

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

AGENDAS FOR BOARD AND COMMITTEE MEETINGS

May 14, 2009
9:00 a.m.

A regular meeting of the Board of Directors and regular meetings of the Standing Committees will be held on Thursday, May 14, 2009, commencing at 9:00 a.m. These meetings shall consist of a simultaneous teleconference call at the following locations:

BART Board Room Kaiser Center 20 th Street Mall – Third Floor 344 – 20 th Street Oakland, CA 94612	The Portman Ritz-Carlton 1376 Nanjing Xi Road Shanghai, 200040, People’s Republic of China
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Members of the public may address the Board of Directors and Standing Committees regarding any matter on these agendas. Please complete a “Request to Address the Board” form (available at the entrance to the Board Room) and hand it to the Secretary before the item is considered by the Board. If you wish to discuss a matter that is not on the agenda during a regular meeting, you may do so under General Discussion and Public Comment.

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

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

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

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

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

Kenneth A. Duron
District Secretary
Regular Meeting of the
BOARD OF DIRECTORS

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

1. CALL TO ORDER

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

2. CONSENT CALENDAR

- A. Approval of Minutes of the Meeting of April 21, 2009 (Special). * Board requested to authorize.
- B. Resolution of Project Compliance and Initial Project Report for Regional Measure 2 Funds for the Downtown Berkeley Bike Station.* Board requested to adopt.
- C. Award of Invitation for Bid No. 8845, Hybrid Truck with Scissor Lift and Hi-Rail System.* Board requested to authorize.
- D. Fiscal Year 2009 Third Quarter Financial Report.* For information.

3. BOARD MATTERS

- A. (CONTINUED from April 23, 2009, Administration Committee Meeting)
Oakland Airport Connector Project: Application for Transportation Infrastructure Finance and Innovation Act of 1998 Loans for the Project.* Board requested to adopt.

RECESS TO STANDING COMMITTEES

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

ALL COMMITTEES ARE ADVISORY ONLY

ADMINISTRATION COMMITTEE

Immediately following the Board Meeting recess

Director Murray, Chairperson

- A-1. Change Order to Agreement No. 6M4054, Real Property Comprehensive Acquisition and Relocation Services, with Paragon Partners Ltd., for Increased Funding (C.O. No. 1).* Board requested to authorize.
- A-2. California Department of Transportation Disadvantaged Business Enterprise (DBE) Implementation Agreement for Contracts Subject to U.S. Department of Transportation (Federal Highway Administration) Regulations.* Board requested to authorize.
- A-3. Fiscal Year 2010 Preliminary Budget Operating Sources, Uses and Service Plan.* For information.
- A-4. Fiscal Year 2010 Budget Procedural Action – Forward Budget from Administration Committee to Board of Directors.*
- A-5. General Discussion and Public Comment.

ENGINEERING AND OPERATIONS COMMITTEE

Immediately following the Administration Committee Meeting
Director Keller, Chairperson

- B-1. Sole Source Procurement with Tyco Electronics Incorporated for Radio Communication Equipment Upgrades.* Board requested to authorize. (TWO-THIRDS VOTES REQUIRED.)
- B-2. Sole Source Procurement with Dailey Wells, Inc., for Integrated Security Response Center Radio Dispatch Consoles and Services.* Board requested to authorize. (TWO-THIRDS VOTES REQUIRED.)
- B-3. Change Order to Contract No. 79HH-110, Closed Circuit Television Project – Phase I Installation, with Adesta Limited Partnership, for Additional Work (C.O. No. 1).* Board requested to authorize.
- B-4. Agreements with PGH Wong Engineering, Inc. (No. 6M8026); Kal Krishnan Consulting Services, Inc. (No. 6M8027); and B&C-URS Joint Venture (No. 6M8028), for General Engineering Services for BART Projects.* Board requested to authorize.
- B-5. Quarterly Performance Report, Third Quarter Fiscal Year 2009 – Service Performance Review.* For information.
- B-6. General Discussion and Public Comment.

PLANNING, PUBLIC AFFAIRS, ACCESS, AND LEGISLATION COMMITTEE

Director Sweet, Chairperson

NO REPORT.

RECONVENE BOARD MEETING

- 4. CONSENT CALENDAR ADDENDA
Board requested to authorize as recommended from committee meetings above.
- 5. REPORTS OF STANDING COMMITTEES
 - A. ADMINISTRATION COMMITTEE
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 - A-2. California Department of Transportation Disadvantaged Business Enterprise (DBE) Implementation Agreement for Contracts Subject to U.S. Department of Transportation (Federal Highway Administration) Regulations.* Board requested to authorize.
 - A-3. Fiscal Year 2010 Preliminary Budget Operating Sources, Uses and Service Plan.* For information.

* Attachment available

A-4. Fiscal Year 2010 Budget Procedural Action – Forward Budget from Administration Committee to Board of Directors.*

B. ENGINEERING AND OPERATIONS COMMITTEE

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B-5. Quarterly Performance Report, Third Quarter Fiscal Year 2009 – Service Performance Review.* For information.

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

NO REPORT.

6. GENERAL MANAGER'S REPORT

NO REPORT.

7. BOARD MATTERS

A. Report of the BART Police Department Review Committee. For information.

B. Roll Call for Introductions.

8. GENERAL DISCUSSION AND PUBLIC COMMENT

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

A. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION
Significant exposure to litigation pursuant to subdivision (b) of Government Code Section 54956.9: one potential case.

B. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION
Name of Case: Johnson et al. vs. BART
Government Code Section: Subdivision (a) of Government Code Section 54956.9



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL <i>[Signature]</i>		GENERAL MANAGER ACTION REQ'D: Approve and Forward to the Administration Committee		
DATE: 5/6/2009		BOARD INITIATED ITEM: No		
Originator/Prepared by: Alan Lee Dept. Capital Development <i>Alan E Lee</i> 5/5/09	General Counsel <i>[Signature]</i> 5-6-09	Controller/Treasurer <i>[Signature]</i> 5/5/09	District Secretary []	BARC <i>[Signature]</i> 5-6-09
Status: Routed		Date Created: 04/29/2009		

TITLE:

Approval of a Resolution of Project Compliance and Initial Project Report for Regional Measure 2 Funds for the Downtown Berkeley Bike Station Project

NARRATIVE:

PURPOSE:

To obtain Board approval of a Resolution of Project Compliance and Initial Project Report ("IPR") for Regional Measure 2 ("RM2") funds for the Downtown Berkeley Bike Station Project ("Project"). The IPR, as described in the attached IPR Summary ("Summary"), includes a request for reimbursement not-to-exceed \$496,784 of planned project expenditures in FY09-10.

DISCUSSION:

The City of Berkeley and BART jointly secured a \$496,784 Regional Measure 2 Safe Routes to Transit grant for the Downtown Berkeley Bike Station Expansion. The grant will provide for relocating and expanding of the Berkeley Bike Station to a store front ground level space near the entrances to the Berkeley Station to better serve BART customers. On April 23, 2009, the BART Board approved entering into a five-year lease agreement with NFLP Berkeley Center DE, LLC for ground level store front property for the Bike Station in downtown Berkeley.

MTC Resolution No. 3636, the Policies and Procedures for Implementation of the Regional Traffic Plan of Regional Measure 2 requires that the project sponsor approve a Resolution of Project Compliance and IPR when the project sponsor requests an allocation of RM2 funds. In accordance with MTC's requirement, staff is requesting that the Board approve the Resolution of Project Compliance and IPR for the Project.

The existing Bike Station opened in 1999 and is located on the concourse level of the Downtown Berkeley BART Station. The Bike Station has 77 spaces, yet regularly parks over 100 bicycles. The District has been planning for the expansion of the Berkeley Bike Station for several years in partnership with the City of Berkeley and regional funding agencies. The new Bike Station will provide a minimum of 250 bicycle parking spaces as well as additional services and amenities including bicycle repair, rentals, retail, and community bicycle education classes.

FISCAL IMPACT:

Approval of the Resolution and IPR is a requirement for the District to receive an allocation not-to-exceed \$496,784 in RM2 funding from the MTC. This action will have no fiscal impact on un-programmed District Reserves. No local or BART match is required. Total funding not-to-exceed \$496,784 for the Project is provided through Regional Measure 2 Bridge Tolls.

ALTERNATIVES:

Do not approve the Resolution of Project Compliance and IPR. This would prevent construction of the proposed Berkeley Bike Station Project.

RECOMMENDATION:

Adoption of the following motion:

MOTION:

Approve the attached Resolution of Project Compliance and Initial Project Report for Regional Measure 2 Funds for the Downtown Berkeley Bike Station Project.

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

In the Matter of Approval
of a Resolution of Project Compliance
and Initial Project Report for Regional
Measure 2 Funds for the Downtown
Berkeley Bike Station /

Resolution No. _____

WHEREAS, SB 916 (Chapter 715, Statutes 2004), commonly referred 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, San Francisco Bay Area Rapid Transit District (BART) is an eligible sponsor of transportation project(s) in Regional Measure 2, Regional Traffic Relief Plan funds; and

WHEREAS, the Downtown Berkeley BART Bike Station 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, attached hereto in the Initial Project Report and incorporated herein as though set forth at length, lists the project, purpose, schedule, budget, expenditure and cash flow plan for which BART is requesting that MTC allocate Regional Measure 2 funds.

NOW, THEREFORE, BE IT RESOLVED, that BART, and its agents shall comply with the provisions of the Metropolitan Transportation Commission's Regional Measure 2 Policy Guidance (MTC Resolution No. 3636); and be it further

RESOLVED, that BART certifies that the project is consistent with the Regional Transportation Plan (RTP); and be it further

RESOLVED, that the year of funding for any design, right-of-way and/or construction phases has taken into consideration the time necessary to obtain environmental clearance and permitting approval for the project; and be it further

RESOLVED, that the Regional Measure 2 phase or segment is fully funded, and results in an operable and useable segment; and be it further

RESOLVED, that BART approves the updated Initial Project Report (IPR), attached to this resolution; and be it further

RESOLVED, that BART approves the cash flow plan, attached to this resolution; and be it further

RESOLVED, that BART has reviewed the project needs and has adequate staffing resources to deliver and complete the project within the schedule set forth in the updated IPR, attached to this resolution; and be it further

RESOLVED, that BART 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); and be it further

RESOLVED, that BART is authorized to submit an application for Regional Measure 2 funds for BART in accordance with California Streets and Highways Code 30914(c); and be it further

RESOLVED, that BART certifies that the projects and purposes 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 Environmental Impact Report Guidelines (14 California Code of Regulations Section 15000 et seq.) and if relevant the National Environmental Policy Act (NEPA), 42 USC Section 4-1 et seq. and the applicable regulations thereunder; and be it further

RESOLVED, that there is no legal impediment to BART's making allocation requests for Regional Measure 2 funds; and be it further

RESOLVED, that there is no pending or threatened litigation which might in any way adversely affect the proposed project, or the ability of BART to deliver such project; and be it further

RESOLVED that BART indemnifies and holds 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 BART, 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, and be it further

RESOLVED, that BART agrees, 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 projects(s); and be it further

RESOLVED, 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 their useful life, that the 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; and be it further

RESOLVED, that BART shall post on both ends of the construction site(s) at least two signs visible to the public stating that the project is funded with Regional Measure 2 Toll Revenues; and be it further

RESOLVED, that BART authorizes its General Manager or her designee to execute and submit an allocation request for the design/construction phase with MTC for Regional Measure 2 funds in the amount of \$496,784, for the project, purposes and amounts included in the project application attached to this resolution; and be it further

RESOLVED, that the General Manager or her designee is hereby delegated the authority to make non-substantive changes or minor amendments to the IPR as he/she deems appropriate; and be it further

RESOLVED, that a copy of this resolution shall be transmitted to MTC in conjunction with the filing of the BART application referenced herein.

Adopted: _____

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Downtown Berkeley Bike Station Project

Initial Project Report Summary

The Project will relocate, design and construct a new bicycle parking facility to expand the capacity and services of the Downtown Berkeley BART Bike Station. The new street-level facility will provide capacity for 250 bicycles. The project will add a self-serve parking option and service enhancements, including retail, repair, and rental.

Project Delivery Milestones

Phase-Milestone	Planned	
	Start Date	Completion Date
Environmental Document	NA	NA
Environmental Studies, Preliminary Eng. (ENV / PE / PA&ED)	2006	April 2009
Final Design - Plans, Specs. & Estimates (PS&E)	May 28, 2009	July 17, 2009
Right-of-Way Activities /Acquisition (R/W)	April 2008	May 30, 2009
Construction (Begin – Open for Use) / Acquisition / Operating Service (CON)	July 20, 2009	October 30, 2009

Total Project Budget Information

Phase	Total Amount - De-escalated - (Thousands)
Environmental Studies & Preliminary Eng (ENV / PE / PA&ED)	
Design - Plans, Specifications and Estimates (PS&E)	\$40,000
Right-of-Way Activities /Acquisition (R/W)	
Construction / Rolling Stock Acquisition (CON)	\$456,784
Total Project Budget (in thousands)	\$496,784



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL <i>[Signature]</i>		GENERAL MANAGER ACTION REQ'D:		
DATE: 5/6/2009		BOARD INITIATED, ITEM: No		
Originator/Prepared by: Larry Fisher Dept: <i>[Signature]</i> Signature/Date: <i>[Signature]</i> 5/4/09	General Counsel <i>[Signature]</i> 5-4-09 []	Controller/Treasurer <i>[Signature]</i> []	District Secretary []	BARC <i>[Signature]</i> 5/6/09 []
Status: Routed		Date Created: 04/08/2009		

TITLE:

Award of IFB #8845 Procurement of Hybrid Hi-Rail Scissor Lift Truck

NARRATIVE:

Purpose:

To request Board authorization to award Invitation For Bid #8845 to Golden Gate Truck Center, Oakland, CA in the amount of \$235,133.00 for the purchase of a Hybrid Scissor Lift Truck, with Hi-Rail system.

Discussion:

This procurement is for a Diesel/Electric Hybrid Scissor Lift Truck with a Hi-Rail system to be used on rail throughout the District. The truck is a 33,000 gross vehicle weight (GVW) vehicle with an 8' X 10' scissor lift platform with a working height of 15 feet. This vehicle will allow workers in BART tunnels and other over-head areas access for maintenance and installation activities. The vehicle will be particularly well suited to relamping the tunnels and conducting other elevated electrical work. 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 maintainance 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 1981 International scissor lift hi-rail truck which will be disposed of at auction.

A notice requesting bids was published on January 28, 2009 and bid requests were mailed to seven (7) prospective bidders. Bids were opened on February 24, 2009 and two (2) bids were received:

Bidder	Price	Grand Total including 9.75% Sales Tax
Golden Gate Truck Center	\$214,244.00	\$235,133.00
Bayshore International Trucks	\$260,274.00	\$285,651.00

Independent cost estimate by District Staff: \$195,750 plus sales tax.

Delivery shall be made within one hundred fifty (150) days after award of the Contract.

Fiscal Impact:

Funding of \$235,133.00 for IFB #8845 is defined by work order 79BJ-2HM and 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.

FY00 – 06 Capital Allocation

50W

\$235,133

As of month ending March 29, 2009, \$8,166,152 is available for commitment from this fund source for this project and BART to date has committed \$7,807,955. There is \$118,491 pending commitment in BART's financial management system. This action will commit an additional \$235,133, leaving an uncommitted balance of \$4,573 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 scissor-lift 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 recommended that the Board adopt the Motion.

Motion:

The General Manager is authorized to award Invitation for Bid #8845 for Hybrid Truck, Scissor-Lift Bed with Hi-Rail System to Golden Gate Truck Center of Oakland, California for the bid amount of \$235,133.00 (inclusive of sales tax), pursuant to notification to be issued by the General Manager, subject to compliance with the District's Protest Procedure.

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

MEMORANDUM

TO: Board of Directors

DATE: May 8, 2009

FROM: General Manager

SUBJECT: **FY09 Third Quarter Financial Report**

The FY09 Third Quarter Financial Report (January–March 2009) is attached. Although the net operating result for the quarter was better than budget, the trends for passenger revenue and sales tax indicate both are likely to end the year under the revised budget. The expense budget is very tight, favorable for the quarter but slightly unfavorable year-to-date. Overall, although the variances are small in percentage, most categories are negative and the year-to-date net operating result is \$5.8M unfavorable as a result.

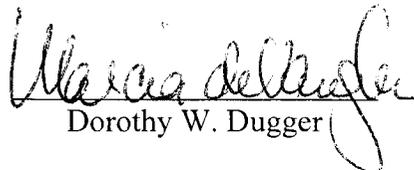
Operating Sources

- Core system ridership declined in each month of the third quarter compared to the same time period in the prior year – the first declines since FY05. Of particular concern is that this downward trend is worsening each month (January -0.8% to March -3.1%). And, although the SFO Extension is still growing the rate has dropped from 25% growth early in FY09 to 2.1% in March.
- Sales tax is another area of great concern. Third quarter results, available to us in mid-March and reflecting taxable sales from approximately October through December, dropped 11.5% compared to the same quarter in FY08. This is the second worst quarter in BART's history and most forecasts anticipate the final quarter of FY09 will be even worse.

Operating Uses

- Expenses were favorable to budget for the quarter, reducing the year-to-date unfavorable variance to 1%. Labor and benefits are essentially on budget for the quarter, primarily due to savings from the selective hiring freeze implemented in October 2008. Year to date labor expenses remain unfavorable, but we hope for fourth quarter improvement due to the freeze and control of overtime. To date non-labor is slightly favorable, but is projected to go over budget in the fourth quarter due to rail car maintenance costs and because some current favorable timing variances in other areas are likely to be gone by year-end.

Recent passenger revenue and sales tax results have exhibited even greater weakness than anticipated when the FY09 budget was revised in February. We are also concerned about expenses and making up the current unfavorable variance. The third quarter \$3.7M favorable net operating result is overstated because of timing issues in both revenue and expenses. Due to the correction of the timing issues, very likely under-runs in ridership and sales tax, and increased expenses, we are anticipating tremendous pressure on the year-end result. Everyone at the District is working very diligently to control expenses.


Dorothy W. Dugger

cc: Board Appointed Officers
Deputy General Manager
Executive Staff

Third Quarter FY09 BUDGET PERFORMANCE REPORT EXECUTIVE SUMMARY

M=million

REVENUE

●Ridership growth in 3Q09 slowed compared to FY08. Core avg wkdy trips declined 2.1%. SFO Ext trips grew 5.6%, but much lower than 21% and 13% from prior quarters. YTD, avg wkdy core trips are 0.3% under budget and SFO Ext trips are 0.9% under budget, with systemwide revenue 0.3% less than the revised budget. 3Q Passenger Rev reflects Feb Budget Revision true-up to account for higher SFO and lower core revenue in prior months.

●Other Operating Revenue under budget YTD due to interest revenue \$0.7M under budget.

EXPENSE

●Net Labor was slightly favorable (\$2.3M) for the third quarter due to the selective hiring freeze. YTD labor remains unfavorable primarily due to overtime.

●Electric Power YTD is slightly unfavorable, but year-end results projected to be on budget.

●Other Non Labor favorable YTD, and included adjustments made in the budget revision. Year end results projected close to budget by end of year. Possible overruns would be due to high rail car maintenance expenses and Hayward fire repair costs.

●The Lakeside building lease is recognized over the life of the lease, which is a non-cash book entry and not budgeted; budget includes actual cash outlay for lease payments.

●Total operating expense is \$4.1M unfavorable YTD, although \$2.9M is due to the OPEB Unfunded Liability, which does not affect the net operating result. Projections for year-end show potential overruns in maintenance materials and labor.

EXTRAORDINARY ITEMS

●The unfavorable variance of \$3.4M reflects "timing" of grant receipts for the quarter. With offsetting grant revenue in the Financial Assistance category; does not affect the bottom line.

OPERATING DEFICIT

●Unfavorable operating revenues and resulted in a \$67.6M Operating Deficit, \$5.8M more than budgeted (\$2.4M excluding Rail Car Fund Swap)

TAX & FINANCIAL ASSISTANCE

●Sales tax revised budget projected a 7% drop from 3Q08 and 5.6% below FY08 overall. 3Q09 actual was down 11.5%. Favorable result for quarter only because of true up to account for lower revenue first two quarters. YTD sales tax is \$2.3M (1.6%) under budget.

●STA reflects revised State budget. No additional payment expected.

●Allocation from SFO Reserve budget reflects YTD budget revision of reduced need for funds due to strong SFO Extension passenger revenue in first half of FY09. 3Q09 true-up in April.

●Debt Service YTD is \$1.7M unfavorable due to better than budget SFO Prem Fare revenue allocations. Over budget allocations will be returned to BART by year end.

●OPEB Unfunded Liability (expense) unfavorable for both the quarter (\$1.0M) and YTD (\$2.9M), shown as expense and offset (no bottom line impact).

NET OPERATING RESULT

●The net operating result for the quarter was \$3.7M favorable, largely due to timing. Year-to-date, the net result is \$5.8M worse than budget, the combination of Operating Revenue (\$1.6M), Operating Expense (\$1.2M) and Net Financial Assistance excluding OPEB liab. and Fund Swap(\$3.0M).

SYSTEM OPERATING RATIO/RAIL COST PER PASSENGER MILE

●The operating ratio (revenue divided by expense) was unfavorable for 3Q09 due to lower than budgeted passenger miles. Rail cost per passenger mile was unfavorable for 3Q09 due to lower than budgeted passenger miles.

CURRENT QUARTER			(\$Millions)*	FISCAL YEAR-TO-DATE		
Budget	Actual	Var.		Budget	Actual	Var.
			REVENUE			
79.2	73.3	-7.4%	Net Passenger Revenue	239.1	238.4	-0.3%
7.5	7.5	-0.5%	Other Operating Revenue	23.0	22.1	-3.8%
86.7	80.8	-6.8%	Total Net Operating Revenue	262.1	260.5	-0.6%
			EXPENSE			
97.8	97.5	0.3%	Net Labor	286.9	289.2	-0.8%
0.3	1.3	-273.2%	OPEB Unfunded Liability**	1.0	3.9	-286.1%
8.9	8.9	-0.2%	Electric Power	28.3	28.7	-1.1%
3.6	3.6	-0.3%	Purchased Transportation	10.8	10.6	1.8%
0.0	(0.3)		Lakeside Lease Accrual	0.0	(0.9)	
23.2	19.4	16.5%	Other Non Labor	66.2	65.9	0.4%
133.9	130.4	2.6%	Total Operating Expense	393.3	397.4	-1.0%
			EXTRAORDINARY EXPENSES			
14.6	18.0	-22.8%	Rail Car Fund Swap	19.2	22.2	-16.0%
14.6	18.0		Total Extraordinary Items	19.2	22.2	
(61.8)	(67.6)	-8.5%	OPERATING DEFICIT	(150.3)	(159.1)	-5.5%
			TAX & FINANCIAL ASSISTANCE			
42.4	45.2	6.7%	Sales Tax	147.8	145.5	-1.6%
3.7	2.8	-25.5%	Prop Tax, Other Assistance	23.0	23.7	3.2%
(0.1)	0.0	-100.0%	State Transit Assistance (STA)	2.1	2.1	0.0%
14.6	18.0	22.8%	Rail Car Fund Swap	19.2	22.2	16.0%
(3.4)	0.0	-100.0%	Allocation from SFO Reserve	(0.2)	0.0	-100.0%
(16.3)	(16.7)	-2.5%	Debt Service	(51.3)	(53.0)	-3.3%
9.2	9.4	-2.1%	Capital and Operating Allocations	(2.9)	(2.8)	-1.8%
0.1	0.1	0.0%	Other Reserve Allocations	0.0	0.0	
0.3	1.3	273.2%	OPEB Unfunded Liability Offset**	1.0	3.9	286.1%
50.6	60.1	18.7%	Net Financial Assistance	138.8	141.7	2.1%
(11.2)	(7.5)		NET OPERATING RESULT	(11.6)	(17.4)	
64.8%	62.0%	-2.8%	System Operating Ratio	66.6%	65.5%	-1.1%
36.7 ¢	37.5 ¢	-2.1%	Rail Cost Per Passenger Mile	35.2 ¢	35.8 ¢	-1.8%

* Totals may not add due to rounding to the nearest million.

■ No Problem

▨ Caution: Potential Problem/Problem Being Addressed

■ Significant Problem

**The Other Post Employment Benefits (primarily retiree medical) is a non-cash expense to recognize the difference between actual retiree medical funding and the full Annual Required Payment, and does not affect the Net Operating Result.



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Walter D. DeLeon</i>		GENERAL MANAGER ACTION REQ'D: Approve and Forward to the Board of Directors		
DATE: 4/16/09		BOARD INITIATED ITEM: No		
Originator/Prepared by: Alan Lee Dept: Capital Development <i>Alan E. Lee</i> 4/15/09	General Counsel <i>Andrew...</i> 4/15/09	Controller/Treasurer <i>Robert...</i> 4-16-09	District Secretary []	BARC <i>...</i> 4/15/09
Signature/Date:				
Status: Routed		Date Created: 04/10/2009		
TITLE:				

Three Resolutions In Support of the Full Funding Plan for the Oakland Airport Connector Project

NARRATIVE:

Purposes:

- 1) To obtain BART Board approval of a Resolution of Local Support for \$70 million of Federal American Recovery and Reinvestment Act of 2009 ("ARRA") funding and stating assurances to implement the Oakland Airport Connector ("OAC") Project. The BART Board is being asked to adopt a Resolution of Local Support for submission to the Metropolitan Transportation Commission ("MTC") as a prerequisite to receipt of \$70 million in ARRA funding.
- 2) To obtain BART Board approval of a Resolution supporting proposed action by MTC to reassign \$50 million to the OAC Project, as those funds are no longer needed for the Transbay Tube Seismic Retrofit Project.
- 3) To obtain BART Board approval of a Resolution Authorizing BART Staff to Investigate and Apply for TIFIA Loans not-to-exceed \$150 million toward the Financing and Completion of the OAC Project.

Discussion:

1) Resolution of Local Support for American Recovery and Reinvestment Act ("ARRA") Allocation of \$70 Million to OAC.

The ARRA includes \$48 billion for the Department of Transportation. Specifically, the ARRA includes \$27.5 billion in Federal Highway Administration (FHWA) funding and \$8.4 billion in Federal Transit Administration ("FTA") funds. It is estimated that the MTC will receive roughly \$150 million through the Surface Transportation Program sub-allocated program and \$340 million in Federal Transit Administration formula funds. Of the Regional amount of \$340 million, BART is programmed to receive \$70 million for the Oakland Airport Connector Project ("Project").

MTC requires Project Sponsors/Implementing Agencies to submit a Resolution of Local Support approved by the Project Sponsor/ Implementing Agency's Board. Staff has prepared the attached Resolution of Local Support for adoption by the BART Board of Directors to meet the MTC requirement for the \$70 million in ARRA funding for the OAC Project.

2) Resolution Confirming a \$50 million cost savings from the Transbay Tube Seismic Retrofit Project and Request MTC to Reassign the savings to the OAC Project.

The Transbay Tube Seismic Retrofit Project has an underrun of \$50 million in Regional Measure 2 ("RM2") Bridge Tolls and other funding that is under the control of the MTC. In Resolution No. 3885 the MTC proposed that \$50 million of cost savings from the Transbay Tube Seismic Retrofit Project be reassigned to the OAC Project. MTC can allocate the cost savings to any RM2 eligible project in the nine counties of the San Francisco Bay region.

3) Resolution Authorizing BART Staff to Investigate and Apply for TIFIA Loans not-to-exceed \$150 million toward the Financing and Completion of the OAC Project

The Controller Treasurer is currently performing financial modeling to evaluate BART debt financing and cash flow needs for the OAC Project. The modeling is based on conservative financial and ridership assumptions for the OAC Project. A low interest Transportation Infrastructure Finance and Innovation Act ("TIFIA") federal financing program is currently the best option. TIFIA is a Federal credit program for eligible transportation projects of national or regional significance under which the U.S. Department of Transportation ("US DOT") provides loans and credit assistance. Staff is investigating applying for a low interest rate loan not-to-exceed \$150 million from the TIFIA federal program. A Letter of Interest has been submitted to US DOT; however, BART has not filed an application.

The Controller Treasurer will continue to work on the financial modeling and OAC Debt Financing and continue to review alternatives to the TIFIA program should it become necessary or should another alternative be deemed more advantageous. It is anticipated that debt service will be covered by revenue generated through ridership that has been modeled at a conservative level. There is the potential, however, that revenue may fall short of projections necessitating supplementation from the General Fund. Staff will bring any proposal for BART Debt Financing, specifically a TIFIA loan or other debt financing mechanism, back to the BART Board for consideration prior to entering into any agreement.

Fiscal Impact:

Approval of the Resolution of Local Support is a requirement for the District to receive an allocation of ARRA funding from the MTC in the amount of \$70 million for OAC. Approval of the Resolution Confirming the Cost Savings, if MTC takes the requested action, will reassign \$50 million in cost savings from the Transbay Tube Retrofit Project to the OAC Project. It is anticipated that debt service for the Resolution Authorizing BART Staff to Investigate and Apply for TIFIA Loans not-to-exceed \$150 million toward the Financing and Completion of the Oakland Airport Connector Project will be covered by revenue generated by OAC ridership.

These actions have no fiscal impact on unprogrammed District Reserves.

Alternatives:

Do not approve the Resolution of Support. This will jeopardize BART's eligibility to receive \$70 million in federal ARRA funds.

Do not approve the Resolution Confirming a \$50 million cost savings from the Transbay Tube Seismic Retrofit Project and request MTC to reassign the cost savings to the OAC Project. These funds are under the control of MTC and MTC can either reassign these cost savings to OAC or reassign these cost savings to any RM2 eligible project(s) in the nine counties of the San Francisco Bay region.

Do not approve the Resolution Authorizing BART Staff to Investigate and Apply for TIFIA Loans not-to-exceed \$150 million toward the Financing and Completion of the Oakland Airport Connector Project.

Recommendation:

Adoption of the following motions:

Motions:

- 1) Approve the attached Resolution of Local Support for the Oakland Airport Connector Project authorizing the filing of an application for federal American Recovery and Reinvestment Act of 2009 funding and stating assurances to implement the Project; and
- 2) Approve the attached Resolution that the Board Certifies the cost savings from the Transbay Tube Seismic Retrofit Project, and the Request of the BART Board to MTC for redirection of said savings to the Oakland Airport Connector Project; and
- 3) Approve the attached Resolution Authorizing BART Staff to Investigate and Apply for TIFIA Loans not-to-exceed One Hundred Fifty Million Dollars toward the Financing and Completion of the Oakland Airport Connector Project.

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

**Resolution of Local Support
American Recovery and Reinvestment Act of 2009 (ARRA) Transit Funding**

**In the Matter of Authorizing the filing of an application
for federal American Recovery and Reinvestment Act
of 2009 (ARRA) funding and stating assurances to implement
the Oakland Airport Connector Project /**

Resolution No. _____

WHEREAS, the San Francisco Bay Area Rapid Transit District (herein referred to as APPLICANT) is submitting an application to the Metropolitan Transportation Commission (MTC) for \$70,000,000 for the Oakland Airport Connector Project (herein referred as PROJECT) for the MTC Regional ARRA Program (MTC Resolution No. 3885) (herein referred as PROGRAM); and

WHEREAS, pursuant to ARRA, and regulations and/or guidance promulgated thereunder, eligible project sponsors wishing to receive Regional ARRA funds for a project shall submit an application first with the appropriate Metropolitan Planning Organization (MPO), for review and inclusion in the MPO's Transportation Improvement Program (TIP); and

WHEREAS, the Metropolitan Transportation Commission (MTC) is the MPO for the nine counties of the San Francisco Bay region; and

WHEREAS, ARRA funds for transit projects are provided through Federal Transit Administration (FTA) Formula Programs (49 U.S.C. §53); and

WHEREAS, APPLICANT is an eligible project sponsor for FTA Section 5307, Section 5309 FG, or Section 5311 funds; and

WHEREAS, APPLICANT is an eligible project sponsor for ARRA funds; and

WHEREAS, as part of the application for ARRA funding, MTC requires a resolution adopted by the responsible implementing agency stating the following:

- 1) that APPLICANT understands that the ARRA funding is fixed at the programmed amount, and therefore any cost increase cannot be expected to be funded with additional ARRA or other MTC-programmed funds; and
- 2) that PROJECT will comply with all project specific requirements as set forth in MTC's Regional ARRA Program (MTC Resolution No. 3885); and PROJECT is as described in the application, and if approved, as included in MTC's TIP; and
- 3) that PROJECT will comply with all the project specific requirements as set forth in the federal ARRA and applicable regulations or guidance.

NOW, THEREFORE, BE IT RESOLVED that APPLICANT is authorized to execute and file an application for funding under the ARRA for PROJECT; and be it further

RESOLVED that the APPLICANT by adopting this Resolution does hereby state that:

1 APPLICANT understands that the ARRA funding for the PROJECT is fixed at the MTC approved programmed amount, and that any cost increases must be funded by the APPLICANT from other funds, and that APPLICANT does not expect any cost increases to be funded with additional ARRA or MTC programmed funds other than those currently identified in the PROJECT'S baseline budget; and

2 APPLICANT understands the funding deadlines associated with these funds and will comply with the applicable provisions and requirements of the Regional ARRA Program (MTC Resolution No. 3885); and

3 PROJECT will be implemented as described in the complete application and in this Resolution and, if approved, for the amount programmed in the MTC federal TIP; and

4 PROJECT will comply with all the project specific requirements as set forth in the ARRA and appropriate applicable regulations or guidance; and be it further

RESOLVED that there is no legal impediment to APPLICANT making applications for the funds; and be it further

RESOLVED that there is no pending or threatened litigation that might in any way adversely affect the proposed PROJECT, or the ability of APPLICANT to deliver such PROJECT; and be it further

RESOLVED that APPLICANT authorizes its General Manager, or designee to execute and file an application with MTC for ARRA funding for the PROJECT as referenced in this Resolution; and be it further

RESOLVED that a copy of this Resolution will be transmitted to the MTC in conjunction with the filing of the application; and be it further

RESOLVED that the MTC is requested to support the application for the PROJECT described in the Resolution and to include the PROJECT, if approved, in MTC's TIP.

Adopted: _____

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

In the Matter of the Certification
of Savings from the Transbay Tube
Seismic Retrofit Project, and the
Request to redirect said Savings to the
Oakland Airport Connector Project /

Resolution No. _____

WHEREAS, the American Recovery and Reinvestment Act (ARRA) has made funds available toward the completion of the Oakland Airport Connector Project in concert with the infusion of other sources of funding; and

WHEREAS, it appears that the Transbay Tube Seismic Retrofit Project involving the Transbay Tube can be completed without consuming all the available funds (Thirty-Seven Million Dollars (\$37,000,000) in RM2 funding and Thirteen Million Dollars (\$13,000,000) in state funding) provided by the Metropolitan Transportation Commission (MTC); and

WHEREAS, MTC has requested that the BART Board of Directors confirm the underrun of costs (i.e. savings) by the Transbay Tube Seismic Retrofit Project in the amount of Fifty Million Dollars (\$50,000,000); and

WHEREAS, such an underrun of costs would permit the MTC to allocate the referenced funds toward alternative transportation projects; and

WHEREAS, the District wishes that said funds be redirected to the Oakland Airport Connector Project;

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors of the San Francisco Bay Area Rapid Transit District hereby certifies the existence of savings from the Transbay Tube Seismic Retrofit Project:

Upon staff's review of financial records, the District confirms that funds in the amount of Fifty Million Dollars (\$50,000,000) have been realized as savings from the estimated cost of the Transbay Tube Seismic Retrofit Project, and that this sum is available for other applications as may be determined by the MTC.

BE IT FURTHER RESOLVED, that the Board of Directors of the San Francisco Bay Area Rapid Transit District hereby requests that the MTC redirect all said savings toward the Oakland Airport Connector Project, and authorizes the General Manager to take all appropriate actions to facilitate such a transfer.

Adopted: _____

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

In the Matter of the Authorizing BART
Staff to Investigate and Apply for TIFIA
Loans not to exceed One Hundred
Fifty Million Dollars toward the
Financing and Completion of the
Oakland Airport Connector Project /

Resolution No. _____

WHEREAS, the Controller Treasurer is performing financial modeling to evaluate BART debt financing and cash flow needs for the Oakland Airport Connector (OAC) Project; and

WHEREAS, it appears that the pledged sources of funding will be unable to cover the full cost of the OAC Project; and

WHEREAS, the Transportation Infrastructure Finance and Innovation Act of 1998 (TIFIA) established a Federal credit program for eligible transportation projects of national or regional significance under the U.S. Department of Transportation (DOT) and provides three forms of credit assistance, including loans; and

WHEREAS, BART may be able to secure advantageous TIFIA loans from the Federal Government in an amount sufficient to complete the Project;

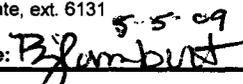
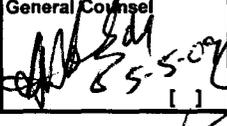
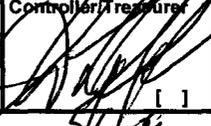
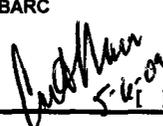
NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors of the San Francisco Bay Area Rapid Transit District hereby authorizes BART staff to investigate and apply for TIFIA loans not-to-exceed One Hundred Fifty Million Dollars (\$150,000,000) on terms determined to be advantageous by the Controller/Treasurer. Staff will bring any proposal for a BART Debt Financing mechanism back to the Board of Directors for consideration prior to entering into any agreement.

Adopted: _____

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EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: 		GENERAL MANAGER ACTION REQ'D: Approve and forward to the Board		
DATE:		BOARD INITIATED ITEM: No		
Originator/Prepared by: Bernadette Lambert Dept: Real Estate, ext. 6131 Signature/Date:  5-5-09	General Counsel  5-5-09	Controller/Treasurer  5/6/09	District Secretary []	BARC  5-6-09
Status: Routed		Date Created: 04/28/2009		

TITLE:
Approval of Change Order No. 1 to BART Agreement No. 6M4054 with Paragon Partners Ltd.

NARRATIVE:

PURPOSE:

To obtain Board authorization for the General Manager to execute Change Order No. 1 to the Real Property Comprehensive Acquisition and Relocation Services Agreement No. 6M4054 with Paragon Partners Ltd. to increase the Agreement amount by \$496,000. The current Agreement is a five-year on-call services agreement for real property acquisition, relocation and property management services not to exceed \$1,000,000.

DISCUSSION:

In January 2007, the Board awarded two five-year agreements for on-call Real Property Comprehensive Acquisition and Relocation Services; one Agreement, No. 6M4031, is with Universal Field Services, Inc. and one Agreement, No. 6M4054, is with Paragon Partners Ltd. The Agreements support the following District projects: Earthquake Safety Program, Warm Springs Extension, eBART, and the Oakland Airport Connector, as well as other projects and real estate activities as needed by the District. The Agreements are effective from May 2007 through May 2012.

Universal Field Services, as of March 31, 2009, has commitments of \$422,003 through the Work Directive process for services provided, leaving a remaining Board authority of \$577,997 for the rest of the Agreement. There are adequate funds for the remaining term of the Agreement.

Paragon Partners Ltd., as of March 31, 2009, has commitments of \$999,883

through the work directive process for services to be provided, leaving a remaining Board authority of \$177 for the rest of the Agreement. Paragon Partners Ltd. is currently providing three individuals supporting District projects full time, at a cost of \$24,000 per month. The current balance of this funding is inadequate to fund the remaining term of the Agreement. Based on a projected, variable calculation of District needs, \$496,000 will need to be added to this Agreement to meet staffing needs through the remaining term.

The Real Estate Department does not have an adequate number of staff to meet current and future project needs, and the services of the on-call consultant are needed to complete the District's work. Universal Field Services was invited to provide employees to perform the current work; however, it was not able to provide qualified personnel and all of the current work was given to Paragon Partners Ltd. The current Paragon Partners Ltd. employees have been working on-site since 2007 and are now an integral part of on-going District projects with valuable project experience and training.

FISCAL IMPACT:

Funding for the additional \$496,000 will be subject to series of Work Directives. Each Work Directive will have a defined scope of services and a separate schedule and budget. Any Work Directive assigned for funding under a State or Federal grant will include state or federal requirements. Work Directives will be approved only if BART Capital Development and Control certifies the eligibility of identified funding sources and the Controller/Treasurer certifies the availability of funding prior to execution of each Work Directive.

Authority to issue Work Directives and administration of Agreement No. 6M4054 will reside with BART's Manager, Right of Way Management Division.

Funding for individual Work Directives will be provided from the Capital Budget and/or Operating Budget accounts as evidenced by the issuance of related Notices to Proceed with work.

ALTERNATIVES:

1. Add no additional funds to the existing Agreement with Paragon Partners Ltd. and lose the individuals it provides and request that Universal Field Services provide different personnel who are not familiar with the projects.

2. Add no additional funds to the existing Agreement with Paragon Partners Ltd. and have BART employees complete the remaining work. This will adversely affect the completion of existing District projects because there is insufficient staff to complete the work on a timely basis.
3. Contract with various firms to provide acquisition, relocation and property management on an as-needed, individual basis. This would be time consuming and reduce BART's control and management of the acquisition, relocation and property management for the projects.

RECOMMENDATION: Adoption of the following motion.

MOTION:

The General Manager is authorized to execute Change Order No. 1 to BART Agreement No. 6M4054 with Paragon Partners Ltd. to increase the Agreement amount by an additional \$496,000 for the provision of real property acquisition, relocation and property management services for the remaining term of the Agreement.



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>[Signature]</i>		GENERAL MANAGER ACTION REQ'D:		
DATE:		BOARD INITIATED ITEM: No		
Originator/Prepared by: Don Demer Dept: <i>[Signature]</i> Signature/Date: 5/4/09	General Counsel <i>[Signature]</i> 5-5-09 []	Controller/Treasurer <i>[Signature]</i> 5/4/09 []	District Secretary []	BARC <i>[Signature]</i> 5-6-09 []
Status: Approved		Date Created: 03/25/2009		

TITLE:

California Department of Transportation Disadvantaged Business Enterprise Program Implementation Agreement for Local Agencies

NARRATIVE:

PURPOSE: To authorize the General Manager to execute the Caltrans' Disadvantaged Business Enterprise (DBE) Program Implementation Agreement for Local Agencies ("Agreement").

DISCUSSION: The Agreement requires the District to implement the Caltrans DBE Program as it pertains to local agencies that receive Federal Highway Administration (FHWA) funding. Under the terms of the Agreement, the District commits to meet the overall DBE Program goal established by Caltrans of 13.5% for FHWA funded contracts by achieving 6.75% participation through race conscious means and 6.75% participation through race neutral means. Currently there are approximately eight BART Earthquake Safety Program contracts that will be subject to these requirements.

The Caltrans DBE Program differs from the District's DBE Program in that the race conscious goal established by Caltrans will be met based on the participation of Underutilized Disadvantaged Business Enterprises (UDBEs) only. UDBEs will include African Americans, Native Americans, Asian Americans (Pacific Islanders only) and women. The race-neutral contract goal can be met by DBEs including Hispanics and Subcontinent Asians. BART's DBE Program allows recognition of DBEs without excluding Hispanics or Subcontinent Asians.

BART's DBE Program would not be applied to the contracts with FHWA funds that will be subject to the Caltrans DBE Program however, BART would still be setting contract specific goals under the Agreement.

The Agreement will be approved as to form by the Office of the General Counsel.

FISCAL IMPACT: The fiscal impact to the District by proceeding with the Agreement would be to retain eligibility to receive FHWA funds.

ALTERNATIVES: Do not sign and implement the Caltrans' DBE Program Implementation Agreement for Local Agencies and lose the eligibility to receive FHWA funds for the Earthquake Safety Program. The District would have to identify alternate funds to cover the loss of FHWA

funding.

RECOMMENDATION: Approve the Motion.

Motion: The General Manager is authorized to execute the Caltrans DBE Program Implementation Agreement for Local Agencies.

CALIFORNIA DEPARTMENT OF TRANSPORTATION DISADVANTAGED BUSINESS ENTERPRISE IMPLEMENTATION AGREEMENT

For the City/County of _____, hereinafter referred to as "RECIPIENT."

I Definition of Terms

The terms used in this agreement have the meanings defined in 49 CFR § 26.5.

II OBJECTIVE/POLICY STATEMENT (§26/1. 26/23)

The RECIPIENT intends to receive federal financial assistance from the U. S. Department of Transportation (DOT) through the California Department of Transportation (Caltrans), and as a condition of receiving this assistance, the RECIPIENT will sign the California Department of Transportation Disadvantaged Business Enterprise Program Implementation Agreement (hereinafter referred to as Agreement). The RECIPIENT agrees to implement the State of California, Department of Transportation Disadvantaged Business Enterprise (DBE) Program Plan (hereinafter referred to as the DBE Program Plan) as it pertains to local agencies. The DBE Program Plan is based on U.S. Department of Transportation (DOT), 49 CFR, Part 26 requirements.

It is the policy of the RECIPIENT to ensure that DBEs, as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also their policy:

- To ensure nondiscrimination in the award and administration of DOT-assisted contracts.
- To create a level playing field on which DBE's can compete fairly for DOT-assisted contracts.
- To ensure that their annual overall DBE participation percentage is narrowly tailored, in accordance with applicable law.
- To ensure that only firms that fully meet 49 CFR, Part 26 eligibility standards are permitted to participate as DBEs.
- To help remove barriers to the participation of DBEs in DOT-assisted contracts.
- To assist the development of firms that can compete successfully in the market place outside the DBE Program.

III Nondiscrimination (§26.7)

RECIPIENT will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR, Part 26 on the basis of race, color, sex, or national origin. In administering the local agency components of the DBE Program Plan, the RECIPIENT will not, directly, or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE Program Plan with respect to individuals of a particular race, color, sex, or national origin.

IV Annual DBE Submittal Form (§26.21)

The RECIPIENT will provide to the Caltrans District Local Assistance Engineer (DLAE) a completed *Local Agency DBE Annual Submittal Form* (Exhibit 9-B) by June 1 of each year for the following Federal Fiscal Year (FFY). This form includes an Annual Anticipated DBE Participation Level (AADPL), methodology for establishing the AADPL, the name, phone number, and electronic mailing address of the designated DBELO, and the choice of Prompt Pay Provision to be used by the RECIPIENT for the following FFY.

V Race-Neutral Means of Meeting the Overall Statewide Annual DBE Goal (§26.51)

RECIPIENT must meet the maximum feasible portion of its AADPL by using race-neutral means of facilitating DBE participation. Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures, is awarded a subcontract on a prime contract that does not carry a DBE goal, or even if there is a DBE goal, wins a subcontract from a prime contractor that did not consider its DBE status in making the award (e.g., a prime contractor that uses a strict low-bid system to award subcontracts).

Race-neutral means include, but are not limited to, the following:

1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE, and other small businesses, participation (e.g., unbundling large contracts to make them more accessible to small businesses, requiring or encouraging prime contractors to subcontract portions of work that they might otherwise perform with their own forces);
2. Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing);
3. Providing technical assistance and other services;
4. Carrying out information and communication programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists of bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);
5. Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;
6. Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of types of work, handle increasingly significant projects, and achieve eventual self-sufficiency;
7. Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;
8. Ensuring distribution of your DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and
9. Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

VI Race Conscious Means of Meeting the Overall Statewide Annual DBE Goal (§26.51(d))

RECIPIENT must establish contract goals for Underutilized Disadvantaged Business Enterprises (UDBEs) to meet any portion of your AADPL you do not project being able to meet using race-neutral means. UDBEs are limited to these certified DBEs that are owned and controlled by African Americans, Native Americans, Women, and Asian Pacific Americans.

VII Quotas (§26.43)

RECIPIENT will not use quotas or set-asides in any way in the administration of the local agency component of the DBE Program Plan.

VIII DBE Liaison Officer (DBELO) (§26.25)

RECIPIENT has designated a DBE Liaison Officer. The DBELO is responsible for implementing the DBE Program Plan, as it pertains to the RECIPIENT, and ensures that the RECIPIENT is fully and properly advised concerning DBE Program Plan matters. [Specify resources available to the DBELO; e.g., the DBELO has a staff of two professional employees assigned to the DBE program on a full-time basis and two support personnel who devote a portion of their time to the program.] The name, address, telephone number, electronic mail address, and an organization chart displaying the DBELO's position in the organization are found in Attachment _____ to this Agreement. This information will be updated annually and included on the DBE Annual Submittal Form.

The DBELO is responsible for developing, implementing, and monitoring the RECIPIENT's requirements of the DBE Program Plan in coordination with other appropriate officials. Duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to determine projected Annual Anticipated DBE Participation Level.
4. Ensures that bid notices and requests for proposals are made available to DBEs in a timely manner.
5. Analyzes DBE participation and identifies ways to encourage participation through race-neutral means.
6. Participates in pre-bid meetings.
7. Advises the CEO/governing body on DBE matters and DBE race-neutral issues.
8. Provides DBEs with information and recommends sources to assist in preparing bids, obtaining bonding and insurance.
9. Plans and participates in DBE training seminars.
10. Provides outreach to DBEs and community organizations to fully advise them of contracting opportunities.

IX Federal Financial Assistance Agreement Assurance (§26.13)

RECIPIENT will sign the following assurance, applicable to and to be included in all DOT-assisted contracts and their administration, as part of the program supplement agreement for each project.

The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract, or in the administration of its DBE Program, or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR, Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The recipient's DBE Program, as required by 49 CFR, Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.). [Note – this language is to be used verbatim, as it is stated in §26.13(a).]

X DBE Financial Institutions (§26.27)

It is the policy of the RECIPIENT to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contracts to make use of these institutions.

Information on the availability of such institutions can be obtained from the DBELO. The Caltrans' Disadvantaged Business Enterprise Program may offer assistance to the DBELO.

XI Directory (§26.31)

RECIPIENT will refer interested persons to the Unified Certification Program DBE directory available from the Caltrans Disadvantaged Business Enterprise Program's website at www.dot.ca.gov/hq/bep.

XII Required Contract Clauses (§§26.13, 26.29)

RECIPIENT ensures that the following clauses or equivalent will be included in each DOT-assisted prime contract:

A. CONTRACT ASSURANCE

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as recipient deems appropriate.

[Note – This language is to be used verbatim, as is stated in §26.13(b). See Caltrans Sample Boiler Plate Contract Documents on the Internet at www.dot.ca.gov/hq/LocalPrograms under "Publications."]

B. PROMPT PAYMENT

Prompt Progress Payment to Subcontractors

The local agency shall require contractors and subcontractors to be timely paid as set forth in Section 7108.5 of the California Business and Professions Code concerning prompt payment to subcontractors. The 10-days is applicable unless a longer period is agreed to in writing. Any delay or postponement of payment over 30 days may take place only for good cause and with the agency's prior written approval. Any violation of Section 7108.5 shall subject the violating contractor or subcontractor to the penalties, sanctions, and other remedies of that Section. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

Prompt Payment of Withheld Funds to Subcontractors

The local agency shall ensure prompt and full payment of retainage from the prime contractor to the subcontractor within thirty (30) days after the subcontractor's work is satisfactorily completed and accepted. This shall be accompanied by including either (1), (2), or (3) of the following provisions [local agency equivalent will need Caltrans approval] in their federal-aid contracts to ensure prompt and full payment of retainage [withheld funds] to subcontractors in compliance with 49 CFR 26.29.

1. No retainage will be held by the agency from progress payments due to the prime contractor. Prime contractors and subcontractors are prohibited from holding retainage from subcontractors. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.
2. No retainage will be held by the agency from progress payments due the prime contractor. Any retainage kept by the prime contractor or by a subcontractor must be paid in full to the earning subcontractor in 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

3. The agency shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the agency of the contract work and pay retainage to the prime contractor based on these acceptances. The prime contractor or subcontractor shall return all monies withheld in retention from all subcontractors within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the agency. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating prime contractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of: a dispute involving late payment or nonpayment by the contractor; deficient subcontractor performance; and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

XIII Local Assistance Procedures Manual

The RECIPIENT will advertise, award and administer DOT-assisted contracts in accordance with the most current published Local Assistance Procedures Manual (LAPM).

XIV Transit Vehicle Manufacturers (§ 26.49)

If FTA-assisted contracts will include transit vehicle procurements, RECIPIENT will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on transit vehicle procurements, to certify that it has complied with the requirements of 49 CFR Part 26, Section 49.

XV Bidders List (§26.11(c))

The RECIPIENT will create and maintain a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on its DOT-assisted contracts. The bidders list will include the name, address, DBE/nonDBE status, age, and annual gross receipts of the firm.

XVI Reporting to the DLAE

RECIPIENT will promptly submit a copy of the Local Agency Bidder/Proposer-UDBE Commitment (Consultant Contract), (Exhibit 10-O(1) "Local Agency Bidder/Proposer-DBE Commitment (Consultant Contract)") or Exhibit 15-G(1) "Local Agency Bidder-UDBE Commitment (Construction Contract) to the DLAE at the time of award of the consultant or construction contracts.

RECIPIENT will promptly submit a copy of the Local Agency Bidder-DBE Information (Exhibit 15-G(2) "Local Agency Bidder-DBE (Construction Contracts) – Information" or Exhibit 10-O(2) "Local Agency Proposer/Bidder-DBE (Consultant Contracts)-Information" of the LAPM) to the DLAE at the time of execution of consultant or construction contract.

RECIPIENT will promptly submit a copy of the Final Utilization of DBE participation to the DLAE using Exhibit 17-F "Final Report – Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors" of the LAPM immediately upon completion of the contract for each consultant or construction contract.

Office of Civil Rights

Department Manager

Wayne Wong
(CalTrans DBE Liaison)

DBE Program
Linda Wells Grogan

EEO Program
Sharon C. Moore

Principal Analyst
Capital Projects
Don Demer

Lead Person
Operating Projects
Ron Granada

Principal Analyst
Joan Morris

2 Senior Analyst
Bendu Griffin
Vacant (open July 1,
2009)

Senior Analyst
Ruby Smith

Senior Analyst
Hoa Sin
Civil Rights Analyst
Donna Titus



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Marcia DeBenedictis</i>		GENERAL MANAGER ACTION REQ'D:		
DATE: c <i>5/5/09</i>		BOARD INITIATED ITEM: No		
Originator/Prepared by: Robert Umbreit Dept:	General Counsel	Controller/Treasurer	District Secretary	BARC
Signature/Date: <i>R Umbreit 5-5-09</i>	<i>[Signature] 5-5-09</i>	<i>[Signature]</i>	<i>[]</i>	<i>[Signature] 5-6-09</i>

TITLE:

Fiscal Year 2010 Preliminary Budget Procedural Action

NARRATIVE:

PURPOSE:

To forward the Fiscal Year 2010 Preliminary Budget from the Administration Committee to the full Board of Directors.

DISCUSSION:

The rules of the Board of Directors (Rule 5-1.2) provide that the Administration Committee shall submit the preliminary budget to the Board not later than the first regular meeting in May of each calendar year. This action does not preclude further consideration and discussion of the FY10 Preliminary Budget at future Board committee meetings. The Board is currently scheduled to adopt the FY10 Annual Budget on June 11, 2009.

FISCAL IMPACT:

According to Board Rules, the FY10 Annual Budget must be adopted on or before June 30, 2009.

ALTERNATIVES:

Under Board Rule 5-1.2, forwarding the budget to the Board no later than the first meeting in May is a required step to adopt the Fiscal Year 2010 annual budget. The Board could suspend rule 5-1.2.

RECOMMENDATION:

That the Administration Committee forward the FY10 Preliminary Budget to the Board for further consideration.



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>[Signature]</i>		GENERAL MANAGER ACTION REQ'D: Obtain Board Approval		
DATE: 5/6/2009		BOARD INITIATED ITEM: NO		
Originator/Prepared by: Thomas Herold Dept: Maintenance and Engineering	General Counsel <i>[Signature]</i> 5/6/09	Controller/Treasurer <i>[Signature]</i> 5/6/09	District Secretary <i>[Signature]</i>	BARG <i>[Signature]</i> 5/6/09
Signature/Date: <i>[Signature]</i> 5/6/09				
Status: Approved		Date Created: 04/16/2009		

TITLE:

Sole Source Procurement of Radio Communication Equipment Upgrades (Two-Thirds Vote Required)

NARRATIVE:

PURPOSE:

To obtain Board authorization in accordance with Public Contract Code §20227, to execute a procurement contract with Tyco Electronics Incorporated to provide upgrades to certain trunked radio equipment to be furnished to the District pursuant to the rebanding requirements of the Federal Communications Commission Report and Order FCC 04-168 (the "R & O") and the Frequency Reconfiguration Agreement ("FRA") with Sprint/Nextel Corporation ("Sprint/Nextel"), which has been entered into by the District pursuant to the R & O.

DISCUSSION:

On March 9, 2006 the Board authorized the General Manager to enter into two agreements with Sprint/Nextel for the purpose of receiving funds from Sprint/Nextel in order for the District to Reband its radio system (i.e. change the set of radio frequencies used by the District for internal communications), as required by the R & O. The first agreement, the Planning Funding Agreement ("PFA"), was entered into on June 15, 2006. The PFA provided the funds necessary for the District to plan its rebanding project. The District entered into the second agreement, the FRA, with Sprint/Nextel on December 3, 2008. The FRA provides funding for the District's implementation of its rebanding project.

In accordance with the R & O and the terms of the FRA, one element of the work is for Sprint/Nextel to furnish 973 replacement handheld and vehicle mounted radios at its cost to the District, in a one-for-one exchange for existing radios owned by the District which will not operate on the newly assigned frequencies. Sprint/Nextel will provide funding directly to Tyco Electronics for manufacture and delivery of the new replacement radios. The trunked radio system equipment in use at BART, including the replacement radios, utilizes a format known as EDACS (Enhanced Digital Access Communications System). It is proprietary, uses unique protocols, and is manufactured solely by Tyco Electronics Incorporated (formerly known as M/A-Com, Inc.).

The Rebanding program permits upgrades to replacement radios if the agency pays the difference between the base cost (on the expense that will be provided by Sprint/Nextel) and the cost of the

upgraded radio. The District has received from the Department of Homeland Security a funding grant for upgrading the new radios to be provided under the Rebanding program from single band 800 mhz radios, to dual band 700/800 mhz radios with a P25 operating format capability for radio interoperability and security purposes throughout the region.

Staff has been advised by Tyco Electronics Inc that the order for rebanding-related radio upgrades must be placed directly with Tyco Electronics. Staff proposes to contract with Tyco Electronics Incorporated to provide the upgraded radio equipment. Pursuant to Public Contract Code §20227, the Board may direct the purchase of any supply, equipment or material without observance of competitive bidding upon a finding by two-thirds of all members of the Board that there is only a single source of procurement and that the purchase is for the sole purpose of duplicating or replacing equipment currently in use.

Staff is now seeking to enter into direct negotiations with Tyco Electronics Incorporated in order to execute a sole source procurement contract with the vendor which will be funded by a Department of Homeland Security grant, to provide upgrades to the Rebanding-furnished replacement equipment.

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

FISCAL IMPACT:

Funding of \$408,120 for the award of a procurement contract to provide a trunked radio equipment upgrade is included in the total project budget for the FMS #79LR, Radio Rebanding Implementation Project. The Office of the Controller/Treasurer certifies that funds are currently available to meet this obligation. The total cost of \$408,120 will be funded as follows:

F/G 61Y - Miscellaneous Pass Thru – Federal Grants \$407,123

As of 4/15/2009, \$407,123 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 \$407,123 leaving an uncommitted balance of \$0 in this fund source.

F/G 52Z - CA-90-Y541 FY07 Capital Assistance Program \$997

As of 4/15/2009, \$997 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 \$997 leaving an uncommitted balance of \$0 in this fund source.

There is no fiscal impact on available unprogrammed District Reserves.

ALTERNATIVES:

If the upgrade to Rebanding-furnished radios is not procured, the District will not have equipment capable of accessing the 700 mhz radio band for radio interoperability and security purposes throughout the region. The grant funding would be returned to the Department of Homeland Security for use in the Region.

RECOMMENDATIONS:

On the basis of analysis by staff, it is recommended that the Board adopt the following motion:

MOTION:

The Board finds in accordance with Public Contract Code §20227, that Tyco Electronics Incorporated is the single source for procurement of equipment necessary to provide upgrades to certain trunked radio equipment to be furnished to the District pursuant to the rebanding requirements of the Federal Communications Commission Report and Order FCC 04-168 (the "R & O") and the Frequency Reconfiguration Agreement ("FRA") with Sprint/Nextel Corporation ("Sprint/Nextel"), and that the procurement is for the purpose of duplicating or replacing equipment or material in use at the District. The Board authorizes the General Manager to enter into direct negotiations with Tyco Electronics Incorporated to execute a contract with Tyco Electronics Incorporated to provide upgrades to Sprint/Nextel furnished radios pursuant to the requirements of the R & O, in an amount not to exceed \$408,120.

(Two-thirds vote required.)



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Marcia Johnson</i>		GENERAL MANAGER ACTION REQ'D: Approve and Forward to Board	
DATE: c <i>5/7/09</i>		BOARD INITIATED ITEM: No	
Originator/Prepared by: Kevin Copley Dept: 4/10/2009	General Counsel	Controller/Treasurer	District Secretary
Signature/Date: <i>Kevin Copley 5/6/09</i>	<i>Andrew Purnell 5/6/09</i>	<i>[Signature] 5/6/09</i>	<i>[Signature] 5/6/09</i>

TITLE:

Sole Source Procurement of Integrated Security Response Center Radio Dispatch Consoles and Services

NARRATIVE:

PURPOSE:

To obtain Board authorization in accordance with Public Contract Code §20227, to enter into negotiations and execute a contract with Dailey Wells, Inc. to provide engineering, parts, software, and services to upgrade the District's existing trunked radio dispatch system, in an amount not to exceed \$280,000.

DISCUSSION:

On October 9, 2008, the Board authorized the General Manager to award a contract for construction services and seismic retrofit of an area of the MetroCenter Building to be used for the Integrated Security Response Center (ISRC). The ISRC construction project is nearing completion, and BART Police require that the ISRC be equipped with eight radio consoles, four of which will be new, and four of which will be upgraded radio consoles.

The police radio system is essential for effective emergency response, providing the crucial voice communication link between BART Officers in the field and BART Police Dispatch. All equipment and services furnished under this EDD to accomplish the ISRC radio expansion project, including all system adjustments, must be accomplished while maintaining the current radio system in service.

The District's trunked radio system utilizes a format known as EDACS (Enhanced Digital Access Communications System). It is proprietary, uses unique protocols, and is manufactured solely by Tyco Electronics (formerly known as M/A-Com, Inc.). Tyco Electronics requires that any modification or service undertaken on an EDACS system must be performed by a company under license to Tyco Electronics. Tyco Electronics designated Dailey Wells, Inc. as the licensed provider of all engineering, service and parts for the District's EDACS radio systems. Dailey Wells was the assembler, field designer, installation and startup contractor for the original EDACS system installation in April 2000. On October 12, 2006, the Board of Directors approved Dailey Wells, Inc. as the sole source provider of trunked radio equipment and services for the Oakland shop radio site project.

Staff proposes to contract with Dailey Wells to provide the necessary radio equipment and technical services for the upgrade and expansion of radio consoles for the ISRC. Staff has

Procurement of ISRC Radio Dispatch System

determined they are capable of providing the engineering, parts, and services, for the work required on the proprietary EDACS trunked radio system in the ISRC.

Pursuant to Public Contract Code §20227, the Board may direct the purchase of any supply, equipment, or material without observance of competitive bidding upon a finding by two-thirds of all members of the Board that there is only a single source of procurement and that the purchase is for the sole purpose of duplicating or replacing equipment currently in use.

Staff is now seeking to enter into direct negotiations with Daily Wells, Inc in order to execute a sole source contract to provide new equipment and modifications to existing equipment.

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

FISCAL IMPACT:

Funding of \$280,000 for procurement of Integrated Security Response Center radio dispatch consoles and services is included in the total project budget for the FMS No. 79HP, New Integrated Security Response Center. The Office of the Controller/Treasurer certifies that funds are currently available to meet this obligation.

F/G 52Z - FY07 FTA CA-90-Y541

\$280,000

As of the month ending March 29, 2009, \$1,000,000 is available for commitment from this fund source for this project and BART has committed \$6,168 to date. There are no pending commitments in BART's financial management system. This action will commit \$280,000 leaving an uncommitted balance of \$713,832 in this fund source.

There is no fiscal impact on available unprogrammed District Reserves.

ALTERNATIVES:

If this equipment and services are not procured, the District will not be able to comply with the radio communication needs of the BART Police Dispatch and the ISRC project.

RECOMMENDATIONS:

On the basis of analysis by staff, it is recommended that the Board adopt the following motion:

MOTION:

Pursuant to Public Contract Code Section 20227, the Board finds that Dailey Wells, Inc is the single source for the procurement of equipment and services necessary to upgrade and expand the District's Integrated Security Response Center radio consoles, and that such purchase is for the sole purpose of duplicating or replacing equipment in use. The General Manager is authorized to enter into a contract with Dailey Wells, Inc for the procurement of trunk radio consoles, support equipment and services in an amount not to exceed \$280,000, including sales tax. (TWO-THIRDS VOTE REQUIRED)



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>[Signature]</i>		GENERAL MANAGER ACTION REQ'D:		
DATE: c <i>5/6/2009</i>		BOARD INITIATED ITEM: No		
Originator/Prepared by: Ed Yee Dept: <i>M&E</i>	General Counsel <i>[Signature]</i> 5-4-09	Controller/Treasurer <i>[Signature]</i> 5/4/09	District Secretary []	BART <i>[Signature]</i> 5/4/09
Signature/Date: <i>[Signature]</i> 5/4/09	[]	[]	[]	[]

TITLE:
CHANGE ORDER NO. 01 TO CONTRACT NO. 79HH-110, CCTV PROJECT - PHASE I INSTALLATION

NARRATIVE:

PURPOSE: To obtain Board authorization for the General Manager to execute Change Order No. 01 to Contract No. 79HH-110, CCTV Project – Phase I Installation in the amount of \$349,000.

DISCUSSION:

Award of Contract No. 79HH-110 to Adesta Limited Partnership in the amount of \$5,899,824.33 was authorized by the Board on May 22, 2008. Notice to Proceed was issued on July 28, 2008.

The CCTV project is a part of the District's Infrastructure Security upgrade program to protect the BART System. Contract No. 79HH-110 provides for the installation of more than 200 cameras of different varieties, over 130 door interlocks and more than 15 access control points. These security devices will be installed in seven locations, three of which are considered high security concern. All documents in high security locations are deemed to be Security Sensitive Information (SSI). SSI documents require special handling and Contractors and their employees must obtain security clearances before they may work onsite.

The purpose of Contract Change Order No. 1 is to add additional work to the original Contract to, among other things, improve the security features being installed. Additional funding became available for security projects after Contract No. 79HH-110 was awarded. This additional work will provide:

1. An improved door monitoring system with the use of a security infrastructure platform that is reliable, flexible, and expandable for future security needs.
2. Additional security devices, which include CCTV cameras, emergency power for security equipment and updated portal intrusion systems. These security devices represent an additional layer of protection that will enhance the overall security system being installed in this Contract.

Change Order No. 1 will be for an amount of \$349,000. This amount represents 5.9% of the original Contract price. Pursuant to Board Rule 5-2.4, except for construction and procurement contracts greater than \$200 million, all Change Orders which involve an expenditure of more than \$200,000 require the approval of the Board of Directors. Staff requests Board authorization for proceeding with Change Order No. 1 for \$349,000.

Staff determined that it is in the District's interest to issue this change order for the additional work for the following reasons:

1. Existing site conditions limit the number of conduits that may be installed in the physically

CHANGE ORDER NO. 01 TO CONTRACT NO. 79HH-110, CCTV PROJECT - PHASE I INSTALLATION

small chase ways. Under these circumstances, it is preferable to issue a Change Order to the existing Contract rather than engage a separate Contractor to perform work in this restrictive location. If BART were to issue a separate Contract for the additional work, the conduit work installed in the first Contract would need to be removed and replaced with larger size conduits in the second Contract.

2. The overall cost and time of awarding a new SSI Contract is very expensive and time consuming.
3. The existing design is integrated with the additional work and the systems are interdependent, thus they can not function independently.

The Contractor's cost proposal has been determined to be fair and reasonable when compared to the Engineer's Estimate.

The Office of the General Counsel will approve this Change Order as to form, and the Procurement Department will review this Change Order for compliance with the District's procurement guidelines, prior to execution of the Change Order.

FISCAL IMPACT:

Funding of \$349,000.00 for Contract No. 79HH-110, Change Order No. 1 is included in the total project budget for the FMS#79HH – Security Improvements. The Office of the Controller/Treasurer certifies that funds are currently available to meet this obligation.

CA-90-Y541 FY07

52Z

\$349,000

As of month ending March 29, 2009, \$3,076,284 is available for commitment from this fund source for this project and BART has committed \$1,961,356 to date. There are pending commitments of \$17,463 in BART's financial management system. This action will commit an additional \$349,000 leaving an uncommitted balance of \$748,465 in this fund source.

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

ALTERNATIVES:

One alternative to issuing the Change Order is to advertise and award a separate Contract which will increase the project cost and delay the completion of this vital work. Another alternative would be to not improve the security in the areas of high security concern at this time. This will limit the District's ability to protect the areas of high security concern and would prevent the District from providing the level of security that is recommended given the level of threat at these locations. Any future security installation Contract is likely to be more expensive.

RECOMMENDATION:

Staff recommends that the Board adopt the following motion:

MOTION:

The General Manager is authorized to execute Change Order No. 01 to Contract No. 79HH-110 for an amount of \$349,000.00.



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>[Signature]</i>		GENERAL MANAGER ACTION REQ'D:		
DATE: c <i>5/6/09</i>		BOARD INITIATED ITEM: No		
Originator/Prepared by: Marvin E Snow Dept: Transit System Development <i>[Signature]</i> Signature/Date: <i>5/4/09</i>	General Counsel <i>[Signature]</i> <i>5-5-09</i>	Controller/Treasurer <i>[Signature]</i>	District Secretary <i>[Signature]</i>	BARC <i>[Signature]</i> <i>5/6/09</i>

TITLE:

**AUTHORITY TO EXECUTE
PROFESSIONAL SERVICES AGREEMENTS
NO. 6M8026, 6M8027, and 6M8028
GENERAL ENGINEERING SERVICES FOR BART PROJECTS**

NARRATIVE:

PURPOSE: Request Board authorization for the General Manager to execute Agreement No. 6M8026 with PGH Wong Engineering, Inc.; Agreement No. 6M8027 with Kal Krishnan Consulting Services, Inc.; and Agreement No. 6M8028 with B&C-URS Joint Venture, to provide General Engineering Services for BART Projects.

DISCUSSION: On February 8, 2007, the Board authorized the General Manager to execute Agreement No. 6M8006 with PGH Wong Engineering, Inc., Agreement No. 6M8007 with Kal Krishnan Consulting Services, Inc., and Agreement No. 6M8008 with Jacobs Engineering Group, Inc. to provide General Engineering Services for BART Projects. Each Agreement was for an amount not to exceed \$15 Million and for a term of up to five years. All engineering services available under these Agreements have either been utilized or otherwise scheduled. Therefore, new agreements are now needed to provide the District with these essential engineering services. As a result the District issued Request for Proposal (RFP) No. 6M8026 on November 29, 2008 to provide the District with general engineering services for BART projects.

RFP No. 6M8026 provides for the award of three separate agreements herein referred to as Agreement Nos. 6M8026, 6M8027, and 6M8028. 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.

Advertisements soliciting interest in the RFP were placed in a number of publications including Disadvantaged Business Enterprises / Minority Business Enterprises / Women Business Enterprises (DBE/MBE/WBE) publications. A Community Outreach Meeting was held on November 12, 2008. On November 26, 2008 an Advance Notice to Proposers was mailed to 190 prospective proposers. A Pre-proposal Meeting for this RFP was held on December 15, 2008 with 117 prospective proposers attending. The RFP was distributed to all

interested potential Proposers.

On February 10, 2009, proposals were received from the following eight firms: PGH Wong Engineering Inc., Jacobs Engineering Group, Inc., Kal Krishnan Consulting Services, Inc., HDR Engineering Inc., B&C-URS Joint Venture, Parsons Transportation Group, Inc., AECOM Technical Services, Inc., and Anil Verma and Associates, Inc.

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 RFP. Subsequently, the proposals were evaluated and scored on the basis of the criteria contained in the RFP with respect to qualifications of the proposing firms and the project team, including key personnel. All proposals were short-listed for oral presentations. The Committee conducted oral interviews on March 17 and 18, 2009.

Based on the oral and written evaluations, the Committee determined that the three most qualified firms were:

1. PGH Wong Engineering, Inc. of San Francisco, California.
2. Kal Krishnan Consulting Services, Inc. of Oakland, California.
3. B&C-URS Joint Venture of Oakland, California.

After making this determination, negotiations were entered into with PGH Wong Engineering, Inc., Kal Krishnan Consulting Services, Inc. and B&C-URS Joint Venture. 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 Proposers. These discussions were concluded on terms favorable to BART and each of the Proposers. Staff determined that the recommended rate structures are fair and reasonable, and that PGH Wong Engineering, Inc., Kal Krishnan Consulting Services, Inc., and B&C-URS Joint Venture are responsible organizations.

Accordingly, the Committee recommends three awards under RFP No. 6M8026, one to each of the following three firms in an amount not to exceed \$15,000,000 each.

1. PGH Wong Engineering, Inc. of San Francisco, California.
2. Kal Krishnan Consulting Services, Inc. of Oakland, California.
3. B&C-URS Joint Venture of Oakland, California.

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

FISCAL IMPACT: Each of the three Agreements has a not-to-exceed limit of \$15,000,000. 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 RFP would adversely impact the implementation of BART's Capital Program.

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

MOTION: The General Manager is authorized to execute:

1. Agreement No. 6M8026 with PGH Wong Engineering, Inc., of San Francisco, California.
2. Agreement No. 6M8027 with Kal Krishnan Consulting Services, Inc. of Oakland, California.
3. Agreement No. 6M8028 with B&C-URS Joint Venture, of Oakland, California.

Each Agreement will be for a term not to exceed five years and each in an amount not to exceed \$15,000,000, subject to the District's protest procedures and FTA's requirements related to protest procedures.

GENERAL ENGINEERING SERVICES FOR BART PROJECTS

- **Introduction**

The District requires a full range of architecture and engineering services over the next five years to support its Capital Program.

Among the services required are architecture and engineering for significant Capital projects such as stations modernization and capacity enhancements; access improvements; train control and traction power upgrades, computer and communication system modifications; mainline and yard infrastructure improvements, emergency response; etc.

Request for Proposal No. 6M8026 was issued in November 2008 to provide the District with these services. The RFP described the detailed, objective selection process to be used; indicated the criteria for making the selection; and stated that the District intended to award three agreements for these services.

- **Scope of Services**

Project Administration
Project Development
Advanced Technologies

Design Services
Contract Documents
Post Bid Services
Procurement Services

Computer Hardware/Software
Staffing (seconded)
Emergency Response

- **Selection Process**

The selection process followed the California Government Code and the Federal Brooks Act regulations related to the procurement of Architectural and Engineering services in which:

1. Proposers are first evaluated on the basis of their qualifications, both written and oral.
2. Upon determining the most qualified proposer(s) 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 three agreements as outlined on the following pages.

RECOMMENDED AWARD

- **Agreement No. 6M8026**

PGH Wong Engineering Inc., San Francisco, CA for a five year period for a total amount not to exceed \$15,000,000

- **Sub-consultants**

<u>Sub-consultant Name and Location</u>	<u>Proposed Services</u>
Acumen Building Enterprise, San Francisco, CA (DBE)	Fare Collection
Arup, San Francisco, CA	Fire Protection and Sustainability
Beyaz and Patel Inc., Walnut Creek, CA (DBE)	Structures, Shops, Stations, Storage
Bob Murphy Consulting, Orinda, CA	Controls and Communications
Corrpro, San Leandro, CA	Cathodic Protection and Structural Coatings
F. W. Associates Inc., San Francisco CA, (DBE)	Systemwide Essential Electric Power
Greg Roja & Associates, San Rafael, CA	Architecture, Stations, Inter-modals, ADA & Title 24
Keneth Helig Consultant, Oakland, CA	Mainline and Yard Infrastructure
Kirsen Technologies Corp, Berkeley, CA	Advanced Technologies
Kwan Henmi Architecture/Planning, San Francisco CA, (DBE)	Architecture and Transit Oriented Development
Moffatt and Nichol, Walnut Creek, CA	Underground and Overhead Structures
PARIKH Consultants Inc, Oakland, CA (DBE)	Geotechnical Engineering
Robin Chiang and Company, San Francisco, CA (DBE)	Architecture, Stations, Inter-modals, ADA & Title 24
Shiralian Management Group, Inc., Berkeley, CA	Scheduling
Towill, Concord, CA	Surveying
Transportation Decision Systems, Inc., Los Altos, CA	Technology Development
Wilbur Smith Associates, San Francisco, CA	Traffic Engineering
Wilson Irig & Associates, Oakland, CA	Noise and Vibration
Willie J. Robinson and Associates Inc., San Francisco, CA	Cost Engineering

RECOMMENDED AWARD

▪ Agreement No. 6M8027

Kal Krishnan Consulting Services, Inc. (DBE) of Oakland, California for a five year period for a total amount not to exceed \$15,000,000

▪ Sub-consultants

<u>Sub-consultant Name and Location</u>	<u>Proposed Services</u>
Acumen Building Enterprise, San Francisco, CA (DBE)	Fare Collection/Smart Card Systems
All Transit Consultants, Pittsburg, CA	Train Control Systems
Booz Allen Hamilton, Inc., San Francisco, CA	AFC, Smart Cards, and Credit Debit Systems
Cit Com, Temecula CA	Security and Surveillance Technology
DKS Associates, Oakland, CA	Traffic Engineering
Elite Reprographics, Oakland, CA	Reprographics and Printing
EM Construction Management, Oakland, CA	Electrical Cost Estimating
FMG Architects, Oakland, CA (DBE)	Architecture, Stations, Inter-modals, ADA & Title 24
Hatch Mott MacDonald, Pleasanton, CA	Communications, Train Control and Systems Engr.
Hinman Consulting, San Francisco, CA	Anti-terrorist Engineering and Seismic Testing
HNTB Corporation, Oakland, Ca	Architectural and Civil Design
Kwan Henmi Architecture/Planning, San Francisco CA, (DBE)	Architecture and Transit Oriented Development
Lea+Elliott, Inc., San Francisco, CA	Train Control, Transit Power, Controls and Comm.
Martin Lee Corporation, Walnut Creek, CA	Cost Estimating
Noll& Tam Architects, Berkeley, CA	Architectural Design Services
PARIKH Consultants, Inc., Oakland, CA (DBE)	Geotechnical Engineering Materials Testing
Parsons Brinkerhoff, Inc.	Structural, Seismic, and Marine Engineering
People and Processes, Inc. Yulee, FL	Maintenance and Operations Technology
QuEST LLC, Wellington, MO	Train Control Systems
Robin Chiang and Company, San Francisco, CA (DBE)	Architecture, Stations, Inter-modals, ADA & Title 24
Roma Design, San Francisco, CA	Architecture and Landscape Architecture
Stantec, San Francisco, CA	Sustainability Design, Alt. Energy, Systems Engr.
Stevens & Associates, San Francisco, CA (DBE)	Architecture
Studio L'image, Oakland, CA (DBE)	Architecture

Sub-consultant Name and Location (continued)

Systems Micro Technologies, Berkeley CA
Systra Consulting, New York, NY
T.Y. Lin International, Oakland, CA
TPS Solutions, Erlanger, KY
TRC Engineering Inc., San Francisco, CA
Underwater Resources Inc., San Francisco CA
VBN Architects, Oakland, CA
Wyle Laboratories, Camarillo, CA
YEI Engineers, Inc., Oakland, CA **(DBE)**

Proposed Services (continued)

Security Systems and Surveillance
Train Control, Traction Power and Systems Engr.
Traffic Engr, Strategic Maintenance, Trans. Planning
Lean Engineering and Six Sigma Consulting
Security Systems
Underwater Construction and Inspection
Architectural Engineering
Lean Engineering, SMP and RCM
Electrical and Mechanical Engineering

RECOMMENDED AWARD

- **Agreement No. 6M8028**

B&C Transit Consultants/URS Joint Venture, Oakland, CA for a five year period for a total amount not to exceed \$15,000,000

- **Sub-consultants**

<u>Sub-consultant Name and Location</u>	<u>Proposed Services</u>
Booz Allen Hamilton, Inc., San Francisco, CA	AFC, Smart Cards, and Credit Debit Systems
EXARO Technologies Corp., South San Francisco, CA (DBE)	Utility Location/Potholing
Haygood and Associates, Albany, CA (DBE)	Landscape Architecture
Keneth Helig Consultant, Oakland, CA	Mainline and Yard Infrastructure
MIG, Inc. Berkeley, CA	Urban Design
OPAC Consulting Engineers, Inc., San Francisco, CA (DBE)	Structural Engineering
Quackenbush Engineering Solutions & Tech., Wellington, MO	VATC Boards
Robin Chiang and Company, San Francisco, CA (DBE)	Architecture, Stations, Inter-modals, ADA & Title 24
Southwest Signal Engineering Co., Walnut Creek, CA	Signal Engineering
Studio L'image, Oakland, CA (DBE)	Architecture
Towill, Concord, CA	Surveying
V&A Consulting, Oakland, CA (DBE)	Cathodic Protection, Corrosion
Wilson Irig & Associates, Oakland, CA	Noise and Vibration
YEI Engineers, Inc., Oakland, CA (DBE)	Electrical and Mechanical Engineering