



BAY AREA
AIR QUALITY
MANAGEMENT
DISTRICT

BOARD OF DIRECTORS
ADMINISTRATION COMMITTEE

COMMITTEE MEMBERS

KAREN MITCHOFF – CHAIR
MARGARET ABE-KOGA
CAROLE GROOM
TYRONE JUE
MARK ROSS

JOHN BAUTERS - VICE CHAIR
JOHN GIOIA
DAVID HUDSON
KATIE RICE
BRAD WAGENKNECHT

THIS MEETING WILL BE CONDUCTED UNDER PROCEDURES AUTHORIZED BY ASSEMBLY BILL 361 (RIVAS 2021) ALLOWING REMOTE MEETINGS. THIS MEETING WILL BE ACCESSIBLE VIA WEBCAST, TELECONFERENCE, AND ZOOM, AS WELL AS IN PERSON. A ZOOM PANELIST LINK WILL BE SENT SEPARATELY TO COMMITTEE OR BOARD MEMBERS

- **THE PUBLIC MAY OBSERVE THIS MEETING THROUGH THE WEBCAST BY CLICKING THE LINK AVAILABLE ON THE AIR DISTRICT’S AGENDA WEBPAGE AT**

www.baaqmd.gov/bodagendas

- **MEETING ATTENDEES MAY, IN LIEU OF REMOTE PARTICIPATION, ATTEND IN PERSON FOR PUBLIC COMMENT AND/OR OBSERVATION AT 375 BEALE STREET, BOARD ROOM (1ST FLOOR). IN-PERSON ATTENDEES MUST PASS REQUIRED HEALTH SCREENINGS AND ADHERE TO POSTED PUBLIC HEALTH PROTOCOLS WHILE IN THE BULIDING. THE PUBLIC MAY ALSO PARTICIPATE REMOTELY VIA ZOOM AT THE FOLLOWING LINK OR BY PHONE**

<https://bayareametro.zoom.us/j/87691158844>

(669) 900-6833 or (408) 638-0968

WEBINAR ID: 876 9115 8844

- **THOSE PARTICIPATING BY PHONE WHO WOULD LIKE TO MAKE A COMMENT CAN USE THE “RAISE HAND” FEATURE BY DIALING “*9”. IN ORDER TO RECEIVE THE FULL ZOOM EXPERIENCE, PLEASE MAKE SURE YOUR APPLICATION IS UP TO DATE**

ADMINISTRATION COMMITTEE MEETING AGENDA

WEDNESDAY, APRIL 20, 2022

12:00 PM

1. **Call to Order - Roll Call**
2. **Pledge of Allegiance**
3. **Public Meeting Procedure**

The Committee Chair shall call the meeting to order and the Clerk of the Boards shall take roll of the Committee members.

This meeting will be webcast. To see the webcast, please visit www.baaqmd.gov/bodagendas at the time of the meeting. Closed captioning may contain errors and omissions and are not certified for their content or form.

***Public Comment on Agenda Items:** The public may comment on each item on the agenda as the item is taken up. Members of the public who wish to speak on matters on the agenda for the meeting, will have two minutes each to address the Committee. No speaker who has already spoken on that item will be entitled to speak to that item again.*

CONSENT CALENDAR (Items 4 - 5)

4. Approval of the Minutes of March 16, 2022

The Committee will consider approving the draft minutes of the Administration Committee meeting of March 16, 2022.

5. Hearing Board Quarterly Report: January 2022 - March 2022

The Committee will receive the Hearing Board Quarterly Report for the period of January 2022 through March 2022.

PRESENTATION(S)

6. Management Audit and Fiscal Year Ending (FYE) 2022 Staffing Update

This item is informational only and will be presented by John Chiladakis, Director of Information Services, and George Skiles and Lynda McCallum of Sjoberg Evashenk.

7. Bay Area Regional Collaborative (BARC) Update

This is an informational item only and will be presented by Allison Brooks, BARC Executive Director.

8. Renewal of Contract for Spare the Air Advertising and Messaging Campaigns

This is an action item to consider recommending the Board of Directors authorize the Interim Executive Officer/APCO to amend the existing contract with Allison + Partners (A+P) for the Fiscal Year Ending 2023 Spare the Air Campaigns' Advertising, Communications & Evaluation Services in an amount not to exceed \$1,950,000 for the second year of a three-year contract. This item will be presented by Kristina Chu, Communications Manager.

9. Air District Board Composition Discussion

This is an informational item only and will be presented by Alan Abbs, Legislative Officer.

OTHER BUSINESS

10. Public Comment on Non-Agenda Matters

Pursuant to Government Code Section 54954.3

Members of the public who wish to speak on matters not on the agenda for the meeting, will have two minutes each to address the Committee.

11. Committee Member Comments

Any member of the Committee, or its staff, on his or her own initiative or in response to questions posed by the public, may: ask a question for clarification, make a brief announcement or report on his or her own activities, provide a reference to staff regarding factual information, request staff to report back at a subsequent meeting concerning any matter or take action to direct staff to place a matter of business on a future agenda. (Gov't Code § 54954.2)

12. Time and Place of Next Meeting

Wednesday, May 18, 2022 at 11:00 a.m., in person or via webcast, teleconference, or Zoom, pursuant to procedures in accordance with Assembly Bill 361 (Rivas 2021).

13. Adjournment

The Committee meeting shall be adjourned by the Chair.

CONTACT:

MANAGER, EXECUTIVE OPERATIONS
375 BEALE STREET, SAN FRANCISCO, CA 94105
vjohnson@baaqmd.gov

(415) 749-4941
FAX: (415) 928-8560
BAAQMD homepage:
www.baaqmd.gov

- Any writing relating to an open session item on this Agenda that is distributed to all, or a majority of all, members of the body to which this Agenda relates shall be made available at the Air District's offices at 375 Beale Street, Suite 600, San Francisco, CA 94105, at the time such writing is made available to all, or a majority of all, members of that body.

Accessibility and Non-Discrimination Policy

The Bay Area Air Quality Management District (Air District) does not discriminate on the basis of race, national origin, ethnic group identification, ancestry, religion, age, sex, sexual orientation, gender identity, gender expression, color, genetic information, medical condition, or mental or physical disability, or any other attribute or belief protected by law.

It is the Air District's policy to provide fair and equal access to the benefits of a program or activity administered by Air District. The Air District will not tolerate discrimination against any person(s) seeking to participate in, or receive the benefits of, any program or activity offered or conducted by the Air District. Members of the public who believe they or others were unlawfully denied full and equal access to an Air District program or activity may file a discrimination complaint under this policy. This non-discrimination policy also applies to other people or entities affiliated with Air District, including contractors or grantees that the Air District utilizes to provide benefits and services to members of the public.

Auxiliary aids and services including, for example, qualified interpreters and/or listening devices, to individuals who are deaf or hard of hearing, and to other individuals as necessary to ensure effective communication or an equal opportunity to participate fully in the benefits, activities, programs and services will be provided by the Air District in a timely manner and in such a way as to protect the privacy and independence of the individual. Please contact the Non-Discrimination Coordinator identified below at least three days in advance of a meeting so that arrangements can be made accordingly.

If you believe discrimination has occurred with respect to an Air District program or activity, you may contact the Non-Discrimination Coordinator identified below or visit our website at www.baaqmd.gov/accessibility to learn how and where to file a complaint of discrimination.

Questions regarding this Policy should be directed to the Air District's Non-Discrimination Coordinator, Suma Peesapati, at (415) 749-4967 or by email at speesapati@baaqmd.gov.

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

375 BEALE STREET, SAN FRANCISCO, CA 94105

FOR QUESTIONS PLEASE CALL (415) 749-4941

EXECUTIVE OFFICE: MONTHLY CALENDAR OF AIR DISTRICT MEETINGS

APRIL 2022

<u>TYPE OF MEETING</u>	<u>DAY</u>	<u>DATE</u>	<u>TIME</u>	<u>ROOM</u>
Board of Directors Stationary Source and Climate Impacts Committee	Monday	18	9:00 a.m.	Webcast only pursuant to Assembly Bill 361
Board of Directors Meeting	Wednesday	20	9:00 a.m.	1 st Floor, Board Room (In person option available) <u>and</u> REMOTE pursuant to Assembly Bill 361
Board of Directors Administration Committee	Wednesday	20	12:00 p.m.	1 st Floor, Board Room (In person option available) <u>and</u> REMOTE pursuant to Assembly Bill 361
Path to Clean Air Community Emissions Reduction Plan Steering Committee	Monday	25	5:30 p.m.	Webcast only pursuant to Assembly Bill 361
Board of Directors Budget and Finance Committee	Wednesday	27	9:30 a.m.	Webcast only pursuant to Assembly Bill 361
Board of Directors Mobile Source and Climate Impacts Committee	Thursday	28	9:30 a.m.	Webcast only pursuant to Assembly Bill 361

MAY 2022

<u>TYPE OF MEETING</u>	<u>DAY</u>	<u>DATE</u>	<u>TIME</u>	<u>ROOM</u>
Board of Directors Special Meeting Budget Hearing	Wednesday	4	8:30 a.m.	1 st Floor, Board Room (In person option available) <u>and</u> REMOTE pursuant to Assembly Bill 361
Board of Directors Meeting	Wednesday	4	9:00 a.m.	1 st Floor, Board Room (In person option available) <u>and</u> REMOTE pursuant to Assembly Bill 361
Board of Directors Community Equity, Health and Justice Committee	Thursday	5	9:30 a.m.	Webcast only pursuant to Assembly Bill 361
Board of Directors Legislative Committee	Monday	9	1:00 p.m.	Webcast only pursuant to Assembly Bill 361
Technology Implementation Office (TIO) Steering Committee	Friday	13	1:00 p.m.	Webcast only pursuant to Assembly Bill 361

MAY 2022

<u>TYPE OF MEETING</u>	<u>DAY</u>	<u>DATE</u>	<u>TIME</u>	<u>ROOM</u>
Board of Directors Stationary Source and Climate Impacts Committee	Monday	16	9:00 a.m.	Webcast only pursuant to Assembly Bill 361
Path to Clean Air Community Emissions Reduction Plan Steering Committee	Monday	16	5:30 p.m.	Webcast only pursuant to Assembly Bill 361
Board of Directors Meeting	Wednesday	18	9:00 a.m.	1 st Floor, Board Room (In person option available) <u>and REMOTE</u> pursuant to Assembly Bill 361
Board of Directors Administration Committee	Wednesday	18	11:00 a.m.	1 st Floor, Board Room (In person option available) <u>and REMOTE</u> pursuant to Assembly Bill 361
Board of Directors Budget and Finance Committee	Wednesday	25	9:30 a.m.	Webcast only pursuant to Assembly Bill 361
Board of Directors Mobile Source and Climate Impacts Committee	Thursday	26	9:30 a.m.	Webcast only pursuant to Assembly Bill 361

HL 4/15/2022 – 12:05 P.M.

G/Board/Executive Office/Moncal

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Memorandum

To: Chairperson Karen Mitchoff and Members
of the Administration Committee

From: Alexander Crockett
Interim Acting Executive Officer/APCO

Date: April 20, 2022

Re: Approval of the Minutes of March 16, 2022

RECOMMENDED ACTION

Approve the attached draft minutes of the Administration Committee (Committee) meeting of March 16, 2022.

BACKGROUND

None.

DISCUSSION

Attached for your review and approval are the draft minutes of the Administration Committee meeting of March 16, 2022.

BUDGET CONSIDERATION/FINANCIAL IMPACT

None.

Respectfully submitted,

Alexander Crockett
Interim Acting Executive Officer/APCO

Prepared by: Marcy Hiratzka
Reviewed by: Vanessa Johnson

ATTACHMENTS:

1. Draft Minutes of the Administration Committee Meeting of March 16, 2022

Bay Area Air Quality Management District
375 Beale Street, Suite 600
San Francisco, California 94105
(415) 749-5073

DRAFT MINUTES

Administration Committee Meeting
Wednesday, March 16, 2022

**This meeting was conducted under procedures in accordance with Assembly Bill 361.
Members of the Committee participated by teleconference.**

- 1. PUBLIC MEETING PROCEDURE (OUT OF ORDER, ITEM 3)**
- 2. CALL TO ORDER – ROLL CALL (ITEM 1)**

Administration Committee (Committee) Chairperson Karen Mitchoff called the meeting to order at 1:02 p.m.

Present: Committee Chairperson Karen Mitchoff; Committee Vice Chairperson John Bauters; and Directors Margaret Abe-Koga, John Gioia, David Hudson, Tyrone Jue, Katie Rice, Mark Ross, and Brad Wagenknecht.

Absent: Directors Cindy Chavez and Carole Groom.

- 3. PLEDGE OF ALLEGIANCE (ITEM 2)**
- 4. APPROVAL OF THE MINUTES OF FEBRUARY 16, 2022**

Public Comments

No requests received.

Committee Comments

None.

Committee Action

Director Wagenknecht made a motion, seconded by Director Gioia, to approve the Minutes of February 16, 2022; and the motion carried by the following vote of the Committee:

AYES: Abe-Koga, Bauters, Gioia, Jue, Mitchoff, Rice, Ross, Wagenknecht.
NOES: None.
ABSTAIN: None.
ABSENT: Chavez, Groom, Hudson.

5. MANAGEMENT AUDIT UPDATE AND FISCAL YEAR ENDING (FYE) 2022 STAFFING AUTHORIZATION REVIEW

John Chiladakis, Director of Information Services, gave the joint presentation *Management Audit Update* with George Skiles and Linda McCallum from Sjoberg Evashenk, the contractor hired by the Air District to conduct the management audit.

NOTED PRESENT: Director Hudson was noted present at 1:19 p.m.

Public Comments

No requests received.

Committee Comments

The Committee and staff discussed concerns regarding the way in which ten of the 26 FYE 2022 positions were filled (as of March 2022), the request that the sixteen remaining vacant positions be put on hold until the Board discusses this issue further, and how to prevent this from reoccurring (staff filling a given number of positions beyond what is authorized by the Board); and which of the Air District’s processes need to be analyzed to ensure that leadership opportunities and control issues are being properly identified.

Committee Action

None; receive and file.

6. CONDUCT INTERVIEWS AND CONSIDER RECOMMENDING BOARD OF DIRECTORS APPROVAL OF CANDIDATES FOR APPOINTMENT TO THE AIR DISTRICT’S HEARING BOARD

The Committee conducted interviews of nine candidates who were applying for five seats (three vacancies and two positions set to expire in coming months) on the Air District’s Hearing Board.

Public Comments

Public comments were given by Jed Holtzman, San Francisco resident; and Lori Ellen Cannon.

Committee Comments

The Committee members discussed how candidates’ experience and perspectives might assist the Hearing Board in reviewing and deciding cases; the candidates’ knowledge and experience regarding air quality matters; the candidates’ experience serving on other boards or commissions; why the candidates became interested in this opportunity; whether things from the candidates’ personal or professional backgrounds may conflict with serving on the Hearing Board; and the candidates’ availability to serve on the Hearing Board.

Committee Action

1. Director Hudson made a motion, seconded by Director Abe-Koga, to recommend the Board **approve** re-appointment of Dr. Peter Chiu, as Principal Member in the Medical category of the Hearing Board; and the motion **carried** by the following vote of the Committee:

AYES: Abe-Koga, Bauters, Gioia, Hudson, Jue, Mitchoff, Rice, Ross, Wagenknecht.

NOES: None.

ABSTAIN: None.

ABSENT: Chavez, Groom.

2. Director Rice made a motion, seconded by Director Hudson, to recommend the Board **approve** the re-appointment of Valerie Armento, as Principal Member in the Attorney category, and the appointment of Jeffrey Lee, as Alternate Member in the Attorney category.

Vice Chair Bauters made a **SUBSTITUTE MOTION**, seconded by Director Gioia, to recommend the Board **approve** the re-appointment of Valerie Armento, as Principal Member in the Attorney category; and the motion **carried** by the following vote of the Committee:

AYES: Abe-Koga, Bauters, Gioia, Hudson, Jue, Mitchoff, Rice, Ross, Wagenknecht.

NOES: None.

ABSTAIN: None.

ABSENT: Chavez, Groom.

Because the **SUBSTITUTE MOTION carried**, the original motion made by Director Rice, seconded by Director Hudson, **failed**.

3. Director Abe-Koga made a motion, seconded by Director Hudson, to recommend the Board **approve** the appointment of Jeffrey Lee, as Alternate Member in the Attorney category of the Hearing Board; and the motion **carried** by the following vote of the Committee:

AYES: Abe-Koga, Bauters, Gioia, Hudson, Jue, Mitchoff, Rice, Ross, Wagenknecht.

NOES: None.

ABSTAIN: None.

ABSENT: Chavez, Groom.

4. Director Gioia made a motion, seconded by Vice Chair Bauters, to recommend the Board **approve** the appointment of Elizabeth Patterson, as Principal Member in the Public category.

Director Rice made a **SUBSTITUTE MOTION**, seconded by Director Hudson, to recommend the Board **approve** the appointment of Amelia Timbers, as Principal Member in the Public category; and the motion **carried** by the following vote of the Committee:

AYES: Abe-Koga, Hudson, Jue, Mitchoff, Rice, Ross, Wagenknecht.
NOES: Bauters, Gioia.
ABSTAIN: None.
ABSENT: Chavez, Groom.

Because the **SUBSTITUTE MOTION carried**, the original motion made by Director Gioia, seconded by Director Bauters, **failed**.

7. PUBLIC COMMENT ON NON-AGENDA MATTERS

No requests received.

8. COMMITTEE MEMBER COMMENTS

None.

9. TIME AND PLACE OF NEXT MEETING

The next meeting was to take place on Wednesday, April 20, 2022, at 1:00 p.m., in person or via webcast, teleconference, or Zoom, pursuant to procedures authorized by Assembly Bill 361. After the meeting adjourned, the time of the meeting changed to 12:00 p.m. (date remained the same.)

10. ADJOURNMENT

The meeting adjourned at 3:43 p.m.

Marcy Hiratzka
Clerk of the Boards

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Memorandum

To: Chairperson Karen Mitchoff and Members
of the Administration Committee

From: Alexander Crockett
Interim Acting Executive Officer/APCO

Date: April 20, 2022

Re: Hearing Board Quarterly Report: January 2022 - March 2022

RECOMMENDED ACTION

None; receive and file.

BACKGROUND

None.

DISCUSSION

This report covers the first calendar quarter (January – March) of 2022.

- Held one hearing;
- Processed one order; and
- Collected a total of \$0 in Hearing Board filing fees.

Location: Solano County; City of Benicia

Docket: 3731 – APCO vs. Valero Refining Company - California – Accusation and (Proposed) Stipulated Conditional Order for Abatement (confidential version with trade secrets & public version without trade secrets were both submitted)

Regulation(s): Regulation 8, Rule 2 (Organic Compounds, Miscellaneous Operations)

Synopsis: Respondent operates the Valero Benicia Refinery. The facility's two hydrogen plants are process units which were part of original construction of the refinery. Each process unit was designed to vent excess hydrogen to atmosphere through process vent ST-302. The Accusation and Stipulation requested that the Hearing Board enter a Conditional Order for Abatement against the Respondent that would require the Respondent, prior to termination of the Conditional Order of Abatement, to cease venting of regulated air contaminants through the Refinery's process vent ST-302 in a manner exceeding standards set forth in Air District

Regulation 8-2. Because a capital project to abate emissions from ST-302 (“the Vent Project”) will require time to design, engineer, permit, and construct, the Parties requested entry of the Conditional Order for Abatement to establish the requirements and schedule for the Vent Project and to provide conditions to minimize emissions from ST-302 during normal operations pending completion of the Vent Project. The Respondent’s Vent Project may install piping to direct flow of process gases that contain pollutants subject to Regulation 8-2 to an existing flare, the North South flare, or may be a different control or abatement fix, in accordance with the requirements set forth in detail in the Stipulation.

The Parties agreed to address the allegations identified in a Notice of Violation issued by the Air District (NOV A58465) and to provide the relief sought. The Parties expect to enter into a separate Enforcement Penalty Agreement to address penalties for NOV A58465. The Parties recognized the Air District's reservation of rights to enforce penalties or another abatement action for any violations by Valero, either through the Parties' separate Enforcement Penalty agreement or otherwise. The Parties agreed that the Respondent owns and operates the facility as specified in the Stipulation. The Respondent also agreed that notwithstanding interim measures taken since issuance of the Notice of Violation (NOV A58465) to minimize emissions of regulated pollutants from process vent ST-302, such emissions are continuing intermittently, and at times may exceed 15 lbs./day and contain more than 300 parts per million ("ppm") total carbon on a dry basis, which the Air District alleges is in violation of Regulation 8, Rule 2, Section 301.

Subject to a temporary permit authorization issued by the Air District in 2019, Valero undertook an interim project to minimize emissions of pollutants from ST-302 by installing internal piping to maintain streams containing pollutants regulated under Reg. 8-2 in a lower-pressure area of the hydrogen grid. Although Valero believes this measure has been very effective in substantially minimizing atmospheric emissions of regulated pollutants, the Parties stipulated that a more complex capital project would be needed for compliance of ST-302 with Regulation 8-2-301. This will require time to design, engineer, permit, construct, and start up. As such, the Parties agreed that the Respondent will complete a capital project to abate potential excess non-methane hydrocarbon emissions from ST-302 in the manner and on the schedule to this stipulation, which provides for completion of this Vent Project as soon as feasible but no later than the soonest scheduled refinery-wide maintenance outage ("Turnaround") at the Refinery. The Parties further agreed that meanwhile, Valero shall continue implementing interim measures to minimize emissions, and shall report progress to the Air District. The Parties agreed to enter the Stipulated Conditional Order of Abatement to provide for implementation of a capital project and other actions necessary to bring the Valero Benicia Refinery into compliance with current Air District rules and regulations, and to provide interim measures for minimizing non-compliant atmospheric emissions in the meantime.

Status: Accusation filed by Complainant (Air District) on January 24, 2022; Notice of Hearing (for March 15, 2022) filed/issued on January 25, 2022; Notice of Defense filed by Respondent on February 7 2022; Separate Statement (pursuant to Section 12 of the proposed Stipulated Order of Abatement) filed by Complainant on February 17, 2022; Separate Statement (pursuant to Section 12 of the proposed Stipulated Order of Abatement) filed by Respondent on March 10, 2022; Complainant submitted Exhibits C-1 through C-3, and Respondent submitted Exhibits R-A

through R-D, to the Clerk on March 14, 2022; hearing held on March 15, 2022; Stipulated Conditional Order for Abatement filed/issued on March 15, 2022 (see language below).

This was a well-publicized hearing and approximately 35 members of the public attended, including KPIX news and 8 speakers who addressed the Hearing Board.

THE HEARING BOARD ORDERED:

1. That the Air Pollution Control Officer's and Respondent's Request for this Stipulated Conditional Order for Abatement shall be and hereby is GRANTED as follows: Respondent Valero and its agents, employees, successors and assigns are hereby ordered to cease operation of the Benicia Refinery's process vent ST-302, unless: As soon as feasible but no later than by the end of Valero's soonest refinery-wide Turnaround, or such later date as the Hearing Board may approve upon a showing of good cause, Valero shall design, receive a District authority to construct, construct, receive a District permit to operate, and operate a capital project ("the Vent Project") to control or abate atmospheric emissions from the Hydrogen System at the Valero Benicia Refinery through the Refinery's process vent ST-302 to a level not exceeding standards set forth in District Regulation 8-2 and in satisfaction of all the requirements set forth in detail in this Stipulated Order of Abatement and its Appendices 1 and 2.

2. That the Stipulated Order for Abatement shall become effective immediately.

3. That the Hearing Board shall retain jurisdiction over this matter until Respondent comes into compliance with the requirements of Regulation 8, Rule 2, Section 30 l in accordance with the requirements set forth in Paragraph I of this Stipulated Order for Abatement, during which period the parties may apply to alter or terminate this Order in accordance with the Rules of the Hearing Board.

4. For such other and further relief that this Board deems just and proper.

Location: Contra Costa County; City of Richmond

Docket: 3732 – APCO vs. Chemtrade West US, LLC – Accusation and Stipulated Conditional Order for Abatement

Regulation(s): Regulation 1, Rule 522 (General Provisions, Continuous Emission Monitoring and Recordkeeping Procedures)

Synopsis: Respondent operates the Chemtrade sulfuric acid manufacturing plant, a source of sulfur dioxide (“SO₂”) emissions which are monitored, in part, by a Continuous Emissions Monitoring System (“CEMS”) on its Sulfuric Acid Manufacturing Plant (“S-1”). Air District staff determined the S-1 CEMS is improperly configured and cannot comply with applicable monitoring requirements without replacement and reconfiguration. The Stipulated Order requests the Hearing Board enter a Conditional Order for Abatement against Respondent requiring Respondent to refrain from operating its Plant after the deadlines unless Respondent has completed all Compliance Actions by their deadlines. All Compliance Actions refer specifically to the CEMS unit installed at S-1.

Status: Accusation filed by Complainant on February 24, 2022; Notice of Defense filed by Respondent on March 10, 2022; Notice of Hearing (for April 5, 2022) filed/issued on March 15, 2022; Notice of Continued Hearing (for April 12, 2022) filed/issued on March 17, 2022.

BUDGET CONSIDERATION/FINANCIAL IMPACT

None.

Respectfully submitted,

/S/ Valerie J. Armento

Valerie J. Armento, Esq.
Chair, Hearing Board

Prepared by: Marcy Hiratzka
Reviewed by: Vanessa Johnson

ATTACHMENTS:

None

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

Memorandum

To: Chairperson Karen Mitchoff and Members
of the Administration Committee

From: Alexander Crockett
Interim Acting Executive Officer/APCO

Date: April 20, 2022

Re: Management Audit and Fiscal Year Ending (FYE) 2022 Staffing Update

RECOMMENDED ACTION

None; receive and file.

BACKGROUND

On December 15, 2021, the Air District Board (Board) reviewed the vendors' bid scores for management audit services and authorized the execution of a contract with the highest scoring vendor, Sjoberg Evashenk, for independent management audit services in an amount not to exceed \$250,000.

The initial task order under the contract called for a first deliverable in March 2022 to inform new FYE 2022 staffing authorization, and a second deliverable in May 2022 which will provide information regarding Air District-wide risk and rank the Air District's divisions for further audit priority.

Sjoberg Evashenk began work on the FYE 2022 staffing authorization review and risk assessment deliverables in January 2022, and the Management Auditor presented the FYE 2022 staffing authorization review to the Air District Board on April 6, 2022. The Auditor presented the conclusion that (a) the allocation of additional positions in the FYE 2022 budget is reasonable and consistent with their independent analysis; (b) internal control weaknesses led to the filling of 10 of 26 of the positions as of the end of February 2022; and, (c) despite these weaknesses, it is evident that the need for the remaining 16 positions is supported by current workload demands and Air District priorities.

DISCUSSION

During the April 6, 2022 Board meeting, the Board directed staff to develop a new Task Order under the management audit services contract with Sjoberg Evashenk that would include the following: (1) an immediate commencement of a performance audit for HR functions at the Air District, and (2) Audit oversight of the recruitment of the remaining 16 of the 26 positions

authorized in FYE 22 which would include a control step requiring sign-off by the Executive Officer for each of the 16 remaining positions. The board also directed staff to report to the Administration Committee with the details of the new Task Order.

The scope of work for the Task Order is attached to this memorandum, and during today's committee meeting, the management auditor will present an overview of the Task Order and its deliverables.

BUDGET CONSIDERATION/FINANCIAL IMPACT

None.

Respectfully submitted,

Alexander Crockett
Interim Acting Executive Officer/APCO

Prepared by: John Chiladakis
Reviewed by: George Skiles

ATTACHMENTS:

1. Task Order 2 - Sjoberg Evashenk Consulting, Inc. - Contract No. 2021.228

**BAY AREA AIR QUALITY MANAGEMENT DISTRICT
MASTER SERVICES CONTRACT
SJOBERG EVASHENK CONSULTING, INC.
CONTRACT NO. 2021.228
Task Order No. 2**

Work Plan:

CONTRACTOR will conduct a performance audit of human resources management functions within the Air District. The objectives of this performance audit are to determine whether:

- a. Established human resources management functions ensure compliance with federal and state laws, as well as District policies and directives.
- b. Human resources business processes efficiently and effectively meet Air District priorities.
- c. The recruitment and filling of the 16 remaining FYE 22 vacancies is compliant with Board directives and the FYE 22 Budget.

The scope of the performance audit includes all human resources management functions of the Air District between Fiscal Year Ending 2019 through the period of audit fieldwork.

General Audit Plan:

To meet these objectives, CONTRACTOR will follow the general audit plan outlined below:

1. Interview key Human Resources personnel and Air District personnel to gain an understanding of human resources practices within the Air District, including but not limited to:
 - a. Hiring and Recruiting
 - b. Classification and Compensation
 - c. Employee Recordkeeping
 - d. Employee Relations and Performance Management
 - e. Benefits Management
 - f. Employee Relations
 - g. Workplace Investigation
 - h. Payroll Management
 - i. Professional and Workforce Development, Training, and Succession Planning
 - j. Workplace Safety & Health
 - k. Diversity, Equity, and Inclusion Initiatives
2. Review pertinent laws and regulations, policies and procedures, strategic plans, succession and workforce plans, prior compensation and benefit studies, training

program materials, record-keeping efforts, labor agreements, exit interview information, and best practices publications.

3. Obtain and review vacancy, turnover, recruitment, hiring, and retention trends; evaluate and understand challenges faced by departments or divisions, and their experience with Human Resources as customers.
4. Conduct an employee survey, or evaluate prior employee survey efforts, to obtain an understanding of employee and management feedback regarding human resources practices within the Air District.
5. Map key business processes and evaluate potential internal control weaknesses or opportunities for improvement.
6. Assess key performance indicators, including resource indicators (budget, FTEs), workload indicators, backlogs, service indicators (including processing time and responsiveness), employee turnover statistics, employee aging reports, retirement statistics and average retirement age, and length of service statistics—by department and office, as well as general information related to the Air District’s competing labor markets.
7. Assess controls in place to ensure compliance with rules and regulations, and identify opportunities for improvement.

Deliverables and Milestones:

Deliverable	Due Date
1. Detailed Audit Plan	April 29, 2022
2. Draft Report	September 9, 2022
3. Final Report	October 31, 2022

Task Order Schedule: The period of performance for this Task Order shall be from April 11, 2022, through December 31, 2022.

Task Order Contact:

CONTRACTOR’s contact person under this Task Order shall be George Skiles at george@secteam.com. DISTRICT’s contact person under this Task Order shall be Alexander “Sandy” Crockett at ACrockett@baaqmd.gov

Task Order Cost:

DISTRICT will pay CONTRACTOR a fixed cost of \$65,500 for all labor and expenses to complete all work outlined in this Task Order. Payments will be made in three installments following delivery of and invoicing for the documents shown in the table below. Payments will be made within thirty (30) calendar days after receipt and approval of CONTRACTOR’s invoice.

Description	Payment
Delivery of Phase 1 Detailed Audit Plan	\$18,500
Delivery of Phase 2 Draft Report	\$32,500

Delivery of Phase 2 Final Report	\$14,500
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Total Task Order Cost not to exceed: \$65,500.

IN WITNESS WHEREOF, the parties to this Task Order have caused this Task Order to be duly executed on their behalf by their authorized representatives.

BAY AREA AIR QUALITY
MANAGEMENT DISTRICT

SJOBERG EVASHENK CONSULTING, INC.

By: _____
Alexander Crockett
Acting Executive Officer/APCO

By: _____
George Skiles
Partner

Date: _____

Date: _____

Approved as to form:
District Counsel

By: _____
Adan Schwartz
Acting District Counsel

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Memorandum

To: Chairperson Karen Mitchoff and Members
of the Administration Committee

From: Alexander Crockett
Interim Acting Executive Officer/APCO

Date: April 20, 2022

Re: Bay Area Regional Collaborative (BARC) Update

RECOMMENDED ACTION

None; receive and file.

BACKGROUND

The Bay Area Regional Collaborative (BARC) consists of Board/Commission representatives of the four regional agencies and provides a forum for discussing issues of regional importance.

DISCUSSION

At the upcoming Administration Committee meeting, BARC Executive Director, Allison Brooks, will present the Draft BARC Shared Work Plan Overview.

BUDGET CONSIDERATION/FINANCIAL IMPACT

None.

Respectfully submitted,

Alexander Crockett
Interim Acting Executive Officer/APCO

Prepared by: Michelle Beteta
Reviewed by: Vanessa Johnson

ATTACHMENTS:

None

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
 Memorandum

To: Chairperson Karen Mitchoff and Members
 of the Administration Committee

From: Alexander Crockett
 Interim Acting Executive Officer/APCO

Date: April 20, 2022

Re: Renewal of Contract for Spare the Air Advertising and Messaging Campaigns

RECOMMENDED ACTION

The Committee will consider recommending the Board of Directors authorize the Interim Executive Officer/APCO to amend the existing contract with Allison + Partners (A+P) for the Fiscal Year Ending 2023 Spare the Air Campaigns’ Advertising, Communications & Evaluation Services in an amount not to exceed \$1,950,000 for the second year of a three-year contract.

BACKGROUND

The Air District’s Communications Office relies on contractors to assist with various aspects of its advertising and outreach programs. The Communications Office completed a Request for Proposal (RFP) process in December 2020 to solicit responses for the following services: Advertising, Media Relations, Social Media, Public Opinion Surveys and Employer Outreach services. Air District Communications Office representatives and a Metropolitan Transportation Commission staff member reviewed the applications and conducted firm interviews. Allison+Partners was the selected contractor.

A three-year contract was approved by the Board in March 2020 for A+P with funding not to exceed \$1,950,000 per contract year during Fiscal Year Ending (FYE) 2022 and FYE 2023, and \$2,019,000 for FYE 2024, which includes in-language surveys. The breakdown for the FYE 2023 contracts as follows:

- Spare the Air summer campaign
 - 1. Advertising \$600,000
 - 2. Media Relations \$200,000
 - 3. Social Media \$75,000
 - 4. Employer Program \$200,000
 - 5. Public Opinion Surveys \$50,000

- Spare the Air winter campaign
 1. Advertising \$600,000
 2. Media Relations \$100,000
 3. Social Media \$75,000
 4. Public Opinion Surveys \$50,000

DISCUSSION

In the previous contract year, A+P has satisfied Air District requirements. A+P participated in bi-monthly status meetings to highlight ongoing and new work. Recommended messaging projects are well conceived and results are provided to staff. A+P is thorough and timely in executing projects, making recommendations and performing required tasks. Staff is recommending Board approval.

BUDGET CONSIDERATION/FINANCIAL IMPACT

Funding for this contract for FYE 2023 comes from the following sources:

- Spare the Air Every Day
 1. Congestion Mitigation Air Quality (CMAQ) - \$925,000
 2. Transportation Fund for Clean Air (TFCA) - \$200,000
- Spare the Air Winter
 1. General Revenue - \$825,000

Respectfully submitted,

Alexander Crockett
Interim Acting Executive Officer/APCO

Prepared by: Kristina Chu
Reviewed by: Kristine Roselius

ATTACHMENTS:

1. Executed Master Services Contract with Allison+Partners - Contract No. 2021.031
2. Draft STA Contract Renewal with Allison+Partners - Contract No. 2021.031

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

MASTER SERVICES CONTRACT

CONTRACT NO. 2021.031

1. **PARTIES** – The parties to this Contract (“Contract”) are the Bay Area Air Quality Management District (“DISTRICT”) whose address is 375 Beale Street, Suite 600, San Francisco, CA 94105, and **Allison & Partners LLC** (“CONTRACTOR”) whose address is 40 Gold Street, San Francisco, CA 94133.
2. **RECITALS**
 - A. DISTRICT is the local agency with primary responsibility for regulating stationary source air pollution in the Bay Area Air Quality Management District in the State of California. DISTRICT is authorized to enter into this Contract under California Health and Safety Code Section 40701. DISTRICT desires to contract with CONTRACTOR for Services as defined herein. DISTRICT is entering into this Contract based on CONTRACTOR’s stated qualifications to perform the Services.
 - B. Work to be performed by CONTRACTOR under this Contract will be funded in part with federal funding from the Congestion Mitigation and Air Quality (“CMAQ”) Improvement Program provided by the Federal Highway Administration (“FHWA”) and administered by the California Department of Transportation (“CALTRANS”).
 - C. Work to be performed by CONTRACTOR under this Contract will also be funded in part by funds from DISTRICT’s Transportation Fund for Clean Air (“TFCA”).
 - D. All parties to this Contract have had the opportunity to have this contract reviewed by their attorney.
3. **DEFINITIONS**
 - A. “Purchase Order” shall mean the written or electronic document used by DISTRICT to track payments to CONTRACTOR under this Contract.
 - B. “Services” shall mean the services to be provided by CONTRACTOR hereunder as generally described in the General Description of Services, attached hereto as Attachment A and made a part hereof by this reference, and as specifically described in Task Orders issued pursuant to this Contract.
 - C. “Task Order” shall mean a written request by DISTRICT for specific services to be performed by CONTRACTOR.
4. **PERFORMANCE REQUIREMENTS**
 - A. CONTRACTOR is authorized to do business in the State of California. CONTRACTOR attests that it is in good tax standing with federal and state tax authorities.
 - B. CONTRACTOR agrees to obtain any and all required licenses, permits, and all other appropriate legal authorizations from all applicable federal, state and local jurisdictions and pay all applicable fees.
 - C. CONTRACTOR shall comply with all laws and regulations that apply to its performance under this Contract, including any requirements to disclose potential conflicts of interest under DISTRICT’s Conflict of Interest Code.

- D. CONTRACTOR shall not engage in any performance of work during the term of this contract that is in direct or indirect conflict with duties and responsibilities set forth in the Scope of Work.
 - E. CONTRACTOR shall exercise the degree of skill and care customarily required by accepted professional practices and procedures.
 - F. CONTRACTOR shall ensure that any subcontractors, employees and agents performing under this Contract comply with the performance standards set forth in paragraph D above.
5. TERM – The term of this Contract is from July 1, 2021 to June 30, 2022, unless further extended by amendment of this Contract in writing, or terminated earlier. CONTRACTOR shall not submit any invoice for services performed under this Contract until the Contract is fully executed.
6. TERMINATION
- A. The DISTRICT may terminate this Contract at any time, at will, and without specifying any reason, by notifying CONTRACTOR in writing. The notice of termination shall specify the effective date of termination, which shall be no less than thirty (30) calendar days from the date of delivery of the notice of termination, and shall be delivered in accordance with the provisions of section 13 below. Immediately upon receipt of the notice of termination, CONTRACTOR shall cease all services under this Contract, except such services as are specified in the notice of termination. CONTRACTOR shall deliver a final invoice for all remaining services performed but not billed, including any services specified in the termination notice, on or before ten (10) business days following the termination date.
 - B. Either party may terminate this Contract for breach by the other party.
 - i) Failure to perform any agreement or obligation contained in this Contract or failure to complete the services in a satisfactory manner shall constitute a breach of the Contract.
 - ii) The non-breaching party may terminate the Contract by delivery of a written notice of breach. The notice of breach shall specify the date of termination, which shall be no earlier than ten (10) business days from delivery of the notice of breach. In the alternative, at its sole discretion, the non-breaching party may require the breaching party to cure the breach. The notice of breach shall specify the nature of the breach and the date by which such breach must be cured.
 - iii) If CONTRACTOR fails to perform any obligation under this Contract, DISTRICT at its sole discretion, may perform, or cause the performance, of the obligation itself. In that event, DISTRICT shall deduct the costs to perform such obligation and any other costs to cure the breach from the payment otherwise due to CONTRACTOR for work performed under this Contract. DISTRICT's performance hereunder shall not be deemed a waiver or release of any obligation of, or default by, CONTRACTOR under this Contract.
 - iv) The notice of breach shall be provided in accordance with the notice requirements set forth in section 13.
 - v) The non-breaching party reserves all rights under law and equity to enforce this Contract and recover any damages.
7. INSURANCE
- A. CONTRACTOR shall maintain the following insurance:
 - i) Workers' compensation and employers' liability insurance as required by California law or other applicable statutory requirements.
 - ii) Occurrence-based commercial general liability insurance or equivalent form with a limit of not less than one million dollars (\$1,000,000) each occurrence. Such insurance shall include

DISTRICT and its officers, agents, and employees as additional insureds and shall be primary with respect to any insurance maintained by DISTRICT.

- iii) Business automobile liability insurance or equivalent form with a limit of not less than one million dollars (\$1,000,000) each accident. Such insurance shall include coverage for owned, hired, and non-owned vehicles. If CONTRACTOR is a sole proprietor, CONTRACTOR may meet this insurance requirement with personal automobile liability insurance carrying a business use endorsement or by demonstrating to the satisfaction of DISTRICT that business use is covered under the CONTRACTOR's personal automobile liability insurance. A CONTRACTOR using only rental vehicles in performing work under this Contract may meet this insurance requirement by purchasing automobile liability insurance in the required coverage amount from the rental agency.
- B. All insurance shall be placed with insurers acceptable to DISTRICT.
- C. Prior to commencement of work under this Contract, CONTRACTOR shall furnish properly-executed certificates of insurance for all required insurance. Upon request by DISTRICT, CONTRACTOR shall provide a complete copy of any required insurance policy. CONTRACTOR shall notify DISTRICT in writing thirty (30) days prior to cancellation or modification of any required insurance policy. Any such modifications are subject to pre-approval by DISTRICT.
- D. If CONTRACTOR fails to maintain the required insurance coverage set forth above, DISTRICT reserves the right either to purchase such additional insurance and to deduct the cost thereof from any payments owed to CONTRACTOR or to terminate this Contract for breach.

8. INDEMNIFICATION

- A. CONTRACTOR shall indemnify and hold DISTRICT, its officers, employees and agents harmless from and against any and all liability, loss, expense, including reasonable attorneys' fees, or claims for injury or damages arising out of the performance of this Contract but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of CONTRACTOR, its officers, agents, or employees.
- B. DISTRICT shall indemnify and hold CONTRACTOR, its officers, employees and agents harmless from and against any and all liability, loss, expense, including reasonable attorneys' fee, or claims for injury or damages arising out of the performance of this Contract but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of DISTRICT, its officers, agents, or employees.

9. AGREEMENT TO PROVIDE SERVICES

- A. CONTRACTOR hereby agrees to provide to DISTRICT, as DISTRICT may from time to time designate, such services as DISTRICT may order by Task Order, all in accordance with and subject to the terms, covenants and conditions of this Contract. DISTRICT agrees to pay for these services ordered by DISTRICT in accordance with and subject to the terms, covenants and conditions of this Contract.
- B. All Task Orders issued by DISTRICT to CONTRACTOR for services during the term of this Contract are subject to the provisions of this Contract as though fully set forth in such Task Order. In the event that the provisions of this Contract conflict with any Task Order issued by DISTRICT to CONTRACTOR, the provisions of this Contract shall govern. No other terms and conditions, including, but not limited to, those contained in CONTRACTOR's standard printed terms and conditions, on CONTRACTOR's order acknowledgment, invoices or otherwise, shall have any

application to or effect upon or be deemed to constitute an amendment to or to be incorporated into this Contract, any Task Order, or any transactions occurring pursuant heretoor thereto, unless this Contract shall be specifically amended to adopt such other terms and conditions in writing by the parties.

- C. Notwithstanding any other provision of this Contract to the contrary, DISTRICT shall have no obligation to order or purchase any services hereunder and the placement of any Task Order shall be in the sole discretion of DISTRICT. Without limiting the generality of the foregoing, the actual quantity of services to be purchased hereunder shall be determined by DISTRICT in its sole discretion and shall not exceed \$1,950,000. This Contract is not exclusive. CONTRACTOR expressly acknowledges and agrees that DISTRICT may purchase at its sole discretion, services that are identical or similar to the services described in this Contract from any third party.
10. TASK ORDERS – Each Task Order will specify the following items, as relevant: specific services requested, schedule for services, location where services are to be performed (with contact person), and cost or estimated cost of services. Each Task Order issued under this Contract shall be made part of, and be incorporated into this Contract, and shall reference this Contract on the face of each Task Order. Should any Task Order not conform to or satisfy the terms of this Contract, CONTRACTOR shall have five (5) business days after receipt to reject the Task Order. By not rejecting the Task Order within five (5) business days, CONTRACTOR will have accepted the Task Order. Acceptance by CONTRACTOR is limited to the provisions of this Contract and the Task Order. No additional or different provisions proposed by CONTRACTOR or DISTRICT shall apply. In addition, the parties agree that this Contract and accepted Task Orders constitute a contract for services and satisfy all statutory and legal formalities of a contract.
11. PRICING, INVOICES, AND PAYMENT
- A. DISTRICT shall pay CONTRACTOR for all services ordered and provided in compliance with the terms and conditions of this Contract and with Task Orders issued under this Contract.
- B. CONTRACTOR shall submit original invoices to DISTRICT in form and substance and format reasonably acceptable to DISTRICT. Each invoice, including supporting documentation, must be prepared in duplicate on CONTRACTOR's letterhead; must list DISTRICT's contract number, Purchase Order Number, and the CONTRACTOR's Social Security Number or Federal Employer Identification Number; and must be submitted to: Bay Area Air Quality Management District, 375 Beale Street, Suite 600, San Francisco, CA 94105, Attn: Contracts Manager.
- C. Except as specifically set forth in Attachment A or in Task Orders under this Contract, DISTRICT shall not be responsible for any additional costs or expenses of any nature incurred by CONTRACTOR in connection with the provision of the services, including without limitation travel expenses, clerical or administrative personnel, long distance telephone charges, etc.
- D. CONTRACTOR represents, warrants and covenants that the prices, charges and fees for services set forth in this Contract (on the whole) are at least as favorable as the prices, charges and fees CONTRACTOR charges (on the whole) to other of its customers or clients for the same or substantially similar services provided under the same or substantially similar circumstances, terms, and conditions. If CONTRACTOR agrees or contracts with other clients or customers similarly situated during the Term of this Contract, and offers or agrees to financial terms more favorable than those set forth herein (on the whole), CONTRACTOR hereby agrees that it will reduce the prices, charges and/or fees charged to DISTRICT in respect of the services hereunder to the most favorable rates received by those other clients or customers.

12. DISPUTE RESOLUTION – A party that disputes a notice of breach must first seek mediation to resolve the dispute in accordance with the provisions set forth below.
- A. Upon receipt of a notice of breach of contract, the party may submit a demand for mediation to resolve whether or not a breach occurred. The party must state the basis of the dispute and deliver the demand within ten (10) business days of the date of receipt of the notice of breach.
 - B. The mediation shall take place at DISTRICT’s office at 375 Beale Street, Suite 600, San Francisco, or at such other place as may be mutually agreed upon by the parties and the mediator.
 - C. The parties shall make good faith efforts to hold the mediation within thirty (30) days after receipt of the demand for mediation.
 - D. Each party shall bear its own mediation costs.
 - E. In the event the parties are unable to resolve the dispute, either party may file an action in a court of competent jurisdiction to enforce the Contract.
 - F. Maximum recovery under this section shall be limited to the total value of all Task Orders issued under this Contract. The mediation costs shall not reduce the maximum amount recoverable under this section.
13. NOTICES – All notices that are required under this Contract shall be provided in the manner set forth herein, unless specified otherwise. Notice to a party shall be delivered to the attention of the person listed below, or to such other person or persons as may hereafter be designated by that party in writing. Notice shall be in writing sent by e-mail, facsimile, or regular first class mail. In the case of e-mail and facsimile communications, valid notice shall be deemed to have been delivered upon sending, provided the sender obtained an electronic confirmation of delivery. E-mail and facsimile communications shall be deemed to have been received on the date of such transmission, provided such date was a business day and delivered prior to 4:00 p.m. PST. Otherwise, receipt of e-mail and facsimile communications shall be deemed to have occurred on the following business day. In the case of regular mail notice, notice shall be deemed to have been delivered on the mailing date and received five (5) business days after the date of mailing.

DISTRICT: Bay Area Air Quality Management District
375 Beale Street, Suite 600
San Francisco, CA 94105
Attn: Kristina Chu

CONTRACTOR: Allison & Partners LLC
40 Gold Street
San Francisco, CA 94133
Attn: Meghan Curtis

14. ADDITIONAL PROVISIONS – All attachment(s) to this Contract are expressly incorporated herein by this reference and made a part hereof as though fully set forth.
15. EMPLOYEES OF CONTRACTOR
- A. CONTRACTOR shall be responsible for the cost of regular pay to its employees, as well as cost of vacation, vacation replacements, sick leave, severance pay, and pay for legal holidays.
 - B. CONTRACTOR, its officers, employees, agents, or representatives shall not be considered employees or agents of DISTRICT, nor shall CONTRACTOR, its officers, employees, agents, or

representatives be entitled to or eligible to participate in any benefits, privileges, or plans, given or extended by DISTRICT to its employees.

- C. DISTRICT reserves the right to review the credentials to perform the services for any of CONTRACTOR's employees assigned herein and to disapprove CONTRACTOR's assignments. CONTRACTOR warrants that it will not employ any subcontractor(s) without prior written approval from DISTRICT.

16. CONFIDENTIALITY – In order to carry out the purposes of this Contract, CONTRACTOR may require access to certain of DISTRICT's confidential information (including trade secrets, inventions, confidential know-how, confidential business information, and other information that DISTRICT considers confidential) (collectively, "Confidential Information"). It is expressly understood and agreed that DISTRICT may designate in a conspicuous manner Confidential Information that CONTRACTOR obtains from DISTRICT, and CONTRACTOR agrees to:

- A. Observe complete confidentiality with respect to such information, including without limitation, agreeing not to disclose or otherwise permit access to such information by any other person or entity in any manner whatsoever, except that such disclosure or access shall be permitted to employees of CONTRACTOR requiring access in fulfillment of the services provided under this Contract.
- B. Ensure that CONTRACTOR's officers, employees, agents, representatives, and independent contractors are informed of the confidential nature of such information and to assure by agreement or otherwise that they are prohibited from copying or revealing, for any purpose whatsoever, the contents of such information or any part thereof, or from taking any action otherwise prohibited under this section.
- C. Not use such information or any part thereof in the performance of services to others or for the benefit of others in any form whatsoever whether gratuitously or for valuable consideration, except as permitted under this Contract.
- D. Notify DISTRICT promptly and in writing of the circumstances surrounding any possession, use, or knowledge of such information or any part thereof by any person or entity other than those authorized by this section. Take at CONTRACTOR's expense, but at DISTRICT's option and in any event under DISTRICT's control, any legal action necessary to prevent unauthorized use of such information by any third party or entity which has gained access to such information at least in part due to the fault of CONTRACTOR.
- E. Take any and all other actions necessary or desirable to assure such continued confidentiality and protection of such information during the term of this Contract and following expiration or termination of the Contract.
- F. Prevent access to such materials by a person or entity not authorized under this Contract.
- G. Establish specific procedures in order to fulfill the obligations of this section.

17. INTELLECTUAL PROPERTY RIGHTS – Title and full ownership rights to all intellectual property developed under this Contract shall at all times remain with DISTRICT, unless otherwise agreed to in writing.

18. PUBLICATION

- A. DISTRICT shall approve in writing any report or other document prepared by CONTRACTOR in connection with performance under this Contract prior to dissemination or publication of such report or document to a third party. DISTRICT may waive in writing its requirement for prior approval.

- B. Until approved by DISTRICT, any report or other document prepared by CONTRACTOR shall include on each page a conspicuous header, footer, or watermark stating "DRAFT – Not Reviewed or Approved by BAAQMD," unless DISTRICT has waived its requirement for prior approval pursuant to paragraph A of this section.
- C. Information, data, documents, or reports developed by CONTRACTOR for DISTRICT, pursuant to this Contract, shall be part of DISTRICT's public record, unless otherwise indicated. CONTRACTOR may use or publish, at its own expense, such information, provided DISTRICT approves use of such information in advance. The following acknowledgment of support and disclaimer must appear in each publication of materials, whether copyrighted or not, based upon or developed under this Contract.

"This report was prepared as a result of work sponsored, paid for, in whole or in part, by the Bay Area Air Quality Management District (District). The opinions, findings, conclusions, and recommendations are those of the author and do not necessarily represent the views of the District. The District, its officers, employees, contractors, and subcontractors make no warranty, expressed or implied, and assume no legal liability for the information in this report."

- D. CONTRACTOR shall inform its officers, employees, and subcontractors involved in the performance of this Contract of the restrictions contained herein and shall require compliance with the above.
- 19. NON-DISCRIMINATION – In the performance of this Contract, CONTRACTOR shall not discriminate in its recruitment, hiring, promotion, demotion, and termination practices on the basis of race, religious creed, color, national origin, ancestry, sex, age, marital status, sexual orientation, medical condition, or physical or mental disability and shall comply with the provisions of the California Fair Employment & Housing Act (Government Code Section 12900 et seq.), the Federal Civil Rights Act of 1964 (P.L. 88-352) and all amendments thereto, and all administrative rules and regulations issued pursuant to said Acts. CONTRACTOR shall also require each subcontractor performing services in connection with this Contract to comply with this section and shall include in each contract with such subcontractor provisions to accomplish the requirements of this section.
 - 20. PROPERTY AND SECURITY – Without limiting CONTRACTOR'S obligations with regard to security, CONTRACTOR shall comply with all the rules and regulations established by DISTRICT for access to and activity in and around DISTRICT's premises.
 - 21. ASSIGNMENT – No party shall assign, sell, license, or otherwise transfer any rights or obligations under this Contract to a third party without the prior written consent of the other party, and any attempt to do so shall be void upon inception.
 - 22. WAIVER – No waiver of a breach, of failure of any condition, or of any right or remedy contained in or granted by the provisions of this Contract shall be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy shall be deemed a waiver of any other breach, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies. Further, the failure of a party to enforce performance by the other party of any term, covenant, or condition of this Contract, and the failure of a party to exercise any rights or remedies hereunder, shall not be deemed a waiver or

relinquishment by that party to enforce future performance of any such terms, covenants, or conditions, or to exercise any future rights or remedies.

23. ATTORNEYS' FEES – In the event any action is filed in connection with the enforcement or interpretation of this Contract, each party shall bear its own attorneys' fees and costs.
24. FORCE MAJEURE – Neither DISTRICT nor CONTRACTOR shall be liable for or deemed to be in default for any delay or failure in performance under this Contract or interruption of services resulting, directly or indirectly, from acts of God, enemy or hostile governmental action, civil commotion, strikes, lockouts, labor disputes, fire or other casualty, judicial orders, governmental controls, regulations or restrictions, inability to obtain labor or materials or reasonable substitutes for labor or materials necessary for performance of the services, or other causes, except financial, that are beyond the reasonable control of DISTRICT or CONTRACTOR, for a period of time equal to the period of such force majeure event, provided that the party failing to perform notifies the other party within fifteen calendar days of discovery of the force majeure event, and provided further that that party takes all reasonable action to mitigate the damages resulting from the failure to perform. Notwithstanding the above, if the cause of the force majeure event is due to party's own action or inaction, then such cause shall not excuse that party from performance under this Contract.
25. SEVERABILITY – If a court of competent jurisdiction holds any provision of this Contract to be illegal, unenforceable or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them will not be affected.
26. HEADINGS – Headings on the sections and paragraphs of this Contract are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Contract.
27. COUNTERPARTS/FACSIMILES/SCANS – This Contract may be executed and delivered in any number of counterparts, each of which, when executed and delivered, shall be deemed an original, and all of which together shall constitute the same contract. The parties may rely upon a facsimile copy or scanned copy of any party's signature as an original for all purposes.
28. GOVERNING LAW – Any dispute that arises under or relates to this Contract shall be governed by California law, excluding any laws that direct the application of another jurisdiction's laws. Venue for resolution of any dispute that arises under or relates to this Contract, including mediation, shall be San Francisco, California.
29. ENTIRE CONTRACT AND MODIFICATION – This Contract represents the final, complete, and exclusive statement of the agreement between the parties related to CONTRACTOR providing services to DISTRICT and supersedes all prior and contemporaneous understandings and agreements of the parties. No party has been induced to enter into this Contract by, nor is any party relying upon, any representation or warranty outside those expressly set forth herein. This Contract may only be amended by mutual agreement of the parties in writing and signed by both parties.
30. SURVIVAL OF TERMS – The provisions of sections 8 (Indemnification), 16 (Confidentiality), 17 (Intellectual Property Rights), and 18 (Publication) shall survive the expiration or termination of this Contract.

31. FEDERAL FUNDING REQUIREMENTS

A. Non-Discrimination and Statement of Compliance

- i) CONTRACTOR's signature affixed herein and dated shall constitute a certification under penalty of perjury under the laws of the State of California that CONTRACTOR has, unless exempt, complied with the nondiscrimination program requirements of Gov. Code §12990 and 2 CCR § 8103.
- ii) During the performance of this Contract, CONTRACTOR and its subcontractors shall not deny the Contract's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. CONTRACTOR and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
- iii) CONTRACTOR and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 et seq.), the applicable regulations promulgated there under (2 CCR §11000 et seq.), the provisions of Gov. Code §§11135- 11139.5, and the regulations or standards adopted by DISTRICT to implement such article. The applicable regulations of the Fair Employment and Housing Commission implementing Gov. Code §12990 (a-f), set forth 2 CCR §§8100-8504, are incorporated into this Contract by reference and made a part hereof as if set forth in full.
- iv) CONTRACTOR shall permit access by representatives of the Department of Fair Employment and Housing and the DISTRICT upon reasonable notice at any time during the normal business hours, but in no case less than twenty-four (24) hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or DISTRICT shall require to ascertain compliance with this clause.
- v) CONTRACTOR and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.
- vi) CONTRACTOR shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Contract.
- vii) CONTRACTOR, with regard to the work performed under this Contract, shall act in accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d et seq.). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the United States shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.
- viii) CONTRACTOR shall comply with regulations relative to non-discrimination in federally assisted programs of the U.S. Department of Transportation (49 CFR Part 21 - Effectuation of Title VI of the Civil Rights Act of 1964). Specifically, the CONTRACTOR shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR §21.5, including employment practices and the selection and retention of subcontractors.

- ix) CONTRACTOR, subrecipient or subcontractor will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR26 on the basis of race, color, sex, or national origin. In administering the DISTRICT components of the Disadvantaged Business Enterprises (DBE) Program Plan, CONTRACTOR, subrecipient or subcontractor will not, directly, or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE Program Plan with respect to individuals of a particular race, color, sex, or national origin.

B. Cost Principles and Administrative Requirements

- i) CONTRACTOR agrees that 48 CFR Part 31, Contract Cost Principles and Procedures, shall be used to determine the allowability of individual terms of cost.
- ii) CONTRACTOR also agrees to comply with Federal procedures in accordance with 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- iii) Any costs for which payment has been made to the CONTRACTOR that are determined by subsequent audit to be unallowable under 48 CFR Part 31 or 2 CFR Part 200 are subject to repayment by CONTRACTOR to DISTRICT.
- iv) When a CONTRACTOR or subcontractor is a Non-Profit Organization or an Institution of Higher Education, the Cost Principles for Title 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards shall apply.

C. Contingent Fee - CONTRACTOR warrants, by execution of this Contract that no person or selling agency has been employed, or retained, to solicit or secure this Contract upon an agreement or understanding, for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by CONTRACTOR for the purpose of securing business. For breach or violation of this warranty, DISTRICT has the right to annul this Contract without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the Contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

D. Retention of Records/Audits - For the purpose of determining compliance with Gov. Code § 8546.7, the CONTRACTOR, subcontractors, and DISTRICT shall maintain all books, documents, papers, accounting records, Independent CPA Audited Indirect Cost Rate workpapers, and other evidence pertaining to the performance of the Contract including, but not limited to, the costs of administering the Contract. All parties, including the CONTRACTOR's Independent CPA, shall make such workpapers and materials available at their respective offices at all reasonable times during the Contract period and for three (3) years from the date of final payment under the Contract. DISTRICT, Caltrans Auditor, FHWA, or any duly authorized representative of the Federal government having jurisdiction under Federal laws or regulations (including the basis of Federal funding in whole or in part) shall have access to any books, records, and documents of the CONTRACTOR, subcontractors, and the CONTRACTOR's Independent CPA, that are pertinent to the Contract for audits, examinations, workpaper review, excerpts, and transactions, and copies thereof shall be furnished if requested without limitation.

E. Subcontracting

- i) Nothing contained in this Contract or otherwise, shall create any contractual relation

between DISTRICT and any subcontractors, and no subcontract shall relieve the CONTRACTOR of its responsibilities and obligations hereunder. CONTRACTOR agrees to be as fully responsible to the DISTRICT for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by CONTRACTOR. CONTRACTOR's obligation to pay its subcontractors is an independent obligation from the DISTRICT's obligation to make payments to the CONTRACTOR.

- ii) CONTRACTOR shall perform the work contemplated with resources available within its own organization and no portion of the work shall be subcontracted without written authorization by DISTRICT Contract Administrator, except that which is expressly identified in the CONTRACTOR's approved Cost Proposal.
- iii) Any subcontract entered into as a result of this Contract, shall contain all the provisions stipulated in this entire Contract to be applicable to subcontractors unless otherwise noted.
- iv) CONTRACTOR shall pay its subcontractors within Fifteen (15) calendar days from receipt of each payment made to CONTRACTOR by DISTRICT.
- v) Any substitution of subcontractors must be approved in writing by DISTRICT Contract Administrator in advance of assigning work to a substitute subcontractor.
- vi) Prompt Progress Payment - CONTRACTOR or subcontractor shall pay to any subcontractor, not later than fifteen (15) days after receipt of each progress payment, unless otherwise agreed to in writing, the respective amounts allowed CONTRACTOR on account of the work performed by the subcontractors, to the extent of each subcontractor's interest therein. In the event that there is a good faith dispute over all or any portion of the amount due on a progress payment from CONTRACTOR or subcontractor to a subcontractor, CONTRACTOR or subcontractor may withhold no more than 150 percent of the disputed amount. Any violation of this requirement shall constitute a cause for disciplinary action and shall subject the licensee to a penalty, payable to the subcontractor, of 2 percent of the amount due per month for every month that payment is not made. In any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to his or her attorney's fees and costs. The sanctions authorized under this requirement shall be separate from, and in addition to, all other remedies, either civil, administrative, or criminal. This clause applies to both DBE and non-DBE subcontractors.
- vii) Prompt Payment of Withheld Funds to Subcontractors - DISTRICT may hold retainage from CONTRACTOR and shall make prompt and regular incremental acceptances of portions, as determined by DISTRICT, of the contract work, and pay retainage to CONTRACTOR based on these acceptances. DISTRICT has designated the method below to ensure prompt and full payment of any retainage kept by CONTRACTOR or subcontractor to a subcontractor.
 - a. No retainage will be held by DISTRICT from progress payments due to CONTRACTOR. Any retainage kept by CONTRACTOR or by a subcontractor must be paid in full to the earning subcontractor within 15 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment may take place only for good cause and with the DISTRICT's prior written approval. Any violation of these provisions shall subject the violating CONTRACTOR or subcontractor to the penalties, sanctions, and remedies

specified in Section 3321 of the California Civil Code. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies, otherwise available to CONTRACTOR or subcontractor in the event of a dispute involving late payment or nonpayment by CONTRACTOR, deficient subcontractor performance and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

F. Equipment Purchase and Other Capital Expenditures

- i) Prior authorization in writing by DISTRICT's Contract Administrator shall be required before CONTRACTOR enters into any unbudgeted purchase order, or subcontract exceeding five thousand dollars (\$5,000) for supplies, equipment, or CONTRACTOR services. CONTRACTOR shall provide an evaluation of the necessity or desirability of incurring such costs.
- ii) For purchase of any item, service, or consulting work not covered in CONTRACTOR's approved Cost Proposal and exceeding five thousand dollars (\$5,000), with prior authorization by DISTRICT's Contract Administrator, three competitive quotations must be submitted with the request, or the absence of proposal must be adequately justified.
- iii) Any equipment purchased with funds provided under the terms of this Contract is subject to the following:
 - a. CONTRACTOR shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of five thousand dollars (\$5,000) or more. If the purchased equipment needs replacement and is sold or traded in, DISTRICT shall receive a proper refund or credit at the conclusion of the Contract, or if the Contract is terminated, CONTRACTOR may either keep the equipment and credit DISTRICT in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established DISTRICT procedures; and credit DISTRICT in an amount equal to the sales price. If CONTRACTOR elects to keep the equipment, fair market value shall be determined at CONTRACTOR's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by DISTRICT and CONTRACTOR, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by DISTRICT.
 - b. Regulation 2 CFR Part 200 requires a credit to Federal funds when participating equipment with a fair market value greater than five thousand dollars (\$5,000) is credited to the project.

G. Rebates, Kickbacks or Other Unlawful Consideration - CONTRACTOR warrants that this Contract was not obtained or secured through rebates, kickbacks or other unlawful consideration either promised or paid to any DISTRICT employee. For breach or violation of this warranty, DISTRICT shall have the right, in its discretion, to terminate this Contract without liability, to pay only for the value of the work actually performed, or to deduct from this Contract price or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

H. State Prevailing Wage Rates for Public Works Projects

- i) No contractor or subcontractor may be awarded a contract containing public work elements unless registered with the Department of Industrial Relations (DIR) pursuant to Labor Code §1725.5. Registration with DIR must be maintained throughout the entire

term of this Contract, including any subsequent amendments.

- ii) CONTRACTOR shall comply with all of the applicable provisions of the California Labor Code requiring the payment of prevailing wages. The General Prevailing Wage Rate Determinations applicable to work under this Contract are available and on file with the Department of Transportation's Regional/District Labor Compliance Officer (<https://dot.ca.gov/programs/construction/labor-compliance>). These wage rates are made a specific part of this Contract by reference pursuant to Labor Code §1773.2 and will be applicable to work performed at a construction project site. Prevailing wages will be applicable to all inspection work performed at DISTRICT construction sites, at DISTRICT facilities and at off-site locations that are set up by the construction contractor or one of its subcontractors solely and specifically to serve DISTRICT projects. Prevailing wage requirements do not apply to inspection work performed at the facilities of vendors and commercial materials suppliers that provide goods and services to the general public.
- iii) General Prevailing Wage Rate Determinations applicable to this project may also be obtained from the Department of Industrial Relations website at <http://www.dir.ca.gov>.
- iv) Payroll Records
 - a. CONTRACTOR and subcontractor shall keep accurate certified payroll records and supporting documents as mandated by Labor Code §1776 and as defined in 8 CCR §16000 showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by CONTRACTOR or subcontractor in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
 - The information contained in the payroll record is true and correct.
 - The employer has complied with the requirements of Labor Code §1771, §1811, and §1815 for any work performed by his or her employees on the public works project.
 - b. The payroll records enumerated under paragraph (i) above shall be certified as correct by CONTRACTOR under penalty of perjury. The payroll records and all supporting documents shall be made available for inspection and copying by DISTRICT representatives at all reasonable hours at the principal office of CONTRACTOR. CONTRACTOR shall provide copies of certified payrolls or permit inspection of its records as follows:
 - A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or the employee's authorized representative on request.
 - A certified copy of all payroll records enumerated in paragraph (a) above, shall be made available for inspection or furnished upon request to a representative of DISTRICT, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations. Certified payrolls submitted to DISTRICT, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards shall

- not be altered or obliterated by CONTRACTOR.
- The public shall not be given access to certified payroll records by CONTRACTOR. CONTRACTOR is required to forward any requests for certified payrolls to DISTRICT's Contract Administrator by both email and regular mail on the business day following receipt of the request.
- c. CONTRACTOR shall submit a certified copy of the records enumerated in paragraph (a) above, to the entity that requested the records within ten (10) calendar days after receipt of a written request.
- d. Any copy of records made available for inspection as copies and DISTRICT AGENCY shall be marked or obliterated in such a manner as to prevent disclosure of each individual's name, address, and social security number. The name and address of the CONTRACTOR or subcontractor performing the work shall not be marked or obliterated.
- e. CONTRACTOR shall inform DISTRICT of the location of the records enumerated under paragraph (a) above, including the street address, city and county, and shall, within five (5) working days, provide a notice of a change of location and address.
- f. CONTRACTOR or subcontractor shall have ten (10) calendar days in which to comply subsequent to receipt of written notice requesting the records enumerated in paragraph (a) above. In the event the CONTRACTOR or subcontractor fails to comply within the ten (10) day period, he or she shall, as a penalty to DISTRICT, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Such penalties shall be withheld by DISTRICT from payments then due. CONTRACTOR is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section.
- v) When prevailing wage rates apply, CONTRACTOR is responsible for verifying compliance with certified payroll requirements. Invoice payment will not be made until the invoice is approved by the DISTRICT Contract Administrator.
- vi) Penalty
 - a. CONTRACTOR and any of its subcontractor shall comply with Labor Code §1774 and §1775. Pursuant to Labor Code §1775, CONTRACTOR and any subcontractor shall forfeit to DISTRICT a penalty of not more than two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of DIR for the work or craft in which the worker is employed for any public work done under the Contract by the CONTRACTOR or by its subcontractor in violation of the requirements of the Labor Code and in particular, Labor Code §§1770 to 1780, inclusive.
 - b. The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of mistake, inadvertence, or neglect of the CONTRACTOR or subcontractor in failing to pay the correct rate of prevailing wages, or the previous record of the CONTRACTOR subcontractor in meeting their respective prevailing wage obligations, or the willful failure by CONTRACTOR or subcontractor to pay the correct rates of prevailing wages. A

mistake, inadvertence, or neglect in failing to pay the correct rates of prevailing wages is not excusable if CONTRACTOR or subcontractor had knowledge of the obligations under the Labor Code. CONTRACTOR is responsible for paying the appropriate rate, including any escalations that take place during the term of the Contract.

- c. In addition to the penalty and pursuant to Labor Code §1775, the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the CONTRACTOR or subcontractor.
- d. If a worker employed by a subcontractor on a public works project is not paid the general prevailing per diem wages by the subcontractor, the prime contractor of the project is not liable for the penalties described above unless the prime contractor had knowledge of that failure of the subcontractor to pay the specified prevailing rate of wages to those workers or unless the prime contractor fails to comply with all of the following requirements:
 - The Contract executed between CONTRACTOR and the subcontractor for the performance of work on public works projects shall include a copy of the requirements in Labor Code §§ 1771, 1775, 1776, 1777.5, 1813, and 1815.
 - CONTRACTOR shall monitor the payment of the specified general prevailing rate of per diem wages by the subcontractor to the employees by periodic review of the certified payroll records of the subcontractor.
 - Upon becoming aware of the subcontractor's failure to pay the specified prevailing rate of wages to the subcontractor's workers, CONTRACTOR shall diligently take corrective action to halt or rectify the failure, including but not limited to, retaining sufficient funds due the subcontractor for work performed on the public works project.
 - Prior to making final payment to the subcontractor for work performed on the public works project, CONTRACTOR shall obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor had paid the specified general prevailing rate of per diem wages to the subcontractor's employees on the public works project and any amounts due pursuant to Labor Code §1813.
- e. Pursuant to Labor Code §1775, DISTRICT shall notify CONTRACTOR on a public works project within fifteen (15) calendar days of receipt of a complaint that a Subconsultant has failed to pay workers the general prevailing rate of per diem wages.
- f. If DISTRICT determines that employees of a subcontractor were not paid the general prevailing rate of per diem wages and if DISTRICT did not retain sufficient money under the Contract to pay those employees the balance of wages owed under the general prevailing rate of per diem wages, CONTRACTOR shall withhold an amount of moneys due the subcontractor

sufficient to pay those employees the general prevailing rate of per diem wages if requested by DISTRICT.

g. Hours of Labor - Eight (8) hours labor constitutes a legal day's work. CONTRACTOR shall forfeit, as a penalty to the DISTRICT, twenty-five dollars (\$25) for each worker employed in the execution of the Contract by CONTRACTOR or any of its subcontractors for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of the Labor Code, and in particular §§1810 to 1815 thereof, inclusive, except that work performed by employees in excess of eight (8) hours per day, and forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day and forty (40) hours in any week, at not less than one and one-half (1.5) times the basic rate of pay, as provided in §1815.

h. Employment of Apprentices

- Where either the prime Contract or the subcontract exceeds thirty thousand dollars (\$30,000), CONTRACTOR and any subcontractors under him or her shall comply with all applicable requirements of Labor Code §§ 1777.5, 1777.6 and 1777.7 in the employment of apprentices.
- CONTRACTOR and subcontractors are required to comply with all Labor Code requirements regarding the employment of apprentices, including mandatory ratios of journey level to apprentice workers. Prior to commencement of work, CONTRACTOR and subcontractors are advised to contact the DIR Division of Apprenticeship Standards website at <https://www.dir.ca.gov/das/>, for additional information regarding the employment of apprentices and for the specific journey-to-apprentice ratios for the Contract work. CONTRACTOR is responsible for all subcontractors' compliance with these requirements. Penalties are specified in Labor Code §1777.7.

I. Prohibition of Expending DISTRICT, State, or Federal Funds for Lobbying

i) CONTRACTOR certifies, to the best of his or her knowledge and belief, that:

- a. No State, Federal, or DISTRICT appropriated funds have been paid or will be paid, by or on behalf of the CONTRACTOR, to any person for influencing or attempting to influence an officer or employee of any local, State, or Federal agency, a Member of the State Legislature or United States Congress, an officer or employee of the Legislature or Congress, or any employee of a Member of the Legislature or Congress in connection with the awarding or making of this Contract, or with the extension, continuation, renewal, amendment, or modification of this Contract.
- b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Contract, the CONTRACTOR shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

- ii) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. §1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than one hundred thousand dollars (\$100,000) for each such failure.
- iii) CONTRACTOR also agrees by signing this document that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed one hundred thousand dollars (\$100,000), and that all such subrecipients shall certify and disclose accordingly.

J. Debarment and Suspension Certification

- i) CONTRACTOR's signature affixed herein shall constitute a certification under penalty of perjury under the laws of the State of California, that the CONTRACTOR or any person associated therewith in the capacity of owner, partner, director, officer or manager:
 - a. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
 - b. Has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years;
 - c. Does not have a proposed debarment pending; and
 - d. Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.
- ii) Any exceptions to this certification must be disclosed to DISTRICT. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining responsibility. Disclosures must indicate the party to whom the exceptions apply, the initiating agency, and the dates of agency action.
- iii) Exceptions to the Federal Government Excluded Parties List System maintained by the U.S. General Services Administration are to be determined by FHWA.

K. Disadvantaged Business Enterprises Participation

- i) CONTRACTOR, DISTRICT, or subcontractor shall take necessary and reasonable steps to ensure that DBEs have opportunities to participate in the contract (49 CFR 26). To ensure equal participation of DBEs provided in 49 CFR 26.5, DISTRICT shows a contract goal for DBEs. CONTRACTOR shall make work available to DBEs and select work parts consistent with available DBE subcontractors and suppliers. CONTRACTOR shall meet the DBE goal shown elsewhere in these special provisions or demonstrate that they made adequate good faith efforts to meet this goal. It is CONTRACTOR's responsibility to verify that the DBE firm is certified as DBE at date of proposal opening and document the record by printing out the California Unified Certification Program (CUCP) data for each DBE firm. A list of DBEs certified by the CUCP can be found [here](#). All DBE participation will count toward the California Department of Transportation's federally mandated statewide overall DBE goal. Credit for materials or supplies CONTRACTOR purchases from DBEs counts towards the goal in the following manner:
 - a. 100 percent counts if the materials or supplies are obtained from a DBE manufacturer.
 - b. 60 percent counts if the materials or supplies are purchased from a DBE regular dealer.

- c. Only fees, commissions, and charges for assistance in the procurement and delivery of materials or supplies count if obtained from a DBE that is neither a manufacturer nor regular dealer. 49CFR26.55 defines "manufacturer" and "regular dealer."
- ii) This Contract is subject to 49 CFR Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". Contractors who enter into a federally-funded agreement will assist DISTRICT in a good faith effort to achieve California's statewide overall DBE goal.
- iii) The goal for DBE participation for this Contract is 15%. Participation by DBE CONTRACTOR or subcontractor shall be in accordance with information contained in [Exhibit 10-O1: Consultant Proposal DBE Commitment](#), or in [Exhibit 10-O2: Consultant Contract DBE Commitment](#) hyperlinked hereto and incorporated as part of the Contract. If a DBE subcontractor is unable to perform, CONTRACTOR must make a good faith effort to replace him/her with another DBE subcontractor, if the goal is not otherwise met.
- iv) CONTRACTOR can meet the DBE participation goal by either documenting commitments to DBEs to meet the Contract goal, or by documenting adequate good faith efforts to meet the Contract goal. An adequate good faith effort means that the CONTRACTOR must show that it took all necessary and reasonable steps to achieve a DBE goal that, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to meet the DBE goal. If CONTRACTOR has not met the DBE goal, complete and submit [Exhibit 15-H: DBE Information – Good Faith Efforts](#) to document efforts to meet the goal. Refer to 49 CFR Part 26 for guidance regarding evaluation of good faith efforts to meet the DBE goal.
- v) Contract Assurance - Under 49 CFR 26.13(b), CONTRACTOR, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. CONTRACTOR shall carry out applicable requirements of 49 CFR 26 in the award and administration of federal-aid contracts. Failure by the CONTRACTOR to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to: (1) Withholding monthly progress payments; (2) Assessing sanctions; (3) Liquidated damages; and/or (4) Disqualifying CONTRACTOR from future proposing as non-responsible.
- vi) Termination and Substitution of DBE subcontractors - CONTRACTOR shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless CONTRACTOR or DBE subcontractor obtains the DISTRICT's written consent. CONTRACTOR shall not terminate or substitute a listed DBE for convenience and perform the work with their own forces or obtain materials from other sources without authorization from the DISTRICT. Unless the DISTRICT's consent is provided, CONTRACTOR shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE on the [Exhibit 10-O2 Consultant Contract DBE Commitment](#) form. DISTRICT authorizes a request to use other forces or sources of materials if CONTRACTOR shows any of the following justifications:
- a. Listed DBE fails or refuses to execute a written contract based on plans and specifications for the project.
 - b. DISTRICT stipulated that a bond is a condition of executing the subcontract and the listed DBE fails to meet the DISTRICT's bond requirements.

- c. Work requires a consultant's license and listed DBE does not have a valid license under Contractors License Law.
- d. Listed DBE fails or refuses to perform the work or furnish the listed materials (failing or refusing to perform is not an allowable reason to remove a DBE if the failure or refusal is a result of bad faith or discrimination).
- e. Listed DBE's work is unsatisfactory and not in compliance with the contract.
- f. Listed DBE is ineligible to work on the project because of suspension or debarment.
- g. Listed DBE becomes bankrupt or insolvent.
- h. Listed DBE voluntarily withdraws with written notice from the Contract.
- i. Listed DBE is ineligible to receive credit for the type of work required.
- j. Listed DBE owner dies or becomes disabled resulting in the inability to perform the work on the Contract.
- k. DISTRICT determines other documented good cause.

CONTRACTOR shall notify the original DBE of the intent to use other forces or material sources and provide the reasons and provide the DBE with 5 days to respond to the notice and advise CONTRACTOR and DISTRICT of the reasons why the use of other forces or sources of materials should not occur. CONTRACTOR's request to use other forces or material sources must include:

- a. One or more of the reasons listed in the preceding paragraph.
- b. Notices from CONTRACTOR to the DBE regarding the request.
- c. Notices from the DBEs to CONTRACTOR regarding the request.

If a listed DBE is terminated or substituted, CONTRACTOR must make good faith efforts to find another DBE to substitute for the original DBE. The substitute DBE must perform at least the same amount of work as the original DBE under the contract to the extent needed to meet or exceed the DBE goal.

- vii) Commitment and Utilization - DISTRICT's DBE program must include a monitoring and enforcement mechanism to ensure that DBE commitments reconcile to DBE utilization. DISTRICT shall request CONTRACTOR to:
- a. Notify the DISTRICT's contract administrator or designated representative of any changes to its anticipated DBE participation
 - b. Provide this notification before starting the affected work
 - c. Maintain records including:
 - Name and business address of each 1st-tier subconsultant
 - Name and business address of each DBE subconsultant, DBE vendor, and DBE trucking company, regardless of tier
 - Date of payment and total amount paid to each business (see [Exhibit 9-F Monthly Disadvantaged Business Enterprise Payment](#))

If CONTRACTOR is a DBE contractor, they shall include the date of work performed by their own forces and the corresponding value of the work. If a DBE is decertified before completing its work, the DBE must notify CONTRACTOR in writing of the decertification date. If a business becomes a certified DBE before completing its work, the business must notify CONTRACTOR in writing of the certification date. CONTRACTOR shall submit the notifications to DISTRICT. On work completion, CONTRACTOR shall complete [Exhibit 17-O](#)

[Disadvantaged Business Enterprises \(DBE\) Certification Status Change](#) form and submit the form to the DISTRICT within 30 days of contract acceptance. Upon work completion, CONTRACTOR shall complete [Exhibit 17-F Final Report – Utilization of Disadvantaged Business Enterprises \(DBE\), First-Tier Subcontractors](#) and submit it to the DISTRICT within 90 days of contract acceptance. DISTRICT will withhold \$10,000 until the form is submitted. DISTRICT will release the withhold upon submission of the completed form. In the DISTRICT's reports of DBE participation to Caltrans, DISTRICT must display both commitments and attainments.

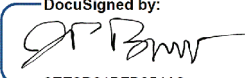
- viii) A DBE is only eligible to be counted toward the Contract goal if it performs a Commercially Useful Function (CUF) on the Contract. CUF must be evaluated on a contract by contract basis. A DBE performs a CUF when it is responsible for execution of the work of the Contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible, with respect to materials and supplies used on the Contract, for negotiating price, determining quality and quantity, ordering the material and installing (where applicable), and paying for the material itself. To determine whether a DBE is performing a CUF, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the Contract is commensurate with the work it is actually performing, and other relevant factors.
- ix) A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, Contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.
- x) If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its Contract with its own work force, or the DBE subcontracts a greater portion of the work of the Contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.
- xi) CONTRACTOR shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime CONTRACTOR's shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- xii) If a DBE subcontractor is decertified during the life of the Contract, the decertified subcontractor shall notify CONTRACTOR in writing with the date of decertification. If a subcontractor becomes a certified DBE during the life of the Contract, the subcontractor shall notify CONTRACTOR in writing with the date of certification. Any changes should be reported to DISTRICT within thirty (30) calendar days.
- xiii) After submitting an invoice for reimbursement that includes a payment to a DBE, but no later than the 10th of the following month, CONTRACTOR shall complete and email the [Exhibit 9-F: Disadvantaged Business Enterprise Running Tally of Payments](#) to business.support.unit@dot.ca.gov with a copy to DISTRICT at kchu@baaqmd.gov.
- xiv) Any subcontract entered into as a result of this Contract shall contain all of the provisions

of this section.

IN WITNESS WHEREOF, the parties to this Contract have caused this Contract to be duly executed on their behalf by their authorized representatives.

BAY AREA AIR QUALITY
MANAGEMENT DISTRICT

ALLISON & PARTNERS LLC

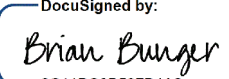
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Jack P. Broadbent
Executive Officer/APCO

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Meghan Curtis
General Manager

Date: 4/26/2021

Date: 4/19/2021

Approved as to form:
District Counsel

By:  _____
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Brian C. Bunger
District Counsel

Attachment A

General Description of Services

CONTRACTOR shall provide advertising, communications, and public outreach services in support of DISTRICT's Spare the Air Campaigns, the overall objectives of which is to continue to inform and motivate Bay Area residents and businesses to take actions on a continual basis that improve air quality. The work may include the following tasks to achieve those objectives:

A. Comprehensive Spare the Air Communications Strategy

CONTRACTOR will work with the DISTRICT to develop a Comprehensive Spare the Air Communications Strategy that outlines key objectives to meet the goals of the DISTRICT. This plan will include messaging and marketing strategies that will guide implementation; a listing and schedule of activities; and identify key milestones for reporting and evaluation. The Comprehensive Communications Strategy will be inclusive of:

- Creative
- Media Buy
- Media Relations
- Social Media
- Employer Program
- Public Opinion Surveys
- In-Language Survey

B. Spare the Air Campaigns and Employer Program

CONTRACTOR will implement the Spare the Air summer and winter campaigns and the Spare the Air Employer Program. Major tasks include:

- CONTRACTOR will create, design and produce advertising campaign materials to assist the DISTRICT in meeting overall campaign objectives, as outlined in the Comprehensive Communications Strategy. CONTRACTOR will present draft creative to DISTRICT for approval prior to the commencement of production.
- CONTRACTOR will negotiate and execute a Media Buy for the DISTRICT to reach the audiences identified in the Comprehensive Communications Strategy. CONTRACTOR will present the draft media plan to DISTRICT for approval prior to the execution of the media buy.
- CONTRACTOR will design Media Relations plans at the commencement of each program which will incorporate messaging, pitch ideas, and Social Media outreach. CONTRACTOR will work with DISTRICT to create an outreach timeline with clear guidelines and protocols for engagement with the media through a series of local and regional events and pitches; and with the public through social media platforms. The Media Relations plan and Social Media outreach will be aligned with the outreach and messaging for the Employer Program and its key activities.
- CONTRACTOR will continue to implement the Spare the Air Employer Program to disseminate air quality information to Bay Area employers as well as to build a network of employers who will actively participate in the Spare the Air program. CONTRACTOR will work with the DISTRICT to recruit new employers, actively engage with employers and work to improve and enhance the program.

C. Public Opinion Surveys

CONTRACTOR will coordinate with the DISTRICT to develop and deliver a research plan that measures baseline awareness and ongoing awareness at key milestones to be determined by the DISTRICT.

D. In-Language Survey

CONTRACTOR will coordinate with DISTRICT and its contractor, True North Research, Inc., to develop and deliver an in-language survey to measure ongoing awareness at key milestones to be determined by DISTRICT. In the third year alone of this contract, CONTRACTOR will also coordinate and conduct in-language surveys in Spanish, Mandarin and Cantonese as a follow-up to the in-language surveys conducted in previous years for the Spare the Air winter campaign.

Hourly Rates

CONTRACTOR will bill DISTRICT for the work completed under this Contract at the following hourly rates:

Staff Level	Hourly Rate
Partner	\$400.00/hr
Executive Vice President	\$325.00/hr
Senior Vice President	\$310.00/hr
Vice President	\$250.00/hr
Director	\$210.00/hr
Account Manager	\$190.00/hr
Senior Account Executive	\$175.00/hr
Account Executive	\$150.00/hr
Assistant Account Executive	\$125.00/hr
Account Coordinator	\$110.00/hr

AMENDMENT NO. 1 TO
BAY AREA AIR QUALITY MANAGEMENT DISTRICT
CONTRACT NO. 2021.031

This amendment to the above-entitled contract (“Contract Amendment”) is dated, for reference purposes only, February 7, 2022.

RECITALS:

1. The Bay Area Air Quality Management District (“DISTRICT”) and **Allison & Partners, LLC** (“CONTRACTOR”) (hereinafter referred to as the “PARTIES”) entered into the above-entitled contract for advertising, communications, and public outreach services for DISTRICT’s Spare the Air Campaigns (the “Contract”), which Contract was executed on behalf of CONTRACTOR on April 19, 2021, and on behalf of DISTRICT on April 26, 2021.
2. The PARTIES seek to amend the term and the total cost of the Contract because DISTRICT seeks to have CONTRACTOR continue to provide the services prescribed in the Contract, and CONTRACTOR desires to provide those services up to the new total cost and new term date.
3. In accordance with Section 29 of the Contract, DISTRICT and CONTRACTOR amend the above-entitled Contract as follows:

TERMS AND CONDITIONS OF CONTRACT AMENDMENT:

1. By this Contract Amendment, DISTRICT and CONTRACTOR amend Section 5, “Term.” The term of the Contract shall be extended so that the termination date of the Contract is now June 30, 2023.
2. By this Contract Amendment, DISTRICT and CONTRACTOR amend Paragraph C of Section 9, “Agreement to Provide Services”, of the Contract to replace “\$1,950,000” with “\$1,950,000 from July 1, 2021 – June 30, 2022 and \$1,950,000 from July 1, 2022 to June 30, 2023.”
3. DISTRICT and CONTRACTOR agree that all other terms and conditions of the Contract shall remain in full force and effect.

IN WITNESS WHEREOF, the PARTIES have caused this Contract Amendment to be duly executed on their behalf by their authorized representatives.

BAY AREA AIR QUALITY
MANAGEMENT DISTRICT

ALLISON & PARTNERS LLC

By: _____
Alexander Crockett
Interim Executive Officer/APCO

By: _____
Meghan Curtis
General Manager

Date: _____

Date: _____

Approved as to form:
District Counsel

By: _____
Adan Schwartz
Acting District Counsel

DRAFT

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Memorandum

To: Chairperson Karen Mitchoff and Members
of the Administration Committee

From: Alexander Crockett
Interim Acting Executive Officer/APCO

Date: April 20, 2022

Re: Air District Board Composition Discussion

RECOMMENDED ACTION

None; receive and file.

BACKGROUND

At the February 16, 2022 Administration Committee meeting, committee members heard a presentation for Air District staff regarding a timeline to receive information, discuss, and potentially adjust the composition and size of the Air District Board. This includes the idea of whether or not to add non-elected appointees, and the desired backgrounds of potential appointees. Changes to the Board of Directors (Board) composition will require legislation, and a deliberative process in 2022 could get Board consensus on legislative language that could be introduced in 2023. As a reminder, the timeline below was suggested to meet a 2023 introduction:

February 16, 2022

Administration Committee: Overview of proposed timeline.

April 2022

Administration Committee: Background, history, and questions. This meeting would review the existing Health and Safety Code statute related to Bay Area Air Quality Management District Board composition, the formula used to allocate board members between cities and counties, and questions that the Committee(s) and Board may want to address regarding Board composition, including potential number of new appointees, appointing authority, eligibility criteria, and whether to change the formula for establishing elected official representation. This meeting would also provide a background on the most recent bill changing the composition of the San Diego Air Pollution Control District Board - Assembly Bill (AB) 423 (Gloria; Chapter 744, Statutes of 2019) - and the current status of a bill proposing to change the composition of the South Coast Air Quality Management District Board - Senate Bill (SB) 342 (Gonzalez). This meeting could be used to provide some initial direction related to the above questions, but primarily be used to set up the discussion for the following meeting.

May 2022

Administration Committee: Discussion and consensus regarding proposal to bring to Board of Directors for consideration.

Month TBD 2022

Board of Directors: Receive presentation, discuss, and provide direction to staff if necessary.

Month TBD 2022

Legislative Committee: Receive presentation on proposed legislative language and provide direction to staff if necessary.

Month TBD 2022

Board of Directors: Receive presentation on proposed legislative language and provide direction to staff if necessary.

January/February 2023

Bill introduction, if necessary.

DISCUSSION

The information below is a partial reprint of information provided for the December 2, 2020, Board meeting pertinent to this discussion.

The composition of the Air District Board of Directors is prescribed in California Health and Safety Code Sections 40220 through 40226, with a majority of the sections remaining unchanged since 1975. In brief, the nine counties or partial counties get one, two, three, or four Board members based on the population in the county or partial county.

In appointing representatives from individual counties, the first appointee is a county supervisor, the second a city councilmember or mayor, the third a county supervisor, and the fourth a city councilmember or mayor. Appointees are determined by the respective county boards of supervisors or city selection committees, and in some instances county boards of supervisors have exercised their prerogative to appoint a member from the list provided by a city selection committee to fill a county supervisor seat. The governing statutes explicitly provide that the city selection committee appointee for the City and County of San Francisco is the Mayor of the City of San Francisco. In addition, the city selection committee appointee in a county that appoints only three members may appoint a deputy to act on his or her behalf on the board of directors or its committees, but the board member remains responsible for the acts of his or her deputy acting in that capacity. As a result, the Board currently consists of 24 members representing the 9 counties as follows:

- Population of 300,000 or less:
 - 1 representative each:
 - Marin and Napa
- Population of 750,000 or less, but more than 300,000:
 - 2 representatives each:
 - Solano and Sonoma
- Population of 1,000,000 or less, but more than 750,000:
 - 3 representatives each:
 - San Francisco and San Mateo
- Population of more than 1,000,000
 - 4 representatives each:
 - Alameda, Contra Costa, and Santa Clara

The Board appears likely to remain at 24 members for at least a decade with either San Francisco or Marin next reaching thresholds to appoint another representative.

Comparable Air District Board Compositions

The other four large air districts in California (South Coast Air Quality Management District , San Joaquin Valley Unified Air Pollution Control District , Sacramento Metropolitan Air Quality Management District, and San Diego Air Pollution Control District) also have prescribed Board compositions in the California Health and Safety Code, with San Diego’s Board changing as of March 2021 due to the passage of Assembly Bill 423 (Gloria) in 2019. Unlike the Bay Area AQMD, which increases Board size with population growth, each of these air districts have a set number of Board members comprised of different numbers of county supervisors, city councilmembers or mayors, and in some cases non-elected appointees. Non-elected appointees specify different backgrounds for qualification, and can be appointed by the Governor, Senate, Assembly, or by the air district’s own Board. It should be noted that some of these air districts do not have an Advisory Council like the Bay Area AQMD has, or a Community Advisory Council like the Bay Area AQMD has, to provide formal technical and community perspectives. The table below illustrates the Board composition differences between air districts.

Air District	Population	Counties (whole and partial)	Total Board Members	External Appointee(s) Information
Bay Area	7.5 million	9	24 County Elected (14) City Elected (10)	Mayor of San Francisco currently appoints a deputy to act on her behalf
South Coast	17 million	4	13 County Elected (4) City Elected (6) External Appointee (3)	1 - Governor Appointed with the advice and consent of Senate 1 - State Senate Rules Committee Appointed 1 - Speaker of State Assembly Appointed
San Joaquin	4.3 million	8	15 County Elected (8) City Elected (5) External Appointee (2)	Governor Appointed with the advice and consent of Senate: 1 - Physician 1 - Medical or scientific expertise
Sacramento Metro	1.6 million	1	14 County Elected (5) City Elected (9)	None
San Diego	3.3 million	1	11 County Elected (2) City Elected (6) External Appointee (3)	Board Appointed 1 - Physician or Public Health Professional 1 - Environmental Justice Representative 1 - Scientific or Technical Background

BUDGET CONSIDERATION/FINANCIAL IMPACT

None.

Respectfully submitted,

Alexander Crockett
Interim Acting Executive Officer/APCO

Prepared by: Alan Abbs
Reviewed by: Alexander Crockett

ATTACHMENTS:

1. Bay Area AQMD - Board Composition
2. Sacramento Metropolitan AQMD - Board Composition
3. San Diego County APCD - Board Composition
4. San Joaquin Valley APCD - Board Composition
5. South Coast AQMD - Board Composition

HEALTH AND SAFETY CODE - HSC

DIVISION 26. AIR RESOURCES [39000 - 44474] (*Division 26 repealed and added by Stats. 1975, Ch. 957.*)

PART 3. AIR POLLUTION CONTROL DISTRICTS [40000 - 41357] (*Part 3 added by Stats. 1975, Ch. 957.*)

CHAPTER 4. Bay Area Air Quality Management District [40200 - 40276] (*Heading of Chapter 4 amended by Stats. 1978, Ch. 1025.*)

ARTICLE 3. Governing Body [40220 - 40234] (*Article 3 added by Stats. 1975, Ch. 957.*)

40220. The bay district board is the governing body of the bay district and shall exercise all the powers of the bay district.

(Added by Stats. 1975, Ch. 957.)

40220.5. The bay district board shall be a board of directors consisting of members appointed pursuant to Section 40221.5 from each county included, in whole or in part, within the district on the basis of the population of that portion of the county, as determined by the latest estimate prepared by the Demographic Research Unit of the Department of Finance pursuant to Section 2227 of the Revenue and Taxation Code, included within the district.

(Amended by Stats. 2019, Ch. 29, Sec. 119. (SB 82) Effective June 27, 2019.)

40221. A county with a population of 300,000 or less shall appoint one member of the bay district board; a county with a population of 750,000 or less, but more than 300,000, shall appoint two members of the bay district board; a county with a population of 1,000,000 or less, but more than 750,000, shall appoint three members of the bay district board; and a county with a population of more than 1,000,000 shall appoint four members of the bay district board.

(Added by Stats. 1976, Ch. 517.)

40221.5. (a) The members of the bay district board shall be appointed as follows:

(1) For a county entitled to appoint one member of the bay district board, the board of supervisors shall appoint either a member of the board of supervisors or a person from a list submitted to the board of supervisors by the city selection committee of that county.

(2) For a county entitled to appoint two members of the bay district board, the city selection committee of that county shall appoint one member and the board of supervisors shall appoint the other member, which member may either be a member of the board of supervisors or a person on the list submitted to the board of supervisors by the city selection committee.

(3) For a county entitled to appoint three members of the bay district board, two members shall be appointed as provided in paragraph (2) and the third member shall be appointed by the board of supervisors and shall either be a member of the board of supervisors or a person on the list submitted to the board of supervisors by the city selection committee of that county.

(4) For a county entitled to appoint four members of the bay district board, the city selection committee of that county shall appoint two members and the board of supervisors shall appoint the other two members, either one or both of whom may be members of the board of supervisors or persons on the list submitted to the board of supervisors by the city selection committee.

(b) Any member of the bay district board appointed, and any person named on the list submitted to the board of supervisors by the city selection committee, shall be either a mayor or a city councilperson of a city in that portion of the county included within the district. The member appointed by a city selection committee pursuant to paragraph (3) of subdivision (a) or Section 40212 may designate a deputy to act on his or her behalf on the bay district board or any of its committees. The board member shall be responsible for the acts of the deputy acting in his or her official capacity on the bay district board or any of its committees under this designation.

(Amended by Stats. 2002, Ch. 1001, Sec. 1. Effective January 1, 2003.)

40222. Each member appointed by the board of supervisors shall hold office for a term of four years and until the appointment and qualification of his successor, and each member appointed by the city selection committee shall hold office for two years and until the appointment and qualification of his successor.

(Added by Stats. 1975, Ch. 957.)

40223. Any vacancy on the bay district board shall be filled by appointment in the same manner as the vacating member was appointed.

Any member of the bay district board may be removed at any time in the same manner as he was appointed. If four-fifths of the members of the board of supervisors of a county request the removal of a member appointed by the city selection committee of such county, the city selection committee of such county shall meet within 20 days to consider the removal of such member.

(Added by Stats. 1975, Ch. 957.)

40224. If any member of the bay district board is recalled from his or her office as a supervisor, mayor, or city council member, pursuant to Division 11 (commencing with Section 11000) of the Elections Code, his or her office as member of the bay district board shall be vacant.

(Amended by Stats. 1994, Ch. 923, Sec. 155. Effective January 1, 1995.)

40225. No supervisor, mayor, or city council member shall hold office on the bay district board for a period of more than three months after ceasing to hold the office of supervisor, mayor, or city council member, respectively, and his or her membership on the bay district board shall thereafter be considered vacant, except that any mayor who continues to hold office as a city council member, or any city council member who continues to hold office as a mayor, shall not be considered to have ceased to hold office under this section.

(Amended by Stats. 2010, Ch. 699, Sec. 28. (SB 894) Effective January 1, 2011.)

40226. A majority of the members of the bay district board constitutes a quorum for the transaction of business and may act for the bay district board.

(Added by Stats. 1975, Ch. 957.)

40227. Each member of the bay district board shall receive actual and necessary expenses incurred in the performance of board duties, and may receive compensation, to be determined by the bay district board, not to exceed one hundred dollars (\$100) for each day attending the meetings of the bay district board and committee meetings thereof, or, upon authorization of the bay district board, while on official business of the bay district, but the compensation shall not exceed six thousand dollars (\$6,000) in any one year. Compensation pursuant to this section shall be fixed by ordinance.

(Amended by Stats. 1986, Ch. 135, Sec. 1.)

40228. The bay district board may appoint an executive secretary to perform such duties as may be assigned to the executive secretary by the bay district board.

(Added by Stats. 1975, Ch. 957.)

40229. The bay district board may, by ordinance, adopt a civil service system for any or all employees of the bay district, except that the executive secretary and the air pollution control officer shall be exempt from such system and shall serve at the pleasure of the bay district board.

(Added by Stats. 1975, Ch. 957.)

40230. The bay district board may establish, within the bay district, zones wherein special regulations are warranted. In establishing such zones, the bay district board shall consider the degree of

concentration of population, the number, nature, and dispersal of the stationary sources of air pollution, whether the area is a rural agricultural area, and the presence or absence of industry.

(Added by Stats. 1975, Ch. 957.)

40231. The bay district board may establish, within the bay district, zones wherein differing tax formulas may be applied. In establishing such zones, the bay district board shall consider the degree of concentration of population, the number, nature, and dispersal of the stationary sources of air pollution, whether the area is a rural agricultural area, and the presence or absence of industry.

(Added by Stats. 1975, Ch. 957.)

40232. Except as provided in Section 41705, the bay district board shall establish standards for the emission of identifiable odor-causing substances. Exceptions or variances may be granted from such standards in a manner provided by the bay district board. No person shall discharge from any source any contaminant which violates such standards.

(Amended by Stats. 1995, Ch. 952, Sec. 2. Effective October 16, 1995.)

40233. (a) Notwithstanding any other provision of law, the bay district shall adopt, implement, and enforce transportation control measures for the attainment of state or federal ambient air quality standards, in accordance with all of the following procedures:

(1) The bay district shall estimate, by June 30, 1989, the quantity of emission reductions from transportation sources necessary to attain and maintain state and federal ambient air standards.

(2) The Metropolitan Transportation Commission, in cooperation with the bay district, the Association of Bay Area Governments, local entities, and employers, shall develop and adopt a plan to control emissions from transportation sources which will achieve the emission reductions established pursuant to paragraph (1). The plan shall include, at a minimum, a schedule for implementing transportation control measures, identification of potential implementing agencies and any agreements entered into by agencies to implement portions of the plan, and a procedure for monitoring the effectiveness of and compliance with the measures. The commission shall submit the plan to the bay district for its adoption according to a reasonable schedule developed by the bay district in consultation with the commission, but not later than June 30, 1990.

(3) Upon receipt of the plan submitted by the commission, the bay district shall review the plan to determine if it will achieve the emission reductions specified in paragraph (1). If the bay district determines that the plan will achieve those reductions, the bay district shall adopt the plan and implement it immediately. If the bay district determines that the plan will not achieve the emission reductions specified in paragraph (1), it shall notify the commission of the specific deficiencies in the plan and return the plan to the commission for revision. Within 60 days after receipt of the plan, the commission shall revise it and return it to the bay district. If the bay district determines that the revised plan will achieve necessary emission reductions, the bay district shall adopt the plan and implement it immediately. If the bay district determines that the revised plan still will not achieve the emission reductions specified in paragraph (1), or if the plan is not submitted pursuant to the schedule established under paragraph (2), the bay district shall develop and adopt a plan to control emissions from transportation sources.

(4) As the bay district periodically revises its estimates of the emission reductions from transportation sources necessary to attain state and federal ambient air standards specified in paragraph (1), the plan for transportation control measures shall also be revised, adopted, and enforced according to the procedure established pursuant to paragraphs (1), (2), and (3).

(b) The bay district may delegate any function with respect to transportation control measures to any local agency, if all of the following conditions are met:

(1) The local agency submits to the bay district an implementation plan which provides adequate resources to adopt and enforce the measures, and the bay district approves the plan.

(2) The local agency agrees to adopt and implement measures at least as stringent as those in the district air quality management plan to attain state standards.

(3) The bay district adopts procedures to review the performance of the local agency in implementing the measures to ensure compliance with the district air quality management plan to attain state standards.

(c) The bay district may revoke a delegation under this section if it determines that the performance of the local agency is in violation of this section or is otherwise inadequate to implement the district air quality management plan.

(d) For purposes of this section, "transportation control measures" means any strategy to reduce vehicle trips, vehicle use, vehicle miles traveled, vehicle idling, or traffic congestion for purposes of reducing motor vehicle emissions.

(e) The bay district and the commission shall report, not later than June 30, 1991, to the Legislature on the effectiveness of this section.

(Added by Stats. 1988, Ch. 1569, Sec. 2.)

40234. In adopting any regulation, the bay district board shall comply with Section 40703.

(Added by Stats. 1990, Ch. 1457, Sec. 1.)

HEALTH AND SAFETY CODE - HSC

DIVISION 26. AIR RESOURCES [39000 - 44474] (*Division 26 repealed and added by Stats. 1975, Ch. 957.)*

PART 3. AIR POLLUTION CONTROL DISTRICTS [40000 - 41357] (*Part 3 added by Stats. 1975, Ch. 957.)*

CHAPTER 11. Sacramento Metropolitan Air Quality Management District [40950 - 41094] (*Heading of Chapter 11 renumbered from Chapter 10 (as added by Stats. 1988, Ch. 1541) by Stats. 1990, Ch. 216, Sec. 79.)*

ARTICLE 3. Governing Body [40980 - 40982] (*Article 3 added by Stats. 1988, Ch. 1541, Sec. 3.)*

40980. (a) The Sacramento district shall, at a minimum, be governed by a district board composed of the Board of Supervisors of the County of Sacramento.

(b) If the County of Placer submits a resolution of inclusion, pursuant to Section 40963, one or more elected officials from that county shall be included on the Sacramento district board, pursuant to agreement between that county and the Sacramento district board.

(c) (1) The membership of the Sacramento district board shall include one or more members who are mayors or city council members, or both, and one or more members who are county supervisors.

(2) The number of those members and their composition shall be determined jointly by the counties and cities within the district, and shall be approved by a majority of the counties, and by a majority of the cities that contain a majority of the population in the incorporated area of the district.

(d) The governing board shall reflect, to the extent feasible and practicable, the geographic diversity of the district and the variation of population between the cities in the district.

(e) (1) Except as provided in paragraph (2), the members of the governing board who are mayors or city council members shall be selected by the city council of the city that they represent. The members of the governing board who are county supervisors shall be selected by the county if the district only contains one county or a majority of counties within the district if the district contains more than one county.

(2) The city selection committee shall be convened to select a member of the governing board from nominees who are mayors or city council members only if there is to be a change in a board member designated to represent more than one city, and only if more than one of those cities submits nominees for that board member position.

(3) When selecting a member of the governing board, a city council and the city selection committee may also appoint a mayor or another city council member as an alternate to serve and vote in place of the member who is absent or is disqualified from participating.

(f) (1) If the district fails to comply with subdivision (c), one-third of the members of the governing board shall be mayors or city council members, and two-thirds shall be county supervisors. The number of those members shall be determined as provided in paragraph (2) of subdivision (c), and the members shall be selected pursuant to subdivision (e).

(2) For purposes of paragraph (1), if any number which is not a whole number results from the application of the term "one-third" or "two-thirds," the number of county supervisors shall be increased to the nearest integer, and the number of mayors or city council members decreased to the nearest integer.

(*Amended by Stats. 2007, Ch. 343, Sec. 17. Effective January 1, 2008.*)

40981. The Sacramento district board shall elect a chairperson every two years from its membership.

(*Amended by Stats. 2007, Ch. 664, Sec. 3. Effective January 1, 2008.*)

40982. Each member of the Sacramento district board shall receive actual and necessary expenses incurred in the performance of board duties, and may receive compensation, to be determined by the Sacramento district board, not to exceed one hundred dollars (\$100) for each day attending the meetings of the Sacramento district board and committee meetings thereof, or upon authorization of the Sacramento district board, while on official business of the Sacramento district, but the

compensation shall not exceed six thousand dollars (\$6,000) in any one year. Compensation pursuant to this section shall be fixed by ordinance.

(Added by Stats. 2006, Ch. 425, Sec. 1. Effective September 22, 2006.)

HEALTH AND SAFETY CODE - HSC

DIVISION 26. AIR RESOURCES [39000 - 44474] (*Division 26 repealed and added by Stats. 1975, Ch. 957.*)

PART 3. AIR POLLUTION CONTROL DISTRICTS [40000 - 41357] (*Part 3 added by Stats. 1975, Ch. 957.*)

CHAPTER 2. County Air Pollution Control Districts [40100 - 40131] (*Chapter 2 added by Stats. 1975, Ch. 957.*)

ARTICLE 1. Administration [40100 - 40104] (*Article 1 added by Stats. 1975, Ch. 957.*)

40100.6. (a) The 11 members of the San Diego County Air Pollution Control District governing board shall be appointed as follows:

(1) (A) Two members representing the board of supervisors as appointed by a majority of the board of supervisors.

(B) One of the two members representing the board of supervisors pursuant to subparagraph (A) shall be the member of the board of supervisors who is currently serving as the San Diego County Air Pollution Control District's member on the state board, as required pursuant to paragraph (4) of subdivision (d) of Section 39510. That member of the board of supervisors shall continue to serve as one of the two members of the San Diego Air Pollution Control District pursuant to subparagraph (A) until that member is no longer the San Diego County Air Pollution Control District's member on the state board.

(2) The mayor or a city council member at large from the City of San Diego.

(3) (A) One city council member from each of the five supervisorial districts. Those five members shall be selected by city selection committees representing the cities of that supervisorial district.

(B) A city shall not have more than two members.

(4) Three public members shall be appointed by the members appointed pursuant to paragraphs (1) to (3), inclusive, at a public hearing. The public members shall be appointed according to the following:

(A) One public member shall be a physician or public health professional actively practicing within the boundaries of the San Diego County Air Pollution Control District. The member's speciality shall be in the health effects of air pollution on vulnerable populations.

(B) One public member shall be a person representing environmental justice interests and who works directly with communities within the boundaries of the San Diego County Air Pollution Control District that are most significantly burdened by, and vulnerable to, high levels of pollution, including communities with diverse racial and ethnic populations and communities with low-income populations. This member may be a resident of that community and have a demonstrated record of community leadership.

(C) One public member shall be a person with a scientific or technical background in air pollution, such as an environmental engineer, chemist, meteorologist, or air pollution specialist.

(b) All members shall be appointed on the basis of their demonstrated interest and proven ability in the field of air pollution control and their understanding of the needs of the general public in connection with the air pollution problems of the San Diego Air Basin.

(c) All members shall reside within the boundaries of the San Diego County Air Pollution Control District.

(d) Each member of the San Diego County Air Pollution Control District shall serve a four-year term and until that member's successor is appointed.

(e) Each member of the San Diego County Air Pollution Control District governing board appointed pursuant to paragraph (4) of subdivision (a) shall receive compensation of one hundred dollars (\$100) for each day, or a portion thereof, but not to exceed one thousand dollars (\$1,000) per month, while attending meetings of the district governing board or any committee of the district governing board or, upon authorization of the district governing board, while on official business of the San Diego County

Air Pollution Control District, and the actual and necessary expenses incurred in performing the member's official duties.

(f) (1) A vacancy on the San Diego County Air Pollution Control District governing board shall be filled by appointment in the same manner as the vacating member was appointed.

(2) A member of the San Diego County Air Pollution Control District governing board may be removed at any time in the same manner as the member was appointed.

(g) (1) The San Diego County Air Pollution Control District governing board shall consult with the United States Navy, the United States Marine Corps, and the United States Coast Guard on all permitting, rules, regulations, and planning issues that have the potential to impact the mission of the United States Navy, the United States Marine Corps, and the United States Coast Guard.

(2) The San Diego County Air Pollution Control District governing board shall designate one member appointed pursuant to paragraph (1) of subdivision (a) to serve as the liaison to the United States Navy, the United States Marine Corps, and the United States Coast Guard. The liaison shall report to the San Diego County Air Pollution Control District governing board as necessary to inform the governing board of any issues with the activities described in paragraph (1) and of any potential resolution to those issues.

(h) This section shall become operative on March 1, 2021.

(Added by Stats. 2019, Ch. 744, Sec. 6. (AB 423) Effective January 1, 2020. Operative March 1, 2021, by its own provisions.)

HEALTH AND SAFETY CODE - HSC

DIVISION 26. AIR RESOURCES [39000 - 44474] (*Division 26 repealed and added by Stats. 1975, Ch. 957.*)

PART 3. AIR POLLUTION CONTROL DISTRICTS [40000 - 41357] (*Part 3 added by Stats. 1975, Ch. 957.*)

CHAPTER 5.7. San Joaquin Valley Unified Air Pollution Control District [40600 - 40608] (*Chapter 5.7 added by Stats. 2003, Ch. 483, Sec. 2.*)

40600. (a) The San Joaquin Valley Unified Air Pollution Control District formed by the Counties of Fresno, Kern, Kings, Madera, Merced, San Joaquin, Stanislaus, and Tulare pursuant to Chapter 3 (commencing with Section 40150), and consisting of the Counties of Fresno, Kings, Madera, Merced, San Joaquin, Stanislaus, and Tulare, and that portion of the County of Kern that is within the San Joaquin Valley Air Basin, is a single integrated agency with all staff under one centralized management structure that is able to implement programs on a basinwide basis, and has all of the following:

- (1) An individual air pollution control officer who is responsible for the issuance of all permits by the unified district.
- (2) A single budget for the unified district with resources allocated based on the program needs of the San Joaquin Valley Air Basin.
- (3) A uniform fee structure.
- (4) Three hearing boards established pursuant to Section 40800. One hearing board shall serve the northern region, one shall serve the central region, and one shall serve the southern region. Identical policies governing the operation of each hearing board shall be established by the unified district board and shall be binding upon each hearing board.
- (5) A citizen's advisory committee.

(b) Rules and regulations adopted by the San Joaquin Valley Unified Air Pollution Control District are binding on all counties within the unified district. The unified district shall enforce all permits issued by the unified district and all permits issued by the individual county districts prior to formation of the unified district. The unified district shall review, revise, adopt, and implement any air pollution control plans required within the San Joaquin Valley Air Basin by state and federal law.

(c) Notwithstanding any other provision of law, the San Joaquin Valley Unified Air Pollution Control District shall be governed by a district board composed of 15 voting members, appointed as follows:

- (1) Eight members, one of whom shall be appointed by each of the Counties of Fresno, Kern, Kings, Madera, Merced, San Joaquin, Stanislaus, and Tulare. The board of supervisors of each of those counties shall, by majority vote, appoint one of its members to serve as a member of the district board.
- (2) Five city council members appointed by the special city selection committee created pursuant to Section 40600.5. The special city selection committee shall not appoint more than one city council member representing a city located in the same county. Of the five city council members appointed pursuant to this paragraph, three shall be from a city having a population of less than 100,000, with one member selected from the northern region, one from the central region, and one from the southern region of the district. The other two city council members appointed pursuant to this paragraph shall be from a city having a population of 100,000 or more, with each member selected from different regions of the district.
- (3) The terms of office for members appointed pursuant to paragraph (2) after April 1, 2007, shall be three years.
- (4) Two public members appointed by the Governor, with the advice and consent of the Senate, as follows:
 - (A) One public member who is a physician, actively practicing within the district, whose daily practice or research specialty lies in the health effects of air pollution on vulnerable populations.
 - (B) One public member who has medical or scientific expertise in the health effects of air pollution.

(5) The terms of office for the members initially appointed pursuant to subparagraphs (A) and (B) of paragraph (4) shall be as follows:

(A) For the member appointed pursuant to subparagraph (A) of paragraph (4), the term shall be four years.

(B) For the member appointed pursuant to subparagraph (B) of paragraph (4), the term shall be two years.

(6) After the initial term of appointment, the terms of office for the members appointed pursuant to subparagraphs (A) and (B) of paragraph (4) shall be four years.

(d) Each member shall be appointed on the basis of his or her demonstrated interest and proven ability in the field of air pollution control and their understanding of the needs of the general public in connection with air pollution problems of the San Joaquin Valley Air Basin.

(e) Each member shall be appointed on the basis of his or her ability to attend substantially all meetings of the district board, to discharge all duties and responsibilities of a member of the district board on a regular basis, and to participate actively in the affairs of the district. A member shall not designate an alternate for any purpose or otherwise be represented by another person in his or her capacity as a member of the district board.

(f) All members shall be residents of the district.

(g) Any vacancy in the office of a member of the district board shall be filled promptly by the appointing authority.

(h) As used in this section, the following terms have the following meanings:

(1) "Central region" means the Counties of Fresno, Kings, and Madera.

(2) "Northern region" means the Counties of Merced, San Joaquin, and Stanislaus.

(3) "Southern region" means the Counties of Kern and Tulare.

(Amended by Stats. 2008, Ch. 622, Sec. 1. Effective January 1, 2009.)

HEALTH AND SAFETY CODE - HSC

DIVISION 26. AIR RESOURCES [39000 - 44474] (*Division 26 repealed and added by Stats. 1975, Ch. 957.*)

PART 3. AIR POLLUTION CONTROL DISTRICTS [40000 - 41357] (*Part 3 added by Stats. 1975, Ch. 957.*)

CHAPTER 5.5. South Coast Air Quality Management District [40400 - 40540] (*Chapter 5.5 added by Stats. 1976, Ch. 324.*)

ARTICLE 3. Governing Body [40420 - 40428] (*Heading of Article 3 renumbered from Article 2.5 by Stats. 1980, Ch. 1085.*)

40420. (a) The south coast district shall be governed by a district board consisting of 13 members appointed as follows:

- (1) One member appointed by the Governor, with the advice and consent of the Senate.
 - (2) One member appointed by the Senate Committee on Rules.
 - (3) One member appointed by the Speaker of the Assembly.
 - (4) Four members appointed by the boards of supervisors of the counties in the south coast district. Each board of supervisors shall appoint one of these members, who shall be one of the following:
 - (A) A member of the board of supervisors of the county making the appointment.
 - (B) A mayor or member of a city council from a city in the portion of the county making the appointment that is included in the south coast district.
 - (5) Three members appointed by cities in the south coast district. The city selection committee of Orange, Riverside, and San Bernardino Counties shall each appoint one of these members, who shall be either a mayor or a member of the city council of a city in the portion of the county included in the south coast district.
 - (6) A member appointed by the cities of the western region of Los Angeles County, consisting of the Cities of Agoura Hills, Artesia, Avalon, Bell, Bellflower, Bell Gardens, Beverly Hills, Calabasas, Carson, Cerritos, Commerce, Compton, Cudahy, Culver City, Downey, El Segundo, Gardena, Hawaiian Gardens, Hawthorne, Hermosa Beach, Hidden Hills, Huntington Park, Inglewood, La Habra Heights, La Mirada, Lakewood, Lawndale, Lomita, Long Beach, Lynwood, Malibu, Manhattan Beach, Maywood, Montebello, Norwalk, Palos Verdes Estates, Paramount, Pico Rivera, Rancho Palos Verdes, Redondo Beach, Rolling Hills, Rolling Hills Estates, Santa Fe Springs, Santa Monica, Signal Hill, South Gate, Torrance, Vernon, West Hollywood, Westlake Village, and Whittier. These cities shall organize as a city selection committee for the purposes of subdivision (f), and shall be known as the city selection committee of the western region of Los Angeles County. The member appointed shall be either a mayor or a member of the city council of a city in the western region.
 - (7) A member appointed by the cities of the eastern region of Los Angeles County, consisting of the cities in Los Angeles County that are not listed in paragraph (6) or (8), and excluding the Cities of Lancaster, Los Angeles, and Palmdale. These cities shall organize as a city selection committee for the purposes of subdivision (f), and shall be known as the city selection committee of the eastern region of Los Angeles County. The member appointed shall be either a mayor or a member of the city council of a city in the eastern region.
 - (8) A member appointed by the Mayor of the City of Los Angeles from among the members of the Los Angeles City Council.
- (b) All members shall be appointed on the basis of their demonstrated interest and proven ability in the field of air pollution control and their understanding of the needs of the general public in connection with air pollution problems of the South Coast Air Basin.
- (c) The member appointed by the Governor shall be either a physician who has training and experience in the health effects of air pollution, an environmental engineer, a chemist, a meteorologist, or a specialist in air pollution control.
- (d) Each member shall be appointed on the basis of his or her ability to attend substantially all meetings of the south coast district board, to discharge all duties and responsibilities of a member of

the south coast district board on a regular basis, and to participate actively in the affairs of the south coast district. No member may designate an alternate for any purpose or otherwise be represented by another in his or her capacity as a member of the south coast district board.

(e) Each appointment by a board of supervisors shall be considered and acted on at a duly noticed, regularly scheduled hearing of the board of supervisors, which shall provide an opportunity for testimony on the qualifications of the candidates for appointment.

(f) The appointments by cities in the south coast district shall be considered and acted on at a duly noticed meeting of the city selection committee, which shall meet in a government building and provide an opportunity for testimony on the qualifications of the candidates for appointment. Each appointment shall be made by not less than a majority of all the cities in the portion of the county included in the south coast district having not less than a majority of the population of all the cities in the portion of the county included in the south coast district. Population shall be determined on the basis of the most recent verifiable census data developed by the Department of Finance. Persons residing in unincorporated areas or areas of a county outside the south coast district shall not be considered for the purposes of this subdivision.

(g) The members appointed by the Senate Committee on Rules and the Speaker of the Assembly shall have one or more of the qualifications specified in subdivision (c) or shall be a public member. None of those appointed members may be a locally elected official.

(h) All members shall be residents of the district.

(i) (1) The member who was serving on the district board as of June 1, 2007, who had been appointed to represent the eastern region of Los Angeles County shall be deemed on January 1, 2008, to be the member appointed to represent the western region of Los Angeles County pursuant to paragraph (6) of subdivision (a) and shall serve from January 1, 2008, until the end of the term of office for the member who had been appointed to represent the western region of Los Angeles County. At the end of that term, the city selection committee of the western region of Los Angeles County shall make an appointment pursuant to paragraph (6) of subdivision (a).

(2) The member who was serving on the district board as of June 1, 2007, who had been appointed to represent the western region of Los Angeles County shall be deemed on January 1, 2008, to be the member appointed pursuant to paragraph (8) of subdivision (a) until the end of that member's term. At the end of that term, the Mayor of the City of Los Angeles shall make an appointment pursuant to paragraph (8) of subdivision (a).

(3) On or after January 1, 2008, the city selection committee of the eastern region of Los Angeles County shall convene promptly to make an appointment pursuant to paragraph (7) of subdivision (a).

(Amended by Stats. 2007, Ch. 664, Sec. 1. Effective January 1, 2008.)

40421.5. For the purpose of complying with Section 50271 of the Government Code, each mayor shall designate a member of the city's legislative body to attend and vote in his or her place and as his or her representative if the mayor is unable to attend any meeting of the city selection committee to be held pursuant to this article. If a mayor does not make this designation within 10 days preceding a meeting of the city selection committee, the legislative body shall designate one of its own members to represent the city.

(Added by Stats. 1988, Ch. 741, Sec. 2.)

40422. (a) The term of each member of the south coast district board shall be four years and until his or her successor is appointed. Upon the expiration of his or her term, a member who is a mayor from the County of Orange or a member of a city council from the County of Orange may be reappointed, in accordance with subdivision (f) of Section 40420, within 60 days, and the office shall become vacant if the member is not so reappointed within 60 days. Any vacancy on the south coast district board shall be filled within 60 days of its occurrence by its appointing authority.

(b) The members first appointed to the board shall classify themselves by lot so that the terms of four members expire January 15, 1990, the terms of four members expire January 15, 1991, and the terms of three members expire January 15, 1992.

(c) Notwithstanding subdivision (a), no member of a board of supervisors, mayor, or member of a city council shall hold office on the south coast district board for more than 60 days after ceasing to be supervisor, mayor, or member of the city council, respectively, and the membership on the board held by that person terminates upon the expiration of that 60-day period. However, any mayor who immediately resumes the office of member of the city council, and any member of a city council who becomes mayor, has not ceased to hold office for the purposes of this subdivision.

(d) Any member who does not attend three consecutive meetings of the south coast district board without good and sufficient cause therefor, shall be removed by the appointing authority. Any member who does not attend three consecutive meetings of the south coast district board, without good and sufficient cause therefor, and is not thereupon removed by the appointing authority, may be removed by the affirmative vote of at least eight members of the south coast district board.

(Amended by Stats. 1993, Ch. 563, Sec. 1. Effective January 1, 1994.)

40423. The south coast district board shall provide for the frequency and location of its meetings, except that no meeting of the south coast district board shall take place without public notice given at least seven days in advance of the scheduled date of the meeting or, as to special and emergency meetings, without complying with the requirements of Section 54956 or 54956.5, respectively, of the Government Code.

(Amended by Stats. 1988, Ch. 741, Sec. 3.)

40424. (a) Except as provided in subdivision (b), seven members of the south coast district board shall constitute a quorum, and no official action shall be taken by the south coast district board except in the presence of a quorum and upon the affirmative votes of a majority of the members of the south coast district board.

(b) Notwithstanding subdivision (a), whenever there are two or more vacancies on the south coast district board, six members shall constitute a quorum, and the two vacant positions shall not be counted toward the majority required for official action by the south coast district board. Thereafter, whenever at least one of those vacancies is filled, the quorum and voting requirements of subdivision (a) shall apply.

(Amended by Stats. 1988, Ch. 741, Sec. 4.)

40424.5. Voting by the south coast district board on the adoption of all items on its agenda shall be by rollcall. Unless any board member objects, a substitute rollcall may be used on any agenda item. A substitute rollcall shall consist of a unanimous voice vote of the south coast district board members in attendance and shall be recorded by the clerk of the board as an "aye" vote for all members present. For purposes of this section, any consent calendar is a single item.

(Amended by Stats. 1992, Ch. 371, Sec. 1. Effective January 1, 1993.)

40425. The south coast district board shall elect a chairperson every two years from its membership.

(Amended by Stats. 2007, Ch. 664, Sec. 2. Effective January 1, 2008.)

40426. Each member of the south coast district board shall receive compensation of one hundred dollars (\$100) for each day, or portion thereof, but not to exceed one thousand dollars (\$1,000) per month, while attending meetings of the south coast district board or any committee thereof or, upon authorization of the south coast district board, while on official business of the south coast district, and the actual and necessary expenses incurred in performing the member's official duties.

(Amended by Stats. 1987, Ch. 1301, Sec. 6.)

40426.5. (a) Upon the request of any person, or on his or her own initiative, the Attorney General may file a complaint in the superior court for the county in which the south coast district board has its principal office alleging that a member of the south coast district board knowingly or willfully violated

any provision of Title 9 (commencing with Section 81000) of the Government Code, setting forth the facts upon which the allegation is based, and asking that the member be removed from office. Further proceedings shall be in accordance as near as may be with rules governing civil actions. If, after trial, the court finds that the member of the south coast district board knowingly violated this section, it shall issue an order removing the member from office.

(b) The remedy provided in this section is in addition to, and not to the exclusion of, any other remedy, sanction, or penalty available pursuant to law.

(Added by Stats. 1987, Ch. 1301, Sec. 7.)

40426.7. (a) No retired, dismissed, or separated employee or officer of the south coast district, or member of the south coast district board, shall participate in any contract of the district in which he or she engaged in any of the negotiations, transactions, planning, arrangements, or any part of the decisionmaking process relevant to the contract while acting in the capacity of employee or officer of the south coast district, or member of the south coast district board, during the 24-month period commencing on the date the person became retired, dismissed, or separated from service with the south coast district or ceased being a member of the south coast district board.

(b) For a period of 12 months following retirement, dismissal, or separation from service with the south coast district, no former employee or officer of the south coast district, or member of the south coast district board, shall enter into a contract with the south coast district if that person had been with the south coast district in a position involving making any decision, giving or withholding any approval, making any recommendation, rendering any advice, or conducting any investigation concerning the general subject of the proposed contract within 12 months prior to retirement, dismissal, or separation from service with the south coast district. Notwithstanding the prohibitions in this subdivision, the south coast district board may, by a two-thirds vote, enter into a contract with a retired employee of the south coast district or an employee who separated under conditions satisfactory to the south coast district if the south coast district board finds and determines that, at the time of the retirement or separation, the employee was working on one or more programs that are of great importance to the south coast district, that the services of the employee are necessary to assure the continued effectiveness of the program or programs, that the contract is only for that period of time necessary to complete the employee's work on the program or programs, and that the employee is the most qualified person to provide the needed services.

(c) No former employee or officer of the south coast district previously holding a position designated in the conflict-of-interest code of the south coast district, and no member of the south coast district board, who was, at any time while in the service of the south coast district, involved in making any decision, giving or withholding any approval, making any recommendation, rendering any advice, or conducting any investigation involving a particular person shall, with respect to any of these matters that the former employee, officer, or member of the south coast district board was involved in, do any of the following:

(1) Act as an agent or attorney, or otherwise represent, that person in an appearance before the south coast district board or the hearing board.

(2) Make a communication on behalf of that person with the intent to influence the south coast district board or its officers or employees or the hearing board.

(3) Represent, aid, counsel, advise, consult with, or otherwise assist that person in connection with any of these matters in any capacity.

(4) Knowingly enter into a contract or accept employment for any purpose specified in this subdivision.

(d) Any violation of this section is a misdemeanor.

(e) This section applies only to employees and officers who are in the employment of the south coast district on or after July 1, 1988, and members serving on the south coast district board on or after July 1, 1988.

(f) This section shall become operative on July 1, 1988.

(Amended by Stats. 1988, Ch. 1412, Sec. 2. Section applicable July 1, 1988, as specified by this amendment.)

40427. The south coast district board shall determine the location of its headquarters and may establish branch offices in each of the counties included, in whole or in part, within the south coast district, and in such other parts of the south coast district as it deems necessary.

(Added by renumbering Section 40227 by Stats. 1976, Ch. 1063.)

40428. There is continued in existence the South Coast Air Quality Management District Advisory Council, which is appointed by the south coast district board, to advise and consult with the south coast district board in effectuating the purpose of this division.

The membership and rules of the advisory council shall be as established by resolution of the south coast district board.

(Added by Stats. 1980, Ch. 1085.)