

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

**BOARD MEETING AGENDA**

December 6, 2018

9:00 a.m.

A regular meeting of the Board of Directors will be held at 9:00 a.m. on Thursday, December 6, 2018, in the BART Board Room, 2040 Webster 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>); at [bart.legistar.com](http://bart.legistar.com); and via email ([https://public.govdelivery.com/accounts/CATRANBART/subscriber/new?topic\\_id=CATRANBART\\_1904](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 and [bart.legistar.com](http://bart.legistar.com) no later than 48 hours in advance of the meeting.

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

Patricia K. Williams  
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 November 8, 2018 (Special) and November 15, 2018 (Regular).\* Board requested to authorize.
- B. Resolution Fixing the Non - California Public Employees Retirement System (CalPERS) Medical Plan Structure and Rates for Calendar Year 2019.\* Board requested to adopt.
- C. Independent Auditor's Reports on the Basic Financial Statements and Internal Control for the Fiscal Year Ended June 30, 2018.\* For information.
- D. BART Accessibility Task Force Membership Appointment.\* 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. ADMINISTRATION ITEMS

Director Allen, Chairperson

- A. Award of Agreement No. 6M4607, with Mobility As A Service (MAAS), Payment Processor.\* Board requested to authorize.
- B. Resolution Ratifying the Collective Bargaining Agreement with the BART Police Officers' Association.\* Board requested to adopt.

5. ENGINEERING AND OPERATIONS ITEMS

Director Simon, Chairperson

- A. Award of Contract No. 15II-120, Station Emergency Lighting.\* Board requested to authorize.

- B. Sole Source Procurement with Integrated Display Systems Inc. for Elevator-Escalator Remote Monitoring Pilot Project.\* Board requested to authorize. (TWO-THIRDS VOTE REQUIRED.)
- C. Change Orders to Contract No. 05HA-100, El Cerrito Del Norte Station Modernization, with Clark Construction Group.\*
  - a. Upgraded Fire Alarm System for the Station (C.O. No. 054).
  - b. Accessibility Improvement Program (C.O. No. 049).
 Board requested to authorize.
- D. Change Order to Contract No. 15QH-150, Lafayette Station Site Improvement Project, with USS Cal Builders, Inc., for Extension of Time (C.O. No. 19).\* Board requested to authorize.
- E. Change Order to Contract No. 6M7220, Emergency Restoration, Preventive Maintenance, Non-Emergency Repair and Seismic Relocation Work of the Commercial Fiber Optic and Wireless Network, with Phase 3 Communications, Inc., for Extension of Time (C.O. No. 04).\* Board requested to authorize.
- F. Update on BART Safety, Reliability, and Traffic Relief Program.\* For information.

6. PLANNING, PUBLIC AFFAIRS, ACCESS, AND LEGISLATION ITEMS

Director Blalock, Chairperson

- A. BART to Antioch Capacity Improvements.
  - a. Station Parking Expansion.\* Board requested to authorize/adopt.
    - 1. Approve 4<sup>th</sup> Addendum to the Final Environmental Impact Report.
    - 2. Adopt the Revised Project.
    - 3. Resolution of Project Compliance Authorizing the Filing of an Allocation Request with the Metropolitan Transportation Commission for Regional Measure 2, Regional Measure 1, and AB 1171 Bridge Toll Funds to Support Design of the Revised Project.
  - b. No Cost Change Order to Contract No. 04SF-140, for Procurement of eBART vehicles, with Stadler Bussnang AG, to Extend the Period and Modify Re-pricing Provisions to Exercise Contract Options No. 1 and No. 2 for the Purchase of up to Six Additional Vehicles.\* Board requested to authorize.
- B. Millbrae Station Transit Oriented Development (TOD).\*
  - a. Adopt Findings, Statement of Overriding Consideration and Mitigation Monitoring and Reporting Program for the TOD #2 Project as described in the Final Environmental Impact Report (FEIR).
  - b. Approve changes to the TOD #2 Project.

- c. Delegation of Authority to the General Manager or her designee to approve or disapprove any additional modifications to the TOD #2 Project as described in the FEIR.

Board requested to authorize.

- C. 2019 Federal and State Advocacy Program.\* Board requested to authorize.
- D. Authorization of Exclusive Negotiating Agreement for Transit-Oriented Development at North Concord/Martinez Station.\* Board requested to authorize.
- E. Modifications to BART Advertisement Content Guidelines.\* Board requested to authorize.
- F. Award of Agreement No. 6M4604, Stationary Engineering Services for BART's Office Building at 101 8th Street, Oakland, CA.\* Board requested to authorize.
- G. Implementation Approach for Assembly Bill 2923 San Francisco Bay Area Rapid Transit District: Transit Oriented Development.\* For information.

## 7. GENERAL MANAGER'S REPORT

- A. Report of Activities, including Updates of Operational, Administrative, and Roll Call for Introductions Items.

## 8. BOARD MATTERS

- A. Resolution Commending Director Blalock.\* Board requested to adopt.
- B. Resolution Commending Director Keller.\* Board requested to adopt.
- C. 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.)
- D. 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.)
- E. In Memoriam.  
(An opportunity for Board members to introduce individuals to be commemorated.)

## 9. 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.)

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

A. CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Property: BART Property Located at the Millbrae BART Station, & The northwesterly portion of Millbrae Avenue bounded by Rollins Road to the east and BART parcels to the west and north APN 024-180-270 and 300 respectively

District Negotiators: Carl Holmes, Assistant General Manager, Planning, Development, and Construction; Sean Brooks, Department Manager, Real Estate and Property Development; and Kimberly Koempel, Principal Planner

Negotiating Parties: Republic Millbrae LLC, City of Millbrae, and San Francisco Bay Area Rapid Transit District

Under Negotiation: Price and Terms

Government Code Section: 54956.8

11. OPEN SESSION

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

Board of Directors  
Minutes of the 1,826th Meeting  
November 8, 2018

A special meeting of the Board of Directors was held November 8, 2018, convening at 9:16 a.m. in the Board Room, 2040 Webster Street, Oakland, CA. President Raburn presided; Patricia K. Williams, District Secretary.

Directors present: Directors Blalock, Keller, McPartland, Saltzman, and Raburn.

Absent: Directors Dufty, Josefowitz, and Simon. Director Allen entered the Meeting later.

President Raburn called for Public Comment on Item 3 Only. No comments were received.

President Raburn announced that the Board would enter into closed session under Item 3-A (Conference with Negotiators) and Item 3-B (Public Employee Employment) of the Meeting agenda, and that the Board would reconvene in open session at the conclusion of the closed session.

The Board Meeting recessed at 9:17 a.m.

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The Board reconvened in closed session at 9:20 a.m.

Directors present: Directors Blalock, Keller, McPartland, Saltzman, and Raburn.

Absent: Directors Dufty, Josefowitz, and Simon. Director Allen entered the Meeting later.

Director Allen entered the Meeting.

Director Saltzman exited the Meeting.

The Board Meeting recessed at 12:20 p.m.

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The Board reconvened in open session at 12:26 p.m.

Directors present: Director Raburn.

Absent: Directors Allen, Blalock, Dufty, Josefowitz, Keller, McPartland, Saltzman, and Simon.

President Raburn announced that the Board had concluded its closed session and that there were no announcements to be made.

The Meeting was adjourned at 12:27 p.m.

Patricia K. Williams  
District Secretary

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

Board of Directors  
Minutes of the 1,827th Meeting  
November 15, 2018

A regular meeting of the Board of Directors was held November 15, 2018, convening at 9:00 a.m. in the Board Room, 2040 Webster Street, Oakland, California. President Raburn presided; Patricia K. Williams, District Secretary.

Directors present: Directors Blalock, Dufty, Keller, McPartland, Simon, and Raburn.

Absent: Director Josefowitz. Directors Allen and Saltzman entered the meeting later.

Consent Calendar items brought before the Board were:

1. Approval of Minutes of the Meetings of October 25, 2018 (Regular), and October 25, 2018 (Special).
2. Resolution Fixing the Employer's Contribution to California Public Employees Retirement System Medical Premium for Non-Represented Employees.
3. Award of Contract No. 6M3418, Reconditioning of Transit Vehicle Nickel Cadmium Batteries.

Director Keller made the following motions as a unit. Director Dufty seconded the motions, which carried by unanimous electronic vote. Ayes – 6: Directors Blalock, Dufty, Keller, McPartland, Simon, and Raburn. Noes – 0. Absent: - 3: Directors Allen, Josefowitz and Saltzman.

1. That the Minutes of October 25, 2018 (Regular) and October 25, 2018 (Special) be approved.
2. That the Board adopt Resolution No. 5381, Fixing the Employer Contribution under Section 22892 of the Public Employees' Medical and Hospital Care Act for Group 006 Non-Represented Employees pertaining to Non-Represented Employees; and Resolution No. 5382, Fixing the Employer Vesting Contribution under Section 22902 of the Public Employees' Medical and Hospital Care Act for Group 006 Non-Represented Employees.
3. That the General Manager be authorized to award Contract No. 6M3418, an estimated quantities contract, for Reconditioning Transit Vehicle Nickel-Cadmium Batteries, to Industrial Battery Services, for a total bid



price of \$1,690,639.70, including all taxes, pursuant to notification to be issued by the General Manager.

Director Saltzman entered the meeting.

President Raburn announced that the order of agenda items would be changed.

Director Blalock, Chairperson of the Planning, Public Affairs, Access, and Legislation Committee, brought the matter of Recommendation for Deployment of Ford GoBike at 24th Street Mission BART before the Board. Ms. Grace Crunican, General Manager; Mr. Carl Holmes, Assistant General Manager, Planning, Development and Construction; Mr. Steve Beroldo, Manager of Access Programs; and Mr. Tim Chan, Manager of Planning, presented the item.

The following individuals addressed the Board:

Carolina Morales  
Brad Williford  
Anne Cervantes

Director Allen entered the meeting

The following individuals addressed the Board.

Erick Arguello (submitted a petition, letters, and pictures for the record  
John Mendoza  
Jean Walsh  
Brian Klofas  
Vicky Castro  
Scott Feency  
Vadim Graboys  
Carlos Bacanegra  
Keziah Plattner  
Kelly Hill  
Larissa Pedroncelli  
Ace On The Case  
Gillian Gillett  
Gabriel Medina  
Kevin Ortiz

The item was discussed.

Director Dufty moved that the Board recommend installing the Ford GoBike docks on the City sidewalk adjacent to the Mission branch library for 18 months. Director Simon seconded the motion.

Director McPartland made a substitute motion to continue the item. The substitute motion died for a lack of a second.

Discussion continued.

The motion carried by electronic vote. Ayes – 5: Directors Allen, Blalock, Dufty, Keller, and Simon. Noes – 3: Directors McPartland, Saltzman and Raburn. Absent: - 1: Director Josefowitz.

Director Allen, Chairperson of the Administration Committee, brought the matter of Award of Agreement No. 6M5131, with Hinderliter, de Llamas and Associates, for Sales Tax Revenue Collection Services before the Board. Ms. Pamela Herhold, Assistant General Manager, Performance and Budget, presented the item.

President Raburn made the following motions as a unit:

1. That the General Manager be authorized to execute Agreement No. 6M5131, with Hinderliter, de Llamas and Associates, to provide sales tax revenue collection services, for an initial term of three years, with options for two additional one-year terms based upon a contingency fee of 18% determined by the amount of tax revenue recovered for the District, pursuant to the notice to be issued by the General Manager, and subject to the District's protest procedures.
2. Adoption of Resolution No. 5383 In the matter of Authorizing Consultant Hinderliter, de Llamas and Associates to Examine Sales and Use Tax Records at the California Department of Tax and Fee Administration on behalf of the District.  
Director Allen seconded the motions, which carried by unanimous electronic vote.  
Ayes – 8: Directors Allen, Blalock, Dufty, Keller, McPartland, Saltzman, Simon and Raburn. Noes – 0. Absent – 1: Director Josefowitz.

Director Allen brought the matter of Actuarial Report on Changes to Pension and Other Postemployment Benefits (OPEB) under Consideration by the District before the Board. Ms. Herhold; Mr. Michael Jones, Assistant General Manager, Administration; and Ms. Diane Iwata, Human Resources, Division Manager, presented the item.

Director Simon, Chairperson of the Engineering and Operations Committee, brought the matter of Authorization for Negotiation for Sole Source Procurement of Additional Transit Vehicles before the Board. Ms. Tamar Allen, Assistant General Manager, Operations; Mr. Duncan Watry, Project Manager, Systems Development; and Mr. John Garnham, Group Manager, Rail Vehicle Capital Program, presented the item. The item was discussed.

Director Blalock moved that Pursuant to California Public Contract Code Section 20227, the Board of Directors find that Bombardier Transit Corporation is the single source for the purchase of heavy rail transit vehicles that will be used to duplicate equipment currently in use by the District; and that the General Manager be authorized to negotiate and execute a contract with Bombardier for the purchase of up to 425 E Car rail transit vehicles for an amount not to exceed \$1,167,282,284.00, including applicable taxes and fees, subject to funding availability. Directors Keller and Saltzman seconded the motion, which carried by unanimous roll call vote by the required two-thirds vote. Ayes – 8: Directors Allen, Blalock, Dufty, Keller, McPartland, Saltzman, Simon and Raburn. Noes – 0. Absent – 1: Director Josefowitz.

Director Simon brought the matter of Sole Source Procurement with Bombardier Transportation for Software Changes, Testing and System Certification for the West Bay Line GEALOC Track Signaling Circuit Boards before the Board. President Raburn moved that the General Manager be authorized to negotiate an Agreement with Bombardier Transportation to perform W-Line train control speed code reductions in an amount not to exceed \$133,612.00. Director Blalock seconded the motion, which carried by unanimous electronic vote. Ayes – 8: Directors Allen, Blalock, Dufty, Keller, McPartland, Saltzman, Simon and Raburn. Noes – 0. Absent – 1: Director Josefowitz.

Randall Glock addressed the Board.

Director Simon brought the matter of Change Orders to Contract No. 15IF-130A, Powell Street Station Ceiling Upgrades, with Icenogle Construction Management, Inc., for the Procurement and Installation of a Light-Emitting Diode (LED) Light System before the Board. Ms. Allen; Mr. Holmes; and Ms. Shirley Ng, Group Manager Capital Programs, Extensions, presented the item. The item was discussed. Director Blalock moved that General Manager be authorized to execute Change Orders, in an aggregate amount not to exceed \$3,500,000.00 to Contract No. 15IF-130A, Powell Street Station Ceiling Improvements, with Icenogle Construction Management, Inc. to provide a revised lighting system. Director Dufty seconded the motion, which carried by unanimous electronic vote. Ayes – 8: Directors Allen, Blalock, Dufty, Keller, McPartland, Saltzman, Simon and Raburn. Noes – 0. Absent – 1: Director Josefowitz.

Director Simon brought the matter of Change Order to Contract No. 01RQ-150, Construction of Hayward Maintenance Complex Project Central Warehouse, with Clark Construction Group - California, LP, for Additional Dump Fees for Hauling to a Class II Landfill (C.O. No. 10) before the Board. Ms. Allen; and Mr. Thomas Horton, Group Manager, Seismic Retrofit Capital Programs, presented the item. The item was discussed. President Raburn moved that the General Manager be authorized to execute Change Order No. 010, additional dump fees for hauling to Class II landfill, for an amount not to exceed \$1,500,000.00, for Contract No. 01RQ-150, Hayward Maintenance Complex Project, Central Warehouse, with Clark Construction Group- California LP. Director Blalock seconded the motion, which carried by unanimous electronic vote. Ayes – 8: Directors Allen, Blalock, Dufty, Keller, McPartland, Saltzman, Simon and Raburn. Noes – 0. Absent – 1: Director Josefowitz.

Director Simon brought the matter of Change Order to Contract No. 09AF-111A, TBT Cross Passage Doors Replacement, with DMZ Builders, to Mitigate Conflicts with Concurrent Projects (C.O. No. 1) before the Board. Ms. Allen and Ms. Tracy Johnson, Group Manager, Maintenance and Engineering, presented the item. President Raburn moved that the General Manager be authorized to execute Change Order No. 1, Schedule Acceleration to Mitigate Conflicts with Concurrent Projects, in the amount of not to exceed \$290,000.00 for Contract No. 09AF-111A, TBT Cross Passage Doors Replacement. Director McPartland seconded the motion, which carried by unanimous electronic vote. Ayes – 8: Directors Allen, Blalock, Dufty, Keller, McPartland, Saltzman, Simon and Raburn. Noes – 0. Absent – 1: Director Josefowitz.

Director Simon brought the matter of Update on Wheel and Rail Profile Optimization before the Board. Ms. Allen; Mr. Greg Shivy, Principal Track Engineer; and Mr. Charles Franz, Vehicle Systems Engineer, presented the item. The item was discussed.

Director Simon brought the matter of Quarterly Performance Report, First Quarter Fiscal Year 2019 – Service Performance Review before the Board. Ms. Crunican, Ms. Allen and Mr. Carlos Rojas, Chief of Police, presented the item. The item was discussed.

Jerry Grace addressed the Board.

Director Blalock Chairperson of the Planning, Public Affairs, Access, and Legislation Committee, brought the matter of New Transbay Rail Crossing Update before the Board. Ms. Crunican, Mr. Holmes, Mr. David Kutrosky, Managing Director, Capitol Corridor; and Ms. Ellen Smith, Group Manager, Planning, Systems Development, presented the item. The item was discussed.

Jerry Grace addressed the Board.

President Raburn announced that the Board would enter into closed session, under Item 10-B (Conference with Labor Negotiators) of the regular meeting agenda, and that the Board would reconvene in open session upon the conclusion of the closed session.

The Board Meeting recessed at 12:57 p.m.

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The Board Meeting reconvened in closed session at 1:05 p.m.

Directors present: Directors Allen, Blalock, Dufty, Keller, McPartland, Saltzman, Simon, and Raburn.

Absent: Director Josefowitz.

The Board Meeting recessed at 1:58 p.m.

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The Board Meeting reconvened in open session at 2:01 p.m.

Directors present: Directors Allen, Blalock, Dufty, Josefowitz, Keller, McPartland, Saltzman, and Raburn.

Absent: Director Josefowitz.

President Raburn reported there were no announcements.

Director Blalock brought the matter of Compensation and Benefits for the General Manager, General Counsel, Controller/Treasurer, and Independent Police Auditor before the Board, and moved that the base salaries of the General Manager, General Counsel, Controller/Treasurer, and Independent Police Auditor be increased by 2.5 percent, retroactive to July 1, 2018, when other non-represented employees received the same wage increase, and that the General Manager

receive an additional two weeks' vacation accrual effective July 1, 2018, and that the Board President be authorized to execute on behalf of the Board any necessary changes to the Board Appointees' employment agreements to incorporate this change. Director Keller seconded the motion, which carried by unanimous electronic vote. Ayes – 8: Directors Allen, Blalock, Dufty, Keller, McPartland, Saltzman, Simon and Raburn. Noes – 0. Absent – 1: Director Josefowitz.

Director Keller brought the matter of Compensation and Benefits for District Secretary before the Board, and moved that the Board approve the following terms of employment for Patricia Williams, which shall be incorporated in a mutually satisfactory written employment agreement prepared by the General Counsel for execution by Ms. Williams and the Board President: Service for an indefinite term at the pleasure of the Board; base salary of \$208,424.00 per year; twelve months' severance pay for involuntary termination unless a result of death or gross misconduct; mandatory arbitration of employment disputes; benefits afforded non-represented management employees and retirees; and, upon retirement, option to participate in an alternative retiree medical, dental, or vision plan if Ms. Williams relocates to an area which is not within the service area of a District-sponsored plan, provided the alternative plan is comparable in both cost and coverage to the District sponsored plan. Director Dufty seconded the motion, which carried by unanimous electronic vote. Ayes – 8: Directors Allen, Blalock, Dufty, Keller, McPartland, Saltzman, Simon and Raburn. Noes – 0. Absent – 1: Director Josefowitz.

Director Blalock brought the matter of Discussion of Advertisement Guidelines before the Board. Ms. Crunican; Mr. Holmes; Mr. Aaron Weinstein, Manager of Marketing and Research; and Ms. Catherine Westphall, Manager of Advertising Franchise, presented the item. The item was discussed.

Director Dufty exited the meeting.

President Raburn 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, ridership, upcoming events, and outstanding Roll Call for Introductions items.

President Raburn called for Board Member Reports, Roll Call for Introductions, and In Memoriam.

Director Simon requested on behalf of the entire Board that the Meeting be adjourned in honor of Jerome Grier Wiggins Jr, Electrician at BART and younger brother of Maceo Wiggins; and in honor of Alana Devich Cyril.

Director Blalock reported he had attended the Public Works Conference in Richmond.

Director Saltzman reported she had attended the Contra Costa County Mayors' Conference, the Alameda County Mayors' Conference, and the Grand Opening of Downtown Berkeley Bike Station.

Director Allen reported she had attended the Contra Costa County Mayors' Conference, the Contra Costa Transportation Authority Planning Committee meeting, a meeting of the Concord Rotary, the Capitol Corridor Joint Powers Authority Board Meeting, and the Contra Costa Transportation Authority Board meeting.

Director McPartland reported he had attended the BART Veterans Day program, The Veterans Day and 100-year Anniversary of Armistice of WWI event, and had been the featured speaker at City of Hayward Veterans Program.

President Raburn reported he had attended the Powell Street Canopy ribbon cutting ceremony, the Downtown Berkeley Bike Station opening, and the Dia de los Muertos celebration at Fruitvale Station where BART had honored Wayne Wong.

President Raburn called for Public Comment. No comments were received.

President Raburn announced that the Board would enter into closed session under Item 10-A (Conference with Labor Negotiators) of the regular meeting agenda, and that the Board would reconvene in open session at the conclusion of the closed session.

The Board Meeting recessed at 3:02 p.m.

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The Board Meeting reconvened in closed session at 3:03 p.m.

Directors present: Directors Allen, Blalock, Keller, Saltzman, Simon, and Raburn.

Absent: Directors Dufty, Josefowitz, and McPartland.

The Board Meeting recessed at 3:24 p.m.

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The Board Meeting reconvened in open session at 3:26 p.m.

Directors present: Directors Allen, Blalock, Josefowitz, Keller Saltzman, and Raburn.

Absent: Directors Dufty, Josefowitz and McPartland.

President Raburn reported there were no announcements to be made.

The Meeting was adjourned at 3:27 p.m. in honor of Jerome Grier Wiggins Jr. and Alana Devich Cyril.

Patricia K. Williams  
District Secretary



## EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <span style="float: right;">28 Nov 2018</span> <i>Robert M. Pann</i>		GENERAL MANAGER ACTION REQ'D:		
DATE: 11/21/2018		BOARD INITIATED ITEM: No		
Originator/Prepared by: Diane Iwata Dept: Human Resources Administration <i>Diane Iwata</i> Signature/Date: 11/24/2018	General Counsel <i>[Signature]</i> 11/26/18 [ ]	Controller/Treasurer <i>[Signature]</i> 11/26/18 [ ]	District Secretary  [ ]	BARC  <i>[Signature]</i> 11/26/18 [ ]

### Non-CalPERS Medical Plan Structure and Rates for CY 2019

**PURPOSE:**

To obtain Board approval of a resolution approving a change to the contribution schedule for non-California Public Employee Retirement System (“non-CalPERS”) medical plans that are available to active members of the Board of Directors, eligible former members of the Board, eligible survivors of BART employees and Board members, and eligible non-registered domestic partners of BART employees and retirees for calendar year 2019.

**DISCUSSION:**

The District has two non-CalPERS medical plans, a self-insured indemnity plan under United Health Care (“UHC”) and a fully-insured health maintenance organization plan under Kaiser Permanente (“Kaiser”). These non-CalPERS plans are available to individuals who are not eligible for CalPERS coverage; specifically, those survivors of employees who died prior to contracting with CalPERS, non-registered domestic partners, and active Board members and former Board members who are eligible for District provided benefits under State law and District policy. The number of individuals currently in the non-PERS plans has remained consistently low over the past few years. A total of 45 individuals participate in these plans, thirty-eight (38) in UHC and seven (7) in Kaiser.

Due to industry restrictions, the District cannot match the District’s plan designs identically to CalPERS. However, the District makes every effort to keep these plans as closely aligned in plan design as possible. As UHC is self-funded, the District must establish the premium for this plan; however, the District pays all actual expenses. The Board previously approved matching the UHC rate to the CalPERS Bay Area PERS Choice plan, as the UHC plan is

close in plan design. Since the District's Kaiser Plan is fully insured, the negotiated rate is used for the District plan and not matched to the CalPERS Bay Area Kaiser HMO rates.

The District has also applied the medical cap formula and contribution amount used for a non-represented employee/annuitant to participants under the non-CalPERS medical plans. The medical cap for non-represented employees/annuitants is the more costly of the CalPERS Bay Area Blue Shield Access+ HMO basic plan or the CalPERS Bay Area Kaiser HMO basic plan for the applicable level of plan participation for the employee/annuitant (as previously negotiated for collective bargaining groups in 2009), less the employee/annuitant monthly contribution. For participants under the District plans, the medical cap was modified to be the more costly of the CalPERS Bay Area Blue Shield Access+ HMO basic plan or the District's non-CalPERS Kaiser HMO basic plan for the applicable level of plan participation for the employee, less the employee/annuitant monthly contribution. For calendar year 2019, the non-represented employee/annuitant contribution is \$147.14 per month. Staff is recommending this same contribution amount be applied to participants under the non-CalPERS medical plans.

**FISCAL IMPACT:**

For the twenty-one (21) primary participants (does not include dependents) enrolled in the District's non-CalPERS medical plans, the contribution increase (3% and additional monthly contribution) is estimated to produce a savings of \$10,133 for calendar year 2019. Savings are included in the FY 2019 budget.

**RECOMMENDATION:**

Approve the attached resolution. The Office of the General Counsel will approve any agreements or modifications to agreements with plan providers as to form.

**MOTION:**

To adopt the attached resolution "In the Matter of Non-CalPERS Medical Plan Structure and Rates for CY 2019."



**Directors, Former Directors and Their Survivors  
Eligibility and Premium Contributions for Health Benefits—2019**

Length of Service on Board	Category	Date First Served on Board		
		1/01/81-01/01/89	1/02/89-12/31/94	1/1/95 or Later
12 Years (3 Full Terms)	Active Director	None in Category	Employee Rate* plus \$15/mo. Survivor Contribution if enrolled	Employee Rate*
	Survivor of Active Director	None in Category	\$15/mo. Survivor Contribution if enrolled	Fully Self Paid
	Former Director	\$0.0/mo. Health Benefit Contribution plus \$15 Survivor Benefit if enrolled.	Employee Rate * plus \$15/mo. Survivor Benefit Contribution if enrolled	Fully Self Paid
	Survivor of Former Director	\$15/mo. Survivor Contribution if enrolled.	\$15/mo. Survivor Contribution if enrolled	Fully Self Paid
At Least 1 Full Term But Less Than 12 Years	Active Director	None in Category	Employee Rate* plus \$15/mo. Survivor Benefit Contribution if enrolled	Employee Rate*
	Survivor of Active Director	None in Category	\$15/mo. Survivor Contribution if enrolled	Fully Self Paid
	Former Director	Not Eligible	Fully Self-Paid	Fully Self Paid
	Survivor of Former Director	Not Eligible	Fully Self-Paid	Fully Self Paid
Less Than 1 Term	Active Director	None in Category	Employee Rate* plus \$15/mo. Survivor Benefit Contribution if enrolled	Employee Rate
	Survivor of Active Director	None in Category	\$15/mo. Survivor Benefit if enrolled	Not Eligible
	Former Director	Not Eligible	Not Eligible	Not Eligible
	Survivor of Former Director	Not Eligible	Not Eligible	Not Eligible

Note: The Employee Premium Contribution Rates for 2019 are attached.

<b>Kaiser Permanente HMO</b>	<b>Single</b>	<b>2-Party</b>	<b>Family</b>
Total Monthly Premium	\$ 1,330.81	\$ 2,661.62	\$ 3,766.19
District's Cost	\$ 1,183.67	\$ 2,514.48	\$ 3,619.05
Director's Cost	\$ 147.14	\$ 147.14	\$ 147.14

<b>United Health Care</b>	<b>Single</b>	<b>2-Party</b>	<b>Family</b>
Total Monthly Premium	\$ 866.27	\$ 1,732.54	\$ 2,252.30
District's Cost	\$ 719.13	\$ 1,585.40	\$ 2,105.16
Director's Cost	\$ 147.14	\$ 147.14	\$ 147.14

Note: The Employee Premium Contribution Rates for 2019 are attached.

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

In the Matter of the

Resolution No.

Non-CalPERS Medical Plan

Plan Structure and Rates

For Calendar Year 2019

WHEREAS, Board Resolution 4981, adopted April 13, 2006 sets forth at length the applicable law and history of District provided medical benefits for active members and former members of the Board and their eligible survivors and further sets forth required premium contributions by active members and former members, with the latter dependent on when the former Director first served and his/her length of service;

WHEREAS, by Resolution 4981, adopted by the Board on April 13, 2006, the Board confirmed its policy and practice with respect to the participation and contributions of active and former members of the Board in District provided health plans, with the premium contribution structure for all active directors and eligible former directors as identified there indexed to the lowest premium contribution among the employee groups;

WHEREAS, the parties in 2009 collective bargaining agreed that the District's contribution for health insurance premiums for employees and retirees would be capped at an amount up to the applicable level of plan participation (single, two-party, family) and the same Medicare status as elected by the eligible employee or retiree for the most costly HMO Plan offered to the employee by CalPERS, less the indexed employee contribution (\$86.95 for calendar year 2011);

WHEREAS, after contracting with CalPERS for medical benefits for employees under the Public Employees Medical and Hospital Care Act (PEMHCA), the District has maintained two health plans outside of CalPERS for those individuals who are eligible for District provided coverage under collective bargaining agreements or District policy, but are not eligible under the District's contract with CalPERS, including members of the Board of Directors (Board), domestic partners and some survivors of employees, retirees and former Board members;

WHEREAS, by Resolution 5116, adopted on November 19, 2009, the Board approved a premium structure for the non-CalPERS' plans with a cap similar to the negotiated structure for the CalPERS' plans that capped the District contribution for active members and those former

members who are eligible for benefits on the same terms as employees at an amount up to the applicable level of plan participation (single, two-party, family) for the non-CalPERS HMO, less the indexed employee contribution;

WHEREAS, by Resolution 5151, adopted by the Board on December 2, 2010, the Board authorized amendments to the District's agreements for the non-CalPERS Plans with Principal Financial Group and Kaiser to align their benefit and premium structure more closely with the benefits and premium structure then provided under the CalPERS PERS Choice Plan and the Kaiser HMO Plan and authorized a new rate structure effective in Calendar year 2011 applicable to active directors and those former directors who are eligible for District provided benefits at the capped contribution rate;

WHEREAS, effective January 1, 2012, the District replaced Principal Financial Group as its non-CalPERS self-funded plan administrator with United Health Care (UHC);

WHEREAS, as more fully set forth in Resolution No. 4981, State law imposes restrictions on health benefits that may be provided by the District to the current and most former members of its governing board. For those directors who first serve after January 1, 1989, such benefits may not exceed benefits provided to full-time current or retired employees and the terms, conditions, or contributions applicable to any plan provided to employees must also apply to any plan provided for members of the governing board;

WHEREAS, the Board has adopted an employer's monthly contribution structure for the non-represented employees for calendar year 2019 and intends to apply this same structure to current and eligible former Board members and survivors who have non-CalPERS medical plans and who are eligible for District provided benefits under the capped contribution structure; and

NOW, THEREFORE BE IT RESOLVED that, (a) the established total premium for determining the applicable employer contribution for the self-funded UHC plan for 2019 will be set at the same level as the CalPERS PERS Choice Bay Area Plan as it has been established for 2019 and the total premium for the insured Non-CalPERS Kaiser Plan used for determining the applicable employer contribution for 2019 shall be established by the rates negotiated between Kaiser and the District for that period;

BE IT FURTHER RESOLVED that, the rate structure and premium contribution for Directors and for former Directors and survivors who are eligible for District provided health benefits under a non-CalPERS plan at the capped employer contribution structure shall be the amount necessary to pay the full cost of his/her enrollment, including the enrollment of his/her family members in a health benefits plan up to a maximum of the higher of the Non-CalPERS Kaiser basic plan or the Bay Area Blue Shield Access+ basic plan, less \$147.14 employee/annuitant share each month for the year 2019; and

BE IT FURTHER RESOLVED THAT, the rate structure and premium contribution for these plans for Calendar Year 2019 shall be as follows:

<b>Kaiser Permanente HMO</b>	Single	2-Party	Family
Total Monthly Premium	\$ 1,330.81	\$ 2,661.62	\$ 3,766.19
District's Cost	\$ 1,183.67	\$ 2,514.48	\$ 3,619.05
Director's Cost	\$ 147.14	\$ 147.14	\$ 147.14

<b>United Health Care</b>	Single	2-Party	Family
Total Monthly Premium	\$ 866.27	\$ 1,732.54	\$ 2,252.30
District's Cost	\$ 719.13	\$ 1,585.40	\$ 2,105.16
Director's Cost	\$ 147.14	\$ 147.14	\$ 147.14

BE IT FURTHER RESOLVED THAT, with the exception of the new premium contribution structure applicable to active directors and those former directors who are eligible for District provided benefits at the capped contribution rate, Resolution No. 4981 "In the Matter of Health and Welfare Benefits for Directors" remains in full force and effect.

Adopted at a regular meeting of the Board of Directors of the San Francisco Bay Area Rapid Transit District at Oakland, California this \_\_\_ day of \_\_\_\_\_ 2018.

Signed: \_\_\_\_\_

President

Attest: \_\_\_\_\_

District Secretary



# EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Robert M. Pevan</i> 28 Nov 2018		GENERAL MANAGER ACTION REQ'D:		
DATE: 11/19/2018		BOARD INITIATED ITEM: No		
Originator/Prepared by: Christopher Gan, Dept: Assistant Controller <i>Chris Gan</i> 11/26/18 Signature/Date:	General Counsel <i>[Signature]</i> 11/26/18 [ ]	Controller/Treasurer <i>[Signature]</i> 11/26/18 [ ]	District Secretary [ ]	BARC <i>[Signature]</i> 11/26/18 [ ]

## Independent Auditor's Report on Basic Financial Statements and Internal Control for the fiscal year ended June 30, 2018

### PURPOSE:

To present the Independent Auditor's Reports on Basic Financial Statements and Internal Control over financial reporting for the fiscal year ended June 30, 2018.

### DISCUSSION:

The San Francisco Bay Area Rapid Transit District Act provides that an annual audit be made of all books and accounts of the District by an independent public accountant (Public Utilities Code Section 28769).

The independent certified public accounting firm of Macias, Gini and O'Connell LLP conducted the audit for fiscal year 2018. The District's basic financial statements provide 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 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. Their audit concluded that the District's basic financial statements for the year ended June 30, 2018 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 control over financial reporting. The results of the evaluation are discussed in the Independent Auditor's Report on Internal Control over Financial Reporting.

The auditor's report indicated that they did not identify any deficiencies in internal control over financial reporting that are material weaknesses.

**FISCAL IMPACT:**

None

**ALTERNATIVES:**

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

**RECOMMENDATION:**

None

**MOTION:**

None



# EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>28 Nov 2018</i> <i>Robert M. Pown</i>		GENERAL MANAGER ACTION REQ'D: Yes		
DATE: 11/20/2018		BOARD INITIATED ITEM: Yes		
Originator/Prepared by: Elena Van Loo Dept: Customer Access & Accessibility Signature/Date: <i>Elena Van Loo</i> <i>Nov 26, 2018</i>	General Counsel <i>[Signature]</i> <i>11/22/18</i> [ ]	Controller/Treasurer <i>[Signature]</i> <i>11/22/18</i> [ ]	District Secretary [ ]	BARC <i>[Signature]</i> <i>11/26/18</i> [ ]
Status: Routed		Date Created: 11/20/2018		

## BART Accessibility Task Force Membership Appointment

### PURPOSE:

Request the BART Board of Directors to appoint a nominated candidate, Emily Witkin, to the BART Accessibility Task Force (BATF).

### DISCUSSION:

The BATF has been in existence since 1975 to advise the BART Board and BART staff on accessibility issues at BART. The BATF by-laws provide for the committee to be composed of up to eighteen members who live or work in the BART service area. The BATF by-laws also state that to become a member of the committee an interested candidate must attend three out of four consecutive meetings and then apply for membership. If the candidate is endorsed by the members of the BATF through a majority vote, then the recommendation for membership is submitted to the BART Board of Directors for final approval.

### Candidate for BATF Membership:

- Emily Witkin, a candidate for membership to the BATF, was endorsed by a majority vote of the members of the BATF that were present at the November 14, 2018 BATF Committee meeting.
- This BATF membership recommendation is being submitted to the BART Board for consideration.
- The prospective candidate, if approved by the BART Board, will be officially seated as a member of the BATF on December 12, 2018 for a term of one year, or until the



BART Board announces appointments and/or re-appointments for a new term, whichever occurs later. If approved, the BATF will be comprised of 18 members.

**FISCAL IMPACT:**

Members receive a \$15.00 monthly stipend for travel to attend regularly scheduled monthly committee meetings. Additionally, members are eligible to be reimbursed for the actual cost of travel for additional pre-approved meetings.

Funds will be budgeted in the Customer Access Department operating budget (Dept. 1102491, Account 681500-Other Non-Professional Services). Funding for services in the Fiscal Year are included in the Department's existing operating budget. Funding for subsequent years will be included in the proposed annual operating budget, which is subject to Board approval.

This action is not anticipated to have any Fiscal Impact on the unprogrammed District reserves in the current Fiscal Year.

**ALTERNATIVES:**

Do not make the appointment.

**RECOMMENDATION:**

Appoint Emily Witkin to the BART Accessibility Task Force (BATF).

**MOTION:**

The BART Board accepts the recommendation of the BATF and appoints the nominated candidate, Emily Witkin, for membership to the BATF for a term beginning December 12, 2018 for one year, or until the Board makes new appointments and/or reappointments for a new term, whichever occurs later.



# EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>29 Nov 2018</i> <i>Robert M. Powers</i>		GENERAL MANAGER ACTION REQ'D:		
DATE: 11/26/2018		BOARD INITIATED ITEM: No		
Originator/Prepared by: Angie West Dept: Office of the CIO <i>[Signature]</i> Signature/Date: <i>11/28/18</i>	General Counsel <i>[Signature]</i> <i>11/29/18</i> [ ]	Controller/Treasurer <i>Chris Gan</i> <i>11/28/18</i> [ ]	District Secretary [ ]	BARC <i>[Signature]</i> <i>11/29/18</i>

## Award of Agreement No.6M4607: Mobility as a Service (Maas) - Payment Processor

### PURPOSE:

To request that the Board authorize the General Manager to award Agreement No. 6M4607 to PayPal Braintree in the estimated amount of \$1.4M (subject to the actual transaction volume) for payment processing services which will allow BART to charge a customer's credit or debit card for various digital products and services across multiple channels (e.g., mobile and website).

### DISCUSSION:

The District's Mobility as a Service (Maas) Program will utilize payment processing services to power the BART Official App, parking payments and other channels as necessary to collect payments and report on all transactions. Included in this service will be the ability to report on all back-office financial details to Treasury including refunds, chargebacks, and account reconciliation. The payment processing service is a critical element to support the Feb 11, 2019, 5AM BART opening, when the BART patrons will not have access to parking payment machines. The BART Official App will be integrated with the payment processing services to allow patrons to easily pay for the parking fee using their smart phones.

The District requires a commercially available, payment processing service that is easy to integrate with BART applications and requires minimal configuration. The system will need to be flexible and scalable to support new technologies and other diverse products and

channels. A Request For Proposal (RFP) was issued to private commercial entities that met this criterion and other valuable components such as experience with other public sector entities with high transaction volumes, Payment Card Industry compliance, and use of transaction data encryption.

The Notice to Proposers was emailed on October 5, 2018, to five (5) prospective Proposers. RFP No. 6M4607 was sent to firms meeting the technical qualifications required to process digital payments. In response to the RFP, two (2) proposals were received. The two responsive proposals were reviewed by the BART evaluation team and scored based on several factors, including the firm's qualifications, experience and references, proposed services and project plan and schedule.

As a result of the analysis, PayPal/Braintree was determined to be the top proposer. The staff has determined that the proposal submitted by PayPal Braintree is responsive and that its proposal price is fair and reasonable based on industry standards payment processing services. Additionally, a review of the PayPal/Braintree's business experience has resulted in the determination that PayPal Braintree is responsible. PayPal/Braintree has over 254 million active users in more than 200 countries and has processed over \$16B transactions. In 2013, PayPal acquired leading e-commerce solution for Credit and Debit card payments; Braintree payments. Braintree provided both payments technology, aka "Gateway", and banking and services, aka "Merchant Acquiring" services. Leveraging the power of their dual-sided network (both consumer and merchant) PayPal has both vertical and horizontal experience across all facets of payment needs and support infrastructure to accommodate any future expansions

This multi-year service agreement will provide the District with pricing based on transaction volume to access PayPal Braintree payment processing engine for fee payments estimated to be \$1.4M for the four-year contract period. During the term of the contract, the District will be monitoring and evaluating transaction volume and fees to ensure optimal pricing is applied.

Pursuant to the District's Non-Federal Small Business Program, the Office of Civil Rights set a 5% Small Business Prime Preference for this Agreement for Small Businesses certified by the California Department of General Services (DGS). It was determined that there were no certified Small Businesses certified by the DGS among the responsive Proposers and, therefore, the Small Business Prime Preference is not applicable.

Pursuant to the District's Non-Discrimination Program for Subcontracting, the Availability Percentages for this Agreement are 5.5% for MBEs and 2.8% for WBEs. PayPal/Braintree will not be subcontracting any portion of the Work and therefore, the provisions of the District's Non-Discrimination Program for Subcontracting do not apply.

**FISCAL IMPACT:**

The subject EDD proposes a four-year contract at a total cost of \$1.4M from 12/10/2018 – 6/30/2022. These costs will be partially offset by a corresponding reduction of fees currently incurred for pre-5AM EZ Rider transactions. Funds will be budgeted in the Office of Controller/Treasurer operating budget (Cost Center 0302320 - Credit/Debit Fare Program, Account 602022 - Credit Card and Interchange Fees) as follows:

	Base Agreement		Option Years		Total
	FY19	FY20	FY21	FY22	
<b>Sales</b>	\$1,625,000	\$3,900,000	\$17,700,000	\$17,700,000	\$41M
<b>Cost</b>	\$65,000	\$156,000	\$586,320	\$586,320	\$1.4M
<b>%Cost</b>	4.00%	4.00%	3.31%	3.31%	3.4%
<i>FY19 sales and cost prorated to start from February 2019</i>					

Funding for services in this Fiscal Year is included in the Department's existing operating budget. Funding for subsequent years will be included in the proposed annual operating budget, which is subject to Board approval.

This action is not anticipated to have any Fiscal Impact on unprogrammed District reserves in the current Fiscal Year.

**ALTERNATIVES:**

The alternative to awarding this Agreement would be to reject the proposal and re-advertise the RFP, which staff believes would not lead to a better price or more competition.

**RECOMMENDATION:**

Adoption of the following motion.

**MOTION:**

The General Manager is authorized to award Agreement No. 6M4607 to PayPal Braintree for two base years and given authorization to exercise two single year options to extend the Agreement, at the estimated total cost of \$1.4M (subject to the actual transaction volume).



# EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Robert M. Poore</i> 30 Nov 2018		GENERAL MANAGER ACTION REQ'D:		
DATE: 11/26/2018		BOARD INITIATED ITEM: No		
Originator/Prepared by: Martin Gran Dept: Labor Relations <i>Martin Gran</i> Signature/Date: 11/29/18	General Counsel <i>[Signature]</i> 11/29/18 [ ]	Controller/Treasurer <i>[Signature]</i> 11/30/18 [ ]	District Secretary [ ]	BARC <i>[Signature]</i> 11/29/18 [ ]
Status: Routed		Date Created: 11/26/2018		

## Resolution Ratifying the Collective Bargaining Agreement with the BART Police Officers' Association

### PURPOSE:

To obtain approval of the attached resolution ratifying the successor Collective Bargaining Agreement (CBA) between the following San Francisco Bay Area Rapid Transit District and the BART Police Officers' Association (BPOA).

### DISCUSSION:

The District's CBA with the BPOA was for a five -year period and expired on June 30, 2018. Negotiations for a successor Agreement commenced in February 2018. In November 2018, the parties reached a tentative agreement, subject to member and board ratification, to a four-year successor CBA.

The tentative agreement provides the BPOA with the same general wage increase that was provided to the District's other unions at the time of the 2016 contract extension, with an additional one-time 6% market rate adjustment provided to sworn officers to address the fact that salaries for BART Police Officers are currently 13% - 20% below the market average of specified comparator police departments.

The District was able to reach an agreement that provides the District with increased flexibility and efficiency because it: allows the contracting out of background investigations; increases officer accountability by lengthening the amount of time disciplinary records are retained; reduces officer's time off by eliminating two days per year of discretionary leave; increases available patrol officers by civilianizing two positions; and limits employees' ability to accrue compensatory time off when vacancy rates are high.

Although the prior contract expired in June 2018, the agreed-upon wage increase is not retroactive; however, employees will receive a one-time payment in recognition of the delay in all economic increases. In addition, the parties agreed to a number of economic changes, the net result of which represents only minimal financial impact; namely, less than 0.5% of payroll. These include adjustments in pension cost-sharing, as well as modifications to existing premium pays. A summary of the salient changes in the tentative agreement is attached. It is currently anticipated that the BPOA will vote to ratify this Tentative Agreement by December 5, 2018.

**FISCAL IMPACT:** The actual cost for FY 19 is \$2.2M because of the delayed implementation. (The annualized ongoing cost of the FY 19 improvements is \$3.5M.) For each successive year of the 4-year CBA, the following General Wage Increases (GWI) will apply: 2.5% (FY 20); 2.75% (FY 21); and 2.75% (FY 22). Other than GWI, there are no additional economic improvements for each of those three fiscal years, with the exception of 1% adjustments to pension contributions.

**ALTERNATIVES:**

Reject the successor CBA. If the Board does not approve the successor CBA, the parties would remain without a contract and would continue negotiating towards a new successor CBA.

**RECOMMENDATION:**

Adoption of the following motion:

**MOTION:**

The Board approves the attached resolution ratifying the successor Collective Bargaining Agreement between San Francisco Bay Area Rapid Transit District and BART Police Officers' Association (BPOA), July 1, 2018 – June 30, 2022.

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

In the Matter of Ratifying the 2018 - 2022  
Collective Bargaining Agreement between the District  
and the BART Police Officers' Association (BPOA)

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

**BE IT RESOLVED** that the Board of Directors of the San Francisco Bay Area Rapid Transit District hereby ratifies the 2018 - 2022 Collective Bargaining Agreement between the District and the BART Police Officers' Association as generally described in the attached Summary of Changes, dated November 29, 2018; and

**BE IT FURTHER RESOLVED** that the General Manager is authorized to execute the Agreement on behalf of the District.

###

Adopted \_\_\_\_\_

## 2018-22 District/BART Police Officer Association Collective Bargaining Agreement (CBA)

### Summary of Changes from 2013-18

*This document represents a summary of important changes negotiated between the District and the BPOA. While this summary describes the important changes between the expired and successor CBA, should there be any inconsistency between this summary and the labor agreement, the language and intent of the labor agreement shall govern.*

A. *The following provisions are the major cost-drivers of the successor CBA:*

**Article 11.1 General Wage Increase (GWI):** All members shall receive the following wage increases: 2.5% (FY 19); 2.5% (FY 20); 2.75% (FY 21); and 2.75% (FY 22). The FY 19 increase is effective the first pay period following ratification, and all subsequent GWIs are effective on July 1 of the fiscal year.

**Article 11.2 Market Adjustment:** There will be a one-time 6% increase for Police Officers to bring them closer to market average, effective the first pay period following ratification to address the fact that salaries for BART Police Officers are currently 13% - 20% below the market average of specified comparator police departments.

**Article 1.8 Duration of Agreement:** July 1, 2018 – June 30, 2022

B. *The following provisions represent the major non-economic changes:*

**Article 2.7 Contracting Out:** Modified to permit background investigations to be done by outside agencies through the term of the CBA.

**Article 3.1B & 3.2 Police Accountability:** Add additional time that discipline will be held in the employees' personnel files. Prior disciplines shall be considered for promotions for 2 years (up from 1 year), and for progressive discipline for 3 years (up from 2 years).

C. *In addition to the above major cost-drivers, the following economic provisions net out to only minimal costs to the District (i.e., less than 0.5% of payroll):*

**Article 4.5 Holiday Conversion:** Currently, the Police Department relies heavily on overtime to staff holidays. Holiday Conversion converts overtime paid at the holidays to year-round pay on a cost-neutral basis, thus reducing overtime, CTO accrual and back-fill costs.

**Article 4.10 Compensatory Time Off:** Modified to provide the Chief with the ability to limit Police Officers' accrual of compensatory time off (CTO) when the sworn vacancy rate is over 17% to reduce escalating compensatory time-off costs.

**Article 4.11 Discretionary Days Off:** Eliminates current CBA provision allowing employees to take time off work using two days of accumulated paid time off per year outside of the yearly vacation bid process, thus reducing required back-fill.



**Article 5.3, 5.7 & 6.3 Insurance:** Eliminates District-provided life insurance and long-term disability benefits and provides that these benefits will be provided through the Union.

**Article 5.4 Health Benefit Contributions:** Codify that employees will continue to contribute the \$44 per month additional contribution towards health coverage, and apply the existing 3% annual escalator to that contribution.

**Article 6.1 Pension Cost-Share:** The following changes to Sworn employee pension contributions will be incrementally phased in over the term of the CBA:

- Classic Sworn employees will pay more in pension contributions, increasing from the current 4% cost-share up to a 10% contribution.
- PEPRA Sworn employees (officers hired on or after January 1, 2013) will pay a lower pension contribution, decreasing from the current 17% to the statutory minimum 13% contribution.

**Article 7.2 Sr. Police Officer:** Increase pay for Senior Police Officers (by .75% for Intermediate Sr. Officers and 1.25% for Advanced Sr. Officers) to recognize achievement in attaining state POST certifications.

**Article 9.8 Physical Fitness:** Cease program of reimbursing employees up to \$50 per month for gym membership, as the program was under-utilized.

**Article 11.2 Longevity Pay:** Increase Longevity Pay to improve retention and recognize District service. (Increase 10-year and 14-year longevity steps by 1%.)

**Article 11.2C Bilingual Pay:** Increase Bilingual Pay from \$25 per pay period to \$50 pay period to recognize employees who assume additional duties to help serve our diverse ridership.

**Article 11.3 Call-Back Time:** Reform call-back time language to prevent overlapping payment of hours that are included both in minimum call-back hours and an employee's regularly scheduled hours.

**Article 11.9 Uniforms Maintenance Allowance:** Cease paying annual \$1050 uniform maintenance allowance to Police Officers.

**Article 11.11 Education Pay:** Restructure and increase the maximum Education benefit by 1.5% to recruit employees with Associate's and Bachelor's degrees, as well as to incentivize current employees to attain higher education.

**Article 11.12 Civilianize Positions:** Increase available Patrol Officers by civilianizing the two positions previously filled by Police Officers: Traffic Officer and Crime Analyst.



## EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Raymond Hsu</i> 28 Nov 2018		GENERAL MANAGER ACTION REQ'D: Approve and Forward to the Board		
DATE: 8/8/2018		BOARD INITIATED ITEM: No		
Originator/Prepared by: Raymond Hsu Dept: Maintenance and Engineering <i>Raymond Hsu</i> for Raymond Hsu Signature/Date: 11/28/2018	General Counsel <i>[Signature]</i> 11/28/18 [ ]	Controller/Treasurer <i>Chui Gan</i> 11/28/18 [ ]	District Secretary [ ]	BARC <i>[Signature]</i> 11.29.2018 [ ]

### Station Emergency Lighting (15II-120)

#### PURPOSE:

To authorize the General Manager to award Contract No. 15II-120, Station Emergency Lighting, to SilMan Venture Corporation (SilMan Construction) of San Leandro, CA for the total bid price of \$13,789,020.00.

#### DISCUSSION:

This is the second of seven phases to replace Station Emergency Lighting systems across the District. The purpose of this phase, Contract No. 15II-120, is to upgrade the critical emergency lighting systems at eleven (11) stations within Contra Costa and Alameda counties: San Leandro (A40); Bay Fair (A50); Hayward (A60); Rockridge (C10); 12<sup>th</sup> Street (K10); MacArthur (K30); Downtown Berkeley (R20); North Berkeley (R30); El Cerrito Plaza (R40); Richmond (R60); and Lake Merritt (A10).

The emergency lighting system switches on automatically when a station experiences a power outage. The system provides at least ninety minutes of lighting on egress passageways to allow patrons to safely exit the station. The existing emergency lighting systems have been in operation for over twenty years, suffer from obsolescence, make maintenance difficult, and are at or near the end of their useful life.

The scope of work requires the Contractor provide all labor, equipment, material, and services required for installation, testing, commissioning, and connections of station emergency lighting and ensure full compliance with the National Fire Protection Association (NFPA) 101 regulatory requirement in the event of a power failure.

The District provided an Advance Notice to Bidders for 247 prospective bidders on August 3rd, 2018 and Contract Documents were sent to 24 plan rooms. The Contract was advertised on August 9, 2018 in local publications and posted to the District’s Procurement Portal on August 10, 2018. A total of forty-five (45) entities downloaded the Contract Documents from the BART Procurement Portal. A Pre-Bid Meeting was conducted on August 29, 2018 with thirteen (13) prospective bidders. Two site tours were conducted on August 29, 2018, with five (5) prospective bidders and on September 5, 2018 with seven (7) prospective bidders. One (1) addendum was issued during the bid period.

The Office of Civil Rights conducted a Matchmaking session on September 18, 2018 to help introduce Local Small Business firms to potential prime contractors.

A total of two (2) bids were received and publicly opened on October 9, 2018. Tabulation of the Bids, including the Engineer’s Estimate is indicated in the Table 1 as follows:

Table 1: Phase 2: Station Emergency Lighting Bid Prices

<b>SilMan Venture Corporation dba SilMan Construction</b>	San Leandro, CA	\$13,789,020.00
<b>Blocka Construction, Inc.</b>	Fremont, CA	\$31,260,200.00
<b>Engineer’s Estimate</b>		<b>\$13,700,000.00</b>

District staff determined that SilMan Construction was the lowest, responsive bidder. SilMan Construction’s Total Bid Price of \$13,789,020.00 was found to be fair and reasonable and consistent with the engineers estimate.

Non-Discrimination Program:

Pursuant to the District’s Non-Discrimination Program for Subcontracting, the Availability Percentages for this Contract are 18.2% for Minority Business Enterprises (“MBEs”) and 9.3% for Women Business Enterprises (“WBEs”). SilMan Construction did not commit to both MBE and WBE participation; therefore, SilMan Construction was requested to provide the Office of Civil Rights with supporting documentation to determine if it had discriminated on the basis of race, national origin, color, gender or ethnicity. Based on the review of the information submitted by the SilMan Construction, the Office of Civil Rights found no evidence of discrimination.

Small Business Program:

Pursuant to the District’s Non-Federal Small Business Program, the Office of Civil Rights set a 25% Local Small Business (LSB) Subcontractor Participation Goal for this Contract. Bidders who meet the LSB Subcontractor Participation Goal are eligible for an LSB

Preference of 5% of the lowest responsive Bidder's Bid, up to a cap of \$1.5 Million. The Office of Civil Rights determined that SilMan Construction committed to subcontracting 0.4% to LSBs. The apparent low Bidder, SilMan Construction, did not meet the LSB Subcontractor Participation Goal and, therefore, is not eligible for the Bid Preference, but is still the apparent low Bidder.

**FISCAL IMPACT:**

Funding of \$13,789,020 for award of Contract No. 15II-120 is included in the total project budget for 15IIRR1, Station Emergency Lighting. 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 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:

<b>Measure RR</b>	<b>\$27,010,696</b>
<b>TOTAL</b>	<b>\$27,010,696</b>

As of November 13, 2018, \$27,010,696 is the total budget for this project. BART has expended \$2,108,032, committed \$3,573 and reserved \$105,839 to date. This action will commit \$13,789,020, leaving an available fund balance of \$11,004,232 balance for this project.

This action is not anticipated to have any Fiscal Impact on unprogrammed District Reserves.

**ALTERNATIVES:**

- Reject all bids and re-advertise the Contract.
- Rebidding is not likely to result in lower prices.

**RECOMMENDATION:**

Adopt the following motion.

**MOTION:**

The General Manager is authorized to award Contract No. 15II-120 Station Emergency Lighting to SilMan Venture Corporation (SilMan Construction) for the Bid Price of \$13,789,020.00.



# EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>28 Nov 2018</i> <i>R. M. P...</i>		GENERAL MANAGER ACTION REQ'D:		
DATE: 11/16/2018		BOARD INITIATED ITEM: No		
Originator/Prepared by: R. Elliott Vantreas Dept: Maintenance and Engineering	General Counsel <i>[Signature]</i>	Controller/Treasurer <i>Chris Cran</i>	District Secretary	BARC <i>[Signature]</i>
Signature/Date: <i>[Signature]</i> 11/28/18	11/28/18 [ ]	11/28/18 [ ]	[ ]	11-28-2018 [ ]
Status: Approved		Date Created: 11/16/2018		

## Award of Sole Source Agreement, Elevator-Escalator Remote Monitoring Pilot Project (Two-Thirds Vote Required)

### PURPOSE:

To obtain Board authorization for the General Manager to negotiate and execute a Sole Source Agreement with Integrated Display Systems Inc. for the procurement of an Elevator-Escalator Remote Monitoring System in an amount not to exceed \$475,000.

### DISCUSSION:

Beginning in 1995, BART began implementing an Elevator-Escalator Remote Monitoring System as part of an elevator and escalator upgrade program. At that time no remote monitoring solutions were available to allow for monitoring of all the variety of equipment BART maintained. As a result, the benefit of this monitoring was negligible. A reliable Elevator Escalator remote monitoring system will not only provide Maintenance with real time information regarding elevator escalator functionality thereby minimizing the downtime of these systems but will also immediately post equipment outage to public website for customer information.

BART currently maintains 314 elevators and escalators that were procured through fourteen different manufacturers and range in age from one year to forty-seven years old. There is only one product available that can reliably monitor all these systems; Integrated Display Systems Inc. Elevator-Escalator Remote Monitoring system called Lift-Net. This is a patented system not provided by any other manufacturer.

Staff is seeking to enter into direct negotiations with Integrated Display Systems Inc. to execute an Agreement to implement Lift-Net for 83 high use Elevators and Escalators at six passenger stations in an amount not to exceed \$475,000. The remote monitoring system will be configured to allow for future expansion of remote monitoring of Elevators and Escalators at any of the District's passenger stations. The six stations included in this Agreement are:

1. Embarcadero
2. Montgomery St.
3. Powell St.
4. Civic Center
5. 12<sup>th</sup> St. Oakland
6. 19<sup>th</sup> St. Oakland

The Procurement Department will review the Contract to confirm compliance with the District's procurement standards. The Office of the General Counsel will approve the Agreement as to form. Pursuant to the District's Disadvantaged Business Enterprise ("DBE") Program, the Office of Civil Rights is utilizing race and gender-neutral efforts for Sole Source Contracts. Therefore, no DBE goal was set for this Contract.

FTA Circular 4220.1, Chapter VI, Subparagraph 3.i(1)(b) stipulates that the recipient may make a sole source award under certain circumstances, including when the product "demonstrates a unique or innovative concept or capability not available from another source" and "patent or data rights restrictions preclude competition". The Sole Source procurement of a Lift-Net system is justified under the aforementioned FTA requirements. The Lift-Net system implements a communication protocol called the Lift-Net serial data protocol. This protocol was developed and copyrighted by Integrated Display Systems Inc. This protocol is capable of interfacing with multiple manufacturers' controllers. BART currently maintains elevator-escalator systems from fourteen different manufacturers systemwide. The Lift-Net serial data protocol allows for remote monitoring data from all of these systems to be communicated through one system, Lift-Net. Because this protocol is proprietary to Integrated Display Systems, Inc. and the product is unique and not available from another source, BART is precluded from soliciting such a product from any other source other than Integrated Display Systems, Inc.

Pursuant to Public Contract Code Section 20227, the Board may direct the purchase of any supply, equipment or material without observance of competitive bidding upon a finding by two-thirds of all members of the Board that there is only a single source of procurement and that the purchase is for the sole purpose of duplicating or replacing equipment currently in use. A Sole Source procurement is justified under Section 20227 since the Elevator-Escalator Remote Monitoring System being provided by Integrated Display Systems, Inc. is for the sole purpose of replacing the Elevator-Escalator Remote Monitoring System

currently in use throughout the District.

**FISCAL IMPACT:**

Funding of \$475,000 is included in the total project budget for 15LN400, Elevator/ Escalator Remote Monitoring. 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 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:

FY 2017 Operating Allocation to Capital	\$ 612,000
TOTAL	\$ 612,000

As of November 16, 2018, \$612,000 is the total budget for this project. BART has expended \$49,919.90, committed \$0 to date. This action will commit \$475,000 leaving an available fund balance of \$87,081 balance for this project.

This action is not anticipated to have any Fiscal Impact on unprogrammed District Reserves.

**ALTERNATIVES:**

Continue to maintain the systems in the current status which requires station agents, maintenance workers or patrons to notify of elevator/escalator status and for maintenance to react to failures as they occur.

**RECOMMENDATION:**

Adoption of the following motion.

**MOTION:**

Pursuant to California Public Contract Code Section 20227, the Board of Directors finds that Integrated Display Systems, Inc. is the single source for the purchase of an Elevator-Escalator Remote Monitoring System for the sole purpose of replacing the Remote Monitoring System currently in use throughout the District.

The Board of Directors authorizes the General Manager to enter into direct negotiations and to execute an Agreement with Integrated Display Systems, Inc. to provide an Elevator-Escalator Remote Monitoring System in an amount not to exceed \$475,000.

Two thirds vote required.



# EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>28 Nov 2018</i> <i>Rohit M. Poon</i>		GENERAL MANAGER ACTION REQ'D: Yes		
DATE: 11/6/2018		BOARD INITIATED ITEM: No		
Originator/Prepared by: Wahid Amiri Dept: Extensions	General Counsel <i>[Signature]</i>	Controller/Treasurer <i>Christina</i>	District Secretary	BARC <i>[Signature]</i>
Signature/Date: <i>[Signature]</i> 11/28/2018	11/28/18 [ ]	11/28/18 [ ]	[ ]	11-28-2018 [ ]

## Change Orders to Contract No. 05HA-100, El Cerrito Del Norte Station Modernization Project

### PURPOSE:

To authorize the General Manager to execute Change Order Nos. 054 and 049 in an aggregate amount not to exceed \$650,000 to Contract No. 05HA-100, El Cerrito Del Norte Station Modernization Project with Clark Construction Group.

### DISCUSSION:

On February 9, 2017, the Board authorized the General Manager to award Contract No. 05HA-100, El Cerrito Del Norte Station Modernization Project. This project expands the paid area, upgrades the existing paid area, constructs two new elevators and two new stairs, provides new LED lighting and associated station modifications. The project also exercised four options to procure AFC equipment for other stations; relocate the passenger drop off area and enhance the Ohlone Greenway/bicycle path/hardscape; upgrade the area outside the paid area; and provide new bus shelters.

During construction, two issues arose which resulted in Change Orders 54 and 49.

New fire alarm system for the station (CO 054) Est. \$250,000

The original design utilized the approach that a new fire alarm system could be installed with the new facility and then connected to the existing station fire alarm in the existing facility. However, prior to implementation (which was a few years after the design was completed), project staff became aware that the existing system had experienced significant degradation



due to water intrusion as well as electrical grounding problems. These underground utility issues were not apparent during the design phase, but they were discovered during coordination with Maintenance and Engineering (just prior to construction). The system had degraded such that the original design approach to connect the new fire alarm system to the existing could no longer meet code regulations. Therefore, the whole system will need to be new.

Accessibility Improvement Program (CO 049) Est. \$400,000

With the passage of Measure RR, some of the District’s Accessibility Improvements can be implemented through this project. As this change order work is adjacent to the construction area, the additional scope would result in cost savings, construction efficiencies, faster delivery and minimize patron and bus service disruption. The project will modify existing sidewalks and the bus island to meet current ADA codes and pick up construction efficiencies.

Pursuant to Board Rule 5-2.3, Change Orders involving expenditures greater than \$200,000 will require Board approval.

The Office of the General Counsel will approve these Change Orders as to form prior to execution. The Procurement Department will review these Change Orders for compliance with procurement guidelines prior to execution.

**CAPITAL FISCAL IMPACT:**

The total amount of \$650,000 for Change Order No. 054 and No. 049 to Contract 05HA-100 will come from the following projects.

The two tables below depict funding assigned to the referenced project and is included to track funding history against spending authority. Funds needed to meet this request will be expended from the following sources:

**PROJECT 05HA002 – El Cerrito Del Norte Station Mod (CO 054)  
\$250,000**

<b>Proposed Funding</b>	
F/G 802A – Measure RR GOB	\$3,000,000
Total	\$3,000,000

As of November 21, 2018, \$3,000,000 is the total budget for this project. BART has

expended and committed \$0 to date. This action will encumber \$250,000 leaving an available fund balance of \$2,750,000 in this fund source for this project.

**PROJECT 15NU002 – Accessibility Improvement Program (CO 049)  
\$400,000**

<b>Proposed Funding</b>	
F/G 3009, 3013, 3607, 3609 & 352X - Federal funds	\$4,099,041
F/G 8525, 8526, 8529, 8530 & 850W- Operating Alloc to Capital	\$1,024,760
F/G 802A – Measure RR GOB	\$11,900,000
Total	\$17,023,801

As of November 21, 2018, \$17,023,801 is the total budget for this project. BART has expended \$1,738,706, committed \$948,676, and reserved \$0.00 to date. This action will encumber \$400,000 leaving an available fund balance of \$13,936,419 in these fund sources for this project.

The Office of Controller/Treasurer certifies that funds are currently available to meet this obligation.

This action is not anticipated to have any Fiscal Impact on unprogrammed District reserves.

**ALTERNATIVES:**

Failure to issue these Change Orders for Contract No. 05HA-100 will cause the work to be performed in a future contract at a potentially higher cost.

**RECOMMENDATION:**

It is recommended that the Board adopt the following motion:

**MOTION:**

The General Manager is authorized to execute Change Order Nos. 054 and 049 in an aggregate amount not to exceed \$650,000 to Contract No. 05HA-100, El Cerrito Del Norte Station Modernization Project.



**EXECUTIVE DECISION DOCUMENT**

**ATTACHMENT #1**

CONTRACT NO. 05HA-100

CO Nos.: 49 and 54

**CHANGE ORDER SUMMARY**

**BACKGROUND**

Name of Contractor: Clark Construction, LP  
 Contract No./NTP: 05HA-100 / May 15, 2017  
 Contract Description: El Cerrito Del Norte Station Modernization  
 Percent Complete as of: 11/15/2018 – 23%  
 Dollars Percent Complete as of: 11/15/2018 – 26%

<b>COST</b>	<u>% of Award</u>	<u>Cost</u>	<u>Contract Amount</u>
Original Contract Award Amount			\$23,200,000.00
Change Orders:			
Other than Board Authorized CO's	2.55%	\$690,562.95	
Board Authorized CO's:			
Previous Change Orders up to:	48.86%	\$11,334,603.00	
		(including Options)	
Change Order 49:	1.72%	\$400,000.00	
Change Order 54:	1.08%	\$250,000.00	
Subtotal of All Change Orders	54.63%	\$12,675,165.95	
<b>Revised Contract Amount:</b>			<b>\$35,875,165.95</b>

**SCHEDULE**

Original Contract Duration: 740 Days  
 Time Extension to Date: 0 Days  
 Time Extension for these new Change Orders: To Be Determined  
 Estimated Revised Contract Duration: 740 Days

**SUMMARY REASON FOR THESE CHANGE ORDER**

CO 54: Upgrade fire alarm system for the whole station. This is necessary to bring the alarm system to current building codes.

CO 49: Reconstruct sidewalk and bus zone to comply with ADA requirements. This is necessary to modify the bus zone which was not included in the original scope of this project.



# EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <b>28 NOV 2018</b> <i>Phil M. Penn</i>		GENERAL MANAGER ACTION REQ'D: Approve and forward to Board of Directors		
DATE: 11/16/2018		BOARD INITIATED ITEM: No		
Originator/Prepared by: Tracy Johnson Dept: Maintenance and Engineering <i>Tracy Johnson</i> Signature/Date: 11-26-18	General Counsel <i>[Signature]</i> 11/27/18 [ ]	Controller/Treasurer <i>[Signature]</i> 11/27/18 [ ]	District Secretary [ ]	BARC <i>[Signature]</i> 11.27.2018 [ ]

## Contract No.15QH-150, Lafayette Station Site Improvements, Change Order No. 19

### PURPOSE:

To authorize the General Manager to execute Change Order No. 19 to Contract No. 15QH-150, Lafayette Station Site Improvements, in the amount not to exceed \$725,000 which includes a 107 non-compensable calendar day extension of the Contract duration.

### DISCUSSION:

On March 9, 2017 the Board of Directors authorized the General Manager to award Contract No. 15QH-150, Lafayette Station Site Improvements, to USS Cal Builders, Inc. in the amount of \$4,650,000. This Contract essentially consisted of a complete station site renewal and provided for the installation of the following; (a) two completely repaved parking lots; (b) a new storm water management system in compliance with the new water quality requirements; (c) new efficient LED station lighting; and, (d) a new vehicle and bus drive up and drop off alignment.

Change Order No. 19, in the amount not to exceed \$725,000, is required to complete the Contract. This Change Order is comprised of multiple elements of work from various stages of construction, as described below.

After observing the operation of the partially reconfigured “drop-off” area, it was determined that significant improvements to safety and functionality could be achieved by modifying the design plans to better accommodate passengers of cars and busses. This was accomplished by modifying the curbs and ramps. These modifications were valued at \$60,459.59.

The as-built drawings did not show a steel column embedded in the electrical room wall. This unforeseen condition required the contractor to reroute the previously installed conduit. This rework was valued at \$3,812.55.

The Contractor replaced a rusting electrical conduit that could not be reused, as stated in the design drawings, for safety reasons. This additional work was valued at \$4,227.15.

An existing catch basin in the parking lot was damaged and could not be reused as stated in the design drawings. The value of replacing this catch basin was \$45,478.20.

The Contractor encountered and replaced existing utilities which were not shown on the design drawings and were non-compliant with electrical codes. This work was valued at \$11,689.24.

The design elevations for the new ADA ramp did not match the existing conditions. To comply with the design codes, a new handrail was required to accommodate the 5% slope on the new ramp. The value of this extra work was \$20,667.02.

Premium time was provided to the Contractor to accelerate the paving schedule and minimize the inconvenience to BART customers. This premium time was an additional \$130,757.17.

The design for the new pavement specified full-depth reclamation asphalt for a stronger, longer lasting and higher performing final product. Full depth reclamation asphalt allows for the on-site reuse of materials provided the construction is properly sequenced. However, the construction at Lafayette station was inadvertently sequenced such that a significant amount of material was required to be off-hauled. This additional work was valued at \$444,623.34.

The above additional work results in a time extension of 107 calendar days to the Contract completion date which is non-compensable due to a concurrent Contractor caused delay of 389 calendar days.

Pursuant to Board Rule 5-2.3, Change Orders involving expenditures greater than \$200,000 require Board approval. The Procurement Department will review this Change Order prior to execution for compliance with procurement guidelines. The Office of General Counsel will approve the Change Order as to form prior to execution.

**FISCAL IMPACT:**

Funding in the amount of \$725,000 for additional change orders for Contract No. 15QH-150

is included in the total project budget for FMS# 15QH000 – Repair Sidewalks Systemwide.

The table below lists funding assigned to the referenced project and is included to track funding history against spending authority. Funds needed to meet this request will be expended from the following sources:

<b>Proposed Funding</b>	
Various State Funds	1,792,415
Various Local Funds	2,203,992
Various BART Funds	16,901,034
<b>TOTAL</b>	<b>20,897,441</b>

As of October 16, 2018, \$20,897,441 is the total budget for this project. BART has expended \$16,633,601, committed \$982,498, and reserved \$1,000,000 to date. This action will commit \$725,000, leaving an available fund balance of \$1,556,342 in these fund sources for this project.

The Office of Controller/Treasurer certifies that funds are currently available to meet this obligation.

This action is not anticipated to have any Fiscal Impact on unprogrammed District Reserves.

**ALTERNATIVES:**

The Board may elect not to authorize the execution of this Change Order. Failure to issue this Change Order could lead to claims, thus increasing the final cost to the District.

**RECOMMENDATION:**

Recommend that the Board approve the following motion:

**MOTION:**

The General Manager is authorized to execute Change Order No. 19 for Contract No. 15QH-150, Lafayette Station Site Improvements, with USS Cal Builders, Inc in the amount of not to exceed \$725,000 and to extend the Contract completion date by 107 calendar days.

# EXECUTIVE SUMMARY DOCUMENT

## ATTACHMENT #1

### CHANGE ORDER SUMMARY

#### BACKGROUND

Name of Contractor:	USS CAL Builders
Contract No./NTP:	15QH-150/ 5 June 2017
Contract Description:	Lafayette Station Site Improvements
Percent Complete as of 11/29/2018	95%

#### COST

	% of Award	CO Totals	Contract Amount
Original Contract Award Amount			\$4,650,000.00
Optional Contract Line			\$168,000.00
Other than Board Authorized C.O.'s	13.08%	\$608,217.85	
Board Authorized Change Orders	00.00%	\$0.00	
Pending Change Order #19	15.52%	\$721,714.26	
Subtotal of all Change Orders (Optional Contract Line Number not Included in this amount)	28.60%	\$1,329,932.11	
<u>Revised Contract Amount</u>			\$6,147,932.11

#### SCHEDULE

Original Contract Duration:	140 Days
Time Extension to Date:	0 Days
Time Extension Due to Approved C.O.'s:	0 Days
Pending Change Order #19 Time Extension:	107 Days (non-compensable)
Pending Revised Contract Duration:	247 Days

#### SUMMARY REASON FOR THIS CHANGE ORDER

This contract was Bart's first attempt to retrofit an existing station to comply with new sustainability best practices including storm water management and reclaimed pavement. CO No. 19 is comprised of multiple elements of work including the following: (1) During construction field changes were made to achieve additional benefits to the customer "drop-off" area; (2) Several unforeseen conditions were encountered that required us to replace rather than reuse existing underground utilities; (3) To accomplish reopening the first parking lot in time for the holidays, premium time was provided to the Contractor to accelerate the paving schedule (4) Extra off-haul of materials was required due to the Contract specifying a construction sequence that conflicted with optimizing the pavement reclamation. Pavement reclamation provides for a superior end-product with a longer design life; however, this being the District's first attempt to use it we did not recognize this conflict. Consequently, on-site materials needed to be off-hauled. Change Order No. 19, in the amount not to exceed \$725,000, is inclusive of these changes and a 107 Day time extension to the Contract completion date which is non-compensable due to a concurrent Contractor caused delay of 389 Days.



## EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>R. Elliott</i> 28 Nov 2018		GENERAL MANAGER ACTION REQ'D:		
DATE: 11/14/2018		BOARD INITIATED ITEM: No		
Originator/Prepared by: R. Elliott Vantreas Dept: Maintenance and Engineering	General Counsel <i>[Signature]</i>	Controller/Treasurer <i>Chris Gan</i>	District Secretary	BARC <i>[Signature]</i>
Signature/Date: <i>[Signature]</i> 11/28/18	11/28/18 [ ]	11/28/18 [ ]	[ ]	11.28.2018 [ ]
Status: Approved		Date Created: 11/14/2018		

### Authorize Contract Change Order to Contract No. 6M7220 for the Relocation of Above Ground Cable Tray in the C55 Interlocking Area

#### PURPOSE:

To authorize the General Manager to execute a Contract Change Order No. 4 to Contract No. 6M7220 for the Emergency Restoration, Preventative Maintenance, and Non-Emergency Repair and Seismic Relocation Work of the Commercial Fiber Optic and Wireless Networks with Phase 3 Communications, Inc. for a total amount not to exceed \$816,000.

#### DISCUSSION:

On August 28, 2014 the Board authorized the General Manager to award Contract No. 6M7220 to Phase 3 Communications, Inc. for the Base Bid amount of \$854,210. Subsequently, on July 23, 2015 the Board authorized the General Manager to exercise Options One and Two for a total amount not to exceed \$1,708,420.00. The total Contract amount to date is \$2,562,630.

The District has identified vital cabling infrastructure that must be relocated prior to the C55 Interlocking replacement project construction which begins late February 2019. C55 construction is being performed by BART forces and the scope of work to relocate the cabling infrastructure requires support of Phase 3 Communications, Inc. A change order to the Phase 3 Communications, Inc. contract for an amount not to exceed \$816,000 and a 180 day extension to the contract is required to accommodate this work effort. The extended contract completion date will be July 7, 2019.



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

**FISCAL IMPACT:**

Funding in the amount of \$816,000 for the award of Change Order 04 to Contract No. 6M7220 will come from the following projects.

The two tables below depict funding assigned to the referenced projects and is included to track funding history against spending authority. Funds needed to meet this request will be expended from the following sources:

**PROJECT: 49GH002 – Train Control Modernization Program  
\$234,810**

<b>Proposed Funding</b>	
F/G 8531 – FY17 Operating to Capital Allocation	\$2,500,000
F/G 802A – Measure RR GOB	\$8,000,000
<b>TOTAL</b>	<b>\$10,500,000</b>

As of November 13, 2018, \$10,500,000 is the total budget for this project. BART has expended \$244,485 committed \$951,261 and reserved 0.00 for other action. This action will commit \$234,810 leaving an available fund balance of \$9,069,444 in fund resources for this project.

**PROJECT: 15CQ002 – Rails, Ties, Fasteners Phase3  
\$581,190**

<b>Proposed Funding</b>	
F/G 8529 – FY15 Operating to Capital Allocation	\$197,246
F/G 802A – Measure RR GOB	\$252,701,708
<b>TOTAL</b>	<b>\$252,898,954</b>

As of November 13, 2018, \$252,898,954 is the total budget for this project. BART has expended \$61,321,829 committed \$55,728,781 and reserved 6,904,476 for other actions. This action will commit \$581,190 leaving an available fund balance of \$128,362,679 in fund resources for this project.

The Office of the Controller/Treasurer certifies that funds are currently available to meet this obligation.

This action is not anticipated to have any fiscal impact on unprogrammed District Reserves.

**ALTERNATIVES:**

To not authorize the Contract Change Order would cause significant delay in the delivery of the Measure RR C55 Interlocking Replacement or significant impact to C-Line revenue service due to damage to weakened infrastructure.

**RECOMMENDATION:**

Adoption of the following motion.

**MOTION:**

The General Manager is authorized to execute and Contract Change Order to Contract No. 6M7220, Emergency Restoration, Preventative Maintenance, and Non-Emergency Repair and Seismic Relocation Work of the Commercial Fiber Optic and Wireless Networks in an amount not to exceed \$816,000 and extend the completion date of the Contract to July 7, 2019.

# EXECUTIVE DECISION DOCUMENT

## ATTACHMENT #1

### CHANGE ORDER SUMMARY

#### BACKGROUND

Name of Contractor: Phase 3 Communications, Inc.

Contract No./NTP: 6M7220/October 31, 2014

Contract Description: Emergency Restoration, Preventative Maintenance, and Non-Emergency Repair and Seismic Relocation Work of the Commercial Fiber Optic and Wireless Networks

Percentage Complete as of 12/01/19: 95%

<u>COST</u>	<u>% of Award</u>	<u>CO Totals</u>	<u>Contract Amount</u>
Original Contract Award Amount			\$ 2,562,630.00
Change Orders:			
Other than Board Authorized Change Orders	0%	\$0	
Board Authorized Change Orders	0%	\$0	
Pending Change Order #4	<u>32%</u>	<u>\$816,000.00</u>	
Subtotal of all Change Orders	32%	\$816,000.00	<u>\$ 816,000.00</u>
<u>Revised Contract Amount</u>			\$ 3,378,630.00

#### SCHEDULE

Original Contract Duration: 1095 days

Time Extension to Date: 434 days

Time Extension Due to Approved COs: 180 days

Revised Contract Duration: 1709 days

#### SUMMARY REASON FOR THIS CHANGE ORDER

Relocation of vital cabling infrastructure and Commercial Fiber Optic Cables in support of the C55 Track Replacement Project.

# SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

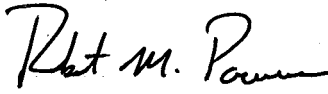

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## MEMORANDUM

**TO:** Board of Directors **DATE:** November 28, 2018  
**FROM:** General Manager  
**SUBJECT:** Update on BART Safety, Reliability, and Traffic Relief Program (Measure RR)

At the December 6, 2018 Board meeting, staff will provide an informational briefing on the Measure RR Program, including accomplishments to date, and short-term, mid-term, and long-term outlooks. Attached is the "Update on BART Safety, Reliability, and Traffic Relief Program (Measure RR)" presentation for discussion.

If you have any questions about the document, please contact Robert Powers, Deputy General Manager at 510-464-6126.

  
\_\_\_\_\_  
 Grace Crunican

cc: Board Appointed Officers  
Deputy General Manager  
Executive Staff



## EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>29 Nov 2018</i> <i>Robert M. Poore</i>		GENERAL MANAGER ACTION REQ'D:		
DATE: 11/19/2018		BOARD INITIATED ITEM: No		
Originator/Prepared by: Maurice Rattray Dept: Extensions Signature/Date: <i>[Signature]</i> <i>11/28/18</i>	General Counsel <i>[Signature]</i> <i>11/29/18</i> [ ]	Controller/Treasurer <i>Chin Gan</i> <i>11/28/18</i> [ ]	District Secretary [ ]	BARC <i>[Signature]</i> <i>11/28/2018</i> [ ]

### Project Changes and Fourth Addendum to the East Contra Costa BART Extension (eBART Project) Final Environmental Impact Report - Antioch Parking Lot Expansion

#### PURPOSE:

To consider the Fourth Addendum to the Final Environmental Impact Report (FEIR) pursuant to the California Environmental Quality Act (CEQA) for the East Contra Costa BART Extension (eBART Project) evaluating the potential environmental impacts of changes (Antioch parking lot expansion) to the eBART Project (Revised Project); find that a subsequent or supplemental environmental impact report is not necessary based upon the Addendum; and adopt the Revised Project, consistent with BART's 2016 Station Access Policy; and adopt the attached Resolution authorizing the filing of an allocation request with the Metropolitan Transportation Commission (MTC) for \$3.61 million of various bridge tolls as part of the funding plan for the Antioch Station Parking Lot Expansion.

#### DISCUSSION:

On April 23, 2009, the BART Board of Directors (Board) certified the FEIR, adopted a Mitigation, Monitoring and Reporting Plan (MMRP) and adopted the eBART Project. The eBART Project described in the FEIR and adopted by the Board (Adopted Project) consists of an approximately 10-mile extension of the BART system via a diesel multiple unit (DMU) starting from the existing Pittsburg/Bay Point BART Station and extending in the median of State Route 4 (SR 4). Commonly known as eBART, the extension is from the Pittsburg/Bay Point BART Station to a new station at Pittsburg Center in Pittsburg and a new terminus station at Hillcrest Avenue in Antioch.

Since eBART opened for revenue service on May 25, 2018, ridership at the stations has exceeded expectations, especially at the Antioch Station. Currently, the ridership is nearly double what was originally forecast with around 3,050 daily exits at the station. The success of the service has resulted in full occupancy of the 1,038 parking spaces by approximately 6:00 AM and a waitlist for parking of around 1,700. This may limit the ability of some patrons to access the system, resulting in potentially reduced BART ridership.

BART is proposing to provide additional parking at the Antioch Station to accommodate the existing parking demand by utilizing a vacant BART-owned parcel located between the current station parking lot and the Maintenance Facility. The 7.97-acre site would provide approximately 850 additional, new, spaces.

There is latent demand to use BART, and constraints on station access limit ridership. An expansion of parking, previously planned at a different location from what is being proposed in the fourth addendum, would be consistent with the original project EIR which had cleared parking expansion and BART's Station Access Policy (adopted June 9th, 2016), which states that expanded automobile parking may be pursued as a secondary investment at stations classified as "auto-dependent." The station is currently displayed as an auto-dependent station.

#### **PROPOSED PARKING EXTENSION:**

The parking expansion would add approximately 850 spaces on the 7.97-acre site. The location of the parking lot is between the existing station parking lot and the DMU maintenance facility. Auto access would be via two driveways on the north side of the lot from Slatten Ranch Road. The site would be graded and paved with asphalt. Parking lot lighting, CCTV (Closed Caption Television Cameras), and emergency phones would be provided.

Solar panels are planned for the parking lot expansion. They will be similar in size and capacity to those in the existing parking lot. The Panels would cover approximately 18 percent of the new parking lot area or approximately 40 percent of the planned parking spaces. The panels would be in the center rows of the parking lot.

As part of MTC's allocation request process from eligible transportation project sponsors for the allocation of Regional Measure 2, Regional Measure 1 and AB 1171 bridge toll funds,

the Board of Directors must adopt the attached Resolution of Project Compliance that, among other things, certifies that the District is authorized to perform the Project for which funds are requested, that there are no legal impediments to the District applying for the funds, and that there is no pending or anticipated litigation which might adversely affect the project or the ability of the District to carry out the Project.

### **ENVIRONMENTAL REVIEW:**

The potential environmental effects of the eBART Project were evaluated under the California Environmental Quality Act (Public Resources Code Section 21000 et seq., CEQA) and presented in a Final EIR. There have been three Addenda to the Final EIR since its certification by the Board in 2009. The first Addendum analyzed a series of modifications to the project. A second Addendum analyzed grading outside the original project footprint. A third Addendum evaluated the then undeveloped area between the parking lot and Maintenance Facility for use as construction staging and storage area. The current Addendum, the fourth, evaluated the proposed additional parking on the storage area for all categories of impact analyzed in the Final EIR (transportation, land use, visual quality, etc.). The Addendum has not identified any substantial changes in the existing environment, nor has it identified any new or more severe impacts that would result from the Revised Project that were not already identified in the Final EIR. Therefore, the Revised Project does not meet the conditions that would require a subsequent or supplemental EIR. All mitigation measures included in the adopted MMRP would also apply to the Revised Project.

All environmental clearance documents are available at:

<https://www.bart.gov/about/projects/ecc/environmental>

### **MULTIMODAL ACCESS STRATEGIES:**

Additionally, and separate from the parking expansion, BART staff will continue to explore active access and transit improvements to provide a comprehensive access solution for the station.

### **FISCAL IMPACT:**

There is no Fiscal Impact for this EDD.

### **ALTERNATIVES:**

The alternative is not to adopt the Revised Project and Addendum to the Final EIR. Failure to adopt the Revised Project would preclude the construction of approximately 850 parking spaces. This may limit the ability of some patrons to access the system, resulting in potentially reduced BART ridership.

**RECOMMENDATION:**

Adoption of the attached Resolutions.

**MOTION:**

Having reviewed and considered the information contained in the Addendum, and the FEIR, the BART Board of Directors hereby:

1. Adopts the attached Resolution, approving the 4th Addendum to the FEIR and adopting the Revised Project.
2. Adopts the attached Resolution of Project Compliance authorizing the filing of an allocation request with the Metropolitan Transportation Commission for Regional Measure 2, Regional Measure 1, and AB 1171 bridge toll funds in the amount of \$3.61 million to support design of the Revised Project.



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

**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 eBART Project – Parking  
Lot Expansion at Antioch Station**

**Resolution No.**

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

WHEREAS, the California Legislature enacted Senate Bill (SB) 916 (Chapter 715, Statutes 2004), commonly referred to as Regional Measure 2 (“RM2”), identified transportation projects eligible to receive funding under the Regional Traffic Relief Plan; and

WHEREAS, MTC is responsible for funding projects eligible for RM2 funds, pursuant to Streets and Highways Code Section 30914(c) and (d); and

WHEREAS, the San Francisco Bay Area Rapid Transit District (“BART”) and the Contra Costa Transportation Authority (“CCTA”) are eligible sponsors of transportation project(s) in Regional Measure 2, Regional Traffic Relief Plan funds; and

WHEREAS, the East Contra Costa BART Extension – Parking Lot Expansion at Antioch Station (“Project”) is eligible for consideration in the Regional Traffic Relief Plan of Regional Measure 2, as identified in California Streets and Highways Code Section 30914(c) or (d); and

WHEREAS, MTC adopted Resolution No. 4137, Revised, which establishes the program of projects for Regional Measure 1 (“RM1”) 90% Rail Reserve funds; and

WHEREAS, MTC adopted Resolution No. 3434, Revised, which establishes commitments of Assembly Bill (AB) 1171 bridge toll funds to specific projects and corridors; and

WHEREAS, MTC has established a process whereby eligible transportation project sponsors may submit allocation requests for AB1171, RM1, and RM2 bridge toll funds; and

WHEREAS, RM2, RM1, and bridge toll fund allocation requests to MTC must be submitted consistent with procedures and conditions as outlined in Regional Measure 2 Policy and Procedures; and

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WHEREAS, the RM1, RM2, and AB 1171 bridge toll funds allocation request, sponsored by BART in the attached Initial Project Report and incorporated herein as though set forth at length, lists the project, purpose, schedule, budget, expenditure and cash flow plan for which BART is requesting that MTC allocate bridge toll funds;  
NOW, THEREFORE BE IT:

RESOLVED, that BART, and its agents shall comply with the provisions of the Metropolitan Transportation Commission's RM2 Policy Guidance (MTC Resolution No. 3636); and be it further

RESOLVED, that BART certifies that the Project is consistent with the Plan Bay Area 2040 Regional Transportation Plan (RTP);

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

RESOLVED, that the bridge toll-funded phase or segment is fully funded, and results in an operable and useable segment; and be it further

RESOLVED, that BART approves the Initial Project Report, dated December 6, 2018; and be it further

RESOLVED, that BART approves the cash flow plan; and be it further

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

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

RESOLVED, that BART is authorized to submit an application for RM2 funds for the Project in accordance with California Streets and Highways Code 30914(c); and be it further

RESOLVED, that BART certifies that the projects and purposes for which bridge toll funds are being requested is in compliance with the requirements of the California Environmental Quality Act (Public Resources Code Section 21000 et seq.), and with the State Environmental Impact Report Guidelines (14 California Code of Regulations Section 15000 et seq.); and be it further

RESOLVED, that there is no legal impediment to BART making allocation requests for bridge toll funds; and be it further

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

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

RESOLVED, that BART indemnifies and holds harmless MTC, its Commissioners, representatives, agents, and employees from and against all claims, injury, suits, demands, liability, losses, damages, and expenses, whether direct or indirect (including any and all costs and expenses in connection therewith), incurred by reason of any act or failure to act of BART, its officers, employees or agents, or subcontractors or any of them in connection with its performance of services under this allocation of bridge toll funds. In addition to any other remedy authorized by law, so much of the funding due under this allocation of bridge toll funds as shall reasonably be considered necessary by MTC may be retained until disposition has been made of any claim for damages, and be it further

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

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

RESOLVED, that BART shall post on both ends of the construction site(s) at least two signs visible to the public stating that the Project is funded with RM1, RM2 and AB 1171 Toll Revenues; and be it further

RESOLVED, that BART authorizes its (Executive Director, General Manager, or his/her designee) to execute and submit an allocation request for the construction phase with MTC for Regional Measure 1, Regional Measure 2 and AB 1171 bridge toll funds in the amount of \$3,614,651, for the project, purposes and amounts included in the Initial Project Report; and be it further

RESOLVED, that BART's General Manager, or his/her designee is hereby delegated the authority to make non-substantive changes or minor amendments to the Initial Project Report dated December 6, 2018 as he/she deems appropriate.

RESOLVED, that a copy of this Resolution shall be transmitted to MTC in conjunction with the filing of the Initial Project Report dated December 6, 2018 referenced herein.

###

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

In the Matter of Adopting  
the eBART Revised Project

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

WHEREAS, pursuant to the California Environmental Quality Act (CEQA), the BART Board of Directors on April 23, 2009, certified the Final Environmental Impact Report (FEIR) and adopted the eBART Project (Adopted Project). The Adopted Project consists of an approximately 10-mile extension of the BART system starting from the existing Pittsburg/Bay Point BART Station and extending in the median of State Route 4 (SR 4) to a new station in Antioch, just east of Hillcrest Avenue; and

WHEREAS, staff has come before the Board on previous occasions to seek approval of various eBART Project changes; and

WHEREAS, the design and construction plans have evolved since the Adopted Project and revised projects were approved in 2009, 2011, and 2013 respectively; and

WHEREAS, a change to the eBART Project is now being contemplated (the Fourth Addendum), to provide additional parking at the Antioch Station to accommodate the existing parking demand by utilizing the area between the current station parking lot and the Maintenance Facility for additional parking. The 7.97-acre site would provide approximately 850 additional, new, parking spaces. Auto access would be via two driveways on the north side of the lot from Slatten Ranch Road. The site would be graded and paved with asphalt. Parking lot lighting, CCTV (Closed Caption Television Cameras), and emergency phones would be provided; and

WHEREAS, Section 15164 of the CEQA Guidelines allows a lead agency to prepare an addendum to a previously certified EIR, rather than a subsequent EIR (SEIR), if some changes or additions to a project are necessary, as long as none of the conditions described in Section 15162 requiring the preparation of an SEIR have occurred. Section 15162 states that, when an EIR has been certified, no SEIR shall be prepared for the project unless the lead agency determines, on the basis of substantial evidence in the light of the whole record, that there are substantial changes proposed in the project which require major revisions of the previous EIR, substantial changes occur with respect to the circumstances under which the project is undertaken, or there is new information of substantial importance regarding new or substantially more severe significant effects, new mitigation measures or alternatives, or the feasibility of mitigation measures or alternatives previously considered; and

WHEREAS, staff has revisited the analysis conducted in the FEIR and evaluated the potential effects of the changes described in the Fourth Addendum, surrounding circumstances and new information; and

WHEREAS, based upon the evaluation, none of the conditions described in CEQA Guidelines Section 15162 requiring the preparation of a SEIR have occurred; and therefore an addendum is appropriate; and

WHEREAS, CEQA Guidelines Section 15164(d) provides that the lead agency's decision-making body shall consider an addendum, together with the FEIR, prior to making a decision on changes to the project.

THEREFORE, BE IT RESOLVED that the BART Board of Directors, having reviewed and considered the information contained in the FEIR and the Fourth Addendum for the East Contra Costa BART Extension (eBART Project):

- 1) Finds that, on the basis of substantial evidence contained in the FEIR and the Fourth Addendum and in light of the whole record, that:
  - (a) there are no substantial changes proposed in the Fourth Addendum that will require major revisions to the FEIR due to the involvement of new or substantially more severe significant environmental effects; and
  - (b) there are no substantial changes with respect to the circumstances under which the Project changes considered in the Fourth Addendum will be undertaken which will require major revisions of the FEIR due to the involvement of new or substantially more severe significant environmental effects; and
  - (c) there is no new information of substantial importance, which was not known at the time the FEIR was certified, showing that:
    - (i) the changes considered in the Fourth Addendum will have new or substantially more severe significant effects,
    - (ii) mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce significant effects of the changes considered in the Fourth Addendum or
    - (iii) mitigation measures or alternatives considerably different from those analyzed in the FEIR would substantially reduce significant effects of the changes considered in the Fourth Addendum and
- 2) Adopts the changes considered in the Fourth Addendum, and
- 3) Authorizes staff to implement the changes considered in the Fourth Addendum.



# EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Robert M. Perna</i> 29 Nov 2018		GENERAL MANAGER ACTION REQ'D:		
DATE: 11/15/2018		BOARD INITIATED ITEM: No		
Originator/Prepared by: Maurice Rattray Dept: Extensions <i>Maurice Rattray</i> Signature/Date: 11/28/18	General Counsel <i>[Signature]</i> 11/29/18 [ ]	Controller/Treasurer <i>Chutkan</i> 11/28/18 [ ]	District Secretary [ ]	BARC <i>[Signature]</i> 11/28/2018 [ ]

## BART to Antioch - Extend Vehicle Options

**PURPOSE:** To obtain Board authorization for the General Manager to execute a Change Order to Contract No. 04SF-140, Procurement of eBART Vehicles, with Stadler Bussnang AG to extend the period to exercise Contract Options No. 1 and No. 2 for the purchase of up to six (6) additional vehicles;

**DISCUSSION:** On April 24, 2014, the Board of Directors authorized the General Manager to award Contract No. 04SF-140 to Stadler Bussnang AG for the purchase of eight diesel multiple unit (DMU) vehicles for \$58,124,419 (plus applicable taxes) to be used in the operation of the new rail service from Pittsburg Bay Point Station to Antioch in Eastern Contra Costa County (eBART). The Contract contains two options to purchase additional DMUs. Option No. 1 is for two DMU vehicles with an un-escalated base price of \$16,640,000 and Option No. 2 is for four DMU vehicles with an un-escalated base price of \$29,200,000. BART also has the right to exercise both Options 1 and 2. These options must be exercised by April 24, 2019, which is five years from the award of the base Contract. Stadler has indicated a willingness to extend these options for two years through a change order subject to adding provisions for exchange rate and tariff adjustments.

Based upon ridership projections, it is currently estimated that two additional DMU vehicles will be needed in the 2022/23 time period. It is also estimated that four more DMU vehicles will be required prior to BART running 12-minute headways around 2026. In order to meet this anticipated need, it will be necessary to extend the Option period referenced above to allow for the District to secure funding to exercise each of these vehicle Options.

Staff seeks authorization to execute a Change Order to extend the period for the District to exercise Options No. 1 and No. 2 to purchase up to six (6) additional DMU vehicles from

April 24, 2019 to April 24, 2021 with price adjustments per contract plus exchange rate variations and tariffs.

**Pursuant to Board Rule 5-2.3, Change Orders involving potential substantial alterations in the obligations of either the District or the contractor require Board approval. The Procurement Department will review this Change Order prior to execution for compliance with procurement guidelines. The Office of the General Counsel will approve the Change Order as to form prior to execution.**

**FISCAL IMPACT:** None at this time. BART staff is actively working with state, regional, and local funding partners to secure funding commitments to enable BART to exercise Option #1 and/or Option #2.

**ALTERNATIVES:** Do not authorize the General Manager to extend and to execute options to procure additional DMUs. Once options expire, a new procurement would be required to purchase any required additional DMU vehicles in the future to support eBART operational needs. This could potentially lead to increased procurement, operational, and maintenance costs along with the possibility of having to maintain and operate two incompatible fleets.

**RECOMMENDATION:** Adopt the following Motion.

**MOTION:**

The Board of Directors authorizes the General Manager to execute a Change Order to Contract No. 04SF-140, Procurement of eBART Vehicles, with Stadler Bussnang AG to extend the period and modify re-pricing provisions to exercise Contract Options No. 1 and No. 2 for the purchase of up to six (6) additional vehicles at no cost to the District.

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# EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Rita M. Pann</i> 28 Nov 2018		GENERAL MANAGER ACTION REQ'D:		
DATE: 11/16/2018		BOARD INITIATED ITEM: No		
Originator/Prepared by: Kimberly Koempel Dept: Systems Development <i>[Signature]</i> Signature/Date: 11/28/2018	General Counsel <i>[Signature]</i> 11/28/18 [ ]	Controller/Treasurer <i>Chris Gon</i> 11/28/18 [ ]	District Secretary [ ]	BARC <i>[Signature]</i> 11/28/2018 [ ]

## Approve Millbrae Bart TOD Project and Adopt Findings, SOC, and MMRP for Project under CEQA

### PURPOSE:

To have the Board of Directors: 1) review the Millbrae Station Area Specific Plan Final EIR (“Final EIR”), which consists of the Draft Environmental Impact Report and responses to comments on environmental issues and modifications to the Draft EIR, prepared by the City of Millbrae (“City”), adopt updated Findings, a Statement of Overriding Considerations (“SOC”) and a Mitigation Monitoring Reporting Plan (“MMRP”) relating to the Millbrae BART Transit Oriented Development, in accordance with the California Environmental Quality Act (“CEQA”). 2) approve changes to the Millbrae BART Transit Oriented Development Project and 3) Delegate to the General Manager the authority to approve changes to the Millbrae BART Transit Oriented Development in certain circumstances

### DISCUSSION:

On February 14, 2013 the Board of Directors authorized staff to enter into an exclusive negotiation agreement (“ENA”) with Republic Millbrae LLC (“RUP”) regarding transit-oriented development on BART property located in the City of Millbrae at the BART Station and identified in the EIR as the TOD #2 Plan Area (“Project” or “TOD #2 Project). On October 19, 2014, the 18-month ENA was extended for another 18 months and again on April 14, 2016 for another 12 months.

On January 12, 2016, the Millbrae City Council certified the Final EIR and on February 9, 2016 adopted the Millbrae Station Area Specific Plan. At that time, the City did not adopt



Findings, a Statement of Overriding Considerations, or a Mitigation Monitoring and Reporting Program for the TOD #2 Project.

On June 23, 2016, the Board of Directors voted to approve the TOD #2 Project and, acting as a responsible agency under CEQA and after considering the Final EIR, adopted the Findings, Statement of Overriding Considerations (SOC) and Mitigation Monitoring and Reporting Program (MMRP) for the TOD #2 Project.

On April 10, 2018, the City of Millbrae approved the TOD #2 Project including changes from the project evaluated in the Final EIR and adopted Findings, a SOC, and a MMRP. The Project approved by the City differs from the project approved by the BART Board of Directors in the following ways:

1. The number of hotel rooms increased to 164, a net increase of 38 units;
2. A net decrease of 5,999 square feet of office space and 2,411 square feet of retail spaces;
3. The number of residential units increased to 400, a net increase of 24 units. In addition, the amount of affordable housing units was increased 75 to 100 units.

The Project currently includes 4 buildings. One building includes 151,853 sq. ft. of office with 22,586 square feet of ground floor retail. The second building contains 300 residential units with 20 units affordable to moderate income qualified applicants and includes 13,750 sq. ft. of ground floor retail. The third building is a 164-room hotel with 7,840 square feet of ground floor retail. There is an 80-unit veteran's preferred affordable housing building. The Project also includes enhanced pedestrian and bicycle infrastructure and a new plaza that will be maintained and activated by the development.

The only difference between the project approved by the City of Millbrae and the Project currently being proposed to the BART Board of Directors relates to the amount of BART parking. The final EIR project description included 317 surface spaces for BART in addition to the existing BART parking garage. The City-approved Project included an increase in BART surface parking to 392. However, as the design for the development has progressed it has become infeasible to include that much BART surface parking. The exact number of BART surface parking is still under negotiation but will be closer to the original 317 spaces contemplated in the EIR.

The Project site is in an area that is the subject of the Millbrae Station Area Specific Plan ("MSASP"). The MSASP analyzed a mix of uses that includes office, restaurant/retail, residential, and hospitality. The MSASP is intended to "provide the vision and strategies to guide in the creation of the Millbrae's new economic center, including vibrant, diverse and sustainable transit-oriented developments at and around the station". The related Final EIR serves as a program-level document that analyses the potential impacts of adopting and implementing the MSASP and its buildout potential, along with the associated General Plan

and Zoning amendments. The Final EIR also serves as a project-level document that analyzes the potential impacts of constructing and operating the TOD #2 Project.

On April 10, 2018 the City of Millbrae took the following actions related to the Project:

- Approved a resolution making findings concerning significant impacts of the project, adopting a statement of overriding considerations and adopting a Mitigation Monitoring and Reporting program, based on a final Environmental Impact Report certified by the city council on January 12, 2016, all in accordance with the California Environmental Quality Act (CEQA);
- Approved the development agreement for the Project to grant increases in development intensities and other benefits to the Project in exchange for community benefits including the provision of affordable housing and specific timeframe for construction of a hotel on property located in the transit-oriented development zone of the Millbrae station area specific plan; and
- Adopted resolutions approving the Site Development Plan to allow construction of four new structures, a Conditional Use Permit for Commercial Lodging in Building 6B, and a Vesting Tentative Map to allow the merger and subdivision of existing parcels totaling 16.9 Acres into six parcels, including 4 development parcels, a parcel for the existing Millbrae Intermodal Station and Parking Garage, and a parcel for a surface parking lot.

BART is a responsible agency under CEQA for the TOD #2 Project. As a responsible agency, BART must consider the Final EIR prepared by the City and reach its own conclusions regarding the adequacy of those portions of the EIR relating to the TOD #2 Project. In June 2016, the Board of Directors and BART staff reviewed the Final EIR as certified by the City, and the Board of Directors adopted Findings, Statement of Overriding Considerations and a Mitigation Monitoring Reporting Program for the Project. However, because the project has changed since the Board took action and the City has approved the revised TOD #2 project as the lead agency under CEQA, staff is recommending that the Board of Directors review the Final EIR and reach its own conclusions regarding the adequacy of those portions of the EIR relating to the revised TOD #2 Project and adopt updated Findings, a Statement of Overriding Considerations (“SOC”) and a Mitigation Monitoring Reporting Plan (“MMRP”) which conform to the actions that the City of Millbrae took on April 10, 2018.

BART staff has reviewed the Final EIR and prepared Findings, an SOC, and an MMRP for the revised Project which can be found along with the Final EIR on BART's website at <https://www.bart.gov/about/business/tod/millbrae>

Currently BART and RUP are in negotiations on a Lease Option Agreement. The current development schedule anticipates construction to begin in summer of 2019.

**FISCAL IMPACT:**

There is no fiscal impact from the proposed action.

**ALTERNATIVES:**

If the BART Board determines that evidence of CEQA compliance is inadequate, additional analysis would be required to address any deficiencies identified by the Board.

**RECOMMENDATION:**

It is recommended that the Board adopt the following Motion.

**MOTION:**

After review and consideration of the Final EIR certified by the City of Millbrae on February 9, 2016 and the actions taken by the City on April 10, 2018, the Board:

- 1) Adopts the Findings, Statement of Overriding Consideration and Mitigation Monitoring and Reporting Program for the TOD #2 Project;
- 2) Finds that changes or alterations have been required in, or incorporated into, the project which mitigate or avoid significant effects on the environment;
- 3) Finds that for the significant and unavoidable effects of the TOD #2 Project identified in the final EIR, specific economic, legal, social, technological or other considerations make mitigation measures or alternatives identified in the EIR infeasible and specific overriding economic, legal, social, technological or other benefits of the project outweigh the significant effects on the environment, as identified in the Final EIR and the Statement of Overriding Considerations;
- 4) Approves changes to the TOD #2 Project;
- 5) Delegates to the General Manager or her designees the decision to approve or disapprove any additional modifications to TOD #2 Project as described in the Project Description contained in the Final EIR, based upon the General Manager or her designee's determination that appropriate environmental analysis of such modifications has been performed by the City of Millbrae as lead agency pursuant to CEQA and that such environmental analysis

concludes that the modifications will not result in any new significant environmental effects not considered in the Final EIR or a substantial increase in the severity of previously identified significant effects.



# EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Theresa M. Parnell</i> 28 Nov 2018		GENERAL MANAGER ACTION REQ'D:		
DATE: 11/19/2018		BOARD INITIATED ITEM: No		
Originator/Prepared by: Amanda Cruz Dept: Gov't & Community Relations Signature/Date: <i>Amanda Cruz</i> 11/26/18	General Counsel <i>[Signature]</i> 11/27/18 [ ]	Controller/Treasurer <i>[Signature]</i> 11/27/18 [ ]	District Secretary [ ]	BARC <i>[Signature]</i> [ ]
Status: Routed		Date Created: 11/19/2018		

## 2019 Federal and State Legislative Advocacy Program

### PURPOSE:

To review, discuss, and seek approval of the District's 2019 Federal and State Legislative Advocacy Program.

### DISCUSSION:

BART's federal and state advocacy efforts are guided by annual goals adopted by the Board of Directors. The goals reflect BART's legislative priorities and provide guidance for the District's activities in Washington, D.C. and Sacramento. The program is intended to be broad to give BART the flexibility to pursue legislative and administrative opportunities that may present themselves during the year, and to respond in an expeditious manner to the dynamic political and policy environments at the federal and state level. The following summarizes proposed federal and state goals BART plans to actively pursue in 2019.

### PROPOSED FEDERAL ADVOCACY PROGRAM:

**Secure an appropriation and Full Funding Grant Agreement (FFGA) for BART's Transbay Corridor Core Capacity Project (Core Capacity Project) within the Federal Transit Administration's (FTA) Capital Investment Grant (CIG) Program**  
BART's Core Capacity Project is applying for a total of \$1.25 billion in CIG funding and has requested \$50 million in FY19 and \$100 million in FY20 budget appropriations. FY19 appropriations for Transportation, Housing and Urban Development are currently being negotiated and CIG funding is anticipated to be at or above levels authorized in the Fixing American's Surface Transportation (FAST) Act.

BART has been seeking FTA approval for entry into Engineering since late 2017 and advocacy efforts will continue towards securing a FFGA by the end of 2019. BART will leverage support from its Congressional delegation, transit, business, labor, and other Bay Area stakeholders to ensure the Core Capacity Project does not experience further delays and is given full and fair consideration by the FTA and Administration.

**Advocate for maintaining or increasing funding to support public transit security and safety programs; pursue grants that allow BART to enhance its safety and security initiatives**

For FY19, the BART Board approved the advancement of a Safety and Security Action Plan. The Action Plan includes a series of proposals that will boost the visible presence of police and employees in the system, enhance BART's already robust network of surveillance cameras, increase public safety outreach, and more.

To support initiatives within the Action Plan, BART will continue advocacy efforts focused on maintaining and increasing funding for all transit security programs within the Department of Homeland Security and pursue grant funding for priority projects. BART will also actively explore grant opportunities through the Department of Transportation, Department of Justice, and other federal agencies.

**Educate Congressional delegation regarding ongoing efforts to address quality of life on BART; seek support for programs or policies to assist transit agencies in responding to quality of life issues**

Quality of life on BART is a strategic focus in FY19 with substantial resources committed to addressing the interrelated issues of fare evasion, homelessness, cleanliness, and safety. BART will work to educate members and their staff on efforts to improve the rider experience, employee work environment, and local partnerships. BART will also work with the American Public Transportation Association (APTA) as they take a leadership role in helping transit agencies address issues such as homelessness and mental health. BART may wish to engage in innovative programs that include transit agencies and learn from best practices utilized by other public agencies nationally.

**Engage in advocacy efforts to advance a federal infrastructure initiative with a specific focus on new funding mechanisms for transit and investment in workforce development**

President's Trump's "Rebuilding Infrastructure in America" proposal seeks to utilize \$200 billion in federal funds to leverage \$1.5 trillion in new investment over the next ten years for highways, public transit, airports, goods movement, and telecommunications. Members of Congress have also discussed variations on this proposal, seeking to provide immediate funding for infrastructure investment while exploring potential long-term, sustainable funding streams for transportation. President Trump has stated infrastructure is an area where he could work with the incoming Democratic majority.

BART will continue to advocate to the Administration, Congress, and key policy and fiscal committees for an infrastructure proposal that includes new federal funding for public transit. BART will work with APTA, the Metropolitan Rail Discussion Group, California Transit Association, and other advocacy groups to support a package that prioritizes the replacement of aging infrastructure, addresses growing demand for new or expanded service, and includes funds for innovative mobility and workforce development.

**Advocate for robust transit funding in a federal surface transportation reauthorization bill**

The FAST Act is set to expire at the end of FY 2020. To ensure that the next federal surface transportation reauthorization benefits public transit, BART will work with national and statewide organizations to advocate for a long-term authorization at funding levels no less than what is included in year five of the FAST Act. BART will support restoring Highway Trust Fund solvency and raising new revenues to support transit programs long-term.

**PROPOSED STATE ADVOCACY PROGRAM:**

**Pursue state transit funding through formulaic and competitive grant programs; monitor state budget and identify new funding opportunities that may support BART's operations or capital investment needs**

In November, California voters rejected Proposition 6, which sought to repeal Senate Bill 1 (SB 1) and impede future efforts to generate vital transportation funding. BART opposed Proposition 6 and will continue efforts to protect state transportation funding from being eliminated, repealed, or diverted within the state budget.

With SB 1 dollars continuing to flow in accordance with the FY19 State Budget, BART will educate and engage the new Administration, agency executives, state commissioners, members of the Legislature, and key committees to gain support for critical infrastructure projects such as the Core Capacity Project and other District initiatives with identified funding needs. BART will continue to pursue SB 1-related grants and other possible funding administered by the Department of Transportation, Energy Commission, Air Resources Board, Department of Housing and Community Development, Workforce Development Board, and Office of Emergency Services.

**Advocate for additional, more flexible funding for public transit through the Cap and Trade Program**

BART will support efforts to strengthen the Cap and Trade program as a source of transportation funding and monitor the state budget process closely for opportunities to increase the amount of annual auction proceeds directed to transit investments. BART will also support efforts to restructure the Affordable Housing and Sustainable Communities Program in a way that would enable more direct investment in transportation improvements such as transit-oriented development to further the state's climate change goals.

**Educate the new Administration, state departments, and members of the Legislature on new and ongoing efforts to bolster transit security, and improve rider safety**

Within the past year, violent crimes committed on BART have necessitated additional measures to further enhance safety and security. The Legislature has been supportive of previous efforts at BART to address violent crimes and promote safety through granting BART the authority to create a prohibition order program. As BART continues its implementation of the Safety and Security Action Plan, staff will update members of the Legislature on any progress, seek input, and discuss potential areas in which the state may support various initiatives.

**Monitor implementation of new housing legislation and seek out funding opportunities for affordable housing and transit-oriented development (TOD)**

With the passage of Proposition 1 in November, \$4 billion in state general obligation bonds was approved for affordable housing and veterans housing programs. This includes \$150 million for TOD, specifically loans and grants to local governments and developers for housing projects near transit stations; and \$300 million in grants for infill infrastructure that supports high-density affordable and mixed-income housing. BART will monitor first-year program implementation and seek to identify ways in which funding can be used to support BART's goals within existing TOD and Affordable Housing Policies. BART may also wish to support legislation that seeks to address the housing crisis within the region and specifically look at efforts lead by the Committee to House the Bay Area, or CASA, as convened by the Metropolitan Transportation Commission.

**Continue to engage in statewide efforts to address homelessness and mental health needs**

Last session, BART supported several bills that sought to address the state's homelessness crisis through planning, prevention and emergency aid. BART may wish to continue supporting legislation and budget appropriations that bolster locally administered programs for specific homeless or at-risk populations, especially those funded through the Homeless Emergency Aid Program. With the passage of Proposition 2, the No Place Like Home Program, in November, BART may also wish to monitor how the state plans to accelerate the issuance of \$2 billion in bond funds to help provide housing for individuals experiencing mental illness who are homeless or at risk of homelessness.

**Pursue and pass necessary BART-sponsored legislation**

As necessary, BART will seek to introduce and pass sponsored legislation that addresses a specific problem or goal as identified by the Board and/or staff.

**Monitor and respond to legislation that directly impacts BART**

BART will ensure that the District's interests are represented in any legislative effort that could directly impact the District. This may include bills introduced in the current session as



well as bills that were recently enacted.

**FISCAL IMPACT:**

N/A

**ALTERNATIVES:**

The Board could decline to support the 2019 Federal and State Legislative Advocacy Program.

**RECOMMENDATION:**

For the Board to approve the following motion.

**MOTION:**

The Board approves the 2019 Federal and State Legislative Advocacy Program, as presented by staff.



## EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Rat M. Ponce</i> 28 Nov 2018		GENERAL MANAGER ACTION REQ'D: Approve and forward to Board		
DATE: 11/15/2018		BOARD INITIATED ITEM: No		
Originator/Prepared by: Susan Shaffer Dept: Real Estate and Property Development <i>Susan Shaffer</i> Signature/Date: 11/26/18	General Counsel <i>[Signature]</i> 11/27/18 [ ]	Controller/Treasurer <i>[Signature]</i> 11/27/18 [ ]	District Secretary [ ]	BARC <i>[Signature]</i> 11/27/2018 [ ]

### North Concord/Martinez Station Transit Oriented Development Exclusive Negotiating Agreement Award

#### PURPOSE:

To authorize the General Manager or her designee to execute an Exclusive Negotiating Agreement (ENA) with Brookfield Residential/Novin Development Corporation for Transit-Oriented Development (TOD) at the North Concord/Martinez BART station.

#### DISCUSSION:

BART owns approximately 20 acres at the North Concord/Martinez BART station consisting of a parking lot and the transit center (the "BART Property"). Currently, BART staff is engaged with the City of Concord and the community in developing the Concord Community Reuse Project Specific Plan ("Specific Plan"), initiated in 2017, which includes the BART Property. The Specific Plan and EIR and associated entitlements are expected to be completed in mid- to late-2019. The Specific Plan will establish zoning and environmental clearance for the former Concord Naval Weapons Station (the "Base"), the BART Property, and the former Coast Guard property to the south of BART. Through a competitive selection process, the City of Concord had previously selected FivePoint to be the City's master developer for the larger Base Reuse site (exclusive of the BART Property). FivePoint will develop Phase I of the former Base, and the City of Concord has selected DeNova Homes to redevelop the former Coast Guard property.

The BART Property is a key area within the Specific Plan boundaries, but its development interests are not represented by a developer. Given that the Specific Plan encompasses a very large area in comparison to the BART Property, and is being advanced by and funded by the master developer team, BART staff believed that bringing on BART's own development team to have input on the Specific Plan, especially in regard to the BART

Property, would best facilitate achievement of a successful TOD project on BART Property in line with BART's TOD and Affordable Housing policies. For this reason and to ensure that the BART policies will be implemented on the BART Property, BART initiated an early developer solicitation process to advance the development of the BART Property. Based on the anticipated draft Specific Plan and BART policies, the District is seeking a financially feasible, mixed-use development, featuring commercial office, both affordable and market-rate housing and community-engaged design, with a focus on active access and a sustainable long-term parking strategy.

Staff presented updates to the Board on the Specific Plan process and the preliminary goals and objectives for TOD on the BART Property in October 2017 and June 2018. On August 13, 2018, BART staff released a Request for Qualifications (RFQ) for developer teams. On October 5, 2018, BART received three submittals in response to the RFQ.

An evaluation committee comprised of nine individuals from BART, Contra Costa County, County Connection, and Economic and Planning Systems (a BART economic on-call consultant) reviewed the written proposals. Although BART's original intent was to include City of Concord staff and Community Advisory Committee members on the evaluation panel, the City of Concord's attorney determined that these parties had a conflict of interest, so no one from the City participated in the evaluation process. All three development teams were invited to participate in oral interviews on November 13, 2018. These teams were:

- Brookfield Residential/Novin Development Corporation ("Brookfield/Novin")
- Essex Property Trust, Inc. ("Essex")
- The Michaels Organization / The Republic Family of Companies ("Michaels")

Proposals were scored in the following categories:

- *Direct relevant qualifications and experience of Developer Team.* Experience with: master planning and mixed-use development; negotiating and executing complex land transactions; public agency partnerships, particularly transit; and large-scale infrastructure investment.
- *Preliminary development concept and proposed project approach.* Demonstration that: concept meets BART's goals and objectives for site while being sensitive to community transition; approach addresses real estate market context, development phasing and finance, and community concerns; development concept is compatible with the City's Area Plan; and proposed approach shows overall innovation and creativity.
- *Financial capability of Developer Team, including lender references.* Demonstrated ability to secure funding and financing for a long term, multi-phase project; and provided lender references.
- *Roles and responsibilities of Developer Team.* Provided organizational chart that meets required disciplines with relevant project manager experience; and Small

Business (SB) participation commitment percentage.

While all proposals were strong, the Brookfield/Novin team performed more strongly than the others, particularly on the basis of:

- Assembling a strong local development team, which includes prime consultants
- Proposed project alignment with the Area Plan
- Strength of financial partner in Brookfield Residential, and demonstrated commitment to the project
- Innovative and strategic approach to creating an artist district as part of the plan proposal
- Extensive experience with multiple public agencies and large multi-phased projects
- Strong proposed community engagement approach
- Creative phasing and parking approaches
- Past history of working with adjacent developers to finance infrastructure and create community cohesiveness

Given the strength of the Brookfield/Novin developer team, staff requests authorization to enter into an ENA for a period of 24 months with Brookfield/Novin to advance a transit-oriented development project at North Concord/Martinez BART station. If staff determines that Brookfield/Novin have substantially met the terms of the ENA, but are not ready to return to the Board with a project and ground lease option at the end of the 24-month ENA period, the motion includes authorization to extend the ENA term with Brookfield/Novin for an additional 24 months.

#### **FISCAL IMPACT:**

If approved, BART Real Estate and Property Development Department staff will work with the selected developer to execute an ENA and initiate work on development scoping. BART staff time (0.5-0.75 FTE) is programmed into the operating budget and the FY 2019 work plan already. BART will receive a \$100,000 ENA fee to compensate some BART staff time and consultant and legal fees during the term of this ENA, with a provision in the ENA that this amount will be increased to compensate for BART's expenses as negotiated. This action will not have any impact on unprogrammed District reserves.

The ground lease terms and ridership increases are yet to be negotiated, but staff will ensure that the combination of the ground lease and off- or reverse-commute ridership revenues result in a net positive fiscal impact to BART. The BART Board will review the terms of the deal at key milestones to monitor its fiscal impact and ultimately approve the deal terms.

**ALTERNATIVES:**

1. Do not authorize staff to proceed with an ENA. Staff will not pursue the North Concord/Martinez TOD further without direction from the Board.
2. Authorize staff to proceed with a different team.

**RECOMMENDATION:**

Adopt the following Motion:

**MOTION:**

Authorize the General Manager or her designee to enter into an Exclusive Negotiating Agreement (ENA) with the development team comprised of Brookfield Residential/Novin Development Corporation for a term of 24 months, with authorization to extend the ENA term an additional 24 months if key deliverables are met, to advance transit-oriented development at the North Concord/Martinez Station.



## EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Rhat M. Pourn</i> 28 Nov 2018		GENERAL MANAGER ACTION REQ'D:		
DATE: 11/15/2018		BOARD INITIATED ITEM: Yes		
Originator/Prepared by: Catherine Westphall Dept: Marketing and Research <i>Catherine Westphall</i> Signature/Date: Nov. 27, 2018	General Counsel <i>[Signature]</i> 11/27/18 [ ]	Controller/Treasurer <i>Chris Gen</i> 11/28/18 [ ]	District Secretary [ ]	BARC <i>[Signature]</i> 11/27/2018 [ ]

### Advertising Content Guidelines

#### PURPOSE:

To seek approval and Board adoption of revised Advertising Content Guidelines.

#### DISCUSSION:

In light of controversial advertisements that appeared on BART in 2018, members of the Board have asked for reconsideration of BART's advertising guidelines.

The purpose of the potential changes to the Guidelines is to maintain BART advertising space as a nonpublic forum to meet District objectives related to safety and security, providing a welcoming environment, maintaining and increasing ridership and ad revenue, avoiding unintentional association with viewpoints expressed in ads, and reducing the diversion of resources from other BART objectives. New guidelines, if adopted, will apply to all new ad sales beginning 30 days after the date of adoption.

On November 15, 2018, two options were presented to the Board as an informational item. Staff recommends adoption of Option A as the more comprehensive of the two Options, A and B. Minor clarifications have been made to Option A to more inclusively allow ads related to:

- BART programs, products, services, or partnerships (Option A, section A.2);
- Museums, theaters, or galleries (Option A, section A.3.c);
- Visual or performing arts, fairs, or festivals (Option A, section A.3.g);
- Planetariums (Option A, section A.3.q); and
- Government-designated historic sites (Option A, section A.3.s).

**FISCAL IMPACT:**

The District currently has an Agreement with OUTFRONT Media to sell advertising in the BART system and in several MUNI Metro stations. Under the current Agreement - which expires June 30, 2029 - OUTFRONT forecasts payments to the District totaling \$272 million. Of this total, \$160 million are base payments and the balance depends on sales volume. It is anticipated that Option A would have a small impact on these revenues to the District (less than 2%).

**ALTERNATIVES:**

1. The Board could adopt Option B as an alternative; however, staff recommends Option A as the more comprehensive of the two options.
2. Alternatively, the Board could reject both options, and keep the current Advertising Content Guidelines or direct staff to prepare additional options for Board consideration.

**RECOMMENDATION:**

Adopt Advertising Content Guidelines Option A.

**MOTION:**

That the Board adopt Advertising Content Guidelines Option A, to be applied to all new ad sales beginning 30 days after the date of adoption.

# **BART ADVERTISING CONTENT GUIDELINES – OPTION A**

## **OBJECTIVE**

Through these guidelines, the San Francisco Bay Area Rapid Transit District (“BART”), in keeping with its primary function as a provider of public transportation, does not intend to convert its property into an open public forum for public discourse, debate, or expressive activity. In furtherance of the discrete and limited objectives described below, BART shall retain control over the nature of advertisements accepted for posting in the BART system, and maintain its advertising space as a nonpublic forum with limited content neutral subject matter restrictions. In setting its advertising standards, BART seeks to meet the following goals and objectives:

- (a) Maintain a secure and orderly operating environment;
- (b) Maintain a safe and welcoming environment for all BART passengers, including minors who use the BART system, without regard to race, color, marital status, sexual orientation, religion, national origin, ancestry, age, sex, gender identity, disability, medical condition, or veterans’ status, and avoid claims of discrimination from the public;
- (c) Maintain and increase ridership and fare revenue;
- (d) Avoiding unintentional appearance of favoritism, association with, or bias towards any group, movement, or viewpoint;
- (e) Preserve the marketing potential of the advertising space by avoiding content that the community could view as inappropriate or harmful to the public;
- (f) Increase advertising revenue to help support BART service to the public;
- (g) Avoid imposing demeaning or disparaging messages on a captive audience; and
- (h) Reduce the diversion of resources from BART objectives caused by controversy surrounding advertisements.

BART retains the unqualified right to display, on or in its facilities, advertisements and notices that pertain to BART operations and promotions, consistent with the provisions of its agreement with the Advertising Contractors. Promotional materials may include, but not be limited to, internal marketing collateral, BART branding campaigns, and co-promotional campaigns with third parties. Consistent with the status of the BART premises to which this policy pertains as a nonpublic forum, BART does not accept free public service announcements. These Guidelines shall be effective upon adoption and shall be enforced to the degree that it does not impair the obligations of any executed contract. BART reserves the right, from time to time, to suspend, modify, or revoke the application of any or all of these Guidelines as it deems necessary to comply with legal mandates, facilitate its primary transportation function, to ensure the safety or security of BART customers and BART facilities, or to fulfill the goals and objectives referred to herein. All provisions of these Guidelines shall be deemed severable.

For purposes of understanding the meaning of advertisements, BART may refer to information beyond the advertisement including, but not limited to, dictionaries, reviews by authoritative bodies,



or public information regarding the advertiser. BART shall assess whether an independent, reasonably prudent person, knowledgeable of BART's customer profile and using prevailing community standards, would believe that the advertisement complies with the provisions of these Guidelines. In the case of advertisements that use double entendres or multiple interpretations, all meanings of the advertisement must comply with these Guidelines. BART reserves the right, in all circumstances, to require that an advertisement in the BART system include a disclaimer indicating that such advertising is paid for by the advertiser, stating that "The views expressed in this advertisement do not reflect the views of BART," or a similar statement, and BART may set minimum size standards for the disclaimer to ensure legibility.

## ADVERTISING STANDARDS

### A. Permitted Advertising Categories

The BART system is limited to only the following categories of advertising:

1. **Commercial Advertising.** Paid communications from a for-profit entity or entities.
2. **Governmental Advertising.** Paid communications from public entities created by government action with the intent to advance a specific government purpose as well as communications from BART related to BART programs, products, services, or partnerships.
3. **Public Service Announcements.** Paid communications from any entity not described under Sections A1 or A2 of these guidelines which promotes or furnishes any of the following goods or services:
  - a. The prevention or treatment of an illness, injury, condition, or syndrome recognized by the most recent Diagnostic and Statistical Manual ("DSM") or the Centers for Disease Control ("CDC");
  - b. The recruitment or solicitation of participants for medical, psychological, or behavioral studies;
  - c. Museums, theaters, or galleries which are open to the general public;
  - d. Licensed or accredited pre-K through 12 education programs or services;
  - e. Colleges or universities that have received regional or statewide accreditation;
  - f. Vocational or trade programs;
  - g. Visual or performing arts, fairs, or festivals, provided that the venue or event is open to the general public and has a valid operating permit issued by a governmental entity;
  - h. Environmental matters;
  - i. Provision of services and programs that provide support to low income citizens, victims of abuse, families, youth, immigrants, historically disadvantaged populations, senior citizens, veterans, people identifying as LGBT, or people with disabilities;
  - j. Solicitation by broad-based contribution campaigns which provide funds to multiple charitable organizations;
  - k. Diet or nutrition;
  - l. Sporting events, sporting activities, or services related to sports;
  - m. Travel services, information, or promotion;
  - n. Licensed farmers markets, public botanical gardens, or public parks;
  - o. Commercial or professional trade organizations;

- p. Credit unions, investment entities, or financial services;
- q. Zoos, planetariums, or aquariums;
- r. Governmentally funded public broadcast entities; or
- s. Government-designated historic sites.

### **B. Prohibited Advertising Categories**

Notwithstanding any provisions in Section A of these Guidelines, advertising content that falls into one or more of the following categories is prohibited in the BART system based on inconsistency with the goals and objectives described above:

1. **Political or Public Issue Content.** Any material that, when viewed as a whole, can reasonably be regarded as directly:
  - a. Supporting or opposing a political party;
  - b. Supporting or opposing any political or judicial office holder;
  - c. Supporting or opposing a proposed ballot measure;
  - d. Supporting or opposing a law, ordinance, regulation, or proposed legislation;
  - e. Supporting or opposing a constitutional amendment or amendments;
  - f. Supporting or opposing an active governmental investigation;
  - g. Supporting or opposing ongoing civil litigation;
  - h. Supporting or opposing ongoing criminal prosecution;
  - i. Supporting or opposing a judicial ruling or rulings;
  - j. Supporting or opposing a strike, walkout, boycott, protest, divestment, embargo, or groupings thereof;
  - k. Supporting or opposing the election of any candidate or group of candidates;
  - l. Supporting or opposing a policy or policies of a named or identified governmental, business, or nonprofit entity other than the policies of the advertiser itself;
  - m. Supporting or opposing any foreign nation or group of nations or any policy of a foreign nation or group of nations other than the policies of the advertiser itself;
  - n. Depicting an image or images of one or more living political or judicial figures or depicting an image of one or more political or judicial figures that have died within the last five (5) years;
  - o. Referring to one or more living political or judicial figures or referring to one or more political or judicial figures that have died within the last five (5) years; or
  - p. Using a slogan, symbol, slogans, or symbols associated with any prohibited category of this section B1.
  
2. **Religious Content.** Any material that, when viewed as a whole, can reasonably be regarded as directly:
  - a. Promoting or opposing any religion, atheism, spiritual beliefs, or agnosticism, inclusive of images depicting religious iconography occupying 15% or more of any advertisement frame.

3. **Obscene or Vulgar Content.** Any material that, when viewed as a whole, can reasonably be regarded as:
  - a. Meeting the standards for obscenity as set forth in the California Penal Code Section 311; or
  - b. Utilizing words, text, symbols, or images recognized by the community as extremely vulgar, indecent, or profane for display in a public setting that includes minors.
  
4. **Unlawful, Unsafe, or Disruptive Content.** Any material that depicts or, when viewed as a whole, can reasonably be regarded as encouraging or promoting any of the following:
  - a. The sale, use, possession, or distribution of goods or services that are unlawful;
  - b. A contest or contests that violate applicable law;
  - c. Unlawful or unsafe behavior;
  - d. Detrimental actions to the maintenance and safe operation of public transportation; or
  - e. Graffiti or vandalism.
  
5. **False, Misleading, or Tortious Content.** Any material that depicts or, when viewed as a whole, can reasonably be regarded as:
  - a. False or fraudulent;
  - b. Deceptive or misleading;
  - c. Copyright, trademark, or patent infringement;
  - d. Constituting a tort of libel, trade libel, public disclosure of private facts, intrusion into private matters, misappropriation of a person's name or likeness, or depiction in a false light; or
  - e. BART graphics, logos, or representations without the express written consent of BART, or which implies or declares an endorsement by BART, its directors, management, or employees, of any service, product, or point of view, without prior written authorization by BART.
  
6. **Content Advertising Specified Goods or Services.** Any material that directly advertises any of the following categories of goods or services:
  - a. Alcohol, or any material that depicts the consumption of alcoholic beverages or signs of excessive alcohol intoxication;
  - b. Firearms or non-firearm weapons;
  - c. Tobacco, or depictions of tobacco-related products, e-cigarettes, products that simulate smoking, or products that resemble tobacco products; or
  - d. "Adult"-oriented goods or services, including the use of brand names, trademarks, or slogans, for goods or services rated "X" or NC-17 by the Motion Picture Association of America ("MPAA"), adult book stores, adult video stores, nude dance clubs, adult telephone services, adult internet sites, or escort services.

Notwithstanding items 6.a. and 6.c. above, depictions of tobacco products or alcohol consumption are permissible to the extent that the purposes of such depictions are non-commercial and are otherwise advancing a scientific, medical, journalistic, artistic, or public health objective.

- 7. Inappropriate, Offensive, or Violent Content.** Any material that, when viewed as a whole, can reasonably be regarded as depicting or describing any of the following:
- a. A graphic or realistic dead, mutilated, or disfigured human body or bodies;
  - b. A graphic or realistic human body part or body parts in a state of mutilation, dismemberment, decomposition, or disfigurement;
  - c. A fetus or fetuses in a state of mutilation, dismemberment, decomposition, or disfigurement;
  - d. Human or animal excrement, vomit, or graphic depictions of blood or viscera;
  - e. An act of animal abuse as defined in California Penal Code Section 597;
  - f. The act of killing, mutilating, or disfiguring human beings or animals;
  - g. Genocide, mass-murder, or war crimes recognized under the laws and customs of war;
  - h. Weapons or violent implements, if either appear to be aimed or pointed at the viewer;
  - i. Images of firearms, non-firearm weapons, or threatening sharp-edged device in the foreground of an image or occupying 15% or more of any advertisement image or frame;
  - j. Graphic violence or graphic sexual harassment;
  - k. Denigrating public transportation or the mission of BART;
  - l. Graphic images that, under contemporary community standards, would be reasonably considered extremely frightening to minors or the elderly; or
  - m. Material that is insulting, degrading, disparaging, demeaning, or disrespectful; or material that belittles or is dismissive of genocide, war crimes, or slavery that is so objectionable under contemporary community standards as to make it reasonably foreseeable that the material will result in harm to (including loss of ridership), disruption of, or interference with the transportation system.

#### **ADVERTISING PROGRAM ADMINISTRATION**

(a) BART may, from time to time, select "Advertising Contractors" who shall be responsible for the daily administration of BART's advertising programs, in a manner consistent with these Guidelines and with the terms and conditions of their agreements with BART.

(b) BART shall designate an employee as its "Contract Administrator" to be the primary contact for the Advertising Contractors on issues related to advertising content. Questions regarding the terms, provisions, and requirements of these Guidelines shall be addressed initially to the Contract Administrator.

(c) The Advertising Contractors shall comply with these Guidelines, and shall review all advertising with reference to them. If there is any question as to whether a proposed advertisement falls into a prohibited category--as outlined in these Guidelines--the Advertising Contractors shall refer that advertisement to the Department Manager of Marketing and Research, or their designee for review and consideration. The Department Manager of Marketing and Research or their designee shall determine whether the proposed advertising will be accepted. In the event that the advertising is rejected, the advertiser may request in writing that the decision be reconsidered. Upon such request, the Department Manager of Marketing & Research shall consult with BART's Office of the General Counsel and with the Assistant General Manager for External Affairs, or the officer designated by the General Manager for this purpose. The Assistant General Manager for External Affairs or General Manager designee, on the basis of such consultation, shall determine whether the proposed advertising will be accepted or rejected.

## **BART ADVERTISING CONTENT GUIDELINES – OPTION B**

### **OBJECTIVE**

Through these guidelines, the San Francisco Bay Area Rapid Transit District (“BART”), in keeping with its primary function as a provider of public transportation, does not intend to convert its property into an open public forum for public discourse, debate, or expressive activity. In furtherance of the discrete and limited objectives described below, BART shall retain control over the nature of advertisements accepted for posting in the BART system, and maintain its advertising space as a nonpublic forum with limited content neutral subject matter restrictions. In setting its advertising standards, BART seeks to meet the following goals and objectives:

- (a) Maintain a secure and orderly operating environment;
- (b) Maintain a safe and welcoming environment for all BART passengers, including minors who use the BART system, without regard to race, color, marital status, sexual orientation, religion, national origin, ancestry, age, sex, gender identity, disability, medical condition, or veterans’ status, and avoid claims of discrimination from the public;
- (c) Maintain and increase ridership and fare revenue;
- (d) Avoiding unintentional appearance of favoritism, association with, or bias towards any group, movement, or viewpoint;
- (e) Preserve the marketing potential of the advertising space by avoiding content that the community could view as inappropriate or harmful to the public;
- (f) Increase advertising revenue to help support BART service to the public;
- (g) Avoid imposing demeaning or disparaging messages on a captive audience; and
- (h) Reduce the diversion of resources from BART objectives caused by controversy surrounding advertisements.

BART retains the unqualified right to display, on or in its facilities, advertisements and notices that pertain to BART operations and promotions, consistent with the provisions of its agreement with the Advertising Contractors. Promotional materials may include, but not be limited to, internal marketing collateral, BART branding campaigns, and co-promotional campaigns with third parties. Consistent with the status of the BART premises to which this policy pertains as a nonpublic forum, BART does not accept free public service announcements. These Guidelines shall be effective upon adoption and shall be enforced to the degree that it does not impair the obligations of any executed contract. BART reserves the right, from time to time, to suspend, modify, or revoke the application of any or all of these Guidelines as it deems necessary to comply with legal mandates, facilitate its primary transportation function, to ensure the safety or security of BART customers and BART facilities, or to fulfill the goals and objectives referred to herein. All provisions of these Guidelines shall be deemed severable.

For purposes of understanding the meaning of advertisements, BART may refer to information beyond the advertisement including, but not limited to, dictionaries, reviews by authoritative bodies,

or public information regarding the advertiser. BART shall assess whether an independent, reasonably prudent person, knowledgeable of BART's customer profile and using prevailing community standards, would believe that the advertisement complies with the provisions of these Guidelines. In the case of advertisements that use double entendres or multiple interpretations, all meanings of the advertisement must comply with these Guidelines. BART reserves the right, in all circumstances, to require that an advertisement in the BART system include a disclaimer indicating that such advertising is paid for by the advertiser, stating that "The views expressed in this advertisement do not reflect the views of BART," or a similar statement, and BART may set minimum size standards for the disclaimer to ensure legibility.

## ADVERTISING STANDARDS

### Prohibited Advertising Categories

Advertising content that falls into one or more of the following categories is prohibited in the BART system based on inconsistency with the goals and objectives described above:

1. **Obscene or Vulgar Content.** Any material that, when viewed as a whole, can reasonably be regarded as:
  - a. Meeting the standards for obscenity as set forth in the California Penal Code Section 311; or
  - b. Utilizing words, text, symbols, or images recognized by the community as extremely vulgar, indecent, or profane for display in a public setting that includes minors.
  
2. **Unlawful, Unsafe, or Disruptive Content.** Any material that depicts or, when viewed as a whole, can reasonably be regarded as encouraging or promoting any of the following:
  - a. The sale, use, possession, or distribution of goods or services that are unlawful;
  - b. A contest or contests that violate applicable law;
  - c. Unlawful or unsafe behavior;
  - d. Detrimental actions to the maintenance and safe operation of public transportation; or
  - e. Graffiti or vandalism.
  
3. **False, Misleading, or Tortious Content.** Any material that depicts or, when viewed as a whole, can reasonably be regarded as:
  - a. False or fraudulent;
  - b. Deceptive or misleading;
  - c. Copyright, trademark, or patent infringement;
  - d. Constituting a tort of libel, trade libel, public disclosure of private facts, intrusion into private matters, misappropriation of a person's name or likeness, or depiction in a false light; or
  - e. BART graphics, logos, or representations without the express written consent of BART, or which implies or declares an endorsement by BART, its directors, management, or employees, of any service, product, or point of view, without prior written authorization by BART.

4. **Content Advertising Specified Goods or Services.** Any material that directly advertises any of the following categories of goods or services:
  - a. Alcohol, or any material that depicts the consumption of alcoholic beverages or signs of excessive alcohol intoxication;
  - b. Firearms or non-firearm weapons;
  - c. Tobacco, or depictions of tobacco-related products, e-cigarettes, products that simulate smoking, or products that resemble tobacco products; or
  - d. "Adult"-oriented goods or services, including the use of brand names, trademarks, or slogans, for goods or services rated "X" or NC-17 by the Motion Picture Association of America ("MPAA"), adult book stores, adult video stores, nude dance clubs, adult telephone services, adult internet sites, or escort services.

Notwithstanding items 4.a. and 4.c. above, depictions of tobacco products or alcohol consumption are permissible to the extent that the purposes of such depictions are non-commercial and are otherwise advancing a scientific, medical, journalistic, artistic, or public health objective.

5. **Inappropriate, Offensive, or Violent Content.** Any material that, when viewed as a whole, can reasonably be regarded as depicting or describing any of the following:
  - a. A graphic or realistic dead, mutilated, or disfigured human body or bodies;
  - b. A graphic or realistic human body part or body parts in a state of mutilation, dismemberment, decomposition, or disfigurement;
  - c. A fetus or fetuses in a state of mutilation, dismemberment, decomposition, or disfigurement;
  - d. Human or animal excrement, vomit, or graphic depictions of blood or viscera;
  - e. An act of animal abuse as defined in California Penal Code Section 597;
  - f. The act of killing, mutilating, or disfiguring human beings or animals;
  - g. Genocide, mass-murder, or war crimes recognized under the laws and customs of war;
  - h. Weapons or violent implements, if either appear to be aimed or pointed at the viewer;
  - i. Images of firearms, non-firearm weapons, or threatening sharp-edged device in the foreground of an image or occupying 15% or more of any advertisement image or frame;
  - j. Graphic violence or graphic sexual harassment;
  - k. Denigrating public transportation or the mission of BART;
  - l. Graphic images that, under contemporary community standards, would be reasonably considered extremely frightening to minors or the elderly; or
  - m. Material that is insulting, degrading, disparaging, demeaning, or disrespectful; or material that belittles or is dismissive of genocide, war crimes, or slavery that is so objectionable under contemporary community standards as to make it reasonably foreseeable that the material will result in harm to (including loss of ridership), disruption of, or interference with the transportation system.

## ADVERTISING PROGRAM ADMINISTRATION

- (a) BART may, from time to time, select “Advertising Contractors” who shall be responsible for the daily administration of BART’s advertising programs, in a manner consistent with these Guidelines and with the terms and conditions of their agreements with BART.
- (b) BART shall designate an employee as its “Contract Administrator” to be the primary contact for the Advertising Contractors on issues related to advertising content. Questions regarding the terms, provisions, and requirements of these Guidelines shall be addressed initially to the Contract Administrator.
- (c) The Advertising Contractors shall comply with these Guidelines, and shall review all advertising with reference to them. If there is any question as to whether a proposed advertisement falls into a prohibited category--as outlined in these Guidelines--the Advertising Contractors shall refer that advertisement to the Department Manager of Marketing and Research, or their designee for review and consideration. The Department Manager of Marketing and Research or their designee shall determine whether the proposed advertising will be accepted. In the event that the advertising is rejected, the advertiser may request in writing that the decision be reconsidered. Upon such request, the Department Manager of Marketing & Research shall consult with BART’s Office of the General Counsel and with the Assistant General Manager for External Affairs, or the officer designated by the General Manager for this purpose. The Assistant General Manager for External Affairs or General Manager designee, on the basis of such consultation, shall determine whether the proposed advertising will be accepted or rejected.





# EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Rht M. Perna</i> 29 Nov 2018		GENERAL MANAGER ACTION REQ'D: Approve and Forward to the Board		
DATE: 11/8/2018		BOARD INITIATED ITEM: No		
Originator/Prepared by: Joseph Basuino Dept: Real Estate and Property Development	General Counsel <i>[Signature]</i> 11/29/18 [ ]	Controller/Treasurer <i>Chris Gan</i> 11/29/18 [ ]	District Secretary [ ]	BARC <i>[Signature]</i> 11/28/2018 [ ]
Signature/Date: <i>Joseph M Basuino 11-26-18</i>				
Status: Routed	Date Created: 11/8/2018			

## Award of Agreement 6M4604, Stationary Engineering Services for 101 8th Street, Oakland, CA ("MetroCenter")

### PURPOSE:

To obtain Board authorization for the General Manager to award Agreement 6M4604, Stationary Engineering Services, to ABM Industry Groups LLC.

### DISCUSSION:

BART purchased the Joseph P. Bort MetroCenter from the Metropolitan Transportation Commission ("MTC") on June 22, 2017. At the time of the sale, the building systems maintenance staff was comprised of MTC employees. These employees were re-assigned to MTC's new office located at 375 Beale St., San Francisco, CA after the sale.

The Metro Center is a four-story office building of approximately 118,000 square feet of gross area. The building has the typical equipment found in similar office buildings including but not limited to: chillers, condensing units, vane air flow valves, boilers, water heaters, air handling units, air conditioning for server rooms, sewage pumps, storm water pumps, fire alarms, fire sprinklers, elevators, and other related equipment. Operation, maintenance, repair, and spare part management requires individuals specifically trained to manage this type of facility.

The third floor and portions of the first and second floors of the building are used as BART's police headquarters. The police dispatch center occupies a portion of the ground floor. The rest of the second floor is being occupied by the Building Manager and Maintenance and Engineering staff, as well as Transportation staff. A majority of the first

floor is rented to one non-profit organization, Asian Health Services. A commercial kitchen is located on the first floor but it is closed. Due to the police operations, this building is in operation 24 hours per day, 365 days per year.

Because of the 24 hour use of the building, its critical importance to police operations and the building's age, two stationary engineers, also known as building engineers, are needed to operate and maintain the infrastructure, systems and equipment for the building. The scope of the work requires a chief level and journey level stationary engineer to work split shifts so that there will be coverage in place for approximately 12 hours per day, Monday through Friday.

This contract specifically applies to the Joseph P. Bort MetroCenter. The Scope of Work for this contract includes, but is not limited to labor to install, repair, maintain, and manage the building infrastructure and related equipment.

It should be noted that in September 2018, the BART Board selected a transit-oriented (TOD) development team that is eventually expected to dismantle the MetroCenter building and construct high-rise development on the site. Investments and staffing for the MetroCenter are taking that into account.

The District, through the efforts from the Contract Administration Division and the Office of Civil Rights, provided advanced notice to seven hundred twenty-two (722) prospective bidders on September 6, 2018. The potential Contract was advertised in several publications, starting September 7, through September 20, 2018 and posted to the BART Procurement Portal on September 7, 2018. A Pre-Proposal Meeting was held on September 20, 2018. A total of 16 firms downloaded copies of the Request of Proposal.

On October 16, 2018, the District received a total of 2 proposals, which are shown in Table 1 below:

Table 1

Proposer	Proposal Prices (Corrected)
<b>ABM Industry Groups LLC ("ABM")</b>	
Base 3 Years:	\$1,391,586.00
Option Year 4:	\$ 505,117.00
Option Year 5:	\$ 522,486.00
<b>Total Proposal Price:</b>	<b>\$2,419,189.00</b>
<b>ABLE Services:</b>	
Base 3 Years:	\$2,555,844.30
Option Year 4:	\$ 929,140.02
Option Year 5:	\$ 979,224.84
<b>Total Proposal Price:</b>	<b>\$4,464,209.16</b>

District staff reviewed and evaluated both proposals and determined that ABM was the lowest responsive proposer. ABM's proposal price was 45.6% below the proposed price submitted by the next lowest proposer, ABLE Services.

Pursuant to the District's Non-Federal Small Business Program, the Office of Civil Rights set a 5% Small Business Prime Preference for this Agreement for Small Businesses certified by the California Department of General Services ("DGS"). It was determined that there were no certified Small Businesses certified by the DGS among the responsive Proposers and, therefore, the Small Business Prime Preference is not applicable.

Pursuant to the District's Non-Discrimination Program for Subcontracting, the Availability Percentages for this Agreement are 5.5% for MBEs and 2.8% for WBEs. ABM will not be subcontracting any portion of the Work and therefore, the provisions of the District's Non-Discrimination Program for Subcontracting do not apply.

**FISCAL IMPACT:**

The subject EDD proposes a five (5) year Stationary Engineering contract at a total cost of \$2,426,717 from January 1, 2019 – December 31, 2023. Funds will be budgeted in the Real Estate and Property Development operating budget (Department 1011275-RE&PD Financial Admin, account 681300- Professional & Technical Services) as follows:

<b>Proposed Funding</b>	
FY19*	\$ 232,762.33
FY 20	\$ 465,524.67
FY 21	\$ 465,524.67
FY 22	\$ 485,606.83
FY 23	\$ 515,071.50
FY24*	\$ 262,227.00
<b>Total</b>	<b>\$2,426,717.00</b>

\*FY19 and FY24 funding is not for a full Fiscal Year. Funding is expected to begin 1/1/19.

Funding for services in this Fiscal Year are included in the Department's existing operating budget. Real Estate and Property Development will be requesting additional ongoing funding for subsequent years to be included in the proposed annual operating budget, which is subject to Board approval.

This action is not anticipated to have any Fiscal Impact on unprogrammed District reserves in the current Fiscal Year.

**ALTERNATIVES:**

Do not approve the current agreement and have a combination of BART staff and outside vendors implement building repairs as components break down.

**RECOMMENDATION:**

It is recommended that the Board adopt the following Motion.

**MOTION:**

The General Manager is authorized to award Agreement No. 6M4604, Stationary Engineering Services, in the amount not to exceed \$1,396,574 to ABM Industry Groups LLC, pursuant to notification to be issued by the General Manager and subject to the District's Protest Procedures. The General Manager is also authorized to exercise the option for Year 4 in the amount not to exceed \$505,689 and the option for Year 5 in the amount not to exceed \$524,454.

# SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

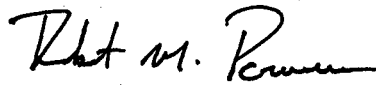
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## MEMORANDUM

**TO:** Board of Directors **DATE:** November 28, 2018  
**FROM:** General Manager  
**SUBJECT:** Assembly Bill 2923 Implementation Plan Update

On September 30, 2018, Governor Brown signed Assembly Bill 2923, co-authored by Assemblymembers David Chiu and Timothy Grayson. At the Dec. 6, 2018 Board meeting, staff will provide an overview of the bill, what this means for the BART Transit-Oriented Development Program and an initial implementation approach. Attached is the presentation for discussion.

If you have any questions, please contact Carl Holmes, Assistant General Manager, Planning, Development and Construction at (510) 464-7592.

  
\_\_\_\_\_  
for Grace Crunican

Attachment

cc: Board Appointed Officers  
Deputy General Manager  
Executive Staff

Before the Board of Directors of the  
SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

Resolution Commending  
**THOMAS M. BLALOCK, P.E.**  
For Meritorious Service

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

WHEREAS, Thomas M. Blalock served as a member of the Board of Directors of the San Francisco Bay Area Rapid Transit District from December 6, 1994, to December 7, 2018, tied for the longest tenure for an elected representative on the Board, and his service included terms as President in 2000, 2009, and 2015, and Vice President in 1999, 2008 and 2014; and

WHEREAS, the notable service of Director Blalock included terms as Chairperson of the Board's Administration Committee, Engineering and Operations Committee, and Planning, Public Affairs, Access, and Legislation Committee, as well as Chairperson, Vice Chairperson and member on numerous other committees of the Board; and

WHEREAS, Director Blalock expertly represented the District on transportation Boards throughout the region, including the Capitol Corridor Joint Powers Authority, the San Joaquin Joint Powers Authority, the Altamont Commuter Express, and the Alameda County Transportation Commission; and

WHEREAS, during Director Blalock's long and distinguished career as an engineer he served as City Engineer and as Public Works Director for the City of Fremont; and he has earned recognition from the American Society of Civil Engineers, serving as President of the San Francisco Section and receiving the Harland Bartholomew Award; he received the Samuel A. Greely Award from the American Public Works Association in 1991, chaired the City of Fremont's Downtown Planning Advisory Committee in 1996, and received the Award of Distinction from his alma mater of San Jose State University in 2000; and

WHEREAS, Director Blalock's wisdom and steadfast determination guided the District through financial cycles both robust and belt-tightening to successful implementation of fiscally responsible projects such as the two systemwide rehabilitation programs, the Earthquake Safety Program, and the development of the Fleet of the Future; and

WHEREAS, Director Blalock's tenure on the Board oversaw momentous expansion of the system in the counties of Alameda, Contra Costa, and San Mateo, including Extensions to Pittsburg/Bay Point, Dublin/Pleasanton, the San Francisco Airport extension to Millbrae, the Oakland Airport Connector, and BART to Antioch; and

WHEREAS, as a champion of the expansion of BART to the Silicon Valley, Director Blalock has tirelessly shared his vision and expertise, resulting in construction of the long-awaited extension into Santa Clara County, and the opening of the beautiful Warm Springs/South Fremont Station in 2017;

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the San Francisco Bay Area Rapid Transit District does hereby take public cognizance of the immeasurable contributions Mr. Blalock has made to the citizens of the South Bay and to the cause of public transportation, and

BE IT FURTHER RESOLVED that a suitably engrossed copy of this Resolution be tendered to Thomas M. Blalock as a token of the high esteem in which Director Blalock is held by the members of the San Francisco Bay Area Rapid Transit District Board of Directors.

Adopted by the Board of Directors  
of the San Francisco Bay Area Rapid Transit District  
December 6, 2018

ATTEST:

\_\_\_\_\_  
Patricia K. Williams  
District Secretary

\_\_\_\_\_  
Robert Raburn  
President

Before the Board of Directors of the  
SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

Resolution Commending  
**JOEL KELLER**  
For Meritorious Service

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

WHEREAS, Joel Keller served as a member of the Board of Directors of the San Francisco Bay Area Rapid Transit District from December 14, 1994, to December 7, 2018, and his service included terms as President in 2002, 2005, and 2014, and Vice President in 1998, 2001, 2004, and 2013; and

WHEREAS, the distinguished service of Director Keller included terms as Chairperson of the Board's Administration Committee, Engineering and Operations Committee, and Strategic Planning Committee, as well as Chairperson, Vice Chairperson and member on numerous other committees of the Board, including serving for decades on the Capitol Corridor Joint Powers Authority Board and playing an instrumental role in the formation of the BART Police Citizen Review Board; and

WHEREAS, Director Keller's dedication to the citizens of Eastern Contra Costa County included serving as Mayor of Antioch, a member of Antioch City Council, Commissioner of the Delta Protection Commission, Chair of both the Contra Costa Transportation Authority Board and Contra Costa Mayor's Conference, the founding Chair of Delta 2000, and a Board member of Association of Bay Area Governments, Delta Diablo Sanitation District, Tri-Delta Transit, Highway 4 By-Pass Authority, United Way of the Bay Area, and Transplan; and

WHEREAS, Director Keller's guidance and foresight were instrumental in the successful completion of major programs of improvement for the District, resulting in public support and funding for a \$1.2 billion renovation of the system in the mid-1990s, the Earthquake Safety Program in 2004, and in 2016 the passage of Measure RR, a \$3.5 billion bond measure to fund the Safety, Reliability, and Traffic Relief Program; and

WHEREAS, Director Keller's strong leadership during his tenure on the Board has contributed immeasurably to amazing expansion of the District's services, with extensions built to the San Francisco International Airport, Oakland International Airport, Dublin/Pleasanton, Warm Springs/South Fremont, and Pittsburg/Bay Point; and

WHEREAS, through participation in countless community events, meetings, and presentations, Director Keller proudly officiated at the opening of the long-awaited BART to Antioch extension;

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the San Francisco Bay Area Rapid Transit District does hereby take public cognizance of the immeasurable contributions Mr. Keller has made to the citizens of the District and to the cause of public transportation; and

BE IT FURTHER RESOLVED that a suitably engrossed copy of this Resolution be tendered to Joel Keller as a token of the high esteem in which Director Keller is held by the members of the San Francisco Bay Area Rapid Transit District Board of Directors.

Adopted by the Board of Directors  
of the San Francisco Bay Area Rapid Transit District  
December 6, 2018

ATTEST:

\_\_\_\_\_  
Patricia K. Williams  
District Secretary

\_\_\_\_\_  
Robert Raburn  
President