

San Francisco Bay Area Rapid Transit District

2150 Webster Street, P. O. Box 12688, Oakland, CA 94604-2688



BOARD MEETING AGENDA

Please note that the agenda has been revised and that attachments have been added under Item 4-A.

Thursday, September 8, 2022

9:00 AM

via Teleconference Only. Zoom Link: <https://us06web.zoom.us/j/88219642717>

Board of Directors

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT
2150 Webster Street, P. O. Box 12688, Oakland, CA 94604-2688

* * * REVISED * * *

BOARD MEETING AGENDA

September 8, 2022

9:00 a.m.

A regular meeting of the Board of Directors will be held at 9:00 a.m. on Thursday, September 8, 2022.

Please note, pursuant to all necessary findings having been made by the Board of Directors of the San Francisco Bay Area Rapid Transit District (for itself as well as all subordinate legislative bodies) to continue remote public meetings in the manner contemplated under urgency legislation Assembly Bill No. 361, public participation for this meeting will be via teleconference only.

You may watch the Board Meeting live or archived at <https://bart.gov/boardtv>

Presentation materials will be available via Legistar at <https://bart.legistar.com>

You may also join the Board Meeting via Zoom by calling 833-548-0282 and entering access code 882 1964 2717; logging in to Zoom.com and entering access code 882 1964 2717; or typing the following Zoom link into your web browser:
<https://us06web.zoom.us/j/88219642717>

If you wish to make a public comment:

- 1) Submit written comments via email to board.meeting@bart.gov, using “public comment” as the subject line. Your comment will be provided to the Board and will become a permanent part of the file. Please submit your comments as far in advance as possible. Emailed comments must be received before 4:00 p.m. on September 7, 2022, in order to be included in the record.
- 2) Call 833-548-0282, enter access code 882 1964 2717, dial *9 to raise your hand when you wish to speak, and dial *6 to unmute when you are requested to speak; log in to Zoom.com, enter access code 882 1964 2717, and use the raise hand feature; or join the Board Meeting via the Zoom link (<https://us06web.zoom.us/j/88219642717>) and use the raise hand feature.

Public comment is limited to three (3) minutes per person.

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

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

BART provides service/accommodations upon request to persons with disabilities and individuals

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

Rules governing the participation of the public at meetings of the Board of Directors and Standing Committees are available for review on the District's website (<http://www.bart.gov/about/bod>).

Meeting notices and agendas are available at bart.legistar.com; via email (<https://cloud.info.bart.gov/signup>); or via regular mail upon request submitted to the District Secretary.

Complete agenda packets (in PDF format) are generally available for review at bart.legistar.com no later than 48 hours in advance of the meeting.

Please submit your requests to the District Secretary via email to BoardofDirectors@bart.gov; in person or U.S. mail at 2150 Webster Street, 10th Floor, Oakland, CA 94612; or telephone 510-464-6083.

Regular Meeting of the
BOARD OF DIRECTORS

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

1. CALL TO ORDER
 - A. Roll Call.
 - B. Pledge of Allegiance.
 - C. Introduction of Special Guests.
2. REPORT OF THE BOARD PRESIDENT
3. BOARD COMMITTEE REPORTS

(An opportunity for Committee Chairpersons to report out on the activities of Board Committees that have met since the last Board Meeting.)

4. CONSENT CALENDAR
 - A. Approval of Minutes of the Meetings of August 23, 2022 (Special) and August 25, 2022 (Regular).
Board requested to authorize.
(Minutes will be available on Tuesday, September 6, 2022.)

Attachments: [Approval of Minutes of the Meeting of August 23, 2022 \(Special\)](#)
[Approval of Minutes of the Meeting of August 25, 2022 \(Regular\)](#)

- B. Award of Agreement No. 6M5188 for Language Translation and Interpretation Services.
Board requested to authorize.

Attachments: [Award of Agreement No. 6M5188 for Language Translation and Interpretation Services - EDD](#)

- C. Change Orders to Agreement No. 6M3223 with Jacobs (CH2M Hill) and Agreement No. 6M3224 with Hatch LTK Consulting Services, Inc., for Vehicle Engineering Consultant Services for BART Revenue Vehicle Projects, for Period of Performance (Time Extension).

Board requested to authorize.

Attachments: [Change Orders to Agreement No. 6M3223 with Jacobs \(CH2M Hill\) and Agreement No. 6M3224 with Hatch LTK Consulting Services, Inc. - EDD](#)

- D. BART Accessibility Task Force (BATF) Membership Appointment.

Board requested to ratify.

Attachments: [BART Accessibility Task Force \(BATF\) Membership Appointment - EDD](#)

5. GENERAL MANAGER'S REPORT

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

6. PUBLIC COMMENT - 15 Minutes

(An opportunity for members of the public to address the Board of Directors on matters under their jurisdiction and not on the agenda. Public comment is limited to three (3) minutes per person.)

7. ADMINISTRATION ITEMS

Director Simon, Chairperson

- A. Responses to the 2021-2022 Alameda County Grand Jury Report, "BART is on the Wrong Track with Independent Oversight."

Board requested to authorize.

Attachments: [Responses to the 2021-2022 Alameda County Grand Jury Report - EDD](#)
[Responses to the 2021-2022 Alameda County Grand Jury Report - Grand Jury Report](#)

- B. Amended and Restated Clipper® Memorandum of Understanding.
Board requested to authorize.

Attachments: [Amended and Restated Clipper® Memorandum of Understanding - EDD](#)

8. ENGINEERING AND OPERATIONS ITEMS

Director Dufty, Chairperson

- A. District Military Equipment Use Policy and Ordinance.
Board requested to adopt/enact. (Second Reading of Ordinance and Action)

Attachments: [District Military Equipment Use Policy and Ordinance - EDD](#)
[District Military Equipment Use Policy and Ordinance - Policy](#)
[District Military Equipment Use Policy and Ordinance - Ordinance](#)
[District Military Equipment Use Policy and Ordinance - Letter of Support](#)
[District Military Equipment Use Policy and Ordinance - Resolution](#)

- B. Award of Contract No. 15IJ-130, Fire Alarm System Replacement, Phase 3.
Board requested to authorize.

Attachments: [Award of Contract No. 15IJ-130, Fire Alarm System Replacement, Phase 3 - EDD](#)

9. CLOSED SESSION

A. CONFERENCE WITH REAL PROPERTY NEGOTIATORS:

Property: Property Located at the Lake Merritt BART Station, bounded by Ninth Street to the north, Fallon Street to the east, Eighth Street to the south, and Oak Street to the west (APN # 001-0169-001-00).

District Negotiators: Carl Holmes, Assistant General Manager, Design and Construction; Val Menotti, Chief Planning & Development Officer; Abigail Thorne-Lyman, Director of Real Estate & Property Development; and Darin Smith, Economic & Planning Systems.

Negotiating Parties: LMTOD, LLC, the East Bay Asian Local Development Corporation, and San Francisco Bay Area Rapid Transit District.

Under Negotiation: Price and Terms

Government Code Section: 54956.8

10. OPEN SESSION

A. Announcement from Closed Session, if any.

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

Director Foley, Chairperson

A. Lake Merritt BART Station Area Projects.

i. BART Police Headquarters Relocation Update.

For information.

ii. Transit-Oriented Development (TOD) Project.

a. Consider and Adopt the City of Oakland's California Environmental Quality Act Findings for the Lake Merritt BART Station TOD Project.

Board requested to adopt.

b. Lake Merritt BART Station TOD Project.

Board requested to authorize.

c. That the General Manager or His Designee be Authorized to Enter Into an Option Agreement and Other Agreements and Documents As Needed to Advance the Lake Merritt BART Station TOD, Block 1 Development.

Board requested to authorize.

d. Extension of the Exclusive Negotiating Agreement with the East Bay Asian Local Development Corporation and LMTOD, LLC for Block 2.

Board requested to authorize.

Attachments: [Lake Merritt BART Station Area Projects - Memo](#)
[Lake Merritt BART Station Area Projects - Presentation](#)
[Transit-Oriented Development \(TOD\) Project - EDD](#)

12. BOARD MATTERS

A. Board Member Reports.

(Board member reports as required by Government Code Section 53232.3(d) are available through the Office of the District Secretary. An opportunity for Board members to report on their District activities and observations since last Board Meeting.)

B. Roll Call for Introductions.

(An opportunity for Board members to introduce a matter for consideration at a future Committee or Board Meeting or to request District staff to prepare items or reports.)

C. In Memoriam.

(An opportunity for Board members to introduce individuals to be commemorated.)

13. CLOSED SESSION

A. PUBLIC EMPLOYEE PERFORMANCE EVALUATION

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

Government Code Section: 54957

B. CONFERENCE WITH LABOR NEGOTIATORS

Designated Representatives: President Saltzman, Vice President Li, and Director Foley

Title: District Secretary

Government Code Section: 54957.6

14. OPEN SESSION

A. Announcement from Closed Session, if any.

B. Compensation and Benefits for District Secretary. Board requested to authorize.

April B. A. Quintanilla
Acting District Secretary

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT
2150 Webster Street, P.O. Box 12688, Oakland, CA 94604-2688

Board of Directors
Minutes of the 1,913th Meeting
August 23, 2022

A Special meeting of the Board of Directors was held on August 23, 2022, convening at 1:00 p.m., via teleconference, pursuant to all necessary findings having been made by the Board of Directors of the San Francisco Bay Area Rapid Transit District (for itself as well as all subordinate legislative bodies) to continue remote public meetings in the manner contemplated under urgency legislation Assembly Bill No. 361. Vice President Li presided; Mag Tatum, Senior Board Analyst.

Directors Present: Directors Ames, Dufty, Foley, Li, Raburn, and Simon.

Absent: Director McPartland. Director Allen and President Saltzman entered the Meeting later.

Vice President Li called for Public Comment on Item 3 only. Aleta Dupree addressed the Board.

Vice President Li announced that the Board would enter into closed session under Item 3 (Public Employee Employment/Appointment) of the Special Meeting agenda, and that the Board would reconvene in open session upon conclusion of the closed session.

The Board Meeting recessed at 1:05 p.m.

The Board reconvened in closed session at 1:07 p.m.

Directors Present: Directors Allen, Ames, Dufty, Foley, Li, Raburn, Simon, and Saltzman.

Absent: Director McPartland.

The Board Meeting recessed at approximately 4:28 p.m.

The Board reconvened in open session at 4:28 p.m.

President Saltzman announced that the Board had concluded its closed session under Item 3 and that there was no announcement to be made.

The Meeting adjourned at 4:30 p.m.

Mag Tatum, Senior Board Analyst

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT
2150 Webster Street, P.O. Box 12688, Oakland, CA 94604-2688

Board of Directors
Minutes of the 1,914th Meeting
August 25, 2022

A regular meeting of the Board of Directors was held on August 25, 2022, convening at 9:01 a.m., via teleconference, pursuant to all necessary findings having been made by the Board of Directors of the San Francisco Bay Area Rapid Transit District (for itself as well as all subordinate legislative bodies) to continue remote public meetings in the manner contemplated under urgency legislation Assembly Bill No. 361. President Saltzman presided; April B. A. Quintanilla, Acting District Secretary.

Directors Present: Directors Ames, Dufty, Foley, Raburn, Simon, and Saltzman.

Absent: Director McPartland. Director Allen and Vice President Li entered the Meeting later.

President Saltzman gave instructions regarding Public Comment.

President Saltzman brought the matter of Report of the Board President before the Board and announced that the Board Meeting on September 22, 2022, would be an evening meeting and that the Board Meeting on October 27, 2022, would be held at the Hayward Maintenance Complex.

President Saltzman called for Public Comment on the Report of the Board President. No comments were received.

President Saltzman brought the matter of Board Committee Reports before the Board. Director Dufty, Chairperson of the Audit Committee, provided a report on the Audit Committee meeting held on July 19, 2022. President Saltzman, Chairperson of the Personnel Review Special Committee (PRSC), provided a report on the PRSC meeting held on August 3, 2022.

President Saltzman called for Public Comment on the Board Committee Reports. No comments were received.

President Saltzman brought the matter of Update on Safety, Reliability, and Traffic Relief Program (Measure RR) before the Board. Carl Holmes, Assistant General Manager, Design and Construction; Suresh Devarajan, Senior Manager of Engineering Programs; Myat San, Group Manager, Electrical and Mechanical Engineering; and Sylvia Lamb, Assistant Chief Engineering Officer presented the item.

Vice President Li entered the Meeting.

President Saltzman brought the matter of Bond Oversight Committee Annual Report before the Board and introduced the following individuals and thanked them for their service on the Bond Oversight Committee (BOC): Marian Breitbart, Member of the BOC; Daren Gee, Member of the BOC; and Michael McGill, Chair of the BOC. BOC Chair McGill presented the item.

BOC Members Gee and Breitbart addressed the Board.

Aleta Dupree addressed the Board.

The item was discussed, with the following highlights:

Director Dufty commented on the importance of appreciating citizen involvement and inquired about the coordination and cooperation between the BOC and staff.

Director Raburn thanked staff for their work; commented on the work completed during the COVID-19 pandemic and the positive impact of the proactive work; recognized the BOC members for their work; and expressed appreciation for the BOC members' service.

Vice President Li echoed the comments of Directors Dufty and Raburn; thanked the BOC members for their work; thanked staff for their assistance to the BOC; commended the work of the BOC and staff; and commented on potentially returning to voters in the future and increasing weekend service.

Director Ames commended the BOC Annual Report; thanked the BOC members for their work; commented on involving the BOC in the prioritization of projects; thanked staff and the BOC for forecasting projects; and commented on addressing system failures, the importance of Measure RR, renewing an infrastructure measure, and including a detailed project list in the BOC Annual Report.

President Saltzman echoed the comments made by other Board Members; expressed appreciation for the work of staff and the BOC; commented on the delays that were essentially avoided due to infrastructure work and the positive impact of Measure RR work; expressed appreciation for the support of voters and others; suggested that the work of the Measure RR Program and BOC be shared; and thanked the BOC members for their service.

President Saltzman announced that Item 5-N, Rescind Original Authorization to Award and Reject All Bids for Contract No. 15CQ-211, Procurement of Direct Fixation Fastener Assemblies, would be removed from the Consent Calendar.

Consent Calendar items brought before the Board were:

1. Approval of Minutes of the Meeting of July 28, 2022.
2. Resolution to Continue Virtual Meetings During the Pandemic.
3. District Base Pay Schedules.
4. Revision of Substance Abuse Policy and Procedures.
5. Recruitment Services for Positions Related to Engineering, Planning, Project Management, and Technology.
6. Fixed Property Tax Rates Fiscal Year 2022-2023 – General Obligation Bonds.
7. Proposed Revision to Rules of the Board of Directors.
8. Renewal of Agreement No. 6M4803, with Intergraph Corporation (dba Hexagon), for Hexagon EcoSys Project Portfolio Management Software.

9. Agreement with Alameda-Contra Costa Transit District for Feeder Service Payments for Fiscal Years 2022 and 2023.
10. Award of Contract No. 15TK-195, Station Agent Double Dutch Doors Replacement, Phase 3.
11. Award of Contract No. 15QJ-111, Roofing Work San Mateo County and Hayward Shop.
12. Award of Contract No. 6M3603, Reconditioning of Transit Vehicle Nickel Cadmium Batteries.
13. Change Order to Contract No. 15EJ-171, 34.5 KV Cable Replacement M-Line MVS Switching Station and MTF, MSS, MPS, and MTW Substations, with DMZ Builders, for Upgrades for Closed Circuit Television System (Change Order No. 034).
14. District Fuel Card Program.
15. Agreement with Norstan Communications, Inc. (dba Black Box Network Services) for Districtwide Telecommunications Maintenance and Support Services.
16. Single Source Procurement with Knorr Brake Corporation for Brake System Overhaul and Spare Parts.

Director Dufty made the following motions as a unit. Director Simon seconded the motions.

1. That the Minutes of the Meetings of July 28, 2022, be approved.
2. That Resolution No. 5528, In the Matter of Re-Authorizing the District's legislative and subordinate legislative bodies to utilize the provisions enacted by Assembly Bill (AB) 361 to meet remotely with teleconferenced meetings during a re-proclaimed emergency as authorized by law in accordance with Government Code Section 54953(e) and other applicable provisions of the Ralph M. Brown Act for an additional period of thirty (30) days from the adoption of this Resolution, be adopted.
3. That the Board approves the base pay schedule in effect July 1, 2022 and the BART Police Managers Association (BPMA) base pay schedules for 84-hour classifications from January 1, 2017 through June 30, 2021.
4. That the District's revised Substance Abuse Policy and Procedures be adopted.
5. That the General Manager or his designee be authorized to execute agreements for recruitment services to identify suitable candidates both inside and outside of California and to help fill positions related to engineering, planning, project management and technology as identified by the Human Resources Department, in conformance with established District procedure governing the procurement of professional services.
6. That Resolution No. 5529, In The Matter of Fixing The Rate of Taxes For San Francisco Bay Area Rapid Transit District for Fiscal Year 2022/23, be adopted.
7. That the attached revisions to Board Rule 5-3.5 be adopted. (The Revised Board Rule is attached and hereby made a part of these Minutes.)

8. That the General Manager or his designee be authorized to execute an agreement with Intergraph Corporation (dba Hexagon), in an amount not to exceed \$3,802,6660.00 for a five (5) year term inclusive of a two year (2) base contract and three (3) one-year options, for Hexagon EcoSys Project Portfolio Management (PPM) software.
9. That the General Manager be authorized to execute the Fiscal Year (FY) 22 and FY23 BART/Alameda-Contra Costa Transit District (“AC Transit”) Feeder Agreement for an amount not to exceed \$5.4 million.
10. That the General Manager be authorized to award Contract No. 15TK-195, Station Agent Booth Double Dutch Doors Replacement, Phase 3, to ACR Glazing Contractors, Inc. for the Bid amount of \$697,562.00, pursuant to notification issued by the General Manager.
11. That the General Manager be authorized to award Contract No. 15QJ-111, Roofing Work San Mateo County and Hayward Shop to Best Contracting Services, Inc. of Gardena, California for the Total Base Bid amount of \$604,700.00; and that additionally, the General Manager be authorized to exercise any or all of the three options, subject to availability of funding and at the District’s sole discretion, for an additional \$530,768.00, bringing the total authorization to \$1,135,468.00.
12. That the General Manager be authorized to award Contract No. 6M3603, a five-year estimated-quantities contract, to Industrial Battery Services (IBS) for reconditioning of transit vehicle batteries for \$1,895,250.00 including options and all taxes.
13. That the General Manager be authorized to execute Change Order No. 034 to Contract No. 15EJ-171 – 34.5KV Cable Replacement M-Line for additional electrical upgrades for the Closed Circuit Television (CCTV) system in the amount of \$1,850.832.00.
14. That the General Manager be authorized to (1) enter into an agreement with the new state fuel card provider, WEX Bank Fleet Payment System, the monitor and administrator of the WEX Fleet Card Program, for the purchase of fuel by District staff for non-revenue vehicles; and (2) expend approximately \$400,000.00 to process US Bank Voyager fleet fuel card services expenses as the District transitions between different fuel service providers.
15. That the General Manager be authorized to execute a three-year agreement with Norstan Communications, Inc., dba Black Box Network Services, and at his discretion, to exercise the options to renew for two additional one-year terms in an amount not to exceed \$3,127,522.61.
16. That the Board finds pursuant to Public Contract Code Section 20227 that Knorr Brake Corporation is the single supplier for the brake system overhaul and spare parts; and that the General Manager be authorized to enter direct negotiations with Knorr to execute an agreement for the overhaul of pneumatic friction brake components and purchase of spare parts in an amount not to exceed \$1,226,493.61 including sales tax.

Director Foley requested that Item 5-Q, Single Source Procurement with Knorr Brake Corporation for Brake System Overhaul and Spare Parts, be removed from the Consent Calendar.

President Saltzman inquired whether Directors Dufty and Simon would accept a friendly amendment to Director Dufty's motions to remove Item 5-Q. Directors Dufty and Simon accepted the amendment and the motions brought by Director Dufty and seconded by Director Simon were as follows:

1. That the Minutes of the Meetings of July 28, 2022, be approved.
2. That Resolution No. 5528, In the Matter of Re-Authorizing the District's legislative and subordinate legislative bodies to utilize the provisions enacted by Assembly Bill (AB) 361 to meet remotely with teleconferenced meetings during a re-proclaimed emergency as authorized by law in accordance with Government Code Section 54953(e) and other applicable provisions of the Ralph M. Brown Act for an additional period of thirty (30) days from the adoption of this Resolution, be adopted.
3. That the Board approves the base pay schedule in effect July 1, 2022 and the BART Police Managers Association (BPMA) base pay schedules for 84-hour classifications from January 1, 2017 through June 30, 2021.
4. That the District's revised Substance Abuse Policy and Procedures be adopted.
5. That the General Manager or his designee be authorized to execute agreements for recruitment services to identify suitable candidates both inside and outside of California and to help fill positions related to engineering, planning, project management and technology as identified by the Human Resources Department, in conformance with established District procedure governing the procurement of professional services.
6. That Resolution No. 5529, In The Matter of Fixing The Rate of Taxes For San Francisco Bay Area Rapid Transit District for Fiscal Year 2022/23, be adopted.
7. That the attached revisions to Board Rule 5-3.5 be adopted. (The Revised Board Rule is attached and hereby made a part of these Minutes.)
8. That the General Manager or his designee be authorized to execute an agreement with Intergraph Corporation (dba Hexagon), in an amount not to exceed \$3,802,6660.00 for a five (5) year term inclusive of a two year (2) base contract and three (3) one-year options, for Hexagon EcoSys Project Portfolio Management (PPM) software.
9. That the General Manager be authorized to execute the Fiscal Year (FY) 22 and FY23 BART/Alameda-Contra Costa Transit District ("AC Transit") Feeder Agreement for an amount not to exceed \$5.4 million.
10. That the General Manager be authorized to award Contract No. 15TK-195, Station Agent Booth Double Dutch Doors Replacement, Phase 3, to ACR Glazing Contractors, Inc. for the Bid amount of \$697,562.00, pursuant to notification issued by the General Manager.
11. That the General Manager be authorized to award Contract No. 15QJ-111, Roofing Work San Mateo County and Hayward Shop to Best Contracting Services, Inc. of Gardena, California for the Total Base Bid amount of \$604,700.00; and that additionally, the General Manager be authorized to exercise any or all of the three options, subject to availability of funding and at the District's sole discretion, for an additional \$530,768.00, bringing the total authorization to \$1,135,468.00.

12. That the General Manager be authorized to award Contract No. 6M3603, a five-year estimated-quantities contract, to Industrial Battery Services (IBS) for reconditioning of transit vehicle batteries for \$1,895,250.00 including options and all taxes.
13. That the General Manager be authorized to execute Change Order No. 034 to Contract No. 15EJ-171 – 34.5KV Cable Replacement M-Line for additional electrical upgrades for the Closed Circuit Television (CCTV) system in the amount of \$1,850.832.00.
14. That the General Manager be authorized to (1) enter into an agreement with the new state fuel card provider, WEX Bank Fleet Payment System, the monitor and administrator of the WEX Fleet Card Program, for the purchase of fuel by District staff for non-revenue vehicles; and (2) expend approximately \$400,000.00 to process US Bank Voyager fleet fuel card services expenses as the District transitions between different fuel service providers.
15. That the General Manager be authorized to execute a three-year agreement with Norstan Communications, Inc., dba Black Box Network Services, and at his discretion, to exercise the options to renew for two additional one-year terms in an amount not to exceed \$3,127,522.61.

President Saltzman called for Public Comment on the Consent Calendar, except for Items 5-N and 5-Q.

Aleta Dupree addressed the Board.

Director Raburn requested that Item 5-I, Agreement with Alameda-Contra Costa Transit District for Feeder Service Payments for Fiscal Years 2022 and 2023, be removed from the Consent Calendar.

President Saltzman inquired whether Directors Dufty and Simon would accept a friendly amendment to Director Dufty's motions to remove Item 5-I. Directors Dufty and Simon accepted the amendment and the motions brought by Director Dufty and seconded by Director Simon were as follows:

1. That the Minutes of the Meetings of July 28, 2022, be approved.
2. That Resolution No. 5528, In the Matter of Re-Authorizing the District's legislative and subordinate legislative bodies to utilize the provisions enacted by Assembly Bill (AB) 361 to meet remotely with teleconferenced meetings during a re-proclaimed emergency as authorized by law in accordance with Government Code Section 54953(e) and other applicable provisions of the Ralph M. Brown Act for an additional period of thirty (30) days from the adoption of this Resolution, be adopted.
3. That the Board approves the base pay schedule in effect July 1, 2022 and the BART Police Managers Association (BPMA) base pay schedules for 84-hour classifications from January 1, 2017 through June 30, 2021.
4. That the District's revised Substance Abuse Policy and Procedures be adopted.
5. That the General Manager or his designee be authorized to execute agreements for recruitment services to identify suitable candidates both inside and outside of California and to help fill positions related to engineering, planning, project management and technology as identified by the Human Resources Department, in conformance with established District procedure governing the procurement of professional services.

6. That Resolution No. 5529, In The Matter of Fixing The Rate of Taxes For San Francisco Bay Area Rapid Transit District for Fiscal Year 2022/23, be adopted.
7. That the attached revisions to Board Rule 5-3.5 be adopted. (The Revised Board Rule is attached and hereby made a part of these Minutes.)
8. That the General Manager or his designee be authorized to execute an agreement with Intergraph Corporation (dba Hexagon), in an amount not to exceed \$3,802,6660.00 for a five (5) year term inclusive of a two year (2) base contract and three (3) one-year options, for Hexagon EcoSys Project Portfolio Management (PPM) software.
9. That the General Manager be authorized to award Contract No. 15TK-195, Station Agent Booth Double Dutch Doors Replacement, Phase 3, to ACR Glazing Contractors, Inc. for the Bid amount of \$697,562.00, pursuant to notification issued by the General Manager.
10. That the General Manager be authorized to award Contract No. 15QJ-111, Roofing Work San Mateo County and Hayward Shop to Best Contracting Services, Inc. of Gardena, California for the Total Base Bid amount of \$604,700.00; and that additionally, the General Manager be authorized to exercise any or all of the three options, subject to availability of funding and at the District's sole discretion, for an additional \$530,768.00, bringing the total authorization to \$1,135,468.00.
11. That the General Manager be authorized to award Contract No. 6M3603, a five-year estimated-quantities contract, to Industrial Battery Services (IBS) for reconditioning of transit vehicle batteries for \$1,895,250.00 including options and all taxes.
12. That the General Manager be authorized to execute Change Order No. 034 to Contract No. 15EJ-171 – 34.5KV Cable Replacement M-Line for additional electrical upgrades for the Closed Circuit Television (CCTV) system in the amount of \$1,850.832.00.
13. That the General Manager be authorized to (1) enter into an agreement with the new state fuel card provider, WEX Bank Fleet Payment System, the monitor and administrator of the WEX Fleet Card Program, for the purchase of fuel by District staff for non-revenue vehicles; and (2) expend approximately \$400,000.00 to process US Bank Voyager fleet fuel card services expenses as the District transitions between different fuel service providers.
14. That the General Manager be authorized to execute a three-year agreement with Norstan Communications, Inc., dba Black Box Network Services, and at his discretion, to exercise the options to renew for two additional one-year terms in an amount not to exceed \$3,127,522.61.

The motions brought by Director Dufty and seconded by Director Simon carried by unanimous roll call vote. Ayes: 7 – Directors Ames, Dufty, Foley, Li, Raburn, Simon, and Saltzman. Noes: 0. Absent: 2 – Directors Allen and McPartland.

Regarding Item 5-I, Director Raburn commented on AC Transit's feeder bus service, Early Bird Service, and mutual aid during service disruptions; and expressed support for collaborations with AC Transit.

Director Raburn moved that the General Manager be authorized to execute the Fiscal Year (FY) 22 and FY23 BART/Alameda-Contra Costa Transit District (“AC Transit”) Feeder Agreement for an amount not to exceed \$5.4 million. Director Dufty seconded the motion, which carried by unanimous roll call vote. Ayes: 7 – Directors Ames, Dufty, Foley, Li, Raburn, Simon, and Saltzman. Noes: 0. Absent: 2 – Directors Allen and McPartland.

Director Allen entered the Meeting.

Regarding Item 5-Q, Director Foley inquired whether staff is evaluating opportunities to become self-sufficient and bring the work in-house in the future.

Director Foley moved that the Board finds pursuant to Public Contract Code Section 20227 that Knorr Brake Corporation is the single supplier for the brake system overhaul and spare parts; and that the General Manager be authorized to enter direct negotiations with Knorr to execute an agreement for the overhaul of pneumatic friction brake components and purchase of spare parts in an amount not to exceed \$1,226,493.61 including sales tax. Director Raburn seconded the motion, which carried by unanimous roll call vote by the required two-thirds vote. Ayes: 8 – Directors Allen, Ames, Dufty, Foley, Li, Raburn, Simon, and Saltzman. Noes: 0. Absent: 1 – Director McPartland.

President Saltzman called for the General Manager’s Report. Robert Powers, General Manager, reported on the upcoming Tanforan Memorial event at San Bruno Station, the Clipper® Bay Pass Pilot Program, BART’s award of funding from the FY22 Transit Security Grant Program, BART’s 50th Anniversary Celebration, vintage arcade games at Powell Street Station, BART’s 50th Anniversary webpage, the City of El Cerrito’s virtual community workshop regarding BART’s Transit-Oriented Development (TOD) Program, the virtual joint study session of the City of El Cerrito’s Planning Commission and Design Review Board regarding TOD projects, BART’s receipt of the Construction Management Association of America (CMAA) 2022 Project of the Year award and the Engineering News-Record (ENR) California 2022 Regional Best Project Winner for Interior Tenant Improvements award, the BART Police Department’s recruitment for civilian and sworn officer positions, and ridership.

Aleta Dupree addressed the Board.

The item was discussed, with the following highlights:

Director Ames shared feedback she received from a participant in the Clipper® Bay Pass Pilot Program; recognized other students who were selected for the Program; commented on students contributing to ridership and including additional institutions in the Program; and thanked General Manager Powers for his work on the Fare Integration Task Force.

Vice President Li commented on increased ridership and commended staff’s work; asked the Chief of Police to comment on the BART Police Department’s assistance with the investigation of a recent violent attack in San Francisco; and thanked John Vuong, Police Sergeant, Justin Sangster, Senior Police Officer, Kenneth Rosenbaum, Senior Police Officer, and Miles Williamson, Police Officer, for their assistance with the investigation of the violent attack in San Francisco.

Director Raburn expressed appreciation for General Manager Powers’ ridership report; commented on the 50% fare discount during the month of September; and suggested that Board Members return to the Board Room in September, with the concurrence of public health officials, to help increase ridership.

President Saltzman called for general Public Comment.

Aleta Dupree addressed the Board.

Director Simon, Chairperson of the Administration Committee, had no report.

Director Dufty, Chairperson of the Engineering and Operations Committee, brought the matter of District Specialized Military Equipment Ordinance before the Board. Director Dufty briefly commented on the item, noting that there would be a presentation and action on the item at a later meeting, and provided a brief background on the item, including Director Simon's involvement in developing reform measures. Ed Alvarez, Chief of Police, and Kevin Franklin, Deputy Chief of Police, presented the item.

Aleta Dupree addressed the Board.

The item was discussed, with the following highlights:

Director Simon expressed support for the conversation and appreciation for the leadership of the Chief of Police, BART Board, and BART Police Citizen Review Board (BPCRB); and provided background information on the restrictions that were placed on some of the items that could be transferred from the military to police departments by the Obama Administration, which were lifted by the Trump Administration in 2017, inappropriate use of militarized equipment, and BART Police Department's thoughtful approach to responding to dangerous and tragic events and being a leader; and expressed support for the item.

Director Dufty recognized Director Simon's work to help facilitate the eight measures surrounding police conduct and responsibility that were adopted in 2021.

Director Raburn thanked Director Simon for her comments; commented that he attended a BPCRB meeting that included a presentation on compliance with Assembly Bill (AB) 481 and questions from the public; expressed a preference for members of the public to address how their comments were incorporated into the report to ensure that the issues were addressed; and expressed support for the item.

Director Ames expressed how heartwarming it was to see the collaboration with the BPCRB and the BART Police Department; shared her experience with observing military-type police equipment used at a George Floyd event; and expressed support for the legislation.

Director Foley, Chairperson of the Planning, Public Affairs, Access, and Legislation Committee, brought the matter of Resolution to Adopt Assembly Bill 2923 Transit-Oriented Development Conformance Findings before the Board. Val Menotti, Chief Planning and Development Officer, presented the item.

Aleta Dupree addressed the Board.

The item was discussed with the following highlight:

President Saltzman thanked staff for all of their work on the project and expressed excitement with what staff plans to do going forward and with what BART is planning to do with its Transit-Oriented Development Program.

President Saltzman moved that after review and consideration of “Attachment A: Summary of Conformance Findings by Station Area,” Resolution No. 5530, Resolution of the Board of Directors of the San Francisco Bay Area Rapid Transit District adopting Assembly Bill No. 2923 (AB 2923) conformance findings for each of the 10 zoning standards for each affected BART-owned parcel, be adopted. Vice President Li seconded the motion.

Discussion continued, with the following highlights:

Director Ames expressed appreciation about comments made by Chief Planning and Development Officer Menotti about the job/employment sector; commented that the current Transit-Oriented Development policy identifies that job centers should be located closer to the BART Stations, which would create more ridership as we are in a ridership crisis; commented on AB 2923 and developing principles to emphasize job quality and explore incentives to generate job usage as we have a grant that is going to enable staff to talk about the potential sites for jobs; and indicated that she would abstain from the vote on the item.

Director Raburn acknowledged former BART Vice President Nick Josefowitz for his visionary work with former Assemblymember David Chiu; thanked Chief Planning and Development Officer Menotti, Abigail Thorne-Lyman, Director of Real Estate and Property Development, Kamala Parks, Senior Planner, and the Real Estate Department for their work; commented on the detailed compliance report provided to the Board in July; and noted that the resulting up-zoning provides opportunities for compact growth development at many BART stations.

The motion brought by President Saltzman and seconded by Vice President Li carried by unanimous roll call vote. Ayes: 7 – Directors Allen, Dufty, Foley, Li, Raburn, Simon, and Saltzman. Noes: 0. Abstentions: 1 – Director Ames. Absent: 1 – Director McPartland.

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

Director Dufty commented on the situation at the 24th Street Mission Station Plaza, noting that it has been riddled with untoward activity and that recently there has been a different crowd, lots of narcotics, and threats of violence towards the community-based vendors, as well as several questions about stolen property; thanked BART executive staff, General Manager Powers, and Michael Jones, Deputy General Manager, for their diligence in responding to a very complex and difficult situation that has unfolded at the 24th Street Mission Station; acknowledged Hillary Ronen, Supervisor, City and County of San Francisco Board of Supervisors, for her and her staff’s efforts to remedy the situation; and announced that a community meeting regarding this issue would be held in the near future.

Director Raburn reported that he had attended the California Hispanic Chambers of Commerce event and recognized Julian Chacon, Principal Administrative Analyst, Office of Civil Rights (OCR), Hoa Sin, Senior Manager of Economic Opportunity Policies, Fernando Flores, Senior Administrative Analyst, OCR, and Thomas Lee for their attendance at the event. Director Raburn reported that he had attended the Alameda Council Labor Unionist of the Year Ceremony and the Oakland-Chinatown Street Fest and he recognized Henry Symons, Senior Government and Community Relations Representative, Michelle Pallen-Mendiola, Administrative Analyst, Customer Service Administration, and Michael Fong, Community Services Officer, for their attendance at the Oakland-Chinatown Street Fest.

Director Foley reported that he had attended the Brentwood City Council Workshop regarding Priority Area One Specific Plan in anticipation of a potential transit hub and future BART station in their neighborhood; noted that he, BART staff, and City of Brentwood staff discussed the required transit overlay needed to potentially house a future BART station; and thanked Deputy General Manager Jones, Shane Edwards, Assistant General Manager, Operations, and BART staff for their beautification efforts at the Pittsburg and Antioch BART stations.

Director Ames inquired about an incident that occurred in Richmond on the Richmond BART line.

Director Allen requested that staff provide an update on rider safety initiatives.

President Saltzman reported that she had spoken with Santa Cruz Yes In My Back Yard (YIMBY) about BART's Transit-Oriented Development Program and received positive comments about BART's social media.

President Saltzman announced that the Board would enter into closed session under Items 12-A (Public Employee Performance Evaluation), 12-B (Public Employee Appointment), and 12-C (Conference with Labor Negotiators) of the Regular Meeting agenda, and that the Board would reconvene in open session upon conclusion of the closed session.

President Saltzman called for Public Comment on closed session. No comments were received.

The Board Meeting recessed at 11:06 a.m.

The Board reconvened in closed session at 11:18 a.m.

Directors Present: Directors Ames, Duffy, Foley, Li, Raburn, Simon, and Saltzman.

Absent: Director McPartland. Director Allen entered the Meeting later.

Director Allen entered the Meeting.

Director Allen exited the Meeting.

The Board Meeting recessed at approximately 12:37 p.m.

The Board reconvened in open session at 12:38 p.m.

Directors present: Directors Ames, Duffy, Foley, Li, Raburn, and Saltzman.

Absent: Directors Allen, McPartland, and Simon.

President Saltzman announced that the Board had concluded its closed session under Items 12-A, 12-B, and 12-C; that the Board had appointed April Quintanilla as District Secretary, effective August 25, 2022, subject to completion of reference and backgrounds checks and the parties reach an agreement on terms and conditions of employment; and that the vote on the appointment was unanimous, with Directors Allen and McPartland absent.

President Saltzman, Director Dufty, Vice President Li, and Director Foley gave congratulatory remarks regarding April Quintanilla's appointment as District Secretary.

The Meeting adjourned at 12:41 p.m.

April B. A. Quintanilla
Acting District Secretary

5-3.5 Use of District Property Other than Automobiles

- (a) In addition to the use of District automobiles as authorized in Board Rule 5-3.4, each Director may have use and possession of the following property for District-related business, to the extent that such property is comparable in cost and function to property generally available to District employees:

- (1) Facsimile machine
- (2) Mobile device (i.e., tablets, portable Wi-Fi, hotspots, etc.)
- (3) Cellular Phone
- (4) Personal Computer, Laptop
- (5) Printer

All District property shall be returned to the District when a Director leaves office.

- (b) Directors shall request all District property through the District Secretary's Office. The District Secretary shall make and maintain a list of District property that is issued to each Director. This list shall be available for periodic review and audit, as required.
- (c) Not later than September 15 of each year, the Performance and Audit Department shall complete an annual review for the previous fiscal year for compliance with the requirements of this Board Rule 5-3.5, and, at its discretion, may conduct an audit based on the results of the review. The results of the review shall be presented at the next Audit Committee meeting following September 15, and, at the discretion of the Audit Committee, may be forwarded to the full Board. The presentation shall include a list of District property that is issued to each Director.
- (d) If it is determined that costs were incurred that were not for District-related business, Directors shall reimburse the District within 30 days upon request by the District Secretary. If such requests are not responded to or reimbursements are not made within 30 days, the District Secretary shall report to the President or Vice President in accordance with Board Rule 5-3.6.



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <div style="float: right; border: 1px solid black; padding: 2px; margin-top: 5px;"> DocuSigned by: <i>Michael Jones</i> <small>47000790F2D7463...</small> </div>		GENERAL MANAGER ACTION REQ'D:		
DATE: 8/12/2022 9/1/2022		BOARD INITIATED ITEM: No		
Originator/Prepared by: Emily Alter Dept: Civil Rights <div style="float: right; border: 1px solid black; padding: 2px; margin-top: 5px;"> DocuSigned by: <i>Maceo Wiggins</i> <small>B574118129214E1...</small> </div> Signature/Date: <div style="text-align: right;">8/29/2022</div>	General Counsel <div style="float: right; border: 1px solid black; padding: 2px; margin-top: 5px;"> DocuSigned by: <i>Jeanne Belan</i> <small>F8FD7B3A73E74E8...</small> </div> Signature/Date: <div style="text-align: right;">8/29/2022 []</div>	Controller/Treasurer <div style="float: right; border: 1px solid black; padding: 2px; margin-top: 5px;"> DocuSigned by: <i>Chris Gan</i> <small>EE11C8CEEEA04FD...</small> </div> Signature/Date: <div style="text-align: right;">8/31/2022 []</div>	District Secretary <div style="float: right; border: 1px solid black; padding: 2px; margin-top: 5px;"> DocuSigned by: <i>Pamela Herhold</i> <small>3BB24D65B8724F5...</small> </div> Signature/Date: <div style="text-align: right;">[]</div>	BARC <div style="float: right; border: 1px solid black; padding: 2px; margin-top: 5px;"> DocuSigned by: <i>Pamela Herhold</i> <small>3BB24D65B8724F5...</small> </div> Signature/Date: <div style="text-align: right;">8/31/2022 []</div>

Award of Agreement No 6M5188 for Contractor Services to Provide Language Translation and Interpretation Services

PURPOSE: To authorize the General Manager to award Agreement No. 6M5188 for language translation and interpretation services to Accent on Languages, Inc.

DISCUSSION: Title VI of the Civil Rights Act of 1964 (Title VI) and other applicable federal regulations require the District take reasonable steps to ensure Limited English Proficient (LEP) persons who have a limited ability to speak, read, write, or understand English have meaningful access to the District's services, programs, and activities. Accordingly, in 2013 the District drafted a Title VI Language Assistance Plan to assist the District in implementing quality and accurate language assistance measures, which include translation and interpretation services. It was updated in 2019 to reflect linguistic changes in BART service area and to include new language assistance measures where applicable.

The services under this Agreement will be provided on an as-needed basis for a base term of three (3) years, with options to renew for two (2) additional one (1) year periods.

Advance Notice of the Request for Proposals (RFP) was issued to eighty-seven (87) potential proposers and one hundred thirty-four (134) certified Small Businesses. RFP No. 6M5188 was posted on BART's Procurement Portal on April 19, 2022 and advertised in ten (10) local newspapers on April 23, 2022. Thirty-one (31) planholders registered on the Procurement Portal for this RFP. A Pre-Proposal Meeting and Networking Session were held on May 3, 2022 with eighteen (18) firms in attendance. Three (3) proposals were received on May 31, 2022 from the following proposers:

1. International Contact, Inc., Oakland

2. Accent on Languages, Inc., Berkeley
3. Lan Do & Associates, LLC, San Francisco

The three (3) proposals were reviewed by a Source Selection Committee, which was chaired by Contract Administration and included representatives from the Office of Civil Rights (OCR) and the Planning, Development, and Construction Department. The Committee reviewed the technical proposals for compliance with the ten (10) minimum technical requirements set forth in the RFP. Two of the three proposals were determined to be technically acceptable.

The two technically acceptable price proposals for the 3-year base period and 2 additional option years were then opened and evaluated. During such evaluation, the Source Selection Committee discovered that the price proposals could not be comparably evaluated. Accordingly, the Price Proposal Form was revised so that the price proposals would be submitted in a consistent format to allow a comparable evaluation. Subsequently, a request for Best and Final Offers (BAFOs) was issued to the two technically acceptable proposers.

BAFOs received on August 3, 2022 were evaluated and ranked as follows:

Written Translation and Oral Interpretation Services by Contract Term	Proposer	
	Accent on Languages, Inc.	International Contact, Inc.
Base (3 Years)	\$637,620.00	\$726,450.00
Option (2 Years)	\$425,080.00	\$484,300.00
Total BAFO Price (5 Years)	\$1,062,700.00	\$1,210,750.00

The Committee determined that the proposal submitted by Accent on Languages, Inc. (AOL) is the lowest priced technically acceptable proposal. Furthermore, examination of the proposer's business experience and financial capabilities has resulted in a determination that the proposer is responsible and that the \$1,062,700 total BAFO price submitted by Accent on Languages, Inc. is fair and reasonable based on adequate price competition.

Pursuant to the District's Non-Federal Small Business Program, the Office of Civil Rights set a 5% Small Business Prime Preference for this Agreement for Small Businesses certified by the California Department of General Services. The apparent low Proposer, AOL, is not a certified Small Business and, therefore, is not eligible for the 5% Small Business Prime Preference. The apparent second low Proposer, International Contact, Inc. is a certified Small Business, making it eligible for the 5% Small Business Prime Preference for this Agreement for evaluation purposes. After review by the Office of Civil Rights, and

application of the 5% Small Business Prime Preference, AOL remains the lowest responsive Proposer.

Pursuant to the District's Non-Discrimination Program for Subcontracting, the Availability Percentages for this Contract are 5.5% for Minority Business Enterprises ("MBEs") and 2.8% for Women Business Enterprises ("WBEs"). AOL committed to 0% MBE and 0% WBE participation. AOL did not meet either the MBE or WBE Availability Percentages; therefore, AOL was requested to provide the Office of Civil Rights with supporting documentation to determine if it had discriminated on the basis of race, national origin, color, gender or ethnicity. Based on the review of the information submitted by AOL, the Office of Civil Rights found no evidence of discrimination.

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

FISCAL IMPACT: The cost of this agreement is for an amount not to exceed \$1,062,700.00. This amount covers the 3-year base period with options to renew for two (2) additional one (1) year periods. The Agreement will commence upon receipt of a Notice to Proceed.

The amount not to exceed \$1,062,700.00 will be requested in future preliminary operating budget cycles. The estimated annual cost for services is as follows:

<u>Fiscal Year</u>	<u>Amount</u>
2023	\$212,540.00
2024	\$212,540.00
2025	\$212,540.00
2026	\$212,540.00
2027	\$212,540.00
Total	\$1,062,700.00

The proposed services will be funded by a combination of capital and operating sources. Capital projects that require translation services will fund their share of the work while funding for the operating share of the work is included in OCR's Adopted FY23 & FY24 budget (Department Cost Center 1304391 and Account Code 681300). Funding for subsequent fiscal years will be included in the proposed annual operating budget, which is

subject to Board approval. This action is not anticipated to have any Fiscal impact on unprogrammed District reserves.

ALTERNATIVES:

1. To initiate another Request for Proposals. Staff believes this would be unlikely to result in more competitive pricing.
2. Not award this Agreement, which would jeopardize the District's ability to provide language services for BART's Limited English Proficient customer population.

RECOMMENDATION:

Adopt the following motion:

MOTION: The General Manager is authorized to award Agreement No. 6M5188 to Accent on Languages, Inc. for the proposed price of \$637,620.00 for the base 3 years, pursuant to notification to be issued by the General Manager and subject to compliance with the District's protest procedures and FTA requirements related to protest procedures. The General Manager is also authorized to exercise the options to extend the term of the Agreement for two (2) additional years for the proposed price of \$425,080.00 subject to availability of funds.



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <div style="border: 1px solid black; padding: 2px; display: inline-block;"> DocuSigned by: <i>Michael Jones</i> 47000790F2D7463... </div>		GENERAL MANAGER ACTION REQ'D: Approve and Forward to the September 8, 2022 E & O Committee Meeting		
DATE: 7/19/2022 8/31/2022		BOARD INITIATED ITEM: No		
Originator/Prepared by: Leonard Moy Dept: New Car Procurement <div style="border: 1px solid black; padding: 2px; display: inline-block;"> DocuSigned by: <i>Leonard Moy</i> DD573FE7DCF84CE... </div> Signature/Date: <div style="text-align: right;">8/26/2022</div>	General Counsel <div style="border: 1px solid black; padding: 2px; display: inline-block;"> DocuSigned by: <i>Jana Belan</i> F8FD7B3A73E74E8... </div> <div style="text-align: right;">8/29/2022 []</div>	Controller/Treasurer <div style="border: 1px solid black; padding: 2px; display: inline-block;"> DocuSigned by: <i>Chris Gan</i> EE11C8CEEEA04FD... </div> <div style="text-align: right;">8/26/2022 []</div>	District Secretary <div style="text-align: right;">[]</div>	BARC <div style="border: 1px solid black; padding: 2px; display: inline-block;"> DocuSigned by: <i>Shane Edwards</i> 8128A2EB2F014F3... </div> <div style="text-align: right;">8/29/2022 []</div>

Change Orders to Agreements No. 6M3223 and No. 6M3224 for Vehicle Engineering Consultant Services for BART Revenue Vehicle Projects, for Period of Performance (Time Extension)

PURPOSE:

To authorize the General Manager to execute Change Orders to Agreements No. 6M3223 with Jacobs (CH2M Hill) and No. 6M3224 with Hatch LTK Consulting Services, Inc. (LTK) extending the period of performance for each agreement by five years to ensure continued Vehicle Engineering Consultant Services support for BART Revenue Vehicle Projects.

DISCUSSION:

On February 14, 2013, the Board authorized award of Agreements No. 6M3223 and No. 6M3224 for a period of performance of ten years in the amount of \$25,000,000, each. A competitive Request for Proposal process was initiated by the District and four proposals were submitted for two agreements. Based on a best value analysis, the District awarded the two agreements to CH2M Hill and LTK.

CH2M Hill was acquired by Jacobs Engineering Group in December 2017. LTK merged with Hatch Engineering in November 2021 to become Hatch LTK. However, both consultants have retained the personnel that are working on these on-call agreements.

These on-call agreements were awarded solely for the support of the District's new car ("Fleet of the Future") procurement Contract No. 40FA-110 ("railcar procurement contract") and were each executed for a 10 year duration to coincide with the expected project schedule for the new car contract. The intent was to have vehicle engineering consultant services available to the District for the life of the new car procurement to assure adequate

coverage with engineering and inspection services and to maintain continuity of resources and knowledge. It was anticipated that the 10 year period would be sufficient to support the procurement process of new Fleet of the Future vehicles without an interruption of support.

Due to the slower than anticipated delivery and acceptance of the new railcars, utilization of these agreements has been lower than anticipated at the time of award. As of June 30, 2022, \$19.6 Million has been committed to Agreement No. 6M3223 and \$8.8 Million has been committed to Agreement No. 6M3224. Discontinuance of these consultants on this critical project, at this time, would be disruptive to orderly project progress. Staff has concluded that it is in the District's best interest to extend the term of the agreements for five years each to ensure continued support of this critical project. Staff requests a five year time extension only and anticipates no need for changes to the original Board authorized commitment levels.

Continuity in Design services during the production, testing, and commissioning is vital to ensure the rail vehicles are manufactured and tested per specifications within stringent tolerances that will facilitate the success of this procurement. Many of the services needed to support the railcar procurement contract are specialized in nature or require substantial amounts of training and knowledge of the processes as well as the history of design development for all systems. For instance, the current team includes a mechanical engineer with a PhD from the Massachusetts Institute of Technology who was involved in the vehicle design process since the beginning of the project and has been instrumental in the approval of all structural designs and calculations. This knowledge is vital for current process control variation and discussions based on historical knowledge of the vehicle structural design development. There are also experts in software design who have helped to navigate network development, software handoffs, Institute of Electrical and Electronics Engineers (IEEE) and Sil 4 requirements of the railcar procurement contract. Possessing this knowledge of the development and design available for any discussion in this area is vital to the continuity of the railcar procurement contract.

Agreement Nos. 6M3223 and 6M3224 also cover inspection services in Mexico and the east coast, which are otherwise difficult to find. The inspectors for the car body and car structure for the Fleet of the Future vehicles need to be certified weld inspectors (CWI). Once qualified CWI inspectors are located and hired, they undergo a substantial amount of training due to the specialized aluminum railcar body requirements, which are difficult to weld and detect for defects compared to steel. The CWIs have been with the on-call agreement team since the beginning of the railcar project and have in-depth knowledge of where problems can arise and what to look for. Having to find new CWIs under a new on-call agreement would cause significant delays for the railcar procurement project. In addition, the vehicle supplier has had trouble obtaining and maintaining qualified welders that can perform aluminum welding.

Staff certifies that this Change Order is consistent with the sole source procurement requirements provided under Federal Transit Administration (FTA) Circular 4220.1F, which

states that a recipient of FTA funding can make a sole source award under certain circumstances, including where “Substantial Duplication Costs” and “Unacceptable Delay” would preclude competitive award to the recipient. Here the personnel performing under these current on-call agreements are specially trained, familiar, and uniquely experienced with the Fleet of the Future vehicle development process that is currently underway. A competitive procurement of new on-call consultants to perform identical roles would lead to ‘substantial duplication costs’ to train new consultant personnel and bring them up to speed on the Fleet of the Future railcar and its development and inspection processes. In addition, such a process to procure a new firm and train firm personnel would lead to ‘unacceptable delays’ to the Fleet of the Future railcar project schedule. Thus, such an amendment to extend the on-call agreements would be justified under the FTA Circular rules.

The Office of the General Counsel will review and approve the Change Order as to form. The Procurement department will review the Change Order to ensure compliance with its internal procedures.

FISCAL IMPACT:

None. Time extension only.

ALTERNATIVES:

One: Initiate a new procurement for Vehicle Engineering Consultant Services for BART Revenue Vehicle Projects. Implementation of this alternative would, however, result in delays which would be both inefficient and costly.

Two: Utilize BART staff. BART does not, however, have available staff members with the required expertise and experience and it would be difficult to hire, train, and maintain such a team without adversely impacting project schedules or budgets.

RECOMMENDATION:

It is recommended that the Board adopt the following motion:

MOTION:

The General Manager is authorized to execute Change Orders to Agreements No. 6M3223 and No. 6M3224 extending the period of performance by five years to April 30, 2028 and March 31, 2028, respectively.



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL:		DocuSigned by: <i>Michael Jones</i> 47000790F2D7463...		GENERAL MANAGER ACTION REQ'D:	
DATE: 8/16/2022		9/1/2022		BOARD INITIATED ITEM: Yes	
Originator/Prepared by: Elena Van Loo Dept: Customer Access & Accessibility Department DocuSigned by: <i>Elena Van Loo</i> 0439BDB546734D2... Signature/Date: 8/31/2022		General Counsel DocuSigned by: <i>Jana Belan</i> F8FD7B3A73E74E8... 8/31/2022 []		Controller/Treasurer DocuSigned by: <i>Chris Gan</i> EE11C8CEEEA04FD... 8/31/2022 []	
		District Secretary		BARC DocuSigned by: <i>Carl Holmes</i> 2243E3B49EA349E... 8/31/2022 []	

BART Accessibility Task Force (BATF) Member Appointment

PURPOSE:

Request the BART Board of Directors to appoint a nominated candidate, David Fritz, to the BART Accessibility Task Force (BATF).

DISCUSSION:

The BATF has been in existence since 1975 to advise the BART Board and BART staff on accessibility issues at BART. The BATF by-laws provide for the committee to be composed of up to eighteen members who live in the BART District. The BATF by-laws also state that to become a member of the committee an interested candidate must attend three of four consecutive meetings and then apply for membership. If the candidate is endorsed by the members of the BATF through a majority vote, then the appointment to the BATF is submitted to the BART Board of Directors.

Candidate for BATF membership:

- David Fritz, a candidate for membership to the BATF, was endorsed by a 10-1-1 vote by the members of the BATF who were present at the August 25, 2022 BATF meeting.

This BATF membership recommendation is being submitted to the BART Board for consideration. The prospective candidate, if approved by the BART Board, will be officially seated as a member of the BATF on September 08, 2022, for a term of one year, or until the BART Board announces appointments and/or re-appointments for a new term, whichever occurs later. If approved, the BATF will be comprised of 17 members.

FISCAL IMPACT:

Members receive a \$15 monthly stipend for travel to attend regularly scheduled monthly committee meetings. Additionally, members are eligible to be reimbursed for the actual cost of travel for additional pre-approved meetings.

Funds will be budgeted in the Customer Access Department operating budget (Dept. 1102491, Account 681500-Other Non- Professional Services). Funding for services in Fiscal Year 2023 and Fiscal Year 2024 are included in the Department's existing operating budget. Funding for subsequent years will be included in the proposed annual operating budget, which is subject to Board approval.

This action is not anticipated to have any fiscal impact on the unprogrammed District reserves in the current fiscal year.

ALTERNATIVES:

Do not make the appointment.

RECOMMENDATION:

Appoint David Fritz to the BART Accessibility Task Force (BATF).

MOTION:

The BART Board accepts the recommendation of the BATF and appoints the nominated candidate, David Fritz, for membership to the BATF for a term beginning September 08, 2022 for one year, or until the Board makes new appointments and/or reappointments for a new term, whichever occurs later.



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL:		DocuSigned by: <i>Michael Jones</i> 47000790F2D7463...		GENERAL MANAGER ACTION REQ'D:	
DATE: 8/29/2022		8/31/2022		BOARD INITIATED ITEM: Yes	
Originator/Prepared by: Dennis Markham Dept: Performance & Audit Admin DocuSigned by: <i>D. Markham</i> 8664597FBC564FC... Signature/Date: 8/30/2022	General Counsel DocuSigned by: <i>Jana Belan</i> F8FD7B3A73E74E8... 8/30/2022 []	Controller/Treasurer DocuSigned by: <i>Chris Gan</i> EE11C8CEEEA04FD... 8/30/2022 []	District Secretary []	BARC DocuSigned by: <i>Pamela Herhold</i> 3BB24D65B8724F5... 8/30/2022 []	

Approve Response to 2021-2022 Alameda County Grand Jury Report

PURPOSE:

To obtain Board approval of responses to findings and recommendations contained in the 2021-2022 Alameda County Grand Jury Final Report "BART is on the Wrong Track with Independent Oversight".

DISCUSSION:

On June 29, 2022, the 2021-2022 Alameda County Civil Grand Jury issued a Final Report entitled "BART is on the Wrong Track with Independent Oversight" ("Report"), which contained six findings and six recommendations relating to the Board of Director's oversight of the BART Office of Inspector General ("OIG") and the OIG's working relationship with management. Although the Report stands as a thoughtful illustration of oversight and working relationships, it should be considered within the context of BART's past and current understanding of the OIG's role and responsibilities. As such, BART welcomes the opportunity to respond in detail to each of the findings and recommendations to describe its position, provide explanatory information, and add clarifying detail.

In conformance with the statutory response requirements, staff has proposed agreement or disagreement with the Report findings (supplemented by a narrative response), and has attempted to provide brief, but comprehensive responses to the Report recommendations. These proposed responses are provided as Attachment A and are accompanied by the Report for reference.

FISCAL IMPACT:

Board approval of the responses has no fiscal impact; BART has already implemented or plans to implement some of the recommendations as described in Attachment A, and any new initiatives that may be recommended would be determined as part of future budgets as

applicable.

ALTERNATIVES:

Direct staff to amend responses based on Board input.

RECOMMENDATION:

Approve Attachment A, Responses from the BART Board of Directors to the 2021-2022 Alameda County Grand Jury Final Report “BART is on the Wrong Track with Independent Oversight”

MOTION:

The Board approves the attached Responses from the BART Board of Directors to the 2021-2022 Alameda County Grand Jury Final Report “BART is on the Wrong Track with Independent Oversight” and directs staff to transmit the Responses to the 2021-2022 Alameda County Civil Grand Jury.

Responses to 2021-2022 Alameda County Civil Grand Jury Final Report
"BART is on the Wrong Track with Independent Oversight"

FINDINGS

Finding 41:

BART's board and management interfered with the Office of the Inspector General's performance of its duties.

RESPONSE: *Disagree*

The Board disagrees with this finding. The Grand Jury report cites areas of supposed "obstruction" of the Office of the Inspector General (OIG), including the Board's unwillingness to adopt the OIG Charter until the OIG consulted with BART's labor unions (see responses to Findings #42 and #43), and management's handling of the OIG's risk assessment.

Management initially viewed the topics of the OIG's risk assessment as not being in alignment with the scope of the OIG's enabling legislation, which was interpreted as to review fraud, waste, and abuse, and tied to reviewing capital projects (Senate Bill 595 (Glazer), Section 28840 "...to ensure that the district makes effective use of bridge toll revenue and other revenue and operates efficiently, effectively, and in compliance with applicable federal and state laws."). Management directed staff to pause their participation in the risk assessment until a clear understanding of the OIG's scope could be achieved. Once the scope of the OIG was clarified to reflect a broader scope, management directed staff to assist the OIG and the risk assessment moved forward with an OIG consultant.

It was never management's intent to interject itself into the actual interviews with staff. Management did interject itself into reviewing and commenting on the risk assessment final report (May 2021) when it found several factual errors (e.g., functions that were stated to be under the wrong department, incorrect department names, reference to lack of controls or processes that were already in place, etc.), even though the OIG indicated that no feedback would be taken as the report was final. Management was also concerned that the risk assessment covered some lower risk areas and did not focus on areas of presumed greater risk. Ultimately, the IG did not bring the risk assessment to the full Board of Directors.

Overall, management has been receptive and responsive to recommendations made by the OIG. Per the *Office of Inspector General Fiscal Year 2022 Annual Report*, Appendix I shows that management has accepted 40 of 47 (85%) recommendations made by the OIG. Two recommendations were associated with the Board's use of social media that the Board did not accept, and one was associated with a conflict-of-interest recommendation to seek outside counsel, which management did, but the IG disagreed with the District actions taken (see response to Finding #46).

Four of the seven unaccepted recommendations pertain to a tunnel lighting upgrade project for which management disagreed with the findings and provided independent data to support management's position. Management took the OIG and several board members to the field to observe the product in question, after which the IG committed to providing a supplemental report, which management has yet to receive.

Finding 42:

BART's board and general manager hampered the approval and implementation of a charter for the Office of the Inspector General, resulting in a lack of understanding within the organization that the Inspector General is independent.

RESPONSE: *Disagree*

The Board disagrees with this finding. The Board and the General Manager supported the OIG from the beginning of the OIG's charter effort including suggesting clarifying language, asking that roles and responsibilities be better defined, advising that terms of the BART labor agreements should be considered, etc. When the IG presented the charter at the January 14, 2021 board meeting, alignment with labor agreements had not been attained and the labor unions expressed concerns that the charter impeded their ability to adequately represent their membership when meeting with the OIG. The Board, as a policy body, directed the OIG to work directly with the labor unions and return with a charter for approval. To-date, an updated charter has not been brought to the Board for its consideration.

Finding 43:

BART's board and management supported the labor unions representing BART employees to try to limit the independence of the Office of the Inspector General investigations by setting unreasonable conditions for engagement of employee witnesses or complainants.

RESPONSE: *Disagree*

The Board disagrees with this finding. The Board and management are neutral to the conditions of engagement between the labor unions and the OIG. The Board requested the IG to develop an acceptable meeting protocol with the labor unions prior to approving the OIG Charter (see response to Finding #42). Involvement by the Board and management would bring in additional parties that would make coming to an agreement between the labor unions and OIG more difficult, which is why the Board has asked the OIG to resolve any issues directly with the unions.

Finding 44:

BART's Office of the Inspector General does not have access to independent counsel, administrative staff, and records storage systems as is considered best practice nationally.

RESPONSE: *Disagree*

The Board disagrees with this finding. The legislation that created the OIG is silent regarding access to independent parties and systems, but it did not preclude the IG from doing so. In practice, the OIG has contracted for external support (e.g., Whistleblower Hotline and external consultants) with no issues. The Board and management have provided the OIG access to BART's General Counsel, District Secretary, Controller-Treasurer, Information Technology, Human Resources, Procurement, Communications, and External Affairs departments, all of which have provided staff time and other resources in support of the OIG.

While there are no restrictions (other than the policies and procedures applicable to all staff) on the OIG's access to independent resources outside of BART, management believes that those provisions and related costs should have been part of the OIG enabling legislation. The Board and management support OIG access to independent counsel, administrative staff, and records storage systems if funds are secured by the OIG to pay for them (see

response to Recommendation #59). It should be noted that subject to existing Board policy, all departments (including the OIG) seeking to use outside counsel should coordinate with the General Counsel's office.

Finding 45:

BART's Office of the Inspector General's budget, set at an initial \$1 million per year in 2018 by PUC Section 28842, is much lower than the budgets of comparable transit agencies' Office of Inspector Generals adjusted for size. A mechanism for increasing the budget annually in the enabling legislation has not been used.

RESPONSE: *Disagree Partially*

The Board partially disagrees with this finding. The OIG was created by the state and funded with Bay Area bridge tolls (2018's Regional Measure 3 (RM3)). One of the criteria for BART's support of RM3 was the assurance that funding for the OIG would come from sources separate and distinct from BART. The RM3 legislation allows for the IG to request a budget increase from the Bay Area Toll Authority (BATA) on an annual basis (the "mechanism" to increase the budget). The Board and management have supported and assisted the IG's request for additional funding from BATA.

BATA denied the OIG's request for additional funding in 2020, citing budget cuts related to lower traffic volumes (and related toll revenue) due to COVID 19. In early 2022, BART's General Manager convened a meeting with the BATA Chair and Vice Chair, MTC Executive Director, BART Inspector General, and other key BART staff to secure additional funding, but BATA subsequently denied the request citing that Regional Measure 3 is in litigation.

The Board and management have continued to support the IG's request for additional funding. In January 2022, the Board revised its adopted 2022 State Legislative Advocacy Program to include the pursuit of additional funding for the OIG. BART staff met with several Bay Area legislators to discuss the OIG's funding needs and submitted a \$1 million budget request to a member in the Assembly for one-time funding. While the request was not advanced within the State's Fiscal Year 2023 Budget, BART staff continue to evaluate funding opportunities within the Fiscal Year 2024 State Budget.

Management has also assisted the OIG with funding 50% (including a change order) of its performance audit of BART's financial organizational structure and allowed the OIG to access its central services on-call consultants. Furthermore, management has stated that it will cover any OIG overhead expenses that would cause the OIG to exceed its current annual \$1 million budget.

The Grand Jury uses two measures, percentage of OIG budget to total operating budget and number of OIG staff, to compare BART's OIG resources to peer transit agencies Washington Metropolitan Area Transit Authority (WMATA) and the Los Angeles County Metropolitan Transportation Authority (LA Metro). WMATA and LA Metro have much wider breadths of programs than BART, including large bus systems and, in the case of LA Metro, allocating funds for several local sales tax programs plus express lane construction. These program differences should be considered. Both peer agencies have, at times, been under court or government-ordered mandates and oversight for past deficiencies. The wider breadth and additional oversight partially explain the larger IG budgets. Beyond these reasons using the ratio of IG budget to operating budget for comparison is reasonable.

Management finds the comparison of Full-Time Equivalents (FTE) among peer agencies to be misleading as the FTEs are not adjusted for the size of the agency (both WMATA and LA Metro are much larger organizations than BART). A better measurement, although not perfect, is OIG FTEs as a percentage of agency FTEs, which still shows that the BART OIG lags behind peer agencies but to a lesser extent than compared to using FTE counts.

Finding 46:

A potential serious conflict of interest exists between a BART senior manager and a construction management firm now under contract that employs the manager's spouse and sibling.

RESPONSE: *Disagree Partially*

The Board agrees that a potential conflict of interest existed, and management contends that the potential conflict has been addressed. The senior manager was placed in a different position when the IG informed management of the conflict and, as a result, the manager no longer performs any work related to the firm that employs their spouse and sibling. Furthermore, management has revamped its California Form 700 Statement of Economic Interests disclosure process and is in the process of reviewing its code of conduct and conflict of interest policies, all based on recommendations of the OIG.

One of the OIG's recommendations pertaining to this potential conflict was for management to "Seek an expert outside opinion from the Fair Political Practices Commission (FPPC) or other appropriate source to determine if the conflicts of interest violate California Government Code § 1090." As the FPPC will not provide an advisory opinion regarding past conduct, BART obtained an opinion from outside counsel, who advised that there were authorities supporting both sides of the conflict-of-interest question. Management stands by its assertion that the potential conflict has been adequately addressed and no further action is necessary beyond implementing the eight other recommendations made by the IG.

RECOMMENDATIONS

Recommendation 56:

BART’s Board of Directors must adopt written policies that acknowledge California Government Code 1236 and require compliance with standards prescribed by the Institute of Internal Auditors or the Government Auditing Standards issued by the Comptroller General of the United States (known as the “Yellow Book.”).

RESPONSE: *Implementation Pending*

Reference to California Government Code 1236 (which references standards prescribed by the Institute of Internal Auditors and Government Auditing Standards) has already been added to the latest draft version of the OIG Charter (July 2021), which will be reviewed by BART’s Audit Committee and full Board when the IG next brings the charter up for review, anticipated to be by the end of calendar 2022. Furthermore, California Government Code 1236 will be integrated into any standard Internal Audit policies.

Recommendation 57:

BART’s Board of Directors must adopt an Office of the Inspector General charter that expands on the spare language of PUC 28840 – 28845 such that the independence of the Inspector General is clearly acknowledged, and the roles and relationships are clearly defined between the Inspector General and senior BART staff such as general manager, general counsel, treasurer/controller, and internal auditor.

RESPONSE: *Analysis Required*

The Board is awaiting the outcome of California Senate Bill (SB 1488) (Glazer). With respect to independence, the Board and management will adhere to any applicable existing and new legislation regarding the function and practices of the Inspector General, including proposed California Senate Bill 1488, adding Public Utilities Code Section 28840(c), which contains specific language in this regard. With respect to roles and responsibilities, the Board and management will review any proposed OIG Charter brought to its attention by December 28, 2022, to ensure that the roles and responsibilities do not contradict or conflict with the roles and responsibilities of the Board, general manager, general counsel, controller/treasurer, and internal auditors.

Recommendation 58:

BART’s Board of Directors must give the Office of the Inspector General unencumbered and confidential access to all of BART’s resources, information, and employees, while respecting the “Weingarten” right of employees to representation during an investigatory interview if requested by the employee.

RESPONSE: *Implementation Pending*

The Board is awaiting the outcome of SB 1488 and resolution of issues regarding the IG’s access to union employees (see response to Finding #42) before implementing this recommendation. With respect to access of information and records, the Board and management will adhere to any applicable existing and new legislation regarding the function and practices of the Inspector General, including proposed California SB 1488, adding Public Utilities Code Section 28841.2(c)(2), which contains specific language in this regard. With respect to staff access, the Board and management will adhere to all laws, rules, regulations, and collective bargaining agreements.

Recommendation 59:

BART's Board of Directors must provide the Office of the Inspector General independent access to counsel, administrative staff, and records storage systems.

RESPONSE: *Implemented*

The Board agrees that the Office of the Inspector General should have (and currently has) a pathway to access independent counsel, administrative staff, and records storage systems, when warranted. There are no restrictions on the OIG for accessing resources outside of the District provided the OIG has budget capacity for independent access pursuant to policies and procedures that apply to all departments and staff. Within the District offices, the Inspector General has access to the same resources as BART's board-appointed officers (General Counsel, Controller-Treasurer, Independent Police Auditor, and the General Manager). For example, the OIG regularly engages with Communications to post and update the OIG webpage on bart.gov. Government & Community Relations prepared a funding strategy document and met with elected officials in collaboration with the OIG to pursue member budget requests for additional funding in the Fiscal Year 2022-23 State Budget. In addition, the OIG has received direct support from Information Technology, Human Resources, Procurement, the District Secretary's office, and other departments. Pursuant to existing Board policy, all departments can seek to use of outside counsel through coordination with the General Counsel's office.

Recommendation 60:

BART's Board of Directors must increase funding for the Office of the Inspector General to the level of peer transit agencies such as LA Metro and WMATA, expressed as a percentage of overall operating budget.

RESPONSE: *Not Implemented*

The Board will continue to support the OIG's request for a budget increase through the Bay Area Toll Authority (BATA) consistent with the OIG's enabling legislation, and other sources aside from BART (see response to Finding #45).

Using LA Metro and WMATA as peers in this regard may be overstating the BART OIG's budget needs due to their much wider breadths of programs than BART, as described in the response to Finding #45, but overall, the Board agrees that the OIG may be underfunded relative to similar offices in other transit agencies.

Recommendation 61:

BART's Board of Directors must update BART's Code of Conduct, last revised in 2013, to make reporting of potential conflicts of interest more internally consistent and aligned with federal and state regulations.

RESPONSE: *Implementation Pending*

The Board supports an update to the District's Code of Conduct and management is in the process of reviewing all codes of conduct (employee, board, contractor, etc.) as part of a wholesale review of its conflict-of-interest policies and procedures and will update policies to align with federal and state regulations by the end of calendar year 2022.

BART IS ON THE WRONG TRACK WITH INDEPENDENT OVERSIGHT

EXECUTIVE SUMMARY

BART, the San Francisco Bay Area’s largest and geographically broadest rapid transit system, is governed by an elected board of directors whose members serve four-year terms and are drawn from nine districts representing portions of the area served. A board-appointed general manager is the chief executive officer.

A successful 2018 regional ballot measure in nine Bay Area counties activated [Senate Bill 595](#) which dedicated \$1 billion in bridge toll revenue to BART capital projects. It also created an independent Office of the Inspector General (OIG) to provide oversight and accountability of BART’s operations and finances. The first and current Inspector General (IG) was selected by California Governor Gavin Newsom in 2019 from three candidates put forward by BART’s board.

The Grand Jury found that from the beginning, both BART’s board and management impeded the IG’s efforts to conduct independent oversight. In addition, board members and management supported union efforts to limit OIG access to their members, which stymied OIG independence and the confidentiality of investigations.

At a time when ridership is down due to the lingering effects of the pandemic, and BART is more dependent than ever on public funding, independent oversight should be strengthened, not sidelined. This public agency, with a \$2.4 billion annual budget, lacks proper financial structures and oversight. It has a treasurer/controller, an internal auditor, a general counsel, and an external auditor, but none of these are independent of BART’s board or management.

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When compared with other urban transit agencies, BART’s OIG is significantly underfunded and unable to fulfill its mission of uncovering waste, fraud, and abuse. At its current level of funding, the OIG has a backlog of urgent investigations that it does not have the resources to undertake. As one BART director stated at a recent public hearing, “Without this oversight, we don’t know what we don’t know.” Despite this, some BART directors have publicly refused to support efforts to find funding to adequately support the OIG.

A textbook example of the need for independent oversight was revealed in April 2022 when the OIG found an apparent conflict of interest between a senior BART manager and a construction management firm now working on a \$40 million BART contract. The BART manager, who helped

write the contract, did not disclose that the construction firm employs the manager's spouse and sibling. On its face, this is an apparent violation of state and federal guidelines that eluded BART's internal controls for two years. With \$1.5 billion in annual capital expenditures, most of it contracted to private companies, how is the public to know how many other such conflicts have gone undiscovered?

BACKGROUND

In 2018, nine Bay area counties, including four not served by BART, were willing to raise their bridge tolls to help fund BART with the expectation of improving transportation and reducing congestion throughout the region. Once this ballot measure passed, the enabling legislation, California Public Utility Code sections 28840-28845 went into effect, providing initial seed money of \$1 million per year from tolls collected by the Bay Area Toll Authority (BATA) with the provision that the budget could be adjusted annually.

In March 2020, BART's ridership suddenly plunged 94% due to COVID-19. As of the writing of this report (April 2022), it was still below 50% of pre-pandemic levels. An agency that had previously been funded mostly from the farebox now needed substantially more public money. To supplement lost income while avoiding layoffs, BART received \$328 million in Federal CARES Act funding and \$57 million in Federal Coronavirus Response and Relief funds. Now that the system relies primarily on public funding it has more responsibility than ever to be accountable.

What Is an Inspector General?

Nationally, the Inspector General Act of 1978 (IG Act) created OIGs to be independent and objective units that conduct audits and investigations to promote economy, efficiency, and effectiveness of their agencies' programs and operations. Their purpose is to prevent and detect waste, fraud, and abuse. OIGs are operationally independent from their agencies. Supervision of the IGs themselves is strictly limited and there are safeguards against their removal. The IG Act guarantees OIG independence to ensure the objectivity of their work.

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It is the norm nationally for publicly supported urban transit agencies to have OIGs. Across the country, these watchdogs have uncovered fraud and saved their transit systems millions of dollars. As the chart on page 129 shows, peer transit agency OIGs are far better funded than BART's OIG.

Typically, IGs report only to their agency heads, in this case, BART's elected board. Employees, even chief executives, do not direct the activities of IGs. This independence limits the potential for conflicts of interest that could exist if an IG were supervised by an official whose programs were being reviewed.

Specifically, the California Public Utility Code legislation states:

*There is hereby created in the district an **independent** (emphasis added) Office of the BART Inspector General to ensure that the district makes effective use of bridge toll revenue and other revenue and operates efficiently, effectively, and in compliance with applicable federal and state laws.*

The legislation goes on to define the duties and responsibilities of the BART OIG to include, among other things, examining the operating practices of the district to identify fraud, waste, and opportunities for efficiencies in the administration of programs and operations.

California Government Code Section 1236 requires special district personnel that conduct audits to adhere to “standards prescribed by the Institute of Internal Auditors, or the Government Auditing Standards issued by the Comptroller General of the United States,” and moreover, that “Auditors should be independent of the activities they audit.”

INVESTIGATION

The Grand Jury interviewed members of BART’s elected board and senior BART officials. The Grand Jury reviewed the board’s public meeting agendas, minutes, and meeting videos as well as applicable laws, internal emails, budget documents, national auditing standards, and news reports.

A Pattern of Obstruction

From the beginning, the Grand Jury learned that BART’s board, management, and unions demonstrated an unwillingness to support an independent OIG and erected roadblocks to its function. Instances of attempted interference include the following:

- Unlike comparable transit agencies across the country, BART had never had an IG. The enabling legislation offered little guidance, so a charter was needed to clarify roles and insure sufficient independence between the OIG and BART’s management. The IG presented such a charter at a January 2020 board meeting. At the meeting, the board directed the IG to consult with BART’s unions before the board would consider adopting the charter. Subsequently, a heavily modified version of the charter was produced by union attorneys. The modified charter would have required the IG to provide 48 hours’ notice of any interview with a represented employee, no matter what the subject. Since the vast majority of BART employees are union-represented, it is necessary for the OIG to hear about issues directly from employees. While employees are entitled to union representation in disciplinary matters (Weingarten rights), such a provision applicable to non-disciplinary matters where employees are merely witnesses and not themselves the subject of an inquiry would needlessly destroy the confidentiality of investigations. IGs

should have direct access to all employees, whether they're union or not, and employees should be able to bypass management or union representatives to talk directly with IGs on whistleblowing matters if employees so choose.

- One of the core responsibilities of an OIG is to conduct a risk assessment. A risk assessment is the ranked identification of risks that could negatively impact a complex organization's ability to conduct its mission. It identifies areas most vulnerable to waste, fraud, and abuse and looks for opportunities to improve programs, operations, and service delivery. As such it is a roadmap and work plan for the OIG. But the BART Audit Committee directed the OIG not to move forward with the risk assessment until concerns expressed by BART's general manager were resolved.

BART management went so far as to instruct staff not to cooperate with the OIG until the scope of the risk assessment was altered to management's satisfaction.

In the summer of 2020, the OIG produced an outline of the proposed risk assessment for BART. In a series of emails during August and September 2020, BART's management sought to insert itself into the process by identifying areas of risk assessment that it wanted to be off limits to the OIG. BART management sought to restrict the OIG from investigating such areas as potential cost savings and controls, revenues, performance metrics for project and program activities, maintenance and engineering, environmental sustainability and equipment delivery—all seemingly vital areas to

the operation of a transit agency. BART management went so far as to instruct staff not to cooperate with the OIG until the scope of the risk assessment was altered to management's satisfaction. Ultimately, the risk assessment was carried out by an independent consultant.

- In a July 30, 2020, letter to BART's general counsel, the IG identified examples of obstruction:
 - Physical evidence was withheld because a BART employee did not understand the OIG's right to access all information.
 - Management made misleading responses to investigations.
 - Management withheld documentary evidence to quantify the cost of a decision to terminate a contract.
 - Management did not respond to an OIG investigation pertaining to a vendor credit for an overcharge.
 - IG described instances of employees fearing retaliation for contact with the OIG.
 - BART general manager insisted on being the conduit through which all communication between the OIG and employees is filtered.

An Underfunded Watchdog

The enabling legislation set an initial OIG budget of \$1 million for the first year, from an allocation of bridge toll revenue from BATA. It states:

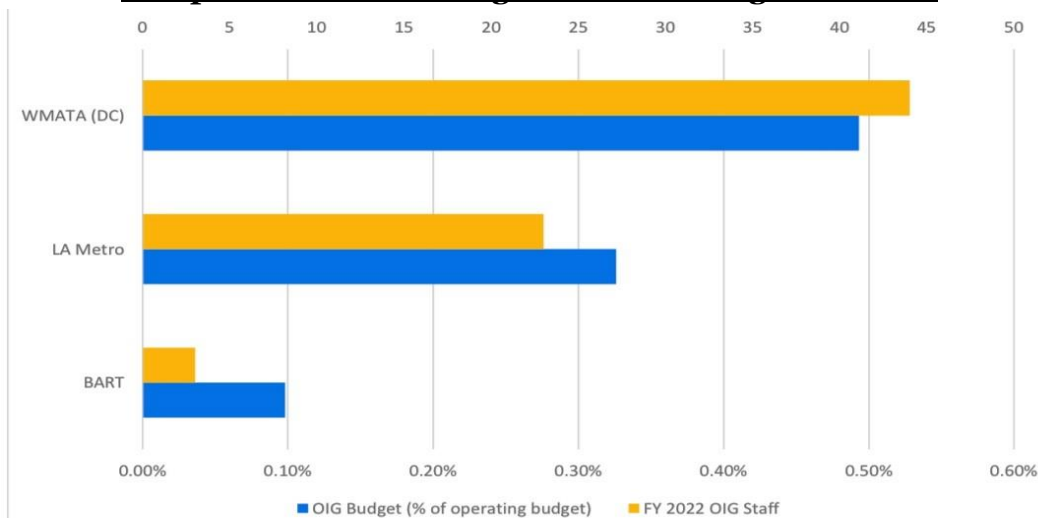
“In the second and subsequent years of operation of the office, the authority may increase the amount of funding allocated for this purpose to the extent funds are requested and justified by the office and can be accommodated in the authority’s budget.”

When compared to other urban transit agencies, BART’s OIG is significantly underfunded and unable to fulfill its mission of uncovering waste, fraud, and abuse.

No second or subsequent requests for additional funding have been made by BART’s board. In March 2020, BART’s general manager and BATA’s executive director entered into a funding agreement for the BART OIG. With regard to annual adjustments to the OIG budget as provided for in the law, the agreement states that any increase in the OIG budget is subject to “BATA’s sole reasonable discretion.” Further, it stipulates that the OIG will be charged for overhead. Overhead, not mentioned in the legislation, is not defined but can be as much as 50% of direct labor expenses. Such a charge reduces the OIG’s already paltry budget by as much as 25%. The Grand Jury found no evidence that this agreement was ever discussed or voted on by BART’s board.

In a December 2021 letter from the IG to the executive director of BATA, a supplementary budget request pursuant to the enabling legislation was made. It proposed an annual budget of approximately \$2.7 million to hire staff and pay for independent legal advice and experts to conduct complex and time-consuming audits. This letter was never answered. After prompting from BART directors, the IG was asked to present this budget request to BART’s Audit Committee and ultimately to BART’s full board in January 2022. At that meeting, some BART directors refused to even consider looking for additional funding for the OIG.

Comparison of Transit Agencies’ OIG Budget and Staff



In February 2022, California [Senate Bill 1488](#) was introduced – an amendment that would update and expand the lean text of the original legislation approved by Bay Area voters in 2018. It would spell out the relationship between the OIG and BART staff in a way that that the defeated charter sought to do. However, BART’s general manager recommended that the board oppose the bill. On April 14, 2022, the BART board voted 6-3 to “oppose the bill unless amended.”

The bill, if enacted, would, among other things:

1. Authorize the OIG to engage in fraud prevention as well as detection.
2. Stipulate that the OIG has the independence necessary to conduct audits and investigations in conformance with national standards.
3. Give the OIG the authority to examine all records and documents.
4. Give the OIG the authority to confidentially interview employees.
5. Give the OIG subpoena power.
6. Require the general manager to respond to all OIG findings and recommendation within 10 days.

Unearthing a Conflict of Interest

On April 8, 2022, the OIG reported an apparent conflict of interest between a BART senior manager and a construction management firm, under contract with BART for a \$40 million project, that employs the BART manager’s spouse and sibling. The report alleges that neither the firm nor the BART manager met its responsibilities to disclose the potential conflict of interest in compliance with BART’s Codes of Conduct, or California Government Code Section 1090 that prohibits government employees from having a role in making contracts in which they have a financial interest. The report also alleges noncompliance with the even more stringent requirements of the Federal Transit Administration (the construction project is partially funded by the federal government).

Public records say that the BART manager in question stated that the family relationships were common knowledge and that “everyone knew.” Regardless of whether the BART employee gained financially from the contract, the fact remains that well-established BART rules as well as state and federal guidelines were alleged to have been ignored. The OIG recommended that the contract be voided to protect BART from possibly more damaging financial and legal consequences going forward. Some of the nine recommended actions were implemented, and at an April 14, 2022, joint meeting with its Audit Committee, BART’s board discussed the need for independent counsel to advise whether or not the contract should be voided.

CONCLUSION

Four years after the voters spoke, some members of BART’s board and management continue to resist the independence of the OIG mandated by voters and the legislature. There is still no charter that enshrines this independence or spells out roles and relationships within BART.

Recent allegations of a previously unreported conflict-of-interest involving a \$40 million construction contract demonstrates that BART management's own internal controls aren't performing well and makes the case for an independent OIG to review and report on BART's financial operations. Now largely funded by the public, BART needs to step up its accountability.

The OIG's existing, arbitrary \$1 million per year budget is inadequate. BART must work together with other government entities to fully fund the OIG, at least to the level of \$2.7 million per year required to execute the planned audits and investigations for 2022 and 2023.

FINDINGS

Finding 41:

BART's board and management interfered with the Office of the Inspector General's performance of its duties.

Finding 42:

BART's board and general manager hampered the approval and implementation of a charter for the Office of the Inspector General, resulting in a lack of understanding within the organization that the Inspector General is independent.

Finding 43:

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RECOMMENDATIONS

Recommendation 56:

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REQUEST FOR RESPONSES

Pursuant to California Penal Code sections 933 and 933.05, the Grand Jury requests each entity or individual named below to respond to the enumerated Findings and Recommendations within specific statutory guidelines, no later than 90 days from the public release date of this report.

Responses to Findings shall be either:

- The respondent agrees with the finding.
- The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.

Responses to Recommendations shall be one of the following:

- The recommendation has been implemented, with a summary regarding the implemented action.
- The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
- The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency where applicable. This time frame shall not exceed six months from the date of publication of the Grand Jury report.
- The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

RESPONSES REQUIRED

BART Board of Directors

Findings 41 through 46
Recommendations 56 through 61



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <div style="float: right; border: 1px solid black; padding: 2px;"> <small>DocuSigned by:</small> <i>Michael Jones</i> <small>47000790F2D7463...</small> </div>		GENERAL MANAGER ACTION REQ'D:		
DATE: 6/13/2022 8/31/2022		BOARD INITIATED ITEM: No		
Originator/Prepared by: Patricia Nelson Dept: Financial Planning <div style="border: 1px solid black; padding: 2px; margin-top: 10px;"> <small>DocuSigned by:</small> <i>Patricia Nelson</i> <small>2C70690039C64FD...</small> </div> Signature/Date: <div style="text-align: right;">8/30/2022</div>	General Counsel <div style="border: 1px solid black; padding: 2px; margin-top: 10px;"> <small>DocuSigned by:</small> <i>Jana Belan</i> <small>F8FD7B3A73E74E8...</small> </div> <div style="text-align: right;">8/30/2022 []</div>	Controller/Treasurer <div style="border: 1px solid black; padding: 2px; margin-top: 10px;"> <small>DocuSigned by:</small> <i>Chris Gan</i> <small>EE11C8CEEEA04FD...</small> </div> <div style="text-align: right;">8/30/2022 []</div>	District Secretary <div style="text-align: right;">[]</div>	BARC <div style="border: 1px solid black; padding: 2px; margin-top: 10px;"> <small>DocuSigned by:</small> <i>Pamela Herhold</i> <small>3BB24D65B8724F5...</small> </div> <div style="text-align: right;">8/30/2022 []</div>

Clipper - Amended and Restated Memorandum of Understanding (2022 MOU)

PURPOSE: To authorize the General Manager to execute an Amended and Restated Clipper® Memorandum of Understanding (MOU) with the Metropolitan Transportation Commission and Bay Area transit operators that use Clipper®.

DISCUSSION: Currently, twenty-two transit systems in the region use Clipper® (Clipper), the automated regional fare payment system for intra- and inter-operator transit trips in the San Francisco Bay Area. The Metropolitan Transportation Commission (MTC) manages the Clipper program.

On February 19, 2016, MTC and the transit operators executed an Amended and Restated Clipper MOU (replacing a previous MOU). The purpose of the MOU is to document:

- Operator, MTC and Contracting Agency responsibilities in support of the Clipper Program.
- The role and responsibilities of the Clipper Executive Board and Clipper Executive Director.
- The terms for adding new operator or affiliated participants.
- The approach to allocating Clipper costs between MTC and the operators, as well as among the operators.
- Clipper Program goals and performance measures.

The 2016 MOU also established the Clipper Executive Board to make policy on behalf of all the participating transit operators, while MTC acts as the Contracting Agency.

Effective September 1, 2021, an amendment to the 2016 MOU transferred oversight and administration of the Regional Transit Connection Discount Card Program (RTC Program),

which provides people with disabilities access to discounts on transit, to the Clipper Executive Board and MTC.

A new MOU needs to be executed to reflect program changes driven by the Next Generation Clipper system.

The 2022 MOU builds on the core agreements of the 2016 Clipper MOU and includes:

- A cost-sharing agreement for the Operations and Maintenance (O&M) of the Clipper 2.0 (C2) account-based system, including the C2 System Integrator, Customer Service Center, Payment Services, and Fare Media Fulfillment contracts.
- Allocation of Clipper capital costs to MTC, with some exceptions for capital costs for the benefit of particular operators.
- Revenue allocation for the C2 account-based system, which mirrors the revenue allocation principles of the original Clipper system.
- Incorporation of Amendments 1 through 3 to the 2016 MOU, including the assumption by MTC of program management responsibilities for the RTC Program and RTC cost-sharing agreements.
- Additions to the Program Goals and Performance Measures to document operator commitment to encourage Clipper as the Bay Area's primary fare payment system once customer transition has been achieved:
 - Transit mobile payments are made primarily through the Clipper system.
 - Acceptance of open payments is available primarily through the Clipper system.
 - Regional eligibility requirements for means-based discount program are standardized.
- General clean-up and clarifications.

The term of the MOU shall begin upon the Effective Date that all parties have signed and continue for a period of ten (10) years, unless terminated by written agreement of the Parties.

FISCAL IMPACT: As noted above, the 2022 MOU includes the account-based cost-sharing agreements between MTC and the operators and how costs will be shared amongst the operators. MTC and operator personnel participating in the cost-sharing discussions have agreed in this MOU that MTC will cover 50% of the shared O&M and service levels incentives and that the operators will further share the operators' 50% portion of the costs based on their percentage of Clipper ridership and percentage of revenue processed.

The current C2 System Integrator project delivery schedule forecasts C2 O&M fees will be assessed beginning January 2023. Actual future costs will depend on ridership levels and revenue processed. When the operators complete the transition to C2, the monthly cost to BART is estimated to be \$623,000 which includes fees for the System Integrator O&M, Customer Services O&M, RTC, Credit/Debit Fees and Commissions paid to third parties.

Refer to table below for estimated costs.

	2015 MOU (Pre-pandemic)	FY23 2022 MOU During Transition	FY24 2022 MOU Post-Transition
Current Clipper Operating Costs	\$399,000	\$429,000	N/A
Clipper 2.0 (C2 System Integrator O&M, Customer Services O&M, KPIs, and SLAs)	N/A	\$200,000*	\$401,000
Credit/Debit Interchange Fees and Commission	\$200,000	\$173,000	\$200,000
Clipper Executive Director and Other Clipper Staff	\$11,000	\$11,000	\$12,000
RTC PROGRAM	N/A	\$10,000	\$10,000
Estimated Monthly Cost	\$610,000	\$823,000	\$623,000
Annual Estimated Total Cost	\$7,320,000	\$8,676,000	\$7,476,000

*Clipper 2.0 \$200k monthly begins in Jan 2023. FY23 Estimated Total Cost includes only 6 months of Clipper 2.0 charges

This change will be funded by BART Department No. 0302320 (Fund Source: account 602023 - Clipper Fees)

Funding for subsequent years will be included in the proposed annual operating budget, which is subject to Board approval.

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

ALTERNATIVES: Do not authorize the General Manager to execute the 2022 MOU. Direct the General Manager to request and obtain specific changes to the 2022 MOU as a condition of execution.

RECOMMENDATIONS: Adoption of the following Motion.

MOTION: The General Manager is authorized to execute the 2022 Amended and Restated Clipper® Memorandum of Understanding with the Metropolitan Transportation Commission and Bay Area transit operators that use Clipper®.



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <div style="float: right; border: 1px solid black; padding: 2px;"> <small>DocuSigned by:</small> <i>Michael Jones</i> <small>47000790F2D7463...</small> </div>		GENERAL MANAGER ACTION REQ'D:		
DATE: 5/5/2022 9/1/2022		BOARD INITIATED ITEM: No		
Originator/Prepared by: Olivia Jackson Dept: Office of the Chief <div style="border: 1px solid black; padding: 2px; margin-top: 10px;"> <small>DocuSigned by:</small> <i>Olivia Jackson</i> <small>5A906366B7C145F...</small> </div> Signature/Date: <div style="text-align: right;">9/1/2022</div>	General Counsel <div style="border: 1px solid black; padding: 2px; margin-top: 10px;"> <small>DocuSigned by:</small> <i>Jana Belan</i> <small>F8FD7B3A73E74E8...</small> </div> <div style="text-align: right;">9/1/2022 []</div>	Controller/Treasurer <div style="border: 1px solid black; padding: 2px; margin-top: 10px;"> <small>DocuSigned by:</small> <i>Chris Gan</i> <small>EE11C8CEEEA04FD...</small> </div> <div style="text-align: right;">9/1/2022 []</div>	District Secretary <div style="text-align: right;">[]</div>	BARC <div style="border: 1px solid black; padding: 2px; margin-top: 10px;"> <small>DocuSigned by:</small> <i>Shane Edwards</i> <small>8128A2EB2F014F3...</small> </div> <div style="text-align: right;">9/1/2022 []</div>

BART Police Department Use of Specialized or Military Equipment Policy/Ordinance

PURPOSE:

To have a second reading and commence the Board approval process for an ordinance governing the use of specialized or military equipment by the BART Police Department (BART PD) in satisfaction of the requirements under Government Code Section 7071 (which sets forth the means by which specialized or military equipment may henceforth be acquired and used by local law enforcement agencies).

DISCUSSION:

In summary, AB 481 requires BART PD to obtain approval from the Board of Directors at a regular and open meeting, prior to taking certain actions related to funding, acquisition, or use of “military equipment”, as defined in Government Code § 7070(c). That section requires that any law enforcement agency seeking to use specialized or military equipment must first adopt an ordinance setting out the local government's policy that complies with Government Code Section 7070 et seq.

The Police Department released Draft Lexipol Policy 711 to the community by posting it on the District website, at least thirty (30) days prior to the Board of Directors’ consideration of the agenda item in compliance with Government Code § 7071. This was to encourage public participation, transparency, and community partnership. Any proposed or final policy will be posted on the District website page as long as the military equipment is available for use. The policy and the attached reports to the Board will include how the equipment is being used, the maintenance and use costs, internal audits, and community feedback on the use.

As explained in the attached, if approved by ordinance, and for as long as the military equipment is available for use, BART PD must abide by the terms of its ordinance when:

1. Requesting Military Equipment made available pursuant to Section 2576a of Title 10 of the United States Code.
2. Seeking funds for Military Equipment, including, but not limited to, applying for a grant, soliciting, or accepting private, local, state, or federal funds, in-kind donations, or other donations or transfers.
3. Acquiring Military Equipment either permanently or temporarily, including by borrowing or leasing.
4. Collaborating with another law enforcement agency in the deployment or other use of Military Equipment within the territorial jurisdiction of BART.
5. Using any new or existing Military Equipment for a purpose, in a manner, or by a person not previously approved by the governing body pursuant to this chapter.
6. Soliciting or responding to a proposal for, or entering into an agreement with, any other person or entity to seek funds for, apply to receive, acquire, use, or collaborate in the use of, Military Equipment.
7. Acquiring Military Equipment through any means not provided by this section.

Approvals under this policy are subject to annual review by the Board of Directors to assist BART PD in its ongoing oversight. The policy shall be approved if the Board determines that the benefits to the community outweigh the costs and that the proposed manner of use reasonably safeguards civil liberties and rights. Four findings must be made:

First, that the military equipment is necessary because there is no reasonable alternative that can achieve the same objective of officer and civilian safety.

Second, that the proposed military equipment use policy will safeguard the public's welfare, safety, civil rights, and civil liberties.

Third, that if purchasing the equipment, the equipment is reasonably cost effective compared to available alternatives that can achieve the same objective of officer and civilian safety.

Fourth, prior military equipment use complied with the military equipment use policy that was in effect at the time, or if prior uses did not comply with the accompanying military equipment use policy, corrective action has been taken to remedy nonconforming uses and ensure future compliance.

The policy shall continue in effect until it is amended or repealed by an ordinance of the Board of Directors.

FISCAL IMPACT:

The proposed Specialized or Military Equipment Use Ordinance will have no fiscal impact on the District.

ALTERNATIVES:

If the Board does not approve the proposed ordinance continuing the use of specialized or military equipment, the BART PD must cease its use of the identified specialized or military equipment until it receives approval from the Board.

RECOMMENDATION:

Staff recommends that the Board approve the motion to advance the process to adopt the ordinance.

MOTION:

The Board adopts the attached Military Equipment Use Policy and the Military Equipment Use Ordinance in concert with making the following findings by resolution in support of the ordinance:

1. The Board finds the military equipment addressed in the proposed policy and ordinance is necessary because there is no reasonable alternative that can achieve the same objective of officer and civilian safety.
2. The Board finds that the proposed policy and ordinance will safeguard the public welfare, safety, civil rights and civil liberties.
3. The Board finds that purchasing the military equipment addressed in the military equipment use policy is reasonably cost effective compared to available alternatives that could achieve the same objective of officer and civilian safety.
4. The Board finds that, when the information required under AB 481 is received regarding the BART Police Department's prior use of military equipment (as defined in said law), it will faithfully determine whether prior military use has complied with Board policies, that BART Police will take corrective action to curb nonconforming uses, if any, and will ensure future compliance with the terms of the Military Equipment Use Policy and the Military Equipment Use Ordinance.

Specialized or Military Type Equipment

711.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for the approval, acquisition, and reporting requirements of [specialized or](#) military equipment (Government Code § 7070; Government Code § 7071; Government Code § 7072).

711.1.1 DEFINITIONS

Definitions related to this policy include (Government Code § 7070):

Exigent Circumstance – A rapidly evolving, or ongoing emergency situation posing an imminent danger of death or serious bodily injury to any person where the imminent nature of the incident makes prior approval for the use of Specialized or Military Equipment unfeasible.

Governing body – The elected or appointed body that oversees the Department.

Military equipment – Includes but is not limited to the following:

- [Unmanned, remotely piloted, powered aerial or ground vehicles \(Category 1\).](#)
- [Mine-resistant ambush-protected \(MRAP\) vehicles or armored personnel carriers. However, police versions of standard consumer vehicles are specifically excluded \(Category 2\).](#)
- [High mobility multipurpose wheeled vehicles \(HMMWV\), two-and-one-half-ton trucks, five-ton trucks, or wheeled vehicles that have a breaching or entry apparatus attached. However, unarmored all-terrain vehicles \(ATVs\) and motorized dirt bikes are excluded \(Category 3\).](#)
- [Tracked armored vehicles that provide ballistic protection to their occupants and utilize a tracked system instead of wheels for forward motion \(Category 4\).](#)
- [Command and control vehicles that are either built or modified to facilitate the operational control and direction of public safety units \(Category 5\).](#)
- [Weaponized aircraft, vessels, or vehicles of any kind \(Category 6\).](#)
- [Battering rams, slugs, and breaching apparatuses that are explosive in nature. However, items designed to remove a lock, such as bolt cutters, or a handheld ram designed to be operated by one person, are specifically excluded \(Category 7\).](#)
- [Firearms and ammunition of .50 caliber or greater. However, standard issue shotguns are specifically excluded \(Category 8\).](#)
- [Ammunition of .50 caliber or greater. However, standard issue shotgun ammunition is specifically excluded \(Category 9\).](#)
- [Specialized firearms and ammunition of less than .50 caliber, including assault weapons as defined in Penal Code § 30510 and Penal Code § 30515, with the exception of standard-issue service weapons and ammunition of less than .50 caliber that are issued to officers \(Category 10\).](#)
- [Any firearm or firearm accessory that is designed to launch explosive projectiles \(Category 11\).](#)

Bay Area Rapid Transit Police Department

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Specialized or Military Type Equipment

- "Flashbang" grenades and explosive breaching tools, "tear gas," and "pepper balls," excluding standard, service issued pepper spray (Category 12).
- TASER® Shockwave, microwave weapons, water cannons, and long-range acoustic devices (LRADs) (Category 13).
- The following projectile launch platforms and their associated munitions: 40mm projectile launchers, "bean bag," rubber bullets, and specialty impact munition (SIM) weapons (Category 14).
- Any other equipment as determined by a governing body or a state agency to require additional oversight (Category 15).

711.2 POLICY

It is the policy of the Bay Area Rapid Transit Police Department that members of this department comply with the provisions of Government Code § 7071 with respect to specialized or military equipment.

As defined in the Government Code, the Specialized or Military Equipment Use Policy means a publicly released, written document that includes, at a minimum, all of the following:

- A description of each type of Specialized or Military Equipment, the quantity sought, its capabilities, expected lifespan, and product descriptions from the manufacturer of the Military Equipment.
- The purposes and authorized uses for which the law enforcement agency or the state agency proposes to use each type of Specialized or Military Equipment.
- The fiscal impact of each type of Specialized or Military Equipment, including the initial costs of obtaining the equipment and estimated annual costs of maintaining the equipment.
- The legal and procedural rules that govern each authorized use.
- The training, including any course required by the Commission on Peace Officer Standards and Training, that must be completed before any officer, agent, or employee of the law enforcement agency or the state agency is allowed to use each specific type of Specialized or Military Equipment to ensure the full protection of the public's welfare, safety, civil rights, and civil liberties and full adherence to the Specialized or Military Equipment use policy.
- The mechanisms to ensure compliance with the Specialized or Military Equipment use policy, including which independent persons or entities have oversight authority, and, if applicable, what legally enforceable sanctions are put in place for violations of the policy.
- For a law enforcement agency, the procedures by which members of the public may register complaints or concerns or submit questions about the use of each specific type of Specialized or Military Equipment, and how the law enforcement agency will ensure that each complaint, concern, or question receives a response in a timely manner.

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711.3 SPECIALIZED OR MILITARY EQUIPMENT COORDINATOR

The Chief of Police should designate a member of this department to act as the [specialized or](#) military equipment coordinator. The responsibilities of the [specialized or](#) military equipment coordinator include but are not limited to:

- (a) Acting as liaison to the governing body for matters related to the requirements of this policy.
- (b) Identifying department equipment that qualifies as [specialized or](#) military equipment in the current possession of the Department, or the equipment the Department intends to acquire that requires approval by the governing body.
- (c) Conducting an inventory of all [specialized or](#) military equipment at least annually.
- (d) Collaborating with any allied agency that may use [specialized or](#) military equipment within the jurisdiction of Bay Area Rapid Transit Police Department (Government Code § 7071).
- (e) Preparing for, scheduling, and coordinating the annual community engagement meeting to include:
 - 1. Publicizing the details of the meeting.
 - 2. Preparing for public questions regarding the department's funding, acquisition, and use of equipment.
- (f) Preparing the annual [specialized or](#) military equipment report for submission to the Chief of Police and ensuring that the report is made available on the department website (Government Code § 7072).
- (g) Establishing the procedure for a person to register a complaint or concern, or how that person may submit a question about the use of a type of [specialized or](#) military equipment, and how the Department will respond in a timely manner.

711.4 MILITARY EQUIPMENT INVENTORY

[A list of equipment currently held by the Department or in coordination with another local agency is attached to the policy as the Annual Military Equipment Inventory Report and incorporated into this policy for reference. The inventory list will be updated each year as part of the annual report required pursuant to AB 481.](#)

[See attachment: 2022 Annual Military Equipment Inventory Report.pdf](#)

711.5 SPECIALIZED OR MILITARY EQUIPMENT USE POLICY

[Pursuant to California Government Code §7070, the Police Department will submit a Specialized or Military Equipment Use Policy for approval to the Bay Area Rapid Transit Board of Directors annually. The BART Police Department recognizes that critical incidents are unpredictable and can be very traumatic in nature. A variety of military equipment options can greatly assist incident commanders, officers, and specific units in bringing those incidents to a swift resolution in a safe manner.](#)

Bay Area Rapid Transit Police Department

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711.6 APPROVAL

The Chief of Police or the authorized designee shall obtain approval from the governing body by way of an ordinance adopting the [specialized or](#) military equipment policy. As part of the approval

process, the Chief of Police or the authorized designee shall ensure the proposed [specialized or](#) military equipment policy is submitted to the governing body and is available on the department website at least 30 days prior to any public hearing concerning the [specialized or](#) military equipment at issue (Government Code § 7071). The [specialized or](#) military equipment policy must be approved by the governing body prior to engaging in any of the following (Government Code § 7071):

- (a) Requesting [specialized or](#) military equipment made available pursuant to 10 USC § 2576a.
- (b) Seeking funds for [specialized or](#) military equipment, including but not limited to applying for a grant, soliciting or accepting private, local, state, or federal funds, in-kind donations, or other donations or transfers.
- (c) Acquiring military equipment either permanently or temporarily, including by borrowing or leasing.
- (d) Collaborating with another law enforcement agency in the deployment or other use of [specialized or](#) military equipment within the jurisdiction of this department.
- (e) Using any new or existing [specialized or](#) military equipment for a purpose, in a manner, or by a person not previously approved by the governing body.
- (f) Soliciting or responding to a proposal for, or entering into an agreement with, any other person or entity to seek funds for, apply to receive, acquire, use, or collaborate in the use of [specialized or](#) military equipment.
- (g) Acquiring [specialized or](#) military equipment through any means not provided above.

711.7 USE IN EXIGENT CIRCUMSTANCES

In an Exigent Circumstance, and with the approval of the Chief of Police or his/her designee, the Police Department may temporarily acquire, borrow and/or use Specialized or Military Equipment that is not included in the Specialized or Military Equipment Use Policy in order to safely resolve the Exigent Circumstance.

If the Police Department temporarily acquires, borrows, and/or uses Specialized or Military Equipment in exigent circumstances, in accordance with this section, it must take all of the following actions:

- Provide written notice of that temporary acquisition or use to the Bay Area Rapid Transit Board of Directors, with copies sent to the Independent Police Auditor and Chairperson of the Civilian Review Board, as soon as feasible but no later than 30 days following the commencement of such Exigent Circumstance, unless such information is confidential or privileged under local, state or federal law.
- Cease use of the Specialized or Military Equipment temporarily acquired or used under this section when the Exigent Circumstance is resolved, or when the Specialized or Military Equipment temporarily acquired or used under this section is no longer reasonably necessary to safely resolve the Exigent Circumstance.

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- Any use of the Specialized or Military Equipment temporarily acquired or used under this section beyond the Exigent Circumstance requires following the steps required under Section 711.6 – APPROVAL.
- [Include the exigent use of Specialized or Military Equipment in the Police Department's next annual Specialized or Military Equipment Report.](#)

711.8 COORDINATION WITH OTHER JURISDICTIONS

[Specialized or](#) Military equipment should not be used by any other law enforcement agency or member in this jurisdiction unless the [specialized or](#) military equipment is approved for use in accordance with this policy.

711.9 ANNUAL REPORT

Upon approval of a [specialized or](#) military equipment policy, the Chief of Police or the authorized designee shall submit a [specialized or](#) military equipment report to the governing body for each type of [specialized or](#) military equipment approved within one year of approval, and annually thereafter for as long as the [specialized or](#) military equipment is available for use (Government Code § 7072).

The Chief of Police or the authorized designee should also make each annual [specialized or](#) military equipment report publicly available on the department website for as long as the [specialized or](#) military equipment is available for use. The report shall include all information required by Government Code § 7072 for the preceding calendar year for each type of [specialized or](#) military equipment in department inventory.

[As required under the Government Code, the following information shall, at a minimum, include the following information for the immediately preceding calendar year for each type of Specialized or Military Equipment:](#)

- [A summary of how the Specialized or Military Equipment was used and the purpose of its use.](#)
- [A summary of any complaints or concerns received concerning the Specialized or Military Equipment.](#)
- [The results of any internal audits, any information about violations of the Specialized or Military Equipment Use Policy, and any actions taken in response.](#)
- [The total annual cost for each type of Specialized or Military Equipment, including acquisition, personnel, training, transportation, maintenance, storage, upgrade, and other ongoing costs, and from what source funds will be provided for the Specialized or Military Equipment in the calendar year following submission of the annual Specialized or Military Equipment Report.](#)
- [The quantity possessed for each type of Specialized or Military Equipment.](#)
- [If the law enforcement agency intends to acquire additional Specialized or Military Equipment in the next year, the quantity sought for each type of Specialized or Military Equipment.](#)

Bay Area Rapid Transit Police Department

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Specialized or Military Type Equipment

711.10 COMMUNITY ENGAGEMENT

Within 30 days of submitting and publicly releasing the annual report, the Department shall hold at least one well-publicized and conveniently located community engagement meeting, at which the Department should discuss the report and respond to public questions regarding the funding, acquisition, or use of [specialized or](#) military equipment.

[Pursuant to California Government Code §7070\(d\)\(7\), members of the public may register complaints, concerns, or submit questions about the use of each specific type of Specialized or Military Equipment in this policy by any of the following means:](#)

- [Via email to BART IA \(Complaints\):](#) IA@bart.gov
[Via phone call to:](#) [\(510\) 464-7029](tel:(510)464-7029)
- [Via mail sent to:](#)
 - [Bay Area Rapid Transit Police Department](#)
 - [Attn : Office of Internal Affairs](#)
 - [101 8th Street](#)
 - [Oakland CA 94607](#)
- [Via email to BART OIPA \(Complaints\):](#) oipa@bart.gov
- [Via phone call to:](#) [\(510\) 874-7477](tel:(510)874-7477)
- [Via mail sent to:](#)
 - [2150 Webster Street, 4th Floor](#)
 - [Attn: BART Office of the Independent Police Auditor](#)
 - [Oakland, CA 94612](#)
- [Via email to \(Equipment Coordinator\):](#) blucas@bart.gov
- [Via phone call to:](#) [\(510\) 912-5976](tel:(510)912-5976)
- [Via mail sent to:](#)
 - [Bay Area Rapid Transit Police Department](#)
 - [Attn: Specialized or Military Equipment Use Coordinator, Sgt. B. Lucas #S33](#)
 - [101 8th Street](#)
 - [Oakland, CA 94607](#)

Attachments

2022 Annual Military Equipment Inventory Report.pdf

Specialized or Military Equipment

Attachment: 711.4
2022 Annual Military Equipment Report
(DRAFT REPORT)

Bay Area Rapid Transit Police Department

BART PD CA Policy Manual

Specialized or Military Equipment

Qualifying Equipment Owned/Utilized by the Bay Area Rapid Transit Police Department

1. AR-15 Style Semiautomatic Rifle – CA Government Code 7070(c)(10) (Category 10)

a. Equipment Capabilities, Quantity and Lifespan:

AR-15 style firearms owned by this department that can fire .223/5.56mm caliber projectiles accurately over 100 yards.

Quantity Owned: 92

Price Per Unit: Approximately \$1,500 dollars

Lifespan: Approximately 15 Years

b. Manufacturer Product Description:

The AR-15 style rifles the department owns are the Colt LE 6920 and Sig Sauer M400. It features a 16" barrel and a free-float M-Lok Handguard. The Sig Sauer M400 also features ambidextrous controls for right-handed and left-handed users. It is topped with a Sig Sauer Romeo Red Dot sight, which aids in achieving accurate shots.

c. Purpose/Authorized Uses:

Members may deploy the patrol rifle in any circumstance where the member can articulate a reasonable expectation that the rifle may be needed. Examples of some general guidelines for deploying the patrol rifle may include, but are not limited to:

- a. Situations where the member reasonably anticipates an armed encounter.
- b. When a member is faced with a situation that may require accurate and effective fire at long range.
- c. Situations where a member reasonably expects the need to meet or exceed a suspect's firepower.
- d. When a member reasonably believes that there may be a need to fire on a barricaded person or a person with a hostage.
- e. When a member reasonably believes that a suspect may be wearing body armor.
- f. When authorized or requested by a supervisor.
- g. When needed to euthanize an animal.

d. Fiscal Impacts:

The initial cost of this equipment was approximately \$138,000 dollars. Replacement parts required for the regular maintenance should be approximately less than \$1,000 per year.

e. Legal/Procedural Rules Governing Use:

All applicable federal, state, and local laws governing police use of force, and various Bay Area Rapid Transit Police Department (BART PD) policies regarding use of force and firearms. Refer to BART PD Policies 312 and 432, for more information on the use and training of Patrol Rifles.

Bay Area Rapid Transit Police Department

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Specialized or Military Equipment

f. **Training Required:**

Any officer who is authorized to use the AR-15 style rifle must complete a CA POST certified Patrol Rifle Operator Course as well as regular departmental trainings and qualifications as required by law and policy.

g. **Other Notes:**

For clarification purposes only, these rifles are standard issue service weapons for members of the BART PD. As such, **they are exempted** from this Military Equipment Use Policy per CA Gov't Code §7070 (c)(10). They have been included in this document out of an abundance of caution and in the interest of transparency.

2. Bolt Action Precision Rifles - CA GC §7070(c)(10) (Category 10)

a. **Equipment Capabilities, Quantity and Lifespan:**

Bolt action style rifles chambered in .308/7.62mm x 51 caliber, can fire rounds accurately out to 1,000 yards.

Quantity Owned: 6

Price Per Unit: Approximately \$5,000 dollars with accessories

Lifespan: Approximately 15 Years

b. **Manufacturer Product Description:**

The bolt action style rifle that the department owns are the Remington Model 700 SPS Tactical. The Remington 700 Sniper Rifle is a bolt-action, precision-fire weapon system that fires 7.62 x 51mm (.308 caliber) ammunition. It is capable of firing at greater distances and with great accuracy than Department issued patrol rifles.

c. **Purpose/Authorized Uses:**

SWAT members are allowed to utilize firearms chambered in .308. SWAT members must successfully complete the bi-annual Department approved SWAT Sniper Qualification Course. SWAT members may deploy the rifle in any circumstance where the member can articulate a reasonable expectation that the rifle may be needed. Examples of some general guidelines for deploying the bolt action rifle may include, but are not limited to:

- a. Situations where the member reasonably anticipates an armed encounter.
- b. When a member is faced with a situation that may require accurate and effective fire at long range.
- c. Situations where a member reasonably expects the need to meet or exceed a suspect's firepower.
- d. When a member reasonably believes that there may be a need to fire on a barricaded person or a person with a hostage.
- e. When a member reasonably believes that a suspect may be wearing body armor.
- f. When authorized or requested by a supervisor.

d. **Fiscal Impacts:**

The initial cost of this equipment was approximately \$30,000 dollars. Replacement parts required for the regular maintenance should be approximately less than \$1,000 per year.

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e. **Legal/Procedural Rules Governing Use:**

All applicable federal, state, and local laws governing police use of force, and various BART PD policies regarding use of force and firearms. Refer to BART PD Policies 300 and 312, for more information on the use and training of Bolt Action Precision Rifles.

f. **Training Required:**

Any SWAT officer who is authorized to use the bolt action style rifle must complete a CA POST certified Basic SWAT Operator Course as well as CA POST certified Basic SWAT Sniper/Designated Marksman Course. Additionally, SWAT snipers attend monthly training and must successfully complete a bi-annual qualification course as well as any trainings and qualifications as required by law and policy.

g. **Other Notes:**

None.

3. Suppressors (Surefire SOCOM556 & SOCOM762) - CA GC §7070(c)(15) (Category 15)

a. **Equipment Capabilities, Quantity and Lifespan:**

Reduces the visual and audible sound signatures of rifles, protecting the hearing of the user.

Quantity Owned: 6 (4 SOCOM556 & 2 SOCOM762)

Price Per Unit: \$1,099 dollars (SOCOM556), \$1,199 dollars (SOCOM762)

Lifespan: 15 years

b. **Manufacturer Product Description:**

The SureFire Mini with maximum sound attenuation. Employs SureFire Total Signature Reduction® technology to virtually eliminate first round flash and reduce sound and dust signatures.

c. **Purpose/Authorized Uses:**

The SureFire SOCOM suppressors are authorized for use by SWAT operators in training, patrol and tactical scenarios.

d. **Fiscal Impacts:**

The initial cost of these items was \$6,794 dollars. These items will be replaced as needed when damaged or at the end of its life cycle.

e. **Legal/Procedural Rules Governing Use:**

All applicable federal, state, and local laws governing police use of force, and various BART Police Department policies regarding use of force and firearms. Refer to BART PD Policies 300, 312 and 432 for more information.

f. **Training Required:**

Any officer who is authorized to use the AR-15 style rifle must complete a CA POST certified Patrol Rifle Operator Course as well as regular departmental trainings and qualifications as required by law and policy.

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g. Other Notes:

None.

4. Suppressors (Sig Sauer SRD556) - CA GC §7070(c)(15) (Category 15)

a. Equipment Capabilities, Quantity and Lifespan:

Reduces the visual and audible sound signatures of rifles, protecting the hearing of the user.

Quantity Owned: 41

Price Per Unit: Approximately \$600 dollars

Lifespan: Varies, depending on usage and handling

b. Manufacturer Product Description:

The SRD556 is an Inconel 718 direct thread suppressor. Inconel 718, a nickel alloy stainless steel, provides the highest level of durability, particularly with short-barreled hosts using supersonic ammunition. The 1/2x28tpi threads match the vast majority of modern rifles in .223/5.56mm on the market today. The rear mount has wrench flats to torque the suppressor to the barrel. These wrench flats can be used as a location to "pin and weld" the suppressor to make a shorter barrel over 16" in total length.

c. Purpose/Authorized Uses:

The Sig Sauer SRD556 suppressors are a direct thread attachment to the Sig Sauer M400 patrol rifles and are authorized for use in training, on patrol, and in tactical scenarios.

d. Fiscal Impacts:

These items were included in the price of the Sig Sauer M400 patrol rifles. These items will be replaced as needed when damaged or at the end of its life cycle.

e. Legal/Procedural Rules Governing Use:

All applicable federal, state, and local laws governing police use of force, and various BART Police Department policies regarding use of force and firearms. Refer to BART PD Policies 300, 312 and 432 for more information.

f. Training Required:

Any officer who is authorized to use the AR-15 style rifle must complete a CA POST certified Patrol Rifle Operator Course as well as regular departmental trainings and qualifications as required by law and policy.

g. Other Notes:

None.

5. .223/5.56mm Ammunition - CA GC §7070(c)(10) (Category 10)

a. Equipment Capabilities, Quantity and Lifespan:

To be used with AR-15 style firearms owned by this department that can fire .223/5.56mm caliber projectiles accurately over 100 yards.

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Quantity Owned: 56 Cases (Currently), 200 (When fully stocked, but the amounts may vary due to training)

Price Per Unit: (Case of 1,000) Approximately \$600

Lifespan: N/A

b. Manufacturer Product Description:

.223 Remington: (5.56x45mm), also known as .223 Rem or .223, is a small-bore, high-powered, intermediate rifle cartridge. The bullet is approximately .224 inches (5.56 mm) in diameter, and 45 mm in length.

5.56mm Nato: The 5.56 NATO cartridge is visually nearly identical to the .223 Remington cartridge, with the exception of the casing headstamp, which usually bears the NATO insignia. It can be fired in some of the same weapons. The 5.56 can use the same projectiles as .223, as well as projectiles developed specifically for 5.56. It is a small-bore, high-powered, intermediate rifle cartridge.

c. Purpose/Authorized Uses:

Members may deploy the patrol rifle in any circumstance where the member can articulate a reasonable expectation that the rifle may be needed. Examples of some general guidelines for deploying the patrol rifle may include, but are not limited to:

- a. Situations where the member reasonably anticipates an armed encounter.
- b. When a member is faced with a situation that may require accurate and effective fire at long range.
- c. Situations where a member reasonably expects the need to meet or exceed a suspect's firepower.
- d. When a member reasonably believes that there may be a need to fire on a barricaded person or a person with a hostage.
- e. When a member reasonably believes that a suspect may be wearing body armor.
- f. When authorized or requested by a supervisor.
- g. When needed to euthanize an animal.

d. Fiscal Impacts:

The initial cost of these items was approximately \$120,000 when fully equipped.

e. Legal/Procedural Rules Governing Use:

All applicable federal, state, and local laws governing police use of force, and various BART PD policies regarding use of force and firearms. Refer to BART PD Policies 312 for more information.

f. Training Required:

Officers must successfully complete a CA POST certified Police Academy, CA POST Patrol Rifle Operator Course, and departmental training and qualification courses.

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g. Other Notes:

For clarification purposes only, these items are standard issue for members of the Bay Area Rapid Transit Police Department. As such, **they are exempted** from this Military Equipment Use Policy per CA Gov't Code §7070 (c)(10). They have been included in this document out of an abundance of caution and in the interest of transparency.

6. .308/7.62x51 (Ruag Swiss P Armour Piercing) - CA GC §7070(c)(10) (Category 10)

a. Equipment Capabilities, Quantity and Lifespan:

Provides an accurately fired projectile out to 1,000 yards with the increased capability of defeating hard targets such as reinforced glass, and body- and light vehicle armor.

Quantity owned: 1,000 (Amounts may vary, due to training)

Price Per Unit: Approximately \$1.5 dollars per round

Lifespan: N/A

b. Manufacturer Product Description:

To be prepared for every scenario, snipers require a round with high penetration power on hard targets such as reinforced glass, body- and light vehicle armor. Because the core stays intact during penetration, it transfers extremely effective residual energy to hard targets. The bullet jacket provides best accuracy, protects the barrel and is stripped off upon impact.

c. Purpose/Authorized Uses:

Ruag Swiss P Armour Piercing ammunition is authorized for use in extreme tactical scenarios when the "open-air" round is not believed to be enough to defeat the intended target and training.

d. Fiscal Impacts:

The initial cost of these items was \$1,500 dollars. These items are not frequently used due to the high liability and low frequency.

e. Legal/Procedural Rules Governing Use:

All applicable federal, state, and local laws governing police use of force, and various BART Police Department policies regarding use of force and firearms. Refer to BART PD Policies 300 and 312 for more information.

f. Training Required:

Any SWAT officer who is authorized to use the bolt action style rifle may use the above ammunition. Said members must complete a CA POST certified Basic SWAT Operator Course as well as CA POST certified Basic SWAT Sniper/Designated Marksman Course. Additionally, SWAT snipers attend monthly training and must successfully complete a bi-annual qualification course as well as any trainings and qualifications as required by law and policy.

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g. Other Notes:

None.

**7. .308/7.62x51mm (Ruag Swiss P Styx Action – “Open Air”) - CA GC §7070(c)(10)
(Category 10)**

a. Equipment Capabilities, Quantity and Lifespan:

Provides an accurately fired projectile out to 1,000 yards.

Quantity Owned: 500 (Amounts may vary, due to training)

Price Per Unit: Approximately \$2.91 dollars per round

Lifespan: N/A

b. Manufacturer Product Description:

The shot which is taken as a last resort requires the highest hit probability and an absolutely reliable effect on the target (as in hostage rescue situations etc.). The Styx Action (and Final) rounds were specifically designed to transfer maximum energy in the first few centimeters after striking a soft target and reducing the risk of over penetration, and possible collateral damage.

c. Purpose/Authorized Uses:

R Ruag Swiss P Styx Action ammunition is authorized for use in tactical scenarios when patrol rifle ammunition is not believed to be enough to solve the ballistic problem.

d. Fiscal Impacts:

The initial cost of these items was approximately \$1,455 dollars.

e. Legal/Procedural Rules Governing Use:

All applicable federal, state, and local laws governing police use of force, and various BART Police Department policies regarding use of force and firearms. Refer to BART PD Policies 300 and 312 for more information.

f. Training Required:

Any SWAT officer who is authorized to use the bolt action style rifle may use the above ammunition. Said members must complete a CA POST certified Basic SWAT Operator Course as well as CA POST certified Basic SWAT Sniper/Designated Marksman Course. Additionally, SWAT snipers attend monthly training and must successfully complete a bi-annual qualification course as well as any trainings and qualifications as required by law and policy.

g. Other Notes:

None.

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8. Flashbang/Noise Flash Distraction Devices (NFDD) - CA GC Code §7070(c)(12) (Category 12)

a. Equipment Capabilities, Quantity and Lifespan:

The flashbang, sometimes referred to as “stun grenade,” is a diversionary device that delivers a bright flash and loud explosive-type noise when deployed to distract and disorient. This is a non-lethal handheld grenade that does not fragment or produce any shrapnel.

Quantity Owned: 25 (Consumable item, amounts may vary)

Price Per Unit: Approximately \$50 dollars

Lifespan: 5 Years

b. Manufacturer Product Description:

The distraction device utilizes a standard military-style M201A1 fuse and produces 175 dB of sound output at 5 feet and 6-8 million candelas for 10 milliseconds.

c. Purpose/Authorized Uses:

Flashbangs/NFDDs are designed to distract and disorient occupants of a given location to allow officers to enter a location in the safest manner possible for all involved parties given the circumstances surrounding an event. They are most often used in tactical scenarios or situations by tactical officers (i.e., SWAT Officers).

d. Fiscal Impacts:

The initial cost of this equipment was approximately \$1,250 dollars. Due to NFDD being consumable items, fiscal impacts will vary based on usage.

e. Legal/Procedural Rules Governing Use:

Flashbangs/NFDDs can only be deployed in accordance with all applicable federal, state, local laws, and department policy governing police use of force. Refer to BART PD Policy 312.3.7 for more information.

f. Training Required:

Officers must complete a CA POST certified Basic SWAT Operator Course prior to being issued flashbangs/NFDDs. Additionally, the Central County SWAT Team provides internal training for members in the use of flashbangs/NFDDs.

g. Other Notes:

None.

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9. 40mm Less than Lethal Impact Munitions Systems (LLIMS) Launchers - CA GC Code §7070(c)(14) (Category 14)

a. Equipment Capabilities, Quantity and Lifespan:

The Defense Technology 40mm LMT is a single-shot launcher capable of firing 40mm kinetic energy munitions, also commonly referred to as specialty impact munitions (SIM), which are less-lethal projectiles.

Quantity Owned: 17

Price Per Unit: Approximately \$1939.73 dollars

Lifespan: Approximately 15 Years

b. Manufacturer Product Description:

Defense Tech 40mm LMT Single Launcher: Manufactured exclusively for Defense Technology®, the 40LMTS is a tactical single shot launcher that features an expandable ROGERS Super Stoc and an adjustable Integrated Front Grip (IFG) with light rail. The ambidextrous Lateral Sling Mount (LSM) and QD mounting systems allow both a single and two-point sling attachment. The 40LMTS will fire standard 40mm less lethal ammunition, up to 4.8 inches in cartridge length. The Picatinny Rail Mounting System will accept a wide array of enhanced optics/sighting systems.

c. Purpose/Authorized Uses:

This department is committed to reducing the potential for violent confrontations when suspects are encountered. LLIMS projectiles, when used properly, are less likely to result in death or serious physical injury.

LLIMS projectiles are approved by the department and are fired from Defense Technology Single Shot 40 mm launchers. Certain munitions can be used in an attempt to de-escalate a potentially deadly situation, with a reduced potential for death or serious physical injury.

Approved munitions are justified and may be used to compel an individual to cease his or her actions when such munitions present a reasonable option for resolving a situation. LLIMS may also be used when dealing with vicious animals.

Officers are not required, or compelled, to use approved munitions in lieu of other reasonable tactics if the involved officer(s) determine that deployment of these munitions cannot be done safely. The safety of hostages, innocent persons, and officers takes priority over the safety of subjects engaged in criminal or suicidal behavior. Operators shall advise dispatch via radio when LLIMS is deployed. If not on scene, sergeants shall respond immediately to assume control of the deployment and use. When an officer is deploying LLIMS, he/she is the officer in charge until the arrival of a supervisor.

Before discharging projectiles, the officer should consider the following factors:

- a. Severity of the crime or incident.
- b. Subject's capability to pose an imminent threat to the safety of officers or others.
- c. If the subject is actively resisting arrest or attempting to evade arrest by flight.
- d. The credibility of the subject's threat, as evaluated by the officers present, and the subject's physical capacity/capability.
- e. The proximity of weapons available to the subject.

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- f. The officer's, versus the subject's, physical factors (e.g., age, size relative strength, skill level, injury/exhaustion, the number of officer(s) versus subject(s).
- g. The availability of other force options and their possible effectiveness.
- h. Distance and angle to target.
- i. Type of munitions employed.
- j. Type and thickness of subject's clothing.
- k. The subject's actions dictate the need for an immediate response and the use of control devices appears appropriate.

d. Fiscal Impacts:

The initial cost of this equipment was approximately \$32,975.41 dollars. Up to \$38,000 dollars have been approved from the operational budget to purchase 15 additional LLIMS Launchers. With the additional LLIMS launchers, the department plans to train all its Police Officers in the use and deployment of LLIMS.

e. Legal/Procedural Rules Governing Use:

LLIMS launchers may only be used in accordance with all federal, state, and local laws as well as department policies regarding police use of force. Refer to BART PD Policies 300, 308 and 459 for more information.

f. Training Required:

All officers who are allowed to use the LLIMS launcher and approved munitions, must successfully complete the 3-hour department training course and a 2-hour training/qualification course annually.

g. Other Notes:

None.

10. 40mm CS Ferret Barricade Round - CA GC Code §7070(c)(12) (Category 12)

a. Equipment Capabilities, Quantity and Lifespan:

The equipment listed in this section is designed to temporarily distract or temporarily incapacitate an individual through the introduction of a chemical irritant impacting the eyes, nose, and skin. To be used with LLIMS Launcher to effect a less than lethal point-of aim, point of impact direct-fire capability as an intermediate force option.

Quantity Owned: 20

Price Per Unit: \$52.5 dollars

Lifespan: 5 Years

b. Manufacturer Product Description:

The Ferret 40mm Barricade Penetrating Round is filled with CS powder chemical agent. It is a frangible projectile that is spin stabilized utilizing barrel rifling. It is non-burning and designed to penetrate barriers. Primarily used to dislodge barricaded subjects, it can also be used for area denial. Primarily used by tactical teams, it is designed to penetrate

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barriers, such as windows, hollow core doors, wallboard and thin plywood. Upon impact the nose ruptures and instantaneously delivers the agent payload inside a structure or vehicle.

c. Purpose/Authorized Uses:

40mm CS Ferret Barricade rounds are used for barricaded subjects in efforts to use non-lethal force to affect an arrest in a tactical environment or in crowd control and civil disobedience situations. This department is committed to reducing the potential for violent confrontations when suspects are encountered. LLIMS projectiles, when used properly, are less likely to result in death or serious physical injury.

LLIMS projectiles are approved by the department and are fired from Defense Technology Single Shot 40 mm launchers. Certain munitions can be used in an attempt to de-escalate a potentially deadly situation, with a reduced potential for death or serious physical injury.

d. Fiscal Impacts:

The initial cost of these items was approximately \$1,050 dollars.

e. Legal/Procedural Rules Governing Use:

All applicable federal, state, and local laws governing police use of force, and various BART PD policies regarding use of force and firearms. Refer to BART PD Policies 300, 308 and 459 for more information.

f. Training Required:

Officers assigned to SWAT must complete a CA POST certified Basic SWAT Operator course and Chemical Munitions Instructor Course.

g. Other Notes:

None.

11. 40mm eXact iMPact Sponge Rounds (Blue Tip) - CA GC Code §7070(c)(14) (Category 14)

a. Equipment Capabilities, Quantity and Lifespan:

40mm eXact iMPact rounds offer a less than lethal point-of aim, point of impact direct-fire capability as an intermediate force option. To be used with LLIMS Launcher to effect a less than lethal point-of aim, point of impact direct-fire capability as an intermediate force option.

Quantity Owned: 452 (In Armory and Patrol)

Price Per Unit: Approximately \$19.60 dollars

Lifespan: 5 Years

b. Manufacturer Product Description:

The eXact iMPact 40mm Sponge Round is a point-of-aim, point-of-impact direct-fire round. This lightweight, highspeed projectile consisting of a plastic body and sponge nose that is spin stabilized via the incorporated rifling collar and the 40mm launcher's rifled barrel. The round utilizes smokeless powder as the propellant, and, therefore, have velocities that are extremely consistent. Used for Crowd Control, patrol, and Tactical Applications.

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c. Purpose/Authorized Uses:

40mm eXact iMPact rounds offer a less than lethal point-of aim, point of impact direct-fire capability as an intermediate force option for patrol, crowd control, and tactical officers. This department is committed to reducing the potential for violent confrontations when suspects are encountered. LLIMS projectiles, when used properly, are less likely to result in death or serious physical injury.

LLIMS projectiles are approved by the department and are fired from Defense Technology Single Shot 40 mm launchers. Certain munitions can be used in an attempt to de-escalate a potentially deadly situation, with a reduced potential for death or serious physical injury.

d. Fiscal Impacts:

The initial cost of these items was approximately \$8,859.2 dollars. Due to 40mm eXact iMPact Sponge Rounds being consumable items, fiscal impacts will vary based on usage and training.

e. Legal/Procedural Rules Governing Use:

All applicable federal, state, and local laws governing police use of force, and various BART PD policies regarding use of force and firearms. Refer to BART PD Policies 300, 308 and 459 for more information.

f. Training Required:

All officers who are allowed to use the LLIMS launcher and approved munitions, must successfully complete the 3-hour department training course and a 2-hour training/qualification course annually.

g. Other Notes:

None.

12. 40mm Foam Baton - CA GC Code §7070(c)(14) (Category 14)

a. Equipment Capabilities, Quantity and Lifespan:

To be used with LLIMS Launcher to effect a less than lethal point-of aim, point of impact direct-fire capability as an intermediate force option.

Quantity Owned: 12

Price Per Unit: \$25 dollars

Lifespan: 5 Years

b. Manufacturer Product Description:

The 40 mm Multiple Foam Baton Round is most widely used as a crowd management tool where stand-off distances are limited. It may also prove valuable in riot situations where police lines and protestors are in close proximity. The round contains three foam projectiles. It utilizes smokeless powder and has more consistent velocities and tighter patterns compared to its 37 mm counterpart. The foam projectile allows for closer deployment, while minimizing injury.

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c. Purpose/Authorized Uses:

40mm Foam Baton rounds offer a less than lethal point-of aim, point of impact direct-fire capability as an intermediate force option for patrol, crowd control, and tactical officers. This department is committed to reducing the potential for violent confrontations when suspects are encountered. LLIMS projectiles, when used properly, are less likely to result in death or serious physical injury.

LLIMS projectiles are approved by the department and are fired from Defense Technology Single Shot 40 mm launchers. Certain munitions can be used in an attempt to de-escalate a potentially deadly situation, with a reduced potential for death or serious physical injury.

d. Fiscal Impacts:

The Initial cost of these items was approximately \$300 dollars. These items are purchased for training purposes for recruits attending Police Academies. A minimum of 25 rounds are usually kept in the armory and used for police academy training purposes.

e. Legal/Procedural Rules Governing Use:

All applicable federal, state, and local laws governing police use of force, and various BART PD policies regarding use of force and firearms. Refer to BART PD Policies 300, 308 and 459 for more information.

f. Training Required:

The use of this munition is primarily used in the police training academy. All academy recruits are trained in various less lethal impact munitions.

g. Other Notes:

None.

13. 40mm Bean Bag- CA GC Code §7070(c)(14) (Category 14)

a. Equipment Capabilities, Quantity and Lifespan:

To be used with LLIMS Launcher to effect a less than lethal point-of aim, point of impact direct-fire capability as an intermediate force option.

Quantity Owned: 9

Price Per Unit: Approximately \$25.55 dollars

Lifespan: 5 Years

b. Manufacturer Product Description:

The 40 mm Bean Bag Round is most widely used as a crowd management tool by Law Enforcement and Corrections when there is a need to target individual instigators. It has also been successfully used as a dynamic, high-energy single subject round for incapacitation or distraction. The round contains one silica sand-filled bag. It utilizes smokeless powder as the propellant and has more consistent velocities and tighter patterns compared to its 37 mm black powder counterpart.

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c. Purpose/Authorized Uses:

40mm Bean Bag rounds offer a less than lethal point-of aim, point of impact direct-fire capability as an intermediate force option for patrol, crowd control, and tactical officers. This department is committed to reducing the potential for violent confrontations when suspects are encountered. LLIMS projectiles, when used properly, are less likely to result in death or serious physical injury.

This department is committed to reducing the potential for violent confrontations when suspects are encountered. LLIMS projectiles, when used properly, are less likely to result in death or serious physical injury.

LLIMS projectiles are approved by the department and are fired from Defense Technology Single Shot 40 mm launchers. Certain munitions can be used in an attempt to de-escalate a potentially deadly situation, with a reduced potential for death or serious physical injury.

d. Fiscal Impacts:

The initial cost of these items was approximately \$230 dollars. These items are purchased for training purposes for recruits attending Police Academies. A minimum of 25 rounds are usually kept in the armory.

e. Legal/Procedural Rules Governing Use:

All applicable federal, state, and local laws governing police use of force, and various BART PD policies regarding use of force and firearms. Refer to BART PD Policies 300, 308 and 459 for more information.

f. Training Required:

The use of this munition is primarily used in the police training academy. All academy recruits are trained in various less lethal impact munitions.

g. Other Notes:

None.

14. 40mm Stinger 60-Caliber - CA GC Code §7070(c)(14) (Category 14)

a. Equipment Capabilities, Quantity and Lifespan:

To be used with LLIMS Launcher to effect a less than lethal point-of aim, point of impact direct-fire capability as an intermediate force option.

Quantity Owned: 16

Price Per Unit: Approximately \$30 dollars

Lifespan: 5 Years

b. Manufacturer Product Description:

The Stinger® 40 mm 60-Caliber Round is most widely used as a crowd management tool by Law Enforcement and Corrections. The round contains approximately eighteen 60-Caliber rubber balls. It utilizes smokeless powder as the propellant and has more consistent velocities and tighter patterns compared to its 37 mm counterpart. It is suitable for administering a means of pain compliance over a greater distance than its 32-Caliber Stinger® counterpart. Used for routing crowds or groups that are mildly resistive.

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c. Purpose/Authorized Uses:

40mm Stinger rounds offer a less than lethal point-of aim, point of impact direct-fire capability as an intermediate force option for patrol, crowd control, and tactical officers. This department is committed to reducing the potential for violent confrontations when suspects are encountered. LLIMS projectiles, when used properly, are less likely to result in death or serious physical injury.

LLIMS projectiles are approved by the department and are fired from Defense Technology Single Shot 40 mm launchers. Certain munitions can be used in an attempt to de-escalate a potentially deadly situation, with a reduced potential for death or serious physical injury.

d. Fiscal Impacts:

The initial cost of these items was approximately \$480 dollars. These items are purchased for training purposes for recruits attending Police Academies. A minimum of 25 rounds are usually kept in the armory.

e. Legal/Procedural Rules Governing Use:

All applicable federal, state, and local laws governing police use of force, and various BART PD policies regarding use of force and firearms. Refer to BART PD Policies 300, 308 and 459 for more information.

f. Training Required:

The use of this munition is primarily used in the police training academy. All academy recruits are trained in various less lethal impact munitions.

g. Other Notes:

None.

Ordinance No. 2022-1

AN ORDINANCE OF THE SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT
ADDRESSING THE USE OF MILITARY EQUIPMENT BY THE BART POLICE
DEPARTMENT.

WHEREAS, the San Francisco Bay Area Rapid Transit District (BART) Board of Directors has invested heavily in maintaining a safe and secure transportation system hardened against terrorist sabotage, criminal behavior, and threats to public peace and safety; and

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

WHEREAS, the Board recognizes that there is a point at which law enforcement resources may be viewed as unnecessary and unsettling to the riding public, and

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

WHEREAS, the Board of Directors recognizes that military equipment use by law enforcement should be judiciously balanced with the need to reasonably protect recognized civil liberties; and
WHEREAS, the Board of Directors finds that proper transparency, oversight and accountability are fundamental to minimizing the mitigatable risks to the afore-mentioned civil liberties posed by use of military equipment by law enforcement personnel, and

WHEREAS, the Board of Directors finds it essential to have an informed public discourse about whether to adopt additional military equipment to that already utilized within the District, and
WHEREAS, the Board of Directors finds it desirable that safeguards be in place to protect reasonable expectations of privacy and freedom of speech and assembly, duly balanced against a need to preserve public peace and safety, and to address exigent circumstances before any new military equipment for law enforcement purposes is deployed.

WHEREAS, the Board of Directors finds that if either new military equipment is approved for use or existing equipment is used in a materially different manner or for a materially different purpose, there must be clear internal policies and procedures to ensure that reasonable safeguards are being followed and that the military equipment's benefits outweigh its costs.

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

17-601 Name of Ordinance

A. This Ordinance shall be known as the Military Equipment Use Ordinance.

17-602 Definitions

A. "Military Equipment" includes all of the following (Per CA Gov. Code §7070):

1. Unmanned, remotely piloted, powered aerial or ground vehicles.
2. Mine-resistant ambush-protected (MRAP) vehicles or armored personnel carriers. However, police versions of standard consumer vehicles are specifically excluded from this subdivision.
3. High mobility multipurpose wheeled vehicles (HMMWV), commonly referred to as Humvees, two and one-half-ton trucks, five-ton trucks, or wheeled vehicles that have a breaching or entry apparatus attached. However, unarmored all-terrain vehicles (ATVs) and motorized dirt bikes are specifically excluded from this subdivision.
4. Tracked armored vehicles that provide ballistic protection to their occupants and utilize a tracked system instead of wheels for forward motion.
5. Command and control vehicles that are either built or modified to facilitate the operational control and direction of public safety units.
6. Weaponized aircraft, vessels, or vehicles of any kind.
7. Battering rams, slugs, and breaching apparatuses that are explosive in nature. However, items designed to remove a lock, such as bolt cutters, or a handheld ram designed to be operated by one person, are specifically excluded from this subdivision.
8. Firearms of .50 caliber or greater. However, standard issue shotguns are specifically excluded from this subdivision.
9. Ammunition of .50 caliber or greater. However, standard issue shotgun ammunition is specifically excluded from this subdivision.
10. Specialized firearms and ammunition of less than .50 caliber, including assault weapons as defined in Sections 30510 and 30515 of the Penal Code, with the exception of standard issue service weapons and ammunition of less than .50 caliber that are issued to officers, agents, or employees of a law enforcement agency or a state agency.
11. Any firearm or firearm accessory that is designed to launch explosive projectiles.
12. "Flashbang" grenades and explosive breaching tools, "tear gas," and "pepper balls," excluding standard, service-issued handheld pepper spray.
13. Taser Shockwave, microwave weapons, water cannons, and the Long Range Acoustic Device (LRAD).
14. The following projectile launch platforms and their associated munitions: 40mm projectile launchers, "bean bag," rubber bullet, and specialty impact munition (SIM) weapons.
15. Any other equipment as determined by a governing body or a state agency to require additional oversight.
16. Notwithstanding paragraphs (1) through (15), "Military Equipment" does not include general equipment not designated as prohibited or controlled by the federal Defense Logistics Agency.

B. "District" means any department, agency, bureau, and/or subordinate division of the San Francisco Bay Area Rapid Transit District.

- C. "Police Department" or "BART Police Department" means any division, section, bureau, employee, volunteer and/or contractor of the San Francisco Bay Area Rapid Transit District's Police Department.
- D. "Board of Directors" means the governing legislative body of the San Francisco Bay Area Rapid Transit District.
- E. "Military Equipment Use Policy" means a publicly released, written document that includes, at a minimum, all of the following:
1. A description of each type of Military Equipment, the quantity sought, its capabilities, expected lifespan, and product descriptions from the manufacturer of the Military Equipment.
 2. The purposes and authorized uses for which the law enforcement agency or the state agency proposes to use each type of Military Equipment.
 3. The fiscal impact of each type of Military Equipment, including the initial costs of obtaining the equipment and estimated annual costs of maintaining the equipment.
 4. The legal and procedural rules that govern each authorized use.
 5. The training, including any course required by the Commission on Peace Officer Standards and Training, that must be completed before any officer, agent, or employee of the law enforcement agency or the state agency is allowed to use each specific type of Military Equipment to ensure the full protection of the public's welfare, safety, civil rights, and civil liberties and full adherence to the Military Equipment use policy.
 6. The mechanisms to ensure compliance with the Military Equipment use policy, including which independent persons or entities have oversight authority, and, if applicable, what legally enforceable sanctions are put in place for violations of the policy.
 7. For a law enforcement agency, the procedures by which members of the public may register complaints or concerns or submit questions about the use of each specific type of Military Equipment, and how the law enforcement agency will ensure that each complaint, concern, or question receives a response in a timely manner.
- F. "Exigent Circumstances" means a law enforcement agency's good faith belief that an emergency involving the danger of, or imminent threat of death or serious physical injury to any person is occurring, has occurred, or is about to occur.
- G. "State agency" means the law enforcement division of every state office, officer, department, division, bureau, board, and commission or other state body or agency, except those agencies provided for in Article IV (except Section 20 thereof) or Article VI of the California Constitution.
- H. "Type" means each item that shares the same manufacturer model number.

17-603 Military Equipment Use Policy Requirement

- A. The BART Police Department shall obtain approval of the Board of Directors, by a resolution adopting a Military Equipment Use Policy (MEUP) at a regular meeting of the Board of Directors held pursuant to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code) prior to engaging in any of the following:
1. Requesting Military Equipment made available pursuant to Section 2576a of Title 10 of the United States Code.
 2. Seeking funds for Military Equipment, including, but not limited to, applying for a grant, soliciting or accepting private, local, state, or federal funds, in-kind donations, or other donations or transfers.
 3. Acquiring Military Equipment either permanently or temporarily, including by borrowing or leasing.
 4. Collaborating with another law enforcement agency in the deployment or other use of Military Equipment within the territorial jurisdiction of BART.
 5. Using any new or existing Military Equipment for a purpose, in a manner, or by a person not previously approved by the governing body pursuant to this chapter.
 6. Soliciting or responding to a proposal for, or entering into an agreement with, any other person or entity to seek funds for, apply to receive, acquire, use, or collaborate in the use of, Military Equipment.
 7. Acquiring Military Equipment through any means not provided by this section.
- B. No later than May 1, 2022, if seeking to continue the use of any Military Equipment that was acquired prior to January 1, 2022, the BART Police Department shall commence a Board of Directors approval process in accordance with this section. If the Board of Directors does not approve the continuing use of Military Equipment, including by adoption pursuant to a Military Equipment Use Policy submitted pursuant to this code, within 180 days of submission of the proposed Military Equipment Use Policy to Board of Directors, the BART Police Department shall cease its use of the Military Equipment until it receives the approval of Board of Directors in accordance with this code.
- C. In seeking the approval of Board of Directors, the BART Police Department shall submit a proposed Military Equipment Use Policy to the Board of Directors and make those documents available on the Police Department's internet website at least 30 days prior to any public hearing concerning the Military Equipment at issue.
- D. The Board of Directors shall only approve a Military Equipment Use Policy pursuant to this chapter if it determines all of the following:
1. The Military Equipment is necessary because there is no reasonable alternative that can achieve the same objective of officer and civilian safety.
 2. The proposed Military Equipment use policy will safeguard the public's welfare, safety, civil rights, and civil liberties.

3. If purchasing the equipment, the equipment is reasonably cost effective compared to available alternatives that can achieve the same objective of officer and civilian safety.
 4. Prior Military Equipment use complied with the Military Equipment Use Policy that was in effect at the time, or if prior uses did not comply with the accompanying Military Equipment Use Policy, corrective action has been taken to remedy nonconforming uses and ensure future compliance.
- E. In order to facilitate public participation, any proposed or final Military Equipment Use Policy shall be made publicly available on the internet website of the Police Department for as long as the Military Equipment is available for use.
- F. The Board of Directors shall review this ordinance at least annually and vote on whether to renew it at a regular meeting held pursuant to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code).

17-604 Use in Exigent Circumstances

- A. Notwithstanding the provisions of this Chapter, the Police Department may acquire, borrow and/or use Military Equipment in Exigent Circumstances without following the requirements of this code.
- B. If the Police Department acquires, borrows, and/or uses Military Equipment in Exigent Circumstances, in accordance with this section, it must take all of the following actions:
1. Provide written notice of that acquisition or use to the Board of Directors within 30 days following the commencement of such Exigent Circumstance, unless such information is confidential or privileged under local, state or federal law.
 2. If it is anticipated that the use will continue beyond the Exigent Circumstance, submit a proposed amended Military Equipment Use Policy to the Board of Directors within 90 days following the borrowing, acquisition and/or use, and receive approval, as applicable, from the Board of Directors.
 3. Include the Military Equipment in the Police Department's next annual Military Equipment Report.

17-605 Reports on the Use of Military Equipment.

- A. The Police Department shall submit to Board of Directors an annual Military Equipment Report for each type of Military Equipment approved by the Board of Directors within one year of approval, and annually thereafter for as long as the Military Equipment is available for use.
- B. The Police Department shall also make each annual Military Equipment Report required by this section publicly available on its internet website for as long as the Military Equipment is available for use.

- C. The annual Military Equipment Report shall, at a minimum, include the following information for the immediately preceding calendar year for each type of Military Equipment:
1. A summary of how the Military Equipment was used and the purpose of its use.
 2. A summary of any complaints or concerns received concerning the Military Equipment.
 3. The results of any internal audits, any information about violations of the Military Equipment Use Policy, and any actions taken in response.
 4. The total annual cost for each type of Military Equipment, including acquisition, personnel, training, transportation, maintenance, storage, upgrade, and other ongoing costs, and from what source funds will be provided for the Military Equipment in the calendar year following submission of the annual Military Equipment Report.
 5. The quantity possessed for each type of Military Equipment.
 6. If the law enforcement agency intends to acquire additional Military Equipment in the next year, the quantity sought for each type of Military Equipment.
- D. Within 30 days of submitting and publicly releasing an annual Military Equipment Report pursuant to this section, the Police Department shall hold at least one well-publicized and conveniently located community engagement meeting, at which the general public may discuss and ask questions regarding the annual Military Equipment report and the law enforcement agency's funding, acquisition, or use of Military Equipment.
- E. The Board of Directors shall determine, based on the annual Military Equipment Report submitted pursuant to this section, whether each type of Military Equipment identified in that report has complied with the standards for approval set forth in this code and the Military Equipment Use Policy. If the Board of Directors determines that a type of Military Equipment identified in that annual Military Equipment Report has not complied with the standards for approval, the Board of Directors shall either disapprove a renewal of the authorization for that type of Military Equipment or require modifications to the Military Equipment Use Policy in a manner that will resolve the lack of compliance.

17-607 Severability

- A. If any section, subsection, sentence, clause, phrase, or word of this Chapter, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of this Chapter.
- B. The Board of Directors hereby declares that it would have passed this Chapter and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this Chapter or application thereof would be subsequently declared invalid or unconstitutional.

In regular session of the Board of Directors of the San Francisco Bay Area Rapid Transit District introduced on the ____ day of _____, 2022 and finally passed and adopted this ____ day of _____, 2022, on regular roll call of the members of said Board by the following vote:

Ayes:

Noes:

Abstentions:

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

President, Board of Directors

ATTEST:

April Quintanilla, Interim District Secretary

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

TO: Board of Directors

DATE: August 31, 2022

FROM: Erin Armstrong, BPCRB Chairperson

SUBJECT: Letter of Support

Dear Sir/Madam,

I am writing this letter of support for the District's Specialized Military Equipment Ordinance and the BART Police Department's Draft Policy.

The BART Police Department (BPD) worked with the BART Police Citizen Review Board (BPCRB) to create a forum for input and engagement regarding this policy. BPD presented the District's Specialized Military Equipment Ordinance and the BART Police Department's Draft Policy at multiple community meetings with the BPCRB and received feedback from committee members and the public. With this beneficial input, both the BPCRB and BPD were able to finalize the draft policy.

Therefore, I support the efforts of the BART Police Department to seek approval and annual reporting to assist BART PD in its ongoing oversight.

Sincerely,

Erin Armstrong

Erin Armstrong, Chairperson BPCRB

DRAFT

BEFORE THE BOARD OF DIRECTORS OF THE
SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

In the Matter of Authorizing
the adoption of a resolution making
four necessary preliminary findings in
support of the adoption of a Military
Equipment Use Policy and Ordinance.

Resolution No. _____

WHEREAS, State legislation requires the adoption of a policy and an ordinance in order continue the use of military equipment for California law enforcement agencies; and

WHEREAS, BART desires to continue to use military equipment for policing purposes within the policy and ordinance parameters established by the District Board, and

WHEREAS, the enabling legislation requires the making of certain findings prior to the adoption of a military equipment use policy and ordinance, and

WHEREAS, the Board of Directors believes that it can make the below listed four findings in good faith, based upon the representations of BART Police representatives,

NOW, THEREFORE, BE IT RESOLVED that:

1. The Board finds the military equipment addressed in the proposed policy and ordinance is necessary because there is no reasonable alternative that can achieve the same objective of officer and civilian safety.
2. The Board finds that the proposed policy and ordinance will safeguard the public welfare, safety, civil rights and civil liberties.
3. The Board finds that purchasing the military equipment addressed in the military equipment use policy is reasonably cost effective compared to available alternatives that could achieve the same objective of officer and civilian safety.
4. The Board finds that, when the information required under AB 481 is received regarding the BART Police Department's prior use of military equipment (as defined in said law), it will faithfully determine whether prior military use has complied with Board policies, that BART Police will take corrective action to curb nonconforming uses, if any, and will ensure future compliance with the terms of the Military Equipment Use Policy and the Military Equipment Use Ordinance.

PASSED AND ADOPTED this _____ day of _____, 2022 by the following vote:

AYES:

NOES:

ABSENT:

PRESIDENT

ATTEST:

DISTRICT SECRETARY



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <div style="float: right; border: 1px solid black; padding: 2px;"> DocuSigned by: <i>Michael Jones</i> <small>47000790F2D7463...</small> </div>		GENERAL MANAGER ACTION REQ'D:		
DATE: 8/9/2022		8/31/2022		
BOARD INITIATED ITEM: No				
Originator/Prepared by: R. Elliott Vantrease Dept: Strategic Engineering <div style="border: 1px solid black; padding: 2px; margin-top: 5px;"> DocuSigned by: <i>R. Elliott Vantrease</i> <small>B0EBC6071DF7485...</small> </div> Signature/Date: 8/29/2022	General Counsel <div style="border: 1px solid black; padding: 2px; margin-top: 5px;"> DocuSigned by: <i>Janaa Belan</i> <small>F8FD7B3A73E74E8...</small> </div> Signature/Date: 8/29/2022 <div style="text-align: right;">[]</div>	Controller/Treasurer <div style="border: 1px solid black; padding: 2px; margin-top: 5px;"> DocuSigned by: <i>Chris Gan</i> <small>EE11C8CEEEA04FD...</small> </div> Signature/Date: 8/29/2022 <div style="text-align: right;">[]</div>	District Secretary <div style="border: 1px solid black; padding: 2px; margin-top: 5px;"> DocuSigned by: <i>Shane Edwards</i> <small>8128A2EB2F014F3...</small> </div> Signature/Date: 8/29/2022 <div style="text-align: right;">[]</div>	BARC <div style="border: 1px solid black; padding: 2px; margin-top: 5px;"> DocuSigned by: <i>Shane Edwards</i> <small>8128A2EB2F014F3...</small> </div> Signature/Date: 8/29/2022 <div style="text-align: right;">[]</div>

Award of Contract No. 15IJ-130, Fire Alarm System Replacement Phase 3

PURPOSE:

To request Board authorization for the General Manager to award Contract No. 15IJ-130 for Fire Alarm System Replacement, Phase 3 to Patriot Contracting Inc., of Union City, California for the amount \$10,144,589.

DISCUSSION:

The existing Fire Alarm Systems (FAS) serving Lake Merritt, Coliseum, San Leandro, Walnut Creek, Montgomery, and Downtown Berkeley stations are well beyond their useful life. Furthermore, replacement parts and equipment for the fire alarm systems are no longer available, and as a result, service and maintenance of the existing Fire Alarm Systems have become extremely challenging.

The replacement FAS under this Contract will allow for remote monitoring by the Maintenance and Engineering (M&E) department. Each new FAS will consist of a new Fire Alarm Control Unit (FACU) utilizing addressable technology for alarm initiating devices which will provide voice evacuation messages to station patrons and temporal audible evacuation signals to staff within the outdoor substations. The FACU will supervise and monitor alarm signals from various initiating devices (e.g., smoke and heat detectors, pull stations, sprinkler water flow, and valve position switches) covering specified areas as required by the NFPA72 – National Fire Alarm and Signaling Code. The FACU will also supervise and control the visual and audible occupant notification appliances within the

station areas. In addition, the control panel will be programmed to provide interfaces to specified station equipment, such as fare barriers, escalators, and elevators.

This Contract was publicly advertised on March 22, 2022 to replace Fire Alarm Systems at Lake Merritt, Coliseum, San Leandro, Walnut Creek, Montgomery, and Downtown Berkeley stations. Advance Notice to Bidders of this Contract was emailed to over three hundred (300) prospective Bidders with Contractor classification “A”, “B” or “C10”. A Pre-Bid meeting was conducted on April 6, 2022, with eight (8) prospective Bidders in attendance, and a site tour was conducted on April 13, 2022, with four prospective Bidders in attendance.

Two Bids were received and publicly opened on May 23, 2022. Tabulation of the Bids, including the Engineer’s Estimate, is indicated as follows:

Item	Name	Total Bid Price
1	Patriot Contracting, Inc., Union City, CA	\$ 10,144,589
2	Reliable Monitoring Services, Signal Hill, CA	\$ 11,075,098
3	Engineer’s Estimate	\$ 13,647,921

Patriot Contracting, Inc., Union City, California was the apparent low Bidder.

District staff has determined that Patriot Contracting, Inc.’s Bid is responsive to the solicitation. Further review of Patriot Contracting, Inc.’s license, business experience, and financial capabilities has resulted in a determination that Patriot Contracting, Inc., is a responsible Bidder.

The total Bid Price of \$10,144,589 is 25.7% below the Engineer’s Estimate of \$13,647,921. Staff determined that the Bid is reasonable and found the difference to be attributable to the labor cost. The Engineer’s Estimate had assumed more work to be performed during graveyard shifts and at higher rates.

Pursuant to the District’s Non-Federal Small Business Program, the Office of Civil Rights set a 14% Local Small Business (LSB) Subcontractor Participation Goal for this Contract. Bidders who meet the LSB Subcontractor Participation Goal are eligible for an LSB Preference of 7% of the lowest responsive Bidder’s Bid, up to a cap of \$150,000. The Office of Civil Rights determined that Patriot Contracting, Inc. committed to subcontracting 0% to LSBs. The apparent low Bidder Patriot Contracting, Inc. did not meet the LSB Subcontractor Participation Goal and, therefore, is not eligible for the Bid Preference, but is still the apparent low Bidder.

Pursuant to the District’s Non-Discrimination Program for Subcontracting, the Availability Percentages for this Contract are 18.2% for Minority Business Enterprises (“MBEs”) and

9.3% for Women Business Enterprises (“WBEs”). Patriot Contracting, Inc. committed to 5.9% MBE and 4.2%WBE participation. Patriot Contracting, Inc. did not meet either the MBE or WBE Availability Percentages; therefore, Patriot Contracting, Inc. was requested to provide the Office of Civil Rights with supporting documentation to determine if it had discriminated on the basis of race, national origin, color, gender, or ethnicity. Based on the review of the information submitted by Patriot Contracting, Inc., the Office of Civil Rights found no evidence of discrimination.

CAPITAL FISCAL IMPACT:

Funding of \$10,144,589 for the award of contract 15IJ-130 for the Fire Alarm System Replacement Phase 3 is included in the total Project Budget for FMS # 15IJRR2 – Fire Alarm Replacement Ph 3.

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

Fund Description	Amount
F/G 802A/802B/802C - Measure RR	\$24,600,000
TOTAL	\$24,600,000

As of 07/06/2022, \$24,600,000 is the total budget for this project. BART has expended \$1,386,188, committed \$154,259, and reserved \$0 to date. This action will commit \$10,144,589 leaving an available fund balance of \$12,914,964 in the 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:

Reject all Bids and re-advertise the Contract, resulting in additional costs and time delay for re-advertisement, and longer repair and maintenance times. Given that this contract is already below Engineer’s Estimate, it is highly unlikely that re-advertisement will result in lower Bid prices.

RECOMMENDATION:

Adopt the following motion.

MOTION:

The General Manager is authorized to award Contract No. 15IJ-130 for Fire Alarm System Replacement, Phase 3 to Patriot Contracting, Inc., Union City, California for the total Bid price of \$10,144,589 pursuant to a notification to be issued by the General Manager and subject to compliance with the District's protest procedures.

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

MEMORANDUM

TO: Board of Directors

DATE: September 1, 2022

FROM: Robert M. Powers, General Manager


SUBJECT: Lake Merritt BART Station Area Projects

At the September 8, 2022 Board meeting, staff will provide have a presentation on Lake Merritt BART Station Area Projects:

- BART Police Headquarters Relocation Update (For Information)
- Lake Merritt Transit-Oriented Development (For Action)

These items were recently presented for information at the June 9, 2022 Board meeting. Background California Environmental Quality Act (CEQA) materials for the upcoming Lake Merritt TOD item were emailed to the Board on August 26, 2022.

Please contact Val Menotti, Chief Planning & Development Officer, at (510) 287-4794 if you have any questions.

DocuSigned by:

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Robert Powers

Lake Merritt BART Station Area Projects

BART Board of Directors
September 8, 2022



Agenda

BART Police Headquarters Relocation Status Update

Lake Merritt TOD Update

Lake Merritt Plaza Upgrade Update

Recommended Actions Pertaining to Lake Merritt TOD

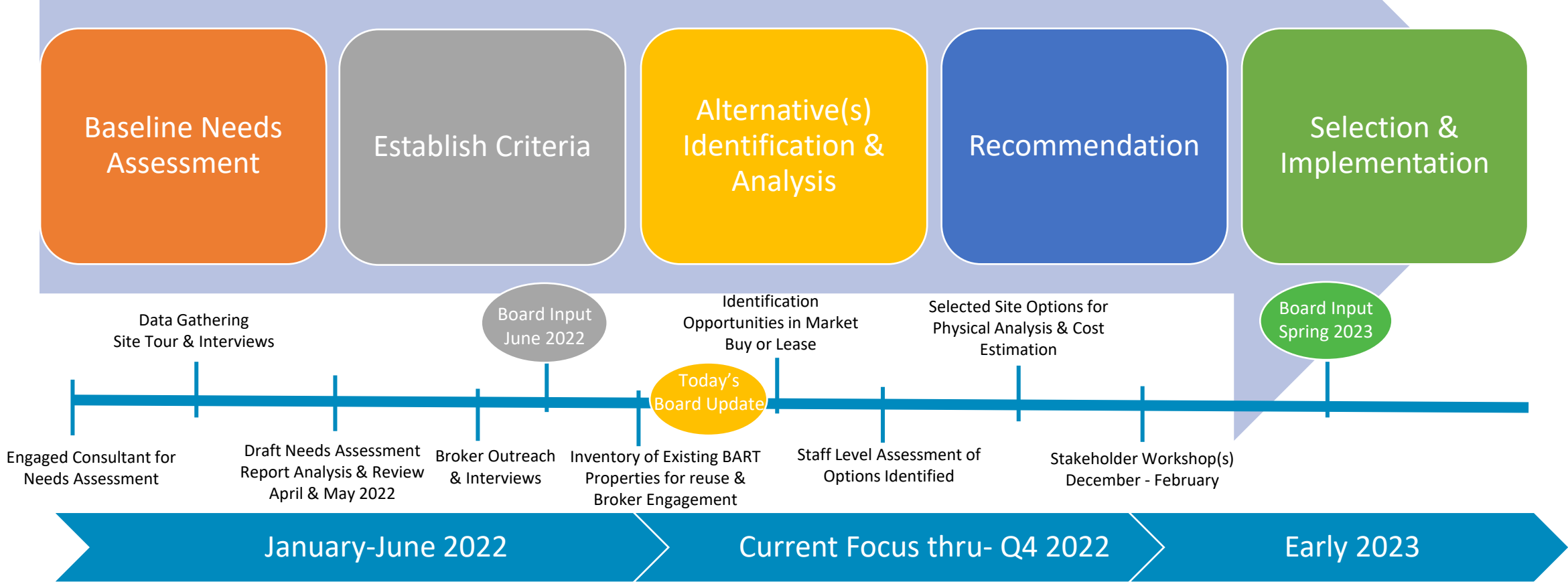


BART Police Administrative HQ

Relocation Planning Update



Overall Relocation Planning Strategy



Relocation planning process is a transparent and collaborative effort to build consensus on requirements for the new facility.

Search Criteria Summary Matrix

Site Criteria	Factors of Consideration
<input type="checkbox"/> Available for build-out & occupancy	<ul style="list-style-type: none"> Can be made ready for occupancy for 2025 Impact of “re-use” of an existing BART owned property
<input type="checkbox"/> Proximity	<ul style="list-style-type: none"> BART Station – pedestrian accessible Centrality within BART System Driving time for freeway access
<input type="checkbox"/> Appropriately sized if we Build, Buy or Lease	<ul style="list-style-type: none"> Parcel to accommodate 65-75K sf facility Plus 65K-75K sf+ of parking & storage 1.5 acres minimum target search size
<input type="checkbox"/> Meets physical safety standards (applicable to structure)	<ul style="list-style-type: none"> Essential Service Facility standard Maintain CALEA Accreditation
<input type="checkbox"/> Community Factors	<ul style="list-style-type: none"> Partnership with nearby community Safety of staff & visitors

Consensus on Definitions:

- System Core
- Centrality
- Proximity

General Options



Buy Property

- Existing Facility & Renovate and/or Retrofit
- Improved (demo) or Unimproved Land
 - Design/Build
 - Build-to-Suit-to-Own by District



Lease

- Existing Facility & Renovate and/or Retrofit (TIs)
- Build-to-Suit- on Land to Lease by District



Build on Existing BART Owned Land

- Repurpose
 - Parking Lot
 - Yard or warehouse

Coming Soon

Focus of Current Staff Effort

Assessment of Existing BART Property & Further Analysis Warranted

Site Criteria	Considerations Identified
✓ Proximity	<ul style="list-style-type: none">▪ Adjacent to BART Station▪ Pedestrian accessible▪ Central to BART System▪ Reasonable freeway access
✓ Appropriately sized	<ul style="list-style-type: none">▪ Urban 2 or 3-Story building + stacked garage parking = approx. 1.2 to 2 acres▪ Suburban 2 or 3-Story building + garage or surface parking = approx. 2.3 to 4 acres
✓ Available for build-out & occupancy	<ul style="list-style-type: none">▪ Station sites identified are existing customer parking lots▪ Not included in existing TOD workplans

Bay Fair Station

- Customer parking lot (Ala. Co. portion)
- West of UPRR tracks
- Concerns: located in residential area & ADA access tunnel under UPRR

Castro Valley Station

- Customer parking lot north of station
- Along Wilbeam and/or Redwood Road

El Cerrito Del Norte

- Customer parking lots north or west of station
- New facility could include Zone 2 (R) Patrol
- Concerns: freeway access & congestion

North Concord/Martinez

- Customer parking lot

BART PD Administrative HQ Relocation Planning

Next Steps

Next Steps for 2022

- ✓ Conduct site tours of other modernized Police Facilities
- ✓ Work with Broker to identify **options to Buy or Lease**
- ✓ Physical analysis of Select Site Alternatives
- ✓ Formulate Project funding options for consideration

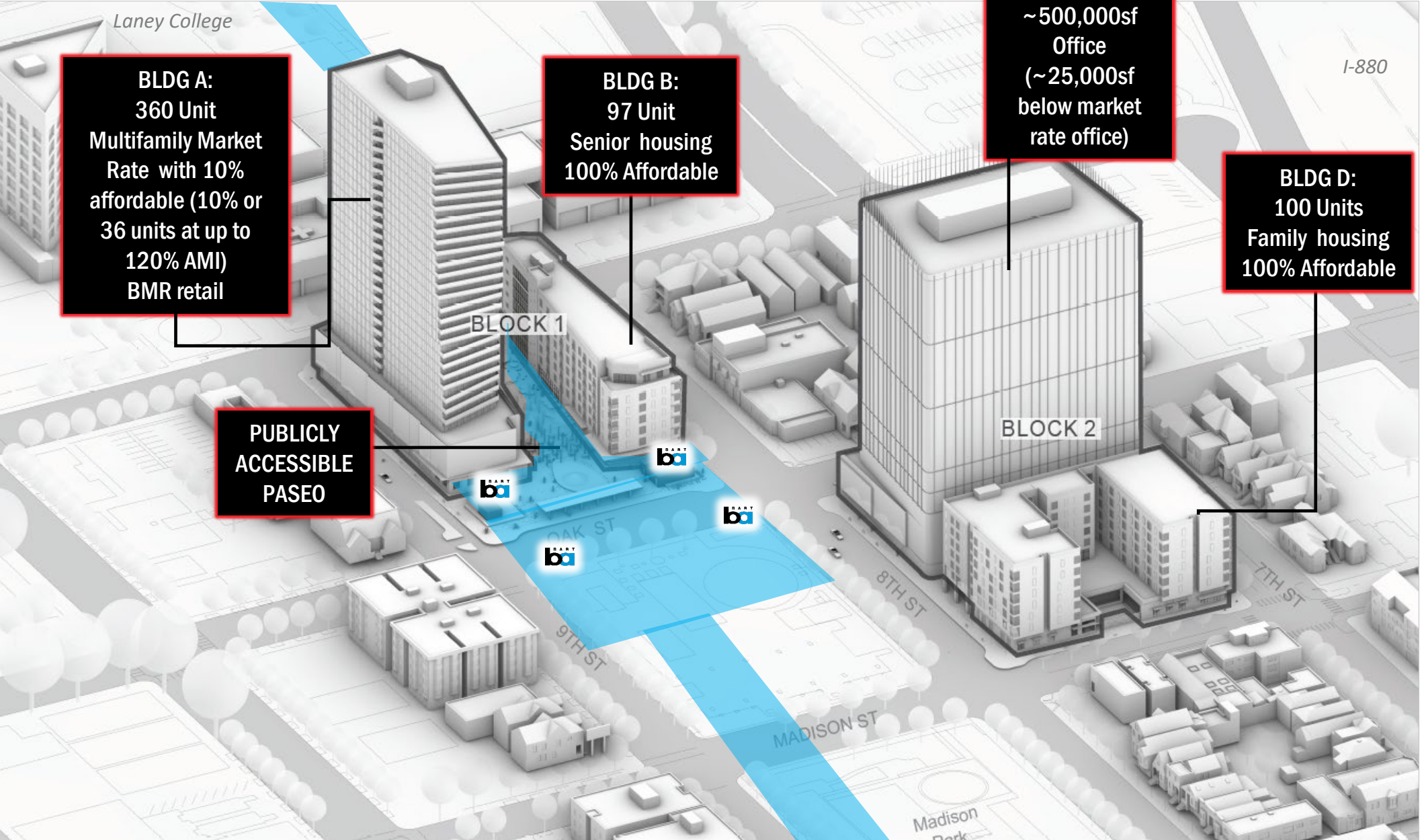


Q1 & Q2 2023

- ✓ Identify ancillary needs including IT & workplace modernization
- ✓ Generate Cost estimates for Select Site Alternatives
- ✓ Internal BART Stakeholder Workshops

Returning to Board with Site Alternatives & Recommendations in early Spring 2023

Lake Merritt TOD Project



STRADA

LMTOD, LLC



**EAST BAY ASIAN LOCAL
DEVELOPMENT CORPORATION**
BUILDING HEALTHY, VIBRANT AND SAFE NEIGHBORHOODS



History

December 2014: The Lake Merritt Station Area Plan Adopted

May 2018: Request For Proposals Released

September 2018: Request For Proposals Awarded to Strada /East Bay Asian Local Development Corporation (EBALDC)

January 2019: Entered into Exclusive Negotiating Agreement (ENA) with Developers Strada/EBALDC

February 2020: Submitted Preliminary Design Plans (PDP)

October 2020: Station Access Study Completed

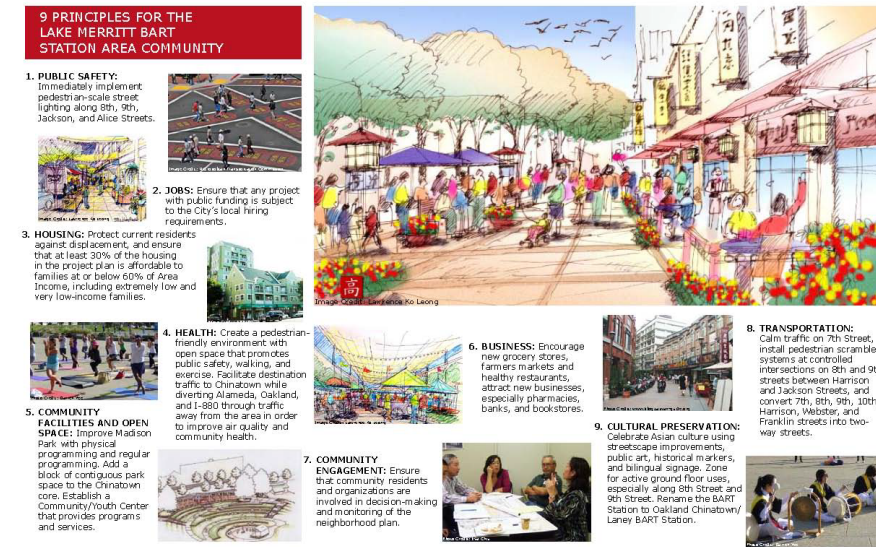
November 2020: BART Board Authorizes ENA Extension for 1 year w/ 6- month option

May 2021: Preliminary Development Plan City Approval (including CEQA)

March 2022: 6-month ENA extension option executed

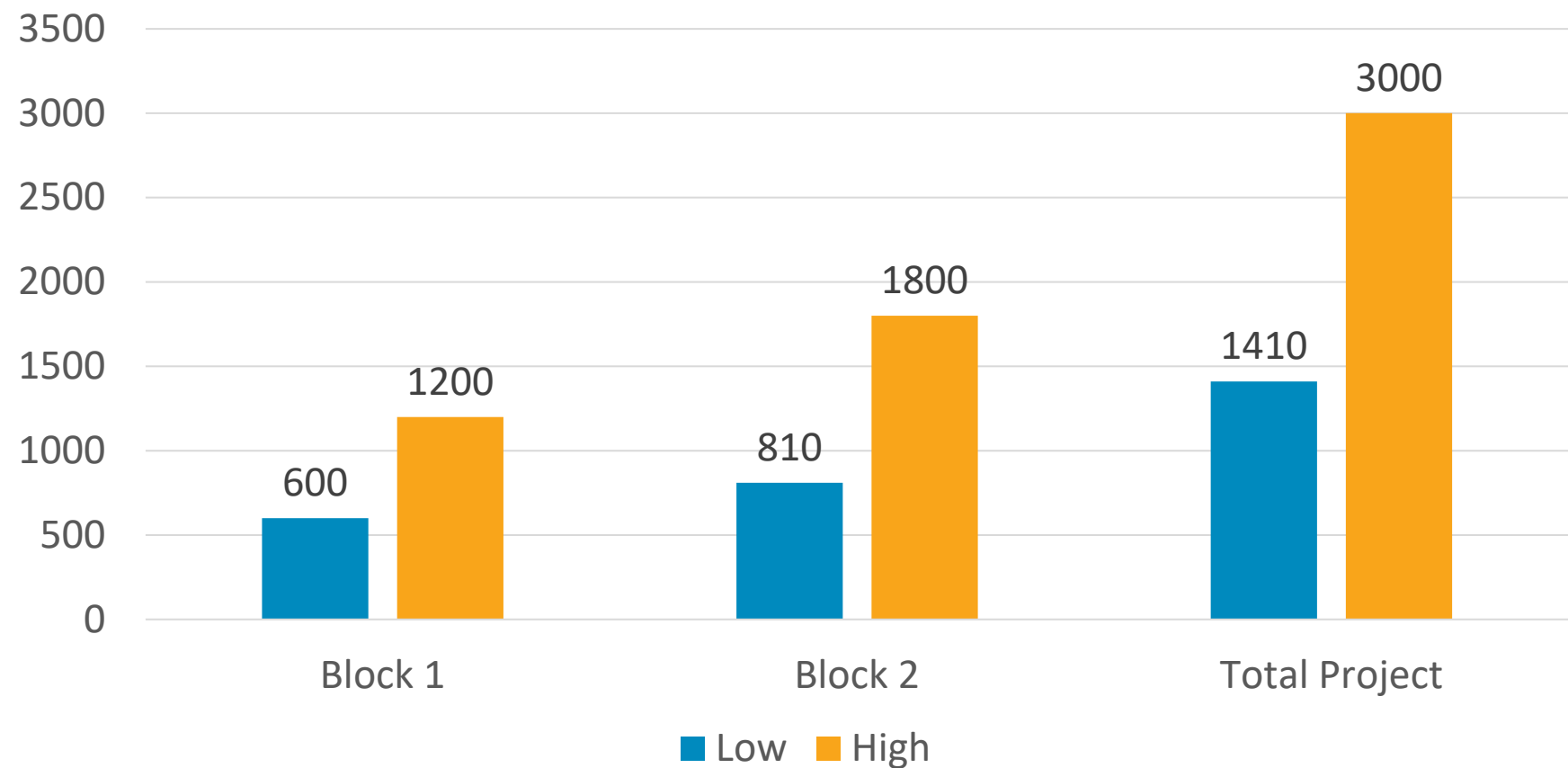
June 2022: Oakland Planning Commission Approves Final Development Plan for Senior Affordable Housing

June 2022: Board review of progress to date and draft option terms



TOD BART Ridership Gains – All Phases of Lake Merritt TOD

Net New Daily BART Riders from
Lake Merritt TOD



“Low” assumes and 60% of pre-COVID ridership and no park and ride users return to BART

“High” assumes 100% of pre-COVID ridership and 83% of park and ride users return to BART

Lake Merritt Plaza Upgrade

- Building on Previous Phase: Structural analysis, waterproofing membrane investigation, storm water treatment strategy
- Current Phase
 - Additional structural analysis of Admin Bldg columns and bike station site
 - Coordination with HVAC, Generator, Uninterrupted Power Supply (UPS), TOD projects; Oakland Dept of Transportation (OakDOT), Alameda County Transportation Commission (ACTC)
 - New conceptual designs & Basis of Design (Winter 22/23)
 - Community Engagement (Winter 22/23)
- Future Phase: 35% Design

Recommended Actions Overview

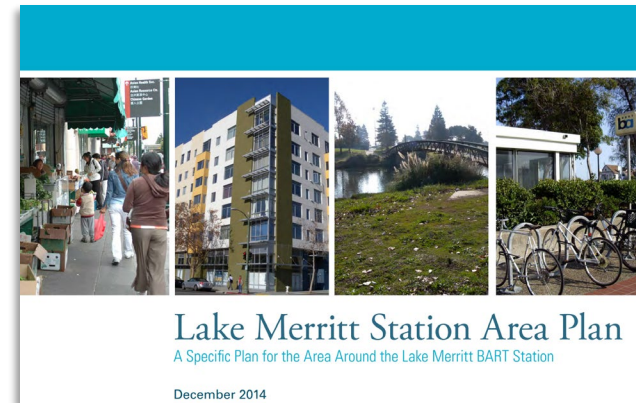
1. Consider and Adopt City of Oakland's CEQA findings (City is lead agency, BART is responsible agency) – Both Blocks
2. Approve the Project – Both Blocks
3. Authorize BART to enter into agreements needed to effectuate project – Block 1 Only
4. Extend Exclusive Negotiating Agreement (ENA) for a period of up to 5 years (3-year initial term + 2 option years) – Block 2 Only

Actions 1 & 2: CEQA and Approve Project

“No supplemental environmental review required in accordance with Public Resources Code Sections 21083.3 (community plan exemption), 21166 and CEQA Guidelines Sections 15162 through 15164, 15168, and 15183.” The 2014 Lake Merritt Station Area Plan EIR analyzed the environmental impacts of adoption and implementation of the LMSAP. The Project is within the impact envelope of the reasonably foreseeable maximum development program analyzed by the 2014 LMSAP EIR, providing the basis for use of an Addendum. – *City of Oakland CEQA Findings for this Project, May 2021*

EIR's covering this project include:

- Lake Merritt Station Area Plan EIR (2014)
- Central District Urban Renewal Plan Amendments EIR (2011)
- General Plan Housing Element Update EIR (2010)
- General Plan Land Use and Transportation EIR (“LUTE” - 1998)



Board is being asked to review, consider and adopt the City of Oakland's CEQA findings, Statement of Overriding Considerations, Standard Conditions of Approval and Mitigation Monitoring and Reporting Program (set forth in the Lake Merritt BART TOD CEQA Analysis Addendum).

Addendum for this project can be found:

https://cao-94612.s3.amazonaws.com/documents/LMBART-CEQA-Checklist-Addendum_Final_signed-1.pdf

Action 4: Extend ENA

MET Building Site (Block 2) Recommendation

- Longer term ENA of three years with two one year options to extend:
 - Allow for COVID/remote work trends to settle
 - Flexibility to attract possible office tenants
 - Provides time for BART to complete relocation of BART Police HQ and other needs
- ENA requirements:
 - Annual reporting to Board on efforts to attract office tenant
 - More definitive schedule to be provided in Fall 2024

Lake Merritt TOD: Next Steps

- Affordable Housing Financing Applications; Advanced/pre-Building Permit Design (Building B)
- **Block 1:**
 - Late 2023: Execute Leases & Start Construction (Building B – Affordable Senior). Estimated Building A FDP Approval.
 - 2024: Execute Lease & Start Construction (Building A – Market Rate Tower)
- **Block 2:**
 - 2026 (at earliest): Start Construction Building C (Office) and Building D (Affordable Family)



Recommended Motions – Lake Merritt TOD

After review and consideration of the environmental effects of the Lake Merritt TOD Project as shown in the 2014 Lake Merritt Station Area Plan EIR, certified on July 28, 2014, and the project specific Lake Merritt BART TOD CEQA Analysis Addendum adopted by the City of Oakland on May 19, 2021, the Board:

1. Adopts the City's CEQA Findings, Statement of Overriding Considerations, Standard Conditions of Approval and Mitigation Monitoring and Reporting Program;
2. Approves the Lake Merritt BART Station TOD Project;
3. Authorizes the General Manager or his designee to enter into a Lease Option Agreement and other agreements and documents as needed to advance the Lake Merritt BART Station TOD, Block 1 development;
4. Authorizes the General Manager or his designee to extend the Exclusive Negotiating Agreement with the East Bay Asian Local Development Corporation (EBALDC) and LMTOD, LLC for Block 2, for a period of three years, with two additional one-year options to extend.

Thank You





EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: DocuSigned by: <i>Michael Jones</i> 47000790F2D7463...		GENERAL MANAGER ACTION REQ'D: Yes		
DATE: 8/26/2022		8/31/2022		
BOARD INITIATED ITEM: No				
Originator/Prepared by: Abigail Thorne-Lyman Dept: Real Estate & Prop Development DocuSigned by: <i>Abigail Thorne-Lyman</i> EFBCE0EAF4353431... Signature/Date: 8/30/2022	General Counsel DocuSigned by: <i>Alicia Belan</i> F8FD7B3A73E74E8... 8/30/2022 []	Controller/Treasurer DocuSigned by: <i>Chris Gan</i> EE11C8CEEEA04FD... 8/30/2022 []	District Secretary []	BARC DocuSigned by: <i>Carl Holmes</i> 2243E3B49EA349E... 8/30/2022 []

Adoption of City of Oakland Lake Merritt BART Station TOD CEQA findings; approval of Lake Merritt BART Station TOD Project, authorization to enter into an Option Agreement, and authorization for extension to the Exclusive Negotiating Agreement

PURPOSE: To advance transit-oriented development (TOD) at the Lake Merritt station through several actions of the Board of Directors: (1) Certify that it reviewed and considered the 2014 Lake Merritt Station Area Plan EIR and the project specific Addendum and adopt the City of Oakland's CEQA Findings, Statement of Overriding Considerations, Standard Conditions of Approval and Mitigation Monitoring and Reporting Plan; (2) Approve the Lake Merritt Station TOD project (Blocks 1 and 2); (3) Authorize the General Manager or his designee to enter into a Lease Option Agreement and other agreements or documents as necessary to advance the Lake Merritt TOD, Block 1 development, and (4) Authorize the General Manager or his designee to enter into an Exclusive Negotiation Agreement ("ENA") extension for up to five years on Block 2 at 101 8th Street.

DISCUSSION:

Background

Planning for neighborhood change around the Lake Merritt BART Station began in 2008 and the Lake Merritt Station Area Specific Plan (the Plan) was adopted by the Oakland City Council (City) in late 2014. The Plan lays out a community-based vision for the roughly one-half mile radius around the Lake Merritt BART Station in Downtown Oakland. BART's two development sites – 51 9th Street, or the Lake Merritt station parking lot (also known as

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Block 1), and 101 8th Street, or the Metro Center building (also known as Block 2) (collectively the Project) – are located in the center of the Plan Area and both blocks are identified as “Opportunity Sites” in the Plan. The City’s designated zoning for these blocks is D-LM-2 and D-LM-4, designations created specifically for the Plan, and the City General Plan designates these sites as part of the Central Business District (CBD), with desired character and uses including “a mix of large-scale offices, commercial, urban (high-rise) residential, institutional, open space, cultural, educational, arts, entertainment, service, community facilities and visitor uses.” The zoning allows for a height of up to 275 feet.

In the Spring of 2018, BART released a request for qualifications for a TOD for Blocks 1 and 2 (the Project). In May 2018, BART invited a short list of four teams to submit proposals and in September 2018, the BART Board authorized staff to enter into an Exclusive Negotiating Agreement (ENA) with a team including the East Bay Asian Local Development Corporation (EBALDC) and Strada Investment Group (Strada) to develop the Blocks. In January 2020 Strada’s rights were assigned to LMTOD, LLC, a limited partnership between Strada, the developer, and the California State Teachers Retirement System (or CalSTRS), the major investor in the project. In February 2020, BART and the developer team submitted a formal application to the City of Oakland for Preliminary Development Plan (PDP) approval and the City initiated CEQA review. The application was deemed complete by City Staff in November 2020.

Project Entitlements and Findings Under the California Environmental Quality Act (CEQA)

On May 19, 2021, the City of Oakland Planning Commission approved the PDP for development of BART property at the Lake Merritt Station. The approved Planned Unit Development (PUD) includes the Project as shown in Attachment A, totaling 557 residential units, 40% of which are affordable, 497,000 square feet of office space, 18,500 square feet of retail and other commercial space, a day care, and 408 parking spaces. This Project entails four buildings, the 360-unit residential high-rise building (Building A), a 97-unit mid-rise residential senior affordable building (Building B) and a publicly accessible Paseo on Block 1. Block 2 is proposed to include a 500,000-sf office high-rise (Building C) and an approximately 100-unit affordable multifamily residential mid-rise building (Building D). No BART patron parking spaces would be provided in the development, consistent with community direction as stated in the City’s adopted Plan. BART’s Station Access Typology classifies this station as 'Urban with Parking' and the TOD Policy states that BART should strive for limited to no parking replacement for this station type. As a result, there would be a net loss of 210 BART parking spaces to accommodate development of both Blocks.

As part of the May 19, 2021 Planning Commission Meeting, City staff presented its CEQA findings for the PUD, primarily utilizing the EIR for the Plan (2014 Plan EIR - link in Attachment B), which was certified by the City of Oakland on July 28, 2014. City staff found that “the Lake Merritt BART Station Redevelopment Project qualifies for an addendum as well as an exemption from additional environmental review.” (CEQA Findings -

Adoption of City of Oakland Lake Merritt BART Station TOD CEQA findings; approval of Lake Merritt BART Station TOD Project, authorization to enter into an Option Agreement, and authorization for extension to the Exclusive Negotiating Agreement

Attachment C). The City's Addendum to the 2014 Plan EIR (Lake Merritt BART TOD CEQA Analysis Addendum - Attachment D) indicates that the project meets all requirements under CEQA Guidelines Sections 15164, 15183, and 15168 and that no supplemental environmental review was required in accordance with Public Resources Code Sections 21083.3 (community plan exemption) and 21166 and CEQA Guidelines Sections 15162 through 15164, 15168, and 15183. The City further concluded: "overall, based on the analysis, findings, and conclusions of the [2014 Plan EIR], as well as those of the 1998 LUTE EIR, the 2011 Redevelopment Plan Amendments EIR, ...and for the housing components of the Project, the 2010 General Plan Housing Element Update EIR and its 2014 Addendum – all of which are summarized in the Addendum – the potential environmental impacts associated with the Lake Merritt BART Station Redevelopment Project have been adequately analyzed and covered in the [2014 Plan EIR] and other previous CEQA Documents. Therefore, no further review or analysis under CEQA is required." (Attachment C).

Project Current Status

For Block 1, developers must submit a complete horizontal Final Development Plan (FDP) application two years from preliminary approval, or May 2023. For Block 2, developers must submit a complete FDP application four years from PUD/PDP approval or May 2025. EBALDC expedited its FDP application for its Senior Affordable Housing building on Block 1 ("Building B") to advance its funding applications, and the City of Oakland approved EBALDC's Final Development Plan on July 20, 2022. EBALDC has secured a \$24.4 million Affordable Housing & Sustainable Communities (AHSC) grant, and BART secured a Transit and Intercity Rail Capital Program (TIRCP) Grant for \$49 Million, of which \$19.5 Million will modernize BART infrastructure to enable the Lake Merritt TOD. LMTOD LLC is still working through design development for its high rise residential building ("Building A") and expects to submit an FDP application early in 2023.

The development team has completed the milestones stated in the ENA Extension and BART staff and the Development Team staff have negotiated a non-binding Lease Option Term Sheet for Block 1.

Extension of Exclusive Negotiating Agreement (ENA) for 101 8th Street

While Buildings C and D on Block 2 at 101 8th Street have received preliminary entitlements from the City of Oakland, development of these sites will take additional time to advance. The Metro Center building currently on the site accommodates several BART facilities including the BART Police Department Headquarters (BPD HQ) and other BART infrastructure. Staff are currently actively advancing efforts to relocate specialized operations from this site, with a goal of relocating all special facilities by the end of calendar year 2025. Relocating these uses by a certain date is key to attracting a future office tenant to the site, as these relocations will take several years, and the developer must be ready to begin

Adoption of City of Oakland Lake Merritt BART Station TOD CEQA findings; approval of Lake Merritt BART Station TOD Project, authorization to enter into an Option Agreement, and authorization for extension to the Exclusive Negotiating Agreement

construction within 12 to 18 months of securing the tenant in order to have success at moving the project forward. However, if the relocation is complete before the office development is ready to begin, the building could be occupied with interim office tenants who could more readily be relocated.

Prior to advancing development of Block 2, time is needed for the office market in Oakland to recover from the COVID-19 pandemic and allow remote work trends in the Bay Area to settle. For this reason, staff is recommending a three-year extension of the ENA, with two, one-year options to extend, contingent on LMTOD, LLC making concerted efforts to attract an anchor office tenant. Staff and the developer will return to the Board annually with a status update on the office market in Oakland, efforts to attract a tenant and relocate BART infrastructure, and an updated schedule for development.

The office of General Counsel will approve as to form any agreements and documents that may result from implementation of the motions presented below for approval.

FISCAL IMPACT: There is no fiscal impact to adopt the City's CEQA findings, adopt the Project, or to extend the ENA for Block 2. The fiscal impact of authorizing the Agreements for Block 1 will be net revenue positive to the District.

ALTERNATIVES: Do not adopt the City of Oakland's CEQA findings, do not approve the Project, do not authorize the General Manager or his designee to enter into a Lease Option Agreement and other agreements and documents as necessary needed to advance the Lake Merritt TOD, Block 1 development and do not authorize staff to extend the ENA for Block 2. This would effectively terminate the Lake Merritt station TOD at this time.

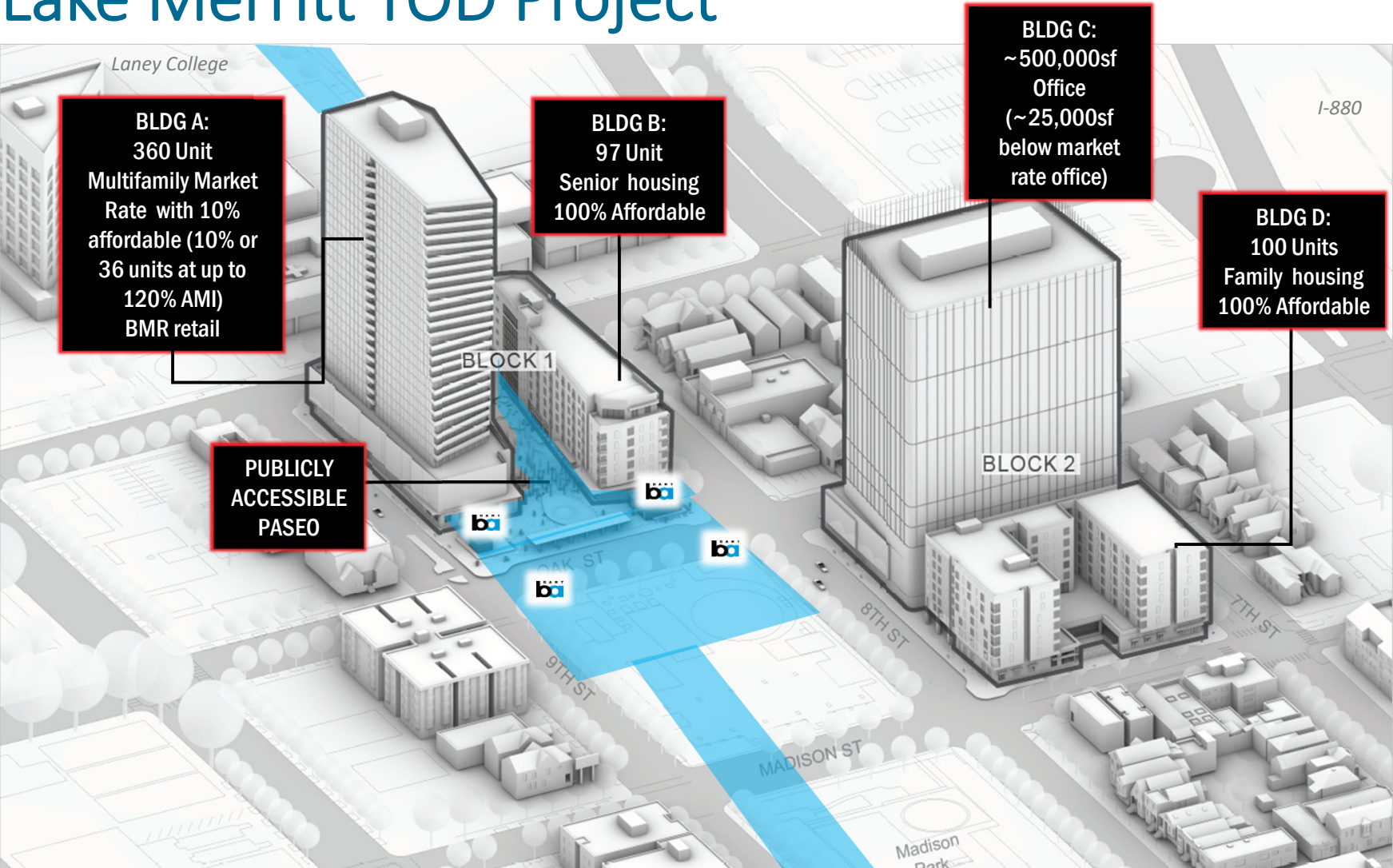
RECOMMENDATION: Adopt the following motions.

MOTION: After review and consideration of the environmental effects of the Lake Merritt TOD Project as shown in the 2014 Lake Merritt Station Area Plan EIR, certified on July 28, 2014, and the project specific Lake Merritt BART TOD CEQA Analysis Addendum adopted by the City of Oakland on May 19, 2021, the Board:

1. Adopts the City's CEQA Findings, Statement of Overriding Considerations, Standard Conditions of Approval and Mitigation Monitoring and Reporting Program;
2. Approves the Lake Merritt BART Station TOD Project;
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4. Authorizes the General Manager or his designee to extend the Exclusive Negotiating Agreement with the East Bay Asian Local Development Corporation (EBALDC) and LMTOD, LLC for Block 2, for a period of three years, with two additional one-year options to extend.

Adoption of City of Oakland Lake Merritt BART Station TOD CEQA findings; approval of Lake Merritt BART Station TOD Project, authorization to enter into an Option Agreement, and authorization for extension to the Exclusive Negotiating Agreement

Lake Merritt TOD Project



STRADA

EAST BAY ASIAN LOCAL
DEVELOPMENT CORPORATION
BUILDING HEALTHY, VIBRANT AND SAFE NEIGHBORHOODS

BART 50 YEARS
1972-2022

Attachment B:

The Lake Merritt Station Area Plan Environmental Impact Report (2014) can be accessed at the following link:

<https://www.oaklandca.gov/topics/lake-merritt-station-area-plan-environmental-impact-report>

California Environmental Quality Act

An evaluation of the Project is provided in the CEQA Checklist in Section 7 that follows. This evaluation concludes that the Lake Merritt BART Station Redevelopment Project qualifies for an addendum as well as an exemption from additional environmental review. It is consistent with the development density and land use characteristics established by the City of Oakland General Plan, and any potential environmental impacts associated with its development were adequately analyzed and covered by the analysis in the 2014 LMSAP EIR, and in the applicable Prior EIRs: the 1998 LUTE EIR, the 2011 Redevelopment Plan Amendments EIR, and the 2010 General Plan Housing Element Update EIR and its 2014 Addendum.

The Project would be required to comply with the applicable mitigation measures and City of Oakland SCAs identified in the 2014 LMSAP EIR. With implementation of the applicable mitigation measures and SCAs, the Project would not result in a substantial increase in the severity of previously identified significant impacts in the 2014 LMSAP EIR, the applicable Prior EIRs, or in any new significant impacts that were not previously identified in any of those Prior EIRs.

In accordance with California Public Resources Code Sections 21083.3, 21094.5, and 21166; and CEQA Guidelines Sections 15183, 15183.3, 15162, 15164, 15168, and 15180, and as set forth in the CEQA Checklist below, the Project qualifies for an addendum and one or more exemptions because the following findings can be made:

- **Addendum.** The 2014 LMSAP EIR analyzed the impacts of development within the LMSAP. The Project would not result in substantial changes or involve new information not already analyzed in the 2014 LMSAP EIR because the level of development now proposed for the site is within the broader development assumptions analyzed in the 2014 LMSAP EIR. The Project would not cause new significant impacts not previously identified in the 2014 LMSAP EIR, or result in a substantial increase in the severity of previously identified significant impacts. No new mitigation measures would be necessary to reduce significant impacts. No changes have occurred with respect to circumstances surrounding the LMSAP that would cause significant environmental impacts to which the Project would contribute considerably, and no new information has been put forward that shows that the Project would cause significant environmental impacts. Therefore, no supplemental environmental review is required in accordance with Public Resources Code Section 21166, and CEQA Guidelines Sections 15162 through 15164.
- **Community Plan Exemption.** The Project would not result in significant impacts that (1) are peculiar to the project or project site; (2) were not previously identified as significant project-level, cumulative, or offsite effects in the 2014 LMSAP EIR, or in the applicable Previous CEQA Documents: 1998 LUTE EIR, the 2011 Redevelopment Plan Amendments EIR, and for the housing components of the Project, the 2010 General Plan Housing Element Update EIR and its 2014 Addendum; or (3) were previously identified as significant effects, but—as a result of substantial new information not known at the time the 2014 LMSAP EIR was prepared, or when the Prior EIRs were certified—would increase in severity beyond that described in those EIRs. Therefore, the Project would meet the criteria to be exempt from further environmental review in accordance with Public Resources Code Section 21083.3 and CEQA Guidelines Section 15183.
- **Other Applicable Previous CEQA Documents - Prior EIRs and Redevelopment Projects.** The analysis in the 2011 Redevelopment Plan Amendments EIR, the 2010 General Plan

Housing Element Update EIR and its 2014 Addendum, and in this CEQA Analysis demonstrates that the Project would not result in substantial changes or involve new information that would warrant preparation of a subsequent EIR, per CEQA Guidelines Section 15162, because the level of development now proposed for the site is within the broader development assumptions analyzed in the EIR. The effects of the Project have been addressed in that EIR and no further environmental documents are required in accordance with CEQA Guidelines Sections CEQA Guidelines Sections 15168 and 15180.

Overall, based on an examination of the analysis, findings, and conclusions of the 2014 LMSAP EIR, as well as those of the 1998 LUTE EIR, the 2011 Redevelopment Plan Amendments EIR (or “Redevelopment Plan Amendments EIR”), and for the housing components of the Project, the 2010 General Plan Housing Element Update EIR and its 2014 Addendum—all of which are summarized in the CEQA Checklist in Section 7 of this document—the potential environmental impacts associated with the Lake Merritt BART Station Redevelopment Project have been adequately analyzed and covered in the 2014 LMSAP EIR and other Previous CEQA Documents. Therefore, no further review or analysis under CEQA is required.

Each of the above findings provides a separate and independent basis for CEQA compliance.

Attachment D:

Lake Merritt BART TOD CEQA Analysis Addendum can be accessed at:

https://cao-94612.s3.amazonaws.com/documents/LMBART-CEQA-Checklist-Addendum_Final_signed-1.pdf