


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 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.

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