

# **San Francisco Bay Area Rapid Transit District**

2150 Webster Street, P. O. Box 12688, Oakland, CA 94612-2688



## **BOARD OF DIRECTORS DRAFT MINUTES OF THE 1,970<sup>TH</sup> MEETING THURSDAY, DECEMBER 5, 2024**

Members of the Board of Directors  
Bevan Dufty, President (District 9)  
Mark Foley, Vice President (District 2)  
    Debora Allen (District 1)  
    Rebecca Saltzman (District 3)  
    Robert Raburn (District 4)  
    Melissa Hernandez (District 5)  
    Elizabeth Ames (District 6)  
    Lateefah Simon (District 7)  
    Janice Li (District 8)

## MEETING DESCRIPTION

A Regular Meeting of the Board of Directors was held on December 5, 2024, convening at 9:02 a.m. in the BART Board Room, 2150 Webster Street, 1st Floor, Oakland, California. President Dufty presided, April B. A. Quintanilla, District Secretary.

### 1. CALL TO ORDER

President Dufty called the Meeting to order at 9:02 a.m.

#### A. Roll Call.

Directors Present in Oakland: Directors Foley, Li, Raburn, Saltzman, and Dufty.

Directors Present via Teleconference: None.

Absent: None. Directors Allen, Ames, Hernandez, and Simon entered the Meeting later.

#### B. Pledge of Allegiance: Vice President Foley led the Pledge of Allegiance.

President Dufty announced that Public Comment would be limited to two minutes per speaker throughout the Meeting.

#### C. Introduction of Special Guests.

- i. The Honorable Phil Ting, California State Assemblymember, District 19.
- ii. Mark Chekal, Former District Director for California State Assemblymember Phil Ting.

President Dufty welcomed The Honorable Phil Ting, California State Assemblymember, District 19, and Mark Chekal, former District Director for Assemblymember Phil Ting, recognizing their significant contributions to public service and transit advocacy. President Dufty commended both guests for their impactful work in advancing public transit and improving the quality of life for Californians.

Directors Allen and Hernandez entered the Meeting in Oakland.

Assemblymember Ting addressed the Board, reaffirming his commitment to BART's success, expressing gratitude, and reflecting on their partnership during his tenure.

Mark Chekal addressed the Board, reflecting on his experience working alongside BART and its leaders, and expressing his appreciation for the agency's ongoing progress and impact.

#### Discussion

The item was discussed, with the following highlights:

Director Li expressed gratitude and admiration for Assemblymember Phil Ting and Former District Director Mark Chekal, highlighting their impactful public service and their continued presence in community advocacy.

Directors Simon entered the Meeting in Oakland.

Director Saltzman praised both Assemblymember Ting and Mark Chekal for their critical contributions, underscoring the importance of their work in shaping transit policy and supporting the Bay Area community.

Director Simon expressed her appreciation for both Assemblymember Ting and Mark Chekal, lauded their contributions and mentorship, and expressed confidence in their continued impact in future endeavors.

#### Public Comment

No comments were received.

## **2. REPORT OF THE BOARD PRESIDENT**

President Dufty expressed gratitude for his second term as Board President, acknowledged the collective successes of the BART Board, and invited reflections and comments from departing Board Members. President Dufty also reflected on highlights of BART's top accomplishments in 2024, including improvements to the customer experience, operational improvements, equity and accessibility initiatives, grant and finance achievements, workforce and community engagement, and advocacy efforts to secure reliable funding.

President Dufty thanked Vice President Foley for his leadership, expressing optimism about the incoming Board Members and highlighting the diverse backgrounds and fresh perspectives they bring.

#### Discussion

The item was discussed, with the following highlights:

Director Saltzman expressed gratitude to President Dufty for his leadership, dedication, and efforts to hold the BART Board together during a challenging year; congratulated Director Simon on her upcoming Congressional role; and expressed excitement about Director Simon's future impact her District, BART, and the country.

Director Simon praised President Dufty for his leadership and contributions, emphasizing his ability to bring kindness and dignity to tough conversations. Director Simon reaffirmed her commitment to advancing transit as a vital public service for the Bay Area.

Director Allen presented her colleagues with "Dark MAGA" hats, accompanied by personal letters and acknowledged the particularly difficult last four years for BART, marked by the COVID-19 Pandemic, fiscal challenges, and operational struggles. Director Allen also expressed gratitude for the opportunity to serve and determination to address BART's ongoing challenges, leaving a legacy of fiscal oversight and advocacy for transparency and public safety.

Vice President Foley praised President Dufty's leadership, marked by vision, compassion, and an unwavering commitment to equity and progress and presented a President Dufty with a commemorative plaque in recognition of his service to BART and the Bay Area community.

Director Li highlighted President Dufty's leadership as Board President in 2024 and expressed heartfelt gratitude to Directors Simon, Saltzman, and Dufty for their mentorship, emphasizing the significant impact her mentors and colleagues have had on her personal and professional growth.

### Public Comment

The following individuals addressed the Board:

Barney Smits  
Aleta Dupree  
Glenn Overton  
June Johnson  
Joe Kunzler  
John Arantes

### **3. BOARD COMMITTEE REPORTS**

There were no board committee reports.

### **4. CONSENT CALENDAR.**

President Dufty brought the following Consent Calendar items before the Board.

- A. Approval of Minutes of the Meeting of October 24, 2024.
- B. Amendments to Transit Security Advisory Committee (TSAC) Bylaws.
- C. Amendment to the District Contractor Code of Conduct.
- D. Non-California Public Employees' Retirement System (CalPERS) Medical Plan Structure and Rates for Calendar Year 2025.
- E. Extension of Agreement No. 6M4607, with PayPal/Braintree, for Mobility as a Service (MaaS) - Payment Processor.
- F. Procurement with RightStar for BMC Remedyforce Software as a Service Subscription for a Cloud-Based Information Technology (IT) Management Solution.
- G. Results of Independent Audit for the Fiscal Year Ending on June 30, 2024.
- H. Award of Agreement No. 6M3695 and Agreement No. 6M3696 to Elite Pressure Washing Services, LLC., for Systemwide High Pressure Power Washing Services at Area 1 - West Bay and Area 4 - East Bay South.
- I. Reject the Sole Responsive Bid for Invitation for Bid No. 9137, Procurement of Rectifiers and Transformers.
- J. Authorization to Execute Agreements with Bus Operators to Continue Early Bird Express Bus Service.

- K. Procurement with Pacific Mobile Structures for a Single Mobile Trailer for the Hayward Training Center for Communications Based Train Control Training.
- L. Change Order to Contract No. 15EK-102, TCCCP New Traction Power Facilities, West Bay, with C3M Clark Cupertino A Joint Venture, for Project Delays.

President Dufty requested that Item 4-B, Amendments to Transit Security Advisory Committee (TSAC) Bylaws, be removed from the Consent Calendar and indicated that Omar Farmer, Chair of the Transit Security Advisory Committee, had requested that the item be continued to the next business Board Meeting in January.

Director Simon moved to approve the Consent Calendar, except Item 4-B, by one motion.

Director Raburn seconded the motion.

#### Public Comment

Aleta Dupree addressed the Board.

#### Action

Upon motion by Director Simon and second by Director Raburn, the Board took the following actions by unanimous roll call vote.

#### *Vote Summary:*

*Moved / Seconded: Director Simon / Director Raburn.*

*Aye: Directors Allen, Ames, Foley, Hernandez, Li, Raburn, Saltzman, Simon, and Dufty.*

*No: 0*

*Abstain: 0*

*Absent: 0*

*Result: 9-0, motion carried by unanimous roll call vote.*

- A. The Minutes of the Meeting of October 24, 2024, were approved. *(Vote: 9-0)*
- C. The Board adopted the attached amended District Contractor Code of Conduct, subject to adoption of the Suspension and Debarment Policy. (The amended District Contractor Code of Conduct is attached and hereby made a part of these Minutes.) *(Vote: 9-0)*
- D. Resolution No. 5608, In the Matter of the Non-CalPERS Medical Plan Structure and Rates For Calendar Year 2025, was adopted. *(Vote: 9-0)*
- E. The General Manager or his designee was authorized to extend Agreement No. 6M4607 with PayPal/Braintree for one (1) year, for the not-to-exceed amount of \$519,115.33 (subject to the actual transaction volume), for payment processing services. *(Vote: 9-0)*
- F. The General Manager was authorized to purchase a one-year BMC Remedyforce Software as a Service subscription for a cloud-based Information Technology (IT) management solution from RightStar, in an amount not to exceed \$114,828.01. *(Vote: 9-0)*

- G. *Item 4-G, Results of Independent Audit for the Fiscal Year Ending on June 30, 2024, was presented for information only.*
- H. The General Manager was authorized to award Agreement No. 6M3695 to Elite Pressure Washing Services, LLC. for Systemwide High Pressure Power Washing Services at Station Plazas and Parking Structure Stairwells at Area 1 – West Bay for a three-year period at a total compensation of \$449,400.00, and award Agreement No. 6M3696 to Elite Pressure Washing Services, LLC. for Systemwide High Pressure Power Washing Services at Station Plazas and Parking Structures Stairwells at Area 4 – East Bay South for a three-year period at a total compensation of \$855,000.00, pursuant to notification to be issued by the General Manager and subject to the District’s Protest Procedures. Subject to available funding, the General Manager was further authorized to exercise two (2) one-year option years to Agreement No. 6M3695 and Agreement No. 6M3696 for an amount of \$299,600.00, and \$570,000.00, respectively. *(Vote: 9-0)*
- I. The General Manager was authorized to reject the sole responsive Bid for Invitation for Bid (IFB) No. 9137, Procurement of Rectifiers and Transformers. *(Vote: 9-0)*
- J. The General Manager was authorized to execute individual agreements with bus operators to provide early morning bus services for an aggregate amount not to exceed \$1,500,000.00 per year, for up to three years. The General Manager was also authorized to exercise up to three, one-year extensions, per agreement. *(Vote: 9-0)*
- K. The General Manager was authorized to award the procurement for the Communications Based Train Control Hayward Training Mobile Trailer to Pacific Mobile Structures in an amount not to exceed \$148,395.00 including all applicable taxes. *(Vote: 9-0)*
- L. The General Manager was authorized to execute the Change Order No. 76 Part 2 identified above in an aggregate amount not to exceed \$3,442,155.00 to Contract No. 15EK-102, TCCCP New Traction Power Facilities, West Bay. (The Executive Decision Document is attached and hereby made a part of these Minutes.) *(Vote: 9-0)*

## 5. **GENERAL MANAGER’S REPORT**

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

Robert Powers, General Manager, reported on the upcoming Sweater Fest event and the employee Service Awards event.

General Manager Powers also recognized and thanked Directors Allen, Saltzman, Simon, and Dufty for their services and partnership. General Manager Powers expressed gratitude and respect for the departing Board Members, highlighting their unique contributions and lasting impact on BART. General Manager Powers concluded by expressing confidence in the continuing collaboration with the departing Board Members in their future roles.

### Public Comment

The following individuals addressed the Board:

Glenn Overton  
Barney Smits  
Aleta Dupree

## 6. **BOARD MATTERS - PART I**

### A. Not One More Girl Initiative Update.

President Dufty brought the item before the Board.

Alicia Trost, Chief Communications Officer; Chantal Hildebrand, Co-Executive Director, Alliance for Girls (AFG); Mars Francis, Youth Leader, AFG; and Kennedy Foye, Senior Fellow, AFG, presented the item.

### Public Comment

The following individuals addressed the Board:

Rocio Molina  
Glenn Overton  
Ada Chan  
Aleta Dupree  
Haleema Bharoocha  
Alanna  
Joe Kunzler

President Dufty welcomed and recognized newly elected Board Member Barnali Ghosh, who would officially join the Board at the next Board Meeting.

Director-Elect Ghosh expressed gratitude to outgoing Board Members: President Bevan Dufty, Congresswoman-Elect Lateefah Simon, and Directors Debora Allen and Rebecca Saltzman. Director-Elect Ghosh acknowledged the significant contributions of the outgoing Board Members and recognized the legacy they leave behind.

### Discussion

The item was discussed, with the following highlights:

Director Raburn emphasized the importance of distributing the *Not One More Girl* cards and reiterated the importance of taking proactive measures to ensure passenger safety and remove serial predators from the BART system.

Vice President Foley expressed gratitude for the presentation and the opportunity to learn about the *Not One More Girl* initiative and reiterated his commitment to working on this initiative moving forward.

Director Simon praised the Alliance for Girls for their comprehensive, data-driven presentation and their impactful work supporting young women and gender-expansive individuals.

Director Li reiterated a strong commitment to *Not One More Girl*, noting that the work is far from finished and should remain a priority even during challenging fiscal times.

Director Saltzman commended the *Not One More Girl* initiative for its data-driven approach and direct engagement with riders, expressing optimism about the future implementation of its recommendations and emphasizing the critical need for creating a safe and inclusive transit system.

Director Ames expressed strong support for the *Not One More Girl* initiative, highlighting the importance of creating community-focused, welcoming BART stations, and praised the youth-driven approach as essential for the success of this long-overdue effort.

Director Hernandez emphasized the significance of engaging community-based organizations (CBOs) to improve BART's community outreach and collaborating with cities to align BART's efforts with local initiatives.

President Dufty expressed gratitude to the panel and reinforced BART's commitment to continuing the work on the *Not One More Girl* Initiative and making meaningful progress.

Michael Jones, Deputy General Manager, provided an update on an emergency report, noting that a significant earthquake in Humboldt triggered a tsunami warning for the region.

Vice President Foley sought clarification the closure of underground stations and confirmed understanding that stations such as 12<sup>th</sup> Street and 19<sup>th</sup> Street would be closed to avoid the need for potential evacuations.

President Dufty acknowledged the updates and expressed gratitude for the real-time planning and safety efforts.

Director Simon highlighted public concerns and the importance of clear communication during the event.

Director Saltzman highlighted the need for timely and accurate updates on BART's website and alert systems.

Deputy General Manager Jones assured the board that the issue was being addressed in real-time, with the executive team and senior leadership actively managing the situation.

#### Action

No Board action was taken, as the item was presented for information only.

#### B. Lake Merritt Station Renaming Consideration.

President Dufty brought the item before the Board.

Rodd Lee, Assistant General Manager, External Affairs; Val Menotti, Assistant General Manager, Planning and Development; and Andrew Tang, Manager of Special Projects, presented the item.



## Public Comment

The following individuals addressed the Board:

Janet Xie  
Joshua Simon  
Paul Seto  
Julia Liou  
Ener Chu  
Stephanie Tran  
Janelle Chan  
Ada Chan  
Alfred Juan Gong  
Glenn Overton  
Barney Smits  
Aleta Dupree

## Discussion

The item was discussed, with the following highlights:

Director Raburn highlighted the transformational transit-oriented development (TOD) project, including Chinatown Senior Housing, as an opportunity to honor Oakland-Chinatown's legacy, noting that this renaming reflects BART's commitment to community representation and cultural recognition, reinforcing the system's role in enhancing equity and inclusion for its diverse ridership.

Director Raburn moved to correct the name of Lake Merritt Station to Oakland Chinatown Station with a proposed deadline to coincide with the opening of Chinatown Senior Housing.

Director Simon seconded the motion.

Director Simon emphasized the importance of honoring the community's history and identity.

Deputy General Manager Jones confirmed the official cancellation of the tsunami alert in the Bay Area, stating that BART's service restoration had been in progress for the last 30–40 minutes and service is expected to return to normal before the end of the meeting.

President Dufty thanked the Deputy General Manager for the update and for ensuring safety during the alert.

Director Li expressed gratitude to the community for sharing their stories and emphasized the importance of renaming the Lake Merritt station to rectify past harms and uphold public accountability. Director Li sought further clarity to ensure the Board's next actions were focused on implementation, rather than duplicating prior expressions of intention, including confirming the exact wording of the October 24<sup>th</sup> Roll Call for Introductions (RCI) request and celebrating cultural identity through meaningful actions like incorporating Chinese characters in signage.

Director Saltzman clarified the intent of the motion beyond the RCI submitted on October 24<sup>th</sup>.

Director Raburn emphasized collaboration and seeking external funding sources, while acknowledging BART's history of securing capital funding for projects such as lighting upgrades at San Leandro Station.

Director Saltzman expressed support for renaming Lake Merritt Station to Oakland Chinatown Station as an acknowledgment of community advocacy and cultural significance, and emphasized caution due to BART's financial situation.

Director Saltzman made the following substitute motion: That the Board of Directors supports the intent to change the Lake Merritt Station name, subject to identifying the applicant, identifying funding, and conducting proper outreach.

Director Saltzman also recommended that the station renaming policy be reviewed and updated.

Vice President Foley seconded Director Saltzman's substitute motion.

Director Allen emphasized the financial implications of renaming the station, clarifying that the project should be considered an operating cost, and expressed support for renaming the station only if external funding is secured.

Vice President Foley expressed support for the substitute motion, acknowledging the need for renaming but favoring a structured and funded approach.

Director Ames expressed appreciation for Director Saltzman's substitute motion as a compromise and concern about the lack of a clear applicant and the need for a public process to confirm the appropriateness of the proposed name.

### Action

Upon substitute motion by Director Saltzman and second by Vice President Foley, the Board of Directors supported the intent to change the Lake Merritt Station name, subject to identifying the applicant, identifying funding, and conducting proper outreach, by unanimous roll call vote.

#### *Vote Summary:*

*Moved / Seconded: Director Saltzman / Vice President Foley*

*Aye: Directors Allen, Ames, Foley, Hernandez, Li, Raburn, Saltzman, Simon, and Dufty.*

*No: 0*

*Abstain: 0*

*Absent: 0*

*Result: 9-0, motion carried by unanimous roll call vote.*

President Dufty expressed appreciation for the community's participation, emphasizing this as a positive step forward toward addressing historical inequities and creating a more inclusive transit system.

11. **CLOSED SESSION**

*Item 11 was heard after Item 6-B, Lake Merritt Station Renaming Consideration.*

A. CONFERENCE WITH LEGAL COUNSEL- EXISTING LITIGATION

Name of Case: Andrew Pisano and Kaitlyn Pisano v. San Francisco Bay Area Rapid Transit District, Philip M. Valenzuela, et al.

Case No.: RG-19-041496

Government Code Section 54956.9(d)(1)

B. PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Titles: General Manager, General Counsel, District Secretary, Independent Police Auditor, and Inspector General

Government Code Section: 54957

C. CONFERENCE WITH LABOR NEGOTIATORS

Agency Negotiators: President Dufty, Vice President Foley, and Director Simon

Titles: General Manager, General Counsel, District Secretary, Independent Police Auditor, and Inspector General

Government Code Section: 54957.6

President Dufty brought the item before the Board and indicated that the Board would enter Closed Session and reconvene in Open Session after the conclusion of Closed Session.

Public Comment

No comments were received.

The Board Meeting recessed at 12:46 p.m.

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The Board reconvened in Closed Session at 12:51 p.m.

Directors Present in Oakland: Directors Allen, Ames, Foley, Hernandez, Li, Raburn, Simon, and Dufty.

Directors Present via Teleconference: None.

Absent: None. Director Saltzman entered the Meeting later.

Director Saltzman entered the Meeting in Oakland.

Director Simon exited the Meeting.

The Board Meeting recessed at approximately 2:00 p.m.

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## 12. **OPEN SESSION**

The Board reconvened in Open Session at 2:18 p.m.

Directors Present in Oakland: Directors Allen, Ames, Hernandez, Raburn, and Dufty.

Directors Present via Teleconference: None.

Absent: Directors Saltzman and Simon.

A. Announcements from Closed Session, if any.

President Dufty announced that the Board had concluded its Closed Session and that there were no announcements to be made.

## 7. **PLANNING, PUBLIC AFFAIRS, ACCESS, AND LEGISLATION ITEMS**

Director Raburn, Chairperson

A. BART's 2025 Federal and State Legislative Advocacy Program.

Director Raburn, Chairperson of the Planning, Public Affairs, Access, and Legislation Committee, brought the item before the Board.

President Dufty moved that the Board approves the 2025 Federal and State Legislative Advocacy Program as presented by staff.

Director Hernandez seconded the motion.

### Public Comment

No comments were received.

### Action

Upon motion by President Dufty and second by Director Hernandez the Board approved the 2025 Federal and State Legislative Advocacy Program as presented by staff by unanimous roll call vote.

*Vote Summary:*

*Moved / Seconded: President Dufty / Director Hernandez*

*Aye: Directors Allen, Ames, Hernandez, Raburn, and Dufty.*

*No: 0*

*Abstain: 0*

*Absent: Directors Foley, Li, Saltzman, and Simon.*

*Result: 5-0, motion carried by unanimous roll call vote.*

## **9. ENGINEERING AND OPERATIONS ITEMS**

Lateefah Simon, Chairperson

*Item 9 was heard after Item 7, Planning, Public Affairs, Access, and Legislation Items.*

Director Li entered the Meeting in Oakland.

### A. Next Generation Fare Gates Update.

Director Ames, Vice Chairperson of the Engineering and Operations Committee, brought the item before the Board.

Sylvia Lamb, Assistant General Manager, Infrastructure Delivery; Katherine Ogburn, Manager of Strategic Project Support; and Joy Sharma, Chief Infrastructure Delivery Officer, presented the item.

Vice President Foley entered the Meeting in Oakland.

### Public Comment

Aleta Dupree addressed the Board.

### Discussion

The item was discussed, with the following highlights:

Director Allen expressed gratitude and pride in the progress made on the fare gate modernization project and recalled listening to riders' concerns during the 2016 election, with a majority requesting station hardening, fare gate replacements, and better fare evasion control.

Director Li praised the visible progress and positive impact of the new fare gates, noting changes in rider behavior, and proposing two initiatives to improve communication and responsiveness: (1) establishing a centralized email address, such as faregates@bart.gov, for riders to submit feedback and ideas; and (2) deploying QR codes at fare gate locations to provide information about the project and an easy way for riders to offer feedback.

President Dufty shared positive feedback from the Director of the Oakland Airport regarding the installation of fare gates, highlighting the seamless coordination with airport operations during a busy period.

Director Raburn stressed the importance of accessibility, effective signage, and operational preparedness to ensure a seamless and inclusive experience for all riders.

Director Ames emphasized the importance of continued integration of fare gates with broader station security upgrades, effective communication with the public, and maintaining momentum to ensure the project is completed successfully.

Action

No Board action was taken, as the item was presented for information only.

8. **ADMINISTRATION ITEMS**

Janice Li, Chairperson

A. District Suspension and Debarment Policy.

Director Li, Chairperson of the Administration Committee, brought the item before the Board.

President Dufty moved that the Board adopts the attached District Suspension and Debarment Policy.

Director Raburn seconded the motion.

Public Comment

No comments were received.

Discussion

The item was discussed, with the following highlight:

Director Allen commended the policy as a solid starting point and emphasized the need for future refinement to limit the General Manager's discretion.

Action

Upon motion by President Dufty and second by Director Raburn, the Board adopted the attached District Suspension and Debarment Policy by unanimous roll call vote. (The District Suspension and Debarment Policy is attached and hereby made a part of these Minutes.)

*Vote Summary:*

*Moved / Seconded: President Dufty / Director Raburn*

*Aye: Directors Allen, Ames, Foley, Hernandez, Li, Raburn, and Dufty.*

*No: 0*

*Abstain: 0*

*Absent: Directors Saltzman and Simon.*

*Result: 7-0-, motion carried by unanimous roll call vote.*

- B. Award of Agreements for Financial On-Call Professional Services.
- i. Agreement No. 6M2099 with Bell Burnett & Associates.
  - ii. Agreement No. 6M2100 with Crowe LLP.
  - iii. Agreement No. 6M2101 with Deloitte & Touche.
  - iv. Agreement No. 6M2102 with Equilibrium Collaborative LLC.
  - v. Agreement No. 6M2103 with Sjoberg Evashenk Consulting, Inc.
  - vi. Agreement No. 6M2104 with Sperry Capital, Inc.
  - vii. Agreement No. 6M2105 with Steer Group.

Director Li brought the item before the Board.

Director Raburn moved that the General Manager be authorized to award Agreement No. 6M2099 to Bell Burnett & Associates (SA-1), Agreement No. 6M2100 to Crowe LLP. (SA-1, SA-2, SA-3, SA-4), Agreement No. 6M2101 to Deloitte & Touche (SA-1, SA-2), Agreement No. 6M2102 to Equilibrium Collaborative LLC (SA-1, SA-3), Agreement No. 6M2103 to Sjoberg Evashenk Consulting, Inc. (SA-1), Agreement No. 6M2104 to Sperry Capital, Inc. (SA-1, SA-2, SA-3), and Agreement No. 6M2105 to Steer Group (SA-2, SA-3, SA-4), to provide on-call professional services for the Finance Department and Performance & Budget Executive Office, not to exceed \$1,000,000.00 per firm per Service Area and not to exceed \$16,000,000.00 in aggregate, pursuant to notification to be issued by the General Manager, and subject to compliance with the District's Protest Procedures.

President Dufty seconded the motion.

#### Public Comment

No comments were received.

#### Discussion

The item was discussed, with the following highlight:

Director Allen expressed concern regarding the lack of detailed scopes of work and descriptions for the services under the proposed contracts and indicated that she would not support the motion.

#### Action

Upon motion by Director Raburn and second by President Dufty, the General Manager was authorized to award Agreement No. 6M2099 to Bell Burnett & Associates (SA-1), Agreement No. 6M2100 to Crowe LLP. (SA-1, SA-2, SA-3, SA-4), Agreement No. 6M2101 to Deloitte & Touche (SA-1, SA-2), Agreement No. 6M2102 to Equilibrium Collaborative LLC (SA-1, SA-3), Agreement No. 6M2103 to Sjoberg Evashenk Consulting, Inc. (SA-1), Agreement No. 6M2104 to Sperry Capital, Inc. (SA-1, SA-2, SA-3), and Agreement No. 6M2105 to Steer Group (SA-2, SA-3, SA-4), to provide on-call professional services for the Finance Department and Performance & Budget Executive Office, not to exceed \$1,000,000.00 per firm per Service Area and not to exceed \$16,000,000.00 in aggregate, pursuant to notification to be issued by the General Manager, and subject to compliance with the District's Protest Procedures by roll call vote.

*Vote Summary:*

*Moved / Seconded: Director Raburn / President Dufty*

*Aye: Directors Ames, Foley, Hernandez, Li, Raburn, and Dufty.*

*No: Director Allen.*

*Abstain: 0*

*Absent: Directors Saltzman and Simon.*

*Result: 6-1, motion carried by roll call vote.*

## 10. **BOARD MATTERS - PART II**

### A. Review of the BART Citizen Oversight Model and Proposed Revisions to the Model.

President Dufty brought the item before the Board.

President Dufty commented on the Citizen Oversight Model review process and outlined nine proposed revisions that represented a consensus among stakeholders. President Dufty suggested that the nine consensus items be approved, and that the remaining six proposed revisions be continued. President Dufty also commented on requests submitted by the Office of the Independent Police Auditor (OIPA) that did not reach consensus.

Director Raburn moved that the Board approve the following proposed revisions to the BART Citizen Oversight Model:

1. Replacing the word “citizen” with “civilian” throughout the Model to reflect that the Model serves all people regardless of citizenship. (Proposed Modification #1)
2. Add language to the Model to clarify that Independent Police Auditor (IPA) investigations are limited to sworn personnel. (Proposed Modification #3)
3. Remove the term “significant” on settlement review allowing for IPA review of all settlements. (Proposed Modification #5)
4. Updates to BPCRB attendance requirements. (Proposed Modification #8)
5. Updates to the BPCRB voting requirements. (Proposed Modification #9)
6. Dedicated BART Legal support for the BPCRB. (Proposed Modification #10)
7. BPCRB policy and equipment review process. (Proposed Modification #11)
8. Dedicated BPCRB staff support. (Proposed Modification #13)
9. Annual review of the BPCRB budget. (Proposed Modification #15)

President Dufty seconded the motion.

Russell Bloom, Independent Police Auditor, expressed concern about procedural issues and shifting criteria for consensus, highlighting the lack of rationale provided for objections from stakeholders, and noting that stakeholder objections to some proposals were communicated after a stakeholder meeting in which objections were not voiced.

Kevin Franklin, Chief of Police, expressed gratitude to stakeholders and affirmed that the revisions reflected a fair consideration of input, supporting the proposed modifications as reasonable and beneficial for moving forward.



## Public Comment

Aleta Dupree and George Perezvelez addressed the Board.

## Discussion

The item was discussed, with the following highlights:

Director Allen expressed concern about procedural clarity and stakeholder reconciliation in the oversight model review process.

Director Allen questioned the use of an on-call engineering contractor to provide administrative support for the BPCRB, suggesting the District Secretary's Office (DSO) could have directly hired and trained staff for the role.

President Dufty clarified that the consultant's administrative staff would primarily handle tasks such as producing meeting minutes.

## Action

Upon motion by Director Raburn and second by President Dufty, the Board approved the following proposed revisions to the BART Citizen Oversight Model by unanimous roll call vote:

1. Replacing the word "citizen" with "civilian" throughout the Model to reflect that the Model serves all people regardless of citizenship. (Proposed Modification #1)
2. Add language to the Model to clarify that Independent Police Auditor (IPA) investigations are limited to sworn personnel. (Proposed Modification #3)
3. Remove the term "significant" on settlement review allowing for IPA review of all settlements. (Proposed Modification #5)
4. Updates to BPCRB attendance requirements. (Proposed Modification #8)
5. Updates to the BPCRB voting requirements. (Proposed Modification #9)
6. Dedicated BART Legal support for the BPCRB. (Proposed Modification #10)
7. BPCRB policy and equipment review process. (Proposed Modification #11)
8. Dedicated BPCRB staff support. (Proposed Modification #13)
9. Annual review of the BPCRB budget. (Proposed Modification #15)

### *Vote Summary:*

*Moved / Seconded: Director Raburn / President Dufty*

*Aye: Directors Allen, Ames, Foley, Hernandez, Li, Raburn, and Dufty.*

*No: 0*

*Abstain: 0*

*Absent: Directors Saltzman and Simon.*

*Result: 7-0, motion carried by unanimous roll call vote.*

- B. Board Member Reports.
- C. Roll Call for Introductions.
- D. In Memoriam.

President Dufty called for Items 10-B, Board Member Reports; 10-B, Roll Call for Introductions; and 10-B, In Memoriam.

Director Allen expressed gratitude to BART staff, reflecting on her time with the agency and acknowledging past difficult moments, but emphasized her continued respect for staff's professionalism, especially during challenging times.

Director Ames expressed appreciation for the departing Board Members, highlighting their leadership and achievements.

Vice President Foley thanked the team for coordinating the farewell event and acknowledged the contributions of departing Board Members, reflecting on the valuable lessons learned during their tenure together.

Director Li and President Dufty reflected on their time with colleagues, with Director Li providing updates on ongoing regional advocacy efforts regarding the fiscal cliff. Director Li and President Dufty expressed a commitment to maintaining relationships and collaboration beyond the Board.

Director Raburn reported that he had participated in the San Lorenzo Halloween tabling event; attended the National Organization of Black Law Enforcement Officials Third Annual Achievers Luncheon; represented BART at the Fruitvale Dia de los Muertos event; attended a briefing with retiring East Bay Municipal Utility District Directors William Patterson and Doug Linney; and attended the Native American Health Center Gala in Oakland. Director Raburn emphasized the importance of these engagements in fostering community relationships and celebrating cultural heritage.

Director Hernandez reflected on her six-month tenure on the BART Board, expressing gratitude for the opportunity to work alongside colleagues. Director Hernandez wished departing Board Members success in their future roles and extended best wishes to Director Saltzman on her transition to the El Cerrito City Council, acknowledging the impactful work done at the city level and highlighting the importance of continued mentorship and support among colleagues.

President Dufty expressed gratitude for Director Hernandez's contributions and enthusiasm, emphasizing her readiness to mentor and support future colleagues. President Dufty also expressed gratitude to BART's Communications and IT teams for their invaluable support and extended his heartfelt appreciation for their work in ensuring smooth operations and seamless communication.

Director Allen exited the Meeting.

## 12. OPEN SESSION

*Item 12-B was acted upon after Item 10, Board Matters – Part II.*

- B. Compensation and Benefits for General Manager, General Counsel, District Secretary, Independent Police Auditor, and Inspector General.

President Dufty brought the item before the Board and summarized a proposed motion for the item.

Vice President Foley moved that the base salaries of the General Manager, General Counsel, District Secretary, and Inspector General be increased by 4%, retroactive to July 1, 2024, when other non-represented employees received the same wage increase; that the General Manager receive an additional 4% on January 1, 2025; and that the Board President be authorized to execute any necessary changes to the Board appointees' employment agreements to incorporate the change.

Director Li seconded the motion.

#### Public Comment

No comments were received.

#### Action

Upon motion by Vice President Foley and second by Director Li, the base salaries of the General Manager, General Counsel, District Secretary, and Inspector General were increased by 4%, retroactive to July 1, 2024, when other non-represented employees received the same wage increase; the General Manager will receive an additional 4% on January 1, 2025; and the Board President was authorized to execute any necessary changes to the Board appointees' employment agreements to incorporate the change by unanimous roll call vote.

#### *Vote Summary:*

*Moved / Seconded: Vice President Foley / Director Li*

*Aye: Directors Ames, Foley, Hernandez, Li, Raburn, and Dufty.*

*No: 0*

*Abstain: 0*

*Absent: Directors Allen, Saltzman, and Simon.*

*Result: 6-0, motion carried by unanimous roll call vote.*

### **13. PUBLIC COMMENT**

President Dufty called for general 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.

Aleta Dupree and Barney Smits addressed the Board.

### **14. ADJOURNMENT**

The Meeting adjourned at 3:24 p.m.

April B. A. Quintanilla  
District Secretary

## I. Definitions

The following definitions shall apply to this Contractor Code of Conduct:

- A. **District Official.** The term "District Official" shall mean any Board member, officer, or employee of the District or any other person who is serving on a District selection committee for the review of bids or proposals.
- B. **Contractor.** The term "Contractor" shall mean entities doing business with the District, including but not limited to Persons, partnerships, corporations, joint ventures or other entities who contract directly or indirectly (e.g. through an Affiliate) with, or are seeking to contract with, the District to provide goods to, or perform any type of work or services for or on behalf of, the District. A Contractor includes a contractor, supplier, consultant, subcontractor, subsupplier, subconsultant, vendor, manufacturer, broker or Affiliate. The definitions of "Person" and "Affiliate" in the District's Suspension & Debarment Policy are incorporated by reference into this Contractor Code of Conduct as though fully set forth herein.
- C. **Solicitation.** The term "Solicitation" shall mean a Request for Proposals (RFP), Request for Qualifications (RFQ), Invitation For Bid (IFB), Statement Of Qualifications (SOQ), or other District procurement solicitation.
- D. **Gift.** The term "Gift" shall mean the provision of anything of value, whether tangible or intangible, that provides a personal benefit, when full consideration is not provided for the value of the benefit received. Examples of Gifts include, but are not limited to, tangible items, discounts, event tickets, travel, accommodations, meals, entertainment, and cash.
- E. **Close Personal Relationship.** The term "Close Personal Relationship" shall mean any relationship other than kinship, spousal or spousal equivalent that establishes a significant personal or financial bond between an individual and such other individual that could impair an individual's ability to act fairly and independently. Examples include, but are not limited to, a household co-habitant or a personal friend.
- F. **Immediate Family.** The term "Immediate Family" shall mean a father, mother, spouse, child, parent, brother, sister, grandfather, grandmother, father-in-law, mother-in-law, sister-in-law, brother-in-law, step relatives in the same relationship and domestic partner and civil unions recognized under State law.

## II. Application of the Contractor Code of Conduct

This Contractor Code of Conduct (“Code”) shall govern the conduct of all Contractors of the District. The Code supersedes all prior written ethics policies adopted by the District which conflict with the Code. The Code is to be read in conjunction with applicable provisions of the District's Procurement Manual and other applicable Board Rules, policies, and procedures. The Code is informed by state and federal laws but may be stricter or impose greater limitations than such laws. All Contractors shall ensure that their subcontractors comply with this Code.

## III. Conflict with Contract Terms

The terms of this Contractor Code of Conduct are not intended to limit or otherwise modify other terms contained in a contract between the District and any Contractor. In the event there is a conflict between this Contractor Code of Conduct and the terms of a contract between the District and a Contractor, the terms of the contract shall govern.

## IV. Purpose

The purpose of this Code is to protect the integrity of the procurement process and to provide a comprehensive statement of pertinent regulations and obligations governing the conduct of Contractors doing business with the District so they will be able to compete fairly and ethically perform their work and services.

This Code does not purport to respond to all ethical issues that may arise in the course of doing business with the District. Each person and entity doing business with the District is expected at all times to conduct himself or herself in the manner of an ethical, reasonable person.

## V. Professional Conduct

- A. District Contractors shall conduct themselves in a manner consistent with the law, this Code of Conduct, District policies, and good judgment.
- B. They shall not commit any act which may bring reproach or discredit upon the District.
- C. Speech or behavior that is likely to create an appearance of impropriety is to be avoided.
- D. Contractors shall not involve themselves in altercations or any other act of hostility with the District employees, other Contractors, or the public. Neither

shall they engage in acts which will subject the District to criticism or adversely affect the interests of the District.

- E. It is up to each Contractor to maintain a professional, safe, and productive environment.

## VI. Interpretation

The District Ethics Officer is charged with advising District management regarding ethical issues. Contractors and District managers may contact the Ethics Officer ([ethicsofficer@bart.gov](mailto:ethicsofficer@bart.gov)) with questions regarding this Code of Conduct.

## VII. Enforcement

Violations of law or this Code by a Contractor should be reported to the District Ethics Officer ([ethicsofficer@bart.gov](mailto:ethicsofficer@bart.gov)) and Internal Audit ([internalaudit@bart.gov](mailto:internalaudit@bart.gov)) division. In any instance where the District has received an allegation of a violation of this Code of Conduct, the District may, in its sole discretion, issue a stop work order for affected contracts, including but not limited to, agreements and work plans, pending investigation and/or resolution of the allegation. In addition to imposing any remedy or sanction provided in this Code, the District may also, in its sole discretion, act against a Contractor for violations of law or this Code as outlined in the District Suspension and Debarment Policy ([www.bart.gov/about/bod/policies](http://www.bart.gov/about/bod/policies)).

## VIII. Contacts by Staff Prior to the Issuance of a Solicitation

While informational and market research contacts by District employees with prospective Contractors can be a valuable source of data to the District, such contacts can sometimes provide an unfair advantage to persons contacted as part of the market research prior to a Solicitation or a future procurement. All parties must exercise sound judgment and caution to ensure that there is no preferential treatment of any prospective Contractor and to avoid even the appearance of such preferential treatment. The District may be prohibited by law from awarding a contract to a Contractor who has received such preferential treatment or where there is an appearance of preferential treatment.

## IX. Communication During Pendency of Bid or Proposal

- A. Requirement to Log Communications. During the period of time commencing with the submittal of a bid or proposal in response to a Solicitation and ending with the award of the contract, District Officials shall keep a log of all communications, whether oral or written, from any person who is not a District Official, regarding a

pending bid or proposal. The log shall contain the following information for each communication:

- i. the date of the communication.
- ii. the name of the person making the communication; and
- iii. a brief statement of the topic of the communication, including the name of any bidder or proposer that is a subject of the communication.

B. Submission and Maintenance of Logs. The logs shall be submitted on a weekly basis to the District Ethics Officer and Internal Audit division, together with any written communications received from any person who is not a District Official regarding pending bids or proposals. The logs and any such written communications shall be maintained by the Ethics Officer for three (3) years from the contract award date and shall be subject to public inspection and copying pursuant to California Government Code Section 7920 et seq.

C. Exceptions. The requirement to keep a log of communications described in subsection B. above shall not apply where:

- i. the communication is required by the terms of the Solicitation, such as a document submitted as part of a proposal, or the oral interview of a proposer or bidder.
- ii. the communication is made publicly at a meeting of the Board; or
- iii. in the case of negotiated procurements, the communication is initiated by a member of the District's selection committee for the purpose of negotiating the contract in accordance with the terms of the Solicitation.

## **X. Prohibition Regarding Gifts**

No bidder, proposer, or Contractor, or any of their consultants or proposed subcontractors shall offer, give, or promise to offer or give, directly or indirectly, any Gift or favor of any value to any District Official.

## **XI. Financial Contribution Limitation**

All Contractors and prospective Contractors, and each of their subcontractors and proposed subcontractors, are charged with full knowledge of the requirements of Section 5-5.1 of the Rules of the Board of Directors limiting the making of contributions

(monetary or in-kind) to Board members or candidates for Director and shall not violate or conspire with any other person to violate said Section.

Contract and agreement documents shall require contractors, and their subcontractors, to submit a certification of compliance with this Rule with their bid or proposal, or as otherwise directed in contract and agreement documents. Failure to submit a certification within five calendar days after it is due may render the bid or proposal non-responsive.

## **XII. Prohibition Regarding Offers of Employment**

California Government Code Section 87407 prohibits public officials from using their official positions to influence any governmental decision directly relating to any person with whom they are negotiating or have any arrangement concerning prospective employment. No bidder, proposer, or Contractor shall offer, or promise to offer, either directly or indirectly, any future employment or business opportunity to any District Official, or member of his or her Immediate Family, or business associates of the District Official, or any other person with whom a District Official has a Close Personal Relationship if such offer of employment is conditioned expressly or impliedly on the awarding of a present or future contract or preference in the awarding of a contract to anyone at any time by the District.

In addition, District officers and employees may be disqualified from working on District matters involving a person or entity with whom the officer or employee is negotiating or has any arrangement concerning prospective employment, whether or not the prospective employer has conditioned an offer of employment on the awarding of a present or future contract or preference in the awarding of a contract.

## **XIII. Prohibition Regarding Information**

Prior to a contract award, no bidder, proposer, or Contractor shall solicit or obtain, directly or indirectly, from any District Official, any information relating to current or future contracts, or a specific pending procurement, unless such information is at the time a public record required to be disclosed under the California Public Records Act, or has otherwise been made available at the same time in the same form to all other bidders, proposers, and Contractors.

## **XIV. Prohibitions on Use and Disclosure of Confidential Information**

At no time shall any Contractor who obtains confidential or proprietary District information in the course of doing or seeking to do business with the District disclose any such information to any person not authorized by the District to receive such



information or use such information for any personal gain except as necessary to fulfill its contractual obligations to the District.

## **XV. Prohibition Regarding Participation in Procurement Development**

No Contractor who participates in the development of a scope of work, solicitation documents, contract documents, or technical specifications may participate as a bidder, proposer, or sub-proposer on that particular procurement or perform any work on that particular procurement or any other procurement that would constitute an organizational conflict of interest or would give that Contractor an unfair advantage over other bidders or proposers on that procurement.

## **XVI. Duty to Disclose Conflicts of Interest**

- A. Each bidder, proposer, and Contractor, and each of their consultants and subcontractors, seeking to do business, or doing business with the District has an obligation to promptly disclose in writing, following the procedure set forth in subsection XVI.B below, any of the following potential conflicts of interest which become known to the management of the bidder, proposer or Contractor:
- i. **Business Investments or Interests:** Any financial interest held by a District Official in the Contractor (examples include, but are not limited to, an investment or ownership interest in Contractor, or income received in the past twelve (12) months from Contractor).
  - ii. **Personal Relationship:** Any financial or Close Personal Relationship between any officers or employees of the Contractor and a District Official.
  - iii. **Prior Employment:** Employment in the past five (5) years or sixty (60) months of a District Official by Contractor.
  - iv. **Family or Relative Employment:** Present employment by Contractor of an Immediate Family member of a District Official.
  - v. **Offers of Employment:** Any pending offer, or promised offer, made either directly or indirectly, of any future employment or business opportunity with Contractor to any District Official, or member of the District Official's Immediate Family, business associates of the District Official, or any other person with whom a District Official has a Close Personal Relationship.
  - vi. **Gifts or Favors:** Offer or presentation of Gifts to a District Official or an Immediate Family Member of a District Official.

- vii. Campaign Contributions: Any campaign contributions to a Board member or candidate for the Board, whether monetary or in-kind, exceeding the limits outlined in the San Francisco Bay Area Rapid District Rules of the Board of Directors.
  - viii. Other: Any other interest in or connection with the Contractor by a District Official that might tend to subject the District to criticism on the basis that such interest or connection would impair the District's objectivity in awarding or administering a Solicitation or existing contract.
- B. Bidders, proposers, and Contractors shall report the above-described conflicts of interest using the [District Contractor Conflict-of-Interest Declaration](#) form. The completed form shall be submitted to the District's Ethics Officer and Internal Audit at [conflictofinterest@bart.gov](mailto:conflictofinterest@bart.gov).
  - C. The duty to disclose potential conflicts of interest as described above exists prior to and during any employment or contract regardless of whether the facts constitute a conflict of interest under any law. The District Ethics Officer and Internal Audit division shall provide advice to either the Director of Procurement or the Director of Real Estate and Property Development for the District and to the Board of Directors as to whether any facts disclosed under this section constitute a prohibited conflict of interest, and the impact, if any, of that conflict on the relationship between the bidder, proposer or Contractor and the District.
  - D. The District encourages good faith reporting of all suspected violations of this section. The identity of any person reporting a violation of this section shall not be disclosed except as necessary to carry out the purposes and requirements of this section or as otherwise required by law. Individuals who, in good faith, report an improper activity by a District employee, officer, or Contractor are protected from retaliation pursuant to the District's Whistleblower and Anti-Retaliation Policy.
  - E. In any instance where the District has determined that an allegation of a violation of this section has merit, the General Manager, or his or her designee, may take remedial action, including but not limited to:
    - i. Meet with the Contractor to obtain an explanation of the violation.
    - ii. Direct the prime Contractor to remove the offending subcontractor from the project.
    - iii. Rescind, void, or terminate the contract or any affected work plans; and/or
    - iv. Any other reasonable and appropriate action.

- F. In any instance where the General Manager, or his or her designee, propose a sanction under this section, he or she shall notify the Contractor in writing of the recommended action. The Contractor may request an informal hearing, to explain the Contractor's position regarding the alleged violation and/or the proposed sanction. Any such request must be made in writing and received by the General Manager, or his or her designee, within ten (10) working days of the issuance of the notice of the recommended sanction.

If no request is received within the ten (10) working day period, the sanction may be imposed forthwith. If a timely request for an informal hearing is received, the informal hearing shall take place within ten (10) working days after the General Manager, or his or her designee, receives the request. The Contractor may be represented by legal counsel at its own expense at the hearing. Within ten (10) working days after the informal hearing, the General Manager, or his or her designee, shall advise the Contractor in writing of the outcome of the hearing.

- G. Notwithstanding any other provision of these sections, in any procurement where a violation of this section has been established prior to the award of the contract, the District, at its sole discretion, shall determine whether to terminate the procurement or to proceed to award a contract with or without disqualifying the offending bidder or proposer.

## **XVII. Post-Employment Contracting**

Former District Officials are prohibited from contracting with BART (as a contractor or subcontractor, or employee of a contractor or subcontractor) for twelve months after terminating BART employment, regardless of whether the former District Official participated in the making of that contract while employed by BART.

## **XVIII. Important Notice - Related Laws**

In addition to the District Code of Conduct, Contractors are required to comply with all applicable laws in connection with the District procurement process and the work performed pursuant to any agreement with the District.

## Policy Information & History

**Type of Policy:** Code of Conduct

**Effective Date:** August 2013

**Last Revised:** December 2024

**Board of Directors Adoption:** 2024-12-05

**Next Review:** December 2025 or as needed

**Policy Owner:** Performance & Audit (lead), General Counsel, Procurement

**Policy Contact:** Director of Performance & Audit

Revision Date	Version #	Author	Description
2023-12-07	2.0	Performance & Audit	Updated 2013 version to better align with other BART policies and procedures, state and federal rules and regulations, and to incorporate recommendations from audits and investigations conducted by BART's Office of Inspector General.
2024-12-05	3.0	Performance & Audit	Updated to align with the Suspension & Debarment Policy adopted by the Board of Directors at the same meeting. Modify Post-Employment Contracting to remove the provision that it applies to only those who are required to file, or should be required to file, a Form 700.
YYYY-MM-DD		[Office, Department/Unit]	[Brief & specific description of change]



# EXECUTIVE DECISION DOCUMENT

<b>GENERAL MANAGER APPROVAL:</b>		DocuSigned by: <i>Michael Jones</i> 47000790F2D7463...	<b>GENERAL MANAGER ACTION REQ'D:</b> Approve and Send to Board		
<b>DATE:</b> 11/22/2024		11/26/2024	<b>BOARD INITIATED ITEM:</b> No		
<b>Originator/Prepared by:</b> Avineet Garg <b>Dept:</b> PM/CM - Facilities	<b>General Counsel</b>	<b>Controller/Treasurer</b>	<b>District Secretary</b>	<b>BARC</b>	
DocuSigned by: <i>Avineet Garg</i> 55A7EC60413A48C...	DocuSigned by: <i>Amelia Sandoval</i> 2528C067C44147D...	DocuSigned by: <i>Shirley Gan</i> EE11C8CEEEA04FD...		DocuSigned by: <i>Shane Edwards</i> 8128A2EB2F014F3...	
<b>Signature/Date:</b> 11/26/2024	11/26/2024 [ ]	11/26/2024 [ ]	[ ]	11/26/2024 [ ]	

## Change Order to Contract No. 15EK-102, Transbay Corridor Core Capacity Project (TCCCP) New Traction Power Facilities, West Bay

### PURPOSE:

To obtain Board authorization for the General Manager to execute Change Order No. 76 Part 2 to Contract No. 15EK-102 for TCCCP New Traction Power Facilities, West Bay, in an amount not to exceed \$3,442,155.

### DISCUSSION:

The award of Contract No. 15EK-102, TCCCP New Traction Power Facilities, West Bay, to C3M, Clark, Cupertino A Joint Venture of San Francisco, CA was authorized by the Board on July 23, 2020, in the amount of \$54,959,114.

The Contract is for the procurement and installation of two new traction power substations (“TPSS”) at Civic Center (“MCC”) and Montgomery Street (“MMS”) stations. The contract calls for the construction of the substation equipment, installation and testing of the equipment, and installation of associated equipment at adjacent facilities. The project is jointly funded by Transbay Corridor Core Capacity Project (“TCCCP”) FTA funds and by Measure RR.

This change order will compensate the contractor for project delays. These project delays were caused for various reasons including asbestos abatement, differing site conditions and

coordination with third parties. The total estimated amount for this Change Order No. 76 which will compensate the Contractor for the delay on the project is \$4,106,819. Change Order No. 76 Part 1 was previously issued for an amount of \$664,664. The current request, Change Order No. 76 Part 2, will be issued for the amount not to exceed \$3,442,155.

<b>Summary</b>	<b>Amount</b>	
Change Order No. 76 Part 1	\$664,664	Board Approved 11/16/2023
Change Order No. 76 Part 2	\$3,442,155	Pending Board Approval
Total Commitment	\$4,106,819	

**FISCAL IMPACT:**

Funding in the amount of \$3,442,155 for the Change Order to Contract No. 15EK-102 is included in the total project budget for FMS# 15EK600 – Substation for Core Capacity West Bay.

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

<b>Fund Group</b>	<b>Fund Description</b>	<b>Amount</b>
FEDERAL	FTA TCCCP FFGA-CIG/ARP	71,166,060
BART	Measure RR GOB	21,399,335
BART	BART Capital Funds	25,000
	<b>TOTAL</b>	<b>92,590,395</b>

As of November 21, 2024, \$92,590,395 is the total budget for this project. BART has expended \$81,897,356, committed \$6,175,899, and reserved \$0 to date. This action will commit \$3,442,155, leaving an available fund balance of \$1,074,985 in these fund sources for this project.

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

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

**ALTERNATIVES:**

The Board can elect not to authorize the execution of this Change Order. If the Change Order is not executed, the Contractor may pursue a claim against the District for the cost of the delays attributable to the District and would likely increase the final cost to the District.

**RECOMMENDATION:**

It is recommended that the Board adopt the following motion.

**MOTION:**

Authorize the General Manager to execute the Change Order No. 76 Part 2 identified above in an aggregate amount not to exceed \$3,442,155 to Contract No. 15EK-102, TCCCP New Traction Power Facilities, West Bay.

# SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

## SUSPENSION AND DEBARMENT POLICY

**Section 1 Statutory Authority.** The San Francisco Bay Area Rapid Transit District is a rapid transit district created by the California Legislature, with authority to exercise the powers and responsibilities necessary to carry out the purposes of its enabling legislation, including, but not limited to, the authority to make, supervise, and regulate Contracts [California Public Utilities Code Sections 28763, 28766, 28768, 28970; 28971].

**Section 2 Findings and Objectives.**

A. The Board of Directors of the San Francisco Bay Area Rapid Transit District finds that in order to promote integrity in the public contracting processes and to protect the public interest, it will contract only with Responsible individuals and entities. Debarment and Suspension are discretionary actions that, taken in accordance with this policy, are among the appropriate means to effectuate this objective.

B. Toward this end, the District shall have, through this policy, the discretion to exclude from contracting with the District a Contractor who is Debarred pursuant to the Debarment procedure or Suspended pursuant to the Suspension procedure in this policy or who appears on any Suspended, excluded or Debarment list by any local, state or federal government.

C. To protect the public interest the Board of Directors finds that procedures and processes are necessary to ensure that businesses found to be non-Responsible be prevented from contracting with the District.

D. To promote integrity in the public contracting process, and to assure that Contractors doing business with the District are provided proper safeguards and



procedures and to avoid the occurrence of de facto Debarments, a formal Suspension and Debarment procedure is necessary.

E. To ensure compliance with 49 Code of Federal Regulations, Part 26 in federally funded projects and the District's non-federal equity programs, the Board of Directors finds that procedures and processes are necessary to ensure that businesses found to be in violation of federal guidelines for disadvantaged business entity status on federally funded projects and/or found to have misrepresented their small, minority or disadvantaged business entity status be prevented from contracting with the District.

F. As a grantee of federal funds BART is accountable for the use of the funds provided and must comply with the requirements and standards set forth by the federal government including the determination of Contractor Responsibility.

G. The serious nature of Debarment and Suspension requires such sanctions to be imposed only if in the public interest for the District's protection and not for the purpose of punishment. The District shall impose Suspension and Debarment to protect its interests only for the causes and in accordance with the procedures set forth in this policy.

**Section 3 Definitions.** The following terms, whenever used in this policy, shall be construed as defined in this section.

A. "Affiliate" Entities and/or Persons are Affiliates of each other if, directly or indirectly, either one controls or has the power to control the other, or a third Person or entity controls or has the power to control both. Indicia of control include but are not limited to: interlocking or overlapping management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees or a

business entity organized following the Debarment, bankruptcy, dissolution, or reorganization of a Contractor or entity which has the same or similar management, ownership, or Principal employees as the, Debarred, Ineligible, or voluntarily excluded entity or Person.

B. "BART" or "District" means the San Francisco Bay Area Rapid Transit District acting through its Board of Directors, or through any officer or employee with powers delegated by the Board of Directors or authorized by law.

C. "Benefit" means money, or any other thing of value provided by or realized because of, a Contract with BART. A thing of value includes insurance or guarantees of any kind.

D. "Civil Judgment" means a decision in a civil action at the trial or appellate level by any court of competent jurisdiction, whether entered by verdict, settlement, stipulation or otherwise creating a civil liability for the wrongful acts complained of.

E. "Contract" means any agreement to provide goods to or perform any type of work or services for or on behalf of, the District.

F. "Contractor" means entities doing business with the District as defined in the District Contractor Code of Conduct, including but not limited to Persons, partnerships, corporations, joint ventures or other entities who contract directly or indirectly (e.g. through an Affiliate) with, or are seeking to contract with, the District to provide goods to, or perform any type of work or services for or on behalf of, the District. A Contractor includes a contractor, supplier, consultant, subcontractor, subsupplier, subconsultant, vendor, manufacturer, broker or Affiliate.

G. "Contracting Officer" means the District's administrative head of procurement or the person serving in any successor position or his or her designee.

H. “Covered Transaction” means any procurement program, activity, agreement or transaction with the District, regardless of type, amount or source of funding.

I. “Conviction” means a judgment or conviction of a criminal offense of a type which would give rise to Debarment of the convicted party under the terms of this policy by any court of competent jurisdiction at the trial or appellate level whether entered upon a verdict or a plea and includes a conviction upon a plea of *nolo contendere*.

J. “Debarment” means an action taken by BART which results in a Contractor, and/or any Affiliate of the Contractor, being prohibited from bidding upon, submitting a Proposal for, being awarded, and/or performing work on a Covered Transaction or Related Transactions with the District for a period of up to three (3) years, or longer if circumstances warrant, consistent with the factors provided in 2 CFR Parts 180.860-180.865. A Contractor who has been determined by the District to be subject to such a prohibition is "Debarred."

K. “Debarring Official” means the General Manager of the District who may delegate any of his or her functions under this policy and authorize successive delegations. The Debarring Official is responsible for initiating recommended Debarment actions and obtaining legal advice from the Office of the General Counsel.

L. “Ex Parte Communication” means any communication with a member of the Executive Review Panel, other than by Panel member’s staff, which is direct, or indirect, oral, or written, concerning the merits or procedures of any pending proceeding which is made by a party in the absence of any other party.

M. "Executive Review Panel" means the three-member panel designated by the Debarring Official or the Suspending Official, as the case may be, to preside over Contractor Debarment or Suspension hearings and make findings. Members of the panel shall not have been involved in the investigation of the grounds for Debarment. The term "Executive Review Panel" also means a hearing officer appointed in lieu of the three-member panel by the Debarring Official, as authorized by paragraph C. of Section 12, or by the Suspending Official as authorized by paragraph A. of Section 31.

N. "Indictment" means indictment for a criminal offense. Any information or other filing by competent authority charging a criminal offense shall be given the same effect as an Indictment.

O. "Ineligible" means excluded from BART contracting (and subcontracting, if appropriate) pursuant to statutory, Executive Order, policy, or regulatory authority (including the federal government).

P. "Notice" means the written communication served on a Contractor, its bonding companies and Affiliates in accordance with Section 8, to initiate a Debarment action or in accordance with Section 20 to advise of a Debarment decision, or in accordance with Section 30 to initiate a Suspension or advise of a Suspension decision. Notice shall be considered to have been received by the Contractor, its bonding companies and Affiliates five (5) days after being deposited in the U.S. Mail, postage pre-paid, and addressed by BART to the Contractor, its bonding companies and Affiliates' last known addresses based on information provided by the Contractor, its bonding companies and/or Affiliates.

Q. "Participant" means any Person who submits a Proposal for, enters into, or reasonably may be expected to enter into a Covered Transaction. This term also

includes any Person who is legally authorized to act on behalf of or to commit a Participant in a Covered Transaction.

R. “Person” means any individual, corporation, partnership, association, member of a joint venture, unit of government or legal entity, however organized.

S. “Preponderance of the Evidence” means proof by information that, compared with that opposing it, tends to the conclusion that the fact at issue is more probably true than not.

T. “Principal” means officer, director, owner, partner, key employee or other person within a Contractor with significant management or supervisory responsibilities; a person who has a critical influence on or substantive control over a Covered Transaction, whether or not employed by the Participant or any Affiliate of a Participant.

U. “Proposal” means any response to a solicitation, invitation for bid, request for quote, request for application, request for qualification, request for proposal, invitation to submit a proposal or similar communication by or on behalf of a Contractor seeking to participate or receive a Benefit, directly or indirectly, in or under a Covered Transaction.

V. “Related Transaction” means a transaction related to a Covered Transaction, which assists the Participant in executing a Covered Transaction, regardless of the extent of the influence on or substantive control over the Covered Transaction by the Person performing the Related Transaction. Related Transactions include, but are not limited to, transactions of the Participant with any of the following Persons:

1. Contractors (including subcontractors);
2. Principal investigators;
3. Loan officers;

4. Staff appraisers and inspectors;
5. Underwriters;
6. Bonding companies;
7. Appraisers and inspectors;
8. Real estate agents and brokers;
9. Management and marketing agents;
10. Accountants, consultants, investment bankers, architects, engineers, attorneys and others in a business relationship with Participants in connection with a Covered Transaction;
11. Vendors of materials and equipment in connection with a Covered Transaction;
12. Closing agents;
13. Turnkey developers of projects;
14. Title companies;
15. Escrow agents;
16. Project owners; and
17. Employees or agents of any of the above.

W. “Respondent” means a Contractor or Person against whom a Debarment or Suspension action has been initiated.

X. “Responsible” means having the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform a District Contract.

Y. “Settlement” means an agreement between BART and a Contractor that releases one or more party’s claims against another party to the agreement.

Z. “Suspension” means action taken by the Suspending Official to disqualify a Contractor temporarily from participating in Covered Transactions and/or Related Transactions with the District. A Contractor so disqualified is “Suspended.”

AA. “Suspending Official” means the administrative head of procurement for the District or his or her designee. The Suspending Official is responsible for Suspending a Contractor after obtaining legal advice from the Office of the General Counsel.

BB. “Voluntary Exclusion or Voluntarily Excluded” means a status, assumed by a Person, who is excluded from participating in Covered Transactions and Related Transactions with the District in accordance with the terms of a Settlement with the District.

CC. “Warning Letter” means a written communication from the District to one or more Persons concerning acts and/or omissions prohibited by this policy.

#### **Section 4 Coverage.**

This policy applies to:

A. Any Contractor who has participated, is currently participating, or may reasonably be expected to participate, in a Covered Transaction, irrespective of the source of funding or the date on which the Covered Transaction occurred. This policy shall expressly apply to Covered Transactions that occurred before its adoption by the Board of Directors;

B. Any Contractor who has participated, is currently participating, or may reasonably be expected to participate, in a Related Transaction, irrespective of the source of funding;

C. Any Principal of the Contractors described in paragraphs A. or B.; and

D. Any Affiliate of the Contractors described in paragraphs A. or B.

**Section 5      General.**

A.      The District, after obtaining legal advice from the Office of the General Counsel, shall decide whether to proceed with the Debarment of a Contractor.

B.      The causes of Debarment set forth in Section 7 are not intended to be an exhaustive list of the acts or omissions for which a Person may be Debarred; grounds other than those enumerated in this policy may be a basis for Debarment.

C.      The District may Debar a Contractor for any of the causes set forth in Section 7 using the procedures set forth in this policy. The existence of a cause for Debarment, however, does not necessarily require that the Contractor be Debarred; the seriousness of the Contractor's acts or omissions and any mitigating factors shall be considered in making any Debarment decision.

D.      Debarment constitutes Debarment of all divisions or other organizational elements of the Contractor named in the Debarment proceedings, unless the Debarment decision is limited by its terms to specific Affiliates, divisions, organizational elements and/or individuals. The Debarring Official may extend the Debarment decision to include any Affiliates of the Contractor and Persons if they are:

1.      Specifically named, and
2.      Given written Notice of the proposed Debarment and an opportunity to respond.

E.      The BART Board of Directors hereby delegates the Debarment of Contractors to the General Manager or his or her designee.

**Section 6      Investigation and Referral.**

A.      It is the responsibility of all BART employees to report to the Debarring Official any information which would support a cause for Debarment.



B. The Office of the Inspector General shall report to the Debarring Official the results of any investigation by the Inspector General which would support a cause for Debarment.

C. The District shall conduct the inquiry into the cause for Debarment and develop the documentation required by paragraph E of this section.

D. Information concerning the existence of a cause for Debarment from any source shall be promptly reported and referred to the Debarring Official and the Office of the Inspector General. The Debarring Official shall be responsible for deciding whether or not to proceed with Debarment. After consideration, the Debarring Official may issue a Notice of proposed Debarment, pursuant to Section 8.

E. The District shall develop basic documentation that includes, but is not limited to:

1. The name of the specific Respondent(s) against whom the action is being taken;
2. The reason(s) for proposing the Debarment;
3. A short narrative stating the facts and/or describing other evidence supporting the reason(s) for the proposed Debarment;
4. The recommended time period for the Debarment;
5. Copies of any relevant supporting documentation identified under this section.

F. The Office of the General Counsel is responsible for reviewing the documentation and Notices for legal sufficiency.

G. If as a result of an inquiry into the existence of a cause for Debarment it is the opinion of the Inspector General and/or the BART Police Department that a

criminal referral should be made to one or more prosecutorial agencies, they shall cooperate and coordinate in the referral.

**Section 7 Debarment of Contractors.**

A. The District may Debar a Contractor if it finds, in its discretion, that the Contractor is responsible for any of the following:

1. Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public agreement or transaction;
2. Violation of federal or state antitrust statutes, including those prescribing price fixing between competitors, allocation of customers between competitors, and bid rigging;
3. Commission of embezzlement, theft, forgery, bribery, fraud, making false statements, submitting false information, receiving stolen property, making false claims, obstructing justice, fraudulently obtaining public funds, or attempting to commit any of the foregoing;
4. Performance or conduct on one or more private or public agreements or transactions that caused or may have caused a threat to the health or safety of the Contractor's employees, District employees, any other persons involved with the transaction, the general public or property;
5. Debarment by any other governmental agency;
6. Violation of federal guidelines for disadvantaged business enterprises on federally funded projects including, but not limited to, violation of 49 Code of Federal Regulations, part 26, *et seq.*, and/or misrepresenting

small, minority or disadvantaged business entity status or violation of non-federal District Equity Program Requirements;

7. Noncompliance with the prevailing wage requirements of applicable law, including any pending violations by the Contractor, or any Affiliate of the Contractor;

8. Violation of any District requirements for providing a drug-free workplace;

9. Violation of any nondiscrimination provisions included in any public agreement or transaction;

10. Any other significant labor law violations, including, but not limited to, child labor violations, failure to pay wages, or unemployment insurance tax delinquencies;

11. A violation of a statutory, regulatory, or District policy provision or requirement applicable to a public or private agreement or transaction, including, but not limited to, any violation of the District Contractor Code of Conduct;

12. Violation of any licensing, subletting or sublisting laws;

13. Falsification, concealment, withholding and/or improper destruction of records;

14. Violation of settlement agreements and/or consent decrees which impose obligations on the Contractor to perform certain activities and/or to refrain from certain acts;

15. Violation of any law, regulation, policy or agreement relating to conflict of interest with respect to government funded procurement;

16. Knowingly or negligently doing business with a Person that is debarred, suspended, ineligible, or voluntarily excluded by any public entity in connection with a Covered Transaction or a Related Transaction;

17. Violation of a material provision of any settlement of a Debarment action;

18. Commission of an act or offense which indicates a lack of business integrity or business honesty;

19. Willful failure to perform in accordance with the terms of one or more contracts;

20. A history of failure to perform, or of unsatisfactory performance of one or more contracts including, but not limited to, default on contracts with the District or any other public agency;

21. Commission of any act or omission which negatively reflects on the Contractor's quality, fitness or capacity to perform a contract with the District or any other public entity, including, but not limited to, deficient performance of contracts, false certifications or statements, fraud in performance or billing, or lack of financial or technical resources;

22. Any other cause of so serious or compelling a nature that it affects the present Responsibility of a Contractor.

**Section 8 Notice of Proposed Debarment.**

A. A Debarment proceeding shall be initiated by Notice to the Contractor, its bonding companies and Affiliates, at least ninety (90) calendar days prior to the date of the Debarment hearing advising:

1. That Debarment is being considered;

2. Of the specific Debarment action proposed;
3. Of the reasons for the proposed Debarment in terms sufficient to put the Contractor, its bonding companies and Affiliates on notice of the conduct or transaction(s) upon which it is based;
4. Of the cause(s) relied upon under Section 7 for proposing Debarment;
5. Of the provisions of this policy, and any other procedures, if applicable, governing Debarment decision making;
6. That the Contractor, its bonding companies and/or Affiliates must submit a written response within thirty calendar (30) days of the receipt of the Notice of Proposed Debarment and the consequence of not providing a response;
7. Of the right to a hearing before the Executive Review Panel;
8. Of the date, time and place of the Debarment hearing;
9. Of the potential effect of a Debarment;
10. That the Contractor, its bonding companies and/or Affiliates, may appear at the Debarment hearing to challenge the Debarment action and that failure to appear may result in a waiver of the Contractor's, its bonding companies' and/or Affiliates' defenses to the Debarment action, and be taken as an admission by the party failing to appear that the basis for the Debarment is accurate, except to the extent the Contractor, its bonding companies and/or Affiliates challenge the Debarment action solely by means of a written submission; and
11. That the District may submit a reply to the written response of

the Contractor, its bonding companies and/or Affiliates within (30) calendar days following receipt of the response made by or on behalf of the Contractor, its bonding companies and/or Affiliates.

B. The Office of the General Counsel will be consulted for legal advice on all proposed Debarment actions prior to the Notice being sent to the Respondent.

C. Notice to the Contractor, its bonding companies and Affiliates shall be deemed sufficient if it is served by any of the means authorized by Code of Civil Procedure Section 1013, or as otherwise specified in Section 10.

D. Any attempt by the Contractor, its bonding companies and/or Affiliates to affirmatively avoid service by way of example, and not limitation, refusing to pick-up a certified letter, shall be deemed ineffective and shall not prevent the Debarment proceeding from going forward.

**Section 9 Documents Submitted to the Executive Review Panel.**

A. Respondent's Response.

1. The Respondent shall submit to the Executive Review Panel and serve in accordance with Section 10, a response to the Notice of Proposed Debarment within thirty (30) calendar days of receipt of the Debarring Official's Notice which response shall:

- a. State whether the Respondent will appear at the hearing;
- b. Respond to the allegations of the District. Allegations by the District contained in the Notice to the Respondent may be deemed admitted by the Executive Review Panel when not specifically denied in the Respondent's response; and

c. Be certified under oath and pursuant to the laws of the State of California by the Respondent, or an officer or director of Respondent that the contents of the response is true and correct.

2. The response may set forth any affirmative defenses and any evidentiary support therefore, to the allegations by the District. Where a Respondent intends to rely on any affirmative defense, it must be set forth in the response.

3. If the Respondent intends to waive its right to a hearing and rely solely on the response in support of its position, the response must clearly state such intention. Failure to clearly state such intention may be deemed a waiver of the Respondent's defenses to the Debarment action if the Respondent does not appear at the hearing.

4. In the event that the Respondent fails to file a written response within thirty (30) calendar days of receipt of the Debarring Official's Notice in accordance with this section, the allegations of the District may be deemed admitted, the Executive Review Panel may enter an order of default and transmit it to the Debarring Official. The Debarring Official's decision shall thereafter issue, with service on the parties.

B. Reply by the District. The District may submit to the Executive Review Panel and serve in accordance with Section 10, a reply to the Respondent's response not later than thirty (30) calendar days after receiving the Respondent's response.

C. Stipulations. The parties are encouraged to meet and resolve as many matters as possible by stipulated agreement prior to the hearing. The parties may stipulate as to any relevant matters of fact or law. Stipulations may be received in

evidence at the hearing, and when received shall be binding on the parties with respect to the matter stipulated.

D. Document and Submission Requirements.

1. An original and one copy of all documents to be presented to the Executive Review Panel and a list of all witnesses to be called at the Debarment hearing shall be served on the Executive Review Panel no later than ten (10) calendar days before the scheduled hearing, and copies of all documents served on the Executive Review Panel shall be served simultaneously on the opposing party at the specific location designated on the Notice of Debarment.

2. All documents required or permitted under this policy, in addition to being served on the Executive Review Panel in accordance with this section, shall be served upon:

- a. The Office of the General Counsel;
- b. The Respondent or Respondent's representative;

3. Documents served in accordance with this section and Section 10 shall state clearly the party's name and the title of the document. All documents should be typewritten or printed in clear, legible form.

**Section 10 Service.**

A. Service of documents on the Respondent, including the Notice, shall be made by any reasonable means, including by first class mail, fax, e-mail or delivery to:

1. The Respondent to be served or that Respondent's designated representative or agent, at the last known address;
2. The Respondent's last known place of business; or
3. A Principal of the Respondent.



B. Proof of service shall not be required unless the fact of service is denied under oath and put in issue by appropriate objection on the part of the Respondent allegedly served. In such cases, service may be established by written receipt signed or on behalf of the Respondent to be served, or may be established prima facie by any responsible means, including, but not limited to affidavit or certificate of service of mailing.

C. Service of documents on bonding companies and Affiliates shall follow the procedures set forth in paragraphs A. and B.

**Section 11 Time Computation.** Any period of time prescribed or allowed by this policy shall include in its computation of the prescribed period, Saturdays, Sundays and national holidays, except that when the last day of the period is a Saturday, Sunday, national holiday or other day that the District's administrative headquarters is closed, the period shall run until the end of the next following business day.

**Section 12 Executive Review Panel Powers and Responsibilities.**

A. Debarment proceedings shall be presided over by the Executive Review Panel, as defined in paragraph M. of Section 3. The Debarring Official shall appoint the three members of the Executive Review Panel.

B. At the request of the Debarring Official, the Office of the General Counsel may appoint legal counsel to advise the Executive Review Panel during the Debarment hearing.

C. If the Debarring Official determines in his or her sole discretion that the Debarment proceeding will be unusually complex or is expected to be of extended duration, or for any other reason, he or she may appoint a hearing officer, who may, but is not required to be, a retired judge, to conduct the hearing. Any hearing officer so

appointed shall have all of the powers and duties otherwise reserved to the Executive Review Panel.

D. To ensure that the proceedings before the Executive Review Panel are not only fair and impartial, but are conducted expeditiously, it shall have the power to:

1. Regulate the course of the hearing and the conduct of the parties and their counsel;
2. Consider and rule upon all evidentiary and procedural matters pertaining to the hearing, including, but not limited to, setting page limits on documents that may be submitted;
3. Receive evidence and rule on offers of proof; and
4. Take any other action necessary to protect each party's rights, to avoid delay in the disposition of the Debarment proceeding and to maintain order.

E. Further Powers of the Executive Review Panel.

1. The Executive Review Panel shall conduct a fair and impartial hearing and, to that end, shall, in addition to the powers set forth in paragraph D., have the power to:

- a. Schedule the Debarment hearing date, time and place;
- b. Postpone the Debarment hearing date;
- c. Hold conferences to facilitate the settlement or simplification of the issues by consent of the parties or at the request of a party;
- d. Make findings of fact and take Notice of any material fact not appearing in evidence in the record which would properly be a matter of judicial notice;
- e. Administer oaths and affirmations;

f. Issue a decision imposing Debarment of the Respondent with respect to future BART transactions, or imposing no sanction; and

g. Recommend to BART staff, if so requested, a course of action to remedy Respondent's past actions which gave rise to the Debarment action.

F. Prohibition Against Ex Parte Communications. Ex Parte communications are prohibited unless:

1. The purpose and content of the communication have been disclosed in advance or simultaneously to all parties involved; or
2. The communication is a request for information to the Executive Review Panel's staff concerning the status of the Debarment action.

**Section 13 Debarment Hearing Procedure.**

A. Right to Hearing.

1. All Respondents subject to Debarment pursuant to this policy shall be entitled to a hearing at the date, time and place set forth in the Notice.

2. The Respondent may elect to waive its right to a hearing and rely solely on a written response. If the Respondent elects to waive its right to a hearing, such waiver must be clearly stated in the Respondent's response.

However, if the Respondent fails to file a written response as required under Section 9, the allegations of the District shall be deemed admitted, and an order of default shall be entered pursuant to Section 9 A. 4.

3. The Executive Review Panel shall perform no independent collection of evidence and shall render a decision based on the evidence as

submitted by the parties, although the Executive Review Panel may take judicial notice of common, uncontested facts.

B. Conduct of Hearing.

1. The hearing shall be informal in nature and members of the Executive Review Panel may ask questions at any time.

2. The hearing shall proceed with all reasonable speed. The Executive Review Panel may order the hearing be recessed for good cause, stated on the record. The Executive Review Panel may, for convenience of the parties, or in the interest of justice, order that the hearing be continued or extended to a later date.

3. The Respondent and/or its attorney or other authorized representative shall be given an opportunity to appear at the hearing and to submit documentary evidence, present and/or cross-examine witnesses, and offer rebuttal evidence at the hearing. Prior to the hearing, the Respondent is entitled to request the District's complete files with respect to the proposed Debarment, excluding any records or information that are privileged under applicable law.

C. Representation of the Parties.

1. The District may be represented by a member of the staff of the Office of the General Counsel and/or by an attorney assigned by the Office of the General Counsel, as may be appropriate in a particular case.

2. The Respondent may be represented at the hearing as follows:

a. Individuals may appear on their own behalf;

b. A member of a partnership or joint venture may appear on behalf of the partnership or joint venture;

c. A bona fide officer may appear on behalf of a corporation or association upon a showing of adequate authorization;

d. An attorney who submits a Notice of appearance and representation to the Executive Review Panel may represent the Respondent; or

e. An individual not included within subparagraphs a. through d., above, may represent the Respondent upon an adequate showing, as determined by the Executive Review Panel, that the individual possesses the legal, technical or other qualifications necessary to advise and assist in the presentation of the Respondent's case.

D. All testimony provided at the hearing shall be under oath.

E. At the request of either the Respondent or the District, the proceedings shall be transcribed by an authorized court reporter. The cost of the transcript of the proceedings shall be paid by the party requesting the transcript, or in the event both parties request the transcript, the cost shall be divided evenly between them.

**Section 14 Standard of Proof.** The cause for Debarment must be established by a Preponderance of the Evidence.

**Section 15 Burden of Proof.**

A. The District has the burden of proof to establish the cause for Debarment.

B. The Respondent has the burden of proof to establish mitigating circumstances and any affirmative defenses.

C. Where the proposed Debarment is based upon a Conviction, Civil Judgment, or a Debarment by another governmental agency and the District submits

evidence as to the existence of such, the District shall be deemed to have met its burden of proof to establish cause for Debarment.

**Section 16 Closing of the Hearing Record.**

A. The closing of the hearing record may be postponed by the Executive Review Panel, in its discretion, in order to permit the admission of other evidence into the record after the hearing. In the event further evidence is admitted, each party shall be given an opportunity within a reasonable time to respond to such evidence.

B. Once the Executive Review Panel deems the hearing to be concluded there shall be no further proceedings before it or evidence accepted by it on the cause for Debarment unless a request is made in writing within three (3) calendar days following the conclusion of the hearing, and good cause shown.

**Section 17 Rules of Evidence**

A. Every party shall have the right to present its case or defense by oral or documentary evidence and to submit rebuttal evidence. The Executive Review Panel may, within its discretion, permit cross-examination of witnesses on request. The Executive Review Panel may exclude irrelevant, immaterial or unduly repetitious evidence.

B. The Debarment hearing need not be conducted according to technical rules relating to evidence and witnesses except as hereinafter provided. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions.

C. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but, over timely objection, shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. An objection is timely if made before submission of the case or on reconsideration.

D. The rules of privilege as set forth in the California Code of Civil Procedure shall apply. The Executive Review Panel has discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time.

E. The Executive Review Panel shall not have the power or authority to compel any witness or party to give evidence in contravention of any evidentiary privilege recognized under applicable law, including, but not limited to, the Fifth Amendment privilege against self-incrimination under the Constitution of the United States of America and the attorney-client privilege.

**Section 18 Scope of Debarment.**

A. Debarment of a Contractor and its Affiliates under this policy constitutes Debarment of all its specifically identified Principals, individuals, divisions and other organizational elements from all Covered Transactions and Related Transactions with the District, unless the Debarment decision is limited by its terms to one or more Principals, individuals, divisions or other organizational elements or to specific types of transactions.

B. As may be appropriate, the Debarment action may include any Affiliate of the Participant that is specifically named and given Notice of the proposed Debarment and an opportunity to respond.

C. The Debarment of a Contractor and its Affiliates under this policy may include the Debarment of any other business that is, has been or will be controlled or owned by the Contractor and its Affiliates or by any entity owned or controlled by a Person or Persons who own a controlling interest in a Contractor and its Affiliates then or at the time the Debarment was imposed.

**Section 19 Period of Debarment.**

A. Debarments shall be for a period commensurate with the seriousness of the Respondent's conduct, up to three (3) years or longer if circumstances warrant, consistent with the factors provided in 2 CFR Parts 180.860-180.865.

**Section 20 Debarment Decision.**

A. The Debarment decision shall be made within forty-five (45) calendar days after conclusion of the hearing, unless the Executive Review Panel extends this period for good cause.

B. In Debarment actions where Respondent fails to provide any submission in opposition by the time provided in paragraph A. of Section 9, the Executive Review Panel may, in its discretion, enter an order of default against the Respondent, and Notice shall be provided by the Debarring Official;

C. Written findings of fact shall be prepared if requested by the parties. The Executive Review Panel shall base its decision on the facts as found, together with any information and argument submitted by the parties and any other information in the administrative record.

D. If the Executive Review Panel decides to impose Debarment, it shall forward its decision to the Debarring Official.



E. The Debarring Official shall review the recommendation of the Executive Review Panel and either affirm or modify the recommendation. If the Debarring Official modifies the recommendation, he or she shall document the reason(s) for the modification.

F. The Debarring Official shall, within forty-five (45) calendar days of the close of the hearing, provide Notice to the Respondent which Notice shall include, but not be limited to, the following:

1. Reference to the Notice of proposed Debarment;
2. Whether the cause for Debarment has been established; and
3. If the cause for Debarment has been established:
  - a. Specifying the reasons for Debarment;
  - b. Stating the period of Debarment, including effective dates;
  - c. Advising of the scope of the Debarment;
  - d. If the Debarring Official has modified the recommendation of the Executive Review Panel, stating the reason(s) for the modification; and
  - e. Stating the time period in which the Respondent may submit an appeal.

G. The Notice to the Respondent shall be in writing, signed by the Debarring Official, and transmitted by certified mail, return receipt requested. The Office of the General Counsel will be consulted for legal advice on all Debarment actions prior to the Notice being sent to the Respondent.

**Section 21 Appeal of Final Determination.**

A. Any party may request review of the Debarment decision by filing a written appeal with the Debarring Official within twenty-one (21) calendar days of receipt of the final Debarment decision. The appeal shall specifically identify the issues and the bases upon which appeal is based and shall be served in accordance with Section 10.

B. Any party to the Debarment hearing opposing the appeal may submit a response opposing review. The response must be submitted to the Debarring Official and served in accordance with Section 10 within fourteen (14) calendar days of the receipt of the appeal.

C. Each complete and timely filed appeal shall be reviewed by the Debarring Official whose determination shall result in one of the following findings:

1. Affirming the decision of the Executive Review Panel;
2. Overturning the decision of the Executive Review Panel;
3. Directing a modification of the decision, including, but not limited to, the scope of duration of any Debarment; or
4. Referring the matter back to the Executive Review Panel for additional proceedings consistent with this policy.

D. The Debarring Official shall issue a determination within thirty (30) calendar days of submission of the appeal, unless notice is given to the Executive Review Panel and the parties extending the period for submitting a determination. The Debarring Official's review shall be limited to the factual record produced before the Executive Review Panel. The determination of the Debarring Official need not be a formal written

determination; rather a letter, served upon all parties in accordance with Section 10, setting forth the determination of the appeal.

E. The submission of an appeal shall have no effect on the decision of the Executive Review Panel, unless and until the Debarring Official issues a determination modifying the Executive Review Panel's determination.

**Section 22 Review of Debarment Period.**

A. After the period for appeal has lapsed, a debarred Respondent may request that the Debarring Official withdraw or modify the terms of the Debarment, if any of the following circumstances arise:

1. Newly discovered material evidence;
  2. Reversal of a Conviction or Civil Judgment upon which a Debarment was based;
  3. A meaningful change in ownership or management;
  4. Elimination of other causes for which the Debarment was imposed;
- or
5. Any other reason that is in the best interests of the District.

B. A request for review shall be in writing, supported by documentary evidence and served in accordance with Section 10.

**Section 23 The Parties Excluded From Procurement Programs List.**

A. The District shall maintain a Parties Excluded From Procurement Programs List. Such list shall contain the names of all Contractors currently Suspended or Debarred by the District.

B. The District shall periodically, but in no case less than twice annually, forward to the appropriate agency with the state and federal governments the then current Parties Excluded From Procurement Programs List.

**Section 24 Effect of Suspension or Debarment.**

A. Contractors on the Parties Excluded From Procurement Programs List are excluded from Covered Transactions and Related Transactions as either Participants or Principals, and the District shall not solicit or accept offers from, award Contracts to, or consent to subcontracts with any such Contractors. Contractors on the Parties Excluded From Procurement Programs List are also excluded from conducting business with the District as agents, or Affiliates of other Persons.

B. Contractors included on the Parties Excluded From Procurement Programs List as having been declared Ineligible for receiving Contracts from the District, and if applicable, subcontracts, are Ineligible under the conditions and for the period set forth in the Parties Excluded From Procurement Programs List. The District shall not solicit offers from, award Contracts to, or consent to subcontracts with these Contractors under those conditions and for that period.

C. Contractors included on the Parties Excluded From Procurement Programs List are excluded from acting as individual sureties to any Person, Contractor, Principal or Participant.

D. Each time Proposals are received for any District procurement, the Contracting Officer shall review the list of Parties Excluded from Procurement Programs. Any Proposal received from any Contractor included on the Parties Excluded From Procurement Programs shall be rejected.

E. Proposals or offers received from any Contractor included on the Parties Excluded From Procurement Programs List shall not be evaluated for award nor shall discussions be conducted with any such Contractor during a period of Ineligibility. If the period of Ineligibility expires or is terminated prior to award, the Contracting Officer may, but is not required to, consider such Proposals or offers.

F. Immediately prior to award, the Contracting Officer shall again review the Parties Excluded from Procurement Programs List to ensure that no award is made to a Contractor on such List.

G. Contractors included on the Parties Excluded From Procurement Programs List who participate in BART transactions during the period of their Debarment or Suspension will not be paid for goods, work or services provided and their Contracts shall be deemed void.

**Section 25 Imputed Conduct.**

A. Conduct of the type described in Section 7 by an officer, director, shareholder, partner, employee, Principal, Affiliate or other individual associated with a Contractor may be imputed to the Contractor when the conduct occurred in connection with the individual's performance or duties for or on behalf of the Contractor, or with the Contractor's knowledge, approval or acquiescence. The Contractor's acceptance of the Benefits derived from the conduct shall constitute evidence of such knowledge, approval or acquiescence.

B. Conduct of the type described in Section 7 by a Contractor may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the Contractor who participated in, knew of, or had reason to know of the Contractor's conduct.

C. Conduct of the type described in Section 7 by one Contractor participating in a joint venture or similar arrangement may be imputed to the other Contractors participating in the joint venture if the conduct occurred for or on behalf of the joint venture or similar arrangement, or with the knowledge, approval, or acquiescence of these Contractors. Acceptance of the Benefits derived from the conduct shall be evidence of such knowledge, approval or acquiescence.

**Section 26 Continuation of Current Contracts.**

A. Notwithstanding the Debarment, Suspension or proposed Debarment or Suspension of a Contractor, the District may suspend the performance of Contracts or subcontracts in existence at the time the Contractor was Debarred, Suspended or proposed for Suspension or Debarment unless the General Manager or his or her designee, directs otherwise. A decision to terminate a contract should be made only after review by BART contracting and technical personnel and after obtaining legal advice from the Office of the General Counsel to ensure the propriety of the proposed action.

B. The District shall not award options to Contracts or in any way extend the duration of current Contracts, or consent to additional subcontracts, with Contractors proposed for Suspension or Debarment or included on the Parties Excluded From Procurement Programs List unless specifically approved in writing by the General Manager, or his or her designee, for good cause shown.

**Section 27 Restrictions on Subcontracting.** When a Contractor Debarred, Suspended or proposed for Suspension or Debarment is proposed as a subcontractor for any subcontract subject to District consent, the Contracting Officer shall not consent to any such subcontracts.

**Section 28 Actions Other Than Debarment.** As an alternative to Debarment, one or more of the following actions may be taken:

A. Voluntary Exclusion.

1. BART and a Contractor may agree to a Voluntary Exclusion of the Contractor and any of its Principals and/or Affiliates from BART activities and transactions for an agreed-upon period.

2. Contractors and any of their Principals and/or Affiliates who are Voluntarily Excluded from participation in District transactions shall be placed on the Parties Excluded From Procurement Programs List.

3. Contractors and any of their Principals and/or Affiliates who participate in District transactions during the period of their Voluntary Exclusion will not be paid for goods, work or services provided, and may be considered for Debarment.

B. Settlement. Contractors and any of its Principals and/or Affiliates found to be in violation of one or more provisions of this policy may enter into a Settlement with the District. The Settlement will specifically provide that the Person will refrain from the act(s) or omission(s) that had been found to be in violation of this policy. A Settlement may be entered into alone or in conjunction with one or more of the procedures described in this section.

C. Warning Letter. Where there appears to be an act or omission in violation of this policy, at the sole discretion of the Debarring Official, a warning letter may be issued to the Contractor and any of its Principals and/or Affiliates. In all subsequent transactions between the Contractor and any of its Principals and/or Affiliates and the

District, the warning letter will be considered notice concerning such acts or omissions and may be evidence in a subsequent Debarment proceeding.

**Section 29 Suspension of Contractors.**

A. The Suspending Official may, to protect the public interest, suspend a Contractor or Contractor's Affiliate suspected, upon sufficient evidence, of committing of any act described in Section 7, or subject to an Indictment for any of the causes set forth in Section 7.

B. The District may modify or terminate the Suspension at any time. The District reserves the discretion to lift a Suspension on the basis that it finds insufficient grounds to proceed with Debarment.

C. Suspension is a serious action to be imposed on the basis of sufficient evidence, pending completion of an investigation or legal proceedings, when it has been determined that immediate action is necessary to protect the interests of the District.

D. Suspension constitutes Suspension of all divisions or other organizational elements of the Contractor, unless the Suspension decision is limited by its terms to specific divisions or organizational elements. The Suspending Official may extend the Suspension decision to include any Affiliates of the Contractor if they are:

1. Specifically named; and
2. Given written Notice of the Suspension and an opportunity to respond.

**Section 30 Notice of Suspension.** When a Contractor is Suspended, it and its bonding companies and Affiliates shall be immediately notified of the Suspension by certified mail, return receipt requested. The Notice of Suspension shall include the following information:



A. That the Contractor has been suspended and that the Suspension is based upon an Indictment or other sufficient evidence that the Contractor has committed an act described in Section 7;

B. A description of the actions of the Contractor giving rise to the Suspension sufficient to place the Contractor on notice without disclosing the District's evidence;

C. That the Suspension is for a temporary period pending the completion of an investigation and such proceedings as may ensue;

D. The effect of the Suspension;

E. That, within 30 calendar days after receipt of the Notice of Suspension, the Contractor may submit, in writing, information and argument in opposition to the Suspension; and

F. Except for Suspensions based upon an Indictment, that additional proceedings shall be conducted if the Contractor disputes any material facts supporting the Suspension.

**Section 31 Suspension Procedures.**

A. Following the imposition of Suspension, the Contractor may within 30 calendar days, submit written information and argument to the Suspending Official in opposition to the Suspension. If it is found that the Contractor's submission in opposition raises a genuine dispute over facts material to the Suspension, the Suspending Official shall:

1. Constitute the Executive Review Panel or, in lieu thereof, appoint a hearing officer, who will exercise all of the powers of an Executive Review Panel; and

2. Notify the Contractor as to the date certain of the hearing on the facts supporting the Suspension.

B. In the event that the Contractor fails to file a written response within thirty (30) calendar days of receipt of the Suspending Official's Notice of Suspension in accordance with this section, the Contractor shall be deemed to have waived any opposition to the Suspension and shall not be entitled to a hearing on the Suspension.

C. The suspended Contractor shall, no later than ten (10) calendar days before the hearing before the Executive Review Panel, provide a written list of proposed witnesses to be presented at the hearing and a description of each writing to be submitted for consideration by the Executive Review Panel. The Contractor proposed for Suspension will be entitled to request and review the District's complete files relating to the proposed Suspension, excluding any privileged records or information under applicable law. Failure by the suspended Contractor to provide the required information within the time required by this paragraph shall be sufficient cause for continuance of the hearing.

D. The Contractor proposed for Suspension and/or its attorney or other authorized representative shall be given an opportunity to appear at the Suspension hearing and to submit documentary evidence, present and/or cross-examine witnesses, and offer rebuttal evidence at the hearing. All testimony provided at the hearing shall be under oath. Failure to dispute all the bases for the Suspension either in writing or at the time of the hearing shall be deemed an admission that each undenied basis for Suspension is true.

E. At the request of either the Contractor or the District the proceedings shall be transcribed by an authorized court reporter. The cost of the transcript of the

proceedings shall be paid for by the party requesting the transcript, or in the event both parties request the transcript, the cost shall be divided evenly between them.

F. The cause for Suspension must be established by a Preponderance of the Evidence. Where the proposed Suspension is based upon a Conviction or Civil Judgment, the standard shall be deemed to have been met.

G. Once the Executive Review Panel or hearing officer deems the hearing to be concluded there shall be no further proceedings before it or evidence accepted by it relating to the Suspension.

**Section 32 Suspension Decision.**

A. Within ten (10) calendar days of the conclusion of the Suspension hearing, the Executive Review Panel shall submit to the Suspending Official its determination whether the Suspension shall be upheld, modified or terminated.

B. The Suspending Official shall review the findings of the Executive Review Panel and may uphold or modify the recommendation. If the Suspending Official modifies the recommendation, he or she shall document the reason(s) for the modification.

C. The Suspending Official shall provide Notice of the determination to the Suspended Contractor and any Affiliates and bonding companies, which Notice shall be in writing, signed by the Suspending Official, and transmitted by certified mail, return receipt requested. The Office of the General Counsel will be consulted for legal advice on all Suspension actions prior to any Notices being sent to the Respondent.

**Section 33 Period of Suspension.**

A. Suspension shall be for a temporary period pending the completion of the District's investigation and any ensuing proceedings, unless sooner terminated by the Suspending Official.

B. If the District does not initiate Debarment proceedings within twelve (12) months after the date of the Suspension Notice, the Suspension will terminate automatically unless there are pending legal proceedings. However, once Debarment proceedings have been initiated, the Suspension may continue indefinitely pending resolution of the Debarment proceeding.

**Section 34 Scope of Suspension.** The scope of Suspension shall be the same as that for Debarment.

**Section 35 Preemption.** In the event any Contract is subject to federal and/or state laws that are inconsistent with the terms of this policy, such laws shall control.

**Section 36 Severability.** If any section, subsection, subpart or provision of this policy, or the application thereof to any Person or circumstances, is held invalid, the remainder of the provisions of this policy and the application of such to other Persons or circumstances shall not be affected thereby.

**Section 37 Judicial Review.**

A. Judicial review of any final decision reached by the District under this policy shall be conducted by the Superior Court of California pursuant to an administrative writ of mandate as described under Code of Civil Procedure Section 1094.5, but only if the petition for writ of mandate is filed within the time limits set forth in Code of Civil Procedure Section 1094.6.

B. In every final decision reached under this policy, Notice of such final

decision shall only be given directly to the Respondent and its bonding companies and Affiliates and such Notice shall explain that Code of Civil Procedure Section 1094.6 governs the time period within which judicial review of any such final decision must be sought. Final Notice to the Respondent and its bonding companies and Affiliates shall include the following statement:

THE DISTRICT HAS REACHED A FINAL DECISION IN THIS ADMINISTRATIVE MATTER . IF YOU CHOOSE TO SEEK JUDICIAL REVIEW OF THE DISTRICT'S FINAL DECISION IN THIS MATTER, SUCH ACTION SHALL BE INITIATED UNDER CODE OF CIVIL PROCEDURE SECTION 1094.5 AND TIME LIMITS FOR FILING SUCH AN ACTION ARE SET FORTH IN CODE OF CIVIL PROCEDURE SECTION 1094.6. IT IS YOUR SOLE RESPONSIBILITY TO TAKE WHATEVER ACTION YOU DEEM APPROPRIATE IN RESPONSE TO THIS NOTICE.