



# EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Robert M. Power</i> 5 June 2019		GENERAL MANAGER ACTION REQ'D:		
DATE: 5/13/2019		BOARD INITIATED ITEM: Yes		
Originator/Prepared by: Michaela Morales Dept: Finance Signature/Date: <i>Michaela Morales</i> 5/31/19	General Counsel <i>MHR</i> 6/3/19	Controller/Treasurer <i>Ag White</i> 6/3/19	District Secretary [ ]	BARC <i>Power</i> 5/31/19

## AUTHORIZE THE ISSUANCE AND SALE OF GENERAL OBLIGATION BONDS, (ELECTION OF 2016), 2019 SERIES B (Green Bonds)

### PURPOSE:

To request Board adoption of a resolution, which authorize the issuance and sale of not to exceed \$360 million in General Obligation Bonds (Election of 2016), 2019 Series B-1 (Green Bonds) and 2019 Series B-2 (Federally Taxable) (Green Bonds) (the "Bonds"). Furthermore, to seek Board authorization for the Controller-Treasurer to (1) enter into a Bond Purchase Agreement with the Underwriters selected from the District's Underwriters Pool to provide the District with underwriting services in the issuance of the Bonds, (2) to implement the preparation, execution and delivery of the necessary documents including the Preliminary Official Statement, the Official Statement, Supplemental Trust Agreement, Bond Purchase Agreement, Continuing Disclosure Agreement and related agreements and, (3) to attend rating agency meetings and to execute "Green Bond" certification agreements in connection with the issuance of the Bonds.

### DISCUSSION:

In 2019, the District intends to issue not to exceed \$360 million of voter approved General Obligation Bonds. Proceeds of the Bonds will be used to fund projects authorized by Measure RR and to pay costs of issuance of the bonds.

The proposed resolution will authorize the Controller-Treasurer to negotiate the structure, financing terms and cost of issuance of the Bonds. In addition, the resolution authorizes the preparation, execution, and delivery of the necessary documents including the Preliminary

Official Statement, Official Statement, Supplemental Trust Agreement, Bond Purchase Agreement, Continuing Disclosure Agreement and related agreements, and payment to cover the costs of issuance as well as the execution of green bond certification agreements in connection with issuance of the Bonds.

The District advertised the RFP for underwriting services to the 12 members of the District's Underwriting Pool on March 27, 2019 and received 11 proposals on April 12, 2019. The Selection Committee performed a technical evaluation of the proposals. The Selection Committee ranked these proposals and recommended Morgan Stanley and Citigroup Global Markets/Siebert Cisneros Shank as Joint Senior Managers, J.P. Morgan Securities LLC and Stifel Financial Corp. as Co-Senior Managers, and Backstrom McCarley Berry & Co. LLC and Raymond James as Co-Managers for the Bonds.

Green Bonds are issued to encourage investing in projects that support sustainability and the environment. More specifically, Green Bonds finance projects aimed at energy efficiency, pollution prevention, sustainable agriculture, fishery and forestry, the protection of aquatic and terrestrial ecosystems, clean transportation, sustainable water management, and the cultivation of environmentally friendly technologies. BART issuances are 'Green Bonds' as the District's projects finance a mass transit system.

#### **FISCAL IMPACT:**

The District proposes to issue General Obligation Bonds (Election of 2016), 2019 Series B, in the total principal amount not to exceed \$360 million. The cost of issuance for underwriting, legal counsel, financial advisors, rating agencies, trustee services, and other auxiliary fees is estimated not to exceed 1% of principal amount of Bonds issued. All fees shall be paid out of proceeds and, therefore, no direct costs will be paid by the District. If no bonds are issued, no expense will be incurred.

Interest and principal on the General Obligation Bonds will be paid through ad valorem taxes assessed on all property in the three BART District counties. No General Obligation Bond debt service will be borne by District general fund revenues.

#### **ALTERNATIVES:**

The District may elect not to issue the General Obligation Bonds (Election of 2016), 2019 Series B, at this time which would mean no bond funds would be available to fund projects under Measure RR.

#### **RECOMMENDATION:**

To authorize the issuance of the Bonds and for the Controller-Treasurer to negotiate the structure, financing terms and cost of issuance for the General Obligation Bonds (Election of 2016), 2019 Series B, and execute and deliver all documents necessary for their issuance.

**MOTION:**

The Board adopts the attached resolution, incorporated herein as if set forth in full, authorizing and approving the issuance and sale of not to exceed \$360 million aggregate principal amount of General Obligation Bonds (Election of 2016), 2019 Series B, and authorizing the preparation, execution and delivery of agreements and documents in connection therewith.

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

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

AUTHORIZING AND APPROVING THE ISSUANCE AND SALE OF NOT TO EXCEED \$360 MILLION AGGREGATE PRINCIPAL AMOUNT OF SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT GENERAL OBLIGATION BONDS (ELECTION OF 2016), 2019 SERIES B; AUTHORIZING THE EXECUTION AND DELIVERY OF A FIRST SUPPLEMENTAL TRUST AGREEMENT PURSUANT TO WHICH SUCH BONDS ARE TO BE ISSUED, A BOND PURCHASE AGREEMENT PURSUANT TO WHICH SUCH BONDS ARE TO BE SOLD BY NEGOTIATED SALE; APPROVING AN OFFICIAL STATEMENT RELATING TO SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF THE OFFICIAL STATEMENT AND CERTAIN DOCUMENTS IN CONNECTION WITH THE ISSUANCE AND SALE OF SUCH BONDS, INCLUDING A CONTINUING DISCLOSURE AGREEMENT; DELEGATING TO THE CONTROLLER/TREASURER OF THE DISTRICT POWER TO DETERMINE FINAL TERMS OF SUCH BONDS AND COMPLETE SAID DOCUMENTS AND AUTHORIZING CERTAIN OTHER MATTERS RELATING THERETO.

WHEREAS, pursuant to Resolution No. 5321 of the San Francisco Bay Area Rapid Transit District (the "District"), adopted June 9, 2016, the District duly called an election, and an election was regularly held in the Counties of Alameda, Contra Costa and San Francisco on November 8, 2016, at which the following proposition ("Measure RR") was submitted to the electors of the District:

"To keep BART safe; prevent accidents/breakdowns/delays; relieve overcrowding; reduce traffic congestion/pollution; and improve earthquake safety and access for seniors/disabled by replacing and upgrading 90 miles of severely worn tracks; tunnels damaged by water intrusion; 44-year-old train control systems; and other deteriorating infrastructure, shall the Bay Area Rapid Transit District issue \$3.5 billion of bonds for the acquisition or improvement of real property subject to independent oversight and annual audits?"

WHEREAS, at least two-thirds of the votes cast on said proposition were in favor of issuing said bonds;

WHEREAS, pursuant to said favorable vote and pursuant to Part 2 of Division 10 of the Public Utilities Code of the State of California, commencing with Section 28500, and Article 4.5 of Chapter 3 of Division 2 of Title 5 of the Government Code, commencing with Section 53506, and other applicable law, the District is authorized to issue said bonds;

WHEREAS, the District has heretofore issued its General Obligation Bonds (Election of 2016), 2017 Series A-1 (Green Bonds) (the “2017 A-1 Bonds”) in an aggregate principal amount of \$271,600,000 and its General Obligation Bonds (Election of 2016), 2017 Series A-2 (Federally Taxable) (Green Bonds) (the “2017 A-2 Bonds” and, together with the 2017 A-1 Bonds, the “2017A Bonds”) in an aggregate principal amount of \$28,400,000, pursuant to that certain Trust Agreement (Measure RR) (the “Master Trust Agreement”), by and between the District and U.S. Bank National Association, as trustee (the “Trustee” or “U.S. Bank”), dated as of June 1, 2017;

WHEREAS, the District deems that it is necessary and desirable to issue its “San Francisco Bay Area Rapid Transit District General Obligation Bonds (Election of 2016), 2019 Series B-1 (Green Bonds)” and its “San Francisco Bay Area Rapid Transit District General Obligation Bonds (Election of 2016), 2019 Series B-2 (Federally Taxable) (Green Bonds)” (collectively, the “2019B Bonds”) in an aggregate principal amount not exceeding \$360,000,000, according to the terms and in the manner as set forth in the First Supplemental Trust Agreement, to be dated as of August 1, 2019 (together with the Master Trust Agreement, the “Trust Agreement”), between the District and the Trustee, for the purpose of financing the cost of the projects authorized in Measure RR (collectively, the “Project”) and paying the costs of issuance of the 2019B Bonds;

WHEREAS, there has been prepared and presented to this meeting a proposed form of First Supplemental Trust Agreement (such First Supplemental Trust Agreement, in the form presented to this meeting, with such changes, insertions and omissions as are made pursuant to this Resolution being hereinafter referred to as, the “First Supplemental Trust Agreement”);

WHEREAS, the District deems it necessary and desirable to sell the 2019B Bonds by negotiated sale to Morgan Stanley & Co. LLC (“Morgan Stanley”), Citigroup Global Markets Inc. and Siebert Cisneros Shank & Co. L.L.C., as senior managers, and the other underwriters designated in the bond purchase agreement (collectively, the “Underwriters”) for whom Morgan Stanley is acting as representative (the “Representative”), in order to provide flexibility in the timing of the sale of the 2019B Bonds and to achieve a more desirable debt structure and an overall lower cost of borrowing, all pursuant to a bond purchase agreement to be entered into between the District and the Representative, a proposed form of which has been prepared and presented to this meeting (such bond purchase agreement, in the form presented to this meeting, with such changes, insertions and omissions as are made pursuant to this Resolution, being hereinafter referred to as the “Bond Purchase Agreement”);

WHEREAS, there has been prepared and submitted to this meeting a proposed form of the Official Statement (as defined herein) in preliminary form (the “Preliminary Official Statement”) to be used in connection with the offering and sale of the 2019B Bonds;

WHEREAS, in order to assist the Underwriters in complying with Securities and Exchange Commission Rule 15c2-12(b)(5), there has been prepared and submitted to this meeting a proposed form of Continuing Disclosure Agreement (such Continuing Disclosure Agreement, in the form presented to this meeting, with such changes, omissions and insertions as are made pursuant to this Resolution, being hereinafter referred to as the “Continuing Disclosure Agreement”), which is proposed to be entered into by the District and the Trustee, as trustee and as dissemination agent;

WHEREAS, the District has engaged Sperry Capital Inc., as municipal advisor to the District with respect to the 2019B Bonds, and Orrick, Herrington & Sutcliffe LLP, as bond and disclosure counsel to the District with respect to the 2019B Bonds and pursuant to Section 5852.1 of the Government Code of the State of California, the District has estimated the costs of issuance for the 2019B Bonds and has received certain representations and good faith estimates from the Representative as to the debt costs and finance charges with respect to the 2019B Bonds as set forth in Appendix A hereto; and

WHEREAS, the District hereby determines that use of the proceeds of the 2019B Bonds for the Project will assist BART in providing mass transit services which are electrically powered and thus reduce the amount of carbon dioxide that would otherwise be released if BART riders used automobiles and as such the 2019B Bonds should be certified as "Green Bonds" under the low carbon land transport criteria established by the Climate Bonds Standard and Certification Scheme;

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

Section 1. The foregoing recitals are true and correct, and the issuance by the District of San Francisco Bay Area Rapid Transit District General Obligation Bonds (Election of 2016), 2019 Series B-1 (Green Bonds) and San Francisco Bay Area Rapid Transit District General Obligation Bonds (Election of 2016), 2019 Series B-2 (Federally Taxable) (Green Bonds), in an aggregate principal amount not to exceed \$360,000,000, on the terms and conditions set forth herein and in the First Supplemental Trust Agreement, as finally executed and delivered, is hereby approved.

Section 2. The First Supplemental Trust Agreement in the form presented to this meeting is hereby approved. The Controller/Treasurer of the District is hereby authorized and directed to execute and deliver the First Supplemental Trust Agreement in substantially the form presented to this meeting with such changes, insertions and omissions as may be approved by such officer, such approval being conclusively evidenced by the execution and delivery of the First Supplemental Trust Agreement. The proceeds of the 2019B Bonds (after payment of the costs of issuance thereof) will be applied to provide funds for the purposes hereinabove described. The maximum term of the 2019B Bonds shall not exceed thirty (30) years. The maximum rate of interest to be payable on the 2019B Bonds shall not exceed five and one-half percent (5.50%) per annum. The combined true interest cost for the 2019B Bonds shall not exceed four and one-half percent (4.50%). Optional redemption of the 2019B Bonds shall be provided for at not later than ten (10) years from the date of issuance at the principal amount of 2019B Bonds being redeemed; provided, however, that the Controller/Treasurer of the District is hereby authorized to cause all or any portion of the 2019B Bonds to be issued as noncallable, taxable or tax-exempt bonds. The 2019B Bonds shall be signed by the manual or facsimile signature of the President of the Board of Directors of the District and countersigned by the manual or facsimile signature of the Secretary of the District, and the manual or facsimile seal of the District shall be affixed to the 2019B Bonds. The 2019B Bonds shall be authenticated by a manual signature of a duly authorized officer of the Trustee. The dated date of the document, the interest payment dates, series designations, tax designation, denominations, forms, manner of execution, terms of redemption and other terms of

the 2019B Bonds shall be as provided in the First Supplemental Trust Agreement as finally executed.

Section 3. The sale of the 2019B Bonds to the Underwriters on the terms and conditions contained in the Bond Purchase Agreement are hereby approved and authorized. The Bond Purchase Agreement in the form presented to this meeting is hereby approved and the Controller/Treasurer of the District is hereby authorized and directed to execute and deliver the Bond Purchase Agreement in substantially such form with such changes, insertions and omissions as may be approved by such officer, such approval being conclusively evidenced by the execution and delivery thereof. The maximum underwriting discount on the sale of the 2019B Bonds (exclusive of original issue discount) shall be not greater than one half of one percent (0.50%) of the principal amount of the 2019B Bonds. The proceeds, including any accrued interest on the sale of the 2019B Bonds, shall be applied simultaneously with the delivery of the 2019B Bonds, as required by the terms of the First Supplemental Trust Agreement as finally executed.

Section 4. The form of Preliminary Official Statement presented to this meeting is hereby approved and the distribution of the Preliminary Official Statement, in connection with the offering and sale of the 2019B Bonds, with such changes, omissions and insertions as shall be approved by the Controller/Treasurer, is hereby authorized and approved. The Controller/Treasurer is hereby authorized to review the Preliminary Official Statement and to certify on behalf of the District that the Preliminary Official Statement is “deemed final” as of its date, except for certain terms and pricing information permitted to be omitted therefrom pursuant to Securities and Exchange Commission Rule 15c2-12. The Controller/Treasurer of the District is authorized to deliver such a certification to the Underwriters.

The Controller/Treasurer of the District is hereby authorized and directed to prepare a final version of the Official Statement (such final version of the Official Statement, in the form of the Preliminary Official Statement, with such changes, insertions and omissions as shall be approved by the Controller/Treasurer of the District, being hereinafter referred to as the “Official Statement”) and to execute the Official Statement and any amendment or supplement thereto, in the name of and on behalf of the District, and cause the Official Statement and any such amendment or supplement to be delivered to the Underwriters and distributed in connection with the offering and sale of the 2019B Bonds.

Section 5. The form of Continuing Disclosure Agreement presented to this meeting is hereby approved. The Controller/Treasurer of the District is hereby authorized and directed to execute and deliver a Continuing Disclosure Agreement in substantially the form presented to this meeting, with such changes, insertions and omissions as may be approved by such officer, such approval being conclusively evidenced by the execution and delivery of the Continuing Disclosure Agreement.

Section 6. The Controller/Treasurer of the District is hereby authorized to arrange and confirm Green Bond certifications from the Climate Bonds Initiative for the 2019B Bonds or a portion thereof and the Controller/Treasurer of the District is further authorized to execute and deliver all documents necessary in connection therewith.

Section 7. The Controller/Treasurer of the District is hereby authorized to enter into or to instruct the Trustee to enter into one or more investment agreements, float contracts, swaps or other hedging products (hereinafter collectively referred to as the "Investment Agreement") providing for the investment of moneys in any of the funds and accounts created under the Trust Agreement, on such terms as the Controller/Treasurer of the District shall deem appropriate. Pursuant to Section 5922 of the California Government Code, the Board of Directors of the District hereby finds and determines that the Investment Agreement will reduce the amount and duration of interest rate risk with respect to amounts invested pursuant to the Investment Agreement and is designed to reduce the amount or duration of payment, rate, spread or similar risk or result in a lower cost of borrowing when used in combination with the 2019B Bonds or enhance the relationship between risk and return with respect to investments.

Section 8. Pursuant to Section 29121 of the California Public Utilities Code, the District shall, at the time of fixing the general tax levy and in the manner provided for fixing the general tax levy, levy and collect annually until the 2019B Bonds are paid, or until there is a sum in the treasury of the District set apart for the purpose of paying all principal of and interest (and redemption premiums, if any) on the 2019B Bonds as the same become due and payable, a tax sufficient to pay the annual interest on the 2019B Bonds and such part of the principal thereof, including any sinking fund installments or redemption premiums required to be paid pursuant to the Trust Agreement, as will become due before the proceeds of a tax levied at the next general tax levy will be made available for such purposes.

Section 9. The District hereby pledges all revenues from the property taxes collected from the levy for the payment of outstanding general obligation bonds of the District heretofore and hereafter issued pursuant to voter-approved Measure RR of the District, including the 2019B Bonds and any bonds issued to refund the 2019B Bonds or any other bonds issued pursuant to Measure RR (for the purpose of this pledge herein collectively, the "Bonds") and amounts on deposit in the interest and sinking fund of the District to the payment of the principal or redemption price of and interest on the Bonds. This pledge shall be valid and binding from the date hereof for the benefit of the owners of the 2019B Bonds and successors thereto. The property taxes and amounts held in the interest and sinking fund of the District shall be immediately subject to this pledge, and the pledge shall constitute a lien and security interest which shall immediately attach to the property taxes and amounts held in the interest and sinking fund of the District to secure the payment of the Bonds and shall be effective, binding, and enforceable against the District, its successors, creditors and all others irrespective of whether those parties have notice of the pledge and without the need of any physical delivery, recordation, filing, or further act.

Section 10. The Board of Supervisors, the Auditor-Controller, the Assessor, the Treasurer, and other appropriate officials of each of the County of Alameda, the County of Contra Costa and the City and County of San Francisco (each a "BART County" and collectively, the "BART Counties"), are hereby requested to take and authorize such actions as may be necessary pursuant to laws of the State of California to provide for the levy and collection of the property tax on all property within their respective County subject to taxation by the District at such rate specified annually by the District to provide for payment of all principal of, redemption premium, if any, and interest on the 2019B Bonds as the same shall become due and payable, and to transfer such monies to or as requested by the District for deposit to the District's interest and sinking fund established pursuant to the Trust Agreement, and the Secretary of the District is hereby authorized



and directed to deliver certified copies of this Resolution to the Clerk of the Board of Supervisors, the Auditor-Controller, the Assessor, the Treasurer and other appropriate officials of each BART County. The Board hereby agrees to reimburse each BART County for any costs associated with the levy and collection of said tax, upon such documentation of said costs as the District shall reasonably request. The Controller/Treasurer of the District is hereby authorized to enter into agreements with each BART County or provide such other documentation as the Controller/Treasurer of the District determines is necessary or convenient to assist in the levy and collection of the taxes and the transfer thereof to or at the direction of the District.

Section 11: The President of the Board of Directors of the District, the General Manager of the District or Interim General Manager of the District, the Controller/Treasurer of the District, the General Counsel of the District, the District Secretary and any other proper officer of the District, acting singly, is, and each of them hereby is, authorized and directed to execute and deliver any and all documents and instruments and to do and cause to be done any and all acts and things necessary or proper to carry out the transactions contemplated by the Trust Agreement, the Bond Purchase Agreement, the Preliminary Official Statement, the Official Statement and the Continuing Disclosure Agreement, and by this Resolution, including without limitation, the delivery of tax certifications, the delivery of any instructions or documents relating to the investment of bond proceeds and the making of any determinations or submission of any documents or reports which are required by any governmental entity in connection with the issuance or payment of the 2019B Bonds.

Section 12. All actions heretofore taken by the officers, representatives or agents of the District in connection with the issuance and sale of the 2019B Bonds are hereby ratified, confirmed and approved.

Section 13. This Resolution shall take effect from and after its adoption.

PASSED AND ADOPTED on \_\_\_\_\_, 2019.

**EXHIBIT A TO RESOLUTION**

**GOOD FAITH ESTIMATES**

**SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT  
GENERAL OBLIGATION BONDS  
(ELECTION OF 2016), 2019 SERIES B  
(GREEN BONDS)**

The following information was obtained from Morgan Stanley & Co. LLC, as Representative of the Underwriters of the bonds defined above (the "Bonds"), for consideration prior to the authorization in the foregoing Resolution of the proposed Bonds:

1. *True Interest Cost of the Bonds.* Assuming an aggregate principal amount of the Bonds in the amount of \$360,000,000 is sold pursuant to the financing and based on market interest rates prevailing at the time of preparation of this information, a good faith estimate of the true interest cost of the Bonds, which means the rate necessary to discount the amounts payable on the respective principal and interest payment dates to the purchase price received for the Bonds, is 3.352%.

2. *Finance Charge of the Bonds.* Assuming such a principal amount of the proposed Bonds is sold and based on market interest rates prevailing at the time of preparation of this information, a good faith estimate of the Finance Charge of the Bonds, which means the sum of all fees and charges paid to third parties (or costs associated with the issuance of the Bonds), is \$1,320,000.00, as follows:

a)	Bond Counsel Fees	\$ 360,000.00*
b)	Disclosure Counsel Fees	100,000.00*
c)	Disbursements	5,000.00*
d)	Municipal Advisor Fees	32,500.00*
e)	Rating Agency Fees	165,000.00*
f)	Trustee Fees	9,000.00*
g)	Printer Fees	3,000.00*
h)	Miscellaneous Expenses	4,500.00*
i)	Green Bond Certification	3,600.00*
j)	Underwriters' Discount	630,000.00*
	Subtotal	<u>\$1,312,600.00*</u>
k)	Contingency	7,400.00*
	Total:	<u>\$1,320,000.00*</u>

\* Preliminary, subject to change.

3. *Amount of Proceeds to be Received.* Assuming such aggregate principal amount of the proposed Bonds required to effectuate the financing is sold and based on market interest rates prevailing at the time of preparation of this information, a good faith estimate of the amount of proceeds expected to be received by the issuer for sale of the Bonds less the Finance Charge of the Bonds described in 2 above and any reserves or capitalized interest paid or funded with proceeds of the Bonds, is \$360,000,000.00.

4. *Total Payment Amount.* Assuming such aggregate principal amount of the proposed Bonds (\$360,000,000.00) are sold and based on market interest rates prevailing at the time of preparation of this information, a good faith estimate of the total payment amount, which means the sum total of all payments the issuer will make to pay debt service on the Bonds plus the Finance Charge of the Bonds described in paragraph 2 above not paid with the proceeds of the Bonds, calculated to the final maturity of the Bonds, is \$577,677,792.33.

Attention is directed to the fact that the foregoing information constitutes good faith estimates only. The actual interest cost, finance charges, amount of proceeds and total payment amount may vary from the estimates above due to variations from these estimates in the timing of Bond sales, the amount of Bonds sold, the amortization of the Bonds sold and market interest rates at the time of each sale. The date or dates of sale and the amount of Bonds sold will be determined by the issuer based on need for funds and other factors. The actual interest rates at which the Bonds will be sold will depend on the bond market at the time of sale. The actual amortization of the Bonds will also depend, in part, on market interest rates at the time of each sale. Market interest rates are affected by economic and other factors beyond the issuer's control.