

1 JASON A. BEZIS
State Bar No. 225641

2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
Complainant

5 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

6 STATE OF CALIFORNIA

7 In the Matter of)	FPPC No.: 16/19959 (December 20, 2018 hearing)
)	
8 SAN FRANCISCO BAY AREA RAPD TRANSIT)	SUPPLEMENT TO COMPLAINANT’S PUBLIC
DISTRICT (BART),)	COMMENT OPPOSING DRAFT STIPULATION,
)	DECISION, AND ORDER
9 Respondent.)	
)	Violation of FPPC Regulation 18420.1
)	
)	(Payment by Local Agency for Campaign-Related
)	Communications)

12
13 Complainant Jason A. Bezis herein supplements his public comment opposing the draft stipulation,
14 decision and order that he submitted Wednesday afternoon. At 5:04 p.m. Wednesday, following a Public Records
15 Act request, Complainant received from Respondent BART documents relating to the Measure RR political
16 consulting contract with Yes on RR campaign manager Clifford Moss, LLC. A two-page excerpt is attached as
17 Exhibit D.

18 Clifford Moss executed Professional Services Agreement No. 6M7239 with BART on July 10, 2015, but
19 work possibly commenced in February 2015. The “Scope of Services” was titled “for consulting services to develop
20 ballot language and spending plan for BART bond election” and included:

- 21 • “Create public information to highlight BART’s positives;”
- 22 • “Build a coalition around the need for additional dollars for BART;”
- 23 • “Help staff to lay the groundwork with opinion leaders and leading key community groups to
24 ensure participation and support for funding requests at all levels so that funders understand the
25 great amount of community support that exists for funding BART’s capital needs;” and
- 26 • “Work with staff to innovate ways to communicate with the community and our customers
27 through traditional media, social media, and face-to-face opportunities.”

28 The purpose or effect of actions by BART consultant/Yes on RR campaign manager Clifford Moss LLC
under BART Agreement No. 6M7239 served to develop a campaign to promote approval of the bond measure by

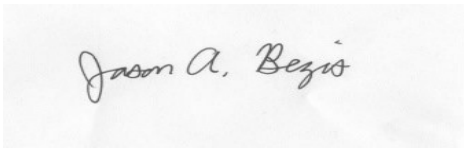
1 the electorate. Therefore, it was campaign activity under California Attorney General Opinions 04-211 and 13-304,
2 among other legal authority.

3 Clifford Moss, LLC arguably was a “common consultant” to BART and the Yes on RR committee, under
4 FPPC Regulation 18225.7. Clifford Moss worked as a campaign consultant for BART and also provided the
5 “committee supporting ... the ballot measure with professional services related to campaign ... strategy for the
6 current campaign.” *In re Fontana* (1976), 2 FPPC Ops. 25, requires BART and/or Yes on RR committee to report
7 some or all of the Contract No. 6M7239 spending even if it occurred before BART Board voted to place Measure
8 RR on the ballot on June 9, 2016.

9 Total contract amount was \$99,600 (just below the \$100,000 threshold for BART board approval). If even
10 a small fraction of this contract amount were deemed campaign activity reportable to the FPPC as an independent
11 expenditure or contribution, then the \$7,791.66 of total campaign spending that BART is willing to admit to in the
12 draft stipulation is a gross understatement of BART’s actual campaign spending. Similarities in election-time
13 messages between the Yes on RR campaign, BART and other actors such as the Golden State Warriors organization
14 were not accidental coincidences (similar or identical taglines/catchphrases such as “BART ... safe and reliable” and
15 “44 years”); they apparently have BART political consultant/Yes on RR campaign manager Clifford Moss, LLC as
16 their common denominator. As seen in Exhibit A, Clifford Moss’ marketing material, Clifford Moss declares of its
17 Measure RR campaign work: “*every message* targeted to voters included the same disciplined refrain: **Keep BART**
18 **safe and reliable.**” (emphasis in original).

19 The Commission should not approve any stipulation with BART until the dual role of Clifford Moss, LLC
20 as BART’s Measure RR political consultant (Contract No. 6M7239) and Yes on RR campaign manager is fully
21 investigated and explained and the actual grand total of BART’s campaign spending is known.

22 Respectfully submitted,

23 
24

25 JASON A. BEZIS, December 19, 2018

26
27 Attachment: Exhibit D (excerpt of BART Professional Services Agreement No. 6M7239 with Clifford Moss, LLC,
28 2 pp.).



SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT
 300 Lakeside Drive, P.O. Box 12688
 Oakland, CA 94604-2688
 (510) 464-6000

CONFORMED

2015

July 1, 2015

Thomas M. Blalock, P.E.
 PRESIDENT

Tom Radulovich
 VICE PRESIDENT

Grace Crunican
 GENERAL MANAGER

Clifford Moss LLC
 5111 Telegraph, Suite 307
 Oakland, CA 94609

Subject: Professional Services Agreement No. 6M7239
 Consulting Services to Develop Advocacy Plans for Funding at the
 State, Federal, Regional, and Local Level and for Development of an
 Asset Management Plan to Set Priorities for the District's Unfounded
 Capital Needs Program

DIRECTORS

Gail Murray
 1ST DISTRICT

Joel Keller
 2ND DISTRICT

Rebecca Saltzman
 3RD DISTRICT

Robert Reburn, Ph.D.
 4TH DISTRICT

John McPartland
 5TH DISTRICT

Thomas M. Blalock, P.E.
 6TH DISTRICT

Zakharly Mallett, MCP
 7TH DISTRICT

Nicholas Josefowitz
 8TH DISTRICT

Tom Radulovich
 9TH DISTRICT

This letter is an Agreement between the San Francisco Bay Area Rapid Transit District (BART) and Clifford Moss LLC (hereinafter referred to as "CONSULTANT") for the performance of professional services in connection with the scope of services as described below.

The services required under this Agreement cannot be performed satisfactorily by the officers and employees of BART.

CONSULTANT shall perform all of the services as described in Attachment A, SCOPE OF SERVICES, attached hereto and by this reference made a part hereof.

All work shall be performed by CONSULTANT under the direction of Kerry Hamill (Project Manager) or a designated representative who will approve a work plan prior to CONSULTANT beginning work.

CONSULTANT will be paid \$8,300.00 per month as full compensation for the satisfactory completion of all services. This sum includes payment for taxes, insurance, and fringe benefits, as well as indirect costs, overhead and profit allowance, materials and supplies.

CONSULTANT shall complete and submit an Internal Revenue Service Form W-9, Request for Taxpayer Identification Number and Certification, to BART's Accounts Payable Department at the address shown below, indicating this Agreement name and number. CONSULTANT agrees to file such tax forms as may be reasonably requested by BART to implement Internal Revenue Code Section 3406 and to accept as part of any compensation due, any payment made by BART to the Internal Revenue Service pursuant to that Section.

Total compensation for all services shall not exceed \$99,600.00. CONSULTANT's services will be billed on a monthly basis, and payment will be made within thirty (30) calendar days of receipt of an acceptable invoice, approved by the Project Manager or a designated representative, provided a completed Form W-9 is on file with the Assistant Controller.

CONFORMED**ATTACHMENT A****SCOPE OF SERVICES****PROFESSIONAL SERVICES AGREEMENT NUMBER 6M7239****FOR CONSULTING SERVICES TO DEVELOP BALLOT LANGUAGE AND SPENDING PLAN FOR BART
BOND ELECTION**

The services to be performed by CONSULTANT shall consist of services requested by the Project Manager including, but not limited to, the following:

CONSULTANT shall:

- i. Work with staff to:
 - (a) Create public information to highlight BART's positives;
 - (b) Reach out to internal and external stakeholders to define the outlines of an expenditure and asset management plan; and
 - (c) Build a coalition around the need for additional dollars for BART from state, federal, local, regional sources to help the agency to pay for its large unfunded capital needs.
- ii. Bring together internal and external stakeholders in support of additional funding for BART from the sources listed above.
- iii. Help staff to lay the groundwork with opinion leaders and leading key community groups to ensure participation and support for funding requests at all levels so that funders understand the great amount of community support that exists for funding BART's capital needs.
- iv. Work with staff and other consultants to conduct research polling, and focus groups to help to best define the problem and talk to the public about BART's large capital needs.
- v. Work with staff on analysis, research, and database work to help the Office of External Affairs plan and manage its public outreach campaigns as effectively as possible.
- vi. Work with staff to innovate ways to communicate with the community and our customers through traditional media, social media, and face-to-face opportunities.
- vii. Work with BART staff from all Departments to create an asset management/expenditure plan that prioritizes the Agency's significant capital needs.
- viii. Work with the Board to ensure that the expenditure/asset management plan is aligned with the District's policy priorities.