

File No. 121186

Committee Item No. 8

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee

Date 01/30/2013

Board of Supervisors Meeting

Date _____

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Completed by: Victor Young

Date January 25, 2013

Completed by: Victor Young

Date _____

1 [Feeder Agreement - BART]
2

3 **Resolution retroactively approving the Feeder Agreement between the City and County**
4 **of San Francisco and the Bay Area Rapid Transit District for payment for transfer trips,**
5 **with a term from July 1, 2010, to June 30, 2020.**
6

7 WHEREAS, The San Francisco Municipal Transportation Agency (SFMTA) and the
8 San Francisco Bay Area Rapid Transit District (BART) provide an integrated transit network in
9 San Francisco; and

10 WHEREAS, The SFMTA provides extensive transit services to BART stations, allowing
11 customers to use transit to reach locations away from BART stations; and

12 WHEREAS, BART pays a lump sum to the SFMTA for the provision of feeder bus and
13 rail services to BART stations under the Feeder Agreement based on the percentage change
14 in sales tax revenues BART collected during the two previous years; and

15 WHEREAS, In 2011 the SFMTA Board of Directors and the San Francisco Board of
16 Supervisors approved a feeder payment from BART to the SFMTA for fiscal year 2010 based
17 on a sales tax methodology and asked future payments to be based on a ridership
18 methodology; and

19 WHEREAS, Specifically, in Board of Supervisors Resolution No. 348-11, adopted
20 August 2, 2011, the Board approved the fiscal year 2010 payment with the following requests:
21 (1) That the SFMTA present the renegotiated Fast Pass reimbursement agreement with
22 BART and the Fiscal Year 2011 and 2012 Feeder Agreements with BART to the Board for
23 approval at the same time; (2) that the SFMTA and BART negotiate the methodology for the
24 FY 2011 and FY 2012 Feeder Agreements to provide a clear nexus between the actual
25 number of transfer trips between BART and Muni and the related Feeder Agreement payment

1 by BART to the SFMTA; (3) and that the SFMTA and BART renegotiate a retroactive amount
2 for the FY 2010 Feeder Agreement payment based on the new methodology developed for
3 FY 2011; further, the Board declared its intent to condition its approval of any future Feeder
4 Agreement on inclusion of a provision for a retroactive payment to the SFMTA for FY 2010;
5 and

6 WHEREAS, The Clipper electronic data for fiscal year 2010 did not accurately reflect
7 feeder ridership counts because both BART and Muni patrons were transitioning to Clipper
8 from paper fare media; therefore, the parties could not apply the new methodology to fiscal
9 year 2010; and

10 WHEREAS, The SFMTA and BART have negotiated a new Feeder Agreement and are
11 proposing that feeder payments for fiscal years 2011 through 2012 increase by 0.5% over the
12 previous respective fiscal years in the amounts of \$2,654,357 for FY 2011 and \$2,667,629 for
13 FY 2012; and

14 WHEREAS, For fiscal years 2013 through 2020, the SFMTA and BART are proposing
15 to adjust Feeder Agreement payments annually based on the San Francisco Bay Area
16 Consumer Price Index (CPI) and the percentage change of Muni feeder ridership to BART
17 stations using the Clipper® Card, with a maximum 5 percent increase in payments in any
18 given year; and

19 WHEREAS, On November 20, 2012, the SFMTA Board of Directors adopted
20 Resolution No. 12-142, approving the Agreement between the City and County of San
21 Francisco and the San Francisco Bay Area Rapid Transit District for Payment of Transfer
22 Trips (Feeder Agreement), with a term from July 1, 2010 to June 30, 2020, based on the
23 terms outlined above; and,
24
25

1 WHEREAS, A copy of the Agreement is on file with the Clerk of the Board of
2 Supervisors in File No. 121186, which is hereby declared to be a part of this motion as if set
3 forth fully herein; now, therefore, be it

4 RESOLVED, That the Board of Supervisors retroactively approves the Agreement
5 between the City and County of San Francisco and the Bay Area Rapid Transit District for
6 Payment for Transfer Trips (Feeder Agreement) between the City and BART, with a term from
7 July 1, 2010 to June 30, 2020.

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Items 8 and 9 -**Files 12-1186 & 12-1187****Department:****Municipal Transportation Agency (SFMTA)****EXECUTIVE SUMMARY****Legislative Objective**

- 12-1186: The proposed resolution would approve a 10-year Feeder agreement retroactively from July 1, 2010 through June 30, 2020 between the City, on behalf of the Municipal Transportation Agency (SFMTA), and Bay Area Rapid Transit (BART), in which BART partially reimburses SFMTA for the costs of passenger transfer trips between the San Francisco Municipal Railway (MUNI) and BART.
- 12-1187: The proposed resolution would approve the Fast Pass agreement between the City, on behalf of SFMTA, and BART, for a 4.5-year term retroactive to January 1, 2010 through June 30, 2014, in which SFMTA partially reimburses BART for BART trips in San Francisco taken by Adult Fast Pass users who purchase the Fast Pass from SFMTA with the option to take unlimited monthly rides on BART within San Francisco.

Key Points

- A proposed resolution approving a new Fast Pass agreement with an 8.5-year term retroactive from January 1, 2010 through June 30, 2018 was considered by the Budget and Finance Committee on May 4, 2011 (File 11-0201). The Budget and Finance Committee tabled the proposed resolution and requested that SFMTA staff renegotiate the terms of this agreement along with the Feeder agreement discussed below and bring back both agreements jointly to the Board of Supervisors for approval.
- Under the proposed Feeder agreement (File 12-1186), BART pays SFMTA to offset a portion of SFMTA's costs to provide MUNI feeder services to BART stations located in San Francisco. The proposed Feeder agreement includes retroactive payments by BART to SFMTA of \$2,654,357 in FY 2010-11 and \$2,667,629 in FY 2011-12. From FY 2012-2013 through FY 2019-20, payments are adjusted annually based on the percentage change of ridership and the San Francisco Bay Area Consumer Price Index (CPI), up to a maximum of 5 percent annually. Feeder ridership changes would be calculated using the number of MUNI feeder trips taken by passengers who then transfer to BART which were tracked on the Clipper Card for the two preceding years.
- Under the proposed Fast Pass agreement (File 12-1187), SFMTA pays BART \$1.19 for each BART trip in San Francisco using the Fast Pass with the option to take unlimited trips on BART within San Francisco, retroactively from January 1, 2010 through June 30, 2012, increasing to \$1.21 per BART trip retroactively from July 1, 2012 through June 30, 2014. There is an annual reimbursement cap on payments by SFMTA to BART of \$14 million per fiscal year.

Fiscal Analysis

- 12-1186: Payments by BART to SFMTA for SFMTA providing feeder service to BART stations in San Francisco are estimated to total \$32,069,140 under the proposed 10-year Feeder agreement assuming a 2.88 annual increase in CPI and a 3 percent ridership increase, resulting in annual increases in payments of five percent due to the cap limiting increases in payments to five percent annually.
- 12-1187: SFMTA would be required to reimburse BART an estimated \$42,763,704 under the proposed Fast Pass agreement, less the \$8,690,297 which has previously been paid by SFMTA to BART for a net retroactive payment by SFMTA to BART of \$34,073,407.

- Based on the estimated payments from FY 2010-11 through FY 2013-14 for both the proposed Fast Pass, an estimated payment of \$37,498,332 by SFMTA to BART and the Feeder agreement, an estimated payment of \$11,054,057 by BART to SFMTA, SFMTA would pay approximately \$26,444,275 in total net payments to BART, the overlapping time period of the proposed Fast Pass and Feeder agreements.

Policy Considerations

- 12-1186: The proposed Feeder agreement limits increases in annual payments by BART to SFMTA to five percent. However, there is no limit to the decrease in annual payments. Since FY 1998-99, the annual change in feeder ridership has ranged between a 6.8 percent decrease and a 13.4 percent increase. Therefore, the Budget and Legislative Analyst recommends a five percent floor on decreases in payments from BART to SFMTA to stabilize Feeder payments by BART to SFMTA.
- 12-1187: In the Budget and Legislative Analyst's report to the May 4, 2011 Budget and Finance Committee, the Budget and Legislative Analyst recommended that the Budget and Finance Committee request that SFMTA staff renegotiate the terms of the Fast Pass agreement, including (1) adjusting annual reimbursements by SFMTA to BART based on the rate of inflation rather than increases in BART fares, and (2) capping annual SFMTA's reimbursement increases to BART. As noted above, the proposed Fast Pass agreement includes an annual reimbursement payment cap of \$14,000,000, as previously recommended by the Budget and Legislative Analyst, but continues to adjust annual reimbursements by SFMTA to BART based on the percentage increase in BART fares rather than the rate of inflation.
- 12-1187: The annual cap of \$14,000,000 payable by SFMTA to BART is \$4,390,842, or 45.7 percent, more than any estimated annual payment, the maximum being \$9,609,158, under the proposed Fast Pass agreement. Therefore, the annual cap of \$14,000,000, which would likely not serve to contain payment increases in a significant way, should be reduced to \$10,000,000.
- 12-1187: Because SFMTA's FY 2011-12 incremental revenues of \$3,608,840 from the \$10 additional fee for purchasing a Fast Pass with the option to take unlimited monthly rides on BART within San Francisco are \$5,584,544 less than SFMTA's FY 2011-12 payment to BART of \$9,193,384 under the Fast Pass agreement, the Budget and Legislative Analyst considers approval of the proposed resolution to be a policy matter for the Board of Supervisors.

Recommendations

12-1186

- Amend the proposed resolution to specify that the proposed Feeder agreement will be revised to correct the formula for payment increases from FY 2012-13 through FY 2019-20, as agreed to by SFMTA.
- Amend the proposed resolution to require that the proposed Feeder agreement be revised to include a floor of no more than five percent on decreases in payments from BART to SFMTA.
- Approve the proposed resolution as amended.

12-1187

- Amend the proposed resolution to require that the proposed Fast Pass agreement be revised to reduce the amount of the annual cap by \$3,500,000 to \$10,500,000 to reflect actual anticipated payments by SFMTA to BART. Approval of the proposed resolution, as amended, is a policy decision for the Board of Supervisors.

MANDATE STATEMENT/ BACKGROUND

Mandate Statement

12-1186: In accordance with Charter Section 9.118(a), City agreements, or amendments to such City agreements, with anticipated revenue of \$1,000,000 or more are subject to approval of the Board of Supervisors.

12-1187: In accordance with Charter Section 9.118(b), City agreements with anticipated expenditures of \$10,000,000 or more, or amendments to such City agreements with anticipated expenditures of more than \$500,000, are subject to approval by the Board of Supervisors.

Background

12-1186: Feeder Agreement

Since 1987, Bay Area Rapid Transit (BART) and the San Francisco Municipal Transportation Agency (SFMTA) have entered into annual Feeder agreements, in which BART pays the SFMTA to offset a portion of SFMTA's costs to provide Municipal Railway (MUNI) services to BART stations located in San Francisco. The original methodology for calculating BART's Feeder agreement payment to the SFMTA was based on the difference between SFMTA's operating costs and fare revenues for each passenger trip resulting from a transfer between BART and MUNI, multiplied by the number of trips.

Since 1991, BART's Feeder agreement payments to the SFMTA have been adjusted annually by the percentage change in Sales Tax revenue allocated to BART¹ for the two years prior to the current year's Feeder agreement, irrespective of the actual number of transfer trips between BART and MUNI. Under that method, in August 2011 the Board of Supervisors approved a resolution authorizing the payment by BART to SFMTA of \$2,641,151 for FY 2009-10 based on a FY 2008-09 payment of \$2,904,092 minus \$262,941, the 9.1 percentage decrease in the Sales Tax allocation to BART in FY 2008-09 compared to FY 2007-08 (Resolution No. 348-11). However, the resolution "urge[d] the SFMTA and BART to renegotiate the methodology for the FY 2011 and FY 2012 Feeder agreements to provide a clear nexus between the actual number of transfers trips between BART and Muni and the related Feeder agreement payment by BART to the SFMTA."

12-1187: Fast Pass Agreement

The Fast Pass agreement between BART and SFMTA allows Adult Fast Pass users who purchase the Fast Pass with the BART option² to take an unlimited number of monthly rides on BART within San Francisco city limits at no additional cost to the rider, with reimbursements for each trip to be made by the SFMTA to BART at a fixed reimbursement rate. According to Mr. Jason Lee, SFMTA Financial Services Manager, approximately 34.4 percent of Fast Passes sold in FY 2011-12 were Fast Passes with the BART option. The most recent Fast Pass agreement, with a two-year term from December 21, 2007 through December 31, 2009, provided that

¹ BART collects 0.5 percent Sales Tax from San Francisco, Alameda, and Contra Costa counties. Of this amount, BART retains 75 percent and the remaining 25 percent is split evenly between AC Transit and SFMTA.

² The Adult Fast Pass with the BART option costs, \$74, \$10 more than the \$64 MUNI-only Adult Fast Pass.

SFMTA pay BART a fixed reimbursement rate of \$1.02 per trip.³ SFMTA continued to pay BART at the same \$1.02 reimbursement rate until December, 2010. Since December, 2010, no payments by SFMTA to BART have been made because SFMTA did not have the contractual authority to continue payments.

A proposed resolution approving a new Fast Pass agreement with an 8.5-year term retroactive from January 1, 2010 through June 30, 2018 was considered by the Budget and Finance Committee on May 4, 2011 (File 11-0201). Key provisions of that new Fast Pass agreement included:

- Prior to July 1, 2012 - An increase in the reimbursement rate payable by SFMTA to BART from \$1.02 per trip to \$1.19 per trip retroactive to January 1, 2010 through June 30, 2012, resulting in a reimbursement rate discount of \$0.56 or 32 percent from the BART fare in San Francisco of \$1.75.
- Beginning on July 1, 2012 – An increase in the reimbursement rate payable by SFMTA to BART by the same amount as BART fare increases, rather than being tied to the rate of inflation. However, BART's fare policy expired on July, 2012 and the structure of a new fare policy was not yet known;
- Annual reimbursement rate increases limited to ten percent; and
- No not-to-exceed amount capping SFMTA's reimbursements to BART on an annual basis.

As a result, the Budget and Finance Committee tabled the proposed resolution and requested that SFMTA staff renegotiate the terms of this agreement along with the Feeder agreement discussed below and to bring back both renegotiated agreements jointly to the Board of Supervisors for approval.

DETAILS OF PROPOSED LEGISLATION

12-1186: The proposed resolution would retroactively approve a 10-year Feeder agreement between the City, on behalf of SFMTA, and BART for payment by BART to SFMTA for transfer trips made on San Francisco Municipal Railway (MUNI) to BART stations located in San Francisco with a term retroactive from July 1, 2010 through June 30, 2020 (Fiscal Years 2010-11 through 2019-20). The proposed Feeder agreement's key provisions include:

- FY 2010-11: Payment by BART to SFMTA of \$2,654,357 (an increase of 0.5 percent above the FY 2009-10 reimbursement amount of \$2,641,151);
- FY 2011-12: Payment by BART to SFMTA of \$2,667,629 (an increase of 0.5 percent above the FY 2010-11 reimbursement amount of \$2,654,357);
- FY 2012-13 through FY 2019-20: Payments by BART to SFMTA are adjusted annually based on the percentage change of ridership and the San Francisco Bay Area Consumer

³ From December 21, 2007 through June 30, 2009, the BART fare in San Francisco was \$1.50, or \$0.48 more than the SFMTA reimbursement of \$1.02 made to BART. From July 1, 2009 through December 31, 2009, when the prior agreement expired, the BART fare in San Francisco was \$1.75, or \$0.73 more than the SFMTA reimbursement to BART of \$1.02.

Price Index (CPI), up to a maximum of 5 percent annually⁴. Feeder ridership changes would be calculated by the number of MUNI feeder trips to BART tracked on the Clipper Card⁵ for the two preceding years.

According to Mr. Lee, the proposed Feeder agreement is a negotiated agreement between SFMTA and BART which is entered into voluntarily.

Based on inquiries by the Budget and Legislative Analyst, Mr. Lee advises that the formula currently included in the proposed Feeder agreement is incorrect. Therefore, the Budget and Legislative Analyst recommends that the proposed Feeder agreement should be amended to accurately reflect the method for calculating annual payment⁶.

12-1187: The proposed resolution would approve a new 4.5-year Fast Pass agreement which allows Adult Fast Pass users who purchase the Fast Pass with the BART option⁷ to take an unlimited number of monthly rides on BART within San Francisco city limits at no additional cost to the rider, between the City, on behalf of SFMTA, and BART, with a term retroactive to January 1, 2010 through June 30, 2014. Either SFMTA or BART may terminate the proposed Fast Pass agreement after giving the other party a 90-day written notice prior to the termination date. The proposed Fast Pass agreement's key provisions include:

- A \$1.19 reimbursement rate payable by SFMTA to BART would apply retroactively to January 1, 2010 and would be in effect until June 30, 2012. This \$1.19 rate represents a 16.7 percent increase over the current \$1.02 rate. This proposed \$1.19 reimbursement rate is based on BART's last 16.7 percent fare increase in San Francisco from \$1.50 to \$1.75 on July 1, 2009.
- A \$1.21 reimbursement rate payable by SFMTA to BART, an increase of 1.7 percent, based on BART's most recent July, 2012 fare increase of 1.4 percent, would commence retroactive to July 1, 2012 and remain in effect through June 30, 2014.⁸ However, the BART fares for trips within San Francisco stayed the same at \$1.75 per trip other than trips between Market Street stations and the Balboa Park station, which increased by \$0.05 to \$1.80 per trip or 2.9 percent increase. Those trips comprise approximately 37 percent of trips taken by Fast Pass riders on BART.
- SFMTA and BART must begin negotiations by January 1, 2014 for a new Fast Pass agreement. If both parties cannot agree on the terms of a new agreement effective July 1, 2014, then the Fast Pass agreement shall continue on a month-to-month basis with a reimbursement rate adjustment based on BART's CPI formula effective on the date of a

⁴ The formula in the proposed Feeder agreement states that: Annual Feeder payment = Previous Year's Feeder payment *(((1 + Percentage Change in Ridership with 1 being 100 percent)*(1+Percentage Change in CPI)) -1). This formula incorrectly subtracts the previous year's feeder payment from the calculation.

⁵ The Clipper Card is an all-in-one transit card for Bay Area transit systems, including BART and MUNI, that keeps track of passes, discount tickets, ride books and cash value that are loaded onto it, while applying all applicable fares, discounts and transfer rules.

⁶ The formula which correctly calculates the annual Feeder payment is: Annual Feeder payment = Previous Year's Feeder payment *((1 + Percentage Change in Ridership with 1 being 100 percent)*(1+Percentage Change in CPI)).

⁷ The Adult Fast Pass with the BART option costs, \$74, \$10 more than the \$64 MUNI-only Adult Fast Pass.

⁸ \$1.19 x 1.014 percent = \$1.2067, rounded to \$1.21.

BART fare increase on or after July 1, 2014.

- There is an annual reimbursement payment cap of \$14 million per fiscal year payable by SFMTA to BART. Based on actual ridership, the SFMTA would pay BART \$9,609,158 for FY 2010-11 Fast Pass trips.

In the Budget and Legislative Analyst's report to the May 4, 2011 Budget and Finance Committee, the Budget and Legislative Analyst recommended that the Budget and Finance Committee request that SFMTA staff renegotiate the terms of this agreement, including (1) adjusting annual reimbursements by SFMTA to BART based on the rate of inflation rather than increases in BART fares, and (2) capping annual SFMTA's reimbursement increases to BART. As noted above, the proposed Fast Pass agreement includes an annual cap on reimbursements made by SFMTA to BART of \$14,000,000, as previously recommended by the Budget and Legislative Analyst, but continues to adjust annual reimbursements by SFMTA to BART based on the percentage increase in BART fares rather than the rate of inflation.

FISCAL ANALYSIS

12-1186: BART Feeder Agreement Payments to SFMTA from FY 2010-11 through FY 2019-20 Are Estimated to be \$32,069,140

As previously noted, the formula included in the proposed feeder agreement is incorrect. As shown below in Table 1 below, based on the SFMTA-corrected formula included in the proposed Feeder agreement, the payments by BART to SFMTA are estimated to total \$32,069,140 over the ten-year term of the agreement. According to Mr. Lee, these estimates are based on two assumptions:

1. Ridership will increase at an average of 3 percent annually, based on recent BART ridership trends.
2. CPI annual adjustments will average 2.88 percent based on fluctuations in CPI between 2.5 and 3.25 percent.

Table 1 below summarizes payments both constrained by the 5 percent annual increase cap and unconstrained by any payment increase cap.

Table 1: Estimated Payments by BART to SFMTA under Feeder Agreement

	Estimated Payment to SFMTA by BART Without Cap	Estimated Payment to SFMTA by BART with 5% Cap	Difference
FY 2010-11	\$2,654,357	\$2,654,357	\$0
FY 2011-12	2,667,629	2,667,629	0
FY 2012-13	2,826,790	2,801,010	25,780
FY 2013-14	2,995,448	2,941,061	54,387
FY 2014-15	3,174,168	3,088,114	86,054
FY 2015-16	3,363,552	3,242,520	121,032
FY 2016-17	3,564,235	3,404,646	159,589
FY 2017-18	3,776,892	3,574,878	202,014
FY 2018-19	4,002,236	3,753,622	248,614
FY 2019-20	4,241,025	3,941,303	299,722
Total	\$33,266,333	\$32,069,140	\$1,197,193

Given an average CPI of 2.88 percent, a 2.1 percent increase in ridership would result in actual additional payments by BART to SFMTA under the proposed Feeder agreement due to the five percent cap on annual payment increases. If ridership increases beyond that 2.1 percent in any given year, SFMTA would not be additionally reimbursed for that increase. In addition, it is possible that ridership could decrease and the proposed Feeder agreement does not include a floor on decreases in annual payments.

Without the 5 percent annual cap on payment increases, payments would increase approximately 6 percent annually and result in a total of \$33,266,333 in payments by BART to SFMTA, an increase of approximately \$1,197,193 in payments over the term of the proposed Feeder agreement with the five percent cap in place (See Table 1 above). While the Budget and Legislative Analyst believes that the five percent cap is reasonable, the Budget and Legislative Analyst notes that there is currently no floor limiting how much the annual payments by BART to SFMTA could decrease over the 10-year term included in the proposed Feeder agreement.

12-1187: The Proposed Fast Pass Agreement Would Result in Total Estimated Payments by SFMTA to BART of \$42,763,704

As shown in Table 2 below, SFMTA would pay BART an estimated \$42,763,704 under the proposed Fast Pass agreement from January 1, 2010 through June 30, 2014, less the \$8,690,297 which has already been paid by SFMTA to BART, or a net of \$34,073,407. If the proposed agreement is approved, SFMTA would be required to make an initial one-time retroactive payment of \$15,377,617 to BART (See Table 2 below)

Table 2: Total Estimated Payments by SFMTA to BART from January 1, 2010 through June 30, 2014

	Trips	Amount Previously Paid by SFMTA to BART at \$1.02 Reimbursement Rate	Proposed Annual Reimbursement by SFMTA to BART	Amount SFMTA Would Owe BART Retroactively if Proposed Agreement is Approved
\$1.19 Per Trip Reimbursement Rate				
January 1, 2010 – June 30, 2010	4,424,682	\$4,513,175	\$5,265,372	\$752,197
July 1, 2010 – June 30, 2011	8,074,923	4,177,122	9,609,158	5,432,036
July 1, 2011 – June 30, 2012	7,725,533	0	9,193,384	9,193,384
Subtotal for Retroactive Payments	20,225,138	\$8,690,297	\$24,067,914	\$15,377,617
\$1.21 Per Trip Reimbursement Rate				
July 1, 2012 – June 30, 2013	7,725,533	\$0	\$9,347,895	\$0
July 1, 2013 – June 30, 2014	7,725,533	0	9,347,895	0
Subtotal for Estimated Payments	15,451,066	\$0	\$18,695,790	\$0
Total	35,676,204	\$8,690,297	\$42,763,704	\$15,377,617

Two Agreements Result in Estimated Annual Net Payments of \$6,406,834 to \$6,954,801 by SFMTA to BART from FY 2010-11 through FY 2013-14

As shown in Table 3 below, based on the estimated payments for both the proposed Fast Pass and Feeder agreements, SFMTA would pay approximately \$26,444,275 in total net payments to BART from FY 2010-11 through FY 2013-14, the overlapping time period of the proposed Fast Pass and Feeder agreements.

Table 3: Net Payments to BART from FY 2010-11 through FY 2013-14

	Estimated Payments by BART to SFMTA Under Proposed Feeder Agreement	Estimated Payments by SFMTA to BART Under Proposed Fast Pass Agreement	Net Payments by SFMTA to BART
FY 2010-11	\$2,654,357	\$9,609,158	\$6,954,801
FY 2011-12	2,657,629	9,193,384	6,535,755
FY 2012-13	2,801,010	9,347,895	6,546,885
FY 2013-14	2,941,061	9,347,895	6,406,834
Total	\$11,054,057	\$37,498,332	\$26,444,275

POLICY CONSIDERATIONS**12-1186: The Proposed Feeder Agreement Only Includes a Cap on Increases in Payments but Does not Cap Decreases**

As previously noted, the proposed Feeder agreement limits increases in annual payments by BART to SFMTA to five percent. According to Mr. Lee, this five percent cap was agreed upon during negotiations⁹. However, there is no limit to the decrease in annual payments payable by BART to SFMTA. While Mr. Lee advises that electronically tracked feeder ridership is not available for previous years, the total number of San Francisco exits from San Francisco BART stations is available and would serve as an approximation for potential future changes in feeder ridership. Based on the available San Francisco BART exit data, ridership on MUNI could potentially fluctuate significantly from year to year. Since FY 1998-99, the annual change has ranged between a 6.8 percent decrease and a 13.4 percent increase. Therefore, the Budget and Legislative Analyst recommends revising the proposed resolution to require a five percent floor on decreases in payments to stabilize payments by BART to SFMTA under the proposed Feeder agreement.

12-1187: The \$14,000,000 Annual Cap in Payments by SFMTA to BART is Too High

The proposed Fast Pass agreement includes a cap on payments by SFMTA to BART, as previously recommended by the Budget and Legislative Analyst. However, the annual cap of \$14,000,000 is \$4,390,842, or 45.7 percent, more than any estimated annual payment, the maximum being \$9,609,158, under the proposed Fast Pass agreement. Therefore, the annual cap of \$14,000,000 payable by SFMTA to BART, which would likely not serve to contain payment increases in a significant way, should be reduced.

In order to establish an annual cap which serves to contain payments payable by SFMTA to BART, the proposed Fast Pass agreement should be amended to reduce the cap from \$14,000,000 to a cap of \$10,500,000, a reduction of \$3,500,000, which is more practically linked to possible fluctuations in payments under a Fast Pass agreement.

12-1187: SFMTA's Payment to BART under the Fast Pass Agreement is Less than SFMTA's Incremental Revenues from the Fast Pass

Because SFMTA's FY 2011-12 incremental revenues of \$3,608,840 from the \$10 additional fee for purchasing the Fast Pass with the Bart option are \$5,584,544 less than SFMTA's FY 2011-12 payment to BART of \$9,193,384 under the Fast Pass agreement, the Budget and Legislative Analyst considers approval of the proposed resolution to be a policy matter for the Board of Supervisors.

⁹ Mr. Lee advises that SFMTA originally proposed a cap of 6 to 7 percent annually.

RECOMMENDATIONS

12-1186

1. Amend the proposed resolution to specify that the proposed Feeder agreement will be revised to correct the formula for payment increases from FY 2012-13 through FY 2019-20, as agreed to by SFMTA.
2. Amend the proposed resolution to require that the proposed Feeder agreement be revised to include a floor of no more than 5 percent on decreases in payments from BART to SFMTA.
3. Approve the proposed resolution as amended

12-1187

1. Amend the proposed resolution to require that the proposed Fast Pass agreement be revised to reduce the amount of the annual cap from \$14,000,000 to \$10,500,000, a reduction of \$3,500,000, to reflect actual anticipated payments by SFMTA to BART.
2. Approval of the proposed resolution, as amended, is a policy decision for the Board of Supervisors.

**AGREEMENT BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO
AND THE SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT
FOR PAYMENT FOR TRANSFER TRIPS (FEEDER AGREEMENT)**

This Agreement is entered into this ____ day of _____, 2013 (the "Effective Date") by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("the City"), acting by and through its Municipal Transportation Agency ("SFMTA"), and the SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT ("BART") (collectively, the "Parties").

RECITALS

1. The City is a municipal corporation chartered under the Constitution of the State of California and empowered by the Constitution and by its charter to, among other matters, operate the San Francisco Municipal Railway ("Muni") through the San Francisco Municipal Transportation Agency ("SFMTA").
2. BART is a rapid transit district duly created and acting under the laws of the State of California, operating a regional rapid transit system for the San Francisco Bay Area.
3. Both SFMTA and BART operate transit services in San Francisco and pursuant to Section 29142.4(a) of the Public Utilities Code of the State of California are participating members of a regional transit coordinating council established by the Metropolitan Transportation Commission ("MTC") to coordinate routes, schedules, fares, and transfers within San Francisco.
4. SFMTA and BART participate with MTC in developing an annual regional financial plan to which this Agreement is, in part, responsive.
5. MTC has determined that a payment by BART to SFMTA for feeder service will facilitate the coordination of transit service, furnish an incentive for providing enhanced feeder service between Muni and BART stations in San Francisco, and therefore encourage transit use and improve the quality of transit service.

6. Since 1987, BART and the City have entered into agreements providing for payment by BART to the City for enhanced feeder service between Muni and BART stations in San Francisco.
7. The first feeder service payment of \$1.3 million BART made in 1987 was based on estimates of the number of riders transferring between Muni and BART. The original intent was to validate these estimates with actual passenger counts.
8. Because actual numbers of transferring riders were not available, in 1989 MTC directed that the feeder service payment be linked to BART's sales tax growth. At the time, both agencies agreed to the sales tax methodology, which has been applied to calculate feeder payment amounts since 1989.
9. Inasmuch as the Clipper® program electronically tracks ridership by transit agency, the parties now agree that sales tax methodology is no longer appropriate for determining feeder service payments.
10. System connectivity is important to both BART and SFMTA. BART serves eight station locations within San Francisco and connects the city to the East Bay and the Peninsula. Over 60 Muni routes, the vast majority of total service, provide transfer opportunities at the eight BART stations, allowing passengers who originate from or are destined to locations away from these stations to access the BART system.
11. This Agreement will govern the feeder payments from BART to SFMTA for Fiscal Years 2011 through 2020.
12. The feeder payments for Fiscal Years 2011 and 2012 will increase by one-half of one (0.5) percent over the payments made for the respective previous fiscal years.
13. This Agreement reinstates a trip-based methodology for calculating the feeder payment for Fiscal Year 2013 through Fiscal Year 2020. The new formula adjusts the previous year's feeder payment by the year-to-year percentage change in actual individual trips transferring from Muni to BART based on Clipper data and the year-to-year percentage change in inflation based on the San Francisco Bay Area Consumer Price Index for All Urban Consumers, for all items, not to exceed five (5) percent annually.

AGREEMENT

NOW, THEREFORE, the SFMTA and BART, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, agree as follows:

SECTION I. PAYMENT

The manner for establishing the feeder service payment between SFMTA and BART has been determined by SFMTA and BART as set forth below.

1.1 Payment Amount for Fiscal Years 2011 and 2012

1. For Fiscal Year 2011 ("FY11"), BART agrees to pay SFMTA the amount of Two Million, Six Hundred Fifty-Four Thousand, Three Hundred Fifty-Seven Dollars (\$2,654,357) within thirty (30) calendar days of the Effective Date.
2. For Fiscal Year 2012 ("FY12"), BART agrees to pay SFMTA the amount of Two Million, Six Hundred Sixty-Seven Thousand, Six Hundred Twenty-Nine Dollars (\$2,667,629) within thirty (30) calendar days of the Effective Date.

1.2 Payment Amount for Fiscal Years 2013 through 2020

1. The Fiscal Year 2013 ("FY13") payment amount will be the FY12 payment amount adjusted by the following changes occurring in the two years prior to FY13:
 - a. "Ridership Change": The percentage change between FY11 and FY12 in total Clipper[®] transactions in which a customer transfers from Muni to BART. Under the supervision of the MTC, the Clipper[®] vendor (currently Cubic Transportation Systems) tracks these transactions and other interagency transfers on a monthly basis and summarizes them in an Interoperator Travel Matrix report.
 - b. "Inflation Change": The percentage change between FY11 and FY12 is based on the San Francisco Bay Area Consumer Price Index for All Urban Consumers ("San Francisco-Oakland-San Jose CPI-U") for all items, with an index based period of 1982-84 = 100, as reported by the Bureau of Labor Statistics, U.S. Department of Labor.
 - c. Specifically, the FY13 payment amount shall be calculated as follows:

FY13 Feeder Payment = FY12 Feeder Payment x (1 + Ridership Change) x (1 + Inflation Change)

where Ridership Change and Inflation Change are percentages expressed as decimals (e.g., 3% = 0.03)

2. The payment amounts for Fiscal Years 2014 ("FY14") through 2020 ("FY20") shall be calculated using the FY13 payment calculation methodology as described in Section I.1.2.1.c above, but will only reflect the one-year period prior to the fiscal year being calculated. Under no circumstances shall the total feeder payment increase by more than five (5) percent from the previous year's payment.
3. BART agrees to render payment for Fiscal Years 2013 through 2020 by December 31 of each fiscal year.

SECTION II. OTHER COSTS ASSOCIATED WITH AGREEMENT

SFMTA and BART will each bear its own internal costs associated with administration of this Agreement including, without limitation, reporting, billing, accounting, and auditing costs.

SECTION III. RECORDS AND AUDITS

BART will preserve and maintain, and SFMTA or its authorized representatives will have the right to audit BART's accounts, records, and data regarding BART records for a period of three (3) years after the final payment under this Agreement. SFMTA will preserve and maintain, and BART or its authorized representatives will have the right to audit SFMTA's accounts, records, and data regarding collection and compilation of transit trip data and relevant cost accounting data for a period of three (3) years after the final payment under this Agreement. These documents will adhere to generally accepted accounting principles as required by the uniform system of accounts and records adopted by the State Controller pursuant to Section 99243 of the Public Utilities Code, and as required by Section 15 of the Urban Mass Transportation Administration Act of 1964, as amended. Pursuant to California Government Code Section 8546.7, the Parties to this Agreement will be subject to the examination and audit

of the Auditor General of the State of California for a period of three (3) years after the final payment under this Agreement.

SECTION IV. TIME PERIOD AND CONDITION OF AGREEMENT

It is agreed and understood that there is no obligation under this Agreement on the part of BART to make any payment to SFMTA for fiscal years other than Fiscal Years 2011 through 2020.

SECTION V. GENERAL PROVISIONS

A. Responsibility:

SFMTA will be solely responsible for the maintenance, safety, and operation of vehicles providing connecting feeder service to BART stations and for the training and supervision of all personnel involved in providing connecting feeder service to BART stations. SFMTA will be responsible for the setting of transfer fares and the operation of all of SFMTA's transit services connecting with BART stations. SFMTA will secure any necessary approvals from City or State agencies for the placement of all bus stop signs, benches and shelters.

B. Notices:

All invoices, notices or other communications to either party by the other will be deemed given when made in writing and delivered or mailed to such party at their respective addresses as follows:

To BART: BART
 300 Lakeside Drive
 P.O. Box 12688
 Oakland, CA 94604-2688

Invoices:
 Assistant Controller
 300 Lakeside Drive
 P.O. Box 12688
 Oakland, CA 94604-2688

All Other Notices:

General Manager
300 Lakeside Drive
P.O. Box 12688
Oakland, CA 94604-2688

To SFMTA:

Municipal Transportation Agency
One South Van Ness Avenue, Seventh Floor
San Francisco, CA 94103

Invoices: Sonali Bose
Chief Financial Officer
Municipal Transportation Agency
One South Van Ness Avenue, Eighth Floor
San Francisco, CA 94103

All Other Notices:

Edward D. Reiskin
Director of Transportation
Municipal Transportation Agency
One South Van Ness Avenue, Seventh Floor
San Francisco, CA 94103

C. Indemnity:

SFMTA agrees to indemnify, save harmless and defend BART, its officers, agents, and employees from legal liability of any nature or kind on account of any claim for damages to property or personal injuries to or death of person or persons incurred by reason of any act, or failure to act, of SFMTA, its officers, agents, employees and subcontractors, or any of them, in performing any duties required by this Agreement, unless such claims arise out of the sole negligence of BART, its officers, agents, or employees.

BART agrees to indemnify, save harmless and defend SFMTA, its officers, agents and employees from legal liability of any nature or kind on account of any claim for damages to property or personal injuries to or death of person or persons incurred by reason of any act, or failure to act, of BART, its officers, agents, employees and subcontractors, or any of them, in performing any duties required by this Agreement, unless such claims arise out of the sole negligence of SFMTA, its officers, agents, or employees.

The foregoing provisions regarding indemnification are included pursuant to the provisions of Section 895.4 of the Government Code, and are intended by the parties to modify and supersede the otherwise applicable provisions of Chapter 21, Part 2, Division 3.6, Title I of

the Government Code.

D. Compliance with ADA:

BART and SFMTA acknowledge that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Without limiting any other provision of this Agreement, BART and SFMTA will provide the services specified in this Agreement in a manner that complies with the Americans With Disabilities Act of 1990 ("ADA") 42 U.S.C §12143 is and any and all other applicable federal, state, and local disability rights legislation. BART and SFMTA agree not to discriminate against disabled persons in the provision of services, benefits, or activities provided under this Agreement and further agree that any violation of this prohibition on the part of BART and SFMTA, their employees, agents or assigns will constitute a material breach of this Agreement.

SECTION VI. TERM OF THE AGREEMENT

This Agreement covers the period from July 1, 2010, through June 30, 2020.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

SAN FRANCISCO BAY AREA
RAPID TRANSIT DISTRICT

CITY AND COUNTY OF
SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY

By: _____
Grace Crunican
General Manager

By: _____
Edward D. Reiskin
Director of Transportation
Municipal Transportation Agency

Authorized by MTA Board
Resolution No. _____
Dated: _____

Attest:

Roberta Boomer
Secretary, MTA Board

Board of Supervisors
Resolution No. _____
Dated: _____

Attest:

Clerk of the Board

APPROVED AS TO FORM:
Office of the General Counsel

APPROVED AS TO FORM:
Dennis J. Herrera
City Attorney

By: _____
Patricia McCoy Smith
Attorney

By: _____
Robin M. Reitzes
Deputy City Attorney

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. 12-142

WHEREAS, The San Francisco Municipal Transportation Agency (SFMTA) and the San Francisco Bay Area Rapid Transit District (BART) provide an integrated transit network in San Francisco; and

WHEREAS, The SFMTA provides extensive transit services to BART stations, allowing customers to use transit to reach locations away from BART stations; and

WHEREAS, Since 1989, BART has paid a lump sum to the SFMTA for the provision of feeder bus and rail services to BART stations under the Feeder Agreement based on the percentage change in sales tax revenues BART collected during the two previous years; and

WHEREAS, In 2011 the SFMTA Board and San Francisco Board of Supervisors approved a feeder payment from BART to the SFMTA for fiscal year 2010 based on a sales tax methodology and asked future payments to be based on a ridership methodology; and

WHEREAS, The SFMTA and BART are proposing that feeder payments for fiscal years 2011 through 2012 increase by 0.5% over the previous respective fiscal years in the amounts of \$2,654,357 for FY 2011 and \$2,667,629 for FY 2012; and

WHEREAS, For fiscal years 2013 through 2020, the SFMTA and BART are proposing to adjust Feeder Agreement payments annually based on the San Francisco Bay Area Consumer Price Index (CPI) and the percentage change of Muni feeder ridership to BART stations using the Clipper® Card, with a maximum five percent increase in payments in any given year; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors authorizes the Director of Transportation to execute the Agreement between the City and County of San Francisco and the San Francisco Bay Area Rapid Transit District for Payment of Transfer Trips (Feeder Agreement), for the term from July 1, 2010 to June 30, 2020; and be it

FURTHER RESOLVED, That the SFMTA Board of Directors authorizes the Director of Transportation to submit the Agreement to the Board of Supervisors for its approval.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of November 20, 2012.

R. Bowmer

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

FORM SFEC-126:
NOTIFICATION OF CONTRACT APPROVAL
(S.F. Campaign and Governmental Conduct Code § 1.126)

City Elective Officer Information <i>(Please print clearly.)</i>	
Name of City elective officer(s): Members, San Francisco Board of Supervisors	City elective office(s) held: Members, San Francisco Board of Supervisors
Contractor Information <i>(Please print clearly.)</i>	
Name of contractor: San Francisco Bay Area Rapid Transit District (BART)	
<i>Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. Use additional pages as necessary.</i>	
(1) BART Board of Directors: Gail Murray, Joel Keller, Rebecca Saltzman, Robert Raburn, John McPartland, Thomas Blalock, Zakhary Mallett, James Fang, Tom Radulovich; (2) General Manager: Grace Crunican; Controller/Treasurer: Scott Schroeder; Assistant General Manager of Operations: Paul Oversier; (3) none; (4) none; (5) none	
Contractor address: 300 Lakeside Dr., PO Box 12688, Oakland, CA 94604-2688	
Date that contract was approved:	Amount of contract: \$2,641,151 for FY 2010, \$2,654,357 for FY 2011, \$2,667,629 for FY 2012, with subsequent payment to be adjusted by the percentage change of ridership and CPI for the two preceding years up to a maximum of 5% for FY 2013 to FY 2020
Describe the nature of the contract that was approved: BART pays a lump sum to the SFMTA for the provision of feeder bus and rail services to BART stations under the Feeder Agreement. For this contract, the amount is \$2,641,151 for FY 2010, \$2,654,357 for FY 2011, \$2,667,629 for FY 2012, with subsequent payment to be adjusted by the percentage change of ridership and CPI for the two preceding years up to a maximum of 5% for FY 2013 to FY 2020.	
Comments:	

This contract was approved by (check applicable):

the City elective officer(s) identified on this form

a board on which the City elective officer(s) serves San Francisco Board of Supervisors
Print Name of Board

the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on this form sits

Print Name of Board

Filer Information <i>(Please print clearly.)</i>	
Name of filer: Angela Calvillo, Clerk of the Board	Contact telephone number: (415) 554-5184
Address: City Hall, Room 244 1 Dr. Carlton B. Goodlett Pl., San Francisco CA 94102	E-mail: Board.of.Supervisors@sfgov.org

Signature of City Elective Officer (if submitted by City elective officer)

Date Signed

Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk)

Date Signed