

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

**AGENDAS FOR BOARD AND COMMITTEE MEETINGS**

November 20, 2008

9:00 a.m.

A regular meeting of the Board of Directors and regular meetings of the Standing Committees will be held on Thursday, November 20, 2008, commencing at 9:00 a.m. All meetings will be held in the BART Board Room, Kaiser Center 20<sup>th</sup> Street Mall – Third Floor, 344 – 20<sup>th</sup> Street, Oakland, California.

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

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

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

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

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

Kenneth A. Duron  
District Secretary

Regular Meeting of the  
**BOARD OF DIRECTORS**

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

1. **CALL TO ORDER**

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

2. **CONSENT CALENDAR**

- A. Approval of Minutes of the Meeting of October 23, 2008.\* Board requested to authorize.

- B. Resolution Concurring with Contra Costa Transportation Authority's Request for Regional Measure 2 Funds for the State Route 4 (East) Widening Project from Loveridge Road to State Route 160.\* Board requested to authorize.
- C. Resolutions Authorizing Execution of Funding Agreements with the U. S. Department of Homeland Security and the Governor's Office of Homeland Security for Transit Security Grant Programs.\* Board requested to authorize.
- D. Agreement with Keep Em Away Pest Elimination for Pest and Bee Control Services Districtwide (Agreement No. 6M3091).\* Board requested to authorize.
- E. Award of Invitation for Bid No. 8843, Hybrid Hi-Rail Truck.\* Board requested to authorize.
- F. Reject Bid for Contract No. 6M3037B, Procurement of Fasteners.\* Board requested to reject.

#### **RECESS TO STANDING COMMITTEES**

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

#### **ALL COMMITTEES ARE ADVISORY ONLY**

##### ADMINISTRATION COMMITTEE

Immediately following the Board Meeting recess

Director Franklin, Chairperson

- A-1. Second Amendment to Agreement with Freshfields, Bruckhaus, Deringer, LLP, for Legal Services in Connection with the Oakland Airport Connector Project.\* Board requested to authorize.
- A-2. Approve Amendment No. 1 to the Second Phase Development Agreement for the Northern California Power Agency Lodi Energy Center Project.\* Board requested to authorize.
- A-3. General Discussion and Public Comment.

##### ENGINEERING AND OPERATIONS COMMITTEE

Immediately following the Administration Committee Meeting

Director Fang, Chairperson

- B-1. Change Order to Agreement No. 6M8010, General Engineering Services for the Dismantling of Lake Merritt Administration Building, for Increased Amount.\* Board requested to authorize.

- B-2. Award of Contract No. 17BJ-140, Lake Merritt Administration Building Dismantling Project.\* Board requested to authorize.
- B-3. Stations Modernization Program Update.\* For information.
- B-4. Quarterly Performance Report, First Quarter Fiscal Year 2009 - Service Performance Review.\* For information.
- B-5. General Discussion and Public Comment.

PLANNING, PUBLIC AFFAIRS, ACCESS, AND LEGISLATION COMMITTEE  
Immediately following the Engineering and Operations Committee Meeting  
Director Ward Allen, Chairperson

- C-1. Authorize Memorandum of Understanding with the City of Oakland and the Peralta Community College District to Prepare a Lake Merritt Station Area Specific Plan.\* Board requested to authorize.
- C-2. General Discussion and Public Comment.

**RECONVENE BOARD MEETING**

3. CONSENT CALENDAR ADDENDA

Board requested to authorize as recommended from committee meetings above.

4. REPORTS OF STANDING COMMITTEES

A. ADMINISTRATION COMMITTEE

- A-1. Second Amendment to Agreement with Freshfields, Bruckhaus, Deringer, LLP, for Legal Services in Connection with the Oakland Airport Connector Project.\* Board requested to authorize.
- A-2. Approve Amendment No. 1 to the Second Phase Development Agreement for the Northern California Power Agency Lodi Energy Center Project.\* Board requested to authorize.

B. ENGINEERING AND OPERATIONS COMMITTEE

- B-1. Change Order to Agreement No. 6M8010, General Engineering Services for the Dismantling of Lake Merritt Administration Building, for Increased Amount.\* Board requested to authorize.
- B-2. Award of Contract No. 17BJ-140, Lake Merritt Administration Building Dismantling Project.\* Board requested to authorize.
- B-3. Stations Modernization Program Update.\* For information.

B-4. Quarterly Performance Report, First Quarter Fiscal Year 2009 - Service Performance Review.\* For information.

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

C-1. Authorize Memorandum of Understanding with the City of Oakland and the Peralta Community College District to Prepare a Lake Merritt Station Area Specific Plan.\* Board requested to authorize.

5. GENERAL MANAGER'S REPORT

NO REPORT.

6. BOARD MATTERS

A. Roll Call for Introductions.

7. GENERAL DISCUSSION AND PUBLIC COMMENT

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

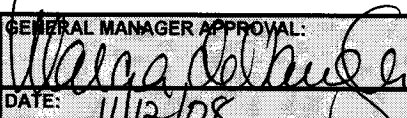
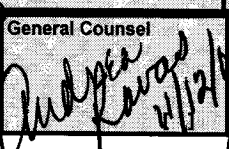
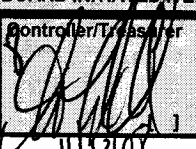
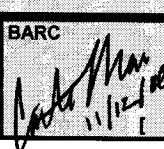
A. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION

Name of Case: Nash v. BART – N.D. Cal. Case No. CO5 5307 VRW

Government Code Section: 54956.9(a)



## EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: 		GENERAL MANAGER ACTION REQ'D:		
DATE: 11/12/08		BOARD INITIATED ITEM: No		
Originator/Prepared by: Stacey Perkins Dept. Capital development & Control	General Counsel	Controller/Treasurer	District Secretary	BARC
Signature/Date: SP 11/12/08	 11/12/08	 11/12/08	[ ]	 11/12/08 [ ]
Status: Approved		Date Created: 09/02/2008		

TITLE:

### Approval of Resolution Concurring with Contra Costa Transportation Authority's Request for Regional Measure 2 Funds for the State Route 4 (East) Widening Project from Loveridge Road to State Route 160

#### NARRATIVE:

##### Purpose:

To obtain BART Board concurrence on an application by the Contra Costa Transportation Authority (CCTA) for \$15 million in Regional Measure 2 (RM2) funds for right of way acquisition to widen the median of State Route 4 (SR4) between Loveridge Road and State Route 160 to accommodate future transit in the median.

##### Discussion:

The proposed East Contra Costa BART Extension (eBART) Project would extend rail service eastward from the Pittsburg/Bay Point BART Station into the communities of Pittsburg and Antioch in Contra Costa County in the median of SR4. BART is currently conducting its environmental review of the proposed eBART Project, with related preliminary engineering ongoing. BART and CCTA are co-sponsors for the RM2 funds associated with the eBART Project. A portion of funds from the proposed eBART Project are designated for the scope of work necessary for certain modifications to SR4, in order to accommodate future transit within the median. This application for RM2 funds by CCTA is for the first increment of RM2 funds necessary to begin the right of way acquisition to modify SR4 to create a wider median.

##### Fiscal Impacts:

Approval of the Resolution is a requirement for CCTA to receive an allocation of RM2 funds from MTC.

##### Alternatives:

Do not approve the attached Resolution Concurring with Contra Costa Transportation Authority's Resolution of Project Compliance and Initial Project Report for Regional Measure 2 Funds for the State Route 4 East Widening Project: Loveridge Road to SR160. Should the Board adopt the eBART Project (which is anticipated to be brought to the Board next Spring), the eBART schedule would be closely coordinated with the SR4 Highway Widening Project. Failure to approve the Resolution could result in schedule delays and cost increases for both projects.

**Motion:**

The Board of Directors approves the attached Resolution Concurring with Contra Costa Transportation Authority's Resolution of Project Compliance and Initial Project Report for Regional Measure 2 Funds for the State Route 4 East Widening Project: Loveridge Road to SR160, CCTA Resolution No. 08-17-P.

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

**In the Matter of the  
Approval of a Resolution  
Concurring with Contra  
Costa Transportation  
Authority's Resolution of  
Project Compliance and  
Initial Project Report for  
Regional Measure 2 Funds  
for the State Route 4 East  
Widening Project:  
Loveridge Road to SR160**

**Resolution No.**

Whereas, SB 916 (Chapter 715, Statutes 2004), commonly referred to as Regional Measure 2, identified projects eligible to receive funding under the Regional Traffic Relief Plan; and

Whereas, the Metropolitan Transportation Commission (MTC) is responsible for funding projects eligible for Regional Measure 2 funds pursuant to Streets and Highways Code Section 30914(c) and (d); and

Whereas, MTC has established a process whereby eligible transportation project sponsors may submit allocation requests for Regional Measure 2 funding; and

Whereas, allocations to MTC must be submitted consistent with procedures and conditions as outlined in Regional Measure 2 Policy and Procedures; and

Whereas, CCTA and BART are eligible sponsors of transportation project(s) in Regional Measure 2, Regional Traffic Relief Plan funds; and

Whereas, the State Route 4 East Widening Project: Loveridge Road to SR160 (the PROJECT) is eligible for consideration in the Regional Traffic Relief Plan of Regional Measure 2, as identified in California Streets and Highways Code Section 30914(c) or (d); and

Whereas, the Regional Measure 2 allocation request, sponsored by CCTA and concurred in by BART, in the Initial Project Report dated November 4, 2008 and incorporated herein as though set forth at length, lists the purpose, schedule, budget, expenditure and cash flow plan for which CCTA is requesting that MTC allocate Regional Measure 2 funds for the State Route 4 East Widening Project: Loveridge Road to SR160; and

Whereas, in its Resolution No. 08-17-P, dated September 17, 2008, and incorporated herein, CCTA and its agents agree to comply with the provisions of the Metropolitan Transportation Commission's Regional Measure 2 Policy Guidance (MTC Resolution No. 3636);

NOW, THEREFORE, BE IT RESOLVED that:

1. Pursuant to Resolution No.08-17-P, CCTA has certified that the PROJECT is consistent with the Regional Transportation Plan (RTP).
2. The timeframe of funding for any right-of-way acquisition phase for the PROJECT has taken into consideration the time necessary to obtain environmental clearance and permitting approval for the PROJECT.
3. Pursuant to Resolution No. 08-17-P, CCTA has certified that the Regional Measure 2 phase or segment for the PROJECT is fully funded and results in an operable and useable segment.
4. Pursuant to Resolution No.08-17-P, CCTA has approved the updated Initial Project Report dated November 4, 2008.
5. Pursuant to Resolution No.08-17-P, CCTA has approved the cash flow plan.
6. Pursuant to Resolution No.08-17-P, CCTA has acknowledged that it has reviewed the PROJECT needs and has adequate staffing resources to deliver and complete the PROJECT within the schedule set forth in the Initial Project Report dated November 4, 2008.
7. CCTA is an eligible sponsor of projects in the Regional Measure 2 Regional Traffic Relief Plan, Capital Program, in accordance with California Streets and Highways Code 30914(c).
8. CCTA is authorized to submit an application for Regional Measure 2 funds for the PROJECT in accordance with California Streets and Highways Code 30914(c).
9. BART concurs that CCTA has certified that the PROJECT and purpose for which RM2 funds are being requested is in compliance with the requirements of the California Environmental Quality Act (Public Resources Code Section 21000 et seq.), and with the State CEQA Guidelines (14 California Code of Regulations Section 15000 et seq.) and, if relevant, the National Environmental Policy Act (NEPA), 42 USC Section 4321 et. seq. and the applicable regulations thereunder.
10. CCTA has agreed to acquire the right of way for the PROJECT for additional widening of the median in order to accommodate future potential mass transit. Funding is to be used to accommodate future transit in the median of the PROJECT in a manner that is consistent with all of the alternatives considered in the eBART Draft EIR issued on September 17, 2008, including the no project alternative.
11. There is no legal impediment to BART's concurrence in CCTA's allocation request for Regional Measure 2 funds.
12. There is no pending or threatened litigation, which might in any way adversely affect the PROJECT, or the ability of CCTA, with support by BART, to deliver such PROJECT.
13. Pursuant to Resolution No.08-17-P, CCTA has agreed to indemnify and hold harmless MTC, its Commissioners, representatives, agents, and employees from and against all claims, injury, suits, demands, liability, losses, damages, and expenses, whether direct or indirect (including any and all costs and expenses in connection therewith), incurred by reason of any act



or failure to act of Contra Costa Transportation Authority, its officers, employees or agents, or subcontractors or any of them in connection with its performance of services under this allocation of RM2 funds. In addition to any other remedy authorized by law, so much of the funding due under this allocation of RM2 funds as shall reasonably be considered necessary by MTC may be retained until disposition has been made of any claim for damages.

14. Pursuant to Resolution No.08-17-P, CCTA has agreed that, if any revenues or profits from any non-governmental use of property (or project) are collected, that those revenues or profits shall be used exclusively for the public transportation services for which the PROJECT was initially approved, either for capital improvements or maintenance and operational costs; otherwise, the Metropolitan Transportation Commission is entitled to a proportionate share equal to MTC's percentage participation in the PROJECT(s).

15. Pursuant to Resolution No.08-17-P, CCTA has agreed that assets purchased with RM2 funds including facilities and equipment shall be used for the public transportation uses intended, and should said facilities and equipment cease to be operated or maintained for their intended public transportation purposes for its useful life, that the Metropolitan Transportation Commission (MTC) shall be entitled to a present day value refund or credit (at MTC's option) based on MTC's share of the Fair Market Value of the said facilities and equipment at the time the public transportation uses ceased, which shall be paid back to MTC in the same proportion that Regional Measure 2 funds were originally used.

16. Pursuant to Resolution No.08-17-P, CCTA has authorized its Executive Director to execute and submit an allocation request for the right of way acquisition phase for the PROJECT to MTC for Regional Measure 2 funds in the amount of \$15.0 million, for the PROJECT, purposes and amounts included in the Initial Project Report dated November 4, 2008.

17. Pursuant to Resolution 08-17-P, CCTA's Executive Director has been delegated the authority to make non-substantive changes or minor amendments to the Initial Project Report as s/he deems appropriate.

18. A copy of this resolution shall be transmitted to MTC in conjunction with the filing of the Initial Project Report dated November 4, 2008 referenced herein.

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## EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Valencia Delacruz</i>		GENERAL MANAGER ACTION REQ'D: Approve and forward to the Administration Committee		
DATE: 11/12/08		BOARD INITIATED ITEM: No		
Originator/Prepared by: Michael Tanner Dept. Capital Dev't -6433	General Counsel	Controller/Treasurer	District Secretary	BARC
Signature/Date: <i>[Signature]</i> 11/7/08	<i>[Signature]</i> 11-10-08	<i>[Signature]</i> 11/12/08		<i>[Signature]</i> 11-12-08
Status: Routed		Date Created: 11/07/2008		

TITLE:

### Authorize the General Manager to Execute Funding Agreements for Security Grants

#### NARRATIVE:

**Purpose:** To obtain Board authorization for the General Manager to file grant applications and execute funding agreements on behalf of the District with the U.S. Department of Homeland Security (DHS) and the Governor's Office of Homeland Security (OHS) for FY06/FY07 Transit Security Grant Program (TSGP) grants.

**Discussion:** Board Resolution 4898 authorizes the General Manager to file grant applications and execute funding agreements on behalf of the San Francisco Bay Area Rapid Transit District for District projects and activities with any other public agency of the United States Government or the State of California, and with any other public agency. In the past years, Board Resolution 4898 was sufficient authority for the General Manager to apply for and execute agreements for federal and State security grants.

OHS, which also administers grants from DHS, has made the following change to the requirements for grant applications and executing funding agreements for its Transit Security Grant Program (TSGP). OHS requires that subgrantees submit a Governing Body Resolution with each new grant to appoint agents authorized to execute any actions necessary for each application and subgrant.

OHS will not accept resolutions other than resolutions that are adopted every fiscal year and for each new grant. OHS will not process reimbursements or issue an award letter until the required resolution is on files.

**Fiscal Impact:** Approximately \$4 million is programmed for the District to receive in FY06 TSGP funds and \$8 million is programmed for the District to receive in FY07 TSGP Base and Supplemental grant funds.

**Alternatives:** OHS will not award the grant funds until submittal of the required resolutions. Without such award, \$12 million for security projects would be unfunded. BART reserves and/or another funding source would have to be identified.

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

**Motion:** Adoption of the attached resolutions.

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

In the Matter of Authorizing Actions  
Necessary to Obtain Financial  
Assistance from the Federal Department  
of Homeland Security \_\_\_\_\_

Resolution No.

WHEREAS, the District will benefit from continuing to receive funds for its security projects from the Federal Department of Homeland Security, which funds are administered by the Governor's Office of Homeland Security; and

WHEREAS, the Governor's Office for Homeland Security requires that agencies filing grant applications and executing grant agreements must submit new governing body resolutions every fiscal year and for each new grant.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the San Francisco Bay Area Rapid Transit District:

That the General Manager is hereby authorized to execute for and on behalf of the San Francisco Bay Area Rapid Transit District, a rapid transit district established under the laws of the State of California, any actions necessary for the purpose of obtaining federal financial assistance provided by the federal Department of Homeland Security and subgranted through the State of California for the FY 2006 Transit Security Grant Program (TSGP) grant in the amount of \$ 4,108,815.

Adopted on \_\_\_\_\_, 2008

***Certification***

I, Kenneth A. Duron, District Secretary, do hereby certify that the above is a true and correct copy of a resolution passed and approved by the Board of Directors of the San Francisco Bay Area Rapid Transit District on the \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Kenneth A. Duron, District Secretary

Date \_\_\_\_\_

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

In the Matter of Authorizing Actions  
Necessary to Obtain Financial  
Assistance from the Federal Department  
of Homeland Security \_\_\_\_\_

Resolution No.

WHEREAS, the District will benefit from continuing to receive funds for its security projects from the Federal Department of Homeland Security, which funds are administered by the Governor's Office of Homeland Security; and

WHEREAS, the Governor's Office for Homeland Security requires that agencies filing grant applications and executing grant agreements must submit new governing body resolutions every fiscal year and for each new grant.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the San Francisco Bay Area Rapid Transit District:

That the General Manager is hereby authorized to execute for and on behalf of the San Francisco Bay Area Rapid Transit District, a rapid transit district established under the laws of the State of California, any actions necessary for the purpose of obtaining federal financial assistance provided by the federal Department of Homeland Security and subgranted through the State of California for the FY 2007 Transit Security Grant Program (TSGP) Base grant in the amount of \$ 5,029,840.

Adopted on \_\_\_\_\_, 2008

***Certification***

I, Kenneth A. Duron, District Secretary, do hereby certify that the above is a true and correct copy of a resolution passed and approved by the Board of Directors of the San Francisco Bay Area Rapid Transit District on the \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Kenneth A. Duron, District Secretary

Date \_\_\_\_\_

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

In the Matter of Authorizing Actions  
Necessary to Obtain Financial  
Assistance from the Federal Department  
of Homeland Security \_\_\_\_\_

Resolution No.

WHEREAS, the District will benefit from continuing to receive funds for its security projects from the Federal Department of Homeland Security, which funds are administered by the Governor's Office of Homeland Security; and

WHEREAS, the Governor's Office for Homeland Security requires that agencies filing grant applications and executing grant agreements must submit new governing body resolutions every fiscal year and for each new grant.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the San Francisco Bay Area Rapid Transit District:

That the General Manager is hereby authorized to execute for and on behalf of the San Francisco Bay Area Rapid Transit District, a rapid transit district established under the laws of the State of California, any actions necessary for the purpose of obtaining federal financial assistance provided by the federal Department of Homeland Security and subgranted through the State of California for the FY 2007 Transit Security Grant Program (TSGP) Supplemental grant in the amount of \$ 2,767,383.

Adopted on \_\_\_\_\_, 2008

***Certification***

I, Kenneth A. Duron, District Secretary, do hereby certify that the above is a true and correct copy of a resolution passed and approved by the Board of Directors of the San Francisco Bay Area Rapid Transit District on the \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Kenneth A. Duron, District Secretary

Date \_\_\_\_\_



## EXECUTIVE DECISION DOCUMENT

<b>GENERAL MANAGER APPROVAL:</b> 		<b>GENERAL MANAGER ACTION REQ'D:</b> Approve and Forward to E&O Committee		
<b>DATE:</b> 11/12/08		<b>BOARD INITIATED ITEM:</b> No		
<b>Originator/Prepared By:</b> Larry Fisher Dept: Maintenance and Engineering  <b>Signature/Date:</b> 11/12/08	<b>General Counsel</b>  11-10-08 [ ]	<b>Controller/Treasurer</b>  11/10/08 [ ]	<b>District Secretary</b> [ ]	<b>EAARC</b>  11/10/08 [ ]
<b>Status: Routed</b>		<b>Date Created: 10/24/2008</b>		

TITLE:

### Agreement 6M3091 to Provide Pest and Bee Control Services Districtwide

**NARRATIVE:**

**Purpose:** To obtain Board authorization for the General Manager to award Service Agreement No.6M3091 to Provide Pest and Bee Control Services Districtwide to Keep Em Away Pest Elimination, of Concord, CA.

**Discussion:**

This contract will provide for pest control at District facilities systemwide on a regular and on-call basis for a period of three years, with District options to extend the Agreement for two additional one year periods.

The Request for Proposal (RFP) was issued on June 3, 2008 and advertised during the same week. Twenty RFP packages were sent out to parties expressing interest in bidding. A pre-proposal conference was held on June 18, 2008 at 300 Lakeside Drive and was attended by representatives of twelve companies. Subsequently, five proposals were received on July 8, 2008. These were reviewed by a committee to establish responsiveness of proposals and evaluate merits of each technical proposal. All five proposals were determined to have met the technical requirements and were found to be responsive to the general RFP requirements. Price proposals were then opened and evaluated. Proposed prices are as follows:

Proposer	Total Bid Price Base Bid
Keep Em Away Pest Elimination, Concord, CA	\$148,800
Applied Pest Management, Inc., Vallejo, CA.	\$173,400
Western Exterminator Company, Sacramento, CA.	\$198,900
Jacobs Weed & Pest Control, Lafayette, CA.	\$199,800
Terminix Commercial, Union City, CA.	\$415,200

Staff has determined that the apparent low proposer, Keep Em Away Pest Elimination of Concord, CA., is technically competent to service this contract and has submitted a fully responsive proposal to this RFP. Furthermore, a review of this proposer's license, business experience, and financial capabilities has resulted in the determination that the proposer is responsible. Staff has also determined that the bid pricing is fair and reasonable.

**Fiscal Impact**

District expenditures for this agreement are estimated as follows:

FY09	\$19,840
FY10	\$29,760
FY11	\$29,760
FY12	\$29,760
FY13	\$29,760
FY14	\$9,920

Funding for this agreement will be provided from FY09 through FY14 Operating Budget for Cost Center 648, Maintenance Support. Funding is currently in place for FY09 expenditures.

**Alternative:**

To not award this Contract will result in an increase in pest related complaints from patrons and staff in District facilities. District Staff is neither equipped nor licensed to apply pest control chemicals.

**Recommendation:**

Staff recommends that the Board adopt the following motion.

**Motion:**

The General Manager is authorized to award Service Agreement 6M3091 to Provide Pest and Bee Control Services Districtwide for a period of three years, and to exercise the options to extend the Agreement for up to two additional one-year periods for the proposal price of \$148,800 pursuant to notification to be issued by the General Manager and subject to the District's protest procedures.



## EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: 		GENERAL MANAGER ACTION REQ'D:		
DATE: 11/12/08		BOARD INITIATED ITEM: No		
Originator/Prepared by: Larry Fisher Dept: Maintenance and Engineering Signature/Date:  11/10/08	General Counsel 11/10/08	Controller/Treasurer 11/10/08	District Secretary [ ]	BARO 11/10/08
Status: <b>Routed</b>		Date Created: 09/23/2008		

TITLE:

### Procurement of Hybrid Hi-Rail Truck

**NARRATIVE:**

**Purpose:**

To request Board authorization to Award Invitation For Bid #8843 to Golden Gate Truck Center, Oakland, CA in the amount of \$190,229.85 for the purchase of a Hybrid Truck, Flatbed with Hi-Rail system.

**Discussion:**

This procurement is for a Diesel/Electric Hybrid Flatbed Truck with Hi-Rail system to be used on rail throughout the District. The truck is a 33,000 GVW vehicle with 18' long flat bed and with side and rear gates. Diesel/Electric Hybrid trucks produce far less exhaust emissions when operating in the Hybrid mode. This is especially significant when being used for maintenance operations below ground in the Trans-Bay Tube and in underground stations. This purchase is part of the District's continuing effort to improve conditions for maintenance workers and is consistent with the Board's concern for consideration of worker safety when choosing fuels and vehicles to be utilized underground. This vehicle replaces a 1993 model Diesel Flatbed Truck that will be retired from the fleet.

A notice requesting bids was published on June 11, 2008 and bid requests were mailed to seven (7) prospective bidders. Bids were opened on July 8, 2008 and two (2) bids were received:

Bidder	Price	Grand Total including 8.75% Sales Tax
Golden Gate Truck Center	\$174,924.00	\$190,229.85
Bayshore International Trucks	\$175,000.00	\$190,312.50

Independent cost estimate by District Staff: \$165,000 plus sales tax.  
 Delivery shall be made within one hundred fifty days after award of contract.

**Fiscal Impact:**

Funding of \$190,230.00 for contract 79BJ-2HM is included in the total project budget for the FMS#79BJ – Replace Non-Revenue Vehicles. The Office of the Controller/Treasurer certifies that funds are currently available to meet this obligation.

<b><u>FY06 – 10 Capital Maintenance Allocation</u></b>	<b><u>50Z</u></b>	<b><u>\$190,230</u></b>
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As of 08/24/08, \$2,233,000 is available for commitment from this fund source for this project and BART to date has committed \$197,140. There is \$899,384 pending commitment in BART's financial management system. This action will commit an additional \$190,230, leaving an uncommitted balance of \$946,246 in this fund.

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

**Alternative:**

Not awarding this IFB would leave the District with an aging Flatbed Hi-Rail Truck for underground maintenance. Alternatively the District could issue a Invitation for Bid for a standard Diesel engined truck as a replacement.

**Recommendation:**

It is the recommendation of District Staff to award IFB #8843 to Golden Gate Truck Center for the procurement of a Diesel/Electric Hybrid Flatbed with Hi-Rail System truck.

**Motion:**

The General Manager is authorized to award IFB #8843 for Hybrid Truck, Flatbed with Hi-Rail System to Golden Gate Truck Center for an amount of \$190,229.85 (inclusive of sales tax), pursuant to notification to be issued by the General Manager, subject to compliance with the District's Protest Procedure.



## EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Wanda Delaney</i>		GENERAL MANAGER ACTION REQ'D: Approve and Forward to the Board	
DATE: 11/12/08		BOARD INITIATED ITEM: No	
Originator/Prepared by: Tamar Allen Dept: <i>TD</i> Signature/Date: <i>11-11-08</i>	General Counsel <i>Andrew Kump</i> Signature/Date: <i>11/12/08</i>	Controller/Treasurer <i>[Signature]</i> Signature/Date: <i>11/12/08</i>	District Secretary <i>[Signature]</i> Signature/Date: <i>11/10/08</i>
Status: Routed		Date Created: 09/19/2008	

### REJECT SOLE BID FOR CONTRACT No. 6M3037B - THE PROCUREMENT OF FASTENERS

#### NARRATIVE:

**PURPOSE:** To reject the Bid for Contract No. 6M3037B, The Procurement of Fasteners.

**DISCUSSION:** The purpose of this Contract is to furnish various type of mechanical fasteners for the Rolling Stocks and Shops Department for the use of revenue vehicle maintenance.

On June 16, 2008 Advance Notice to Bidders was mailed to thirty four (34) prospective Bidders. This Contract was advertised on June 18, 2008 as a two-step sealed bid procurement Contract. A total of six (6) firms purchased copies of the Contract Book. A pre-Bid meeting was held on June 27, 2008 with three (3) prospective Bidders attending. On July 22, 2008 the following three bids were received:

<u>Bidder</u>	<u>Location</u>	<u>Total Bid</u>
Fastenal Company	Hayward, CA	
Non-Responsive		
UZ Engineered Products	Cleveland, OH	
Non-Responsive		
ACF Components and Fasteners	Hayward, CA	\$446,483.57
<b>ENGINEER'S ESTIMATE</b>		<b>\$181,500.00</b>

This procurement was structured as a two-step sealed Bid Contract, the first step of which is to determine whether the Bidder has demonstrated minimum technical qualifications necessary for performance of the Work. The second step, which is the opening of the sealed Price Bids, only takes place after technical qualifications have been established.

The Bids received from the first and second Bidders were deemed non-responsive at the time of the technical compliance review due to failure to provide detailed information required to meet the Minimum Technical Qualifications. These Bidders were then disqualified and did not go forward to the second step. Their Price Bids were therefore returned to them unopened.

The sole technically responsive Bid submitted by ACF Components and Fasteners is \$446,483.57, which is \$264,983.57 (246%) above the Engineer's Estimate. It is Staff's belief that modifying the Minimum Technical Qualifications to be less restrictive and re-advertising the Contract will result in greater participation in the Bid process and substantially lower responsive Bids than the sole Bid received.

**FISCAL IMPACT:**

There is no fiscal impact resulting from the rejection of the sole Bid.

**ALTERNATIVE:**

The alternative is to award this Contract without sufficient budgeted funds for completion.

**RECOMMENDATION:**

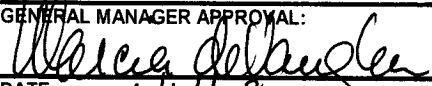

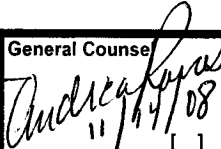
It is recommended that the Board adopt the following motion:

**MOTION:**

The Bid for Contract No. 6M3037B, The Procurement of Fasteners, is rejected.



## EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: 		GENERAL MANAGER ACTION REQ'D: Forward to the Administration Committee		
DATE: 11/14/08		BOARD INITIATED ITEM: No		
Originator/Prepared by: Debora Faniel Dept: for Kenneth Odell, Attorney - Office of the General Counsel	General Counsel  11/14/08	Controller/Treasurer  11/14/08	District Secretary	BARC
Signature Date: 11/14/08	[ ]	[ ]	[ ]	[ ]

TITLE:

### **Second Amendment to Agreement for Legal Services for the Oakland Airport Connector Project with Freshfields, Bruckhaus, Deringer, LLP**

NARRATIVE:

#### **PURPOSE:**

To request Board authorization for the General Counsel to execute a Second Amendment to the Agreement with Freshfields, Bruckhaus, Deringer, LLP, for legal services in connection with the Oakland Airport Connector (OAC) Project (the "Project").

#### **DISCUSSION:**

On January 12, 2006, the Board authorized the General Counsel to execute an agreement with Freshfields, Bruckhaus, Deringer, LLP to provide legal services related to the procurement of private investment capital to design, construct, finance and operate the Project. The scope of work included advising BART on transaction terms (e.g., ridership risk, operations and maintenance and life cycle risk, variable concession term); drafting necessary project agreement(s); and recommending revisions to current procurement documents to support the selected procurement model and business structure. The scope of work also included assistance with proposal evaluation and negotiations. The legal services have been performed under the general direction of the General Counsel.

Freshfields has extensive international expertise in metro and light rail project financings and has experience with the development of project financing agreements (including commercial and financial issues) of the type anticipated for the Project. Their services have proven extremely valuable in developing the documents, which were used to solicit proposals, to advise on an extensive number of complex and first impression legal issues, and to support the District during the RFP process. The budget initially established for this work was \$500,000; an amendment to the Agreement providing an additional \$300,000 funding was approved in August 2006. At all times it was anticipated that the estimate required for the work could change, depending on a number of factors.

Negotiations with proposers over terms of the concession agreement and financial models proved more protracted than expected due to volatility of the financial markets and the airline industry. Ultimately, the market downturn has caused BART to reconsider its affordability parameters; the current RFP has expired and staff intends to issue a new RFP specifying new technical and financial criteria.

Because of the foregoing factors and the complexity of the transaction, increased funding in the projected amount of \$635,000 is necessary for this Agreement. These additional costs include payment for essential services provided in staff's recent efforts to continue to advance the Project as well as the support required to assist staff in proposal solicitation, evaluation and negotiation under the new procurement. These services will enable BART to move forward quickly to bring the new procurement process to financial close.

**FISCAL IMPACT:**

Funding of \$635,000 for the Second Amendment to the Agreement for legal services is included in the total project budget for the FMS #01ZL, Oakland Airport Connector Construction Phase. The Office of the Controller/Treasurer certifies that funds are currently available to meet this obligation. The total cost of \$635,000 will be funded as follows:

<u>F/G 59J - Oakland Airport Connector (ACTIA)</u>	<u>\$635,000</u>
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As of the month ending October 26, 2008, \$3,000,000 is available for commitment from this fund source for this project and BART has committed \$2,115,776 to date. There are pending commitments of \$216,891 in the BART financial management system. This action will commit an additional \$635,000 leaving an uncommitted balance of \$32,333 in this fund source.

There is no fiscal impact on available unprogrammed District Reserves.

**ALTERNATIVE:**

The alternative is to decline to execute the Second Amendment to Agreement in the recommended amount, which would require (1) a revised amendment to provide for the current balance owing, and (2) identifying and retaining new counsel to complete the legal work on the transaction.

**RECOMMENDATION:**

That the Board of Directors adopt the following Motion:

**MOTION:**

That the General Counsel is authorized to execute the Second Amendment to the Agreement with Freshfields, Bruckhaus, Deringer, LLP, in the amount of \$635,000 to provide continuing legal services in connection with the Oakland Airport Connector Project.



## EXECUTIVE DECISION DOCUMENT

<b>GENERAL MANAGER APPROVAL:</b> <i>Marcia del Valle</i>		<b>GENERAL MANAGER ACTION REQ'D:</b> Approve and place on November 20, 2008 Administrative Committee Agenda		
<b>DATE:</b> 11/13/08		<b>BOARD INITIATED ITEM:</b> No		
<b>Originator/Prepared by:</b> Frank Schultz Dept. Operating Budgets & Analysis <i>Frank Schultz</i> <b>Signature/Date:</b> 11/13/08	<b>General Counsel:</b> <i>W. Low</i> <b>Signature/Date:</b> 11/13/08	<b>Controller/Treasurer:</b> <i>[Signature]</i> <b>Signature/Date:</b> 11/13/08	<b>District Secretary:</b> [ ]	<b>BARC:</b> <i>Chris Hane</i> <b>Signature/Date:</b> 11-13-08
<b>Status:</b> Routed		<b>Date Created:</b> 11/04/2008		

TITLE:

### Approval of Amendment No.1 to the Second Phase Agreement for the Lodi Energy Center Project

NARRATIVE:

#### PURPOSE

To authorize the General Manager to execute Amendment No. 1 to the Second Phase Agreement for funding the planning and development activities of the Lodi Energy Center (LEC).

#### DISCUSSION

The District is a member of the Northern California Power Agency (NCPA). NCPA is developing the LEC project which is a 255-megawatt natural gas generation plant. NCPA has a three-phase project development process and the first phase (fatal flaw analysis) for the LEC project has been completed. The Board previously authorized the General Manager to enter into the NCPA Second Phase Development Agreement, with the District taking a 15 megawatt share (approximately six percent) of the plant's output. There are fourteen participants in the LEC project that include, in addition to BART, the California Department of Water Resources, the Modesto Irrigation District and the City of Santa Clara.

The second phase development process includes environmental permitting - Phase IIA and detailed design engineering - Phase IIB. At its January 10, 2008 meeting, the Board authorized the payment of \$941,000 toward the District's share of Phase IIA development costs. At its June 26, 2008 meeting, the Board authorized the payment of \$529,000 toward the District's share of Phase IIB development costs.

The LEC is scheduled to enter commercial operation in mid-2012. The steam and gas turbines along with ancillary equipment, collectively known as the power island equipment, is the single most important component of the LEC. As part of the detailed design engineering, NCPA has established that the power island equipment has a manufacturing lead time of approximately two years. Because it needs to be on-site and available for installation more than a year before the planned commercial operation date, the total lead time is approximately three years. To accommodate this schedule, NCPA proposes that project participants make a deposit with the manufacturer for the power island equipment. The deposit would establish a fixed delivery date to meet the commercial operation date as well as a fixed price - thereby avoiding power island equipment cost escalation.

The cost of the manufacturer's deposit was considered, but not included in the amount originally budgeted for Phase IIB activities. However, since the original Phase IIB budget was developed, power island equipment costs have escalated significantly and are expected to continue to increase. Also, when the budget was adopted, manufacturing slots for the equipment were readily available. With the increase in worldwide demand for power generation facilities, that is no longer true. Project participants have now agreed that the facility will have "fast start" capacity that will, among other things, reduce plant emissions. The addition of this capacity requires an advanced manufacturing time.

As an additional finding of the detailed design, NCPA has concluded that existing facilities at the LEC project site are not adequate to house on-site engineering staff and that leased space is necessary.

NCPA has established a Project Participant Committee (PPC) to oversee the LEC project. BART is a member of the PPC. The PPC evaluated the cost and benefits of the power island deposit and the need for leased space and concluded that both are appropriate expansions in the scope of Phase IIB activities. The total combined augmentation to the Phase IIB budget for these purposes is \$15 million. The District's proportional share amounts to \$882,353.

At its September 2008 meeting, the NCPA Commission approved Amendment No. 1 to the Second Phase Agreement. The Amendment expands the scope of the LEC Phase IIB project to provide for the power island deposit and leased space. It also augments the Phase IIB budget by \$15 million. The proposed amendment to the Second Phase Agreement has been forwarded to all project participants for approval by their governing boards. According to the terms of the Second Phase Agreement, unanimous approval by the project participants is necessary for Amendment No. 1 to become effective.

The proposed expanded scope for Phase IIB will ensure the delivery date and cost of the power island equipment, thereby adding stability and certainty to the overall cost and schedule for the LEC project. The alternative, which is to delay placing the order for the power island equipment, is not cost-effective. It is recommended that the District continue to participate in the LEC project by signing Amendment No. 1 to the Second Phase Agreement and provide its share of the augmented Phase IIB costs which amounts to \$882,353.

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

### **FISCAL IMPACT**

The Board has previously authorized \$941,000 for the District's share of Phase IIA costs and \$529,412 for Phase IIB costs. The proposed augmentation for Phase IIB costs is \$882,353 for a total Phase IIB cost of \$1,411,165. The District has recently completed its forward purchases for almost all of its FY09 and FY10 power supply. As a result, there will be very limited purchases on the day-ahead (spot) market through FY10. The District has established a Power Stabilization Reserve of \$2.3 million to provide a source of funding if day-ahead (spot) purchases exceed budgeted amounts. Since the level of day-ahead purchasing has been substantially reduced, this

reserve is available for the augmented cost of the District's share of Phase IIB activities.

The District's total Phase II development costs (with augmented funding) amounts to \$2.4 million. Phase III of the LEC project is the financing and construction phrase. If the project progresses to construction, the development costs will be refunded to the District as part of the financing process. If the LEC project does not progress to Phase III, the cost of almost all the development activities may be lost. The one potential area of cost recovery would be the sale of the power island delivery slot to another power plant project developer.

#### **ALTERNATIVE**

The District could choose not to approve Amendment No. 1 to the Second Phase Agreement and pay the increased Phase IIB costs. Project participants could wait until the detailed design engineering is completed in approximately one year before placing the order for the power island equipment. This may reduce, but it would not eliminate, the deposit requirements. However, NCPA estimates the cost of project delay - from rising equipment costs and lost energy supply - at \$52 million for a full year.

The District also could choose to end its participation in the Lodi Energy Center. In the absence of generation from this plant, the District would have to continue to rely on more expensive market power supply. The development costs that the District has paid so far would be refunded if another project participant takes up BART's share and the plant goes into commercial operation.

#### **RECOMMENDATION**

It is recommended that the Board adopt the following motion.

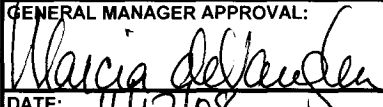
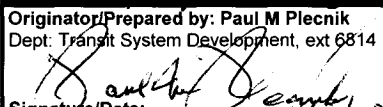
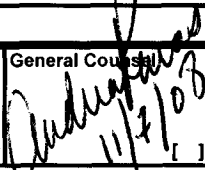
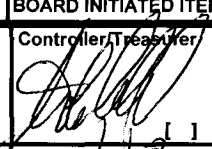
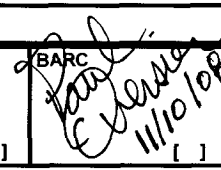
#### **MOTION**

That the Board authorize the General Manager to execute Amendment No. 1 to the Second Phase Agreement for funding the planning and development activities of the Lodi Energy Center Project and to authorize the payment of \$882,353 for the District's augmented share of Phase IIB project funds.





## EXECUTIVE DECISION DOCUMENT

<b>GENERAL MANAGER APPROVAL:</b> 		<b>GENERAL MANAGER ACTION REQ'D:</b> Approve and forward to the November 20, 2008 E & O Committee Meeting		
<b>DATE:</b> 11/12/08		<b>BOARD INITIATED ITEM:</b> No		
<b>Originator/Prepared by:</b> Paul M Plecnik Dept: Transit System Development, ext 6814  <b>Signature/Date:</b> 11/13/08	<b>General Counsel:</b>  11/7/08 [ ]	<b>Controller/Treasurer:</b>  11/7/08 [ ]	<b>District Secretary:</b> [ ]	<b>BARC:</b>  11/10/08 [ ]
<b>Status:</b> Routed		<b>Date Created:</b> 10/24/2008		
<b>TITLE:</b>				

**CHANGE ORDER NO. 1  
PROFESSIONAL SERVICES AGREEMENT NO. 6M8010  
GENERAL ENGINEERING SERVICES FOR THE DISMANTLING  
OF THE LAKE MERRITT ADMINISTRATION BUILDING**

**NARRATIVE:**

**PURPOSE:**

To obtain Board authorization for the General Manager to execute Change Order No. 1, to Professional Service Agreement No. 6M8010 General Engineering Services for the Dismantling of the Lake Merritt Administration (LMA) Building, in the amount of \$250,000.

**DISCUSSION:**

The District entered into Agreement No. 6M8010 with Stevens & Associates of San Francisco, California on May 27, 2007 to provide general engineering services for the preparation of a design specification and drawing package for the dismantling of the Lake Merritt Administration (LMA) Building. The total amount authorized by the Board for this Agreement was \$650,000. Included in the original scope of work is the requirement to provide Design Services During Construction (DSDC) upon award of Contract No. 17BJ-140, the LMA Dismantling Project contract. Currently, the original Agreement's remaining budget has approximately \$30,000 available for DSDC work. BART management staff believes this amount is inadequate and that the Agreement must be increased by \$250,000 to ensure compliance with the specifications and drawing package during the performance of the actual dismantling work. The major reason for this Change Order is that unforeseen complex design issues involving hazmat abatement and dismantling arose during the design phase. Extensive risk/hazard analysis performed during the design phase utilized funds that were planned to be expended during the DSDC phase. Stevens & Associates and its subcontractors prepared the engineering specifications and drawings and is most qualified to provide the DSDC support during abatement and dismantling of the building. The Change Order will increase the authorized value of Agreement No. 6M8010 from \$650,000 to \$900,000. Work Plans (WPs) under the Agreement will define individual work assignments. Each WP will have its own scope, schedule, and budget.

The office of the General Counsel will approve the Change Order as to form prior to execution.

**FISCAL IMPACT:**

The not-to-exceed change order amount of Two Hundred and Fifty Thousand Dollars (\$250,000) for this Agreement will come from the Earthquake Safety Program under project 17BJ - LMA Dismantling Project. The Office of the Controller/Treasurer certifies that funds are currently available to meet this obligation.

F/G 01F – Earthquake Safety General Obligation Bond  
\$250,000

As of month ending 9/28/08, \$10,308,854 is available for commitment from this fund source for this project, and \$7,039,618 has been committed by BART to date. There are pending commitments of \$1,117,463 in BART's financial management system. This action will commit an additional \$250,000 leaving an uncommitted balance of \$1,901,773 in this fund source.

There is no fiscal impact on available unprogrammed District Reserves.

**ALTERNATIVES:**

Not to execute the Change Order to the Agreement. If the change order is not executed, BART management staff will not have the technical design consultant support to respond to dismantling and hazardous materials abatement specifications, drawings and design calculations issues raised by the dismantling contractor. District technical staff did not prepare the specification and drawing package and therefore is unable to provide the DSDC support.

**RECOMMENDATION:**

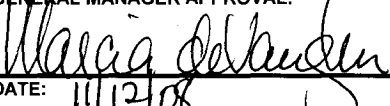
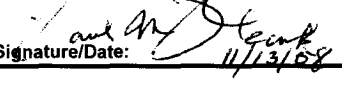
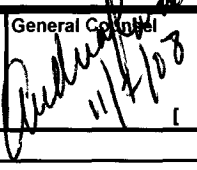
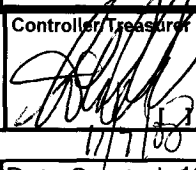
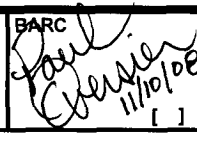
Adoption of the following motion.

**MOTION:**

The General Manager is authorized to execute Change Order No.1 to Agreement No. 6M8010, in an amount not-to-exceed \$250,000.00, increasing the Board-authorized amount under the Agreement to a not-to-exceed total of \$900,000.



## EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: 		GENERAL MANAGER ACTION REQ'D: Approve and forward to the November 20, 2008 E & O Committee Meeting		
DATE: 11/12/08		BOARD INITIATED ITEM: No		
Originator/Prepared by: Paul M Plecnik Dept: Transit System Development, ext 6814 Signature:  Date: 11/13/08	General Counsel  11/14/08 [ ]	Controller/Treasurer  11/17/08 [ ]	District Secretary [ ]	BARC  11/10/08 [ ]
Status: Routed		Date Created: 10/28/2008		
TITLE:				

### AWARD CONTRACT NO. 17BJ-140 FOR THE LMA DISMANTLING PROJECT

#### NARRATIVE:

#### PURPOSE:

To obtain Board authorization for the General Manager to award Contract No. 17BJ-140, LMA Dismantling Project, to Silverado Contractors, Inc.

#### DISCUSSION:

The District has initiated an Earthquake Safety Program for the purpose of upgrading the original BART system that was built more than 30 years ago. The goal of this program is to develop prudent and cost-effective seismic retrofit solutions to ensure the safety of both BART patrons and employees during and after a major seismic event in the San Francisco Bay Area.

The Lake Merritt Administration (LMA) Building in downtown Oakland was designed in the late 1960's. LMA is immediately adjacent to BART's Lake Merritt Station. The administration building does not meet current seismic codes. The building also contains hazardous materials, including asbestos used to fireproof the structural steel. These and other issues led to the decision to dismantle the building rather than to retrofit the building seismically to meet current standards. In August 2006, the District prepared the Initial Study/ Mitigated Negative Declaration, an environmental impact study to address all environmental factors associated with dismantling the building. Upon completion of the study, the Board approved Agreement No. 6M8010 with Stevens & Associates in May 2007 to prepare the design specification and drawing package for the LMA Dismantling Project. The work to be performed under this Contract No. 17BJ-140 will be to remediate the hazardous materials from the six above-grade levels of the building before each level will be dismantled. The concourse and platform levels beneath the building and plaza contain critical facilities that will remain in operation both during and after the dismantling.

Before the dismantling contract can begin, the HVAC equipment for the offices and equipment rooms in the two underground levels is being relocated from the LMA penthouse

to the street level under current Contract No. 17BJ-120B. All work associated with the HVAC modifications that supports the below grade levels will be completed before the active dismantling of the building begins. Also, hydraulic Freight Elevator No. 83 that services the lower floors at LMA will be modified to carry employees only between the two lower floors during the dismantling process. After dismantling of the building is completed, a follow-on Contract No. 17BJ-150 will construct a headhouse for Freight Elevator No. 83 that will bring service to the street level, restore the two stairwell plaza entrances and improve the LMA plaza lighting.

On September 4, 2008, the Advance Notice to Bidders was e-mailed to 72 prospective Bidders. Contract Documents were sent to 19 plan rooms and Minority Assistance Organizations. The Contract was advertised on September 5, 2008. A total of 33 firms purchased copies of the Contract Documents. A pre-Bid meeting was held on September 18, 2008 with 47 prospective Bidders attending. Bids were publicly opened on October 21, 2008.

The following Bids were received:

<b>Bidder</b>	<b>Location</b>	<b>Total</b>
<b>Silverado Contractors, Inc.</b>	<b>Oakland, CA</b>	<b>\$3,946,000</b>
<b>Ferma Corporation</b>	<b>Mountain View, CA</b>	<b>\$4,622,000</b>
<b>Randazzo Enterprises</b>	<b>Castroville, CA</b>	<b>\$5,063,700</b>
<b>Cleveland Wrecking</b>	<b>Oakland, CA</b>	<b>\$5,694,000</b>
<b>Miller Environmental</b>	<b>Anaheim, CA</b>	<b>\$5,760,000</b>
<b>LVI Environmental</b>	<b>Hayward, CA</b>	<b>\$6,380,459</b>
<b>West Bay Builders</b>	<b>Novato, CA</b>	<b>\$6,765,000</b>
<b>Evans Brothers</b>	<b>Livermore, CA</b>	<b>\$7,213,400</b>
<b>CST Environmental</b>	<b>Brea, CA</b>	<b>\$7,997,800</b>
<b>Engineer's Estimate</b>		<b>\$7,155,000</b>

The apparent low Bid price submitted by Silverado Contractors, Inc. is \$3,946,000 which is 45% lower than the Engineer's Estimate of \$7,155,000.

After review by District staff, the low Bid has been deemed to be responsive to the solicitation. Furthermore, staff's review of the low Bidder's business experience and financial capabilities has resulted in a determination that the Bidder is responsible and that the Bid of \$3,946,000 submitted by Silverado Contractors, Inc. is fair and reasonable. Staff believes that the recent downturn in the Northern California business climate has caused contractors to significantly lower bid proposals to compete more effectively for fewer large-scale contracts such as the LMA Dismantling Project.

**FISCAL IMPACT:**

Funding of \$3,946,000 for Award of Contract No. 17BJ-140 is included in the total project budget for FMS #17BJ, Lake Merritt Building Dismantling. The Office of the Controller/Treasurer certifies that funds are currently available to meet this obligation. The total cost of \$3,946,000 will be funded as follows:

F/G 01F - Earthquake Safety General Obligation Bond \$651,854

As of month ending 9/28/08. \$10,308,854 is available for commitment from this fund source for this project and BART has committed \$7,039,618 to date. There is a pending commitment total of \$715,609 in BART's financial management system. This action will commit \$651,854 leaving an uncommitted balance of \$1,901,773 in this fund source.

F/G 01G - Earthquake Safety General Obligation Bond \$1,794,146

As of month ending 9/28/08. \$1,794,146 is available for commitment from this fund source for this project and BART has committed \$0 to date. There are no pending commitments in BART's financial management system. This action will commit \$1,794,146 leaving an uncommitted balance of \$0 in this fund source.

F/G 90W - Federal Emergency Management Agency (FEMA) \$1,500,000

As of month ending 9/28/08. \$4,000,000 is available for commitment from this fund source for this project and BART has committed \$200,000 to date. There are no pending commitments in BART's financial management system. This action will commit \$1,500,000 leaving an uncommitted balance of \$2,300,000 in this fund source.

There is no fiscal impact on available unprogrammed District Reserves.

**ALTERNATIVES:**

Reject all bids and not award the Contract. If the Contract is not awarded, staff will have to issue a new Invitation to Bid and restart the contract bidding process. In that event, the schedule for dismantling the LMA building would be delayed.

**RECOMMENDATION:**

Adoption of the following motion.

**MOTION:**

The General Manager is authorized to award Contract No. 17BJ-140, LMA Dismantling Project, to Silverado Contractors, Inc. for the Bid amount of \$3,946,000 pursuant to notification to be issued by the General Manager, and subject to the District's protest procedures and FEMA's requirements related to protests.

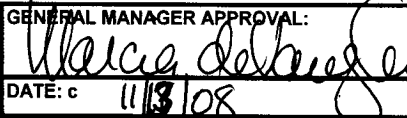
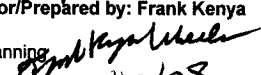
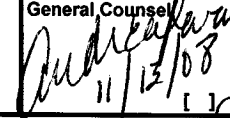
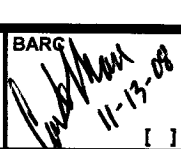
## FUNDING SUMMARY - EARTHQUAKE SAFETY PROGRAM

PROJECT ELEMENT	Baseline Budget	Current Forecast as of 8/26/08	REMARKS
<b>ENVIRONMENTAL, ENGINEERING, AND CONSTRUCTION MANAGEMENT</b>			
GEC (Bechtel Team)	\$105,000,000	\$186,000,000	
Other GEC	\$81,478,000	\$0	
<b>Subtotal GEC</b>	<b>\$186,478,000</b>	<b>\$186,000,000</b>	
CM	\$61,498,000	\$64,258,626	
Environmental	\$1,042,796	\$2,061,892	
<b>TOTAL E, E &amp; CM</b>	<b>\$249,018,796</b>	<b>\$252,320,518</b>	
<b>CONSTRUCTION</b>			
<b>Transbay Tube</b>			
Oakland Ventilation Structure	\$1,033,000	\$1,153,096	
Oakland Landside	\$17,970,000	\$10,699,433	
<b>San Francisco Ferry Plaza</b>			
SFTS (including Tube liner)	\$73,037,000	\$5,095,800	
Marine Vibro Demo	\$101,285,000	\$137,852,879	
Stitching	\$82,962,000	\$0	
<b>Aerial Guideways</b>			
West Oakland/North Oakland	\$112,923,000	\$119,515,327	
Fremont	\$178,224,000	\$149,362,000	
Concord	\$36,500,000	\$22,452,000	
Richmond	\$80,155,000	\$66,441,000	
San Francisco/Daly City	\$36,590,000	\$42,740,000	
<b>Stations (18)</b>	<b>\$126,961,000</b>	<b>\$104,427,000</b>	
<b>Other Structures</b>			
LMA	\$5,529,000	\$5,110,448	
Yds & Shops	\$12,436,000	\$22,318,000	
Parking Structures	\$14,437,000	\$8,985,158	
At Grade Trackway	\$22,361,000	\$0	
<b>Systems</b>	<b>\$7,066,000</b>	<b>\$11,587,118</b>	
<b>TOTAL CONSTRUCTION</b>	<b>\$909,469,000</b>	<b>\$707,739,259</b>	
<b>PROGRAM COSTS</b>			
Program Costs ( Hazmat, ROW, Consult, Staff)	\$159,894,204	\$227,223,244	
Contingency	\$32,104,000	\$163,202,979	
<b>TOTAL PROGRAM COSTS</b>	<b>\$191,998,204</b>	<b>\$390,426,223</b>	
<b>TOTAL FUNDING</b>	<b>\$1,350,486,000</b>	<b>\$1,350,486,000</b>	

(Funding includes \$43.3m of Prior Program Funding)



## EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: 		GENERAL MANAGER ACTION REQ'D:		
DATE: c 11/13/08		BOARD INITIATED ITEM: No		
Originator/Prepared by: Frank Kenya Wheeler Dept: Planning Signature/Date: 11/13/08	General Counsel  11/13/08 [ ]	Controller/Treasurer  11/13/08 [ ]	District Secretary [ ]	BARG  11-13-08 [ ]

TITLE:

### Memorandum of Understanding for the Lake Merritt BART Specific Plan

NARRATIVE:

#### PURPOSE

To authorize execution of a Memorandum of Understanding with the City of Oakland and the Peralta Community College District to pursue development of a Specific Plan for the BART Lake Merritt Station area within the City of Oakland, with BART's contribution in the amount of \$50,000.00, plus staff time.

#### DISCUSSION

The Board of Directors adopted a Transit Oriented Development (TOD) policy in 2005 that encourages a more proactive approach to comprehensive planning for TOD around BART stations. Land Use Strategy #1 under the TOD policy states that BART should " . . . proactively develop and promote station area plans and land use policies that encourage intensive, high quality development oriented towards transit on and around station properties." An opportunity now exists to implement BART's TOD policy in the BART Lake Merritt Station area.

Three public agencies, BART, the City of Oakland (City) and the Peralta Community College District (College) have been in discussions regarding a community planning process for the BART Lake Merritt Station area. Through a Caltrans-funded, Community-Based Planning Grant, the three agencies initiated a limited visioning process for the station area to engage key stakeholders and policymakers, and a Final Summary Report was prepared that identified several objectives for the station area. The Final Summary Report concluded there was a need for more comprehensive planning around the BART Lake Merritt Station area with the intent:

- a) To propose a high-density mixed-use development with a residential component that will increase the patronage of transit facilities;
- b) To provide a development that will inspire community pride and serve as a catalyst for economic development in the surrounding community;
- c) To improve public safety in the station area;
- d) To increase pedestrian and bicycle traffic and safety in the project area and to the BART station;
- e) To improve transit access and connections between the BART station and the surrounding community;
- f) To create vibrant public spaces that will accommodate existing BART plaza users and contribute to the public well-being and quality of life;
- g) To identify opportunities for shared parking in the station area; and
- h) To support the educational needs of Laney College students and faculty.

Building on the Final Summary Report, the City designated the BART Lake Merritt Station area as a Priority Development Area under the Metropolitan Transportation Commission (MTC) and Association of Bay Area Governments (ABAG) FOCUS program. The City, in conjunction with BART and the College, subsequently applied for and received \$720,000 in Station Area Planning program grant funds from MTC to conduct a Station Area Planning process. The City also received an additional \$30,000 Community Engagement grant from ABAG to conduct a targeted outreach process for lower-income and minority community members and stakeholders in the station area. This grant will provide resources to help community members understand TOD, identify concerns and provide an analysis of potential impacts from development in the station area.

The Specific Plan process will identify the necessary land use policies, design guidelines, access improvements and implementation strategies necessary to create a more livable station area and region. The deliverables resulting from the process include a Draft and Final Specific Plan, Amendments to City of Oakland Zoning Code and General Plan to implement the plan and a Draft and Final Environmental Impact Report to satisfy California Environmental Quality Act review of the Specific Plan.

It is proposed that a Memorandum of Understanding (MOU) be entered into in order to formalize the relationship among BART, the City and the College to pursue the Specific Plan process at the BART Lake Merritt Station. Staff is requesting that the Board authorize the General Manager to execute the MOU. The MOU will be approved as to form by the Office of the General Counsel.

#### **FISCAL IMPACTS**

BART staff recommends making a financial contribution in the amount of \$50,000 toward the preparation of the Specific Plan. The City has been awarded a \$720,000 grant from MTC to fund the Specific Plan effort. BART, the City and the College are each providing \$50,000 over a two fiscal year period to fulfill the required \$150,000 local cash match. The BART Planning and Property Development Departments would each contribute equally toward the \$50,000 total BART contribution from their respective operating budgets over the next two fiscal years, beginning in FY09. The Operating Budgets Department will verify the availability of operating funding during each year's annual budget process. In addition to the financial contribution, an in-kind contribution of staff time from the Planning and Property Development Departments would be required to support the Specific Plan process over the next two fiscal years.

#### **ALTERNATIVES**

Do not authorize execution of an MOU. Failure to enter into an MOU would prevent BART from engaging in a proactive, community-based land use planning process for the BART Lake Merritt Station area.

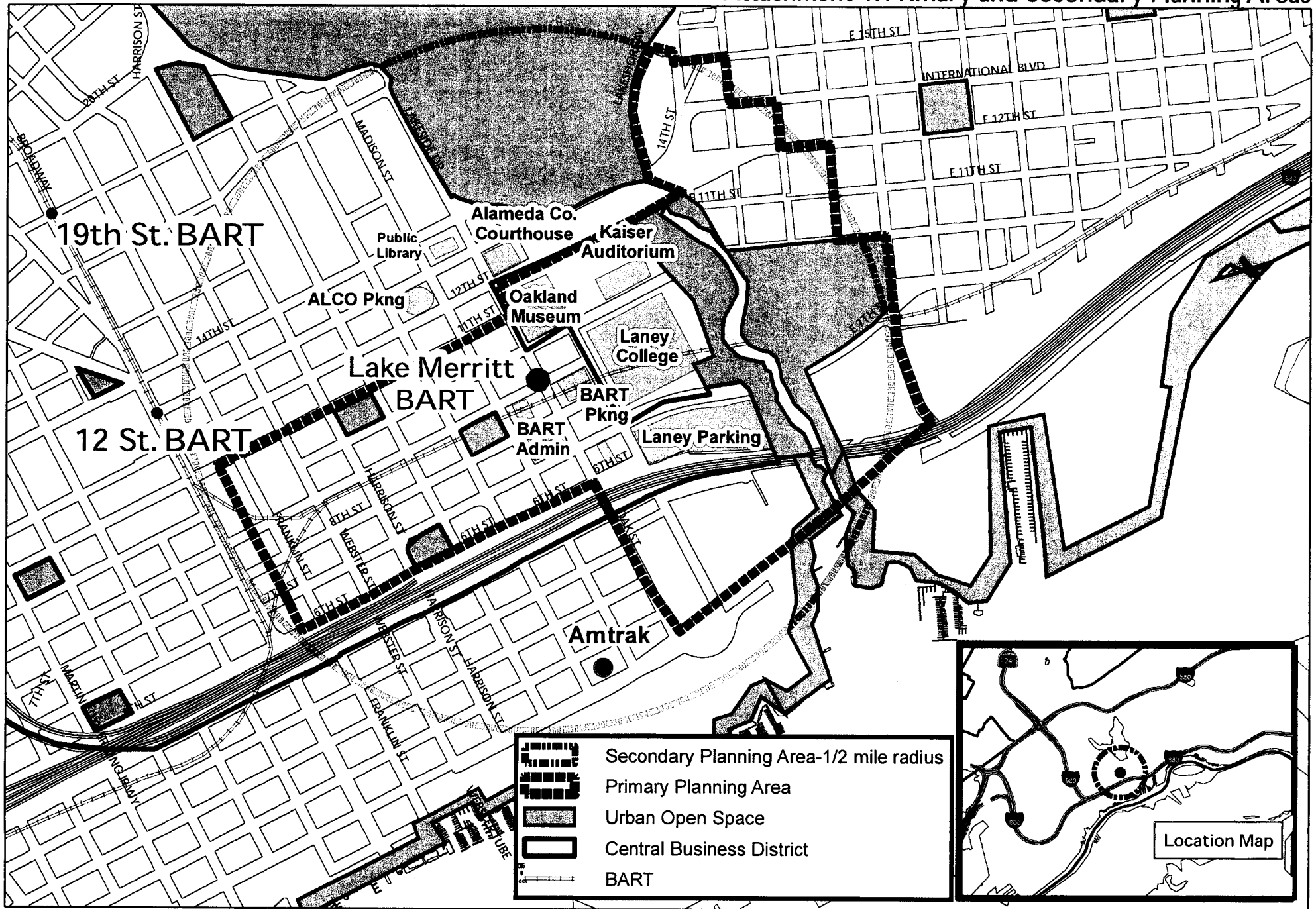
#### **RECOMMENDATION**

Approve the following motion.

#### **MOTION**

The General Manager or her designee is authorized to execute a Memorandum of Understanding with the City of Oakland and the Peralta Community College District to develop a Specific Plan for the BART Lake Merritt Station area within the City of Oakland, with BART's financial contribution in the amount of \$50,000, plus staff time.





## Lake Merritt BART Station Area Plan

0 210 420 840 1,260 1,680  
Feet



October 9, 2008