

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

AGENDAS FOR BOARD AND COMMITTEE MEETINGS

January 8, 2009

9:00 a.m.

A regular meeting of the Board of Directors and regular meetings of the Standing Committees will be held on Thursday, January 8, 2009, commencing at 9:00 a.m. All meetings will be held in the BART Board Room, Kaiser Center 20<sup>th</sup> Street Mall – Third Floor, 344 – 20<sup>th</sup> Street, Oakland, California.

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

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

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

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

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

Kenneth A. Duron  
District Secretary

Regular Meeting of the  
BOARD OF DIRECTORS

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

1. CALL TO ORDER

- A. Roll Call.
- B. Pledge of Allegiance.
- C. Introduction of Special Guests.
- D. Public Hearing: Proposed BART Plus Ticket Price Increase.\*

2. CONSENT CALENDAR

- A. Approval of Minutes of the Meeting of December 18, 2008.\* Board requested to authorize.

- B. Award of Contract No. 15TF-110, Wayside Fence Rehabilitation.\* Board requested to authorize.

## **RECESS TO STANDING COMMITTEES**

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

## **ALL COMMITTEES ARE ADVISORY ONLY**

### ADMINISTRATION COMMITTEE

Immediately following the Board Meeting recess

Director Franklin, Chairperson

- A-1. Change Order to Agreement No. 6M2010, Insurance Brokerage Services, with Merriwether & Williams, for Claims Consulting Services and Forensic Accounting (C.O. No. 1).\* Board requested to authorize.
- A-2. Fiscal Year 2009 Budget Update: Budget Deficit Reduction Strategies.\* For information.
- A-3. General Discussion and Public Comment.

### ENGINEERING AND OPERATIONS COMMITTEE

Immediately following the Administration Committee Meeting

Director Fang, Chairperson

- B-1. Award of Contract No. 15TJ-110, Platform Elevators Ashby Station and Lake Merritt Station.\* Board requested to authorize.
- B-2. (CONTINUED from December 4, 2008, Engineering and Operations Committee Meeting)  
Modification to Agreement No. 6G3975, General Engineering Services for the Earthquake Safety Program, with Bechtel Infrastructure Corporation, for Time Extension and Increase in Agreement Amount.\* Board requested to authorize.
- B-3. Resolution Authorizing Funding Solution for the Warm Springs Extension Project.\* Board requested to authorize.
- B-4. General Discussion and Public Comment.

### PLANNING, PUBLIC AFFAIRS, ACCESS, AND LEGISLATION COMMITTEE

Immediately following the Engineering and Operations Committee Meeting

Director Ward Allen, Chairperson

- C-1. Agreements for State and Federal Advocacy Services.\* Board requested to authorize.
- C-2. General Discussion and Public Comment.

## **RECONVENE BOARD MEETING**

### **3. CONSENT CALENDAR ADDENDA**

Board requested to authorize as recommended from committee meetings above.

### **4. REPORTS OF STANDING COMMITTEES**

#### **A. ADMINISTRATION COMMITTEE**

A-1. Change Order to Agreement No. 6M2010, Insurance Brokerage Services, with Merriwether & Williams, for Claims Consulting Services and Forensic Accounting (C.O. No. 1).\* Board requested to authorize.

A-2. Fiscal Year 2009 Budget Update: Budget Deficit Reduction Strategies.\* For information.

#### **B. ENGINEERING AND OPERATIONS COMMITTEE**

B-1. Award of Contract No. 15TJ-110, Platform Elevators Ashby Station and Lake Merritt Station.\* Board requested to authorize.

B-2. (CONTINUED from December 4, 2008, Engineering and Operations Committee Meeting)  
Modification to Agreement No. 6G3975, General Engineering Services for the Earthquake Safety Program, with Bechtel Infrastructure Corporation, for Time Extension and Increase in Agreement Amount.\* Board requested to authorize.

B-3. Resolution Authorizing Funding Solution for the Warm Springs Extension Project.\* Board requested to authorize.

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

C-1. Agreements for State and Federal Advocacy Services.\* Board requested to authorize.

### **5. GENERAL MANAGER'S REPORT**

NO REPORT.

### **6. BOARD MATTERS**

A. Roll Call for Introductions.

### **7. GENERAL DISCUSSION AND PUBLIC COMMENT**

Notice of Public Hearing  
San Francisco Bay Area Rapid Transit District  
Proposed BART Plus Ticket Price Increase  
9:00 a.m., Thursday, January 8, 2009

Notice is hereby given that a public hearing will be held by the Board of Directors of the San Francisco Bay Area Rapid Transit District (“BART”) concerning a proposed BARTPlus ticket price increase. The hearing will be conducted on Thursday, January 8, 2009, at 9:00 a.m., in the BART Board Room, Kaiser Center 20th Street Mall, Third Floor, 344 20th St., Oakland, California.

The item to be considered at the hearing is as follows:

“The current BARTPlus ticket consists of a half-month bus pass combined with stored BART value in a variety of denominations. The proposed change increases the price of the bus pass from \$24 to \$29 with the \$5 increase going to the bus operators. There is no change to the price of the BART rail portion of the ticket. This proposal is recommended by all the participating bus operators and would become effective July 1, 2009.”

The proposal would change the ticket price for the eight denominations as follows:

<b>Current Price</b>	<b>Effective 7/1/2009</b>
\$38	\$43
\$43	\$48
\$47	\$52
\$52	\$57
\$57	\$62
\$62	\$67
\$66	\$71
\$71	\$76

Following the January 8, 2009 hearing, the proposed ticket price increases will be discussed at a subsequent meeting of the BART Board Administration Committee, after which the full Board of Directors may be asked to take action on the proposed ticket price increases. The Board of Directors may adopt any, all, or none of the proposal elements. For more information, contact Charlotte Barham at 510-464-6379.

Comments may be made at the hearing or should be sent to:

Kenneth A. Duron, District Secretary  
San Francisco Bay Area Rapid Transit District  
300 Lakeside Drive  
Oakland, California 94612  
[kduron@bart.gov](mailto:kduron@bart.gov)

Dated at Oakland, California, this 8<sup>th</sup> day of December, 2008.



## EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Walter DeBenedictis</i>		GENERAL MANAGER ACTION REQ'D: Approve and Forward to the Board		
DATE: <i>12/30/08</i>		BOARD INITIATED ITEM: No		
Originator/Prepared by: Willie Zee Dept: <i>Willie Zee</i>	General Counsel: <i>Andrew Rosen</i> <i>12/30/08</i>	Controller/Treasurer: <i>Chris G...</i> <i>12/30/08</i>	District Secretary: [ ]	BARC: <i>Paul ...</i> <i>12/30/08</i>
Signature/Date: <i>Willie Zee</i> <i>12/30/08</i>	[ ]	[ ]	[ ]	[ ]

Status: Routed	Date Created: 11/25/2008
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TITLE:

### Award Contract No. 15TF-110, Wayside Fence Rehab

NARRATIVE:

#### PURPOSE:

To authorize the General Manager to award Contract No. 15TF-110, Wayside Fence Rehab, to Central Fence Company of San Jose.

#### DISCUSSION:

The Work in general consists of providing all labor, materials, equipment and other accessories necessary to replace approximately 900 linear feet of deteriorated existing chain link fence and barbed wire along KX Spur, between 23rd Street, Northgate Avenue and Sycamore Street, Oakland.

Advance Notice to Bidders was mailed out on October 1, 2008 to 38 prospective bidders. The Contract was also advertised on October 1, 2008. Contract Documents were mailed to 19 plan rooms and minority assistance organizations. A Pre-Bid Meeting and Site Inspection tour was held on October 10, 2008, with a total of 4 prospective bidders in attendance. An addendum was issued to extend the Bid Due Date from October 21, 2008 to November 4, 2008. Five bids were received on November 4, 2008 as follows:

<u>Bidder</u>	<u>Location</u>	<u>Total Bid</u>
1. Golden Bay Fence Plus Iron Works Inc.	Stockton	\$229,525
2. North American Fence & Supply, Inc.	Oakland	\$236,436
3. Central Fence Company	San Jose	\$155,830
4. Fence Corp, Inc.	Sacramento	\$181,920
5. Harding Construction Inc.	Oakland	\$150,000

#### **ENGINEER'S ESTIMATE**

**\$156,145**

The bid submitted by Harding Construction Inc. was determined to be non-responsive due to irregularities regarding the Buy-America Certificate.

Staff has determined that the bid submitted by Central Fence Company is responsive to the solicitation, and the bidder's license, business experience, and financial capabilities indicate that the bidder is responsible. Staff has also determined that the bid price of \$155,830 is fair and reasonable.

Staff has determined that there will be no significant effect on the environment with installation of replacement fence materials at BART facilities, and that the work is categorically exempt from the provisions of the California Environmental Quality Act (CEQA), pursuant to subsection d of Section 15301, Existing Facilities, of the State CEQA Guidelines.

**FISCAL IMPACT:**

Funding for this \$155,830 award of Contract No. 15TF-110 is included in the total project budget for the FMS #15TF, Wayside Fence Rehab. The Office of the Controller/Treasurer certifies that funds are currently available to meet this obligation.

**F/G 52Y - FTA CA 90 Y421**

**\$155,830**

As of month ending 10/26/08, \$469,137 is available for commitment from this fund source for this project, and \$150,322 has been committed by BART to date. There are pending commitments of \$1,494 in BART's financial management system. This action will commit an additional \$155,830 leaving an uncommitted balance of \$161,491 in this fund source.

There is no fiscal impact on available unprogrammed District Reserves.

**ALTERNATIVES:**

The Board may reject all bids and rebid the contract. Rejecting bids will result in the deferral of replacing the existing fence that is a vital feature for public safety, and is not likely to result in better pricing.

**RECOMMENDATION:**

Adoption of the following motion:

**MOTION:**

The General Manager is authorized to award Contract No. 15TF-110, Wayside Fence Rehab for the bid price of \$155,830 to Central Fence Company pursuant to notification to be issued by the General Manager, and subject to the District's protest procedures and FTA's requirements related to protest procedures.



## EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL <i>Maia Delaney</i>		GENERAL MANAGER ACTION REQ'D:		
DATE: 12/30/08		BOARD INITIATED ITEM: No		
Originator/Prepared by: James Bridgeman Dept: Insurance	General Counsel	Controller/Treasurer	District Secretary	BARC
Signature/Date: <i>James Bridgeman</i> 12/29/08	<i>MB</i>	<i>Chris Gan</i> 12/29/08	[ ]	<i>Maia Delaney</i> 12/29/08
Status: Routed		Date Created: 12/22/2008		

TITLE:

### Approval of Change Order No. 1 to Agreement 6M2010 for Claims Consulting Services and Forensic Accounting

NARRATIVE:

**PURPOSE:** To authorize the General Manager to execute Change Order No. 1 to Agreement No. 6M2010 with Merriwether & Williams Insurance Services ("Merriwether & Williams") in the amount of \$300,000 to provide expert claims consulting and forensic accounting services to assist the District in obtaining full reimbursement from its insurance policies for the Hayward Yard Incident.

**DISCUSSION:** On May 10th, 2008 an incident at the District's Hayward Yard caused damage to equipment and interrupted service. Electrical arcing destroyed equipment at Gap Breaker Station AZD, Substation AAY, the Hayward Yard Tower (including its train control equipment room), and at other locations around the Hayward Yard. As a result of this damage, traction power and train control were lost in the Hayward Yard as well as the mainline in the area from South Hayward to Union City for several months. At present, the best estimate of the total loss is approximately \$11.4 million.

District personnel have been working with adjusters for its insurers to determine the total extent of the District's loss from this event. So far, Staff has focused on calculating the total extent of the loss. The next step is to obtain reimbursement from the insurers. This is complicated by the fact that two policies apply to the incident. The District's property insurance policy provides coverage for fire while the Energy Systems policy covers electrical injury. Thus, we have two separate parties with whom we must negotiate the final settlement. The two policies have differing terms and deductibles: \$2.5 million deductible for the Property policy and \$1 million for the Energy Systems policy. It is not clear at this time, how much each policy should pay. In addition, the Energy Systems insurer has taken the position that there were two separate loss occurrences and, therefore, two deductibles would apply. This position has a material impact on the District's recovery. There are other complex technical issues that must be resolved such as the fact that much of the equipment destroyed is no longer available. Though the equipment was old, it was performing a useful function and had value. Expertise will be needed to determine that value. We also need to thoroughly analyze BART labor, lost revenue, and additional costs to maximize the recovery under the policies. We need to determine the amount of additional labor required by the incident and convince the insurers that it is appropriate for reimbursement under

the policies. These questions require specialized technical expertise and may also involve litigation support.

In June of 2007, the Board authorized Agreement No. 6M2010 with Merriwether & Williams in an amount not to exceed \$336,462 for a three-year term plus two one-year extensions. The services include assisting the District in the procurement of the Property and Energy Systems Insurance coverages that apply to this incident. The scope also includes assisting the District in the adjustment of claims under the policies; however, the scope for this Change Order requires more specialized technical assistance beyond that contemplated in the base agreement.

**FISCAL IMPACT:** The Change Order will be funded by the Insurance Department out of its Professional and Technical Services and Physical Damage Premium accounts. At least one of the policies provides coverage for the cost of developing and presenting the claim. A substantial portion of the cost of this Change Order will be reimbursed out of the claim recovery.

**ALTERNATIVES:** If the Change Order is not approved, the resolution of the Hayward Yard claim will be delayed as will the receipt of reimbursement funds from the insurers. The District could also procure the services from a different vendor. This would involve further delay.

**RECOMMENDATION:** Adopt the following motion.

**MOTION:** The General Manager is authorized to execute Change Order No. 1 to Agreement No. 6M2010 with Merriwether & Williams in the amount of \$300,000



# SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

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## MEMORANDUM

**TO:** Board of Directors

**DATE:** January 2, 2009

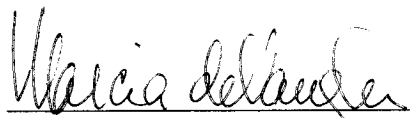
**FROM:** General Manager

**SUBJECT:** FY09 Budget Update - Deficit Reduction Strategies: For Information

At the January 8, 2009 meeting of the Board of Directors, an updated forecast of the FY09 budget deficit and strategies to balance the budget will be presented at the Administration Committee Meeting.

A time-sensitive strategy that will be discussed with the Board next week is a proposed return to twenty (20) minute night and weekend service. In order to realize any savings during FY09 and a full year of savings in FY10, this service change must be included in the bi-annual system bid for station agents and train operators in February. The next system bid will not occur until September 2009. No Board action is requested at the January 8 Board meeting.

The FY09 budget revision will be calendared in late January or early February when we should have better information on the impact of state budget decisions. Please do not hesitate to call me or Carter Mau at (510) 464-6194 with questions or concerns.

  
Dorothy W. Dugger

cc: Board Appointed Officers  
Deputy General Manager  
Executive Staff



## EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Marc Delbrug</i>		GENERAL MANAGER ACTION REQ'D: Approve and Forward to the January 8, 2009 E & O Committee Meeting		
DATE: <i>12/30/08</i>		BOARD INITIATED ITEM: No		
Originator/Prepared by: John Gee Dept: John Gee Dept. TSD, Stations Capital Program Ext. 4928 Signature/Date: <i>John Gee 12/29/08</i>	General Counsel <i>MB</i> <i>12/29/08</i>	Controller/Treasurer <i>Chuitan</i> <i>12/29/08</i>	District Secretary [ ]	BARC <i>Paul</i> <i>12/29/08</i>
Status: Routed		Date Created: 10/21/2008		

TITLE:

### Award of Contract No. 15TJ-110 Construction of Ashby Station and Lake Merritt Station Platform Elevators

NARRATIVE:

**PURPOSE:** To obtain Board authorization for the General Manager to award Contract No. 15TJ-110 for the Construction of Ashby Station and Lake Merritt Station Platform Elevators.

**DISCUSSION:** There is currently only one functioning elevator each at the Ashby Station and at the Lake Merritt Station. With the addition of the Ed Roberts Campus, located adjacent to the Ashby Station, a single elevator will not be able to handle the increase in patron usage. The existing Lake Merritt Station platform elevator, from the paid area to the free area, will remain in service until installation of the new elevator is complete. The existing platform elevator will be converted for District Personnel Smart Card Access after the new platform elevator has been put into service. This contract is for the procurement and installation of an additional elevator at the Ashby Station and a replacement elevator at the Lake Merritt Station. As part of the work to add another elevator at the Ashby Station, the existing elevator will be rotated to enable the two elevators to be in a facing pair configuration, the existing concourse will be extended, a new machine room will be added and a wall opening cut. As part of the work to add another elevator at the Lake Merritt Station, a new machine room will be added as well as a new bridge to connect the concourse to the new elevator. Work at both stations will include all the necessary electrical, alarm system, lighting, security, communication and fire protection system connections.

On October 23, 2008, the Advance Notice to Bidders was mailed to 189 prospective bidders and contract documents were sent to 19 plan rooms. The Contract was advertised on October 27, 2008 in local publications. A total of 25 firms purchased copies of the contract documents. A pre-bid meeting and site tour was conducted on November 13, 2008 with 15 prospective bidders attending. A subsequent site tour was conducted on December 8, 2008 with 7 prospective bidders attending. Bids were publicly opened on December 16, 2008. The bids received and the Engineer's Estimate are shown below:

<u>Bidder</u>	<u>Location</u>	<u>Total Amount</u>
West Bay Builders, Inc.	Novato, CA	\$3,390,000.00
Taber Construction, Inc.	Martinez, CA	\$3,423,000.00
California Plus Engineering, Inc.	Cambell, CA	\$4,650,000.00
Bugler Construction	Pleasanton, CA	\$5,132,000.00
<b><u>Engineer's Estimate:</u></b>		<b><u>\$6,201,000</u></b>

The apparent low bid submitted by West Bay Builders of \$3,390,000.00 is 45% below the Engineer's Estimate of \$6,201,000

After review by District staff, the Bid has been deemed to be responsive to the solicitation. Furthermore, staff review of the low bidder's business experience and financial capabilities has resulted in a determination that the bidder is responsible and the Bid of \$3,390,000 submitted by West Bay Builders is fair and reasonable.

The District's Environmental Compliance staff has reviewed the scope of work and determined that there will be no significant effect on the environment from the construction of the two new elevators and that it is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to CEQA Section 15301 for modifications to existing facilities. The Ashby Station will receive federal funding and is therefore subject to the National Environmental Policy Act (NEPA). The federal funding agency, FTA, has concurred that implementation of the Contract will not have a significant impact on the environment and qualifies for a categorical exclusion under 23 CFR 771.117 (d)(9).

On September 14, 2006, the BART Board of Directors voted to adopt the Initial Study/Mitigated Negative Declaration (IS/MND) and Mitigation Monitoring and Reporting Plan (MMRP) for the Lake Merritt Administration Dismantling Project.

**FICAL IMPACT:**

Funding for the \$3,390,000 for award of contract 15TJ-110 is included in the project budgets for a) 05CC, Ashby Station Elevator \$1,922,000 b) 17BJ, Lake Merritt Station Elevator \$1,468,000. The Office of the Controller/treasurer certifies that funds are currently available to meet this obligation.

**05CC:**

**FTA Grant CA-90-Y604**      **54G: \$ 322,293**  
**Prop 1B PTMISEA**        **55S: \$ 1,599,707**

As of month ending 11/23/08, \$2,800,293 is available for commitment from Fund Source 54G for Project 05CC, and \$0 has been committed by BART to date. There are no pending commitments in BART's financial management system. This action will commit \$322,293,

leaving an uncommitted balance of \$2,478,000 in this fund source.

As of month ending 11/23/08, \$2,000,000 is available for commitment from Fund Source 55S for Project 05CC, and \$0 has been committed by BART to date. There are no pending commitments in BART's Financial Management System. This action will commit \$1,599,707, leaving an uncommitted balance of \$400,293 in this fund source.

**17BJ:**

**BART Proceeds from the Disposal of Fixed Assets                      90M: \$ 1,468,000**

As of month ending 11/23/08, \$3,000,000 is available for commitment from Fund Source 90M for Project 17BJ, and \$683,426 has been committed by BART to date. There are pending commitments of \$72,790 in BART's Financial Management System. This action will commit \$1,468,000, leaving an uncommitted balance of \$775,784 in this fund source.

There is no fiscal impact on available unprogrammed District reserves.

**ALTERNATIVES:** The alternative is not award the Contract, cancel the grants and continue using the single elevator at each station.

**RECOMMENDATION:** Based on analysis by staff, it is recommended that the Board adopt the following motion:

**MOTION:** The General Manager is authorized to award Contract No. 15TJ-110 for the Construction of Ashby Station and Lake Merritt Station Platform Elevators to West Bay Builders, Inc. for the total bid price of \$3,390,000.00, pursuant to notification to be issued by the General Manager, subject to the District's protest procedures and FTA's requirements related to protest procedures.



## EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Walter D. ...</i>		GENERAL MANAGER ACTION REQ'D: Approve and forward to Board of Directors		
DATE: 11/25/08		BOARD INITIATED ITEM: No		
Originator/Prepared by: Thomas Horton Dept: 754 <i>Thomas Horton</i> Signature/Date:	General Counsel <i>Andrew ...</i> 11/24/08	Controller/Treasurer <i>[Signature]</i> 11/24/08	District Secretary [ ]	BARC <i>Paul ...</i> 11/24/08 [ ]
Status: Routed		Date Created: 11/12/2008		

TITLE:

### Time Extension and Increase of Contract Value - Agreement No. 6G3975 General Engineering Services for the Earthquake Safety Program (Bechtel Infrastructure Corporation)

NARRATIVE:

#### PURPOSE:

To obtain the Board's approval for the General Manager to execute a modification to Agreement No. 6G3975, General Engineering Services for the Earthquake Safety Program, with Bechtel Infrastructure Corporation (Bechtel). The value of the Agreement would increase from \$186,000,000 to between \$197,700,000 and \$226,230,000, depending upon the Board's decision regarding operability retrofits. The term of the Agreement would be extended by up to 15 months, again depending upon the Board's decision.

#### DISCUSSION:

The Board authorized award of Agreement 6G3975 in 2000 to Bechtel in an amount not to exceed \$105 million. During the first two years of the Agreement, Bechtel conducted a Vulnerability Study that established the overall scope of the Earthquake Safety Program (Program) and described options for the amount of retrofit to be done. The BART Board chose an option that would upgrade the Core System (Berkeley Hills Tunnel to Daly City Yard) to operability, while upgrading the remainder of the system to safety standards only. The Board expressed its desire that staff seek additional funding to allow additional operability retrofits.

In November 2006, the Board authorized an increase in Agreement 6G3975 from \$105 million to \$186 million, with an extension in the term of the Agreement for an additional four years to September 2013, due to the increase in the size and scope of the Program.

Staff is requesting further modifications to the Agreement for two purposes: (1) additional analysis and design for the Transbay Tube to address vulnerabilities not previously recognized; and (2) design of additional operability retrofits in certain portions of the BART System currently designed for safety only.

Transbay Tube Additional Analysis and Design

While the extensive analysis done to date by Fugro West, Inc., the section designer chosen by Bechtel for the Transbay Tube, has greatly reduced the scope of the required Transbay Tube retrofits, it also has identified potential new vulnerabilities to the Transbay Tube in two areas. Analysis of both areas is required to determine if retrofit is required and, if so, how much. Design may be required for one or both of the identified areas. The estimated cost of analysis and design if retrofit is required in both areas is \$11,700,000. The design and construction cost of these new retrofits is significantly less than BART originally budgeted for the purpose, so there would be no increase in the overall Program cost. However, the design and analysis work is not currently within the scope of Agreement No. 6G3975. The design and construction of the retrofits will take place within the current term of the Agreement, so no time extension would be required solely for this activity.

### Additional Operability Retrofits

Since 2005, staff and consultants have made extraordinary efforts to reduce Program costs, resulting in substantial savings. The Program now has over \$200 million in its management reserve account. This presents an opportunity to upgrade portions of the system currently designated for safety retrofits only to operability status.

Because of the need to set aside some of these funds to cover potential future shortfalls in other funding sources and to ensure an adequate construction contingency, not all of the management reserve is available for additional operability upgrades. Depending upon assumptions regarding future contract bid conditions, staff projects that up to \$193.1 million will be available for additional upgrades.

In addition to cost, other considerations for additional upgrade include: additional ridership gained by the additional operability upgrade; access to a maintenance yard; amount of schedule extension; ability to meet BART's seismic criteria; and the required environmental clearance. Staff has developed four alternatives for the Board's consideration.

Alternative 1 consists of retrofitting 68 piers between the R Line/C Line split and the point where the R Line enters the tunnel at Berkeley, along with upgrading the Oakland Main Shop building. Because the tunnels in Berkeley are considered seismically sound, this would give BART the ability to operate trains to North Berkeley. The seismic retrofits are statutorily exempt from the requirements of the California Environmental Quality Act (CEQA). Pursuant to the provisions of the National Environmental Policy Act (NEPA), the work will require assessment of additional environmental impacts (included in the anticipated schedule), but staff anticipates that little environmental documentation will be required. The total cost of this alternative is estimated at \$51 million, of which engineering costs to be added to Agreement No. 6G3975 are estimated at \$8,392,000. Program construction completion is anticipated by June 2013.

Alternative 2 includes retrofitting 52 piers along the C Line between the eastern portal of the Berkeley Hills Tunnel and a point east of the Pleasant Hill Station, and upgrade of the Oakland Main Shop Building. This would ensure that the C Line, including the Concord Yard, would

remain operational after a Hayward Fault earthquake as long as the Berkeley Hills Tunnel remains open. With other earthquake scenarios, such as an event on the Concord Fault, part of the C Line would not be operational. Since ridership on the C Line is very high, this provides a greater increase in ridership than Alternative 1, along with access to a maintenance yard. The work will require assessment of additional environmental impacts, and because of its size and complexity the required environmental documentation may be more extensive than in Alternative 1. The total cost of this alternative is estimated at \$134 million, of which engineering costs to be added to Agreement No. 6G3975 are estimated at \$20,670,000. Program construction completion is anticipated by June 2014.

Alternative 3 combines Alternatives 1 and 2. This would provide operability of the R Line to North Berkeley; the Oakland Main Shop; and the C Line after a Hayward Fault earthquake if the Berkeley Hills Tunnel remains open. The increased capability provided by this Alternative would be higher than with any of the other alternatives. However, the required environmental documentation is also likely to be more extensive than in Alternative 1.. The total cost of this alternative is estimated at \$182.4 million, of which engineering costs to be added to Agreement No. 6G3975 are estimated at \$28,530,000. Program construction completion is anticipated by June 2014.

Alternative 4 is to take no action for additional operability upgrades. This alternative adds no construction cost for upgraded operability, and the cost increase relates only to the additional design costs for the Transbay Tube.

#### Effect on Agreement

The overall effect on Agreement No. 6G3975 would include an increase in the not-to-exceed value and, in most cases, an extension of time. The new not-to-exceed value would be the sum of the increase due to additional operability and the increase due to Transbay Tube analysis and design. The effect on the Agreement of the various alternatives is as follows:

Alternative 1: Increase Agreement value from \$186,000,000 to \$206,092,000, with an extension of the Agreement term from September 2013 to December 2013.

Alternative 2: Increase Agreement value from \$186,000,000 to \$218,370,000, with an extension of the Agreement term from September 2013 to December 2014.

Alternative 3: Increase Agreement value from \$186,000,000 to \$226,230,000, with an extension of the Agreement term from September 2013 to December 2014.

Alternative 4: Increase Agreement value from \$186,000,000 to \$197,700,000. No increase in the Agreement term would be required.

Staff recommends that the Board adopt Alternative 3, with the increases in Agreement value and term specified above. This will allow Bechtel to continue Program support throughout the estimated Program duration.

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

**FISCAL IMPACT:**

Agreement No. 6G3975 has a recommended not-to-exceed cost limit of up to \$226,230,000. District financial obligations under the Agreement will be subject to Annual Work Plans (AWPs). Each AWP will have a defined scope of services and separate schedule and budget. Any AWP assigned for funding under a State or federal grant will include State or federal requirements. AWP's 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 AWP.

BART's Manager, Earthquake Safety Program, will have the authority to issue AWP's and to administer Agreement No. 6G3975.

Funding for individual AWP's will be provided from BART's Capital Budget accounts as evidenced by the issuance of related work orders.

**ALTERNATIVES:**

The Board could decline to authorize the Agreement modification. Staff would have to issue a new Request for Proposals and seek a new agreement to complete the required engineering services for the Transbay Tube. Staff would also have to seek a new agreement to complete design for additional operability. This would entail additional time and cost to the Program, both for the cost of the additional procurement and the loss of efficiency if a new firm is required to "ramp up" to complete the analysis and designs.

**RECOMMENDATION:**

Staff recommends that the Board adopt one of the following alternative motions:

Alternative 3 (Recommended)

The Board of Directors hereby authorizes the General Manager to execute a modification to Agreement Number 6G3975, General Engineering Services for the Earthquake Safety Program, with Bechtel Infrastructure Corporation to increase the not-to-exceed value to \$226,230,000, and to extend the term of the Agreement for an additional fifteen months, from September 2013 to December 2014.

Alternative 2

The Board of Directors hereby authorizes the General Manager to execute a modification to Agreement Number 6G3975, General Engineering Services for the Earthquake Safety Program, with Bechtel Infrastructure Corporation to increase the not-to-exceed value to \$218,370,000, and



to extend the term of the Agreement for an additional fifteen months, from September 2013 to December 2014.

Alternative 1

The Board of Directors hereby authorizes the General Manager to execute a modification to Agreement Number 6G3975, General Engineering Services for the Earthquake Safety Program, with Bechtel Infrastructure Corporation to increase the not-to-exceed value to \$206,092,000, and to extend the term of the Agreement for an additional three months, from September 2013 to December 2013.

Alternative 4

The Board of Directors hereby authorizes the General Manager to execute a modification to Agreement Number 6G3975, General Engineering Services for the Earthquake Safety Program, with Bechtel Infrastructure Corporation to increase the not-to-exceed value to \$197,700,000.



## EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Paul Medved</i>		GENERAL MANAGER ACTION REQ'D:		
DATE: c <i>12/31/08</i>		BOARD INITIATED ITEM: No		
Originator/Prepared by: Paul Medved Dept: Transit System Development <i>Paul Medved 12/31/08</i> Signature/Date:	General Counsel <i>Andrya Kavanagh 12/31/08</i>	Controller/Treasurer <i>Chun E. ... 12/31/08</i>	District Secretary [ ]	BART <i>Paul Jenner 12/31/08</i> [ ]

TITLE:

### Resolution Providing Additional Funding for the Warm Springs Extension Project

NARRATIVE:

#### PURPOSE:

To obtain approval of a Resolution providing additional funding for the Warm Springs Extension (WSX) Project (Project).

#### DISCUSSION:

The BART Board of Directors adopted a project for the Warm Springs Extension and certified a California Environmental Quality Act (CEQA) Final Environmental Impact Report (FEIR) on September 15, 1992. The District later prepared a Supplemental Environmental Impact Report (SEIR) for the purpose of updating the 1992 FEIR due to changed circumstances and certain revisions to the Project since 1992. On June 26, 2003, following a public hearing, the Board certified the SEIR, adopted the WSX Project, and authorized the General Manager to acquire property necessary to construct the Project.

In July 2006, the Federal Transit Administration (FTA), as lead federal agency, and BART released a Final Environmental Impact Statement (FEIS) for the WSX Project. The FTA issued a Record of Decision on October 24, 2006 which determined that the National Environmental Policy Act requirements and other federal requirements for the Project had been satisfied.

In early 2007 the WSX Project team devised an implementation strategy intending to minimize the effects of escalation on the project's capital cost based on availability of right of way required for the project. The strategy consisted of preparing two contracts, one for the construction of the Fremont Central Park Subway (Subway) and the other for the design-build procurement of the Line, Track, Station and Systems (LTSS) for the remainder of the extension work.

In September 2008 the Metropolitan Transportation Commission (MTC) updated and amended Resolution No. 3434 to provide a funding solution for advancing the WSX Project. This solution involves a financial commitment on the part of MTC as well as contributions by the Santa Clara Valley Transportation Authority (SCVTA), the Alameda County Transportation Improvement Authority (ACTIA) and BART, all of which are to be finalized by the end of February 2009.

Resolution Providing Additional Funding for the Warm Springs Extension Project

FISCAL IMPACT:

This action has no fiscal impact on unprogrammed District reserves. With approval of the Resolution, BART undertakes to contribute \$24 million. BART may fund its contribution from any of the following sources, including but not limited to: Proposition 1B State Local Partnership, a grant or loan from ACTIA, High-Speed Rail Passenger Train Bond Act funding for local agencies, Project cost savings, and any new or unanticipated source of funds not included in MTC Resolution No. 3434 as amended. Financial commitments will not be incurred against this amount until such time as funding is identified.

ALTERNATIVES:

Do not approve the Resolution. This would delay or prevent construction of the Project as the Resolution No. 3434 funding plan would require reformulation.

RECOMMENDATION:

Adoption of the following motion:

MOTION:

Approve the attached Resolution Providing Additional Funding for the Warm Springs Extension Project

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

**In the Matter of the  
Approval of a Resolution  
Providing Additional Funding  
For the Warm Springs Extension  
Project**

**Resolution No. \_\_\_\_\_**

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

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

WHEREAS, the District has complied with all requirements of CEQA and NEPA for the Project; and

WHEREAS, the Metropolitan Transportation Commission (MTC) is the regional transportation planning agency for the San Francisco Bay Area pursuant to Government Code Section 66500 et seq.; and

WHEREAS, in 1988 the Project was included in Tier 1 of MTC's Resolution No. 1876 New Rail Transit Starts and Expansion Program with an approximate \$200 million funding shortfall; and

WHEREAS, in 2001 the Project was included in MTC's Resolution No. 3434 Regional Transit Expansion Program, the successor to Resolution No. 1876, with a full funding plan which included funding sources that failed to materialize; and

WHEREAS, in September 2008 MTC amended Resolution No. 3434 to include \$144 million in new funding to close the Project funding shortfall from MTC, BART, the Alameda County Transportation Improvement Authority (ACTIA) and the Santa Clara Valley Transportation Authority (SCVTA); and

WHEREAS, pursuant to MTC Resolution No. 3434 as amended, BART's contribution to the Project would be \$24 million, to be matched by \$120 million from MTC, ACTIA and SCVTA; and

WHEREAS this \$24 million would be in addition to the \$20 million in BART's Proposition 1B Revenue-based funds previously committed to the Project, which was subsequently matched by MTC with an equal amount of MTC's Proposition 1B Population-based funds, pursuant to MTC Resolution No. 3814;

NOW, THEREFORE, BE IT RESOLVED that BART will contribute \$24 million in additional funding for the Project, to be matched with \$120 million in new funding from MTC, ACTIA, and SCVTA; and

BE IT FURTHER RESOLVED that BART may fund its contribution from any of the following sources, including but not limited to: Proposition 1B State Local Partnership, a grant or loan from ACTIA, High Speed Rail Passenger Train Bond Act funding for local agencies, Project cost savings, and any new or unanticipated source of funds not included in MTC Resolution No. 3434; and

BE IT FURTHER RESOLVED that the timing of the \$24 million to be provided by BART will be determined in conjunction with funding partners and based on actual cashflow needs and relatively equal funding participation throughout the Project construction period.



## EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Marcia delBuda</i>		GENERAL MANAGER ACTION REQ'D: Approve and forward to PPAAL		
DATE: <i>12/31/08</i>		BOARD INITIATED ITEM: No		
Originator/Prepared by: Kerry Hamill Dept: GCR <i>Kerry Hamill</i> Signature/Date: <i>12/31/08</i>	General Counsel <i>Andrew Renda</i> <i>12/31/08</i>	Controller/Treasurer <i>Chris Good</i> <i>12/31/08</i>	District Secretary [ ]	BARC <i>Just Mink</i> <i>12/31/08</i>
Status: Routed		Date Created: 12/19/2008		

TITLE:

### Proposed State and Federal Legislative Advocacy Agreement Renewals

NARRATIVE:

#### Purpose:

To request that the Board renew expiring agreements with three government relations firms – Schott and Lites, Inc., CJ Strategies and David Klaus and the Blair Law Firm – which represent BART before the California State Legislature, the U.S. Congress, and the federal Executive Branch, respectively.

The Board is also requested to renew a supplemental agreement with Schott & Lites, Inc. for continued legislative, funding and advocacy efforts involving the Capitol Corridor Inter-City Passenger Service.

The term of each of the proposed agreements, including a supplemental agreement, would be from January 1, 2009 – December 31, 2009. Each contract would have an option for renewal for one additional year, at the same rate of compensation, with the possibility of an increase to offset inflation, not to exceed the increase in the Consumer Price Index (CPI) as set by the Bureau of Labor Statistics. The rate of compensation for each proposed contract for 2009 is the same or less than each firm's current rate of compensation for 2008.

#### Discussion:

As outlined in Attachment A, each firm has a proven track record of effectively articulating BART's needs in a continually changing political environment. Retaining this team of experienced legislative advocates will ensure continuity in the relationships that have been cultivated with key elected and appointed officials who make decisions about transportation policy and funding that directly affect BART.

#### Schott & Lites, Inc.

Staff recommends that the Board renew the District's primary and supplemental agreements with Schott & Lites, Inc., a firm whose representatives have skillfully advocated BART's interests before the California State Legislature since 1977. For 2009, the focus at the state level will be to

advocate for BART and Capitol Corridor funding despite a record deficit and a declining economy. The fiscal condition of the state could continue to preclude the sale of critical infrastructure bonds in the near term, and the Sacramento team will look for ways to lessen the potential damage to BART and Capitol Corridor projects. Schott and Lites will continue - through its primary and supplemental contracts - to advocate for legislation that preserves state funding for transit and inner city rail, improves BART's ability to create transit oriented development around BART stations, reduces greenhouse gases across the state and region and identifies the funding for transit projects as a part of the strategy to combat global warming.

### **CJ Strategies**

Staff also recommends that the Board renew the District's agreement with CJ Strategies, a firm which has successfully represented BART to the U.S. Congress since 1984. Major legislative opportunities for BART will arise in 2009 relating to an economic stimulus package, climate change legislation, and the Reauthorization of the Federal Transit Program. BART's focus with Congress in the coming year will be to gain significant federal commitments to rebuild the core system, acquire a new fleet of rail cars, and to proceed with projects to connect with the Oakland Airport and build an extension to Warm Springs from Fremont. As has been the case in recent years, BART will work with other transit properties to increase homeland security funding levels.

### **David Klaus/Robert A. Blair Law Firm**

Staff recommends that the Board renew the District's agreement with David Klaus/Robert A. Blair, who have been an effective liaison team between BART and the Federal Executive Branch since 1982. Primary goals for this year include retaining the already secured \$24.99 million in federal funds for the Oakland Airport Connector Project, and seeking additional federal funds if possible, obtaining DOT/FTA support for a program to provide federal funding in the SAFETEA-LU Reauthorization for the BART rail car program and otherwise maximize funding for BART in the reauthorization legislation, maximizing BART's opportunities to obtain funding and financing from climate control legislation, and resolving the administrative and regulatory issues that are likely to arise in connection with BART projects that receive federal funds through the economic stimulus program.

The services provided by these three firms will not include the furnishing of legal advice, which will continue to come from the Office of the General Counsel.

### **Fiscal Impact:**

All of the proposed agreements cover a one-year period from January 1, 2009 – December 31, 2009. Funds sufficient to cover all three proposed primary agreements and one supplemental agreement, through fiscal year 2009, are provided for in the Government and Community Relations' fiscal year 2009 operating budget. The total amount of these proposed new agreements charged to the Department's current operating budget is \$221,452.91 (one half of the total calendar year commitment). Funding for the proposed agreement renewals for the second half of the calendar year 2009 will be proposed in the Department's fiscal year 2010 budget. Should the General Manager exercise the option to renew these agreements for the calendar year 2010, Government and Community Relations would budget operating funds for this purpose in the

second half of the Department's FY 2010 budget and the first half of the FY 2011 budget.

For Schott & Lites, Inc., the monthly rate for the primary agreement, including expenses, would not exceed \$8,198.92. Total compensation over the 12-month period for this agreement would not exceed \$98,387.04. The General Manager would be authorized to renew these agreement for one additional year and to determine whether an increase to offset inflation is warranted based on performance.

The monthly rate, including expenses, of the supplemental agreement with Schott and Lites, Inc. would not exceed \$1,630.40. Total compensation for a 12-month period would not exceed \$19,564.76. The option authorizes the General Manager to renew this agreement for one additional year and permits her to determine whether an increase to offset inflation is warranted based on the Consultant's performance.

Taken together, the combined amount of the District's agreements with Schott and Lites, Inc. during 2009 would not exceed \$117,952.81.

For CJ Strategies, the monthly rate for the primary agreement, including expenses, would not exceed \$14,818.42. Total compensation for a 12-month period would not exceed \$177,821.00. The option that authorizes the General Manager to renew the agreement for one additional year also permits her to determine whether an increase to offset inflation is warranted based on performance.

For David Klaus/Robert A. Blair Law Firm, the monthly rate, including expenses, would not exceed \$12,261.00. Total compensation for a 12-month period would not exceed \$147,132.00. The option that authorizes the General Manager to renew the agreement for one additional year also permits her to determine whether an increase to offset inflation is warranted based on performance.

**Alternative:**

Decline to renew the agreements or alter the terms and conditions. Declining to renew the agreements jeopardizes established relationships with the State Legislature, Congressional and Executive Branch decision-makers and could diminish the District's prospects for accomplishing its state and federal legislative program.

**Recommendation:**

That the Board adopt the following motion. The Office of the General Counsel will approve the renewal agreements as to form.

**Motions:**

1. That the General Manager is authorized to enter into agreements as follows:
  - a) a one-year primary agreement for state legislative advocacy services with Schott & Lites, Inc., for



a total compensation not to exceed \$98,387.00; and

b.) a one-year primary agreement for federal advocacy services with CJ Strategies for a total compensation not to exceed \$177,821.04; and

c.) a one-year primary agreement for Executive Branch advocacy services with David Klaus/Robert A. Blair for a total compensation not to exceed \$147,132.00; and

d.) the authority to extend for one year each of the aforementioned agreements, each at an amount not to exceed the previous year's cost plus an inflationary increase based on the change to the Consumer Price Index as determined by the Bureau of Labor Statistics.

2.) That the General Manager is authorized to enter into a supplemental agreement for legislative advocacy services involving the Capitol Corridor Inter-City Passenger Service with Schott & Lites, Inc., for a total compensation not to exceed \$19,564.76; and the authority to extend this agreement by an additional year at an amount not to exceed the previous year's cost plus an inflationary increase based on the change to the Consumer Price Index as determined by the Bureau of Labor Statistics.

## Attachments

### 2007-2008 Federal Accomplishments by CJ Strategies

**FY08 Appropriations** – CJ Strategies worked with Senator Feinstein’s office to secure funding for BART Earthquake Safety Program. \$656,000 was included in the final FY08 Transportation HUD Appropriations bill.

**Completion of Full Funding Grant Agreement** – CJ Strategies worked with the BART Congressional delegation to ask FTA to release the final funding for the extension to SFO. We drafted a letter to FTA from the Delegation in March of 2007 asking FTA to release the final funding in the amount of \$2,424,694, which was released soon thereafter.

**Public Private Partnership Pilot Program** – CJ Strategies briefed the BART Congressional delegation staff as well as House Transportation and Infrastructure staff on the Oakland Airport Connector Project when the announcement of the procurement changes was first made in August of 2007. Since that time, CJ Strategies has continued to update Representative Barbara Lee’s staff and key committee staff.

**Transit Security Funding** – CJ Strategies continues to support increased funds for transit security. The FY09 Homeland Security Appropriations bill includes \$400 million for Rail and Transit Security (same amount as in FY08 and an increase over the Administration’s FY09 request of \$175 million). However, this is below the \$750 million that was authorized in H.R. 1 – Implementing Recommendations of the 9/11 Commission Act of 2007.

**Climate Change Legislation** – CJ Strategies worked with the New Starts Working Group and APTA to ensure transit would be included as a separate entity in the substitute amendment that was brought up for debate. In addition, CJ Strategies briefed Senate Environment and Public Works Committee staff on the need for additional funds specific to transit.

**Solar Tax Credit Letter** – CJ Strategies worked with BART staff to draft a letter from the BART Board to our Members of Congress regarding Bart’s continued commitment to enhancing system sustainability. We briefed staff on BART’s commitment to using solar energy in its parking and maintenance facilities and the need for the extension of the federal solar tax credit.

**House Homeland Security Chair Visit to BART** – CJ Strategies coordinated the visit of House Homeland Security Committee Chairman Bennie Thompson (D-MS) to BART. Chairman Thompson received a briefing by BART staff and toured various BART locations.

**General Manager’s Testimony before the Senate Banking Committee Hearing** – CJ Strategies worked with Committee staff and BART staff on the General Manager’s testimony for the hearing entitled *Strengthening the Ability of Public Transportation to Reduce Our Dependence on Foreign Oil*. General Manager Dorothy Dugger testified on BART’s growing ridership and the need for additional funding for expanding core capacity. In addition, we met with Senate Banking Committee staff separately to focus on reauthorization and how to move

forward with additional funds for core capacity.

**SILO/LILO Meetings** – CJ Strategies scheduled a meeting where key Pelosi staff was briefed by transit agencies. In addition, CJ Strategies participated in Delegation meetings with representatives from other California transit agencies including: LAMTA, SFMTA, Caltrain, Sacramento RTD and VTA. CJ Strategies also worked with Representative Tauscher’s staff to coordinate the California Delegation letter to Treasury asking for assistance. CJ Strategies continues to participate in weekly calls with other impacted transit agencies and their Washington Representatives regarding the SILO issue

**FY09 Appropriations Pending** – BART made two FY09 appropriations requests. BART submitted a \$3,000,000 Transportation appropriations request to Senator Feinstein and Representative Tauscher for continued Earthquake Safety funds. The second is a request for EPA funds to complete the Transit Sustainability Implementation Guidelines which BART initiated with EPA in 2007. The 111<sup>th</sup> Congress plans to complete the FY09 Appropriations bills in early 2009.

**Accomplishments 2007 - 2008 Bob Blair Law Firm and David Klaus**

**SFO Extension Grant** - Successfully obtained the \$2.424 million final payment from FTA for BART on the SFO Extension. Although Congress did not appropriate the funds, worked with FTA and US DOT to ensure that the continuing resolution permitted payment.

**Oakland Airport Connector (OAC) Project**- Successfully worked with FTA to get Public Private Partnership Pilot Program (P5) designation for OAC. Assisted in successfully obtaining waiver from the federal bonding requirements on the OAC project. Successfully worked with FTA re Memorandum of Understanding between FTA and BART for \$24.99 million for OAC under PENTA-P. Obtained a letter from US DOT “inviting” BART to seek up to \$300 million in private activity bonds for OAC. Maintain support for OAC project at FTA/DOT during delays in the contracting process beyond the dates specified in the MOU. Successfully obtained FTA/DOT continuing commitment of the \$24.99 million allocation for OAC after the termination of the RFP.

**SILO/LILO** - Successfully worked with BART and other California transit properties to avoid draconian excise taxes on closed SILO transactions (such as Bart’s). Worked as part of a team that obtained guidance from the Department of the Treasury on the issue and persuaded House Ways & Means Committee Chairman-elect Rangel to make SILO/LILO relief one of his priorities.

**Homeland Security** - In 2007, assisted BART with its Transit Security Grant application for \$4,190,000 (which was awarded in 2008). Also provide on-going assistance to BART in positioning itself to seek additional funding for other security needs. Worked with other Washington representatives to use the change in control of the Senate and House to seek legislatively increased funding for transit security nationwide.

**Climate Change Legislation** - Provided support and analysis to BART and its congressional lobbying team for amendment to Senate Climate bill to substantially increase funding for transit as a means to reduce greenhouse gases. Provide ongoing monitoring of House and Senate climate change legislation to identify opportunities for additional transit funding in the legislation.

**Federal Transit Funding Formulas** - Provide expertise and analysis with regard to federal funding formulas for transit, including:

Perform analysis to compare the amount that BART contributes to the total amount received by the Bay Area MTC with the amount of funds BART actually receives. This analysis was used by the General Manager to argue for increased BART funding. Perform analysis of FTA funding formulas and options for development of BART position on Reauthorization of SAFETEA-LU.

### **Miscellaneous**

Kept BART abreast of action by FTA on Buy America changes.  
Arranged meetings and assisted in keeping FTA informed on BART's seismic retrofit program.  
Coordinated with BART research staff regarding energy-efficiency improvements. Provided support at FTA for BART application for \$300k funding for ultra-capacitor project, and identified potential grant opportunities at the US Department of Energy.

### **Accomplishments by Schott/Lites 2007 - 2008**

**State Budget** - This year, Governor Schwarzenegger signed the 2008-09 State Budget and various budget trailer bills on September 23<sup>rd</sup>, a record 85 days late. Although the Budget as enacted theoretically resolved much of the state's shortfall, a few short months after enactment of the Budget, the state was already projected to be billions of dollars in the red before the end of the fiscal year. We are now faced with a projected deficit that exceeds \$40 billion. Although this year's Budget diverted nearly \$1.7 billion of traditional public transportation dollars to pay General Fund expenditures, we were able to secure some important state support in the Budget for transit purposes:

Funds Proposition 42 (\$1.42 billion), according to established formula, including 20% to the Public Transportation Account (PTA);

Allocates \$122 million for intercity passenger rail services;

Provides nearly \$4 billion in Proposition 1B bond funding, including: \$101 million for Transit Security (TSSSDRA)

\$1.5 billion for the Corridor Mobility Improvement Account (CMIA);

\$996 million for the State Transportation Improvement Program (STIP);

\$200 million for the State Local Partnership Program (SLPP); and

Provides \$306 million to the State Transit Assistance (STA) program for transit operations;

(Transit agencies across the state are at risk of losing most of the STA money (75%) approved as a part of the 2008-09 budget. The ever-worsening budget outlook will force mid-year cuts by the state, and the Governor's spending reduction plan includes taking away most of the already approved STA dollars. BART will continue to work with other agencies and our legislative

advocates to fight these additional transit cuts.)

**AB 490 (Hancock)** – Chapter 213, Statutes of 2007

Authorizes the BART Board to adjust, by ordinance or resolution, its monthly compensation based on the California Consumer Price Index (CPI).

**AB 1221 (Ma)**

Increases area authorized to be included in a transit village plan from the existing ¼ mile limitation, to up to ½ mile from the main entrance to a transit station. We were able to pass the bill through the Legislature; however the Governor vetoed the bill. The Governor's veto statement was a formula statement used on many bills which simply said that due to the late enactment of the Budget, the Governor was not signing bills that were not strictly necessary. We anticipate re-introducing the bill again in the coming Session.

**AB 1326 (Houston)** – Chapter 116, Statutes of 2007

Fulfilled BART commitment to pass clean-up legislation related to SB 1678 (Murray) of 2006, which increased procurement thresholds for BART and LAMTA.

**AB 2367 (Leno)**

Authorizes San Francisco to create an infrastructure financing district that includes waterfront property and to use tax increment financing for stated purposes. Negotiated with sponsors and author's office to assure that BART's related ad valorem property taxes were not diverted.

**AB 3034 (Galgiani)** – Chapter 267, Statutes of 2008

Enacted the Safe, Reliable High-Speed Passenger Train Bond Act for the 21<sup>st</sup> Century, after voter approval in November of 2008. On behalf of BART, we worked diligently to assure that previous "connectivity" funds, which benefit BART, remained in the final bill.

**SB 375 (Steinberg)** – Chapter 728, Statutes of 2008

Requires Air Resources Board to provide regions with greenhouse gas emission reduction targets; requires a regional transportation plan to include a Sustainable Communities Strategy designed to achieve the targets for greenhouse gas emission reduction; requires the California Transportation Commission to maintain guidelines for travel demand models; requires cities and counties, in general, to revise their housing elements every eight years in conjunction with the regional transportation plan and complete any necessary re-zonings within a specific time period; and relaxes CEQA requirements for housing developments that are consistent with a Sustainable Communities Strategy. BART sought and received significant amendments to advance goals.

**SB 717 (Perata)** – Chapter 733, Statutes of 2007

Continuously authorizes the transfers of sales tax revenue derived from the sale of motor vehicle fuels to the Transportation Investment Fund. Provides transit operators with more predictable and flexible funding to address capital or operations needs, by shifting the contribution of Proposition 42's sales tax on gasoline dollars to the PTA from a formula weighted 50% State Transit Assistance Program (STA) and 50% State and regional programming; to a formula weighted 75% STA and 25% state and regional programming. Results in an additional \$85

million flowing directly to transit operators through the STA program.

**SB 748 (Corbett)**

States the purposes of the State-Local Partnership Program and requires CTC to adopt related guidelines for the program. Defines eligible matching funds under the program. Although the bill was never sent to the Governor, it provided the basis and background for implementation of the policy objectives which were carried out through the Budget process, including allowing bridge toll, property tax and other self-help revenues critical to BART's objectives, to be used as matching funds.

Additionally, we managed efforts on various bills to authorize increases in local vehicle registration and other fees, for green house gas reduction efforts, including transit funding.

**Steele Ranch Transfer**

As part of the SFO extension project, BART acquired Steele Ranch as mitigation property for the San Francisco Garter Snake. We continue to work with BART staff, staff attorneys and outside counsel to resolve outstanding issues necessary to effectuate the transfer of Steele Ranch from BART to an appropriate land management entity. For some time, we have been negotiating with the State Department of Fish and Game (DFG), State Parks and the federal Fish and Wildlife Service (F&WS) in an effort to transfer the property, and have recently engaged the Resources Agency as well.