

File No. 221173

Committee Item No. 2

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee Date December 7, 2022

Board of Supervisors Meeting Date _____

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- MTAB Resolution No. 10-144 11/22/2010
- MTAB Resolution No. 221206-113 12/6/2022
- _____
- _____

Completed by: Brent Jalipa Date December 1, 2022

Completed by: Brent Jalipa Date _____

1 [Cost-Sharing Agreement - Retroactive - BART - Paratransit Services - Reimbursement by
2 BART]

3 **Resolution retroactively authorizing the Director of Transportation to execute a new**
4 **Cost-Sharing Agreement for paratransit services between the City and County of San**
5 **Francisco, through the Municipal Transportation Agency (SFMTA), and the Bay Area**
6 **Rapid Transit District (BART), under which BART will reimburse the SFMTA for**
7 **providing BART’s paratransit services within San Francisco for a one year period from**
8 **July 1, 2022, through June 30, 2023, with nine one-year automatic renewal options, for a**
9 **maximum term of ten years.**

10

11 WHEREAS, Section 223 of the Americans with Disabilities Act of 1990 (ADA) requires
12 that BART and the San Francisco Municipal Transportation Agency (SFMTA) provide
13 paratransit services within their service areas to individuals whose disabilities will not allow
14 them to use regular fixed route transit service; and

15 WHEREAS, The SFMTA administers a Paratransit Program for ADA paratransit-
16 eligible individuals in San Francisco through its Paratransit Broker and has provided these
17 services to eligible individuals in BART's service area since 1994; and

18 WHEREAS, On November 16, 2010, the SFMTA Board of Directors adopted
19 Resolution No. 10-144, which authorized the execution of a Cost-Sharing Agreement for
20 Paratransit Services with BART, which agreement was approved by the Board of Supervisors
21 on December 10, 2010; and

22 WHEREAS, The City has applied for and received from the Metropolitan Transportation
23 Commission, State Transit Assistance (STA) funds and Transportation Development Act
24 (TDA) funds to implement paratransit services in San Francisco; and

25

1 WHEREAS, BART has agreed to continue to contribute its share of the cost of
2 providing ADA paratransit services in San Francisco, less the value of its share of STA and
3 TDA funds which the MTC has allocated to the City for this purpose; and

4 WHEREAS, BART commissioned a study of taxi, SF Access, group van and
5 Commission on the Aging paratransit services to determine how much of the paratransit costs
6 in San Francisco would be attributable to BART; the results of which indicated that
7 approximately 7.9 percent of the overall costs for ADA paratransit should be borne by BART;
8 and

9 WHEREAS, The SFMTA and BART are entering into this Agreement for the purpose of
10 continuing a cost-sharing arrangement whereby BART reimburses the SFMTA for providing
11 BART's mandated ADA paratransit services within San Francisco for up to ten years; and

12 WHEREAS, On October 4, 2022, the SFMTA, under authority delegated by the
13 Planning Department, determined that the Cost-Sharing Agreement for Paratransit Services is
14 not a "project" under the California Environmental Quality Act (CEQA) pursuant to Title 14 of
15 the California Code of Regulations, Sections 15060(c) and 15378(b); and

16 WHEREAS, A copy of the CEQA determination is on file with the Clerk of the
17 Board of Supervisors and which is hereby declared to be a part of this resolution as if set forth
18 fully herein; now, therefore, be it

19 RESOLVED, That the Board of Supervisors authorizes the Director of Transportation to
20 execute a new Cost-Sharing Agreement for Paratransit Services between the City, through
21 the SFMTA, and the Bay Area Rapid Transit District (BART), under which BART will
22 reimburse the SFMTA for providing BART's patrons with ADA paratransit services within San
23 Francisco for a retroactive period from July 1, 2022, through June 30, 2023, with nine one-
24 year automatic renewal options, for a maximum term of 10 years; and, be it

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1 FURTHER RESOLVED, That within 30 days of the document being fully executed by
2 all parties, the final document shall be provided to the Clerk of the Board for inclusion in the
3 official file.

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AGREEMENT No. 6M7320

COST-SHARING AGREEMENT FOR PARATRANSIT SERVICES

BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO

AND THE SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

This Agreement is entered into this _____ day of _____ 2022, between the City and County of San Francisco (CITY), a municipal corporation, acting through its Municipal Transportation Agency (SFMTA), and the San Francisco Bay Area Rapid Transit District (BART), a rapid transit district established pursuant to California Public Utilities Code, Sections 28500 et seq.

RECITALS

A. The CITY is a municipal corporation chartered under the Constitution of the State of California and empowered by the Constitution and the CITY Charter to operate the Municipal Railway (Muni).

B. The SFMTA is empowered by the CITY Charter to manage and control all public transportation functions of Muni.

C. BART operates rail service in Alameda, Contra Costa, San Francisco, San Mateo and Santa Clara Counties.

D. Section 223 of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12143, requires that BART and the CITY provide paratransit services within their service areas to individuals who are unable because of their disability to use regular transit service.

E. The SFMTA administers a Paratransit Program for ADA paratransit-eligible individuals in San Francisco through a Paratransit Broker. Since 1994, the SFMTA has provided paratransit services in San Francisco, through its Paratransit Broker, to all certified ADA paratransit-eligible users in areas where Muni and BART service areas overlap.

F. The CITY has applied for and received from the Metropolitan Transportation Commission (MTC) State Transit Assistance (STA) funds and Transportation Development Act (TDA) funds to assist in funding paratransit services in San Francisco.

G. In 1994, BART commissioned a study of the CITY's Paratransit Program, which included paratransit services provided by taxi, lift van, group van, and the Commission on Aging to determine how much of the costs of the CITY's Paratransit Program would be attributable to BART. The results of the study indicated that

approximately 8.8% of the CITY's overall costs for ADA paratransit should be borne by BART.

H. On November 22, 2011, the CITY and BART entered into an agreement, in accordance with the results of the 1994 study, in which they memorialized (1) the SFMTA's agreement to cover BART's obligation under the ADA to provide paratransit services, and (2) BART's agreement to share in the costs of the SFMTA's Paratransit Program (the "2011 Paratransit Cost- Sharing Agreement").

I. In Spring 2012, BART, with concurrence from the SFMTA, commissioned Nelson Nygaard to perform a new study of paratransit services and costs (2012 Nelson Nygaard Study).

J. On June 4, 2014, the Parties entered into a First Amendment to the 2011 Paratransit Cost-Sharing Agreement to reflect revised cost-sharing percentages based on the 2012 Nelson Nygaard Study. Pursuant to the terms of this Amendment, the 8.8% cost-sharing percentage was adjusted down to 7.9% and the 5% administration fee was adjusted down to 4.7%.

K. The 2011 Paratransit Cost-Sharing Agreement has recently expired and the Parties now wish to enter into this new paratransit cost-sharing agreement (Agreement) to memorialize the Parties' continued commitments, consistent with the results of the 2012 Nelson Nygaard Study, for (1) the SFMTA to cover BART's obligation under the ADA to provide paratransit services, and (2) BART to share in the costs of the SFMTA's Paratransit Program.

FOR AND IN CONSIDERATION of the mutual promises contained herein, the parties agree as follows:

I. COST-SHARING FORMULA

- A. BART shall pay 7.9% of the "Net Operating Expenses" of providing services to eligible paratransit individuals in the CITY's service area, as calculated below. For purposes of this Agreement, this amount shall be known as the "Annual BART Share Net Operating Expenses."
- B. Calculation of Net Operating Expenses.
 - 1. On or about February 1, the CITY shall estimate the annual operating budget for SFMTA's Paratransit Broker Contract for the following fiscal year (July 1 through June 30) (Total Operating Expenses).
 - 2. The Total Operating Expenses shall be reduced by the following to arrive at the Net Operating Expenses:

- a. an estimate of STA population-based revenue allocated to the CITY for paratransit as approved by MTC;
- b. an estimate of TDA Article 4.5 funds allocated to the CITY as approved by MTC;
- c. an estimate of paratransit fare revenues for the fiscal year, as submitted in the revenue line items in Muni's budget request;
- d. except for trips on paratransit taxi service, the difference between estimated fare revenues as calculated in the SFMTA's budget request and the amount that would be generated if maximum fares were charged, if the fare charged for ADA SF Access services is less than the maximum amount allowed under ADA rules (i.e., twice the undiscounted fixed route fare); and
- e. an estimate of any new sources of operating funds that are dedicated specifically for ADA paratransit, from a funding source received by the SFMTA, which would also be available to BART for paratransit services provided in San Francisco. This excludes the San Francisco County Transportation Authority's Prop K funds and the subsequent successor sales tax measure, Prop L

C. Billing of Annual BART Share Net Operating Expenses

1. The SFMTA shall bill BART for one quarter of 7.9% of the estimated Net Operating Expenses for each of the following three fiscal year quarters: Quarter 1 (July through September) (Q1), Quarter 2 (October through December) (Q2), and Quarter 3 (January through March) (Q3), as provided in Section II.B below.
 2. Following the end of each fiscal year, the SFMTA shall calculate the actual amount of Net Operating Expenses according to the formula in Section I.B above. For Quarter 4 (April through June) (Q4), the SFMTA shall bill BART an amount equal to 7.9% of actual Net Operating Expenses less amounts already billed for Q1, Q2, and Q3. The amount may be more or less than the amounts billed in the previous three quarters, depending whether actual Net Operating Expenses were more or less than the estimated Net Operating Expenses. If amounts billed to BART in Q1, Q2, and Q3 exceeded the BART Annual Share Net Operating Expenses for that fiscal year, BART shall receive a refund or credit to appear in the Q1 invoice of the following year.
- D. Notwithstanding the above, if for any fiscal year the SFMTA's annual budget contribution is less than 92.1% of the total Net Operating Expenses, BART's share of the costs will also be reduced proportionally so that the cost-sharing between BART and SFMTA will remain the same.

II. RESPONSIBILITIES

A. BART shall:

1. Pay to the SFMTA the Annual BART Share of Net Operating Expenses described in Section I.A, above, in quarterly payments. BART's payments shall be due on August 1 for Q1, on November 1 for Q2, on February 1 for Q3, and on August 15 for Q4. For the first fiscal year that this Agreement is in effect, the Q4 payment will not be due on August 15 but will instead be due within 30 calendar days of BART's receipt of the SFMTA's acceptable invoice.
2. Pay to the SFMTA an Administration Fee equal to 4.7% of the Annual BART Share Net Operating Expenses, in quarterly payments. BART's payments for the Administration Fee will be due at same time as the payments described in Section II.A.1 above.

B. CITY shall:

1. By February 1 of each year, submit an estimate to BART for 7.9% of the Net Operating Expenses for the following fiscal year.
2. Prior to the beginning of Q1, Q2, and Q3, respectively, of each fiscal year, submit an invoice to BART in the amount of one quarter of 7.9% of the estimated Net Operating Expenses for that fiscal year.
3. Following the end of the fiscal year and calculation of the Actual Net Operating Expenses, submit a final invoice to BART for the fiscal year for the difference between 7.9% of the Actual Net Operating Expenses and the amounts billed in Q1, Q2, and Q3.
4. Include with each invoice, an amount owed for the Administration Fee for that quarter. For Q1, Q2, Q3, this amount will be 4.7% of the Annual BART Share Net Operating Expenses billed for that quarter. The amount owed for the Administration Fee shall be adjusted with the final invoice so that the total Administration Fee equals 4.7% of the Actual Annual BART Share Net Operating Expense for the fiscal year.
5. Provide paratransit services in the CITY and fulfill BART's obligation to ADA Paratransit in the limits of Muni's service area and in Daly City, in compliance with ADA requirements.
6. Apply for, and administer, all forms of grants or revenues, including, but not limited to, TDA and STA funds, to fund paratransit services in the CITY.
7. Credit the amount of STA and TDA funds for which BART is eligible for paratransit in the San Francisco to BART's 7.9% share of the cost of the provision of services to ADA paratransit-eligible individuals.
8. Provide an annual report of service level statistics.

9. Provide an annual report of all funds received and disbursed under this Agreement in accordance with generally accepted accounting principles, upon request by BART.

III. TERM OF AGREEMENT; AMENDMENT

- A. The term of this Agreement shall be for one year from its Effective Date, with automatic renewals for up to nine additional years, for a total term of up to ten years, unless terminated by either party with a 180-day notice of termination.
- B. This Agreement may not be amended except by mutual written agreement of the parties, executed as required under law.

IV. STUDY OF PARATRANSIT DEMAND; AUDIT OF PARATRANSIT COSTS

- A. BART or SFMTA may commission a study of paratransit services and costs at any time for the purpose of determining the continuing validity of the cost-sharing percentage contained in Section I.A, above and, if requested by either BART or SFMTA, for the purpose of examining the Administration Fee described in Section II.A.2 above to determine if the Administration Fee is reasonable. The review of the Administration Fee shall be based on, but not limited to, examining actual SFMTA staff and overhead costs associated with the provision of paratransit. The study shall employ the same or better methodology, as mutually determined by staff, as that used in determining the cost-sharing percentage in the 2012 Nelson Nygaard Study, "Updating the San Francisco Paratransit Cost Sharing Formula," (a copy of which is attached as Exhibit A). Prior to beginning such study, the parties agree to approve the study methodology in writing and parties agree that such approval will not be unreasonably withheld. If the results of the study determine that the cost-sharing percentage or the Administration Fee should change, either upward or downward, the parties shall amend this Agreement to reflect the new percentages. Such Amendment shall be approved by BART and by the SFMTA on behalf of the CITY. The new cost-sharing percentage or Administration Fee shall not apply retroactively but will apply only in fiscal years for which payment has not been completed. The new cost-sharing percentage and Administration Fee shall remain in effect until such time that a new study pursuant to this Section IV is completed or this Agreement is terminated, whichever is earlier.
- B. The cost of the study shall be borne equally by the CITY and BART. Charges to the CITY for the cost of the study will accrue only after prior written authorization certified by the CITY's Controller, and the amount of the CITY's obligation for such study shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization.

- C. BART shall have the right to inspect and audit all accounts, records and data relating to the CITY's paratransit program, including the records of the CITY's Paratransit Broker. The records shall be made available for any such inspection or audit during normal business hours. BART's rights hereunder are expressly made subject to confidentiality and disclosure provisions of applicable Federal and State statutes and regulations. The CITY shall preserve and maintain such records for a period of three years after the fiscal year for which such payments are made. The Auditor General of the State of California under California Government Code Section 8546.7 shall have the same rights conferred upon BART by this Section.

V. LIABILITY

- A. Neither BART nor any officer, director, agents, or employees thereof, shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by the CITY, its Paratransit Broker, or any subcontractor in connection with providing the paratransit services pursuant to this Agreement. It is also agreed that pursuant to Government Code Section 895.4, the CITY shall indemnify, defend and hold BART harmless from any liability imposed for injury (as defined in Government Code Section 810.8) occurring by reason of anything done or omitted to be done by the CITY, its paratransit broker, or any subcontractor in connection with providing the paratransit services pursuant to this Agreement.
- B. Neither the CITY, nor any officer, employee or agent thereof, shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by BART in connection with this Agreement. It is also agreed that pursuant to Government Code Section 895.4, BART shall indemnify, defend and hold the CITY harmless from any liability imposed for injury (as defined in Government Code Section 810.8) occurring by reason of anything done or omitted to be done by BART in connection with this Agreement.

VI. GENERAL PROVISIONS

- A. This Agreement shall be deemed to be made in, and shall be construed in accordance with, the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.
- B. The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

- C. All captions are for reference only and shall not be considered in construing this Agreement.
- D. This Agreement sets further the entire agreement between the parties, and supersedes all other oral or written provisions. This Agreement may be modified only as provided in Sections III.B and IV.A.
- E. Should any part of this Agreement be declared invalid by a court of law, such decision shall not affect the validity of any remaining portion which shall remain in full force and effect. Should the severance of any part of this Agreement materially affect any other rights and obligations of the parties hereunder, the parties will negotiate in good faith to amend this Agreement in a manner satisfactory to the parties.
- F. Other than the Administration Fee described in Section II.A.2, above, the CITY and BART shall each bear its own internal costs associated with administration of this Agreement, including, without limitation, reporting, billing, accounting and auditing costs.
- G. This Agreement shall bind and benefit the parties hereto and their assignees, successors, and permitted assigns.
- H. This Agreement and any documents supplied hereunder are subject to public inspection under the California Public Records Act and the City's Sunshine Ordinance (see San Francisco Administrative Code §67.24(e)), unless exempted by law.

VII. NOTICES

All notices to be given by the parties hereto shall be in writing and delivered or mailed, postage prepaid, as follows:

To CITY: San Francisco Municipal Transportation Agency
1 South Van Ness Ave, 7th floor
San Francisco, CA 94103

Attn: Annette Williams
Director of Accessible Services Program

To BART: San Francisco Bay Area Rapid Transit District
2150 Webster Street
8th floor
Oakland, CA 94612

Attn: Laura Timothy, Manager of Access and Accessible Services

VIII. EFFECTIVE DATE OF AGREEMENT

This Agreement is effective as of July 1, 2022.

[Signatures on next page]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers, on the day and year first hereinabove written.

CITY AND COUNTY OF SAN FRANCISCO

Municipal Transportation Agency

By: _____
Jeffrey P. Tumlin
Director of Transportation

Municipal Transportation Agency
Board of Directors
Resolution No.
Dated: _____

Board of Supervisors
Resolution No.
Dated: _____

ATTEST:

Secretary, SFMTA Board of Directors

ATTEST:

Clerk of the Board

APPROVED AS TO FORM:

David Chiu
City Attorney

By: Robin Reitzes
Robin M. Reitzes
Deputy City Attorney

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

By: _____
Robert Powers, General Manager

APPROVED AS TO FORM:

Office of the General Counsel

By: _____
BART Attorney


Exhibit A: Updating the San Francisco Paratransit Cost-Sharing Formula

AGREEMENT No. 6G0185

COST-SHARING AGREEMENT FOR PARATRANSIT SERVICES

BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO

AND THE SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

 This Agreement is entered into this 22nd day of February, 2001, [Agreement effective July 1, 2000, pursuant to Section VI] between the City and County of San Francisco (hereinafter referred to as "CITY"), acting through its Municipal Transportation Agency (hereinafter referred to as "MTA"), and the San Francisco Bay Area Rapid Transit District (hereinafter, called "BART"), a rapid transit district established pursuant to California Public Utilities Code, Sections 28500 et seq.

WITNESSETH

WHEREAS, The CITY is a municipal corporation chartered under the Constitution of the State of California and empowered by the Constitution and the CITY Charter to operate the Municipal Railway (hereinafter referred to as "MUNI"), and

WHEREAS, The MTA is empowered by the CITY Charter to manage and control all public transportation functions of MUNI; and

WHEREAS, BART operates in Alameda, Contra Costa, San Francisco and San Mateo Counties; and

WHEREAS, Section 223 of the Americans with Disabilities Act of 1990 (hereinafter referred to as "ADA"), requires that BART and the CITY provide paratransit services within their service areas to individuals who are unable because of their disability to use regular transit service; and

WHEREAS, The CITY administers a Paratransit Program for ADA paratransit eligible individuals in the CITY through a Paratransit Broker and is prepared to provide these services to eligible individuals in the CITY's and BART's service area; and

WHEREAS, The CITY has applied for and received from the Metropolitan Transportation Commission (hereinafter referred to as "MTC") State Transit Assistance (hereinafter referred to as "STA") funds and Transportation Development Act (hereinafter referred to as "TDA") funds to implement paratransit services in the CITY; and

WHEREAS, BART has agreed to contribute an amount equal to its share of the cost of providing ADA paratransit services in the CITY, less the value of its share of STA and TDA funds which the MTC has allocated to the City for this purpose; and

WHEREAS, BART commissioned a study of taxi, lift-van, group van and Commission on Aging paratransit services to determine how much of the paratransit costs in

the CITY would be attributable to BART. The results of the study indicated that approximately 8.8% of the overall costs for ADA paratransit should be borne by BART; and

WHEREAS, BART's contribution provides service which was not being provided by the City prior to the cost-sharing agreement between the CITY and BART in 1994, service which helps MTA and BART to comply with the ADA; and

WHEREAS, The CITY and BART remain in accord with the results of the study and are entering into this Agreement for the purpose of memorializing a cost-sharing agreement between the parties.

FOR AND IN CONSIDERATION of the mutual promises contained herein, the parties agree as follows:

I. COST SHARING FORMULA

BART shall pay 8.8% of the "Net Operating Expenses" of providing services to eligible paratransit individuals in the CITY's service area. "Net Operating Expenses" for the budget year shall be calculated as follows:

- A. "Total Operating Expenses", which shall be defined as the estimated ADA paratransit demand provided in the MTA's ADA Complementary Paratransit Plan effective January 1994 and as revised in subsequent years, reduced by:
- The total amount of State Transit Assistance (hereinafter referred to as "STA") Population-Based Revenue allocated to the CITY for paratransit service, as approved by the MTC;
 - The total amount of Transportation Development Act (hereinafter referred to as "TDA") Article 4.5 funds allocated to CITY, as approved by the MTC;
 - Estimated paratransit fare revenues, as submitted in the revenue line items in MUNI's budget request;
 - Prior year adjustments for STA revenue, TDA revenue and paratransit revenues. Prior year adjustments will be calculated for the budget year by comparing audited actual revenues from the prior year to the estimates that were used for budget purposes. If audited actual revenues exceed the amounts that were budgeted, that difference shall be subtracted from the "Total Operating Expenses" for the budget year; likewise, if the audited actual revenues were less than budgeted, that difference shall be added to the "Total Operating Expenses" for the budget year.
- B. If the fare charged for lift van and group van paratransit trips is less than the maximum amount allowed under ADA rules (twice the lesser of MUNI's or

BART's standard adult fare for a trip within the City), the difference between estimated fare revenues as calculated in MUNI's budget request, and the amount that would be generated if maximum fares were charged, shall also be deducted from the "Total Operating Expense." This shall not apply to paratransit taxi services where customer fares are a percentage of the meter rate, and fluctuates depending on trip length.

- C. Notwithstanding the above, if for any fiscal year MUNI's annual budget contribution is less than 91.2% of the estimated ADA paratransit demand, the "Total Operating Expenses" shall be defined as the quotient of the budgeted MUNI amount divided by 91.2%.

II. RESPONSIBILITIES

A. BART shall:

- (1) Pay to the CITY, through MTA, its annual monetary contribution for the paratransit services as described in Section I in equal quarterly payments. Following receipt of CITY's annual invoice discussed paragraph B. (1) below payments thereafter shall be due on August 1 for the first fiscal year quarter; on October 1 for the second fiscal year quarter; on January 1 for the third fiscal year quarter; and on April 1 for the fourth fiscal year quarter.

B. City shall:

- (1) Submit an annual invoice to BART on or about July 1 for the fiscal year July 1 through June 30.
- (2) Provide paratransit services for eligible BART patrons in the CITY and extending to the limits of MUNI's service area in Daly City in compliance with ADA requirements.
- (3) Apply for, and administer, all forms of grants or revenues, including but limited to, TDA and STA funds, to fund the paratransit services in the CITY.
- (4) Credit BART's share of STA/TDA funds to BART's 8.8% share of the cost of the provision of services to ADA paratransit eligible individuals.
- (5) Provide monthly reports of all funds received and disbursed under this Agreement in accordance with generally accepted accounting principles.
- (6) Submit to BART by February 1 of each year, a budget showing BART's estimated share of cost for the next fiscal year.

III. TERM OF AGREEMENT; AMENDMENT

- A. The term of this Agreement shall be for one year from its effective date, with automatic renewal for up to nine (9) years unless terminated by either party with a 180-day notice of termination.
- B. This Agreement may not be amended except by mutual written agreement of the parties.

IV. STUDY OF PARATRANSIT DEMAND; AUDIT OF PARATRANSIT COSTS

- A. BART or MTA may commission a study of paratransit services and costs at any time for the purpose of determining the continuing validity of the cost-sharing percentage contained in Section I, above. The study shall employ the same methodology used in determining the original cost-sharing percentage (see Exhibit A, Allocation of Local ADA Paratransit Costs in San Francisco County, Final Report, September 29, 1994) and shall in addition provide an assessment of the costs or savings associated with the service hours and policies of the CITY paratransit system, unless the parties agree that another methodology would be preferable. If the results of the study determine that the percentage should change, either upward or downward, the parties shall amend this Agreement to reflect the new percentage. Such Amendment need only be approved by the MTA on behalf of the CITY. The cost of the study shall be borne equally by the CITY and BART. Charges to the CITY for the cost of the study will accrue only after prior written authorization certified by the CITY's Controller, and the amount of the CITY's obligation for such study shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization.
- B. BART shall have the right to inspect and audit all accounts, records and data relating to the CITY's paratransit program, including the records of the CITY's paratransit broker. The records shall be made available for any such inspection or audit during normal business hours. BART's rights hereunder are expressly made subject to confidentiality and disclosure provisions of applicable Federal and State statues and regulations. The CITY shall preserve and maintain such records for a period of three (3) years after the fiscal year for which such payments are made.

V. LIABILITY

- A. Neither BART nor any officer, director, agents, or employees thereof, shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by the CITY, its Paratransit Broker or any subcontractor in connection with providing the paratransit service pursuant to this Agreement. It is also agreed that pursuant to Government Code

Section 895.4, the CITY shall indemnify, defend and hold BART harmless from any liability imposed for injury (as defined in Government Code Section 810.8) occurring by reason of anything done or omitted to be done by the CITY, its paratransit broker or any subcontractor in connection with providing the paratransit service pursuant to this Agreement.

- B. Neither the CITY nor any officer, employee or agent thereof, shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by BART in connection with this Agreement. It is also agreed that pursuant to Government Code Section 895.4, BART shall indemnify, defend and hold the CITY harmless from any liability imposed for injury (as defined in Government Code Section 810.8) occurring by reason of anything done or omitted to be done by BART in connection with this Agreement.

VI. GENERAL PROVISIONS

- A. This Agreement shall be deemed to be made in, and shall be construed in accordance with the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in the CITY.
- B. The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.
- C. All captions are for reference only and shall not be considered in construing this Agreement.
- D. This Agreement sets further the entire agreement between the parties, and supersedes all other oral or written provisions. This Agreement may be modified only as provided in Section III.
- E. Should any part of this Agreement be declared invalid by a court of law, such decision shall not affect the validity of any remaining portion which shall remain in full force and effect. Should the severance of any part of this Agreement materially affect any other rights and obligations of the parties hereunder, the parties will negotiate in good faith to amend this Agreement in a manner satisfactory to the parties.
- F. The CITY and BART shall each bear its own internal costs associated with administration of this Agreement, including, without limitation, reporting, billing, accounting and auditing costs.

VII. NOTICES

All notices to be given by the parties hereto shall be in writing and delivered or mailed, postage prepaid, as follows:

To CITY: Municipal Transportation Agency
 Municipal Railway
 949 Presidio Avenue, Room 150A
 San Francisco, CA 94115

Attn: Annette Williams, Manager
 Accessible Services Program

To BART: BART
 800 Madison Street
 P.O. Box 12688
 Oakland, CA 94604-2688

Attn: Susan G. Sanderson, Manager
 Paratransit Programs

VI. EFFECTIVE DATE OF AGREEMENT

This Agreement is effective as of July 1, 2000.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed, in quadruplicate, by their duly authorized officers, on the day and year first hereinabove written.

CITY AND COUNTY OF SAN FRANCISCO

Municipal Transportation Agency
Resolution No. 01-002

By: Michael T. Burns
Michael T. Burns
General Manager

ATTEST:

R. Boerner
Secretary, MTA

APPROVED AS TO FORM:

Louise H. Renne
City Attorney

By: Robert Bryan
Robert Bryan
MTA General Counsel

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

By: Thomas E. Margro
Thomas E. Margro, General Manager

APPROVED AS TO FORM:

Sherwood Wakeman, General Counsel

By: Shirley Nakao
Office of the General Counsel

AGREEMENT No.
COST-SHARING AGREEMENT FOR PARATRANSIT SERVICES
BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO
AND THE SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

This Agreement is entered into this 22 day of November 2011, between the City and County of San Francisco ("CITY"), a municipal corporation, acting through its Municipal Transportation Agency ("SFMTA"), and the San Francisco Bay Area Rapid Transit District ("BART"), a rapid transit district established pursuant to California Public Utilities Code, Sections 28500 et seq.

RECITALS

A. The CITY is a municipal corporation chartered under the Constitution of the State of California and empowered by the Constitution and the CITY Charter to operate the Municipal Railway ("MUNI").

B. The SFMTA is empowered by the CITY Charter to manage and control all public transportation functions of MUNI.

C. BART operates in Alameda, Contra Costa, San Francisco and San Mateo Counties.

D. Section 223 of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. § 12143, requires that BART and the CITY provide paratransit services within their service areas to individuals who are unable because of their disability to use regular transit service.

E. The SFMTA administers a Paratransit Program for ADA paratransit-eligible individuals in San Francisco through a Paratransit Broker. Since 1994, the SFMTA has provided paratransit services in San Francisco, through its Paratransit Broker, to all certified ADA paratransit eligible users in areas where MUNI and BART service areas overlap.

F. The CITY has applied for and received from the Metropolitan Transportation Commission ("MTC") State Transit Assistance ("STA") funds and Transportation Development Act ("TDA") funds to assist in funding paratransit services in San Francisco.

G. In 1994, BART commissioned a study of the CITY's Paratransit Program, which included paratransit services provided by taxi, lift van, group van and the Commission on Aging to determine how much of the costs of the CITY's Paratransit Program would be attributable to BART. The results of the study indicated that approximately 8.8% of the CITY's overall costs for ADA paratransit should be borne by BART.

H. The CITY and BART are in accord with the results of the study and are entering into this Agreement to memorialize (1) SFMTA's agreement to cover BART's obligation under the ADA to provide paratransit services, and (2) BART's agreement to share in the costs of SFMTA's Paratransit Program.

FOR AND IN CONSIDERATION of the mutual promises contained herein, the parties agree as follows:

I. COST SHARING FORMULA

A. BART shall pay 8.8% of the "Net Operating Expenses" of providing services to eligible paratransit individuals in the CITY's service area, as calculated below. For purposes of this Agreement, this amount shall be known as the "Annual BART Share Net Operating Expenses"

B. Calculation of Net Operating Expenses.

1. On or about February 1, the CITY shall estimate the annual operating budget for SFMTA's Paratransit Broker Contract for the following fiscal year (July 1 through June 30) ("Total Operating Expenses").
2. The Total Operating Expenses shall be reduced by the following to arrive at the Net Operating Expenses:
 - a. an estimate of STA population based revenue allocated to the CITY for paratransit as approved by MTC,
 - b. an estimate of TDA Article 4.5 funds allocated to the CITY as approved by MTC,
 - c. an estimate of paratransit fare revenues for the fiscal year, as submitted in the revenue line items in MUNI's budget request,
 - d. except for trips on paratransit taxi service, the difference between estimated fare revenues as calculated in SFMTA's budget request and the amount that would be generated if maximum fares were charged, if the fare charged for ADA SF Access services is less than the maximum amount allowed under ADA rules (i.e., twice the undiscounted fixed route fare).

C. Billing of Annual BART Share Net Operating Expenses

1. SFMTA shall bill BART for one quarter of 8.8% of the estimated Net Operating Expenses for each of the following three fiscal year quarters: Quarter 1 (July through September) ("Q1"), Quarter 2 (October through December) ("Q2"), and Quarter 3 (January through March) ("Q3"), as provided in Section II.B below.
2. Following the end of each fiscal year SFMTA shall calculate the actual amount of Net Operating Expenses according to the formula in Section I.B

above. For Quarter 4 (April through June) ("Q4"), BART shall be billed an amount equal to 8.8% of actual Net Operating Expenses less amounts already billed for Q1, Q2, and Q3. The amount may be more or less than the amounts billed in the previous three quarters depending whether actual Net Operating Expenses were more or less than the estimated Net Operating Expenses.

- D. Notwithstanding the above, if for any fiscal year SFMTA's annual budget contribution is less than 91.2% of the total "Net Operating Expenses," BART's share of the costs would also be reduced proportionally so that the cost sharing between BART and SFMTA would remain the same.

II. RESPONSIBILITIES

A. BART shall:

1. Pay to the SFMTA the Annual BART Share Net Operating Expenses described in Section I.A, above, in quarterly payments. BART's payments shall be due on August 1 for Q1, on November 1 for Q2, on February 1 for Q3, and on August 15 for Q4. For the first fiscal year that this Agreement is in effect, the Q4 payment will not be due on August 15 but will instead be due within 30 calendar days of BART's receipt of SFMTA's invoice.
2. Pay to SFMTA an Administration Fee equal to 5% of the Annual BART Share Net Operating Expenses, in quarterly payments. BART's payments for the Administration Fee will be due at the same time as the payments described in Section II.A.1 above.

B. City shall:

1. By February 1 of each year, submit an estimate to BART for 8.8% of the Net Operating Expenses for the following fiscal year.
2. Prior to the beginning of Q1, Q2, and Q3 of each fiscal year, submit an invoice to BART in the amount of one quarter of 8.8% of the estimated Net Operating Expenses, for a total of three invoices for Q1, Q2, and Q3.
3. Following the end of the fiscal year and calculation of the Actual Net Operating Expenses, submit a final invoice to BART for the fiscal year for the difference between 8.8% of the Actual Net Operating Expense and the amount billed in Q1, Q2, and Q3.
4. Include with each invoice, an amount owed for the Administration Fee for that quarter. For Q1, Q2, Q3, this amount will be 5% of the Annual BART Share Net Operating Expenses billed for that quarter. The amount owed for the Administration Fee shall be adjusted with the final invoice so that the Administration Fee equals 5% of the Actual Annual BART Share Net Operating Expense for the fiscal year.

5. Provide paratransit services in the CITY and fulfill BART's obligation to ADA Paratransit in the limits of MUNI's service area and in Daly City in compliance with ADA requirements.
6. Apply for, and administer, all forms of grants or revenues, including but not limited to, TDA and STA funds, to fund the paratransit services in the CITY.
7. Credit the amount of STA and TDA funds for which BART is eligible for paratransit in the City and County of San Francisco to BART's 8.8% share of the cost of the provision of services to ADA paratransit eligible individuals.
8. Provide an annual report of service level statistics.
9. Provide an annual report of all funds received and disbursed under this Agreement in accordance with generally accepted accounting principles upon request by BART.

III. TERM OF AGREEMENT; AMENDMENT

- A. The term of this Agreement shall be for one year from its Effective Date, with automatic renewals for up to nine (9) additional years, for a total term of up to ten (10) years, unless terminated by either party with a 180-day notice of termination.
- B. This Agreement may not be amended except by mutual written agreement of the parties.

IV. STUDY OF PARATRANSIT DEMAND; AUDIT OF PARATRANSIT COSTS

- A. BART or SFMTA may commission a study of paratransit services and costs at any time for the purpose of determining the continuing validity of the cost-sharing percentage contained in Section I.A, above and, if requested by either BART or SFMTA, for the purpose of examining the 5% Administration Fee described in Section II.A.2 above to determine if the Administration Fee is reasonable based on, but not limited to, examining actual SFMTA staff and overhead costs associated with the provision of paratransit. The study shall employ the same or better methodology, as mutually determined by staff, as that used in determining the original cost-sharing percentage (see Exhibit A, Allocation of Local ADA Paratransit Costs in San Francisco County, Final Report, September 29, 1994). Prior to beginning such study, the parties agree to approve the study methodology in writing and parties agree that such approval will not be unreasonably withheld. If the results of the study determine that the 8.8% cost-sharing percentage or the 5% Administration Fee should change, either upward or downward, the parties shall amend this Agreement to reflect the new percentages. Such Amendment shall be approved by BART and by the SFMTA on behalf of the CITY. The new cost-sharing percentage or Administration Fee shall not apply retroactively but will apply only in fiscal

years for which payment has not been completed. The new cost-sharing percentage and Administration Fee shall remain in effect until such time that a new study pursuant to this Section IV is completed or this Agreement is terminated, whichever is earlier.

1. If, for any reason, the parties do not complete a study regarding the Administration Fee pursuant to Section IV.A, above, BART shall only be responsible for paying the Administration Fee for fiscal years 2010/2011 and 2011/2012.
- B. The cost of the study shall be borne equally by the CITY and BART. Charges to the CITY for the cost of the study will accrue only after prior written authorization certified by the CITY's Controller, and the amount of the CITY's obligation for such study shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization.
- C. BART shall have the right to inspect and audit all accounts, records and data relating to the CITY's paratransit program, including the records of the CITY's paratransit broker. The records shall be made available for any such inspection or audit during normal business hours. BART's rights hereunder are expressly made subject to confidentiality and disclosure provisions of applicable Federal and State statutes and regulations. The CITY shall preserve and maintain such records for a period of three (3) years after the fiscal year for which such payments are made. The Auditor General of the State of California under California Government Code Section 8546.7 shall have the same rights conferred upon BART by this Section.

V. LIABILITY

- A. Neither BART nor any officer, director, agents, or employees thereof, shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by the CITY, its Paratransit Broker or any subcontractor in connection with providing the paratransit service pursuant to this Agreement. It is also agreed that pursuant to Government Code Section 895.4, the CITY shall indemnify, defend and hold BART harmless from any liability imposed for injury (as defined in Government Code Section 810.8) occurring by reason of anything done or omitted to be done by the CITY, its paratransit broker or any subcontractor in connection with providing the paratransit service pursuant to this Agreement.
- B. Neither the CITY nor any officer, employee or agent thereof, shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by BART in connection with this Agreement. It is also agreed that pursuant to Government Code Section 895.4, BART shall indemnify, defend and hold the CITY harmless from any liability imposed for injury (as defined in Government Code Section 810.8) occurring by reason of anything done or omitted to be done by BART in connection with this Agreement.

VI. GENERAL PROVISIONS

- A. This Agreement shall be deemed to be made in, and shall be construed in accordance with the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.
- B. The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.
- C. All captions are for reference only and shall not be considered in construing this Agreement.
- D. This Agreement sets forth the entire agreement between the parties, and supersedes all other oral or written provisions. This Agreement may be modified only as provided in Sections III.B and IV.A.
- E. Should any part of this Agreement be declared invalid by a court of law, such decision shall not affect the validity of any remaining portion which shall remain in full force and effect. Should the severance of any part of this Agreement materially affect any other rights and obligations of the parties hereunder, the parties will negotiate in good faith to amend this Agreement in a manner satisfactory to the parties.
- F. Other than the Administration Fee described in Section II.A.2, above, the CITY and BART shall each bear its own internal costs associated with administration of this Agreement, including, without limitation, reporting, billing, accounting and auditing costs.
- G. This Agreement shall bind and benefit the parties hereto and their assignees, successors, and permitted assigns.
- H. This Agreement and any documents supplied hereunder are subject to public inspection under the California Public Records Act and the City's Sunshine Ordinance (see San Francisco Administrative Code §67.24(e)) unless exempted by law.

VII. NOTICES

All notices to be given by the parties hereto shall be in writing and delivered or mailed, postage prepaid, as follows:

To CITY: San Francisco Municipal Transportation Agency
1 South Van Ness Ave, 7th floor
San Francisco, CA 94103

Attn: Annette Williams, Manager
Accessible Services Program

To BART: San Francisco Bay Area Rapid Transit District
300 Lakeside Drive
16th Floor
Oakland, CA 94612

Attn: Laura Timothy, Manager of Access and Accessible Services

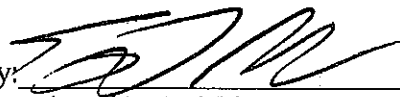
VIII. EFFECTIVE DATE OF AGREEMENT

This Agreement is effective as of July 1, 2010.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed, in triplicate, by their duly authorized officers, on the day and year first hereinabove written.

CITY AND COUNTY OF SAN FRANCISCO

Municipal Transportation Agency

By: 
Edward D. Reiskin
Director of Transportation

Municipal Transportation Agency
Board of Directors
Resolution No. 10-144
Dated: November 16, 2010

Board of Supervisors
Resolution No. 438-11
Dated: 10/24/11

ATTEST:



Secretary, SFMTA Board of Directors

ATTEST:

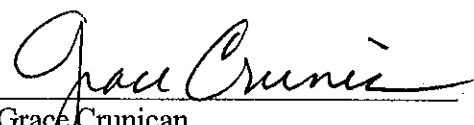

Clerk of the Board

APPROVED AS TO FORM:

Dennis J. Herrera
City Attorney


By: 
Robin M. Reitzes
Deputy City Attorney

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

By: 
Grace Crunican,
General Manager

APPROVED AS TO FORM:

Office of the General Counsel

By: 
BART Attorney

**AMENDMENT NO. 1 TO COST-SHARING AGREEMENT
FOR PARATRANSIT SERVICES BETWEEN THE CITY AND COUNTY OF SAN
FRANCISCO AND THE SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT**

THIS AMENDMENT, entered into this 4th day of June 2013, is Amendment No. 1 ("Amendment No. 1") to the Cost-Sharing Agreement For Paratransit Services Between the City and County of San Francisco ("CITY"), acting through its Municipal Transportation Agency ("SFMTA"), and the San Francisco Bay Area Rapid Transit District ("BART") (collectively, the "Parties") entered into on November 22, 2011 (the "Agreement").

RECITALS

- A. On November 22, 2011, the Parties entered into the Agreement for the purpose of memorializing their understanding regarding SFMTA's agreement to cover BART's obligation under the Americans with Disabilities Act to provide paratransit services and BART's agreement to share in the costs of SFMTA's Paratransit Program.
- B. The Agreement provides that BART shall pay 8.8% of the "Net Operating Expenses" of providing services to eligible paratransit individuals in the CITY's service area. The 8.8% cost-sharing percentage is based on a 1994 study of the CITY's paratransit program that was commissioned by BART.
- C. The Agreement further provides that BART shall pay SFMTA an Administration Fee equal to 5% of the Annual BART Share Net Operating Expenses.
- D. Paragraph IV.A of the Agreement provides that either BART or SFMTA may commission a new study of paratransit services and costs at any time. It further provides that if the results of the new study determine that the 8.8% cost-sharing percentage or the 5% Administration Fee should change, either upward or downward, the Parties shall amend the Agreement to reflect the new percentages.
- E. In Spring 2012, BART, with the concurrence of SFMTA, commissioned Nelson Nygaard to perform a new study of paratransit services and costs ("2012 Nelson Nygaard Study"). The 2012 Nelson Nygaard Study was issued in June 2012.
- F. The 2012 Nelson Nygaard Study concluded that the 8.8% cost sharing percentage should be adjusted down to 7.9% and that the 5% Administration Fee should be adjusted down to 4.7%.
- G. The purpose of this Amendment No. 1 is to revise the Agreement to reflect the results of the 2012 Nelson Nygaard Study.

AGREEMENT

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

1. Section I.A of the Agreement is amended to read as follows:
 - A. BART shall pay 7.9% of the “Net Operating Expenses” of providing services to eligible paratransit individuals in the CITY’s service area, as calculated below. For purposes of this Agreement, this amount shall be known as the “Annual BART Share Net Operating Expenses”.
2. Section I.C.1 and I.C.2 of the Agreement are amended to read as follows:
 - C. Billing of Annual BART Share Net Operating Expenses
 1. SFMTA shall bill BART for one quarter of 7.9% of the estimated Net Operating Expenses for each of the following three fiscal year quarters: Quarter 1 (July through September) (“Q1”), Quarter 2 (October through December) (“Q2”), and Quarter 3 (January through March) (“Q3”), as provided in Section II.B below.
 2. Following the end of each fiscal year SFMTA shall calculate the actual amount of Net Operating Expenses according to the formula in Section I.B above. For Quarter 4 (April through June) (“Q4”), BART shall be billed an amount equal to 7.9% of actual Net Operating Expenses less amounts already billed for Q1, Q2, and Q3. The amount may be more or less than the amounts billed in the previous three quarters depending whether actual Net Operating Expenses were more or less than the estimated Net Operating Expenses.
3. Section II.A.2 of the Agreement is amended to read as follows:
 2. Pay to SFMTA an Administration Fee equal to 4.7% of the Annual BART Share Net Operating Expenses, in quarterly payments. BART’s payments for the Administration Fee will be due at the same time as the payments described in Section II.A.1 above.
4. Section II.B of the Agreement is amended to read as follows:
 - B. City shall:
 1. By February 1 of each year, submit an estimate to BART for 7.9% of the Net Operating Expenses for the following fiscal year.
 2. Prior to the beginning of Q1, Q2, and Q3 of each fiscal year, submit an invoice to BART in the amount of one quarter of 7.9% of the estimated Net Operating Expenses, for a total of three invoices for Q1, Q2, and Q3.
 3. Following the end of the fiscal year and calculation of the Actual Net Operating Expenses, submit a final invoice to BART for the fiscal year for the

difference between 7.9% of the Actual Net Operating Expense and the amount billed in Q1, Q2, and Q3.

4. Include with each invoice, an amount owed for the Administration Fee for that quarter. For Q1, Q2, Q3, this amount will be 4.7% of the Annual BART Share Net Operating Expenses billed for that quarter. The amount owed for the Administration Fee shall be adjusted with the final invoice so that the Administration Fee equals 4.7% of the Actual Annual BART Share Net Operating Expense for the fiscal year.
5. Provide paratransit services in the CITY and fulfill BART's obligation to ADA Paratransit in the limits of MUNI's service area and in Daly City in compliance with ADA requirements.
6. Apply for, and administer, all forms of grants or revenues, including but not limited to, TDA and STA funds, to fund the paratransit services in the CITY.
7. Credit the amount of STA and TDA funds for which BART is eligible for paratransit in the City and County of San Francisco to BART's 7.9% share of the cost of the provision of services to ADA paratransit eligible individuals.
8. Provide an annual report of service level statistics.
9. Provide an annual report of all funds received and disbursed under this Agreement in accordance with generally accepted accounting principles upon request by BART.

5. Section IV.A of Agreement is amended to read as follows:

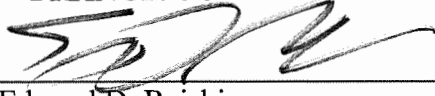
- A. BART or SFMTA may commission a study of paratransit services and costs at any time for the purpose of determining the continuing validity of the cost-sharing percentage contained in Section I.A above and, if requested by either BART or SFMTA, for the purpose of examining the Administration Fee described in Section II.A.2 above to determine if the Administration Fee is reasonable based on, but not limited to, examining actual SFMTA staff and overhead costs associated with the provision of paratransit. The study shall employ the same or better methodology, as mutually determined by staff, as that used in determining the original cost-sharing percentage (see Exhibit A, Allocation of Local ADA Paratransit Costs in San Francisco County, Final Report, September 29, 1994). Prior to beginning such study, the parties agree to approve the study methodology in writing and parties agree that such approval will not be unreasonably withheld. If the results of the study determine that the cost-sharing percentage or the Administration Fee should change, either upward or downward, the parties shall amend this Agreement to reflect the new percentages. Such Amendment shall be approved by BART and by the SFMTA on behalf of the CITY. The new cost-sharing percentage or Administration Fee shall not apply retroactively but will apply only in fiscal years for which payment has not been completed. The new cost-sharing percentage and Administration Fee shall remain in effect until such time that a new study pursuant to this Section IV is completed or this Agreement is terminated, whichever is earlier.

6. This Amendment shall be effective as of July 1, 2012.

7. Except as expressly amended, all other terms and conditions of the Agreement shall remain in full force and effect.

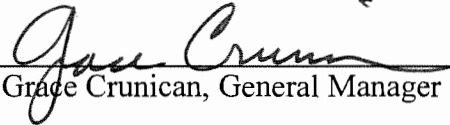
IN WITNESS WHEREOF, the Parties have caused this Amendment No. 1 to be executed by their duly authorized officers.

**CITY AND COUNTY OF SAN
FRANCISCO**



Edward D. Reiskin
Director of Transportation

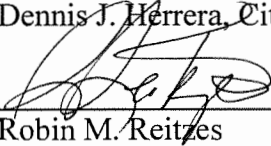
**SAN FRANCISCO BAY AREA
RAPID TRANSIT DISTRICT**



Grace Crunican, General Manager

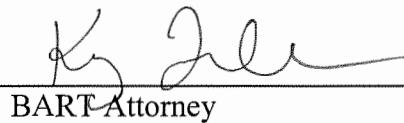
Approved as to Form:

Dennis J. Herrera, City Attorney



Robin M. Reitzes
Deputy City Attorney

Approved as to Form:



BART Attorney

**MEMORANDUM OF UNDERSTANDING
FOR COORDINATED TRANS-BAY ADA PARATRANSIT SERVICES
BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO
AND THE SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT**

This Memorandum of Understanding ("MOU") is entered into between the City and County of San Francisco ("CITY"), by and through its Public Transportation Commission ("PTC"), and the San Francisco Bay Area Rapid Transit District ("BART").

W I T N E S E T H

WHEREAS, The CITY is a municipal corporation chartered under the Constitution of the State of California and empowered by the Constitution and the CITY charter to operate a local transit system (hereinafter referred to as "MUNI") and

WHEREAS, The PTC is empowered by the CITY Charter to manage and control the Public Transportation Department, which department has the responsibility for all public transportation functions of the CITY other than the Port and Airport, including Muni; and

WHEREAS, BART is a rapid transit district duly created and acting under the laws of the State of California, operating a public transit system in Alameda, Contra Costa, San Francisco and San Mateo counties;

WHEREAS, BART and the CITY are responsible for the provision of ADA paratransit to eligible individuals with disabilities in their respective service areas; and

WHEREAS, BART's responsibility to provide ADA paratransit includes the requirement to provide ADA paratransit services within its service area in San Francisco as well as between its service area in Alameda and Contra Costa Counties and its service area in San Francisco and Northern San Mateo Counties, these trips being generally referred to as "Trans-Bay" paratransit trips; and

WHEREAS, on February 22, 1995, BART and the CITY executed a cost-sharing agreement, through which MUNI provides ADA paratransit services on behalf of BART for trips which are in San Francisco; and

WHEREAS this cost-sharing agreement does not address the Trans-Bay trips which BART must provide; and

WHEREAS BART and MUNI are in agreement that a high level of coordination between them would render the Trans-Bay service which BART must provide more efficient to administer and easier for eligible patrons to use; and

WHEREAS, BART has contracted with a paratransit broker to provide paratransit services within its service area, including Trans-Bay paratransit trips; and

WHEREAS, The CITY has contracted with a paratransit broker to provide paratransit services within its service area; and

WHEREAS, Both BART's and the CITY's paratransit brokers perform their duties in part by contracting with paratransit providers, including paratransit brokers for other transit agencies; and

WHEREAS, The CITY and BART are entering into this MOU for the purpose of coordinating the Trans-Bay service between the parties, through their respective paratransit brokers.

FOR AND IN CONSIDERATION of the mutual promises contained herein, the parties agree as follows:

I. Responsibilities of the Parties

- A. BART and the CITY agree to direct their paratransit brokers to enter into a contractual arrangement in order to implement services specified under this MOU.
- B. BART will direct its Paratransit Broker to:
 - 1. Provide the full length of any Trans-Bay paratransit trip as long as the trip is between the BART/AC Transit combined service area in the East Bay and the BART and MUNI service area in San Francisco and Northern San Mateo Counties ("WestBay").
 - 2. For each trip, determine whether or not the West Bay end of the trip falls within three-quarters of a mile of a BART station.
 - 3. For any trip which originates or terminates within three-quarters of a mile of a BART station, charge the patron a fare in accordance with the paratransit fare structure adopted by BART and AC Transit. For any trip which originates or terminates more than three-quarters of a mile from a BART station but less than three-quarters of a mile of MUNI light-rail or bus stop, charge the patron a fare in accordance with the paratransit fare structure adopted by BART and AC Transit, plus an additional fare which is equal to the average fare paid by a patron using MUNI's paratransit system. (This fare is currently \$.80.)

4. For trips which originate or terminate beyond BART's service area but within MUNI's service area, calculate the distance from the nearest BART station to the West Bay end of the trip.
 5. Maintain records necessary for the verification of each Trans-Bay trip provided under this MOU (e.g. the time, date, origin and destination addresses, carrier, fare collected, etc.).
 6. On a mutually agreeable schedule, submit a report to MUNI's paratransit broker, detailing the service provided on behalf of the CITY, as well as an invoice detailing the costs for this service and the fares collected.
- C. The CITY will direct its paratransit broker to:
1. Upon receipt and review of a service report (as described in Section 1.B.6 above), pay BART's paratransit broker for the service which the broker provided on behalf of the CITY.
- D. The rate of payment shall be \$2.00 per mile (calculated in air miles) from the West Bay end of the trip to the nearest BART station, less any fares collected by BART's Paratransit Broker.

II. Auditing

- A. BART, the CITY, and their paratransit brokers shall have full access to all records regarding services provided pursuant to this MOU. Said parties shall provide access to records during normal business hours upon reasonable notification.
- B. All records shall be maintained for a period of three years after the MOU ceases to be in effect.

III. Term of MOU

- A. This MOU shall be in effect until June 30, 1999, unless earlier terminated as hereinafter provided.
- B. This MOU may be extended for additional five-year periods upon mutual agreement of the parties which agreement shall be in writing.
- C. This MOU may be terminated by either party for any reason giving ninety (90) days written notice to the other.

IV. Notices

A. For BART

Bay Area Rapid Transit
Attn: Ronald L. Brooks, Paratransit Services Coordinator
800 Madison Street, Rm. 430
Oakland, CA 94607
Tel: (510) 464-6184
Fax (510) 464-6196

B. For the CITY:

Public Transportation Department
Attn: Annette Williams, Accessible Services Manager
949 Presidio Avenue
San Francisco, CA 94115
Tel (415) 923-6142
Fax (415) 923-6306

V. Effective Date of MOU

This MOU shall be effective as of February 26, 1996.

VI. General Provisions

- A. This MOU shall be deemed to be made in, and shall be construed in accordance with, the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of the MOU shall be in San Francisco
- B. The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions, hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.
- C. All captions are for reference only and shall not be considered construing this Agreement.
- D. This MOU sets forth the entire agreement between the parties, and supersedes all other oral or written provisions. This MOU may only be modified in writing.
- E. Should any part of this MOU be declared invalid by a court of law, such decision shall not affect the validity of any remaining portion which shall remain in full force and effect. Should the severance of any part of this MOU materially affect any other rights and obligations of the parties hereunder, the parties will negotiate in good faith to amend this MOU in a manner satisfactory to the parties.
- F. The City urges companies not to import, purchase, obtain, or use for any purpose, any tropical hardwood or tropical hardwood product.

IN WITNESS WHEREOF, the parties hereto have caused this MOU to be executed, in quadruplicate, by their authorized officers, on the day and year first hereinabove written.

CITY AND COUNTY OF SAN FRANCISCO

Public Transportation
Commission Resolution No. 95-170

By *[Signature]*
For Director of Public Transportation

ATTEST:

[Signature]
Secretary, PTC

APPROVED AS TO FORM:

Louise H. Renne
City Attorney

By: *[Signature]*
George E. Krueger
~~Utilities~~ General Counsel
Transportation

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

By: *[Signature]*
Richard White, General Manager

APPROVED AS TO FORM

Sherwood Wakeman, General Counsel

By: *[Signature]*
Office of the General Counsel



Cost-Sharing Agreement for Paratransit Services

The San Francisco Municipal Transportation Agency (SFMTA) seeks authorization for the Director of Transportation to execute a new Cost-Sharing Agreement for Paratransit Services between the City and the Bay Area Rapid Transit District (BART), through the SFMTA, under which BART will reimburse the SFMTA for providing BART's ADA paratransit services within San Francisco for a retroactive period, with nine one-year automatic renewal options, for a maximum term of 10 years; and authorization for the Director of Transportation to submit the Agreement to the Board of Supervisors for approval.

Not a "project" under CEQA pursuant to CEQA Guidelines Sections 15060(c) and 15378(b) because the action would not result in a direct or a reasonably foreseeable indirect physical change to the environment.

A handwritten signature in black ink that reads "Angela Alter".

October 4, 2022

Angela Alter, Environmental Review Planner Date
San Francisco Municipal Transportation Agency

A handwritten signature in black ink that reads "J McKellar".

October 5, 2022

Jennifer McKellar, Senior Planner Date
San Francisco Planning Department

MUNICIPAL TRANSPORTATION AGENCY
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION No. 01 - 002

WHEREAS, Section 223 of the Americans with Disabilities Act of 1990 (ADA), requires that BART and the Municipal Railway provide paratransit services within their service areas to individuals whose disabilities prevent the use of regular transit service; and,

WHEREAS, The City administers a Paratransit Program for ADA paratransit eligible individuals in San Francisco through a Paratransit Broker and has provided these services to eligible individuals in BART's service area since 1994; and,

WHEREAS, The City has applied for and received from the Metropolitan Transportation Commission, State Transit Assistance funds and Transportation Development Act funds to implement paratransit services in the County of San Francisco; and,

WHEREAS, BART has agreed to continue to contribute its share of the cost of supplying ADA paratransit services in San Francisco, less the value of its share of STA and TDA funds which the MTC has allocated to the City for this purpose; and,

WHEREAS, BART commissioned a study of taxi, lift-van, group van and Commission on the Aging paratransit services to determine how much of the paratransit costs in San Francisco would be attributable to BART; the results of which indicated that approximately 8.8% of the overall costs for ADA paratransit should be borne by BART; and,

WHEREAS, The City and BART continue to be in accord with the results of the study and are entering into this Agreement for the purpose of continuing a cost-sharing arrangement between the parties for up to an additional 9 year period; and, therefore, be it further

RESOLVED, That this Municipal Transportation Board authorizes the Director of Transportation to execute a cost-sharing agreement between BART and Muni requiring Muni to provide BART's ADA Paratransit services to be paid for by BART for a period of up to 9 years.

I hereby certify that the foregoing resolution was adopted by the Municipal Transportation Agency Board at its meeting of JAN 16 2001



Secretary, Municipal Transportation Agency Board

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. 10-144

WHEREAS, Section 223 of the Americans with Disabilities Act of 1990 (ADA) requires that BART and the San Francisco Municipal Transportation Agency (SFMTA) provide paratransit services within their service areas to individuals whose disabilities will not allow them to use regular fixed route transit service; and,

WHEREAS, The SFMTA administers a Paratransit Program for ADA paratransit-eligible individuals in San Francisco through its Paratransit Broker and has provided these services to eligible individuals in BART's service area since 1994; and,

WHEREAS, The City has applied for and received from the Metropolitan Transportation Commission, State Transit Assistance (STA) funds and Transportation Development Act (TDA) funds to implement paratransit services in San Francisco; and,

WHEREAS, BART has agreed to continue to contribute its share of the cost of providing ADA paratransit services in San Francisco, less the value of its share of STA and TDA funds which the MTC has allocated to the City for this purpose; and,

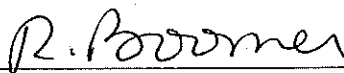
WHEREAS, BART commissioned a study of taxi, lift-van, group van and Commission on the Aging paratransit services to determine how much of the paratransit costs in San Francisco would be attributable to BART; the results of which indicated that approximately 8.8 percent of the overall costs for ADA paratransit should be borne by BART; and,

WHEREAS, The SFMTA and BART are entering into this Agreement for the purpose of continuing a cost-sharing arrangement whereby BART reimburses the SFMTA for providing BART's mandated ADA paratransit services within San Francisco for up to an additional 10-year period; now, therefore, be it

RESOLVED, That the Executive Director/CEO is authorized to execute a Cost-Sharing Agreement for Paratransit Services with BART requiring BART to reimburse the SFMTA for providing BART's ADA Paratransit services within San Francisco for a period of up to 10 years, and be it

FURTHER RESOLVED, That the SFMTA Board authorizes the Executive Director/CEO to submit the Cost-Sharing Agreement to the Board of Supervisors for approval.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of NOV 16 2010.



Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. 221206-113

WHEREAS, Section 223 of the Americans with Disabilities Act of 1990 (ADA) requires that BART and the San Francisco Municipal Transportation Agency (SFMTA) provide paratransit services within their service areas to individuals whose disabilities will not allow them to use regular fixed route transit service; and,

WHEREAS, The SFMTA administers a Paratransit Program for ADA paratransit-eligible individuals in San Francisco through its Paratransit Broker and has provided these services to eligible individuals in BART's service area since 1994; and,

WHEREAS, On November 16, 2010, the SFMTA Board of Directors adopted Resolution No. 10-144, which authorized the execution of a Cost-Sharing Agreement for Paratransit Services with BART, which agreement was approved by the Board of Supervisors on December 10, 2010; and

WHEREAS, The City has applied for and received from the Metropolitan Transportation Commission (MTC), State Transit Assistance (STA) funds and Transportation Development Act (TDA) funds to implement paratransit services in San Francisco; and,

WHEREAS, BART has agreed to continue to contribute its share of the cost of providing ADA paratransit services in San Francisco, less the value of its share of STA and TDA funds which the MTC has allocated to the City for this purpose; and,

WHEREAS, BART commissioned a study of taxi, SF Access, group van and Commission on the Aging paratransit services to determine how much of the paratransit costs in San Francisco would be attributable to BART; the results of which indicated that approximately 7.9 percent of the overall costs for ADA paratransit should be borne by BART; and,

WHEREAS, The SFMTA and BART are entering into this Agreement for the purpose of continuing a cost-sharing arrangement whereby BART reimburses the SFMTA for providing BART's mandated ADA paratransit services within San Francisco for up to 10 years; and,

WHEREAS, On October 4, 2022, the SFMTA, under authority delegated by the Planning Department, determined that the Cost-Sharing Agreement for Paratransit Services is not a "project" under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b); and,


WHEREAS, A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors and is incorporated herein by reference; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors authorizes the Director of Transportation to execute a new Cost-Sharing Agreement for Paratransit Services between the City, through the

SFMTA, and the Bay Area Rapid Transit District (BART), under which BART will reimburse the SFMTA for providing BART's patrons with ADA paratransit services within San Francisco for a retroactive period from July 1, 2022 through June 30, 2023, with nine one-year automatic renewal options, for a maximum term of 10 years, and be it further

RESOLVED, That the SFMTA Board of Directors authorizes the Director of Transportation to submit the Cost-Sharing Agreement to the Board of Supervisors for approval.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of December 6, 2022.



Secretary to the Board of Directors
San Francisco Municipal Transportation Agency



London Breed, Mayor

Gwyneth Borden, Chair
Amanda Eaken, Vice Chair
Stephanie Cajina, Director

Steve Heminger, Director
Fiona Hinze, Director
Manny Yekutieli, Director

Jeffrey Tumlin, Director of Transportation

November 11, 2022

**The Honorable Members of the Board of Supervisors
City and County of San Francisco
1 Dr. Carlton Goodlett Place, Room 244
San Francisco, CA 94102**

Subject: Request for Approval – Execute Agreement No. 6M7320 to establish a new cost sharing agreement with BART for Paratransit Services in San Francisco

Honorable Members of the Board of Supervisors:

The San Francisco Municipal Transportation Agency (SFMTA) requests that the San Francisco Board of Supervisors authorize the Director of Transportation to execute Agreement No. 6M7320, a new Cost-Sharing Agreement for Paratransit Services between the City, through the SFMTA, and the Bay Area Rapid Transit District (BART), under which BART will reimburse the SFMTA for providing BART's ADA paratransit services within San Francisco for a retroactive period from July 1, 2022 through June 30, 2023, with nine one-year automatic renewal options, for a maximum term of 10 years.

BACKGROUND

Section 223 of the Americans with Disabilities Act of 1990 (ADA) requires that BART and the SFMTA provide paratransit services within their service areas to individuals whose disabilities will not allow them to use regular fixed route transit service. Since 1994, the SFMTA has provided paratransit services to meet BART's ADA paratransit obligations for trips within San Francisco, for which the SFMTA receives reimbursement from BART. This arrangement was initially authorized after BART commissioned a study of taxi, SF Access, group van and Commission on the Aging paratransit services to determine BART's share of paratransit responsibilities within San Francisco. Currently, the SFMTA provides these services through its Paratransit Broker, Transdev Services, Inc.

The last cost-sharing agreement was entered into in 2010, amended in 2013 (after a second consultant study), and expired in 2020. Paratransit staff efforts over the last couple of years have been focused on responding to the COVID pandemic. BART, which had drafted the prior cost-sharing agreement, did not prepare a new agreement until recently, although BART continued to pay under the expired agreement. Neither BART nor the SFMTA realized that the 2010 agreement had expired.

The key elements of the new Cost-Sharing Agreement essentially mirror the prior agreement:

- BART is responsible for 7.9 percent of all paratransit trips in San Francisco.

- The 7.9 percent is based on a statistical analysis of the paratransit trips in San Francisco. A random sampling of actual paratransit trips was analyzed to determine BART's share of responsibility, based on route miles and trip duration for both Muni and BART service areas.
- BART provides 7.9 percent of the annual paratransit budget, excluding funding sources which BART is eligible to receive on its own; namely, State Transportation Development Act funds, State Transit Assistance funds, and fare revenues. The estimated amount of BART's contribution for FY 22/23 is \$1.25 million.
- An additional 4.7 percent administrative cost is applied to the BART's share of the annual cost of paratransit services in San Francisco.
- This new Agreement is for one year, effective (retroactively) as of July 1, 2022), with automatic renewals up to 10 years unless terminated by either party with a 180-day termination notice.

ALTERNATIVES CONSIDERED

An alternative to this agreement would be for BART to operate its own paratransit system in San Francisco for ADA-eligible persons traveling in the BART corridor. A separate program would likely not be cost-effective because it would be duplicative, the fixed costs would be higher, and there would be no opportunity to take advantage of the economies of scale offered by the larger SFMTA program. A separate service would also be very complicated for customers because they would have to choose between two paratransit service programs for trips along the BART corridor.

STAKEHOLDER ENGAGEMENT

The Executive Committee of the Paratransit Coordinating Council, an advisory committee comprised of paratransit consumers, community representatives, and service providers who provide feedback regarding the SF Paratransit program, were informed and are supportive of the SFMTA entering into another cost-sharing agreement with BART.

FUNDING IMPACT

The City has applied for and received from the Metropolitan Transportation Commission, State Transit Assistance (STA) funds and Transportation Development Act (TDA) funds to implement paratransit services in San Francisco. BART has agreed to continue to contribute its share of the cost of providing ADA paratransit services in San Francisco, less the value of its share of STA and TDA funds which the MTC has allocated to the City for this purpose. This agreement will bring approximately \$2.3 million in funding from BART for the SFMTA's paratransit operating budget each year.

SFMTA BOARD ACTION

On December 6, 2022, the SFMTA Board of Directors is scheduled to act on Agreement No. 6M7320, authorizing the Director of Transportation to execute the new Cost-Sharing Agreement for Paratransit Services between the City, through the SFMTA, and the BART, under which BART will reimburse the SFMTA for providing BART’s ADA paratransit services within San Francisco for a retroactive period from July 1, 2022 through June 30, 2023, with nine one-year automatic renewal options, for a maximum term of 10 years.

REQUEST FOR APPROVAL

The SFMTA respectfully requests that the Board of Supervisors authorize the Director of Transportation to execute Agreement No. 6M7320, a new Cost-Sharing Agreement for Paratransit Services between the City, through the SFMTA, and the BART, under which BART will reimburse the SFMTA for providing BART’s ADA paratransit services within San Francisco for a retroactive period from July 1, 2022 through June 30, 2023, with nine one-year automatic renewal options, for a maximum term of 10 years.

Sincerely,



Jeffrey P. Tumlin
Director of Transportation