

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 1,946TH MEETING THURSDAY, DECEMBER 7, 2023

Members of the Board of Directors

Janice Li, President (District 8)

Mark Foley, Vice President (District 2)

Debora Allen (District 1)

Rebecca Saltzman (District 3)

Robert Raburn (District 4)

John McPartland (District 5)

Elizabeth Ames (District 6)

Lateefah Simon (District 7)

Bevan Dufty (District 9)

MEETING DESCRIPTION

A Regular Meeting of the Board of Directors was held on December 7, 2023, convening at 9:13 a.m. in the BART Board Room, 2150 Webster Street, 1st Floor, Oakland, California. President Li presided, April B. A. Quintanilla, District Secretary.

1. CALL TO ORDER

President Li called the Meeting to order at 9:13 a.m.

A. Roll Call.

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

Directors Present via Teleconference: Director Saltzman.

Absent: None. Directors Allen, Dufty, and McPartland entered the Meeting later.

Director Saltzman announced that she was attending the Meeting via teleconference under the Just Cause provision of Government Code Section 54953(f).

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

C. Introduction of Special Guests. No Special Guests were introduced.

2. REPORT OF THE BOARD PRESIDENT

President Li brought the item before the Board. President Li requested that Board Members communicate with the District Secretary if there is something affecting their attendance to Board Meetings. President Li noted that BART is in its Holiday Toy Drive season and encouraged donations to the toy drive. President Li announced that the next regular meeting would be the last meeting of the year and that Board leadership would change.

3. BOARD COMMITTEE REPORTS

President Li called for Board Committee Reports. Vice President Foley, Vice Chairperson of the Audit Committee, reported on the Audit Committee meeting on November 21st, noting that the Committee received a presentation of the Independent Auditor's Report for the Fiscal Year ending on June 30, 2023, and a presentation about reconciliation of operations, operating results between audited financial statements, and the operating budget. Vice President Foley also indicated that the Audit Committee reviewed four applications for the vacant Audit Committee public member seat.

4. BOARD MATTERS – PART I

A. Financial Structure Recommendations and Implementation Plan.

President Li brought the item before the Board.

Dennis Markham, Director of Performance and Audit; Alexander Burnett, Principal, Bell Burnett & Associates; and Kristin Centanni, Uplift Collaborative, presented the item.

Director McPartland entered the meeting in Oakland.

Public Comment

Glenn Overton addressed the Board.

Discussion

The item was discussed, with the following highlight:

Director Simon encouraged the Board to unanimously adopt the recommendations and thanked staff for planning for the implementation of change.

Director Allen entered the Meeting in Oakland.

Discussion

Discussion continued, with the following highlights:

Director Ames indicated that system improvement would result from the recommendations; inquired about how the changes would affect the public; and expressed support for efficiency.

Director Allen indicated that this project has roots in her advocacy for this subject to be examined in 2017. Director Allen also noted that this change would impact the way businesses work with BART by reducing the bureaucratic process.

Director Allen moved that Resolution No. 5018 be rescinded and that the financial structure roadmap, including: (1) move the Controller-Treasurer position and all functions, departments, and staff subordinate to the Controller-Treasurer under the span of control of the General Manager; (2) create a Chief Financial Officer (CFO) position and fill it on an interim basis until the District Act is amended, and on a permanent basis after the District Act is amended; and (3) implement a people-focused Organizational Change Management (OCM) strategy that builds involvement and engages staff before, during, and after implementation of the roadmap, be adopted.

Director Simon seconded the motion.

Vice President Foley noted how difficult structural changes can be for any organization, especially a public agency, and thanked the members of the Financial Structure Ad Hoc Committee who explored this change.

President Li thanked Robert Powers, General Manager, and the consultants and noted that BART is committed to financial accountability, budget efficiency, and continuing to improve BART. President Li also expressed intent to vote in favor of the recommended changes and indicated that this change is the first step to reap the benefits of the structural changes.

Action

Upon motion by Director Allen and second by Director Simon, Resolution No. 5018 was rescinded and the financial structure roadmap, including: (1) move the Controller-Treasurer position and all functions, departments, and staff subordinate to the Controller-Treasurer under the span of control of the General Manager; (2) create a Chief Financial Officer (CFO) position and fill it on an interim basis until the District Act is amended, and on a permanent basis after the District Act is amended; and (3) implement a people-focused Organizational Change Management (OCM) strategy that builds involvement and engages staff before, during, and after implementation of the roadmap was adopted by unanimous roll call vote.

Vote Summary:

Moved / Seconded: Director Allen / Director Simon

Aye: Directors Allen, Ames, Foley, McPartland, Raburn, Saltzman, Simon, and Li.

No: 0.

Abstain: 0.

Absent: Director Dufty.

Result: 8-0, motion carried by unanimous roll call vote.

5. **INSPECTOR GENERAL'S REPORT**

A. Office of the Inspector General Update.

President Li brought the item before the Board.

Claudette Biemeret, Inspector General, presented the item.

Public Comment

Glenn Overton and Aleta Dupree addressed the Board.

Discussion

The item was discussed, with the following highlights:

Director Simon congratulated the Inspector General for building her office and well utilizing the resources that were secured for her.

Director Saltzman expressed appreciation for the Inspector General's updates to the full Board and the collaboration between her office and the General Manager's Office.

Director Ames commended the collaboration between the Inspector General's Office and others and her efforts to address community concerns through her work.

Director Allen commented on the independence of the Inspector General's Office.

Action

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

6. CONSENT CALENDAR

President Li brought the following Consent Calendar action and information items before the Board.

- A. Approval of Minutes of the Meetings of June 8, 2023 and July 27, 2023.
- B. (CONTINUED from November 16, 2023 Board Meeting) Fiscal Year 2023 Year-End Budget Revision.
- C. Amendment of District Contractor Code of Conduct.
- D. Change Order to Agreement with SHI International Corporation for a Software Subscription from Auth0, Inc. for Cloud-Based Identity Management Software.
- E. Award of Agreements for On-Call Performance Audit and/or Fraud Examination Services.
 - i. Award of Agreement No. 6M2091 with BCA Watson Rice – Western Region, LLP.
 - ii. Award of Agreement No. 6M2092 with GPP Analytics, Inc.
 - iii. Award of Agreement No. 6M2093 with Moss Adams, LLP.
 - iv. Award of Agreement No. 6M2094 with Tap International, Inc.
- F. Recruitment and Relocation Expenses for Chief Financial Officer.
- G. Amendment of Purchase Order with UPLift Collaborative for Financial Structure Organizational Change Management Services.
- H. Approval of Side Letter Agreements with Amalgamated Transit Union (ATU); Service Employees International Union (SEIU); American Federation of State, County and Municipal Employees (AFSCME); BART Police Officers' Association (BPOA); and BART Police Managers' Association (BPMA).
- I. Non-California Public Employees' Retirement System (CalPERS) Medical Plan Structure and Rates for Calendar Year 2024.
- J. Results of Independent Audit for the Fiscal Year Ended June 30, 2023.
- K. Fiscal Year 2024 First Quarter Financial Report.
- L. Procurement with Converge Technology Solutions, as the Official National Association of State Procurement Officials (NASPO) Provider, for A New Flash Storage Array System.
- M. Procurement with Grainger, as the Official National Association of State Procurement Officials (NASPO) Provider, for Electrical Transformers and Miscellaneous Materials.
- N. Appointment of BART Accessibility Task Force Members.
- O. Amendment to Agreements with Urban Alchemy and District Works for Expanded Attendant Services at Embarcadero, Civic Center/UN Plaza, Powell St., and Montgomery St. BART Stations.

Director Simon moved to approve all Consent Calendar action items by one motion.

Director McPartland seconded the motion.

Directors Raburn and Allen requested that Item 6-K, Fiscal Year 2024 First Quarter Financial Report, be removed from the Consent Calendar.

Public Comment

The following individuals addressed the Board:

Hillary Brown
Wendy Aragón
Aleta Dupree

Director Allen requested that Item 6-B, Fiscal Year 2023 Year-End Budget Revision, be removed from the Consent Calendar.

Directors Simon and McPartland indicated acceptance of removing Item 6-B from Director Simon's motion to approve the Consent Calendar action items.

Action

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

Vote Summary:

Moved / Seconded: Director Simon / Director McPartland

Aye: Directors Allen, Ames, Foley, McPartland, Raburn, Saltzman, Simon, and Li.

No: 0.

Abstain: 0.

Absent: Director Dufty.

Result: 8-0, motion carried by unanimous roll call vote.

- A. The Minutes of the Meeting of June 8, 2023 and July 27, 2023, were approved. *(Vote: 8-0)*
- C. The attached amended District Contractor Code of Conduct was adopted. (The amended District Contractor Code of Conduct is attached and hereby made a part of these Minutes.) *(Vote: 8-0)*
- D. The General Manager was authorized to execute a change order with SHI International Corporation, to obtain a software subscription from Auth0, Inc., in an amount not to exceed \$293,599.96 over two years, for cloud-based identity management software *(Vote: 8-0)*

- E. The General Manager was authorized to execute the following agreements to provide on-call performance audit and/or fraud examination services, for the amount not to exceed \$1,000,000.00 per agreement pursuant to notification to be issued by the General Manager and subject to the District's Protest Procedures:
- a. BCA Watson Rice - Western Region, LLP
 - b. GPP Analytics, Inc.
 - c. Moss Adams, LLP
 - d. Tap International, Inc.

Vote: (8-0)

- F. The General Manager or his designee was authorized to execute a national recruitment and relocation assistance agreement, if necessary to assist the District in the identification of qualified candidates both inside and outside of California for the position of Chief Financial Officer or equivalent, should this position be created, in conformance with established District procedures. *(Vote: 8-0)*
- G. Purchase order 0000055511 with UPlift Collaborative was amended to increase the not-to-exceed amount to \$1,400,000.00 and to extend the provision of Organizational Change Management (OCM) services, including developing a detailed OCM roadmap, communications strategy, cultural shift program, change champion network, and providing engagement support and education and training of staff. *(Vote: 8-0)*
- H. The Board approved and authorized the General Manager to execute Side Letters of Agreement SL GEN 2-01 with ATU and SEIU, SL 23-01 with AFSCME, 23-03 with BART Police Officers' Association (BPOA), and SL 23-01 with BART Police Managers' Association (BPMA), modifying the dental and vision plan coverage in the Collective Bargaining Agreements. *(Vote: 8-0)*
- I. Resolution No. 5577, In the Matter of the Non-CalPERS Medical Plan Structure and Rates For Calendar Year 2024, was adopted. *(Vote: 8-0)*
- J. *Item 6-J, Results of Independent Audit for the Fiscal Year Ended June 30, 2023, was presented for information only.*
- K. *Item 6-K, Fiscal Year 2024 First Quarter Financial Report, was presented for information only.*
- L. The General Manager was authorized to enter into a NASPO Value Point Contract with Converge Technology Solutions, located Lincoln, Rhode Island, for the procurement of new state of the art Flash Storage Array System for an amount not to exceed \$180,000.00. *(Vote: 8-0)*
- M. The Board authorized the General Manager to enter into a purchasing agreement with Grainger for electrical transformers and miscellaneous materials for the District-wide deployment of Next Generation fare gates in an amount not to exceed \$1,700,000.00. *(Vote: 8-0)*
- N. The BART Board of Directors appointed the nominated candidates, Hillary Brown and Alex Tiphayachan, for membership to the BART Accessibility Task Force (BATF) beginning December 13, 2023 for a one year term, or until the Board makes new appointments and/or reappointments for a new term, whichever occurs later. *(Vote: 8-0)*

- O. The Board authorized the General Manager to execute a second amendment to the existing agreements with Urban Alchemy and District Works to add funding for expanded attendant services at Embarcadero, Civic Center, Powell, and Montgomery Stations, in an amount not to exceed \$3,000,000.00 (\$1,500,000.00 per consultant). *(Vote: 8-0)*

President Li brought Items 6-B, Fiscal Year 2023 Year-End Budget Revision, and 6-K, Fiscal Year 2024 First Quarter Financial Report, before the Board.

Discussion

Item 6-K was discussed, with the following highlights:

Director Raburn commented on Item 6-K; acknowledged staff for the accuracy of their projections; and inquired about the cause of the negative capital labor reimbursement expenditure.

Director Allen expressed desire for Item 6-K to be presented on the main agenda with a staff presentation and for the report to be more robust. Director Allen also sought clarification on overbudgeted items.

Public Comment

Aleta Dupree addressed the Board.

Action

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

Discussion

Item 6-B was discussed, with the following highlights:

Director Allen indicated that Item 6-B should have been presented on the regular agenda and requested that staff provide additional information about the item.

Director Ames inquired about the timing of a resolution to address over expenditures.

Director Allen inquired about reconciliation of overtime budget allocations.

President Li moved that Resolution No. 5576, In the matter of amending Resolution No. 5520 regarding Fiscal Year 2023 Annual Budget, be adopted.

Director Raburn seconded the motion.

Action

Upon motion by President Li and second by Director Raburn, Resolution No. 5576, In the matter of amending Resolution No. 5520 regarding Fiscal Year 2023 Annual Budget, was adopted by unanimous roll call vote.

Vote Summary:

Moved / Seconded: President Li / Director Raburn

Aye: Directors Allen, Ames, Foley, McPartland, Raburn, Saltzman, Simon, and Li.

No: 0.

Abstain: 0.

Absent: Director Dufty.

Result: 8-0, motion carried by unanimous roll call vote.

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

9. **PLANNING, PUBLIC AFFAIRS, ACCESS, AND LEGISLATION ITEMS**
Director Saltzman, Chairperson

Item 9-A was heard after Item 6, Consent Calendar.

A. BART's 2024 Federal and State Legislative Advocacy Program.

On behalf of Director Saltzman, Chairperson of the Planning, Public Affairs, Access, and Legislation Committee, President Li brought the item before the Board.

Rodderick Lee, Assistant General Manager, External Affairs; Amanda Cruz, Director of Government and Community Relations; Alex Walker, Manager of Government Relations and Legislative Affairs; Emily Bacque Da Silva, Partner, The Picard Group; Jim Lites, Vice Chair, California Strategies; and Claire Van Zuiden, Partner, California Strategies, presented the item.

Public Comment

The following individuals addressed the Board:

Glenn Overton
Adina Levin
Brandi

Discussion

The item was discussed, with the following highlights:

Director Ames requested that staff monitor Senate Bill 1121 so that BART may benefit from any potential funding resulting from this legislation.

Vice President Foley expressed appreciation for everyone's work and assistance. Vice President Foley also requested that staff evaluate how to address the first mile/last mile issue for public transit as that is an important component and often an obstacle for people to overcome when taking public transportation.

Director Raburn echoed gratitude to staff and encouraged them to research housing bonds to allow communities to be transit friendly. Director Raburn also noted that there is some overlap with Caltrain and BART services, such as Human Resources departments, that could lead to cost savings and encouraged everyone to follow the Transportation Task Force recommendations.

Director Allen expressed satisfaction with the work of the Legislative Affairs team that contributed to the Governor vetoing a bill that would have decriminalized fare evasion in transit systems. Director Allen also expressed concern about the addition of non-sworn Police Department personnel and indicated that efforts should not be focused on the Link21 program when there is unmet need within BART's capital projects.

President Li commented on prioritizing early and frequent engagement with new Assembly and Senate leadership and indicated that 2024 will be a year to focus on BART's messaging about the state of Bay Area transit and the new changes that BART is actively delivering.

Director Raburn moved that the Board approves the 2024 Federal and State Legislative Advocacy Program as presented by staff.

Vice President Foley seconded the motion.

Action

Upon motion by Director Raburn and second by Vice President Foley, the Board approved the 2024 Federal and State Legislative Advocacy Program as presented by staff.

Vote Summary:

Moved / Seconded: Director Raburn / Vice President Foley

Aye: Directors Allen, Ames, Foley, McPartland, Raburn, Saltzman, Simon, and Li.

No: 0.

Abstain: 0.

Absent: Director Dufty.

Result: 8-0, motion carried by unanimous roll call vote.

10. ADMINISTRATION ITEMS **Director Dufty, Chairperson**

Item 10-A was heard after Item 9-A, BART's 2024 Federal and State Legislative Advocacy Program.

A. Next Generation Clipper® and Clipper® START Update.

On behalf of Director Dufty, Chairperson of the Administration Committee, President Li brought the item before the Board.

Pamela Herhold, Assistant General Manager, Performance and Budget; Jason Weinstein, Interim Clipper® Program Director, Metropolitan Transportation Commission (MTC); and Lysa Hale, Clipper® Principal Program Representative, MTC presented the item.

Public Comment

The following individuals addressed the Board:

Clarence Fisher
Glenn Overton
Aleta Dupree

Director Dufty entered the Meeting in Oakland.

Public Comment

Adina Levin addressed the Board.

Discussion

The item was discussed, with the following highlights:

Director McPartland requested clarification on the available discounts to riders and how the discounts would be secured.

Director Saltzman noted the rise of Clipper® mobile cards and inquired about the timing of Clipper® 2.0 and Clipper® START.

Director Allen indicated that Clipper® 2.0 is a critical component of customer service and that the new system should be maintained.

Director Ames commended the Clipper® team for providing open payment options as well as Clipper® payment options and encouraged Clipper® to expand their program to different income levels and consider more definitions of “low income.”

Director Raburn commented on the progress leading to Clipper® 2.0. Director Raburn also inquired about the process for lost or stolen cards, the application process for various discounts, smart cards, accessibility issues for people with disabilities, and discounted Clipper® cards for students.

Vice President Foley inquired about how Clipper® will support unbanked riders and if fare reversals/credit would be possible if the need arises.

President Li commended Clipper’s® significant changes since the launch of the program, the work on the Clipper® Bay Pass, and the positive changes arriving with Clipper® 2.0. President Li also requested that Clipper® staff be mindful of how to implement new fare policies proposed by different transit agencies.

Action

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

13. CLOSED SESSION

Item 13 was heard after Item 10-A, Next Generation Clipper® and Clipper® START Update.

A. CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Property: Property (including air rights) located at Ashby BART Station, 3100 Adeline Street, Berkeley 94703. APNs 53-1597-39-04 and 53-1703-009-00.

District Negotiators: Val Menotti, Chief Planning and Development Officer; Deb Castles, Principal Property Development Officer; Carli Paine, Group Manager of Transit-Oriented Development; and Darin Smith, Economic and Planning Systems.

Negotiating Parties: San Francisco Bay Area Rapid Transit District and City of Berkeley.

Under Negotiation: Price and Terms
Government Code Section: 54956.8

B. CONFERENCE WITH LABOR NEGOTIATORS

Agency Negotiators: President Li, Vice President Foley, and Director Saltzman

Titles: General Manager, Controller-Treasurer, District Secretary, Independent Police Auditor, and Inspector General

Government Code Section: 54957.6

President Li brought the item before the Board and indicated that the Board would enter into Closed Session under Items 13-A (Conference with Real Property Negotiators) and 13-B (Conference with Labor Negotiators) of the Regular Meeting agenda.

The Board Meeting recessed at 1:12 p.m.

The Board reconvened in Closed Session at 1:16 p.m.

Directors Present in Oakland: Directors Allen, Ames, McPartland, Raburn, Simon, and Li.

Directors Present via Teleconference: Director Saltzman.

Absent: None. Directors Dufty and Foley entered the Meeting later.

Director Dufty entered the Meeting in Oakland.

Vice President Foley entered the Meeting in Oakland.

The Board Meeting recessed at approximately 1:49 p.m.

14. OPEN SESSION

The Board reconvened in Open Session at 1:49 p.m.

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

Directors Present via Teleconference: None.

Absent: Director Saltzman.

A. Announcements from Closed Session, if any.

President Li announced that the Board had concluded its Closed Session under Items 13-A and 13-B and indicated that the Board would proceed to Item 14-B.

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

President Li moved that the base salaries of the General Manager, Interim Controller-Treasurer, District Secretary, Inspector General, and Independent Police Auditor be increased by three percent retroactive to July 1, 2023, when other non-represented employees received the same wage increase, and that the Board President be authorized to execute any necessary changes to the Board Appointees' employment agreements to incorporate the change.

Director Dufty seconded the motion.

Public Comment

No comments were received.

Action

Upon motion by President Li and second by Director Dufty, the base salaries of the General Manager, Interim Controller-Treasurer, District Secretary, Inspector General, and Independent Police Auditor were increased by three percent retroactive to July 1, 2023, when other non-represented employees received the same wage increase, and the Board President was authorized to execute any necessary changes to the Board Appointees' employment agreements to incorporate the change.

Vote Summary:

Moved / Seconded: President Li / Director Dufty

Aye: Directors Allen, Ames, Dufty, Foley, McPartland, Raburn, Simon, and Li.

No: 0.

Abstain: 0.

Absent: Director Saltzman.

Result: 8-0, motion carried by unanimous roll call vote.

9. **PLANNING, PUBLIC AFFAIRS, ACCESS, AND LEGISLATION ITEMS**
Director Saltzman, Chairperson

Item 9-B was heard after Item 14-B, Compensation and Benefits for General Manager, Controller-Treasurer, District Secretary, Independent Police Auditor, and Inspector General.

B. Update on Link21 Program.

On behalf of Director Saltzman, President Li brought the item before the Board.

Val Menotti, Chief Planning and Development Officer; Sadie Graham, Director of Link21; and Camille Tsao, Manager of Special Projects for Capitol Corridor, presented the item.

Public Comment

Aleta Dupree addressed the Board.

Discussion

The item was discussed, with the following highlights:

Vice President Foley inquired about running e-BART trains through the proposed rail construction.

Director Ames requested that staff check the proposed crossing at Martinez for freight and passenger rail and requested that a new ridership analysis be considered to validate the proposed maps.

Director Raburn inquired where governance would be considered during the proposed stages of the Link21 program.

Director Allen requested that staff notify Board Members of new updates on the Link21 website so that the Board can be informed and inquired about the total dollars spent on the project to date. Director Allen suggested that the Link21 project should be paused until BART's financial situation is more stable.

Director Dufty indicated that it is important to continue to advance the Link21 project and that he has received positive feedback from public officials regarding the project.

President Li indicated that there should be a forum for deeper discussion of the funding and contracting related to the Link21 project.

Action

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

7. **GENERAL MANAGER'S REPORT**

Item 7 was heard after Item 9-B, Update on Link21 Program.

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

Robert Powers, General Manager, reported on updates from the listening tours that staff has been engaging in; the upcoming SweaterFest event; the implementation of the new bikes on BART rules and related signage; his attendance at a Senate hearing on Bay Area Transit; future disclosure of the first two employer participants in the Clipper® Bay Pass pilot program; BART's receipt of grant funding to update BART's early warning system; the progress of the Holiday Toy Drive; ridership; and recruitment efforts for the BART Police Department and the release of a new recruitment video.

Public Comment

Aleta Dupree and Glenn Overton addressed the Board.

Discussion

The item was discussed, with the following highlight:

Director Dufty noted that stations and cars were clean and commended staff for their work. Director Dufty also thanked General Manager Powers for inviting Bay Area Council representatives to observe the new fare gates and briefing them on the Chief Financial Officer initiative.

8. PUBLIC COMMENT

President Li 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.

The following individuals addressed the Board:

Glenn Overton
Barney Smits
Aleta Dupree

11. ENGINEERING AND OPERATIONS ITEMS **Director Foley, Chairperson**

Vice President Foley, Chairperson of the Engineering and Operations Committee, had no report and no items were presented.

12. BOARD MATTERS – PART II

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

President Li called for Items 12-A, Board Member Reports; 12-B, Roll Call for Introductions; and 12-C, In Memoriam.

Director Raburn reported that he had attended the Oakland Structures Breakfast event featuring Mayor Sheng Thao and the 20th Annual Scholarship & Industry Awards event hosted by the Conference of Minority Transportation Officials. Director Raburn also reported on attending a workforce development tour at the Hayward Maintenance Complex Component Repair Shop and thanked Prem Bajaj, Manager of Workforce Development, and team members for following-up on his request to organize a tour with Eden Regional Occupational Program high school students.

Director McPartland reported that he had attended a safety drill in the Berkley Hills tunnel and recognized Thomas Maloney's, Director of Fire Life Safety, work on the event. Director McPartland also requested that

the Meeting be adjourned in honor of the military service members who died in the attack at Pearl Harbor 82 years ago.

Vice President Foley reported that he had attended the California Transit Association's Annual Conference.

Director Ames reported that Union City held a Station District Open House event for Union City Station and that corporations have purchased land next to Quarry Lakes Parkway with the intent to use the land to access Interstate 880.

Director Allen reported on a scholarship fundraiser event held by the BART Police Officers' Association in honor of fallen BART Police Officer, Tommy Smith. Director Allen also reported on the San Ramon Chamber of Commerce WOW awards event and recognized the volunteer work performed by retired engineers in the Bay Area.

15. **ADJOURNMENT**

The Meeting adjourned at 3:11 p.m. in honor of the military service members who died in the attack at Pearl Harbor 82 years ago.

April B. A. Quintanilla
District Secretary

District Contractor Code of Conduct

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 any contractor, supplier, real property developer, or consultant of the District.
- 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 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 and Internal Audit 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.

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.

XL 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.
- 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 who were required to, or should have been required to, file a Form 700 (Statement of Economic Interests), 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.