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

BOARD MEETING AGENDA
February 22, 2018
9:00 a.m.

A regular meeting of the Board of Directors will be held at 9:00 a.m. on Thursday, February 22, 2018, in the BART Board Room, Kaiser Center 20th Street Mall – Third Floor, 344 – 20th Street, Oakland, California.

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

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

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

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

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

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

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

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

Kenneth A. Duron
District Secretary

Regular Meeting of the
BOARD OF DIRECTORS

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

1. CALL TO ORDER

   A. Roll Call.
   B. Pledge of Allegiance.
   C. Introduction of Special Guests.

2. CONSENT CALENDAR

   A. Approval of Minutes of the Meetings of January 25, 2018, and February 8 and 9, 2018.* Board requested to authorize.

   B. Award of Invitation for Bid No. 9034, Fiberglass Walkway.* Board requested to authorize.

   C. 2018 Organization of Committees and Special Appointments Revision.* 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
   NO ITEMS.

5. ENGINEERING AND OPERATIONS ITEMS
   Director Simon, Chairperson

   A. Award of Contract No. 15CQ-200A, Rail Procurement.* Board requested to authorize.

   B. Change Order to Contract No. 01RQ-110, Construction of Hayward Maintenance Complex Project Maintenance Facilities, with Clark Construction, for Car Lift Rail Modifications to the Hayward Shop Shallow Pit Car Lifts (C.O. No. 235).* Board requested to authorize.

   C. Santa Clara County BART Extension: Update on Phase I and Phase II.* For information.

   D. BART Police Citizen Oversight Model Evaluation Report.* For information.

   E. Quarterly Performance Report, Second Quarter Fiscal Year 2018 - Service Performance Review .* For information.

* Attachment available

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

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

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

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

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. PUBLIC EMPLOYEE EMPLOYMENT / APPOINTMENT

Title:	District Secretary/Interim District Secretary
Gov't. Code Section:	54957(b)(1)

B. CONFERENCE WITH NEGOTIATORS

Designated Representatives:	Directors Keller, Raburn, and Simon
Title:	District Secretary/Interim District Secretary
Gov't. Code Section:	54957.6

* Attachment available

C. CONFERENCE WITH LABOR NEGOTIATORS:

Designated representatives: Grace Crunican, General Manager; Michael Jones, Assistant General Manager, Employee Relations; and Martin Gran, Chief Employee Relations Officer

Employee Organizations:
(1) Amalgamated Transit Union, Local 1555;
(2) American Federation of State, County and Municipal Employees, Local 3993;
(3) BART Police Officers Association;
(4) BART Police Managers Association;
(5) Service Employees International Union, Local 1021; and
(6) Service Employees International Union, Local 1021, BART Professional Chapter
(7) Unrepresented employees (Positions: all)

Government Code Section: 54957.6

11. OPEN SESSION

A. Compensation and Benefits for Interim District Secretary. Board requested to authorize.

* Attachment available

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

Board of Directors
Minutes of the 1,806th Meeting
January 25, 2018

A regular meeting of the Board of Directors was held January 25, 2018, convening at 9:01 a.m. in the Board Room, 344 20th Street, Oakland, California. President Raburn presided; Kenneth A. Duron, District Secretary.

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

Absent: None. Directors Dufty, Josefowitz, and Keller entered the Meeting later.

Director Keller entered the Meeting.

Consent Calendar items brought before the Board were:

1. Approval of Minutes of the Meeting of January 11, 2018.

2. Resolution Accepting Caltrans Adaptation Planning Grant Funds for the BART Sea Level Rise and Flooding Resiliency Study.

3. Change Order to Contract No. 79HM-120, SFTS MB, with Manson Construction Company, Inc., for Revised Cathodic Protection System (C.O. No. 31).

Director Allen made the following motions as a unit. Director Blalock seconded the motions, which carried by unanimous acclamation. Ayes – 7: Directors Allen, Blalock, Keller, McPartland, Saltzman, Simon, and Raburn. Noes - 0. Absent – 2: Directors Dufty and Josefowitz.

1. That the Minutes of the Meeting of January 25, 2018, be approved.

2. Adoption of Resolution No. 5366, In the Matter of Accepting Fiscal Year 2017-2018 Adaptation Planning Grant from the California Department of Transportation (Caltrans).

3. That the General Manager be authorized to execute Change Order No. 31, Revised Cathodic Protection System, for a credit to the District of not less than $1.00, for Contract No. 79HM-120, SFTS MB, with Manson Construction Company, Inc.

President Raburn called for Public Comment.

Clarence Fischer addressed the Board.

Director Dufty entered the Meeting.

Darrel Carey addressed the Board.

Director Josefowitz entered the Meeting.

The following individuals addressed the Board.

Michael Bernick
Lock Holmes

Director Allen, Chairperson of the Administration Committee, brought the matter of Magnetic Stripe Ticket Surcharge Waiver for Transit Operators before the Board. Mr. Bob Franklin, Department Manager, Customer Access, presented the item. The item was discussed. Director Josefowitz moved that the General Manager be authorized to waive the $0.50 per trip magnetic stripe ticket surcharge for tickets purchased by County Connection, if the use of Clipper® is an infeasible option, if the trip is for official transit purposes only, until December 31, 2018, and that staff report back to the Board on the status of County Connection's progress toward transitioning to Clipper. Director Keller seconded the motion. Director Blalock noted that Aleta Dupree had submitted public comments on the item. The motion carried by unanimous electronic vote. Ayes – 9: Directors Allen, Blalock, Dufty, Josefowitz, Keller, McPartland, Saltzman, Simon, and Raburn. Noes – 0.

Director Simon, Chairperson of the Engineering and Operations Committee, brought the matter of Change Orders to Contract No. 01RQ-110, Construction of Hayward Maintenance Complex Project Maintenance Facilities, with Clark Construction: Maintain Run-Around Track Capability (C.O. No. 74), before the Board. Mr. Thomas Horton, Group Manager, Hayward Maintenance Complex, presented the item. The item was discussed. Director Saltzman moved that the General Manager be authorized to execute Change Order No. 74, Maintain Run-Around Track Capabilities, to Contract No. 01RQ-110, Hayward Maintenance Complex Project Maintenance Facilities, with Clark Construction, for an amount not to exceed $1,551,000.00. Director Blalock seconded the motion, which carried by unanimous electronic vote. Ayes – 9: Directors Allen, Blalock, Dufty, Josefowitz, Keller, McPartland, Saltzman, Simon, and Raburn. Noes – 0.

Director Simon brought the matter of Change Orders to Contract No. 01RQ-110, Construction of Hayward Maintenance Complex Project Maintenance Facilities, with Clark Construction: Additional Cabling and Technology Systems Modifications (C.O. No. 108), before the Board. Mr. Horton presented the item. Director McPartland moved that the General Manager be authorized to execute Change Order No. 108, for Additional Cabling and Technology Systems Modifications for Intermediate Distribution Frame/Main Distribution Frame (IDF/MDF) Room, to Contract No. 01RQ-110, Hayward Maintenance Complex Project Maintenance Facilities, with Clark Construction, for an amount not to exceed $419,000.00. Director Blalock seconded the motion, which carried by unanimous acclamation. Ayes – 9: Directors Allen, Blalock, Dufty, Josefowitz, Keller, McPartland, Saltzman, Simon, and Raburn. Noes – 0.

Director Simon brought the matter of Change Order to Contract No. 79HM-120, SFTS MB, with Manson Construction Company, Inc., for Marine Barrier Additional Steel Framing and Welding (C.O. No. 80), before the Board. Mr. Horton presented the item. Director McPartland moved

that the General Manager be authorized to execute Change Order No. 80, MB Design Growth, in an amount not to exceed $3,300,000.00, for Contract No. 79HM-120, SFTS MB, with Manson Construction Company, Inc. Director Blalock seconded the motion, which carried by unanimous acclamation. Ayes – 9: Directors Allen, Blalock, Dufty, Josefowitz, Keller, McPartland, Saltzman, Simon, and Raburn. Noes – 0.

Director Simon brought the matter of Upper M-Line Traction Study before the Board. Mr. Paul Oversier, Assistant General Manager, Operations; Mr. Duncan Watry, Principal Planner; Mr. Steve Sims, Project Manager; and Mr. Tim Chan, Manager of Planning, presented the item. The item was discussed.

Director Simon brought the matter of Santa Clara County BART Extension: Update on Phase I and Phase II, before the Board. Mr. Oversier; Ms. Bernadette Lambert, Project Manager; and Mr. Robert Mitroff, Chief Planning and Development Officer, presented the item. The item was discussed.

Director Blalock, Chairperson of the Planning, Public Affairs, Access, and Legislation Committee, brought the matter of Execution of Agreement with Contra Costa Transportation Authority for Design Completion of the Mokelumne Intermodal Trail Bridge, Brentwood, before the Board. Ms. Rachel Russell, Senior Planner, presented the item. The item was discussed. Director Keller moved that the General Manager or her designee be authorized to execute an agreement with Contra Costa Transportation Authority (CCTA) providing for BART to reimburse CCTA in an amount of $200,000.00 for work associated with completion of the design of the Mokelumne Trail Overcrossing. Director Saltzman seconded the motion, which carried by unanimous acclamation. Ayes – 9: Directors Allen, Blalock, Dufty, Josefowitz, Keller, McPartland, Saltzman, Simon, and Raburn. Noes – 0.

Directory Blalock brought the matter of BART Parking Program Update before the Board. Mr. Franklin presented the item. The item was discussed.

President Raburn called for the General Manager's Report.

General Manager Grace Crunican and Mr. Oversier reported on the debut of the Fleet of the Future train cars. The report was discussed.

Ms. 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, noting on-going discussions regarding a regional means-based fare program and Clipper card utilization.

President Raburn called for the Quarterly Report of the Controller/Treasurer for the Period Ending September 30, 2017. Ms. Rose Poblete, Controller/Treasurer, presented the Report.

President Raburn called for Quarterly Report of the Independent Police Auditor. Mr. Russell Bloom, Independent Police Auditor, presented the Report. The Report was discussed.

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

Director Allen reported she had attended the Contra Costa Mayors' Conference, given a presentation to the Asian Pacific Islanders American Public Affairs group, attended the opening of the Pleasant Hill Bike Hub bike station, a Contra Costa Transportation Committee meeting, the TriValley-San Joaquin Valley Regional Rail Authority meeting, and the Fleet of the Future ribbon cutting ceremony.

Director Josefowitz requested an update on the status of ACE upgrades.

Director Blalock reported he had attended the South Bay Engineers Club meeting in Pleasanton.

Director Simon reported she had attended the Contra Costa Mayors' Conference and several meetings with West Oakland community groups regarding development in that area.

Director Dufty reported he had attended a LEAD SF policy committee meeting, and thanked the District Secretary for the profound impact his integrity and hard work had had on the District.

President Raburn reported he had participated in the bike station dedication at Pleasant Hill / Contra Costa Centre Station and the Fleet of the Future ceremony, and attended the Women's March in Oakland.

President Raburn called for Public Comment.

Jerry Grace addressed the Board.

The Meeting was adjourned at 1:10 p.m.

Kenneth A. Duron
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 1,807th Meeting
February 8 and 9, 2018

A regular meeting of the Board of Directors was held February 8 and 9, 2018. The Meeting was a Board Workshop. The first session, convening at 8:48 a.m. in the Renaissance Room, Renaissance ClubSport, 2805 Jones Road, Walnut Creek, California. President Raburn presided; Kenneth A. Duron, District Secretary.

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

Absent: None.

President Raburn called for Public Comment.

Robert S. Allen addressed the Board.

The Workshop was held.

General Manager Grace Crunican; Ms. Kerry Hamill, Assistant General Manager, External Affairs; and Mr. Carl Holmes, Assistant General Manager, Planning, Development, and Construction, gave an overview of the workshop and of the District's accomplishments during Fiscal Year 2017.

Ms. Abigail Thorne-Lyman, Manager of Planning; Ms. Ellen Smith, Department Manager, Strategic Planning; and Mr. Aaron Weinstein, Department Manager, Marketing and Research, gave a presentation on 2018 Context, including segments on State of the Region, Strategic Plan, and Ridership Trends and Challenges. The presentation was discussed.

The Board Meeting recessed at 9:58 a.m.

The Board Meeting reconvened at 10:15 a.m.

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

Absent: None.

Ms. Pamela Herhold, Acting Assistant General Manager, Administration and Budgets; Mr. Dennis Markham, Division Manager, Financial Planning, gave a presentation on Financial Outlook – Long Range Forecast. The presentation was discussed.

Mr. Michael Jones, Assistant General Manager, Human Resources, and Ms. Mary Beth Redding, Bartels and Associates, gave a presentation on Financial Outlook – Pension Funding Strategies. The presentation was discussed.

Gena Alexander addressed the Board.

The Board Meeting recessed at 12:03 p.m.

The Board Meeting reconvened at 12:32 p.m.

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

Absent: Director Simon.

Julia Liou addressed the Board.

Director Allen entered the Meeting.

Mr. Sean Brooks, Department Manager, Real Estate and Property Development; Mr. Weinstein,; and Mr. Ravi Misra, Chief Information Officer, gave a presentation on Non-Passenger Revenue Opportunities, including segments on Transit Oriented Development, Advertising, and BART Digital Railway and Strategy. The presentation was discussed.

Mr. Robert Powers, Deputy General Manager; Ms. Angela Borchardt, Research Project Supervisor; Mr. Tim Chan, Manager of Planning; Chief of Police, Carlos Rojas; and Ms. Jennifer Easton, Art Program Manager, gave a presentation on Rider and Public Experience, including segments on Quality of Life on BART – Customer Feedback, and Quality of Life Initiatives – Impact of Homelessness on Riders and System; Partnerships for Public Safety; BART Police Department Recruitment, Hiring Efforts, and Patrol Deployment Study; and Public Conduct Campaign. The presentations were discussed.

Jerry Grace addressed the Board.

The Board Meeting recessed at 2:45 p.m.

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

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

Absent: Director Simon.

Mr. Paul Oversier, Assistant General Manager, Operations; and Ms. Tamar Allen, Chief Maintenance and Engineering Officer, continued the presentation on Rider and Public Experience – Quality of Life Initiatives, including a segment on Station Cleaning Programs.

John Arantes addressed the Board.

The Station Cleaning Programs segment was discussed.

Mr. Oversier; Mr. John McCormick, Department Manager, Operations Planning and Support; and Deputy Chief of Police Lance Haight continued the presentation of Rider and Public Experience – Quality of Life Initiatives, including a segment on Fare Evasion.

Jerry Grace addressed the Board.

The Fare Evasion presentation was discussed.

Mr. Oversier gave a presentation on Riders and Public Experience – Service Reliability. The presentation was discussed.

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

President Raburn announced that the Board would enter into closed session in the Board Room, Renaissance ClubSport, under Item 5-A (Public Employee Employment/Appointment), Item 5-B (Conference with Negotiators), and 5-C (Public Employee Performance Evaluation) 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 4:38 p.m.

The Board Meeting reconvened in closed session at 4:53 p.m.

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

Absent: Director Simon.

The Board Meeting recessed at 5:10 p.m.

The Board Meeting reconvened in closed session at 5:25 p.m.

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

Absent: Director Simon.

The Board Meeting recessed at 6:38 p.m.

The Board Meeting reconvened in open session at 6:39 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 there were no announcements to be made.

The Board Meeting adjourned at 6:39 p.m.

The Board Meeting reconvened on February 9, 2018, at 8:36 a.m., in the Renaissance Room, Renaissance ClubSport, 2805 Jones Road, Walnut Creek, California. President Raburn presided; Kenneth A. Duron, District Secretary.

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

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

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

Director Keller entered the Meeting.

Mr. Holmes; Mr. Jones; Ms. Hamill; Mr. Maceo Wiggins, Acting Department Manager, Office of Civil Rights; Ms. Allen; and Mr. Robert Mitroff, Chief Planning and Development Officer, gave a presentation on the BART Safety, Reliability, and Traffic Relief Program (Measure RR) Update.

Director Dufty entered the Meeting.

The presentation was discussed.

Director Josefowitz entered the Meeting.

Discussion continued.

The Board Meeting recessed at 9:42 a.m.

The Board Meeting reconvened at 9:54 a.m.

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

Absent: Director Simon.

President Raburn introduced and welcomed former Board member Gail Murray.

Mr. Oversier gave a presentation on Major Projects - Passenger Rail Service, Operations, and Rail Yard Management. The presentation was discussed.

The following individuals addressed the Board.

Robert S. Allen
Bob Vinn
Randall Glock

Mr. Powers and Mr. Mitroff gave a presentation on Major Projects – BART Extension to Silicon Valley. The presentation was discussed.

Jerry Grace addressed the Board.

Mr. Thomas Dunscombe, Group Manager, Capital Projects, gave a presentation on Major Projects - Communications Based Train Control. The presentation was discussed.

Ms. Smith and Mr. David Kutrosky, Managing Director, Capitol Corridor, gave a presentation on Major Projects – Second Transbay Crossing.

The Board Meeting recessed at12:11 p.m.

The Board Meeting reconvened at 12:26 p.m.

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

Absent: Director Simon.

Jerry Grace addressed the Board.

The presentation on the Second Transbay Crossing was discussed.

Director Dufty exited the Meeting.

President Raburn brought Workshop Review before the Board. Ms. Smith recapped the items covered in the Workshop. The Review was discussed.

The Board Meeting was adjourned at 1:18 p.m.

Kenneth A. Duron
District Secretary

EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: Robert M. Powers 14 FEB 2018			GENERAL MANAGER ACTION REQ'D:	
DATE: 1/17/2018			BOARD INITIATED ITEM: No	
Originator/Prepared by: Joan Stephan Dept: Maintenance and Engineering Signature/Date: 2/9/18	General Counsel 2/12/18 [ ]	Controller/Treasurer 2/12/18 [ ]	District Secretary [ ]	BARC 2/12/18 [ ]

AUC TO AFM STEPABLE DUCT TRAY FIBERGLASS WALKWAY SYSTEM

PURPOSE: To request Board authorization to award Invitation For Bid No. #**9034** to **ATLANTIC TRACK & TURNOUT CO., BLOOMFIELD, NEW JERSEY** in the amount of **$1,879,949.99** (includes all taxes) for the purchase of FIBERGLASS WALKWAY.

DISCUSSION:
This procurement involves the purchase of fiberglass walkway components and associated hardware needed for the installation of a fiberglass walkway system between the Union City and Fremont traction power substations (AUC and AFM).

The proposed fiberglass walkway system between AUC and AFM will serve several purposes. First, it will provide a stable walking surface adjacent to the track for both maintenance access and emergency passenger egress. The elevated areas will also include a hand rail for improved safety. Second, it will serve to protect new armored cables, that were installed at surface between AUC and AFM as part of a different project, from weather elements and vandalism. This protection is necessary because one cable has already been faulted as a result of attempted theft, which required maintenance forces to splice the cable to regain power redundancy. The fiberglass walkway system cover will also reduce the exposure of the cables to both destructive ultraviolet light and inclement weather.

Low smoke zero halogen fiberglass was chosen for this project to reduce the risk of stray current proliferation as well as the risk of smoke and toxicity in the event of a fire. Fiberglass is also lighter for ease of installation and will allow for an accelerated schedule for installation under blanket conditions.

Once procured, BART forces will install the roughly three (3) miles of fiberglass walkway to complete this project.

This is a two (2) year estimated quantity Contract. Pursuant to the terms of the District's standard estimated quantity contract provisions, during the term of the Contract the District is required to purchase from the Supplier a minimum amount of 50 percent of the Contract Bid Price. Upon Board approval of this Contract, the General Manager will also have the authority to purchase up to 150 percent of the Contract Bid Price, subject to availability of funding.

A notice requesting Bids was published on November 16, 2017, and correspondingly, the solicitation was posted on the BART Vendor Portal. Bid requests were mailed to three (3) prospective Bidders. Bids were opened on December 5, 2017 and two (2) Bids were received.

Bidder	**Lot Price**	**Grand Total including 9.75% Sales Tax**
Atlantic Track & Turnout Co. Bloomfield, NJ	$1,712,938.49*	$1,879,949.99*
Enduro Composites, Houston TX	$1,727,267.39	$1,895,675.96

* Amount after minor arithmetical correction by the district using the Bidder's Unit Prices.

Independent cost estimate including tax by BART staff: $ 1,823,095.72

Staff has determined that the apparent low Bidder, Atlantic Track & Turnout Co, submitted a responsive bid. Staff has also determined that the bid pricing is fair and reasonable based on BART staff's independent cost estimate.

Pursuant to the District's Disadvantaged Business Enterprise (DBE) Program, the Office of Civil Rights is utilizing race and gender-neutral efforts for Invitations for Bid (IFB). Therefore, no DBE goal was set for this IFB.

FISCAL IMPACT:
Funding of $1,879,950 for Bid No. 9034 is included in total project budget for FMS # 15EJ700 – 34.5KV Cable Between AUC and AFM. 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.

As of January 29, 2018, $6,853,950 is available for this project from the following sources:

Fund No	Fund Description	Fund Source	Amount
3001	FY11 Capital Improvements CA-05-0253-00	Federal	109,200
3401	FY12 Capital Improvements CA -05-0263-00	Federal	1,043,000
353G	FY08 Capital Improvements CA-05-0224-00	Federal	200,000
3602	FY13 Capital Improvements CA-54-0007-00	Federal	3,008,400
3603	FY14 Capital Improvements CA-54-0023-00	Federal	928,000
3605	FY15 Capital Improvements CA-54-0041-00	Federal	283,160
6018	FY11-12 PRJ Match MTC RES# 4044	Local	200,000
6302	FY12-13 MTC B-Toll AB664	Local	554,100
851W	FY07-11 Capital Allocation	BART	225,300
8525	FY13 Capital Allocation	BART	232,000
8526	FY14 Capital Allocation	BART	70,790
Total			6,853,950

BART has expended $4,628,138, has committed $200,937 and reserved $0 to date for other action. This action will commit $1,879,950 leaving an available fund balance of $144,925 in this project.

There is no fiscal impact on available unprogrammed District Reserves.

ALTERNATIVES:
Reject all Bids and re-advertise. Staff does not believe, however, that this would result in a better price or increased competition.

Another alternative is to reject all Bids and not re-advertise. However, during development of the design for this project, alternative methods for constructing the walkway were considered. None of the alternatives met the safety requirements deemed necessary for use on the project. Without procurement of this walkway, the installed cables will continue to be vulnerable to theft and weather and there will not be a safe and clear walkway for use along the A2 track.

RECOMMENDATION:
Adopt the following motion.

MOTION:
The General Manager is authorized to award IFB No. #9034 for Fiberglass Walkway To Atlantic Track & Turnout Co. for an amount of $1,879,949.99, including tax, pursuant to notification to be issued by the General Manager, and subject to compliance with the District's Protest Procedure and FTA's requirements related to protests.

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

MEMORANDUM

TO: Board of Directors **DATE:** February 15, 2018

FROM: District Secretary

SUBJECT: 2018 Organization of Committees and Special Appointments Revision

Board Rule 3-3.2 requires the ratification by a majority vote of all members of the Board any appointment of any Committee member by the Board President. The Rule includes a provision that such appointments shall be submitted directly to the Board.

In accordance with Board Rule 3-3.2, President Raburn is bringing a revision to the 2018 Organization of Committees and Special Appointments before the Board of Directors for ratification at the Regular Board Meeting on February 22, 2018. President Raburn proposes the creation of the Labor Negotiations Review Special Committee. A prior Labor Negotiations Review Ad Hoc Committee established in 2014 had been allowed to sunset on 12/31/16 following consideration of the Collective Bargaining Report and Recommendations by Agreement Dynamics, Inc. presented at the September 11, 2014 Regular Board Meeting.

- Labor Negotiations Review Special Committee. The objectives of the committee are to ensure that recommendations in the Collective Bargaining Report and Recommendations by Agreement Dynamics, Inc. remain relevant, are revised where necessary and followed. The intent is to ensure errors that occurred in 2013 during the collective bargaining negotiations are avoided with BPOA/BPMA in 2018 and to prepare for the negotiations with ATU, SEIU, AFSCME in 2021.

  Members: Bevan Dufty, Chairperson, Joel Keller, Rebecca Saltzman

Should you have any questions about the establishment of the Committee or recommended appointments, please contact President Raburn or me at your convenience.

Kenneth A. Duron

cc: Board Appointed Officers
Deputy General Manager
Executive Staff

MOTION:

That the Board of Directors ratifies the proposed revision to the Organization of Committees and Special Appointments for 2018 creating the Labor Negotiations Review Special Committee.

EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: Robert M. Powers 19 FEB 2018		GENERAL MANAGER ACTION REQ'D:		
DATE: 2/7/2018		BOARD INITIATED ITEM: No		
Originator/Prepared by: Mark Letman Dept: Maintenance and Engineering Signature/Date: 2/14/18	General Counsel 2/14/18 [ ]	Controller/Treasurer 2/14/18 [ ]	District Secretary [ ]	BARC 2/14/18 [ ]

Award of Contract 15CQ-200A For Rail Procurement

PURPOSE:

To request Board authorization for the General Manager to award Contract No. 15CQ-200A for Rail Procurement to L.B. Foster Company, Pittsburg, Pennsylvania for the Base Bid Price of $20,425,877.95, including all applicable sales taxes.

DISCUSSION:

Contract No. 15CQ200A is five (5) year Contract to purchase eight hundred (800) foot lengths of Continuous Welded Rail (CWR) and special trackwork steel components for the District's Measure RR funded, track infrastructure replacement projects. Premium head hardened rail and upgraded steel components will replace legacy track and interlockings, and update ninety-pound rail (90RA) to one hundred nineteen pound per yard rail (119RE) in BART maintenance yards.

Pre-advertisement notices were mailed to fifteen (15) prospective Bidders. On December 18, 2017 the Contract was advertised and seven (7) prospective Bidders registered for the Contract documents. Two potential suppliers attended a pre-bid meeting held on January 10, 2018. Bids were opened on January 30, 2018 and three (3) Bids were received.

Bidder	Grand Total Including 9.75% Sales Tax
Progress Rail Services Corporation Albertville, AL	$17,111,649.30

A&K Railroad Materials, Inc. Salt Lake City, UT.	$17,451,845.24
L.B. Foster Company Pittsburg, PA.	$20,425,877.95

Independent cost estimate by BART staff: $20,567,924.20 including all applicable sales taxes.

Two (2) of the Bids submitted were determined to be non-responsive due to non-compliance with the Bid requirements. Progress Rail Services Corporation did not submit the required Bidders Bond and A&K Railroad Materials, Inc. did not submit a signed Bid Form. Staff has determined that only L.B. Foster Company submitted a responsive Bid. Staff also determined that L.B. Foster's Bid price was fair and reasonable based upon the independent cost estimate and market survey of qualified suppliers.

Pursuant to the District's Non-Discrimination Program for Subcontracting, the Availability Percentages for this Contract are 2.2% for Minority Business Enterprise ("MBEs"), 1.1% for Women Business Enterprises ("WBEs"). The apparent low Bidder, L.B. Foster Company, had a zero percent commitment to the utilization of MBE and WBE participation. Therefore, L.B. Foster Company 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 L.B. Foster Company, the Office of Civil Rights found no evidence of discrimination.

Pursuant to the District's Non-Federal Small Business Program, the Office of Civil Rights set an 8% Small Business (SB) Participation Goal for this Contract. Bidders who meet the SB Participation Goal are eligible for a Small Business Preference of 5% of the lowest responsive Bidder's Bid. Since L.B. Foster Company committed to subcontracting 7.5% to SBs, it did not meet the SB Participation Goal and it was not eligible for the Prime Preference. However, due to the first and second low Bidders being found non-responsive, L.B. Foster Company is now the apparent low Bidder. Thus, the Prime Preference will not apply to Foster's Company's Bid.

FISCAL IMPACT:

This Contract is an estimated quantity Contract. Upon Board approval of this Contract, the General Manager will also have the authority to purchase up to 150 percent of the Contract Base Bid Price, subject to the availability of funds.

Funding in the amount of $30,638,817 ($20,425,878 base Contract value including CA Sales Tax, plus $10,212,939 additional potential Contract value) to award Contract No. 15CQ-200A is included in the total budget for FMS# 15CQ002 Replace Rails, Ties, Fasteners Ph3,

Measure RR.

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:

Source	Fund Description	Total
BART	Measure RR General Obligation Bonds	$616,949,279
BART	BART Operating to Capital Allocation	$197,246
		$617,146,525

As of 02/08/2018, $617,146,525 is the total budget for this project. BART has expended $20,808,474 committed $23,986,579 and reserved $30,312,892 to date for other actions. This action will commit $30,638,817, leaving an available fund balance of $511,399,762 in fund sources 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:

Reject the Bid and re-advertise the Contract. This however, is not likely to result in increased competition or lower prices and would delay the procurement of rail, consequently postponing the replacement of rail infrastructure, which could negatively impact revenue service.

RECOMMENDATION:

On the basis of analysis by Staff and certification by the Controller-Treasurer that the funds are available for this purpose, it is recommended that the Board adopt the following motion.

MOTION:

The General Manager is authorized to award Contract No. 15CQ-200A, an estimated quantity contract, for Rail Procurement, to L.B. Foster Company of Pittsburgh, PA, for the Base Bid Price of $20,425,877.95 including all applicable sales taxes, pursuant to notification to be issued by the General Manager, subject to compliance with the District's Protest Procedures. The General Manager is also authorized to purchase up to 150 percent of the Contract Base Bid Price, subject to the availability of funds.

EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: 14 FEB 2018		GENERAL MANAGER ACTION REQ'D: Approve and forward to Board of Directors		
DATE: 1/12/2018		BOARD INITIATED ITEM: No		
Originator/Prepared by: Kevin Sanderson Dept: Extensions Signature/Date: FOR 2/12/18	General Counsel 2/12/18 [ ]	Controller/Treasurer 2/12/18 [ ]	District Secretary [ ]	BARC 2/12/18 [ ]

Contract No. 01RQ-110, Hayward Maintenance Complex Project Maintenance Facilities, Change Order No. 235, Car Lift Rail Modifications to the Hayward Shop Shallow Pit Car Lifts

PURPOSE:
To authorize the General Manager to execute Change Order No. 235 for Contract No. 01RQ-110, Hayward Maintenance Complex Project Maintenance Facilities with Clark Construction, for Car Lift Rail Modifications to the Hayward Shop Shallow Pit Car Lifts, in an amount not to exceed $816,000.

DISCUSSION:
On July 23, 2015, the Board of Directors authorized the award of Contract No. 01RQ-110, Hayward Maintenance Complex Project Maintenance Facilities in the amount of $98,390,000, to Clark Construction. The Contract is for the construction of a new Component Repair Shop and the addition of vehicle lifts and associated utilities and trackwork at the existing Hayward Shop.

Following commencement of the Contract Work and equipment testing activities had begun, it was determined that the car lifting rail component of the shallow-pit car lifts were too long and prohibited the removal of certain revenue vehicle components during maintenance and repair activities. As a result, the Contractor will need to perform additional work to modify the rails of the existing car lifts in the Hayward Main Shop as well as the future car lifts to be installed in the Hayward Back Shop. Because this additional work is not described in the Contract Documents, a change to the Contract is required. The estimated value of this Change Order is an amount not-to-exceed $816,000. 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 the General Counsel will approve the Change Order as to form prior to execution.

FISCAL IMPACT:

Funding in the amount of $816,000 for the award of Change Order No. 235 to Contract No. 01RQ-110 is included in the total budget for FMS# 01RQ003, HMC-Shops Mod & Component Repair.

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:

Proposed Funding	
F/G 5602 - High Speed Passenger Rail Bond	$61,389,000
F/G 656K - VTA	$49,710,000
F/G 8526 - FY14 Operating Capital Alloc	$2,477,367
F/G 8529 - FY15 Operating Capital Alloc	$7,386,920
F/G 8530 - FY16 Operating Capital Alloc	$1,881,418
TOTAL	$122,844,705

As of February 2, 2018, $122,844,705 is the total budget for this project. BART has expended $93,985,469 committed $16,556,496 and reserved $3,458,911 to-date for other action. This action will commit $816,000 leaving an available fund balance of $8,027,829 in these fund sources 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:
The Board can elect not to authorize the execution of this Change Order. If this Change Order is not approved, District staff will not be able to utilize the new car lifts to their full advantage, contributing to a loss in vehicle maintenance and repair efficiency.

RECOMMENDATION:
Recommend that the Board approve the following motion:

MOTION:
The General Manager is authorized to execute Change Order No. 235 to Contract No. 01RQ-110, Hayward Maintenance Complex Project Maintenance Facilities, with Clark Construction, for an amount not to exceed $816,000, for Car Lift Rail Modifications to the Hayward Shop Shallow Pit Car Lifts.

EXECUTIVE DECISION DOCUMENT

ATTACHMENT #1

CONTRACT N0. 01RQ-110 **CO No**: 235

CHANGE ORDER SUMMARY

BACKGROUND

Name of Contractor: Clark Construction Group
Contract No./NTP: 01RQ-110 / October 21, 2015
Contract Description: Hayward Maintenance Complex Project – Maintenance Facilities

Percent Complete as of: 02/06/2018 – 82%

Dollars Percent Complete as of: 02/06/2018 – 86.20%

COST	% of Award	Cost	Contract Amount
Original Contract Award Amount			$98,390,000.00
Change Orders:			
Other than Board Authorized C.O.s:	4.36%	$4,289,804.00	
Board Authorized Change Orders:	2.72%	$2,676,208.00	
This Change Order No. 235:	.80%	$ 816,000.00	
Subtotal of all Change Order	7.88%	$7,782,012.00	
Revised Contract Amount:			$106,172,012.00

SCHEDULE

Original Contract Duration:	860 Days
Time Extension to Date:	62 Days
Time Extension Due to Approved COs:	62 Days
Revised Contract Duration:	922 Days

SUMMARY REASON FOR THIS CHANGE ORDER

Car Lift Rail Modifications to the Hayward Shop Shallow Pit Car Lifts

Following commencement of the Contract Work and equipment testing activities had begun, it was determined that the car lifting rail component of the shallow-pit car lifts were too long and prohibited the removal of certain revenue vehicle components during maintenance and repair activities. As a result, the Contractor will need to perform additional work to modify the rails of the existing car lifts in the Hayward Main Shop as well as the future car lifts to be installed in the Hayward Back Shop.

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

MEMORANDUM

TO: Board of Directors **DATE:** February 15, 2018

FROM: General Manager

SUBJECT: **Santa Clara County BART Extension: Update on Phase I and Phase II.**

Staff will provide a verbal update at the Board of Directors' meeting on February 22, 2018 on the status of the negotiations for the BART-VTA Operations & Maintenance Agreement and the outcome of the most recent meetings on the tunneling coordination for the Phase II Extension.

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

Robert M. Powers
for Grace Crunican

cc: Board Appointed Officers
Deputy General Manager
Executive Staff

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

MEMORANDUM

TO: Board of Directors **DATE:** February 15, 2018

FROM: Independent Police Auditor

SUBJECT: BART Citizen Oversight Model Evaluation

Pursuant to Chapter 3-01 of the BART Citizen Oversight Model (Model), the Board of Directors (Board), with input from the BART Police Citizen Review Board (BPCRB), Independent Police Auditor (IPA), BART Police Associations (BPOA and BPMA), complainants, and the public will evaluate the BART Police citizen oversight structure after the first year of implementation to determine whether the need exists to make changes and/or otherwise make adjustments to the system to improve its continued performance. Chapter 3-01 further provides that this evaluation shall in no way be intended to eliminate the BART Police citizen oversight structure.

In order to facilitate the review and evaluation required by the Model, and after significant research and extensive discussion, the Office of the Independent Police Auditor (OIPA) engaged the OIR Group, a law enforcement consulting organization led by veteran former federal civil rights prosecutor Michael Gennaco, and featuring a number of the nation's most experienced police practices and oversight professionals.

The thorough review undertaken by OIR expanded the list of required stakeholders and participants. Local interviews were primarily conducted by Aaron Zisser, who has worked as a consultant on reform and oversight in the criminal justice system, either conducting reviews on behalf of oversight and monitoring agencies or advising client-agencies on improving their corrections or police oversight functions.

The evaluation commenced in January 2017 and a final report was generated and submitted in June 2017 (with an Addendum in July 2017) including a total of 54 recommendations for improvement. The report was distributed and discussed at a July 18, 2017 Operations, Safety and Workforce Standing Committee meeting and again at a Board meeting on August 10, 2017.

OIPA was instructed to provide the Board with an assessment of the necessary resources to implement each of the 54 recommendations, and this request has been fulfilled with the submission of the attached color-coded Implementation Matrix for your consideration. At your request, OIPA has also provided the Board with copies of materials generated for your consideration by the BPCRB. A resource assessment submitted by the Chief of Police has been integrated into the OIPA Implementation Matrix along with OIPA's impression of any impact to the operations of the BPCRB. Materials from other entities such as BPOA, BPMA, BPD and the General Manager may be submitted to you independently and under separate cover.

If you have any questions, please feel free to contact me at (510) 874-7477.

Russell G. Bloom

cc: Board Appointed Officers

Independent Review of the BART Police Oversight Structure

June 2017

Michael J. Gennaco
323 821 0586
7142 Trask Avenue
Playa del Rey, CA 90293
OIRGroup.com

Aaron B. Zisser
628 400 1203
Oakland, CA
civilrightsconsulting.com

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I. Executive Summary

Overview of the review: Chapter 3-01 of the BART oversight model (hereinafter the "Model") provides as follows:

> The Board of Directors, with input from the BART Police Citizen Review Board, Auditor, BART Police Associations, complainants and the public, will evaluate the BART Police citizen oversight structure after the first year of implementation to determine if the need exists to make changes and or otherwise make adjustments to the system to improve its continued performance. This evaluation shall in no way be intended to eliminate the BART Police citizen oversight structure.[1]

This review and report were commissioned and conducted in furtherance of BART's compliance with this provision of the Model; that is, to facilitate the Board of Directors' evaluation of the oversight structure.

Our review began in January 2017. We interviewed the stakeholders whose input is expressly set out in the Model, but we conducted many additional interviews with a broad range of other significant parties. We ensured that the evaluation takes account of the original impetus for the establishment of the oversight system – the January 1, 2009, shooting of Oscar Grant by a BART Police Department (BART PD) officer – as well as the subsequent systemic reviews of policies and practices. Because oversight's effectiveness depends heavily on the community's trust, engagement, and support, we placed a high premium on community attitudes and concerns regarding the oversight system. We measured these factors in a variety of ways.

During our review, all individuals we met were generous with their time, accessibility, and candor. Representatives of the Board of Directors, the BART Police Citizen Review Board, and the BART PD were particularly helpful in providing both relevant documents and important insights regarding the issues discussed herein. The Office of the Independent Police Auditor (OIPA) was especially helpful in facilitating the mechanics of our work, and was continually available to provide documents and important perspective. To the degree that our findings and recommendations may help enhance the current civilian oversight system, it reflects the cooperation, assistance, and acumen provided by these stakeholders.

The oversight system: The BART PD oversight system, established in July 2010 following a process that involved community input, consists of the OIPA and the BART Police Citizen Review Board. According to the Model, OIPA (with a current staffing level of three) is to conduct investigations of complaints alleging serious officer misconduct, make recommendations on BART PD policies and practices, audit Internal Affairs (IA) investigations, conduct close monitoring of officer-involved shootings, conduct community outreach, issue

[1] The Oversight Model is available on the website of the Office of the Independent Police Auditor: https://www.bart.gov/about/policeauditor and attached to this report as Attachment A.

public reports on investigation outcomes and trends, and provide staffing and other resources to the BART Police Citizen Review Board.

The BART Police Citizen Review Board consists of 11 members. Each of the nine Directors selects one member, while one is appointed by the police associations, and one is "at-large." According to the Model, the Review Board is to hold monthly public meetings, review OIPA's investigations, review BART PD and OIPA recommendations regarding BART PD policies, make its own recommendations regarding BART PD policies, conduct community outreach, and issue reports on its activities. Its members are also authorized under the Model to participate in officer and executive hiring.

Overview of findings: We found that the Model devised in response to the tragic shooting of Oscar Grant created two oversight entities that have served a valuable purpose in establishing effective civilian oversight over an agency that had no such previous external influences. The fact that we offer numerous recommendations designed to strengthen and clarify the original Model should in no way diminish the work of those who have worked diligently to fulfill the overarching objectives of accountability, advancing progressive police practices, and fostering greater community trust in law enforcement. Instead, this Report seeks to fulfill a key part of the Model's original vision: one that recognized that a constructive re-assessment of BART's nascent oversight program should be built into the design.

From that starting point, we found several areas in which the Model could benefit from revision and reform. These include significant omissions in the Model relating to investigations and auditing authority, and the ambiguities in provisions relating to outreach, reporting, investigations, and policy recommendations.

The review features a total of fifty-three recommendations. They range in scope from broad issues of jurisdiction and structure to more particular or technical adjustments to specific provisions in the Model. Among the key categories that produced specific suggestions for reform are the following:

Recommendations to expand authority and related findings: We recommend expanding the oversight system's authority in two areas:

- **Broader audit authority:** First, we recommend expanding the auditing authority to allow OIPA to review any operational aspect of BART PD – as opposed to merely reviewing IA's operations.

- **Investigations absent a complaint:** Second, we recommend authorizing OIPA to conduct its own independent investigation or review into any use of force or potential act of misconduct without the need to await receipt of a qualifying citizen complaint.

Other recommendations and findings:

- **Independence** from each other's roles and responsibilities should be reinforced through structural changes to OIPA and the BART Police Citizen Review Board for the sake of their respective and mutual effectiveness. OIPA's obligations relating to staffing the

Review Board should be removed, the requirement of a Review Board performance evaluation of the IPA should be eliminated, and orientation and training for Review Board members should be enhanced to delineate roles and responsibilities.

- **Case Auditing** should be conducted in a more consistent and thorough manner that allows for not only pre-completion input into the IA investigation, but also the ability to influence dispositions and discipline prior to BART PD's final decision.

- A **Systemic Auditing** protocol should be developed and implemented. OIPA should analyze trends and patterns, and it should be involved in BART PD procedures relating to use-of-force reviews and early identification of officers who may require remedial interventions.

- **Investigations** should address a broader range of complaints; any person should be able to file a complaint; and written protocols should be developed regarding investigative techniques, procedures, and coordination with other BART components to ensure confidence in OIPA's investigations and to ensure that it receives all complaints coming in to BART.

- **Use of Force Review** should become an arena in which OIPA more regularly participates, including assessing individual incidents, and contributing to holistic discussions of tactics and training, and other potential elements of constructive feedback.

- **Policy, procedure, and practice recommendations** should constitute a regular and formalized element of OIPA's interactions with and influence on BART PD.

- **Public reporting** by OIPA should be enhanced, in the form of greater detail with regard to its case monitoring role of internal investigations initiated by BART PD. Similarly, OIPA should report on the increased activities proposed in this report.

- **Mediation** should continue to be studied for ways to make it more attractive to complainants and officers.

- **An oversight system evaluation** should be conducted periodically.

II. Introduction

A. Background.

BART PD: Established in 1969, BART PD is "comprised of 296 personnel, of which 206 are sworn peace officers," according to BART PD's website.[2] BART PD covers the entire BART system, which extends into four counties. The Chief of Police reports to the General Manager (GM), who is appointed by the Board of Directors.

Shooting of Oscar Grant and aftermath: On January 1, 2009, Oscar Grant was fatally shot by BART police officer Johannes Mehserle on the Fruitvale Station platform. On August 11, 2009, the law firm Meyers Nave issued a report regarding policies and practices "relevant to the" Oscar Grant shooting.[3]

From June 2009 to September 2009, the National Organization of Black Law Enforcement Executives (NOBLE) conducted a review of BART PD's policies and practices, and it issued a report on January 1, 2010, which identified areas for improvement in a number of areas of BART PD's operations.[4] A follow-up audit was conducted in 2013, and BART PD continues to report on its ongoing efforts to implement the recommended reforms.

In June 2010, Mehserle was convicted of involuntary manslaughter and acquitted of murder and voluntary manslaughter charges.

BART Public Safety Accountability Act: In September 2009 – immediately following the Meyers Nave report and before the completion of the NOBLE report – a bill was proposed in the state legislature to create an independent oversight system for BART PD. In July of 2010, the BART Public Safety Accountability Act was enacted. It directed the BART Board of Directors to "establish an office of independent police auditor, reporting directly to the board, to investigate complaints against district police personnel" and assigned the following "powers and duties" to the appointed auditor[5]:

(1) To investigate those complaints or allegations of on-duty misconduct and off-duty unlawful activity by district police personnel, within the independent police auditor's purview as it is set by the board.

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[2] "History of the BART Police Department," http://m.bart.gov/about/police/employment.

[3] Meyers Nave, "Review of BART PD Policies, Practices and Procedures Re: New Year's Day 2009," 1 (Aug. 2009), available at https://www.bart.gov/sites/default/files/docs/Meyers_Nave_Public_Report.pdf.

[4] NOBLE, "BART Management Audit," (Jan. 2010) [NOBLE Audit (2010)], available at https://www.bart.gov/sites/default/files/docs/NOBLE_Final_Report.pdf.

[5] CA Pub. Util. Code § 28767.8(a) (2016).

(2) To reach independent findings as to the validity of each complaint.

(3) To recommend appropriate disciplinary action against district police personnel for those complaints determined to be sustained.[6]

The Act also authorized the Board to create "a citizen review board to participate in recommending appropriate disciplinary action."[7]

Oversight Model: Pursuant to the legislation, the BART Board of Directors formed a committee to study what type of oversight should be established. There were numerous public hearings with robust input from members of the community. The Model eventually promulgated called for an independent police auditor, as well as a citizen review board. Responsibilities of the oversight system – detailed in this report – included: investigations of complaints alleging serious officer misconduct, recommendations on BART PD policies and practices, auditing of Internal Affairs investigations, close monitoring of officer-involved shootings, community outreach, and issuing public reports on investigation outcomes and trends.

OIPA: The OIPA is appointed by and reports directly to the Board of Directors. OIPA consists of three staff, including the Independent Police Auditor (IPA), an investigator, and an administrative support person.

BART Police Citizen Review Board: The Review Board consists of 11 members, including nine members appointed by the respective Directors, a member appointed by the police associations, and an at-large member selected through a formal application process.

B. Scope and Methodology

Scope: Chapter 3-01 of the Oversight Model provides as follows:

> The Board of Directors, with input from the BART Police Citizen Review Board, Auditor, BART Police Associations, complainants and the public, will evaluate the BART Police citizen oversight structure after the first year of implementation to determine if the need exists to make changes and or otherwise make adjustments to the system to improve its continued performance. This evaluation shall in no way be intended to eliminate the BART Police citizen oversight structure.

Even though the Model calls for an evaluation after one year of implementation, no assessment has ever been conducted since the inception of BART's civilian oversight. While this lapse was unfortunate, it is a testament to OIPA and the Board of Directors that this independent review has now been commissioned.

We sought to answer two basic sets of questions:

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[6] CA Pub. Util. Code § 28767.8(b)(1)-(3) (2016).

[7] CA Pub. Util. Code § 28767.8(c) (2016).

- Does the oversight structure perform as contemplated in the language of the Model? If not, what ambiguities or omissions in the Model's language may impact optimum performance?

- Could the oversight structure be improved or enhanced to further the oversight system's goals, as articulated in best practices and understood by the communities it serves?

Overview of methodology: To these ends, we evaluated:

- The language of the Model for ambiguity or weaknesses.

- Whether practice could benefit by providing clearer authority, expansion of duties, and reconsideration of priorities.

- The perceptions and concerns of communities BART serves and BART system stakeholders, as well as national best practices, to gauge what changes would help to instill additional trust in the oversight structure and aid in serving its goals.

Interviews: Our review began in January 2017 and entailed more than 50 interviews with nearly four dozen stakeholders. These included OIPA staff; BART Police Citizen Review Board members; seven BART directors; local oversight professionals; local advocacy groups, including the local ACLU affiliate and the Coalition on Homelessness; police associations; IA officers; and BART PD command staff.

Community interest and concerns: Just as it was essential that we speak with police officials and representatives, community feedback – particularly input from impacted communities, including communities of color – was of critical importance in our review. This is because the effectiveness of civilian oversight depends heavily on the community's trust in its independence, authority, and capacity.

Community members – especially those who have perceived or borne the brunt of systemic unfairness and an adversarial relationship with law enforcement – are much more likely to provide information and insight to an oversight entity that they consider fair, meaningful, and empowered. Those contributions from the community can, in turn, strengthen the legitimacy and the effectiveness of the oversight entity. And this dynamic can ultimately increase community trust in the police department, as well – the public is reassured by the sense of accountability and gives credence to the positive acknowledgements of progress that the oversight entity can provide. Accordingly, our recommendations draw heavily on what we learned from and about the communities served by BART.

We assessed community interest through interviews with individual residents as well as political leaders, leaders of community and advocacy groups, and leaders of other Bay Area oversight agencies who could speak to broader community sentiment. We also gauged community interest and concerns through other Bay Area initiatives on oversight, as well as input provided during the original 2009 process.

Finally, we sought to account for any countervailing concerns, with an eye toward maximizing the understanding and acceptance of all key stakeholders, including those subject to oversight and those with contrasting viewpoints on how it should function.

BART Police Citizen Review Board sessions and documentation: We attended three Review Board sessions and requested and reviewed additional documentation, including:

- The Model and earlier drafts of the Model
- Review Board bylaws
- Complaints and OIPA investigation reports
- Notifications provided to officers and complainants
- OIPA monitoring reports regarding IA investigations
- OIPA and Review Board reports
- Review Board agendas and minutes
- OIPA and Review Board policy recommendations
- IPA and Review Board member selection materials
- The 2010 NOBLE report, the follow-up 2013 audit, and the 2009 Meyers Nave report
- Outreach materials
- Public information regarding the process for developing the oversight Model, community members' observations of the oversight system, and serious incidents involving BART PD officers

Best practices and standards: In addition to drawing from our own experience and exposure to various oversight models and practices, we consulted best practices and standards from a variety of sources, including the National Association for the Civilian Oversight of Law Enforcement (NACOLE) reports and reports by other professional organizations; scholarly literature on oversight; the NACOLE code of ethics (cited in the Model); the Core Principles for an Effective Police Auditor's Office (cited in the Model); U.S. Department of Justice, Civil Rights Division investigations and consent decrees[8] and COPS Collaborative Reform Initiative reports[9]; and the Final Report of the President's Task Force on 21st Century Policing (May 2015).[10]

C. Acknowledgements

We received enormous support throughout the review process from a range of stakeholders and are grateful to each person who took the time to sit down with us for an interview. We were able to interview most members of the Board of Directors, who expressed strong interest in the review. Some helpfully directed us to other stakeholders. BART PD's executive staff, Internal

[8] The U.S. Department of Justice publishes its findings letters and settlement agreements on its website: https://www.justice.gov/crt/special-litigation-section-cases-and-matters0.

[9] The U.S. Department of Justice catalogues its COPS assessment reports: https://cops.usdoj.gov/collaborativereform.

[10] Final Report of the President's Task Force on 21st Century Policing (May 2015), available at https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.

Affairs investigators, and the police associations, as well as the OIPA staff were open and candid and provided invaluable insights.

The current IPA enlisted this review, provided a comprehensive list of potential interviewees, contacted many of them to help schedule interviews, and was readily available for ongoing questions. The IPA provided critical OIPA documents and spent many hours sharing his understanding of and views on the system with us. We applaud his energy and interest and note that this review likely would not have happened but for his proactivity and creativity. The IPA's embracing of this peer review process, and full cooperation with it, is testament to an admirable growth mindset.

Finally, we are grateful to the family of Oscar Grant, who remain constructively engaged in the subjects of oversight and accountability, and who took the time in that spirit to share their experience and suggestions with us.

III. Findings and Recommendations

BART's current oversight model has many admirable features and has served its transit community well for almost six years. The Model provides OIPA with access to the most sensitive of Police Department records and gives it the ability to conduct independent investigations, audit internal investigations conducted by BART PD, and make policy recommendations. Moreover, the Model provides the BART Police Citizen Review Board with an opportunity to meaningfully weigh in on complaint investigations and recommend disciplinary outcomes, an authority that very few community-based oversight entities possess.

However, the Model has ambiguities and places unnecessary limits on oversight authority. This is due in large part to requiring the existence of a complaint before authority can be exercised. In addition, the Model saddles OIPA with administrative functions for the BART Police Citizen Review Board, blurring the lines between oversight entities with complementary yet distinct and independent roles. The recommendations set out below – which flow from an evaluation process expressly contemplated by the original model –are intended to provide clarity regarding both OIPA and the BART Police Citizen Review Board's authority. The recommendations suggest a course that could result in more impactful oversight for the benefit of the community and BART PD alike.

A. Clarifying Oversight's Scope

The Model Should Make Explicit that OIPA's Oversight Scope Includes All Employees of BART PD and Any Potential Violations of Policy.

Currently the Model states that OIPA has the authority to exercise its oversight duties with regard to "any and all law enforcement activities or personnel operating under the authority of" BART. We have been informed that this passage has been interpreted to include non-sworn members of BART. However, for purposes of clarity, the Model should indicate that all employees of BART are within OIPA's oversight authority.

Many of the non-sworn employees of a police agency have considerable interaction with the public and are indirectly imbued with the authority of the law enforcement entity for which they work. Accordingly, those employees often have significant influence on whether the public is appropriately served by the agency. For that reason, all police department employees should be subject to civilian oversight's ambit.

Moreover, at least as to sworn officers, the Model should make clear that any potential violations of policy should fall within the ambit of OIPA. Law and practice has also recognized that there is a clear nexus between off-duty conduct and on duty responsibilities for sworn officers. For that reason, it has been long held that police officers can be held accountable for off-duty misconduct inconsistent with their duties and responsibility to uphold the law. For example, officers who are found to have engaged in domestic violence or impaired driving can be independently sanctioned for that conduct by their employing agencies. In order to ensure accountability for these actions, progressive oversight entities have recognized that they must

similarly be able to exercise oversight over off-duty officer conduct. The Model for OIPA must ensure that such oversight authority exists over BART PD.

Recommendation One: The Model should be revised to make clear that the scope of OIPA's authority extends to non-sworn employees of BART PD and to all potential misconduct involving sworn officers whether on or off duty.

B. Increasing OIPA's Monitoring Responsibilities

OIPA Should Consider Revising Its Approach Towards Monitoring Internal Affairs Investigations Conducted by BART PD Toward Real-Time Monitoring and More Transparency.

Pursuant to the Model, OIPA has the authority to audit internal affairs investigations conducted by BART PD to determine if the investigations are "complete, thorough, objective and fair." OIPA also has the ability to "require" follow-up investigation into any citizen complaint or allegation that is handled by BART PD.

OIPA has, in the past, exercised this authority provided by the Model when it determined that a BART PD investigation did not meet investigative standards. However, we are aware of a recent instance when there was resistance by BART PD after the Auditor identified an incomplete and substandard investigation and sought follow-up investigative work. BART PD should be reminded of the non-discretionary language in the Model requiring it to conduct follow-up investigation when requested by OIPA. To ensure an effective remedy should there be any BART PD compliance issues, the Auditor should be able to present any significant lapse to the attention of the General Manager, the Board of Directors, and the BART Police Citizen Review Board and set out the incident in its public reporting.

The Model provides the opportunity for OIPA to engage with BART PD as it proceeds with its internal investigative process. That ability has been enhanced by OIPA's direct access to IA's investigative database. We have been informed that OIPA regularly uses its database access to audit investigations being conducted by BART PD and has provided input and suggestions such as identifying additional witnesses to interview. OIPA also provides feedback on completed investigations to BART PD.[11]

However, to the degree that OIPA provides such auditing of the Department's internal affairs investigations, most of the feedback occurs after the case has been completed and a disposition has already been rendered. At that point, any post hoc input from OIPA has a potentially limited impact on disposition decisions made by the Police Department since the disposition has already been determined and subject officers and complainants notified about that decision.

Another approach to auditing of BART PD cases that appears to be workable within the current Model would be for OIPA to deploy "real-time" monitoring of cases. Under that paradigm,

[11] To the degree there remains any uncertainty, OIPA should be provided the authority to monitor any internal investigations conducted by BART PD, including internally generated investigations.

OIPA would audit active Internal Affairs investigations, serve as a resource during the pendency of the investigations, and, upon their completion, would review each case for completeness and objectivity. OIPA would then provide any feedback to Internal Affairs, suggesting any additional investigation prior to the case being completed. Similarly, prior to BART decision-makers' determination as to whether the evidence indicates a violation of policy, OIPA would offer independent recommendations on investigative outcomes. Finally, on founded cases, OIPA would present its recommendations with regard to the appropriate level of discipline. While BART PD would have ultimate authority regarding each of these internal decisions, OIPA's real time involvement in these decisions would likely make its input more impactful than the "after the fact" interaction currently deployed.[12]

In addition to providing quality assurance in real time for thorough investigations and evidence-based determinations on outcomes, OIPA could and should weigh in on other important investigative decisions. Sometimes, allegations of misconduct implicate potential crimes. The decision whether to forward such allegations to the District Attorney is one in which OIPA should participate. Additionally, under this approach, OIPA could play a helpful role in the proper scoping of investigations.

As importantly, OIPA should document and report on its auditing function. Currently, there is no detailed report of OIPA's auditing of BART PD cases, and the data reported regarding discipline and the outcomes by investigating agency (i.e., OIPA versus IA) is unclear. If OIPA decides to transition its current auditing function into real-time monitoring, it should significantly enhance its reporting of this function to the BART Police Citizen Review Board, the Board of Directors, and the public. OIPA should set out a narrative of each case audited, whether it found the investigation adequate, any input made by OIPA regarding improving the investigations, the disposition, and, in founded cases, the discipline imposed. OIPA should also report on the degree to which it concurred or disagreed with BART PD's case determinations. This increased level of transparency would provide stakeholders an important window into the Police Department's accountability system and an independent assessment of its vibrancy.[13]

Recommendation Two: OIPA should consider modifying its monitoring function of BART PD internal affairs investigations to "real-time" monitoring, offering recommendations on the strength of investigations and appropriateness of dispositions prior to BART PD completing the process.

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[12] We have been informed that, to the credit of the former Chief, occasionally OIPA had been asked in real time to provide input regarding investigative or disposition determinations by BART PD. Our recommendation is for a more comprehensive expansion of this encouraging dynamic.

[13] We leave to OIPA to determine based on its resources what portion of BART PD's internal investigations it could monitor in real time. One potential "bright line" suggestion would be to monitor all internal investigations conducted by the Department's Internal Affairs unit.

Recommendation Three: Should OIPA move to real-time monitoring, it should be involved in decisions regarding whether a matter should be forwarded to the District Attorney for criminal review, and the appropriate scoping of an investigation.

Recommendation Four: OIPA should make its reported data on investigations and recommended discipline clearer and should publicly report its involvement and auditing functions in detail, setting out its assessment of the quality of each investigation and the appropriateness of each disposition and disciplinary determination. The Model should be modified to provide OIPA the express authority to report any resistance by BART PD to conduct additional investigation to the attention of the Board of Directors, the General Manager, the BART Police Citizen Review Board, and the public.

C. Making the Complaint Process Available to All

The Model Should Be Revised to Allow Any Person to File a Complaint with OIPA or the BART Police Citizen Review Board Against Any BART Employee.

Currently, the Model provides for a very limited universe of persons who may file a complaint with OIPA or the BART Police Citizen Review Board. Only "victims of on-duty police misconduct, a victim's parent or guardian or a witness to misconduct" are permitted to file complaints against "a BART police officer." The Model's limitation on who qualifies as a complainant has led to circumstances in which OIPA has been handcuffed in its ability to investigate concerning incidents.

In one recent case, a widow of a person who died in custody did not qualify as a "complainant" under the Model's definition. And in another case, a concerning use of force incident that occurred on a train platform, was captured on video, was uploaded on You Tube, and received thousands of views but did not qualify for OIPA purview because a qualified complainant did not file with the Auditor.

There is no rational justification for denying access to any individual who desires to file a complaint with BART's oversight entities. In fact, progressive oversight entities even allow receipt of anonymous complaints. In addition, for the reasons discussed above, OIPA should have clear authority to investigate complaints against any BART PD employee, not just police officers.

Recommendation Five: The Model should be revised to provide any persons the ability to file a complaint with OIPA and/or the BART Police Citizen Review Board against any BART PD employee.

D. Enhancing OIPA Investigations

The Model Should Be Revised to Provide OIPA the Discretion to Investigate Any Complaint Received.

Currently, the Model provides OIPA the authority to investigate "all complaints of allegations of police officer misconduct regarding unnecessary or excessive use of police force, racial profiling, sexual orientation bias, sexual harassment, and the use of deadly force, suspicious and wrongful

deaths." It is inconsistent with progressive oversight practices to limit OIPA's investigative authority to these categories. Instead of setting out what OIPA "can do," the Model should provide OIPA the discretion and authority to investigate any complaint received.

Recommendation Six: The Model should be revised to provide OIPA the ability to investigate any allegation of misconduct that implicates the policies of BART PD.[14]

OIPA and BART PD Should Consider New Investigative Models Designed to Create Efficiencies and Avoid Duplicative Investigations.

Currently, when OIPA determines to investigate a complaint and proceeds with its investigation, BART PD conducts its own investigation into the same allegations. This paradigm results in two investigations of the same allegation with the same purpose – to determine whether the facts indicate a violation of BART PD policies. In addition to the inefficiencies of having two investigations being conducted for the same purpose, such an investigative scheme has the potential of requiring the complainant, witnesses, and involved officers to be interviewed twice, with any inconsistencies being used to undermine the investigation if a disciplinary determination is challenged. Moreover, the existence of two investigations with separate review criteria could lead to disparate results based on the same set of facts.

For these reasons, we recommend that OIPA and BART PD examine the possibility of developing an investigative paradigm whereby the Auditor has initial review authority on complaint allegations made to his Office. In those cases, the Auditor should determine whether to investigate the case or refer all or some of the allegations to BART PD for investigation. Any allegations referred to BART PD should be monitored by OIPA. BART PD should defer any investigation of allegations assumed by OIPA. Such a paradigm would eliminate the inefficiencies of two investigations undertaken for the same purpose and the potential negative consequences discussed above.

Recommendation Seven: OIPA and BART PD should develop an investigative paradigm whereby OIPA would determine whether to investigate any complaint allegations received initially by the Office and BART PD would defer investigating allegations that the Auditor opted to investigate.

OIPA Should Develop an Investigative Handbook.

Too frequently, investigative authority is provided to entities with little guidance or direction on how to exercise that authority. This has proven true in our experience regarding police agencies and their internal review processes, and oversight agencies are often susceptible to the same

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[14] To the degree that our recommendations provide clear authority for OIPA to investigate allegations of misconduct, it may become necessary for the Auditor and BART PD to work out protocols regarding which entity investigates which allegations. One "bright line" rule that may work is for the entity that initially receives the allegation to take the investigative lead. We are confident, however, that OIPA and the Police Department will be able to work out these jurisdictional questions.

omissions. OIPA apparently falls within this paradigm. While, to its credit, OIPA did create investigative templates and standard formatting for its investigations, principles of investigation were not set out in any handbook or manual. Such a handbook is particularly important for internal investigations of police officers, given the unique substantive elements and the distinctive framework of statutory requirements set forth in California's "Police Officer's Bill of Rights."

An investigative handbook that codified basic principles would help ensure that OIPA investigations were conducted consistent with best internal investigative practices.[15] Moreover, the development of an investigative handbook should not create a substantial resource burden. Our experience suggests that, while the handbook should be tailored to OIPA's oversight responsibilities for BART PD, universal investigative principles that already exist in handbooks of other agencies could be easily incorporated into an OIPA version.

Recommendation Eight: OIPA should develop a handbook to provide guidance and expectations for its internal investigations.

OIPA Should Develop Internal Guidelines Regarding Investigative Timelines for Completion of an Investigation.

Under California law, in order for discipline to be imposed, a subject police officer generally must be informed of the agency's intent to discipline within a year of agency knowledge of the investigation. For that reason, with some exceptions, internal investigations of police officers need to be completed within a year of their initiation. While police agencies and oversight entities imbued with investigative authority recognize this statutory requirement, many recognize the interest in completing investigations well before the one-year deadline. There are several reasons for this.

First, if an investigation languishes unnecessarily, the complainant and subject officer will not receive timely notice of the result. More importantly, because most discipline is intended to be remedial, a delayed investigation will result in the remediation also being delayed. Nor does the quality of evidence tend to improve with age; on the contrary, memories fade and a delayed investigation can undermine the gathering of accurate and complete recollections. Finally, collateral issues such as consideration for promotion or special assignment can be unnecessarily delayed for the subject officer during the pendency of unresolved investigations.

Fortunately, OIPA has established a history of being timely in completing its investigations, in part because of its relatively small caseload. However, because the recommendations set out in

[15] While a qualitative review of OIPA's internal investigations was not the focus of our inquiry, we learned of one investigative technique that was concerning, namely the frequent use of telephone interviews by OIPA. Investigative principles strongly favor in-person interviews because of the natural limitations that exist if an interview is conducted over the telephone.

this report envision a larger caseload for OIPA, it is important to establish formal protocols for maintaining timeliness.[16]

Recommendation Nine: OIPA should set out investigative timelines in its internal protocols that not only meet the statutory requirements but also reflect a commitment to prompt and efficient resolution of cases.

The Model Should Be Amended so that OIPA's Disciplinary Determinations Correspond to Those Utilized by BART PD.

Currently, the Model states that OIPA is to recommend that the matter be "dismissed" at the conclusion of an OIPA investigation in which the allegations are not supported by the evidence. Such a finding is not a generally accepted outcome for internal investigations in California. Rather, police agencies provide a menu of disposition options; for BART PD they are sustained, not sustained, exonerated or unfounded.

We have been informed that, in practice, OIPA makes findings after its investigation consistent with the four options available to BART PD. However, in order for the Model to conform to current practice, the language should be revised accordingly.

Recommendation Ten: The Model should be clarified to reflect that upon the conclusion of an OIPA investigation, OIPA should recommend a finding of sustained, not sustained, exonerated, or unfounded.

OIPA Should Revise its Closing Letters to Provide the Complainant as Much Information as Legally Permissible.

At the conclusion of an internal investigation, OIPA prepares a closing letter informing the complainant of the results. Consistent with many closing letters we have reviewed, OIPA's closing letters are brief and provide little detail about the underlying investigation. Instead, the notification letter simply reports the outcome without explaining the basis for the decision or the nature of the investigative process. Complainants whose allegation is not proven (i.e., exonerated, unfounded, or not sustained) are left wondering about the thoroughness of the investigation and the legitimacy of the result.

California law provides restrictions on the type of information that can be provided to a complainant. Those restrictions, for example, have been interpreted to bar the agency from providing precise information about the disciplinary action taken. However, there is room under the law to give complainants more insight into the process. There is no prohibition, for example, on providing the number of witnesses interviewed, or whether video or audio evidence existed and was reviewed. By sharing this information, and otherwise tailoring the notification to the unique circumstances of the case, OIPA could move away from the type of "form letter" response that can exacerbate disappointment and undermine trust in the process. Accordingly,

[16] We iterate that the ability to successfully keep to any internal timelines will be dependent on a sufficient allocation of resources to OIPA.

OIPA should craft closing letters that offer insights into the process and the means by which the result was reached.

Recommendation Eleven: OIPA should tailor its closing letters to each individual case and provide the complainant additional information about the investigative steps taken to reach its conclusion.

At the End of an Investigation, OIPA Should Consider Offering the Complainant the Opportunity to View Video Evidence.

Because of the adoption of body-worn cameras and the other video surveillance available at BART stations, there is a significant likelihood that the conduct complained about may be captured by video evidence. Video evidence can be significantly dispositive of allegations made against police officers. In cases in which video evidence exists and has contributed to the decision not to sustain an allegation, it is recommended that OIPA offer the complainant the opportunity to view the video, particularly when the complainant is the alleged victim of the misconduct.[17]

Recommendation Twelve: When a concluded investigation does not result in a sustained finding, OIPA should offer the complainant the opportunity to view any video account of the incident.

E. Improving the Disposition Process of OIPA Investigations

The Model Should Be Revised so that More Transparency is Provided Regarding the BART Police Citizen Review Board's Determination on Case Outcomes.

Currently the Model requires the Auditor to submit his findings to the BART Police Citizen Review Board for consideration. Under current practice, the Review Board considers the Auditor's recommendations and votes in closed session regarding whether to agree or disagree with those recommendations. The Model is silent about how that vote is reported. Current practice is to report out the results of any vote and the vote count when not unanimous, but the way in which individual Board members voted is not discernable.

While the case deliberation must remain private in accord with state law, there is no legal prohibition on publicizing how each Review Board member voted. Moreover, when there is a dissent, a rationale for the opposing votes should be crafted that could be made public. Accordingly, and consistent with enhanced transparency, the Model should be revised to stipulate that such information will be made public in the interest of providing further insight into the process and outcomes.

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[17] Competing privacy interests may prevail in cases in which the complainant is not the person being captured on video and in those situations OIPA should use its discretion on whether to offer to show the video evidence.

There may be occasions where OIPA may be interested in presenting monitored BART PD cases to the BART Police Citizen Review Board in order to receive input and feedback. Modifying the Model to provide the Auditor flexibility and discretion to do so is consistent with the document's overarching interest in gaining meaningful feedback and input from the community-based oversight entity.

Recommendation Thirteen: The Model should be revised to instruct that the BART Police Citizen Review Board's vote tally by member on the Auditor's case recommendations and findings should be made public. In cases in which a non-unanimous majority agrees with the Auditor's case recommendations and findings, the dissenters should set out their rationale for diverging from the majority's determination.

Recommendation Fourteen: The Model should be revised to provide the Auditor the discretion to present BART PD internal investigations to the BART Police Citizen Review Board in order to receive input and feedback.

The Model Should Be Revised to Provide More Clarity Regarding Process When BART's Chief Disagrees with OIPA/BART Police Citizen Review Board's Recommendation.

Currently the Model states that, should the BART Chief of Police disagree with the findings and recommendations of the Auditor and the BART Police Citizen Review Board, the Chief has the ability to appeal the determination to the General Manager in a confidential personnel meeting. The Model further states that the General Manager shall then make a decision and convey his/her decision to the Chief, Auditor, and the BART Police Citizen Review Board. The Model then instructs the Chief to implement the General Manager's decision.

We have been informed that this process has been used at least twice in the six-year existence of BART's oversight system. Based on recollection, we learned that in both cases, the Chief communicated with the General Manager's Office, pursuant to the Model, and the General Manager decided to accept the Chief's recommendations.

As implemented and as the current Model suggests, the appeal process has to date amounted to an ex parte meeting between the Chief and the General Manager. In that process, the General Manager only apparently heard the arguments put forth by the Chief; neither the Auditor nor the BART Police Citizen Review Board had an opportunity to be heard or to rebut the Chief's arguments. Moreover, because there was no public accounting of this process, there was no record of the Chief's reason for disagreement or the rationale for the General Manager accepting the Chief's view over those of the oversight entities.

In common law jurisprudence, most "appeal" processes consist of a forum where the appealing party submits arguments in writing, all other parties submit papers in response to the moving party and all parties can be heard in a meeting. Moreover, the decision-maker generally affords each party the opportunity to respond to any arguments put forward by the "appealing" party at the meeting. However, under the current plain language of the Model and apparent practice, the Chief of Police has the apparent ability to present his arguments to the General Manager without any opportunity for the Auditor or the BART Police Citizen Review Board to be heard.

The Model should be revised to explicitly provide for an opportunity for the Auditor and a representative (e.g., the chair) of the BART Police Citizen Review Board to have seats at the General Manager's meeting with the Chief in order to be able to listen to the Chief's arguments and to respond to them accordingly.[18] Such a process will provide the General Manager the opportunity to hear from all impacted parties and be able to make a better-informed determination based on input from each of them. The Model should also be revised to require the Auditor to publicly report on the outcome of any such appeals consistent with state law.

Recommendation Fifteen: The Model should be changed to require the Chief to timely put forward the reasons and arguments for appeal in writing and provide the Auditor and the Chair of the BART Police Citizen Review Board the opportunity to respond in writing, to be present at any appeal meeting, and to respond to any additional arguments set forth by the Chief at the appeal meeting. The Model should be further revised to require the General Manager to set out her/his findings in writing.

Recommendation Sixteen: The Model should be changed to require the Auditor to publicly report the results of any such appeal meeting consistent with state law confidentiality requirements.

The Model Should Be Revised so that the Chief of Police Does Not Determine Disputes Between the Auditor and the BART Police Citizen Review Board on Case Outcomes.

Currently the Model states that in cases in which the BART Police Citizen Review Board disagrees with the Auditor and fail to come to a consensus, the Review Board and the Auditor are to appeal the disagreement to the Chief of Police for a determination. Under the current model, the Chief then listens to both parties and determines whether to accept either the Review Board or the Auditor's findings.

Under the current language of the Model, the potential exists for an untenable situation in which the head of the agency subject to oversight is empowered to be the initial decision-maker when the two oversight entities disagree on outcome.[19] A more appropriate dispute resolution process would be for the General Manager to convene a meeting with the Auditor, the Chair of the BART Police Citizen Review Board, and the Chief of Police. During that meeting, the General Manager would hear the opposing positions of the oversight entities and render a disposition determination accordingly.

Recommendation Seventeen: The Model should be changed so that when the BART Police oversight entities disagree on a case disposition, the General Manager will convene a meeting and, after receiving input from the oversight entities and the Chief of Police, render a disposition determination.

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[18] Moreover, in order for the envisioned process to effectively work, the Chief must timely present any appeal to the General Manager.

[19] We have been informed that, to date, this provision has not been applied in an actual case. While this is fortunate, the potential for such a circumstance obviously continues to exist.

The Model Should Be Modified to Allow Complainants to Appeal to OIPA Any BART PD Internal Affairs Findings.

Currently the Model provides complainants the right to appeal to OIPA the findings of an internal investigation conducted by BART PD regarding "on-duty incidents." There is scant rationale for so limiting appellate rights of complainants.

Recommendation Eighteen: The Model should be revised to provide complainants the right to appeal to OIPA the findings of any internal affairs investigation conducted by BART PD.

Complainants Should Be Informed as a Matter of Course of Their Right to Appeal BART PD Internal Affairs Findings to OIPA.

We have been informed that the right to appeal BART PD IA findings to OIPA has been used by complainants only infrequently. One explanation for this may be complainants' unawareness of this option. Pursuant to state law, when BART PD closes an internal affairs investigation, it informs the complainant of that event by letter. The closing letter could be used as an efficacious way to make complainants aware of their right to appeal the findings to OIPA.

Recommendation Nineteen: BART and OIPA should work with BART PD to ensure that the Police Department's required notification letter to the complainant regarding case outcome also informs the complainant of his/her right to appeal the finding to OIPA.

Recommendation Twenty: OIPA should regularly report on the number of appeals received and the results of those appeals.

The Model Should Be Revised to Protect all Disposition and Disciplinary Decisions from Unprincipled Changes at the End of the Process.

Currently, the Model simply states that any discipline recommended shall be subjected to an administrative hearing prior implementation to address the "due process" rights of public employees. However, the Model does not articulate a role for either oversight entity in the post-disciplinary processes that currently exist.

Prior to the actual imposition of discipline, BART employees have the ability to argue that any decision is not supported by the evidence or is inappropriate or otherwise unfair. Currently, the Chief of Police has the ability to modify the initial determination and rescind charges or discipline as he sees fit. As a result, the potential exists for initial disciplinary findings by the oversight entities to be entirely undone by the Chief with neither notice nor opportunity for input from them. The Model's silence on oversight's role in post-disciplinary appellate processes creates a huge hole in the process that must be filled in order to ensure the effectiveness of oversight.

One easily implemented remedy would be to add a provision to the Model requiring the Chief to consult with the Auditor prior to modifying any disposition or discipline decision. If the employee has raised principled reasons during the post-discipline process for a modification, the Auditor should obviously be open to the Chief's proposed amendments. Conversely, the Auditor should have the opportunity to resist changes in outcome that do not seem to have a reasonable

basis. If the proposed change is sufficiently significant in its impact on accountability, the Auditor should request a meeting with the General Manager prior to the change being effectuated. The Model should also require the Auditor to report on any post-disciplinary changes in disposition and discipline and whether he agreed with the modifications.[20]

After a disciplinary determination has been made, BART PD employees have the ability to appeal to an arbitrator. BART is required in this forum to establish the policy violation and discipline, and any determination by the arbitrator is binding on the parties. Again, our experience with other jurisdictions is that prior or during these proceedings, the Chief and entity may be approached by representatives of the employee with an offer to settle the case. The settlement offer is usually an agreement by the employee to drop the appeal in exchange for a lessening or removal of the disciplinary determination. Without the oversight entity's input in these settlement offers, the potential exists for a settlement that undermines accountability.

Again, an easy remedy exists. The Model should require input from the Auditor before any settlement agreement is struck between BART and the appealing employee. Should the Auditor determine that the settlement offer was unreasonable and undermined accountability, the Auditor should be able to convene a meeting with the General Manager for a final determination regarding the settlement offer. Finally, the Model should require the Auditor to report on any disciplinary determinations that are settled, whether he was consulted, and whether he agreed with the decision to settle the case.

The arbitration process itself is beyond the authority of OIPA but nonetheless warrants attention as an important influence on its work. Arbitration hearings test the strength of internal investigations and disposition determinations and can uncover potential weaknesses in those processes. In addition, an arbitrator has the authority to rescind even termination cases and order the agency to return the police officer to work – a power that is worthy of public awareness and scrutiny.

During our review, we were informed of at least one instance in which a BART police officer was returned to work after being initially terminated by the Department for a serious violation. However, because the Model sets out no role for its oversight entity in these processes, the Auditor did not review or assess the reason for the decision to return this terminated employee to BART employ. As importantly, the Model did not contemplate a public accounting of this decision as part of the Auditor's transparency responsibilities. This should be addressed.

Recommendation Twenty-One: The Model should be revised to require the Chief of Police to consult with the Auditor prior to modifying any initial disposition or disciplinary determinations. The Model should provide the Auditor an appeal process to the General Manager should he believe that any modification would result in a serious erosion of

[20] We were informed of one case in which a BART police officer originally received notice that he was to be terminated for a serious infraction that was investigated by the Police Department. However, that decision was reversed during the grievance process and the employee was returned to work. The appropriateness of this decision notwithstanding, this is the type of case that OIPA should be reporting on publicly.

accountability. The Model should require the Auditor to publicly report on any modification of an initial disposition or disciplinary modification and whether he agreed with the modification.

Recommendation Twenty-Two: The Model should be revised to require BART to apprise OIPA of any offers to settle cases after discipline has been imposed and provide the Auditor an opportunity for consultation. The Model should provide the Auditor the opportunity to appeal any intention to settle the matter to the General Manager should the Auditor find that the settlement would amount to a serious erosion of individual accountability. The Model should require the Auditor to publicly report on any cases settled at the post-discipline stage and whether OIPA agreed with the decision to settle.

Recommendation Twenty-Three: The Model should be revised to require the Auditor to report on any arbitration determinations that modify or rescind initial disposition and disciplinary decisions and to evaluate the reasons for any modification. The Model should require the Auditor to identify any systemic issues that formed the basis for any modification and work with BART PD to remediate those issues.

OIPA Should Report Publicly the Results of Any Completed Investigation.

While currently OIPA provides some information regarding completed investigations, we recommend that its reporting be modified to include a narrative of the allegation, the results of the investigation, whether the BART Police Citizen Review Board agreed with OIPA's recommendation, whether the Chief agreed with the proposed disposition, and whether there were any post-disciplinary changes to the initial disposition. In most cases, the reporting should begin when the investigation is initiated, with additional information being included as the process moves forward. Consistent with state law requirements, identifying information about the case or officers involved should not be included.

Recommendation Twenty-Four: OIPA should publicly report on every investigation from inception to conclusion, providing information about the case result and the degree to which OIPA and the BART Police Citizen Review Board recommendations were implemented.

F. Additional Risk Management Role for OIPA.

OIPA Should Be Expressly Authorized to Review Any Claim, Civil Complaint, and Law Suit Settlements and Judgments.

When an individual believes he or she has been aggrieved by police officers, the person can file a complaint with the agency and/or oversight entity. Some persons, however, seek relief through the courts and file a claim or lawsuit instead. Depending on how the concern is received, the entity's response may be entirely different. Complaints filed with the agency or oversight entity are investigated as personnel matters, while the evidence-gathering for litigation has a different and inherently defensive orientation. We understand this dichotomy but see it differently – or at least more broadly. Among other things, a claim or lawsuit is essentially a "citizen complaint with a price tag attached." If a jurisdiction handles these matters solely in litigation mode, it may overlook important questions of potential misconduct or resist the kind of investigation that might produce unwanted evidence.

For that reason, leading oversight entities routinely review claims and lawsuits to ensure that such an appropriate internal inquiry does occur in addition to other responses. In a similar vein, oversight entities monitor civil litigation to identify potential individual officer performance issues as well as systemic issues that may be unsurfaced. In cases resulting in significant settlements or adverse judgments, the oversight entity is often involved with the agency in developing a corrective action plan designed to remediate any of those issues.

In large part, because the Model did not specify a role for OIPA in these matters, it has not been involved in reviewing the civil litigation from an oversight and risk management perspective. OIPA should expressly be provided such authorization so that it can perform this important function.

Recommendation Twenty-Five: OIPA should be provided authority to review claims and lawsuits to ensure allegations of misconduct are thoroughly investigated.

Recommendation Twenty-Six: OIPA should review any significant settlements and adverse judgments involving BART PD performance and work with BART PD to develop corrective actions intended to remediate any systemic issues.

Recommendation Twenty-Seven: OIPA should report publicly on its work in reviewing civil litigation.

G. Developing a Mediation Program

OIPA Should Redouble its Efforts to Develop a Robust Mediation Program.

The Model expressly sets out a role for the Auditor in developing a mediation program. It states expressly that OIPA "shall develop a voluntary alternative dispute resolution process for resolving those complaints which may most appropriately be corrected or modified through less formal means." The Model also contemplated that the BART Police Citizen Review Board and BART Police Associations would be part of the development process.

Nonetheless, in four years there has yet to be a case that has gone through a mediation process. While a few individual instances have come close, participants withdrew from the process at the eleventh hour.

Mediation – where involved parties can safely and productively articulate different viewpoints with a neutral arbiter – provides a process consistent with contemporary principles of restorative and procedural justice. The key to developing an effective mediation program is to make the process worthwhile to all participants, and departments have often faced challenges in getting officers to see the benefits. While these challenges are real, the experience of agencies in other jurisdictions shows they are surmountable. OIPA should examine these other jurisdictions to gain ideas for achieving a successful program. BART PD also should be more engaged in working with OIPA and the Police Associations to consider additional incentives for police officers to engage in mediation.

Recommendation Twenty-Eight: OIPA should redouble its efforts to create a mediation process that is attractive to complainants and officers and provides an effective alternative dispute resolution process.

H. Ensuring Prompt OIPA Notification of All Critical Incidents

OIPA Should Receive Notification as to All Critical Incidents.

Currently, the Model provides that the Auditor shall be notified immediately regarding an officer-involved shooting that results in the death or serious bodily injury to a member of the public or a police officer so that the Auditor can respond in real time to the investigative scene. The current language of the Model restrictively limits notification of OIPA to only uses of deadly force that result in death or serious bodily injury.[21] While a shooting that does not result in serious injury or loss of life has less significant consequences for the involved parties, a non-hit shooting or one that results in minor injury still involved a decision by the officer to use deadly force, and that decision is worthy of the same scrutiny. Additionally, the notification protocol does not expressly include other uses of force that result in death or serious injury, or incidents in which an off-duty officer may take police action and use deadly force.

We have been informed that, to the credit of BART PD, it has been regularly informing OIPA of a broader set of critical incidents that do not fit squarely within the Model's language. While BART PD's voluntary approach is praiseworthy, the Model should be modified so that it is clear to all that notification of OIPA should occur for a broader category of incidents.

Recommendation Twenty-Nine: The Model should be enhanced to ensure that OIPA is timely notified of any critical incident including all officer-involved shootings (on duty or off duty) regardless of whether the use of deadly force resulted in injury or death, any use of force resulting in significant injury, and any in-custody death.

I. Enhancing OIPA's Footprint Regarding Use of Force

The Auditor Should Be Regularly Reviewing Uses of Force by BART Police Officers.

In order for peace officers to perform their public safety function they are provided unique authority. In addition to being provided the power to arrest, police are provided the authority to use force when necessary. This authority, however, must be strictly limited and its exercise carefully scrutinized in light of the Constitution, the law, and internal policy. As a result, police officers are required to report when they use force, and command staff of the agency has a responsibility to review the policy and legal appropriateness of these incidents.

Because of the inherent seriousness of force incidents, and the profound ramifications of misuse or abuse of this police power, independent oversight should be significantly involved in

[21] The subheading of the Model is entitled "On-Duty Officer Involved Shooting Incidents," suggesting that there is no need to notify OIPA of off-duty uses of deadly force.

monitoring force. Currently, except for some officer-involved shootings, OIPA's review of force incidents is limited to situations when a "qualified person" complains of force. As a result, both significant and minor force incidents escape the purview of BART's oversight entity and are not subjected to outside independent review.

OIPA should be afforded the opportunity to review every force incident and determine whether the force should be the subject of an internal affairs investigation. OIPA should also review the force to determine whether other issues are implicated for the involved officers or the Department as a whole. OIPA should work with BART PD to ensure that each force incident is reviewed with an eye toward identifying systemic issues such as training, equipment, supervision, and policy.

We also understand that BART PD convenes use of force review boards that examine significant force incidents. OIPA should regularly participate in those review boards to provide an independent perspective and to help assess individual performance and conduct as well as identify systemic issues. Finally, OIPA should regularly report on its involvement in the force review process and on any critical incidents.

Recommendation Thirty: The Model should be revised to provide OIPA the authority for and responsibility of reviewing use of force incidents by BART PD, regardless of whether the incident is a subject of a complaint.

Recommendation Thirty-One: OIPA should regularly participate in BART PD's use of force review boards.

Recommendation Thirty-Two: OIPA should report publicly on its use of force review program including the outcome of BART PD's use of force review boards.

Recommendation Thirty-Three: OIPA should report publicly on the internal review of any officer-involved shootings, in-custody deaths, or serious uses of force.

J. Mapping Out a Significant Role for the Auditor in BART PD's Early Identification System

OIPA Should Be Involved in the Early Identification System.

We have been informed that BART PD continues to develop an early identification system. This system is intended to use relevant data to identify police officers who may be displaying patterns of conduct that need to be addressed before they become a problem for the officer, the agency, and/or the public. For example, an early identification system may reveal an officer who uses force significantly more frequently than his or her counterparts on the shift – a potential "red flag" that could make further scrutiny worthwhile. The resultant intervention is intended to be remedial rather than punitive and might use mentoring, closer supervision, or other non-punitive strategies tailored to help mitigate or fix identified concerns.

Our experience is such programs are not only potentially beneficial, but also that independent oversight can be a helpful resource in their development, implementation, and execution. Currently, there is no role for OIPA in the Department's early identification system; we are

confident that setting out a distinct role for an independent voice will strengthen the system that BART PD has been developing.

Recommendation Thirty-Four: The Model should be revised to provide authority and responsibility for OIPA to regularly participate in BART PD's early identification process.

Recommendation Thirty-Five: OIPA should report regularly on the status of the Department's early identification system and results.

K. Increasing OIPA's Role as Auditor

The Model Should Be Modified to Increase the Auditing Function of the Independent Police Auditor.

While the professional oversight entity for BART PD is named the Independent Police Auditor, most of its work to date has been not auditing but investigating complaints. This incongruity stems, in large part, because the Model does not clearly define the auditing role for the Auditor.[22] As a result, OIPA has not conducted systemic audits of vital police functions. Other jurisdictions with robust oversight regularly conduct audits of their responsible police agencies, including the following areas:

- Recruiting and hiring practices
- Background investigations
- Supervisor performance
- Email, MDC and texting reviews
- Academy and in-service training
- Performance evaluations
- Promotional and special assignment processes
- Potential bias-based policing in stops or searches
- Stop and frisk practices
- Complaint intake procedures
- Appropriate use of the disciplinary matrix
- Transparency and public reporting of data by the police agency
- Crisis intervention practices and/or interactions with the homeless
- Police Department outreach
- Use of lock-ups
- Assessing compliance with precepts set out in pillars of 21st Century Policing

[22] For example, one lost opportunity was that no role was created in the Model for OIPA to audit and report on BART PD's progress on implementing the recommendations set forth by the NOBLE report referred to above.

These oversight entities publicly report on the results of those audits.[23] Those same jurisdictions often monitor systems audits conducted by the police agencies themselves and publicly report on the results of those audits.

The Model should be revised so that OIPA is provided authority and responsibility to conduct systemic audits of BART PD functions that impact the quality of the Department and the service provided to its public. Similarly, the Model should provide OIPA the authority and responsibility of monitoring internal audits conducted by BART PD and to publicly report the results of those audits.[24]

Recommendation Thirty-Six: The Model should be revised to provide OIPA the authority, access to data and records, staffing, and responsibility to conduct systemic audits of BART PD functions that impact the quality of the Department and the service provided to its public.

Recommendation Thirty-Seven: The Model should be revised to provide OIPA the authority and responsibility to monitor any audits conducted by BART PD regarding similar issues and report publicly the results of those audits.

L. Expanding OIPA's Role in Policy Development

The Model Should Explicitly Authorize OIPA to Be Involved in BART PD-Initiated Policy Development.

The current Model expressly authorizes the Auditor to develop specific recommendations concerning "General Orders and Directives, procedures, practices, and training" intended to improve "professionalism, safety, effectiveness, and accountability" of BART PD employees. To its credit, OIPA has made policy recommendations – for example, it most recently suggested changes to the way in which BART PD deals with panhandlers. However, OIPA has had little involvement in policy and training changes initiated by BART PD.[25] Our experience is that the most efficacious method of policy development is to have the police incorporate the feedback and input of oversight entities at an early stage, rather than the presentation of a "finished" product for review at the end of the process.

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[23] We were informed that the recently retired Chief requested OIPA to conduct an audit of background investigation files, but that the project was halted because of disagreement regarding the Auditor's access and authority.

[24] The increased role we recommend for OIPA in auditing, reporting, and real-time monitoring of BART PD IA cases will likely result in a need to provide additional resources to the Auditor. The Board of Directors, the General Manager, and OIPA should work jointly to determine the degree to which additional resources will be needed to perform these additional functions.

[25] For example, BART PD recently developed language intended to modify its use of force policy; OIPA had no involvement in its initial development.

Recommendation Thirty-Eight: The Model should be revised to provide OIPA the authority and responsibility to be involved in any policy or training initiatives being developed by BART PD and to report publicly on any reforms.

The Model Should Explicitly Authorize OIPA to Forward Any Policy Recommendations to the General Manager and/or the Board of Directors.

While the Model currently authorizes the BART Police Citizen Review Board to forward any of its policy recommendations to the General Manager and/or the Board of Directors, no similar express language exists for OIPA. While we have been informed that in practice OIPA has been provided the ability to forward policy recommendations it has made to these entities, it would be advisable to revise the Model to expressly recognize this authority.

Recommendation Thirty-Nine: The Model should be revised to provide OIPA the express authority to forward policy recommendations to the General Manager and/or Board of Directors. In situations in which OIPA's recommendations are not accepted by BART PD, OIPA should consider whether to forward its recommendations for further consideration to BART's governing entity.

OIPA Should Ensure that the Public Is Informed on Status and Outcome of Policy Recommendations.

Over the years, OIPA has developed thoughtful policy recommendations. However, there is no "record" of the degree to which BART PD accepted and integrated those recommendations. For example, in its 2012-13 annual report, OIPA set out in detail recommended changes to BART PD's recording policy. However, in the subsequent annual reports, there is no follow up on whether BART PD accepted or rejected each of the recommendations.

Recommendation Forty: In its annual report, OIPA should include an update on any previous outstanding recommendations and the degree to which the recommendations were endorsed by the Review Board and accepted by BART PD.

M. Ensuring Integration of Oversight in BART PD's Policies and Practices

BART PD's General Orders Should Include the Authorities and Responsibilities of its Oversight Entities and a Provision Recognizing the Duty to Cooperate with those Oversight Entities.

While the current General Orders and Directives of BART PD include some references to the existence and responsibility of the Independent Police Auditor and the BART Police Citizen Review Board, the specific responsibilities set out by the Model do not appear to be incorporated into those Orders. BART PD General Orders should make specific reference to oversight and its responsibilities. Moreover, BART PD's Orders should inform its members of their responsibility to cooperate and respect the role of its oversight entities.

Recommendation Forty-One: BART and OIPA should work with BART PD to ensure that BART PD's General Orders incorporate the authority of its oversight entities and the duty of members to cooperate in the execution of that authority.

N. Ensuring Regular Dialogue Between Oversight and BART Police Associations

OIPA and the BART Police Citizen Review Board Should Develop Mechanisms to Ensure At Least Annual Meets with the BART Police Associations.

The Model instructs both OIPA and the BART Police Citizen Review Board to meet "periodically" and "seek input" from the BART Police Managers Association and the BART Police Officers Association. We have been informed that while meetings may have occurred during the first year and have been subsequently scheduled, actual meetings over the past few years have been sporadic at best. We believe that there is value in having periodic meetings between the oversight entities and those tasked with representing the interests of BART police officers. For that reason, a meeting schedule should be devised by both oversight entities to ensure there is an attempt to meet with both Police Associations at least annually. OIPA and the Citizen Review Board should annually report on any meetings that are held with the Police Associations.

Recommendation Forty-Two: OIPA and the BART Police Citizen Review Board should attempt to schedule a meeting at least annually with the two BART Police Associations. The oversight entities should annually report on whether such meetings occurred.

O. Clarifying the Relationship Between OIPA and the BART Police Citizen Review Board

The Model Should Be Revised to Provide Further Guidance Regarding the Relationship Between OIPA and the BART Police Citizen Review Board.

Consistent with oversight trends nationwide, BART's oversight system includes a professional oversight office and an oversight board appointed from the community. That paradigm has resulted in OIPA being able to develop an expertise in police accountability practices adapted to a police agency designed to police an extensive transit system and a Board selected from the BART community that has a meaningful voice and role in both individual cases and systemic reform.

While it is laudatory that the drafters of the Model recognized the value in having both police practices experts and community members involved in providing oversight, more clarity is needed in defining the relationship between the two entities. The Model should expressly recognize that OIPA and the BART Police Citizen Review Board are to be considered as entities with complementary oversight roles that are independent of each other.

Much of the source of confusion about the complementary oversight entities is that the Model assigns the BART Police Citizen Review Board administrative tasks to OIPA. To eliminate this overlap, BART should consider creating an Executive Assistant position to provide

administrative support for the BART Police Citizen Review Board. The Executive Assistant would assume the administrative functions now set out in Chapter 1-05 of the Model including:

- Records of Review Board meetings
- Preparation of Review Board reports
- Review Board staff support and facilitation of training
- Review Board community outreach and communicating with the public
- Application process for open Review Board seats

In addition to the administrative tasks expressly set out in the Model, the Executive Assistant could also be responsible for assisting in developing the Review Board meeting agenda, arranging Review Board training, coordinating Review Board outreach, assisting with Review Board reporting responsibilities, and providing any additional administrative support for the BART Police Citizen Review Board.

The Model currently states that the BART Police Citizen Review Board "shall assess and report to the Board of Directors' Personnel Committee on the performance and effectiveness" of OIPA. We have been informed that this provision of the Model has not been implemented in practice. The Auditor is subject to an annual performance review by the BART Board of Directors, the appointing authority. In assessing that performance, the Board of Directors could and should solicit input from several stakeholders, including the BART Police Citizen Review Board. However, the Model should be modified to clarify that the BART Police Citizen Review Board is not the "assessor" of the Auditor's performance but simply another important source for input to the Board of Directors.

Similarly, when a BART Police Citizen Review Board seeks reappointment to a new term, the appointing Director should seek input from OIPA along with other important stakeholders on the performance of that Review Board member.

Recommendation Forty-Three: The Model should be revised to expressly clarify the independent yet complementary roles of the BART Police Citizen Review Board and OIPA.

Recommendation Forty-Four: BART should consider creating an Executive Assistant position for the BART Police Citizen Review Board to assist with administrative tasks now assigned to OIPA.

Recommendation Forty-Five: The Model should be revised to acknowledge that the BART Police Citizen Review Board is one potential source of information when the Board of Directors is seeking input on the performance of OIPA.

Recommendation Forty-Six: The Model should be revised to provide OIPA the opportunity for input when a BART Police Citizen Review Board member seeks reappointment.

P. Clarifying and Enhancing the Roles of the BART Police Citizen Review Board

The Model should provide clarification of BART Police Citizen Review Board Member Qualifications.

Currently the Model disallows from service on the BART Police Citizen Review Board any person "currently employed in a law enforcement capacity" or any "relative of current and former BART Police Department personnel." While prohibiting relatives of current and former BART PD personnel from serving, the Model does not expressly disallow former BART PD personnel themselves from membership on the BART Police Citizen Review Board. The Model should be revised to correct this incongruity.

Recommendation Forty-Seven: The Model should clarify that former BART PD personnel are ineligible to serve on the BART Police Citizen Review Board.

BART Police Citizen Review Board Members Should Have Requisite Training in Order to Fulfill Their Responsibilities.

By selecting BART Police Citizen Review Board members from the community, BART oversight benefits from each member's life experience and perspective. However, modern day policing is increasingly complex, and BART PD itself has a unique role in providing public safety for a large transit system. As detailed above, the BART Police Citizen Review Board has been provided considerable authority, including the ability to consider and vote on the Auditor's recommendations regarding specific complaint investigation dispositions.[26] This authority carries with it a heavy burden of responsibility and the BART Police Citizen Review Board cannot effectively exercise that authority regarding investigation dispositions without each member undertaking a careful read of each case.[27]

Accordingly, in order to effectively carry out BART Police Citizen Review Board duties, each member must be afforded a basic understanding of progressive police practices, constitutional and state law, principles of civilian oversight, and BART PD's distinctive challenges. The training should also focus on how, as expressly stated in the Model, the BART Police Citizen Review Board fulfills the "essential community involvement component" piece of the system and how it can most effectively fulfill this role. To these ends, a training curriculum developed for each new Review Board member, including ride-alongs, should be devised. In addition, Review Board members should get additional training at least semi-annually, perhaps as an agenda item during regularly scheduled meetings. As noted above, we recommend assignment of an Executive Assistant to the Review Board; that individual could be responsible, with input from the existing BART Police Citizen Review Board and the Auditor, for developing and maintaining the BART Police Citizen Review Board's training program.

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[26] The Board of Directors should continue to be mindful of the weighty responsibilities demanded of each Review Board member when making future appointments.

[27] Review Board members who have not had the opportunity to read the investigation and accompanying materials should recuse themselves from deliberations and voting on the Auditor's recommendation for that particular case.

Recommendation Forty-Eight: A Training Curriculum Should Be Devised For Incoming BART Police Citizen Review Board Members, and In-Service Training Should Be Provided at Least Semi-Annually to Current Review Board Members.

Rotating the Location of the BART Police Citizen Review Board Meetings Would Allow the Review Board to Reach More Communities.

As noted above, BART PD is responsible for providing public safety for a transit system to traverses multiple jurisdictions over a wide-ranging area. Yet the BART Police Citizen Review Board responsible for oversight over this region only meets at one location. Community members served must travel to this location to attend meetings and provide public comment. While this challenge is ameliorated by the transit-friendly locale of the meetings, it would demonstrate the Review Board's responsiveness to other communities to rotate the meeting locations. While such a rotation may provide some logistical challenges, it appears worth exploring whether those hurdles can be overcome.

Recommendation Forty-Nine: The BART Police Citizen Review Board should consider rotating its meetings to a wider array of locales served by BART.

The BART Police Citizen Review Board's Outreach Should Be More Vibrant.

The current Model notes that the existence of the BART Police Citizen Review Board effectuates the essential community involvement component of the oversight system. To advance that crucial role, the Model expects that the BART Police Citizen Review Board will lead in outreach efforts to the community, particularly constituencies impacted most by policing, including communities of color, immigrant communities, and individuals with psychiatric disabilities. While the Review Board's regularly scheduled public meetings fulfills that role to some degree, the Model certainly contemplated that more could and should be done in the outreach arena. We gather from the BART Police Citizen Review Board's annual reports that outreach has been largely undertaken by a few members. However, outreach should be an expected responsibility of all members of the Review Board.

To that end, before a Review Board member is appointed, the appointing authority should emphasize the outreach expectation to the potential appointee. Moreover, at one year intervals, the BART Police Citizen Review Board should place an item on the agenda in which each member publicly reports on the outreach efforts he/she has undertaken. The degree to which a member has engaged in public outreach should be considered by the appointing authority in determining whether to reappoint the member to an additional term. The Executive Assistant (recommended elsewhere) for the BART Police Citizen Review Board should track the outreach efforts of individual members and the Review Board as a whole.

Recommendation Fifty: Procedures should be adopted by the BART Police Citizen Review Board intended to ensure that the Model's commitment to outreach is achieved. To that end, each incoming member should be alerted to outreach expectations by his/her appointing authority. On an annual basis, each Review Board member should report publicly on the outreach he/she has undertaken the previous year. Finally, the degree of each member's

public outreach will be considered prior to reappointing the Review Board member to an additional term.

The Model Should Provide More Flexibility for "Good Cause" Meeting Absences.

Currently, the Model calls for removal of any BART Police Citizen Review Board member who misses more than three regularly scheduled meetings per year. While the interest in having Review Board members attend meetings is well-placed, there may be situations where a member has "good cause" to miss a meeting. For that reason, it would be advisable to provide each Director with flexibility to excuse his/her appointed Review Board member's absence for good cause. Such excusal would not count against the absence limit requirements.

Recommendation Fifty-One: The Model should be revised to authorize excused absences for good cause that would not count against the absence limitations.

Q. Providing Increased Transparency Authority for BART Oversight

The BART Oversight Entities Should Be Expressly Authorized to Make Public Statements.

It is not uncommon for officer-involved shootings, in-custody deaths, significant force incident or allegations of misconduct to engender immediate controversy and concern, particularly if part of the incident is captured on videotape. In those cases, the existence of oversight entities can assist in tempering that concern with the recognition that there will be an independent review and accounting of the incident at the conclusion of any investigation. In recognition of this, jurisdictions have provided their oversight entities full rein to make public statements about their role in the wake of controversial incidents.

We have been informed that the Auditor has interpreted the Model to allow him the authority to make public statements about his work and BART policing issues. That being said, the Model should be revised to expressly authorize the Auditor freedom to make such statements. Moreover, the Auditor should be free to speak with any media outlets about any aspect of oversight and in conjunction with any public report or findings. The BART Police Citizen Review Board's ability to make timely public statements provides logistical challenges since the Review Board meets as a body only periodically. However, the BART Police Citizen Review Board should consider authorizing the Chair to make public statements on behalf of the Review Board regarding role and process when an exigency to respond is presented.

Recommendation Fifty-Two: The Model should be revised to expressly authorize OIPA and the BART Police Citizen Review Board to make public statements about their oversight work.

R. Ensuring Periodic Review of BART Oversight

BART's Oversight Entities Should Be Reviewed on a Regular Basis.

As noted above, the current Model provided for an assessment of oversight after one year of implementation. Because the world of oversight is new and constantly evolving, there should be a commitment to a periodic review of BART's oversight entities on a going forward basis.

Recommendation Fifty-Three: The Model should be revised to call for periodic reviews of BART's oversight entities at a minimum of four-year intervals.

Independent Review of the BART Police Oversight Structure

July 2017

ADDENDUM

OIR GROUP

Michael J. Gennaco
323 821 0586
7142 Trask Avenue
Playa del Rey, CA 90293
OIRGroup.com

Aaron B. Zisser
628 400 1203
Oakland, CA
civilrightsconsulting.com

INDEPENDENT REVIEW OF THE BART OVERSIGHT STRUCTURE: ADDENDUM

The Model Should Set Out With More Clarity Procedures for Replacement of BPCRB Members.

A question has arisen since the issuance of our initial June 2017 report, and we were asked to address an issue surrounding the replacement of BPCRB members. The specific question was whether a new BART Director may, prior to the end of the BPCRB member's term of appointment, replace the BPCRB member appointed by that BART Director's predecessor. The Model is currently silent on this specific issue. Chapter 2-04 of the Model does address removal for cause "including but not limited to breach of ethics, confidentiality, or criminal conviction" and allows for removal by a resolution adopted by the majority of the Board of Directors. As stated in our Report, Chapter 2-04 of the Model also calls for automatic termination of a BPCRB member after three Board meeting absences in a calendar year.[1]

Whether the Model currently provides authority for an incoming Director to remove a BPCRB member unilaterally is not specifically addressed by the current Model. The fact that the Model does not provide clear guidance on this issue suggests a need to amend the Model in order to do so. Because our project was focused on improving the Model through revisions, we offer our thoughts below.

From a civilian oversight perspective, modifying the Model to expressly allow a Director to remove a BPCRB member appointed by his/her predecessor could be seen by some as undermining the independence of the BPCRB. If a BPCRB member can be replaced by an incoming Director for no reason, that BPCRB member may be concerned that making decisions on individual cases, policies, or systemic issues that are controversial could then be a basis for his/her removal. Such a tenuous situation may also dissuade otherwise interested individuals from seeking appointment to the BPCRB.

On the other hand, the BPCRB's strength and authority arise in part from the support and confidence of the elected Directors in the member and the current Model appointment process clearly provides Directors the ability to each select a member with virtually unfettered discretion. Consistent with that discretion, a persuasive argument could be made that an incoming Director should have the authority to replace a BPCRB member with a new appointee who better reflects the values, interests, and philosophy of the incoming Director.

In sum, the Model should be clarified to specifically speak to this issue. Potential options to modifying the Model would be to expressly prohibit removal of BPCRB members except for unexcused absences or good cause or provide incoming Directors a brief window such as 60 days during which they could replace the outgoing Director's appointee. Requiring the incoming

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[1] In our initial report, we have recommended modification of this provision in order to provide relief for excused absences.

Director to act within a brief period of time reduces the perception that a BPCRB member is being removed because the Director is unhappy with actions taken in a particular matter.

Recommendation Fifty-Four: The Model should be revised to clarify whether a newly-seated BART Director may unilaterally remove his or her predecessor's BPCRB appointee and specify any time limits for doing so.

INDEPENDENT REVIEW OF THE BART POLICE OVERSIGHT STRUCTURE – OIPA IMPLEMENTATION MATRIX

#	OIR Recommendation	OIPA Resources Assessment	BPD Resources Assessment	Overall Difficulty Rating (1-5)	BPCRB Resources (See BPCRB Work-Product for Additional)	Change Model Language	Notes/Comments
1.	The Model should be revised to make clear that the scope of OIPA's authority extends to non-sworn employees of BART PD and to all potential misconduct involving sworn officers whether on or off duty.	Additional expenditure of time for existing staff, including possible overtime.	Any expansion of OIPA authority will increase the workload of Professional Standards. FTE and resources needed unknown until any expansion is identified.	2	May increase the number of closed session investigative report presentations heard by BPCRB and could significantly increase prep time and material review.	**Yes**	This has the potential to increase the number of allegations investigated by OIPA and reviewed by BPCRB, which could require additional OIPA staff time. May also increase the number of cases reviewed by the BPCRB, adding to meeting prep time and meeting duration. This may impact BPD when non-sworn personnel are attending OIPA interviews and may add to the frequency of OIPA requests for Dispatch audio files.
2.	OIPA should consider modifying its monitoring function of BART PD internal affairs investigations to "real-time" monitoring, offering recommendations on the strength of investigations and appropriateness of dispositions prior to BART PD completing the process.	Additional expenditure of time for existing staff, including possible overtime.	Increased IA staff time. Fiscal impact unknown until better defined.	2	Possible impact on BPCRB workload/ material review.	No	Main impact would be additional time expended by OIPA and accelerated completion deadlines. Although it would require IA to engage in more/lengthier discussions with OIPA, it could minimize time spent by IA revising and/or reopening completed investigations. No standalone effect for BPCRB unless that body is authorized to hear monitoring reports in closed session, in which case additional time for review of materials would attach.
3.	Should OIPA move to real-time monitoring, it should be involved in decisions regarding whether a matter should be forwarded to the District Attorney for criminal review, and the appropriate scoping of an investigation.	Additional expenditure of time for existing staff, including possible overtime.	This would require additional staff time and likely an increase in staffing.	2	No impact on BPCRB workload or material review.	**Yes**	Expenditure of time to review relevant materials would be the main area of impact for OIPA.

0	1	2	3	4	5

Difficulty Rating Color Key

#	OIR Recommendation	OIPA Resources Assessment	BPD Resources Assessment	Overall Difficulty Rating (1-5)	BPCRB Resources [See BPCRB Work-Product for Additional]	Change Model Language	Notes/Comments
4.	OIPA should make its reported data on investigations and recommended discipline clearer and should publicly report its involvement and auditing functions in detail, setting out its assessment of the quality of each investigation and the appropriateness of each disposition and disciplinary determination. The Model should be modified to provide OIPA the express authority to report any resistance by BART PD to conduct additional investigation to the attention of the Board of Directors, the General Manager, the BART Police Citizen Review Board, and the public.	Additional expenditure of time for existing staff, including possible overtime.	There is no impact on BPD resources	3	No impact on BPCRB workload or material review.	**Yes**	Preparation of detailed reports regarding each IA investigation could require significant OIPA staff time. Although the recommendation includes a change to Model language, OIPA can and already has begun to report additional detail regarding the monitoring process in Monthly Reports and such reporting does not violate the existing Model language. **Note:** Only part of the recommendation requires a change to Model language.
5.	The Model should be revised to provide any persons the ability to file a complaint with OIPA and/or the BART Police Citizen Review Board against any BART PD employee.	Additional expenditure of time for existing staff, including possible overtime.	An increase in the number of complaints investigated by OIPA will result in more frequent on-duty investigative interviews for subject officers. This will possibly require additional overtime for	2	This could increase the number of closed session investigative report presentations heard by BPCRB and could significantly increase prep time and material review.	**Yes**	This has the potential to increase the number of independent investigations conducted by OIPA. This could also increase the number of cases heard by the BPCRB which adds to meeting prep time and meeting length.

0 | 1 | 2 | 3 | 4 | 5

Difficulty Rating Color Key

#	OIR Recommendation	OIPA Resources Assessment	BPD Resources Assessment	Overall Difficulty Rating (1-5)	BPCRB Resources [See BPCRB Work Product for Additional]	Change Model Language	Notes/Comments
			subject employees.				
6.	The Model should be revised to provide OIPA the ability to investigate any allegation of misconduct that implicates the policies of BART PD.	Additional expenditure of time for existing staff, including possible overtime.	An increase in the number of complaints investigated by OIPA will result in increased staff time and an increase in FTE.	3	This could increase the number of closed session investigative report presentations heard by BPCRB and could increase prep time and material review.	**Yes**	This expansion would allow OIPA to investigate allegations beyond the currently authorized (most serious) allegations. This has the potential to significantly increase the number of independent investigations conducted by OIPA. This could also increase the number of cases heard by the BPCRB which adds to meeting prep time and meeting length. It is unlikely that OIPA would apply this discretion to complaints of relatively minor misconduct allegations (e.g. discourtesy), but it is likely that OIPA would elect to investigate more serious allegations regarding Performance of Duty, Improper Arrest/Detention, Truthfulness, etc.
7.	OIPA and BART PD should develop an investigative paradigm whereby OIPA would determine whether to investigate any complaint allegations received initially by the Office and BART PD would defer investigating allegations that the Auditor opted to investigate.	Minimal expenditure of time for IPA.	The mere development of a plan would not require extensive labor or time.	1	No impact on BPCRB workload or material review.	No	This recommendation could reduce the number of cases being investigated by IA, but would not independently increase the number of cases being investigated by OIPA.

0	1	2	3	4	5

Difficulty Rating Color Key

INDEPENDENT REVIEW OF THE BART POLICE OVERSIGHT STRUCTURE – OIPA IMPLEMENTATION MATRIX

#	OIR Recommendation	OIPA Resources Assessment	BPD Resources Assessment	Overall Difficulty Rating (1-5)	BPCRB Resources [See BPCRB Work-Product for Additional]	Change Model Language	Notes/Comments
8.	OIPA should develop a handbook to provide guidance and expectations for its internal investigations.	Longer term/amortized expenditure of time for existing staff.	No impact to BPD	1	No impact on BPCRB workload or material review.	No	This process is already underway, and will lead to the creation of a living document as technologies and internal information collection processes evolve (e.g. new station cameras, new stations, new Dispatch software, etc.).
9.	OIPA should set out investigative timelines in its internal protocols that not only meet the statutory requirements but also reflect a commitment to prompt and efficient resolution of cases.	No expenditure of resources.	No impact to BPD.	0	No impact on BPCRB workload or material review.	No	Completion timelines are established by statute, and OIPA already commits to exceeding those timelines, and historically exceeds statutory timelines.
10.	The Model should be clarified to reflect that upon the conclusion of an OIPA investigation, OIPA should recommend a finding of sustained, not sustained, exonerated, or unfounded.	No expenditure of resources.	No impact to BPD.	0	No impact on BPCRB workload or material review.	**Yes**	This requires only a minor change to Model language to reflect practices already in place.
11.	OIPA should tailor its closing letters to each individual case and provide the complainant additional information about the investigative steps taken to reach its conclusion.	Minimal expenditure of time for existing staff.	No impact to BPD.	1	No impact on BPCRB workload or material review.	No	State law prohibits the disclosure of certain information related to disciplinary processes, but non-specific investigative tasks would be easily portable from the completed investigative report (e.g. "OIPA interviewed x# of subjects and witnesses, reviewed x hours of video from BWC and stations, reviewed Dispatch audio, etc.")

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Difficulty Rating Color Key

#	OIR Recommendation	OIPA Resources Assessment	BPD Resources Assessment	Overall Difficulty Rating (1-5)	BPCRB Resources [See BPCRB Work-Product for Additional]	Change Model Language	Notes/Comments
12.	When a concluded investigation does not result in a sustained finding, OIPA should offer the complainant the opportunity to view any video account of the incident.	Additional expenditure of time for existing staff, including possible overtime.	No impact to BPD if OIPA does this without the assistance of the police department.	3	No impact on BPCRB workload or material review.	No	Because state law prohibits the disclosure of certain information related to disciplinary processes, OIPA may be prohibited or limited by existing law regarding disclosure of video that may be deemed part of a personnel file.
13.	The Model should be revised to instruct that the BART Police Citizen Review Board's vote tally by member on the Auditor's case recommendations and findings should be made public. In cases in which a non-unanimous majority agrees with the Auditor's case recommendations and findings, the dissenters should set out their rationale for diverging from the majority's determination.	Insignificant expenditure of time or resources.	No impact to BPD.	1	Additional language in BPCRB Quarterly Report and additional time drafting rationale for dissent.	**Yes**	It may be complicated for dissenters to fully explain rationale without divulging privileged information and evidence that was considered for voting in the minority. Minor changes to Model language.
14.	The Model should be revised to provide the Auditor the discretion to present BART PD internal investigations to the BART Police Citizen Review Board in order to receive input and feedback.	Additional expenditure of time for existing staff, including possible overtime.	An increase in staff time and would require an FTE to handle the increased workload.	4	This would increase the number of closed session presentations heard by BPCRB and could significantly increase prep time and material review.	**Yes**	Although OIPA currently reviews and generates monitoring reports for IA investigations, these are not presented to BPCRB for review or consideration. It would represent a significant change to the Model to authorize the BPCRB to review IA investigative reports and all associated evidence. Packaging, transmitting, and presenting all the evidence attached to an IA investigation would be time-consuming, as would review of the information by the BPCRB members.

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Difficulty Rating Color Key

#	OIR Recommendation	OIPA Resources Assessment	BPD Resources Assessment	Overall Difficulty Rating (1-5)	BPCRB Resources [See BPCRB Work-Product for Additional]	Change Model Language	Notes/Comments
15.	The Model should be changed to require the Chief to timely put forward the reasons and arguments for appeal in writing and provide the Auditor and the Chair of the BART Police Citizen Review Board the opportunity to respond in writing, to be present at any appeal meeting, and to respond to any additional arguments set forth by the Chief at the appeal meeting. The Model should be further revised to require the General Manager to set out her/his findings in writing.	Minimal expenditure of time for existing staff.	Some additional expenditure of time for Chief of Police.	2	Minimal expenditure of time for BPCRB.	**Yes**	Presently, the Chief may appeal a finding by OIPA with which the BPCRB agreed by bringing the matter to a closed-door meeting with the GM without any input from the IPA. Appeals by the Chief are historically rare, but the drain on the Chief and the GM would be dependent on the number of appeals by the Chief. It may be challenging for both the Chief and the GM to fully and publicly set forth the reasons for their findings without violating privacy protections for officers.
16.	The Model should be changed to require the Auditor to publicly report the results of any such appeal meeting consistent with state law confidentiality requirements.	Minimal expenditure of time for existing staff.	No Impact to BPD.	2	No impact on BPCRB workload or material review.	**Yes**	Although the recommendation includes a change to the language of the Model, there is no current prohibition on the inclusion of such reporting, and the release of data/information regarding the reversal of findings and disciplinary recommendations.
17.	The Model should be changed so that when the BART Police oversight entities disagree on a case disposition, the General Manager will convene a meeting and, after receiving input from the oversight entities and	Minimal expenditure of time for existing staff.	Some additional expenditure of time for Chief of Police.	2	Some additional expenditure of time for BPCRB Chair.	**Yes**	The recommendation presented here could increase the GM's workload significantly if required to review reports and evidence and convene a meeting.

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Difficulty Rating Color Key

#	OIR Recommendation	OIPA Resources Assessment	BPD Resources Assessment	Overall Difficulty Rating (1-5)	BPCRB Resources [See BPCRB Work-Product for Additional]	Change Model Language	Notes/Comments
	the Chief of Police, render a disposition determination.						
18.	The Model should be revised to provide complainants the right to appeal to OIPA the findings of any internal affairs investigation conducted by BART PD.	Some expenditure of time for existing staff including possible overtime.	Some additional expenditure of time for BPD.	2	No impact on BPCRB workload or material review.	**Yes**	Appeals of IA investigations are rare, and IA investigations of off-duty conduct are also rare. It is unlikely that this would result in a significant number of additional appeal investigations by OIPA, but does add to the potential workload for OIPA staff.
19.	BART and OIPA should work with BART PD to ensure that the Police Department's required notification letter to the complainant regarding case outcome also informs the complainant of his/her right to appeal the finding to OIPA.	No expenditure of resources.	Minimal expenditure of resources.	0/3 (see Notes)	No expenditure of resources.	No	Although the correspondence from IA to complainants could be revised with minimal effort, it remains to be seen whether such notification would result in an increase in cases appealed to OIPA. It is not unreasonable to imagine that a dissatisfied complainant would be encouraged to lodge an appeal if the letter informing them of unsatisfactory findings also reminded them of their right to appeal. There is the potential, therefore, for this adjustment to result in significant additional work for OIPA staff.
20.	OIPA should regularly report on the number of appeals received and the results of those appeals.	Insignificant expenditure of time for existing staff.	No Impact to BPD.	0	No Impact to BPCRB.	No	OIPA already reports on the number of appeals received, and it requires an insignificant amount of staff time and labor to report the results in such a way as to avoid violating existing privacy protections for officers.
21.	The Model should be revised to require the Chief of Police to consult with the Auditor prior to modifying any initial disposition	Some expenditure of time for IPA.	Some additional expenditure of time for BPD/Chief of Police.	2	No Impact to BPCRB.	**Yes**	This recommendation adds additional time commitments for OIPA and the Chief of Police to meet in consultation, but adds no additional layer of process. There would be some attendant additional time spent reporting on the results

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Difficulty Rating Color Key

#	OIR Recommendation	OIPA Resources Assessment	BPD Resources Assessment	Overall Difficulty Rating (1-5)	BPCRB Resources [See BPCRB Work-Product for Additional]	Change Model Language	Notes/Comments
	or disciplinary determinations. The Model should provide the Auditor an appeal process to the General Manager should he believe that any modification would result in a serious erosion of accountability. The Model should require the Auditor to publicly report on any modification of an initial disposition or disciplinary modification and whether he agreed with the modification.						of these consultations in such a way as to avoid violating existing privacy protections for officers. The GM would be called upon to participate only when the Chief and the IPA were unable to come to terms.
22.	The Model should be revised to require BART to apprise OIPA of any offers to settle cases after discipline has been imposed and provide the Auditor an opportunity for consultation. The Model should provide the Auditor the opportunity to appeal any intention to settle the matter to the General Manager should the Auditor find that the settlement would amount to a serious erosion of individual accountability. The Model should require the Auditor to publicly report	Some expenditure of time for IPA.	Some additional expenditure of time for BPD/Chief of Police.	3	No Impact to BPCRB.	**Yes**	This recommendation creates the potential for a significant and extended series of discussions and would require extreme care to avoid running afoul of existing employee protections. The reporting recommendation is not insignificant, but would not dramatically increase the workload of OIPA staff.

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Difficulty Rating Color Key

#	OIR Recommendation	OIPA Resources Assessment	BPD Resources Assessment	Overall Difficulty Rating (1-5)	BPCRB Resources [See BPCRB Work-Product for Additional]	Change Model Language	Notes/Comments
	on any cases settled at the post-discipline stage and whether OIPA agreed with the decision to settle.						
23.	The Model should be revised to require the Auditor to report on any arbitration determinations that modify or rescind initial disposition and disciplinary decisions and to evaluate the reasons for any modification. The Model should require the Auditor to identify any systemic issues that formed the basis for any modification and work with BART PD to remediate those issues.	Some expenditure of time for existing staff.	No Impact to BPD.	3	No Impact to BPCRB.	**Yes**	The reporting recommendation is significant and could dramatically increase the workload of OIPA staff depending on the depth of any underlying systemic issues at play.
24.	OIPA should publicly report on every investigation from inception to conclusion, providing information about the case result and the degree to which OIPA and the BART Police Citizen Review Board recommendations were implemented.	Some expenditure of time for existing staff.	No Impact to BPD.	3	No Impact to BPCRB.	No	The reporting recommendation is not significant but would increase the workload of OIPA staff, adding some unknown amount of additional time spent collecting the data for inclusion in OIPA Monthly Reports.
25.	OIPA should be provided authority to review claims and lawsuits to ensure allegations of misconduct are thoroughly investigated.	Some expenditure of time for existing staff.	Some additional expenditure of time for BPD/Chief of Police.	3	This could increase the number of closed session investigative re-	**Yes**	Careful review of claims and lawsuits related to policing could consume significant time depending of the number and nature of claims. This would also require cooperation with BPD, GM, OGC, and any outside counsel. Further, if the

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Difficulty Rating Color Key

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					port presentations heard by BPCRB and could significantly increase prep time and material review.		recommendation is interpreted to mean that OIPA should ensure thorough investigation by undertaking those investigations pursuant to any expanded purview, then these investigations would also require significant time and labor from OIPA, as well as additional time for the BPCRB to review materials and receive reports in closed session at its monthly meetings.
26.	OIPA should review any significant settlements and adverse judgments involving BART PD performance and work with BART PD to develop corrective actions intended to remediate any systemic issues.	Some expenditure of time for existing staff.	Some additional expenditure of time for BPD/Chief of Police.	2	No Impact to BPCRB.	No	This would amount to a minimal expansion of the type of policy, practice and procedure review already undertaken by OIPA. Additional time would be required reviewing settlements/judgments in an amount dependent on the number and complexity of those matters.
27.	OIPA should report publicly on its work in reviewing civil litigation.	Some expenditure of time for existing staff.	No Impact to BPD.	2	No Impact to BPCRB.	No	The reporting recommendation is not significant but would require some amount of staff time and labor to report in such a way as to avoid violating existing privacy protections for officers.
28.	OIPA should redouble its efforts to create a mediation process that is attractive to complainants and officers and provides an effective alternative dispute resolution process.	Some expenditure of time for existing staff.	Will require additional expenditure of time for BPD.	2	No Impact to BPCRB.	No	OIPA continues to explore ways to secure buy-in to the program from complainants and officers alike.
29.	The Model should be enhanced to ensure that OIPA is timely notified of any critical incident including all officer-involved shootings (on duty	Some expenditure of time for existing staff.	Some additional expenditure of time for BPD.	1	Possible minimal additional expenditure of time for BPCRB Chair.	**Yes**	Under the current Model, OIPA and the BPCRB are notified only when an on-duty shooting results in death or SBI. If the Directors want OIPA to respond to the scene of other uses of force that result in death or serious injury, there is the

Difficulty Rating Color Key

#	OIR Recommendation	OIPA Resources Assessment	BPD Resources Assessment	Overall Difficulty Rating (1-5)	BPCRB Resources (See BPCRB Work-Product for Additional)	Change Model Language	Notes/Comments
	or off duty) regardless of whether the use of deadly force resulted in injury or death, any use of force resulting in significant injury, and any in-custody death.						potential for some additional expenditure of time for OIPA staff. Currently, OIPA will notify the BPCRB Chair in the event of an OIS resulting in death or SBI, so the Chair could potentially be impacted by changes to the notification requirements. Expansion to involve off-duty incidents would similarly increase potential expenditures of time.
30.	The Model should be revised to provide OIPA the authority for and responsibility of reviewing use of force incidents by BART PD, regardless of whether the incident is a subject of a complaint.	Significant expenditure of time for existing staff/May require additional professional staff.	Some additional expenditure of time for BPD. Fiscal impact unknown.	3	No Impact to BPCRB.	**Yes**	OIPA currently reviews as many Use of Force reports and associated evidence as time allows, but does not reach 100% review. It may be difficult or impossible to reach the level of review in the recommendation with existing staffing levels.
31.	OIPA should regularly participate in BART PD's use of force review boards.	Significant expenditure of time for existing staff/May require additional professional staff.	Some additional expenditure of time for BPD. Fiscal impact unknown.	4	No Impact to BPCRB.	**Yes**	The number of contacts reviewed by BPD would make it extremely difficult to participate in the review of each reported case with existing staffing levels.
32.	OIPA should report publicly on its use of force review program including the outcome of BART PD's use of force review boards.	Significant expenditure of time for existing staff/May require additional professional staff.	No Impact to BPD.	3	No Impact to BPCRB.	**Yes**	The number of contacts reviewed by BPD would make it extremely time consuming to report on the outcome of each review, and may be extremely difficult to accomplish with existing staffing levels.
33.	OIPA should report publicly on the internal review of any officer-involved shootings, in-custody deaths, or serious uses of force.	Significant expenditure of time for existing staff.	Additional time and resources will be required. Fiscal impact unknown.	3	No Impact to BPCRB.	No	Extensive additional reporting on complex investigations requires significant time, and would likely require some cooperation from BPD regarding the collection of information and data for re-

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Difficulty Rating Color Key

#	OIR Recommendation	OIPA Resources Assessment	BPD Resources Assessment	Overall Difficulty Rating (1-5)	BPCRB Resources [See BPCRB Work-Product for Additional]	Change Model Language	Notes/Comments
							porting while maintaining the confidentiality of personnel matters under state law.
34.	The Model should be revised to provide authority and responsibility for OIPA to regularly participate in BART PD's early identification process.	Insignificant expenditure of time for existing staff.	Some additional expenditure of time for BPD.	1	No Impact to BPCRB.	**Yes**	OIPA already has access to and regularly reviews EIS data, and there is no existing barrier to OIPA communication with BPD regarding patterns. However, there is no formal process by which OIPA suggests or participates in intervention processes.
35.	OIPA should report regularly on the status of the Department's early identification system and results.	Some expenditure of time for existing staff.	Some additional expenditure of time for BPD.	2	No Impact to BPCRB.	No	Additional reporting would require some time commitment and additional communication between OIPA and BPD to confirm the accuracy of data entries by BPD.
36.	The Model should be revised to provide OIPA the authority, access to data and records, staffing, and responsibility to conduct systemic audits of BART PD functions that impact the quality of the Department and the service provided to its public.	Significant expenditure of time for existing staff/May require additional professional staff.	Potentially significant expenditure of time for BPD. Fiscal impact unknown.	5	No Impact to BPCRB.	**Yes**	Systemic formal audits of vital police functions (e.g. recruiting, training, stop data, etc.) would be challenging to perform with existing OIPA staffing levels. There would also be some impact to BPD staff as the department cooperated with the production of data/information for such audits.
37.	The Model should be revised to provide OIPA the authority and responsibility to monitor any audits conducted by BART PD regarding similar issues and report publicly the results of those audits.	Additional expenditure of time for existing staff.	Additional expenditure of time for BPD.	3	No Impact to BPCRB.	**Yes**	To the extent BPD performs its own internal audits, the impact to OIPA would be related to the additional expenditure of time to monitor, review, and report on those audits. In-depth review and reporting may be challenging to accomplish with existing OIPA staffing levels.

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Difficulty Rating Color Key

#	OIR Recommendation	OIPA Resources Assessment	BPD Resources Assessment	Overall Difficulty Rating (1-5)	BPCRB Resources [See BPCRB Work-Product for Additional]	Change Model Language	Notes/Comments
38.	The Model should be revised to provide OIPA the authority and responsibility to be involved in any policy or training initiatives being developed by BART PD and to report publicly on any reforms.	Some expenditure of time for existing staff.	Additional expenditure of time for BPD. Significant delays in implementing policy and training initiatives.	2	No Impact to BPCRB.	**Yes**	The BPCRB is already required to review BPD-initiated policies, but OIPA's involvement with this type of policy development has been less formal and has historically consisted of post-draft or even post-implementation review and comment in the form of recommendations for revision. Earlier involvement would require opportunities for OIPA to meet with BPD, but may conserve time and energy overall.
39.	The Model should be revised to provide OIPA the express authority to forward policy recommendations to the General Manager and/or Board of Directors. In situations in which OIPA's recommendations are not accepted by BART PD, OIPA should consider whether to forward its recommendations for further consideration to BART's governing entity.	Insignificant expenditure of time for existing staff.	No Impact to BPD.	1	No Impact to BPCRB.	**Yes**	There is the potential for the GM (and/or the BoD) to expend time reviewing any policy recommendations forwarded by OIPA. In all instances to date, it has been sufficient and appropriate for OIPA to submit such recommendations to the BPCRB for review and comment before direct submission to BPD.
40.	In its annual report, OIPA should include an update on any previous outstanding recommendations and the degree to which the recommendations were endorsed by the Review Board and accepted by BART PD.	Some expenditure of time for existing staff.	No Impact to BPD.	1	No Impact to BPCRB.	No	This recommendation is easily accomplished and does not require any change to the Model language, nor does it require significant or extensive additional research for reporting purposes.

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Difficulty Rating Color Key

#	OIR Recommendation	OIPA Resources Assessment	BPD Resources Assessment	Overall Difficulty Rating (1-5)	BPCRB Resources [See BPCRB Work-Product for Additional]	Change Model Language	Notes/Comments
41.	BART and OIPA should work with BART PD to ensure that BART PD's General Orders incorporate the authority of its oversight entities and the duty of members to cooperate in the execution of that authority.	Insignificant expenditure of time for existing staff.	Some additional expenditure of time for BPD.	1	Some expenditure of time for BPCRB.	No	While BPD officers are currently required to participate in the oversight process pursuant to language in the existing Model, there is no language in the BPD policy manual that incorporates the requirement. A change to BPD policy would require the BPCRB to review the proposed language prior to implementation by BPD.
42.	OIPA and the BART Police Citizen Review Board should attempt to schedule a meeting at least annually with the two BART Police Associations. The oversight entities should annually report on whether such meetings occurred.	Minimal expenditure of time for existing staff.	Minimal impact dependent on when meeting are scheduled.	1	Some expenditure of time for BPCRB.	No	Adherence to the requirements of the existing Model doesn't require any language changes or any additional time for OIPA. Such adherence may result in additional time expenditure for BPCRB members and/or the Chair. The reporting recommendation would require some minimal additional time for OIPA and the BPCRB.
43.	The Model should be revised to expressly clarify the independent yet complementary roles of the BART Police Citizen Review Board and OIPA.	No expenditure of time for existing staff.	No Impact to BPD.	0	No Impact to BPCRB.	**Yes**	The addition of clarifying language would not require any expenditure of time by any of the entities.
44.	BART should consider creating an Executive Assistant position for the BART Police Citizen Review Board to assist with administrative tasks now assigned to OIPA.	Significant expenditure of time for existing staff.	Some additional impact.	5	Significant impact to BPCRB.	**Yes**	This recommendation represents a dramatic change to the existing organization, and **would require additional staffing**. The recommendation does not contemplate the management structure of the District, and it may be difficult to create a new position in a department other than OIPA for this purpose. Support for the BPCRB is cyclical, and peaks in connection with that body's monthly meetings. However, there are times when other tasks consume significant

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#	OIR Recommendation	OIPA Resources Assessment	BPD Resources Assessment	Overall Difficulty Rating (1-5)	BPCRB Resources [See BPCRB Work-Product for Additional]	Change Model Language	Notes/Comments
							time and attention from OIPA staff, especially with regard to expense reimbursement processes and the onboarding of new appointees to the BPCRB. The provision of training for the BPCRB has become increasingly time-consuming, and a dedicated EA could improve and expand that support aspect with the dedication of time not currently available to OIPA staff. Importantly, there may be some difficulty for existing staff to fulfill support functions for both the BPCRB and OIPA staff if even a significant number of the OIR recommendations are implemented by the Directors. It may be more feasible to add an additional staff member to OIPA dedicated to supporting the BPCRB and its activities.
45.	The Model should be revised to acknowledge that the BART Police Citizen Review Board is one potential source of information when the Board of Directors is seeking input on the performance of OIPA.	No expenditure of time for existing staff.	No Impact to BPD.	0	Some impact to BPCRB.	**Yes**	There is no practical impact to any of the entities that would result from this change to the Model other than the fulfillment of the existing assessment process from BPCRB members.
46.	The Model should be revised to provide OIPA the opportunity for input when a BART Police Citizen Review Board member seeks reappointment.	Some expenditure of time for existing staff.	No Impact to BPD.	0	No impact to BPCRB.	**Yes**	This would require some minimal and intermittent input from the IPA only if and when any Director sought to collect impressions regarding the performance of an individual BPCRB member.

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#	OIR Recommendation	OIPA Resources Assessment	BPD Resources Assessment	Overall Difficulty Rating (1-5)	BPCRB Resources [See BPCRB Work-Product for Additional]	Change Model Language	Notes/Comments
47.	The Model should clarify that former BART PD personnel are ineligible to serve on the BART Police Citizen Review Board.	No expenditure of time for existing staff.	No Impact to BPD.	0	Some impact to BPCRB.	**Yes**	This is only a change to the rules regarding BPCRB member requirements and would have no impact on existing members or on any of the entities considered herein.
48.	A Training Curriculum Should Be Devised for Incoming BART Police Citizen Review Board Members, and In-Service Training Should Be Provided at Least Semi-Annually to Current Review Board Members.	Some expenditure of time for existing staff/May require additional professional staff.	No Impact to BPD.	3	Some impact to BPCRB.	No	Implementation difficulty would be dependent on whether existing OIPA staff or **additional OIPA staff** would take responsibility. It would increase the expenditure of time for existing staff and would have no impact on GM staff, or alternatively, would require some lower level of guidance from existing staff and significant staffing assistance from the GM if the tasks were assigned to the EA suggested elsewhere. Any enhanced training program would certainly impact the time commitment for volunteer BPCRB members regardless of how that training is provided.
49.	The BART Police Citizen Review Board should consider rotating its meetings to a wider array of locales served by BART.	Significant expenditure of time for existing staff.	Some impact to BPD.	4	Significant impact to BPCRB.	No	Changing BPCRB meeting locations would be logistically challenging for BPCRB members and for OIPA and BPD staff, alike. The Chief of Police and some command staff and union reps regularly attend BPCRB meetings. Managing audio/visual requirements, provision of refreshments, delivery of materials, and posting/notice requirements would be complicated by holding regular offsite meetings, but it remains unknown to what degree these challenges would and could be overcome. There is also some uncertainty regarding the availability of appropriate venues for the meetings, and some effort would be required by both BPCRB and OIPA to further explore available options.

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#	OIR Recommendation	OIPA Resources Assessment	BPD Resources Assessment	Overall Difficulty Rating (1-5)	BPCRB Resources [See BPCRB Work-Product for Additional]	Change Model Language	Notes/Comments
50.	Procedures should be adopted by the BART Police Citizen Review Board intended to ensure that the Model's commitment to outreach is achieved. To that end, each incoming member should be alerted to outreach expectations by his/her appointing authority. On an annual basis, each Review Board member should report publicly on the outreach he/she has undertaken the previous year. Finally, the degree of each member's public outreach will be considered prior to reappointing the Review Board member to an additional term.	Potential for some minimal expenditure of time for OIPA staff (whether existing staff or new "EA")	No Impact to BPD.	2	Significant impact to BPCRB.	No	A change to procedures and practices regarding BPCRB outreach would not require a change to the language of the Model, but an enhanced commitment to outreach and annual reporting as recommended would require significant additional time from each BPCRB volunteer. Most outreach activity would need to occur outside of the monthly meeting schedule, and each member would have to prepare and deliver a public report on an annual basis.
51.	The Model should be revised to authorize excused absences for good cause that would not count against the absence limitations.	Minimal expenditure of time for existing staff.	No Impact to BPD.	1	Some impact to BPCRB.	**Yes**	This recommendation would require some small measure of communication between OIPA, individual BPCRB members, and Directors, but has the potential to eliminate the labor and time-intensive process of replacing BPCRB for excessive absences. The existing "leave of absence" language is impractical because of the lengthy process for replacing a member on a temporary basis, although this new recommended language need not necessarily eliminate the "leave of absence" option for Directors and BPCRB volunteers.

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INDEPENDENT REVIEW OF THE BART POLICE OVERSIGHT STRUCTURE – OIPA IMPLEMENTATION MATRIX

#	OIR Recommendation	OIPA Resources Assessment	BPD Resources Assessment	Overall Difficulty Rating (1-5)	BPCRB Resources [See BPCRB Work-Product for Additional]	Change Model Language	Notes/Comments
52.	The Model should be revised to expressly authorize OIPA and the BART Police Citizen Review Board to make public statements about their oversight work.	No expenditure of time for existing staff.	No Impact to BPD.	0	Some impact to BPCRB and Chair.	**Yes**	The mere change to the language of the model to include express authorization does not, in and of itself, require any work from the entities, but the change may result in additional work for the BPCRB as they establish a process for approving and issuing any public statements by the Chair.
53.	The Model should be revised to call for periodic reviews of BART's oversight entities at a minimum of four-year intervals.	Significant expenditure of time for existing staff.	Some impact to BPD.	3	Significant impact to BPCRB.	**Yes**	With this (OIR Group) review process as a point of reference, it is likely that each of the entities will be asked to commit significant time to engaging whomever is contracted to conduct subsequent reviews.
54.	The Model should be revised to clarify whether a newly-seated BART Director may unilaterally remove his or her predecessor's BPCRB appointee and specify any time limits for doing so.	No expenditure of time for existing staff	No Impact to BPD.	0	Some impact to BPCRB.	**Yes**	This clarification should have little to no effect on the entities (aside from the Directors, themselves), though the process adopted would necessarily have some effect on how often OIPA would facilitate recruitment and would affect BPCRB volunteer expectations regarding terms of service.

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Date: November 13th, 2017

To: BART Board of Directors
300 Lakeside Drive, P. O. Box 12688,
Oakland, CA 94604-2688

From: BART Police Citizen Review Board
George Perezvelez, Chairperson 2017-2018

Subject: BART Police Citizen Review Board (BPCRB) review and chart on the OIR Group Report

The OIR Group's Report (Report) makes recommendations regarding BART's Police Citizen Review Board (BPCRB) and includes an opinion on the proposed changes to the structure and the process by which the Office of the Independent Police Auditor (OIPA) and the BPCRB operate. The BPCRB believes that the Report provides the BART Board of Directors (BART Board) with a contrasting opinion on possible changes to the existing police oversight model.

The BPCRB discussed the Report during two regular meetings, on September 18, 2017 and October 16, 2017, as well as during an additional special meeting held on October 23, 2017, for a total of 8 hours of deliberation.

The BPCRB as a group decided to engage in a deliberative process comprised of a thorough discussion of each individual recommendation followed by an up or down vote. Some of the votes were close and the opinions expressed by BPCRD members were at times strikingly divergent. Hence the Chair recommends that individual Directors engage with their BPCRB appointee to better appreciate the point(s) raised during those discussions and the appointee's reasoning during those close votes.

The BPCRB appreciates that the BART Board must take into account budgetary concerns as well as digest stakeholder input regarding how police oversight should be conducted. We trust that the BART Board agrees with the BPCRD's view that effective police oversight is dependent on the continued implementation of progressive policing measures. Measures that ultimately guarantee the safety of the public, our law enforcement personnel and the BART community at large.

Although the BPCRB understands that ultimately it is up to the BART Board to approve changes to the current police oversight model, we respectfully request our continued participation during the final deliberative and implementation process.

Respectfully submitted,

George D. Perezvelez

BPCRB OIR Report Annotated Review and Chart		
Recommendations	**Discussion**	**Vote**
Recommendation One: The Model should be revised to make clear that the scope of OIPA's authority extends to non-sworn employees of BART PD and to all potential misconduct involving sworn officers whether on or off duty.	The Board believes all possible legal ramifications and labor contracts need to be thoroughly reviewed before a final recommendation can be made	Unanimous consent to defer to legal and further discussion
Recommendation Two: OIPA should consider modifying its monitoring function of BART PD internal affairs investigations to "real-time" monitoring, offering recommendations on the strength of investigations and appropriateness of dispositions prior to BART PD completing the process.	The Board believes this needs to go to BART legal counsel for a fully vetted opinion. Concerns exist with cases of a disciplinary matter vis a vis a criminal investigation conducted by a district attorney's office.	Unanimous consent to defer to legal and further discussion
Recommendation Three: Should OIPA move to real-time monitoring, it should be involved in decisions regarding whether a matter should be forwarded to the District Attorney for criminal review, and the appropriate scoping of an investigation	The Board believes this needs to go to BART legal counsel for a fully vetted opinion.	Unanimous consent to defer to BART legal counsel and further discussion
Recommendation Four: OIPA should make its reported data on investigations and recommended discipline clearer and should publicly report its involvement and auditing functions in detail, setting out its assessment of the quality of each investigation and the appropriateness of each disposition and disciplinary determination. The Model should be modified to provide OIPA the express authority to report any resistance by BART PD to conduct additional investigation to the attention of the Board of Directors, the General Manager, the BART Police Citizen Review Board, and the public.	The Board believes that further discussion is needed to ensure all aspects of the Police Officer's Bill of Rights are observed and that all dissemination of information should be in line with the Freedom of Information Act requirements as well as established District policy.	Unanimous vote to defer to BART legal counsel for further discussion
Recommendation Five: The Model should be revised to provide any persons the ability to file a complaint with OIPA and/or the BART Police Citizen Review Board against any BART PD employee	The Board believes this recommendation needs to be fully vetted and discussed at a subcommittee level with all stakeholders present. The language of the recommendation needs to be expanded to include circumstances that could create abuses within the system.	Unanimous agreement to defer to the subcommittee process
Recommendation Six: The Model should be revised to provide OIPA the ability to investigate any allegation of misconduct that implicates the policies of BART PD	The Board fully agrees with this recommendation	Unanimous consent
Recommendation Seven: OIPA and BART PD should develop an investigative paradigm whereby OIPA would determine whether to investigate any complaint allegations received initially by the Office and BART PD would defer investigating allegations that the Auditor opted to investigate	The Board believes that this could be implemented internally	Unanimous consent

Recommendation Eight: OIPA should develop a handbook to provide guidance and expectations for its internal investigations.	The Board is in agreement with this recommendation and recommends that the process be made public	Unanimous consent
Recommendation Nine: OIPA should set out investigative timelines in its internal protocols that not only meet the statutory requirements but also reflect a commitment to prompt and efficient resolution of cases.	The Board is in agreement with this recommendation and recommends that the process be made public	Unanimous consent
Recommendation Ten: The Model should be clarified to reflect that upon the conclusion of an OIPA investigation, OIPA should recommend a finding of sustained, not sustained, exonerated, or unfounded.	The Board is in agreement with this recommendation.	Unanimous consent
Recommendation Eleven: OIPA should tailor its closing letters to each individual case and provide the complainant additional information about the investigative steps taken to reach its conclusion.	The Board is in agreement with this recommendation. The board further recommends that the letter with findings should only be sent out after the appeal process is completed to minimize confusion and streamline the reporting process.	Unanimous consent
Recommendation Twelve: When a concluded investigation does not result in a sustained finding, OIPA should offer the complainant the opportunity to view any video account of the incident.	The Board believes that this should be referred to BART legal counsel for further review. Some concerns with adherence to the Freedom of information Act requirements exist.	Unanimous consent to defer to BART legal counsel for further discussion
Recommendation Thirteen: The Model should be revised to instruct that the BART Police Citizen Review Board's vote tally by member on the Auditor's case recommendations and findings should be made public. In cases in which a non-unanimous majority agrees with the Auditor's case recommendations and findings, the dissenters should set out their rationale for diverging from the majority's determination.	The Board agrees with this recommendation. Dissenting opinions are relevant to the process but only if they can be used as part of an appeal process.	Passed by majority vote
Recommendation Fourteen: The Model should be revised to provide the Auditor the discretion to present BART PD internal investigations to the BART Police Citizen Review Board in order to receive input and feedback.	The Board agrees with this recommendation. This process can only have merit if the BPCRB will have a say in adjudication and only if IA is allowed to present the reasoning behind their findings.	Passed by majority vote
Recommendation Fifteen: The Model should be changed to require the Chief to timely put forward the reasons and arguments for appeal in writing and provide the Auditor and the Chair of the BART Police Citizen Review Board the opportunity to respond in writing, to be present at any appeal meeting, and to respond to any additional arguments set forth by the Chief at the appeal meeting. The Model should be further revised to require the General Manager to set out her/his findings in writing.	The Board agrees with this recommendation. In order for there to be full transparency of process, the steps taken to adjudicate discipline must be open to review as well.	Passed by majority vote

Recommendation Sixteen: The Model should be changed to require the Auditor to publicly report the results of any such appeal meeting consistent with state law confidentiality requirements	The Board agrees with this recommendation. In order for there to be full transparency of process, the steps taken to adjudicate discipline must be open to review as well.	Unanimous consent
Recommendation Seventeen: The Model should be changed so that when the BART Police oversight entities disagree on a case disposition, the General Manager will convene a meeting and, after receiving input from the oversight entities and the Chief of Police, render a disposition determination.	The Board agrees with this recommendation. In order for there to be full transparency of process, the steps taken to adjudicate discipline must be open to review as well.	Unanimous consent
Recommendation Eighteen: The Model should be revised to provide complainants the right to appeal to OIPA the findings of any internal affairs investigation conducted by BART PD.	The Board agrees with this recommendation. In addition it also recommends the addition and stipulation that all appealed cases to the OIPA effectively become the jurisdiction of the OIPA.	Passed by majority vote
Recommendation Nineteen: BART and OIPA should work with BART PD to ensure that the Police Department's required notification letter to the complainant regarding case outcome also informs the complainant of his/her right to appeal the finding to OIPA.	The Board agrees with the recommendation.	Unanimous consent
Recommendation Twenty: OIPA should regularly report on the number of appeals received and the results of those appeals.	The Board agrees with this recommendation	Unanimous consent
Recommendation Twenty-One: The Model should be revised to require the Chief of Police to consult with the Auditor prior to modifying any initial disposition or disciplinary determinations. The Model should provide the Auditor an appeal process to the General Manager should he believe that any modification would result in a serious erosion of accountability. The Model should require the Auditor to publicly report on any modification of an initial disposition or disciplinary modification and whether he agreed with the modification.	Although somer members felt past cases made this recommendation necessary for transparency, the majority disagreed.	Not recommended by a majority vote
Recommendation Twenty-Two: The Model should be revised to require BART to apprise OIPA of any offers to settle cases after discipline has been imposed and provide the Auditor an opportunity for consultation. The Model should provide the Auditor the opportunity to appeal any intention to settle the matter to the General Manager should the Auditor find that the settlement would amount to a serious erosion of individual accountability. The Model should require the Auditor to publicly report on any cases settled at the post-discipline stage and whether OIPA agreed with the decision to settle.	The Board agrees with this recommendation	Passed by majority vote

Recommendation Twenty-Three: The Model should be revised to require the Auditor to report on any arbitration determinations that modify or rescind initial disposition and disciplinary decisions and to evaluate the reasons for any modification (a). The Model should require the Auditor to identify any systemic issues that formed the basis for any modification and work with BART PD to remediate those issues(b).	The Board members separated this recommendation into two parts for the purpose of discussion and clarification.	Unanimous consent on both (a) and (b)
Recommendation Twenty-Four: OIPA should publicly report on every investigation from inception to conclusion, providing information about the case result and the degree to which OIPA and the BART Police Citizen Review Board recommendations were implemented.	The Board agrees with this recommendation	Unanimous consent
Recommendation Twenty-Five: OIPA should be provided authority to review claims and lawsuits to ensure allegations of misconduct are thoroughly investigated.	The Board agrees with this recommendation	Passed by majority vote
Recommendation Twenty-Six: OIPA should review any significant settlements and adverse judgments involving BART PD performance and work with BART PD to develop corrective actions intended to remediate any systemic issues.	Agree. Concerns remained about the specific intent in the use of the word"adverse" as well as well as the necessary funding needed to defray such an expansion of responsibilities.	Passed by majority vote
Recommendation Twenty-Seven: OIPA should report publicly on its work in reviewing civil litigation.	Board members agreed that this recommendation, although valid, needed to be vetted by BART legal counsel	Unanimous consent to defer to BART legal counsel for further discussion
Recommendation Twenty-Eight: OIPA should redouble its efforts to create a mediation process that is attractive to complainants and officers and provides an effective alternative dispute resolution process	The Board agrees with this recommendation	Unanimous consent
Recommendation Twenty-Nine: The Model should be enhanced to ensure that OIPA is timely notified of any critical incident including all officer-involved shootings (on duty or off duty) regardless of whether the use of deadly force resulted in injury or death, any use of force resulting in significant injury, and any in-custody death.	The Board agrees with this recommendation. In addition, the BPCRB Chair should be added to the list of names that need to be notified during such events.	Unanimous consent
Recommendation Thirty: The Model should be revised to provide OIPA the authority for and responsibility of reviewing use of force incidents by BART PD, regardless of whether the incident is a subject of a complaint.	The Board agrees with this recommendation.	Unanimous consent
Recommendation Thirty-One: OIPA should regularly participate in BART PD's use of force review boards.	Although some members believed that the participation of the Independent Auditor in all use of force review steps would add to the oversight process and transparency, the recommendation was rejected by a majority vote.	Not recommended by a majority vote

Recommendation Thirty-Two: OIPA should report publicly on its use of force review program including the outcome of BART PD's use of force review boards.	Although some members believed this would add transparency, the recommendation was not approved by a majority vote.	Not recommended by a majority vote
Recommendation Thirty-Three: OIPA should report publicly on the internal review of any officer-involved shootings, in-custody deaths, or serious uses of force	Although some members believed this would add transparency, the recommendation was not approved by a majority vote.	Not recommended by a majority vote
Recommendation Thirty-Four: The Model should be revised to provide authority and responsibility for OIPA to regularly participate in BART PD's early identification process	The Board agrees with this recommendation. In addition, the BPCRB recommends that the best practice wording of "early warning" be made as a substitution.	Unanimous consent
Recommendation Thirty-Five: OIPA should report regularly on the status of the Department's early identification system and results.	The Board agrees with this recommendation. In addition, the BPCRB recommends that the best practice wording of "early warning" be made as a substitution.	Passed by majority vote
Recommendation Thirty-Six: The Model should be revised to provide OIPA the authority, access to data and records, staffing, and responsibility to conduct systematic audits of BART PD functions that impact the quality of the Department and the service provided to its public.	Although some board members believed this would be the natural development of the auditing process and part of any accountability steps, the recommendation was not approved by a majority vote.	Not recommended by a majority vote
Recommendation Thirty-Seven: The Model should be revised to provide OIPA the authority and responsibility to monitor any audits conducted by BART PD regarding similar issues and report publicly the results of those audits.		Not recommended by a majority vote
Recommendation Thirty-Eight: The Model should be revised to provide OIPA the authority and responsibility to be involved in any policy or training initiatives being developed by BART PD and to report publicly on any reforms.	Although some board members believed this would prove useful and result in an inclusive and transparent review of the department's training program, the recommendation was not approved by a majority vote.	Not recommended by a majority vote
Recommendation Thirty-Nine: The Model should be revised to provide OIPA the express authority to forward policy recommendations to the General Manager and/or Board of Directors. In situations in which OIPA's recommendations are not accepted by BART PD, OIPA should consider whether to forward its recommendations for further consideration to BART's governing entity.	Although some members strongly believed that this will add to the check and balances process, the recommendation was not approved by a majority vote.	Not recommended by a majority vote
Recommendation Forty: In its annual report, OIPA should include an update on any previous outstanding recommendations and the degree to which the recommendations were endorsed by the Review Board and accepted by BART PD.	The Board agrees with this recommendation.	Unanimous consent
Recommendation Forty-One: BART and OIPA should work with BART PD to ensure that BART PD's General Orders incorporate the authority of its oversight entities and the duty of members to cooperate in the execution of that authority.	The Board agrees with this recommendation.	Unanimous consent

Recommendation Forty-Two: OIPA and the BART Police Citizen Review Board should attempt to schedule a meeting at least annually with the two BART Police Associations. The oversight entities should annually report on whether such meetings occurred.	The Board agrees with this recommendation.	Unanimous consent
Recommendation Forty-Three: The Model should be revised to expressly clarify the independent yet complementary roles of the BART Police Citizen Review Board and OIPA	The relationship between the OIPA and the BPCRB must not be separated. The continuity and administrative connectivity of both agencies must not be changed in order to continue to streamline communications and reinforce cooperation and a shared responsibility of the complaint and oversight process. Delineation should not equal watering down. Although the office of The Independent Auditor is the investigative arm of the process, the board believes that it is the BPCRB who ultimately has oversight of the department.	Not recommended by unanimous consent
Recommendation Forty-Four: BART should consider creating an Executive Assistant position for the BART Police Citizen Review Board to assist with administrative tasks now assigned to OIPA.	The Board takes no position on this matter.	No vote
Recommendation Forty-Five: The Model should be revised to acknowledge that the BART Police Citizen Review Board is one potential source of information when the Board of Directors is seeking input on the performance of OIPA.	The Board agrees with this recommendation.	Unanimous consent
Recommendation Forty-Six: The Model should be revised to provide OIPA the opportunity for input when a BART Police Citizen Review Board member seeks reappointment	Disagree. OIPA should have no function here.	Not recommended by unanimous consent
Recommendation Forty-Seven: The Model should clarify that former BART PD personnel are ineligible to serve on the BART Police Citizen Review Board.	The Board agrees with this recommendation.	Unanimous consent
Recommendation Forty-Eight: A Training Curriculum Should Be Devised For Incoming BART Police Citizen Review Board Members, and In-Service Training Should Be Provided at Least Semi-Annually to Current Review Board Members.	The Board agrees with this recommendation. In addition, a revision of the training of all members of OIPA should be conducted as well.	Unanimous consent
Recommendation Forty-Nine: The BART Police Citizen Review Board should consider rotating its meetings to a wider array of locales served by BART	Although agreed upon by the majority, several Board members expressed concern on the logistic inherent in holding such meetings in the locations at the farthest perimeter of the service lines.	Passed by majority vote

Recommendation Fifty: Procedures should be adopted by the BART Police Citizen Review Board intended to ensure that the Model's commitment to outreach is achieved. To that end, each incoming member should be alerted to outreach expectations by his/her appointing authority. On an annual basis, each Review Board member should report publicly on the outreach he/she has undertaken the previous year.(a) Finally, the degree of each member's 34 public outreach will be considered prior to reappointing the Review Board member to an additional term(b)	Agree. Although all the Board members believe that outreach should be a paramount effort, they did not agree on the recommendation that it be set as part of a Litmus test	Agree by a consensus with reservations of point (b) of the recommendation
Recommendation Fifty-One: Absences and leaves of absence	Approved with the correction to the recommendation that the model should be specific in its stipulation of "more than two" continued absences	Unanimous consent
Recommendation Fifty-Two: The Model should be revised to expressly authorize OIPA and the BART Police Citizen Review Board to make public statements about their oversight work.	The Board agrees with the caveat of restrictions on subject matter and Chair and OIPA as lead	Passed by majority vote
Recommendation Fifty-Three: The Model should be revised to call for periodic reviews of BART's oversight entities at a minimum of four-year intervals.	The Board believes that two years should be an ample time in between revisions.	Passed by majority vote
Process from removal as per Addendum	Board of Directors should review their own policies	Unanimous consent
Chair Recommendation		
A hearing process must be established in which complainants, subject officers, their representatives and Internal Affairs are able to present their case to the BPCRB before adjudication.	This will allow for full representation, transparency as well as redress of complaints by individuals making allegations as well as offering subject officers the opportunity to present their case before a decision is made on an allegation.	Not voted on

MEMORANDUM

TO: BART Board of Directors

FROM: BPCRB Members David Rizk, Aman Sebahtu, Cydia Garrett

RE: OIR Review of Citizen Oversight Model

DATE: February 15, 2018

We write this memo to the Board to express our concern regarding the memo the majority of the BPCRB voted to send to you concerning the OIR report on BART's Citizen Oversight Model. We believe the OIR group did a thoughtful and thorough review of the Model, and we appreciate all of the reasoning and considerations that underlie the recommendations that OIR articulated in the report. As members with many years of collective experience on BPCRB, we can say with confidence that the OIR report recommendations reflect a good practical understanding of how BPD, OIPA, and BPCRB actually work together. The proposed changes are also backed by extensive research, best-practices, and current thinking in the field of civilian oversight, and are designed to promote better oversight so that BPD operates more efficiently and more safely and continues to improve its connections to the Bay Area communities it serves. The Citizen Oversight Model strongly supports BPD's primary mission to fight crime and protect BART riders, and we are certain that OIR's recommendations will make BART's riders much safer.

Unfortunately, the BPCRB's review of the OIR report does it a severe disservice. First, the BPCRB memo does not acknowledge that the "special" meetings to discuss the report were not well attended, and as a result, many of the votes to disapprove particular recommendations do not in fact reveal the views of the majority of the BPCRB's eleven members because so few members voted. Thus, where the memo states that a particular recommendation was "not recommended by a majority vote," in many cases that may mean just three to five members voted "no."

Sadly, the BPCRB's discussions about the recommendations at its meetings also reflected a surprising degree of confusion and lack of understanding about the existing provisions of the Model, the way oversight actually works at BART, and the reasoning underlying OIR's recommendations. The chart attached to the memo exemplifies the problem. It does not reflect any coherent reasons why BPCRB voted one way or another. For example, the memo makes various confused references to what the law may require, such as the Freedom of Information Act, which does not even apply to local agencies. BPCRB likewise purports to defer judgement on many recommendations to the General Counsel's office.

Such positions are uninformed and unhelpful. We trust the District will implement OIR's recommendations consistent with the law and the General Counsel's advice.

Another stark example of BPCRB's lack of understanding about the existing Model: Recommendation 43 urges that the Model should be revised to clarify the independent yet complimentary roles of the CRB and the OIPA. The chart attached to the memo contains incoherent commentary suggesting that "the OIPA and the BPCRB[D] must not be separated," and claims that "the [O]ffice of [t]he Independent [Police] Auditor is the investigative arm of the process, [and] the board believes that it is the BPCRB[D] who [sic] ultimately has oversight of the department." These sweeping comments reflect ignorance of the Model. The existing Model actually defines the relationship between OIPA and the BPCRB in detail, and specifically authorizes OIPA to make its own recommendations to BPCRB, the Chief, and the GM. In no meaningful sense does the BPCRB have oversight of the department to the exclusion of OIPA. In fact, and contrary to any suggestion that OIPA is merely a subservient investigative office for BPCRB, Section 1-08 of the Model, entitled "Independence of the Office of the Independent Police Auditor," expressly states that "The Auditor and any employee of the Office of the Independent Police Auditor shall, at all times, be totally independent." The comments regarding a number of recommendations are similarly misplaced.

Finally, a number of BPCRB's votes on particular recommendations reflect a lack of understanding of general oversight principles, and the way the process actually works today at BART. For example, Recommendation 36 calls for revisions to clarify that OIPA is enabled to conduct systematic audits and access BPD records and data in order to improve the quality and service that BPD provides to the public. For reasons that were not clear at the time, and are certainly not clarified by the chart attached to BPCRB's memo to the Board, this proposal was "not recommended by a majority vote." Nationally, auditing is increasingly becoming a best-practice norm for police oversight agencies, and it already occurs in San Jose and San Francisco, just by way of example. Here at BART, the Model provides for an agency entitled the Office of the Independent Police *Auditor*, and in fact, OIPA already conducts informal audits of BPD procedures practices, with full cooperation from BPD. For instance, when new body cameras were introduced, OIPA systematically reviewed body camera footage from use of force incidents and discovered that the cameras were routinely falling off of officers' chests. OIPA communicated this problem to BPD, and BPD raised the issue with Axon, the vendor, which promised to provide a chest clip to remedy the problem. Without OIPA's audits, this problem may not have been discovered until a critical incident occurred and the footage was unusable. We understand that the Chief, the GM, OIPA, and the management union all support Recommendation 36, and the officers' union has not yet weighed in, but is likely to support it as well. BPCRB's rejection of Recommendation 36 makes no sense whatsoever.

There are many more examples where other stakeholders, including BPD, the GM, OIPA, and the unions, *agree* with particular recommendations, yet BPCRB voted "no." This is a very unfortunate situation, and we urge the Board not to let it unduly influence the Board's careful consideration of OIR's well-reasoned recommendations.

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

Memorandum

TO: Board of Directors **DATE:** February 15, 2018

FROM: Carlos Rojas, Chief of Police via G.M. Grace Crunican

SUBJECT: BART Police Oversight Structure Report

I have examined the Independent Review of the BART Police Oversight Structure report by the OIR Group that was completed in June 2017. I appreciate and recognize the need to clarify the roles of the Civilian Review Board (CRB) and the Office of the Independent Police Auditor (OIPA). Clarifying roles is a positive step to improving the Oversight Model, however, I have concerns about the expansion of the Authority of OIPA and the CRB without further discussion. There was no information provided that would justify the expansion of the Oversight Model. Moreover, I believe that in updating the Oversight Model its focus should be on role clarification and protocol improvements. Furthermore, the seriousness of the confidentiality of police officer personnel files and the information contained therein is paramount to ensure full compliance with California state law. Many of the recommendations also raise concerns in protecting officer privacy, and the risk associated with the potential breach of confidential information. Therefore, more discussions are necessary to ensure both compliance with state law and a comprehensive understanding of the recommendations.

The current Oversight Model provides guidelines as to the role of both the CRB and the OIPA. At this time, detailed policies and/or procedures that may exist in the OIPA are not known or readily available to the public or the police department. In some ways, the lack of role clarity has made it difficult to motivate police personnel to engage in providing proactive policing services to BART ridership. Therefore, many of the recommendations will be a positive improvement in clarifying the Oversight Model.

Updating the Oversight Model will be important to strengthening the relationship between BART Police personnel and the important work being conducted by the OIPA. Based on my review and analysis of the Oversight Structure report, I believe there are recommendations that will further clarify the Oversight Model. The recommendations identified as "Agree" will also augment the trust and credibility of both the Oversight Model and the work of the OIPA.

The attached table bifurcates the recommendations into the theme of "OIPA Protocol Improvement" (Agree) and Expansion of Authority and/or Infringement on Personnel Policy (Disagree). The BART Police Department is very willing to work closely with OIPA on any of the agreed upon recommendations.

RECOMMENDATION:
The 39 recommendations that are illustrated as "Agree" under the green banner in the attachment should be APPROVED as a starting point for the OIPA and BART Police Department to collaborate and work on to achieve the goal of implementation. I do believe we have 39 issues on which we can begin working on immediately. I would propose putting the remaining 15 issues on hold until progress is made on the initial 39.

Agree – BART Police Oversight Recommendations

OIPA Protocol Practice Improvements	
(2) OIPA should consider modifying its monitoring function of BART PD internal affairs investigations to "real-time" monitoring, offering recommendations on the strength of investigations and appropriateness of dispositions prior to BART PD completing the process.	
(5) The Model should be revised to provide any persons the ability to file a complaint with OIPA and/or the BART Police Citizen Review Board against any BART PD employee.	
(6) The Model should be revised to provide OIPA the ability to investigate any allegation of misconduct that implicates the policies of BART PD.	
(7) OIPA and BART PD should develop an investigative paradigm whereby OIPA would determine whether to investigate any complaint allegations received initially by the Office and BART PD would defer investigating allegations that the Auditor opted to investigate	
(8) OIPA should develop a handbook to provide guidance and expectations for its internal investigations.	
(9) OIPA should set out investigative timelines in its internal protocols that not only meet the statutory requirements but also reflect a commitment to prompt and efficient resolution of cases.	
(10) The Model should be clarified to reflect that upon the conclusion of an OIPA investigation, OIPA should recommend a finding of sustained, not sustained, exonerated, or unfounded.	
(11) OIPA should tailor its closing letters to each individual case and provide the complainant additional information about the investigative steps taken to reach its conclusion.	
(13) The Model should be revised to instruct that the BART Police Citizen Review Board's vote tally by member on the Auditor's case recommendations and findings should be made public. In cases in which a non-unanimous majority agrees with the Auditor's case recommendations and findings, the dissenters should set out their rationale for diverging from the majority's determination.	
(17) The Model should be changed so that when the BART Police oversight entities disagree on a case disposition, the General Manager will convene a meeting and, after receiving input from the oversight entities and the Chief of Police, render a disposition determination.	
(18) The Model should be revised to provide complainants the right to appeal to OIPA the findings of any internal affairs investigation conducted by BART PD.	

OIPA Protocol Practice Improvements	
(19) BART and OIPA should work with BART PD to ensure that the Police Department's required notification letter to the complainant regarding case outcome also informs the complainant of his/her right to appeal the finding to OIPA.	
(20) OIPA should regularly report on the number of appeals received and the results of those appeals.	
(23) The Model should be revised to require the Auditor to report on any arbitration determinations that modify or rescind initial disposition and disciplinary decision and to evaluate the reasons for any modification. The Model should require the Auditor to identify any systemic issues that formed the basis for any modification and work with BART PD to remediate those issues.	
(24) OIPA should publicly report on every investigation from inception to conclusion, providing information about the case result and the degree to which OIPA and the BART Police Citizen Review Board recommendations were implemented.	
(26) OIPA should review any significant settlements and adverse judgements involving BART PD performance and work with BART PD to develop corrective actions intended to remediate any systemic issues.	
(28) OIPA should redouble its efforts to create a mediation process that is attractive to complainants and officers and provides an effective alternative dispute resolution process.	
(29) The Model should be enhanced to ensure that OIPA is timely notified of any critical incident including all officer-involved shootings (on duty or off duty) regardless of whether the use of deadly force resulted in injury or death, any use of force resulting in significant injury, and any in-custody death.	
(30) The Model should be revised to provide OIPA the authority for and responsibility of reviewing use of force incidents by BART PD, regardless of whether the incident is a subject of a complaint.	
(33) OIPA should report publicly on the internal review of any officer-involved shootings, in-custody deaths, or serious uses of force.	
(34) The Model should be revised to provide authority and responsibility for OIPA to regularly participate in BART PD's early identification process.	
(35) OIPA should report regularly on the status of the Department's early identification system.	
(36) The Model should be revised to provide OIPA the authority, access to data and records, staffing, and responsibility to conduct systemic audits of BART PD functions that impact the quality of the Department and the service provided to its public.	

OIPA Protocol Practice Improvements	
(37) The Model should be revised to provide OIPA the authority and responsibility to monitor any audits by BART PD regarding similar issues and report publicly the results of those audits.	
(40) In its annual report, OIPA should include an update on any previous outstanding recommendations and the degree to which the recommendations were endorsed by the Review Board and accepted by BART PD.	
(41) BART and OIPA should work with BART PD to ensure that BART PD's general orders incorporate the authority of its oversight entities and the duty of members to cooperate in the execution of that authority.	
(42) OIPA and the BART Police Citizen Review Board should attempt to schedule a meeting at least annually with two BART Police Associations. The oversight entities should annually report on whether such meetings occurred.	
(43) The Model should be revised to expressly clarify the independent, yet complementary roles, of the BART Police Citizen Review Board and OIPA.	
(44) BART should consider an Executive Assistant position for the BART Police Citizen Review Board to assist with administrative tasks now assigned to OIPA.	
(45) The Model should be revised to acknowledge that the BART Police Citizen Review Board is one potential source of information when the Board of Directors is seeking input on the performance of OIPA.	
(46) The Model should be revised to provide OIPA the opportunity for input when a BART Police Citizen Review Board member seeks reappointment.	
(47) The Model should clarify that former BART PD personnel are ineligible to serve on the BART Police Citizen Review Board.	
(48) A Training Curriculum should be devised for incoming BART PD Citizen Review Board members and in-service training should be provided at least semi-annually to current Review Board members.	
(49) The BART Police Citizen Review Board should consider rotating its meetings to a wider array of locals served by BART.	
(50) Procedures should be adopted by the BART PD Citizen Review Board intended to ensure that the Model's commitment to outreach is achieved. To that end, each incoming member should be alerted to outreach expectations by his/her appointing authority. On an annual basis, each Review Board member should report publicly on the outreach he/she has undertaken the previous year. Finally, the degree of each member's public outreach will be considered prior to reappointing the Review Board member to an additional term.	

OIPA Protocol Practice Improvements	
(51) The Model should be revised to authorize excused absences for good cause that would not count against the absence limitations.	
(52) The Model should be revised to expressly authorize OIPA and the BART PD Citizen Review Board to make statements about their oversight work.	
(53) The Model should be revised to call for periodic reviews of BART's oversight entities at a minimum of four-year intervals.	
(54) The Model should be revised to clarify whether a newly-seated BART Director may unilaterally remove his or her predecessor's BPCRB appointee and specify any time limits for doing so.	

Disagree/Clarification Needed: BART Police Oversight Recommendations

Expansion of Authority and/or Infringement on Personnel Policy
(1) The Model should be revised to make clear that the scope of the OIPA's authority extends to non-sworn employees of BART PD and to all potential misconduct involving sworn officers whether on or off duty.
(3) Should OIPA move to real-time monitoring, it should be involved in decisions regarding whether a matter should be forwarded to the District Attorney for criminal review, and the appropriate scoping of an investigation.
(4) OIPA should make its reported data on investigations and recommended discipline clearer and should publicly report its involvement and auditing functions in detail, setting out its assessment of the quality of each investigation and the appropriateness of each disposition and disciplinary determination. The Model should be modified to provide OIPA the express authority to report any resistance by BART PD to conduct additional investigation to the attention of the Board of Directors, the General Manager, the BART Police Citizen Review Board, and the public.
(12) When a concluded investigation does not result in a sustained finding, OIPA should offer the complainant the opportunity to view any video account of the incident.
(14) The Model should be revised to provide the Auditor the discretion to present BART PD internal investigations to the BART Police Citizen Review Board in order to receive input and feedback.
(15) The Model should be changed to require the Chief to timely put forward the reasons and arguments for appeal in writing and provide the Auditor and the Chair of the BART Police Citizen Review Board the opportunity to respond in writing, to be present at any appeal meeting, and to respond to any additional arguments set forth by the Chief at the appeal meeting. The Model should be further revised to require the General Manager to set out her/his findings in writing.
(16) The Model should be changed to require the Auditor to publicly report the results of any such appeal meeting consistent with state law confidentiality requirements.
(21) The Model should be revised to require the Chief of Police to consult with the Auditor prior to modifying any additional disposition or disciplinary determinations. The Model should provide the Auditor an appeal process to the General Manager should he believe that any modification would result in a serious erosion of accountability. The Model should require the Auditor to publicly report on any modification of an initial disposition or disciplinary modification and whether he agreed with the modification.

Expansion of Authority and/or Infringement on Personnel Policy
(22) The Model should be revised to require BART to apprise OIPA of any offers to settle cases after discipline has been imposed and provide the Auditor an opportunity for consultation. The Model should provide the Auditor the opportunity to appeal any intention to settle the matter to the General Manager should the Auditor find that the settlement would amount to a serious erosion of individual accountability. The Model should require the Auditor to publicly report on any cases settled at the post-discipline stage and whether OIPA agreed with the decision to settle.
(25) OIPA should be provided authority to review claims and lawsuits to ensure allegations of misconduct are thoroughly investigated.
(27) OIPA should report publicly on its work in reviewing civil litigation.
(31) OIPA should regularly participate in BART PD's use of force review boards.
(32) OIPA should report publicly on its use of force review program including the outcome of BART PD's use of force review boards.
(38) The Model should be revised to provide OIPA the authority and responsibility to be involved in any policy or training initiatives being developed by BART PD and report publicly on any reforms.
(39) The Model should be revised to provide OIPA the express authority to forward policy recommendations to the General Manager and/or Board of Directors. In situations in which OIPA's recommendations are not accepted by BART PD, OIPA should consider whether to forward its recommendations for further consideration to BART's governing entity.

BART Police Managers' Association

101 8th STREET OAKLAND, CA 94604

February 14, 2018

BART Board of Directors
P.O. Box 12688
Oakland, CA 94604-2688

President Raburn and Members of the Board,

On behalf of the BART Police Managers' Association, I wanted to send a letter outlining the Association's thoughts on report issued by the OIR Group regarding the independent review of the BART Police oversight structure. We know the report was lengthy and contained 53 recommendations for you all to consider, so there is a lot of information to digest before any decisions are made. We felt it is important for us to share our perspective with you so you can have a well-rounded understanding of the issues with some of the recommendations.

Below is our feedback in regard to each of the recommendations:

Recommendation 1:

- We agree with the part of the recommendation that OIPA's oversight scope should include all employees who conduct enforcement related activities and the ability to investigate any policy violations, however it should not include those in non-enforcement positions since employees within other Departments at BART working similar type jobs are not subject to this type of oversight. We also agree with the part of the recommendation that OIPA should conduct investigations in regard to off-duty conduct, however only when there is a nexus to the employee's employment at BART.

Recommendation 2:

- We agree with the recommendation that OIPA should consider modifying is monitoring function of BART PD's internal affairs investigations to "real-time" monitoring, as it would make the process more efficient.

Recommendation 3:

- We disagree with the recommendation that OIPA should be involved in decisions regarding whether a matter should be forwarded to the District Attorney for criminal review as this is outside of the scope of an administrative investigation. Conducting a criminal investigation is vastly different than conducting an administrative investigation, thus OIPA would be working outside of their area of expertise and training.

Recommendation 4:

- We agree with the part of the recommendation that OIPA should make its reported data on investigations and recommended discipline clearer and publicly report its involvement and auditing functions, as they already have a foundation for this through their monthly report publication. We disagree with the part of the recommendation that OIPA should publicly report any resistance by BART PD, as we have found through working with OIPA that perceived resistance could simply be a difference of opinion based on different perspectives of the issue. There have been some issues that have arisen in the past where the Department was unable to enact the recommendations simply because it is not efficient or an accepted best practice in the law enforcement industry.

Recommendation 5:

- We agree with the recommendation that OIPA should be allowed to accept complains from all persons.

Recommendation 6:

- We agree with the recommendation that OIPA should have the ability to investigate any allegation of misconduct, however with the caveat that they only have the authority to investigate those employees involved in enforcement related activities.

Recommendation 7:

- We disagree with the recommendation that OIPA should develop an investigative paradigm whereby OIPA would determine whether to investigate any complaint allegations received initially by their office, as they should investigate all allegations received by their office since the complainant was more comfortable reporting it to them. They should notify BART PD Office of Internal Affairs of the complaint, but it should be left up to the Department to determine if they want to open a parallel investigation. Nonetheless, the Chief of Police should remain the final reviewer and decision-maker of the investigations in regard to discipline thus allowing OIPA to continue making their recommendations to the Chief of Police.

Recommendation 8:

- We agree with the recommendation that OIPA should develop a handbook to provide guidance and expectations for its internal investigations.

Recommendation 9:

- We agree with the recommendation that OIPA should set out investigation timelines in its internal protocols.

Recommendation 10:

- We agree with the recommendation that OIPA should recommend a finding of sustained, not sustained, exonerated, or unfounded.

Recommendation 11:

- We disagree with the recommendation that OIPA should tailor their closing letters to provide additional information to the complainant, as confidentiality laws require certain aspects of the investigation to remain confidential.

Recommendation 12:

- We disagree with the recommendation that OIPA should have the opportunity to allow a complainant the opportunity to view any video in cases not resulting in a sustained finding, as the videos are often criminal evidence and should only be released or shown when ordered through a proper legal process.

Recommendation 13:

- We agree with the recommendation for the Model to be revised to instruct the BART Police Citizen Review Board's vote tally by member on the Auditor's case recommendations, allowing the dissenters to set out their rational for diverging from the majorities determination, and for those findings to be made public.

Recommendation 14:

- We disagree with the recommendation that OIPA should present BART PD internal affairs cases to the BART Police Citizen Review Board, as we don't see the benefit of them presenting cases they are not currently investigating themselves.

Recommendation 15:

- We disagree with the recommendation that the Chief of Police and General Manager be required to set out their findings in writing.

Recommendation 16:

- We disagree with the recommendation that the Auditor publicly report on the results of any appeal meeting with the General Manager, as this would cause divisive relationship since this would be the end of his appeal process and this method would seem to be trying to use public opinion to force his/her recommended outcome.

Recommendation 17

- We agree with the recommendation that when the oversight entities disagree that the General Manager will convene a meeting and solicit input from all parties before rendering his/her decision, as long as the discussions remain confidential.

Recommendation 18:

- We disagree with the recommendation that complainants should be provided the right to appeal to the OIPA the findings of any internal affairs investigation, as the OIPA should be monitoring all the investigations and note any issues prior to the final disposition. This would provide a complainant "two bites at the apple" should they disagree with a disposition.

Recommendation 19:

- We disagree with the recommendation that the Police Department's notification letter to the complainant be required to include the complainant's right to appeal the findings to the OIPA, as this would again be providing the complainant "two bites at the apple."

Recommendation 20

- We agree with the recommendation that the OIPA should regularly report on the number of appears received and the results of those appeals, as there is already a limited appeals process through OIPA and they already report on those appeals in their monthly report.

Recommendation 21

- We disagree with the recommendation that the Chief of Police should be required to consult with the Auditor prior to modifying any initial disposition or disciplinary actions, as usurp the authority of the Chief of Police who was hired to be the chief executive of the Department.

Recommendation 22

- We disagree with the recommendation that the District apprise the OIPA of any offers to settle cases after discipline has been imposed and provide the Auditor an opportunity for consultation, as there is an administrative appeals process authorized by the California Police Officer Bill of Rights (POBR) and the ultimately determination should rest with the General Manager or Chief of Police.

Recommendation 23

- We disagree with the part of the recommendation that the Auditor report on any arbitration cases, as the arbitration process supersedes the internal affairs and/or oversight investigation processes and OIPA is not involved in the arbitration. We agree with the part of the recommendation that the Auditor should review the arbitration decision to identify any systemic issues that formed the basis for any modification and work with the Department to remedy those issues.

Recommendation 24

- We disagree with the recommendation that the OIPA should publicly report on every investigation from, inception to conclusion, and provide information about the case result and the degree to which OIPA and BART Police Citizen Review Board recommendations were implemented, as this would foster a divisive relationship.

Recommendation 25

- We disagree with the recommendation that the OIPA should be provided the authority to review claims and lawsuits to ensure allegations of misconduct are thoroughly investigation, as the Department would be aware of all the fact/circumstances leading to the lawsuit and should initiate an investigation if needed.

Recommendation 26:

- We agree with the recommendation that the OIPA should review any significant settlement and adverse judgements involving BART PD performance and work with the Department to develop corrective actions intended to remediate any systemic issues.

Recommendation 27:

- We agree with the recommendation that the OIPA should publicly report on its work in reviewing civil litigation, if it pertains only to systemic issues they identify and are trying to remediate.

Recommendation 28:

- We agree with the recommendation that the OIPA should increase its efforts to create a mediation process that is attractive to complainants and officers, as we have yet to have any case process through mediation.

Recommendation 29:

- We agree with the recommendation that the OIPA is notified timely of any critical incident, as the Department has already implemented this process outside of being required by the Model.

Recommendation 30:

- We disagree with the recommendation that the OIPA be provided the authority and responsibility to review all use of force incident, as the OIPA has full access already to all records/videos and there is already an extremely robust use of force review process in place at the Department.

Recommendation 31:

- We disagree with the recommendation that the OIPA should regularly participate in the use of force review board, as there is already an extremely robust use of force review process in place at the Department and the OIPA does not have the training and/or expertise to be able to evaluate every use of force.

Recommendation 32:

- We disagree with the recommendation that the OIPA should report publicly on the use of force review program and outcomes of the use of force review programs, as the Chief of Police already produces a monthly report provided to the BART Police Citizen Review Board that identified the number of use of force incident and any excessive use of force incident would be identified through an internal affairs investigation.

Recommendation 33:

- We disagree with the recommendation that the OIPA should report publicly on the internal review of officer-involved shootings, in-custody deaths, or serious uses of force, as the County District Attorney already releases their findings of an independent review.

Recommendation 34:

- We don't have a definitive opinion on the OIPA participating in the Department's early identification process, however there should be a clearly defined role for them if they are included in the process.

Recommendation 35

- We disagree with the recommendation that the OIPA should regularly report on the status of the Department's early identification system and results, as we are unclear as to what can be reported out because most, if not all, of the information is to remain confidential by law.

Recommendation 36:

- We agree with the recommendation that the OIPA have the authority, access to data and records, staffing, and responsibility to conduct systemic audits of Department functions.

Recommendation 37

- We agree with the part of the recommendation that the OIPA should have the authority and responsibility to monitor any audits conducted by the Department, however we disagree with the part of the recommendation that the OIPA should report publicly on the audits as they should not be reporting on work they did not conduct themselves.

Recommendation 38:

- We disagree with the recommendation that the OIPA be provided the authority and responsibility to be involved in any policy or training initiative being developed by the Department. The members of the OIPA are policing experts, nor do they have the knowledge or training to provide direct input on all the practices of law enforcement.

Recommendation 39:

- We disagree with the recommendation that the OIPA should be provided the authority to forward policy recommendations to the General Manager and/or Board of Directors, as the BART Police Citizen Review Board already has this authority and the OIPA should have their support on any policy being pushed through this process and if not then the policy should probably not process anyway.

Recommendation 40:

- We agree with the recommendation that the OIPA should include an update on any previous outstanding recommendations and the degree to which the recommendations were endorsed by the BART Police Citizen Review Board and accepted by the Department.

Recommendation 41:

- We agree with the recommendation that OIPA should ensure the Department's policy manual incorporate the authority of its oversight entities and the duty of members to cooperate in the execution of that authority, as it is already the practice for members of the Department to cooperate with investigation conducted by OIPA and would only necessitate a single line being added to one of our existing policies.

Recommendation 42:

- We agree with the recommendation that the OIPA and BART Police Citizen Review Board should attempt to schedule a meeting at least annually with the two Police Associations.

Recommendation 43:

- We agree with the recommendation that the OIPA and Citizen Review Board should have independent and complementary roles defined in the Model.

Recommendation 44:

- We have a neutral opinion on whether BART should create an executive assistant position for the BART Police Citizen Review Board.

Recommendation 45:

- We agree with the recommendation that the Citizen Review Board is one potential source of information when the Board of Directors is seeking input on the performance of OIPA.

Recommendation 46

- We agree with the recommendation that the OIPA should be provided the opportunity for input when a BART Police Citizen Review Board member seeks reappointment.

Recommendation 47

- We agree with the recommendation that the Model should clarify that former BART PD personnel are ineligible to serve on the BART Police Citizen Review Board.

Recommendation 48

- We agree with the recommendation that a training curriculum should be devised for incoming BART Police Citizen Review Board members and in-service training should be provided at least semi-annually to current review board members.

Recommendation 49

- We agree with the recommendation that the BART Police Citizen Review Board should consider rotating its meetings to a wider array of locales served by BART.

Recommendation 50

- We agree with the recommendation that procedures should be adopted by the BART Police Citizen Review Board to ensure that the Model's commitment to outreach is achieved.

Recommendation 51

- We agree with the recommendation that the Model be revised to authorize excused absences for good cause that would not count against the absence limitations.

Recommendation 52

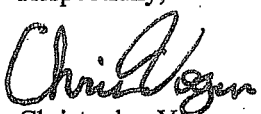
- We disagree with the recommendation that the Model should be revised to expressly authorize OIPA and the BART Police Citizen Review Board to make public statements about their oversight work, as they should be working with the Department to resolve any issues identified rather than using the media to try to control the Department. This would again foster an us versus them mentality when the two entities disagree with the Department.

Recommendation 53

- We agree with the recommendation that the Model should be revised to call for periodic reviews of BART's oversight entities at a minimum of four-year intervals.

I hope this letter helped to clarify the position of the BPMA and if you have any further questions or concerns, please feel free to contact me at bartpma@gmail.com.

Respectfully,



Christopher Vogan
President
BART Police Managers' Association

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

MEMORANDUM

TO: Board of Directors **DATE:** February 15, 2018

FROM: Grace Crunican

SUBJECT: Dublin/Pleasanton BART Hybrid Parking Update – For Information

On February 9, 2017, the BART Board considered adoption of a parking garage project for the Dublin / Pleasanton BART station that would add 540 net new parking spaces for BART patrons on an existing BART surface parking lot. Before deciding, the Board directed staff to assess alternative methods and technologies to provide 540 net new parking spaces more cost-effectively, as well as options for multimodal station access improvements. At the July 27, 2017 meeting, the BART Board considered staff's recommendations and directed staff to advance the Hybrid Parking program to improve access to the Tri-Valley BART stations. It was determined that the Hybrid Parking program presented a more cost-effective and flexible solution with a faster implementation timeframe, to provide 540 new parking spaces. The Board also directed staff to advance the Iron Horse Trail/Bike Parking Project to improve pedestrian and bicycle access at the Dublin/Pleasanton station.

At the February 22, 2018 Board meeting, staff will give an update on the progress of these efforts and highlight two recent developments relevant to the project, as listed below.

1) **Alameda County proposal for a garage adjacent to the D/P BART station:** On behalf of Alameda County, the Livermore-Amador Transit Authority (LAVTA), an eligible recipient of SB1 funds, submitted an SB1 Transit and Intercity Rail Capital Program (TIRCP) grant application for $20 M in January 2018 for the construction of a multi-level parking structure with 398 spaces near the Dublin / Pleasanton BART station. The garage is to be planned, constructed, operated, maintained and owned by Alameda County (See Attachment 1 – LAVTA "Submittal of TIRCP Grant Application"). TIRCP grant awards are expected to be announced on April 30, 2018.

2) **City of Pleasanton does not support the proposed Shared Parking near the West Dublin / Pleasanton BART Station:** The Hybrid Parking program included a shared parking component at an existing, underutilized retail center parking lot located ½ mile from the West Dublin / Pleasanton BART station. In December, BART staff met with City of Pleasanton staff to discuss next steps to advance a shared parking agreement between BART and the owner of the parking lot (Regency Center). In response, BART staff received a letter dated February 2, 2018 (See Attachment 2: "BART Parking at JC Penney

Plaza Shopping Center") indicating that City of Pleasanton would not support shared parking at this site. Under local zoning regulations, BART would need a City action to allow shared use parking with the retail center. In light of the City's response, BART staff is in the process of reassessing the Hybrid Parking program proposal by shifting 155 parking spaces originally intended as shared parking spaces to the automated parking system. Details will be included in the staff presentation.

Due to these recent developments, staff wanted to provide the Board with an update, and get the Board's direction on next steps.

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

Grace Crunican

cc: Board Appointed Officers
Deputy General Manager
Executive Staff

Attachment 1: Submittal of TIRCP Grant Application

LIVERMORE AMADOR VALLEY TRANSIT AUTHORITY

STAFF REPORT

SUBJECT: Submittal of TIRCP Grant Application

FROM: Michael Tree, Executive Director

DATE: January 8, 2018

Action Requested
Staff recommendation is that the LAVTA Board provide the Executive Director with signature authorization to approve and submit a TIRCP application to fund a parking garage adjacent to the Dublin/Pleasanton BART station. Said parking garage will be planned, constructed, operated, maintained and owned by the County of Alameda.

Background
The Transit and Intercity Rail Capital Program (TIRCP) was created by Senate Bill (SB) 862 (Chapter 36, Statutes of 2014) and modified by Senate Bill 9 (Chapter 710, Statutes of 2015) to provide grants from the Greenhouse Gas Reduction Fund to fund transformative capital improvements that will modernize California's intercity, commuter, and urban rail systems, and bus and ferry transit systems to reduce emissions of greenhouse gases by reducing congestion and vehicle miles traveled throughout California. The goal of the TIRCP is to provide monies to fund transformative capital improvements that modernize California's intercity rail, bus, ferry and rail transit systems to achieve the following objectives:

- Reduction in greenhouse gas emissions;
- Expand and improve rail service to increase ridership;
- Integrate the rail service of the state's various rail operations, including integration with the high-speed rail system; and
- Improve safety

The California Department of Transportation, in collaboration with CalSTA, is responsible for administering this program.

Eligible applicants must be public agencies, including joint powers agencies, that operate or have planning responsibility for existing or planned regularly scheduled intercity or commuter passenger rail service (and associated feeder bus service to intercity rail services), urban rail transit service, or bus or ferry transit service (including commuter bus services and vanpool services).

Projects eligible for funding under the program include, but are not limited to, rail capital projects, including the acquisition of rail cars and locomotives, and the facilities to support

them that expand, enhance, or improve existing rail systems and connectivity to existing and future transit systems, including the high-speed rail system.

Discussion
The County of Alameda has the need for a parking garage on a 2.46-acre parcel of Alameda County-owned land, adjacent to the Dublin/Pleasanton BART station. The envisioned $34 million 398 space parking garage will add much-needed parking in a critical transit center that includes BART, County Connection, MAX BART Express, San Joaquin RTD, Stanislaus Regional Transit and Wheels (LAVTA) and will facilitate commuters that are seeking to utilize transit, but are often denied due to lack of parking as early as 7:30a.m. at the BART station. The project is a future-thinking project that incorporates new and still developing technology to reduce greenhouse gas emissions. The garage will include electric vehicle charging stations and preferred parking to vanpools to further maximize utilization.

The County has approached LAVTA with the intent to partner with the transit agency to submit a qualified application. The partnership will entail an application by LAVTA for funding towards the parking garage, with the County providing the staff to prepare the application, plan and manage the construction of the project, and operate, maintain, and own the completed garage.

Fiscal Impact
None

Recommendation
Staff recommendation is that the LAVTA Board provide the Executive Director with signature authorization to approve and submit a TIRCP application to fund a parking garage adjacent to the Dublin/Pleasanton BART station. Said parking garage will be planned, constructed, operated, maintained and owned by the County of Alameda.

Attachments:

1. Letter dated January 3, 2018 from Alameda County

Submitted: _____

WILLIE A. HOPKINS, JR., Director

1401 LAKESIDE DRIVE, OAKLAND, CALIFORNIA 94612 510 208 9700 FAX 510 208 9711 WWW.ACGOV.ORG/GSA/

January 3, 2018

TO: Michael Tree, Executive Director, Livermore Amador Valley Transit Authority

FROM: Willie A. Hopkins, Jr., Director, Alameda County, General Services Agency

SUBJECT: PROPOSED DUBLIN PARKING GARAGE PARTNERSHIP

This memo provides an overview of the need for a parking garage on a 2.46-acre parcel of Alameda County-owned land, adjacent to the Dublin Bay Area Rapid Transit (BART) Station, how this project would be of benefit to the region, and why Livermore Amador Valley Transit Authority (LAVTA) should support Alameda County's application to the 2018 Transit and Intercity Rail Capital Program.

Bay Area residents are experiencing increasingly worse traffic congestion. The Metropolitan Transportation Commission (MTC) recently found that traffic congestion has increased 80% since 2010, with 5 of the top most congested freeways occurring in Alameda County. Furthermore, commuters that are seeking to utilize transit are often denied due to lack of parking. BART estimates that the Dublin BART station is completely full by 7:30 AM daily. Providing additional parking at transit connections will allow more commuters to transition to transit and reduce overall vehicle miles traveled.

The proposed $34 million project will add much-needed parking for 398 vehicles in a critical transit center that includes BART, County Connection, Max BART Express, San Joaquin RTD, Stanislaus Regional Transit, and Wheels (LAVTA). The proposed partnership project between Alameda County and LAVTA builds upon prior efforts from BART to expand parking at transit stations and continues the trend to alleviate congestion and encourage increased utilization of transit.

This proposal is a future-thinking project that incorporates new and still developing technology to reduce greenhouse gas emissions. The garage is designed to accommodate the rise of autonomous vehicles and the resulting decrease in parking demand with design features that allow for the transformation of the building to office or other commercial space instead of a complete demolition. The garage will also include electric vehicle charging stations and preferred parking to vanpools to further maximize utilization.

The proposed project is well-qualified for the Transit and Intercity Rail Capital Program by reducing vehicle miles traveled through increasing ridership of existing systems and provide an excellent opportunity for our two agencies to work together to provide improved services to our residents.

Please contact me if you have any additional questions or comments.

Attachment 2: BART Parking at JC Penney Plaza Shopping Center

THE CITY OF

PLEASANTON

February 2, 2018

Rachel Factor
Senior Planner
San Francisco Bay Area Rapid Transit District
300 Lakeside Drive, 21st Floor
Oakland, CA 94604-2688

Subject: BART Parking at JC Penney Plaza Shopping Center

Dear Rachel:

Thank you for your patience while we've looked into your inquiry about utilizing some of the parking at the Regency Center/Pleasanton Plaza Shopping Center ("Regency Center", also known as the JC Penney Plaza). We appreciate you sharing the Transportation Analysis and Parking Study for the Hybrid Parking Strategy prepared by Urban Planning Partners/TJKM.

West Pleasanton

The Regency Center is zoned Regional Commercial-Periphery (C-R(P)) District. The Pleasanton Municipal Code does not allow parking in this zoning district to be leased or rented to another property owner or use, even if the City determines there is excess parking. Further, based on a review of the shopping center's permitted uses and required parking ratios, staff does not find there to be a surplus of parking at the shopping center. Therefore, the City is unable to support BART's proposal to lease parking at this site.

In addition to the zoning conflict, the proposed location is nearly a half mile from the BART station. The City does not believe that the Regency remote lot would serve the needs of the BART riders or Stoneridge Mall and BART passengers would continue to use the Mall parking lot as a closer alternative.

East Pleasanton

The City is supportive of a pilot study to determine if attendant parking is a viable solution. We are unaware and the study did not identify any similar attendant parking implementations where the patrons arrive in concentrated numbers. This may extend wait times for both the drop off and pick up of vehicles which may ultimately make the attendant solution unsuccessful.

COMMUNITY DEVELOPMENT
www.cityofpleasantonca.gov
P. O. BOX 520 · 200 Old Bernal Avenue
Pleasanton, CA 94566-0802

Planning	Building & Safety	Code Enforcement	Permit Center	Traffic Engineering
(925) 931-5600	(925) 931-5300	(925) 931-5620	(925) 931-5630	(925) 931-5677
Fax: 931-5483	Fax: 931-5478	Fax: 931-5478	Fax: 931-5478	Fax: 931-5487

Although the City is encouraged by the pursuit of alternate solutions, the Dublin Garage Expansion is the preferred solution.

If you have any questions regarding the aforementioned, please do not hesitate to contact me at 925-931-5614 or gbeaudin@cityofpleasantonca.gov.

Sincerely,

Gerry Beaudin
Director of Community Development

c: Mike Tassano, City Traffic Engineer
Ellen Clark, Planning Manager