



BAY AREA
AIR QUALITY
MANAGEMENT
DISTRICT

BOARD OF DIRECTORS
MEETING
February 15, 2023

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

- **THE PUBLIC MAY PARTICIPATE REMOTELY VIA ZOOM AT THE FOLLOWING LINK OR BY PHONE**

<https://bayareametro.zoom.us/j/82774316408>

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

WEBINAR ID: 827 7431 6408

- **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**

BOARD OF DIRECTORS MEETING AGENDA

WEDNESDAY, FEBRUARY 15, 2023

9:00 AM

Chairperson, John J. Bauters

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

The Board Chair shall call the meeting to order and the Clerk of the Boards shall take roll of the Board 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. No speaker who has already spoken on that item will be entitled to speak to that item again.*

4. **Special Orders of the Day**

CONSENT CALENDAR (Items 5 - 13)

5. Approval of the Minutes of the Board of Directors Meeting of January 25, 2023

The Board will consider approving the draft minutes of the Board of Directors meeting of January 25, 2023.

6. Approval of the Minutes of the Board of Directors Meeting of February 1, 2023

The Board will consider approving the draft minutes of the Board of Directors meeting of February 1, 2023.

7. Board Communications Received from February 1, 2023 through February 14, 2023

A copy of communications directed to the Board of Directors received by the Air District from February 1, 2023 through February 14, 2023, if any, will be distributed to the Board Members by way of email.

8. Personnel Out-of-State Business Travel Report for January 2023

In accordance with Division III, Section 5.4(b) of the Air District Administrative Code, the Board is hereby notified that the attached memorandum lists Air District personnel who have traveled on out-of-state business in the preceding months.

9. Consider Adopting Proposed Amendments to Section 4.9 and Section 6 of Division I of the Administrative Code Regarding (i) Creation of a New Finance & Administration Committee and (ii) Time Limits for Public Comment

The Board of Directors will consider adopting proposed revisions to Section 4.9 and Section 6 of Division I of the Administrative Code to (i) combine the existing Administration Committee and Budget & Finance Committee into a new Finance & Administration Committee, and (ii) revise the Administrative Code provision on time limits for public comment.

10. Report of the Advisory Council Meeting of January 30, 2023

The Board of Directors will receive a report of the Advisory Council meeting of January 30, 2023.

11. Report of the Richmond Area Community Emissions Reduction Plan Steering Committee Meeting of January 30, 2023

The Board of Directors will receive a report of the Richmond Area Community Emissions Reduction Plan Steering Committee Meeting of January 30, 2023.

12. Report of the Budget and Finance Committee Meeting of February 1, 2023

The Board of Directors will receive a report of the Budget and Finance Committee meeting of February 1, 2023.

13. Report of the Stationary Source and Climate Impacts Committee Meeting of February 8, 2023

The Board of Directors will receive a report of the Stationary Source and Climate Impacts Committee Meeting of February 8, 2023.

INFORMATIONAL ITEM(S)

14. Overview of State and Federal Funding for Retrofitting Low-Income Homes with Cleaner Appliances

The Board of Directors will receive an informational update on federal and state incentives that can support moderate and low-income residents with installing cleaner residential water heaters and furnaces. This item will be presented by Amy Dao, Senior Planner in the Climate Protection Section.

15. Green and Healthy Homes Initiative's Innovative Funding Strategies For Low-Income Building Retrofits

The Board of Directors will receive an informational update on innovative funding strategies for low-income building retrofits from Ms. Ruth Ann Norton, President and Chief Executive Officer of the Green and Healthy Homes Initiative, an organization dedicated to addressing the social determinants of health, opportunity, and equity through the creation of healthy, safe, and energy efficient homes.

16. Air Monitoring and Modeling of Incidents: Formation of an Ad Hoc Committee

This is an informational item. Ranyee Chiang, PhD, Director of Meteorology and Measurement, will give an update on the development of an incident response monitoring and modeling program and discuss the Stationary Source and Climate Impacts Committee's recommendation to the Board Chair regarding the appointment of an ad hoc committee to help guide the development of a possible program.

CLOSED SESSION

17. Public Employee Performance Evaluation and Employment

Pursuant to Government Code Section 54957(b)

Title: Interim Air Pollution Control Officer/Executive Officer

18. Public Employee Appointment and Employment

Pursuant to Government Code Section 54957(b)

Title: Interim Chief Operating Officer

19. Conference with Labor Negotiators

Pursuant to Government Code Section 54957.6

Agency Designated Representatives: Board Chair John J. Bauters; DeeAnne Gillick, Sloan Sakai Yeung & Wong LLP

Unrepresented Employee: Interim Chief Operating Officer

20. Conference with Legal Counsel re Anticipated Litigation (Government Code Sections 54956.9(a) and (d)(2))

Pursuant to Government Code sections 54956.9(a) and (d)(2), the Board will meet in closed session with legal counsel to discuss a significant exposure to litigation, based on facts and circumstances not known to a potential plaintiff or plaintiffs: One case.

21. Conference With Legal Counsel re Existing Litigation (Government Code Section 54956.9(a))

Pursuant to Government Code Section 54956.9(a), the Board will meet in closed session with legal counsel to discuss the following case:

Communities for a Better Environment v. Bay Area Air Quality Management District and McWane Inc., Alameda Superior Court Case No. 22CV020451.

OPEN SESSION

ACTION ITEM(S)

22. Consider Amending the Interim Executive Officer / APCO's Employment Agreement and Approving the Interim Chief Operating Officer's Employment Agreement

This is an action item and will be presented by John J. Bauters, Chairperson of the Board. The Board of Directors will consider Amending the Interim Executive Officer/APCO's Employment Agreement and Approving the Interim Chief Operating Officer's Employment Agreement.

23. Recommend Amending the Management Audit Contract with Sjoberg Evashenk Consulting, Inc.

This is an action item and will be presented by John Chiladakis, Acting Chief Administrative Officer. The Board of Directors will consider authorizing the Interim Executive Officer/APCO to amend the Air District's contract with Sjoberg Evashenk Consulting, Inc. to fund ongoing management audit services through 2023 by increasing the contract's not to exceed amount by \$300,000 from \$250,000 to a total of \$550,000.

OTHER BUSINESS

24. 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 will be given an opportunity to address the Board of Directors.

25. Board Member Comments

Any member of the Board, 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)

26. Report of the Interim Executive Officer/APCO

27. Chairperson's Report

28. Time and Place of Next Meeting

March 1, 2023, at 9:30 a.m. at the Towers Emeryville, 2000 Powell St., Suite 250, Second Floor Tenant Lounge and Training Center, Emeryville, CA 94608. The meeting will also be webcast for members of the public.

29. Adjournment

The Board meeting shall be adjourned by the Board 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 spesapati@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

FEBRUARY 2023

<u>TYPE OF MEETING</u>	<u>DAY</u>	<u>DATE</u>	<u>TIME</u>	<u>ROOM</u>
Board of Directors Meeting	Wednesday	15	9:00 a.m.	Webcast only pursuant to Assembly Bill 361
Board of Directors Community Equity, Health and Justice Committee	Wednesday	15	1:00 p.m.	Webcast only pursuant to Assembly Bill 361
Board of Directors Legislative Committee - CANCELLED	Wednesday	15	3:30 p.m.	Webcast only pursuant to Assembly Bill 361
Board of Directors Legislative Committee	Monday	27	9:00 a.m.	Webcast only pursuant to Assembly Bill 361
Path to Clean Air Community Emissions Reduction Plan Steering Committee	Monday	27	5:30 p.m.	Webcast only pursuant to Assembly Bill 361

ADG 2/10/2023 – 8:45 a.m.

G/Board/Executive Office/Moncal

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Memorandum

To: Chairperson John J. Bauters and Members
of the Board of Directors

From: Sharon L. Landers
Interim Executive Officer/APCO

Date: February 15, 2023

Re: Approval of the Minutes of the Board of Directors Meeting of January 25, 2023

RECOMMENDED ACTION

Approve the attached draft minutes of the Board of Directors meeting of January 25, 2023.

BACKGROUND

None.

DISCUSSION

Attached for your review and approval are the draft minutes of the Board of Directors meeting of January 25, 2023.

BUDGET CONSIDERATION/FINANCIAL IMPACT

None.

Respectfully submitted,

Sharon L. Landers
Interim Executive Officer/APCO

Prepared by: Marcy Hiratzka
Reviewed by: Vanessa Johnson

ATTACHMENTS:

1. Draft Minutes of the Board of Directors Meeting of January 25, 2023

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

Board of Directors Special Meeting
Wednesday, January 25, 2023

DRAFT MINUTES

Note: Audio recordings of the meeting are available on the website of the Bay Area Air Quality Management District at www.baaqmd.gov/bodagendas

This meeting was conducted under procedures authorized by Assembly Bill 361 (Rivas 2021), allowing remote meetings. Members of the Board of Directors participated by teleconference.

CALL TO ORDER

1. **Opening Comments:** Board of Directors (Board) Chairperson John J. Bauters, called the meeting to order at 9:00 a.m.

Roll Call:

Present: Chairperson John J. Bauters; Vice Chairperson Davina Hurt; Secretary Lynda Hopkins; and Directors Margaret Abe-Koga, Ken Carlson, Noelia Corzo, Joelle Gallagher, John Gioia, Erin Hannigan, David Haubert, Tyrone Jue, Sergio Lopez, Otto Lee, Myrna Melgar, Nate Miley, Ray Mueller, Rob Rennie, Katie Rice, Mark Ross, Shamann Walton, and Steve Young.

Absent: Director David Hudson.

2. **PLEDGE OF ALLEGIANCE**
3. **PUBLIC MEETING PROCEDURE**
4. **SPECIAL ORDERS OF THE DAY**

Chair Bauters introduced recently promoted Air District employees: Simon Winer, Supervising Air Quality Specialist, Compliance & Enforcement; and Aubsorn Ward, Accountant, Finance. He also introduced Diana Ruiz, a new manager in Community Engagement.

CONSENT CALENDAR (ITEMS 5 -12)

5. Remote Teleconferencing per Assembly Bill (AB) 361 (Rivas) [Click here to view signed Board Resolution No. 2023-01](#)
6. Approval of the Minutes of December 21, 2022
7. Board Communications Received from December 22, 2022, through January 24, 2023
8. Personnel Out-of-State Business Travel Report for December 2022
9. Notices of Violations Issued and Settlements in Excess of \$10,000 in the Month of December 2022
10. Report of the Administration Committee Meeting of December 21, 2022
 - A) Action Item: Consider Authorizing the Corrective Action Plan to implement the recommendations from the Human Resources Management Performance Audit.
11. Authorization to Execute Legal Services Agreement with Woodruff, Spradlin & Smart to represent the Air District in *Communities for a Better Environment v. Bay Area Air Quality Management District et al*
12. Authorization to Execute a Contract Amendment with Renne Public Law Group

Public Comments

Public comments were given by Tony Fisher, Coalition for Clean Air.

NOTED PRESENT: Directors Miley, Rice, and Young were noted present at 9:09 a.m.

Board Comments

None.

Board Action

Vice Chair Hurt made a motion, seconded by Director Walton, to **approve** Consent Calendar Items 5 through 12 inclusive; and the motion **carried** by the following vote of the Board:

AYES: Abe-Koga, Bauters, Carlson, Corzo, Gallagher, Gioia, Hannigan, Haubert, Hopkins, Hurt, Jue, Lopez, Lee, Melgar, Miley, Mueller, Rennie, Rice, Ross, Walton, Young.
NOES: None.
ABSTAIN: None.
ABSENT: Hudson.

OTHER BUSINESS

13. PUBLIC COMMENT ON NON-AGENDA MATTERS

No requests received.

14. BOARD MEMBER COMMENTS

None.

15. REPORT OF THE EXECUTIVE OFFICER/AIR POLLUTION CONTROL OFFICER (APCO)

Sharon L. Landers, Interim Executive Officer/APCO, reported the following:

- Air District staff has released proposed amendments to Rules 9-4 and 9-6 to reduce emissions of nitrogen oxides from residential and commercial furnaces and water heaters in buildings in the Bay Area. These rules govern point of sale emission standards for small, typically residential and commercial, water and space heating systems. Emissions of nitrogen oxides impact local and regional air quality and contribute to the formation of ozone and secondary particulate matter. The Air District Board of Directors will conduct a public hearing to consider adoption of the proposed amendments and certification of the Environmental Impact Report (EIR) on March 15, 2023, at 9:00 AM. Staff plans to convene a formalized ongoing Implementation Working Group (IWG) to support the proposed rule amendments after potential adoption. The IWG is intended to consist of a variety of stakeholders with different areas of expertise in reference to the implementation of the rule amendments. This may include community-based organizations, environmental justice groups, advocacy, and subject matter expert organizations, building technology experts, affordable and market rate housing developers and managers, local and state government staff, funding and financing agencies, equipment manufacturers and distributors, tenant representation organizations and labor organizations.
- On February 28, 2022, the Governor’s State of Emergency will expire, requiring a return to in-person meetings of local legislative bodies, under the Ralph M. Brown Act and Assembly Bill (AB) 2449 (Rubio). The Air District is developing new procedures for in-person meetings that will enable limited remote attendance in publicly accessible remote locations.
- The Governor’s 2023-24 Budget was released on January 10, 2023. A budget deficit of \$22.5 billion is anticipated. Program cuts are anticipated to affect programs of interest to the Air District. Budget hearings will be held, leading up to the 2022-23 May Revision to the Governor's Budget.
- The 2023 Legislative Session has begun, and members will soon be introducing bills; 2,500 are anticipated in February. Air District Legislative staff tracks air quality-related bills and participates in committee hearings and advocacy activities, per the Board’s Legislative Committee.
- Dr. Ranyee Chiang, Director of Meteorology and Measurement, was asked to provide a summary on recent air quality.

Board Comments

The Board and staff discussed ways in which the Air District notifies the public, stakeholders, and agencies of its rulemakings; the request for a fact sheet about the Rule 9-4 and 9-6 rulemakings that the Board members can circulate to their constituents; circulated misinformation regarding rulemakings that can cause alarm; and whether the amount of rain that the California has had in January will affect the 2023 fire season.

16. CHAIRPERSON'S REPORT

Chair Bauters gave the following remarks:

- Welcome to four new Board members (County Supervisors Ken Carlson, Noelia Corzo, Joelle Gallagher, and Ray Mueller).
- Director Lee was reappointed to the Board by the Santa Clara County Board of Supervisors on January 10, 2023.
- On February 1, 2022, there will be a Board meeting at 9:00 a.m., and a Budget & Finance Committee meeting at 1:00 p.m. (both remote, per AB 361.)
- A consultant will be selected by Air District staff to update various sections of the Air District's Administrative Code. The goal is to complete comprehensive updates to the Administrative Code to reflect best practices by the end of 2023.
- A proposed strategic planning process will be introduced to the Board at its annual retreat on March 1, 2023. This process is anticipated to have a 5-year timeline and horizon, with annual updates. This process is intended to be a collaboration between the Board and Air District staff, regarding how to carry out Board priorities.
- In preparation for the transition back to in-person meetings in March, per AB 2449 (Rubio), Chair Bauters reminded the Board members of §1.2(B) of the Air District's Administrative Code, which states, "*Unless excused by the Chairperson, a Board member shall receive compensation for attending meetings of the Board only if: (1) the Board member arrives for the meeting no later than 30 minutes after the scheduled beginning of the meeting; and (2) the Board member misses no more than 30 minutes of the meeting plus, in the event a meeting continues beyond noon, the time between noon and adjournment.*"
- Per AB 2449 (Rubio), satellite/remote locations in various parts of the Bay Area are being identified by Air District staff. These locations may be utilized by Board members and members of the public who wish to attend Board/committee meetings from those locations, rather than at the Air District's headquarters in San Francisco.

17. TIME AND PLACE OF NEXT MEETING

Wednesday, February 1, 2023, at 9:00 a.m., via webcast, teleconference, or Zoom, pursuant to procedures in accordance with Assembly Bill 361 (Rivas 2021).

CLOSED SESSION (9:26pm)

18. CONFERENCE WITH LEGAL COUNSEL RE ANTICIPATED LITIGATION (GOVERNMENT CODE SECTIONS 54956.9(a) AND (d)(2))

Pursuant to Government Code sections 54956.9(a) and (d)(2), the Board will meet in closed session with legal counsel to discuss a significant exposure to litigation, based on facts and circumstances not known to a potential plaintiff or plaintiffs: Four cases.

Reportable Action: Alexander Crockett, District Counsel, had nothing to report.

19. **CONFERENCE WITH LEGAL COUNSEL RE EXISTING LITIGATION
(GOVERNMENT CODE SECTION 54956.9(a))**

Pursuant to Government Code Section 54956.9(a), the Board will meet in closed session with legal counsel to discuss the following case:

Communities for a Better Environment v. Bay Area Air Quality Management District and McWane Inc., Alameda Superior Court Case No. 22CV020451.

Reportable Action: Mr. Crocket stated that the Board authorized Air District staff to pursue a settlement and litigation strategy in the case of *Communities for a Better Environment v. Bay Area Air Quality Management District*.

OPEN SESSION (10:26 a.m.)

20. **ADJOURNMENT**

The meeting adjourned at 10:26 a.m.

Marcy Hiratzka
Clerk of the Boards

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Memorandum

To: Chairperson John J. Bauters and Members
of the Board of Directors

From: Sharon L. Landers
Interim Executive Officer/APCO

Date: February 15, 2023

Re: Approval of the Minutes of the Board of Directors Meeting of February 1, 2023

RECOMMENDED ACTION

Approve the attached draft minutes of the Board of Directors meeting of February 1, 2023.

BACKGROUND

None.

DISCUSSION

Attached for your review and approval are the draft minutes of the Board of Directors meeting of February 1, 2023.

BUDGET CONSIDERATION/FINANCIAL IMPACT

None.

Respectfully submitted,

Sharon L. Landers
Interim Executive Officer/APCO

Prepared by: Marcy Hiratzka
Reviewed by: Vanessa Johnson

ATTACHMENTS:

1. Draft Minutes of the Board of Directors Meeting of February 1, 2023

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

Board of Directors Regular Meeting
Wednesday, February 1, 2023

DRAFT MINUTES

Note: Audio recordings of the meeting are available on the website of the Bay Area Air Quality Management District at www.baaqmd.gov/bodagendas

This meeting was conducted under procedures authorized by Assembly Bill 361 (Rivas 2021), allowing remote meetings. Members of the Board of Directors participated by teleconference.

CALL TO ORDER

1. **Opening Comments:** Board of Directors (Board) Vice Chairperson, Davina Hurt, called the meeting to order at 9:00 a.m.

Roll Call:

Present: Vice Chairperson Davina Hurt; Secretary Lynda Hopkins; and Directors Margaret Abe-Koga, Ken Carlson, Noelia Corzo, Joelle Gallagher, John Gioia, Erin Hannigan, David Haubert, Tyrone Jue, Sergio Lopez, Otto Lee, Myrna Melgar, Nate Miley, Ray Mueller, Rob Rennie, Katie Rice, Mark Ross, Shamann Walton, and Steve Young.

Absent: Chairperson John J. Bauters; and Director David Hudson.

2. **PLPEDGE OF ALLEGIANCE**
3. **PUBLIC MEETING PROCEDURE**
4. **SPECIAL ORDERS OF THE DAY**

Vice Chair Hurt and Directors Walton and Miley gave remarks about the history of the annual observance of Black History Month/African American History Month in the United States, during the month of February. They encouraged others to honor African American history during the rest of the year as well. The history of the American civil rights movement and subsequent environmental justice movement was also described and acknowledged. Veronica Eady, Senior Deputy Executive Officer of Policy & Equity, described various events that the Air District will be holding in February to honor Black History Month.

NOTED PRESENT: Director Lee was noted present at 9:14 a.m., and Director Mueller was noted present at 9:18 a.m.

CONSENT CALENDAR (ITEMS 5 -9)

- 5. Remote Teleconferencing per Assembly Bill (AB) 361 (Rivas)
- 6. Board Communications Received from January 25 through January 31, 2023
- 7. Notice of Proposed Amendments to Section 4.9 and Section 6 of Division I of the Administrative Code Regarding (i) Creation of a New Finance & Administration Committee and (ii) Time Limits for Public Comment
- 8. Authorization to Amend Legal Services Agreement with Shute Mihaly & Weinberger
- 9. Report of the Community Advisory Council meeting of January 19, 2023

Public Comments

No requests received.

Board Comments

None.

Board Action

Director Young made a motion, seconded by Director Carlson, to **approve** Consent Calendar Items 5 through 9, inclusive; and the motion **carried** by the following vote of the Board:

- AYES: Abe-Koga, Carlson, Corzo, Gallagher, Gioia, Hannigan, Haubert, Hopkins, Hurt, Jue, Lopez, Lee, Melgar, Miley, Mueller, Rennie, Rice, Ross, Walton, Young.
- NOES: None.
- ABSTAIN: None.
- ABSENT: Bauters, Hudson.

OTHER BUSINESS

10. PUBLIC COMMENT ON NON-AGENDA MATTERS

No requests received.

11. BOARD MEMBER COMMENTS

None.

12. REPORT OF THE EXECUTIVE OFFICER/AIR POLLUTION CONTROL OFFICER (APCO)

Sharon L. Landers, Interim Executive Officer/APCO, reported the following:

- Dr. Ranyee Chiang, Director of Meteorology and Measurement, was asked to provide a summary on recent air quality.

- Regarding the reports of a fire at the Martinez Refining Company at noon on January 31, 2023, the Air District sent inspectors to the facility, and responded to complaints from the public. No Notices of Violation have been issued from the Air District to the facility yet. Air District staff will continue to investigate the event and respond to public inquiries and complaints. Jeff Gove, Director of Compliance and Enforcement, added that as of the morning of February 1, 2023: inspectors have not seen any smoke from or at the facility, nor detected any offsite odors from the facility; and no public complaints were made to the Air District during the evening of January 31, 2023, or this morning.

Board Comments

The Board and staff discussed whether the Air District can request the additional support of other agencies, if/when Air District resources are overwhelmed during an investigation of an incident; requests from the Martinez City Council for more detailed answers from the facility, which are necessary to address the public’s concerns about the facility’s frequent incidents; independent reviews of the incident that will be conducted by (root cause analysis and community health risk assessment of facility), commissioned by Contra Costa County Health Services; and anticipated prosecution of the facility by the Contra Costa County District Attorney’s Office.

13. **CHAIRPERSON’S REPORT**

On behalf of Chair Bauters, Vice Chair Hurt gave the following remarks:

- Board members should have received the 2023 Air District Board committee assignments. Calendar invites to those meetings for the entire calendar year will be issued.
- The Budget & Finance Committee will meet on February 1, 2023 at 1:00 p.m., via Zoom.
- Save the date for the in-person, annual Board retreat on March 1, 2023.

14. **TIME AND PLACE OF NEXT MEETING**

Wednesday, February 15, 2023, at 9:00 a.m., via webcast, teleconference, or Zoom, pursuant to procedures in accordance with Assembly Bill 361 (Rivas 2021).

15. **ADJOURNMENT**

At 9:33 a.m., the meeting was adjourned in honor of those who lost their lives during recent events in the California communities of Selma, Monterey Park, and Half Moon Bay, as well as Tyre Nichols in Memphis, Tennessee.

Marcy Hiratzka
Clerk of the Boards

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Memorandum

To: Chairperson John J. Bauters and Members
of the Board of Directors

From: Sharon L. Landers
Interim Executive Officer/APCO

Date: February 15, 2023

Re: Board Communications Received from February 1, 2023 through February 14, 2023

RECOMMENDED ACTION

None; receive and file.

BACKGROUND

None.

DISCUSSION

Copies of communications directed to the Board of Directors received by the Air District from February 1, 2023 through February 14, 2023, if any, will be distributed to the Board members by way of email.

BUDGET CONSIDERATION/FINANCIAL IMPACT

None.

Respectfully submitted,

Sharon L. Landers
Interim Executive Officer/APCO

Prepared by: Justine Buenaflor
Reviewed by: Vanessa Johnson

ATTACHMENTS:

None

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

Memorandum

To: Chairperson John J. Bauters and Members
of the Board of Directors

From: Sharon L. Landers
Interim Executive Officer/APCO

Date: February 15, 2023

Re: Personnel Out-of-State Business Travel Report for January 2023

RECOMMENDED ACTION

None; receive and file.

BACKGROUND

In accordance with Division III, Section 5.4(b) of the District's Administrative Code, the Board is hereby notified of District personnel who have traveled on out-of-state business. The report covers out-of-state business travel for the month of January 2023. The monthly out-of-state business travel report is presented in the month following travel completion.

DISCUSSION

The following out-of-state business travel activities occurred in the month of January 2023:

American Meteorological Society Annual Meeting, Denver, CO, January 8-12, 2023 attendees:

- Charles Knoderer, CCM, Meteorology & Quality Assurance Manager
- Richard Lam, Air Quality Meteorologist

BUDGET CONSIDERATION/FINANCIAL IMPACT

All associated business travel-related costs are covered by the respective division's FYE 2023 Budget.

Respectfully submitted,

Sharon L. Landers
Interim Executive Officer/APCO

Prepared by: Michelle Hutson
Reviewed by: Stephanie Osaze

ATTACHMENTS:

None

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

Memorandum

To: Chairperson John J. Bauters and Members
of the Administration Committee

From: Sharon L. Landers
Interim Executive Officer/APCO

Date: February 15, 2023

Re: Consider Adopting Proposed Amendments to Section 4.9 and Section 6 of Division I
of the Administrative Code Regarding (i) Creation of a New Finance &
Administration Committee and (ii) Time Limits for Public Comment

RECOMMENDED ACTION

Adopt proposed revisions to Section 4.9 and Section 6 of Division I of the Administrative Code to (i) combine the existing Administration Committee and Budget & Finance Committee into a new Finance & Administration Committee, and (ii) revise the Administrative Code provision on time limits for public comment.

BACKGROUND

The standing committees of the Board of Directors are provided for under Section 6 of Division I of the Administrative Code. There are currently six standing committees: Administration, Legislative, Mobile Source and Climate Impacts, Community Equity Health & Justice, Stationary Source and Climate Impacts, and Budget & Finance. In the past, the functions of the Budget & Finance Committee have at times been consolidated within the Administration Committee. The Administrative Code was amended most recently with respect to this issue on February 16, 2022, when the Budget & Finance Committee was re-established as a separate, stand-alone committee.

Section 4.9 of Division I of the Administrative Code sets forth time limits for public comment. Section 4.9 currently states that members of the public who wish to address the Board on non-agenda items shall have a limit of five minutes each and shall address the Board under a time reserved for “public presentation,” and that members of the public who wish to speak on agendized items shall have a limit of three minutes each.

DISCUSSION

Staff recommend consolidating the functions of the Administration Committee and Budget & Finance Committee into a new Finance & Administration Committee. The recent management audit revealed a need for greater attention to staffing levels, the capacity and work of the agency, and strategic and long-term planning to meet the Board’s goals and needs. Combining the work

of the current Administration and Budget & Finance committees will allow for a concentrated focus on these policy, staffing and fiscal needs in a single, holistic committee. Doing so will provide for greater connectivity between the Air District's staff, personnel and management decisions and the agency's budget and finance considerations.

In addition, consolidating these committees will help integrate staff work and will save time, reduce bureaucracy, and improve overall agency efficiency. It will also reduce barriers to public participation by putting these related issues into one space for public engagement.

Combining these committees will also help enhance Board participation in committee work. Board member availability for multiple committees and filling committee vacancies has been challenging in the past few years. Conducting the Air District's business through fewer committees and fewer committee meetings will make it easier to fill out committee rosters by reducing the total number of committee seats that need to be filled.

Staff also recommend revising Section 4.9, regarding time limits for public comment. The current language of Section 4.9, which states that members of the public are allowed five minutes to comment on non-agenda items and three minutes to comment on agenda items, does not comport with the Board's historical practice. Moreover, it is not sound policy to specify a set time limit to apply in all situations. Depending on the meeting and the topic, it may be prudent to allow more time or less time for public comment. A better approach would be to provide flexibility to allow the Director chairing the meeting (i.e., Board Chairperson, Committee Chairperson, or other Director standing in for the Board or Committee Chairperson) to establish the appropriate time limits for each item. Staff propose revising Section 4.9 to create such a flexible approach.

All of these recommended revisions are shown in the attached redline version of Section 4.9 (on time limits for public comment) and the relevant portions of Section 6 (on Board committees). A clean version showing what the proposed amendments would look like in final form is also attached.

The Administration Committee considered staff's proposal at its December 21, 2022, meeting, and voted to recommend to the Board of Directors that the Board adopt these proposed revisions. Per Division I, Section 14.1 of the Administrative Code, notice that the Board of Directors would consider adopting these proposed revisions was provided at the Board's regular meeting held on February 1, 2023.

BUDGET CONSIDERATION/FINANCIAL IMPACT

None. If the Board adopts the proposed amendments, there would likely be a small cost savings by eliminating some committee meetings as a result of combining the Administration and Budget & Finance committees.

Respectfully submitted,

Sharon L. Landers
Interim Executive Officer/APCO

Prepared by: Alexander Crockett
Reviewed by: Sharon Landers

ATTACHMENTS:

1. Draft Admin Code revision to combine Administration and B&F Committees - Redline Version
2. Draft Admin Code revision to combine Administration and B&F Committees - Clean Version

Proposed Amendments to the Administrative Code - Redline

SECTION 4 BOARD OF DIRECTORS, CONDUCT OF BUSINESS

4.9 PRESENTATION TIME LIMITS. (Revised 4/_/5/202306)

~~Time limits for P~~persons addressing the Board ~~or a Board committee at a public meeting~~ shall ~~limit their remarks as follows:~~be established for each item on the meeting's agenda ~~(including public comment on non-agenda matters) by the Director chairing the meeting.~~

- ~~(a) — Persons wishing to speak on items not on the agenda may do so under a time reserved for "public presentation" and shall be limited to five minutes for any single item. Although the Board may refer any issues raised by these speakers to District staff for review, no action may be taken by the Board on these items until they are agendized.~~
- ~~(b) — Persons speaking on agendized items shall be limited to three minutes or at the discretion of the Chair.~~

SECTION 6 BOARD OF DIRECTORS, COMMITTEES

6.1 SPECIAL COMMITTEES.

All special committees shall be appointed by the Chairperson, unless otherwise directed by the Board.

6.2 STANDING COMMITTEES. (REVISED 2/16/22)

Standing Committees of the Board of Directors shall be the following:

- (1) Finance and Administration Committee, consisting of the Chairperson of the Board, who shall be Chairperson of the Committee, the Vice-Chairperson of the Board, the Board Secretary, the last past Chairperson, and up to seven (7) other Directors appointed by the Chairperson.
- (2) Legislative Committee, consisting of up to eleven (11) Directors appointed by the Chairperson.
- (3) Mobile Source and Climate Impacts Committee, consisting of up to eleven (11) Directors appointed by the Chairperson.
- (4) Community Equity Health and Justice Committee, consisting of up to eleven (11) Directors appointed by the Chairperson.
- (5) Stationary Source and Climate Impacts Committee, consisting of up to eleven (11) Directors appointed by the Chairperson.
- ~~(6) Budget and Finance Committee, consisting of up to eleven (11) Directors appointed by the Chairperson.~~
- ~~(7)~~(6) The Chairperson shall be an ex-officio member of all Standing Committees of the Board of Directors.
- ~~(8)~~(7) Each Standing Committee shall have authority to make recommendations to the Board of Directors for action regarding matters within the scope of the Committee's jurisdiction. A standing committee may discuss but may not make recommendations to the Board of Directors regarding issues outside of its jurisdiction and shall refer such matters to the appropriate committee. Except as specified in this Division or as otherwise specified by the Board of Directors, Standing Committees are not delegated decision-making authority.
- ~~(9)~~(8) In no event shall the number of members, including the Chairperson of the Board, appointed to a Committee, constitute a quorum of the Board of Directors.

6.3 ROTATION OF COMMITTEES.

The membership on committees shall ordinarily be rotated among the Counties so as to secure participation in the work of the District by as broad a representation as may be possible.

6.4 FINANCE AND ADMINISTRATION COMMITTEE. (REVISED 7/20/22)

The Finance and Administration Committee will consider and recommend policies of the District relating to the administration of the District's programs and activities, including but not limited to such matters of policy affecting the affairs of the District as may arise from time to time when the Board of Directors is not in session, policies regarding finance, procurement, employment, salaries, working conditions, insurance, and the retaining of consultants. The Committee shall not have authority to authorize alter, change or reverse any

~~policy established by the Board of Directors. The Administration Committee shall consult with the officers of the District and, within the scope and limitations of resolutions or other policies adopted by the Board of Directors, shall implement and make more specific the policies and programs of the District and, within such limits determine policies for the officers of the District. The Administration Committee shall not have authority to authorize the expenditure of any moneys otherwise than is appropriated by the budget adopted by the Board of Directors or to alter, change or reverse any policy established by the Board of Directors. (See Section I-6.7)~~

~~The Finance and Administration Committee shall have the responsibility for will overseeing and guiding guide staff activities relative to short-range and long-range planning regarding the and for receiving short range and long range plan proposals submitted by the District staff, as well as goals and objectives of the District. The Committee will recommend to the Board of Directors ; and for endorsing each year a long-range plan, to be submitted to the Board for its approval, and for its use in reviewing the Budget. In doing so, the Administration Committee should review the goals and objectives and; short- and long-range plans of the California Air Resources Board, to the extent that they are known. The Committee will use the long-range plan approved by the Board of Directors in reviewing and developing the budget each year.~~

~~The Administration Committee may receive and consider staff reports, presentations by staff members or other persons, and any other matter not requiring action by the Board. The Administration Committee shall subsequently report on such matters to the Board at a regular meeting of the Board.~~

~~The Administration Committee will also consider and recommend policies of the District relating to procurement of officers and employees, employment of officers and employees, discharge of officers and employees, salaries and working conditions, and the retaining of consultants. The Administration Committee shall keep itself informed as to the work of the Advisory Council and Hearing Board, to be informed about persons in the community who may be qualified to serve on the Advisory Council and Hearing Board, and to recommend to the Board of Directors selection of such persons whenever vacancies may from time to time occur in the Advisory Council and Hearing Board. The Finance and Administration Committee will assist in the preparation of the annual budget for the District and will present the annual budget with recommendations to the Board of Directors. At Budget review time each year, the Committee will evaluate District goals and objectives and will recommend to the Board of Directors any changes it determines are appropriate. The Committee shall not have authority to authorize the expenditure of any funds not appropriated in the budget adopted by the Board of Directors.~~

~~The Finance and Administration Committee will keep itself informed as to the work of the Advisory Council and Hearing Board, and of persons in the community who may be qualified to serve on the Advisory Council and Hearing Board. The Committee will recommend to the Board of Directors selection of such persons whenever vacancies may from time to time occur on the Advisory Council or Hearing Board.~~

~~The Finance and Administration Committee will consider and recommend updates or revisions to this Code as may from time to time become necessary.~~

~~The Finance and Administration Committee is the successor to, and performs all of the functions of, the Administration Committee, Budget & Finance Committee, Executive Committee and Personnel Committee as those committees existed prior to January 201, 2021-2023. Any function assigned to the Administration Committee, Budget & Finance Committee, Executive Committee or Personnel Committee under this Code shall be performed by the Finance and Administration Committee.~~

6.5 ~~[Reserved] BUDGET AND FINANCE COMMITTEE. (REVISED 2/16/22)~~

~~The Budget and Finance Committee will also assist in the preparation of the annual budget for the District and to present the annual budget with recommendations to the District Board of Directors. The Budget and Finance Committee also is responsible for approving administrative policy proposed by the APCO in the area of finance, procurement, insurance and related matters. At Budget review time each year the Committee shall evaluate District goals and objectives and recommend to the Board of Directors any changes, deletions and additions which it determines to be appropriate.~~

6.6 LEGISLATIVE COMMITTEE.

The Legislative Committee will consider and recommend legislative proposals for the District and consider and recommend a District position on all proposed legislation affecting the District. The Legislative Committee, in conjunction with District staff and the District Legislative Advocate, will keep itself informed on pending legislative matters and will meet and/or confer with appropriate legislators as necessary.

6.7 NOMINATING COMMITTEE. (Revised 10/4/95)

The Nominating Committee will consist of the Chairperson of the Board, the past Chairperson of the Board and three (3) appointees of the Chairperson of the Board, or in the event the past Chairperson of the Board is no longer serving on the Board, four (4) appointees of the Chairperson of the Board. The Nominating Committee shall be appointed no later than the second Board Meeting in November of each year and shall serve until the appointment of a new Committee. It is the function of the Nominating Committee to recommend to the Board the officers for each calendar year. In making its recommendation, the Committee shall not be bound by a recommendation of a previous Nominating Committee. The Committee need not follow a strict rule of rotation between supervisor and city members but may take into account their proportionate membership on the Board of Directors. Additionally, the Committee shall take into account the provisions of Section I-2.7.

6.8 MOBILE SOURCE AND CLIMATE IMPACTS COMMITTEE. (Revised 7/7/21)

The Mobile Source and Climate Impacts Committee will consider and recommend policies and positions of the District relating to transportation planning and funding, on-road and off-road mobile sources, mobile source fuels and equity for impacted communities related to these sectors. The Committee will keep itself informed on actions or proposed actions by local, regional, state and federal agencies affecting air pollutant emissions from mobile sources.

The Committee will also consider and recommend to the Board of Directors policies and positions of the District relating to climate protection activities and climate equity for impacted communities relative to mobile sources. The Committee will keep itself informed on actions and proposed actions by local, regional, state, federal, and international agencies and organizations relating to climate protection relative to mobile sources.

6.9 COMMUNITY EQUITY HEALTH AND JUSTICE COMMITTEE. (Revised 7/7/21)

The Community Equity Health and Justice Committee will advise the Board of Directors regarding equitable and inclusive actions the Air District takes to create a healthy breathing environment for all people of the Bay Area, regardless of race, ethnicity, age, gender identity, national origin, immigration status, ability or sexual orientation. The Committee will oversee staff efforts in developing policies for both internal and external operations, which impact the Bay Area. Internal operations include applying an equity lens to programs, policies, practices and procedures related to staffing, recruitment, promotions, inclusive practices in the workplace, contracting for capital projects and services, and continuous racial equity training. External operations include addressing disparities by applying an equity lens to Air District programs, policies, practices, and procedures. The Committee will prioritize traditionally

marginalized and disinvested communities for investment opportunities to ensure communities highly impacted by air pollution receive program and policy prioritization.

The Committee will also recommend to the Board of Directors overall direction of the District's public engagement programs. In addition, the Committee hears proposals and makes recommendations to the Board of Directors regarding the selection of a contractor(s) to assist the District with aspects of the public engagement programs.

6.10 STATIONARY SOURCE AND CLIMATE IMPACTS COMMITTEE.

The Stationary Source and Climate Impacts Committee will consider and recommend policies to the Board of Directors relating to stationary sources. The Committee shall recommend positions to the Board of Directors on stationary source policy issues affecting the implementation of the State and Federal Air Quality Management Plans and key planning policy issues such as federal and State Air Quality Management Plan development and air quality and economic modeling. The Committee shall review and make recommendations to the Board of Directors regarding major stationary source programs including: permitting, compliance, small business assistance, toxics, source education, and rule development. The Committee shall recommend to the Board of Directors positions concerning federal and state regulations that affect stationary sources. The Committee shall recommend policies to the Board of Directors for disbursement of supplemental environmental project grants.

The Committee will also consider and recommend to the Board of Directors policies and positions of the District relating to climate protection activities and funding relative to stationary sources. The Committee will keep itself informed on actions and proposed actions by local, regional, state, federal, and international agencies and organizations relating to climate protection relative to stationary sources.

6.11 QUORUM FOR COMMITTEES. (Revised 12/6/06)

There is no quorum requirement for a Committee meeting to be held, except that, for the purpose of making a Committee recommendation to the Board of Directors, there is established a quorum of five (5) Committee members.

6.12 COMMITTEE PROCEDURE. (Revised 12/6/06)

- (a) Voting. Only members of the Committee shall be allowed to vote on Committee recommendations.
- (b) Minority Report. Any Committee member can submit a Minority Report to accompany the Committee recommendation submitted to the Board of Directors, but may not use District staff to prepare such report.

Proposed Amendments to the Administrative Code - Redline

SECTION 4 BOARD OF DIRECTORS, CONDUCT OF BUSINESS

4.9 PRESENTATION TIME LIMITS. (Revised __/__/2023)

Time limits for persons addressing the Board or a Board committee at a public meeting shall be established for each item on the meeting's agenda (including public comment on non-agenda matters) by the Director chairing the meeting.

SECTION 6 BOARD OF DIRECTORS, COMMITTEES

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- (2) Legislative Committee, consisting of up to eleven (11) Directors appointed by the Chairperson.
- (3) Mobile Source and Climate Impacts Committee, consisting of up to eleven (11) Directors appointed by the Chairperson.
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- (6) The Chairperson shall be an ex-officio member of all Standing Committees of the Board of Directors.
- (7) Each Standing Committee shall have authority to make recommendations to the Board of Directors for action regarding matters within the scope of the Committee’s jurisdiction. A standing committee may discuss but may not make recommendations to the Board of Directors regarding issues outside of its jurisdiction and shall refer such matters to the appropriate committee. Except as specified in this Division or as otherwise specified by the Board of Directors, Standing Committees are not delegated decision-making authority.
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The Finance and Administration Committee will consider and recommend policies of the District relating to the administration of the District’s programs and activities, including but not limited to policies regarding finance, procurement, employment, salaries, working conditions, insurance, and the retaining of consultants. The Committee shall not have authority to authorize alter, change or reverse any policy established by the Board of Directors.

The Finance and Administration Committee will oversee and guide staff activities relative to short-range and long-range planning regarding the goals and objectives of the District. The Committee will recommend to the Board of Directors each year a long-range plan. In doing so, the Committee should review the goals and objectives and short- and long-range plans of

the California Air Resources Board, to the extent that they are known. The Committee will use the long-range plan approved by the Board of Directors in reviewing and developing the budget each year.

The Finance and Administration Committee will assist in the preparation of the annual budget for the District and will present the annual budget with recommendations to the Board of Directors. At Budget review time each year, the Committee will evaluate District goals and objectives and will recommend to the Board of Directors any changes it determines are appropriate. The Committee shall not have authority to authorize the expenditure of any funds not appropriated in the budget adopted by the Board of Directors.

The Finance and Administration Committee will keep itself informed as to the work of the Advisory Council and Hearing Board, and of persons in the community who may be qualified to serve on the Advisory Council and Hearing Board. The Committee will recommend to the Board of Directors selection of such persons whenever vacancies may from time to time occur on the Advisory Council or Hearing Board.

The Finance and Administration Committee will consider and recommend updates or revisions to this Code as may from time to time become necessary.

The Finance and Administration Committee is the successor to, and performs all of the functions of, the Administration Committee, Budget & Finance Committee, Executive Committee and Personnel Committee as those committees existed prior to January 1, 2023. Any function assigned to the Administration Committee, Budget & Finance Committee, Executive Committee or Personnel Committee under this Code shall be performed by the Finance and Administration Committee.

6.5 [Reserved]

6.6 LEGISLATIVE COMMITTEE.

The Legislative Committee will consider and recommend legislative proposals for the District and consider and recommend a District position on all proposed legislation affecting the District. The Legislative Committee, in conjunction with District staff and the District Legislative Advocate, will keep itself informed on pending legislative matters and will meet and/or confer with appropriate legislators as necessary.

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The Committee will also consider and recommend to the Board of Directors policies and positions of the District relating to climate protection activities and climate equity for impacted communities relative to mobile sources. The Committee will keep itself informed on actions and proposed actions by local, regional, state, federal, and international agencies and organizations relating to climate protection relative to mobile sources.

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The Community Equity Health and Justice Committee will advise the Board of Directors regarding equitable and inclusive actions the Air District takes to create a healthy breathing environment for all people of the Bay Area, regardless of race, ethnicity, age, gender identity, national origin, immigration status, ability or sexual orientation. The Committee will oversee staff efforts in developing policies for both internal and external operations, which impact the Bay Area. Internal operations include applying an equity lens to programs, policies, practices and procedures related to staffing, recruitment, promotions, inclusive practices in the workplace, contracting for capital projects and services, and continuous racial equity training. External operations include addressing disparities by applying an equity lens to Air District programs, policies, practices, and procedures. The Committee will prioritize traditionally marginalized and disinvested communities for investment opportunities to ensure communities highly impacted by air pollution receive program and policy prioritization.

The Committee will also recommend to the Board of Directors overall direction of the District’s public engagement programs. In addition, the Committee hears proposals and makes recommendations to the Board of Directors regarding the selection of a contractor(s) to assist the District with aspects of the public engagement programs.

6.10 STATIONARY SOURCE AND CLIMATE IMPACTS COMMITTEE.

The Stationary Source and Climate Impacts Committee will consider and recommend policies to the Board of Directors relating to stationary sources. The Committee shall recommend positions to the Board of Directors on stationary source policy issues affecting the implementation of the State and Federal Air Quality Management Plans and key planning policy issues such as federal and State Air Quality Management Plan development and air quality and economic modeling. The Committee shall review and make recommendations to the Board of Directors regarding major stationary source programs including: permitting, compliance, small business assistance, toxics, source education, and rule development. The Committee shall recommend to the Board of Directors positions concerning federal and state regulations that affect stationary sources. The Committee shall recommend policies to the Board of Directors for disbursement of supplemental environmental project grants.

The Committee will also consider and recommend to the Board of Directors policies and positions of the District relating to climate protection activities and funding relative to stationary sources. The Committee will keep itself informed on actions and proposed actions by local, regional, state, federal, and international agencies and organizations relating to climate protection relative to stationary sources.

6.11 QUORUM FOR COMMITTEES. (Revised 12/6/06)

There is no quorum requirement for a Committee meeting to be held, except that, for the purpose of making a Committee recommendation to the Board of Directors, there is established a quorum of five (5) Committee members.

6.12 COMMITTEE PROCEDURE. (Revised 12/6/06)

- (a) Voting. Only members of the Committee shall be allowed to vote on Committee recommendations.

- (b) Minority Report. Any Committee member can submit a Minority Report to accompany the Committee recommendation submitted to the Board of Directors, but may not use District staff to prepare such report.

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

Memorandum

To: Chairperson John J. Bauters and Members
of the Board of Directors

From: Sharon L. Landers
Interim Executive Officer/APCO

Date: February 15, 2023

Re: Report of the Advisory Council Meeting of January 30, 2023

RECOMMENDED ACTION

None; receive and file.

BACKGROUND

None.

DISCUSSION

The Advisory Council met on Monday, January 30, 2023, and approved the minutes of September 12, 2022. This meeting was conducted under procedures authorized by Assembly Bill 361. Members of the Council participated by teleconference.

The Council then received and discussed the staff presentation *Fine Particulate Matter Local Risk Methodology Update*, regarding the Air District's Particulate Matter_{2.5} local risk methodology.

The Council then received and discussed three presentations from various entities who provided public comments on the Air District's draft white paper, *Modeling Local Sources of Fine Particulate Matter_{2.5} for Risk Management*:

- *Risk Management and Regulatory Context* given by Christine Wolfe, California Council for Environmental and Economic Balance;
- *Citizen Air Monitoring Network*, given by Ken Szutu, Vallejo resident and Air District Community Advisory Council member; and
- *Modeling Local Sources of Fine Particulate Matter (PM_{2.5}) for Risk Management*, given by Dr. Julie Goodman, Gradient.

Finally, the Council received and discussed the staff presentation *Revision of the PM_{2.5} National Ambient Air Quality Standard: The Role of Air Monitoring Data*, which provided information

and context about the recent proposal from U.S. Environmental Protection Agency, and how air monitoring data is compared to the Particulate Matter National Ambient Air Quality Standards.

The next meeting of the Council will be held at the Call of the Chair, in person at 375 Beale Street, San Francisco, CA 94105. This concludes the Chair Report of the Advisory Council meeting.

BUDGET CONSIDERATION/FINANCIAL IMPACT

None.

Respectfully submitted,

Sharon L. Landers
Interim Executive Officer/APCO

Prepared by: Marcy Hiratzka
Reviewed by: Vanessa Johnson

ATTACHMENTS:

1. Advisory Council January 30, 2023 Meeting Memorandums

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

Memorandum

To: Chairpersons Linda Rudolph and Gina Solomon, and Members of the Advisory Council

From: Sharon L. Landers
Interim Executive Officer/APCO

Date: January 30, 2023

Re: Update on the Proposed Methodology for Determining Local Health Risks from Fine Particulate Matter (PM_{2.5})

RECOMMENDED ACTION

None; presentation only.

BACKGROUND

The Air District has received public comments on a draft white paper, *Modeling Local Sources of Fine Particulate Matter (PM_{2.5}) for Risk Management*, and an accompanying spreadsheet that proposes and illustrates a methodology for modeling health risks attributable to local sources of fine particulate matter, or PM_{2.5}. The purpose of this methodology is to support the assessment and regulation of health risks from PM_{2.5} at a local level. This proposed methodology has been developed by the Air District with guidance from the Air District's Advisory Council and in consultation with staff at the United States Environmental Protection Agency, the California Air Resources Board, and California's Office of Environmental Health Hazard Assessment.

DISCUSSION

At the last Advisory Council meeting (September 2022), the Council requested that staff look into the issue of PM_{2.5} infiltration factors. Today, staff will update the Council on a recommended adjustment to the methodology that is responsive to that request.

In October 2022 – November 2022, the Air District sought public comments regarding the content of the methodology itself. Comments were received from three organizations and one individual:

- California Council for Environmental and Economic Balance
- Citizen Air Monitoring Network
- Western States Petroleum Association
- Dr. Julia Walsh

Staff will present a brief overview of the types of comments received, focusing on themes that pertain to the content of the proposed methodology itself (as opposed to, e.g., potential applications or policy implications). Staff will also highlight the aspects of the proposed methodology that received the most significant attention.

BUDGET CONSIDERATION/FINANCIAL IMPACT

None.

Respectfully submitted,

Sharon L. Landers
Interim Executive Officer/APCO

Prepared by: David Holstius
Reviewed by: Phil Martien & Greg Nudd

ATTACHMENTS:

None

ADVISORY COUNCIL
MEETING OF 01/30/2023

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

Memorandum

To: Chairpersons Linda Rudolph and Gina Solomon, and Members of the Advisory Council

From: Sharon L. Landers
Interim Executive Officer/APCO

Date: January 30, 2023

Re: Comments on the Proposed Methodology for Determining Local Health Risks from Fine Particulate Matter (PM_{2.5})

RECOMMENDED ACTION

None; presentation only.

BACKGROUND

The Air District received public comments on a draft white paper, Modeling Local Sources of Fine Particulate Matter (PM_{2.5}) for Risk Management, and an accompanying spreadsheet that proposes and illustrates a methodology for modeling health risks attributable to local sources of fine particulate matter, or PM_{2.5}. The purpose of this methodology is to support the assessment and regulation of health risks from PM_{2.5} at a local level. This proposed methodology has been developed by the Air District with guidance from the Air District's Advisory Council and in consultation with staff at the United States Environmental Protection Agency, the California Air Resources Board, and California's Office of Environmental Health Hazard Assessment.

DISCUSSION

In October 2022, the Air District released the draft white paper, Modeling Local Sources of Fine Particulate Matter (PM_{2.5}) for Risk Management, to its website and sent an eblast to interested stakeholders, seeking public comment and feedback on the content of the methodology. The public comment period closed in late November 2022, and the Air District received public comment from four organizations and individuals.

The Air District extended invitations to each commentor to present and share information with the Advisory Council. Today, the Advisory Council will receive presentations from three of the organizations that provided public comment:

- Christine Wolfe, Policy and Communications Director, California Council for Environmental and Economic Balance
- Ken Szutu, Founder and Director, Citizen Air Monitoring Network
- Dr. Julie Goodman, Gradient, on behalf of Western States Petroleum Association

BUDGET CONSIDERATION/FINANCIAL IMPACT

None.

Respectfully submitted,

Sharon L. Landers
Interim Executive Officer/APCO

Prepared by: David Holstius & Sonam Shah-Paul
Reviewed by: Phil Martien & Greg Nudd

ATTACHMENTS:

None

ADVISORY COUNCIL
MEETING OF 01/30/2023

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

Memorandum

To: Chairpersons Linda Rudolph and Gina Solomon, and Members of the Advisory Council

From: Sharon L. Landers
Interim Executive Officer/APCO

Date: January 30, 2023

Re: Revision of the PM_{2.5} National Ambient Air Quality Standard: The Role of Air Monitoring Data

RECOMMENDED ACTION

None; presentation only.

BACKGROUND

The U.S. National Ambient Air Quality Standards (NAAQS, pronounced /'næks/ naks) are limits on atmospheric concentration of six pollutants that cause serious health hazards as well as smog and acid rain. Of these six pollutants, in the Bay Area, the concentrations of fine particulate matter (PM_{2.5}) and ozone are closest to the NAAQS. On January 6, 2023, the U.S. EPA announced their decision for the reconsideration of the particulate matter (PM_{2.5}) standard. They proposed to revise the annual PM_{2.5} standard to be more stringent, which may put the Bay Area above the new NAAQS, depending on where it is set. The Bay Area will likely be required to develop and submit a federally enforceable plan to attain the new, more health protective standard. For ozone, the EPA has determined that the Bay Area met the ozone NAAQS (8-hour). However, our most recent air monitoring station data indicates we may bounce above and below this standard in the coming years.

DISCUSSION

Air District staff will provide preliminary information on the recent proposal from EPA as well as background information about the activities that occur after the NAAQS is revised. The presentation will include a review of NAAQS, how monitoring data is used to calculate a design value (the statistic that is compared to the NAAQS), an example of PM_{2.5} trends relative to current and proposed NAAQS, and how wildfire data impacts design values. Staff will also introduce the implications for a revised PM_{2.5} NAAQS and the policy challenges for significantly reducing ambient PM concentrations. We will be responding to the EPA proposed rulemaking on the NAAQS and continue to evaluate our air monitoring data for designations and NAAQS implementation.

BUDGET CONSIDERATION/FINANCIAL IMPACT

None.

Respectfully submitted,

Sharon L. Landers
Interim Executive Officer/APCO

Prepared by: Ranyee Chiang, Kate Hoag
Reviewed by: Greg Nudd

ATTACHMENTS:

None

ADVISORY COUNCIL
MEETING OF 01/30/2023

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

Memorandum

To: Chairperson John J. Bauters and Members
of the Board of Directors

From: Sharon L. Landers
Interim Executive Officer/APCO

Date: February 15, 2023

Re: Report of the Richmond Area Community Emissions Reduction Plan Steering
Committee Meeting of January 30, 2023

RECOMMENDED ACTION

None; receive and file.

BACKGROUND

None.

DISCUSSION

The Richmond Area Community Emissions Reduction Plan Steering Committee met on Monday, January 30, 2023, and approved the Minutes of November 28, 2022. This meeting was conducted under procedures authorized by Assembly Bill 361. Members of the Committee participated by teleconference.

The Committee then received updates from the following Steering Committee Ad Hoc Committees: Vehicles and Trucks, Streets and Freeways, and Logistics and Warehouses; Addressing Public Health and Reducing Exposure; Marine and Rail; Commercial and Industrial Sources Near Communities; Fuel Refining, Support Facilities, Storage, and Distribution; and Odors and Smells.

The Committee then received and discussed the presentation *Review & Vote on Fuel Refining Distribution Storage Scope of Work for Flaring Analysis*, given by Committee member Cantu. The Committee (though a vote) selected Karras G. Consulting to provide technical analysis and advice regarding maximum feasible measures to prevent and reduce emission, health, and safety risk associated with refining and related activities in Richmond and West Contra Costa County, at a consultant rate of \$150/hour for 50 hours total (\$7,500).

The Committee then received and discussed the presentation *Review & Vote on Request for a Communications and Community Engagement Plan*, given by Committee member Severy. The Committee (though a vote) selected Lai R. Consulting to develop a Community Engagement and

Communications Plan that will help the Committee engage and inform the public of the Community Emission Reduction Plan, with a racial, social and environmental justice lens, at a consultant rate of \$150/hour for 50 hours total (\$7,500).

The Committee then received and discussed the staff presentation *Assembly Bill 2449 Update - Changes to Remote Attendance Rules Under Ralph M. Brown Act's Open Meeting Laws*, given by Marcia Raymond, Air District Assistant Counsel.

Finally, the Committee received and discussed the presentation *Proposed Community Emissions Reduction Plan Timeline and Process for Future Community Steering Committee Governance Structure*, given by Committee Co-Chair Angulo. The Committee (through a vote) directed the Committee Co-chairs to transmit a letter notifying the California Air Resources Board that the Committee plans to complete and adopt the Richmond Area Path to Clean Air Community Emissions Reduction Plan on or before December 2023. Following this action, the consensus of the Committee members present was to support the formation of a Governance Ad Hoc Committee that will develop a proposal for transitioning to a community-governance structure (for the Committee's consideration of approval in February). Interested Committee members identified themselves.

The next meeting of the Richmond Area Community Emissions Reduction Plan Steering Committee will be held on Monday, February 27, 2023, at 5:30 p.m., via webcast, teleconference, or Zoom, pursuant to procedures in accordance with Assembly Bill 361 (Rivas 2021). This concludes the Chair Report of the Richmond Area Community Emissions Reduction Plan Steering Committee.

BUDGET CONSIDERATION/FINANCIAL IMPACT

None.

Respectfully submitted,

Sharon L. Landers
Interim Executive Officer/APCO

Prepared by: Marcy Hiratzka
Reviewed by: Vanessa Johnson

ATTACHMENTS:

1. Path to Clean Air Community Emissions Reduction Plan Community Steering Committee January 30, 2023 Meeting Memorandums

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

Memorandum

To: Members of the Path to Clean Air Steering Committee

From: Veronica Eady
Senior Deputy Executive Officer of Policy & Equity

Date: January 30, 2023

Re: Review and Vote on Fuel Refining Distribution Storage Scope of Work for Flaring Analysis

RECOMMENDED ACTION

The Community Steering Committee will vote to approve Karras G. Consulting Scope of Work for Flaring Analysis.

BACKGROUND

The proposed scope of work will support the Steering Committee with independent technical analysis and advice regarding maximum feasible measures to prevent and reduce emission, health, and safety risk associated with refining and related activities in Richmond and West County targeting potential actions that may be initiated in 2023 and accounting for both the need for prompt implementation and the need for sustained preventive action and implementation for at least a decade amid anticipated fundamental change in the petroleum industry.

DISCUSSION

Steering Committee members will receive a presentation and review the Fuel Refining Distribution Storage Scope of Work for Flaring Analysis. There will be opportunities for Committee members and the public to discuss the Consultants' scope of work. The Committee will then vote on whether to adopt the subcontracted proposal for technical support.

BUDGET CONSIDERATION/FINANCIAL IMPACT

None.

Respectfully submitted,

Veronica Eady
Senior Deputy Executive Officer of Policy & Equity

Prepared by: Karissa White

Reviewed by: Veronica Eady

ATTACHMENTS:

1. Karras G Consulting Scope of Work

PATH TO CLEAN AIR COMMUNITY
EMISSIONS REDUCTION PLAN
STEERING COMMITTEE
MEETING OF 01/30/2023

AB 617 SC Consulting Statement of Work Fuel Refining, Storage, and Distribution Subgroup Flaring Analysis

PROBLEM STATEMENT

While we have many sources of pollution to review and reduce, our biggest opportunity lies with emissions reduction at Chevron Richmond, the largest refinery on the west coast of North America. But after 21 months, we still can't answer two fundamental questions.

1. Why does Chevron continue to have such elevated levels of flaring and how damaging are they for public health?

DELIVERABLES

Support the Committee with independent technical analysis and advice regarding maximum feasible measures to prevent and reduce emission, health, and safety risk associated with refining and related activities in Richmond and West County, targeting potential actions that may be initiated in 2023 and accounting for both the need for prompt implementation and the need for sustained preventive action and implementation for at least a decade amid anticipated fundamental change in the petroleum industry:

- A. The initial focus will be on flare emission incident prevention measures and opportunities for proactive community involvement in such measures;
- B. Facility-wide (refinery, sulfur plant, marine terminal) combustion emission prevention measures will be an additional focus to the extent that time and resources allow;
- C. Facility-wide toxic air contaminant emission 'leak' prevention measures, and other technical questions as directed by the Committee, may also be included, to the extent that time and resources allow.

Payment Terms:

An hourly amount of 50 hours was negotiated. The total estimated hours for this project is 50 hours. At a consultant rate of \$150/HR the total estimated project cost for this service is at \$7,500. An advanced payment of \$1,000 is requested at the beginning of the project and the client will be invoiced monthly on the 5th of every month for work done in the previous month. The advanced payment of \$1,000 will be credited towards the invoice

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

Memorandum

To: Members of the Path to Clean Air Steering Committee

From: Veronica Eady
Senior Deputy Executive Officer of Policy & Equity

Date: January 30, 2023

Re: Review and Vote on Ad Hoc's Request for a Communications Community Engagement Plan

RECOMMENDED ACTION

The Community Steering Committee will vote to approve Lai R. Consulting Scope of Work for a Communications Community Engagement Plan.

BACKGROUND

The goal of this work is to develop a strategic community engagement and communications plan for the Assembly Bill (AB) 617 Steering Committee to engage and inform the public regarding the community emissions reduction plan with an emphasis on stationary source pollution with a racial, social, and environmental justice lens.

DISCUSSION

The Community Steering Committee members will receive a presentation and review the Ad Hoc's Request for a Communications Community Engagement Plan. There will be opportunities for Committee members and the public to discuss the Consultants' scope of work. The Steering Committee will then vote on whether to adopt the subcontracted proposal for communications and community engagement support.

BUDGET CONSIDERATION/FINANCIAL IMPACT

None.

Respectfully submitted,

Veronica Eady
Senior Deputy Executive Officer of Policy & Equity

Prepared by: Karissa White
Reviewed by: Veronica Eady

ATTACHMENTS:

1. Lai R. Consulting Scope of Work

PATH TO CLEAN AIR COMMUNITY
EMISSIONS REDUCTION PLAN
STEERING COMMITTEE
MEETING OF 01/30/2023

AB 617 Consulting Statement of Work Community Steering Committee Communications and Community Engagement Plan

Goal: Develop a strategic community engagement and communications plan for the AB 617 Steering Committee to engage and inform the public regarding the community emission reduction plan with an emphasis on stationary source pollution with a racial, social and environmental justice lens.

Methodology

Step 1: Gather and analyze information

Step 2: Develop the Communications and Community Engagement Plan

Step 3: Develop the Outreach and Social Media Materials

Step 1: Gather and analyze community concerns, strategies, work products

I will develop a survey questionnaire for gathering information from the steering committee to identify the targeted audience, communication competency, and community connections. I will analyze the information and present the findings and analysis to the steering committee and facilitate consensus and receive additional feedback.

Step 2: Develop the Communications and Community Engagement Plan

Develop a draft communications and community engagement plan for the steering committee to review, provide feedback and approve a final version.

Step 3: Develop Outreach and Social Media Materials:

Develop Graphic and written outreach materials such as flyers, talking scripts, powerpoint presentations, information packets and a social media toolkit.

Community Engagement and Communications Consultation			
Tasks	EST HRS	Work Type	Work Description
Task 1	20	Research and Analysis	Research, review and analyze documented materials and conduct key stakeholder interviews as needed.
Task 2	6	Survey Questionnaire and Analysis	Gather input and insight through a survey questionnaire and analyze for communication elements
Task 3	24	Communications Strategy and Toolkit	Develop Communications and Social Media Toolkit
Total	50	Deliverable	Strategic Communications Plan
		Deliverable	Communications Toolkit Audience Map, Talking Points, Elevator Pitch, Powerpoint Presentation, Factsheet

		Deliverable	Social Media Toolkit (Digital Engagement Strategy, (3) FB, IG, TW Posts)
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Payment Terms:

An hourly amount of 50 hours was negotiated. The total estimated hours for this project is 50 hours. At a consultant rate of \$150/ HR the total estimated project cost for this service is at \$7,500. An advanced payment of \$1,000 is requested at the beginning of the project and the client will be invoiced monthly on the 5th of every month for work done in the previous month. The advanced payment of \$1,000 will be credited towards the invoice.

PATH TO CLEAN AIR COMMUNITY
EMISSIONS REDUCTION PLAN
STEERING COMMITTEE
MEETING OF 01/30/2023

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

Memorandum

To: Members of the Path to Clean Air Steering Committee

From: Veronica Eady
Senior Deputy Executive Officer of Policy & Equity

Date: January 30, 2023

Re: Assembly Bill (AB) 2449 Update - Changes to Remote Attendance Rules Under Ralph M. Brown Act's Open Meeting Laws

RECOMMENDED ACTION

None; receive and file.

BACKGROUND

The Governor's proclaimed state of emergency will expire on February 28, 2023. After that date, the Community Steering Committee will no longer be able to rely on the guidelines in AB 361 for remote attendance. Any committee member wishing to attend remotely as of March 1, 2023, must do so while adhering to either traditional Brown Act requirements for remote attendance or those of AB 2449, which became effective on January 1, 2023. The goal of this presentation is to inform the committee members of these recent events and the Brown Act rules related to remote attendance effective March 1st.

DISCUSSION

The Community Steering Committee will receive a presentation and discuss AB 2449 changes to remote attendance rules under Ralph M. Brown Act's Opening Meeting Laws. There will be an opportunity for committee members and members of the public to ask questions and seek clarification regarding the information provided during the presentation. This is an informational item only.

BUDGET CONSIDERATION/FINANCIAL IMPACT

None.

Respectfully submitted,

Veronica Eady
Senior Deputy Executive Officer of Policy & Equity

Prepared by: Karissa White

Reviewed by: Veronica Eady

ATTACHMENTS:

1. AB 2449 changes remote attendance rules under Ralph M. Brown Act's Opening Meeting Laws Perspectives Reed Smith LLP (002)

PATH TO CLEAN AIR COMMUNITY
EMISSIONS REDUCTION PLAN
STEERING COMMITTEE
MEETING OF 01/30/2023

28 September 2022 | Reed Smith In-depth

AB 2449 changes remote attendance rules under Ralph M. Brown Act's Opening Meeting Laws

On September 13, 2022, California Governor Gavin Newsom signed California Assembly Bill 2449 (AB 2449) into law. With an effective date of January 1, 2023, AB 2449 imposes four periods of differing rules on remote access to, and member attendance of, local agency public meetings under the Ralph M. Brown Act (Brown Act). This client alert provides a summary of the differing rules for the four specified periods and provides some practical considerations.

Authors: **Maytak Chin, Mariah K. Fairley**
Brown Act Teleconferencing Rules Over the Next Five Year

Now until Jan. 1, 2023 – Traditional Brown Act Rules and AB 361

AB 2449 was not passed as an urgency legislation and has an effective date of January 1, 2023. Until its effective date, the legislative bodies of local public agencies may continue to meet virtually under either:

1. Traditional Brown Act teleconferencing rules that require a quorum of the legislative body to meet in person in the agency's jurisdiction, the posting of the members' remote location on the legislative body's meeting notice and agenda, and public access to each teleconferencing location; or
2. AB 361's abbreviated teleconferencing procedures, which require that the local agency's legislative body makes the following factual determinations by majority vote to justify remote or virtual meetings:
 - That a proclaimed state of emergency exists, and either:
 - State or local officials have imposed or recommended social distancing measures, or
 - As a result of a proclaimed state of emergency, meeting in person would present imminent risks to the health and safety of attendees.

Jan. 1, 2023 to Jan. 1, 2024 – Traditional Brown Act Rules, AB 361, and New Rules under AB 2449

Section 1 of AB 2449 specifies the requirements and procedures for local legislative bodies to hold remote public meetings for calendar year 2023. Gov't Code § 54953(k). Effective January 1, 2023, AB 2449 amends the Brown Act's teleconferencing rules and adds a new alternative for abbreviated teleconferencing procedures that does not require a proclaimed state of emergency. During this period, local legislative bodies may hold virtual, remote public meetings under one of the following alternatives:

1. Traditional Brown Act teleconferencing rules; or
2. AB 361's abbreviated teleconferencing rules described above; or
3. AB 2449's new teleconferencing rules specified in new subdivision (f) of Government Code section 54953 of the Brown Act.

However, if and when the Governor lifts the proclaimed state of emergency due to the COVID-19 pandemic, the legislative bodies of local agencies will no longer be able to rely on AB 361's provisions and will be left only with traditional Brown Act teleconferencing rules and AB 2449's new teleconferencing rules for virtual, remote meetings.

AB 2449's new teleconferencing rules provide a hybrid model of physical and remote attendance for members of local legislative governing bodies, under certain specified circumstances.

As a threshold matter, AB 2449 requires that at least a quorum of members of the local legislative body participate in person from a single physical, public location clearly identified on the agenda and within the local agency's territorial jurisdiction. Gov't Code § 54953(f)(1). Unless there is a physical quorum of members present, the governing body may not utilize AB 2449.

If the physical attendance quorum requirement is met, AB 2449 permits a member who is not physically present to request virtual attendance at the local legislative body's meeting under two circumstances: (1) for "just cause" and (2) due to "emergency circumstances". Both "just cause" and "emergency circumstances" are defined under the statute.

1. A Member's Request to Attend Virtually for "Just Cause"

- **Request Timing and Procedure:** Under AB 2449, in order to attend remotely for "just cause," a member must (1) notify the local agency's legislative body at the earliest opportunity of their need for such participation, and (2) provide a general description of the circumstances justifying their virtual attendance. Gov't Code § 54953(f)(2)(A)(i). The statute allows a member to make their notification as late as the start

of a regular meeting of the local legislative body. *Id.* The legislative body does not need to take action to allow its member to attend the meeting virtually under such circumstances. See *id.*

- **Qualifying Reasons as “Just Cause”:** AB 2449 provides a list of reasons that qualify as “just cause” under its provisions. Specifically, a member has “just cause” for remote participation when:
 - There is a childcare or caregiving need (for a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner) that requires the member to participate remotely (Gov’t Code § 54953(j)(2)(A));
 - A contagious illness prevents the member from attending the meeting in person (*Id.*, subd. (j)(2)(B));
 - There is a need related to a defined physical or mental disability that is not otherwise accommodated for (*Id.*, subd. (j)(2)(C)); or
 - Traveling while on official business of the legislative body or another state or local agency (*Id.*, subd. (j)(2)(D)).
- **Number of Instances Permitted:** A member is limited to two virtual attendances based on “just cause” per calendar year. Gov’t Code § 54953(f)(2)(A)(i).

2. A Member’s Request to Attend Virtually Due to an Emergency

- **Request Timing and Procedure:** A member of the legislative body must make a request to the body to allow the member to meet remotely due to an emergency circumstance, and further must provide a general description of the circumstance justifying such attendance. Gov’t Code § 54953(f)(2)(A)(ii). The member seeking to appear remotely must make the request “as soon as possible,” and shall make a separate request for each meeting in which they seek to participate remotely. *Id.*, subd. (f)(2)(A)(ii)(I).

If the request does not allow sufficient time to be placed on the agenda as a proposed action item, then the legislative body may take action at the beginning of the meeting in accordance with paragraph (4) of subdivision (b) of section 54954.2 of the Brown Act. *Id.*, subd. (f)(2)(A)(ii)(II). Unlike a request for remote attendance for “just cause,” a request from a member to attend remotely due to an emergency circumstance requires that the legislative body take action and approve the remote attendance at the start of the meeting for the member to be allowed to participate remotely for that meeting. *Id.*, subd. (f)(2)(A)(ii).

- **Qualifying Reasons as an “Emergency Circumstance:”** AB 2449 defines “emergency circumstances” as “a physical or family medical emergency that prevents a member from attending the meeting in person.” Gov’t Code § 54953(j)(1). A member is not required to disclose any medical diagnosis or disability, or any personal medical information that is already exempt from existing law. *Id.*, subd. (f)(2)(A)(ii).

3. Additional Requirements for a Member Participating Remotely: In addition to making a request either for “just cause” or due to an “emergency circumstance” for remote appearance, AB 2449 imposes the following three additional requirements on legislative body members seeking to appear remotely at public meetings:

- Before any action is taken during the meeting, the member must publically disclose whether any other individuals 18 years of age or older are present in the room at the remote location with the member, and the general nature of the member’s relationship with any such individuals. Gov’t Code § 54953(f)(2)(B).
- A member of the legislative body participating from a remote location **must** participate through **both** audio and visual technology. *Id.*, subd. (f)(2)(C).
- A member’s remote participation cannot be for more than three consecutive months or 20 percent of the regular meetings for the local agency within a calendar year. *Id.*, subd. (f)(3). And if the legislative body regularly meets fewer than 10 times per calendar year, a member’s participation from a remote location cannot be for more than two meetings. *Id.*

4. Technological Requirements for Virtual Meetings: Assuming the above substantive requirements for virtual meetings are met under AB 2449, the new law provides the following technical specifications for information posted on the meeting’s notice and agendas, and for the conduct of the virtual public meeting:

- **Notice, agenda, and public access:** The legislative body must provide either a two-way audiovisual platform or a two-way telephonic service and a live webcasting of the meeting so that the public may remotely hear, observe, and address the legislative body during the meeting. Gov’t Code § 54953(f)(1)(A). The legislative body must also provide notice and post agendas as otherwise required under the Brown Act (setting aside traditional teleconferencing requirements) and must indicate on the notice how the public may access the meeting and offer comment. *Id.*, subd. (f)(1)(B). The agenda must identify and include an opportunity for all persons to attend via a call-in option, an internet-based service option, and at the in-person location of the meeting. *Id.*, subd. (f)(1)(C). The agenda does not need to be posted at all teleconferencing locations. *Id.*, subd. (f)(1). Public access only needs to be assured at the teleconference location identified as the singular physical location at which a quorum of the legislative body will conduct the meeting, and the notices and agenda do not need to list the individual remote locations that members of the legislative body might attend the meeting from. *Id.*
- **Public comment:** An individual may be required to register for public comment before being allowed to provide public comment, where a third-party platform (such as Zoom or Microsoft Teams) is employed. Gov’t Code § 54953(f)(1)(F). However, AB 2449 prohibits a local legislative body from requiring public comments to be submitted in advance of the meeting and specifies that the agency must provide an opportunity for the public to address the legislative body and offer comment in real time. *Id.*, sub. (f)(1)(E). These requirements are similar to those currently provided under AB 361.

- **Disrupted broadcasting procedures:** In the event that the broadcasting of the meeting to the public by phone or by Internet is disrupted, the local legislative body is prohibited from taking further action on agenda items until public access is restored. Gov't Code § 54953(f)(1)(D). Actions taken on agenda items during a disruption are subject to challenge. *Id.* These requirements are also similar to those currently provided under AB 361.

Jan. 1, 2024 to Jan. 1, 2026 – Traditional Brown Act Rules and New Rules under AB 2449

Section 2 of AB 2449 becomes operative on January 1, 2024, which is the date that AB 361 is scheduled to sunset. Accordingly, effective January 1, 2024, local legislative bodies will only have the traditional Brown Act teleconferencing rules and AB 2449's new rules for teleconferencing for "just cause" or due to "emergency circumstances" as options for remote meetings for this period. As a result of AB 361's sunset date, the provisions of AB 2449 will move from subdivision (f) of Gov't Code section 54953 to subdivision (e) of the same statute. This marks a trend towards moving the meetings of local agencies towards in-person meetings and allowing virtual attendance based on need only, as discussed above.

Section 2 of AB 2449 is also scheduled to sunset on January 1, 2026.

Jan. 1, 2026 and Onward – Traditional Brown Act Rules

Section 3 of AB 2449 becomes operative on January 1, 2026. Once AB 2449 sunsets on January 1, 2026, the available teleconferencing rules revert to those provided under the traditional Brown Act teleconferencing rules. Thus, in order for a legislative body to hold a remote meeting under the relevant part of the traditional Brown Act teleconferencing rules, they must do the following:

1. All votes must be by roll call vote;
2. The teleconference locations must be posted on the agendas and each teleconference location must be identified on the notice and agenda of the meeting or proceeding;
3. Each teleconference location must be made accessible to the public; and
4. During the teleconference, at least a quorum of the members of the legislative body must participate from locations within the boundaries of the legislative body's territorial jurisdiction.

Practical considerations

Under AB 2449's new teleconferencing rules, in effect from Jan. 1, 2023 to Jan. 1, 2026, it is important to coordinate amongst members of the local legislative body to ensure that a physical quorum is secured ahead of each meeting. Moreover, any request for a member to participate remotely under AB 2449 – either for "just cause" or due to a specified "emergency circumstance" should be stated on the record at the beginning of each

public meeting. If a member seeks to participate due to a specified "emergency circumstance" and the legislative body votes not to accept the basis for virtual attendance under AB 2449, then that member may only participate as a general member of the public and cannot vote on any action item.

AB 2449's requirements for providing a general description of "just cause" or an "emergency circumstance" will require that the legislative body delicately balance the need for transparency with the need to participate remotely against the member's privacy interest. Therefore, whether a reason is justified under the statute may be up for debate at the start of the meeting. Any justification for virtual attendance must be clearly stated on the record to meet the three requirements of AB 2449:

1. Justification for the need to appear virtually – either for "just cause" or due to an "emergency circumstance";
2. A public affirmation of whether any other individuals 18 years of age or older are present in the room at the remote location with the member, and the general nature of the member's relationship with any such individual(s); and
3. A statement that the member will participate with both audio and video capabilities turned on throughout the meeting (video cannot be turned off).

Lastly, AB 2449 is going to require a lot of administrative support and record-keeping of:

- Which member has made a request to appear remotely under AB 2449's procedures.
- How many times each member has appeared remotely under its terms.
- The member's reason for appearing remotely, and any action taken by the legislative body.
- Whether staff can confirm ahead of each meeting that there will be a physical quorum of members for any given meeting, and who will be in physical attendance.

Understanding how to comply with and administer AB 2449's myriad of provisions can be complicated. If you need assistance with interpreting the provisions and implementing AB 2449, please do not hesitate to reach out to the counsel listed with this client alert.

In-depth 2022-231

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PATH TO CLEAN AIR COMMUNITY
EMISSIONS REDUCTION PLAN
STEERING COMMITTEE
MEETING OF 01/30/2023

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

Memorandum

To: Members of the Path to Clean Air Steering Committee

From: Veronica Eady
Senior Deputy Executive Officer of Policy & Equity

Date: January 30, 2023

Re: Proposed Community Emissions Reduction Plan (CERP) Timeline and Process for Future Community Steering Committee (CSC) Governance Structure

RECOMMENDED ACTION

The Community Steering Committee (CSC) will vote to direct the Co-Chairs to send a letter to the California Air Resources Board (CARB) notifying them of the extension of time to complete and adopt the CERP, and a call for volunteers to participate in a Governance Ad Hoc.

BACKGROUND

On December 10, 2021, the CSC Co-chairs sent a letter to CARB notifying them there would be a delay in the submission of the CERP until November 2022. Although the CSC has made excellent progress developing the CERP there is still more work ahead, and importantly there is a request from the CSC members for additional time to accommodate a robust community process before CERP adoption. The CSC will discuss the timeline for completing and adopting the CERP and will provide direction to the CSC co-chairs on sending a letter notifying CARB of the amended timeline.

In addition to needing more time to accommodate a robust community process, the CSC is nearing the end of its Air District Board of Directors appointment (made on March 3, 2021, by Resolution No. 2021-02) which subjected the CSC to the Brown Act and expires on April 4, 2023. There is no requirement in AB617 or the CARB Blueprint for CSCs to be appointed by Air District Boards. In addition, CSC members have expressed that the Brown Act limits creative ways of engaging during meetings, creates an undue burden, and that the Board appointment process hinders the recruitment and appointment of new members.

Because the Board appointments sunset on April 4, 2023, the CSC has the opportunity to determine what governance structure they prefer, either transitioning to a community governance structure that continues following Brown Act best practices or requesting the Board of Directors extend the appointments to remain a Board appointed Brown Act committee. The co-chairs will call for a Governance Ad Hoc to develop a transition proposal to be brought to the full CSC for discussion and a vote at the February CSC meeting.

DISCUSSION

The CSC will receive a presentation, discuss, and then vote on sending a letter to CARB extending the timeline for completing and adopting the CERP. Community Steering Committee members will also be invited to join a Governance Ad Hoc to develop a proposed governance structure for the CSC to review and approve at the February CSC meeting. There will be an opportunity for committee members and members of the public to ask questions and seek clarification regarding the information provided during the presentation. This is an action item.

BUDGET CONSIDERATION/FINANCIAL IMPACT

None.

Respectfully submitted,

Veronica Eady
Senior Deputy Executive Officer of Policy & Equity

Prepared by: Karissa White

Reviewed by: Veronica Eady

ATTACHMENTS:

None

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

Memorandum

To: Chairperson John J. Bauters and Members
of the Board of Directors

From: Sharon L. Landers
Interim Executive Officer/APCO

Date: February 15, 2023

Re: Report of the Budget and Finance Committee Meeting of February 1, 2023

RECOMMENDED ACTION

None; receive and file.

BACKGROUND

None.

DISCUSSION

The Budget & Finance Committee met on Wednesday, February 1, 2023, and approved the minutes of November 23, 2022. This meeting was conducted under procedures authorized by Assembly Bill 361. Members of the Committee participated by teleconference.

The Committee then reviewed and discussed the staff presentation *First and Second Quarter Financial Report Fiscal Year Ending 2023*.

The next meeting of the Finance and Administrative Committee is scheduled for Wednesday, April 5, 2023, at 1:00 p.m. The meeting will be webcast for members of the public.

This concludes the Chair Report of the Budget & Finance Committee.

BUDGET CONSIDERATION/FINANCIAL IMPACT

None.

Respectfully submitted,

Sharon L. Landers
Interim Executive Officer/APCO

Prepared by: Marcy Hiratzka
Reviewed by: Vanessa Johnson

ATTACHMENTS:

1. Budget and Finance Committee February 1, 2023 Meeting Memorandums

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

Memorandum

To: Chairperson John J. Bauters and Members
of the Budget and Finance Committee

From: Sharon L. Landers
Interim Executive Officer/APCO

Date: February 1, 2023

Re: First and Second Quarter Financial Reports - Fiscal Year Ending June 30, 2023

RECOMMENDED ACTION

None; presentation only.

BACKGROUND

None.

DISCUSSION

The finance staff will present an update on the Air District's financial results for the first and second quarters of the 2022-2023 fiscal year. Attachments A and B summarize the financial results for both the first and second quarters, respectively.

BUDGET CONSIDERATION/FINANCIAL IMPACT

None.

Respectfully submitted,

Sharon L. Landers
Interim Executive Officer/APCO

Prepared by: Jun Pan
Reviewed by: Stephanie Osaze

ATTACHMENTS:

1. 1st Qtr Financial Report FYE 2023-Attachment-A
2. 2nd Qtr Financial Report FYE 2023-Attachment-B

BUDGET AND FINANCE COMMITTEE
MEETING OF 02/01/2023

Attachment A: Financial Summary

The following information summarizes the financial results of the 1st quarter of the fiscal year ending 2023.

GENERAL FUND: STATEMENT OF REVENUES – Comparison of Prior Year Quarter Actual and Current Year Budget to Actual

REVENUE TYPE	1st QTR FY 2022	1st QTR FY 2023	FY 2023 - % of BUDGETED REVENUE
County Receipts	\$308,875	\$381,997	1%
Permit Fee Receipts	\$18,250,845	\$17,951,719	39%
Title V Permit Fees	\$1,473,244	\$1,198,173	15%
Asbestos Fees	\$1,082,833	\$949,578	24%
Toxic Inventory Fees	\$285,556	\$307,554	19%
Community Health Impact	\$283,027	\$286,052	26%
Criteria Pollutant Toxic	\$270,293	\$455,900	37%
Penalties and Settlements	\$406,000	\$294,278	11%
Interest Income	\$192,900	\$307,779	31%
Total Revenue	\$22,553,573	\$22,133,030	20%

GENERAL FUND: STATEMENT OF EXPENDITURES - Comparison of Prior Year Quarter Actual and Current Year Budget to Actual

EXPENDITURE TYPE	1st QTR FY 2022	1st QTR FY 2023	FY 2023 - % of BUDGETED REVENUE
Personnel - Salaries*	\$10,811,701	\$13,830,500	22%
Personnel - Benefits*	\$11,549,264	\$12,952,154	41%
Operational Services / Supplies	\$4,014,247	\$4,498,657	12%
Capital Outlay	\$650,851	\$773,006	12%
Total Expenditures	\$27,026,063	\$32,054,317	23%
* Consolidated (includes Special Funds)			

CASH INVESTMENTS IN COUNTY TREASURY – Account Balances as of the First Quarter

CASH/INVESTMENTS	1st QTR FY 2022	1st QTR FY 2023
General Fund	\$77,533,047	\$80,790,520
TFCA	\$123,064,145	\$125,780,267
MSIF	\$51,202,639	\$60,750,535
Carl Moyer	\$69,711,310	\$63,773,663
CA Goods Movement	\$21,238,479	\$23,367,888
AQ Projects	\$1,613,118	\$3,232,536
Vehicles Mitigation	\$6,670,879	\$25,537,718
Total	\$351,033,617	\$383,233,127

FUND BALANCES	6/30/2021	6/30/2022	6/30/2023
	Audited	Unaudited	Projected
DESIGNATED: *			
AB617 Staffing Contingency		6,000,000	7,679,746
Community Benefits		3,000,000	3,000,000
Economic Contingency	21,294,922	23,303,025	25,500,741
Litigation Contingency			2,175,000
Pandemic Contingency		7,000,000	4,000,000
Pension Liability	4,000,000	5,000,000	
Richmond Improvement (HQE)			5,000,000
Technology Implementation Office	3,350,000	3,350,000	3,350,000
Wildfire Mitigation	1,000,000	2,000,000	1,000,000
Total Designated Reserves	\$29,644,922	\$49,653,025	\$51,705,487
Undesignated Fund Balance	34,385,565	26,419,061	12,871,599
TOTAL DESIGNATED & UNDESIGNATED	\$64,030,487	\$76,072,086	\$64,577,086
TOTAL FUND BALANCE	\$64,030,487	\$76,072,086	\$64,577,086
* Designated Fund Balances are subject to change at Board's discretion.			
OUTSTANDING LIABILITIES			
CalPERS Pension Retirement			68,298,398
Certificate of Participation Notes			22,770,330
TOTAL OUTSTANDING LIABILITIES			\$91,068,728

VENDOR PAYMENTS

In accordance with provisions of the Administrative Code, Division II Fiscal Policies and Procedures - Section 4 Purchasing Procedures: 4.3 Contract Limitations, the staff is required to present recurring payments for routine business needs such as utilities, licenses, office supplies and the like, more than, or accumulating to more than \$100,000 for the fiscal year. In addition, this report includes all of the vendors receiving payments in excess of \$100,000 under contracts that have not been previously reviewed by the Board. In addition, staff will report on vendors that undertook work for the Air District on several projects that individuals were less than \$100,000, but cumulatively exceed \$100,000.

Below is a list of vendors with cumulative payments made through the First quarter of 2022-2023 fiscal year that exceeded \$100,000 and meets the reporting criteria noted above. All expenditures have been appropriately budgeted as a part of the overall Air District budget for The fiscal Year 2022-2023.

	VENDOR NAME	AMOUNT PAID (July 2022 - Sept 2022)	Explanation
1	AAA Business Supplies	\$102,187	Janitorial, Stationary, Office Supplies
2	Alliant Insurance Services	\$364,436	Various Business Insurance Policies
3	Bay Area Headquarters Authority	\$824,949	Shared Services & Common Areas
4	Benefits Coordinators Corp.	\$432,123	Life Insurance Plan & LTD Insurance
5	CA Public Employee Retirement System (Heath)	\$2,282,085	Health Insurance Plan
6	CA Public Employee Retirement System (Retirement)	\$1,777,285	Retirement Benefits & 457 Supplemental Plan
7	Cubic Transportation Systems	\$105,225	Clipper Transit Subsidy
8	Robert Half, Inc.	\$138,034	Temporary Staffing Services
9	Wang Brothers Investment LLC	\$128,714	Richmond Site Lease

BUDGET AND FINANCE COMMITTEE
MEETING OF 02/01/2023

Attachment B: Financial Summary

The following information summarizes the financial results of the 2nd quarter of the fiscal year ending 2023.

GENERAL FUND: STATEMENT OF REVENUES – Comparison of Prior Year Quarter Actual and Current Year Budget to Actual

REVENUE TYPE	2nd QTR FY 2022	2nd QTR FY 2023	FY 2023 - % of BUDGETED REVENUE
County Receipts	\$14,954,319	\$15,932,866	38%
Permit Fee Receipts	\$28,761,143	\$31,667,142	68%
Title V Permit Fees	\$5,645,058	\$5,434,845	67%
Asbestos Fees	\$2,105,879	\$1,787,681	45%
Toxic Inventory Fees	\$1,732,677	\$1,345,122	81%
Community Health Impact	\$1,027,362	\$940,744	85%
Criteria Pollutant Toxic	\$735,678	\$1,023,442	84%
Penalties and Settlements	\$3,664,428	\$2,149,886	78%
Interest Income	\$367,484	\$702,220	70%
Total Revenue	\$58,994,029	\$60,983,948	56%

GENERAL FUND: STATEMENT OF EXPENDITURES - Comparison of Prior Year Quarter Actual and Current Year Budget to Actual

EXPENDITURE TYPE	2nd QTR FY 2022	2nd QTR FY 2023	FY 2023 - % of BUDGETED REVENUE
Personnel - Salaries*	\$25,290,051	\$27,460,479	43%
Personnel - Benefits*	\$19,786,813	\$17,196,948	55%
Operational Services / Supplies	\$11,525,008	\$11,263,042	29%
Capital Outlay	\$1,409,588	\$1,640,338	25%
Total Expenditures	\$58,011,459	\$57,560,807	41%
* Consolidated (includes Special Funds)			

CASH INVESTMENTS IN COUNTY TREASURY – Account Balances as of the Second Quarter

CASH/INVESTMENTS	2nd QTR FY 2022	2nd QTR FY 2023
General Fund	\$108,094,498	\$100,341,101
TFCA	\$125,602,098	\$124,648,541
MSIF	\$53,376,272	\$64,834,042
Carl Moyer	\$70,537,271	\$70,797,677
CA Goods Movement	\$21,286,051	\$23,439,928
AQ Projects	\$1,362,240	\$2,710,582
Vehicles Mitigation	\$6,688,291	\$25,617,483
Total	\$386,946,721	\$412,389,353

FUND BALANCES	6/30/2021	6/30/2022	6/30/2023
	Audited	Unaudited	Projected
DESIGNATED: *			
AB617 Staffing Contingency		6,000,000	7,679,746
Community Benefits		3,000,000	3,000,000
Economic Contingency	21,294,922	23,303,025	25,500,741
Litigation Contingency			2,175,000
Pandemic Contingency		7,000,000	4,000,000
Pension Liability	4,000,000	5,000,000	
Richmond Improvement (HQE)			5,000,000
Technology Implementation Office	3,350,000	3,350,000	3,350,000
Wildfire Mitigation	1,000,000	2,000,000	1,000,000
Total Designated Reserves	\$29,644,922	\$49,653,025	\$51,705,487
Undesignated Fund Balance	34,385,565	26,419,061	12,871,599
TOTAL DESIGNATED & UNDESIGNATED	\$64,030,487	\$76,072,086	\$64,577,086
TOTAL FUND BALANCE	\$64,030,487	\$76,072,086	\$64,577,086
* Designated Fund Balances are subject to change at Board's discretion.			
OUTSTANDING LIABILITIES			
CalPERS Pension Retirement			68,298,398
Certificate of Participation Notes			22,770,330
TOTAL OUTSTANDING LIABILITIES			\$91,068,728

VENDOR PAYMENTS

In accordance with provisions of the Administrative Code, Division II Fiscal Policies and Procedures - Section 4 Purchasing Procedures: 4.3 Contract Limitations, the staff is required to present recurring payments for routine business needs such as utilities, licenses, office supplies and the like, more than, or accumulating to more than \$100,000 for the fiscal year. In addition, this report includes all of the vendors receiving payments in excess of \$100,000 under contracts that have not been previously reviewed by the Board. In addition, staff will report on vendors that undertook work for the Air District on several projects that individuals were less than \$100,000, but cumulatively exceed \$100,000.

Below is a list of vendors with cumulative payments made through the Second quarter of 2022-2023 fiscal year that exceeded \$100,000 and meets the reporting criteria noted above. All expenditures have been appropriately budgeted as a part of the overall Air District budget for The fiscal Year 2022-2023.

	VENDOR NAME	AMOUNT PAID (July 2022 - Dec 2022)	Explanation
1	AAA Business Supplies	\$134,033	Janitorial, Stationary, Office Supplies
2	Alliant Insurance Services	\$803,393	Various Business Insurance Policies
3	Bay Area Headquarters Authority	\$1,650,110	Shared Services & Common Areas
4	Benefits Coordinators Corp.	\$1,127,006	Life Insurance Plan & LTD Insurance
5	CA Public Employee Retirement System (Heath)	\$4,575,646	Health Insurance Plan
6	CA Public Employee Retirement System (Retirement)	\$4,332,574	Retirement Benefits & 457 Supplemental Plan
7	Cubic Transportation Systems	\$218,725	Clipper Transit Subsidy
8	Denovo Ventures, LLC	\$115,933	Financial System Cloud Hosting Services
9	Enterprise Fleet Services	\$225,593	Fleet Leasing and Maintenance services
10	P&A Administrative Services	\$112,417	Flexible Spending & Cobra Benefit Services
11	Robert Half, Inc.	\$315,959	Temporary Staffing Services
12	Verizon Wireless	\$120,838	Cell Phone Services
13	Wang Brothers Investment LLC	\$300,200	Richmond Site Lease

BUDGET AND FINANCE COMMITTEE
MEETING OF 02/01/2023

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

Memorandum

To: Chairperson John J. Bauters and Members
of the Board of Directors

From: Sharon L. Landers
Interim Executive Officer/APCO

Date: February 15, 2023

Re: Report of the Stationary Source and Climate Impacts Committee Meeting of
February 8, 2023

RECOMMENDED ACTION

None; receive and file.

BACKGROUND

None.

DISCUSSION

The Stationary Source and Climate Impacts Committee met on Wednesday, February 8, 2023. This meeting was conducted under procedures authorized by Assembly Bill 361 (Rivas 2021). Members of the Committee participated by teleconference.

The Committee approved the minutes of November 21, 2022. The Committee then reviewed and discussed the presentation *Air Monitoring and Modeling of Incidents: Options and Next Steps, Formation of Ad Hoc Committee*. The Committee recommended to the Board Chair the appointment of an ad hoc committee to help guide the development of a possible incident response monitoring and/or modeling program. This ad hoc committee would report back to the full Board.

The next meeting of this committee will be held on Wednesday, March 8, 2023, at 9:00 a.m., at 375 Beale Street, San Francisco, CA, 94105. The meeting will also be webcast for members of the public. This concludes the report of the Stationary Source and Climate Impacts Committee.

BUDGET CONSIDERATION/FINANCIAL IMPACT

None.

Respectfully submitted,

Sharon L. Landers
Interim Executive Officer/APCO

Prepared by: Marcy Hiratzka
Reviewed by: Vanessa Johnson

ATTACHMENTS:

1. Stationary Source and Climate Impacts Committee Meeting Memorandums of February 8, 2023

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

Memorandum

To: Chairperson Lynda Hopkins and Members
of the Stationary Source and Climate Impacts Committee

From: Sharon L. Landers
Interim Executive Officer/APCO

Date: February 8, 2023

Re: Air Monitoring and Modeling of Incidents: Options and Next Steps, Formation of an
Ad Hoc Committee

RECOMMENDED ACTION

Staff requests that the Committee recommend to the Board Chair the appointment of an ad hoc committee to help guide the development of a possible incident response monitoring and/or modeling program. This ad hoc committee would report back to the full Board.

BACKGROUND

When there is an incident (e.g. facility incident, odors, flaring, wildfire), the Air District often gets requests to conduct monitoring during and around the incident from community members and other government officials. There is some measurement information that the Air District collects during incidents, but there are many gaps in current capabilities. Air District's current measurement capabilities are mainly designed for other goals. Also, the Air District is sometimes asked to perform computer modeling of incidents after the fact. When this modeling work is done, it competes with other priorities such as permit issuance, Rule 11-18 implementation, and rule development. The Air District does not have a comprehensive and dedicated incident monitoring and modeling program.

Air District staff presented to the Stationary Source and Climate Impacts Committee in September 2022 on current monitoring capabilities and relevance to incidents. Dr. Jason Low from the South Coast Air Quality Management District presented to the Stationary Source and Climate Impacts Committee on November 2022, with an overview of their incident response monitoring capabilities and community-focused monitoring programs, including operational logistics, resources, how results are communicated, as well as challenges and limitations. These presentations were intended to help the Board evaluate whether to prioritize incident monitoring, including relative to current regulatory requirements and commitments or other potential priorities. Committee members wanted to see an accelerated timeline for incident monitoring in the Bay Area, with staff recommending monitoring approaches.

DISCUSSION

Air District staff have analyzed and assessed the components of an incident response monitoring and modeling program. This analysis was based on the monitoring and modeling experience of current Air District staff and can leverage some existing functions through the Communications, Compliance & Enforcement, Health, and My Air Online programs. The components of this possible new incident monitoring and modeling program can be combined in different configurations depending on priorities with corresponding resulting costs, functionality, benefits and limitations.

Based on Air District experience, current functions, and lessons from other organizations, there would still be limitations to even the most robust and expensive program. Not all types of incidents will be able to be addressed, monitoring and modeling may still miss pollution from incidents, results may not be real-time which limits information for impacting actions during incidents, and there will be limited information about health impacts. There are large uncertainties in modeling due to incomplete input information, especially for short duration incidents. For both modeling and monitoring, there is a weak linkage with incident prevention. The number and duration of future incidents is unknown, but the prior history of incidents in the Bay Area shows them to be relatively infrequent and of short duration. Staff safety will continue to be a priority, and will be an important consideration when developing monitoring plans. Program implementation will also depend on timelines for hiring, procurement (including supply-chain delays) as well as securing space for new employees and equipment.

Costs for a new program could be recovered through a new fee. A decision regarding a new fee proposal will need to be made by the end of March 2023 to meet the schedule requirements for the fee rulemaking process. There is an existing Incident Response Fee, and the costs to respond to a specific incident would still be charged to that facility.

Air District staff are requesting that an ad hoc committee be assigned to work with staff in considering the options for program design and developing a proposal for Board consideration for the next fiscal year and to be included in the strategic planning process anticipated to begin in March of 2023. Staff recommend that this be an ad hoc committee of the Board of Directors, and not a subcommittee of the Stationary Source and Climate Impacts Committee, as these issues are cross-cutting and involve the purview of multiple Board Committees, including the Budget and Finance Committee and the Community Equity, Health and Justice Committee. Per Division I, Section 6.1 of the Administrative Code, the Chairperson of the Board has the authority to appoint special committees such as this proposed ad hoc committee. Staff request that the Stationary Source and Climate Impacts Committee recommend appointment of this ad hoc committee to the Chairperson of the Board of Directors.

BUDGET CONSIDERATION/FINANCIAL IMPACT

Any costs for this program would need to be incorporated into the Fiscal Year Ending 2024 and future budgets.

Respectfully submitted,

Sharon L. Landers
Interim Executive Officer/APCO

Prepared by: Ranyee Chiang
Reviewed by: Greg Nudd

ATTACHMENTS:

None

STATIONARY SOURCE AND
CLIMATE IMPACTS COMMITTEE
MEETING OF 02/08/2023

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

Memorandum

To: Chairperson John J. Bauters and Members
of the Board of Directors

From: Sharon L. Landers
Interim Executive Officer/APCO

Date: February 15, 2023

Re: Overview of State and Federal Funding for Retrofitting Low-Income Homes with
Cleaner Appliances

RECOMMENDED ACTION

None; receive and file.

BACKGROUND

In the Bay Area, residential natural gas combustion results in more NOx emissions than the region’s passenger vehicles or refineries. Air District modeling indicates that emissions from these appliances cause up to 89 premature deaths per year and up to \$890 million in health impacts annually. Communities of color are most impacted by the pollution from these sources.

Staff is developing proposed rule amendments to *Regulation 9, Rule 4: Nitrogen Oxides from Fan Type Residential Central Furnaces* (“Rule 9-4”) and *Regulation 9, Rule 6: Nitrogen Oxides Emissions from Natural Gas-Fired Boilers and Water Heaters* (“Rule 9-6”) to include zero-NOx emission standards for residential space and water heating. We are currently planning to bring these amendments to the Board for consideration on March 15, 2023. If approved by the Board, these rule amendments would phase out these sources over time, starting in 2027. But, it would be better to bring these pollution reductions online sooner, especially in overburdened communities.

At this time, feasible technologies to eliminate this pollution, such as electric heat pumps, carry a price premium and may require electrical system upgrades for some older homes. So, it can be challenging to quickly bring these pollution reductions into low-income communities or for middle-income property owners to transition to more efficient, clean, water heaters and furnaces.

DISCUSSION

Overall funding for heat pump water and space heating is at a historical high, with several sources of funds incentivizing these technologies. In August 2022, the Biden Administration passed the Inflation Reduction Act (IRA), which includes billions of dollars focused on heat pumps. The Residential Energy Efficiency Tax Credit provides up to 30% tax credit for purchase

and installation of heat-pump water heaters and space conditioning, as well as electrical panel upgrades. The IRA also includes two rebate programs for low-income households, with \$562 million expected to go to California from these two programs.

For state incentives, the governor’s budget currently designates \$835 million to provide rebates for low- and moderate-income households and under-resourced communities. The California Public Utilities Commission’s Self-Generation Incentive Program (SGIP) includes over \$84 million statewide for heat-pump water heaters. This state funding is complemented by regional and local funding programs. Pacific Gas and Electric’s (PG&E) Energy Savings Assistance (ESA) program offers \$990 million over a six-year program cycle for low-income weatherization services, including heat pump space heating. Several Community Choice Aggregators (CCAs) and the Bay Area Regional Energy Network (BayREN), also offer incentives for heat pumps.

BUDGET CONSIDERATION/FINANCIAL IMPACT

None.

Respectfully submitted,

Sharon L. Landers
Interim Executive Officer/APCO

Prepared by: Amy Dao
Reviewed by: Abby Young

ATTACHMENTS:

None

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

Memorandum

To: Chairperson John J. Bauters and Members
of the Board of Directors

From: Sharon L. Landers
Interim Executive Officer/APCO

Date: February 15, 2023

Re: Green and Healthy Homes Initiative’s Innovative Funding Strategies For Low-
Income Building Retrofits

RECOMMENDED ACTION

None; presentation only.

BACKGROUND

More than 75 percent of California's existing homes and commercial buildings were built before the state’s Building Energy Efficiency Standards were developed in 1978. In the Bay Area, residential natural gas combustion is a major source of climate and air pollution. Health impacts from these sources affect communities of color disproportionately. At this time, feasible technologies to eliminate this pollution, such as electric heat pumps, carry a price premium and may require electrical system upgrades for some of these older homes. The cost of transitioning to these more efficient and clean appliances can be a significant challenge for low-income communities and for middle-income property owners.

DISCUSSION

The Green and Healthy Homes Initiative (GHHI) is an organization dedicated to addressing the social determinants of health, opportunity, and equity through the creation of healthy, safe, and energy efficient homes. GHHI aims to eradicate the negative health impacts of unhealthy housing and unjust policies for children, seniors, and families to ensure better health, economic and social outcomes in historically disinvested communities – with an emphasis on communities of color. GHHI has created innovative programs to improve the delivery of services and ensure the efficient use of resources to reduce lead poisoning (in Maryland by 98 percent), asthma and injury in low-income housing while improving energy efficiency. GHHI effectively integrates funding from private and public sources to deliver results for low-income communities.

Ms. Ruth Ann Norton, the Chief Executive Officer of GHHI, will present on innovative strategies for funding building retrofits for low-income families. GHHI has experience with diverse funding sources such as health care savings, monies from utilities, and local philanthropy. She will also discuss the climate, health, and societal benefits of removing air

pollution sources from the housing of low-income families.

BUDGET CONSIDERATION/FINANCIAL IMPACT

None.

Respectfully submitted,

Sharon L. Landers
Interim Executive Officer/APCO

Prepared by: Idania Zamora
Reviewed by: Abby Young

ATTACHMENTS:

None

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

Memorandum

To: Chairperson John J. Bauters and Members
of the Board of Directors

From: Sharon L. Landers
Interim Executive Officer/APCO

Date: February 15, 2023

Re: Air Monitoring and Modeling of Incidents: Formation of an Ad Hoc Committee

RECOMMENDED ACTION

None. Informational item.

BACKGROUND

When there is an incident (e.g. facility incident, odors, flaring, wildfire), the Air District often gets requests to conduct monitoring during and around the incident from community members and other government officials. There is some measurement information that the Air District collects during incidents, but there are many gaps in current capabilities. Air District's current measurement capabilities are mainly designed for other goals. Also, the Air District is sometimes asked to perform computer modeling of incidents after the fact. When this modeling work is done, it competes with other priorities such as permit issuance, Rule 11-18 implementation, and rule development. The Air District does not have a comprehensive and dedicated incident monitoring and modeling program.

Air District staff presented to the Stationary Source and Climate Impacts Committee in September 2022 on current monitoring capabilities and relevance to incidents. Dr. Jason Low from the South Coast Air Quality Management District presented to the Stationary Source and Climate Impacts Committee on November 2022, with an overview of their incident response monitoring capabilities and community-focused monitoring programs, including operational logistics, resources, how results are communicated, as well as challenges and limitations. These presentations were intended to help the Board evaluate whether to prioritize incident monitoring, including relative to current regulatory requirements and commitments or other potential priorities. Committee members wanted to see an accelerated timeline for incident monitoring in the Bay Area, with staff recommending monitoring approaches.

DISCUSSION

Air District staff have analyzed and assessed the components of an incident response monitoring and modeling program. This analysis was based on the monitoring and modeling experience of current Air District staff and can leverage some existing functions through the Communications, Compliance & Enforcement, Health, and My Air Online programs. The components of this possible new incident monitoring and modeling program can be combined in different configurations depending on priorities with corresponding resulting costs, functionality, benefits and limitations.

Based on Air District experience, current functions, and lessons from other organizations, there would still be limitations to even the most robust and expensive program. Not all types of incidents will be able to be addressed, monitoring and modeling may still miss pollution from incidents, results may not be real-time which limits information for impacting actions during incidents, and there will be limited information about health impacts. There are large uncertainties in modeling due to incomplete input information, especially for short duration incidents. For both modeling and monitoring, there is a weak linkage with incident prevention. The number and duration of future incidents is unknown, but the prior history of incidents in the Bay Area shows them to be relatively infrequent and of short duration. Staff safety will continue to be a priority, and will be an important consideration when developing monitoring plans. Program implementation will also depend on timelines for hiring, procurement (including supply-chain delays) as well as securing space for new employees and equipment.

Costs for a new program could be recovered through a new fee. A decision regarding a new fee proposal will need to be made by the end of March 2023 to meet the schedule requirements for the fee rulemaking process. There is an existing Incident Response Fee, and the costs to respond to a specific incident would still be charged to that facility.

On February 8, 2023, the Stationary Source and Climate Impacts Committee recommended to the Board Chair the appointment of an ad hoc committee to help guide the development of a possible incident response monitoring and/or modeling program. The ad hoc committee's scope would be limited to this topic and its duration would be limited to no longer than the end of calendar year 2023. The ad hoc committee would work with staff to prepare concepts and other materials in preparation for seeking public input before bringing a recommendation to the board. Per Division I, Section 6.1 of the Administrative Code, the Chairperson of the Board has the authority to appoint special committees such as this proposed ad hoc committee.

BUDGET CONSIDERATION/FINANCIAL IMPACT

Any costs for this program would need to be incorporated into the Fiscal Year Ending 2024 and future budgets.

Respectfully submitted,

Sharon L. Landers
Interim Executive Officer/APCO

Prepared by: Ranyee Chiang
Reviewed by: Greg Nudd

ATTACHMENTS:

None

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

Memorandum

To: Members of the Board

From: John J. Bauters
Board Chairperson

Date: February 15, 2023

Re: Consider Amending the Interim Executive Officer / APCO's Employment Agreement and Approving the Interim Chief Operating Officer's Employment Agreement

RECOMMENDED ACTION

The Board of Directors will consider the attached amendment to the Interim Executive Officer / APCO's employment agreement and the attached Interim Chief Operating Officer's employment agreement. Based on the closed session direction, the Interim Executive Officer / APCO's employment agreement and/or the Interim Chief Operating Officer's employment agreement(s) with any potential amendments due to the negotiations will be considered for approval by the Board pursuant to this agenda item and the Board of Directors will authorize the Chair to execute the Agreements.

BACKGROUND

On May 18, 2022, The Board of Directors appointed Sharon Landers as Interim Executive Officer / APCO for a nine-month term ending on February 23, 2023. Ms. Landers has executed the duties of the office in accordance with the direction of the Board and with the standards expected for the position. An Executive Officer / APCO was appointed by the Board for the permanent position on December 21, 2022 and will begin employment in the position on February 21, 2023.

DISCUSSION

If this recommended action is approved by the Board, Ms. Lander's appointment to the position of Interim Executive Officer / APCO will end on February 20, 2023, Ms. Landers will be appointed as Interim Chief Operating Officer for a term beginning February 21, 2023, and ending on December 31, 2023. The appointment of Ms. Landers to the position of Interim Chief Operating Officer will facilitate a planned and orderly transition of Air District operations to new executive leadership.

Bay Area Air District Outside Counsel, Sloan, Sakai, Yeung & Wong, LLP, has prepared the proposed contract included with this Item as Attachment 1.

BUDGET CONSIDERATION/FINANCIAL IMPACT

None.

Respectfully submitted,

John J. Bauters
Board Chairperson

Prepared by: John Chiladakis
Reviewed by: DeeAnne Gillick, Sloan Sakai Yeung & Wong LLP

ATTACHMENTS:

1. Attachment 1 - Employment Agreement, Interim Chief Operating Officer
2. Attachment 2 - Amendment to Employment Agreement, Interim Executive Officer / APCO

EMPLOYMENT AGREEMENT

Interim Chief Operating Officer

This Employment Agreement ("Agreement") is made and entered into on this February 15, 2023, by and between the **Bay Area Air Quality Management District** (the "District") and **Sharon L. Landers** ("Employee") for services to be performed by Employee in the position of Interim Chief Operating Officer. District and Employee are collectively hereinafter referred to as "Parties."

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, the Parties agree as follows:

1. **Term.**

The District hereby employs Employee as Interim Chief Operating Officer and Employee hereby accepts employment for a set term commencing on February 21, 2023, and ending on December 31, 2023, subject to the limitations of this Agreement. The Agreement term may be extended by mutual agreement between the Parties.

2. **Duties.**

Employee shall serve as Interim Chief Operating Officer and shall carry out their duties in a manner consistent with the District's operating rules and regulations and all applicable laws. Employee shall further the purposes and goals of the District, and shall report directly to the Executive Officer/APCO.

Typical duties required of the Interim Chief Operating Officer include:

Under the direction of the Executive Officer,

- To administer and supervise executive staff, including Division Directors and Deputy Air Pollution Control Officers.
- To attend meetings of the Board and its committees either in conjunction with the Executive Officer or as the Executive Officer's designee.
- To develop and direct the policies and procedures for program implementation of the goals and objectives of the District, as directed by the Executive Officer.
- To recommend to the Executive Officer such measures and resolutions as may be appropriate to support the duties and obligations of the District.
- To assist in the preparation of the proposed annual budget.
- To support the review of administrative activities and provide responsive recommendations to the Executive Officer.
- To assist in the development of a classification specification for and recruitment of a permanent Chief Operating Officer.

Employee understands and agrees that the duties listed in this section are illustrative only and that the District may add, subtract, or change them in its discretion. Employee shall devote themselves on a full-time basis to fulfillment of their responsibilities and shall devote such time as may be reasonably necessary for satisfactory performance of their obligations under this

Agreement. Employee shall undertake no other professional employment during the term of this Agreement.

3. Confidentiality

Employee agrees that all files, notes, documents, data, specifications, correspondence, drawings, reports and other material prepared by or furnished to Employee in connection with their District employment shall be and remain the sole and exclusive property of the District. Employee acknowledges and agrees to maintain the District's confidences during and after the termination of this Agreement.

4. Compensation and Benefits.

a. Salary

For services rendered pursuant to this Agreement the District shall pay Employee an annual base salary of \$337,748 per year. Said salary shall be paid on the dates and in the manner consistent with the payroll procedures of the District.

b. Fringe Benefits

Except as otherwise provided in this Agreement Employee shall receive such employee benefits, for example, pension, health, and vacation benefits, as are payable to that class of District employees designated non-represented District Executive Staff.

Exceptions:

- 1) Employee shall not be entitled to an automobile allowance;
- 2) Rather than receiving the full annual accrual of Floating Holidays and Management Leave designated for executive management on July 1, 2023, Employee shall accrue the full annual accrual of Floating Holidays and Management Leave for executive management upon execution of this agreement (with no additional Floating Holidays or Management Leave accruing on July 1, 2023).

c. Income Tax Liabilities

Employee shall be responsible for all income tax liability assessed under law on account of their Compensation under this Agreement.

5. Goals.

Employee shall develop a statement of goals and objectives and a progress report for the Executive Officer and shall present such goals to the Executive Officer.

6. Termination

- a. Employee's tenure as Interim Chief Operating Officer under this agreement is limited to the contractual term set forth herein and Employee's employment as Interim Chief Operating Officer will terminate on December 31, 2023, unless the Parties agree to extend the term of this agreement on or before that date. Moreover, due to the duties of the position and nature of the services provided by Employee to District, the Employee serves

at-will at the pleasure of the Executive Officer, and nothing herein shall prevent, limit, or otherwise interfere with the right of the Executive Officer to terminate Employee with or without cause. Employee shall have no right to a termination hearing; However, the District will not reasonably deny Employee the opportunity to resign in lieu of termination. Employee understands and intends that this position is subject to the terms of this agreement and is temporary in nature, even though the District may choose to continue this position as a regular (non-temporary) position in the future.

- b. This Agreement shall be immediately terminated upon Employee's death or legal incapacity by operation of Labor Code section 2920.
- c. In the event Employee voluntarily retires or resigns, Employee shall provide advance written notice to the District of at least thirty (30) calendar days.

7. **Indemnification and Defense.**

District shall indemnify, defend, and hold Employee harmless from and against all demands, claims, suits, actions, and legal proceedings brought against Employee and arising out of events within the scope of Employee's employment and performance of professional duties for the District, except to the extent that Employee's actions are the result of gross negligence or willful misconduct. Employee shall cooperate in good faith with the District with respect to defense of such claims, demands, or legal actions.

8. **Abuse of Office.**

Any salary provided Employee pending an investigation shall be fully reimbursed if the Employee is convicted of a crime involving an abuse of their office or position, as set forth in Government Code sections 53243 and 53243.4. Any funds for the legal criminal defense of the Employee provided by the District shall be fully reimbursed to the District if the Employee is convicted of an abuse of their office or position, as set forth in Government Code sections 53243.1 and 53243.4.

9. **Severability.**

In the event that any term of this Agreement is finally held or determined to be illegal or void by a court having jurisdiction over the District and Employee, the remainder of this Agreement shall remain in full force and effect unless the term or terms held to be illegal or void are wholly inseparable from the remaining provisions of the Agreement.

10. **Governing Law.**

This Agreement shall be governed by the laws of the State of California.

11. **Counterparts.**

This Agreement may be executed in multiple counterparts, each of which shall constitute an original, and all of which taken together shall constitute one and the same instrument.

12. Entire Agreement.

This Agreement is the entire agreement between the parties regarding District's employment of Employee and supersedes all prior oral or written understandings. This Agreement cannot be modified except by a written amendment signed by both Parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement which shall be effective upon the commencement date specified in Section 1 herein.

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

John J. Bauters, Board Chairperson

EMPLOYEE

DRAFT

AMENDMENT TO EMPLOYMENT AGREEMENT

Interim Executive Director

This Amendment To Employment Agreement (“Agreement”) is made and entered into on this Fifteenth (15th) day of February, 2023, by and between the **Bay Area Air Quality Management District** (the “District”) and Interim Executive Director **Sharon Landers**.

WHEREAS, the District and Sharon Landers are parties to an Agreement setting forth the terms and conditions of Landers’ employment as Interim Executive Director, dated May 19, 2022 ("Employment Agreement");

WHEREAS, the Employment Agreement has a Termination Date of February 23, 2023;

WHEREAS, the District’s new Executive Director begins employment on February 21, 2023; and

WHEREAS, the District desires Sharon Landers to continue employment in the position of Interim Chief Operating Officer, effective February 21, 2023.

NOW, THEREFORE, the District and Sharon Landers agree to modify the Employment Agreement so that her employment as Interim Executive Director terminates on February 20, 2023. Paragraphs 1 and 6(a) of the Employment Agreement are modified as follows:

1. Term.

The District hereby employs Employee as Interim Executive Director of the District and Employee hereby accepts employment for a period of nine (9) months commencing on June 1, 2022 and ending on February 20, 2023, subject to the limitations of this Agreement. The Agreement term may be extended by mutual agreement between the Parties.

6. Termination

a. Employee’s tenure as Interim Executive Officer under this agreement is limited to the contractual term of nine (9) months and Employee’s employment as Interim Executive Officer will terminate on February 20, 2023. Moreover, due to the duties of the position and nature of the services provided by Employee to District, the Employee serves at-will at the pleasure of the Board, and nothing herein shall prevent, limit, or otherwise interfere with the right of the Board to terminate Employee with or without cause. Employee shall have no right to a termination hearing; However, the District will not reasonably deny Employee the opportunity to resign in lieu of termination.

IN WITNESS WHEREOF, the Parties have executed this Amendment to Employment Agreement which shall be effective upon the commencement date specified above.

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

EMPLOYEE

John J. Bauters, Board Chairperson

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

Memorandum

To: Chairperson John J. Bauters and Members
of the Board of Directors

From: Sharon L. Landers
Interim Executive Officer/APCO

Date: February 15, 2023

Re: Recommend Amending the Management Audit Contract with Sjoberg Evashenk
Consulting, Inc.

RECOMMENDED ACTION

Recommend the Board of Directors authorize the Interim Executive Officer/APCO to amend the Air District's contract with Sjoberg Evashenk Consulting, Inc. to fund ongoing management audit services through 2023 by increasing the contract's not to exceed amount by \$300,000 from \$250,000 to a total of \$550,000.

BACKGROUND

On June 16, 2021, the Board of Directors approved a workplan to initiate a management performance audit and authorized the creation of a vendor selection panel that included Board Members Carole Groom and Margaret Abe-Koga, one community member appointed by the Community Equity, Health, and Justice Committee, another appointed by the Stationary Source and Climate Impacts Committee, and a subject matter expert in management audits. The Air District issued Request for Qualifications (RFQ) No. 2021-011 which closed on July 21, 2021. The RFQ requested bids from auditors for ongoing management audit services that span the District's business functions, on an as-needed basis, in response to requests from the Air District's Board of Directors. During the open period, the Air District received six proposals. The panel ranked the proposals and interviewed the top two ranked vendors: Tap International and Sjoberg Evashenk. Sjoberg Evashenk received the highest average combined score.

On December 1, 2021, the Board of Directors approved the selection and execution of a three-year contract with Sjoberg Evashenk for management audit services, and funded the initial scope of services which was estimated to be \$250,000. During the first year of engagement, Sjoberg Evashenk delivered reports on time and to expectation as scoped by the Board of Directors. Those reports included a recommendation on staffing levels and staffing allocation, a recommendation on Air District organizational structure, a management performance audit of the Human Resources functions, and an agency wide risk assessment which reported business/operational risk by functional division.

DISCUSSION

The Air District wide risk assessment report was presented by Sjoberg Evashenk to the Board of Directors in June 2022. Sjoberg Evashenk noted that the audit standards issued by the Institutes of Internal Auditors require that the audit establish a risk-based plan to determine the priorities of management audit activity, and that the plan be consistent with the organization's goals. The purpose of the risk assessment is to help ensure that limited audit resources are deployed in a manner that fulfills the goals of the District by identifying inherent risks to the successful execution of District operations, and to prioritize the assignment of audit resources based on the potential value that the audit may provide to the District.

The Risk Assessment provided risk profiles for each division/office within the Air District, which included general indicators of the size of the division, a description of the core functions of the division and included inherent risks and general concerns associated with the division's operations. These inherent risks are a representation of factors that may impede the ability of the division to achieve, in an effective or efficient manner, its core functions. The Air District divisions that were identified to have the highest relative risk include human resources, for which a performance audit has been completed, Administrative Services, Strategic Incentives, Compliance & Enforcement, My Air Online, and Engineering.

Sjoberg Evashenk has provided an estimate to complete the management performance audits of the five priority divisions at \$150,000 per division which is consistent with the cost of work done to date in the Human Resources division. If the request is approved by the Board, the order for conducting these next five audits will be established with oversight from the Administration and Finance Committee.

BUDGET CONSIDERATION/FINANCIAL IMPACT

\$300,000 will be transferred out of Air District reserves and into the Fiscal Year Ending 2023 budget to fund the cost of these services.

Respectfully submitted,

Sharon L. Landers
Interim Executive Officer/APCO

Prepared by: John Chiladakis

ATTACHMENTS:

1. Original Executed Contract No. 2021.228: Sjoberg Evashenk Consulting, Inc.
2. Draft Contract No. 2021.228 Amendment 1: Sjoberg Evashenk Consulting, Inc.

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

MASTER SERVICES CONTRACT

CONTRACT NO. 2021.228

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 **Sjoberg Evashenk Consulting, Inc.** (“CONTRACTOR”) whose address is 455 Capitol Mall, Suite 700, Sacramento, CA 95814.

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. 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 paragraphs A-E above.

5. TERM – The term of this Contract is from December 15, 2021 to December 14, 2024, 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.

- iv) Professional liability insurance with limits not less than one million dollars (\$1,000,000) each claim.
- 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 hereto or 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 \$250,000. 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: John Chiladakis

CONTRACTOR: Sjoberg Evashenk Consulting, Inc.
455 Capitol Mall, Suite 700
Sacramento, CA 95814
Attn: George Skiles

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.

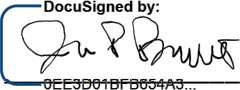
- 19. NON-DISCRIMINATION – In the performance of this Contract, CONTRACTOR shall not discriminate in its recruitment, hiring, promotion, demotion, and termination practices on the basis of race, religious creed, color, national origin, ancestry, sex, age, marital status, sexual orientation, medical condition, 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.

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

SJOBERG EVASHENK CONSULTING, INC.

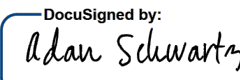
By: 
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Jack P. Broadbent
Executive Officer/APCO

By: 
George J Skiles
Sacramento, CA
2021.12.20 14:28:32-08'00'
George Skiles
Partner

Date: 1/12/2022

Date: December 20, 2021

Approved as to form:
District Counsel

By: 
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Adan Schwartz
Acting District Counsel

Attachment A
General Description of Services

Pursuant to Task Orders issued under the Contract, CONTRACTOR shall conduct a variety of independent management audit services, on an as-needed basis, in response to requests from DISTRICT's Board of Directors and/or Executive Management. The management audits may encompass a wide variety of objectives, including assessing program risk, staffing, cost recovery methodology, effectiveness and results, economy and efficiency, internal controls, compliance with legal or other requirements or other analysis. The management audits will provide information to improve program operations and facilitate decision making by parties with responsibility to oversee or initiate corrective actions and improve public accountability. All work will be summarized in a report with findings, conclusions, and recommendations.

CONTRACTOR shall conduct audit work under applicable professional standards, including:

- Federal and State rules and regulations; and
- Generally Accepted Government Auditing Standards (GAGAS i.e. the "Yellow Book").

AMENDMENT NO. 1 TO
BAY AREA AIR QUALITY MANAGEMENT DISTRICT
CONTRACT NO. 2021.228

This amendment to the above-entitled contract ("Contract Amendment") is dated, for reference purposes only, February 7, 2023.

RECITALS:

1. The Bay Area Air Quality Management District ("DISTRICT") and **Sjoberg Evashenk Consulting, Inc.** ("CONTRACTOR") (hereinafter referred to as the "PARTIES") entered into the above-entitled contract for independent management audit services (the "Contract"), which Contract was executed on behalf of CONTRACTOR on December 20, 2021, and on behalf of DISTRICT on January 12, 2022.
2. The PARTIES seek to amend the total maximum cost of the Contract because DISTRICT seeks to have CONTRACTOR continue to provide the services prescribed in the Contract, and CONTRACTOR desires to continue to provide those services, up to the new total maximum cost.
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 Paragraph C of Section 9, "Agreement to Provide Services", of the Contract to replace "\$250,000" with "\$550,000."
2. 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

SJOBERG EVASHENK CONSULTING, INC.

By: _____
Sharon Landers
Interim Executive Officer/APCO

By: _____
George Skiles
Partner

Date: _____

Date: _____

Approved as to form:
District Counsel

By: _____
Alexander Crockett
District Counsel

DRAFT