

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

BOARD MEETING AGENDA

September 13, 2018

9:00 a.m.

A regular meeting of the Board of Directors will be held at 9:00 a.m. on Thursday, September 13, 2018, in the BART Board Room, Kaiser Center 20th Street Mall – Third Floor, 2040 Webster Street, Oakland, California.

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

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

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

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

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

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

Meeting notices and agendas are available for review on the District's website (<http://www.bart.gov/about/bod/meetings.aspx>), at www.bart.legistar.com, 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.

Patricia K. Williams
Interim District Secretary

Regular Meeting of the
BOARD OF DIRECTORS

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

1. CALL TO ORDER

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

2. CONSENT CALENDAR

- A. Approval of Minutes of the Meeting of August 9, 2018.*
Board requested to authorize.
- B. Enterprise Software License Agreement, with Environmental Systems Research Institute (ESRI).* Board requested to authorize.
- C. Audit of Directors' Use of District Property for Fiscal Year 2018.*
Board requested to accept.
- D. Award of Invitation for Bid No. 9042A, Purchase 35kV Isolation Disconnect Switches, with Trayer Engineering Corporation.*
Board requested to authorize.

3. PUBLIC COMMENT – 15 Minutes

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

4. ADMINISTRATION ITEMS

Director Allen, Chairperson

- A. Fiscal Year 2019 Draft Short Range Transit Plan/Capital Improvement Program.* For information.
- B. Policy to Prohibit Travel to States with Anti - Lesbian, Gay, Bisexual, Transgender, and Queer (LGBTQ) Laws.* Board requested to adopt.

5. ENGINEERING AND OPERATIONS ITEMS

Director Simon, Chairperson

- A. Safety and Security Action Plan Tracking Matrix Update.* For information.
- B. Award of Contract No. 54RR-410, Coverboard Enhancement, C-Line with A, C, and M at the Oakland Wye, with LC General Engineering and Construction, Inc.* Board requested to authorize.

- C. Agreements to Advance Fiscal Year 2019 Quality of Life Initiatives.*
Board requested to authorize.
- D. Award Agreements for Districtwide Small Business Supportive Services.*
 - a. Agreement No. 6M5125 with The Allen Group, LLC., for Pre-Award Small Business Supportive Services.
 - b. Agreement No. 6M5134 with The Allen Group, LLC., for Post-Award Small Business Supportive Services.
 Board requested to authorize.
- E. District Surveillance Technology Policy/Ordinance.* Board requested to approve policy or, in the alternative, direct staff to bring ordinance back for a second reading.
- F. Transbay Tube Earthquake Safety Service Plan Update.*
For information.

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

Director Blalock, Chairperson

- A. Authorization of Exclusive Negotiating Agreement for Transit-Oriented Development with East Bay Asian Local Development Corporation (EBALDC)/Strada Investment Group, a joint venture, at the Lake Merritt BART Station.* Board requested to authorize.

7. GENERAL MANAGER'S REPORT

- A. Review of the Draft Agenda for the Capitol Corridor Joint Powers Board Meeting of September 19, 2018.* For information.
- B. 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. BOARD MATTERS - TRAINING

- A. Training Session: Training in Sexual Harassment Prevention, in accordance with California Government Code Section 12950.1*
For information. (2 hours)
- B. Training Session: Training in General Ethics Principles and Ethics Laws Relevant to Public Service, in Accordance with California Government Code Section 53235.* For information. (2 hours)

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

A. CONFERENCE WITH LABOR NEGOTIATORS:

Designated representatives: Grace Crunican, General Manager; Michael Jones, Assistant General Manager, Administration; 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

B. PUBLIC EMPLOYEE EMPLOYMENT

Title: District Secretary

Government Code Section: 54957(b)(1)

C. CONFERENCE WITH NEGOTIATORS

Designated Representatives: Directors Keller, Raburn, and Simon

Title: District Secretary

Government Code Section: 54957.6

12. OPEN SESSION

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

300 Lakeside Drive, P.O. Box 12688, Oakland, CA 94604-2688

Board of Directors
Minutes of the 1,818th Meeting
August 9, 2018

A regular meeting of the Board of Directors was held August 9, 2018, convening at 9:01 a.m. in the BART Board Room, 2040 Webster Street, Oakland, California; and Provincetown Inn, 1 Commercial Street, Provincetown, Massachusetts. President Raburn presided; Patricia K. Williams, Interim District Secretary.

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

Present in Massachusetts: Director Dufty.

Absent: None.

President Raburn called for Introduction of Special Guests. General Manager Grace Crunican introduced Assistant General Manager, Operations, Mr. Paul Oversier, and thanked him for his 28 years of service to BART.

President Raburn announced that under the provisions of the Rules of the Board of Directors of the San Francisco Bay Area Rapid Transit District, this was the time set to hold a public hearing on the Proposed Termination of the BART Teenage Student Discount (Orange Ticket) Trial Program for Students at Participating Middle and High Schools, that staff would give a brief presentation on the item, and that the meeting would then be opened for comments from the public.

Ms. Pamela Herhold, Assistant General Manager, Performance and Budgets; and Ms. Karen Basting, Department Manager, Customer Service, presented the item.

Aleta Dupree and Margy Wilkinson addressed the Board

There being no further public comment, the Public Hearing was closed.

Consent Calendar items brought before the Board were:

1. Approval of Minutes of the Meeting of July 12, 2018.
2. Side Letters of Agreement.
 - a. Amalgamated Transit Union, Local 1555 (eBART) SL 17-02, Clarification of Special Pay Provisions.
 - b. Amalgamated Transit Union, Local 1555, SL 02-18, Warm Springs and Berryessa Stations.
3. Fixed Property Tax Rates Fiscal Year 2018-2019 General Obligation Bonds.

4. Lifeline Transportation Program Cycle 5 Funds.
5. Revision of Equal Employment Opportunity (EEO) and Prevention of Sexual Harassment in the Workplace Policies.

Director Saltzman made the following motions as a unit. Director McPartland seconded the motions, which carried by unanimous roll call vote. Ayes – 9: Directors Allen, Blalock, Dufty, Josefowitz, Keller, McPartland, Saltzman, Simon, and Raburn. Noes – 0.

1. That the Minutes of the Meeting of July 12, 2018, be approved.
2. a. That the General Manager be authorized to execute Side Letter of Agreement ATU (eBART)/SL 17-02 regarding Clarification of Special Pay.
b. That the General Manager be authorized to execute Side Letter of Agreement ATU/SL 01-18 regarding Warm Springs and Berryessa Stations between the District and Amalgamated Transit Union Local 1555.
3. Adoption of Resolution No. 5376, In the Matter of Fixing the Rate of Taxes for San Francisco Bay Area Rapid Transit District for Fiscal Year 2018/19.
4. Adoption of Resolution No. 5377, In the Matter of Authorizing Action Necessary to Obtain Cycle 5 Lifeline Transportation Funds from the Metropolitan Transportation Commission.
5. Adoption of the revised Equal Employment Opportunity and Prevention of Sexual Harassment in the Workplace Policies.

President Raburn called for Public Comment.

The following individuals addressed the Board.

Clarence Fischer
Michael Moore
Antwon Cloird
Alamo Brown
Robert S. Allen
Jim Wunderman
Blake G.
James Burch
John Arantes

Director Allen, Chairperson of the Administration Committee, brought the matter of Proposed Termination of the BART Teenage Student Discount (Orange Ticket) Trial Program for Students at Participating Middle and High Schools before the Board. Ms. Herhold and Ms. Basting presented the item. The item was discussed.

Aleta Dupree addressed the Board.

President Raburn moved approval of the termination of the BART Discounted “Teenage Student Discount” (Orange Ticket) Trial Program for Students at Participating Middle and High Schools. Director Blalock seconded the motion, which carried by unanimous roll call vote. Ayes – 9: Directors Allen, Blalock, Dufty, Josefowitz, Keller, McPartland, Saltzman, Simon, and Raburn. Noes – 0.

Director Allen brought the matter of BART Safety and Security Action Plan before the Board. Ms. Crunican; Mr. Oversier; Ms. Kerry Hamill, Assistant General Manager, External Affairs; Police Chief Carlos Rojas; and Mr. Travis Engstrom, Assistant Chief Information Officer, presented the item.

The following individuals addressed the Board:

Clarence Fischer	Lou F.
Aleta Dupree	P.F.
Brian Hofer	Joshua Davis
Ken Castle	Michael Moore
Don Fogg	Tracy Rosenberg
Darrell Owens	Ankush Ganapathy
Victoria Fierce	Nagil Arnaaat
Ben Eversole	Roman Kimer
Jim Wunderman	Tekla Balukas
Jackie Barshak	Blake G.
Alexander Post	Charlotta Wallace
Kenji Yamada-read into record	Tareq Samman
Catherine Hutching	Starchild
Mike Chase	Dayten Andrews
Cassidy Crofton	Michael Thomas-read into record
Camille Ochoa	Sinuba Dreem
Lou Katz	
Donna Willmott	

The item was discussed.

Director Saltzman moved that the Board continue Initiative 6 Expansion & Conversion – Digital Camera Network In Stations, Parking Lots & Garages; Initiative 7 Physical Security Information Management (PSIM) System – Implement Systemwide; Initiative 8 Platform Emergency Call Boxes; Initiative 9 Video Screens Showing Real Time Station CCTV Images & Enhanced Video Surveillance Signage; Initiative 10 “No Panhandling” Ordinance within paid areas; Initiative 11 Accelerate System Hardening Efforts; and Initiative 12 Additional Proof of Payment Team For Evenings, be continued to a future meeting. Director Dufty seconded the motion.

Discussion continued.

Director Blalock requested an amendment to exclude Initiative 6 Expansion & Conversion – Digital Camera Network in Stations. Director Saltzman did not accept the amendment.

Director Blalock made a substitute motion to exclude Initiative 6 Expansion & Conversion – Digital Camera Network in Stations. Director McPartland seconded the substitute motion.

Director Simon requested an amendment to the substitute motion to also exclude Initiative 8 Platform Emergency Call Boxes. Directors Blalock and McPartland accepted the amendment.

Discussion continued.

Director Keller made a second substitute motion to continue Initiatives 6 through 12, to an evening meeting in central Contra Costa County, Dublin/Pleasanton or Richmond.

Discussion continued.

Director Keller revised his substitute motion to include El Cerrito or any suburban city.

Discussion continued.

Director Keller further revised his substitute motion to include that the proposed Surveillance Policy come forward in 30 days for action. President Raburn seconded the this substitute motion.

Discussion continued.

Director McPartland made a third substitute motion to continue initiatives 7, 9, 10, 11 and 12 to a future meeting in a suburban city and that the proposed surveillance policy come forward in 30 days for action. Director Blalock seconded the third substitute motion.

President Raburn made a fourth substitute motion to continue Initiatives 6 through 12 to an evening meeting within 30 days in a suburban city.

Director Allen made a fifth substitute motion that the vote be taken on the second substitute motion excluding Initiative 6 and Initiative 8. Director Blalock seconded the fifth substitute motion.

Director Keller made a sixth substitute motion to continue Initiatives 7, 9, 10, 11, and 12 to an evening meeting within 30 days in a BART accessible suburban city, ending before midnight, with the Surveillance Policy being presented for action.

President Raburn seconded the sixth substitute motion. The motion carried by roll call vote. Ayes - 7: Directors Allen, Blalock, Dufty, Josefowitz, McPartland, Saltzman and Simon. Noes - 2: Directors Keller and Raburn.

Director Allen moved to direct the General Manager to move forward with Initiative 6 and Initiative 8. Director Blalock seconded the motion.

Director Josefowitz requested an amendment that the adoption of the Surveillance Policy take place before the procurement process proceeds.

Directors Allen and Blalock accepted the amendment.

Discussion continued.

Director Blalock called the question.

The motion carried by roll call vote. Ayes- 6: Directors Allen, Blalock, Keller, Josefowitz, McPartland, and Raburn. Noes – 3: Directors Dufty, Saltzman, and Simon.

Discussion continued.

Director Josefowitz moved that at the next meeting within the discussion of the BART Safety and Security Action Plan would be included plans on how to engage community organizations, social services, health departments, police, criminal justice, and elected officials to have a holistic response that includes regional partners. Director Dufty seconded the motion. The motion carried by unanimous roll call vote. Ayes – 9: Directors Allen, Blalock, Dufty, Josefowitz, Keller, McPartland, Saltzman, Simon, and Raburn. Noes – 0.

Director Dufty exited the meeting via teleconference.

The Board Meeting recessed at 1:30 p.m.

The Board Meeting reconvened at 1:57 p.m.

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

Absent: Director Dufty.

Director Allen brought the matter of Responses to the 2017-2018 Contra Costa Grand Jury Report No. 1804, “BART Crime and Transparency” before the Board. Ms. Herhold presented the item. The item was discussed. Director Saltzman moved that the Board approve the attached responses from the BART Board of Directors to the 2017-2018 Contra Costa Grand Jury Report No. 1804, “BART Crime and Transparency,” and that staff be directed to transmit those responses to Contra Costa Grand Jury. Director Blalock seconded the motion. The motion carried by unanimous roll call vote. Ayes – 8: Directors Allen, Blalock, Josefowitz, Keller, McPartland, Saltzman, Simon, and Raburn. Noes – 0. Absent – 1: Director Dufty.

Director Allen brought the matter of Resolution for the Authorization of the Certifications and Assurances for the California State of Good Repair Program before the Board. Ms. Herhold; and Ms. Donna Lee, Principal Planner, presented the item. The item was discussed. Director Saltzman moved adoption of Resolution No. 5378 Resolution of Authorization for the Execution of Certifications and Assurances for the California Sate of Good Repair Program, and that the General Manager be designated to execute all required documents for participation in this program. This action will enable the receipt of funds in the amount of \$6,102,066.00 to perform critical elevator escalator renovation and automatic fare collections/communications equipment repairs at various District stations and facilities. Director Keller seconded the motion. The motion carried by unanimous acclamation. Ayes – 8: Directors Allen, Blalock,

Josefowitz, Keller, McPartland, Saltzman, Simon, and Raburn. Noes – 0. Absent – 1: Director Duffy.

Director Allen brought the matter of District's Workers' Compensation Program Contracts: Award of Contract No. 6M4111, Workers' Compensation Third Party Administration Services; Award of Contract No: 6M4112, Workers' Compensation Medical Case Management Services; and Award of Contract No. 6M4113, Workers' Compensation Utilization Review/Bill Review Services before the Board. Mr. Michael Jones, Assistant General Manager, Administration; and Mr. Rod Maplestone, Human Resources, Division Manager, presented the item. The item was discussed.

Director Blalock made the following motions as a unit.

President Raburn requested the motion to award Agreement No. 6M4112 be amended to reflect the agreement would return to the Board for additional authorization prior to exercising the option years.

1. That the General Manager be authorized to award Agreement No. 6M4111, Third-Party Administration Services for the District's self-insured Workers' Compensation Program, to Athens Administrators, Inc., for an amount not to exceed \$3,542,584.00 for the base three-year period, pursuant to notification to be issued by the General Manager and subject to compliance with the District's protest procedures; and that the General Manager be authorized to exercise Option Year 1 for an amount not to exceed \$1,246,396.00 and Option Year 2 for an amount not to exceed \$1,280,672.00, subject to availability of funds. The Agreement authorizes Athens Administrators, Inc. to pay self-insured workers' compensation claims and losses out of a fund provided by the District to the amount required by law.
2. That the General Manager be authorized to award Agreement No. 6M4112, Worker's Compensation Medical Case Management, for the District's self-insured Workers' Compensation Program, to Excel Managed Care & Disability Services, Inc. for an amount not to exceed \$2,846,355 for the base three-year period, pursuant to notification to be issued by the General Manager and subject to compliance with the District's protest procedures; and that the Agreement be brought back before the Board of Directors in three years to ask permission to exercise the options, subject to availability of funds.
3. That the General Manager be authorized to award Agreement No. 6M4113, Utilization and Bill Review Services, for the District's self-insured Workers' Compensation Program, to CareWorks Managed Care Services, Inc. for an amount not-to-exceed \$1,050,507.80 for the base three-year period, pursuant to notification to be issued by the General Manager and subject to compliance with the District's protest procedures; and that the General Manager be authorized to exercise Option Year 1 for an amount not to exceed \$389,883.00 and Option Year 2 for an amount not to exceed \$414,824.25, subject to availability of funds.

Director Keller seconded the motions, which carried by unanimous roll call vote. Ayes – 8: Directors Allen, Blalock, Josefowitz, Keller, McPartland, Saltzman, Simon, and Raburn. Noes – 0. Absent – 1: Director Dufty.

Director Simon, Chairperson of the Engineering and Operations Committee, brought the following items before the Board:

1. Award of Contract No. 15EJ-171, 34.5 kV Cable Replacement M-Line MVS Switching Station and MTF, MSS, MPS, and MTW Substations.
2. Award of Contract No. 54RR-420, Coverboard Enhancement, L-Line.
3. Measure RR Project Support Leases and Rentals.
4. Change Order to Contract No. 01RQ-110, Construction of Hayward Maintenance Complex Project Maintenance Facilities, with Clark Construction Group – California, LP, for Differing Site Condition Soil Plasticity at CRS NOPC No. 6 (C.O. No. 170).
5. Change Orders to Contract No. 15IF-130A, Powell Street Station Ceiling Upgrades, with Icenogle Construction Management, Inc., for the Procurement and Installation of the Public-Address System Infrastructure.
6. Change Order to Agreement No. 6M5087, Disposal of Bulk Hazardous and Non-hazardous Liquid Wastes, with Environmental Resources Management, for General Environmental Services (C.O. No. 2).
7. Change Order to Invitation for Bid No. 8942, Provide Uniforms for Station Agents and Foreworkers, with Murphy and Hartelius Uniforms, for Extension of the Current Contract.
8. Change Order to Invitation for Bid No. 8947A, Provide Uniforms for Train Operators, with Banner Uniform Center, for Extension of the Current Contract.

Director Simon made the following motions as a unit. President Raburn seconded the motions, which carried by unanimous acclamation. Ayes – 8: Directors Allen, Blalock, Josefowitz, Keller, McPartland, Saltzman, Simon, and Raburn. Noes – 0. Absent – 1: Director Dufty.

1. That the General Manager be authorized to award Contract No. 15EJ-171, 34.5 kV Cable Replacement M-Line MBP-MTW Substations, to DMZ Builders Co, Inc. in the amount of \$79,195,100.00, pursuant to notification to be issued by the General Manager and subject to compliance with the District's protest procedures and Federal Transit Administration requirements related to protest procedures.
2. That the General Manager be authorized to award Contract No. 54RR-420, for Coverboard Enhancement, L-Line, to LC General Engineering, for the Base Bid price of \$3,192,843.73, pursuant to notification to be issued by the General Manager, and subject to compliance with the District's protest procedures.

3. That the General Manager be authorized to execute Lease and Rental Agreements for non-revenue vehicles and equipment as identified in Attachment II up to \$20,000,000.00, in the aggregate, for a period of 5 years with vendors listed in the current Attachment I, and those vendors added to Attachment I hereafter. (Attachments I and II are attached and hereby made a part of these minutes.)
4. That the General Manager be authorized to execute Change Order No. 170, Differing Site Condition Soil Plasticity at Component Repair Shop (CRS), for an amount not to exceed \$1,607,000, for Contract No. 01RQ-110, Hayward Maintenance Complex Project Maintenance Facilities, with Clark Construction.
5. That the General Manager be authorized to execute Change Orders, in an aggregate amount not to exceed \$500,000 to Contract No. 15IF-130A, Powell Street Station Ceiling Upgrades with Icenogle Construction Management, Inc., to support the procurement and infrastructure installation of a new public-address system.
6. That the General Manager or her designee be authorized to execute Change Order No. 2 to Agreement No. 6M5087, with Environmental Resource Management in the amount of \$1,000,000.00 for general environmental services to support BART's hazardous materials program.
7. That the General Manager or her designee be authorized to execute a Change Order to extend the contract with M&H for one year to procure additional Station Agent and Foreworker uniforms in the amount of \$848,692, including all applicable taxes.
8. That the General Manager be authorized to execute Change Order to extend the contract with Banner Uniform Center for one year to procure additional Train Operator uniforms in the amount of \$433,069, including all applicable taxes.

Mr. Oversier, Mr. Shane Edwards, Assistant Chief Maintenance and Engineering Officer; and Mr. Myat San, Manager, Traction Power Engineering, gave a presentation on Award of Contract No. 15EJ-171, 34.5 kV Cable Replacement M-Line MVS Switching Station and MTF, MSS, MPS, and MTW Substations.

The following individuals addressed the Board:

John Arantes
Aleta Dupree
Starchild

The item was discussed.

Aleta Dupree addressed the Board on Award of Contract No. 54RR-420, Coverboard Enhancement, L-Line.

Mr. Oversier and Mr. Edwards gave a presentation on Measure RR Project Support Leases and Rentals.

John Arantes addressed the Board.

The item was discussed.

Director Keller exited the meeting.

Director Simon brought the matter of Change Orders to Contract No. 40FA-110, Procurement of Transit Vehicles, with Bombardier Corporation before the Board. Mr. Oversier, Mr. John Garnham, Group Manager, Rail Vehicles; and Mr. David Hardt, Chief Mechanical Officer, gave a presentation. The item was discussed.

President Raburn moved that the General Manager or her designee be authorized to execute Change Order No. 029 (Dual Coupler Adapter) to Contract No. 40FA-110, Procurement of Transit Vehicles, in the amount of \$794,621.00, plus escalation and 9.75% sales tax; and that the General Manager or her designee be authorized to execute Change Order No. 030 (Side Door Header) to Contract No. 40FA-110, Procurement of Transit Vehicles, in the amount of \$1,425,085.00, plus escalation and 9.75% sales tax.

The motion carried by unanimous acclamation. Ayes – 7: Directors Allen, Blalock, Josefowitz, McPartland, Saltzman, Simon, and Raburn. Noes – 0. Absent – 2: Directors Dufty and Keller.

Director Simon brought the matter of Quarterly Performance Report, Fourth Quarter Fiscal Year 2018 – Service Performance Review before the Board. Ms. Crunican and Mr. Oversier presented the item. The item was discussed.

President Raburn called for the General Manager's Report.

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.

Director Blalock, Chairperson of the Planning, Public Affairs, Access, and Legislation Committee, brought the matter of State Legislation for Consideration before the Board. Mr. Roddrick Lee, Department Manager of Government and Community Relations, presented the item.

Mr. Lee gave a presentation on Senate Bill 1045 Conservatorship; serious mental illness and substance use disorders. The item was discussed.

Michael Moore addressed the Board.

Discussion continued.

Director Josefowitz moved that the Board of Directors take a support position on Senate Bill 1045 Conservatorship; serious mental illness and substance use disorders. Director Allen seconded the motion, which failed by electronic vote. Ayes - 4: Directors Allen, Blalock, Josefowitz, and McPartland. Noes - 1: Director Raburn. Abstain – 2: Directors Saltzman and Simon. Absent – 2: Directors Dufty and Keller.

Director Josefowitz recused himself from the presentation and vote on Senate Bill 1376 Transportation network companies: accessibility for persons with disabilities.

Director Josefowitz exited the meeting.

Mr. Lee gave a presentation on Senate Bill 1376 Transportation network companies: accessibility for persons with disabilities. The item was discussed.

Aleta Dupree addressed the Board.

President Raburn moved that the Board take a support position on Senate Bill 1376 Transportation network companies: accessibility for persons with disabilities. Director Saltzman seconded the motion, which carried by electronic vote. Ayes – 5: Directors Blalock, McPartland, Raburn, Saltzman, and Simon. Noes – 0. Abstain – 1: Director Allen. Absent – 3: Directors Dufty, Josefowitz, and Keller.

Director Josefowitz re-entered the meeting.

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

Director Simon reported attending the memorial service for Nia Wilson and working on a safer transport from the Santa Rita Jail due to the recent death of Jessica St. Louis at the Dublin/Pleasanton BART Station.

Director Blalock reported he had met with the Mayor of Fremont regarding Assembly Bill – 2923 San Francisco Bay Area Rapid Transit District: Transit Oriented Development; attended an Urban and Business Association meeting where he gave a Rebuilding BART presentation; met with a graduate student interested in transportation and gave a tour of the Warm Springs Station; and attended the Fremont Festival of the Arts.

President Raburn reported he had attended a special memorial at the MacArthur BART Station for Nia Wilson; attended Personnel Review Special Committee meetings; attended both the Pedal Fest and Art and Soul Festival where he supported the BART booths; and attended the dedication of a mural at the East Bay Greenway at the Coliseum BART Station.

Director Allen reported she had attended a Valley Link meeting to discuss rail options, a League of California Cities meeting, the Contra Costa Sheriff's Posse Barbecue, and the City of Lafayette's 50th Anniversary.

Director McPartland reported he had given a Better BART presentation and attended a three-day Financial Disaster Recovery Workshop at BART.

President Raburn called for Public Comment. Aleta Dupree addressed the Board.

President Raburn announced that the Board would enter closed session under Item 11-B (Public Employee Employment), and Item 11-C (Conference with Negotiators) of the Regular Meeting agenda, and that the Board would reconvene in open session upon conclusion of the closed session.

The Board Meeting recessed at 4:02 p.m.

The Board Meeting reconvened in closed session at 4:05 p.m.

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

Absent: Directors Dufty and Keller.

The Board Meeting recessed at 4:39 p.m.

The Board Meeting reconvened in open session at 4:40 p.m.

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

Absent: Directors Dufty and Keller.

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

The Meeting was adjourned at 4:40 p.m. in memory of Wayne Wong and in honor of the families of Nia Wilson, Don Stevens, Gerald Brisbee, and Jessica St. Louis.

Patricia K. Williams
Interim District Secretary



EQUAL EMPLOYMENT OPPORTUNITY (EEO)

Statement of Policy:

The San Francisco Bay Area Rapid Transit District (District) has a strong commitment to the community we serve and our employees. As an equal opportunity employer, we strive to have a workforce that reflects the community we serve and to provide a work place free of discrimination, harassment and retaliation for filing a complaint. No person is unlawfully excluded from employment opportunities in any personnel transaction including recruitment, hiring, promotion, selection for training, termination, transfer, layoff, demotion, rates of pay or other forms of compensation, benefits and other terms and conditions of employment based on race, color, marital status, sexual orientation, religion (includes religious dress and grooming practices), national origin (including language use restrictions), ancestry, age (40 and above), sex/gender (includes pregnancy, childbirth, breastfeeding, and/or related medical condition), gender identity/gender expression, disability (mental and physical, including HIV and AIDS), medical condition (cancer or a record or history of cancer/genetic characteristics and information), request for family care leave, request for pregnancy disability leave, request for leave for an employee's own serious health condition, or military or veteran status.

District employees who meet state and federal eligibility requirements are:

- Guaranteed leave if disabled because of pregnancy;
- Guaranteed reasonable accommodation for pregnancy;
- Guaranteed leaves for the birth or adoption of a child, for the employee's own serious health condition, or to care for a "family member" (as defined by law) with a serious health condition;
- Protected from harassment because of their sex, race, or any other category covered under the law;
- Protected from retaliation for filing a complaint, for participating in the investigation of a complaint, or for protesting possible violation of the law; and/or
- Protected from prohibited harassment by coworkers, third parties, as well as supervisors and managers with whom the employee comes into contact.

The District is committed to providing reasonable accommodation to applicants and employees because of a disability or to practice or observe their religion, absent undue hardship. Employees with disabilities are also entitled to reasonable accommodation when necessary in order to perform the job.

The District recognizes and values the diversity of its workforce and the benefits to the District programs and services that are promoted by diverse viewpoints, life experiences, and cultural perspectives. The District supports and encourages diversity and provides education and training related to the benefits and challenges of working productively in a culturally diverse environment.

Implementation

As General Manager, I maintain overall responsibility and accountability for District compliance with the EEO Policy and Program. To ensure day-to-day management, including program preparation, monitoring, and complaint investigation, I have appointed **Maceo Wiggins, Department Manager, Office of Civil Rights** as the EEO Officer (510) 464-7194. The EEO Officer reports directly to me and acts with my authority with all levels of management, labor unions, and employees.

All District executives, management and supervisory personnel, however, share in the responsibility for implementing and monitoring the EEO Policy and Program within their respective areas and will be assigned specific tasks to ensure compliance is achieved. Managers and supervisors will be evaluated based on their successful implementation of the District's EEO Policies and Procedures as they are regarding other District goals.

Consistent with applicable federal and state laws, the District is committed to developing a written nondiscrimination program setting forth the policies, practices and procedures, with stated goals and timetables. Upon request, the District will make the EEO Program available for inspection by an employee or applicant for employment.

All District personnel, including Board members, are responsible for and required to comply with the EEO Policy and EEOP. District hiring personnel are accountable for evaluating a diverse pool of candidates to select a qualified individual in a manner that is free of artificial impediments.

All BART employees are responsible for conducting themselves in accordance with the District's EEO Policy.

Reporting

All applicants and employees have the right to file complaints alleging a violation of the EEO Policy. The District complaint procedure does not require an employee to complain directly to their immediate supervisor. Any employee who believes that they have experienced EEO discrimination, harassment and/or retaliation is encouraged to file a complaint with the District's Office of Civil Rights. Complaints of discrimination, harassment or retaliation should be directed to:

Office of Civil Rights
ATTN: Katherine Tate, Principal Administrative Analyst
300 Lakeside Drive, Suite 1800
Oakland, CA 94612
(510) 464-6107
ktate1@bart.gov

District policy and state law prohibit retaliation against an individual who files a charge or complains about EEO discrimination or harassment, who participates in an employment discrimination proceeding (such as an investigation or lawsuit), or who otherwise engages in protected activity including participation as a witness in an EEO investigation. Any such retaliation is strictly prohibited and is a violation of the District's Equal Employment Opportunity Policy, regardless of whether the original complaint is sustained.

All BART employees have the right to file their complaint with the Department of Fair Employment and Housing (DFEH), the Equal Employment Opportunity Commission (EEOC), or the U.S. Department of Transportation (DOT). The statute of limitations to file with DFEH is 365 days from the date of the last discriminatory incident. The statute of limitations for the EEOC is 300 days from the date of the alleged harm. Complaints should be filed with DOT within 180 days of the alleged act of discrimination.

Grace Crunican
General Manager

Date



PREVENTION OF SEXUAL HARASSMENT IN THE WORKPLACE

Statement of Policy:

The San Francisco Bay Area Rapid Transit District (District) is committed to maintaining a workplace that is free of sexual harassment. In keeping with the District's long-standing Equal Employment Opportunity (EEO) Policy, sexual harassment in the workplace will not be tolerated. The District is committed to enforcing this policy and to providing training to its managers, supervisors, foreworkers, lead personnel and employees to assist them in dealing sensitively and effectively with this important issue.

All BART employees are responsible for conducting themselves in accordance with the District's rules of employee conduct, including but not limited to, the EEO Policy.

Any employee who believes that they have been the victim of harassment on the basis of sex has the right to file a complaint with the District's Office of Civil Rights. All complaints of sexual harassment will be investigated. Retaliation against an employee for filing a complaint is prohibited by law. All parties involved will be treated in a fair and impartial manner. Employee privacy and confidentiality will be protected to the extent permitted by law.

Employees who violate this policy will be subject to disciplinary action, up to and including discharge.

Definition

Sexual harassment is a form of sex discrimination and is an unlawful employment practice. It is a personal affront to the affected employee and negatively impacts morale, motivation, and job performance. This policy includes sexual harassment of District employees by non-employees. Unwelcome sexual advances, request for sexual favors, and verbal, physical, visual, or other conduct of a sexual nature constitutes sexual harassment and are prohibited by this policy when:

- Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- Submission to or rejection of such conduct by an individual is used as the basis for an employment decision; and/or
- Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment.

Reporting

Prompt and appropriate action should be taken to prevent or stop incidents of sexual harassment. Any employee who believes that they have been the target of sexual harassment is encouraged to inform the offending person verbally or in writing that such conduct is unwelcome, offensive, and must stop. An employee, however, is not required to

communicate directly with the offending person, or if communication has been ineffective, the employee can complain directly to the Office of Civil Rights or any District manager, supervisor, foreworker or lead personnel. Failure to communicate with the perpetrator does not prevent an employee from filing a complaint, nor does it in any way exonerate the harasser.

Any manager, supervisor, foreworker or lead personnel who witnesses or has knowledge of sexual harassment or other forms of harassment or conduct prohibited by District rules must promptly report such conduct to and consult with the Office of Civil Rights. Managers, supervisors, foreworkers and lead personnel have a legal responsibility to take action if they know or have reason to believe of a harassing situation. Managers, supervisors, foreworkers and lead personnel must take action to address the situation regardless of the victim's stated desire to pursue or not to pursue the matter.

California Government Code Section 12950.1 Training

California employers with 50 or more employees must provide two hours of interactive sexual harassment training to supervisors within six months of hire or promotion, and every two years thereafter. Employers are also required to include a training component on the prevention of "abusive conduct" in its mandatory harassment prevention training.

For more information on the District's Prevention of Sexual Harassment training, contact the Office of Civil Rights.

Enforcement

The Office of Civil Rights can provide both formal and informal consultation and provide information regarding harassment concerns. Complaints and cases of sexual harassment brought to the attention of the Office of Civil Rights or any District manager, supervisor, foreworker or lead personnel will be handled promptly through a confidential process.

Retaliation against employees alleging sexual harassment or involved as witnesses in a sexual harassment investigation is prohibited.

Complaints of sexual harassment or inquires concerning the application of federal and state laws and regulations should be directed to:

Office of Civil Rights
ATTN: Katherine Tate, Principal Administrative Analyst
300 Lakeside Drive, Suite 1800
Oakland, CA 94612
(510) 464-6107
ktate1@bart.gov

Grace Crunican
General Manager

Date

ATTACHMENT I**Prospective Bidders - RR FUNDED LEASES AND RENTALS OF VEHICLES AND EQUIPMENT**

	Prospective Bidder Contacted	Responded as of 7/27/2018
1	Custom Truck One Source	Yes
2	Danella	Yes
3	NESCO Specialty	Yes
4	Progress Rail	
5	Doc Bailey Construction #SB	Yes
6	Ballast Tools Equipment BTE	Yes
7	RCE	Yes
8	Swingmaster	
9	Ohio Crane / IPS	Yes
10	RELAM	Yes
11	Geismar - Modern Track Machinery	Yes
12	A Tool Shed	Yes
13	Ahern	
14	Porter Rents	
15	BARCO	Yes
16	Oakland / Berkeley Rentals	
17	Blueline Rental	Yes
18	CRESCO	Yes
19	Herc Rentals	Yes
20	Monarch	Yes
21	Neff Rental/United Rental	
22	S & S, Supplies and Solutions	Yes
23	Sunbelt	Yes
24	Sunstate	Yes
25	Volvo Construction Equipment	Yes
26	American Truck and Trailer Body	Yes
27	Golden Gate Truck Center	Yes
28	Volkswagen of Oakland	Yes
29	AMERICAN SCISSOR LIFT, INC. #SB	
30	CH BULL COMPANY #SB	Yes
31	INTERSTATE 80 FORKLIFT INC #SB	
32	JRM EQUIPMENT LLC #SB	
33	PINTANE LLC #SB	
34	SDV SERVICES INC #SB	Yes
35	CAL SAFETY INC #SB	Yes
36	WESTERN TRAFFIC SUPPLY, INC # SB	
37	YOLANDA'S CONSTRUCTION ADMIN & TRAFFIC CONTROL #SB	Yes

#SB: Business Certified by the California General Services Agency as a Small Business

ATTACHMENT II

RR FUNDED SERVICES FOR LEASES AND RENTALS OF VEHICLES AND EQUIPMENT

Services for vehicle and equipment of general nature used in construction and railroad applications:

- **Road Vehicles & Equipment**
- **Construction & Material Handling Equipment**
- **Hi-Rail Vehicles & Equipment**
- **Railroad Vehicles & Equipment**
 - Trucks: Light to Heavy duty utility
 - Trucks: Fuel; crane; aerial lift
 - Truck, Personnel Crew; Mechanic; Inspection
 - Truck, Cable Reel
 - Truck, Flat Bed
 - Truck, Rotary Dump
 - Truck, Tunnel Washer
 - Vans
 - Puller Tensioner, Cable
 - Earth Moving Equipment
 - Forklifts; Telehandlers;
 - Compactors
 - Mobile Batch Plant
 - Lifts
 - Signs
 - Compressors; Fans; Air moving; Climate Control equipment
 - Chipper
 - Concrete & Masonry equipment
 - Demolition Equipment
 - Fans
 - Floor and vacuum equipment
 - Generators
 - Ground protection
 - Lighting equipment
 - Trailers
 - Cables, pumps, accessories
 - Road graders, saws, accessories
 - Small tools – air and accessories
 - Trailers
 - Welding equipment
 - Vehicle communications
 - Telematics
 - Shunting equipment
 - Low Railers
 - Switch Tampers
 - Tie Extractor/Inserter
 - Tie Handlers
 - Cranes
 - Flat cars



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>5 Sept 2018</i> <i>Robert M. Powers</i>		GENERAL MANAGER ACTION REQ'D:		
DATE: 8/17/2018		BOARD INITIATED ITEM: No		
Originator/Prepared by: Travis Engstrom Dept: Office of the CIO <i>Travis Engstrom</i> Signature/Date: <i>8/5/2018</i>	General Counsel <i>[Signature]</i> <i>9/5/18</i> []	Controller/Treasurer <i>[Signature]</i> <i>9/5/18</i> []	District Secretary []	BARC <i>[Signature]</i> <i>9/5/18</i> []

Enterprise Software License Agreement: Environmental Systems Research Institute (ESRI)

NARRATIVE:

Purpose

To request that the Board Authorize the General Manager to execute a three (3) year software license agreement with Environmental Systems Research Institute (ESRI) in an amount not to exceed \$450,000. This multi-year software agreement will provide the District with unlimited access to ESRI software products for fixed annual fee payments not to exceed \$150,000 per year.

Discussion

The Office of the Chief Information Officer (OCIO) has identified an opportunity for considerable savings in the procurement of software licenses related to geospatial analysis, design, planning and asset management.

ESRI is the world leader in geospatial technology and it is used by more than ninety five percent of all government entities as a primary mapping and visualization tool. ESRI software is used by the District to exchange information with the Federal Government, State of California, all Bay Area Counties, the Metropolitan Transportation Commission, the Association of Bay Area Governments, and more than 25 local agencies.

The District has explored software alternatives such as open-source options and other vendors used by the other five percent of government entities. The District has found that such alternatives do not provide adequate support for the District's map-based enterprise solutions. BART has purchased ESRI software for the last 15 years. A continued license

agreement will play a critical role in the BART's Enterprise Geographic Information System (EGIS), a system used for state of good repair, demographic analysis, Title VI analysis, community outreach, ridership, on-time performance, analysis, planning, track allocation safety requests, and the District's Regional Anti-Terrorism Integrated Law Enforcement System (RAILS).

The provider is uniquely qualified to provide the necessary software tools, expertise, and specialized applications required to provide BART with the ability to continue to create open-ended enterprise data content that will work with the District's existing business applications.

The Office of General Counsel will approve the Agreement as to form prior to execution.

Fiscal Impact

The subject EDD proposes a 3 year contract at a total cost of \$450,000 from October 1, 2018-September 30, 2021.

Funds will be budgeted in the Office of the Chief Information Officer operating budget (Dept 0504463, Account 681300) as follows:

Proposed Funding	
FY19*	\$150,000
FY20	\$150,000
FY21	\$150,000
Total	\$450,000
<i>*Funding is expected to begin 10/01/2018.</i>	

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

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

Alternative

1. Use a geospatial software vendor other than ESRI. As discussed above, the identified software alternatives do not meet basic enterprise function and connectivity criteria for the District. In addition, alternative software solutions do not provide adequate interoperability with the Metropolitan Transportation Commission, the Association of Bay Area Governments, and the vast majority of local agencies.

2. Do not authorize the execution of the Agreement. In this circumstance, the proposed ESRI Enterprise License Agreement would not be carried out, and the District will have to pay full retail price for all ESRI software, with projected costs being approximately the \$1,112,414.00 for the same three (3) year term. Recommendations Approve the following motion:

Motion

The General Manager or her designee is authorized to execute a 3-year Enterprise License Agreement with Environmental Systems Research Institute (ESRI) in an amount not to exceed \$450,000 to allow for the District's unlimited access to ESRI software products.

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

MEMORANDUM

TO: Board of Directors


DATE: September 7, 2018

FROM: General Manager

SUBJECT: Consent Calendar Item #2: Audit of Directors' Use of District Property

Attached is the Internal Audit Department's final audit report – *Audit of Directors' Use of District Property for Fiscal Year 2018*. The audit report will appear on the September 13, 2018, Board Consent Calendar.

If you have any questions regarding the audit, please contact Dennis Markham at (510) 464-6275.



for Grace Crunican

Attachment

cc: Board Appointed Officers
Deputy General Manager
Executive Staff

*Audit of Directors' Use of District Property
for Fiscal Year 2018*

BACKGROUND

The Performance and Audit Department has audited the District's compliance with the requirements of the San Francisco Bay Area Rapid Transit District's *Rules of the Board of Directors* Board Rule 5-3.5, Use of District Property Other than Automobiles. The Rules require that the Internal Audit Department shall complete an annual audit for the previous fiscal year for compliance with the requirements of Board Rule 5-3.5, and shall submit the audit report, including a list of property issued to each Director, to the next Administration Committee following September 15 for review and forwarding to the full Board (this audit report is included on the agenda for the September 13, 2018, Board Meeting as agreed to with the Interim District Secretary).

Board Rule 5-3.5 requires that:

- Directors may have use and possession of specifically identified District property that is comparable in cost and function to equipment available to District employees;
- The property shall be returned when a Director leaves office;
- Directors request the property through the District Secretary's Office;
- The District Secretary shall request quarterly that the Directors review their cellular phone and calling card charges;
- Directors reimburse the District within 30 days of the quarterly request for reimbursement of costs that are not for District business; and
- The District Secretary shall report to the Board President or Vice President if the quarterly requests are not responded to or reimbursements not made within 30 days.

The purpose of our audit was to determine whether the District complied with the requirements of Board Rule 5-3.5 for the fiscal year ended June 30, 2018. To accomplish our purpose, we reviewed the requirements of the Board Rule, reviewed the report for the audit of compliance with the Board Rule done for the previous year, examined records maintained by the District Secretary, notified Directors of the property recorded in the District's records as issued to each Director, and conducted discussions with the staff of the District Secretary's Office.

*Audit of Directors' Use of District Property
for Fiscal Year 2018*

BACKGROUND
(Cont'd)

We performed the audit in accordance with generally accepted government auditing standards and included such tests as we considered necessary in the circumstances. We used the *Rules of the Board of Directors* Board Rule 5-3.5 as criteria for the audit.

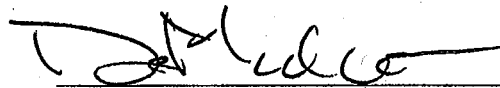
We provided Patricia Williams, Interim District Secretary, with a draft copy of our audit report on August 30, 2018. We discussed the draft audit report with her on August 30, 2018, and we have incorporated her comments.

**SUMMARY OF
AUDIT RESULTS**

We found that in fiscal year 2018, the District complied in all material respects with the requirements of Board Rule 5-3.5. A list of property issued to each Director as recorded in the District's records is shown in Exhibit A.

A former Director who left office in December 2014 did not return or reimburse the District for District purchased equipment as required by Board Rule 5-3.5(a). The equipment was valued at \$2,888 when the Director left office. In October 2017, the District Secretary determined the value of the equipment to be uncollectable.

The cellular phone bills for May and June 2018 were not available in time for this audit. We will review those bills as part of next year's audit.



Dennis Markham, Chief Performance and
Audit Officer

*Audit of Directors' Use of District Property
for Fiscal Year 2018*

Exhibit A

Schedule of District Property in Directors' Custody
As of June 30, 2018

DIRECTOR	PROPERTY DESCRIPTION
Debora Allen 1st District	(No Equipment Issued)
Joel Keller 2nd District	Apple iPhone 6s
Rebecca Saltzman 3rd District	(No Equipment Issued)
Robert Raburn 4th District	(No Equipment Issued)
John McPartland 5th District	Apple iPhone 7 External Computer Hard Drive Computer Phone Card
Thomas M. Blalock 6th District	Brother Intellifax Apple iPad Mini
Lateefah Simon 7th District	Apple iPhone 7
Nicholas Josefowitz 8th District	(No Equipment Issued)
Bevan Dufty 9th District	(No Equipment Issued)



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Robert M. Pevan</i> 5 Sept 2018		GENERAL MANAGER ACTION REQ'D:		
DATE: 8/20/2018		BOARD INITIATED ITEM: No		
Originator/Prepared by: Joan Stephan Dept: Maintenance and Engineering <i>Joan Stephan</i> Signature/Date: 9/4/18	General Counsel <i>[Signature]</i> 9/4/18 []	Controller/Treasurer <i>[Signature]</i> 9/4/18 []	District Secretary []	BARC <i>[Signature]</i> 9.4.2018 []

35kV ISOLATION DISCONNECT SWITCH

PURPOSE:

To request Board Authorization to Award Invitation For Bid No. #9042A to TRAYER ENGINEERING CORPORATION of San Francisco, CA in the amount of \$867,354.25 (includes all taxes) for the purchase of 35KV Isolation Disconnect Switch (IDS) equipment.

DISCUSSION:

The BART traction power electrical transmission system was originally installed over 40 years ago and because of aging and heavy usage, needs replacement. The Traction Power Engineering Department has developed a new switch design to isolate or turn off a substation in the event of an emergency or to perform preventative maintenance without interruption to revenue service. This IFB is for the purchase of 30 switches which will allow personnel to safely control, monitor and direct the flow of 34.5kV to power the trains, and which will support the District's goal of ensuring continued reliable service.

This is a twelve (12) month estimated quantity contract pursuant to the terms of the District's standard estimated quantity contract. During the term of the Contract, the District is required to purchase from the supplier a minimum amount of 50% of the Contract Bid price. Upon Board approval of this Contract, the General Manager will also have the authority to purchase up to 150% of the Contract Bid price, subject to availability of funding.

A notice requesting bids was published on July 20, 2018. This solicitation was, at that time, uploaded onto the BART Vendor Portal and downloaded by nine (9) prospective bidders. Bids were opened on August 14, 2018, one (1) Bid was received.

Bidder	Lot Price Each (30)	Grand Total including 9.75% Sales Tax
Trayer Engineering Corp San Francisco, CA	\$790,300.00	\$867,354.25

Independent cost estimate by BART staff: **\$1,200,000.00**

Pursuant to the District's Non-Federal Small Business Program, the Office of Civil Rights set a 5% Local Small Business Prime Preference for this Invitation for Bid (IFB) for Small Businesses certified by the California Department of General Services and verified as Local (i.e., located in Alameda, Contra Costa or San Francisco counties) by the District. The only responsive Bidder, Trayer Engineering Corporation, is not a certified Local Small Business and, therefore, is not eligible for the 5% Local Small Business Prime Preference.

The District's Non-Discrimination Program for Subcontracting is not applicable to Invitations for Bid. Accordingly, the Office of Civil Rights did not set Minority Business Enterprise (MBE) and Women Business Enterprise (WBE) Availability Percentages for this IFB.

Staff has determined that the apparent low bidder, Trayer Engineering Corporation submitted a responsive bid. Staff has also determined that the bid pricing is fair and reasonable based on District Staff's estimate.

CAPITAL FISCAL IMPACT:

Funding in the amount of \$867,354 for Bid No. 9042A is included in the total project budget for FMS No.# 15EJRR1, 34.5 KV AC Cable Replacement.

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:

Fund No.	Fund Description	Source	Amount
802A	2017 Measure RR GOB	BART	74,738,368
Total			74,738,368

As of August 20, 2018, \$74,738,368 is the total budget for this project. BART has expended

\$ 16,446,610 and committed \$22,630,067 to date. This action will commit \$867,354, leaving an available fund balance of \$34,794,337 in the fund for this project.

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

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

ALTERNATIVES:

The alternative to awarding this Contract would be to reject the Bid and re-advertise the Contract. Staff does not believe that this will result in lower prices or increased competition, and would delay the critical traction power infrastructure improvement projects.

RECOMMENDATION:

It is recommended that the Board approve the following motion:

MOTION:

The General Manager is authorized to award IFB No.# 9042A for 35KV Isolation Disconnect Switch to Trayer Engineering Corporation for an amount of \$867,354.25 (including all applicable sales taxes), pursuant to notification to be issued by the General Manager.

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

MEMORANDUM

TO: Board of Directors

DATE: September 7, 2018

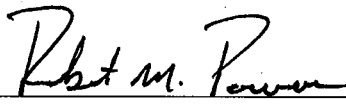
FROM: General Manager

SUBJECT: Draft FY19 Short Range Transit Plan/Capital Improvement Program

The attached document is the Draft FY19 Short Range Transit Plan/Capital Improvement Program, which will be presented at the September 13th board meeting as an informational item.

The document will also be available for download and review at www.bart.gov/about/financials by Monday, September 10, 2018.

If you have any questions about this item, please contact Pamela Herhold, Assistant General Manager, Performance and Budget, at 510-464-6168.



for Grace Crunican

Attachment

cc: Board Appointed Officers
Deputy General Manager
Executive Staff



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>5 Sept 2018</i> <i>Robert M. Powers</i>		GENERAL MANAGER ACTION REQ'D:		
DATE: 9/4/2018		BOARD INITIATED ITEM: No		
Originator/Prepared by: Tiffany Posey Dept: Administration Office	General Counsel	Controller/Treasurer	District Secretary	BARC
Signature/Date: <i>Tiffany Posey 9/4/18</i>	<i>[Signature]</i> 9/5/18 []	<i>[Signature]</i> 9/5/18 []	[]	<i>[Signature]</i> 9/5/18 []

PROHIBITION OF TRAVEL TO STATES WITH ANTI-LGBTQ+ LAWS

PURPOSE:

To adopt a policy prohibiting District-funded travel to states with anti-LBGTQ+ laws.

DISCUSSION:

The San Francisco Bay Area Rapid Transit District (District) is committed to protecting the rights of all individuals and prohibits discrimination based on race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, genetic information, or disabilities.

The District continues to be a leader in protecting civil rights and preventing discrimination based on sexual orientation, gender identity, and gender expression. The District also believes that the exercise of religious freedom is not a blanket justification for discrimination.

On September 27, 2017, the Governor of the State of California signed legislation that prohibits state-funded travel to states that have anti-LGBTQ+ laws. **AB 1887** specifies travel bans to any state that has enacted laws that void or repeal, or has the effect of voiding or repealing, existing state or local protections against discrimination on the basis of sexual orientation, gender identity, or gender expression or has enacted a law that authorizes or requires discrimination against same-sex couples or their families or on the basis of sexual orientation, gender identity, or gender expression, as specified, subject to certain exceptions, including:

- Enforcement of California law, including auditing and revenue collection.
- Litigation.
- To meet contractual obligations.

PROHIBITION OF TRAVEL TO STATES WITH ANTI-LGBTQ+ LAWS (cont.)

- To comply with requests by the federal government to appear before committees.
- To participate in meetings or training required by a grant or required to maintain grant funding.
- To complete job-required training necessary to maintain licensure or similar standards required for holding a position, if comparable training cannot be obtained in California or a different state not subject to the anti-discrimination laws.
- For the protection of public health, welfare, or safety as determined by the District.

Effective October 1, 2018, the District intends to adopt the above-described policy modeled upon the State of California's AB 1887 as well as its current list of states to which District-paid travel would be prohibited. The states currently subject to this ban are:

Alabama	Oklahoma
Kansas	South Dakota
Kentucky	Tennessee
Mississippi	Texas
North Carolina	

Additions or deletions to this list may be periodically made to the extent the State of California adds or deletes states from the AB 1887 roster. Any exception to this policy will need prior approval of the General Manager. Please contact Michael Jones, AGM, Administration if you have questions.

FISCAL IMPACT:

There is no fiscal impact to the District.

ALTERNATIVES:

Adopt amended or modified policy.

RECOMMENDATION:

Adopt the following motion.

MOTION:

The Board adopts the travel policy, attached hereto, prohibiting District-funded travel to states with anti-LGBTQ+ laws.



PROHIBITION OF TRAVEL TO STATES WITH ANTI-LGBTQ+ LAWS

Statement of Policy:

The San Francisco Bay Area Rapid Transit District (District) is committed to protecting the rights of all individuals and prohibits discrimination based on race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, genetic information, or disabilities.

The District continues to be a leader in protecting civil rights and preventing discrimination based on sexual orientation, gender identity, and gender expression. The District also believes that the exercise of religious freedom is not a blanket justification for discrimination.

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- Enforcement of California law, including auditing and revenue collection.
- Litigation.
- To meet contractual obligations.
- To comply with requests by the federal government to appear before committees.
- To participate in meetings or training required by a grant or required to maintain grant funding.
- To complete job-required training necessary to maintain licensure or similar standards required for holding a position, if comparable training cannot be obtained in California or a different state not subject to the anti-discrimination laws.
- For the protection of public health, welfare, or safety as determined by the District.

Effective October 1, 2018, the District will adopt the above-described policy modeled upon the State of California's AB 1887 as well as its current list of states to which District-paid travel would be prohibited. The states currently subject to this ban are:

Alabama	Oklahoma
Kansas	South Dakota
Kentucky	Tennessee
Mississippi	Texas
North Carolina	

Additions or deletions to this list may be periodically made to the extent the State of California adds or deletes states from the AB 1887 roster. Any exception to this policy will need prior approval of the General Manager. Please contact Michael Jones, AGM, Administration if you have questions.

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

MEMORANDUM

TO: Board of Directors

DATE: September 6, 2018

FROM: General Manager

SUBJECT: Safety and Security Action Plan – Tracking Matrix

Please find the Safety and Security Plan – Tracking Matrix which will be presented/discussed as an informational item at the BART Board meeting on September 13, 2018. The goal or intent of this item is to track discussions associated with each of the elements of the Safety and Security effort.

If you have any questions, please contact Robert Powers, Deputy General Manager, at (510) 464-6126 or rpowers@bart.gov.


Grace Crunican

Attachment

cc: Board Appointed Officers
Deputy General Manager
Executive Staff

BART SAFETY & SECURITY ACTION PLAN
Tracking Matrix

#	ITEM	UPDATE - SEPTEMBER 13, 2018	UPDATE - SEPTEMBER 27, 2018	UPDATE - OCTOBER 11, 2018
1	District Surveillance Technology Policy/Ordinance	This item will be discussed at the September 13th Board Meeting.		
2	Emergency BPD Staffing	Ended August 27, 2018; Currently posting additional overtime positions for both officers and CSO.		
3	Rapid Deployment Team & Enhanced Employee Training	Internal meeting Monday, September 10, 2018, 8:00 A.M.		
4	"BART Watch" App, Increase Use	Additional marketing and advertising is underway. New signs will be installed over the next two months.		
5	PSIM Test Project at Lake Merritt	Pilot project is underway		
6	Rider Educational Campaign	Campaign is underway.		
7	Expansion & Conversion – Digital Camera Network	Conceptually approved by Board: Recent progress includes Engineering in progress for the top 14 stations. Expect Procurement action to the Board of Directors in January 2019.		
8	PSIM – Implement Systemwide	A draft system-wide strategy will be agendized as an informational item at the October 11th Board Meeting.		
9	Platform Emergency Call Boxes	Approved by the Board. Pilot call boxes will be installed at the Coliseum Station; Hardware is being procured; Anticipated schedule is for call boxes at Coliseum Station to be operational by mid-December.		
10	Video Screens Showing CCTV Images & Enhanced Video Surveillance Signage	Pilot screens installed at Civic. Update at the October 11th Board Meeting; further action after completion of surveillance policy and pilot evaluation.		
11	"No Panhandling" Ordinance in Paid Areas	BART staff is currently revisiting and researching this topic - will be agendized for Nov/Dec 2018		
12	Accelerate System Hardening Efforts	Update at the September 27th Board Meeting - will include an update on the study to upgrade fare gates system-wide.		
13	Additional Proof of Payment Team for Evenings	At the September 27th Board Meeting, BPD will walk the BART Board through existing data associated with the current Proof of Payment effort. In addition, BPD will request authorization to fill the 2 positions in FY18 and the 8 positions associated with the night team.		
14	Additional BPD Staffing	BPD 5-year strategic staffing plan presented at the September 27th Board Meeting		
15	Systemwide Fare Gate Replacement Program	Will be included as part of the September 27th Board Meeting "Hardening Update"; staff tour of Cubic Lab in San Diego - Scheduled for October 5, 2018		
	Community Policing:			
	a) Community Volunteers	Research of this topic is underway - looking at other public and non-profit jurisdictions.		
	b) MTAP	Under consideration by BART staff; "Ride Alongs" offered to Board members; Scheduled for Sept/Oct		
16	c) BART Staff / Light Duty Assignment	A training program is being developed by BPD and Operations.		
	d) Local BIDS	Outreach to Local Bids are underway - roles and responsibilities are being identified - secure funding needs to be identified.		
	e) Other Outreach	Meeting with homelessness and mental health and housing experts.		



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Robert M. Powers</i> 5 Sept 2018		GENERAL MANAGER ACTION REQ'D: Approve and forward to the E & O Committee Meeting		
DATE: 8/17/2018		BOARD INITIATED ITEM: Yes		
Originator/Prepared by: Vanessa Graham Dept: Maintenance and Engineering <i>Vanessa Graham</i> Signature/Date: 9/4/18	General Counsel <i>[Signature]</i> 9/4/18 []	Controller/Treasurer <i>[Signature]</i> 9/4/18 []	District Secretary []	BARC <i>[Signature]</i> 9.4.2018 []

Award Contract No. 54RR-410 for Coverboard Enhancement, C-line w/ A,C & M segments @ the Oakland Wye

PURPOSE:

To obtain Board authorization for the General Manager to award Contract No. 54RR-410, Coverboard Enhancement, C-line with A, C and M lines at the Oakland Wye to furnish all labor, equipment and materials required for the reinforcement of contact rail coverboard to LC General Engineering and Construction, Inc. San, Francisco, CA.

DISCUSSION:

BART Contact Rail Coverboards are required by the California Public Utilities Commission for consumer protection. Aerodynamic impacts from moving trains compromise the integrity of the pins holding the coverboard in place. Broken pins cause the coverboards to fall into the track zone resulting in delays. These failures are impacted by an aging infrastructure, and have caused service delays throughout the District.

Reinforcement of these coverboards has been performed in the past through the installation of additional brackets performed in three (3) previous District Contracts. This has decreased coverboard related train delays. The Work under Contract 54RR-410 continues this effort and encompasses approximately 164,000 feet of rail. The project covers Alameda County at sections of the A, M and C-line at the Oakland Wye and from Rockridge Station across the Contra Costa County Line to Orinda Station, as well as from the Concord Station to the Pittsburgh Bay Point Station in Contra Costa County

Advanced notice to 150 prospective bidders was mailed on June 6, 2018. The Contract was

advertised in the Daily Pacific Builder, San Francisco Examiner and Daily Construction Services on June 12, 2018. The Contract was advertised on BART's online Procurement Portal on May 30, 2018. A Pre-Bid meeting was held on June 28, 2018 with four (4) prospective bidders in attendance. Two (2) Contracts books were purchased from the District Secretary, and by the bid opening date there were twenty-one (21) plan holders for this solicitation. The following four (4) Bids were received and opened on August 14, 2018 and are presented with the Engineer's Estimate.

1	ProVen Management, Inc.	\$ 5,473,770.00
2	AECOM Energy & Construction	\$ 5,155,040.00
3	SilMan Venture Corporation dba SilMan Construction	\$ 5,042,496.96
4	LC General Engineering and Construction, Inc.	\$ 4,142,211.94
	Engineer's Estimate	\$ 5,172,536.00

Pursuant to the Instructions to Bidders, the bids were evaluated based on the lowest total Bid price. The Bid of the apparent low Bidder, LC General Engineering and Construction, Inc., was determined to be the lowest responsible and responsive Bid submitted.

Staff has examined the firm's business and financial status. There are no subcontractors listed on the Designation of Subcontractor form. The total Bid Price of \$ 4,142,211.94 has been determined to be fair and reasonable by District staff based on the Engineer's Estimate.

Pursuant to the District's Non-Discrimination Program for Subcontracting, the Availability Percentages for this Contract are 18.2% for Minority Business Enterprises (MBEs) and 9.3% for Women Business Enterprises (WBEs). The Bidder, LC General Engineering and Construction, Inc. will not be subcontracting any portion of the Work and therefore, the provisions of the District's Non-Discrimination Program for Subcontracting do not apply.

Pursuant to the District's Non-Federal Small Business Program, the Office of Civil Rights set a 5% Local Small Business Prime Preference for this Contract for Small Businesses certified by the California Department of General Services and verified as a Local Small Business (i.e., located in Alameda, Contra Costa or San Francisco Counties) by the District. The lowest responsive Bidder, LC General Engineering and Construction, Inc. is not a certified Local Small Business and, therefore, is not eligible for the 5% Small Business Prime

Preference but is still the lowest responsive Bidder.

CAPITAL FISCAL IMPACT:

Funding in the amount of \$4,142,212 for Contract No. 54RR-410 is included in the total project budget for FMS# 54RR004 – M&E Line Rail Equipment.

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 source:

Proposed Funding	
F/G 802A - 2017 Measure RR GOB	\$27,327,339
TOTAL	\$ 27,327,339

As of August 20, 2018, \$27,327,339 is the total budget for this project. BART has expended \$516,856, committed \$36, and reserved \$3,192,844 to date. This action will commit \$4,142,212, leaving an available fund balance of \$19,475,391 in these fund sources for this project.

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

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

ALTERNATIVES:

An alternative is not to reinforce Contact Rail Coverboards. The risk and occurrence of coverboard related service delays within the system will continue to increase.

Another alternative is to reject all Bids. However, the low bidder is approximately 20% lower than the Engineer's Estimate. It is unlikely that re-advertising the Contract will result in lower Bids.

RECOMMENDATION:

Based on the analysis by District staff, it is recommended that the Board adopt the following motion.

MOTION:

The General Manager is authorized to award Contract No. 54RR-410 for Coverboard Enhancement, C-line with A, C, and M lines at the Wye, to LC General Engineering, for the Base Bid price of \$4,142,211.94, pursuant to notification by the General Manager, and subject to compliance with the District's protest procedures.



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Robt M. Poore</i> 6 Sept 2018		GENERAL MANAGER ACTION REQ'D:		
DATE: 9/6/2018		BOARD INITIATED ITEM: Yes		
Originator/Prepared by: Tim Chan Dept: Systems Development	General Counsel <i>[Signature]</i>	Controller/Treasurer <i>[Signature]</i>	District Secretary	BARC <i>[Signature]</i>
Signature/Date: <i>[Signature]</i> 9/6/18	9/6/18 []	9/6/18 []	[]	9.6.2018 []

FY19 Quality of Life Initiatives Agreements for Elevator Attendants, Pits Stops and Homeless Outreach

PURPOSE:

To obtain Board authorization to approve the following Agreements with:

1. San Francisco Municipal Transportation Agency (SFMTA) and Urban Alchemy in the amount of \$930,000 for elevator attendants at Civic Center and Powell St. stations in FY19.
2. San Francisco Public Works (SFDPW) in the amount of \$250,000 for three Pit Stop locations in FY19.
3. Contra Costa Health Services (CCHS) in the amount of \$80,500 for one dedicated Homeless Outreach Team in Contra Costa County in FY19.

DISCUSSION:

In recent years, the four downtown San Francisco stations, Embarcadero, Montgomery, Powell St. and Civic Center, have seen a significant increase in the presence of homeless individuals and drug activity. The increase in homeless and drug activity has resulted in a decline in station cleanliness and increased assaults on BART employees who work at these stations. BART and Muni customers are frustrated with dirty stations and visible drug use and feel unsafe in these stations.

Staff has worked on a number of different initiatives in FY18 intended to address these issues. These initiatives include the Elevator Attendant Pilot at Civic Center and Powell St. stations and funding the Pit Stops street level restrooms at 16th St. and Powell St. stations. They, along with expanded partnerships and enforcement with the City of San Francisco,

have helped reduce the number of homeless individuals in the four downtown stations; the last station census showed a decline in homelessness from 159 individuals in January 2018 to 78 individuals in July 2018.

With the adoption of the FY19 budget, the Board authorized the General Manager to negotiate and execute successor or extension amendments to these agreements to continue the elevator attendant and pit stop initiatives and to allow for the addition of one new homeless outreach team (HOT) in Contra Costa County.

Elevator Attendant Program

The Elevator Attendant was a six-month pilot that launched on April 30, 2018. Attendants are in the street and platform elevators at Civic Center and Powell St. stations during BART operating hours. The attendants greet customers when they enter and exit, operate the elevator, and collect data on the number of users and their demographics. They are instructed and monitored not to perform unionized station agent and system service worker responsibilities. This pilot has been a resounding success, and the District has received compliments from many customers, especially the ADA community. For the first three months of the pilot, the average monthly data shows:

Indicators	Civic Center Station	Powell St. Station
Total Customers	57,795	53,014
Disabled	4,943	3,862
Strollers	3,522	5,085
Luggage	14,463	10,018
Bicycle	4,258	1,886
Needles, Urine, Feces	0	0

The pilot will end on October 31, 2018. The goal is to initiate a new contract in order to ensure a seamlessly transition and continuation of the program through June 30, 2019.

This pilot program was through a contract with Hunters Point Family; however, during the pilot program the Executive Director Lena Miller left Hunters Point Family, and founded a new nonprofit to provide attendant services, Urban Alchemy. The current BART contract has been assigned to Urban Alchemy.

Hunter's Point Family was the only vendor of elevator attendant services considered for the pilot project to address sanitation issues in BART Station elevators. Urban Alchemy is the successor of Hunter's Point Family and has assumed all of its contracts. This organization has successfully served the City and County of San Francisco in a number of projects including Civic Center Commons monitoring (to reduce the use of street restroom facilities from being used for unlawful purposes). Urban Alchemy has unique insights regarding the homeless population in and around Civic Center and Powell Street Stations. Urban Alchemy

has demonstrated during the pilot project that it has the best insights regarding the homeless population of San Francisco assist us in making our BART Elevator Attendant project goals achievable.

BART's continued use of Urban Alchemy advances an important public policy objective, namely to provide job training, employment, and workforce development opportunities to formerly incarcerated at-risk local residents/parolees who are eligible to work but face barriers to employment.

For the reasons stated above, including Urban Alchemy's on-going relationship with our project partner, the City and County of San Francisco, the services sought under these agreements have not been solicited through a competitive process.

This EDD, therefore, requests Board authorization for the General Manager to enter into a new agreement with Urban Alchemy (with Hunters Point Family as its fiscal sponsor) to provide elevator attendants at Powell and Civic Center Stations between November 1, 2018 and June 30, 2019 for an amount not to exceed \$930,000. BART will also enter into a separate reimbursement agreement with SFMTA in the amount up to \$465,000.

Pit Stop Program

San Francisco Public Works' Pit Stop Program provides clean and safe public toilets, as well as used-needle receptacles and dog waste stations, in the City's most impacted neighborhoods. The units have running water, soap and hand towels, and are maintained to a high standard. The program began in the Tenderloin District in 2014 at three sites, sparked by a plea from neighborhood middle schoolers who were fed up with having to carefully navigate around human waste on their walk to school. Today, the Pit Stop operates at eighteen (18) sites in nine (9) neighborhoods, including two locations at 16th St./Capp and Powell St. that are co-funded by BART and Public Works.

For the first eight months of 2018, the 16th St./Capp and Powell St. locations saw a total of 34,278 users, of which 6,201 were BART customers.

All of the Pit Stop facilities are staffed by paid attendants who help ensure that the bathrooms are well maintained and used for their intended purpose. Public Works partners with nonprofit organizations that staff the Pit Stops, as part of a workforce development program for people who have faced barriers to employment. One of these organizations is the Hunters Point Family (currently Urban Alchemy) who also staff the elevator attendants at the BART stations.

This EDD, therefore, requests Board authorization for the General Manager to continue the current agreement with Public Works for the funding of two Pit Stop locations at 16th St./Capp and Powell St. This agreement will also allow for the addition of a new Pit Stop

location near the street level of the Embarcadero Station/Drumm St. exit at the Hyatt Regency San Francisco. The total amount shall not exceed \$250,000.

Contra Costa Homeless Outreach Team

While homelessness is most acute in San Francisco, it also affects other parts of the District. Staff recognizes that partnerships must be developed with other counties to address the homeless. Staff is in the process of developing the work plan with the Contra Costa Health Services to provide one homeless outreach team dedicated to BART. This team is expected to launch on January 1, 2019 and consist of two individuals who will work 40 hours per week through June 30, 2019. Their role is to engage the homeless population on BART property and under our aerial tracks and connect them to available services and shelters in this county. Similar to the San Francisco HOT initiative, staff will track progress and successes by contacts, referrals, connections, and permanent placement.

Prior to the execution of all agreements with Urban Alchemy, San Francisco Public Works and Contra Costa Health Services, the Procurement Department will review the contract to confirm compliance with the District's procurement standards and the Office of the General Counsel will approve the Contract as to form.

FISCAL IMPACT:

The Quality of Life Initiatives is part of the FY19 adopted operating budget (funded by the general fund) and includes the following: Elevator Attendant Program, Pit Stop Program, and Contra Costa Homeless Outreach Team.

Elevator Attendant Program

The total cost to continue the Elevator Attendant Program at Civic Center and Powell St. stations from November 1, 2019 to June 30, 2019 is approximately \$930,000. BART will enter into an agreement with Urban Alchemy for the amount up to \$930,000.

However, SFMTA will reimburse BART for 50% of the total cost, so the actual cost to BART will be approximately \$465,000. BART will also enter into a separate reimbursement agreement with SFMTA in the amount up to \$465,000.

Pit Stop Program

The Pit Stop Program consists of two different types of restroom units. The operations of the JC Decaux unit costs \$200,000 annually, and the operations of the Far Western portable unit costs \$100,000 annually.

The total cost to continue the two Pit Stop locations – one Far Western unit at 16th./Capp and one JC Decaux unit at Powell St. – cost is \$300,000. The addition of one JC Decaux

unit at Embarcadero will cost \$200,000 for a total of \$500,000 annually. However, San Francisco Public Works is paying for 50% of the total cost, so the cost per party is \$250,000. BART will enter into an agreement with Public Works for the amount of \$250,000.

Contra Costa Homeless Outreach Team

One dedicated Homeless Outreach Tea (HOT) in Contra Costa County costs approximately \$217,000 annually, of which \$56,000 is covered by CCHS and \$161,000 is covered by BART. With an anticipated start date for the HOT on January 1, 2019, the budget is reduced by half to \$80,500 instead of the full \$161,000. BART will enter into an agreement with Health Services for the amount up to \$80,500.

FY19 Initiatives	BART Cost
Elevator Attendants	\$465,000
Pit Stops	\$250,000
CoCo HOT	\$80,500
Total	\$796,500

For all three Quality of Life Initiatives outlined in this EDD, the Funding Department is 1011276 - Station Area Planning, and the Account Number is 681300. This action is not anticipated to have any Fiscal Impact on unprogrammed District reserves in the current Fiscal Year.

ALTERNATIVES:

The alternative is to not authorize one of more of these Agreements or to limit the duration. If that were to occur these projects would not continue.

RECOMMENDATION:

It is recommended that the Board adopt the following motion.

MOTION:

The Board approves the following:

1. Agreement with Urban Alchemy (UA), with Hunters Point Family as the fiscal agent, in the amount of \$930,000 for the elevator attendant program. BART will enter into a separate reimbursement agreement with SFMTA in the amount up to \$465,000.
2. Agreement with Public Works in the amount of \$250,000 for the Pit Stop Program.
3. Agreement with Contra Costa Health Services (CCHS) in the amount up to \$80,500 for one Contra Costa Homeless Outreach Team.



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>5 Sept 2018</i> <i>Robert M. Paven</i>		GENERAL MANAGER ACTION REQ'D: (N/A)		
DATE: 8/16/2018		BOARD INITIATED ITEM: No		
Originator/Prepared by: James Soncuya Dept: Office of Civil Rights <i>[Signature]</i> Signature/Date: 8/31/18	General Counsel <i>[Signature]</i> 8/31/18 []	Controller/Treasurer <i>[Signature]</i> 8/31/18 []	District Secretary []	BARC <i>[Signature]</i> 7.14.2018 []

TO OBTAIN BOARD AUTHORIZATION TO AWARD AGREEMENT NO. 6M5125, PRE-AWARD SMALL BUSINESS SUPPORTIVE SERVICES AND AGREEMENT NO. 6M5134, POST-AWARD SMALL BUSINESS SUPPORTIVE SERVICES FOR BART DISTRICTWIDE

PURPOSE:

To obtain Board authorization for the General Manager to award both Agreement No. 6M5125 to provide Pre-Award Small Business Supportive Services Districtwide (Pre-Award SBSS) and Agreement No. 6M5134 to provide Post-Award Small Business Supportive Services Districtwide (Post-Award SBSS) to The Allen Group, LLC.

DISCUSSION:

The Pre-Award SBSS will provide ongoing support to small businesses seeking to bid on District contracts by providing training workshops and one-on-one technical assistance on topics including bid preparation, submittals, bonding, insurance, and construction cost estimating. The Post-Award SBSS will provide ongoing support to small businesses who have been awarded District contracts by providing training workshops and one-on-one technical assistance on topics including work scheduling, invoicing, payroll, quality control, contractual requirements, change order preparation and stop notices. The assignments under these Agreements will be on-call, defined by work plans, and subject to funding availability. Each work plan will have its own scope of work, schedule and budget.

The District issued Request for Proposals (RFP) No. 6M5125 on February 9, 2018 to engage one consulting firm or joint venture to provide Pre-Award SBSS in an amount not to

exceed \$3,900,000 over a five-year term and one consulting firm or joint venture to provide Post-Award SBSS in an amount not to exceed \$4,600,000 over a five-year term. The actual cost may be less based on the District's actual need for on-call services.

On February 9, 2018, the Advance Notice to Proposers was sent out to 25 prospective proposers. The RFP was advertised on February 9, 2018 in eleven (11) publications. A total of sixty-six (66) firms downloaded the RFP documents from the District's Procurement Portal. A Pre-Proposal Meeting was held on March 7, 2018 with twenty-one (21) people in attendance.

The proposals were due on April 24, 2018, and on this date proposals for the Pre-Award SBSS and the Post-Award SBSS were received from the following firms (in alphabetical order):

Pre-Award Proposers

<u>Firm</u>	<u>Location</u>
1. Bay Area Business Supportive Services & GCAP Services, Joint Venture	Costa Mesa, CA
2. Butler Enterprises Group, LLC	San Francisco, CA
3. Point Management Group	Suffolk, VA
4. The Allen Group, LLC	San Francisco, CA

Post-Award Proposers

<u>Firm</u>	<u>Location</u>
1. A Squared Ventures, Inc.	Oakland, CA
2. Bay Area Business Supportive Services & GCAP Services, Joint Venture	Costa Mesa, CA
3. Point Management Group	Suffolk, VA
4. The Allen Group, LLC	San Francisco, CA

On May 1, 2018, one proposal was received from Utility Products Company.

A Selection Committee chaired by Contract Administration with representatives from the

Office of Civil Rights, Planning, Development and Construction, Maintenance and Engineering and the Office of the Chief Information Officer ("Committee") reviewed the submittals. The Committee evaluated the proposals utilizing a best value methodology. The submittals were first reviewed for responsiveness to the RFP. The proposal received from Utility Products Company was determined to be non-responsive to the requirements of the RFP because it was not submitted by the proposal due date. The Pre-Award SBSS and Post-Award SBSS proposals from Bay Area Business Supportive Services & GCAP Services and Point Management Group were determined to be non-responsive because of the omission of required information.

Subsequently, the remaining proposals were evaluated and scored on the basis of the criteria contained in the RFP. Based on this evaluation, the Committee determined that all of the remaining proposers were in the competitive range and all were invited to participate in oral interviews on June 27, 2018. The oral interview participants were as follows:

Pre-Award SBSS Oral Interview Participants:

1. Butler Enterprises Group, LLC
2. The Allen Group, LLC

Post-Award SBSS Oral Interview Participants:

1. A Squared Ventures, Inc.
2. The Allen Group, LLC

After the oral presentations, the Committee conducted an evaluation based on the best value methodology and determined that The Allen Group, LLC offered the best overall value to the District for both the Pre-Award SBSS and the Post Award-SBSS.

The Agreements were advertised pursuant to the District's Disadvantaged Business Enterprise ("DBE") Program requirements. The Office of Civil Rights reviewed the scope of work for this Agreement and determined that there were DBE subconsulting opportunities; therefore, a DBE participation goal of 12% was set for each of the Agreements. The Allen Group, LLC committed to subconsulting 12% to DBEs for the Pre-Award SBSS and 12% to DBEs for the Post-Award SBSS. The Office of Civil Rights has determined that The Allen Group has met the DBE participation goal set for the Agreements.

Accordingly, staff recommends award of RFP No. 6M5125 and RFP No. 6M5134 to The Allen Group, LLC.

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

FISCAL IMPACT:

Agreement No. 6M5125 has a not-to-exceed limit of \$3,900,000 over a five-year term and Agreement No. 6M5134 has a not-to-exceed limit of \$4,600,000 over a five-year term. District obligations will be subject to a series of work plans. Each work plan will have a defined scope of services, and separate schedule and budget. Any work plan assigned for funding under a State or Federal grant will include State or Federal requirements. The Controller/Treasurer issues fund codes based on grant awards for allocation to capital projects. Capital Budget and Funds Management will certify the eligibility of identified funding sources prior to incurring project costs against these Agreements and the execution of each work plan. These Agreements will not incur costs against the Operating Budget. The Office of the Controller/Treasurer will certify that funds are available to meet this obligation prior the execution of each work plan. This action is not anticipated to have any Fiscal Impact on unprogrammed District reserves.

ALTERNATIVES:

The District could reject all proposals and solicit new proposals. However, re-issuing the RFP would delay and adversely affect the implementation of the Pre-Award Small Business Supportive Services and Post-Award Small Business Supportive Services Districtwide.

RECOMMENDATION:

It is recommended that the Board adopt the following motion:

MOTION:

The General Manager is authorized to award Agreement No. 6M5125 to provide Pre-Award Small Business Supportive Services in the amount not to exceed \$3,900,000 and Agreement No. 6M5134 to provide Post-Award Small Business Supportive Services in the amount not to exceed \$4,600,000 to The Allen Group, LLC, subject to the District's protest procedures and the FTA requirements related to protests.



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Thad M. Perna</i> 6 Sept 2018		GENERAL MANAGER ACTION REQ'D: Forward to Board of Directors		
DATE: 1/30/2017		BOARD INITIATED ITEM: Yes		
Originator/Prepared by: Matthew Burrows Dept: Office of the General Counsel	General Counsel	Controller/Treasurer	District Secretary	BARC
Signature/Date: <i>[Signature]</i> 9/6/18	<i>[Signature]</i> 9/6/18 []	<i>[Signature]</i> 9/6/18 []	[]	[]

District Surveillance Technology Policy/Ordinance

PURPOSE:

To bring to the Board for its consideration a comprehensive policy governing the use of surveillance technology at the District.

DISCUSSION:

In 2016, while considering the implementation of an Automatic License Plate Reader, the Board directed staff to delay such implementation until a surveillance policy had been considered and approved by the Board. The matter was referred to the technology and communications committee for further work over several public meetings, between which staff and representatives from the public met to develop a document. Following review by the committee, District staff and representative(s) from both Oakland Privacy and the American Civil Liberties Union continued meeting in an attempt to find common ground and have developed the attached Surveillance Technology Policy ("Policy") for the Board's consideration.

As detailed more extensively in the attached, the Policy generally requires Board of Directors' review and approval before new surveillance technology is purchased and implemented and before existing surveillance technology is used in a manner or location different than had already been approved. Approval of grants for surveillance technology also will require Board approval. Staff must also report to the Board at a publicly noticed meeting about surveillance technology currently in use at the District. Required approvals will occur through various reports brought to the Board at publicly noticed meetings.

Those reports to the Board will be publicly released at least 15 days prior to their consideration and may only be approved if the Board determines that the benefits to the community outweigh the costs and that the use reasonably safeguards civil liberties and

rights.

Approvals under this Policy are subject to annual review by the Board of Directors to assist the Board in its ongoing oversight.

Limited exceptions exist for use of surveillance technology in exigent circumstances or for the testing of equipment being considered by the District.

FISCAL IMPACT:

Implementation of this Policy will begin in FY19 and will be funded with existing operating and capital resources in Maintenance and Engineering, the Police Department, and the Office of the Chief Information Officer. Capital funding will be subject to certification of funding availability by the Office of the Controller/Treasurer. Operating funding for subsequent years, if necessary, will be included in the proposed annual budget, which is subject to Board approval.

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

ALTERNATIVES:

The direction given staff by the Board of Directors was to draft a policy for the Board's consideration. The community groups that participated in the formulation of this draft seek that the policy actually be codified by ordinance, with the ability of a prevailing plaintiff to be awarded attorneys' fees by a court. A difference between a policy and an ordinance is in its enforcement. A policy is enforced by the BART Board of Directors. An ordinance may be enforced by a court of law.

The Board could direct these rules to be codified as an ordinance, a copy of which is also attached. This meeting would constitute the first reading and a second reading would be required to occur at a future meeting.

The Board could also direct staff to make additional changes or could decline to pass these proposed rules.

RECOMMENDATION:

This is a Board directed Policy and has been discussed and considered by the now disbanded communications and technology committee. At the committee level, two of the three members favored an ordinance, although without the inclusion of attorneys' fees.

Staff recommends that the Board adopt these rules as a Policy, at least for an initial 2 year

period so that staff may report back to the Board on how it has worked and with suggestions for changes, if any, based on experience, before it being codified as an ordinance.

SAMPLE MOTIONS:

- 1) That the Board of Directors approves the attached Surveillance Technology Policy; or
- 2) That the Board of Directors adopts the attached Surveillance Technology Policy and directs staff to return within 24 months with an update on how the Policy has worked in practice and if any changes should be considered by the Board before adopting these rules as an ordinance; or
- 3) That the Board of Directors directs staff to return with the attached Ordinance Codifying the Surveillance Technology Policy for a second reading and consideration of the matter for adoption at that future meeting;
- 3a) That the Board directs that the ordinance provide for attorneys' fees for a prevailing party.

BART SURVEILLANCE TECHNOLOGY POLICY

WHEREAS, the San Francisco Bay Area Rapid Transit District (BART) Board of Directors has invested heavily in maintaining a safe and secure transportation system hardened against terrorist sabotage, vandalism and theft; and

WHEREAS, the Board of Directors has and continues to believe that the safety and security of the BART system requires the maintenance and support of every technology available to maintain public safety and system security; and

WHEREAS, the Board recognizes that there is a point at which technological resources may be viewed to restrict or limit the reasonable expectation of privacy of the riding public; and

WHEREAS, the Board wishes to harmonize these compelling interests in a manner that permits public discourse and discussion about the decision-making process of adding new technologies for safety and security into the BART transit system; and

WHEREAS, the Board of Directors recognizes that surveillance technology in public areas should be judiciously balanced with the need to reasonably protect recognized civil liberties, including privacy, free expression and public assembly; and

WHEREAS, the Board of Directors finds that proper transparency, oversight and accountability are fundamental to minimizing risks to the afore-mentioned civil liberties posed by surveillance technologies; and

WHEREAS, the Board of Directors finds it essential to have an informed public discourse about whether to adopt additional surveillance technology to that already utilized within the District; and

WHEREAS, the existing infrastructure of surveillance technology already employed within the BART transportation system is extensive, it shall be grandfathered in as a "baseline"; and

WHEREAS, the Board of Directors finds it desirable that safeguards be in place to protect reasonable expectations of privacy and freedom of speech and assembly, duly balanced against a need to preserve public peace and safety, and to address exigent circumstances before any new surveillance technology is deployed; and

WHEREAS, the Board of Directors finds that if either new surveillance technology is approved for use or existing technology is used in a materially different manner or for a materially different purpose in places where the public enjoys a reasonable expectation of privacy or a right to expressive activities and public assembly, there must be clear internal policies and procedures to ensure that reasonable safeguards are being followed and that the surveillance technology's benefits outweigh its costs.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the San Francisco Bay Area Rapid Transit District adopts the following Policy:

Section 1. Title

This Policy shall be known as the Surveillance Technology Policy.

Section 2. Definitions

The following definitions apply to this policy:

- 1) "Surveillance Annual Report" means an annual written report concerning a specific surveillance technology in active use by the District that includes all of the following:
 - a) A reasonably specific description of how the surveillance technology was used;
 - b) Whether and how often data acquired through the use of the surveillance technology was shared with outside entities, the name of any recipient entity, the type(s) of data

BART SURVEILLANCE TECHNOLOGY POLICY

- disclosed, under what legal standard(s) the information was disclosed, and the justification for the disclosure(s);
- c) A summary of community complaints or concerns received by the BART District related to the surveillance technology;
 - d) The results of any internal audits, any information about violations of the Surveillance Use Policy, and any actions taken in response
 - e) Information, including crime statistics, if the equipment is used to deter or detect criminal activity, that help the community assess whether the surveillance technology has been effective at achieving its identified purposes;
 - f) Statistics and information about public records act requests related to surveillance technology; and
 - g) Total annual costs for the new surveillance technology, including personnel and other ongoing cost.
- 2) "BART District entity" means any department, bureau, division, or unit of the San Francisco Bay Area Rapid Transit District. The BART Police Department is considered to be a BART District entity, but may also be referenced directly when the BART Police Department is subject to additional requirements of this policy that are specific to the BART Police Department and do not apply to other BART District entities.
- 3) "Surveillance technology" means any electronic device or system with the capacity to monitor and collect audio, visual, locational, thermal, or similar information on any individual or group. This includes, but is not limited to, drones with cameras or monitoring capabilities, automated license plate recognition systems, closed-circuit cameras/televisions, International Mobile Subscriber Identity (IMSI) trackers, global positioning system (GPS) technology, software designed to monitor social media services or forecast criminal activity or criminality, radio frequency identification (RFID) technology, body-worn cameras, biometric identification hardware or software, and facial recognition hardware or software.
- a) "Surveillance technology" does not include the following devices or hardware, unless they have been equipped with, or are modified to become or include, a surveillance technology as defined in Section 2(3):
 1. routine office hardware, such as televisions, computers, and printers, that is in widespread public use and will not be used for any surveillance or law enforcement functions;
 2. Parking Ticket Devices (PTDs);
 3. manually -operated, non-wearable, handheld digital cameras, audio recorders, and video recorders that are not designated to be used surreptitiously and whose functionality is limited to manually capturing and manually downloading video and/or audio recordings;
 4. surveillance devices that cannot record or transmit audio or video or be remotely accessed, such as image stabilizing binoculars or night vision goggles;
 5. manually-operated technological devices used primarily for internal municipal entity communications and are not designated to surreptitiously collect surveillance data, such as radios and email systems;

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6. municipal agency databases that do not contain any data or other information collected, captured, recorded, retained, processed, intercepted, or analyzed by surveillance technology;
 7. equipment designed to detect the presence of and/or identify the source of chemical, biological, radiological, nuclear or explosive materials;
 8. portable or fixed observations towers designed to provide an elevated viewing platform for facility security;
 9. the BART Watch app or similar successor apps for making reports to the District.
 10. the BART.gov web site and platform;
 11. BART databases and enterprise systems that contain information kept in the ordinary course of BART business, including, but not limited to, human resource, permit, license and business records;
 12. BART Police Department computer aided dispatch (CAD), records / case management, Live Scan, booking, Department of Motor Vehicles, California Law Enforcement Telecommunications System (CLETS), 9-1-1 and related dispatch and operation or emergency services systems;
 13. BART Police Department early warning systems;
 14. Infrastructure and mechanical control systems (SCADA), including those that control or manage lights, utilities, train control, or fare collection;
 15. Physical access control systems, employee identification management systems, and other physical control systems;
 16. Information technology security systems, including firewalls and other internal-facing cyber security systems;
 17. Computers, software, hardware or devices used in monitoring the work and work-related activities involving District buildings, employees, contractors and volunteers or used in conducting internal investigations involving District employees, contractors or volunteers.
- 4) "Surveillance Impact Report" means a publicly-released written report including at a minimum the following:
- a) information describing the proposed surveillance technology and how it generally works;
 - b) information on the proposed purpose(s) for the surveillance technology;
 - c) if applicable, the general location(s) it may be deployed;
 - d) crime statistics for any location(s), if the equipment is used to deter or detect crime;
 - e) an assessment identifying any potential impact on privacy rights and discussing any plans to safeguard the rights of the public;
 - f) the fiscal costs for the surveillance technology, including initial purchase, personnel and other ongoing costs, and any current or potential sources of funding;
 - g) whether use or maintenance of the technology will require data gathered by the technology to be handled or stored by a third-party vendor on an ongoing basis;
 - h) a summary of alternative methods (whether involving the use of a new technology or not) considered before deciding to use the proposed surveillance technology, including the costs and benefits associated with each alternative and an explanation of the reasons why each alternative is inadequate or undesirable; and

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- i) a summary of the experience, if any is known, other law enforcement entities have had with the proposed technology, including information about the effectiveness, any known adverse information about the technology such as unanticipated costs, failures, civil rights or civil liberties issues.
- 5) "Surveillance Use Policy" means a publicly-released policy for use of the surveillance technology that at a minimum specifies the following:
- a) Purpose: The purpose(s) that the surveillance technology is intended to advance.
 - b) Authorized Use: The uses that are authorized, the rules and processes required prior to such use, and the uses that are prohibited.
 - c) Data Collection: The information that can be collected by the surveillance technology.
 - d) Data Access: The individuals (as a category) who can access or use the collected information, and the rules and processes required prior to access or use of the information.
 - e) Data Protection: The safeguards that protect information from unauthorized access, including encryption and access control mechanisms.
 - f) Data Retention: The time period, if any, for which information collected by the surveillance technology will be routinely retained, the reason such retention period is appropriate to further the purpose(s), the process by which the information is regularly deleted after that period lapses, and the specific conditions that must be met to retain information beyond that period.
 - g) Public Access: How collected information can be requested by members of the public, including criminal defendants.
 - h) Third Party Data Sharing: If and how other BART District or non-BART District entities can access or use the information, including any required justification or legal standard necessary to do so and any obligations imposed on the recipient of the information.
 - i) Training: A summary of the training required for any individual authorized to use the surveillance technology or to access information collected by the surveillance technology.
 - j) Auditing and Oversight: The mechanisms to ensure that the Surveillance Use Policy is followed, including internal personnel assigned to ensure compliance with the policy, internal recordkeeping of the use of the technology or access to information collected by the technology, technical measures to monitor for misuse, any independent person or entity with oversight authority.

The District must seek approval from the Board before implementing any changes to any Surveillance Use Policy.

- 6) "Exigent circumstances" means the BART Police Department's good faith belief that an emergency involving danger, death, or serious physical injury to any person requires the immediate use of a surveillance technology, or the information it provides, without pre-approval.

Section 3. Board of Directors Review

- 1) A BART District entity will obtain Board of Directors approval at a properly-noticed public meeting prior to any of the following:

BART SURVEILLANCE TECHNOLOGY POLICY

- a) Accepting funds for new surveillance technology, applying for a grant, or soliciting or accepting state or federal funds or in-kind or other donations;
 - (1) If it is determined that the timetable for applying for surveillance technology funding is not compatible with the notice requirements of Section 4(a), the General Manager is authorized to apply for grants after providing a written justification to the Board of Directors at least five calendar days prior to the deadline for applying for or accepting the relevant funding. Any such notices shall be agendized for public discussion at the next regular meeting of the Board of Directors if that meeting is at least 10 days from the date the notice is sent. If the notice is sent less than 10 days from the next regular meeting, it shall be agendized for public discussion at the following regular meeting. Any funding awarded to a BART District entity following such an application remains subject to the regular review, approval, and oversight requirements of Sections 3, 4, and 5.
 - b) Acquiring surveillance technology, with or without consideration, except for those occasions when a BART District entity conducts a limited scope trial of technology to assess its viability. Such trial shall (i) be limited to a single station or facility, (ii) last no longer than 90 days, and (iii) shall be agendized for public discussion at the first regular meeting of the Board of Directors following the completion of the trial.
 - (1) The BART District will not disclose to any third party information acquired during use of this exception unless disclosure is, similar to the Section 11 exigent circumstances provision (A) for purposes of responding to an emergency and the third party agrees to be bound by the restrictions in this Section or is (B) otherwise required by law enforcement or response agencies that identify the information as pertaining to an active investigation, or is (C) otherwise required by law.
 - (2) Following conclusion of the testing, the BART District will only keep and maintain data related to the results of the testing and will immediately dispose of any data not relevant to the evaluation of the fitness of the technology unless retention is (i) authorized by a court order or (ii) otherwise required by law.
 - c) Using new surveillance technology, or using existing surveillance technology for a purpose, in a manner or in a materially different type of location not previously approved by the Board of Directors; or
 - d) Entering into a written agreement or memorandum of understanding with a non-BART District entity to acquire, share or otherwise use surveillance technology or the information it provides unless such information is provided by way of BART Watch or any successor smart phone application associated with that specific software.
- 2) Any BART District entity will obtain Board of Directors approval of a Surveillance Use Policy applicable for newly acquired technologies in any of the activities described in subsection (1)(b)-(d).

BART SURVEILLANCE TECHNOLOGY POLICY

Section 4. Information Required

- 1) The BART District entity seeking approval under Section 3 shall submit to the Board of Directors a Surveillance Impact Report and a draft Surveillance Use Policy at least twenty-one (21) days prior to the public meeting where approval will be requested.
- 2) The Board of Directors shall publicly release, in print and online, the Surveillance Equipment Request and draft Surveillance Use Policy at least fifteen (15) days prior to the public meeting.

Section 5. Determination by Board of Directors that Benefits Outweigh Costs and Concerns

The Board of Directors shall approve any action described in Section 3, subsection (1) or Section 6 of this policy only after making a determination that the benefits to the community of the surveillance technology outweigh the costs, and the proposed use policy will reasonably safeguard civil liberties and civil rights.

Section 6. Compliance for Existing Surveillance Technology

- 1) Each BART District entity possessing or using surveillance technology prior to the effective date of this policy shall submit a draft Surveillance Use Policy and Surveillance Impact Report no later than one hundred eighty (180) days following the effective date of this policy for review and approval by Board of Directors. The Board of Directors may grant extensions to this requirement. If such an extension is granted, a status report must be prepared and submitted to the Board of Directors at a public meeting no later than ninety (90) days from the date of said extension. The draft Surveillance Use Policy shall be made in a manner that is informative, but that will not undermine the District's legitimate security interests.

Section 7. Continuing Oversight of Surveillance Technology

- 1) Each BART District entity must submit for approval at a public hearing a Surveillance Annual Report for each surveillance technology to the Board of Directors on or before August 1.
- 2) The Board of Directors may grant extensions to this requirement. Commencing on the date 2 years from the effective date of this policy, no further extensions by the Board of Directors to this reporting obligation for the BART Police Department can be made. While a Surveillance Annual Report shall reference and be inclusive of technologies in public places, such references may be made in a manner that will not undermine the District's legitimate security interests.
- 3) Based upon information provided in the Surveillance Annual Report, the Board of Directors shall determine whether the benefits to the community of the surveillance technology implemented after the effective date of this policy outweigh the costs, and that civil liberties and civil rights are safeguarded. If the benefits do not outweigh the costs, or civil rights and civil liberties are not safeguarded, the Board of Directors shall direct that use of the surveillance technology cease and/or require modifications to the Surveillance Use Policy that will resolve the above concerns.

Section 8. Enforcement

- 1) The provisions set forth in this policy of the Board of Directors are all intended to be enforceable exclusively by the Board of Directors.

BART SURVEILLANCE TECHNOLOGY POLICY

- 2) Any perceived failure to discharge the ministerial duties imposed upon District officers or staff herein may be addressed by way of submitting the controversy to the Board of Directors for their intervention in a manner that accomplishes the public policies set forth herein.
- 3.) This policy does not create any right of action in favor of any aggrieved party or plaintiff.

Section 9. Categorical Exemptions from this Policy

- 1) Any surveillance technologies in place before this policy was established may be replaced with technology with materially the same capacities and capabilities and shall be exempt from this policy except (i) as to the annual reporting requirement, and (ii) surveillance technologies used exclusively by the BART Police Department.
 - a) Any replacement of surveillance technologies that enhances or otherwise reasonably appears to upgrade (i.e. enhance, improve, or expand) the capabilities of existing technologies shall NOT be exempt from this policy. Storage capacity increases to CCTV and independent lighting improvements (e.g. LED street lighting or improved stairway lighting) at a facility shall not be regarded to be an improvement or enhancement in surveillance technologies.
- 2) Any surveillance technologies owned and/or operated by third parties on BART facilities and not used by a BART District entity shall be exempt from this policy unless Section 3(1)(d) applies.
- 3) Any surveillance technologies within the secure perimeter of BART's administrative/maintenance/law enforcement facilities and offices shall be exempt from this policy.
- 4) Any surveillance technologies used to protect or monitor areas outside of publicly accessible locations including areas within fenced areas (such as, but not limited to, areas where train cars are parked during non-revenue hours or where the District maintains high voltage equipment) or areas prohibited to the public by signage (such as tunnels, or stairwells leading to the trackway) shall be exempt from this policy.

Section 10. Severability

The provisions in this Policy are severable. If any part of provision of this Policy, or the application of this Policy to any person or circumstance, is held invalid, the remainder of this Policy, including the application of such part or provisions to other persons or circumstances, shall not be affected by such holding and shall continue to have force and effect.

Section 11. Use of Unapproved Technology During Exigent Circumstances

The BART Police Department may temporarily acquire or temporarily use surveillance technology in exigent circumstances without following the provisions of the policy before that acquisition or use. If the BART Police Department acquires or uses a surveillance technology pursuant to this Section, it shall do all of the following:

- a) Use the surveillance technology to solely respond to the exigent circumstances;
- b) Cease using the surveillance technology within seven days or when the exigent circumstances end, whichever is sooner;
- c) Only keep and maintain data related to the exigent circumstances and dispose of any data that is not relevant to an ongoing investigation unless retention is (i) authorized by a court or (ii) otherwise required by law;

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- d) Not disclose to any third party any information acquired during exigent circumstances, unless disclosure is (i) for purposes of responding to the emergency and the third party agrees to be bound by the restrictions in this Section or is (ii) otherwise required by law enforcement or response agencies that identify the material is needed to prevent, deter, respond to and or document significant criminal action such as a terrorist attack, homegrown violent extremist attack or other activity or threats that endanger public safety or transportation infrastructures, or is (iii) otherwise required by law;
- e) Within 30 days following the end of the exigent circumstances report the acquisition or use to the Board of Directors at a regular meeting of the Board of Directors for discussion and/or possible recommendation for approval to acquire or use the surveillance technology; and
- f) Any technology temporarily acquired in exigent circumstances shall be returned when the exigent circumstances end unless the technology is submitted to the Board of Directors for approval pursuant to this policy and is approved.

Section 12. Effective Date

This Policy shall take effect on the date it is adopted by the Board of Directors.

ORDINANCE NO. 2018-_____

AN ORDINANCE OF THE SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT
CODIFYING ITS SURVEILLANCE TECHNOLOGY POLICY

WHEREAS, the San Francisco Bay Area Rapid Transit District (BART) Board of Directors has invested heavily in maintaining a safe and secure transportation system hardened against terrorist sabotage, vandalism and theft; and

WHEREAS, the Board of Directors has and continues to believe that the safety and security of the BART system requires the maintenance and support of every technology available to maintain public safety and system security; and

WHEREAS, the Board recognizes that there is a point at which technological resources may be viewed to restrict or limit the reasonable expectation of privacy of the riding public; and

WHEREAS, the Board wishes to harmonize these compelling interests in a manner that permits public discourse and discussion about the decision-making process of adding new technologies for safety and security into the BART transit system; and

WHEREAS, the Board of Directors recognizes that surveillance technology in public areas should be judiciously balanced with the need to reasonably protect recognized civil liberties, including privacy, free expression and public assembly; and

WHEREAS, the Board of Directors finds that proper transparency, oversight and accountability are fundamental to minimizing risks to the afore-mentioned civil liberties posed by surveillance technologies; and

WHEREAS, the Board of Directors finds it essential to have an informed public discourse about whether to adopt additional surveillance technology to that already utilized within the District; and

WHEREAS, the existing infrastructure of surveillance technology already employed within the BART transportation system is extensive, it shall be grandfathered in as a "baseline"; and

WHEREAS, the Board of Directors finds it desirable that safeguards be in place to protect reasonable expectations of privacy and freedom of speech and assembly, duly balanced against a need to preserve public peace and safety, and to address exigent circumstances before any new surveillance technology is deployed; and

WHEREAS, the Board of Directors finds that if either new surveillance technology is approved for use or existing technology is used in a materially different manner or for a materially different purpose in places where the public enjoys a reasonable expectation of privacy or a right to expressive activities and public assembly, there must be clear internal policies and procedures to ensure that reasonable safeguards are being followed and that the surveillance technology's benefits outweigh its costs; and

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

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

WHEREAS, the Board has determined that the adoption of this policy by ordinance is necessary to preserve the safety, comfort and well-being of BART riders;

NOW, THEREFORE, BE IT ENACTED by the Board of Directors of the San Francisco Bay Area Rapid Transit District:

Section 1. Title

This Ordinance shall be known as the Surveillance Technology Policy.

Section 2. Definitions

The following definitions apply to this ordinance:

- 1) "Surveillance Annual Report" means an annual written report concerning a specific surveillance technology in active use by the District that includes all of the following:
 - a) A reasonably specific description of how the surveillance technology was used;
 - b) Whether and how often data acquired through the use of the surveillance technology was shared with outside entities, the name of any recipient entity, the type(s) of data disclosed, under what legal standard(s) the information was disclosed, and the justification for the disclosure(s);
 - c) A summary of community complaints or concerns received by the BART District related to the surveillance technology,
 - d) The results of any internal audits, any information about violations of the Surveillance Use Policy, and any actions taken in response
 - e) Information, including crime statistics, if the equipment is used to deter or detect criminal activity, that help the community assess whether the surveillance technology has been effective at achieving its identified purposes;
 - f) Statistics and information about public records act requests related to surveillance technology; and
 - g) Total annual costs for the new surveillance technology, including personnel and other ongoing cost.

- 2) "BART District entity" means any department, bureau, division, or unit of the San Francisco Bay Area Rapid Transit District. The BART Police Department is considered to be a BART District entity, but may also be referenced directly when the BART Police Department is subject to additional requirements of this policy that are specific to the BART Police Department and do not apply to other BART District entities.

- 3) "Surveillance technology" means any electronic device or system with the capacity to monitor and collect audio, visual, locational, thermal, or similar information on any individual or group. This includes, but is not limited to, drones with cameras or monitoring capabilities, automated license plate recognition systems, closed-circuit cameras/televisions, International Mobile Subscriber Identity (IMSI) trackers, global positioning system (GPS) technology, software designed to monitor social media services or forecast criminal activity or criminality, radio frequency identification (RFID) technology, body-worn cameras, biometric identification hardware or software, and facial recognition hardware or software.
 - a) "Surveillance technology" does not include the following devices or hardware, unless they have been equipped with, or are modified to become or include, a surveillance technology as defined in Section 2(3):

1. routine office hardware, such as televisions, computers, and printers, that is in widespread public use and will not be used for any surveillance or law enforcement functions;
2. Parking Ticket Devices (PTDs);
3. manually -operated, non-wearable, handheld digital cameras, audio recorders, and video recorders that are not designated to be used surreptitiously and whose functionality is limited to manually capturing and manually downloading video and/or audio recordings;
4. surveillance devices that cannot record or transmit audio or video or be remotely accessed, such as image stabilizing binoculars or night vision goggles;
5. manually-operated technological devices used primarily for internal municipal entity communications and are not designated to surreptitiously collect surveillance data, such as radios and email systems;
6. municipal agency databases that do not contain any data or other information collected, captured, recorded, retained, processed, intercepted, or analyzed by surveillance technology;
7. equipment designed to detect the presence of and/or identify the source of chemical, biological, radiological, nuclear or explosive materials;
8. portable or fixed observations towers designed to provide an elevated viewing platform for facility security;
9. the BART Watch app or similar successor apps for making reports to the District;
10. the BART.gov web site and platform;
11. BART databases and enterprise systems that contain information kept in the ordinary course of BART business, including, but not limited to, human resource, permit, license and business records;
12. BART Police Department computer aided dispatch (CAD), records / case management, Live Scan, booking, Department of Motor Vehicles, California Law Enforcement Telecommunications System (CLETS), 9-1-1 and related dispatch and operation or emergency services systems;
13. BART Police Department early warning systems;
14. Infrastructure and mechanical control systems (SCADA), including those that control or manage lights, utilities, train control, or fare collection;
15. Physical access control systems, employee identification management systems, and other physical control systems;
16. Information technology security systems, including firewalls and other internal-facing cyber security systems;
17. Computers, software, hardware or devices used in monitoring the work and work-related activities involving District buildings, employees, contractors and volunteers or used in conducting internal investigations involving District employees, contractors or volunteers.

4) "Surveillance Impact Report" means a publicly-released written report including at a minimum the following:

- a) information describing the proposed surveillance technology and how it generally works;
- b) information on the proposed purpose(s) for the surveillance technology;

- c) if applicable, the general location(s) it may be deployed;
 - d) crime statistics for any location(s), if the equipment is used to deter or detect crime;
 - e) an assessment identifying any potential impact on privacy rights and discussing any plans to safeguard the rights of the public;
 - f) the fiscal costs for the surveillance technology, including initial purchase, personnel and other ongoing costs, and any current or potential sources of funding;
 - g) whether use or maintenance of the technology will require data gathered by the technology to be handled or stored by a third-party vendor on an ongoing basis;
 - h) a summary of alternative methods (whether involving the use of a new technology or not) considered before deciding to use the proposed surveillance technology, including the costs and benefits associated with each alternative and an explanation of the reasons why each alternative is inadequate or undesirable; and
 - i) a summary of the experience, if any is known, other law enforcement entities have had with the proposed technology, including information about the effectiveness, any known adverse information about the technology such as unanticipated costs, failures, civil rights or civil liberties issues.
- 5) "Surveillance Use Policy" means a publicly-released policy for use of the surveillance technology that at a minimum specifies the following:
- a) Purpose: The purpose(s) that the surveillance technology is intended to advance.
 - b) Authorized Use: The uses that are authorized, the rules and processes required prior to such use, and the uses that are prohibited.
 - c) Data Collection: The information that can be collected by the surveillance technology.
 - d) Data Access: The individuals (as a category) who can access or use the collected information, and the rules and processes required prior to access or use of the information.
 - e) Data Protection: The safeguards that protect information from unauthorized access, including encryption and access control mechanisms.
 - f) Data Retention: The time period, if any, for which information collected by the surveillance technology will be routinely retained, the reason such retention period is appropriate to further the purpose(s), the process by which the information is regularly deleted after that period lapses, and the specific conditions that must be met to retain information beyond that period.
 - g) Public Access: How collected information can be requested by members of the public, including criminal defendants.
 - h) Third Party Data Sharing: If and how other BART District or non-BART District entities can access or use the information, including any required justification or legal standard necessary to do so and any obligations imposed on the recipient of the information.
 - i) Training: A summary of the training required for any individual authorized to use the surveillance technology or to access information collected by the surveillance technology.
 - j) Auditing and Oversight: The mechanisms to ensure that the Surveillance Use Policy is followed, including internal personnel assigned to ensure compliance with the policy, internal recordkeeping of the use of the technology or access to information collected by

the technology, technical measures to monitor for misuse, any independent person or entity with oversight authority.

The District must seek approval from the Board before implementing any changes to any Surveillance Use Policy.

6) "Exigent circumstances" means the BART Police Department's good faith belief that an emergency involving danger, death, or serious physical injury to any person requires the immediate use of a surveillance technology, or the information it provides, without pre-approval.

Section 3. Board of Directors Review

1) A BART District entity will obtain Board of Directors approval at a properly-noticed public meeting prior to any of the following:

a) Accepting funds for new surveillance technology, applying for a grant, or soliciting or accepting state or federal funds or in-kind or other donations;

(1) If it is determined that the timetable for applying for surveillance technology funding is not compatible with the notice requirements of Section 4(a), the General Manager is authorized to apply for grants after providing a written justification to the Board of Directors at least five calendar days prior to the deadline for applying for or accepting the relevant funding. Any such notices shall be agendized for public discussion at the next regular meeting of the Board of Directors if that meeting is at least 10 days from the date the notice is sent. If the notice is sent less than 10 days from the next regular meeting, it shall be agendized for public discussion at the following regular meeting. Any funding awarded to a BART District entity following such an application remains subject to the regular review, approval, and oversight requirements of Sections 3, 4, and 5.

b) Acquiring surveillance technology, with or without consideration, except for those occasions when a BART District entity conducts a limited scope trial of technology to assess its viability. Such trial shall (i) be limited to a single station or facility, (ii) last no longer than 90 days, and (iii) shall be agendized for public discussion at the first regular meeting of the Board of Directors following the completion of the trial.

1) The BART District will not disclose to any third party information acquired during use of this exception unless disclosure is, similar to the Section 11 exigent circumstances provision (A) for purposes of responding to an emergency and the third party agrees to be bound by the restrictions in this Section or is (B) otherwise required by law enforcement or response agencies that identify the information as pertaining to an active investigation, or is (C) otherwise required by law.

(2) Following conclusion of the testing, the BART District will only keep and maintain data related to the results of the testing and will immediately dispose of any data not relevant to the evaluation of the fitness of the technology unless retention is (i) authorized by a court order or (ii) otherwise required by law.

c) Using new surveillance technology, or using existing surveillance technology for a purpose, in a manner or in a materially different type of location not previously approved by the Board of Directors; or

- d) Entering into a written agreement or memorandum of understanding with a non-BART District entity to acquire, share or otherwise use surveillance technology or the information it provides unless such information is provided by way of BART Watch or any successor smart phone application associated with that specific software.
- 2) Any BART District entity will obtain Board of Directors approval of a Surveillance Use Policy applicable for newly acquired technologies in any of the activities described in subsection (1)(b)-(d).

Section 4. Information Required

- 1) The BART District entity seeking approval under Section 3 shall submit to the Board of Directors a Surveillance Impact Report and a draft Surveillance Use Policy at least twenty-one (21) days prior to the public meeting where approval will be requested.
- 2) The Board of Directors shall publicly release, in print and online, the Surveillance Equipment Request and draft Surveillance Use Policy at least fifteen (15) days prior to the public meeting.

Section 5. Determination by Board of Directors that Benefits Outweigh Costs and Concerns

- 1) The Board of Directors shall approve any action described in Section 3, subsection (1) or Section 6 of this Policy only after making a determination that the benefits to the community of the surveillance technology outweigh the costs, and the proposed use policy will reasonably safeguard civil liberties and civil rights.

Section 6. Compliance for Existing Surveillance Technology

- 1) Each BART District entity possessing or using surveillance technology prior to the effective date of this ordinance shall submit a draft Surveillance Use Policy and Surveillance Impact Report no later than one hundred eighty (180) days following the effective date of this for review and approval by Board of Directors. The Board of Directors may grant extensions to this requirement. If such an extension is granted, a status report must be prepared and submitted to the Board of Directors at a public meeting no later than ninety (90) days from the date of said extension. The draft Surveillance Use Policy shall be made in a manner that is informative, but that will not undermine the District's legitimate security interests.

Section 7. Continuing Oversight of Surveillance Technology

- 1) Each BART District entity must submit for approval at a public hearing a Surveillance Annual Report for each surveillance technology to the Board of Directors on or before August 1.
- 2) The Board of Directors may grant extensions to this requirement. Commencing on the date 2 years from the effective date of this ordinance, no further extensions by the Board of Directors to this reporting obligation for the BART Police Department can be made. While a Surveillance Annual Report shall reference and be inclusive of technologies in public places, such references may be made in a manner that will not undermine the District's legitimate security interests.

3) Based upon information provided in the Surveillance Annual Report, the Board of Directors shall determine whether the benefits to the community of the surveillance technology implemented after the effective date of this ordinance outweigh the costs, and that civil liberties and civil rights are safeguarded. If the benefits do not outweigh the costs, or civil rights and civil liberties are not safeguarded, the Board of Directors shall direct that use of the surveillance technology cease and/or require modifications to the Surveillance Use Policy that will resolve the above concerns.

Section 8. Enforcement

1) This ordinance does not confer a private right of action upon any person or entity to seek injunctive relief against the BART District unless that person or entity has first provided written notice to the General Manager and the District's Board of Directors by serving the District Secretary, regarding the specific alleged violation of this ordinance and has provided the General Manager and the Board of Directors with at least ninety (90) days to investigate and achieve compliance regarding any alleged violation. If the specified alleged violation is not remedied within ninety (90) calendar days of receipt of that written notice, a person or entity may seek injunctive relief against the District in a court of competent jurisdiction.

(AND?)

A court shall award costs and any reasonable attorneys' fees to the prevailing party in any action brought to enforce this ordinance as may be awarded pursuant to State law.

Section 9. Categorical Exemptions from this Policy

1) Any surveillance technologies in place before this policy was established may be replaced with technology with materially the same capacities and capabilities and shall be exempt from this policy except (i) as to the annual reporting requirement, and (ii) surveillance technologies used exclusively by the BART Police Department.

a) Any replacement of surveillance technologies that enhances or otherwise reasonably appears to upgrade (i.e. enhance, improve, or expand) the capabilities of existing technologies shall NOT be exempt from this policy. Storage capacity increases to CCTV and independent lighting improvements (e.g. LED street lighting or improved stairway lighting) at a facility shall not be regarded to be an improvement or enhancement in surveillance technologies.

2) Any surveillance technologies owned and/or operated by third parties on BART facilities and not used by a BART District entity shall be exempt from this policy unless Section 3(1)(d) applies.

3) Any surveillance technologies within the secure perimeter of BART's administrative/maintenance/law enforcement facilities and offices shall be exempt from this policy.

4) Any surveillance technologies used to protect or monitor areas outside of publicly accessible locations including areas within fenced areas (such as, but not limited to, areas where train cars are parked during non-revenue hours or where the District maintains high voltage equipment) or areas prohibited to the public by signage (such as tunnels, or stairwells leading to the trackway) shall be exempt from this policy.

Section 10. Severability

1) The provisions in this ordinance are severable. If any part or provision of this ordinance, or the application of this Policy to any person or circumstance, is held invalid, the remainder of this Policy, including the application of such part or provisions to other persons or circumstances, shall not be affected by such holding and shall continue to have force and effect.

Section 11. Use of Unapproved Technology During Exigent Circumstances

1) The BART Police Department may temporarily acquire or temporarily use surveillance technology in exigent circumstances without following the provisions of the Policy before that acquisition or use. If the BART Police Department acquires or uses a surveillance technology pursuant to this Section, it shall do all of the following:

- (a) Use the surveillance technology to solely respond to the exigent circumstances;
- (b) Cease using the surveillance technology within seven days or when the exigent circumstances end, whichever is sooner;
- (c) Only keep and maintain data related to the exigent circumstances and dispose of any data that is not relevant to an ongoing investigation unless retention is (i) authorized by a court or (ii) otherwise required by law;
- (d) Not disclose to any third party any information acquired during exigent circumstances, unless disclosure is (i) for purposes of responding to the emergency and the third party agrees to be bound by the restrictions in this Section or is (ii) otherwise required by law enforcement or response agencies that identify the material is needed to prevent, deter, respond to and or document significant criminal action such as a terrorist attack, homegrown violent extremist attack or other activity or threats that endanger public safety or transportation infrastructures, or is (iii) otherwise required by law;
- (e) Within 30 days following the end of the exigent circumstances report the acquisition or use to the Board of Directors at a regular meeting of the Board of Directors for discussion and/or possible recommendation for approval to acquire or use the surveillance technology; and
- (f) Any technology temporarily acquired in exigent circumstances shall be returned when the exigent circumstances end unless the technology is submitted to the Board of Directors for approval pursuant to this policy and is approved.

Section 12. Effective Date

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

In regular session of the Board of Directors of the San Francisco Bay Area Rapid Transit District introduced on the ___ day of September, 2018 and finally passed and adopted this ___ day of September, 2018, on regular roll call of the members of said Board by the following vote:

Ayes:

Noes:

Abstentions:

WHEREUPON, the President declared the above and foregoing ordinance duly adopted and SO ORDERED.

President, Board of Directors
ATTEST:

Patricia Williams, Interim District Secretary

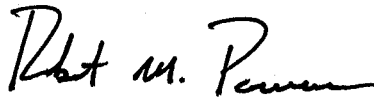
SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

MEMORANDUM

TO: Board of Directors **DATE:** September 6, 2018
FROM: Robert M. Powers, Deputy General Manager
SUBJECT: BART Early Bird Express: Transbay Tube Earthquake Safety Service Plan

Attached is the "BART Early Bird Express: Transbay Tube Earthquake Safety Service Plan" presentation. Staff will provide an overview of the draft service plan during the September 13, 2018 Board Meeting.

For further information, please contact Robert Powers, Deputy General Manager at 510-464-6126.



Robert M. Powers

cc: Board Appointed Officers
Executive Staff



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Robert M. Pann</i> 6 Sept 2018		GENERAL MANAGER ACTION REQ'D:		
DATE: 8/22/2018		BOARD INITIATED ITEM: No		
Originator/Prepared by: Abigail Thorne-Lyman Dept: Planning, Development & Construction	General Counsel	Controller/Treasurer	District Secretary	BARC
<i>Abigail Thorne-Lyman</i> Signature/Date: Sept. 4, 2018	<i>[Signature]</i> 9/5/18 []	<i>[Signature]</i> 9/10/18 []	[]	<i>[Signature]</i> 9/5/2018 []

Lake Merritt Transit-Oriented Development: Authorization to Enter into Exclusive Negotiating Agreement

PURPOSE:

To authorize the General Manager or her designee to execute an Exclusive Negotiating Agreement (ENA) with the East Bay Asian Local Development Corporation (EBALDC)/Strada Investment Group for Transit-Oriented Development (TOD) at the Lake Merritt BART station.

DISCUSSION:

BART owns three city blocks on and adjacent to the Lake Merritt BART Station: the BART plaza block which will accommodate the new Transit Operations Facility and redesigned Plaza; the BART patron surface parking lot between Oak and Fallon Streets; and the Metro Center Building at 101 8th Street.

In 2011, BART staff issued a solicitation seeking a developer of the BART surface parking lot and plaza. BART selected a developer for the site; however, the developer subsequently withdrew when it determined that that market in the area was not ready for a development.

Concurrently, BART staff were engaged with the City of Oakland and community in developing the Lake Merritt Station Area Plan, which was initiated in 2008 and adopted by the City of Oakland in 2014. The Specific Plan established a vision for the larger area and zoned the BART-owned properties for mixed-use development at a maximum of 275'. These properties have the tallest height limit in the Specific Plan area.

With the City's Specific Plan adopted, recession over and a growing regional housing crisis, as well as several newly adopted BART policies including Affordable Housing, TOD and Station Access, BART and the City agreed to initiate a new solicitation for a developer of the two BART-owned properties: the surface parking lot and the Metro Center building site at 101 8th Street. Based on the Specific Plan and BART policies, the District was seeking a financially feasible, high-rise mixed-use development, featuring commercial office, and both affordable and market-rate housing, and community-engaged design, with a focus on active access and minimal parking.

From December 2017 to February 2018, BART staff hosted three stakeholder meetings to establish the goals and objectives for TOD on the property. On March 2, 2018 staff released a Request for Qualifications for developer teams. BART received eight submittals, indicating a strong interest in development on the property.

An evaluation committee comprised of BART and City of Oakland Staff, as well as community and institutional stakeholders, reviewed the proposals and four teams were invited to respond to a Request for Proposals (RFP), which BART issued on May 25, 2018. These teams were:

- East Bay Asian Local Development Corporation (EBALDC) / Strada Investment Group
- Hines Interest Limited Partnership
- Lane Partners
- McGrath Properties, Inc. / Boston Properties

During the evaluation process, Boston Properties decided it was no longer interested in pursuing the RFP, but its partner, McGrath Properties, did want to continue. Because Boston Properties' main strength in the RFQ process was as a financial partner, staff directed McGrath to provide a partner for consideration who was as well capitalized as Boston Properties. McGrath proposed partnering with Brookfield Residential Properties, Inc., an international developer. BART staff reviewed Brookfield's qualifications and determined that their financial contribution to the team was equivalent to Boston Properties, and the McGrath/Brookfield team was authorized to continue in its response to the RFP.

Staff received proposals from all four teams on August 5, 2018. An evaluation committee of ten individuals including BART staff, City staff, community stakeholders, and institutional stakeholders reviewed the written proposals, and conducted interviews with all four teams on August 28, 2018. Proposals were scored using criteria in the following categories:

- *Development Program*: proposal includes high rise office and residential and maximizes allowable building envelope; quantity and depth of affordable housing; quality of urban design; low parking ratios and transportation demand management programming; structural engineering, especially for development over the tracks.

- *Financial Offer and Feasibility*: Reasonableness of cost, revenue and subsidy assumptions; Financial return to BART from both lease terms and BART ridership increases; dollar value of community benefits; phasing and implementation.
- *Community Engagement*: Approach to engaging community in design of development; approach to community benefits negotiation process; approach and experience with involving BART, City and other agencies.
- *Team Member Information*: Strength of team in completing pre-development activities; percentage commitment to small business participation.

Based on the committee scoring on these criteria, as well as the strength of the teams in the oral interview, the teams were ranked as follows:

1. EBALDC/Strada Investment Group (“EBALDC/Strada”)
2. Lane Partners (“Lane”)
3. McGrath Properties, Inc./Brookfield Residential
4. Hines Interest Limited Partnership

While the committee received numerous strong proposals, the EBALDC/Strada term performed more strongly than the others, particularly on the basis of:

- A development program that is fully aligned with Specific Plan and BART’s Goals & Objectives
- Proposed depth and quantity of affordable housing units
- Highest proposed ground lease payments to BART, and strong ridership
- Robust community engagement process and deep knowledge of the surrounding community
- Highest proposed small business participation commitment (35%)

A consideration with the EBALDC/Strada team’s proposal is that project delivery is predicated on applying for, and receiving a high level of subsidy from federal, state, county, and local sources, as well as a proposed capital campaign. The risk in not receiving these subsidy sources is that the project may take longer to complete when compared to other proposals, and that BART’s ground lease revenue may be at risk if the development team is unsuccessful in receiving funds. However, staff determined that the individual assumptions regarding subsidy for each segment of the project was reasonable and the risk is reasonable given the high profile nature of this development within BART’s TOD portfolio, the team’s track record with securing the proposed subsidy types and amounts, and the project’s competitive location for tax credits, state Affordable Housing and Sustainable Communities funds, and federal Opportunity Zone investments.

The second ranked Lane team provided a strong proposal that was slightly less reliant on subsidy, but this team’s proposal included one high-rise building that exceeded the Specific Plan height limits, and was second ranked in numerous criteria including affordability, ground

lease payments, and small business participation. Further, the proposed community engagement approach was robust and well thought through, but the committee did not believe it reflected as deep a knowledge of - or tailoring to - the surrounding community. Nonetheless BART staff believe that the Lane team could successfully deliver a transit-oriented development that is aligned with the Specific Plan and BART's Goals and Objectives for the site, if the EBALDC/Strada team were for some reason unable to advance development.

Given these rankings, staff requests authorization to advance a transit-oriented development project at Lake Merritt BART station with a joint venture comprised of EBALDC and Strada, with the provision that if staff and EBALDC/Strada cannot in good faith negotiate an ENA or substantially meet the terms of the ENA in a timely manner, staff may pursue an ENA with the second ranked team of Lane. This provision will protect BART from a situation where a developer withdraws, and the TOD is stalled.

If staff determine that EBALDC/Strada have substantially met the terms of the ENA, but are not ready to return to the Board with a project and ground lease option at the end of the 24 month ENA period, staff may request of the Board an extension with EBALDC/Strada, which would include a similar ENA fee requirement.

FISCAL IMPACT:

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

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

ALTERNATIVES:

1. Do not authorize staff to proceed with an Exclusive Negotiating Agreement. Staff will not pursue the Lake Merritt TOD further without direction from the Board.
2. Authorize staff to proceed with a different team.

RECOMMENDATION:

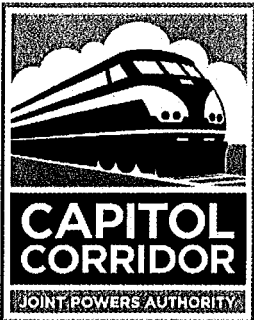
Adopt the following Motion.

MOTION:

Authorize the General Manager or her designee to enter into an exclusive negotiating agreement (ENA) with a joint venture comprised of the East Bay Asian Local Development Corporation and Strada Investment Group for a term of 24 months.

If BART and this joint venture cannot in good faith negotiate an ENA or if the joint venture cannot substantially comply with the terms of the ENA, authorize the General Manager or her designee to enter into an ENA with Lane Partners for a term of up to 24 months.


MEMO



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www.capitolcorridor.org

TO: BART Board of Directors
Grace Crunican, BART General Manager

CC: Bob Powers, BART Deputy General Manager

FROM: David B. Kutrosky, Managing Director 

DATE: September 5, 2018

SUBJECT: CCJPA Board of Directors Meeting, September 19, 2018

I am submitting this memo to provide an overview of the agenda for the September 19, 2018 CCJPA Board of Directors Meeting in lieu of the typical presentation that is covered in the General Manager's report.

The agenda for the upcoming September 19, 2018 CCJPA Board Meeting (see attached cover page) will include the following action items:

- CCJPA FY 19 Budget – Operations, Administration, Marketing Agreement
- Legislative Matters
- CRISI Federal Grant Program Submission

In addition, the CCJPA Board will be provided with:

- Update: CCJPA Ad Hoc Subcommittee Activities
- Update: Programmed Capital Projects (including the 2018 TIRCP Project Awards)

Should you have any questions, please do not hesitate to contact me at davidk@capitolcorridor.org or 510-464-6993. Thanks.

Attachment: Draft Agenda Page – September 19, 2018 CCJPA Board Meeting



CAPITOL CORRIDOR JOINT POWERS AUTHORITY

MEETING OF THE BOARD OF DIRECTORS

September 19, 2018

10 a.m.

City Hall, Council Chambers
 City of Sacramento
 915 I Street, Sacramento, CA 95814
 (see attached map)

A simultaneous teleconference call will take place at:

Santa Clara Valley Transportation Authority
 3331 North First Street, San Jose, CA

Roseville Civic Center, City Council Office
 311 Vernon Street, Roseville, CA

City of Vacaville, City Manager's Office, Conf Rm
 650 Merchant Street, Vacaville, CA

DRAFT AGENDA

- I. Call to Order
- II. Roll Call and Pledge of Allegiance
- III. Report of the Chair
- IV. Consent Calendar *Action*
 - 1. Minutes of the June 20, 2018 Meeting
 - 2. Supplemental Funding for FY 18 CCJPA Budget: Capitalized Maintenance Allocation
 - 3. Accept Award of \$1M TIRCP for Second Transbay Crossing Project
 - 4. Accept Award of \$1M TIRCP for Dumbarton Rail Project
 - 5. Approve Updated 2018 TIRCP Master Agreement
- V. Action and Discussion Items
 - 1. CCJPA FY 19 Budget – Operations, Administration, Marketing *Action*
 - 2. CCJPA/Amtrak FY 19 Operating Agreement *Action*
 - 3. Legislative Matters/State FY 19 Budget *Action*
 - 4. CRISI Federal Grant Program Submission *Action*
 - 5. Update: CCJPA Ad-Hoc Subcommittee Activities *Info*
 - 6. Update: Programmed Capital Grants and New Rail Vehicle Deliveries *Info*
 - 7. Managing Director's Report (including Results of Annual On-Board Surveys (May 2018)) *Info*
 - 8. Work Completed *Info*
 - a. Release of 2 Additional Charger Locomotives into Revenue Service
 - b. Initial Launch of PTC for Capitol Corridor Trains/Union Pacific Railroad Route
 - c. Infrastructure Improvements for CCJPA Travel Time Savings Project
 - d. Marketing Activities (June – August 2018)
 - 9. Work in Progress *Info*
 - a. CCJPA Sacramento-Roseville 3rd Track Project Phase 1
 - b. Oakland-San Jose Project – Phase 2A
 - c. Integrated Travel Program (ITP)/NorCal Megaregional Passenger Rail Planning
 - d. SRA/SB1 Project Updates
 - e. On-Board Information System Project (OBIS)
 - f. Transfer of Management of On-train WiFi Services to CCJPA/Caltrans/CA IPR JPAs
 - g. CCJPA Bike Access Program
 - h. Station Signage and Platform Safety Upgrades
 - i. Renewable Diesel Pilot Program: Status Report
 - j. Upcoming Marketing Activities
- VI. Board Director Reports
- VII. Public Comment
- VIII. Adjournment. Next Meeting Date: 10:00 a.m., November 14, 2018 at BART Boardroom, Kaiser Center
 20th Street Mall, 344-20th Street, 3rd Floor, Oakland, CA

Notes: Members of the public may address the Board regarding any item on this agenda. Please complete a "Request to Address the Board" form (available at the entrance of the Boardroom and at a teleconference location, if applicable) and hand it to the Secretary or designated staff member 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. Speakers are limited to three (3) minutes for any item or matter. The CCJPA Board reserves the right to take action on any agenda item.

Consent calendar items are considered routine and will be enacted, approved or adopted by one motion unless a request for discussion or explanation is received from a CCJPA Board Director or from a member of the audience.

The CCJPA Board provides services/accommodations upon request to persons with disabilities who wish to address Board matters. A request must be made within one and five days in advance of a Board meeting, depending on the service requested. Call (510) 464-6085 for information.

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

MEMORANDUM

TO: Board of Directors

DATE: September 7, 2018

FROM: Interim District Secretary

SUBJECT: State Mandated Training

The state-mandated training on the following two subjects will be provided at the September 13 Board Meeting:

- Sexual Harassment Prevention, in accordance with California Government Code Section 12950.1
- General Ethics Principles and Ethics Laws Relevant to Public Service, in accordance with California Government Code Section 53235.

As in previous years, the law firm of Liebert Cassidy Whitmore has been retained to provide the training.


Each session will be for two hours, as required by Assembly Bills 1234 and 1661. Sexual Harassment Prevention will be presented at 1:00 p.m., and Ethics training will begin at 3:00 p.m.

Copies of the training materials will be provided at the Meeting. If you would like a copy in advance, please advise.

Should you be unable to participate in the session at the September 13, 2018, Regular Board Meeting, the State permits satisfaction of the training requirement through completion of an online course. Please let me know if you would like more information on this option. Also, if you have previously satisfied the training requirements, please submit your certificate of completion to our Office if you have not already done so.

If you have any questions or concerns, please do not hesitate to contact me.

Thank you.


Patricia K. Williams