

# **SPECIAL TRANSIT FARE (FAST PASS<sup>®</sup>) AGREEMENT**

## **BETWEEN**

### **THE SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY AND**

### **THE SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT**

This Special Transit Fare (Fast Pass<sup>®</sup>) Agreement (the “2010-2014 Fast Pass<sup>®</sup> Agreement” or "Agreement") is made and entered into this \_\_\_\_day of \_\_\_\_\_, 2013, between the San Francisco Municipal Transportation Agency (“SFMTA”) (hereinafter referred to collectively as “SFMTA”), and the San Francisco Bay Area Rapid Transit District (“BART”) (collectively, the “Parties”).

## **RECITALS**

1. City is a municipal corporation chartered under the Constitution of the State of California and empowered by the Constitution and the San Francisco Charter to operate a local transit system, the San Francisco Municipal Railway (“Muni”), through its Municipal Transportation Agency (SFMTA).
2. BART is a rapid transit district duly created and acting under the laws of the State of California, charged by law with the operation of a regional rapid transit system for the San Francisco Bay Area.
3. Both SFMTA and BART operate transit services within the City and County of San Francisco and, pursuant to Section 29142.4(a) of the Public Utilities Code of the State of California, intend to coordinate Muni and BART transit services and fares between Muni and BART stations within San Francisco.
4. SFMTA and BART agree that an inter-operator monthly pass (“Fast Pass<sup>®</sup>”) will facilitate the coordination of transit service, encourage transit use, and improve the quality of transit service between Muni and BART stations within San Francisco.
5. SFMTA and BART have determined that the most expeditious means of creating an inter-

operator pass for their patrons is to extend the use of the current Muni Adult Fast Pass<sup>®</sup> to include unlimited trips on BART within San Francisco during a calendar month.

6. On March 23, 1983, the City and BART authorized implementation of the Fast Pass<sup>®</sup> program and execution of a Fast Pass<sup>®</sup> agreement (the “1983 Fast Pass<sup>®</sup> Agreement”) by a Motion adopted by the BART Board of Directors and by City's Public Utilities Commission Resolution No. 83-0110, respectively.
7. Since 1983, the City and BART have entered into subsequent Fast Pass<sup>®</sup> Agreements - the latest of which (the 2008-2009 Fast Pass<sup>®</sup> Agreement) expired on December 31, 2009.
8. Since December 31, 2009, the Parties have continued the Fast Pass<sup>®</sup> program in accordance with the 2008-2009 Fast Pass<sup>®</sup> Agreement.
9. Effective January 1, 2010, the City began to sell two monthly Fast Pass<sup>®</sup> magnetic stripe tickets: the Adult “A” Fast Pass<sup>®</sup>, good on both Muni and BART within San Francisco and currently priced at Seventy-Two Dollars (\$72), and the Adult “M” Fast Pass<sup>®</sup>, good only on Muni and currently priced at Sixty-Two Dollars (\$62). Effective July 2011, the Adult “A” Fast Pass<sup>®</sup> is only electronically stored on the Clipper<sup>SM</sup> smart card and is no longer available as a magnetic ticket.
10. For purposes of this Agreement, “Fast Pass<sup>®</sup>” refers only to the Adult “A” Fast Pass<sup>®</sup>.
11. The Clipper<sup>®</sup> smart card is sold and distributed through the Clipper<sup>®</sup> program, which is operated by Cubic Transportation Systems under contract with the Metropolitan Transportation Commission (MTC). The Clipper<sup>®</sup> program collects the revenue from Fast Pass<sup>®</sup> on Clipper<sup>®</sup> sales, electronically transferring said revenue to SFMTA on a daily basis.
12. SFMTA agrees to reimburse BART for all trips made on BART within San Francisco by passengers using the Fast Pass<sup>®</sup> on Clipper<sup>®</sup>.
13. The Clipper<sup>®</sup> program is being administered by MTC. Certain transaction fees are associated with the Clipper<sup>®</sup> program. BART agrees to reimburse SFMTA for Clipper<sup>®</sup> transaction fees incurred when passengers use the Fast Pass<sup>®</sup> on Clipper<sup>®</sup> to make a BART trip within San Francisco.

14. SFMTA and BART recognize that it is important for the Fast Pass<sup>®</sup> program to be financially sustainable for both agencies.

15. In February 2013, BART renewed a schedule of regular fare increases whereby, every two years, fares increase by a Productivity-Adjusted Consumer-Price-Index (CPI) based percentage.
16. SFMTA and BART agree that retroactive to July 1, 2012, the reimbursement rate will increase from \$1.19 to \$1.21, under the Productivity-Adjusted CPI formula. The reimbursement rate will remain at \$1.21 through June 30, 2014. Any subsequent increases will be made subject to Section 2.D, below, through the term of this Agreement.
17. SFMTA and BART also agree that imposing a cap on the reimbursement amount per fiscal year during the term of the Agreement would help ensure budgetary certainty for SFMTA.

## AGREEMENT

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

### SECTION 1: DEFINITIONS

- A. "Data Acquisition System" ("DAS") is defined to mean BART's computerized system, which automatically records the number of Trips as defined below.
- B. "The Fast Pass<sup>®</sup> Program" is defined as the program in which the Adult "A" Fast Passes<sup>®</sup> is electronically loaded on Clipper<sup>®</sup> to patrons and BART receives a portion of the revenues from Fast Pass<sup>®</sup> use in accordance with the terms of this 2010-2014 Fast Pass<sup>®</sup> Agreement.
- C. "Trip" is defined to mean an exit from the BART system by a passenger who used either a Fast Pass<sup>®</sup> magnetic stripe ticket or a Fast Pass<sup>®</sup> on Clipper<sup>®</sup> to enter and exit a BART rail station within the City and County of San Francisco.
- D. "Trip Estimate" is defined to mean an estimate of Trips based upon statistical analysis of recent station data. All detail supporting such Trip Estimates will be provided to SFMTA with BART's invoice for reimbursement for SFMTA's review.

SECTION 2: SFMTA REIMBURSEMENT TO BART FOR FAST PASS<sup>®</sup> TRIPS TAKEN ON BART

- A. Initial Rate of Reimbursement: Retroactive to January 1, 2010, and continuing on a monthly basis until July 1, 2012, , SFMTA agrees to reimburse BART One Dollar and Nineteen Cents (\$1.19) per trip for each Fast Pass<sup>®</sup> trip on BART, as counted by BART's DAS.
- B. Adjusted Rate of Reimbursement: Effective with the 2012 fare increase, which shall take effect on July 1, 2012, SFMTA agrees to reimburse BART One Dollar and Twenty-One Cents (\$1.21) per trip for each Fast Pass<sup>®</sup> trip on BART, as counted by BART's DAS. This reimbursement rate adjustment from \$1.19 to \$1.21 is based upon BART's productivity-adjusted CPI-based increase formula as calculated for 2012 and as described in the attached Exhibit A "New Fare Rates and Charges: Productivity-Adjusted CPI-Based Increases."
- C. Reimbursement Cap: Under no circumstances shall the total reimbursement from the SFMTA to BART exceed \$10.5 million in any fiscal year of this Agreement.
- D. Negotiation of New Agreement: The Parties agree to commence negotiations no later than January 1, 2014 to determine the terms of a new Fast Pass<sup>®</sup> Agreement to take effect on July 1, 2014. If a new agreement cannot be approved by the Parties (as required by law) by June 30, 2014, then this Agreement shall remain in effect on a month-to-month basis. If BART implements a fare increase on or after July 1, 2014, the reimbursement rate shall be increased by the formula in Exhibit A, effective on the date of the BART fare increase. This increased reimbursement rate would remain in effect until a new Agreement is approved by the Parties.
- E. Required Data: When a Fast Pass<sup>®</sup> paper ticket or a Fast Pass<sup>®</sup> on Clipper<sup>®</sup> is processed through a BART fare gate, DAS records the station of exit, the station of origin, the time of exit, and the type of ticket used. After each revenue day, the data is processed into Microsoft Excel files for tabulation and monitoring. No charges will be incurred under this 2010-2014 Fast Pass<sup>®</sup> Agreement, nor will any payments

become due to BART, until the data required under this Fast Pass<sup>®</sup> Agreement is received from BART and approved by SFMTA as being in compliance with this Agreement, which approval will not be unreasonably withheld.

SECTION 3: BART REIMBURSEMENT TO SFMTA FOR FAST PASS<sup>®</sup> ON CLIPPER<sup>®</sup> TRANSACTION FEES

A. BART agrees to reimburse SFMTA for Clipper<sup>®</sup> transaction fees incurred when patrons use their Fast Passes<sup>®</sup> for BART trips within San Francisco as recorded by DAS. The amount of the transaction fee to be paid by BART for each Fast Pass<sup>®</sup> on Clipper<sup>®</sup> trip is based on the transaction fee structure as stated in the Metropolitan Transportation Commission/Cubic Transportation Systems, Inc. Contract, Part I, Revised Terms and Conditions (Change Order 118), Attachment 2, Price Schedule, dated June 30, 2009:

1. When total region-wide Clipper<sup>®</sup> transactions per month are fifteen (15) million or less, the transaction fee will be 1.5 cents for each Fast Pass<sup>®</sup> trip on BART.
2. When total region-wide Clipper<sup>®</sup> transactions per month are between fifteen (15) million and thirty (30) million, the transaction fee for each Fast Pass<sup>®</sup> trip on BART will be based upon the proportion of 1.5 cents for the first 15 million region-wide transactions and 1.2 cents for any incremental transactions above 15 million.
3. When total region-wide Clipper<sup>®</sup> transactions per month are greater than thirty (30) million, the transaction fee for each Fast Pass<sup>®</sup> trip on BART will be based upon the proportion of 1.5 cents for the first 15 million region-wide transactions, 1.2 cents for the next 15 million transactions, and 0.35 cents for any incremental transactions above 30 million.

B. Based on the fee structure outlined above in Section 3.A, the specific formula used to calculate BART's monthly reimbursement to the SFMTA for Clipper<sup>®</sup> transaction fees shall be as follows:

$$\begin{aligned} &\text{Monthly Clipper}^{\text{®}} \text{ Transaction Fee Reimbursement} = \\ &(\$0.015 * A + \$0.012 * B + \$0.0035 * C) * \\ &(\text{Fast Pass}^{\text{®}} \text{ on Clipper}^{\text{®}} \text{ trip on BART}) \end{aligned}$$

- A = Percentage of regional Clipper® transaction fees charged at 1.5 cents per transaction
- B = Percentage of regional Clipper® transaction fees charged at 1.2 cents per transaction
- C = Percentage of regional Clipper® transaction fees charged at 0.35 cents per transaction

C. In the event that the Clipper® transaction fee schedule or methodology is altered during the term of this Agreement, BART and the SFMTA agree to renegotiate the formula as established in Section 3.B above so that BART will continue to reimburse the SFMTA for all Clipper® transaction fees associated with using the Fast Pass® on BART.

SECTION 4: IDENTIFICATION AND ALLOCATION OF COSTS ASSOCIATED WITH FAST PASS® USE ON BART BETWEEN SAN FRANCISCO STATIONS

- A. Distribution: The Clipper® program will have the responsibility for Fast Pass® on Clipper® distribution.
- B. Billing, Accounting, Auditing: SFMTA and BART each will bear its own internal administrative billing, accounting and auditing costs associated with Fast Pass® use on BART and administration of this 2010-2014 Fast Pass® Agreement.
  - A. Fast Pass® on Clipper® Maintenance of Equipment and Accounting of Trips:

BART will be responsible for the following:

- A. Ensuring proper maintenance of smart card reader hardware and electronic equipment to enable Fast Pass® use in the BART system.
- B. Providing accurate accounting of trips taken with the Fast Pass® in accordance with the procedures set forth in Section 6.A, below.

SECTION 5: COORDINATION REQUIREMENTS

SFMTA and BART believe a harmonious relationship to be essential to faithful execution of this 2010-2014 Fast Pass® Agreement. Both Parties also agree that good relations will be jeopardized by failure to act in concert on all matters affecting Fast Pass® use on BART.

Therefore, SFMTA and BART commit themselves to continued efforts to provide sufficient notice of any action by either Party related to the Fast Pass<sup>®</sup> that has the potential to impact the other.

## SECTION 6: BILLING AND PAYMENT PROCEDURES

- A. Invoice and Supporting Data. Following each month Fast Pass<sup>®</sup> use is accepted on BART, BART will invoice SFMTA for the reimbursement owed by SFMTA to BART for Fast Pass<sup>®</sup> trips taken on BART, less the amount BART owes SFMTA for Clipper<sup>®</sup> transaction fees.
1. The reimbursement owed by SFMTA to BART for Fast Pass<sup>®</sup> trips taken on BART will be calculated by multiplying the previous month's total Fast Pass<sup>®</sup> trips by the applicable rate of reimbursement specified in Section 2.
  2. The amount BART owes SFMTA for Clipper<sup>®</sup> transaction fees will be calculated by multiplying the previous month's total Fast Pass trips by the per trip Clipper<sup>®</sup> transaction fee specified in Section 3.
  3. The number of Fast Pass<sup>®</sup> trips will be based upon either: (1) the DAS data; or (2) available DAS data and total trip estimates, in the absence of complete DAS data. BART will submit all data relied on to compute the number of Fast Pass<sup>®</sup> trips for each month with the monthly invoice via e-mail, with an electronic file containing these trip data reported by origin and destination station, date, and time of day.
  4. If the calculated reimbursement amount above exceeds \$10.5 million cumulatively in any single fiscal year during the term of this 2010-2014 Fast Pass<sup>®</sup> Agreement, BART shall not invoice the SFMTA for the amount above \$10.5 million.
- B. SFMTA Payments. SFMTA will make payment of any balance due within thirty (30) calendar days of receipt of each monthly invoice, including the data specified in Section 2.C above, from BART. BART shall submit all data relied on to compute the number of Fast Pass<sup>®</sup> trips for each month with the monthly invoice. If SFMTA contests BART's monthly trip estimate, SFMTA agrees to pay the undisputed invoice amount within said time, pending the Parties'

resolution of the disputed trip estimate. In that event, SFMTA and BART agree to resolve such dispute in accordance with the terms set forth in Section 7, below.

## SECTION 7: RESOLUTION OF DISPUTES

If any dispute under this 2010-2014 Fast Pass<sup>®</sup> Agreement cannot be resolved by the Parties' staff persons responsible for day-to-day management of the Agreement, upon the written request of either of the Parties, the matter will be handled as described below:

- A. **First Level:** Each Party will designate staff to be the initial person(s) to discuss any apparent dispute or disagreement between the Parties and initiate this procedure. For SFMTA, the first level person will be its Manager, Financial Services and Revenue Contracts, unless SFMTA designates otherwise in writing. For BART, the first level person will be the Manager of Operating Budgets and Analysis, unless BART designates otherwise in writing. The first level person for the initiating Party will submit a written request to the first level person of the other Party setting forth the disagreement and requesting resolution. Each Party will respond within five (5) working days of receipt of a request for resolution from the other Party, or within such other period as the first level persons may agree. Each designated first level person may contact his or her counterpart at the same level at any time to raise any apparent disagreement related to the 2010-2014 Fast Pass<sup>®</sup> Agreement.
- B. **Second Level:** Each Party will designate an individual to whom matters not resolved at the first level will be referred. For SFMTA, the second level person will be the Chief Financial Officer, unless SFMTA designates otherwise in writing. For BART, the second level person will be the Executive Manager, Planning and Budget, unless BART designates otherwise in writing. The second level person for the initiating Party will submit a written request to the second level person of the other Party setting forth the disagreement and requesting resolution. Each Party will respond within five (5) working days of receipt of a request for resolution from the other Party, or within such other period as the second level persons may agree. Each designated second level person may contact his or her counterpart at the same level at any time to raise any apparent disagreement related to the 2010-2014 Fast Pass<sup>®</sup> Agreement.

C. **Third Level:** Each Party will designate individuals to whom matters not resolved at the second level will be referred. These designated



third level persons will constitute the final internal level within BART and SFMTA for resolution of issues between the Parties. Each designated third level person may contact his or her counterpart at the same level at any time to raise any apparent disagreement related to the 2010-2014 Fast Pass<sup>®</sup> Agreement. For SFMTA, the third level person will be the Executive Director/CEO, unless SFMTA designates otherwise in writing. For BART, the third level person will be the General Manager unless BART designates otherwise in writing. The third level person for the initiating Party will submit a written request to the third level person of the Party setting forth the disagreement and requesting resolution. Each Party will respond within ten (10) working days of receipt of a request for resolution from the other Party.

- D. Alternative Dispute Resolution. If the dispute is not resolved at the Third Level, the General Manager of BART and the Executive Director/CEO of SFMTA may agree to a method of non-binding, alternative dispute resolution, including, but not limited to, mediation or non-judicial arbitration.
- E. Judicial Remedies. It is the intent of the Parties that litigation be avoided as a method of dispute resolution to the extent possible. However, nothing herein will foreclose or limit the ability of either Party to pursue judicial remedies.

## SECTION 8: GENERAL PROVISIONS

- A. Records and Audits: BART will maintain trip data documentation consisting of DAS Passenger Reports. SFMTA will have the right to audit BART's accounts, primary and secondary papers regarding collection and compilation of trip data, and relevant cost accounting data during and up to three (3) years after the invoice date of the period in question. BART's monthly invoice to SFMTA will indicate the total number of trips actually counted by the DAS system or, in the absence of complete DAS data, the available DAS data and total trip estimates.
- B. Term; Termination:
  - 1. Term. Subject to Section 2.D, the term of this Agreement shall be from January 1, 2010 through June 30, 2014, unless earlier terminated as provided below.

2. Termination. Either SFMTA or BART may terminate this 2010-2014 Fast Pass<sup>®</sup> Agreement at any time upon giving the other Party ninety (90) calendar days written notice.

C. 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  
San Francisco Bay Area Rapid Transit District  
300 Lakeside Drive  
P. O. Box 12688  
Oakland, CA 94604-2688  
Notices: Attention General Manager

TO: San Francisco Municipal Transportation Agency  
1 South Van Ness, 7<sup>th</sup> Floor  
San Francisco, CA 94103  
Invoices: Attention Chief Financial Officer  
Notices: Attention Director of Transportation

D. Entire Agreement: The provisions of this 2010-2014 Fast Pass<sup>®</sup> Agreement constitute the entire agreement between the Parties relating to this matter, and will apply to Fast Pass<sup>®</sup> use on BART throughout the entire life of such use as defined in this Agreement.

E. Compliance with ADA: Without limiting any other provision of this 2010-2014 Fast Pass<sup>®</sup> Agreement, SFMTA and BART will provide the services specified in this 2010-2014 Fast Pass<sup>®</sup> Agreement in a manner that complies with the Americans with Disabilities Act (ADA) Title 24, and any and all other applicable federal, state, and local disability rights legislation. SFMTA and BART agree not to discriminate against disabled persons in the provision of services, benefits or activities provided under this 2010-2014 Fast Pass<sup>®</sup> Agreement.

F. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation: This 2010-2014 Fast Pass<sup>®</sup> Agreement is subject to the budget and fiscal provisions of the City's Charter. Pursuant to the City's

Charter, a budget is approved every two years to cover the following two-year period. Charges under this Agreement will accrue only after prior written authorization certified by the Controller as part of that budget process, and the amount of City's obligation hereunder will not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This 2010-2014 Fast Pass<sup>®</sup> Agreement will terminate without penalty, liability or expense of any kind to either BART or City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for only a portion of the succeeding fiscal year, this 2010-2014 Fast Pass<sup>®</sup> Agreement will terminate, without penalty, liability or expense of any kind to either BART or City at the end of the term for which funds are appropriated.

If at any time during the term of this 2010-2014 Fast Pass<sup>®</sup> Agreement, the City does not allocate funds in its budget for succeeding years, SFMTA will provide notice of same to BART within thirty (30) calendar days of adoption of said budget. In the event that funds are not appropriated within the City's budget for any succeeding year, this Agreement and the Fast Pass program will terminate at the end of the period for which funds have been certified.

H. Guaranteed Maximum Costs:

1. City's obligation hereunder will not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification.
2. Except as may be provided by laws governing emergency procedures, officers and employees of the City are not authorized to request, and the City is not required to reimburse BART for services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law.
3. Officers and employees of the City are not authorized to offer or promise, nor is the City required to honor any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller.

4. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

I. Submitting False Claims; Monetary Damages:

1. Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim will be liable to the City for three times the amount of damages which the City sustains because of the false claim. A contractor, subcontractor or consultant who submits a false claim will also be liable to the City for the costs, including attorneys' fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the City for a civil penalty of up to \$10,000 for each false claim. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.
2. Pursuant to California Government Code Section 12651, any person who commits any of the following acts will be liable to BART for three times the amount of damages which BART sustains because of the act of that person. A person who commits any of the following acts will also be liable to BART for the costs of a civil action brought to recover any of those penalties or damages, and may be liable to BART for a civil penalty of up to \$10,000 for each false claim. A person will be deemed to have submitted a false claim to BART if the person: “(1) Knowingly presents or causes to be presented to an officer or employee of [BART] a false claim or request for payment or approval. (2) Knowingly makes, uses,

or causes to be made or used a false record or statement to get a false claim paid or approved by [BART]. (3) Conspires to defraud [BART] by getting a false claim allowed or paid by [BART]. (4) Has possession, custody, or control of public property or money used or to be used by [BART] and knowingly delivers or causes to be delivered less property than the amount for which the person receives a certificate or receipt. (5) Is authorized to make or deliver a document certifying receipt of property used or to be used by [BART] and knowingly makes or delivers a receipt that falsely represents the property used or to be used. (6) Knowingly buys, or receives as a pledge of an obligation or debt, public property from any person who lawfully may not sell or pledge the property. (7) Knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to [BART]. (8) Is a beneficiary of an inadvertent submission of a false claim to [BART], subsequently discovers the falsity of the claim, and fails to disclose the false claim to [BART] within a reasonable time after discovery of the false claim." Reference to Government Code Section 12651(6) has been deleted because the Parties agree that Section 12651(6) does not apply to this Agreement.

- J. Severability. Should the application of any provision of this 2010-2014 Fast Pass<sup>®</sup> Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement will not be affected or impaired thereby, and (b) such provision will be enforced to the maximum extent possible so as to effect the intent of the Parties and will be reformed without further action by the Parties to the extent necessary to make such provision valid and enforceable.

K. Indemnification.

1. The City 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 the City, 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.
2. BART agrees to indemnify, save harmless and defend the City, 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 the City, its officers, agents, or employees.
3. 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.

SECTION 9: Effective Date

The effective date of this 2010-2014 Fast Pass<sup>®</sup> Agreement is January 1, 2010.

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

SFMTA Board of Directors  
Resolution No. \_\_\_\_\_  
Dated: \_\_\_\_\_

Attest:  
\_\_\_\_\_  
Roberta Boomer  
Secretary, SFMTA Board

**APPROVED AS TO FORM:**  
Office of the General Counsel

**APPROVED AS TO FORM:**  
Dennis J. Herrera, City Attorney

By: \_\_\_\_\_  
Patricia McCoy Smith  
Attorney, Office of the General Counsel

By: \_\_\_\_\_  
Robin M. Reitzes  
Deputy City Attorney

Board of Supervisors  
Resolution No. \_\_\_\_\_  
Dated: \_\_\_\_\_

Attest:  
\_\_\_\_\_  
Clerk of the Board