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

BOARD MEETING AGENDA
January 22, 2015
5:00 p.m.

A regular meeting of the Board of Directors will be held at **5:00 p.m.** on Thursday, January 22, 2015, 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 regarding any matter on this agenda. 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 Public Comment.

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

Items placed under "consent calendar" 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 meetings, depending on the service requested. Please contact the Office of the District Secretary at 510-464-6083 for information.

Rules governing the participation of the public at meetings of the Board of Directors and Standing Committees are available for review on the District's website (http://www.bart.gov/about/bod), in the BART Board Room, and upon request, in person or via mail.

Meeting notices and agendas are available for review on the District's website (http://www.bart.gov/about/bod/meetings.aspx), and via email (https://public.govdelivery.com/accounts/CATRANBART/subscriber/new?topic_id=CATRANBART_1904) or via regular mail upon request submitted to the District Secretary. Complete agenda packets (in PDF format) are available for review on the District's website no later than 48 hours in advance of the meeting.

Please submit your requests to the District Secretary via email to BoardofDirectors@bart.gov; in person or U.S. mail at 300 Lakeside Drive, 23rd Floor, Oakland, CA 94612; fax 510-464-6011; or telephone 510-464-6083.

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 January 8, 2015.* Board requested to authorize.

   B. Award of Invitation for Bid No. 8945, Procurement of Modular Buildings.* Board requested to authorize.

3. PUBLIC COMMENT – 15 Minutes
   (An opportunity for members of the public to address the Board of Directors on matters under their jurisdiction and not on the agenda. An additional period for Public Comment is provided at the end of the Meeting.)

4. ENGINEERING AND OPERATIONS ITEMS
   Director McPartland, Chairperson

   A. (CONTINUED from December 11, 2014, Special Board Meeting) Customer Communications during Major Service Disruptions and Improvement Initiatives.* For information.

   B. Award of Contract No. 01RQ-120, Construction of Hayward Maintenance Complex Project Site, Track, and Systems.* Board requested to authorize.

   C. Service Planning for Special Events.* For information.

5. ADMINISTRATION ITEMS
   Director Keller, Chairperson

   A. San Francisco Bay Area Rapid Transit District Pay Schedules.* Board requested to authorize.

   B. Resolution in the Matter of Adoption of an Ordinance of the San Francisco Bay Area Rapid Transit District to Prohibit the Use of Electronic Smoking (Vapor) Devices (Electronic Cigarettes) on BART Trains, BART Facilities, and BART Property Whenever They Are Found within the District.* Board requested to adopt.

* Attachment available

C. Independent Auditor's Report on the Basic Financial Statements and Internal Control for the Fiscal Year Ended June 30, 2014.* For information.

6. PLANNING, PUBLIC AFFAIRS, ACCESS, AND LEGISLATION ITEMS
Director Raburn, Chairperson

A. Art Policy and Program: Issues, Opportunities, and Draft Goals and Objectives.* For information.

7. GENERAL MANAGER'S REPORT

A. Report of Activities, including Update of Roll Call for Introductions Items.

8. INDEPENDENT POLICE AUDITOR'S REPORT

A. Written Testimony for President's Task Force on Policing.* For information.

9. BOARD MATTERS

A. Board Member Reports.
(Board member reports as required by Government Code Section 53232.3(d) are available through the Office of the District Secretary. An opportunity for Board members to report on their District activities and observations since last Board Meeting.)

B. Roll Call for Introductions.
(An opportunity for Board members to introduce a matter for consideration at a future Committee or Board Meeting or to request District staff to prepare items or reports.)

C. In Memoriam.
(An opportunity for Board members to introduce individuals to be commemorated.)

10. PUBLIC COMMENT
(An opportunity for members of the public to address the Board of Directors on matters under their jurisdiction and not on the agenda.)

* Attachment available

DRAFT

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

Board of Directors
Minutes of the 1,724th Meeting
January 8, 2015

A regular meeting of the Board of Directors was held January 8, 2015, convening at 9:02 a.m. in the Board Room, 344 20th Street, Oakland, California. President Blalock presided; Kenneth A. Duron, District Secretary.

Directors present: Directors Josefowitz, Keller, Mallett, McPartland, Murray, Raburn, Radulovich, Saltzman, and Blalock.

Absent: None.

President Blalock called for a moment of silence to recognize the victims of the attack on the Charlie Hebdo offices in Paris.

President Blalock requested that Item 2-B, 2015 Standing Committee and Special Appointments, be removed from consent calendar.

Consent Calendar items brought before the Board were:

1. Approval of Minutes of the Meeting of December 18, 2014.

2. Resolution of Project Compliance and Initial Project Report for Metropolitan Transportation Commission Bridge Tolls for the East Contra Costa County BART Extension (eBART) Project.

3. Award of Contract No. 15QG-130, Replace Glass Panels at Coliseum, San Leandro, Bay Fair and South Hayward Stations Platform.

4. Award of Contract No. 15SV-130, BART Earthquake Safety Program Seismic Retrofit and Repairs at Various Locations.

Director Raburn made the following motions as a unit. Director Murray seconded the motions, which carried by unanimous acclamation. Ayes - 9: Directors Josefowitz, Keller, Mallett, McPartland, Murray, Raburn, Radulovich, Saltzman, and Blalock. Noes - 0.

1. That the Minutes of the Meeting of December 18, 2014, be approved.

2. Adoption of Resolution No. 5284, In the Matter of the Approval of a Resolution of Project Compliance and Initial Project Report for Regional Measure 1, Regional Measure 2, and AB1171 Bridge Toll Funds for the East Contra Costa County Rail Extension/eBART Project.

3. That the General Manager be authorized to award Contract No. 15QG-130, Replace Glass Panels at Coliseum, San Leandro, Bay Fair and South Hayward Stations Platforms, to Home Tech Remodeling, Inc., of Folsom, California, for the Bid price of $135,045.93, pursuant to notification to be issued by the General Manager, and subject to compliance with the District's protest procedures.

4. That the General Manager be authorized to award Contract No. 15SV-130, Earthquake Safety Program Seismic Retrofit and Repairs at Various Locations, to Valentine Corporation, for the Bid amount of $1,237,360.00, pursuant to notification to be issued by the General Manager, and subject to the District's protest procedures.

Consent Calendar report brought before the Board was:

1. Fiscal Year 2015 First Quarter Financial Report.

President Blalock brought the matter of 2015 Standing Committee and Special Appointments before the Board. The item was discussed. The BART and AC Transit Coordinating Committee was removed from the proposed list to return for consideration at a future date, and the Reserve Fund/Risk Management Ad Hoc Committee was extended to June 30, 2015. Director McPartland moved ratification of the 2015 Standing Committee and Special Appointments. Director Saltzman seconded the motion, which carried by unanimous acclamation. Ayes - 9: Directors Josefowitz, Keller, Mallett, McPartland, Murray, Raburn, Radulovich, Saltzman, and Blalock. Noes - 0. (The 2015 Standing Committee and Special Appointments are attached and hereby made a part of these Minutes.)

The following individuals addressed the Board.
Mr. Eddie Dillard
Mr. Roger Wykle

Director Keller, Chairperson of the Administration Committee, brought the matter of Strategic Energy Procurement Plan before the Board. Mr. Carter Mau, Assistant General Manager, Administration and Budgets, and Mr. Frank Schultz, Manager, Energy Division, presented the item. The item was discussed.

Director Keller exited the Meeting.

Director McPartland, Chairperson of the Engineering and Operations Committee, brought the matter of Award of Contract No. 02EE-140, Warm Springs Extension, Wetland Mitigation Site, before the Board. Ms. Zhiming Fan, Deputy Project Manager, and Mr. Paul Medved, Project Manager, Warm Springs Extension Program, presented the item. The item was discussed. Director Blalock moved that the General Manager be authorized to award Contract No. 02EE-140, Warm Springs Extension Wetland Mitigation Site, to Siteworks Construction Inc., for the Bid amount of $2,319,935.00, pursuant to notification to be issued by the General Manager, and subject to compliance with the District's protest procedures. Director Mallett seconded the motion, which carried by unanimous acclamation. Ayes - 8: Directors Josefowitz, Mallett,

McPartland, Murray, Raburn, Radulovich, Saltzman, and Blalock. Noes - 0. Absent – 1: Director Keller.

Director McPartland brought the matter of Award of Contract No. 05LD-110, Richmond Intermodal Improvement Project, before the Board. Mr. Tian Feng, District Architect, presented the item. Director Mallett moved that the General Manager be authorized to award Contract No. 05LD-110 to West Bay Builders, for the Bid price of $2,668,000.00, pursuant to notification to be issued by the General Manager, and subject to compliance with the District's protest procedures and Federal Transit Administration's requirements related to protests. The item was discussed. Director Blalock seconded the motion.

Director Keller re-entered the Meeting.

Mr. Eddie Dillard addressed the Board.

The motion carried by unanimous acclamation. Ayes - 9: Directors Josefowitz, Keller, Mallett, McPartland, Murray, Raburn, Radulovich, Saltzman, and Blalock. Noes - 0.

Director McPartland brought the matter of Agreement with Precision Escalator for Westinghouse Escalator Step Refurbishment (Agreement No. 6M3279) before the Board. Mr. Mike Lemon, Acting Assistant Superintendent, Power and Mechanical, presented the item. The item was discussed. Director Mallett moved that the General Manager be authorized to execute Agreement No. 6M3279, Westinghouse Escalator Steps Refurbishment, with Precision Escalator, Kenilworth, New Jersey, at a price not to exceed $882,000.00, plus applicable sales tax. Director Murray seconded the motion, which carried by unanimous acclamation. Ayes - 9: Directors Josefowitz, Keller, Mallett, McPartland, Murray, Raburn, Radulovich, Saltzman, and Blalock. Noes - 0.

Director McPartland brought the matter of Report on Train Destination Sign System before the Board. Mr. Aaron Weinstein, Department Manager, Marketing and Research, and Mr. Kevin Copley, Systems Engineering, presented the item. The item was discussed.

Director Raburn, Chairperson of the Planning, Public Affairs, Access, and Legislation Committee, had no report.

President Blalock called for the General Manager's Report. General Manager Grace Crunican reported on steps she had taken and activities and meetings she had participated in, noting the replacement of the last wools seats with vinyl and the uneventful New Year's Eve service, reminded the Board of upcoming events, and gave a report on the progress of outstanding Roll Call for Introductions items.

President Blalock brought the matter of Amendment to the San Francisco Bay Area Rapid Transit District Money Purchase Pension Plan to Provide for Additional Contributions for General Manager before the Board. Mr. Matthew Burrows, General Counsel, presented the item. The item was discussed. Director Raburn moved adoption of Resolution No. 5285, In the Matter of Amendment of the Money Purchase Pension Program. Director Keller seconded the motion, which carried by electronic vote. Ayes - 7: Directors Josefowitz, Keller, McPartland, Murray, Raburn, Saltzman, and Blalock. Noes – 1: Director Radulovich. Abstain – 1: Director Mallett.

Director Saltzman, Chairperson of the Board Rules Ad Hoc Committee, gave a brief report on the activities of the committee.

President Blalock called for Board Member Reports and Roll Call for Introductions.

Director Saltzman reported she would be riding the initial Late Night Service Bus 822.

Director Raburn reported he had attended a Three Kings event at Fruitvale Station and the California High Speed Rail groundbreaking event.

President Blalock, bringing In Memoriam before the Board, requested the Meeting be adjourned in memory of San Francisco Municipal Transportation Agency Board member Jerry Lee.

President Keller called for Public Comment. Mr. Chris Finn addressed the Board.

The Board Meeting was adjourned at 11:51 a.m. in memory of Mr. Jerry Lee.

Kenneth A. Duron
District Secretary

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT
ORGANIZATION OF COMMITTEES AND SPECIAL APPOINTMENTS

STANDING COMMITTEES

ADMINISTRATION COMMITTEE */**
Joel Keller, Chairperson — Rebecca Saltzman, Vice Chairperson

ENGINEERING AND OPERATIONS COMMITTEE */**
John McPartland, Chairperson — Gail Murray, Vice Chairperson

PLANNING, PUBLIC AFFAIRS, ACCESS, AND LEGISLATION COMMITTEE */**
Robert Raburn, Chairperson — Zakhary Mallett, Vice Chairperson

SPECIAL/AD HOC COMMITTEES

PERSONNEL REVIEW SPECIAL COMMITTEE**
Thomas M. Blalock — Joel Keller — Tom Radulovich

WAYSIDE SAFETY AD HOC COMMITTEE (Sunset 12/31/15 unless extended)
Tom Radulovich, Chairperson — Nicholas Josefowitz — John McPartland — Rebecca Saltzman

LABOR NEGOTIATIONS REVIEW AD HOC COMMITTEE (Sunset 06/30/15 unless extended)
Rebecca Saltzman, Chairperson — Nicholas Josefowitz — Zakhary Mallett — Gail Murray

RESERVE FUND/RISK MANAGEMENT AD HOC COMMITTEE (Sunset 06/30/15 unless extended)
Joel Keller — Gail Murray — Rebecca Saltzman

RULES OF THE BOARD OF DIRECTORS AD HOC COMMITTEE
Joel Keller — Zakhary Mallett — Tom Radulovich — Rebecca Saltzman

ENVIRONMENTAL/SUSTAINABILITY AD HOC COMMITTEE
Robert Raburn, Chairperson — Nicholas Josefowitz — Tom Radulovich — Rebecca Saltzman

SPECIAL APPOINTMENTS - LIAISON

AMERICANS WITH DISABILITIES ACT (ADA) LIAISON
Robert Raburn, Primary — John McPartland, Alternate

CONTRA COSTA TRANSPORTATION AUTHORITY** LIAISON
Gail Murray, Primary — Joel Keller, Alternate

SAN FRANCISCO TRANSPORTATION AUTHORITY** LIAISON
Tom Radulovich, Primary — Nicholas Josefowitz, Alternate

LIAISONS TO STATIONS IN SAN MATEO COUNTY

Daly City Station	Tom Radulovich
Colma Station	Robert Raburn
South San Francisco	John McPartland
San Bruno Station	Zakhary Mallett
San Francisco International Airport Station	Nicholas Josefowitz
Millbrae Station	Joel Keller

* All Directors are members of this Committee (Thomas M. Blalock, Nicholas Josefowitz, Joel Keller, Zakhary Mallett, John McPartland, Gail Murray, Robert Raburn, Tom Radulovich and Rebecca Saltzman)
** Brown Act Committee, subject to public meeting requirements.
*** Brown Act Board, subject to public meeting requirements.

Ratified: January 8, 2015

SAN FRANISCO BAY AREA RAPID TRANSIT DISTRICT
ORGANIZATION OF COMMITTEES AND SPECIAL APPOINTMENTS

SPECIAL APPOINTMENTS – EXTERNAL

ALAMEDA COUNTY TRANSPORTATION COMMISSION **
Thomas M. Blalock, Primary John McPartland, Alternate

ALTERNATE REPRESENTATIVE TO THE AMERICAN PUBLIC TRANSPORTATION ASSOCIATION BOARD OF DIRECTORS
Joel Keller

CAPITOL CORRIDOR JOINT POWERS BOARD***
Nicholas Josefowitz, San Francisco County
Zakhary Mallett, Contra Costa County
Gail Murray, Contra Costa County
Robert Raburn, Alameda County
Tom Radulovich, San Francisco County
Rebecca Saltzman, Alameda County
Joel Keller, Alternate Contra Costa County
John McPartland, Alternate Alameda County

DIRIDON STATION AREA JOINT POLICY ADVISORY BOARD (City of San Jose)**
Thomas M. Blalock

OAKLAND AIRPORT CONNECTOR JOINT ADMINISTRATIVE COMMITTEE**
Robert Raburn

EMERYVILLE-BERKELEY-OAKLAND TRANSPORTATION STUDY POLICY ADVISORY COMMITTEE**
Zakhary Mallett Rebecca Saltzman, Alternate

OVERSIGHT BOARD TO SUCCESSOR AGENCY OF SAN FRANCISCO REDEVELOPMENT AGENCY***
Tom Radulovich

PLEASANT HILL BART STATION LEASING AUTHORITY BOARD OF DIRECTORS**
Joel Keller Gail Murray

SILICON VALLEY RAPID TRANSIT CORRIDOR/WARM SPRINGS BART EXTENSION POLICY ADVISORY BOARD**
Joel Keller John McPartland
Thomas M. Blalock, appointed by Alameda County Transportation Commission

SOUTH HAYWARD BART STATION ACCESS AUTHORITY**
Thomas M. Blalock John McPartland Rebecca Saltzman, Alternate

TRI-VALLEY REGIONAL RAIL POLICY WORKING GROUP**
John McPartland, Chairperson Gail Murray

WEST CONTRA COSTA TRANSPORTATION ADVISORY COMMITTEE (WCCTAC)**
Zakhary Mallett, Primary Joel Keller, Alternate

** Brown Act Committee, subject to public meeting requirements.
*** Brown Act Board, subject to public meeting requirements.

NOTE: BART Directors discharging liaison functions do not serve as members of either a committee of BART or the other Organization, nor as members of a joint committee. Any action on behalf of BART must be taken by the full Board.

Ratified: January 8, 2015

EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL:				GENERAL MANAGER ACTION REQ'D: APPROVE AND FORWARD TO THE BOARD OF DIRECTORS
DATE: c 1/14/15				BOARD INITIATED ITEM: No
Originator/Prepared by: Susan Presley Dept: Rolling Stock and Shops Signature/Date: 12/16/14	General Counsel 12/24/14	Controller/Treasurer	District Secretary [ ]	BARC 1/12/15 [ ]

TITLE:

INVITATION FOR BID NO. 8945 - PROCUREMENT OF MODULAR BUILDINGS

NARRATIVE:

PURPOSE:

To obtain Board authorization for the General Manager to award Invitation for Bid No. 8945 for the purchase of three (3) modular buildings to Mod Space Corporation, Hayward, CA in the amount of $204,824 including all applicable taxes.

DISCUSSION:

The District is in the process of procuring 775 new rail vehicles to replace its existing fleet. All of the new cars will be delivered to the Hayward test track where they will undergo their initial inspection and testing. These modular buildings are being purchased to serve as working office spaces during the test phase and will be utilized by both BART staff and Bombardier personnel who must be on-site during the process.

A notice requesting bids was published on October 8, 2014 and bid requests were mailed to six (6) prospective bidders. Bids were opened on October 28, 2014. The following bids were received:

BIDDER	Quantity	Unit Price	Grand Total including 9.5% Sales Tax
Design Space	3	$169,032	$185,090
Mod Space	3	$187,054	$204,824

Independent cost estimate by BART staff: $283,546.74, including applicable sales tax.

Staff has determined that the apparent low bidder, Design Space submitted a non-responsive bid. Staff has also determined that the price submitted by the next lowest bidder, Mod Space Corporation to be fair and reasonable based upon prior purchases and the independent cost estimate by BART staff.

Delivery of the modular buildings are scheduled to commence within one hundred and twenty (180) days after award of the Contract.

Pursuant to the revised DBE Program, the Office of Civil Rights is utilizing race and gender neutral efforts for Procurement contracts. Therefore, no DBE goal was set for this Contract.

FISCAL IMPACT:

Funding of $204,824 for the award of IFB No. 8945 is included in the total project budget for FMS No. 40FA000 – 775 Car Acquisition Planning. The Office of Controller/Treasurer certifies that funds are currently available to meet this obligation. The following table depicts funding assigned to the referenced project since October 2013, and is included in totality to track funding history against spending authority. Funds needed to meet this request will be expended from a combination of these sources as listed.

Fund Number	Fund Description	Fund Source	Funded Amount
353K	CA-05-0236 FG MOD-FY09	FTA	$12,565,777
3602	FY13 Cap Improve FG/SOGR 5337	FTA	$500,000
3603	FY14 Cap Improve SOGR 5337F	FTA	$500,000
6014	Bridge Toll Alloc 09387205	Regional	$3,141,444
656J	VTA Car Procurement	Local	$9,826,994
8504	System Improv. Reserve	BART	$10
851W	FY07-11 Capital Allocation	BART	$15,172,390
8526	FY14 Operating Allocation	BART	$9,500,000
Total			$51,206,615

As of November 12, 2014, $51,206,615 is the total budget for this project. BART has expended $27,296,244, committed $4,270,004 and reserved $487,275 to date for other actions. This action will commit $204,824 leaving an available fund balance of $18,948,268 in this project.

There is no fiscal impact on available unprogrammed District Reserves.

ALTERNATIVE:

Procurement of the modular buildings is necessary to conduct testing of the new revenue vehicles at the Hayward Test Track. The only alternative is to rebid and risk the chance of not being ready for the arrival of the new vehicles, which will result in a schedule delay.

RECOMMENDATIONS:

On the basis of analysis by staff and certification by the Controller/Treasurer that the funds are available, it is recommended that the Board adopt the following motion:

MOTION:

The General Manager is authorized to award IFB No. 8945 for the Procurement of three (3) Modular Buildings to Mod Space Corporation, for a price of $204,824, including all applicable taxes, subject to compliance with the District's protest procedures and FTA's requirements related to protest procedures.

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

MEMORANDUM

TO: Board of Directors **DATE:** January 15, 2015

FROM: General Manager

SUBJECT: E&O Agenda Item #4.A: Customer Communications During Major Service Disruptions and Improvement Initiatives – For Information

The subject item was continued at the December 4, 2014 Board meeting. At the January 22nd Board meetng, staff will discuss the attached presentation on customer communications during major service delays and improvement initiatives that have been implemented or are planned for future implementation.

The presentation is the result of an inter-departmental committee that included staff from the Transportation, Computer Systems Engineering and Communications departments, and the Office of the Chief Information Officer.

If you have any questions, please contact Chief Transportation Officer Roy Aguilera at (510) 464-6797.

Grace Crunican

Attachments

cc: Board Appointed Officers
Deputy General Manager
Executive Staff

ba

EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: Grace DeVaughn		GENERAL MANAGER ACTION REQ'D: Approve and forward to the Board		
DATE: 1/14/15		BOARD INITIATED ITEM: No		
Originator/Prepared by: Tim Kempf Dept: Planning and Development Signature/Date: 1/12/15	General Counsel 1/13/15 [ ]	Controller/Treasurer [ ]	District Secretary [ ]	BARC 1/15/15 [ ]
Status: Routed		Date Created: 12/24/2014		

TITLE:

Award of Contract No. 01RQ-120 for Construction of Hayward Maintenance Complex Project Site, Track and Systems

NARRATIVE:

PURPOSE: To obtain Board authorization for the General Manager to award Contract No. 01RQ-120 for Construction of Hayward Maintenance Complex Project Site, Track and Systems to Proven Management, Inc., Berkeley, CA.

DISCUSSION: The Hayward Maintenance Complex Project (HMC) was adopted by the BART Board of Directors on May 26, 2011. The Project will provide for expanded and enhanced maintenance complex facilities necessary to support, in part, BART's future system demands, including the new BART revenue vehicles and the Silicon Valley Extension Project. The HMC Project consists of the acquisition of and improvements to three parcels currently containing four warehouse buildings on the west side of the existing Hayward Yard. Improvement elements include a new Vehicle-Level Overhaul Shop, a new Component Repair Shop, an enhanced Central Warehouse, an enhanced Non-Revenue Vehicle Shop and new Storage Area, as well as new trackwork that provides access to these facilities.

The scope of this Contract includes the construction of new special trackwork, systems, utility relocation, and site features such as retaining walls, soundwalls, and extensive earthwork in order to accommodate this new trackwork. Reference Attachment 01RQ-120 Site Plan.

On October 31, 2014, an Advance Notice to Bidders was mailed to 173 prospective bidders. Contract Documents were sent to 22 plan rooms. The Contract was advertised on October 31, 2014 in local publications. A total of 27 firms purchased copies of the Contract Documents. A pre-bid meeting and site visit were conducted on November 19, 2014 with 68 prospective bidders attending. Bids were publicly opened on December 16, 2014. The tabulation of Bids received, and the Engineer's Estimate, are as follows:

Bidder	Location	Total Bid Price
Proven Management, Inc.	Berkeley, CA	$18,769,845
Granite Rock Company	San Jose, CA	$20,001,428
DMZ Transit, JV	Concord, CA	$21,749,000
Shimmick / Stacy and Whitbeck, JV	Alameda, CA	$22,581,000

Engineer's Estimate		$20,700,000

After review by District staff, the apparent low bid submitted by Proven Management, Inc., was deemed responsive to the solicitation. Furthermore, a review of the Bidder's license, business experience and financial capabilities has resulted in a determination that the Bidder is responsible. The Bid Price of $18,769,845 was determined to be fair and reasonable.

This contract was advertised pursuant to the DBE Program requirements. The Office of Civil Rights reviewed the scope of work for this contract and determined that there were subcontracting opportunities; therefore, a DBE participation goal of 25% was set for this contract The low bidder, Proven Management, Inc., committed to subcontracting 26.8% to DBEs. The DBE participation goal for this contract was met.

FISCAL IMPACT:

Funding of $18,769,845 for the award of Contract No. 01RQ-120 is included in the total project budget for 01RQ002, HMC - Site, Track and Systems. The Office of the Controller/Treasurer certifies that funds are currently available to meet this obligation. The following table depicts funding assigned to the referenced project since December 2014, and is included in totality to track funding history against spending authority. Funds needed to meet this request will be expended from a combination of these sources as listed:

Fund No.	Source	Fund Description	Amount
F/G 3007	Federal	FTA	$33,935,400
F/G 8524	BART	FY12 Operating Capital Alloc	$ 4,396,691
TOTAL			$38,332,091

As of December 28, 2014, $38,332,091 is the total budget for this project. BART has expended $0.00 and committed $0.00 to date. This action will commit $18,769,845, leaving an available fund balance of $19,562,246 in these fund sources for this project.

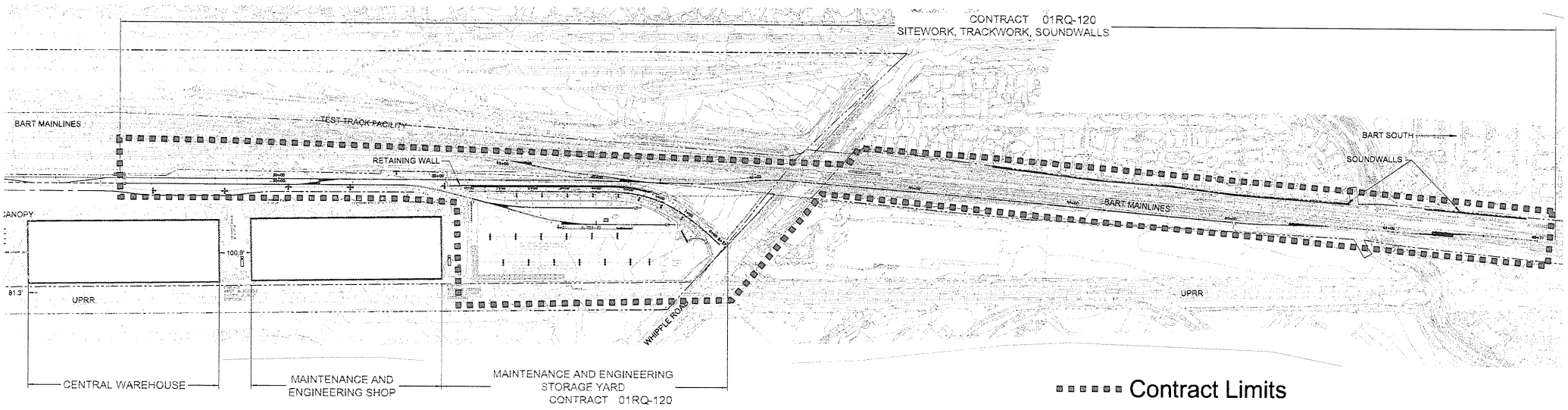
There is no fiscal impact on available un-programmed District Reserves.

ALTERNATIVES: The alternatives are to decline to award the Contract, or rebid. Not awarding the Contract would result in no new trackwork that would lead revenue and non-revenue vehicles from the existing BART mainline to the new HMC facilities, which would make these new facilities as well as the overall concept of the HMC Project unavailable for use by the new BART revenue vehicles and non-revenue vehicles. Rebidding the Contract would result in delays to execution of the work, potentially resulting in increased Project costs due to those delays. Additionally, rebidding the Contract would result in impacts to the testing and commissioning of the new BART revenue vehicles.

RECOMMENDATION: Adoption of the following motion.

MOTION: The General Manager is authorized to award Contract No. 01RQ-120 for Construction of the Hayward Maintenance Complex Project Site, Track and Systems to Proven Management, Inc., for the total Bid Price of $18,769,845, pursuant to notification to be issued by the General Manager, subject to the District's protest procedures and FTA requirements related to protests.

Contract 01RQ-120 Site Plan



SITE PLAN

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

MEMORANDUM

TO: Board of Directors **DATE:** January 15, 2015

FROM: General Manager

SUBJECT: E&O Agenda Item #4.C: Service Planning for Special Events – For Information

At the January 22, 2015 Board meeting, staff will discuss the attached presentation on Service Planning for Special Events. The discussion will include the various types of special events, the event planning process, service delivery tools, challenges and, lessons learned.

If you have any questions, please contact John McCormick, Group Manager Operations Planning and Support, at (510) 464-7557.

Grace Crunican

Attachments

cc: Board Appointed Officers
Deputy General Manager
Executive Staff

EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL:		GENERAL MANAGER ACTION REQ'D:		
DATE: c - 1/14/15		BOARD INITIATED ITEM: No		
Originator/Prepared by: Patrice McElroy Dept: Human Resources Signature/Date: 1/14/15	General Counsel 1/14/15 [ ]	Controller/Treasurer [ ]	District Secretary [ ]	BARC 1-14-15 [ ]

TITLE:

APPROVAL OF THE DISTRICT'S PAY SCHEDULES

NARRATIVE:

PURPOSE:

To approve base pay schedules for all District employees that were in effect during the periods January 2009 through December 2013 and January 1, 2015 to the present in a form prescribed by CalPERS.

DISCUSSION:

The District contracts with the California Public Employee Retirement System (CalPERS) for employee retirement benefits. CalPERS' rules control whether compensation qualifies as reportable to CalPERS for purposes of the retirement calculation. CalPERS' rules regarding pay schedules now require that in order for this element of compensation to be reportable for purposes of the retirement calculation these pay schedules be formally approved by the Board, be publicly available (e.g. the District website) and include each position title and the pay rate.

In 2014, District staff was advised by CalPERS' staff that it should have the then current pay schedule and subsequent schedules formally approved by the Board in the required format. As a result, on July 10, 2014, the Board was asked to approve the pay schedule in effect on January 1, 2014. CalPERS' staff have since modified their instruction and have requested that District staff have the Board formally approve pay schedules in the required format dating back to 2009, conforming to the beginning of the period for which District payroll practices were recently audited by CalPERS.

Three different tables are needed to document base pay compensation changes over these time frames. Two (Attachments A and B) cover the base pay schedules in effect from January 2009 through December 2013. One (Attachment C) reflects the base pay schedule in effect on January 1, 2015. It is important to note these tables do not make changes to compensation for any District employee. They reflect negotiated salary changes with each union already approved by the Board through its ratification of the collective bargaining agreements (CBA's). The pay bands for non-represented employees have been approved by the Board as part of the annual budget resolutions. Staff requests that the Board approve the following tables:

Attachment A: Pay schedule in effect as of January 1, 2009;

Attachment B: Pay Schedules in effect as of July 1 and 5, 2013 (some CBA's were effective 7/1/13 and some on 7/5/13 which is detailed in the attachment); and
Attachment C: Pay Schedule in effect as of January 1, 2015

Since the Board has already approved the pay schedule in effect January 1, 2014 it is not necessary to include that schedule again in this item.

FISCAL IMPACT:

There is no fiscal impact to the District for this proposed action.

ALTERNATIVES:

To not approve the action. However, failure to do so may result in CalPERS' disqualification of pay as "compensation earnable" for reporting and determination of District employees' retirement benefits.

RECOMMENDATION:

Approval of the following motion.

MOTION:

The Board approves the base pay schedules in effect January 1, 2009 (Attachment A), July 1, 2013 and July 5, 2013 (Attachment B) and January 1, 2015 (Attachment C).

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

BOARD MEETING AGENDA
January 22, 2015
5:00 p.m.

A regular meeting of the Board of Directors will be held at **5:00 p.m.** on Thursday, January 22, 2015, 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 regarding any matter on this agenda. 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 Public Comment.

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

Items placed under "consent calendar" 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 meetings, depending on the service requested. Please contact the Office of the District Secretary at 510-464-6083 for information.

Rules governing the participation of the public at meetings of the Board of Directors and Standing Committees are available for review on the District's website (http://www.bart.gov/about/bod), in the BART Board Room, and upon request, in person or via mail.

Meeting notices and agendas are available for review on the District's website (http://www.bart.gov/about/bod/meetings.aspx), and via email (https://public.govdelivery.com/accounts/CATRANBART/subscriber/new?topic_id=CATRANBART_1904) or via regular mail upon request submitted to the District Secretary. Complete agenda packets (in PDF format) are available for review on the District's website no later than 48 hours in advance of the meeting.

Please submit your requests to the District Secretary via email to BoardofDirectors@bart.gov; in person or U.S. mail at 300 Lakeside Drive, 23rd Floor, Oakland, CA 94612; fax 510-464-6011; or telephone 510-464-6083.

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 January 8, 2015.* Board requested to authorize.

   B. Award of Invitation for Bid No. 8945, Procurement of Modular Buildings.* Board requested to authorize.

3. PUBLIC COMMENT – 15 Minutes
   (An opportunity for members of the public to address the Board of Directors on matters under their jurisdiction and not on the agenda. An additional period for Public Comment is provided at the end of the Meeting.)

4. ENGINEERING AND OPERATIONS ITEMS
   Director McPartland, Chairperson

   A. (CONTINUED from December 11, 2014, Special Board Meeting) Customer Communications during Major Service Disruptions and Improvement Initiatives.* For information.

   B. Award of Contract No. 01RQ-120, Construction of Hayward Maintenance Complex Project Site, Track, and Systems.* Board requested to authorize.

   C. Service Planning for Special Events.* For information.

5. ADMINISTRATION ITEMS
   Director Keller, Chairperson

   A. San Francisco Bay Area Rapid Transit District Pay Schedules.* Board requested to authorize.

   B. Resolution in the Matter of Adoption of an Ordinance of the San Francisco Bay Area Rapid Transit District to Prohibit the Use of Electronic Smoking (Vapor) Devices (Electronic Cigarettes) on BART Trains, BART Facilities, and BART Property Whenever They Are Found within the District.* Board requested to adopt.

* Attachment available

C. Independent Auditor's Report on the Basic Financial Statements and Internal Control for the Fiscal Year Ended June 30, 2014.* For information.

6. PLANNING, PUBLIC AFFAIRS, ACCESS, AND LEGISLATION ITEMS
Director Raburn, Chairperson

A. Art Policy and Program: Issues, Opportunities, and Draft Goals and Objectives.* For information.

7. GENERAL MANAGER'S REPORT

A. Report of Activities, including Update of Roll Call for Introductions Items.

8. INDEPENDENT POLICE AUDITOR'S REPORT

A. Written Testimony for President's Task Force on Policing.* For information.

9. BOARD MATTERS

A. Board Member Reports.
(Board member reports as required by Government Code Section 53232.3(d) are available through the Office of the District Secretary. An opportunity for Board members to report on their District activities and observations since last Board Meeting.)

B. Roll Call for Introductions.
(An opportunity for Board members to introduce a matter for consideration at a future Committee or Board Meeting or to request District staff to prepare items or reports.)

C. In Memoriam.
(An opportunity for Board members to introduce individuals to be commemorated.)

10. PUBLIC COMMENT
(An opportunity for members of the public to address the Board of Directors on matters under their jurisdiction and not on the agenda.)

* Attachment available

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

Board of Directors
Minutes of the 1,724th Meeting
January 8, 2015

A regular meeting of the Board of Directors was held January 8, 2015, convening at 9:02 a.m. in the Board Room, 344 20th Street, Oakland, California. President Blalock presided; Kenneth A. Duron, District Secretary.

Directors present: Directors Josefowitz, Keller, Mallett, McPartland, Murray, Raburn, Radulovich, Saltzman, and Blalock.

Absent: None.

President Blalock called for a moment of silence to recognize the victims of the attack on the Charlie Hebdo offices in Paris.

President Blalock requested that Item 2-B, 2015 Standing Committee and Special Appointments, be removed from consent calendar.

Consent Calendar items brought before the Board were:

1. Approval of Minutes of the Meeting of December 18, 2014.

2. Resolution of Project Compliance and Initial Project Report for Metropolitan Transportation Commission Bridge Tolls for the East Contra Costa County BART Extension (eBART) Project.

3. Award of Contract No. 15QG-130, Replace Glass Panels at Coliseum, San Leandro, Bay Fair and South Hayward Stations Platform.

4. Award of Contract No. 15SV-130, BART Earthquake Safety Program Seismic Retrofit and Repairs at Various Locations.

Director Raburn made the following motions as a unit. Director Murray seconded the motions, which carried by unanimous acclamation. Ayes - 9: Directors Josefowitz, Keller, Mallett, McPartland, Murray, Raburn, Radulovich, Saltzman, and Blalock. Noes - 0.

1. That the Minutes of the Meeting of December 18, 2014, be approved.

2. Adoption of Resolution No. 5284, In the Matter of the Approval of a Resolution of Project Compliance and Initial Project Report for Regional Measure 1, Regional Measure 2, and AB1171 Bridge Toll Funds for the East Contra Costa County Rail Extension/eBART Project.

3. That the General Manager be authorized to award Contract No. 15QG-130, Replace Glass Panels at Coliseum, San Leandro, Bay Fair and South Hayward Stations Platforms, to Home Tech Remodeling, Inc., of Folsom, California, for the Bid price of $135,045.93, pursuant to notification to be issued by the General Manager, and subject to compliance with the District's protest procedures.

4. That the General Manager be authorized to award Contract No. 15SV-130, Earthquake Safety Program Seismic Retrofit and Repairs at Various Locations, to Valentine Corporation, for the Bid amount of $1,237,360.00, pursuant to notification to be issued by the General Manager, and subject to the District's protest procedures.

Consent Calendar report brought before the Board was:

1. Fiscal Year 2015 First Quarter Financial Report.

President Blalock brought the matter of 2015 Standing Committee and Special Appointments before the Board. The item was discussed. The BART and AC Transit Coordinating Committee was removed from the proposed list to return for consideration at a future date, and the Reserve Fund/Risk Management Ad Hoc Committee was extended to June 30, 2015. Director McPartland moved ratification of the 2015 Standing Committee and Special Appointments. Director Saltzman seconded the motion, which carried by unanimous acclamation. Ayes - 9: Directors Josefowitz, Keller, Mallett, McPartland, Murray, Raburn, Radulovich, Saltzman, and Blalock. Noes - 0. (The 2015 Standing Committee and Special Appointments are attached and hereby made a part of these Minutes.)

The following individuals addressed the Board.
Mr. Eddie Dillard
Mr. Roger Wykle

Director Keller, Chairperson of the Administration Committee, brought the matter of Strategic Energy Procurement Plan before the Board. Mr. Carter Mau, Assistant General Manager, Administration and Budgets, and Mr. Frank Schultz, Manager, Energy Division, presented the item. The item was discussed.

Director Keller exited the Meeting.

Director McPartland, Chairperson of the Engineering and Operations Committee, brought the matter of Award of Contract No. 02EE-140, Warm Springs Extension, Wetland Mitigation Site, before the Board. Ms. Zhiming Fan, Deputy Project Manager, and Mr. Paul Medved, Project Manager, Warm Springs Extension Program, presented the item. The item was discussed. Director Blalock moved that the General Manager be authorized to award Contract No. 02EE-140, Warm Springs Extension Wetland Mitigation Site, to Siteworks Construction Inc., for the Bid amount of $2,319,935.00, pursuant to notification to be issued by the General Manager, and subject to compliance with the District's protest procedures. Director Mallett seconded the motion, which carried by unanimous acclamation. Ayes - 8: Directors Josefowitz, Mallett,

McPartland, Murray, Raburn, Radulovich, Saltzman, and Blalock. Noes - 0. Absent – 1: Director Keller.

Director McPartland brought the matter of Award of Contract No. 05LD-110, Richmond Intermodal Improvement Project, before the Board. Mr. Tian Feng, District Architect, presented the item. Director Mallett moved that the General Manager be authorized to award Contract No. 05LD-110 to West Bay Builders, for the Bid price of $2,668,000.00, pursuant to notification to be issued by the General Manager, and subject to compliance with the District's protest procedures and Federal Transit Administration's requirements related to protests. The item was discussed. Director Blalock seconded the motion.

Director Keller re-entered the Meeting.

Mr. Eddie Dillard addressed the Board.

The motion carried by unanimous acclamation. Ayes - 9: Directors Josefowitz, Keller, Mallett, McPartland, Murray, Raburn, Radulovich, Saltzman, and Blalock. Noes - 0.

Director McPartland brought the matter of Agreement with Precision Escalator for Westinghouse Escalator Step Refurbishment (Agreement No. 6M3279) before the Board. Mr. Mike Lemon, Acting Assistant Superintendent, Power and Mechanical, presented the item. The item was discussed. Director Mallett moved that the General Manager be authorized to execute Agreement No. 6M3279, Westinghouse Escalator Steps Refurbishment, with Precision Escalator, Kenilworth, New Jersey, at a price not to exceed $882,000.00, plus applicable sales tax. Director Murray seconded the motion, which carried by unanimous acclamation. Ayes - 9: Directors Josefowitz, Keller, Mallett, McPartland, Murray, Raburn, Radulovich, Saltzman, and Blalock. Noes - 0.

Director McPartland brought the matter of Report on Train Destination Sign System before the Board. Mr. Aaron Weinstein, Department Manager, Marketing and Research, and Mr. Kevin Copley, Systems Engineering, presented the item. The item was discussed.

Director Raburn, Chairperson of the Planning, Public Affairs, Access, and Legislation Committee, had no report.

President Blalock called for the General Manager's Report. General Manager Grace Crunican reported on steps she had taken and activities and meetings she had participated in, noting the replacement of the last wools seats with vinyl and the uneventful New Year's Eve service, reminded the Board of upcoming events, and gave a report on the progress of outstanding Roll Call for Introductions items.

President Blalock brought the matter of Amendment to the San Francisco Bay Area Rapid Transit District Money Purchase Pension Plan to Provide for Additional Contributions for General Manager before the Board. Mr. Matthew Burrows, General Counsel, presented the item. The item was discussed. Director Raburn moved adoption of Resolution No. 5285, In the Matter of Amendment of the Money Purchase Pension Program. Director Keller seconded the motion, which carried by electronic vote. Ayes - 7: Directors Josefowitz, Keller, McPartland, Murray, Raburn, Saltzman, and Blalock. Noes – 1: Director Radulovich. Abstain – 1: Director Mallett.

Director Saltzman, Chairperson of the Board Rules Ad Hoc Committee, gave a brief report on the activities of the committee.

President Blalock called for Board Member Reports and Roll Call for Introductions.

Director Saltzman reported she would be riding the initial Late Night Service Bus 822.

Director Raburn reported he had attended a Three Kings event at Fruitvale Station and the California High Speed Rail groundbreaking event.

President Blalock, bringing In Memoriam before the Board, requested the Meeting be adjourned in memory of San Francisco Municipal Transportation Agency Board member Jerry Lee.

President Keller called for Public Comment. Mr. Chris Finn addressed the Board.

The Board Meeting was adjourned at 11:51 a.m. in memory of Mr. Jerry Lee.

Kenneth A. Duron
District Secretary

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT
ORGANIZATION OF COMMITTEES AND SPECIAL APPOINTMENTS

STANDING COMMITTEES

ADMINISTRATION COMMITTEE */**
Joel Keller, Chairperson — Rebecca Saltzman, Vice Chairperson

ENGINEERING AND OPERATIONS COMMITTEE */**
John McPartland, Chairperson — Gail Murray, Vice Chairperson

PLANNING, PUBLIC AFFAIRS, ACCESS, AND LEGISLATION COMMITTEE */**
Robert Raburn, Chairperson — Zakhary Mallett, Vice Chairperson

SPECIAL/AD HOC COMMITTEES

PERSONNEL REVIEW SPECIAL COMMITTEE**
Thomas M. Blalock — Joel Keller — Tom Radulovich

WAYSIDE SAFETY AD HOC COMMITTEE (Sunset 12/31/15 unless extended)
Tom Radulovich, Chairperson — Nicholas Josefowitz — John McPartland — Rebecca Saltzman

LABOR NEGOTIATIONS REVIEW AD HOC COMMITTEE (Sunset 06/30/15 unless extended)
Rebecca Saltzman, Chairperson — Nicholas Josefowitz — Zakhary Mallett — Gail Murray

RESERVE FUND/RISK MANAGEMENT AD HOC COMMITTEE (Sunset 06/30/15 unless extended)
Joel Keller — Gail Murray — Rebecca Saltzman

RULES OF THE BOARD OF DIRECTORS AD HOC COMMITTEE
Joel Keller — Zakhary Mallett — Tom Radulovich — Rebecca Saltzman

ENVIRONMENTAL/SUSTAINABILITY AD HOC COMMITTEE
Robert Raburn, Chairperson — Nicholas Josefowitz — Tom Radulovich — Rebecca Saltzman

SPECIAL APPOINTMENTS - LIAISON

AMERICANS WITH DISABILITIES ACT (ADA) LIAISON
Robert Raburn, Primary — John McPartland, Alternate

CONTRA COSTA TRANSPORTATION AUTHORITY** LIAISON
Gail Murray, Primary — Joel Keller, Alternate

SAN FRANCISCO TRANSPORTATION AUTHORITY** LIAISON
Tom Radulovich, Primary — Nicholas Josefowitz, Alternate

LIAISONS TO STATIONS IN SAN MATEO COUNTY

Daly City Station	Tom Radulovich
Colma Station	Robert Raburn
South San Francisco	John McPartland
San Bruno Station	Zakhary Mallett
San Francisco International Airport Station	Nicholas Josefowitz
Millbrae Station	Joel Keller

* All Directors are members of this Committee (Thomas M. Blalock, Nicholas Josefowitz, Joel Keller, Zakhary Mallett, John McPartland, Gail Murray, Robert Raburn, Tom Radulovich and Rebecca Saltzman)
** Brown Act Committee, subject to public meeting requirements.
*** Brown Act Board, subject to public meeting requirements.

Ratified: January 8, 2015

SAN FRANISCO BAY AREA RAPID TRANSIT DISTRICT
ORGANIZATION OF COMMITTEES AND SPECIAL APPOINTMENTS

SPECIAL APPOINTMENTS – EXTERNAL

ALAMEDA COUNTY TRANSPORTATION COMMISSION **
Thomas M. Blalock, Primary John McPartland, Alternate

ALTERNATE REPRESENTATIVE TO THE AMERICAN PUBLIC TRANSPORTATION ASSOCIATION BOARD OF DIRECTORS
Joel Keller

CAPITOL CORRIDOR JOINT POWERS BOARD***
Nicholas Josefowitz, San Francisco County
Zakhary Mallett, Contra Costa County
Gail Murray, Contra Costa County
Robert Raburn, Alameda County
Tom Radulovich, San Francisco County
Rebecca Saltzman, Alameda County
Joel Keller, Alternate Contra Costa County
John McPartland, Alternate Alameda County

DIRIDON STATION AREA JOINT POLICY ADVISORY BOARD (City of San Jose)**
Thomas M. Blalock

OAKLAND AIRPORT CONNECTOR JOINT ADMINISTRATIVE COMMITTEE**
Robert Raburn

EMERYVILLE-BERKELEY-OAKLAND TRANSPORTATION STUDY POLICY ADVISORY COMMITTEE**
Zakhary Mallett Rebecca Saltzman, Alternate

OVERSIGHT BOARD TO SUCCESSOR AGENCY OF SAN FRANCISCO REDEVELOPMENT AGENCY***
Tom Radulovich

PLEASANT HILL BART STATION LEASING AUTHORITY BOARD OF DIRECTORS**
Joel Keller Gail Murray

SILICON VALLEY RAPID TRANSIT CORRIDOR/WARM SPRINGS BART EXTENSION POLICY ADVISORY BOARD**
Joel Keller John McPartland
Thomas M. Blalock, appointed by Alameda County Transportation Commission

SOUTH HAYWARD BART STATION ACCESS AUTHORITY**
Thomas M. Blalock John McPartland Rebecca Saltzman, Alternate

TRI-VALLEY REGIONAL RAIL POLICY WORKING GROUP**
John McPartland, Chairperson Gail Murray

WEST CONTRA COSTA TRANSPORTATION ADVISORY COMMITTEE (WCCTAC)**
Zakhary Mallett, Primary Joel Keller, Alternate

** Brown Act Committee, subject to public meeting requirements.
*** Brown Act Board, subject to public meeting requirements.

NOTE: BART Directors discharging liaison functions do not serve as members of either a committee of BART or the other Organization, nor as members of a joint committee. Any action on behalf of BART must be taken by the full Board.

Ratified: January 8, 2015

EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL:					GENERAL MANAGER ACTION REQ'D: APPROVE AND FORWARD TO THE BOARD OF DIRECTORS
DATE: c 1/14/15					BOARD INITIATED ITEM: No
Originator/Prepared by: Susan Presley Dept: Rolling Stock and Shops Signature/Date: 12/10/14	General Counsel 12/24/14	Controller/Treasurer [ ]	District Secretary [ ]	BARC 1/12/15 [ ]	

TITLE:

INVITATION FOR BID NO. 8945 - PROCUREMENT OF MODULAR BUILDINGS

NARRATIVE:

PURPOSE:

To obtain Board authorization for the General Manager to award Invitation for Bid No. 8945 for the purchase of three (3) modular buildings to Mod Space Corporation, Hayward, CA in the amount of $204,824 including all applicable taxes.

DISCUSSION:

The District is in the process of procuring 775 new rail vehicles to replace its existing fleet. All of the new cars will be delivered to the Hayward test track where they will undergo their initial inspection and testing. These modular buildings are being purchased to serve as working office spaces during the test phase and will be utilized by both BART staff and Bombardier personnel who must be on-site during the process.

A notice requesting bids was published on October 8, 2014 and bid requests were mailed to six (6) prospective bidders. Bids were opened on October 28, 2014. The following bids were received:

BIDDER	Quantity	Unit Price	Grand Total including 9.5% Sales Tax
Design Space	3	$169,032	$185,090
Mod Space	3	$187,054	$204,824

Independent cost estimate by BART staff: $283,546.74, including applicable sales tax.

Staff has determined that the apparent low bidder, Design Space submitted a non-responsive bid. Staff has also determined that the price submitted by the next lowest bidder, Mod Space Corporation to be fair and reasonable based upon prior purchases and the independent cost estimate by BART staff.

Delivery of the modular buildings are scheduled to commence within one hundred and twenty (180) days after award of the Contract.

Pursuant to the revised DBE Program, the Office of Civil Rights is utilizing race and gender neutral efforts for Procurement contracts. Therefore, no DBE goal was set for this Contract.

FISCAL IMPACT:

Funding of $204,824 for the award of IFB No. 8945 is included in the total project budget for FMS No. 40FA000 – 775 Car Acquisition Planning. The Office of Controller/Treasurer certifies that funds are currently available to meet this obligation. The following table depicts funding assigned to the referenced project since October 2013, and is included in totality to track funding history against spending authority. Funds needed to meet this request will be expended from a combination of these sources as listed.

Fund Number	Fund Description	Fund Source	Funded Amount
353K	CA-05-0236 FG MOD-FY09	FTA	$12,565,777
3602	FY13 Cap Improve FG/SOGR 5337	FTA	$500,000
3603	FY14 Cap Improve SOGR 5337F	FTA	$500,000
6014	Bridge Toll Alloc 09387205	Regional	$3,141,444
656J	VTA Car Procurement	Local	$9,826,994
8504	System Improv. Reserve	BART	$10
851W	FY07-11 Capital Allocation	BART	$15,172,390
8526	FY14 Operating Allocation	BART	$9,500,000
Total			$51,206,615

As of November 12, 2014, $51,206,615 is the total budget for this project. BART has expended $27,296,244, committed $4,270,004 and reserved $487,275 to date for other actions. This action will commit $204,824 leaving an available fund balance of $18,948,268 in this project.

There is no fiscal impact on available unprogrammed District Reserves.

ALTERNATIVE:

Procurement of the modular buildings is necessary to conduct testing of the new revenue vehicles at the Hayward Test Track. The only alternative is to rebid and risk the chance of not being ready for the arrival of the new vehicles, which will result in a schedule delay.

RECOMMENDATIONS:

On the basis of analysis by staff and certification by the Controller/Treasurer that the funds are available, it is recommended that the Board adopt the following motion:

MOTION:

The General Manager is authorized to award IFB No. 8945 for the Procurement of three (3) Modular Buildings to Mod Space Corporation, for a price of $204,824, including all applicable taxes, subject to compliance with the District's protest procedures and FTA's requirements related to protest procedures.

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

MEMORANDUM

TO: Board of Directors **DATE:** January 15, 2015

FROM: General Manager

SUBJECT: E&O Agenda Item #4.A: Customer Communications During Major Service Disruptions and Improvement Initiatives – For Information

The subject item was continued at the December 4, 2014 Board meeting. At the January 22nd Board meetng, staff will discuss the attached presentation on customer communications during major service delays and improvement initiatives that have been implemented or are planned for future implementation.

The presentation is the result of an inter-departmental committee that included staff from the Transportation, Computer Systems Engineering and Communications departments, and the Office of the Chief Information Officer.

If you have any questions, please contact Chief Transportation Officer Roy Aguilera at (510) 464-6797.

Grace Crunican

Attachments

cc: Board Appointed Officers
Deputy General Manager
Executive Staff

ba

EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL:		GENERAL MANAGER ACTION REQ'D: Approve and forward to the Board		
DATE: 1/14/15		BOARD INITIATED ITEM: No		
Originator/Prepared by: Tim Kempf Dept: Planning and Development Signature/Date: 1/12/15	General Counsel [ ]	Controller/Treasurer [ ]	District Secretary [ ]	BARC [ ]

Status: Routed	Date Created: 12/24/2014

TITLE:

Award of Contract No. 01RQ-120 for Construction of Hayward Maintenance Complex Project Site, Track and Systems

NARRATIVE:

PURPOSE: To obtain Board authorization for the General Manager to award Contract No. 01RQ-120 for Construction of Hayward Maintenance Complex Project Site, Track and Systems to Proven Management, Inc., Berkeley, CA.

DISCUSSION: The Hayward Maintenance Complex Project (HMC) was adopted by the BART Board of Directors on May 26, 2011. The Project will provide for expanded and enhanced maintenance complex facilities necessary to support, in part, BART's future system demands, including the new BART revenue vehicles and the Silicon Valley Extension Project. The HMC Project consists of the acquisition of and improvements to three parcels currently containing four warehouse buildings on the west side of the existing Hayward Yard. Improvement elements include a new Vehicle-Level Overhaul Shop, a new Component Repair Shop, an enhanced Central Warehouse, an enhanced Non-Revenue Vehicle Shop and new Storage Area, as well as new trackwork that provides access to these facilities.

The scope of this Contract includes the construction of new special trackwork, systems, utility relocation, and site features such as retaining walls, soundwalls, and extensive earthwork in order to accommodate this new trackwork. Reference Attachment 01RQ-120 Site Plan.

On October 31, 2014, an Advance Notice to Bidders was mailed to 173 prospective bidders. Contract Documents were sent to 22 plan rooms. The Contract was advertised on October 31, 2014 in local publications. A total of 27 firms purchased copies of the Contract Documents. A pre-bid meeting and site visit were conducted on November 19, 2014 with 68 prospective bidders attending. Bids were publicly opened on December 16, 2014. The tabulation of Bids received, and the Engineer's Estimate, are as follows:

Bidder	Location	Total Bid Price
Proven Management, Inc.	Berkeley, CA	$18,769,845
Granite Rock Company	San Jose, CA	$20,001,428
DMZ Transit, JV	Concord, CA	$21,749,000
Shimmick / Stacy and Whitbeck, JV	Alameda, CA	$22,581,000

Engineer's Estimate		$20,700,000

After review by District staff, the apparent low bid submitted by Proven Management, Inc., was deemed responsive to the solicitation. Furthermore, a review of the Bidder's license, business experience and financial capabilities has resulted in a determination that the Bidder is responsible. The Bid Price of $18,769,845 was determined to be fair and reasonable.

This contract was advertised pursuant to the DBE Program requirements. The Office of Civil Rights reviewed the scope of work for this contract and determined that there were subcontracting opportunities; therefore, a DBE participation goal of 25% was set for this contract The low bidder, Proven Management, Inc., committed to subcontracting 26.8% to DBEs. The DBE participation goal for this contract was met.

FISCAL IMPACT:

Funding of $18,769,845 for the award of Contract No. 01RQ-120 is included in the total project budget for 01RQ002, HMC - Site, Track and Systems. The Office of the Controller/Treasurer certifies that funds are currently available to meet this obligation. The following table depicts funding assigned to the referenced project since December 2014, and is included in totality to track funding history against spending authority. Funds needed to meet this request will be expended from a combination of these sources as listed:

Fund No.	Source	Fund Description	Amount
F/G 3007	Federal	FTA	$33,935,400
F/G 8524	BART	FY12 Operating Capital Alloc	$ 4,396,691
TOTAL			$38,332,091

As of December 28, 2014, $38,332,091 is the total budget for this project. BART has expended $0.00 and committed $0.00 to date. This action will commit $18,769,845, leaving an available fund balance of $19,562,246 in these fund sources for this project.

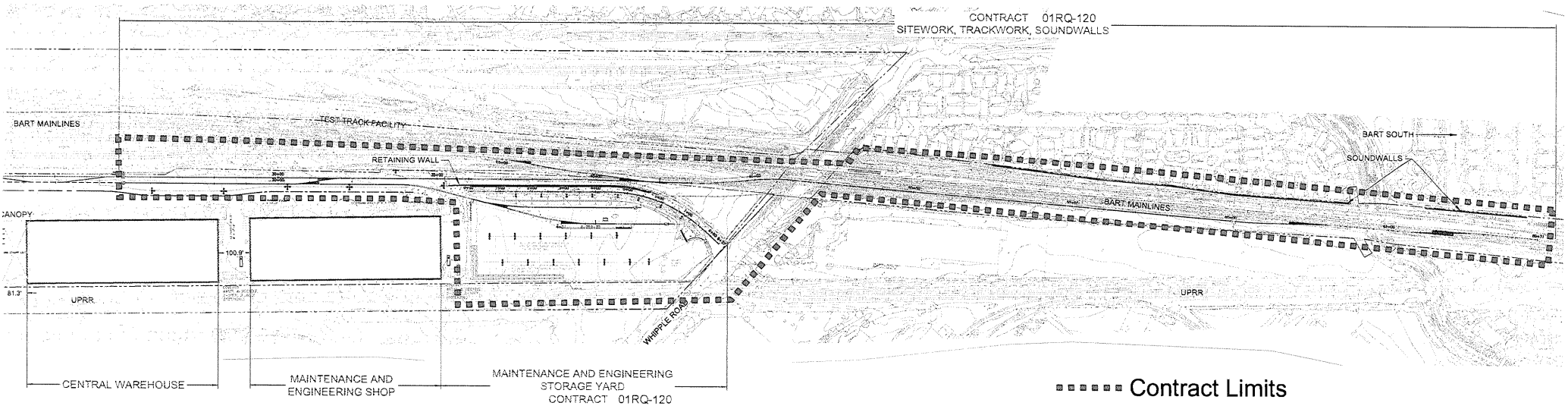
There is no fiscal impact on available un-programmed District Reserves.

ALTERNATIVES: The alternatives are to decline to award the Contract, or rebid. Not awarding the Contract would result in no new trackwork that would lead revenue and non-revenue vehicles from the existing BART mainline to the new HMC facilities, which would make these new facilities as well as the overall concept of the HMC Project unavailable for use by the new BART revenue vehicles and non-revenue vehicles. Rebidding the Contract would result in delays to execution of the work, potentially resulting in increased Project costs due to those delays. Additionally, rebidding the Contract would result in impacts to the testing and commissioning of the new BART revenue vehicles.

RECOMMENDATION: Adoption of the following motion.

MOTION: The General Manager is authorized to award Contract No. 01RQ-120 for Construction of the Hayward Maintenance Complex Project Site, Track and Systems to Proven Management, Inc., for the total Bid Price of $18,769,845, pursuant to notification to be issued by the General Manager, subject to the District's protest procedures and FTA requirements related to protests.

Contract 01RQ-120 Site Plan



SITE PLAN

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

MEMORANDUM

TO: Board of Directors **DATE:** January 15, 2015

FROM: General Manager

SUBJECT: E&O Agenda Item #4.C: Service Planning for Special Events – For Information

At the January 22, 2015 Board meeting, staff will discuss the attached presentation on Service Planning for Special Events. The discussion will include the various types of special events, the event planning process, service delivery tools, challenges and, lessons learned.

If you have any questions, please contact John McCormick, Group Manager Operations Planning and Support, at (510) 464-7557.

Grace Crunican

Attachments

cc: Board Appointed Officers
Deputy General Manager
Executive Staff

EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL:		GENERAL MANAGER ACTION REQ'D:		
DATE: c 1/14/15		BOARD INITIATED ITEM: No		
Originator/Prepared by: Patrice McElroy Dept: Human Resources Signature/Date:	General Counsel [ ]	Controller/Treasurer [ ]	District Secretary [ ]	BARC [ ]

TITLE:

APPROVAL OF THE DISTRICT'S PAY SCHEDULES

NARRATIVE:

PURPOSE:

To approve base pay schedules for all District employees that were in effect during the periods January 2009 through December 2013 and January 1, 2015 to the present in a form prescribed by CalPERS.

DISCUSSION:

The District contracts with the California Public Employee Retirement System (CalPERS) for employee retirement benefits. CalPERS' rules control whether compensation qualifies as reportable to CalPERS for purposes of the retirement calculation. CalPERS' rules regarding pay schedules now require that in order for this element of compensation to be reportable for purposes of the retirement calculation these pay schedules be formally approved by the Board, be publicly available (e.g. the District website) and include each position title and the pay rate.

In 2014, District staff was advised by CalPERS' staff that it should have the then current pay schedule and subsequent schedules formally approved by the Board in the required format. As a result, on July 10, 2014, the Board was asked to approve the pay schedule in effect on January 1, 2014. CalPERS' staff have since modified their instruction and have requested that District staff have the Board formally approve pay schedules in the required format dating back to 2009, conforming to the beginning of the period for which District payroll practices were recently audited by CalPERS.

Three different tables are needed to document base pay compensation changes over these time frames. Two (Attachments A and B) cover the base pay schedules in effect from January 2009 through December 2013. One (Attachment C) reflects the base pay schedule in effect on January 1, 2015. It is important to note these tables do not make changes to compensation for any District employee. They reflect negotiated salary changes with each union already approved by the Board through its ratification of the collective bargaining agreements (CBA's). The pay bands for non-represented employees have been approved by the Board as part of the annual budget resolutions. Staff requests that the Board approve the following tables:

Attachment A: Pay schedule in effect as of January 1, 2009;

Attachment B: Pay Schedules in effect as of July 1 and 5, 2013 (some CBA's were effective 7/1/13 and some on 7/5/13 which is detailed in the attachment); and
Attachment C: Pay Schedule in effect as of January 1, 2015

Since the Board has already approved the pay schedule in effect January 1, 2014 it is not necessary to include that schedule again in this item.

FISCAL IMPACT:

There is no fiscal impact to the District for this proposed action.

ALTERNATIVES:

To not approve the action. However, failure to do so may result in CalPERS' disqualification of pay as "compensation earnable" for reporting and determination of District employees' retirement benefits.

RECOMMENDATION:

Approval of the following motion.

MOTION:

The Board approves the base pay schedules in effect January 1, 2009 (Attachment A), July 1, 2013 and July 5, 2013 (Attachment B) and January 1, 2015 (Attachment C).

EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL:		GENERAL MANAGER ACTION REQ'D:		
DATE: c 1/14/15		BOARD INITIATED ITEM: No		
Originator/Prepared by: Benson Fairow Dept: Police Signature/Date: 01/14/15	General Counsel 1/14/15 [ ]	Controller/Treasurer [ ]	District Secretary [ ]	BARC 1-14-15 [ ]

TITLE:

Adoption of an Ordinance Prohibiting E-Cigarette Use in the BART District

NARRATIVE:

PURPOSE:

To propose the enactment of an ordinance to prohibit the use of e-cigarettes in the BART District, in the same manner as smoking is prohibited by State law.

DISCUSSION:

E-Cigarettes are battery powered devices used to vaporize their liquid contents for consumption in a manner similar to smoking tobacco cigarettes, but without the combustion and resulting smoke. For the most part, the liquid contents of these devices contain varying amounts of nicotine and other chemicals, and may be flavored. The devices were first developed in China in 2004, with the intent to efficiently deliver nicotine to a user without the harmful effects of inhaling smoke. E-cigarettes have been gaining in popularity in the United States and have attracted increased scrutiny over the last few years. A recent news article claims there are 466 brands of e-cigarettes, representing a rapidly growing, three billion dollar industry.

In 2009, the Food and Drug Administration (FDA) expressed its concern over potential health risks associated with the use of e-cigarettes. The agency specifically expressed concerns over increased youth nicotine addiction, the toxicity of the substances contained in the devices, as well as the lack of study to determine whether or not the devices are safe. In April 2014, the FDA announced a proposal to regulate e-cigarettes, but the agency has yet to issue any rules.

BART currently regulates smoking in and around its premises through enforcement of the California Penal Code (PC). PC Section 640(b)(3) makes it an infraction to smoke "…in or on a system facility or vehicle in areas where those activities are prohibited by that system." Smoking is currently a citable offense throughout the District. E-cigarette use in the BART District is not currently regulated.

A Senate Bill (SB648/Corbett) was introduced in February 2013, which would have amended PC 640(b)(4) to prohibit the use of e-cigarettes in the same manner as smoking. This bill was eventually passed, but with the e-cigarette use prohibitions removed.

Just as with tobacco cigarette use, the primary concern from the District comes from any harm that might result from second-hand exposure to the vapor delivered from e-cigarettes. Studies on the effects of e-cigarette use are scarce and sometimes conflicting.

Several communities in California have included e-cigarettes in their smoking ordinances, while others have included the devices in their tobacco retailer license programs. The American Nonsmokers' Rights Foundation reports, as of January 1, 2015, 43 jurisdictions in California have enacted laws regulating the use of e-cigarettes.

Transit agencies throughout the state have had a varied response to e-cigarettes. The Los Angeles County Metropolitan Transportation Authority amended its municipal code controlling cigarettes in March 2014 to include e-cigarettes. Similarly, the Santa Clara Valley Transportation Authority is working toward adding the devices to their special district ordinance related to smoking in and around their facilities. Others, such as the San Diego Metropolitan Transit System and Sacramento Regional Transit District do not currently have ordinances or rules addressing the use of e-cigarettes, choosing instead to wait for State or Federal guidelines.

Considering the failure of SB648 to pass with any significant restrictions on the use of e-cigarettes, the District's only immediate option to create enforceable restrictions on the use of the devices is through the enactment of an ordinance. In doing so, the District may ban or restrict the use of e-cigarettes under its own authority, within the three counties (Alameda, San Francisco, and Contra Costa) included in the District. An ordinance passed by the Board would provide the authority needed to enforce e-cigarette use restrictions in a manner similar to those for smoking, as detailed in the California Penal Code. While such an ordinance would not initially be enforceable in San Mateo County, having such an ordinance would be the first step needed to approach those jurisdictions through which BART passes to solicit their acceptance of the ordinance.

This ordinance is exempt from California Environmental Quality Act pursuant to CEQA Guidelines Section 15061 (b)(3), because it can be seen with certainty that the project will not have a significant effect on the environment and thus no further review under CEQA is required.

FISCAL IMPACT:
Some initial cost would be realized due to signage changes in stations and on train cars to include the ban of e-cigarettes. Tentative plans for these changes involve the use of stickers to cover the pertinent portion of existing signage, thereby alleviating the need for new signs. Public outreach and education may also result in some additional cost.

The District may realize some income from fines associated with the enforcement of an ordinance, but that amount is likely to be negligible. Conversely, the District may have expenses resulting from legal challenges to an ordinance. While such challenges are a possibility, particularly since the enactment of such an ordinance would be a first for the District, BART would likely have wide-spread support from a broad coalition of government and activist organizations.

ALTERNATIVE:
Should the Board wish to not enact an ordinance, it may still pass a resolution against the use of e-cigarettes. Such a resolution would be more symbolic in nature and would not have the same

authority of an ordinance, which would negatively impact any enforcement efforts.

The District may also choose to support and encourage legislation similar to the failed SB648, but such an effort would likely be long-term and face many challenges. Likewise, Federal restrictions may eventually be put in place. Like any State legislation effort, any Federal solution is also likely to be long-term.

RECOMMENDATION:
Staff recommends the Board execute the steps necessary to enact the proposed ordinance, establishing the same restrictions on e-cigarettes as those currently enforced for smoking.

MOTION:
Adopt the attached Resolution introducing, reading the title of, and waiving further reading of an ordinance entitled "An Ordinance of the San Francisco Bay Area Rapid Transit District to Prohibit the Use of Electronic Smoking (Vapor) Devices (Electronic Cigarettes) on BART Trains, BART Facilities, and BART Property whenever they are found within the District." (First reading)

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

In the Matter of the Adoption of an Ordinance of the San Francisco Bay Area Rapid Transit District to Prohibit the Use of Electronic Smoking (Vapor) Devices (Electronic Cigarettes) on BART Trains, BART Facilities, and BART Property whenever they are found within the District /

Resolution No. _____

WHEREAS, no ordinance of the San Francisco Bay Area Rapid Transit District shall be passed by the Board on the day of its introduction, nor within three days thereafter, nor at any time other than a special, regular, or adjourned regular meeting (Public Utilities Code section 28793), and

WHEREAS, an ordinance entitled " An ordinance of the San Francisco Bay Area Rapid Transit District to prohibit the use of electronic smoking (vapor) devices (electronic cigarettes) on BART trains, BART facilities and BART property whenever they are found within the District," has been introduced and title read;

NOW, THEREFORE, BE IT RESOLVED, THAT the Board of Directors of the San Francisco Bay Area Rapid Transit District hereby waives further reading of the proposed ordinance.

BE IT FURTHER RESOLVED, THAT the Board of Directors of the San Francisco Bay Area Rapid Transit District will consider adoption of the proposed ordinance on _____ , 2015 or thereafter as may be duly noticed.

Adopted: _____

# # #

ORDINANCE NO. 2015-1_____

AN ORDINANCE OF THE SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT TO PROHIBIT THE USE OF ELECTRONIC SMOKING (VAPOR) DEVICES (ELECTRONIC CIGARETTES) ON BART TRAINS, BART FACILITIES AND BART PROPERTY WHENEVER THEY ARE FOUND WITHIN THE DISTRICT.

WHEREAS, the San Francisco Bay Area Rapid Transit District has a substantial interest in protecting the health and welfare of its patrons and persons coming on to District property; and

WHEREAS, the San Francisco Bay Area Rapid Transit District has a substantial interest in protecting such persons from the health hazards associated with nicotine inhalation; and

WHEREAS, the potential health risks of the inhalation of vaporized nicotine are largely unknown; and

WHEREAS, the manufacturing of electronic smoking (vapor) devices often employ the use of a nicotine cartridge, designed to deliver vaporized nicotine to the user; and

WHEREAS, the U.S. Food and Drug Administration (FDA) conducted laboratory analysis of electronic smoking device cartridges and found the following:

- Diethylene glycol, an ingredient used in antifreeze and toxic to humans, was found in one cartridge;
- Certain tobacco-specific nitrosamines, which are human carcinogens, were detected in half of the samples tested;
- Tobacco-specific impurities suspected of being harmful to humans – anabasine, myosmine, and B-nicotyrine – were detected in a majority of the samples tested;
- All but one tested cartridge labeled as containing no nicotine did in fact contain low levels of nicotine;
- Three identically labeled cartridges emitted markedly different amounts of nicotine with each puff. Nicotine levels per 100 milliliter puff ranged dramatically from 26.8 to 43.2 micrograms of nicotine; and
- One high-nicotine cartridge delivered trice as much nicotine to users as was delivered by a nicotine inhalation product approved by the FDA for use as a smoking cessation aid which was used as a control;

WHEREAS, electronic smoking (vapor) devices often mimic conventional tobacco products in shape, size, and color, with the user exhaling a vapor similar in appearance to the exhaled smoke from cigarettes and other conventional tobacco products, and

WHEREAS, the use of electronic smoking (vapor) devices in smoke free locations threatens to undermine compliance with smoking regulations and reverse the progress that has been made in establishing a social norm that smoking is not permitted in public places and places of employment; and

WHEREAS, in accordance with similar health concerns, the State of California implemented Health and Safety Code Section 119405, which prohibits the sale of electronic cigarettes to minors in order to protect their welfare and to reduce the chances of nicotine addiction in youth; and

WHEREAS, it is the purpose and intent of the Board of Directors, in enacting this Ordinance, to augment current laws restricting the use of tobacco products to include electronic smoking devices, thus improving the health, safety, and welfare of its patrons and visitors by preventing the harmful effects of nicotine and tobacco products in new forms and in new delivery devices to the extent permitted by law; and

WHEREAS, Public Utilities Code Section 28793 authorizes the Board to pass ordinances; and

WHEREAS, Public Utilities Code Section 28763 authorizes the Board to do any and all things necessary to carry out the purposes of the District; and

WHEREAS, the Board has determined that the adoption of this ordinance, in the absence of adequate State laws, is necessary to preserve the health and safety of BART riders, and those who come on to BART facilities and properties;

NOW THEREFORE, be it enacted by the Board of Directors of the San Francisco Bay Area Rapid Transit District: (Public Utilities Code Section 29795)

SECTION I. Chapter 8 of the San Francisco Bay Area Rapid Transit District Ordinance Code is hereby adopted and made a law of the District as follows:

8.10 Findings and declaration.

The San Francisco Bay Area Rapid Transit District Board of Directors does find that:

(a) Electronic Smoking (Vapor) Device Findings.

The San Francisco Bay Area Rapid Transit District has a substantial interest in protecting the health and welfare of its residents from the health hazards associated with nicotine ingestion.

The San Francisco Bay Area Rapid Transit District has a substantial interest in protecting the public health and welfare by prohibiting smoking and the emission of nicotine vapor in public places, and in protecting the rights of non-smokers to breathe smoke-free and nicotine vapor-free air.

The potential health risks of the inhalation of vaporized nicotine are largely unknown.

The manufacturing of electronic smoking (vapor) devices, often known as electronic cigarettes, remains largely unregulated.

Electronic smoking (vapor) devices often employ the use of a nicotine cartridge, designed to deliver vaporized nicotine to the user.

The World Medical Association has determined that electronic smoking devices are not comparable to scientifically-proven methods of smoking cessation and that neither their value as therapeutic aids for smoking cessation nor their safety as cigarette replacements has been established.

The U.S. Food and Drug Administration (FDA) conducted laboratory analysis of electronic smoking device cartridges and found the following:

- Diethylene glycol, an ingredient used in antifreeze and toxic to humans, was found in one cartridge;
- Certain tobacco-specific nitrosamines, which are human carcinogens, were detected in half of the samples tested;
- Tobacco-specific impurities suspected of being harmful to humans – anabasine, myosmine, and B-nicotyrine – were detected in a majority of the samples tested;
- All but one tested cartridge labeled as containing no nicotine did in fact contain low levels of nicotine;
- Three identically labeled cartridges emitted markedly different amounts of nicotine with each puff. Nicotine levels per 100 milliliter puff ranged dramatically from 26.8 to 43.2 micrograms of nicotine; and
- One high-nicotine cartridge delivered trice as much nicotine to users as was delivered by a nicotine inhalation product approved by the FDA for use as a smoking cessation aid which was used as a control;

Electronic smoking devices often mimic conventional tobacco products in shape, size, and color, with the user exhaling a vapor similar in appearance to the exhaled smoke from cigarettes and other conventional tobacco products.

The use of electronic smoking devices in smoke free locations threatens to undermine compliance with smoking regulations and reverse the progress that has been made in establishing a social norm that smoking is not permitted in public places and places of employment.

In accordance with similar health concerns, the State of California implemented health and Safety Code Section 119405, which prohibits the sale of electronic cigarettes to minors in order to protect their welfare and to reduce the chances of nicotine addiction in youth.

(b) Declaration.

Accordingly, the San Francisco Bay Area Rapid Transit District Board of Directors finds and declares that the purposes of this District enactment are: (A) to protect the public health and welfare by prohibiting the use of electronic smoking (vapor) devices and nicotine vapor inhalation in public places and places of employment (i.e. where an employee works for a business or employer) when state statutes would not otherwise apply; (B) to enforce the state law prohibiting smoking in the workplace; (C) to guarantee the rights of nonsmokers to breathe smoke-free and nicotine vapor free air, and to recognize that the need to breathe smoke-free and nicotine vapor free air shall have priority over the desire to smoke; (D) to reduce addiction to nicotine and tobacco products by minors; and to generally

promote the health, safety, and welfare within the District of all people who ride within BART trains, or otherwise use BART facilities and BART owned properties against the health hazards and harmful effects of the use of tobacco and nicotine products to the extent permitted by law.

8.20 Definitions.

The following words and phrases, whenever used within this ordinance and this chapter, shall be construed as defined in this section:

"Business" means any sole proprietorship, partnership, joint venture, corporation, or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold as well as corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered.

"Electronic Smoking (Vapor) Device" means an electronic and/or battery-operated device, the use of which may resemble smoking, which can be used to deliver an inhaled dose of nicotine. "Electronic Smoking (Vapor) Device" includes any such device and parts thereof, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor. "Electronic Smoking (Vapor) Device" includes nicotine cartridges used in such devices, which may be separately sold or distributed as refills. "Electronic Smoking (Vapor) Device" includes similar devices and cartridges that purport to contain no nicotine.

"Employee" means any person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services for a nonprofit entity, and shall have the same meaning as the term "employee" as defined in Sections 3350 through 3352.94, inclusive, of the California Labor Code.

"Employer" means every person or public service corporation which has any natural person in service, and shall have the same meaning as the term "employer" in Section 3300 and Section 3301 of the California Labor Code.

"Smoking" means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, weed, plant, or other combustible substance in any manner or in any form. "Smoking" also includes the use of an electronic smoking (vapor) device. For purposes of this enactment and this Chapter, the tobacco smoking restrictions in section 6404.5 of the California Labor Code and Penal Code Section 640 shall extend to restrictions on the use of electronic smoking (vapor) devices.

8.30 Prohibition on the Use of Electronic Smoking (Vapor) Devices within the BART District.

The use of Electronic Smoking (Vapor) Devices is prohibited on BART trains, BART facilities and BART property whenever they are found within the District. Any use of Electronic Smoking (Vapor) Devices shall be regulated pursuant to this ordinance in the same manner as tobacco smoking restrictions in section 6404.5 of the California Labor Code and Penal Code Section 640, and shall subject the violator to the penalties established by this ordinance when used within the BART District.

Section 8.40 Limitation of Remedies.

In enacting and implementing this ordinance, the San Francisco Bay Area Rapid Transit District is only undertaking to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury.

Section 8.50 Preemption.

Nothing in this ordinance shall be interpreted or applied so as to create any power, duty or obligation in conflict with, or preempted by, any Federal or State law. Even if not preempted by Federal or State law, the provisions of this Chapter shall not apply if the Federal or State law is more restrictive toward the practices, activities and/or uses banned herein. If the Board of Directors determines that a provision included herein has become preempted by Federal or State law, that preempted provision shall be automatically rescinded from this Chapter. Such rescission shall not affect the validity of the remaining portions of this Chapter.

Section 8.60 Penalties.

Any person found to be in violation of any provision of this ordinance or Chapter shall be guilty of an infraction, and may be punishable by:

(a) A fine, not exceeding one hundred dollars ($100.00), for the first violation;

(b) A fine, not exceeding two hundred dollars ($200.00), for a second violation of this ordinance or Chapter within one year;

(c) A fine, not exceeding five hundred ($500.00), for each additional violation of this ordinance or Chapter within five (5) years.

Section 8.70 Statutory Severability.

If any section, subsection, sentence, clause or phrase of this Chapter is, for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter.

Section 8.80 Liberal Construction.

It is the intention of the Board of Directors that this Chapter shall be liberally construed to accomplish its remedial objectives and to be compatible with Federal and State enactments.

SECTION II. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional and invalid, such decision shall not affect the validity of the remaining portion of this ordinance. The Board of Directors hereby declares that it would have passed this ordinance and every section, subsection, sentence, clause or phrase thereof, irrespective of the fact that

any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or invalid.

SECTION III. This ordinance shall be and the same is hereby declared to be in full force and effect from and after thirty (30) days after the date of its passage and shall be published once before the expiration of fifteen (15) days after said passage, with the names of the Directors voting for or against the same, in a newspaper of general circulation published in the Counties of the District. (Public Utilities Code Sections 28794)

In regular session of the Board of Directors of the San Francisco Bay Area Rapid Transit District introduced on the ___ day of January, 2015, and finally passed and adopted this ___ day of February, 2015, on regular roll call of the members of said Board by the following vote:

Directors:

Murray: Keller: Saltzman: Raburn: McPartland: Blalock: Mallett: Josefowitz: Radulovich:

Ayes: Noes: Absent: Abstain:

WHEREUPON, the Chair declared the above and foregoing ordinance duly adopted and

SO ORDERED.

_____

President, Board of Directors

(Public Utilities Code Section 28796)

ATTEST:

_____

Ken Duron

District Secretary

(Public Utilities Code Section 28796)

ba

EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL:		GENERAL MANAGER ACTION REQ'D:		
DATE: 1/14/15		BOARD INITIATED ITEM: No		
Originator/Prepared by: Christopher Gan Dept: Signature/Date: 1/12/15	General Counsel 1/13/15 [ ]	Controller/Treasurer [ ]	District Secretary 01-13-15 [ ]	BARC 1-12-15 [ ]

Status: **Approved**	Date Created: **01/07/2015**

TITLE:

INDEPENDENT AUDITOR'S REPORTS ON THE BASIC FINANCIAL STATEMENTS AND INTERNAL CONTROL FOR THE FISCAL YEAR ENDED JUNE 30, 2014

NARRATIVE:

Section 28769 of the Public Utilities Code requires that an annual audit be made of all books and accounts of the District. For fiscal year 2014, the independent certified public accounting firm of Macias, Gini and O'Connell conducted the audit and issued their report on December 30, 2014.

The District's annual financial report provides information on the District's Enterprise Fund and Fiduciary Fund. The Enterprise Fund includes all revenues, expenses, assets, liabilities and net assets related to the District's transit operations. The Fiduciary Fund shows all financial transactions of the Retiree Health Benefit Trust, which was created by the District to administer and account for assets which are restricted for the payment of retiree health premiums and administrative costs. The results of the audit concluded that the District's basic financial statements for the year ended June 30, 2014 present fairly, in all material respects, the financial position of the Enterprise Fund and the Fiduciary Fund, and are in conformity with accounting principles generally accepted in the United States of America.

As part of the examination, the auditors performed a review and evaluation of the District's internal accounting controls. The results of the evaluation are discussed in the Independent Auditor's Report on Internal Control. The report indicates that all of the prior year's issues related to the PeopleSoft Financial system implementation were addressed by the District in fiscal year 2014. However, there is a significant deficiency finding related to review and accounting of significant transactions. In fiscal year 2014, the District re-evaluated the various provisions of the Settlement Agreement entered on April 27, 2007 between the District and San Mateo County Transportation District (Samtrans), as well as the Tri-Party Agreement between the District, Samtrans and the Metropolitan Transportation Commission (MTC), which was entered on February 27, 2007, and have concluded that the construction loans provided to the District by Samtrans and MTC during the construction of the SFO Extension amounting to $88,500,000 were no longer required to be paid. The District recognized the extinguishment of the debt in fiscal year 2014 as a special item in the District's financial statements. The extinguishment of the loans from Samtrans and MTC were not recognized by the District at the time of the transactions due to the complexity of the language in the settlement agreements and key terms decided and agreed upon by all relevant parties were not conveyed to finance, or understood by finance. The

report recommends that the District should establish a procedure or process whereby members of finance, legal, and operations are gathered to discuss key terms of significant transactions.

FISCAL IMPACT
None.

ALTERNATIVE
None. The District is required by law to have its books and accounts audited every year by an independent certified public accountant.

SAN FRANCISCO BAY AREA
RAPID TRANSIT DISTRICT

Report to the Board of Directors

Results of the 2014 Audit

MGO Certified Public Accountants.

MGO Certified Public Accountants.

Oakland
505 14th Street, 5th Floor
Oakland, CA 94612
510.273.8974

Sacramento

Walnut Creek

LA/Century City

Newport Beach

San Diego

Seattle

To the Board of Directors of the San Francisco
Bay Area Rapid Transit District
Oakland, California

We have audited the financial statements of the Enterprise Fund and the Retiree Health Benefit Trust Fund of the San Francisco Bay Area Rapid Transit District (District) as of and for the year ended June 30, 2014. Professional standards require that we provide you with information about our responsibilities under generally accepted auditing standards, *Government Auditing Standards* and Office of Management and Budget (OMB) Circular A-133, as well as certain information related to the planned scope and timing of our audit. We have communicated such information in our engagement letter dated November 3, 2014. Professional standards also require that we communicate to you on a number of subjects. The information on pages 3 through 5 satisfies these requirements.

In planning and performing our audit of the District's financial statements as of and for the year ended June 30, 2014, we considered the District's internal control over financial reporting (internal control) as a basis for designing our audit procedures that are appropriate in the circumstances for the purpose of expressing our opinions on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the District's internal control. Accordingly, we do not express an opinion on the effectiveness of the District's internal control.

Our consideration of internal control was for the limited purpose described in the preceding paragraph and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies and therefore, material weaknesses or significant deficiencies may exist that were not identified. However, as discussed below, we identified a deficiency in internal control that we consider to be a significant deficiency.

A *deficiency in internal control* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. A *material weakness* is a deficiency, or combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected on a timely basis. We did not identify any deficiencies in internal control that we consider to be material weaknesses.

A *significant deficiency* is a deficiency, or combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance. We consider item #2014-1 in the accompanying Current Year Comment section of this report to be a significant deficiency.

The District's response to the significant deficiency identified in our audit is described in the Current Year Comment section and was not subjected to the auditing procedures applied in the audit of the financial statements and, accordingly, we express no opinion on it. We will review the status of our recommendation during our next audit engagement. We have also provided a status of our prior year comment beginning on page 7 of this document.

This communication is intended solely for the information and use of the Board of Directors, management and others within the organization, and is not intended to be and should not be used by anyone other than these specified parties.

Macias Gini & O'Connell LLP

Oakland, California
December 30, 2014

REQUIRED COMMUNICATIONS – SIGNIFICANT AUDIT FINDINGS

I. Qualitative Aspects of Accounting Practices

Management is responsible for the selection and use of appropriate accounting policies. The significant accounting policies used by the District are described in Note 1 to the basic financial statements. As described in Note 1 to the basic financial statements, the District adopted the provisions of Governmental Accounting Standards Board (GASB) Statement No. 65, *Items Previously Reported as Assets and Liabilities*; and GASB Statement No. 66, *Technical Corrections – 2012 – An Amendment of GASB Statements No. 10 and No. 62.*

We noted no transactions entered into by the District during the year for which there is a lack of authoritative guidance or consensus. All significant transactions have been recognized in the financial statements in the proper period.

Accounting estimates are an integral part of the financial statements prepared by management and are based on management's knowledge and experience about past and current events and assumptions about future events. Certain accounting estimates are particularly sensitive because of their significance to the financial statements and because of the possibility that future events affecting them may differ significantly from those expected. The most sensitive estimates affecting the financial statements were:

- *Fair value of investments*. The District's investments are generally carried at fair value, which is defined as the amount that the District could reasonably expect to receive for an investment in a current sale between a willing buyer and a willing seller and that is generally measured by quoted market prices.
- *Estimated allowance for losses on accounts receivable*. The allowance for losses on accounts receivable was based on management's estimate regarding the likelihood of collectability.
- *Useful life estimates for capital and intangible assets*. The estimated useful lives of capital and intangible assets were based on management's estimate of the economic life of the assets.
- *Estimated claims liabilities*. Reserves for estimated claims liabilities were based on actuarial evaluations using historical loss, other data, and attorney judgment about the ultimate outcome of claims.
- *Accrual of compensated absences*. The District is required to report and accrue for compensated absences as a liability, which is based upon the accumulated hours owed to employees as of June 30, 2014, at current salary rates and related employment taxes.
- *Pension and Other Postemployment Benefits Plans' employer and employee contributions*. The contribution requirements were based on actuarially determined studies.

REQUIRED COMMUNICATIONS – SIGNIFICANT AUDIT FINDINGS (Continued)

I. Qualitative Aspects of Accounting Policies (continued)

We evaluated the key factors and assumptions used to develop the accounting estimates described above in determining that they are reasonable in relation to the District's financial statements taken as a whole.

Certain financial statement disclosures are particularly sensitive because of their significance to financial statement users. The most sensitive disclosures affecting the financial statements are related to investments, long-term debt, pension benefits, and postemployment healthcare benefits.

The financial statement disclosures are neutral, consistent and clear.

II. Difficulties Encountered in Performing the Audit

We encountered no difficulties in dealing with management in performing and completing our audit.

III. Corrected and Uncorrected Misstatements

Professional standards require us to accumulate all known and likely misstatements identified during the audit, other than those that are trivial, and communicate them to the appropriate level of management. The attached schedule summarizes the uncorrected misstatement of the financial statements. Management has determined that its effects are immaterial, both individually and in the aggregate, to the District's financial statements taken as a whole. None of the misstatements detected as a result of audit procedures and corrected by management were material, either individually or in the aggregate, to the financial statements taken as a whole.

IV. Disagreements with Management

For purposes of this letter, a disagreement with management as a financial accounting, reporting, or auditing matter, whether or not resolved to our satisfaction, that could be significant to the financial statements or to the auditor's report. We are pleased to report that no such disagreements arose during the course of our audit.

V. Management Representations

We have requested certain representations from management that are included in the management representation letter dated December 30, 2014.

REQUIRED COMMUNICATIONS – SIGNIFICANT AUDIT FINDINGS (Continued)

VI. Management Consultations with Other Independent Accountants

In some cases, management may decide to consult with other accountants about auditing and accounting matters, similar to obtaining a "second opinion" on certain situations. If a consultation involves application of an accounting principle to the District's basic financial statements or a determination of the type of auditor's opinion that may be expressed on those financial statements, our professional standards require the consulting accountant to check with us to determine that the consultant has all the relevant facts. To our knowledge, there were no such consultations with other accountants.

VII. Other Audit Findings or Issues

We generally discuss a variety of matters, including the application of accounting principles and auditing standards, with management each year prior to retention as the District's auditors. However, these discussions occurred in the normal course of our professional relationship and our responses were not a condition to our retention.

VIII. Other Matters

We applied certain limited procedures to the Management's Discussion and Analysis and the Schedules of Funding Progress, which are required supplementary information (RSI) that supplements the basic financial statements. Our procedures consisted of inquiries of management regarding the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We did not audit the RSI and do not express an opinion or provide any assurance on the RSI.

IX. Other Information in Documents Containing Audited Financial Statements

Our responsibility for other information in documents containing the financial statements and our report does not extend beyond the financial information identified in our audit report. We do not have an obligation to perform any procedures to corroborate other information contained in these documents. The District will include its financial statements and our report in its annual report. However, we will read the other information in District's annual report and consider whether such information, or its manner of presentation, is materially inconsistent with information, or the manner of its presentation, appearing in the financial statements.

CURRENT YEAR COMMENT

Comment #2014-1 (Significant Deficiency) – Review and Accounting for Significant Transactions

Condition and Context

During the year ended June 30, 2014, the District reevaluated language within the April 27, 2007 settlement agreement between the District and the San Mateo County Transportation District (SamTrans), as well as the Tri-Party Agreement dated February 28, 2007 between the District, SamTrans, and the Metropolitan Transportation Commission (MTC). Upon reevaluation of various provisions within the two agreements, the District determined that certain construction loans amounting to $88,500,000 from SamTrans and MTC no longer required repayment. The District has reported this settlement as a special item in the District's financial statements for the year ended June 30, 2014.

Cause

The two agreements were part of a fast-paced, complex discussion over the funding of the SFO extension project. Key terms decided and agreed-upon by all relevant parties were not properly conveyed by operations to finance, or thoroughly understood by finance at the time of the transaction.

Effect

The District overstated its long-term liabilities by $88,500,000 in the previously issued financial statements for the years ended June 30, 2007 through 2013.

Recommendation

We recommend the District establish a procedure or process whereby members of finance, legal, and operations are gathered to discuss key terms of all significant transactions.

Management Response and Corrective Action

We agree with the finding. The District will implement the following procedures in order to ensure that matters with significant financial impact will be recognized timely in the District's records:

1. Periodic meetings between finance, operations, and legal will be held to discuss issues that could have a significant financial impact to the District.
2. The District will implement a new procedure whereby all documents discussed to the Board of Directors are in their final form.

SAN FRANCISCO BAY AREA
RAPID TRANSIT DISTRICT

Report to the Board of Directors
Year Ended June 30, 2014

STATUS OF PRIOR YEAR COMMENT

Comment	Summary	Status
# 2013-1	BAP system implementation (Material Weakness)	All issues were addressed in the current year.

SAN FRANCISCO BAY AREA
RAPID TRANSIT DISTRICT

Report to the Board of Directors
Year Ended June 30, 2014

SUMMARY OF UNCORRECTED MISSTATEMENT

Impact of Adjustments on Enterprise Fund Financial Statement Captions Increase (Decrease)

Description (Nature) of Audit Difference	Statement of Net Position			Changes in Net Position		
	Assets and Deferred Outflows of Resources	Liabilities	Net Position	Operating Revenues	Operating Expenses	Net Nonoperating Revenues, Capital Contributions, and Special Item
Uncorrected misstatement						
To adjust sales tax revenues from the cash basis to accrual basis.	$ 42,538,717	$ -	$ 38,701,485	$ -	$ -	$ 3,837,232
Total uncorrected misstatement	$ 42,538,717	$ -	$ 38,701,485	$ -	$ -	$ 3,837,232
Financial statement amounts	$ 8,227,042,000	$ 2,017,539,000	$ 6,209,503,000	$ 463,160,000	$ 718,952,000	$ 697,697,000
Impact as a percentage of financial statement amounts	0.52%	0.00%	0.62%	0.00%	0.00%	0.55%

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

Memorandum

TO: Board of Directors **DATE**: January 15, 2015

FROM: General Manager

SUBJECT: PPAAL Agenda Item #6.A: Art Policy - Issues, Opportunities, Draft Goals and Objectives

At the January 22, 2015 Board of Directors meeting, staff will make an informational presentation on the BART Art Policy. This presentation will summarize findings from the Existing Conditions and Best Practices phases of work, including ongoing interviews with Directors, staff, and external stakeholders. Consultants Jeannene Przyblyski and Regina Almaguer will be available to answer questions at the meeting. Ms. Przyblyski will be presenting the item with BART staff.

Ms. Przyblyski is a former San Francisco Arts Commissioner, where she helped develop the City's art policy, and is Provost of the California Institute of the Arts. She has worked as an artist and consultant for the Golden Gate National Parks Conservancy on installations in the Presidio and Alcatraz.

Ms. Almaguer has consulted with BART for over 20 years on the commissioning and installation of art in numerous stations throughout the BART extensions and existing system. Most recently she has supported BART in the selection and installation process for art on the BART to OAK and Warm Springs extensions.

This will be the first of three Board of Directors meetings on the Art Policy in 2015. Subsequent meetings will include:

- Funding and Programming Alternatives (For Information)
- Consider Art Policy for Adoption (For Action)

If you have any questions, please contact Robert Powers at (510) 874-7410.

Grace Crunican

Attachment

cc: Board Appointed Officers
Deputy General Manager
Executive Staff

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

MEMORANDUM

TO: Board of Directors DATE: January 15, 2015

FROM: Independent Police Auditor

SUBJECT: **Written Testimony for President's Task Force on Policing**

Please find attached written testimony regarding oversight of law enforcement that has been submitted to the President's Task Force on 21st Century Policing on behalf of the National Association for Civilian Oversight of Law Enforcement (NACOLE). I am honored to have been a co-author of this testimony, and I plan to discuss it further during my next periodic report to the Board.

Mark P. Smith
BART Independent Police Auditor

The President's Task Force on 21st Century Policing:
Building Legitimacy and Public Trust Through Civilian Oversight
Submitted by The National Association for Civilian Oversight of Law Enforcement
January 9, 2015

I. Introduction

The current crisis of mistrust and breaking or broken relationships between police and the communities they are sworn to serve and protect is one of the most pressing challenges facing the nation. In communities of color particularly, policing practices that are perceived to be overly harsh, unjust, or unfair, regardless of whether those practices are deemed lawful, can undermine police legitimacy. A single officer-involved shooting has the potential to not only shake the public's confidence in the police but, as has been seen in Ferguson, Missouri, rock its very foundation. When the members of one racial group are significantly more likely to be stopped, searched, arrested, or even shot by the police, maintaining trust becomes immensely more difficult. A lack of transparency only serves to increase the divide.

Time and again, cities everywhere have found themselves scrambling to establish civilian oversight in the wake of a scandal and complaints of law enforcement misconduct (irrespective of whether or not allegations are substantiated). People are demanding changes, but what does it mean when the cry for civilian oversight is issued?

The public expects, and experience has shown, that strong, independent oversight builds legitimacy and public trust, through increased police transparency and accountability to the public served. Oversight fosters accountability through independent investigations or auditing of police misconduct complaints, and also can identify needed changes in police practices and training, provide a meaningful voice or forum for the public, and form a crucial bridge between the public and the police. Just as importantly, oversight encourages enhanced transparency about the work of law enforcement. Increased transparency, trust, and communication between the police and the public, facilitated through effective oversight, can lead to greater cooperation between the police and the public in achieving the ultimate goal of decreased crime and increased public safety.

Importantly, civilian oversight provides a mechanism to bring together the many stakeholders involved in supporting trusted, respectful, and effective law enforcement efforts. Oversight breaks down the walls between police and the public and enhances their understanding of each other by reminding police that they ultimately serve the public's interests, and by educating the community on the unique and difficult challenges officers encounter every day. While many take polarizing, divisive positions regarding the role of law enforcement, civilian oversight practitioners strive to work collaboratively with all interests involved to ensure careful, unbiased evaluation of facts and policies in order to achieve solutions that address both the needs of police to protect public safety and the needs of the public to trust their police.

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E-mail: info@nacole.org ◆ Website: www.nacole.org

Citizen oversight of law enforcement is a critical facet of any well-founded effort to strengthen the relationship between police and communities and to build public trust, all while promoting effective policing. And it is one of the only mechanisms proven to ensure sustainable reforms. Civilian oversight alone is not sufficient to yield the legitimacy in which both the public and law enforcement share an interest; without outside oversight, however, no collection of efforts to secure such legitimacy can be considered complete or directly responsive to the public's demands for greater participation in, and understanding of, their local law enforcement.

II. Background of civilian oversight of law enforcement and NACOLE

In its simplest meaning, civilian oversight may be defined as one or more individuals outside the sworn chain of command of a police department who take up the task of holding that department and its members accountable for their actions. Contrasted with internal accountability mechanisms commonly found in law enforcement (i.e., internal affairs), independent police review offers a method of civilian involvement in accountability that is often, but not always, external to the department. Its independence from the agency or the sworn chain of command that it seeks to hold accountable allows it to address a wide range of concerns without any actual or perceived bias, and to ensure that policing is responsive to the needs of the community.

Civilian oversight may be established in response to recurring problems in a particular law enforcement agency, such as a pattern or practice of the use of excessive force or repeated complaints of racial profiling. Sometimes oversight is initiated proactively by a local municipality to identify and correct such issues before they become more widespread and difficult to rectify. Often, however, oversight is generated in response to a single, particularly high-profile allegation or incidence of police misconduct. Whatever the circumstances, police oversight is now found in cities and counties both large and small, and in every geographic region of the nation, as well as in other countries.

While practices vary according to the roles of the oversight entity or the laws of its jurisdiction, it is common for civilian oversight agencies to be both an independent source and a repository of qualitative and quantitative data. Oversight agencies may issue public reports on the number, type, and outcome of misconduct investigations; lawsuits; uses of force; or detentions and arrests. They may provide on-scene monitoring of critical incidents, such as officer-involved shootings, or of mass social gatherings, including protests and demonstrations; and they may subsequently provide the public with a singularly independent account of the actions taken by the police, evaluating whether those actions were appropriate under the circumstances or showed a need for some measure of reform. In addition to the issuance of public reports, qualified and experienced oversight entities may also assess a police department's policies, training curricula, and recruitment standards, among other procedures, in order to compare them against the prevailing standards in a perpetually dynamic profession. The effectiveness of oversight in any particular community is dependent on a host of factors including political and budgetary support, ready access to information including police files, records, and performance data, the training and expertise of oversight personnel, and acceptance by the local law enforcement agency and community.

In 1995, as citizen oversight experienced significant growth and expansion across the country—one of several growth periods in the last thirty years—the National Association for Civilian Oversight of Law Enforcement (NACOLE) was established as the nation's only professional

association of organizations and individuals working directly in oversight. With hundreds of members across the nation and around the world, NACOLE has legitimized police oversight as a professional field of study and practice and facilitated the development of professional standards, including a Code of Ethics, as well as core competencies and training guidelines for oversight practitioners. NACOLE also hosts an annual training conference where civilian overseers and other interested stakeholders meet and exchange information and ideas about issues facing law enforcement oversight.

III. Defining the role of police in a democratic society

In a democratic society, the principle obligations of the police are to protect citizens' fundamental rights and freedoms and to prevent crime and disorder. Sir Robert Peel recognized that police must maintain at all times a relationship with the public that gives reality to the historic tradition that the police are the public and the public are the police. Peel's principles form the basis of American law enforcement, and comprise an approach to policing derived almost exclusively from public cooperation, continuously earned and maintained through public approval, trust, and perceptions of legitimacy.

The proper role for police, thus generally defined, is not static. As society changes, what the public expects from police changes. Broadly, the U.S. Constitution provides a framework of limitations for the police, and state legislatures may also pass laws dictating police roles and conduct; but ultimately, the police are required to be responsive to their specific community. However, the needs and views of that community may change over time. Through active dialogues with the public and law enforcement, civilian oversight brings stakeholders together and provides valuable feedback to law enforcement about how their policies and practices are perceived by their specific community, avoiding divisive discourse and toxic rhetoric. Through review of police practices and training, outside auditors and practitioners can help law enforcement identify areas where their perception of their role has become outdated. Oversight also communicates back to the public about how their police force is performing and whether the department's policies and programs maximize the public's interests and reflect local values.

IV. Building a culture of transparency

Civilian oversight, in even its most basic forms, inherently enhances transparency – it allows individuals from outside a law enforcement agency's sworn chain of command access to the inner workings of that agency, albeit to different degrees. A primary focus of civilian oversight is using this expanded transparency to increase accountability and also to advance community understanding of the work of law enforcement. Police departments are often accused of having an insular culture; those departments that have embraced civilian oversight have been able to neutralize this criticism, and ensure appropriate information is made available for public review. Moreover, in those jurisdictions where strict laws prevent public disclosure of significant amounts of information, a properly designed oversight entity can be the eyes and ears for the public, even if unable to release specific, identifiable information itself.

V. Procedural justice

Central to police legitimacy is the idea of procedural justice: perceptions of fairness in the administration of justice and the fair and impartial exercise of police discretion. And, while officers have an obligation to be impartial and enforce the law fairly, procedural justice also calls upon officers to treat people with dignity and respect, as doing so is equally as important, if not

more so. Procedural justice encompasses not only the way an officer interacts with the public, but also requires that members of the public have an effective procedure to raise concerns about police conduct. Unfortunately, individuals who feel they have been wronged by a police officer are often hesitant to approach the department that employs the officer with their concerns. They may feel intimidated, or doubtful that the department will be interested in, or even capable of, taking a truly unbiased look at their concern. Without an alternative procedure to raise concerns about officer behavior, some members of the public are left to conclude that they have no trustworthy, legitimate avenue for such redress and, even more troublingly, view the entire law enforcement "system" as structured in a way for the police to avoid being held accountable.

Outside review of the police provides an opportunity for those who seek to complain against the police to raise their concerns with fellow citizens, who do not fall within the sworn chain of command of the police department. Acknowledging that oversight agencies' authorities vary from place to place, it is often these agencies that skeptical complainants can turn to in order to feel that their concerns will truly be heard and responded to fairly. Beyond providing procedural justice for specific complaints, overseers can also establish a procedure for review of critical and high profile incidents, such as officer-involved shootings, in-custody deaths, and uses of a TASER, all of which can leave a community clamoring for justice and, potentially, lacking faith in the involved police department's ability to remain unbiased. Furthermore, as civilian overseers look at individual complaints or critical incidents, they gain unique insights and perspectives that put them in a position to identify systemic issues that are most effectively addressed through a change in department-wide policy or training. Ultimately, this impact on systemic issues can further improve police-public interactions and strengthen the community's belief that their police are procedurally just.

Finally, as law enforcement agencies work to adopt a culture of procedural justice, civilian oversight can help communicate to the public the steps being taken and why they are worthy of trust and will serve legitimacy. Police oversight also can audit such efforts to provide the community with reliable information about police agency progress. Law enforcement agencies that are proactively and genuinely striving to provide constitutional policing that is responsive to community needs can find that their own attempts to communicate their efforts to the public are futile because the agency has lost credibility with the public. However, when independent overseers who are charged with looking critically at the department communicate the same message about the department's reform efforts, the public may be more receptive to the message. This is one more illustration of how civilian oversight acts as a bridge connecting, or in some cases reconnecting, law enforcement agencies with the communities they serve.

VI. Protection of civil rights

Police oversight is an important mechanism for ensuring civil rights protections. Civilian oversight has its roots in the Civil Rights Movement. Issues of race and policing are central to the history of oversight, as well as NACOLE. Thus, the oversight community recognizes the important role it plays in identifying, understanding, and addressing discriminatory and unconstitutional police practices. Accordingly, oversight practitioners are at the forefront of investigating, reviewing, and auditing individual cases or patterns of potential civil rights violations, foremost amongst them allegations of racial profiling and biased policing, as well as complaints of illegal searches, excessive force, or unlawful detentions and arrests.

Citizen oversight also helps to ensure police engage in long-term, meaningful outreach to historically disenfranchised and marginalized communities, such as persons with mental illness, the LGBTQ community, homeless individuals, and persons with disabilities. Additionally, independent overseers provide a voice and a forum for these communities, both before and after major incidents involving them and the police have occurred. As with other types of complaints, police oversight entities improve the overall quality of internal investigation of allegations of bias and discrimination in police encounters. With the backing of civilian oversight, many law enforcement agencies across the nation support and vigorously protect the rights of minority and marginalized communities in their jurisdictions.

VII. Recommendations

1. Ensure that police officers continue to have the proper tools, guidance, training, and supervision to carry out their law enforcement responsibilities safely and in accordance with individuals' constitutional rights.

2. Make constitutional policing and transparency core values of policing, as well as building systems of accountability that include independent oversight to carry out those values to support the many police officers who uphold their oaths, engendering greater public trust.

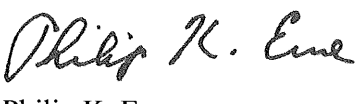
3. Ensure police continue to function as a part of the community; that police continue to work to cultivate legitimacy by engaging with the community fairly, impartially, and respectfully; and, that the police become more directly responsive to the community.

4. Improve the quality and integrity of police disciplinary systems, including investigations of misconduct complaints and uses of force, while vigilantly safeguarding the rights of officers.

5. Ensure that independent oversight is a part of efforts to identify and resolve underlying systemic problems within law enforcement, with a primary focus on reducing and preventing misconduct and enhancing accountability, as well as promoting effective policing and developing strategies for positive organizational change.

Respectfully submitted,

Brian Buchner
NACOLE President



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