
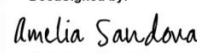
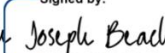
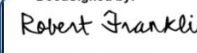
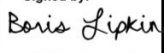





EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL:		DocuSigned by:  <small>47000790F2D7463...</small>	GENERAL MANAGER ACTION REQ'D:		
DATE: 4/13/2026		4/17/2026	BOARD INITIATED ITEM: No		
Originator/Prepared by: Carli Paine Dept: Transit Oriented Development Signature/Date:	General Counsel DocuSigned by:  <small>2528C067C44147D...</small>	Chief Financial Officer Signed by:  <small>7D9A7C6E7348456...</small>	District Secretary DocuSigned by:  <small>AFF4529E1F0D45C...</small>	BARC Signed by:  <small>2DFBAED027824E9...</small>	
 <small>7A5FDAA09067ACD</small> 4/17/2026	4/17/2026 []	4/17/2026 []	4/17/2026 []	4/17/2026 []	

Authorization to Execute Government Agency-Required Agreements for Affordable Housing

PURPOSE:

To obtain Board authorization to execute certain State and local government agency-required agreements for affordable housing components of Board-approved transit-oriented development projects.

DISCUSSION:

BART’s Affordable Housing Policy, Transit-Oriented Development (TOD) Policy, and Transit-Oriented Development (TOD) Performance Targets were adopted by the Board of Directors in 2016. These policies require a minimum of 20% of units built on BART property at each station to be affordable, with a District-wide target of 35% of all units in BART’s portfolio affordable.

As is typical for affordable housing production in California, BART’s development partners use multiple sources of financing to advance individual projects, including the Low Income Housing Tax Credit program, which is administered by the State Tax Credit Allocation Committee (TCAC), and the State’s Multifamily Housing Program and Affordable Housing and Sustainable Communities (AHSC) program, which are administered by the Housing and Community Development Department (HCD). Similarly, local agencies such as Alameda County Housing and Community Development Department make funding available for affordable housing projects. Local and state funding provide the majority of funding for affordable housing in the Bay Area.

TCAC requires execution of a Lease Rider and Estoppel Agreement as a precondition to

providing federal Low Income Housing Tax Credits to affordable housing projects. Tax credit funding is typically received after a project is occupied and is used to pay back construction loans. Additionally, HCD and other local government entities also requires developers of affordable housing projects and the owners of the property on which those projects are constructed to execute agreements similar to the TCAC Agreement. (Such agreements are referred to in this EDD as “Riders”.)

In order to receive these tax credits and funds, developers typically enter into regulatory agreements with the appropriate state or local government entity. The agreements are generally intended to ensure that the projects remain affordable and comply with other requirements for the duration of the agreement. The Riders and similar agreements are intended to protect the State’s rights under those regulatory agreements, in part by requiring landlords such as BART to agree that the terms of the Riders will control over contradictory provisions contained in the lease agreements between the landlord and developer.

At their May 16, 2017 meeting, the Planning Committee of the BART Board voted to authorize the BART General Manager or her designee to enter into State-required Riders for a series of TOD projects: MacArthur, South Hayward, San Leandro (Phases I and II), Castro Valley, Coliseum. Since these Riders are standard and will apply to any future affordable phase of a TOD project, BART staff are seeking Board authorization to enter into State-required agreements required by State affordable housing funding for all TOD projects with an affordable component.

Although the General Manager and staff are typically authorized to execute lease option agreements and supporting documents and agreements when TOD projects are approved by the Board, the state agencies have requested demonstration of explicit authority for TCAC and HCD riders.

The focus of the Riders is generally to articulate certain BART responsibilities as they relate to the State or local government agency’s role in the leased property, such as:

- A. BART must subject any future mortgagor or transferee the terms of the Rider.
- B. The Rider allows for extended time for funders to cure breaches before BART can utilize its remedies for breach under the lease, and BART must have the State agency’s consent to declare a breach of the lease agreement.
- C. Gives the State agency the authority to select a new lessee in certain circumstances, either as a transfer or assignment of an existing lease or, where a ground lease has been terminated by BART, obligating BART to enter into a new lease with an entity selected by the State.

Given affordable housing developers’ reliance on Low Income Housing Tax Credits and State and local government funds to build affordable housing, choosing not to sign a Rider or a similar agreement required by TCAC or HCD would negatively affect current affordable housing

projects on BART's property and limit future affordable housing projects on BART's property.

FISCAL IMPACT:

If the motion is not approved, BART's affordable housing developers would face severe financial consequences as they are expecting tax credits to subsidize a large share of the costs of development over the period of their ground lease. The fiscal impacts of these changes to completed and approved BART TOD projects are unknown, but it is likely that BART would experience some loss of revenues from ground lease and other financial agreements associated with these projects.

ALTERNATIVES:

Do not authorize General Manager to execute rider agreements required by the State and local government agencies in connection with affordable housing projects.

RECOMMENDATION:

Adoption of the following Motion.

MOTION:

The General Manager or his designee is authorized to execute State and local government agency-required agreements for affordable housing components of Board-approved transit-oriented development projects.