

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

AGENDAS FOR BOARD AND COMMITTEE MEETINGS

July 24, 2008
9:00 a.m.

A regular meeting of the Board of Directors and regular meetings of the Standing Committees will be held on Thursday, July 24, 2008, commencing at 9:00 a.m. All meetings will be held in the BART Board Room, Kaiser Center 20th Street Mall – Third Floor, 344 – 20th Street, Oakland, California.

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

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 July 10, 2008.* Board requested to authorize.
- B. Award of Contract No. 6M3086, Repair of Damaged Telecommunication Revenue Duct Bank along Bike Path at 7th and Maritime in Oakland.* 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. Sales and Use Tax Audit Services.*
 - a. Agreement with MuniServices, LLC, for Sales and Use Tax Audit Services (Agreement No. 6M8024). Board requested to authorize.
 - b. Resolution Authorizing MuniServices, LLC, to Examine the State Board of Equalization's Sales and Use Tax Records on Behalf of the District. Board requested to authorize.

- A-2. Grant of Fee and Easement Rights in Livermore to the Alameda County Flood Control and Water Conservation District, Zone 7.* Board requested to authorize.

- A-3. General Discussion and Public Comment.

ENGINEERING AND OPERATIONS COMMITTEE

Immediately following the Administration Committee Meeting

Director Fang, Chairperson

- B-1. Award of Contract No. 15PI-110, BART Earthquake Safety Program: Lake Merritt and MacArthur BART Stations and Church Street MUNI Station.* Board requested to authorize.

- B-2. Change Order to Agreement No. 6G1138, Legal Services, with Jay E. Powell, Esq., to Fund Ongoing Legal Services for Fiscal Year 2009 (C.O. No. 3).* Board requested to authorize.

- B-3. Change Order to Agreement No. 6G5739A, Emergency Restoration Services for the District's Fiber Optics Network, with Phase-3 Communications, Inc., to Increase Expenditure of Funds (C.O. No. 5).* Board requested to authorize.

- B-4. Stations Modernization Program Update.* For information.

- B-5. General Discussion and Public Comment.

PLANNING, PUBLIC AFFAIRS, ACCESS, AND LEGISLATION COMMITTEE

Director Ward Allen, Chairperson

NO REPORT.

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. Sales and Use Tax Audit Services.*

- a. Agreement with MuniServices, LLC, for Sales and Use Tax Audit Services (Agreement No. 6M8024). Board requested to authorize.
- b. Resolution Authorizing MuniServices, LLC, to Examine the State Board of Equalization's Sales and Use Tax Records on Behalf of the District. Board requested to authorize.

A-2. Grant of Fee and Easement Rights in Livermore to the Alameda County Flood Control and Water Conservation District, Zone 7.* Board requested to authorize.

B. ENGINEERING AND OPERATIONS COMMITTEE

B-1. Award of Contract No. 15PI-110, BART Earthquake Safety Program: Lake Merritt and MacArthur BART Stations and Church Street MUNI Station.* Board requested to authorize.

B-2. Change Order to Agreement No. 6G1138, Legal Services, with Jay E. Powell, Esq., to Fund Ongoing Legal Services for Fiscal Year 2009 (C.O. No. 3).* Board requested to authorize.

B-3. Change Order to Agreement No. 6G5739A, Emergency Restoration Services for the District's Fiber Optics Network, with Phase-3 Communications, Inc., to Increase Expenditure of Funds (C.O. No. 5).* Board requested to authorize.

B-4. Stations Modernization Program Update.* For information.

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

NO REPORT.

5. GENERAL MANAGER'S REPORT

NO REPORT.

6. BOARD MATTERS

A. Report of the District Security Advocacy Ad Hoc Committee.

B. Roll Call for Introductions.

7. GENERAL DISCUSSION AND PUBLIC COMMENT



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Wanda DeBorja</i>		GENERAL MANAGER ACTION REQ'D: Approve and forward to the Board	
DATE: c 7/15/08		BOARD INITIATED ITEM: No	
Originator/Prepared by: Chuck Rae Dept: Maintenance and Engineering	General Counsel	Controller/Treasurer	District Secretary
Signature/Date: <i>Chuck Rae 7-11-08</i>	<i>MP</i>	<i>eff acquisition 7/14/08</i>	<i>BARC [] 7/14/08</i>

TITLE:
REPAIR OF DAMAGED TELECOMMUNICATIONS REVENUE DUCT BANK ALONG BIKE PATH AT 7TH AND MARITIME STREETS IN OAKLAND

NARRATIVE:

PURPOSE: To obtain Board authorization for the General Manger to award Contract No. 6M3086 to Smith Denison Construction Co. (Inc.) of Livermore, CA in the amount of \$569,345 for repair of a damaged telecommunication revenue duct bank along the bike path at 7th and Maritime Streets in Oakland.

DISCUSSION: The District's telecommunication duct bank, buried between the aerial transition at 7th and Maritime Streets and the transbay tube approach in Oakland, has failed. The duct bank contains 72 conduits, three of which are occupied by fiber optic cables owned by BART and by commercial carriers. An attempt to install additional cables was not successful because of crushed conduits. Ground movement has severely crushed the conduits and rendered them useless. There also is a chance that the existing cables in the duct bank could become distorted and fail.

On April 10, 2008, Advance Notices to Bidders were mailed to 32 prospective bidders and contract documents were sent to 17 plan rooms and minority assistance organizations. The Contract was advertised on April 15, 2008, and a pre-bid meeting was held on May 8, 2008, with 10 prospective bidders attending. Bids were opened on June 3, 2008. The following four bids were received on June 3, 2008.

<u>BIDDERS</u>	<u>TOTAL BID</u>
Smith Denison Construction, Co. Livermore, Ca	\$569,345
Triple S Electric Co. Alameda, Ca	\$692,400
Emard Engineering Loomis, Ca	\$679,150
Underground Construction Co., Inc.	\$851,760

REPAIR OF DAMAGED TELECOMMUNICATIONS REVENUE DUCT BANK ALONG BIKE PATH AT 7TH AND MARITIME

Engineer's Estimate

\$800,000

Staff has determined that the bid by Smith Denison Construction Co. (Inc.) is responsive and that the bidder is responsible. The bid documents submitted by Smith Denison Construction Co. (Inc.) are satisfactory and examination of that firm's business experience and financial status shows a satisfactory condition. The bid by Smith Denison Construction Co. (Inc), which is approximately 29% below the engineer's estimate of \$800,000 is fair and reasonable.

FISCAL IMPACT: Funding for this Agreement will be provided from the Maintenance and Engineering FY 09 operating budget in the amount of \$569,345.

ALTERNATIVE: The alternative is not to authorize award of the Contract. If the Contract is not awarded the District will not be able to utilize the duct bank to its full capacity, thus impacting the District's ability to provide future cables and commercial fiber development.

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

MOTION: The General Manager is authorized to award Contract 6M3086 for repair of the Damaged Telecommunication Revenue Duct Bank Along Bike path at 7th and Maritime Streets in Oakland to Smith Denison Construction Co. (Inc.) for the bid price of \$569,345 pursuant to notification to be issued by the General Manager, subject to compliance with the District's protest procedures.



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Walter DelBene</i>		GENERAL MANAGER ACTION REQ'D: Approve and forwarded to the Board		
DATE: 7/16/08		BOARD INITIATED ITEM: No		
Originator/Prepared by: Hal Keiner Dept: Internal Audit Ext. 7570	General Counsel <i>David K. ...</i> 7/15/08 []	Controller/Treasurer <i>M. ...</i> 7/14/08 []	District Secretary []	BARC <i>...</i> 7-14-08 []
Signature/Date: <i>Hal Keiner</i> 7/15/08 []				
Status: Routed		Date Created: 05/30/2008		

TITLE:

Agreement with MuniServices, LLC for Sales and Use Tax Audit Services (Agreement No. 6M8024)

NARRATIVE:

PURPOSE:

1) To obtain Board authorization for the General Manager to execute Agreement No. 6M8024 with MuniServices, LLC to provide sales and use tax (sales tax) audit services to detect and document misallocations of "sales tax"; and 2) for the Board to adopt the attached Resolution authorizing MuniServices LLC to examine the State Board of Equalization's "sales tax" records on behalf of the District.

DISCUSSION:

Many California jurisdictions do not receive all of the "sales tax" revenues to which they are entitled due to both taxpayer reporting errors and processing errors. There are many reasons for these errors, such as businesses failing to correctly report their local collections to the State, and businesses misallocating tax collections among the many cities, counties and special districts in which they operate. When businesses fail to correctly report their collections to the State, the State may distribute the tax it has collected in error to other jurisdictions.

Currently, staff understands that MuniServices, LLC is the main provider of this specialized type of audit service to cities and the only provider of such services to transit districts like BART in California. Because of this, a competitive process was not employed in selecting the proposed contractor. Under this agreement, MuniServices, LLC will be used to identify all business sources of local "sales tax", and to track these businesses to ensure that appropriate taxes collected are returned to local jurisdictions. In the Bay Area, MuniServices, LLC advises that it is used by over 40 cities and counties to provide external sales tax audit services, detecting instances of misallocations and under reporting and working with State tax officials to correct these errors. MuniServices, LLC also provides these services for Alameda County Transit Improvement Authority, Santa Clara Valley Transportation Authority, Los Angeles MTA, Orange County Transit Authority, San Diego Council of Governments, and San Joaquin County Council of Governments.

MuniServices, LLC will detect instances of misallocation and under reporting and correct these

reporting errors for BART. The consultant will help maximize the District's income and minimize the lost revenue by detecting and documenting misallocations of "sales tax" within the State's allowable recovery period.

If the Board elects to contract for these services, Section 7056 of the State of California Revenue and Taxation Code requires the Board to pass a resolution allowing the consultant to represent the District for examining tax records of the State Board of Equalization.

In accordance with BART's Procurement Manual (Chapter VII-2), a valid basis exists to support the noncompetitive (sole source) award to MuniServices, LLC based on the following factors;

Unique Capability

MuniServices, LLC has the expertise and unique capability to provide services to both local governments and transit districts in California. In addition to "sales tax" collection processes common to all local taxing jurisdictions, there are processes that are unique to transit districts. Therefore, it is in BART's best interest to contract with a company that has demonstrated an ability to work with city, county and transit district data and has a proprietary data integration system that enables it to correctly identify taxpayer errors and omissions. Staff has determined that MuniServices, LLC is the only known firm that corrects "sales tax" errors applicable to transit districts such as BART.

Urgent Need

BART has neither the staff resources nor the in-house expertise required to monitor and audit all aspects of "sales tax" revenue unique to transit districts. By not performing this function, BART may be losing "sales tax" revenue.

Continuity

Staff understands that MuniServices, LLC has a well-established relationship with the State Board of Equalization (the taxing authority) and services most of California's largest "sales tax" receiving jurisdictions. Staff believes that other consultants would have to go through an extensive learning curve and relationship development to provide such a service; and,

Cost Reasonableness

The cost of MuniServices, LLC services is contingent upon the amount of revenue it collects for BART. MuniServices, LLC has stated that it determines the percentage of revenue it will take (its contingency fee) based on three factors: the total revenue stream under audit, the amount of data (including the number of accounts) that are to be reviewed, and the relative geographical size of the taxing authority. Based on these factors, staff has determined that BART is being charged the same percentage rate as other jurisdictions.

FISCAL IMPACT:

Payments to MuniServices, LLC are contingent upon the amount of revenue it collects for BART. MuniServices, LLC will perform this service on a contingency fee basis as follows: for revenue collections of \$0 to \$3,000,000 through the term of the contract a fee rate of 30% shall be applicable to recoveries within that range; for revenue collections of \$3,000,001 to \$10,000,000 through the term of the contract a fee of 25% shall be applicable to recoveries within that range; and for revenue collections over \$10,000,000 through the term of the contract a fee of 20% shall be applicable to recoveries within that range. No fee payment will be made to MuniServices, LLC until the associated revenue has been deposited in the District's bank account.

It is estimated that MuniServices, LLC's audit services will result in revenue collection of \$500,000 over a twelve-month period. At this level of revenue collected, BART would pay MuniServices LLC \$150,000 (\$500,000 at 30%) in fees each year and "net" \$350,000, which will be deposited in the District's General Fund.

ALTERNATIVE:

Not having this Agreement in place would result in BART forgoing additional annual revenue, currently estimated at \$350,000 "net".

RECOMMENDATION:

It is recommended that the Board adopt the following motions. The Office of the General Counsel will approve the Agreement as to form.

MOTION:

1. That the General Manager is authorized to execute Agreement No. 6M8024 with MuniServices, LLC to provide audit services to examine the State Board of Equalization's records to detect and document misallocations of sales and use tax. The Agreement covers an initial term of three years with options for two additional one-year terms. A contingency fee will be paid to MuniServices, LLC based upon the amount of tax revenue recovered.
2. That the Board adopt the attached Resolution authorizing MuniServices, LLC to examine the State Board of Equalization's sales and use tax records on behalf of the District.

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

In the Matter of Authorizing
Consultant MuniServices, LLC
to Examine Sales and Use Tax Records
at the State Board of Equalization on
behalf of the District

Resolution No. _____

WHEREAS, the State Board of Equalization (SBE) performs all functions incident to the administration and collection of local sales and use taxes; and

WHEREAS, the Board of Directors of the San Francisco Bay Area Rapid Transit District (District) adopted Resolution 4387 on January 10, 1991, authorizing the General Manager, or other officer or employee of the District designated by the Board, to examine sales and use tax records of SBE pertaining to sales and use taxes collected for the District by SBE, and

WHEREAS, Resolution 4387 did not address the authorization of BART's consultants to examine sales and use tax records of SBE, and

WHEREAS, Section 7056 of the California Revenue and Taxation Code allows the District to designate any person, other than an officer or employee, to examine sales and use tax records of SBE pertaining to sales and use taxes collected for the District by SBE provided certain conditions as required by Section 7056 are in the agreement (Agreement) with the designated person; and

WHEREAS, the Board of Directors of the District deems it desirable and necessary to designate MuniServices, LLC (Consultant) as an authorized representative of the District to examine confidential sales and use tax records of SBE pertaining to sales and use taxes collected by SBE for the District; and

WHEREAS, Section 7056 of the California Revenue and Taxation Code sets forth certain requirements and conditions for the disclosure of SBE records, and establishes criminal penalties for the unlawful disclosure of information contained in, or derived from, the sales and use tax records of SBE;

NOW, THEREFORE, BE IT RESOLVED that Consultant is designated to examine the sales and use tax records of SBE pertaining to sales and use taxes collected for the District by SBE. The Agreement between the District and Consultant shall comply with the requirements of Section 7056 of the California Revenue and Taxation Code, so that all of the following conditions are met; specifically consultant:

1. Will have an existing Agreement with the District to examine those sales and use tax records; and
2. Is required by that Agreement to disclose information contained in, or derived from, those sales and use tax records only to the District officer or employee authorized in accordance with Board Resolution 4387; and
3. Is prohibited by that Agreement from performing consulting services for a retailer during the term of that Agreement; and
4. Is prohibited by that Agreement from retaining the information in, or derived from, those sales and use tax records, after that Agreement has expired.

The information obtained by examination of SBE records shall be used only for purposes related to the collection of District sales or use taxes by SBE.

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EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL <i>Walter DeBenedictis</i>		GENERAL MANAGER ACTION REQ'D: Approve and forward to the Board		
DATE: c 7/15/08		BOARD INITIATED ITEM: No		
Originator/Prepared by: Paul Voix Dept: Real Estate <i>Paul Voix</i> Signature/Date: 7/14/08	General Counsel <i>MB</i> 7/11/08	Controller/Treasurer <i>W. P. ...</i> 7/11/08	District Secretary []	BARC <i>Walter DeBenedictis</i> 7/14/08 []

TITLE:

Grant of Fee and Easements in Livermore to the Alameda County Flood Control and Water Conservation District, Zone 7

NARRATIVE:

PURPOSE: To request that the Board authorize the transfer of easement and fee interests from portions of BART Parcel L-4002 to the Alameda County Flood Control and Water Conservation District, Zone 7.

DISCUSSION: The Alameda County Flood Control and Water Conservation District, Zone 7 (Zone 7) has plans for capital improvement project known as the Altamont Water Treatment Plant and Pipeline Project (Pipeline Project). The proposed plant will initially supply up to 24 million gallons per day of treated water per day to the Dublin, Pleasanton, and Livermore areas. The proposed pipeline will stretch approximately 11 miles from the new treatment plant in the Altamont hills to an existing delivery system at Kitty Hawk Road in Livermore. The Pipeline Project is scheduled for completion in 2009.

Zone 7 has approached BART with an offer to purchase certain property interests necessary for the Pipeline Project. All requested rights are within a larger parcel of 53.91 acres (Parcel L-4002) acquired from Dunn Properties Corporation in 1988 for consideration as a future site for a Livermore BART station and parking area; however, no proposed project with identifiable environmental impacts on the property has been developed to date. The rights requested by Zone 7 include an 8,507 +/- square foot parcel (L-4002X) in fee, two adjacent waterline easement areas totaling 15,394 +/- square feet (L-4002E1) and a 2,031 +/- square foot drainage easement (L-4002E2). Zone 7's requirements also include the temporary use of BART land for construction staging areas that is currently being accommodated by BART's permitting program.

BART staff has concluded that the proposed property interest transfers to Zone 7 would not materially diminish the viability of the remaining larger parcel to serve as a station and parking area, should the decision be made to build them. It would also leave enough property to exchange in the event BART decides to exchange property pursuant to a Property Exchange Agreement with the City of Livermore dated October 7, 2005, for another property immediately north of Interstate 580 that may also serve to accommodate a future BART Station.

An appraisal was completed on the subject parcels and staff has negotiated a sales price of

Grant of Fee and Easements in Livermore to the Alameda County Flood Control and Water Conservation District, Zone

\$160,710.00, which reflects fair market value. Zone 7 has agreed to pay this amount for the requested property rights. Board Resolution No. 305, adopted November 21, 1963, allows for the direct sale of parcels to public agencies for public use, without the need for auction or sealed bids.

An Environmental Impact Report (EIR) for the project was prepared by the lead agency, Alameda County Flood Control and Water Conservation District, and its Board of Directors certified the document and adopted the project and the Mitigation Monitoring and Reporting Plan on February 16, 2005. Staff has considered the EIR prepared by the lead agency and recommends the proposed transfer of fee and easement interests.

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

FISCAL IMPACT: BART will be paid \$160,710.00 for the sale of the fee simple and easement interests. The proceeds from the sale of the fee parcel total \$93,610.00, of which \$18,630.00 will be deposited in BART Fund 01C and programmed in the Financial Management System under project 98AR, Excess Land Sales. The remaining fee parcel proceeds, \$74,980.00, and proceeds from the easements, \$67,100.00, will be deposited to BART General Fund 030.

ALTERNATIVE: Do not approve the transfer and be subject to the taking of the parcels under eminent domain by Zone 7.

RECOMMENDATION: Adoption of the following motion.

MOTION: Adoption of the attached resolution.

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

In the matter of authorizing the grant of fee and easements to the
Alameda County Flood Control and Water Conservation District, Zone 7,
affecting BART Parcel No. L-4002
(Parcels L-4002X, L-4002E1 & L-4002E2)
_____ /

Resolution No. _____

RESOLVED by the Board of Directors of the SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT that said Board determines that the grant of fee and easements substantially as shown on the attached Exhibit "A" is the best interests of the District, and hereby authorizes the execution of deeds by the President or Vice President of the Board and the District Secretary or Assistant District Secretary on behalf of the District, in consideration for the sum of \$160,710.00.

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SECRETARY'S CERTIFICATE

I, KENNETH A. DURON, District Secretary, of the SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT, do hereby certify that the foregoing is a true copy of the original resolution adopted by the Board of Directors of the SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT at its meeting regularly called and held on _____ 2008, a majority of the members of said Board being present and voting therefor.

Dated this _____ day of _____, 2008.

Kenneth A. Duron, District Secretary
San Francisco Bay Area Rapid Transit District

EXHIBIT "A"

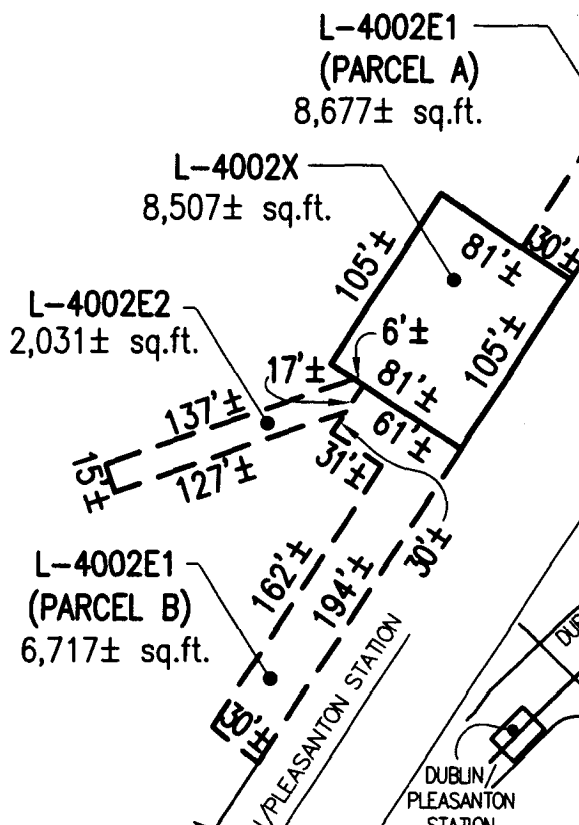
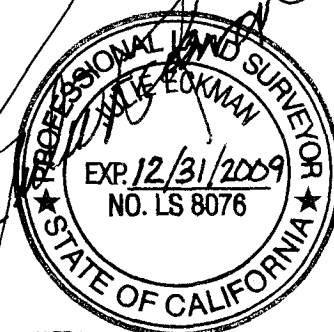
PARCELS L-4002X, L-4002E1, L-4002E2
CITY OF LIVERMORE
COUNTY OF ALAMEDA

SE CORNER
PARCEL ONE OF
PORTION L-4002

APN 904-0005-003-29

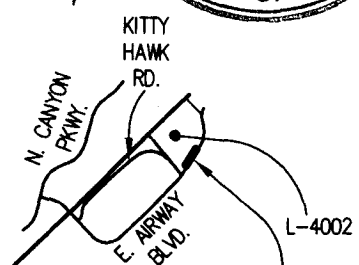
PORTION L-4002
SAN FRANCISCO BAY AREA
RAPID TRANSIT DISTRICT

88-213828 O.R.
PARCEL ONE



EAST AIRWAY BLVD.

STATE ROUTE 580



SITE

LEGEND

O.R. OFFICIAL RECORDS,
ALAMEDA COUNTY
sq.ft. SQUARE FEET



ZONE 7

ALAMEDA COUNTY FLOOD CONTROL
AND
WATER CONSERVATION DISTRICT

ALTAMONT PIPELINE
FEE PARCEL
TO BE ACQUIRED FROM
SAN FRANCISCO BAY AREA
RAPID TRANSIT DISTRICT

DRAWN: KJF	TRACED:	DATE: APRIL, 2007
REV'D: JE	DATE: 7/7/08	SCALE: 1" = 100'
CHECKED: LHF	FILE NO. RF-10047	SHEET NO. OF
APPROVED: JE		1 1

KITTY HAWK RD.

5.2 MILES TO DUBLIN/PLEASANTON STATION



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Marisa Schuler</i>		GENERAL MANAGER ACTION REQ'D: Approve and forward to the Board of Directors		
DATE: 7/15/08		BOARD INITIATED ITEM: No		
Originator/Prepared by: Thomas Horton Dept: TSD #4978 <i>Thomas Horton</i> Signature/Date: 7/14/08	General Counsel <i>Mark K...</i> 7/15/08	Controller/Treasurer <i>[Signature]</i> 7/15/08	District Secretary []	BART <i>[Signature]</i> 7/16/08
Status: Routed		Date Created: 07/02/2008		

TITLE:

Award of Contract No. 15PI-110, For BART Earthquake Safety Program: Lake Merritt and MacArthur BART Stations and Church Street MUNI Station

NARRATIVE:

PURPOSE:

To authorize the General Manager to award Contract No. 15PI-110, For BART Earthquake Safety Program: Lake Merritt and MacArthur BART Stations and Church Street MUNI Station, to Fibrwrap Construction, Inc. of San Francisco, California.

DISCUSSION:

The BART Earthquake Safety Program determined that seismic strengthening was required at the Lake Merritt and MacArthur BART Stations and at the BART-owned Church Street MUNI Station. At the Lake Merritt and Church Street Stations, the work includes wrapping certain structural columns with fiber reinforced polymer (FRP) casing and restoring the existing finishes. At the MacArthur Station, work includes creating a seismic joint in existing concrete slabs by sawcutting a groove and filling it with polystyrene.

Advance Notice to Bidders was mailed on May 22, 2008 to 170 firms. The Contract was advertised on May 23, 2008 and Contract Books were sent to 18 plan rooms. A total of 19 firms purchased copies of the Bid Documents. Two Pre-Bid Meetings were held on June 2, 2008 and June 16, 2008 with a total of 9 potential bidders attending. Two Bids were received. Bids were opened publicly on July 1, 2008. Tabulation of the Bids, including the Engineer's Estimate, is as follows:

<u>Bidder</u>	<u>Location</u>	<u>Bid</u>
Fibrwrap Construction, Inc.	San Francisco, CA	\$1,227,759.25
Monterey Mechanical	Oakland, CA	\$3,493,000
Engineer's Estimate		\$2,618,100

After review by the District staff, the apparent low Bid submitted by Fibrwrap Construction, Inc.

has been determined to be fair and reasonable and deemed to be responsive to the solicitation. Examination of this Bidder's business experience and financial capabilities has resulted in the determination that the Bidder is responsible.

FISCAL IMPACT:

Funding for \$1,227,759 for award of Contract No. 15PI-110 is included in the total project budget for the FMS #15PI, Stations Underground and SF Muni. The Office of the Controller/Treasurer certifies that funds are currently available to meet this obligation.

F/G 01F - Earthquake Safety G.O. Bond:
\$1,227,759

As of the month ending 5/25/08, \$4,000,000 is available for commitment from this fund source for this project, and BART has committed \$0 to date. There are no pending commitments in BART's financial management system. This action will commit \$1,227,759 leaving an uncommitted balance of \$2,772,241 in this fund source.

There is no fiscal impact on available unprogrammed District Reserves.

ALTERNATIVE:

The alternative is to not authorize award of the Contract. If the Contract is not awarded, BART will be unable to implement the seismic strengthening of these three stations.

RECOMMENDATION:

It is recommended that the Board adopt the following motion:

MOTION:

The General Manager is authorized to award Contract No. 15PI-110, For BART Earthquake Safety Program: Lake Merritt and MacArthur BART Stations and Church Street MUNI Station, to Fibrwrap Construction, Inc. for the Bid amount of \$1,227,759.25 pursuant to the notification to be issued by the General Manager and subject to the District's protest procedures.

FUNDING SUMMARY - EARTHQUAKE SAFETY PROGRAM

PROJECT ELEMENT	Baseline Budget	Current Forecast as of 5/29/08	REMARKS
			Updated for Contract 15PI-110
ENVIRONMENTAL, ENGINEERING, AND CONSTRUCTION MANAGEMENT			Underground and Muni Stations
GEC (Bechtel Team)	\$105,000,000	\$176,650,003	
Other GEC	\$81,478,000	\$0	
Subtotal GEC	\$186,478,000	\$176,650,003	
CM	\$61,498,000	\$54,542,137	
Environmental	\$1,042,796	\$2,061,892	
TOTAL E, E & CM	\$249,018,796	\$233,254,032	
CONSTRUCTION			
Transbay Tube			
Oakland Ventilation Structure	\$1,033,000	\$1,153,096	
Oakland Landside	\$17,970,000	\$10,699,433	
San Francisco Ferry Plaza			
SFTS (including Tube liner)	\$73,037,000	\$5,605,380	
Marine Vibro Demo	\$101,285,000	\$137,852,879	
Stitching	\$82,962,000	\$0	
Aerial Guideways			
West Oakland/North Oakland	\$112,923,000	\$132,254,000	
Fremont	\$178,224,000	\$159,046,000	
Concord	\$36,500,000	\$37,185,000	
Richmond	\$80,155,000	\$76,811,000	
San Francisco/Daly City	\$36,590,000	\$50,032,000	
Stations (18)	\$126,961,000	\$104,427,000	
Other Structures			
LMA	\$5,529,000	\$5,003,339	
Yds & Shops	\$12,436,000	\$22,318,000	
Parking Structures	\$14,437,000	\$16,252,000	
At Grade Trackway	\$22,361,000	\$0	
Systems	\$7,066,000	\$11,898,000	
TOTAL CONSTRUCTION	\$909,469,000	\$770,537,127	
PROGRAM COSTS			
Program Costs (Hazmat, ROW, Consult, Staff)	\$159,894,204	\$221,185,221	Includes Bond Cost & OCIP
Contingency	\$32,104,000	\$125,509,620	
TOTAL PROGRAM COSTS	\$191,998,204	\$346,694,841	
TOTAL FUNDING	\$1,350,486,000	\$1,350,486,000	Funding may increase w/Caltrans providing local match. Match will not be included in budget until formally received from Caltrans.



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Marc Delaney</i>		GENERAL MANAGER ACTION REQ'D:	
DATE: c 7/16/08		BOARD INITIATED ITEM: No	
Originator/Prepared by: Esther Low Dept: Office of the General Counsel <i>Esther Low</i> Signature/Date: 7/15/08	General Counsel <i>Andreaf...</i> 7/16/08	Controller/Treasurer <i>...</i> 7/16/08	District Secretary BART <i>Paul...</i> 7/16/08

CHANGE ORDER NO. 3 TO SERVICES AGREEMENT WITH JAY E. POWELL, ESQ.

NARRATIVE:

Purpose: To obtain Board authorization for the General Counsel to issue Change Order No. 3 to Agreement No. 6G1138 with Jay Powell for the provision of legal services.

Discussion: Jay Powell has been the District's primary attorney on telecommunications matters since 1994, when he was a partner with Pillsbury, Madison & Sutro, and has continued such work upon becoming a sole practitioner in 2000 under his initial agreement with the District (No. 6G1102). Mr. Powell has participated in negotiations and drafted licenses and other documents related to telecommunications projects involving fiber optic cable and wireless transmission equipment in the District's right of way. He is very familiar with the legal and operational considerations associated with such projects.

The District entered into Agreement No. 6G1138 with Mr. Powell in November 2004 for an amount not to exceed \$140,000. Change Order No. 1 added \$90,000 in FY 2007, and Change Order No. 2 added \$175,000 for FY 2008. Change Order No. 3 is needed to fund ongoing legal work, including but not limited to license negotiations for WiFi services throughout the BART system. It is estimated that an additional \$180,000 will be necessary to cover legal services for FY 2009.

Mr. Powell is uniquely qualified and the best person to provide these services because of his extensive experience with telecommunications matters generally and his specific familiarity with BART's current telecommunications agreements.

Fiscal Impact: Funding for the \$180,000 needed for Change Order No. 3 will be provided by the Maintenance and Engineering Department, Account No. 551-010.

The District has derived considerable revenue from the telecommunications program. For FY 2008, an estimated \$4.0 million will have been received from fiber agreements, and \$895,000 from cellular site agreements. In addition, approximately \$400,000 will have been received from carriers to pay BART staff support costs. For FY 2009, the estimated figures are \$4.7 million from fiber agreements, \$1.2 million from cellular site agreements, and \$400,000 for staff support costs.

Alternatives: Retain other counsel to provide legal services for the District's

JAY E. POWELL, ESQ.

telecommunications projects. A substantial period of time would be required for new counsel to become knowledgeable about the District's telecommunications agreements and with applicable laws and regulations, as well as District policies. Pending negotiations with the proposed WiFi provider would be jeopardized.

Recommendation: Adoption of the following motion.

Motion: The General Counsel is authorized to execute Change Order No. 3 to Agreement No. 6G1138 with Jay Powell for an amount not to exceed \$180,000.



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Marce Dearden</i>		GENERAL MANAGER ACTION REQ'D:		
DATE: c 7/18/08		BOARD INITIATED ITEM: No		
Originator/Prepared by: Chuck Rae Dept:	General Counsel <i>Andrew...</i>	Controller/Treasurer <i>William...</i>	District Secretary	BARC <i>Paul...</i>
Signature/Date <i>Chuck Rae 7-14-08</i>	<i>Andrew... 7/15/08</i>	<i>William... 7/17/08</i>	[]	<i>Paul... 7/16/08</i>
TITLE:				

AUTHORIZATION TO INCREASE EXPENDITURE OF FUNDS FOR SERVICE AGREEMENT No. 6G5739A, EMERGENCY RESTORATION SERVICE FOR FIBER OPTICS NETWORK

NARRATIVE:

PURPOSE: To authorize the General Manager to execute a change order to Agreement No. 6G5739A with Phase-3 Communications, Inc., of San Jose, California to increase the expenditure of funds for agreement No. 6G5739A, Emergency Restoration Services for the District's Fiber Optics Network by \$500,000.

DISCUSSION: Since 1994, the District has executed three Emergency Restoration Service agreements for the Commercial Telecommunications Revenue Program. The present agreement, 6G5739A, awarded on March 10, 2005 expires March 30, 2009. It has remaining funds of \$18,400. On May 10, 2008 there were four Commercial and two BART fiber cable failures attributed to a traction power fault at the Hayward Yard. The estimated costs for repair are \$350,000.

This incident and the continuing unpredictable nature of events that call for services under the Agreement prompt staff to seek an increase in authority for the expenditure of funds under this agreement in the amount of \$500,000, (\$350,000 for the Hayward Yard incident and \$150,000 to assure that resources are available to provide restoration services for the duration of the agreement).

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

FISCAL IMPACT: The estimated \$350,000 repair at Hayward Yard will be part of the insurance claim. The remaining authorization of \$150,000 is within the FY 09 budget for Telecommunications Revenue cost center 491 restoration contracts.

ALTERNATIVE: To not increase funding expenditure.

A request is currently being processed by Procurement for a new Agreement for on-call restoration services, however, the unpredictable nature of events that call for services

under the Agreement require that contingency plans be put in place to assure that resources are available to provide services until such time that a new Agreement is in place.

Continuing the services under the existing Agreement will assure the continued reliability of the fiber optic network and allow sufficient time for Engineering and Procurement to complete the solicitation process for a new Agreement to be awarded.

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

MOTION: The General Manager is authorized to execute a change order to Agreement No. 6G5739A, Emergency Restoration Services for Fiber Optics Network awarded to Phase-3 Communications, Inc. of San Jose, California, in the amount of \$500,000.

**EXECUTIVE DECISION DOCUMENT
ATTACHMENT
CONTRACT NO. 6G5739A**

July 14, 2008

CHANGE ORDER SUMMARY FORM

BACKGROUND

Name of Contractor: Phase-3 Communications, Inc.
Contract Number / NTP Date: 6G5739A / March 8, 2005
Contract Description: Emergency Restoration Services For Fiber Optic Network
Percent Complete (Thru 7/31/08): 83%

COST

Original Contract Amount: \$297,000

Change Orders:

Board Authorized CO No-5. increase of funds and 1 year extension	62%	\$183,000	
Other Than Board Authorized Change Orders Nos 1-4 for option years 1-3 And 30 day time extension	0%	\$0	
Subtotal:	62%	\$183,000	<u>\$183,000</u>

Revised Contract Amount: \$480,000

SCHEDULE

Original Contract Duration including Option years: 1095 days
Time Extension to Date: 395 days
Time Extension Due to this Change Order: 0 days
Revised Contract Duration: 1490 days

SUMMARY REASONS FOR THIS CHANGE ORDER

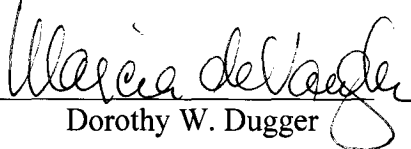
Provide funds to cover the repair costs for the May 10, 2008 Hayward Yard Electrical fault incident.

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

INTER-OFFICE COMMUNICATION

TO: Board of Directors **DATE:** July 18, 2008
FROM: General Manager
SUBJECT: Stations Modernization Program

This is to inform you that District staff will report at the Board's July 24th meeting on the Stations Modernization Program. The goals of the program are to identify the District's total improvement needs and formulate a ten-year program based on the anticipated long-term funding. This presentation will focus on FY09 proposed Stations Modernization Program, which consists of the replacement of the 480-volt switchgear at 15 stations and architectural improvements at four selected stations.


Dorothy W. Dugger

cc: Board Appointed Officers
Deputy General Manager
Executive Staff