

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

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

RECITALS

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

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

This Agreement reinstates a trip-based methodology for calculating the feeder payment for Fiscal Year 2013 through Fiscal Year 2020. The new formula adjusts the previous year's feeder payment by the year-to-year percentage change in actual individual trips transferring from Muni to BART based on Clipper data and the year-to-year percentage change in inflation based on the San Francisco Bay Area Consumer Price Index for All Urban Consumers, for all items. The parties have agreed to limit the total annual feeder payment increase or decrease to five (5) percent.

AGREEMENT

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

SECTION I. PAYMENT

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

1.1 Payment Amount for Fiscal Years 2011 and 2012

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

2. For Fiscal Year 2012 (“FY12”), BART agrees to pay SFMTA the amount of Two Million, Six Hundred Sixty-Seven Thousand, Six Hundred Twenty-Nine Dollars (\$2,667,629) within thirty (30) calendar days of the Effective Date.

1.2 Payment Amount for Fiscal Years 2013 through 2020

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

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

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

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

SECTION II. OTHER COSTS ASSOCIATED WITH AGREEMENT

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

SECTION III. RECORDS AND AUDITS

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

payment under this Agreement.

SECTION IV. TIME PERIOD AND CONDITION OF AGREEMENT

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

SECTION V. GENERAL PROVISIONS

A. Responsibility:

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

B. Notices:

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

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

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

All Other Notices:

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

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

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

All Other Notices:

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

C. Indemnity:

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

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

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

D. Compliance with ADA:

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

SECTION VI. TERM OF THE AGREEMENT

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

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

SAN FRANCISCO BAY AREA
RAPID TRANSIT DISTRICT

CITY AND COUNTY OF
SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY

By: _____
Grace Crunican
General Manager

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

Authorized by MTA Board
Resolution No.
Dated:

Attest:

Roberta Boomer
Secretary, MTA Board

Board of Supervisors
Resolution No. _____
Dated: _____

Attest:

Clerk of the Board

APPROVED AS TO FORM:
Office of the General Counsel

APPROVED AS TO FORM:
Dennis J. Herrera
City Attorney

By: _____
Patricia McCoy Smith
Attorney

By: _____
Robin M. Reitzes
Deputy City Attorney