective bidders attending. Bids were publicly opened on August 25, 2009. The bids received and the Engineer's Estimate are shown below:

<u>BIDDER</u>	<u>LOCATION</u>	<u>TOTAL AMOUNT</u>
Taber Construction, Inc.	Martinez, CA	\$2,904,835.81
Alten Construction, Inc.	Richmond, CA	\$2,988,925.00
California Plus Engineering, Inc.	Campbell, CA	\$3,205,000.00
JFC Construction, Inc.	Martinez, CA	\$3,577,200.00
Arntz Builders	Novato, CA	\$3,784,323.00
Rodan Builders, Inc.	Burlingame, CA	\$4,205,000.00
Angotti & Reilly, Inc.	San Francisco, CA	\$4,605,000.00

<u>Engineer's Estimate:</u>	\$2,754,000.00
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The apparent low bid submitted by Taber Construction, Inc. of \$2,904,835.81 was non-responsive to the solicitation. The bid failed to disclose the amount of work that would be performed by the various first-tier contractors listed. The instructions expressly require that the bidder disclose in the bid the "... total dollar amount of the portions of the work or services subcontracted" The apparent second low bid submitted by Alten Construction, Inc. of \$2,988,925 is 8.5 % above the Engineer's Estimate of \$2,754,000.

After review by District staff, the Bid submitted by the apparent second low bidder has been deemed to be responsive to the solicitation. Furthermore, staff review of the second low bidder's business experience and financial capabilities has resulted in a determination that the bidder is responsible and the Bid of \$2,988,925 submitted by Alten Construction, Inc is fair and reasonable.

Staff has determined that there will be no significant effect on the environment from this action and that it is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to "CEQA Guidelines Section 15301."

FISCAL IMPACT:

Funding of \$2,988,925 for award of Contract 15IG-110 is included in the total project budget for the FMS #15IG – Ashby Station Modernization. The Office of the Controller/Treasurer certifies that funds are currently available to meet this obligation. Funds for this contract will come from the following source:

F/G 55S – Prop 1B PTMISEA

\$2,988,925

As of month ending 8/2/09, \$5,937,061 is available for commitment from this fund source for this project and BART has committed \$1,105,628 to date. There is a pending commitment of \$185,495 in BART's financial management system. This action will commit \$2,988,925 leaving an uncommitted balance of \$1,657,013 in this fund source.

There is no fiscal impact on available unprogrammed District Reserves.

ALTERNATIVES: The alternative is not award the Contract, cancel the grant and leave the station in its current condition.

RECOMMENDATION: It is recommended that the Board adopt the following motion:

MOTION: The General Manager is authorized to award Contract No. 15IG-110 Ashby Station Modernization to Alten Construction, Inc. for the bid price of \$2,988,925, pursuant to notification to be issued by the General Manager, subject to the District's protest procedures.



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: 		GENERAL MANAGER ACTION REQ'D: Approve and Forward to PPAAL Committee		
DATE: c 9/30/09		BOARD INITIATED ITEM: No		
Originator/Prepared by: Jeffrey P Ordway Dept: Property Development Signature/Date: 9/23/09	General Counsel 9/30/09 []	Controller/Treasurer 9/30/09 []	District Secretary []	BARC 9-30-09 []

TITLE:

Hercules New Town Center Transit-Oriented Development

NARRATIVE:

PURPOSE: To request Board authorization to enter into an Exclusive Negotiating Agreement (“ENA”) with The Red Barn Co. (“Red Barn”) and the Hercules Redevelopment Agency (“Agency”) to pursue a transit-oriented development project on BART property in the City of Hercules (“the City”).

DISCUSSION: In December 2004, the BART Board authorized execution of an Exchange Option Agreement with the Agency to exchange BART’s Park-and-Ride parcel for a comparable parcel owned by the Agency approximately one-half mile east of Highway 4, to which the park and ride function has been relocated. Attachment 1 depicts both properties.

In July 2009 the Board authorized a one-year Maintenance and Reimbursement Agreement between BART, the Agency and the Western Contra Costa Transit Authority (“WestCat”) for the Hercules Transit Center. This action continued the strong collaborative relationship between BART, WestCat and the City.

In 2000, the City prepared the Central Hercules District Plan (“District Plan”) to guide the build-out of the undeveloped land remaining in the community. The main goal of the District Plan is to clearly define a more pedestrian/transit oriented development approach to the City’s thus far suburban development pattern. Currently, most of the District Plan has been successfully implemented or is in final stages of entitlement and ready for construction except for the area encompassing both BART’s former Park-and-Ride parcel and the property BART acquired in the aforementioned property exchange. This area has been designated the Hercules New Town Center (“New Town Center”).

In 2004, the Agency selected Red Barn to be the Agency’s redevelopment partner for the New Town Center area. The competitive process employed by the Agency resulted in nine proposals from qualified developers and extensive discussions between the Agency and several of the most highly qualified developers. On March 31, 2004, the Agency authorized exclusive negotiations with Red Barn Communities and its builder partner (now known as The Red Barn Co.) as the development firm that was best qualified to deliver the joint vision of a transit-oriented, multi-use program in the New Town Center area. In 2005, the Agency approved a disposition and development agreement (“DDA”) with Red Barn which gives Red Barn certain rights of

acquisition, development and assistance on parcels in the New Town Center district, if a parcel's owner agrees to engage Red Barn to develop or assist in the development of a parcel. In February 2009, the Hercules City Council adopted a resolution certifying The Hercules New Town Center Final Environmental Impact Report and approved a Mitigation Monitoring and Reporting Program. The environmental clearance consisted of two elements: a) General Plan and zoning amendments to create a "New Town Center" land use designation and zoning district that would apply to the Hercules New Town Center planning area (designated as the seven numbered areas in the attached Exhibit), and b) Redevelopment of parcel 1 (the former BART Park-and-Ride property).

The next logical step in fulfilling the development objectives of both BART and the City is to include BART's newly acquired property in the New Town Center development program and to begin exclusive negotiations between BART, the Agency and Red Barn. Greater physical and financial flexibility can be achieved by including the BART property with other property either owned or controlled by the Agency and Red Barn. Modification and/or replacement of the new Hercules Transit Center will need be addressed as part of any development project on BART's land.

The Red Barn Co. is a real estate development firm located in Southern California which has been focusing on mixed-use, walkable projects. It has been working in the City for the past six years and has already secured entitlement to develop a mixed-use project on BART's former Park-and-Ride property, consisting of 300 residential units, 55,000 square feet of retail, and 60,000 square feet of office. Of note is the fact that Red Barn has an option to acquire the property denoted as area 3 and the City has initiated a study with Caltrans to move the freeway ramp currently within area 4 (refer to the attached exhibit for these areas) to a location further east of the New Town Center area. Including BART's property with these areas will significantly enhance development opportunities within the area.

Staff recommends entering into an Exclusive Negotiating Agreement (ENA) with Red Barn and the Agency to pursue a transit-oriented mixed-use development located on multiple parcels in the New Town Center area.

BART's TOD Policy stipulates, in part, that the District will generally solicit proposals for joint development of District-owned property through a competitive selection process, except in cases where sole source negotiations would result in more favorable conditions for the District. In this case, staff recommends that a sole source relationship be established with The Red Barn for the following reasons:

- Red Barn was selected by the Agency by means of a public, competitive process.
- Red Barn has been working with the City and has created a master plan in concert with the City for the New Town Center.
- Red Barn's previous development experience includes:

- Liberty (Lake Elsinore, CA) – Entitlement for 8,000 residential units, 500,000 square feet of commercial, and 350 acres of parks, schools and recreation space. Involved 80 public and private land owners involved in creating seven town centers.
- Tustin Ranch (Tustin, CA) – Entitlement for 5,000 residential units, 375,000 square feet of commercial and open space, parks and schools.
- Executive Park (Irvine, CA) – Entitlement and construction of 150,000 square feet of commercial.
- Red Barn has the financial resources and development capabilities to meet the City and BART's various transit-oriented development objectives.

During the eighteen-month period of the ENA, the following issues would be addressed, among others:

- Terms and conditions for the use of BART property;
- Long-term transit opportunities and how they may be accommodated;
- Evidence that requisite funding has been obtained;
- Due diligence efforts to ensure that a proposed project represents the highest and best use of the property and fulfills BART's and the Agency's development objectives;
- Discussions with the Agency to determine its requirements and a schedule for its approval of a project; and
- Environmental clearance of any proposed development.

The ENA would include a right to extend for an additional eighteen months, subject to mutual agreement. The Office of the General Counsel will approve the ENA as to form.

Red Barn has agreed to pay BART a \$25,000 fee for the ENA, and the parties will negotiate an additional payment if the ENA is extended beyond the initial eighteen months.

Upon completion of negotiations, staff will return to the Board for approval of the ultimate transaction with Red Barn and the Agency, including appropriate environmental findings.

FISCAL IMPACT: BART will absorb all Property Development staff costs. The \$25,000 ENA fee will be used for project-related BART consultant costs, including outside counsel, incurred by BART during the negotiating process.

ALTERNATIVES: Do not award an ENA to Red Barn and the Agency and direct staff to prepare and release a Request for Development Proposals for BART's recently acquired property. This would delay consideration of a development project in the New Town Center area and could result in incompatible or competing development projects in the area.

RECOMMENDATION: It is recommended that the Board adopt the following motion:

MOTION: The General Manager or her designee is authorized to enter into an Exclusive Negotiating Agreement ("ENA") with The Red Barn Co. and the Hercules Redevelopment Agency to pursue a transit-oriented development project in the New Town Center area. The ENA would be for a period of 18 months, with the right to extend for an additional 18-month period, subject to mutual agreement.

