

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

Board of Directors  
Minutes of the 1,915<sup>th</sup> Meeting  
September 8, 2022

A regular meeting of the Board of Directors was held on September 8, 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, District Secretary.

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

Absent: None. Directors McPartland and Simon entered the Meeting later.

Director McPartland entered the Meeting.

Director Simon entered the Meeting.

President Saltzman brought the matter of Report of the Board President before the Board and announced that the next Board Meeting on Thursday, September 22, 2022, would be the first in-person meeting at BART Headquarters; that members of the public would be able to participate in Board Meetings via Zoom in the future; and that the Board Meeting on Thursday, October 27, 2022, would be held at the Hayward Maintenance Complex at 10:00 a.m.

President Saltzman called for Public Comment on the Report of the Board President. Aleta Dupree addressed the Board.

President Saltzman announced that the rules regarding masks in the Board Room would be the same as the rules for employees in the BART Headquarters building.

President Saltzman brought the matter of Board Committee Reports before the Board. Director Dufty, Chairperson of the Audit Committee, announced that he had attended the BART and Santa Clara Valley Transportation Authority (VTA) joint committee meeting on August 26, 2022; referenced the items discussed in the meeting; announced that Gary Griggs has been hired as VTA's new Chief Program Management Officer; and shared that VTA would be conducting a Board workshop on September 16, 2022.

President Saltzman called for Public Comment on the Board Committee Reports. Aleta Dupree addressed the Board.

Consent Calendar items brought before the Board were:

1. Approval of Minutes of the Meetings of August 23, 2022 (Special) and August 25, 2022 (Regular).
2. Award of Agreement No. 6M5188 for Language Translation and Interpretation Services.

3. 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).
4. BART Accessibility Task Force (BATF) Membership Appointment.

Director Foley made the following motions as a unit. Vice President Li seconded the motions.

1. That the Minutes of the Meetings of August 23, 2022 (Special) and August 25, 2022 (Regular), be approved.
2. That the General Manager be 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 Federal Transit Administration (FTA) requirements related to protest procedures; and that the General Manager also be 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.
3. That the General Manager be 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.
4. That 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.

President Saltzman called for Public Comment on the Consent Calendar. No comments were received.

The motions brought by Director Foley and seconded by Vice President Li carried by unanimous roll call vote. Ayes: 9 – Directors Allen, Ames, Dufty, Foley, Li, McPartland, Raburn, Simon, and Saltzman. Noes: 0.

President Saltzman called for the General Manager's Report. Robert Powers, General Manager, reported on BART's 50<sup>th</sup> Anniversary celebration on September 10, 2022; vintage arcade games at Powell Street Station; new systemwide schedule changes; improved service seven days a week; the launch of a new mobile application for East Bay Paratransit Contactless Fare Payment; the El Cerrito Plaza Transit-Oriented Development (TOD) project; BART's outdoor Soundtrack Concert Series; BART's upcoming Transit General Managers' Ride Along and Happy Hour; and ridership.

Aleta Dupree addressed the Board.

The item was discussed with the following highlights:

Director Allen commented on the recent heat wave and its impact on train service; queried staff on the disparities with service; commented on the upgrade from the East Bay Paratransit System, and lastly inquired about the increase in ridership and the correlation with the recent increase in crime.

Director Dufty commented on the BART-VTA joint committee meeting and asked General Manager Powers for feedback.

Director Raburn shared his most recent experience with train service at Lake Merritt Station after attending an evening Board meeting, noting a 25-minute delay in-between trains; commented that he recently met John Fitzgibbon, Manager of Schedules and Services, who provided insight into the methodology behind the newly implemented train scheduling.

President Saltzman expressed excitement about ridership and commented on General Manager Powers' report on the El Cerrito Planning Commission and Design Review Committee Meeting regarding Plaza development.

President Saltzman called for general Public Comment. David Fritz addressed the Board.

President Saltzman thanked David Fritz for volunteering to join the BATF.

Director Raburn commented that he was experiencing log-in issues when he had planned to introduce David Fritz as a Special Guest and commented that he and David had served on the Service Review Advisory Committee together in the past.

David Fritz and Aleta Dupree addressed the Board.

Director Simon, Chairperson of the Administration Committee, brought the matter of Responses to the 2021-2022 Alameda County Grand Jury Report, "BART is on the Wrong Track with Independent Oversight" before the Board. Pamela Herhold, Assistant General Manager, Performance and Budget, and Dennis Markham, Director of Performance and Audit, presented the item.

Director Simon moved that 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.

The following individuals addressed the Board:

Aleta Dupree  
Harriett Richardson  
Joe Kunzler

The item was discussed, with the following highlights:

President Saltzman expressed support for the Office of the Inspector General (OIG) and acknowledged some of the challenges with the creation of the OIG.

President Saltzman seconded the motion brought by Director Simon.

Discussion continued, with the following highlights:

President Saltzman expressed support for fully funding the OIG; commented that 85% of the recommendations from the OIG have been implemented by BART; and encouraged all parties to continue to work together collaboratively.

Director Ames expressed agreement with the Inspector General regarding the need for collaboration and working with the OIG; commented on the insufficiency and tone of the answers she had received; and noted that she could not support the item.

Director McPartland expressed disagreement with the presentation made by staff; commented that the Inspector General did not participate in the presentation, and as result, the findings will have to be vetted by the Grand Jury; expressed concern about the behavior of staff and Board Appointed Officers; and noted that he did not support the item.

Director Allen expressed that this is a project in which she has taken a great interest; commented that this level of oversight has been needed for some time and that BART needs to expand the role of the Inspector General; expressed support for Senate Bill 1488 and disagreement with the Grand Jury report regarding how Board Members were depicted; and commented that she did not support the proposed response that would be provided to the Grand Jury and that the Bay Area Transportation Authority had indicated that it would not provide BART with any more funds for the OIG.

Director Dufty thanked the Alameda County Civil Grand Jury; acknowledged the civilian process associated with participating on a Grand Jury; thanked staff for their work with this process; commented on the impact COVID-19 has had on BART and its funding sources, the creation of the Inspector General's position and the possibility of establishing a Chief Financial Officer position aimed at improving financial accountability, and the improvements that have been made as a result of having an Inspector General; and expressed the need to work harder so that the OIG is not seen as underfunded.

Director Raburn shared that his background includes chairing the Alameda County Citizen Watchdog Oversight body for Measure B for over a decade; expressed the highest regard for oversight bodies; commented on the great work of other agencies such as Amtrak and the City of Oakland aimed at addressing retention and the remarks made by the Grand Jury; and referenced the Inspector General's previous employment.

The motion brought by Director Simon and seconded by President Saltzman carried by roll call vote. Ayes: 6 – Directors Dufty, Foley, Li, Raburn, Simon, and Saltzman. Noes: 3 – Directors Allen, Ames, and McPartland. (The Responses are attached and hereby made a part of these Minutes.)

Director Simon brought the matter of Amended and Restated Clipper® Memorandum of Understanding before the Board. Assistant General Manager Herhold and Mike Eiseman, Director of Financial Planning, presented the item.

Aleta Dupree and Joe Kunzler addressed the Board.

The item was discussed, with the following highlights:

Director Raburn requested to strike the fifth bullet point regarding Clipper® as the primary fare payment system, citing the aspirational goal BART has with the Capital Corridor and the California Integrated Travel Project, which enables passengers anywhere in the State of California to mobilize both credit and Clipper® cards.

Director Raburn moved that the General Manager be 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®, with the stipulation that item 5 as noted in the 2022 Memorandum of Understanding summary in the Executive Decision Document, regarding Clipper® as the primary fare payment system, be deleted.

Discussion continued, with the following highlight:

President Saltzman deferred to staff for clarity on the impact of changing the document.

The motion brought by Director Raburn died for lack of a second.

President Saltzman moved that the General Manager be 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®. Director Allen 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 Allen exited the Meeting.

Director Dufty, Chairperson of the Engineering and Operations Committee, brought the matter of District Military Equipment Use Policy and Ordinance before the Board. Director Dufty read a letter of support submitted by Erin Armstrong, Chair of the BART Police Citizen Review Board, aloud.

Aleta Dupree addressed the Board.

Director Raburn moved that the Board adopts the attached Military Equipment Use Policy and the Military Use Ordinance and that Resolution No. 5531, 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, be adopted. Director Simon seconded the motion, which carried by unanimous roll call vote. Ayes: 9 – Directors Allen, Ames, Dufty, Foley, Li, McPartland, Raburn, Simon, and Saltzman (Director Allen was absent during roll call, but later requested that her vote be recorded as “yes”). Noes: 0. (The Policy and Ordinance are attached and hereby made a part of these Minutes.)

Director Allen entered the Meeting.

Director Dufty brought the matter of Award of Contract No. 15IJ-130, Fire Alarm System Replacement, Phase 3, before the Board.

Director Simon moved that the General Manager be 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 \$10,144,589.00 pursuant to a notification to be issued by the General Manager and subject to

compliance with the District's Protest Procedures. Vice President Li 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.

President Saltzman announced that the Board would enter into closed session under Item 9-A (Conference with Real Property 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.

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The Board reconvened in closed session at 11:16 a.m.

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

Absent: None.

The Board Meeting recessed at 12:20 p.m.

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The Board reconvened in open session at 12:36 p.m.

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

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

President Saltzman announced that the Board had concluded its closed session under Item 9-A and that there was no announcement to be made.

Director Dufty entered the Meeting.

Director Simon entered the Meeting.

Director Foley, Chairperson of the Planning, Public Affairs, Access, and Legislation Committee, brought the matter of Lake Merritt BART Station Area Projects before the Board. Alesia Strauch, Principal Right of Way Officer; Gina Galetti, Deputy Police Chief; Abigail Thorne-Lyman, Director of Real Estate and Property Development; and Mariana Parreiras, Project Manager, Station Area Planning, presented the item.

The following individuals addressed the Board.

Rick DeSilva  
Tim Frank  
Jesse Blout

The item was discussed with the following highlights:

Director Raburn commented that he was excited to see the item before the Board; thanked staff for their work; and commented on the elements behind the project, namely the community.

Director Raburn moved that after review and consideration of the environmental effects of the Lake Merritt Transit-Oriented Development (TOD) Project as shown in the 2014 Lake Merritt Station Area Plan Environmental Impact Report (EIR), certified on July 28, 2014, and the project specific Lake Merritt BART TOD California Environmental Act (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; and
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.

Director Dufty seconded the motion.

Discussion continued, with the following highlights:

Director Ames commented that she supports this project; inquired about the relocation of the BART Police Department and any environmental discussion or Fiscal Impact Analysis report related to the project; and engaged in discussion with Karen August, City of Oakland Planning Bureau, and Jesse Blout, Strada.

Director Allen commented on her previous request for information; inquired whether the terms of the Exclusive Negotiating Agreement were met; and expressed that considering the challenges with how BART will recover from the pandemic, she could not support a vote to approve the projects.

Director McPartland referenced the concerns raised by Director Allen; expressed that he could not support a motion to approve the item; and congratulated the Asian community for their tenacity and hard work, as well as Director Raburn for working diligently and continuously to advance BART.

Director Raburn responded to comments made by Director McPartland, citing that he fully supports finding a new site for the BART Police Department, as well as an acceptable Emergency Operations Center location.

The motion brought by Director Raburn and seconded by Director Dufty carried by roll call vote. Ayes: 6 – Directors Dufty, Foley, Li, Raburn, Simon, and Saltzman. Noes: 2 – Directors Allen and McPartland. Abstentions: 1 – Director Ames.

President Saltzman announced that the order of agenda items would be changed and that the Board would enter into closed session under Items 13-A (Public Employee Performance Evaluation) and 13-B (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 1:44 p.m.

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The Board reconvened in closed session at 1:50 p.m.

Directors Present: Directors Ames, Foley, Li, McPartland, Raburn, and Saltzman.

Absent: Directors Dufty and Simon. Director Allen entered the Meeting later.

Director Allen entered the Meeting.

The Board Meeting recessed at approximately 2:08 p.m.

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The Board reconvened in open session at 2:10 p.m.

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

Absent: Directors Dufty and Simon.

President Saltzman announced that the Board had concluded its closed session under Items 13-A and 13-B and that there were no announcements to be made.

President Saltzman brought the matter of Compensation and Benefits for District Secretary before the Board.

Director Allen moved that the Board approve the following terms of employment for April Quintanilla effective August 25, 2022, which shall be incorporated in a mutually satisfactory written employment agreement prepared by the General Counsel for execution by Ms. Quintanilla and the Board President:

1. Service for an indefinite term at the pleasure of the Board;
2. Base salary of \$195,000.00 per year;
3. Twelve months' severance pay for involuntary termination, unless a result of death or gross misconduct;



4. Mandatory arbitration of employment disputes;
5. Benefits afforded non-represented management employees and retirees; and
6. Upon retirement, option to participate in an alternative retiree medical, dental, or vision plan if Ms. Quintanilla relocates to an area which is not within the service area of a District-sponsored plan, provided the alternative plan is comparable in both cost and coverage to the District-sponsored plan.

Director McPartland seconded the motion.

President Saltzman called for Public Comment on the Item. No comments were received.

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

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

Director Raburn reported on the Tanforan Memorial Celebration at the San Bruno BART Station; thanked Jennifer Easton, Manager of Special Projects, Strategic and Policy Planning, for her involvement with the event and Byron Toma, Senior Attorney, and Director McPartland for attending the event; and commented on the Oakland PRIDE event and thanked many BART staff for attending the event.

The Meeting adjourned at 2:15 p.m.

April B. A. Quintanilla  
District Secretary

# 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):

**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).
- "Flashbang" grenades and explosive breaching tools, "tear gas," and "pepper balls," excluding standard, service issued pepper spray (Category 12).

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- 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 2022 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.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

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commanders, officers, and specific units in bringing those incidents to a swift resolution in a safe manner.

#### **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 exigent circumstances and with the approval of the Chief of Police or his/her designee, the Police Department may acquire, borrow and/or use Specialized or Military Equipment that is not included in the Specialized or Military Equipment Use Policy.

If the Police Department 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 acquisition or use to the Bay Area Rapid Transit 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.
- If it is anticipated that the use will continue beyond the Exigent Circumstance, submit a proposed amended Specialized or Military Equipment Use Policy to the Bay Area Rapid Transit Board of Directors within 90 days following the borrowing, acquisition

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and/or use, and receive approval, as applicable, from the Bay Area Rapid Transit Board of Directors.

- Include the 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.

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#### **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](mailto:IA@bart.gov)
- Via phone call to: (510) 464-7029
- Via mail sent to:
  - Bay Area Rapid Transit Police Department
  - Attn: Office of Internal Affairs
  - 101 8<sup>th</sup> Street
  - Oakland CA 94607
- Via email to BART OIPA (Complaints): [oipa@bart.gov](mailto:oipa@bart.gov)
- Via phone call to: (510) 874-7477
- Via mail sent to:
  - 2150 Webster Street, 4<sup>th</sup> Floor
  - Attn: BART Office of the Independent Police Auditor
  - Oakland, CA 94612
- Via email to (Equipment Coordinator): [blucas@bart.gov](mailto:blucas@bart.gov)
- Via phone call to: (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 8<sup>th</sup> Street
  - Oakland CA 94607

## **Attachments**



## **2022 Annual Military Equipment Inventory.pdf**

*Specialized or Military Equipment*

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Attachment: 711.4  
2022 Annual Military Equipment Report

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### **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.

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**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.

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President, Board of Directors

ATTEST:

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April Quintanilla, Interim District Secretary



**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.