

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