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

In the Matter of Approval of the Regional Measure 2 (RM2) Implementing Agency Resolution of Project Compliance for the Reallocation of Remaining Warm Springs Extension Project RM2 Funds to the Warm Springs Wetland Mitigation Endowment as Required by the Metropolitan Transportation Commission.

Resolution No. _____

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

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

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

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

WHEREAS, San Francisco Bay Area Rapid Transit District (District) is an eligible sponsor of transportation projects in Regional Measure 2, Regional Traffic Relief Plan funds; and

WHEREAS, the Warm Springs Wetland Mitigation Endowment is eligible for consideration under Project 31, BART Warm Springs Extension, in the Regional Traffic Relief Plan of Regional Measure 2, as identified in California Streets and Highways Code Section 30914(c); and

WHEREAS, the Regional Measure 2 allocation request, attached hereto in the Initial Project Report and incorporated herein as though set forth at length, lists the project, purpose, schedule, budget, expenditure and cash flow plan for which District is requesting that MTC allocate Regional Measure 2 funds; now, therefore, be it

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

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

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

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

RESOLVED, that the District approves the updated Initial Project Report, attached to this resolution; and be it further

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

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

RESOLVED, that the District is an eligible sponsor of projects in the Regional Measure 2 Regional Traffic Relief Plan, Capital Program, in accordance with California Streets and Highways Code 30914(c); and be it further

RESOLVED, that the District is authorized to submit an application for Regional Measure 2 funds for the Warm Springs Wetland Mitigation Endowment in accordance with California Streets and Highways Code 30914(c); and be it further

RESOLVED, that the District certifies that the projects and purposes for which RM2 funds are being requested is in compliance with the requirements of the California Environmental Quality Act (Public Resources Code Section 2l000 et seq.), and with the State Environmental Impact Report Guidelines (l4 California Code of Regulations Section l5000 et seq.) and if relevant the National Environmental Policy Act (NEPA), 42 USC Section 4-1 et. seq. and the applicable regulations thereunder; and be it further

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

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

RESOLVED, that the District agrees to comply with the requirements of MTC's Transit Coordination Implementation Plan as set forth in MTC Resolution 3866; and be it further

RESOLVED, that the District indemnifies and holds harmless MTC, its Commissioners, representatives, agents, and employees from and against all claims, injury, suits, demands, liability, losses, damages, and expenses, whether direct or indirect (including any and all costs and expenses in connection therewith), incurred by reason of any act or failure to act of the District, its officers, employees or agents, or subcontractors or any of them in connection with its performance of services under this allocation of RM2 funds. In addition to any other remedy

authorized by law, so much of the funding due under this allocation of RM2 funds as shall reasonably be considered necessary by MTC may be retained until disposition has been made of any claim for damages, and be it further

RESOLVED, that the District shall, if any revenues or profits from any non-governmental use of property (or project) that those revenues or profits shall be used exclusively for the public transportation services for which the project was initially approved, either for capital improvements or maintenance and operational costs, otherwise the MTC is entitled to a proportionate share equal to MTC's percentage participation in the projects(s); and be it further

RESOLVED, that assets purchased with RM2 funds including facilities and equipment shall be used for the public transportation uses intended, and should said facilities and equipment cease to be operated or maintained for their intended public transportation purposes for its useful life, that the MTC shall be entitled to a present day value refund or credit (at MTC's option) based on MTC's share of the Fair Market Value of the said facilities and equipment at the time the public transportation uses ceased, which shall be paid back to MTC in the same proportion that Regional Measure 2 funds were originally used; and be it further

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

RESOLVED, that the District authorizes its Chief Financial Officer to execute and submit an allocation request for the right-of-way phase with MTC for Regional Measure 2 funds in the amount of $1,180,488.89 for the project, purposes and amounts included in the project application attached to this resolution; and be it further

RESOLVED, that the Chief Financial Officer is hereby delegated the authority to make non-substantive changes or minor amendments to the IPR as he/she deems appropriate.

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