

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

Board of Directors
Minutes of the 1,906th Meeting
April 14, 2022

A regular meeting of the Board of Directors was held on April 14, 2022, convening at 9:00 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 Allen, Ames, Dufty, Foley, Li, McPartland, Raburn, Simon, and Saltzman.

Absent: None.

President Saltzman gave instructions regarding Public Comment.

Under Item 2, Report of the Board President, President Saltzman announced that upon reaching Item 6-A, Office of the Inspector General's Investigative Report, the Board would convene a Special Meeting of the Audit Committee. President Saltzman explained that the Board and Audit Committee would meet and discuss the item and that the Board meeting would reconvene after the item concluded.

President Saltzman commented that there was an unpleasant public comment made at a prior Board Meeting and apologized, as many were unaware that the caller had made unpleasant comments towards a BART Board Director; thanked staff for quickly muting the caller; and expressed that in the future, the Board would not tolerate such comments.

Additionally, President Saltzman provided an update on the seat representing District seven, citing that all Directors have received information from the attorney representing Director Simon; there will be a 4-week review of the information provided; the Board would continue communicating with outside counsel on the matter; and the Board would apprise the public as more information becomes available.

President Saltzman announced that BART and Santa Clara Valley Transportation Authority (VTA) would have a joint meeting on April 27, 2022, at 2:00 p.m.

Aleta Dupree addressed the Board.

The item was discussed, with the following highlight:

Vice President Li inquired about whether the District's Customer Code of Conduct applied to Board meetings and enforcement of the Code in the past?

Consent Calendar items brought before the Board were:

1. Approval of Minutes of the Meetings of March 10, 2022 (Regular, Continued from March 24, 2022, Board Meeting), March 18, 2022 (Special), and March 24, 2022 (Regular).
2. Resolution to Continue Virtual Meetings During the Pandemic.
3. Resolution Authorizing the Submittal of BART to Antioch Operations Application, and Supporting Documents, for the Fiscal Year 2021-2022 Low Carbon Transit Operations Program (LCTOP).
4. Agreement with Toshiba America Business Solutions, Inc., for Leased Copiers and Managed Print Services.
5. Award of Invitation for Bid No. 9115, for the Procurement of No. 10 RH & LH Single Crossover.
6. Award of Invitation for Bid No. 9119, for the Procurement of Scissor Lift with Hi Rail System.
7. Agreement with ELERTS Corporation for BART Watch Incident Reporting System – ELERTS, See Something, Say Something System.

Director Raburn made the following motions as a unit. Director Simon seconded the motions, which carried by unanimous roll call vote. Ayes: 9 – Directors Allen, Ames, Dufty, Foley, Li, McPartland, Raburn, Simon, and Saltzman. Noes: 0.

1. That the Minutes of the Meetings of March 10, 2022, (Regular, Continued from March 24, 2022, Board Meeting), March 18, 2022 (Special), and March 24, 2022 (Regular).
 - a. be approved.
2. That Resolution No. 5511, 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 Resolution No. 5512, In the Matter of Authorizing the Submittal of BART to Antioch Operations Application, and Supporting Documents, for FY 21-22 Low Carbon Transit Operations Program (LCTOP), be adopted.
4. That the General Manager or his designee is authorized to enter into a NASPO ValuePoint copier service and lease agreement with Toshiba America Business Solutions, Inc. for an amount not to exceed \$1,068,333.
5. That the General Manager is authorized to award IFB 9115 for one (1) #10 Left Hand Crossover Track and one (1) #10 Right Hand Crossover Track to Voestalpine Railway Systems Nortrak LLC., Cheyenne, Wyoming in the amount of \$751,887.36 (includes all taxes), pursuant to notification to be issued by the General Manager, subject to compliance with the District’s Protest Procedure.
6. That the General Manager is authorized to award IFB 9119 Scissor Lift with Hi Rail System to Custom Truck One Source for an amount not-to-exceed \$2,425,094.45, pursuant to notification to

be issued by the General Manager, subject to compliance with the District's Protest Procedures and the FTA's requirements related to Protest Procedures.

7. That the Board authorizes the General Manager to execute a 3-Year prepaid subscription agreement, for ELERTS not to exceed \$244,678.00.

President Saltzman called for general Public Comment. Aleta Dupree addressed the Board.

President Saltzman called for the General Manager's Report. Robert Powers, General Manager, reported on the Mask Mandate Extension, Powell Street Station event hosting Senator Padilla, Red Line service, Eno Transportation Mid Management Program nominees, and ridership.

Aleta Dupree addressed the Board.

President Saltzman brought the matter of Office of the Inspector General's Investigative Report before the Board and announced that a Special Meeting of the Audit Committee would be convened under the item.

Director Dufty, Chairperson of the Audit Committee, convened a Special Meeting of the Audit Committee at 9:21 a.m. Chairperson Dufty and Audit Committee Members Allen, Parry, Saltzman, and Willis were present. Harriett Richardson, Inspector General, presented the item to the Board and the Audit Committee.

The following individuals addressed the Board:

Jeff Watson
Aleta Dupree
Unidentified Caller
Schatzie Jefferson
Ann-Marie Hogan
Liz Justison
Wayne Perry

The item was discussed, with the following highlights:

Michael Jones, Deputy General Manager, commented on Inspector General Richardson's presentation detailing her investigation regarding a potential conflict of interest.

President Saltzman thanked the Office of the Inspector General and staff for their work on the report presented and thanked General Manager Powers and Deputy General Manager Jones, and PGH Wong for their collaboration.

Vice President Li thanked staff, Inspector General Richardson, and PGH Wong for their work, collaboration, and information sharing; and commented that she did not think it was warranted at this time to take any actions to void the contract under discussion.

Director Allen thanked Inspector General Richardson and staff for their work on the report and the suggested recommendations. Director Allen expressed appreciation for the well-researched recommendations which included ways to strengthen the internal controls with contracting, in an effort to prevent conflicts of interest from happening with contracts and further recommended that the District Attorney's Office of Alameda County independently investigate the matter and make a

decision to turn the matter over to the Fair Political Practices Commission (FPPC) to allow them to investigate and make the final decision on the matter.

Director Ames asked a few clarifying questions of Inspector General Richardson relative to the investigation and report presented.

Director Foley thanked staff and Inspector General Richardson for their work; expressed support for all of the Inspector General's recommendations; and inquired about the timeline for implementation of all of the recommendations and whether outside counsel provided an opinion regarding the existence of a conflict of interest under Government Code section 1090.

Director McPartland commented that he initially had reservations about the risk of exposure related to potential contributions to profit-sharing based on the information received from outside counsel; thanked staff and Inspector General Richardson for all of their work; and expressed appreciation for General Manager Powers and Director Dufty's manner of addressing the situation and support for the recommendation that no conflict of interest exists.

Audit Committee Member Parry commented that this was a very difficult decision for the Board and management, given the legal considerations; expressed support for obtaining more legal advice on the matter; and commented that appearance does matter, particularly in this situation where there is a lack of clarity.

Director Raburn expressed appreciation for all of the work that has been done on the matter; commented that the potential for conflict of interest by a BART Manager did not lead to misuse of public funds and that person did not participate in the scoring and evaluation of any of the 8 \$40 million dollar bids that were presented to the Board in August 2020; noted that BART's bid procedures guard against abuse; expressed that there was no call to void the remaining \$27 million dollar contract and \$5.4 million in unpaid invoices; and suggested that BART should be looking at making changes to our Employee's Code of Conduct.

Director Simon inquired about our internal media policy as it relates to contractors, whether there was an ideal or appropriate time when the Office of the Inspector General might inform the organizational body on speaking with the media, and how might the Board inform the general public about the situation and the right time to do so.

Audit Committee Member Willis thanked Inspector General Richardson for providing a clear and detailed report; commended management on implementing 5 of the 6 recommendations in an effort to improve its procedures to avoid a potential conflict of interest in the future; and further commented that if a violation of Government Code Section 1090 was not clear at that time, she did not support voiding the contract and withholding funds from the contractor.

Director Dufty thanked everyone for their patience, mutual respect in having a conversation about the path going forward, and incredible collaboration; and expressed that he as well as several other Board Members did not believe there had been a Government Code Section 1090 violation.

The Special Audit Committee Meeting adjourned at 11:22 a.m.

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

Director Dufty, Chairperson of the Engineering and Operations Committee, brought the matter of Roll Call for Introductions (RCI) – Update on RCI Item No. 21-839: Re-Opening BART Restrooms before the Board. Martina Fragnani, Project Manager, presented the item.

Aleta Dupree addressed the Board.

The item was discussed with the following highlights:

President Saltzman thanked staff for all of their work associated with re-opening the restrooms, and to keep on schedule to accelerate re-opening others; and suggested creating and displaying better signage to apprise the public that the restrooms are open.

Director Raburn expressed agreement with the comments made by President Saltzman and desire to see more restrooms open; and suggested that the stainless steel doors be replaced in the current plans with the frosted glass doors.

Director Ames expressed agreement with reopening the restrooms; and inquired whether there were any grant opportunities to assist with keeping the restrooms open and funding the restroom attendant program.

Director Foley commented that as a public agency that utilizes public funds, BART should have public restrooms; expressed support for a restroom attendant program; and commented on working with staff on the restroom attendant program.

Director Dufty exited the meeting.

Director Foley, Chairperson of the Planning, Public Affairs, Access, and Legislation Committee, brought the matter of State Legislation for Consideration before the Board. Amanda Cruz, Manager of Government Relations and Legislative Affairs, presented the item.

Anne-Marie Hogan and Aleta Dupree addressed the Board.

Director Raburn moved that the Board of Directors supports Assembly Bill (AB) 1944 and Senate Bill (SB) 942. Vice President Li seconded the motion, which carried by unanimous roll call vote. Ayes: 8 – Directors Allen, Ames, Foley, Li, McPartland, Raburn, Simon, and Saltzman. Noes: 0. Absent: 1 – Director Dufty.

Vice President Li moved that the Board of Directors opposes SB 1488 unless amended. President Saltzman seconded the motion.

The item was discussed, with the following highlights:

Vice President Li asked staff to speak about how conflicts with investigatory oversight officers and bodies interact with BART Police Operations.

Director McPartland provided brief comments on the presentation brought before the Board by staff and recommended that the Board hear the concerns raised by the Office of the Inspector General.

Director Allen commented that there was an attempt to negotiate a charter for the Office of the Inspector General, that was never realized; provided comments about staff's presentation; and expressed concern about the potential conflict and staff's opposition to tighter internal controls and independent oversight by the Office of the Inspector General.

Director Ames commented that she was surprised by the opposition by staff to the recommendations of the Inspector General as we continuously try and be transparent; and asked the Inspector General a few questions related to her role and related legislation.

President Saltzman commented that having concerns about the subject legislation does not mean that there is a lack of support for the Office of the Inspector General, but also that there should be an oppose unless amended position because of the some the concerns raised and to engage further discussion in an effort to reach a support position.

Director Dufty re-entered the Meeting.

Director Raburn moved to call the question on the motion brought by Vice President Li and seconded by President Saltzman. President Saltzman seconded the motion, which carried by roll call vote. Ayes: 6 – Directors Dufty, Foley, Li, Raburn, Simon, and Saltzman. Noes: 3 – Directors Allen, Ames, and McPartland.

The motion brought by Vice President Li and seconded by President Saltzman to oppose SB 1488 unless amended carried by roll call vote. Ayes: 6 – Directors Dufty, Foley, Li, Raburn, Simon, and Saltzman. Noes: 3 – Directors Allen, Ames, and McPartland.

Director Foley brought the matter of Award of Agreement No. 6M6149, with Motorola Solutions Inc., for Automated License Plate Reader ("ALPR") Services for BART's Parking Enforcement Modernization Program, before the Board. Ryan Greene-Roesel, BART Accessibility Program Parking Manager, presented the item.

Aleta Dupree addressed the Board.

The item was discussed, with the following highlights:

Vice President Li thanked privacy advocates, Media Alliance for bringing critical issues to staff's attention and thanked staff for addressing the concerns and bringing back more information to the Board; expressed readiness to vote yes on this particular item; and requested a memo from staff or Motorola that details the fixes that have been implemented.

Director Raburn commented that staff has assured that they will come back to the Board with their annual report on whether new technology meets the Board's goals and expectations; shared that during a conference last week BART was identified as a leader in technology; and expressed his support of the item.

Vice President Li moved that (1) the General Manager be authorized to execute Agreement No. 6M6149 with Motorola, Inc. for ALPR services in an amount not to exceed \$318,112.00 for the five year base contract and three-month test period, subject to notification by the General Manager and compliance with the Districts' Protest Procedures; and that (2) the General Manager also be authorized to exercise the following options, subject to funding availability, for a total optional amount not to exceed \$2,139,170.00 to: (1)

extend the base contract for up to two additional years; (2) obtain up to 13 additional mobile units; and (3) obtain up to 52 additional fixed cameras, resulting in a total contract not-to-exceed amount of \$2,457,282.00. Director Raburn seconded the motion, which carried by unanimous roll call vote. Ayes: 9 – Directors Allen, Ames, Dufty, Foley, Li, McPartland, Raburn, Simon, and Saltzman. Noes: 0.

Director Foley brought the matter of Award of Agreement No. 6M6155 with HNTB Corporation, for Strategic Advising and Program Management Services (Round 2) for BART's Link21 (New Transbay Rail Crossing) Program. Sadie Graham, Director of Link21, presented the item.

The following individuals addressed the Board:

Peter Gertler
Jessica Dougherty
Robert Luster

Director Dufty moved that (1) the General Manager be authorized to award, subject to the negotiation of fair and reasonable cost reimbursement rates and fees, Agreement No. 6M6155, Strategic Advising and Program Management (Round 2 Services) to HNTB Corporation for a Not-to-Exceed Amount of Eighty Million (\$80,000,000.00) Million for a four (4) year agreement (Phase1); and that (2) the General Manager also be authorized to exercise an option to extend the agreement for six (6) years (Phase 2) for a not-to-exceed amount of One Hundred and Twenty Million (\$120,000,000.00) subject to the availability of funding. Director Foley seconded the motion.

The item was discussed, with the following highlights:

Director Dufty commented that the work output of HNTB has been outstanding pursuant to feedback received from other proposers, staff, and the team of other professionals working alongside the company.

Director Ames commented that the process of how contracts are awarded is concerning, as there is no scope of work provided for further review; expressed her request in the past for growth in both ridership and rail freight; emphasized that there is a lack of transparency and lack of Board guidance as there are little to no updates on the projects that are being awarded; and asked staff for frequent updates on the scope of work.

Director Raburn commented that the program selection is coming next year and looks forward to working with the public in making decisions that will impact climate action and equity.

Director Allen echoed the concerns mentioned by Director Ames, and expressed support for planning now for decades ahead.

Director Allen made the following substitute motion: That (1) the General Manager be authorized to award, subject to the negotiation of fair and reasonable cost reimbursement rates and fees, Agreement No. 6M6155, Strategic Advising and Program Management (Round 2 Services) to HNTB Corporation for a Not-to-Exceed Amount of Eighty Million (\$80,000,000.00) Million for a four (4) year agreement (Phase 1); (2) the General Manager is directed to return to the Board for approval of the exercise of an option; and (3) staff provides semi-annual updates to the Board. Director Ames seconded the motion, which carried by roll call vote. Ayes: 6 – Directors Allen, Ames, Foley, McPartland, Simon, and Saltzman. Noes: 3 – Directors Dufty, Li, and Raburn.

Director Dufty exited the Meeting.

President Saltzman announced that the Board would enter into closed session under Item 11-A (Conference with Legal Counsel – Existing Litigation), 11-B (Conference with Legal Counsel – Existing Litigation), and 11-C (Public Employee Employment) of the Regular Meeting agenda, and that the Board would reconvene in open session upon conclusion of the closed session.

The Board Meeting recessed at 1:28 p.m.

The Board reconvened in closed session at 1:47 p.m.

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

Absent: Director Dufty.

The Board Meeting recessed at approximately 3:10 p.m.

The Board reconvened in open session at 3:11 p.m.

Directors present: Directors Allen, Dufty, Li, Raburn, and Saltzman.

Absent: Director Dufty. Directors Ames and McPartland entered the Meeting later.

Director McPartland entered the Meeting.

Director Ames entered the Meeting.

Directors Foley and Simon entered the Meeting.

Director Foley brought the matter of Link21 Stage Gate 1 Approval before the Board. Link21 Director Graham presented the item.

Director Raburn moved that the Board supports utilization of the Stage Gate process, adopts the revised Link21 Program Vision, Goals, and Objectives and authorizes the General Manager, or his designee, to advance the Program through Stage Gate 1 to proceed with Phase 1: Program Identification. President Saltzman seconded the motion.

The item was discussed with the following highlights:

Director Ames asked staff to elaborate on the list of program alternatives for Phase 0 of the Link21 Stage Gate 1 Program, and to identify problems with the existing rail network Link21 is going to be based on.

Director Allen commented that she appreciates the higher-level thought that Director Ames is putting into this project and that she had a lot of questions after talking with staff as well; expressed disappointment that in 2.5 years and \$50 million of outreach and surveys, we are not further along into the details of this program; and indicated support for moving to the next phase and a desire for staff to start focusing on deliverables that are being brought before the Board.

President Saltzman expressed that she also has some of the same concerns about freight, but this is not the primary issue that freight is facing; and commented that BART is not an agency that is in charge of freight.

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

Director Simon exited the Meeting.

President Saltzman brought the matter of Response to Roll Call for Introductions Item No. 21-843: Exploration and Analysis of Increasing the Annual Contribution to the Section 115 Trust to Address the Continuously Increasing Amounts of Unfunded Pension Liabilities. Mary Beth Redding, Vice President of Batel Associates, presented the item.

The item was discussed with the following highlights:

Director Allen thanked Batel Associates Vice President Redding for addressing the risk and leverage associated with paying down some of the CalPERS liability layers; and commented on the data referencing the number of retirees to the number of people paying current contributions, and the factors that could create an increase over time.

Director Raburn thanked Batel Associates Vice President Redding for the presentation and inquired about the long-term implications of the contributions associated with the investment returns and the impact on retirees.

President Saltzman exited the Meeting and Vice President Li chaired the remainder of the Meeting.

Vice President Li inquired about whether staff could further elaborate on the CalPERS Trust associated with providing a return on investment for employee pensions and paying down liabilities.

Director Allen commented that the projections from 2019 have shifted out another 5 years, as putting \$10 million away in a pension reserve, will have an impact on our bond rating; and noted that it is time to look for ways to increase the contributions, rather than utilizing the assets to address budget deficits and unfunded liabilities.

Vice President Li called for Board Member Reports, Roll Call for Introductions, and In Memoriam requests.

Director Raburn reported that he had attended the Fruitvale Business District Safety Meeting along with Lieutenant Anisa McNack of the BART Police Department, the California Bicycle Summit, and the San Leandro Creek Alliance meeting, which included Lionel Sanchez, Deputy Managing Director of the Capitol Corridor Joint Powers Authority.

Director Foley submitted the following Roll Call for Introductions (RCI) request:

Request staff be directed to develop a Board Member Residency Verification process, to occur at least annually. The draft process shall be presented to the Board for adoption no later than the June 23, 2022 Board Meeting.

Vice President Li seconded Director Foley's RCI request.

Vice President Li thanked staff for setting up meetings with State Legislators; and reported that she had attended a meeting with Assemblymember Alex Lee and Assemblymember Ash Kalra on March 31, 2022, conducted a site visit at the Balboa Park Station with Tom Maloney and BART Police Department Lieutenant John Power, and also joined Director Dufty and San Francisco International Airport Staff (SFO) to visit the BART and SFO Air Train Station alongside SFO Airport Commissioner Jane Natoli.

The Meeting adjourned at 4:24 p.m.

April B. A. Quintanilla
Acting District Secretary