



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Robert M. Pomeroy</i> 4 Sept 2019		GENERAL MANAGER ACTION REQ'D:		
DATE: 8/30/2019		BOARD INITIATED ITEM: No		
Originator/Prepared by: Shana Dines Dept: Labor Relations <i>[Signature]</i> Signature/Date: 9/3/19	General Counsel <i>[Signature]</i> 9/4/19 []	Controller/Treasurer <i>[Signature]</i> 9/3/19 []	District Secretary []	BARC <i>[Signature]</i> 9/3/19 []

Approval of Increases to Pension Contributions and Wage Offsets

PURPOSE:

To ratify two side letters of agreement between the San Francisco Bay Area Rapid Transit District ("District"), the American Federation of State, County, and Municipal Employees Local 3993 ("AFSCME"), the Amalgamated Transportation Union Local 1555 ("ATU"), and the Service Employees International Union Local 1021 ("SEIU") (AFSCME, ATU, and SEIU will be collectively referred to as "the Unions" and the District and the Unions will be hereinafter referred to as "the Parties") representing both core BART and eBART employees which are revising contract language on retirement plans, and increasing pension contributions and wages.

Additionally, to approve the attached resolutions to increase pension contributions for non-represented employees for CalPERS, and a motion to implement same offset for Board Appointed Officers as applied to all other employees stated above.

DISCUSSION:

The District has been working with the Unions on resolving multiple disputed issues related to Public Employee Pension Reform Act ("PEPRA") employee status and benefits, as well as looking at the employee pension contributions for all employees, both Classic and PEPRA, as required by the 2016 contract extension agreements. The parties reached an agreement, which is consistent with terms agreed to in previous negotiations, to increase employee pension contributions by eliminating the Employer Paid Member Contribution ("EPMC") for Classic employees and incorporating an additional pension cost share for all employees, with corresponding wage offsets. This agreement resolved disputes with greater potential liability and settled a major issue prior to commencing contract negotiations in 2021, moving towards more collaborative labor-management relations at the District. The

Unions have ratified these agreements.

The General Manager has decided to extend the same pension contribution terms agreed to by the represented employees to the non-represented employees with the same corresponding wage offset as was negotiated with the Unions. The General Manager does not have the authority to implement pension or salary changes for the Board Appointed Officers ("BAOs"). For consistency, it is staff's recommendation that the Board extend the same terms to the BAOs. For the elimination of the EPMC, the California Public Employees Retirement System ("CalPERS") requires a resolution for all groups. For the additional pension cost share, CalPERS requires a separate resolution for the non-represented employees and BAOs (a requirement which is satisfied by the side letters for the represented employees).

California Government Code 7507 requires that adoption of a retirement benefit change occur no less than two weeks after the actuarial impact upon future annual costs is made public at a public meeting. At the August 22, 2019 Board meeting, the actuarial impact upon future annual costs of the change to pension contributions was publicly disclosed in compliance with this requirement.

FISCAL IMPACT:

The Side Letters were agreed to as part of a larger settlement agreement, which upon ratification of the Side Letters by the Parties, will resolve all issues related to PEPPRA and pension contributions. With each 1% pension contribution increase by the employees, the employees will receive a 0.7214% wage increase, consistent with terms agreed to by the Parties in the past to eliminate this benefit. This settlement agreement dismisses multiple claims with significant potential costs. The cost of the Side Letters is approximately \$2.3 million in FY 20 (0.67% of projected payroll), and \$2.8 million in FY 21 (0.81% of projected payroll). The cost of the resolutions regarding non-represented employees and BAOs is approximately \$670,000 in FY 20 (0.69% of projected payroll), and \$776,000 in FY 21 (0.78% of projected payroll).

ALTERNATIVES:

Reject the Side Letters. If the Board does not approve the Side Letters, the Parties would need to move the issues to a separate arbitration process, which could result in much greater liabilities. In addition, it could jeopardize the relationships between the District and the Unions leading up to 2021 negotiations.

RECOMMENDATION:

Adoption of the following motions:

MOTION:

The Board approves the following motions:

1. To authorize the General Manager to execute two side letters of agreement, including (1) Side Letter of Agreement AFSCME/SL19-01, ATU/SL 19-01, SEIU/SL 19-01 between the District, AFSCME, ATU, and SEIU, and (2) Side Letter of Agreement AFSCME (eBART)/SL19-01, ATU (eBART)/SL 19-01, SEIU (eBART)/SL 19-01 between the District, AFSCME representing eBART, ATU representing eBART, and SEIU representing eBART, both of which are revising contract language on retirement plans, and increasing pension contributions and wages.
2. To adjust the wages and pension contributions for the General Manager, General Counsel, Controller-Treasurer, District Secretary, Independent Police Auditor and Inspector General in the same manner and on the same schedule as described in Side Letter of Agreement 19-01.
3. To adopt the attached "Resolution for Employer Paid Member Contributions" for ATU, SEIU, AFSCME, and non-represented employees and authorize the Board President to sign the resolutions on behalf of the Board.
4. To adopt the attached resolution regarding pension cost sharing for non-represented employees.

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SIDE LETTER OF AGREEMENT

AFSCME/SL 19-01

ATU/SL19-01

SEIU/SL 19-01

Upon signing by the parties, this letter shall constitute a Side Letter of Agreement between the San Francisco Bay Area Rapid Transit District ("District"), the American Federation of State, County, and Municipal Employees Local 3993 ("AFSCME"), the Amalgamated Transit Union Local 1555 ("ATU"), and the Service Employees International Union Local 1021 ("SEIU")(AFSCME, ATU, and SEIU will be collectively referred to as "the Unions" and the District and the Unions will be hereinafter referred to as "the Parties") regarding the contract language on Retirement Benefits.

The following provisions of the respective contracts shall, effective following ratification of this Side Letter, be modified as follows:

ATU/SEIU Article 6.0 Retirement Benefits

~~The Parties agree that no later than thirty (30) days following a final ruling in State of California v DOL, the Parties shall commence bargaining regarding the provisions of Sections 6.1 and 6.2 of the SEIU/ATU Labor Agreement and any other applicable contract provision related to pension contributions.~~

~~After January 1, 2018 and upon request of any party, the parties agree to bifurcate the issues reflected in pending pension-related grievances and endeavor to reach agreement related to employee pension contributions.~~

~~The Parties agree that any resolution shall be cost neutral to all parties. The negotiations shall not result in an increase in the employer paid member contribution as described in Section 6.2. Any agreement described above shall immediately toll the District's prospective liability with respect to the dispute over employee contributions reflected in the grievances. All bargaining shall be conducted based upon the District's obligations under State and Federal law.~~

~~In the event that the Parties are unable to reach agreement within six (6) months of the commencement of bargaining, unresolved issues shall be put to interest arbitration for a final and binding decision.~~

~~Nothing in this Agreement is intended to modify or compromise the position of any party to this Agreement in relation to the pending litigation on referenced above.~~

ATU/SEIU Section 6.1 Public Employees' Retirement System

~~The District shall amend its contract with the Public Employee's Retirement Systems (PERS) to provide the two percent (2%) at 55 retirement option for miscellaneous members in the bargaining~~

~~unit. This change shall become effective August 31, 1992 or as soon thereafter as practicable. The District will take all reasonable steps necessary to implement this amendment so that it can be effective on August 31, 1992 or as soon thereafter as practicable. Except for this change, the District shall continue its present participation in PERS for miscellaneous members at existing levels.~~

~~To partially offset the cost of this new benefit, effective September 1, 1991 the District shall retain its contribution of one point six hundred twenty seven percent (1.627%) of payroll to the District's Money Purchase Pension Plan on behalf of members in the bargaining unit. The retention of the 1.627% contribution shall remain in effect to and including June 30, 2011. Bargaining unit employees shall reimburse the District through deductions from retroactive pay or from payroll deductions for the 1.627% contributions to the Money Purchase Pension Plan made on their behalf for the months of July and August 1991.~~

~~The Union shall approve all changes and execute all documents including, without limitation, documents relating to the PERS contract and the Money Purchase Pension Plan necessary to implement the 2% at 55 retirement benefit, and the change in the District's Money Purchase Pension Plan contribution rate.~~

The District shall provide the two percent (2%) at age 55 retirement plan formula for miscellaneous bargaining unit members determined by CalPERS rules to be classic members. The District shall provide a two percent (2%) at age 62 retirement plan formula, as mandated by PEPPRA, for all miscellaneous bargaining unit members determined by CalPERS rules to be PEPPRA members.

ATU/SEIU Section 6.2 PERS Pick-Up Pension Contributions

~~Effective no later than sixty (60) days following ratification of this Agreement employees shall contribute one half percent (.5%) of base pay towards the Employee's Contribution to the Public Employees' Retirement System (PERS) and the District shall discontinue that contribution. On January 1, 2014, employees shall contribute and the District shall discontinue the payment of an additional one half percent (.5%) of base pay towards the PERS Employee's Contribution. Effective January 1 of each successive year of this Agreement, employees shall contribute an additional one percent (1%) of base pay and the District shall discontinue the payment of one percent each year up to a maximum of four percent (4%). PERS Employee Contributions shall be made on the basis of PERSable income earned during each pay period during the time periods described above.~~

~~For each one half percent (.5%) of base pay that employees contribute to PERS, the District shall, at the same time, increase the base wage rates by 0.3607% and for each one percent (1%) the District shall, at the same time, increase the base wage rates by 0.7214%.~~

~~The District shall continue to pick up the remainder of employees' contributions to PERS. During the life of this Agreement, earnings may accrue to the District by reason of a reduction of the District's contribution to PERS.~~

~~The parties recognize that it may be contended that some of these payments were unlawful and that they could not have been made in the absence of an amendment to the District's contract with PERS and recognize further that BART has not sought such an amendment.~~

~~Should the District be required to reimburse PERS for back contributions related to these payments, BART's pick up of employee PERS contributions will cease until an amount equivalent to the amount required to be reimbursed to PERS has been placed by BART in an escrow account pending mutual agreement by the parties as to alternative benefit(s). Such benefit(s) shall not increase BART's aggregate direct or indirect payroll cost above the amount it would otherwise have incurred by continuation of the PERS pick up program.~~

Effective no later than the first full pay period following sixty (60) days after ratification of this Agreement and retroactive to July 1, 2019, all miscellaneous classic bargaining unit employees shall contribute six percent (6%) of pensionable income to CalPERS and all miscellaneous PEPR bargaining unit employees shall continue to contribute fifty percent (50%) of the normal cost as determined by CalPERS, **which is seven percent (7%) effective July 1, 2019.** Effective no later than the first full pay period following sixty (60) days after ratification, all miscellaneous bargaining unit employees shall receive a 1.4428% base pay increase retroactive to July 1, 2019.

Effective the first full pay period after January 1, 2020, all **classic** miscellaneous bargaining unit members shall contribute seven percent (7%) of pensionable income to CalPERS and all **PEPR bargaining unit employees shall continue to contribute seven percent (7%) of pensionable income to CalPERS** and all miscellaneous bargaining unit employees shall receive an additional 0.7214% base pay increase.

Effective the first full pay period after July 1, 2020, all miscellaneous bargaining unit members shall contribute eight percent (8%) of pensionable income to CalPERS and all miscellaneous bargaining unit employees shall receive an additional 0.7214% base pay increase.

Thereafter, if fifty percent (50%) of the normal cost exceeds eight percent (8%), the PEPR bargaining unit employees shall continue to contribute fifty percent (50%) of the normal cost as determined by CalPERS. It is understood that under PEPR, bargaining unit employees subject to PEPR may be required to contribute over eight percent (8%) of pay to pension in certain years.

To the extent permitted by law, the District agrees that should the current rate of statutory classic employee contributions to CalPERS increase beyond eight percent (8%) during the term of this Collective Bargaining Agreement, the District shall include such rate increase in the affected employer pick up on behalf of bargaining unit members determined by CalPERS rules to be classic members due subsequent to the rate increase. The parties agree that any additional cost to the

District resulting from any increase in the percentage level of employee contributions occurring after November 1979 shall be borne by the District until the expiration of this agreement.

Each employee is solely and personally responsible for any federal, state or local tax liability of the employee that may arise out of receipt of said pick up by the District or any penalty that may be imposed therefore.

AFSCME Section 5.1 Reimbursement of Employees' PERS Contribution Pension Contributions

Effective no later than sixty (60) days following ratification of this Agreement the employees shall contribute one half percent (.5%) of base pay towards the Employee's Contribution to the Public Employees' Retirement System (PERS) and the District shall discontinue that contribution. On January 1, 2014, the District shall discontinue the payment of an additional one half percent (.5%) of base pay towards the Employee's PERS contribution. Effective January 1 of each successive year of this Agreement, employees shall contribute an additional one percent (1%) of base pay, and the District shall discontinue the payment of one percent (1%) each year up to a maximum of four percent (4%). Employee PERS Contributions shall be made on the basis of PERSable income earned during the time periods described above.

The District shall continue to pick up the remainder of employees' contributions to PERS. During the life of this Agreement, earnings may accrue to the District by reason of a reduction of the District's contribution to PERS.

The District agrees that should the current rate of employee contribution to PERS increase during the term of this Collective Bargaining Agreement, the District shall include such rate increase in the affected pick up due to the subsequent rate increase. The parties agree that any additional cost to the District resulting from any increase in the percentage level of employee contributions occurring after November 1979 shall be borne by the District until the expiration of this Agreement.

The parties recognize that it may be contended that some of these payments were unlawful and that they could not have been made in the absence of an amendment to the District's contract with PERS and recognize further that BART has not sought such an amendment.

Should the District be required to reimburse PERS for back contributions related to these payments, BART's pick up of employee PERS contributions will cease until an amount equivalent to the amount required to be reimbursed to PERS has been placed by BART in an escrow account pending mutual agreement by the parties as to alternative benefit(s). Such benefit(s) shall not increase BART's aggregate direct or indirect payroll cost above the amount it would otherwise have incurred by continuation of the PERS pick up program.

Any PERS savings accrued by the District on or after July 1, 1989 remain the property of the District and shall not be shared with employees.

Effective no later than the first full pay period following sixty (60) days after ratification of this Agreement and retroactive to July 1, 2019, all miscellaneous classic bargaining unit employees shall contribute six percent (6%) of pensionable income to CalPERS and all miscellaneous PEPRA bargaining unit employees shall continue to contribute fifty percent (50%) of the normal cost as determined by CalPERS, which is seven percent (7%) effective July 1, 2019. Effective no later

than the first full pay period following sixty (60) days after ratification, all miscellaneous bargaining unit employees shall receive a 1.4428% base pay increase retroactive to July 1, 2019.

Effective the first full pay period after January 1, 2020, all classic miscellaneous bargaining unit members shall contribute seven percent (7%) of pensionable income to CalPERS and all PEPR bargaining unit employees shall continue to contribute seven percent (7%) of pensionable income to CalPERS and all miscellaneous bargaining unit employees shall receive an additional 0.7214% base pay increase.

Effective the first full pay period after July 1, 2020, all miscellaneous bargaining unit members shall contribute eight percent (8%) of pensionable income to CalPERS and all miscellaneous bargaining unit employees shall receive an additional 0.7214% base pay increase.

Thereafter, if fifty percent (50%) of the normal cost exceeds eight percent (8%), the PEPR employees shall continue to contribute fifty percent (50%) of the normal cost as determined by CalPERS. It is understood that under PEPR, bargaining unit employees subject to PEPR may be required to contribute over eight percent (8%) of pay to pension in certain years.

To the extent permitted by law, the District agrees that should the current rate of statutory classic employee contributions to CalPERS increase beyond eight percent (8%) during the term of this Collective Bargaining Agreement, the District shall include such rate increase in the affected employer pick up on behalf of bargaining unit members determined by CalPERS rules to be classic members due subsequent to the rate increase. The parties agree that any additional cost to the District resulting from any increase in the percentage level of employee contributions occurring after November 1979 shall be borne by the District until the expiration of this agreement.

Each employee is solely and personally responsible for any federal, state or local tax liability of the employee that may arise out of receipt of said pick up by the District or any penalty that may be imposed therefore.

Consistent with Sections 3.1 and 3.2, AFSCME pay bands shall also be adjusted by the amount of base pay increases as set forth herein.

AFSCME Section 5.2 Retirement Benefits

~~A. The District shall continue its present participation in the Public Employees' Retirement System (PERS) for miscellaneous members at existing levels.~~

~~The Parties agree that no later than thirty (30) days following a final ruling in *State of California v DOL*, the Parties shall commence bargaining regarding the provisions of Section 5.1 and any other applicable contract provision related to pension contributions.~~

~~After January 1, 2018 and upon request of any party, the parties agree to bifurcate the issues reflected in pending pension-related grievances and endeavor to reach agreement related to employee pension contributions.~~

~~The Parties agree that any resolution shall be cost neutral to all parties. The negotiations shall not result in an increase in the employer paid member contribution as described in Section 5.1. Any agreement described above shall immediately toll the District's prospective liability with respect to the dispute over employee contributions reflected in the grievances. All bargaining shall be conducted based upon the District's obligations under State and Federal law.~~

~~In the event that the Parties are unable to reach agreement within six (6) months of the commencement of bargaining, unresolved issues shall be put to interest arbitration for a final and binding decision.~~

~~Nothing in this Agreement is intended to modify or compromise the position of any party to this Agreement in relation to the pending litigation referenced above.~~

- A. The District shall provide the two percent (2%) at age 55 retirement plan formula for miscellaneous bargaining unit members determined by CalPERS rules to be classic members. The District shall provide a two percent (2%) at age 62 retirement plan formula, as mandated by PEPR, for all miscellaneous bargaining unit members determined by CalPERS rule to be PEPR members.
- B. Effective January 17, 1982, the District discontinued Employer paid additional contributions to PERS. Effective January 18, 1982, the District began contributions of one point six hundred twenty-seven thousandth's percent (1.627%) of payroll to the District's Money Purchase Pension Plan.
- C. ~~The District shall continue to contract with the Public Employees' Retirement System (PERS) to provide the two percent (2%) at 55 retirement option.~~ To partially offset the cost of the 2% at 55 retirement benefit, effective July 1, 1992, the District retained its contribution of one and six hundred twenty-seven thousandth's percent (1.627%) of payroll to the District's Money Purchase Pension Plan on behalf of members in the bargaining unit. The payment of these contributions during the term of the Agreement is subject to the terms of Section 5.5 MPPP and Section 6.2 PERS Medical.

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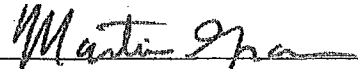
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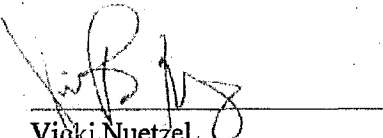
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D. Additional PERS Option. Upon execution of this Agreement, the District will permit employees to purchase up to four (4) years of service credit for any continuous active military service prior to employment with BART pursuant to Government Code Sections 20930.3 and 20930.33. The employees will bear all costs for this PERS option.

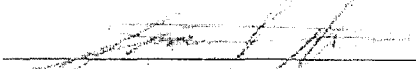
FOR THE DISTRICT

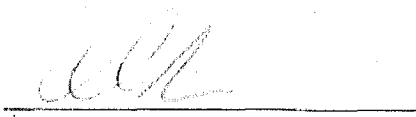

Martin Gran
Chief Labor Relations Officer

APPROVED AS TO FORM

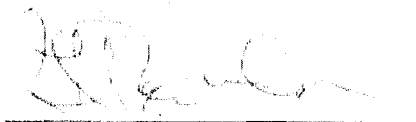

Vicki Nuetzel
Office of the General Counsel

FOR SEIU

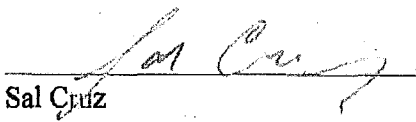

John Arantes
President, BART Chapter


Olivia Rocha
President, Professional Chapter

FOR ATU


Gena Alexander
President, ATU Local 1555

FOR AFSCME


Sal Cruz
President, AFSCME Local 3993

SIDE LETTER OF AGREEMENT

AFSCME (eBART)/SL 19-01

ATU(eBART) /SL19-01

SEIU(eBART)/SL 19-01

Upon signing by the parties, this letter shall constitute a Side Letter of Agreement between the San Francisco Bay Area Rapid Transit District ("District"), the American Federation of State, County, and Municipal Employees Local 3993 ("AFSCME") representing eBART, the Amalgamated Transit Union Local 1555 ("ATU") representing eBART, and the Service Employees International Union Local 1021 ("SEIU"), representing eBART (AFSCME, ATU, and SEIU will be collectively referred to as "the eBART Unions" and the District and the eBART Unions will be hereinafter referred to as "the Parties") regarding the contract language on Retirement Benefits.

The following provisions of the respective contracts shall, effective following ratification of this Side Letter, be modified as follows:

ATU/SEIU

~~10.3 — RETIREMENT BENEFITS~~

~~The Parties agree that no later than thirty (30) days following a final ruling in *State of California v. DOL*, the Parties shall commence bargaining regarding the provisions related to employee pensions, pension contributions and any other applicable contract provision related to pension contributions.~~

~~After January 1, 2018, and upon request of any party, the parties agree to bifurcate the issues reflected in pending pension-related grievances filed by the Unions prior to the execution of this Agreement and endeavor to reach agreement related to employee pension contributions.~~

~~The Parties agree that any resolution shall be cost neutral to all parties. The negotiations shall not result in an increase in the employer paid member contributions as specified in this Agreement. Any agreement described above shall immediately toll the District's prospective liability with respect to the dispute over employee contributions reflected in the grievances. All bargaining shall be conducted based upon the District's obligations under state and federal law.~~

~~In the event that the Parties are unable to reach agreement within six (6) months of the commencement of bargaining, unresolved issues shall be put to interest arbitration for a final and binding decision.~~

~~Nothing in this Agreement is intended to modify or compromise the position of any party to this Agreement in relation to the pending litigation referenced above.~~

10.43 PUBLIC EMPLOYEES' RETIREMENT SYSTEM & PICK UP

~~District employees are enrolled in the Public Employees' Retirement System (PERS). The District's 2013-2021 collective bargaining agreement with ATU and SEIU for District employees at core BART, provides that represented employees receive a benefit of two percent (2%) at age 55; and that employees contribute four percent (4%) of base pay towards the pension; and the District "picks up" the remainder of the Employer Paid Member Contribution to the extent that it exceeds four percent (4%) of base pay.~~

~~For those employees employed by the District prior to January 1, 2013, the District provides a pension of two percent (2%) at 55. Those employees contribute four percent (4%) of the required employee contribution. Employees first employed after January 1, 2013, are provided a pension benefit formula of two percent (2%) at 62 and those same employees are required to contribute fifty percent (50%) of normal cost towards the pension.~~

~~Employee contributions shall be made on all reportable compensation as defined by CalPERS. Each employee is solely and personally responsible for any federal, state or local tax liability of the employee that may arise out of receipt of said "pick up" by the District or any penalty that may be imposed therefore.~~

~~The District and the Union have ongoing disputes regarding the changes to the pension benefit and the change in employee contributions required of Union-represented employees first employed after January 1, 2013. The District asserts, without limitation, that enrollment into the appropriate retirement options is based on the eligibility requirements set by CalPERS and required by California law. The Union objects to the changes described above, and asserts without limitation that the changes to the pension benefit and contribution requirements, and their implementation are unlawful. Both the District and the Union expressly reserve their rights regarding the legal and contractual rights, requirements or restrictions on pension formulae and contributions. Nothing in this description shall be construed as a waiver of either the District's or Union's position taken in any pending pension-related litigation, administrative proceeding, or grievance, and the parties agree that it shall not be cited or referenced in any pending pension-related litigation.~~

~~It is expressly agreed and understood that pension benefits and contributions may be subject to change as a result of the final ruling in *State of California v. DOL*, or following negotiation and/or interest arbitration as described in Section 10.3 above and that such changes, if any, shall apply equally to all employees represented by ATU and SEIU at core BART and eBART.~~

The District shall provide the two percent (2%) at age 55 retirement plan formula for miscellaneous bargaining unit members determined by CalPERS rules to be classic members. The District shall provide a two percent (2%) at age 62 retirement plan formula, as mandated by PEPR, for all miscellaneous bargaining unit members determined by CalPERS rules to be PEPR members.

Effective no later than the first full pay period following sixty (60) days after ratification of this Agreement and retroactive to July 1, 2019, all miscellaneous classic bargaining unit employees shall contribute six percent (6%) of pensionable income to CalPERS and all miscellaneous PEPR bargaining unit employees shall continue to contribute fifty percent (50%) of the normal cost as determined by CalPERS, which is seven percent (7%) effective July 1, 2019. Effective no later

than the first full pay period following sixty (60) days after ratification, all miscellaneous bargaining unit employees shall receive a 1.4428% base pay increase retroactive to July 1, 2019.

Effective the first full pay period after January 1, 2020, all classic miscellaneous bargaining unit members shall contribute seven percent (7%) of pensionable income to CalPERS and all PEPRAs bargaining unit employees shall continue to contribute seven percent (7%) of pensionable income to CalPERS and all miscellaneous bargaining unit employees shall receive an additional 0.7214% base pay increase.

Effective the first full pay period after July 1, 2020, all miscellaneous bargaining unit members shall contribute eight percent (8%) of pensionable income to CalPERS and all miscellaneous bargaining unit employees shall receive an additional 0.7214% base pay increase.

Thereafter, if fifty percent (50%) of the normal cost exceeds eight percent (8%), the PEPRAs employees shall continue to contribute fifty percent (50%) of the normal cost as determined by CalPERS. It is understood that under PEPRAs, bargaining unit employees subject to PEPRAs may be required to contribute over eight percent (8%) of pay to pension in certain years.

To the extent permitted by law, the District agrees that should the current rate of statutory classic employee contributions to CalPERS increase beyond eight percent (8%) during the term of this Collective Bargaining Agreement, the District shall include such rate increase in the affected employer pick up on behalf of bargaining unit members determined by CalPERS rules to be classic members. The parties agree that any additional cost to the District resulting from any increase in the percentage level of employee contributions occurring after November 1979 shall be borne by the District until the expiration of this agreement.

Each employee is solely and personally responsible for any federal, state or local tax liability of the employee that may arise out of receipt of said pick up by the District or any penalty that may be imposed therefore.

AFSCME Section 10.4. Retirement Benefits

~~10.4 — RETIREMENT BENEFITS~~

~~The Parties agree that no later than thirty (30) days following a final ruling in *State of California v. DOL*, the Parties shall commence bargaining regarding the provisions related to employee pensions, pension contributions and any other applicable contract provision related to pension contributions.~~

~~After January 1, 2018, and upon request of any party, the parties agree to bifurcate the issues reflected in pending pension-related grievances filed by the Unions prior to the execution of this Agreement and endeavor to reach agreement related to employee pension contributions. The Parties agree that any resolution shall be cost neutral to all parties. The negotiations shall not result~~

~~in an increase in the employer paid member contributions as specified in this Agreement. Any agreement described above shall immediately toll the District's prospective liability with respect to the dispute over employee contributions reflected in the grievances. All bargaining shall be conducted based upon the District's obligations under state and federal law.~~

~~In the event that the Parties are unable to reach agreement within six (6) months of the commencement of bargaining, unresolved issues shall be put to interest arbitration for a final and binding decision.~~

~~Nothing in this Agreement is intended to modify or compromise the position of any party to this Agreement in relation to the pending litigation referenced above.~~

10.54 PUBLIC EMPLOYEES' RETIREMENT SYSTEM & PICK UP

~~District employees are enrolled in the Public Employees' Retirement System (PERS). The District's 2013-2021 collective bargaining agreement with AFSCME for District employees at core BART, provides that represented employees receive a benefit of two percent (2%) at age 55; and that employees contribute four percent (4%) of base pay towards the pension; and the District "picks up" the remainder of the Employer Paid Member Contribution to the extent that it exceeds four percent (4%) of base pay.~~

~~For those employees employed by the District prior to January 1, 2013, the District provides a pension of two percent (2%) at 55. Those employees contribute four percent (4%) of the required employee contribution. Employees first employed after January 1, 2013, are provided a pension benefit formula of two percent (2%) at 62 and those same employees are required to contribute fifty percent (50%) of normal cost towards the pension.~~

~~Employee contributions shall be made on all reportable compensation as defined by CalPERS. Each employee is solely and personally responsible for any federal, state or local tax liability of the employee that may arise out of receipt of said "pick up" by the District or any penalty that may be imposed therefore.~~

~~The District and the Union have ongoing disputes regarding the changes to the pension benefit and the change in employee contributions required of Union represented employees first employed after January 1, 2013. The District asserts, without limitation, that enrollment into the appropriate retirement options is based on the eligibility requirements set by CalPERS and required by California law. The Union objects to the changes described above, and asserts without limitation that the changes to the pension benefit and contribution requirements, and their implementation~~

The District shall provide the two percent (2%) at age 55 retirement plan formula for miscellaneous bargaining unit members determined by CalPERS rules to be classic members. The District shall provide a two percent (2%) at age 62 retirement plan formula, as mandated by PEPR, for all miscellaneous bargaining unit members determined by CalPERS rules to be PEPR members.

Effective no later than the first full pay period following sixty (60) days after ratification of this Agreement and retroactive to July 1, 2019, all miscellaneous classic bargaining unit employees

shall contribute six percent (6%) of pensionable income to CalPERS and all miscellaneous PEPRAs bargaining unit employees shall continue to contribute fifty percent (50%) of the normal cost as determined by CalPERS, which is seven percent (7%) effective July 1, 2019. Effective no later than the first full pay period following sixty (60) days after ratification, all miscellaneous bargaining unit employees shall receive a 1.4428% base pay increase retroactive to July 1, 2019.

Effective the first full pay period after January 1, 2020, all classic miscellaneous bargaining unit members shall contribute seven percent (7%) of pensionable income to CalPERS and all PEPRAs bargaining unit employees shall continue to contribute seven percent (7%) of pensionable income to CalPERS and all miscellaneous bargaining unit employees shall receive an additional 0.7214% base pay increase.

Effective the first full pay period after July 1, 2020, all miscellaneous bargaining unit members shall contribute eight percent (8%) of pensionable income to CalPERS and all miscellaneous bargaining unit employees shall receive an additional 0.7214% base pay increase.

Thereafter, if fifty percent (50%) of the normal cost exceeds eight percent (8%), the PEPRAs employees shall continue to contribute fifty percent (50%) of the normal cost as determined by CalPERS. It is understood that under PEPRAs, bargaining unit employees subject to PEPRAs may be required to contribute over eight percent (8%) of pay to pension in certain years.

To the extent permitted by law, the District agrees that should the current rate of statutory classic employee contributions to CalPERS increase beyond eight percent (8%) during the term of this Collective Bargaining Agreement, the District shall include such rate increase in the affected employer pick up on behalf of bargaining unit members determined by CalPERS rules to be classic members. The parties agree that any additional cost to the District resulting from any increase in the percentage level of employee contributions occurring after November 1979 shall be borne by the District until the expiration of this agreement.

Each employee is solely and personally responsible for any federal, state or local tax liability of the employee that may arise out of receipt of said pick up by the District or any penalty that may be imposed therefore.

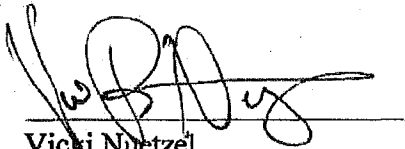
Consistent with Section 10.1, AFSCME pay bands for all eBART employees shall also be adjusted by the amount of base pay increases as set forth herein.

FOR THE DISTRICT



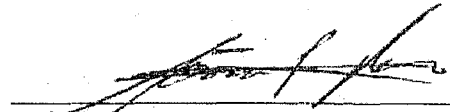
Shana Dines
Chief Labor Relations Officer

APPROVED AS TO FORM

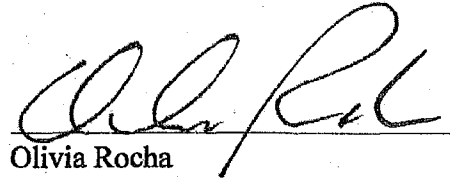


Vicki Nuetzel
Office of the General Counsel

FOR SEIU

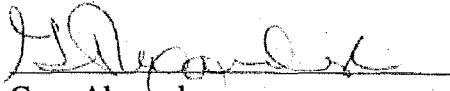


John Arantes
President, BART Chapter



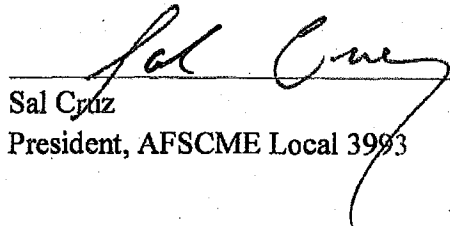
Olivia Rocha
President, Professional Chapter

FOR ATU



Gena Alexander
President, ATU Local 1555

FOR AFSCME



Sal Cruz
President, AFSCME Local 3993

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

In the Matter of The
Employer Paid Member Contributions
Under the California Public Employees
Retirement System for
Employees represented
by AFSCME:

Resolution No. _____

RESOLUTION FOR EMPLOYER PAID MEMBER CONTRIBUTIONS

WHEREAS, the governing body of the San Francisco Bay Area Rapid Transit District has the authority to implement Government Code Section 20691;

WHEREAS, the governing body of the San Francisco Bay Area Rapid Transit District has a written collective bargaining agreement with the American Federation of State, County and Municipal Employees Local 3993 (AFSCME) which specifically provides for a percentage of the normal member contributions to be paid by the employer;

WHEREAS, one of the steps in the procedures to implement Section 20691 is the adoption by the governing body of The San Francisco Bay Area Rapid Transit District of a Resolution to commence said Employer Paid Member Contributions (EPMC); and

WHEREAS, the governing body of the San Francisco Bay Area Rapid Transit District has identified the following conditions for the purpose of its election to pay EPMC:

- The benefit shall apply to all classic employees represented by AFSCME.
- This benefit shall consist of paying 14.286% of the normal member contribution as EPMC effective on July 1, 2019 and 0% of the normal member contribution as EPMC effective on January 1, 2020.
- The effective date of this Resolution shall be July 1, 2019.

NOW, THEREFORE, BE IT RESOLVED, the governing body of the San Francisco Bay Area Rapid Transit District elects to pay EPMC, as set forth above.

Adopted at a regular meeting of the Board of Directors of the San Francisco Bay Area Rapid Transit District at Oakland, California this ____ day of _____ 2019.

Signed: _____
Board President

Attest: _____
District Secretary

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

In the Matter of The
Employer Paid Member Contributions
Under the California Public Employees
Retirement System for
Employees represented
by ATU:

Resolution No. _____

RESOLUTION FOR EMPLOYER PAID MEMBER CONTRIBUTIONS

WHEREAS, the governing body of the San Francisco Bay Area Rapid Transit District has the authority to implement Government Code Section 20691;

WHEREAS, the governing body of the San Francisco Bay Area Rapid Transit District has a written collective bargaining agreement with the Amalgamated Transit Union Local 1555 ("ATU") which specifically provides for a percentage of the normal member contributions to be paid by the employer;

WHEREAS, one of the steps in the procedures to implement Section 20691 is the adoption by the governing body of The San Francisco Bay Area Rapid Transit District of a Resolution to commence said Employer Paid Member Contributions (EPMC); and

WHEREAS, the governing body of the San Francisco Bay Area Rapid Transit District has identified the following conditions for the purpose of its election to pay EPMC:

- The benefit shall apply to all classic employees represented by ATU.
- This benefit shall consist of paying 14.286% of the normal member contribution as EPMC effective on July 1, 2019 and 0% of the normal member contribution as EPMC effective on January 1, 2020.
- The effective date of this Resolution shall be July 1, 2019.

NOW, THEREFORE, BE IT RESOLVED, the governing body of the San Francisco Bay Area Rapid Transit District elects to pay EPMC, as set forth above.

Adopted at a regular meeting of the Board of Directors of the San Francisco Bay Area Rapid Transit District at Oakland, California this ____ day of _____ 2019.

Signed: _____
Board President

Attest: _____
District Secretary

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

In the Matter of The
Employer Paid Member Contributions
Under the California Public Employees
Retirement System for
Employees represented
by SEIU:

Resolution No. _____

RESOLUTION FOR EMPLOYER PAID MEMBER CONTRIBUTIONS

WHEREAS, the governing body of the San Francisco Bay Area Rapid Transit District has the authority to implement Government Code Section 20691;

WHEREAS, the governing body of the San Francisco Bay Area Rapid Transit District has a written collective bargaining agreement with the Service Employees International Union Local 1021 ("SEIU") which specifically provides for a percentage of the normal member contributions to be paid by the employer;

WHEREAS, one of the steps in the procedures to implement Section 20691 is the adoption by the governing body of The San Francisco Bay Area Rapid Transit District of a Resolution to commence said Employer Paid Member Contributions (EPMC); and

WHEREAS, the governing body of the San Francisco Bay Area Rapid Transit District has identified the following conditions for the purpose of its election to pay EPMC:

- The benefit shall apply to all classic employees who are represented by SEIU.
- This benefit shall consist of paying 14.286% of the normal member contribution as EPMC effective on July 1, 2019 and 0% of the normal member contribution as EPMC effective on January 1, 2020.
- The effective date of this Resolution shall be July 1, 2019.

NOW, THEREFORE, BE IT RESOLVED, the governing body of the San Francisco Bay Area Rapid Transit District elects to pay EPMC, as set forth above.

Adopted at a regular meeting of the Board of Directors of the San Francisco Bay Area Rapid Transit District at Oakland, California this ____ day of _____ 2019.

Signed: _____
Board President

Attest: _____
District Secretary

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

In the Matter of The
Employee Sharing Additional Cost
Under the California Public Employees
Retirement System for
Non-Represented Miscellaneous Employees:

Resolution No. _____

RESOLUTION FOR EMPLOYEE SHARING ADDITIONAL COST

WHEREAS, the governing body of the San Francisco Bay Area Rapid Transit District has the authority to implement Government Code Section 20516; and

WHEREAS, the governing body of the San Francisco Bay Area Rapid Transit District has identified the following conditions for the purpose of its election to pay the additional cost share:

- Classic and PEPR Non-represented miscellaneous employees will pay an additional 1%.
- The effective date of this Resolution shall be July 1, 2020.

NOW, THEREFORE, BE IT RESOLVED, the governing body of the San Francisco Bay Area Rapid Transit District elects the Employee Sharing Additional Cost, as set forth above.

Adopted at a regular meeting of the Board of Directors of the San Francisco Bay Area Rapid Transit District at Oakland, California this ____ day of _____ 2019.

Signed: _____
Board President

Attest: _____
District Secretary

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

In the Matter of The
Employer Paid Member Contributions
Under the California Public Employees
Retirement System for
Non-Represented Miscellaneous Employees:

Resolution No. _____

RESOLUTION FOR EMPLOYER PAID MEMBER CONTRIBUTIONS

WHEREAS, the governing body of the San Francisco Bay Area Rapid Transit District has the authority to implement Government Code Section 20691;

WHEREAS, The San Francisco Bay Area Rapid Transit District wishes to provide for a percentage of the normal member contributions of classic non-represented miscellaneous employees to be paid by the employer;

WHEREAS, one of the steps in the procedures to implement Section 20691 is the adoption by the governing body of The San Francisco Bay Area Rapid Transit District of a Resolution to commence said Employer Paid Member Contributions (EPMC); and

WHEREAS, the governing body of the San Francisco Bay Area Rapid Transit District has identified the following conditions for the purpose of its election to pay EPMC:

- The benefit shall apply to all classic employees who are non-represented.
- This benefit shall consist of paying 14.286% of the normal member contribution as EPMC effective on July 1, 2019 and 0% of the normal member contribution as EPMC effective on January 1, 2020.
- The effective date of this Resolution shall be July 1, 2019.

NOW, THEREFORE, BE IT RESOLVED, the governing body of the San Francisco Bay Area Rapid Transit District elects to pay EPMC, as set forth above.

Adopted at a regular meeting of the Board of Directors of the San Francisco Bay Area Rapid Transit District at Oakland, California this ____ day of _____ 2019.

Signed: _____
Board President

Attest: _____
District Secretary