

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

BOARD MEETING AGENDA

October 27, 2011

9:00 a.m.

A regular meeting of the Board of Directors will be held at 9:00 a.m. on Thursday, October 27, 2011, 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 regarding any matter on this agenda. Please complete a “Request to Address the Board” form (available at the entrance to the Board Room) and hand it to the Secretary before the item is considered by the Board. If you wish to discuss a matter that is not on the agenda during a regular meeting, you may do so under General Discussion and Public Comment.

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

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

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

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

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

Meeting notices and agendas are available for review on the District's website (<http://www.bart.gov/about/bod/meetings.aspx>), and via email or via regular mail upon request. Complete agenda packets (in PDF format) are available for review on the District's website no later than 48 hours in advance of the meeting. Those interested in being on the mailing list for meeting notices (email or regular mail) can do so by providing the District Secretary with the appropriate address.

Please submit your requests to the District Secretary via email to BoardofDirectors@bart.gov; in person or U.S. mail at 300 Lakeside Drive, 23rd Floor, Oakland, CA 94612; fax 510-464-6011; or telephone 510-464-6083.

Kenneth A. Duron
District Secretary

Regular Meeting of the
BOARD OF DIRECTORS

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

1. CALL TO ORDER

- A. Roll Call.
- B. Pledge of Allegiance.
- C. Introduction of Special Guests.
 - 1. BART Participation in Urban Shield 2011, Deputy Chief Daniel Hartwig, BART Police Department. (Director Mc Partland's request)

2. CONSENT CALENDAR

- A. Special Appointments: South Hayward BART Station Access Authority.* (President Franklin's request). Board requested to ratify.
- B. Special Appointment: Joint Administrative Committee under the Project Stabilization Agreement for the Oakland Airport Connector Project.* (President Franklin's request). Board requested to ratify.

3. BOARD MATTERS

- A. Proposed Cellular Service Interruption Policy.* (Director Franklin's request). For discussion and action.

4. ENGINEERING AND OPERATIONS ITEMS

Director Fang, Chairperson

- A. Execution of Project Stabilization Agreement for eBART.* Board requested to authorize.
- B. Two Agreements to Provide Sustaining Systems Engineering Services for BART Projects.*
 - a. Agreement No. 6M8049, with B & C Transit, Inc.
 - b. Agreement No. 6M8055, with Acumen Building EnterpriseBoard requested to authorize.
- C. Memorandum of Understanding with Metropolitan Transportation Commission regarding Operations and Maintenance of Clipper Fare Collection System.* Board requested to authorize.

5. ADMINISTRATION ITEMS

Director Blalock, Chairperson

- A. Condemnation of Real Property for the East Contra Costa BART Extension (eBART) Project:
 - i. BART Parcel Numbers: P-5020-1, -2A, -2B, -3A, -3B, -3C and -4
 - ii. BART Parcel Number: P-5030-1
 - iii. BART Parcel Number: P-5040-1
 - iv. BART Parcel Number: P-5050-1
 - v. BART Parcel Numbers: P-5060-1, -2A and -2BBoard requested to authorize. (TWO-THIRDS VOTE REQUIRED.)
- B. Small Business Bonding Assistance Program.* For information.

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

Director Murray, Chairperson

NO REPORT.

7. GENERAL MANAGER'S REPORT

NO REPORT.

8. BOARD MATTERS

- A. Consideration of Letter to Metropolitan Transportation Commission Proposing Funding for Regional Pre-Apprenticeship Program. (Director Keller's request). For discussion and action.
- B. Report on the Board Workshop – Business Advancement Program (BAP) of October 20, 2011. For information.
- C. Board Member Reports. For information.
- D. Roll Call for Introductions.
(An opportunity for Board members to introduce a matter for consideration at a future Committee or Board Meeting or to request District staff to prepare items or reports.)

9. GENERAL DISCUSSION AND PUBLIC COMMENT

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

MEMORANDUM

TO: Board of Directors

DATE: October 19, 2011

FROM: District Secretary

SUBJECT: Special Appointments: South Hayward BART Station Access Authority

On June 23, 2011, the Board authorized execution of a Joint Exercise of Powers Agreement for the South Hayward BART Station Access Authority by and between BART and the City of Hayward. The City and BART will each have two members on the Access Authority's Board of Directors.

Attached for your consideration are President Franklin's proposed appointments of Directors to the newly created South Hayward BART Station Access Authority.

Board Rule 3-3.2 requires the ratification by a majority vote of all members of the Board any appointment of any committee member by the Board President. The Rule includes a provision that such appointments shall be submitted directly to the Board.

In accordance with Board Rule 3-3.2, President Franklin is bringing the appointments before the Board of Directors for ratification on October 27, 2011.

Should you have any questions, please contact Jeff Ordway, Department Manager, Real Estate, or me.

Thank you.



Kenneth A. Duron

Attachment

cc: Board Appointed Officers
Deputy General Manager
Executive Staff

**RATIFICATION OF SPECIAL APPOINTMENTS
SOUTH HAYWARD BART STATION ACCESS AUTHORITY**

MOTION:

That the Board of Directors ratifies the following appointments of representatives to the Board of Directors of the South Hayward BART Station Access Authority.

Director Thomas M. Blalock, P.E.

Director Bob Franklin

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

MEMORANDUM

TO: Board of Directors **DATE:** October 20, 2011
FROM: District Secretary
SUBJECT: Special Appointment: Joint Administrative Committee under the Project Stabilization Agreement for the Oakland Airport Connector Project

Attached for your consideration is President Franklin's proposed appointment of Director Robert Raburn to serve as one of two BART representatives on the Joint Administrative Committee established under the Project Stabilization Agreement for the Oakland Airport Connector Project ("OAC").

The OAC Project is subject to a Project Stabilization Agreement (PSA) that was entered into between BART and the Alameda County Building and Construction Trades Council ("Building Trades"). The PSA provides for creation of a five person Joint Administrative Committee ("JAC"), comprised of two representatives selected by the District, two representatives selected by the Building Trades, and one representative selected by the OAC contractor.

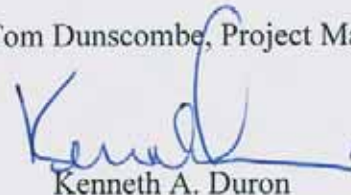
At the request of the Port of Oakland (the "Port"), the District agreed to name a member of the Board of Port Commissioners as one of the BART Representatives on the JAC. In consultation with the Port, the General Manager named Port Commissioner James Head as this representative by letter dated June 15, 2011.

A member of the BART Board of Directors will be the second BART representative on the JAC. At the BART Board meeting of June 23, 2011, the Board named Director Robert Raburn as liaison to the JAC; however, the Board action did not formally establish Director Raburn's membership on the JAC. Hence, a clarification is in order and it is now recommended that Director Raburn be appointed as one of the District's representatives on the JAC.

Board Rule 3-3.2 requires the ratification by a majority vote of all members of the Board any appointment of any committee member by the Board President. The Rule includes a provision that such appointments shall be submitted directly to the Board. In accordance with Board Rule 3-3.2, President Franklin is bringing the appointment before the Board of Directors for ratification on October 27, 2011.

Should you have any questions, please contact Tom Dunscombe, Project Manager, or me.

Thank you.



Kenneth A. Duron

Attachment

cc: Board Appointed Officers
Deputy General Manager

**RATIFICATION OF SPECIAL APPOINTMENT
JOINT ADMINISTRATIVE COMMITTEE UNDER THE PROJECT STABILIZATION
AGREEMENT FOR THE OAKLAND AIRPORT CONNECTOR PROJECT**

MOTION:

That the Board of Directors ratifies the appointment of Director Robert Raburn as a representative to the Joint Administrative Committee under the Project Stabilization Agreement for the Oakland Airport Connector Project.

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

MEMORANDUM

TO: Board of Directors

DATE: October 21, 2011

FROM: General Counsel

SUBJECT: Draft Cell Phone Interruption Policy

Attached please find the Draft Cell Phone Interruption policy that the Board President will bring forward to the October 27th meeting for the Board's discussion and consideration. This Draft incorporates the comments and suggestions of the American Civil Liberties Union, as well as comments from BART's Citizen Review Board, who provided assistance in the development of the draft policy.

Please telephone me if you have any questions.



Matt Burrows

Attachment

Proposed Cell Service Interruption Policy

The San Francisco Bay Area Rapid Transit District (the "District") recognizes that the availability of equipment inside the District's system facilitating cellular communications in its stations and trains (the "System Cellular Equipment") is a valuable and important service to District passengers, especially persons with disabilities, that should be interrupted only in the most extraordinary circumstances that threaten the safety of District passengers, employees and other members of the public, the destruction of District property, or the substantial disruption of public transit service. The District is also fully committed to its long-standing policy of allowing the exercise of First Amendment rights of expression in the areas of its stations where it can be done safely and without interference with the District's primary mission of providing safe, efficient and reliable public transportation services. The District is also committed to full compliance with all state and federal regulatory laws applicable to a temporary interruption of operation of the System Cellular Equipment.

In accordance with these principles, it shall be the policy of the District that the District may implement a temporary interruption of operation of the System Cellular Equipment only when it determines that there is strong evidence of imminent unlawful activity that threatens the safety of District passengers, employees and other members of the public, the destruction of District property, or the substantial disruption of public transit services; that the interruption will substantially reduce the likelihood of such unlawful activity; that such interruption is essential to protect the safety of District passengers, employees and other members of the public, to protect District property or to avoid substantial disruption of public transit services; and that such interruption is narrowly tailored to those areas and time periods necessary to protect against the unlawful activity. Any such interruption shall include measures to ensure the rights of the disabled to information and assistance.¹ The decision to implement a temporary interruption of operation of the System Cellular Equipment requires the authorization of the General Manager.

Illustrative examples of "extraordinary circumstances" include, but are not limited to, strong evidence of use of cell phones (i) as instrumentalities in explosives; (ii) to facilitate violent criminal activity or endanger District passengers, employees or other members of the public, such as hostage situations; and (iii) to facilitate specific plans or attempts to destroy District property or substantially disrupt public transit services. Such circumstances may justify a narrowly tailored interruption of service only if they meet the criteria listed above.

¹ Nothing herein is intended to restrict the District's ability to implement a temporary interruption of the operation of the System Cellular Equipment for maintenance or other operational reasons.



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Valeria DelBueno</i>		GENERAL MANAGER ACTION REQ'D: Approve and forward to Board of Directors		
DATE: c 10/19/11		BOARD INITIATED ITEM: No		
Originator/Prepared by: Olga Perez Dept: Transit System Development <i>OP</i> Signature/Date: 10/18/11	General Counsel <i>Audrea Rayon</i> 10/13/11	Controller/Treasurer <i>JP Pangilinan</i> 10/19/11	District Secretary []	BARC <i>Faulstich</i> 10/19/11

TITLE:

AUTHORIZATION FOR EXECUTION OF PROJECT STABILIZATION AGREEMENT FOR THE SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT eBART PROJECT

NARRATIVE:

PURPOSE:

To authorize the General Manager to execute a Project Stabilization Agreement (PSA) with the Contra Costa Building and Construction Trades Council (CCBTC) for the eBART Project. The PSA will facilitate the timely and successful completion of the eBART Project.

BACKGROUND:

The eBART Project consists of an approximately 10-mile extension of transit service from the current BART terminus in Contra Costa County at the Pittsburg/Bay Point BART Station to a point just east of Hillcrest Avenue in the City of Antioch. The extension will use a Diesel Multiple Unit (DMU) technology, rather than conventional BART technology.

On April 23, 2009, the Board approved the Final Environmental Impact Report (FEIR) for the extension and adopted the eBART Project. The Project adopted by the BART Board based on the FEIR included a transfer platform and two stations. On April 28, 2011, the Board approved an Amendment to the FEIR revising the eBART Project. The revised Project takes a phased approach, with the Hillcrest Station to be constructed as the first phase. The Railroad Avenue Station would be constructed at a later time when funding becomes available. The transfer platform, which will link DMU passengers to the BART system, will be constructed east of the existing Pittsburg/Bay Point BART Station platform in the existing BART tailtrack area.

DISCUSSION:

PSAs have long been used on large, complex, multi-craft, long-term private construction projects and increasingly on similar public projects. Staff has been working with the CCBTC to establish a PSA for the eBART Project. The benefits of a PSA include promoting efficiency of construction operations during construction of a project by providing for the orderly and peaceful settlement of labor disputes and grievances without strike, work-stoppages or lockouts, thereby promoting the public interest in assuring the timely and economical completion of the eBART

Project.

The terms of the PSA bind the District, the CCBTC, and any other signatory labor organization or unions and would be binding on the District's construction contractors for the construction of the line, track, systems and station for the eBART Project, with the exception of Contract No. 04SF-110-A, for the construction of the transfer platform, which has been awarded.

The PSA contains several key components:

1. BART Service Area Hiring Goals. The PSA includes a goal that not less than fifty percent (50%) of all hours worked by journeymen on the eBART Project, on a craft by craft basis, be worked by residents of the BART Service Area, defined as the communities of Alameda, Contra Costa, San Francisco and San Mateo counties.
2. Local Area Hiring Goals. The PSA also includes a goal that not less than twenty-five (25%) of all hours worked by journeymen on the eBART Project, on a craft by craft basis, be worked by residents of the Local Area, defined as the communities of eastern Contra Costa County.
3. Apprentices. The PSA includes a provision that only BART Service Area residents shall be utilized as apprentices and includes a goal that not less than fifty percent (50%) of the hours worked by apprentices on the eBART Project be worked by residents of the Local Area.
4. Helmets to Hardhats. The PSA includes a program that facilitates the entry of veterans into the building and construction trades.
5. PSA Administration. The District will appoint a Coordinator who will be responsible for the administration of the PSA. Compliance with the terms of the PSA shall be monitored on a monthly basis by the Office of Civil Rights. Additionally, quarterly meetings are required to be held between the Coordinator, eBART Project staff, Office of Civil Rights, the contractors and the signatory unions to review the status of compliance with the PSA.

The PSA has been approved as to form by the Office of General Counsel.

FISCAL IMPACT:

No fiscal impact.

ALTERNATIVES:

The District could choose not to proceed with the negotiated PSA. Failure to adopt the PSA could affect the efficiency of the construction of the eBART Project and increases the risk of delays in completion. Moreover, the District would lose terms negotiated with the CCBTC that favor the hiring of local labor.

RECOMMENDATIONS:

It is recommended that the Board adopt the motion.

MOTION:

The General Manager is authorized to execute the Project Stabilization Agreement with the Contra Costa Building and Construction Trades Council for the eBART Project, attached.



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Marisa DeBenedictis</i>		GENERAL MANAGER ACTION REQ'D: Approve and forward to the October 27, 2011 E&O Committee Meeting		
DATE: 10/19/11		BOARD INITIATED ITEM: No		
Originator/Prepared by: Katy Tseng-Wong Dept: Transit Systems Development	General Counsel <i>Andrew Pauro</i> 10/18/11	Controller/Treasurer <i>[Signature]</i>	District Secretary <i>[Signature]</i>	BARC <i>Paul Werner</i> 10/19/11
Signature/Date <i>Katy T. Wong</i>	<i>[Signature]</i>	[]	[]	[]
Status: Routed		Date Created: 10/11/2011		

TITLE:

**PROFESSIONAL SERVICES AGREEMENTS
NO. 6M8049 AND NO. 6M8055
SUSTAINING SYSTEMS ENGINEERING SERVICES
FOR BART PROJECTS**

NARRATIVE:

PURPOSE: Request the Board to authorize the General Manager to award Agreement No. 6M8049 to B&C Transit, Inc. and Agreement No. 6M8055 to Acumen Building Enterprise to provide Sustaining Systems Engineering Services for BART Projects.

DISCUSSION: A new tier of Professional Services Agreements called "sustaining engineering" has been developed by staff to provide an alternative to the larger general engineering/construction management agreements. The sustaining engineering awards are smaller, both in duration and budget authorization and, as a result, will be awarded more frequently. Through this process, a larger pool of firms can participate in District Professional Services Agreements as prime consultants, providing services on both an "on-call" and project specific basis. Sustaining engineering services are procured pursuant to the issuance of a "Request for Statement of Qualifications" ("RFSOQ") which is a simplified procurement process for architectural and engineering services, targeting small, minority, women-owned and/or DBE firms. Professional services for systems engineering services include a wide range of expertise that is frequently required to support BART's capital projects and operations improvement initiatives.

Advertisements soliciting interest in the RFSOQ were placed in a number of publications including DBE/MBE/WBE publications. A Community Outreach Meeting was held on February 17, 2011 notifying interested parties of this RFSOQ in addition to other upcoming District procurements. On August 10, 2011 an Advance Notice to Proposers was sent to approximately 70 prospective proposers and was also posted on BART's website. A Pre-Submittal Meeting for this RFSOQ was held on August 31, 2011 providing details regarding the procurement process and RFSOQ submittal requirements. The RFSOQ was distributed to all interested potential Proposers totaling 80 firms.

On September 13, 2011, proposals were received from the following six firms:

1. Acumen Building Enterprise, Oakland, CA
2. Auriga Corporation, Milpitas, CA
3. B&C Transit, Inc., Oakland, CA
4. CH2M Hill, Oakland, CA
5. Stantec Consulting Services, San Francisco, CA
6. Systra Consulting, Inc., Los Angeles, CA

The proposals were reviewed by a Selection Committee ("Committee") consisting of BART staff from Transit System Development, Maintenance and Engineering, Office of Civil Rights, and Contract Administration. Proposals were first reviewed to determine if the Proposers were considered responsive to the requirements of the RFSOQ. Subsequently, the proposals were evaluated and scored on the basis of the criteria contained in the RFSOQ with respect to qualifications of the proposing firms and the project team. As a result, all six firms were selected for oral interviews. Oral interview were conducted by the Committee on September 29 and September 30, 2011.

Based on the oral and written evaluations, the Committee determined that the two most qualified firms were B&C Transit, Inc. and Acumen Building Enterprise.

After making this determination, negotiations were entered into with the two most qualified firms. BART Contract Administration, with support from Internal Audit and Transit System Development, evaluated and discussed the rates and mark-ups (for a cost-plus-fixed-fee rate agreement) received from the two Proposers. These discussions were concluded on terms favorable to BART. Staff has determined that the recommended rate structures are fair and reasonable, and that both firms are responsible organizations.

Accordingly, the Committee recommends two awards under RFSOQ No. 6M8049, each in an amount not to exceed \$3,000,000 for a three (3) year period of performance as follows:

1. B&C Transit, Inc.
2. Acumen Building Enterprise

Work Plans (WPs) under each agreement will define individual assignments in each case subject to funding availability. Each WP will have its own scope, schedule and budget.

Pursuant to the revised DBE Program, the Office of Civil Rights is utilizing race and gender neutral efforts for Professional Services Agreements. Therefore, no DBE participation goal was set for these Agreements. Although no DBE goal was set, each of the recommended awardees committed to the following DBE participation goals:

1. B&C Transit, Inc.: 20%;
2. Acumen Building Enterprise: 65%.

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

FISCAL IMPACT: Each of the two Agreements has a not-to-exceed limit of \$3,000,000. District obligations will be subject to a series of WPs. Each WP will have a defined scope of services, and a separate schedule and budget. Any WP assigned for funding under a State or Federal grant will include State or Federal requirements. Capital Development and Control will certify the eligibility of identified funding sources and the Controller/Treasurer will certify availability of such funding prior to incurring project costs against these Agreements and the execution of each WP.

ALTERNATIVES: The District could reject all proposals and re-solicit new proposals. Re-issuing the RFSOQ would adversely impact the implementation of BART's Capital Program and operations improvement initiatives.

RECOMMENDATION: Adoption of the following motion:

MOTION: The General Manager is authorized to award Agreement No. 6M8049 to B&C Transit, Inc. and Agreement No. 6M8055 to Acumen Building Enterprise to provide Sustaining Systems Engineering Services for BART Projects, each in an amount not to exceed \$3,000,000, pursuant to notification to be issued by the General Manager and subject to the District's protest procedures and the FTA's requirements related to protest procedures.

SUSTAINING SYSTEMS ENGINEERING SERVICES FOR BART PROJECTS

- **Introduction**

The San Francisco Bay Area Rapid Transit District requires a wide range of expertise for systems engineering services that is frequently required to support BART's capital projects and operations improvement initiatives.

Professional services to be provided by the selected Consultants under the two awarded Agreements are designed for performing discrete task(s) with discrete phases(s) of a project rather than assuming overall responsibilities for developing design and contract documents for a project.

Services provided shall comply with the latest edition of all applicable codes, ordinances, criteria, standards, regulations, and other applicable laws.

Request for Statement of Qualifications No. 6M8049 was issued to provide the District with the required services. The RFSOQ:

- Described the detailed, objective selection process to be used;
- Indicated the criteria for making the selection; and
- Stated the District intended to award two Agreements for these services.

- **Scope of Services**

- Train Control Systems
- Transit Power Systems
- Controls and Communications
- Computer Hardware and Software

- **Selection Process**

Followed California Government Code and Federal Brooks Act regulations related to the procurement of Architectural & Engineering services in which:

- Proposers are first evaluated on the basis of their qualifications, both written and oral; and
- Upon determining the most qualified proposers, terms and conditions of the Agreement are then negotiated.

Terms and conditions favorable to the District have been successfully negotiated with the most qualified proposers; therefore, staff recommends awarding two Agreements as outlined on the following pages.

RECOMMENDED AWARDS

- **Agreement No. 6M8049**

B&C Transit, Inc., Oakland, California for a three year period for total not to exceed amount of \$3,000,000.

8 Subconsultants

Name and Location

All Transit Consultants, LLC, Pittsburg, CA
Atlantic Consultants, Folsom, CA
Aura Management Consultants, LLC, Orinda, CA (DBE)
Intueor Consulting, Inc., San Ramon, CA (DBE)
Jade Associates, Martinez, CA (DBE)
M Lee Corporation, Walnut Creek, CA (DBE)
Schulz Consulting, LLC, Alamo, CA (DBE)
YEI Engineers, Inc., Oakland, CA (DBE)

Services

Systems Project Management & Integration
Cathodic Protection & Structural Coatings
Computer Hardware & Software
Controls & Communication and Project Management
Administrative and Document Support
Cost Estimating
Scheduling
Transit Power Systems

- **Agreement No. 6M8055**

Acumen Building Enterprise, Oakland, California (DBE) for a three year period for total not to exceed amount of \$3,000,000.

5 Subconsultants

Name and Location

Anil Verma Associates, Inc., Oakland, CA (DBE)
Jade Associates, Martinez, CA (DBE)
Kal Krishnan Consulting Services, Inc., Oakland, CA (DBE)
Lea + Elliott, Inc., San Francisco, CA
QuEST Rail LLC, Wellington, MO

Services

Traction power, procurement and system integration
Documentation control and specification development
Communication and safety systems
Automatic transit systems, safety, procurement, implementation and integration
Train Control Systems – hardware and software



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Marisa Debraud</i>		GENERAL MANAGER ACTION REQ'D:		
DATE: 10/19/11		BOARD INITIATED ITEM: No		
Originator/Prepared by: Larry Kozimor Dept:	General Counsel	Controller/Treasurer	District Secretary	BARC
Signature/Date: <i>[Signature]</i> 10/17/11	<i>MB</i> 10/17/11	<i>[Signature]</i> []	[]	<i>Paul</i> <i>Cover</i> 10/19/11 []
Status: Approved		Date Created: 09/30/2011		

TITLE:
MEMORANDUM OF UNDERSTANDING REGARDING OPERATIONS AND MAINTENANCE OF CLIPPER FARE COLLECTION SYSTEM

NARRATIVE:
PURPOSE: To obtain Board authorization for the General Manager to execute the Memorandum of Understanding (MOU) Regarding Operations and Maintenance of Clipper Fare Collection System, and to obtain Board authorization for the General Manager to execute Amendment No.1 to the MOU.

DISCUSSION: In September 2003, the Board authorized BART to proceed with the Phase II systemwide rollout of the regional TransLink fare collection system, and to execute the TransLink Interagency Participation Agreement (IPA). The Agreement was executed by MTC and BART, Alameda Contra Costa Transit District (AC Transit), Golden Gate Bridge Highway and Transportation District (GGT), the City and County of San Francisco, acting by and through its Municipal Transportation Agency (SFMTA), Santa Clara Valley Transportation Agency (VTA), and San Mateo County Transit District (SamTrans).

The IPA created a consortium governed by a TransLink Management Group (TMG) comprised of the general managers of the six above named Operators (Charter Member Agencies), the Executive Director of MTC, and one General Member Agency representative for all other transit Operators in the region who choose to join TransLink. The IPA defined responsibilities of members, decision-making procedures, voting rights, governance structure, and terms of participation. The IPA also included a cost allocation and revenue sharing method, designated MTC as the Contracting Agency for provision of TransLink equipment and services, and established an Operating Group to oversee day-to-day operations of the consortium and TransLink Operating Rules.

In 2009, with MTC's approval, the TransLink contract was assigned by Motorola/ERG to Cubic Transportation Systems, Inc. At that time, MTC asked the TMG to reconsider the consortium governance structure to address concerns about efficiency and effectiveness. The TMG researched options for reorganization and decided to proceed with a Memorandum of Understanding (MOU) to replace the existing IPA.

MTC and the TransLink Operators then negotiated a new MOU intended to serve as the

successor agreement to the IPA. The MOU defines the basic agreements among MTC and the Operators, and continues the primary elements of the IPA including: commitment to the regional program, financial responsibilities, operating rules and dispute resolution. It modifies the governance structure to allow MTC to reassume its original role as managing agency over the TransLink program and reflects the transition of the name of the program from TransLink to Clipper.

The proposed MOU defines high level responsibilities of the Operators and MTC, cost and revenue allocation formulae carried forward from the IPA, a more detailed process for dispute resolution, modified operating rules based on the TransLink Operating Rules initially established in the IPA, amendment procedures, a process for new Operator participation, and the MOU term. The MOU will be effective on the date when all parties have signed the MOU and will terminate at conclusion of the TransLink/Clipper contract (November 2, 2019), unless otherwise terminated by the parties. A copy of the MOU is provided as Attachment A. Attachment B, prepared by MTC staff, provides additional details on the MOU principles.

Amendment No.1 to the MOU implements a two-year pilot program that resulted from an agreement reached between MTC, Cubic, and two of the largest transit benefit providers to maintain the current option for customers to automatically receive transit benefit value on their Clipper cards. The agreement requires Operator payment of a 1% Employer Program Commission, which is conceptually equivalent to commissions previously paid by Operators for the sale of paper fare media. Operators agreed to share the cost of the 1% commission through the existing cost allocation formula during a two-year pilot period, which would allow Operators to evaluate the cost impacts of the new fee. Amendment No.1, included as Attachment C, simply adds the 1% Employer Program Commission to the list of operating costs paid by the Operators under the existing cost allocation formula.

In the spring of 2011, all BART Ticket Vending Machines were modified to allow customers to load cash value to Clipper cards. BART is responsible for payment of credit and debit transaction fees for such cash value loads. The credit and debit transaction fees are in addition to the Clipper transaction fees, and the 1% Employer Program Commission.

The Office of General Counsel has approved the MOU and the MOU Amendment No.1 as to form.

FISCAL IMPACT: Approval of the proposed MOU does not alter the District's financial obligations that were established in the IPA; therefore, there will be no new fiscal impact as a result of this action.

In summary, Operating costs (Clipper transaction fees) for the Clipper system are apportioned among MTC and the Operators by type, as defined in MOU Appendix B. The allocation of such costs to each Operator is based on a combination of revenue collected and the number of fee payment transactions. One-third (1/3) of Clipper transaction fees are allocated to Operators based on each Operator's share of total revenue collected by the Clipper Clearinghouse. Two-thirds (2/3) of Clipper transaction fees are allocated to Operators based on each Operator's

share of total fee payment transactions processed by the Clipper clearinghouse.

To offset Clipper transaction fees during program startup, MTC provided incentive funds to all Operators of which \$2.1M was allocated to BART. These funds were exhausted in April of 2011, and BART's net Clipper transaction fees for FY11 were \$370,000. In addition, BART paid \$70,000 in FY11 for the credit and debit transaction fees associated with loading cash value at BART Ticket Vending Machines (TVMs).

FY12 Clipper expenses will ultimately be determined by the number and rate of customers who convert to Clipper. Conversion of customers to Clipper will be driven by the effectiveness of current outreach and marketing efforts for High Value Discount (HVD), Red and Green ticket transitions. Clipper expenses may also be impacted by the need to retain limited distribution of Red and Green tickets to ensure compliance with Federal and state law. The scope and length of this distribution will be subject to public comment and mutual agreement between BART and MTC. MTC produced a draft report of their Title VI analysis in September 2011, which is currently under operator and FTA review. Any Clipper Clearinghouse failures to remit disputed funds in a timely manner could also affect BART's costs.

Approval of MOU Amendment No.1 alters the District's financial obligations during the two-year pilot program in that it adds the cost of the 1% Employer Program Commission, producing a fiscal impact. If all Operators notify MTC in writing of their agreement to continue paying for this item after the two-year pilot period, there would be continued fiscal impacts.

During FY12, when all fare media transitions are complete as defined in the Fare Media Transition Plan, BART's Clipper transaction fees are estimated at about \$5 million. This figure includes an estimate of approximately \$100,000 to cover the cost of the 1% Employer Program Commission, which constitutes the first full year's financial impact of approving MOU Amendment No.1. It is currently estimated that the second year of the Employer Program Commission in FY13 would cost approximately \$300,000, resulting in a total fiscal impact of about \$400,000 for two years.

The FY12 budget also includes \$640,000 for payment of bank fees for credit and debit loads occurring at BART Ticket Vending Machines (TVMs). This figure may increase, depending on actual levels of customer TVM use for loading value to their Clipper cards. Over time, we expect some operating cost savings associated with the reduction of magnetic ticket use, which have not been estimated to date.

The MOU contains provisions for allocation of revenues that accrue through the Clipper program. Fare revenues are to be distributed to each Operator based on usage. Any other revenues that might be generated during the life of the Clipper contract will be used first to offset MTC's bank fees, then to reduce the Operators' Clipper transaction fees.

ALTERNATIVES: Do not approve the MOU, which would result in the District being left without the protections offered by the MOU in its implementation of the Clipper program. The District is the only Operator that has not signed the MOU.

RECOMMENDATION: Adoption of the following motion:

MOTION: The General Manager is authorized to execute the Memorandum of Understanding Regarding Operations and Maintenance of Clipper Fare Collection System and Amendment No.1 to the MOU.

**MEMORANDUM OF UNDERSTANDING
REGARDING OPERATIONS AND MAINTENANCE OF
CLIPPERSM FARE COLLECTION SYSTEM**

This ClipperSM Memorandum of Understanding (“MOU”) is entered into as of the date on which all Parties listed below have signed the MOU (“Effective Date”), by and among the Metropolitan Transportation Commission (“MTC”) and the following transit operators participating in the ClipperSM program (referred to herein as “Operator” or “Operators”):

Alameda-Contra Costa Transit District (“AC Transit”); Golden Gate Bridge Highway and Transportation District (“GGBHTD”); the San Francisco Bay Area Rapid Transit District (“BART”); the City and County of San Francisco, acting by and through its Municipal Transportation Agency (“MTA”); the San Mateo County Transit District (“SamTrans”); the Santa Clara Valley Transportation Authority (“VTA”); the Peninsula Corridor Joint Powers Board (“Caltrain”); and any other transit operators that implement Clipper and execute this MOU after the Effective Date.

MTC and the Operators are referred to herein as “the Parties” or individually, as a “Party”.

Recitals

1. ClipperSM (formerly TransLink[®]) is an automated fare payment system for intra- and inter-operator transit trips in the San Francisco Bay Area that has been implemented and is currently being operated on Operators’ transit systems.
2. MTC has entered into a contract (“the ClipperSM Contract”) with Cubic Transportation Systems, Inc. (“ClipperSM Contractor”) to operate and maintain ClipperSM through November 2, 2019.
3. On December 12, 2003, MTC and six of the Operators entered into an interagency participation agreement (“IPA”) to create a forum for joint agency decision-making called the TransLink[®] Consortium to work towards the successful implementation of ClipperSM, which agreement was terminated by the Consortium as of the Effective Date.
4. The IPA included provisions assigning responsibilities to MTC and the Operators relative to the implementation, operation and maintenance of the program, including the payment of the operating fees due the ClipperSM Contractor.
5. MTC and the Operators now wish to agree to their continuing obligations to ensure the successful operation and maintenance of ClipperSM.

**Article I
Operator Responsibilities**

Each Operator that is a signatory to this MOU agrees to:

- A. Implement and operate the ClipperSM fare payment system in accordance with the ClipperSM Operating Rules, as adopted and amended from time to time by MTC, consistent with the consultation and approval process set forth in Appendix A, Process for Amending ClipperSM Operating Rules, attached hereto and incorporated herein by this reference. The ClipperSM Operating Rules establish operating parameters and procedures for the consistent and efficient operation of ClipperSM throughout the region and the current version is available on MTC's website at <http://www.mtc.ca.gov/planning/tcip/>.
- B. Pay its share of ClipperSM costs, according to Appendix B, ClipperSM Cost and Revenue Allocation, attached hereto and incorporated herein by this reference. Notwithstanding any contrary survival provisions of the IPA, Appendix B shall supersede Appendix A to the IPA, as of the Effective Date. Changes to Appendix B require an amendment to the MOU in accordance with Article VIII.A.
- C. Make its facilities and staff available to MTC and the ClipperSM Contractor for implementation and operation of ClipperSM. Any Operator and MTC may agree to an operator-specific implementation plan, setting forth specific requirements regarding implementation and operation of ClipperSM for such Operator.
- D. Make determinations regarding the placement of ClipperSM equipment on the Operator's facilities and equipment; perform necessary site preparation; attend ClipperSM Contractor training on the use of the ClipperSM equipment; and provide training to employees using the equipment.
- E. Accept transfer of ownership of equipment one year following Conditional Acceptance by each Operator, as defined in Section 8.3 of the ClipperSM Contract (or for Phase 3 or other new Operators one year following Acceptance, as established by contract change order.) Maintain and track a list of all equipment in accordance with Federal Transit Administration requirements.
- F. Participate in periodic reviews of the cost and revenue allocation formula in Appendix B.1, to support fairness among Operators and to accommodate changes in shared operation costs.

**Article II
MTC Responsibilities**

MTC agrees to:

- A. Operate the ClipperSM fare payment system on behalf of the Operators and carry out the duties and responsibilities of contracting agency for the ClipperSM Contractor through the Term of the Clipper Contract.

- B. Notify and consult with the Operators concerning changes to the Operating Rules affecting Operator Roles and Responsibilities, consistent with the process described in Appendix A.
- C. Fund a portion of the ClipperSM operating and maintenance costs, as set forth in Appendix B.
- D. Transfer ownership of capital equipment to each Operator receiving such equipment one year following Conditional Acceptance of such equipment under the ClipperSM Contract as defined in Section 8.3 of the ClipperSM Contract (or for Phase 3 or other new Operators, one year following Acceptance, as established by contract change order), in accordance with FTA requirements.
- E. Provide regular updates (at least quarterly) on the ClipperSM program to the Operators.
- F. Support the Operators with respect to Article I.F, by providing system data affecting the cost allocation formula.
- G. Hold and manage the ClipperSM bank accounts and act as an agency in trust for the benefit of the cardholders for funds deposited by the cardholders for the ultimate use with the Operators and for the benefit of the Operators for funds due to Operators until dispersed to such Operators.
- H. Retain all books, papers, records, documents, and other materials pertaining to its responsibilities under Appendix B (“the Materials”) in accordance with federal grant and audit requirements and generally accepted accounting principles and make the Materials available to Operators upon request through reasonable means and at reasonable times. Operators may request that Materials be made available for the most recently closed fiscal year during the Term and for up to one year thereafter; provided, however, that nothing in this Article II.H is intended to limit an Operator’s rights to obtain records under the California Public Records Act (Government Code Section 6250 *et seq.*)
- I. Conduct an annual contract compliance audit covering MTC revenue collection and allocation and cost allocation responsibilities under the MOU and provide a copy of the complete audit report to all Operators upon conclusion of each such annual audit.

Article III New Operator Participants

Any Bay Area transit operator not a Party to this Agreement must agree to the terms of the MOU then in effect as a condition of implementing ClipperSM, by entering into a supplemental agreement with MTC. Signature by the other Parties to the MOU is not required. MTC agrees that it will not enter into a supplemental agreement with a particular operator prior to the issuance of a Change Notice to the ClipperSM Contract covering the work required to accept such operator into the system. MTC agrees to provide the other Parties to the MOU with written notice of each supplemental agreement.

**Article IV
Indemnification**

- A. Mutual Indemnification. No Party to this MOU (including any of its directors, commissioners, officers, agents or employees) shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by any other Party under or in connection with this Agreement. Pursuant to Government Code Section 895.4, each Party agrees to fully indemnify and hold other Parties harmless from any liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted to be done by such indemnifying Party under or in connection with this Agreement and for which such indemnifying Party would otherwise be liable.
- B. MTC Indemnification of Operators. Notwithstanding the provisions of Subsection A above, MTC shall indemnify, hold harmless, and defend the Operators from any and all claims or liability resulting from any action or inaction on the part of MTC relating to the ClipperSM Contract or from its failure to carry out its responsibilities under Article II of this MOU. This indemnification covers action or inaction on the part of MTC relating to the ClipperSM Contract prior to the Effective Date of the MOU.
- C. Operator Indemnification of MTC. Notwithstanding the provisions of Subsection A above, each Operator shall indemnify, hold harmless, and defend MTC from any and all claims or liability resulting from any action or inaction on the part of such Operator relating to its responsibilities under Article I of this MOU.

**Article V
Term and Termination/Withdrawal**

- A. Term. The term of the MOU shall begin upon the Effective Date and continue through November 2, 2019 ("the Term"), unless terminated by written agreement of the Parties or as provided in Article V.B below.
- B. Withdrawal. A Party to the MOU may withdraw from the MOU by two hundred forty (240) day advance written notice to all current signators to the MOU. Articles IV and VI and Appendices B and C shall survive a Party's withdrawal from the MOU.

**Article VI
Dispute Resolution**

The Parties agree to abide by the dispute resolution procedures in Appendix C, Dispute Resolution, attached hereto and incorporated herein by this reference, to resolve disputes between or among Parties to the MOU.

Article VII
Changed Circumstances

Any Party may initiate informal discussions among the Parties concerning the provisions of this MOU, based on its assessment that changes in technology or other factors external to the MOU or the ClipperSM Contract indicate that it would be in the best interests of one or more Parties to consider revisions to the MOU. If a majority of Parties agree, the Parties will then jointly evaluate the changed circumstances to determine what, if any, revisions to the MOU are necessary or desirable. Any agreed-upon changes would require an amendment to the MOU approved by all Parties.

Article VIII
General Provisions

- A. The entire Agreement between and among the Parties is contained herein, and no change in or modification, termination or discharge of this MOU shall be valid or enforceable unless it is approved by the Parties and made in writing and signed by the Parties.
- B. Headings in this MOU are for convenience only and not intended to define, interpret or limit the terms and conditions herein.
- C. This MOU may be executed in one or more counterpart, each of which shall be considered an original and all of which shall constitute a single instrument.
- D. This MOU is intended for the sole benefit of the Parties and is not intended to nor shall be construed to confer any benefit or create any right in any third party.
- E. Appendix D, Special Provisions, attached hereto and incorporated herein by this reference, sets forth the terms and conditions required by the City and County of San Francisco in any contracts or agreements entered into by them.
- F. If any provision of this MOU or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this MOU, or the application of such provision to persons, entities or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this MOU shall be valid and be enforceable to the fullest extent permitted by law.
- G. Notices provided under the MOU shall be provided to the individuals listed in Appendix E, Notices, attached hereto and incorporated herein by this reference. Each Party to the MOU is responsible for notifying other Parties of a change in the individual designated to receive notices in writing. Changes to Appendix E may be made by any Party without an amendment to this MOU. MTC will distribute to every other Party the notice information of new Parties to the MOU added pursuant to Article III.
- H. This MOU supersedes and replaces the IPA or, if the TransLink[®] Consortium has been terminated by its members, the surviving provisions of the IPA.

IN WITNESS WHEREOF, this MOU has been duly authorized and executed by the Parties hereto on the dates specified below.

Metropolitan Transportation Commission

Approved as to Form:

Steve Heminger, Executive Director

Melanie J. Morgan
Deputy General Counsel

Date: _____

Alameda Contra Costa Transit District

Approved as to Form:

Mary King, Interim General Manager

Ken Scheidig, General Counsel

Date: _____

Golden Gate Bridge Highway and Transportation District

Approved as to Form:

Celia G. Kupersmith, General Manager

David J. Miller
General Counsel

Date: _____

San Francisco Bay Area Rapid Transit District

Approved as to Form:
Office of the General Counsel

General Manager

Matt Burrows
General Counsel

Date: _____

**City and County of San Francisco
Municipal Transportation Agency**

Approved as to Form:
Dennis J. Herrera, City Attorney

Nathaniel P. Ford Sr.
Executive Director/CEO

Robin M. Reitzes
Deputy City Attorney

Date: _____

Municipal Transportation Agency Board of Directors
Resolution No. _____
Dated: _____

Secretary, MTAB

San Mateo County Transit District

Approved as to Form:

Michael Scanlon, General Manager and
Chief Executive Officer

David J. Miller
General Counsel

Date: _____

Santa Clara Valley Transportation Authority

Approved as to Form:

Michael T. Burns, General Manager

Kevin Allmand
General Counsel

Date: _____

Peninsula Corridor Joint Powers Board

Approved as to Form:

Michael Scanlon, Executive Director

David J. Miller
General Counsel

Date: _____

Appendix A – Process for Amending ClipperSM Operating Rules
Appendix B - ClipperSM Cost and Revenue Allocation
Appendix C – Dispute Resolution
Appendix D – Special Provisions
Appendix E – Notices

J:\CONTRACT\Contracts-New\Con Clipper\MOUs\Clipper MOU\Post-IPA MOU_final.doc

Appendix A

Process for Amending ClipperSM Operating Rules

1. MTC will provide written notice to Operators at least ninety (90) days in advance of making any changes to the Operating Rules affecting Operator Roles and Responsibilities (Section 3 of the ClipperSM Operating Rules). Notice shall be provided by email to the contact named in Appendix E, or as subsequently revised or updated by the Operators, as provided in Article VIII.G.
2. MTC will endeavor to provide additional notice to Operators on possible changes to the Operating Rules affecting Operator Roles and Responsibilities in the regular ClipperSM program reports furnished under Article II.E.
3. MTC's notice shall include enough information to enable Operators to determine the financial and other impacts of the proposed change.
4. If requested by any Operator within 30 days of issuance of such notice, MTC will consult with all affected Operators concerning the proposed change prior to its adoption.
5. Any Operator that requires additional time in excess of the notice period specified by MTC to implement a change may notify MTC of the additional period of time required during the initial 30-day notice period. MTC will then work with the Operator(s) during the consultation period to modify the effective date and/or content of the Operating Rules change, as necessary.
6. Following such consultation process, if any Operator(s) objects to the proposed change, as modified during the consultation process, such Operator(s) may initiate one or more of the dispute resolution processes described in Appendix C.
7. MTC agrees to delay the implementation of the disputed change until the conclusion of the dispute resolution process.

Appendix B

ClipperSM Cost and Revenue Allocation

1. Cost Allocation Among Operators

The allocation of ClipperSM operating costs to each Operator shall be based on a combination of revenue collected and the number of fee payment transactions processed. "Revenue collected" shall mean the fee collected on behalf of each Operator by the ClipperSM clearinghouse (e.g., the price charged to ride on the Operator's transit system, the value of pass sales, the amount of parking fees paid). A "fee payment transaction" shall mean any activity in which a ClipperSM card is used to receive service on or from an Operator's system (e.g., to ride on the Operator's transit system, to park on the Operator's property). A fee payment transaction shall be attributed to the Operator on whose system the service was provided, except that a transaction in which a patron uses a Muni Fast Pass to ride BART will be attributed to MTA. All fee payment transactions are included for purposes of allocating ClipperSM operating costs, regardless of whether the transaction results in a reduction of the amount of stored value or stored rides on a ClipperSM card (e.g., use of a monthly pass on a transit system, intra-operator transfers, entry and exit transactions for a single ride where both transactions are required to compute the appropriate fare payment).

One-third (1/3) of ClipperSM operating costs shall be allocated to Operators based on each Operator's share of total revenue collected by the ClipperSM clearinghouse, as defined above. Two-thirds (2/3) of ClipperSM operating costs shall be allocated to Operators based on each Operator's share of total fee payment transactions processed by the ClipperSM clearinghouse, as defined above.

In addition to the ClipperSM operating costs allocated in accordance with Appendix B.2.B(i) herein, each Operator shall be responsible for payment of:

- a. ClipperSM Data Server (CDS) Store operating costs specified below for any TDS Store implemented on such Operator's site; and
- b. Credit/debit interchange fees charged through an Operator-specific credit/debit gateway associated with ClipperSM sales through add value machines, ticket office terminal devices and ticket vending machines. This responsibility is subject to review pursuant to Article I.F to ensure that no single Operator is unfairly burdened by such fees.
- c. Incremental ClipperSM operating costs established by and/or resulting from ClipperSM Contract change orders requested and funded by an Operator for such Operator's use and benefit shall be the responsibility of such Operator. This applies to costs or portions of costs that would otherwise be MTC's responsibility as described below.

2. **ClipperSM Costs**

A. MTC Operating and Maintenance Costs. MTC shall pay the following ClipperSM operating costs:

- i. All fixed operating costs of the ClipperSM clearinghouse and equipment maintenance services costs as specified in the ClipperSM Contract's Price Schedule (Attachment 2 to the ClipperSM Contract) (the "Price Schedule"), including:
 - a. Item 3.20 Program Management – Operations and Maintenance
 - b. Item 3.30 ClipperSM Testbed Operations & Maintenance
 - c. Item 5.31 Operator Help Desk
 - d. Item 5.32 Reporting
 - e. Item 5.33 Asset Management
 - f. Item 6.0 Equipment Maintenance Services
 - g. Item 10.21(a) Location Acquisition
 - h. Item 10.22 Location Servicing and Support
 - i. Item 10.23 (a) Acquisition Payment for Third Party Location
 - j. Item 12.0 Network Management
 - k. Item 13.22 Basic Monthly Operations and Admin
- ii. Variable ClipperSM operating costs as specified in the Price Schedule (Attachment 2 to the ClipperSM Contract), specifically:
 - a. Item 8.0 Card Distribution Services
 - b. Item 9.41 Fixed and Incremental Fees Per Active Card Account (50% of the invoiced amount)
- iii. All other lump sum and capital expense items specified in the Price Schedule not enumerated above or covered by Section 2.B; and
- iv. \$7,120,000 in incentives to be allocated to Operators to pay operating costs, as shown in Section 4, Incentive Payments, below.

B. Operator Operating Costs.

- i. Operators shall pay the following listed ClipperSM operating costs in accordance with the cost sharing formula in Appendix B.1, reduced by any amounts payable by MTC pursuant to 2.A(iv) above. References to Item numbers refer to the corresponding prices payable to the ClipperSM Contractor under the ClipperSM Contract Price Schedule, which are subject to annual price adjustment as specified in Article 13.6 of the ClipperSM Contract:
 - a. Item 9.24 Balance Protection Services Registration
 - b. Item 9.25 Lock/unlock ClipperSM Application

- c. Item 9.41 Fixed and Incremental Fees Per Active Card Account (50% of the invoiced amount)
 - d. Item 10.11 ClipperSM E-purse Load
 - e. Item 10.12 Pass/Stored Ride Load
 - f. Item 11.0 Autoload Services
 - g. Item 12.22.89 Fixed Monthly Service Fee to Support ClipperSM Data Server Store
 - h. Item 13.22.45 Supplemental Monthly Operations and Admin (except as reduced by MTC in accordance with Section 4.1, Incentive Payments)
 - i. Item 13.31 ClipperSM Transaction Fee
 - j. Item 13.60 Incremental Gateway Fees
 - k. Item 13.70 Incremental Debit Card Interchange Fees
 - l. Item 13.80 Incremental Credit Card Interchange Fees
 - m. Item 13.90 Pass Through Website Credit Card Processing Fees
 - n. Reimbursement of MTC bank fees and direct bank charges in connection with the ClipperSM bank account(s) in excess of the amounts reimbursed under Section 3.A below
 - o. Direct payment or reimbursement of MTC costs for network communication.
- ii. Changes or Additions to Operator Operating Costs Items. Substantive changes or additions to the Operator-paid operating cost items set forth in B(i)(a-o) require an amendment to this Appendix B and approval of all Parties to the MOU as of the date of the change or addition.
- C. MTC shall invoice each Operator on a monthly basis for its share of the operating costs. The Operators shall pay MTC within fifteen (15) calendar days of receipt of such invoice.

3. Revenue Allocation

Revenues generated by ClipperSM during any period of time, including interest earnings on funds held by the clearinghouse and excluding fare revenues or parking fees collected on behalf of and distributed to Operators, shall be utilized as follows:

- A. To offset MTC's bank fees and direct bank charges related to the managing of the ClipperSM accounts;
- B. After deduction of MTC's bank fees and charges under 3.A above, to reduce the Operators' ClipperSM operating costs listed in 2.B(i) above; and
- C. After payment of Operators' ClipperSM operating costs listed in 2.B(i) above, to be allocated to Operators using the formula specified in Section 1 herein.

Notwithstanding the above, fees charged cardholders for card acquisition, card replacement, balance restoration, failed Autoload funding recovery, card refund processing, and other card-related activities shall be reserved to pay for future card procurements; provided, however, that surcharges on limited use cards or other fare media imposed by an Operator to pay for the acquisition, implementation, administration and replacement of such fare media shall be distributed to and retained by such Operator. (For clarity, any surcharge imposed by an Operator as part of its fare structure shall be considered "fare revenue" and shall be distributed to and retained by such Operator.)

4. Incentive Payments

MTC's \$10,000,000 in incentive funds shall be allocated to pay operating costs associated with Phase II as follows:

- (1) \$2,880,000 contingency to Contractor (for payment of ClipperSM Contract Price Schedule Item No. 13.22.45) for transaction assurances in the event minimum transaction volumes (20,000,000 transactions/month) are not achieved. If the minimum transaction volumes are met and these funds are not needed, MTC may reallocate the remaining funds to other purposes; and
- (2) \$7,120,000 to individual Operators, to be applied as a credit against Phase II variable operating costs, a portion of which has already been credited to certain individual Operators:

AC Transit	\$862,227
BART	2,128,016
Caltrain/SamTrans	484,744
Golden Gate Transit	634,239
MTA	2,327,503
SCVTA	683,271

Appendix C

Dispute Resolution

The Parties agree to resolve disputes concerning this MOU between or among one or more Parties based on the following dispute resolution principles.

1. Informal Dispute Resolution

The Parties agree to attempt to resolve informally all disputes. In the event of a dispute among any Parties to the MOU, those Parties shall notify every other Party in writing about the substance of the dispute. The Parties to the dispute shall meet and confer by exchanging written positions on the dispute, and by meeting in person thereafter to discuss and resolve the dispute. If those representatives are unable to resolve the dispute, the chief executives of those Parties shall be informed of the substance of the dispute and provided all writings that have been exchanged regarding the dispute. The chief executives shall meet and confer in person or by telephone concerning the dispute, and may choose to exchange letters in preparation for the meet and confer.

2. Mediation

If the dispute is not resolved, the Parties may avail themselves by mutual consent to mediation, arbitration (binding or non-binding), or any other dispute resolution resource (collectively "Alternate Dispute Resolution (ADR) processes"). All procedures and methodologies in ADR processes shall be by mutual consent of the Parties, including but not limited to the choice of the mediator or arbitrator, dates and times and timelines, whether documents are exchanged in preparation for the ADR session, etc. Fees and expenses of the mediator will be borne equally, unless otherwise agreed. The Parties to the dispute shall be represented by individuals of their choosing, except that the Parties must agree on the question of whether lawyers are present or not. The entire process shall be confidential and treated as a compromise negotiation for purposes of federal and state rules of evidence. If ADR processes are agreed on, the Parties shall agree on the identity of the mediator or arbitrator within 30 days of agreeing on the ADR process. The Parties shall not unreasonably withhold consent as to the choice of the mediator or arbitrator. Unless the schedule of the mediator or arbitrator does not permit, the Parties shall have their ADR process completed within 60 days after agreement on the choice of the mediator or arbitrator. Nothing in this MOU affects the rights or abilities of the Parties to avail themselves of all rights and remedies they have under the law of California or federal law, and to the state or federal courts to resolve their dispute.

3. Operator Obligations

An Operator who disputes amounts claimed by MTC to be due under the MOU agrees to pay the amount claimed pending dispute resolution.

Appendix D

Special Provisions for the City and County of San Francisco.

(References to "City" in Paragraphs 1 and 2 refer to the City and County of San Francisco)

1. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation. This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

2. Guaranteed Maximum Costs. The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by laws governing emergency procedures, officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, Commodities or Services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law. Officers and employees of the City are not authorized to offer or promise, nor is the City required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

3. Sunshine Ordinance. In accordance with San Francisco Administrative Code §67.24(e), contracts, contractors' bids, responses to solicitations and all other records of communications between City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

4. Prohibition on Political Activity with City Funds. In accordance with San Francisco Administrative Code Chapter 12.G, no funds appropriated by the City and County of San Francisco for this Agreement may be expended for organizing, creating, funding, participating in, supporting, or attempting to influence any political campaign for a candidate or for a ballot measure. The terms of San Francisco Administrative Code Chapter 12.G are incorporated herein by this reference.

Appendix E

Notices

Contact:

Metropolitan Transportation Commission:

Melanie Crotty
Director, Traveler Coordination and Information
Email: mcrotty@mtc.ca.gov
Fax: 510-817-5848
Phone: 510-817-5880

Alameda Contra Costa Transit District

Mary King
Interim General Manager
Email: mking@actransit.org
Fax: 510-891-7157
Phone: 510-891-4793

Golden Gate Bridge Highway and Transportation District

Celia G. Kupersmith
General Manager
Email: ckup@goldengate.org
Fax: 415-923-2367
Phone: 415-923-2212

San Francisco Bay Area Rapid Transit District

Larry Kozimor
Project Manager, Transit System Development
Email: lkozimo@bart.gov
Fax: 510-287-4860
Phone: 510-287-4723

City and County of San Francisco Municipal Transportation Agency

Nathaniel P. Ford Sr.
Executive Director/CEO
Email: Nathaniel.ford@sfmta.com
Fax: 415-701-4502
Phone: 415-701-4687

Mailing Address

101 – 8th St.
Oakland, CA 94607

1600 Franklin St.
Oakland, CA 94612

Box 9000, Presidio Station
San Francisco, CA 94129-
0601

300 Lakeside Drive, 21st
Floor,
Oakland, CA 94612

1 South Van Ness Ave.
7th Floor
San Francisco, CA 94103

San Mateo County Transit District

Virginia Harrington

Deputy CEO

Email: harringtong@samtrans.com

Fax: 650-508-6415

Phone: 650-508-7950

1250 San Carlos Avenue,

P.O. Box 3006

San Carlos, CA 94070-2468

Santa Clara Valley Transportation Authority

Ali Hudda

Deputy Director of Accounting

Email: Ali.Hudda@vta.org

Fax: 408-955-9750

Phone: 408-546-7922

3331 North First St.

San Jose, CA 95134-1906

Peninsula Corridor Joint Powers Board

Virginia Harrington

Deputy CEO

Email: harringtong@samtrans.com

Fax: 650-508-6415

Phone: 650-508-7950

1250 San Carlos Avenue,

P.O. Box 3006

San Carlos, CA 94070-2468

Attachment B Principles of MOU

The recommended MOU defines:

1. *High level responsibilities of MTC and the Operators.* Items of note include:

For MTC:

- confirm existing obligations under the ClipperSM Contract to collect and disperse revenues to the participating agencies, according to the stated cost and revenue sharing formula;
- acknowledge responsibility for management of bank accounts and fiduciary duty to the cardholders;
- notify Operators of changes to Operating Rules, participate in consultation process on Rules changes, and provide regular reports to the Operators;
- pay fixed operating costs, specified variable costs and other lump sum and capital costs, and operator incentive fees; and
- make project records available to the operators (exact terms not yet agreed-upon).

For the Operators:

- implement and operate ClipperSM ;
 - pay specified variable operating costs; and
 - accept ownership of equipment one year after acceptance.
2. *Cost and revenue allocation formula.* The formula first adopted in the IPA is carried with minor revisions. Operating costs allocated to MTC and the Operators are specified described, and any changes require an amendment to the MOU. Operators agree to periodic reviews of the cost allocation formula to support fairness among Operators and accommodate changes.
 3. *Process for dispute resolution.* The TransLink[®] IPA called for, but never defined such a process. The proposed process first calls for informal dispute resolution and then allows escalation to mediation or arbitration, binding or nonbinding, as agreed by the parties.
 4. *Process for Operator input on MTC-proposed changes to Operating Rules.* MTC will provide at least 90 day notice for any changes impacting Operators' Roles and Responsibilities, and consult further with Operators, if requested. Disagreement about changes impacting Operators are subject to the dispute resolution process in the MOU, if the consultation process fails to result in agreement.
 5. *Process for new operator participation.* To implement ClipperSM, an agency must sign a supplemental agreement with MTC, agreeing to the terms of the MOU. MTC will not sign a supplemental agreement until Cubic and the operator are ready to implement Clipper.
 6. *Term of the MOU.* The MOU is effective on the date when all parties have signed the MOU and will terminate at conclusion of the ClipperSM Contract (November 2 2019), unless otherwise terminated by the parties.

ATTACHMENT C
AMENDMENT NO. 1
TO
CLIPPER® MEMORANDUM OF UNDERSTANDING

This Amendment No. 1 to the Clipper® Memorandum of Understanding dated _____, 2011, (the "MOU") is entered into as of the ____ day of _____, 2011 by and among the Metropolitan Transportation Commission ("MTC") and the following transit operators participating in the Clipper® program (referred to herein as "Operator" or "Operators"):

Alameda-Contra Costa Transit District ("AC Transit"); Golden Gate Bridge Highway and Transportation District ("GGBHTD"); the San Francisco Bay Area Rapid Transit District ("BART"); the City and County of San Francisco, acting by and through its Municipal Transportation Agency ("MTA"); the San Mateo County Transit District ("SamTrans"); the Santa Clara Valley Transportation Authority ("VTA"); the Peninsula Corridor Joint Powers Board ("Caltrain"); and any other transit operators that implement Clipper and execute this MOU after the Effective Date.

MTC and the Operators are referred to herein as "the Parties" or individually, as a "Party".

The Parties agree to amend the MOU as follows:

Appendix B, Clipper® Cost and Revenue Allocation, is deleted and the revised Appendix B is substituted, as attached hereto and incorporated herein by this reference.

IN WITNESS WHEREOF, this MOU has been duly authorized and executed by the Parties hereto on the dates specified below.

Metropolitan Transportation Commission

Approved as to Form:

Steve Heminger, Executive Director
Date: _____

Adrienne D. Weil
General Counsel

Alameda Contra Costa Transit District

Approved as to Form:

Mary King, Interim General Manager
Date: _____

Carol Babbington, Acting General
Counsel

**Golden Gate Bridge Highway and
Transportation District**

Approved as to Form:

Denis Mulligan, General Manager
Date: _____

David J. Miller
General Counsel

**San Francisco Bay Area Rapid Transit
District**

Approved as to Form:

Date: _____, General Manager

Matt Burrows, General Counsel

**City and County of San Francisco
Municipal Transportation Agency**

Approved as to Form:
Dennis J. Herrera, City Attorney

Edward Reiskin, CEO/Executive Director
Date: _____

Robin M. Reitzes
Deputy City Attorney

Municipal Transportation Agency Board of
Directors
Resolution No. _____
Dated: _____

Secretary, MTAB

San Mateo County Transit District

Approved as to Form:

Michael Scanlon, General Manager and
Chief Executive Officer
Date:

David J. Miller
General Counsel

**Santa Clara Valley Transportation
Authority**

Approved as to Form:

Michael T. Burns, General Manager
Date:

Kevin Allmand
General Counsel

Peninsula Corridor Joint Powers Board

Approved as to Form:

Michael Scanlon, Executive Director
Date:

David J. Miller
General Counsel

J:\CONTRACT\Contracts-New\Con Clipper\MOUs\Clipper MOU\Amendment 1\Clipper
MOU_Amend1_9.14.11_legal.doc

Appendix B

ClipperSM Cost and Revenue Allocation

1. Cost Allocation Among Operators

The allocation of Clipper[®] operating costs to each Operator shall be based on a combination of revenue collected and the number of fee payment transactions processed. "Revenue collected" shall mean the fee collected on behalf of each Operator by the Clipper[®] clearinghouse (*e.g.*, the price charged to ride on the Operator's transit system, the value of pass sales, the amount of parking fees paid). A "fee payment transaction" shall mean any activity in which a ClipperSM card is used to receive service on or from an Operator's system (*e.g.*, to ride on the Operator's transit system, to park on the Operator's property). A fee payment transaction shall be attributed to the Operator on whose system the service was provided, except that a transaction in which a patron uses a Muni Fast Pass to ride BART will be attributed to MTA. All fee payment transactions are included for purposes of allocating Clipper[®] operating costs, regardless of whether the transaction results in a reduction of the amount of stored value or stored rides on a Clipper[®] card (*e.g.*, use of a monthly pass on a transit system, intra-operator transfers, entry and exit transactions for a single ride where both transactions are required to compute the appropriate fare payment).

One-third (1/3) of Clipper[®] operating costs shall be allocated to Operators based on each Operator's share of total revenue collected by the Clipper[®] clearinghouse, as defined above. Two-thirds (2/3) of Clipper[®] operating costs shall be allocated to Operators based on each Operator's share of total fee payment transactions processed by the Clipper[®] clearinghouse, as defined above.

In addition to the Clipper[®] operating costs allocated in accordance with Appendix B.2.B(i) herein, each Operator shall be responsible for payment of:

- a. Clipper[®] Data Server (CDS) Store operating costs specified below for any TDS Store implemented on such Operator's site; and
- b. Credit/debit interchange fees charged through an Operator-specific credit/debit gateway associated with Clipper[®] sales through add value machines, ticket office terminal devices and ticket vending machines. This responsibility is subject to review pursuant to Article I.F to ensure that no single Operator is unfairly burdened by such fees.
- c. Incremental Clipper[®] operating costs established by and/or resulting from Clipper[®] Contract change orders requested and funded by an Operator for such Operator's use and benefit shall be the responsibility of such Operator. This applies to costs or portions of costs that would otherwise be MTC's responsibility as described below.

2. Clipper[®] Costs

- A. MTC Operating and Maintenance Costs. MTC shall pay the following Clipper[®] operating costs:

- i. All fixed operating costs of the Clipper[®] clearinghouse and equipment maintenance services costs as specified in the Clipper[®] Contract's Price Schedule (Attachment 2 to the Clipper[®] Contract) (the "Price Schedule"), including:
 - a. Item 3.20 Program Management – Operations and Maintenance
 - b. Item 3.30 Clipper[®] Testbed Operations & Maintenance
 - c. Item 5.31 Operator Help Desk
 - d. Item 5.32 Reporting
 - e. Item 5.33 Asset Management
 - f. Item 6.0 Equipment Maintenance Services
 - g. Item 10.21(a) Location Acquisition
 - h. Item 10.22 Location Servicing and Support
 - i. Item 10.23 (a) Acquisition Payment for Third Party Location
 - j. Item 12.0 Network Management
 - k. Item 13.22 Basic Monthly Operations and Admin
- ii. Variable Clipper[®] operating costs as specified in the Price Schedule (Attachment 2 to the Clipper[®] Contract), specifically:
 - a. Item 8.0 Card Distribution Services
 - b. Item 9.41 Fixed and Incremental Fees Per Active Card Account (50% of the invoiced amount)
- iii. All other lump sum and capital expense items specified in the Price Schedule not enumerated above or covered by Section 2.B; and
- iv. \$7,120,000 in incentives to be allocated to Operators to pay operating costs, as shown in Section 4, Incentive Payments, below.

B. Operator Operating Costs.

- i. Operators shall pay the following listed Clipper[®] operating costs in accordance with the cost sharing formula in Appendix B.1, reduced by any amounts payable by MTC pursuant to 2.A(iv) above. References to Item numbers refer to the corresponding prices payable to the Clipper[®] Contractor under the Clipper[®] Contract Price Schedule, which are subject to annual price adjustment as specified in Article 13.6 of the Clipper[®] Contract:
 - a. Item 9.24 Balance Protection Services Registration
 - b. Item 9.25 Lock/unlock Clipper[®] Application
 - c. Item 9.41 Fixed and Incremental Fees Per Active Card Account (50% of the invoiced amount)
 - d. Item 10.11 Clipper[®] E-purse Load
 - e. Item 10.12 Pass/Stored Ride Load
 - f. Item 10.30 Employer Program Commission [see Note below]**
 - f.g. Item 11.0 Autoload Services
 - g-h. Item 12.22.89 Fixed Monthly Service Fee to Support ClipperSM Data Server Store

- h.i. Item 13.22.45 Supplemental Monthly Operations and Admin (except as reduced by MTC in accordance with Section 4.1, Incentive Payments)
- i.j. Item 13.31 Clipper[®] Transaction Fee
- j.k. Item 13.60 Incremental Gateway Fees
- k.l. Item 13.70 Incremental Debit Card Interchange Fees
- l.m. Item 13.80 Incremental Credit Card Interchange Fees
- m.n. Item 13.90 Pass Through Website Credit Card Processing Fees
- n.o. Reimbursement of MTC bank fees and direct bank charges in connection with the Clipper[®] bank account(s) in excess of the amounts reimbursed under Section 3.A below
- o.p. Direct payment or reimbursement of MTC costs for network communication.

The period in which Item 10.30 shall be a Clipper[®] Operating Cost under this Section shall be from the Effective Date of Amendment No. 1 to June 30, 2013, unless all Operators notify MTC in writing of their agreement to continue to pay Item 10.30, in which case its applicability shall continue through the Term of the MOU.

- ii. Changes or Additions to Operator Operating Costs Items. Substantive changes or additions to the Operator-paid operating cost items set forth in B(i)(a-o) require an amendment to this Appendix B and approval of all Parties to the MOU as of the date of the change or addition.
- C. MTC shall invoice each Operator on a monthly basis for its share of the operating costs. The Operators shall pay MTC within fifteen (15) calendar days of receipt of such invoice.

3. Revenue Allocation

Revenues generated by Clipper[®] during any period of time, including interest earnings on funds held by the clearinghouse and excluding fare revenues or parking fees collected on behalf of and distributed to Operators, shall be utilized as follows:

- A. To offset MTC's bank fees and direct bank charges related to the managing of the Clipper[®] accounts;
- B. After deduction of MTC's bank fees and charges under 3.A above, to reduce the Operators' Clipper[®] operating costs listed in 2.B(i) above; and
- C. After payment of Operators' Clipper[®] operating costs listed in 2.B(i) above, to be allocated to Operators using the formula specified in Section 1 herein.

Notwithstanding the above, fees charged cardholders for card acquisition, card replacement, balance restoration, failed Autoload funding recovery, card refund processing, and other card-related activities shall be reserved to pay for future card procurements; provided, however, that surcharges on limited use cards or other fare media imposed by an Operator to pay for the acquisition, implementation, administration and replacement of such fare media shall be

distributed to and retained by such Operator. (For clarity, any surcharge imposed by an Operator as part of its fare structure shall be considered "fare revenue" and shall be distributed to and retained by such Operator.)

4. Incentive Payments

MTC's \$10,000,000 in incentive funds shall be allocated to pay operating costs associated with Phase II as follows:

- (1) \$2,880,000 contingency to Contractor (for payment of Clipper[®] Contract Price Schedule Item No. 13.22.45) for transaction assurances in the event minimum transaction volumes (20,000,000 transactions/month) are not achieved. If the minimum transaction volumes are met and these funds are not needed, MTC may reallocate the remaining funds to other purposes; and
- (2) \$7,120,000 to individual Operators, to be applied as a credit against Phase II variable operating costs, a portion of which has already been credited to certain individual Operators:

AC Transit	\$862,227
BART	2,128,016
Caltrain/SamTrans	484,744
Golden Gate Transit	634,239
MTA	2,327,503
SCVTA	683,271



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Marcia DeLeon</i>		GENERAL MANAGER ACTION REQ'D: Approve and Forward to Board		
DATE: c 10/19/11		BOARD INITIATED ITEM: No		
Originator/Prepared by: Barbara Iriabe Dept: Real Estate and Property Development	General Counsel	Controller/Treasurer	District Secretary	BARC
Signature/Date: <i>Barbara Iriabe</i> 10/17/11	<i>[Signature]</i>	<i>[Signature]</i> []	[]	<i>[Signature]</i> 10-19-11 []

TITLE:

**Condemnation of Real Property for the East Contra Costa BART Extension
(eBART Project)
BART Parcels P-5020-1, -2A, -2B, -3A, -3B, -3C, and -4;
P-5030-1; P-5040-1; P-5050-1; and
P-5060-1, -2A and -2B**

NARRATIVE:

PURPOSE:

To adopt by a two-thirds vote of the entire Board each of the following:

1. The attached Resolution of Necessity to Condemn for BART Parcels P-5020-1, -2A, -2B, -3A, -3B, -3C, and -4 in order to acquire fee simple, permanent access, utility and slope easement, and temporary construction easement interests in real property located west of 2502 Willow Avenue, Antioch, California (Parachini Parcel);
2. The attached Resolution of Necessity to Condemn for BART Parcel P-5030-1 in order to acquire fee simple interest in real property located at 2502 Willow Avenue, Antioch, California (Esver Parcel);
3. The attached Resolution of Necessity to Condemn for BART Parcel P-5040-1 in order to acquire fee simple interest in real property located one parcel south of Willow Avenue, Antioch, California (Duarte Parcel);
4. The attached Resolution of Necessity to Condemn for BART Parcel P-5050-1 in order to acquire fee simple interest in real property located one parcel east of 2502 Willow Avenue, Antioch, California (Antioch Paving Parcel); and
5. The attached Resolution of Necessity to Condemn BART Parcels P-5060-1, -2A and -2B in order to acquire fee simple and permanent slope easement interests in real property located two parcels east of 2502 Willow Avenue, Antioch, California (FKP Parcel).

These interests in the properties, all of which are located in Antioch, Contra Costa County, California, are required for the construction of the East Contra Costa BART Extension ("eBART Project" or "Project").

DISCUSSION:

On April 23, 2009, the San Francisco Bay Area Rapid Transit District ("BART" or "District") Board of Directors ("Board") certified the Final Environmental Impact Report ("FEIR") and adopted the eBART

Project (“Adopted Project”) consisting of an approximately 10-mile extension from the BART system starting from the existing Pittsburg/Bay Point BART Station and extending in the median of State Route 4 (“SR4”). The Adopted Project includes using Diesel Multiple Unit (“DMU”) technology, rather than conventional BART technology, a transfer platform in the existing Pittsburg/Bay Point Station tailtracks, a station at Railroad Avenue in the City of Pittsburg, a terminus station east of the Hillcrest Avenue Interchange in the City of Antioch and a maintenance facility east of the Hillcrest Avenue Station (“Hillcrest Station”).

In response to changed circumstances, on April 28, 2011, the Board adopted an Addendum to the FEIR, adopted the Revised Project and authorized staff to implement the Adopted Project as modified by some or all of the Revised Project elements, depending on funding availability and other contingencies as appropriate. The Revised Project takes a phased approach, with the Hillcrest Station to be constructed as the first phase. The Railroad Avenue Station would be constructed at a later time when funding becomes available.

BART proposes to purchase certain real property interests for the purpose of bidding, awarding and proceeding with construction of the “Parking Lot and Maintenance Facility, Contract No. 04SF-120” which requires the acquisition of the following properties:

1. Approximately 818,064 square feet (“s.f.”) in fee (BART Parcel P-5020-1); approximately 79,255 s.f. in permanent access and utility easement (BART Parcel P-5020-2A); approximately 27,113 s.f. in permanent slope and utility easement (BART Parcel P-5020-2B); approximately 78,873 s.f. in fee as an uneconomic remnant (BART Parcel P-5020-3A); approximately 15,598 s.f. in temporary construction easement (BART Parcel P-5020-3B); approximately 15,823 s.f. in temporary construction easement (BART Parcel P-5020-3C); and approximately 824 s.f. in temporary construction easement (BART Parcel P-5030-4), in properties owned by the Donald G. Parachini and Mary Ann Parachini, trustees of the Parachini Family Trust of 2005 and Victor M Parachini, Jr., and Anne Parachini, trustees of the Victor and Anne Parachini family trust of 1998, as amended and restated located west of 2502 Willow Avenue (Assessor’s Parcel Nos. 052-030-017 and 052-030-018) Antioch, California (“Parachini Parcel”).

The proposed use of the Parachini Parcel is for construction, operation and maintenance of the parking lot and roadway, station entry house, pedestrian overcrossing, maintenance facility access road and utilities.

2. Approximately 84,587 s.f. in full fee (BART Parcel P-5030-1), in property owned by Albert A. Esver and Veronica C. Esver located at 2502 Willow Avenue (Assessor’s Parcel No. 052-030-015), Antioch, California (“Esver Parcel”).

The proposed use of the Esver Parcel is for construction, operation and maintenance of the maintenance facility access road and parking lot, above ground fuel storage tank and fuel system, storm water detention basin and utilities.

3. Approximately 88,503 s.f. in full fee (BART Parcel P-5040-1), in property owned by Joseph A. Duarte and Kay Duarte located one parcel south of 2502 Willow Avenue (Assessor’s Parcel No. 052-030-016) Antioch, California (“Duarte Parcel”).

The proposed use of the Duarte Parcel is for construction, operation and maintenance of the maintenance facility parking lot, tunnel portal, maintenance yard lead tracks and utilities.

4. Approximately 228,025 s.f. in full fee (BART Parcel P-5050-1), in property owned by Antioch Paving Company, Incorporated located one parcel east of 2502 Willow Avenue (Assessor's Parcel No. 052-030-013) Antioch, California ("Antioch Paving Parcel").

The proposed use of the Antioch Paving Parcel is for construction, operation and maintenance of vehicle maintenance facility, train wash facility, fuel dispensing facility, maintenance yard tracks and utilities.

5. Approximately 154,927 s.f. in fee (BART Parcel P-5060-1); approximately 59,927 s.f. in permanent slope easement (BART Parcel P-5060-2A); and approximately 96,525 s.f. in permanent slope easement (BART Parcel P-5060-2B) in property owned by FKP, Inc. ("FKP") located two parcels east of 2502 Willow Avenue (Assessor's Parcel Nos. 052-052-006 and 052-052-018) Antioch, California ("FKP Parcel").

The proposed use of the FKP Parcel is for construction, operation and maintenance of the maintenance yard tracks, vehicle inspection pit and utilities.

Project features proposed on or near the Parachini Parcel, the Esver Parcel, the Duarte Parcel, the Antioch Paving Parcel and the FKP Parcel (collectively "Parcels") have been specifically planned and located in an attempt to meet Project needs in the most beneficial and least environmentally harmful way possible.

The Parcels are required for the successful construction of the Project and the safe and efficient operation of the eBART system. The Parcels are uniquely suited to support the required Project purposes.

The offers required by Section 7267.2 of the Government Code were made to the owner(s) of record as follows:

1. For the Parachini Parcel on August 24, 2011. The approved appraisal of the fair market value of the required property interests in the Parachini Parcel is \$5,273,000 (rounded amount). (BART Parcel P-5020-1 is \$4,346,867, Parcel P-5020-2A is \$57,839, Parcel P-5020-2B is \$149,582, Parcel P-5020-3A as an uneconomic remnant is \$483,491, Parcel P-5020-3B is \$15,299, Parcel P-5020-3C is \$15,519, Parcel P-5020-4 is \$34 and severance damages are \$203,448);
2. For the Esver Parcel on March 24, 2011. The approved appraisal of the fair market value of the required property interest in the Esver Parcel is \$242,000;
3. For the Duarte Parcel on April 26, 2011. The approved appraisal of the fair market value of the required property interest in the Duarte Parcel is \$412,000;
4. For the Antioch Paving Parcel on April 26, 2011. The approved appraisal of the fair market value of the required property interest in the Antioch Paving Parcel is \$817,000; and
5. For the FKP Parcel on August 26, 2011. The approved appraisal of the fair market value of the required property interests in the FKP Parcel is \$75,200. (BART Parcel P-5060-1 is \$34,100, Parcel P-5060-2A is \$11,900, Parcel P-5060-2B is \$19,100, and improvements are \$10,100)

To date, negotiations are at an impasse. The property owner(s) of the Parachini Parcel, the Esver Parcel, the Duarte Parcel, the Antioch Paving Parcel and the FKP Parcel were notified on September 23, 2011 of the Board's hearing of this matter. On October 4, 2011, the Parachini Parcel property owner provided its

written request to reserve its right to appear and speak at the Board hearing.

In order to proceed with each of the recommended condemnations for (1) the Parachini Parcel, (2) the Esver Parcel, (3) the Duarte Parcel, (4) the Antioch Paving Parcel and (5) the FKP Parcel, the Board must determine each of the following:

1. The public interest and necessity require the proposed Project.
2. The proposed Project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.
3. The Property described in the resolution is necessary for the proposed Project.
4. That either the offer required by California Government Code Section 7267.2 has been made to the owner or owners of record, or the offer has not been made because the owner cannot be located with reasonable diligence.

FISCAL IMPACT:

Funding of \$6,819,200 for the acquisition of (1) \$5,273,000 for the Parachini Parcel, (2) \$242,000 for the Esver Parcel, (3) \$412,000 for the Duarte Parcel, (4) \$817,000 for the Antioch Paving Parcel and (5) \$75,200 for the FKP Parcel is included in the total project budget for the FMS #04SD – eBART Right of Way Acquisition. The Office of the Controller/Treasurer certifies that funds are currently available to meet this obligation.

As of October 12, 2011, \$7,841,881 is available in the Right of Way budget for this Project from the following source:

<u>F/G 6206 – Regional Measure II</u>	<u>\$7,841,881</u>
---------------------------------------	--------------------

BART has expended \$652,328, committed \$209,698, and reserved \$0 to date for other actions. This action will commit \$6,819,200 leaving an available fund balance of \$160,656 in Right of Way.

There is no fiscal impact on available unprogrammed District Reserves.

ALTERNATIVES:

1. Withdraw each of the condemnation actions and proceed with negotiations without the backing of eminent domain. Withdrawal of each of the condemnation actions may result in the property not being available for the eBART Project construction when required and exposing BART to additional escalation on the capital cost of the eBART Project and potential schedule impacts.

RECOMMENDATION:

Adoption of each of the following motions (Please note that each motion is required to be voted on separately by the Board):

MOTIONS:

1. Adopt the attached, “Resolution of Necessity to Condemn Real Property; Make Findings and Determinations; Authorize Eminent Domain Proceedings and Application for Possession Prior to Judgment for BART Parcel Nos. P-5020-1, P-5020-2A, P-5020-2B, P-5020-3A, P-5020-3B, P-5020-3C and P-5020-4; Draw and Deposit Warrant.” (Two-thirds vote required.)

Condemnation of Real Property for the East Contra Costa BART Extension (eBART Project)

2. Adopt the attached, "Resolution of Necessity to Condemn Real Property; Make Findings and Determinations; Authorize Eminent Domain Proceedings and Application for Possession Prior to Judgment for BART Parcel No. P-5030-1; Draw and Deposit Warrant." (Two-thirds vote required.)
3. Adopt the attached, "Resolution of Necessity to Condemn Real Property; Make Findings and Determinations; Authorize Eminent Domain Proceedings and Application for Possession Prior to Judgment for BART Parcel No. P-5040-1; Draw and Deposit Warrant." (Two-thirds vote required.)
4. Adopt the attached, "Resolution of Necessity to Condemn Real Property; Make Findings and Determinations; Authorize Eminent Domain Proceedings and Application for Possession Prior to Judgment for BART Parcel No. P-5050-1; Draw and Deposit Warrant." (Two-thirds vote required.)
5. Adopt the attached, "Resolution of Necessity to Condemn Real Property; Make Findings and Determinations; Authorize Eminent Domain Proceedings and Application for Possession Prior to Judgment for BART Parcel Nos. P-5060-1, P-5060-2A and P-5060-2B; Draw and Deposit Warrant." (Two-thirds vote required.)

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

MEMORANDUM

TO: Board of Directors
DATE: October 19, 2011

FROM: General Manager

SUBJECT: Administration Agenda Item #3B: Small Business Bonding Assistance Program

The attached Small Business Bonding Assistance Program presentation is an information item which was prepared in response to a request by the Board. Staff plans to present this item at the Board of Directors meeting on October 27th.

A number of organizations have developed small business bonding assistance programs to assist small businesses in qualifying for bonds that are required to guarantee contractor performance. Because these bonds can be difficult for small firms to obtain, bonding assistance programs work closely with the contractors to prepare them for the bond underwriting process and to help them prepare the necessary financial reports. Small business bonding assistance program sponsors provide a Letter of Credit to guarantee bonds issued under the program.

The presentation includes information about how a Small Business Bonding Assistance Program could be developed at BART as well as a discussion of program costs and benefits. If you need additional information, please contact Jim Bridgeman, Manager, Insurance Department at (510) 464-6940.


Grace Crunican

Attachment

cc: Board Appointed Officers
Deputy General Manager
Executive Staff

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

MEMORANDUM

TO: Board of Directors **DATE:** October 20, 2011
FROM: General Manager
SUBJECT: Consideration of Letter to MTC Advocating Funding for Regional Pre-Apprenticeship Programs.

At a meeting with staff and community groups in Contra Costa County in September, Director Keller asked that staff prepare a letter to the Metropolitan Transportation Commission (MTC) for Board consideration that expresses the Board's desire to have MTC establish a new policy that would support providing funding for pre-apprenticeship programs. The letter urges MTC to support pre-apprenticeship programs as a valid and eligible capital project expense.

The attached letter has been reviewed by Director Keller and he plans to bring it forward for discussion and possible action at the October 27, 2011 meeting. Following the discussion, the Board is free to decide whether to send the letter, revise the letter or not send the letter. If a letter is sent, the Board may also wish to decide whether it will be signed by some or all willing members, or just the Board President.


Grace Crunican

Attachment

cc: Board Appointed Officers
Deputy General Manager
Executive Staff
Project Manager, eBART



SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

300 Lakeside Drive, P.O. Box 12688
Oakland, CA 94604-2688
(510) 464-6000

2011

October 27, 2011

Bob Franklin
PRESIDENT

John McPartland
VICE PRESIDENT

Grace Crunican
GENERAL MANAGER

Ms. Adrienne Tissier, Chair
Metropolitan Transportation Commission
101 8th Street
Oakland, CA 94607

Re: Funding Eligibility for Pre-Apprenticeship Programs

DIRECTORS

Gail Murray
1ST DISTRICT

Joel Keller
2ND DISTRICT

Bob Franklin
3RD DISTRICT

Robert Raburn
4TH DISTRICT

John McPartland
5TH DISTRICT

Thomas M. Blalock, P.E.
6TH DISTRICT

Lynette Sweet
7TH DISTRICT

James Fang
8TH DISTRICT

Tom Radulovich
9TH DISTRICT

Dear Chair Tissier:

This is to request that the Metropolitan Transportation Commission establish a new policy that would support providing funding for local pre-apprenticeship programs in Contra Costa, Alameda, San Francisco and San Mateo Counties where BART operates. Pre-apprenticeship programs fill a necessary role in helping place workers that are historically underrepresented in the building trades.

BART is seeking MTC's support to allow agencies to include costs for pre-apprenticeship programs as an eligible, reimbursable project expense. This will help individuals that have historically been underrepresented in the building trades obtain employment in construction. In these times of economic hardship, it is difficult for individuals to be placed in the building trades apprentice openings. The pre-apprenticeship programs help prepare individuals to be placed in apprentice positions when they arise. Among other things, the pre-apprenticeship programs provide hands on training in the construction trades and help prepare individuals for the tests and prerequisites for entrance into apprentice openings. Through a certified apprentice position, the workers involved are able to build their skills and graduate to a full journeyman status in the building trades.

As MTC funds various large capital projects in the San Francisco Bay Area, it should consider the needs of local workers who could perform work on such projects if given the opportunity through a pre-apprenticeship program. Accordingly, BART urges MTC to support pre-apprenticeship programs as a valid and eligible capital project expense.

Sincerely,

Bob Franklin
President

cc: Board Appointed Officers
Federal Transit Administration