

File No. 110201

Committee Item No. 3  
Board Item No. \_\_\_\_\_

**COMMITTEE/BOARD OF SUPERVISORS**  
AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance SUB-Committee      Date: May 4, 2011

Board of Supervisors Meeting      Date \_\_\_\_\_

**Cmte Board**

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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Resolution                                   |
| <input type="checkbox"/>            | <input type="checkbox"/> | Ordinance                                    |
| <input type="checkbox"/>            | <input type="checkbox"/> | Legislative Digest                           |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Budget and Legislative Report                |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Ethics Form 126                              |
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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Contract/Agreement                           |
| <input type="checkbox"/>            | <input type="checkbox"/> | Award Letter                                 |
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**OTHER**      (Use back side if additional space is needed)

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Completed by: Victor Young  
Completed by: Victor Young

Date: April 29, 2011  
Date: \_\_\_\_\_

An asterisked item represents the cover sheet to a document that exceeds 25 pages. The complete document is in the file.

1 [Agreement - Use of Fast Pass on BART]  
2

3 **Resolution approving the Special Transit Fare (Fast Pass) Agreement between the City**  
4 **and the Bay Area Rapid Transit District, with a term from January 1, 2010, to June 30,**  
5 **2018.**

6  
7 WHEREAS, SFMTA Adult Fast Pass users make approximately 8.8 million trips on  
8 BART within San Francisco each year under the Special Transit Fare (Fast Pass) Agreement  
9 ("Agreement") between the City and County of San Francisco (City) and the San Francisco  
10 Bay Area Rapid Transit District (BART), which expired on December 31, 2009; and

11 WHEREAS, Current payments from the SFMTA to BART are estimated at \$9.0 million  
12 per year based on current ridership volumes and a \$1.02 per trip reimbursement rate; and

13 WHEREAS, In 2003, the BART Board adopted a Productivity-Adjusted Consumer Price  
14 Index (CPI) Based Fare Rates and Charges policy that specified a formula for adjusting fares  
15 bi-annually based on the inflation rate less ½ percent for productivity improvements, which  
16 policy will be in effect until 2012; and

17 WHEREAS, BART advanced its most recent bi-annual fare increase by six months,  
18 increased its intra-San Francisco fare 17 percent from \$1.50 to \$1.75 on July 1, 2009, and  
19 has requested a corresponding increase in the Adult Fast Pass reimbursement rate from  
20 \$1.02 to \$1.19 per trip retroactive to January 1, 2010, with a 10% cap on the annual  
21 reimbursement rate; and

22 WHEREAS, BART staff anticipates that the BART Board will implement a similar long-  
23 term fare increase policy to take effect upon the expiration of the existing policy in 2012,  
24 although the details of such a policy are currently unknown; and  
25

1           WHEREAS, Assuming ridership grows by 5 percent annually and reimbursement rates  
2 reach the Agreement's proposed 10-percent annual cap after 2012, total payments to BART  
3 could increase from \$9.0 million today to \$29.1 million in 2018; and

4           WHEREAS, On January 4, 2011, the SFMTA Board of Directors adopted Resolution  
5 No. 11-003, approving the Special Transit Fare (Fast Pass) Agreement between the City and  
6 BART, with a term from January 1, 2010 to June 30, 2018, based on the terms outlined  
7 above; a copy of the Agreement is on file with the Clerk of the Board of Supervisors in File No.  
8 110201, which is hereby declared to be a part of this motion as if set forth fully herein; now,  
9 therefore, be it

10           RESOLVED, That the Board of Supervisors approves the Special Transit Fare (Fast  
11 Pass) Agreement between the City and BART, with a term from January 1, 2010 to June 30,  
12 2018.

**Item 3**  
**File 11-0201**

**Department(s):**  
Municipal Transportation Agency (MTA)

## EXECUTIVE SUMMARY

### Legislative Objective

- The proposed resolution would approve a Special Transit Fare (Fast Pass) Agreement between the City and Bay Area Rapid Transit (BART) for an 8.5-year term retroactive to January 1, 2010 through June 30, 2018.

### Key Points

- The previous MTA and BART Fast Pass Agreement, which expired on December 31, 2009, (a) allowed MUNI Adult Fast Pass users to take unlimited rides on BART within San Francisco, at no additional cost, and (b) MTA reimbursed BART at a fixed discounted rate of \$1.02 per passenger BART trip.
- On May 22, 2003, the BART Board adopted a fare policy, in effect until 2012, in which fares increase every two years by a CPI-based percentage less a 0.5 percent adjustment for BART productivity improvements. However, over the past five years, BART fares within San Francisco increased \$0.50 from \$1.25 to \$1.75, a total increase of 40 percent or an average of eight percent per year.
- The proposed Agreement would (a) increase MTA's reimbursement rate from \$1.02 to \$1.19 per trip, retroactive to January 1, 2010, (b) tie MTA reimbursement rates to BART's percentage rate of increases through July 1, 2012, (c) after July 1 2012, tie MTA's reimbursement rates to BART's actual fare increases and (d) cap future MTA annual reimbursement rate increases to a maximum of ten percent.

### Fiscal Impact

- The proposed rate increase to \$1.19 would result in MTA's annual payments to BART increasing by an estimated \$1,453,005 from \$8,718,031 to \$10,171,036 in 2010, an increase of 16.7 percent.
- Under the proposed Agreement, MTA would owe BART \$6,910,319 more over the term of the proposed Agreement than if reimbursement rates were increased by the same percentage as BART fare increases.

### Policy Considerations

- Given that the BART Board of Directors will not be deciding its fare increase policy until after July 1, 2012, the Budget and Legislative Analyst considers it premature for MTA to enter into the proposed 8.5-year Agreement, which would be tied to a future unknown BART fare policy.
- The previous two-year Agreement contained a not-to-exceed amount of \$28,000,000 or an average of \$14,000,000 annually. The proposed Agreement does not contain a not-to-exceed amount.

### Recommendations

- Request that BART and MTA recommence negotiations to develop a Fast Pass Agreement that establishes reimbursement rates that are tied to the rate of inflation, comparable to BART's existing fare policy, rather than being directly tied to future unknown BART fare increases.
- Request that MTA and BART negotiate a total not-to-exceed amount for each year of the term of the Fast Pass Agreement that reflects (a) reimbursement rate increases tied to the rate of inflation, and (b) ridership increases that do not exceed five percent annually or a mutually-agreed upon amount.

## MANDATE STATEMENT/ BACKGROUND

### Mandate Statement

In accordance with Charter Section 9.118(b), City agreements with anticipated expenditures of \$10,000,000, or more or amendments to such City agreements with anticipated expenditures of more than \$500,000 are subject to approval by the Board of Supervisors.

### Background

#### History of Fast Pass Agreements, BART Fares and MTA Reimbursement Rates

Mr. Jason Lee, Financial Services Manager in the MTA's Finance & Information Technology Division, advises that the Municipal Transportation Agency (MTA) has records of entering into Fast Pass Agreements with Bay Area Rapid Transit (BART) since 1984.<sup>1</sup> These Fast Pass Agreements allow San Francisco Municipal Railway (MUNI) monthly Adult Fast Pass users to take an unlimited number of monthly rides on BART within San Francisco city limits at no additional cost to the rider, with reimbursements made by the MTA to BART at a fixed rate for such rides on BART. The most recent Fast Pass Agreement, with a two-year term from December 21, 2007 through December 31, 2009, provided that MTA pay BART a fixed reimbursement rate of \$1.02 per trip.

Table 1 below summarizes BART Adult fares, reimbursement rates, dollar value of the discounts and percentage value of the discounts from January 1, 2000 through December 31, 2009 and identifies the total percentage increase in these rates.

Date	Adult BART Fare in San Francisco	Reimbursement Rate from MTA to BART	Reimbursement Rate's Discount (In Dollars) Over Standard BART Ticket Price	Reimbursement Rate's Discount (In Percent) Over Standard BART Fare Price
January 1, 2000 – December 31, 2002	\$1.10	\$0.76	\$0.34	30.9%
January 1, 2003 – December 31, 2003	1.15	.80	.35	30.4
January 1, 2004 – December 31, 2005	1.25	.87	.38	30.4
January 1, 2006 – December 20, 2007 <sup>1</sup>	1.40	.97	.43	30.7
December 21, 2007 – December 31, 2007 <sup>2</sup>	1.40	1.02	.38	27.1
January 1, 2008- June 30, 2009	1.50	1.02	.48	32.0
July 1, 2009– December 31, 2009 <sup>3</sup>	1.75	1.02	.73	41.7
<b>Total Percent Increase</b>	<b>59.09%</b>	<b>34.21%</b>	<b>114.71%</b>	<b>35.0%</b>
<sup>1</sup> Fare increased by an additional \$0.10 due to BART's implementation of a \$0.10 capital surcharge for station capital improvements.				
<sup>2</sup> This adjustment was due to the timing of the expiration of the Agreement and adjustment in the reimbursement rate prior to the BART increase in fares.				
<sup>3</sup> Agreement expired on December 31, 2009.				

<sup>1</sup> Some of these agreements were subject to Board of Supervisors approval and expenditures for the BART agreements were included in previous MTA budgets, which were subject to approval by the Board of Supervisors.

Since the latest Agreement expired on December 31, 2009, BART and MTA have been negotiating the terms of a new Fast Pass Agreement, and MTA has continued to pay BART at the same \$1.02 reimbursement rate.

As shown in Table 1 above, BART fares have increased a total of 59.09 percent from January 1, 2000 through December 31, 2009, and have remained at \$1.75 per ride in San Francisco<sup>2</sup>. From January 1, 2000 through December 31, 2005 BART fares within San Francisco increased \$0.15 from \$1.10 to \$1.25, a total increase of 13.64 percent or 2.73 percent per year. In contrast, from December 31, 2005 through December 31, 2010, or over the past five years, BART fares within San Francisco increased \$0.50 from \$1.25 to \$1.75, a total increase of 40 percent or an average of eight percent per year.

### Consumer Price Index (CPI) based Fare Rates and Charges Policy

On May 22, 2003, the BART Board of Directors adopted a productivity-adjusted CPI-based Fare Rates and Charges policy, in effect until July 1, 2012, in which BART fares increase every two years by a CPI-based percentage less a 0.5 percent adjustment for BART productivity improvements.<sup>3</sup> According to Mr. Lee, in accordance with this BART Board fare policy, fares should have increased by approximately six percent every two years assuming a three percent annual inflation rate less a 0.5 percent BART adjustment, which would be a total of 5.5 percent every two years or an average of 2.75 percent annually. However, as discussed above, in contrast to this BART adopted policy, between December 31, 2005 and December 31, 2010, BART fares in San Francisco actually increased 40 percent, or an average of eight percent per year.

## DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve a new 8.5 year Fast Pass Agreement between the City, on behalf of MTA, and BART, with a term retroactive to January 1, 2010 through June 30, 2018. Either MTA or BART may terminate the proposed Fast Pass Agreement after giving the other party a 90-day written notice prior to the termination date. The proposed Agreement's key provisions include:

- (1) The establishment of an initial \$1.19 reimbursement rate, retroactive to January 1, 2010, for MTA to reimburse BART for each MUNI Fast Pass trip on BART, as counted by BART's Data Acquisition System<sup>4</sup> (DAS);
- (2) The initial \$1.19 reimbursement rate would be in effect until it is increased by the same percentage as BART's fares, through July 1, 2012;
- (3) After July 1, 2012, the reimbursement rate will increase by the same amount as BART fare increases for the remaining term of the proposed Agreement;

<sup>2</sup> MUNI currently costs \$2.00 per ride in San Francisco, or \$.25 more than BART.

<sup>3</sup> The 0.5 percent adjustment for productivity improvements represents BART's labor and operational efficiencies.

<sup>4</sup> BART's DAS is a computerized system which automatically records trips by MUNI Adult Fast Pass holders.

- (4) Limits annual reimbursement rate increases to ten percent;
- (5) Mandates BART to reimburse MTA for all Clipper<sup>5</sup> Card (Clipper) transaction fees incurred each time patrons use their Fast Passes on Clipper<sup>6</sup> for BART trips within San Francisco;
- (6) Makes MTA and BART responsible for their own internal administrative billing, accounting and auditing costs associated with Fast Pass use on BART and administration of the proposed Agreement; and
- (7) Requires BART to invoice MTA monthly for the reimbursements to be made by MTA to BART for the previous month's Adult Fast Pass trips taken on BART, less the amount BART owes MTA for Clipper Card transaction fees.

The MTA Board of Directors approved the proposed new Fast Pass Agreement with BART on January 4, 2011.

## FISCAL ANALYSIS

### Retroactive Payment to BART from MTA from January 1, 2010

Under the proposed Agreement, the reimbursement rate that MTA pays BART would increase from the existing \$1.02 to \$1.19 per trip, a \$0.17 and 16.7 percent increase, retroactive to January 1, 2010, the day after the previous Agreement expired on December 31, 2009. This proposed \$1.19 reimbursement rate is based on BART's last 16.7 percent fare increase in San Francisco from \$1.50 to \$1.75 on July 1, 2009. Based on the existing \$1.75 BART fare per trip, the proposed \$1.19 reimbursement rate by MTA to BART represents a discount of 32 percent. As shown in Table 2 below, if the proposed Agreement is approved, MTA would be required to make an initial one-time payment of \$1,684,584 to BART for the difference in the reimbursement rates from January 1, 2010 through February 28, 2011.

**Table 2: Amount MTA Would Owe BART for Reimbursements From January, 2010 Through February, 2011**

	Actual Reimbursement by MTA to BART at \$1.02 Reimbursement Rate	Proposed Reimbursement by MTA to BART at \$1.19 Reimbursement Rate	Amount MTA Would Owe BART Retroactively if Proposed Agreement is Approved
January 1, 2010 – June 30, 2010	\$4,523,279	\$5,277,159	\$753,880
July 1, 2010 – December 31, 2010	4,194,752	4,893,877	699,125
Subtotal 2010	\$8,718,031	\$10,171,036	\$1,453,005
January 1, 2011 - February 28, 2011*	1,218,837	\$1,450,416	231,579
<b>Total MTA Would Owe BART as of March 1, 2011</b>	<b>\$9,936,868</b>	<b>\$11,621,452</b>	<b>\$1,684,584</b>

\* - MTA only has data available through February, 2011

<sup>5</sup> Clipper is an all-in-one transit card that keeps track of any passes, discount tickets, ride books and cash value that an individual loads onto it, while applying all applicable fares, discounts and transfer rules. Clipper can be used now on MUNI, BART, AC Transit and CalTrain.

<sup>6</sup> Fast Passes can be loaded onto Clipper Cards when purchased, such that Fast Pass holders swipe their Clipper Card to allow entry onto MUNI and/or BART vehicles and stations.

In addition to the above-noted \$1,684,584 retroactive payment, MTA would be required to pay BART the proposed new reimbursement rate of \$1.19 per trip for each Adult Fast Pass trip taken on BART from March 1, 2011 through June 30, 2012.

### Estimated Annual Increase in Payments to BART from MTA until 2012

In 2010, MTA's Adult Fast Pass ridership on BART was 8,547,089 trips. Based on the proposed reimbursement rate of \$1.19 per trip, if ridership remains at the same level as 2010, the proposed Agreement will cost MTA \$10,171,036 annually. As shown in Table 3 below, the \$10,171,036 projected annual cost represents an increase of \$1,453,005 or 16.7 percent, from the \$8,718,031 paid by MTA to BART in 2010.

However, if MTA ridership on BART increases by approximately five percent, MTA ridership on BART would increase from 8,547,089 to 8,974,443 trips annually. If such ridership growth occurs, MTA's reimbursement to BART would increase to \$10,679,587 under the proposed \$1.19 reimbursement rate, an overall increase of \$1,961,556 or 22.5 percent, as shown in Table 4 below.

	BART ridership remains constant at 8,547,089 trips	BART ridership increases by 5 percent in 2012 to 8,974,443 trips
Number of BART Trips with MTA Adult Fast Pass	8,547,089	8,974,443
Estimated Annual Payment at \$1.19 Per Trip	\$10,171,036	\$10,679,587
Increase over 2010 Payment \$8,718,031	\$1,453,005	\$1,961,556
Percent Increase 2010 payment of \$8,718,031	16.7%	22.5%

On July 1, 2012, BART is scheduled to implement another fare increase. In accordance with the proposed Agreement, MTA's reimbursement rate would increase by the same percentage as the BART fares on July 1, 2012. If BART increases its fares from \$1.75 to \$1.90 per trip, or by eight percent, as BART fares have averaged annually over the past five years, the MTA reimbursement rate would similarly increase by eight percent or from \$1.19 to \$1.29 per trip.

### Change in Methodology to Determine MTA Reimbursement Rates to BART After July 1, 2012 Fare Increase

Both historically and under the proposed Agreement, through July 1, 2012, MTA reimbursement rates to BART would increase by the same percentage as BART fares increase in San Francisco. However, the Budget and Legislative Analyst notes that after July 1, 2012, under the proposed Agreement, MTA's reimbursement rates would increase by the same amount as BART fares increase rather than the same percentage as BART fares increase. This provision in the proposed Agreement is a significant change from the previous Agreement and the proposed Agreement's terms until 2012, and could result in significant cost increases to MTA over the term of the proposed Agreement. Mr. Lee advises that this change was not previously noted by MTA staff.



At the same time, the Budget and Legislative Analyst notes that the proposed Agreement includes an annual reimbursement rate growth cap of ten percent. This provision will limit the maximum annual increases in MTA's reimbursement rates for any subsequent increases after the scheduled July 1, 2012 BART fare increase through the remaining term of the Agreement, which expires on June 30, 2018. For example, if BART fares increase in 2013 from \$1.90 to \$2.05, an increase of \$0.15 or 8 percent, rounded to the nearest 5 cents<sup>7</sup>, the reimbursement rate charged by BART to the MTA would also increase by \$0.15 from \$1.29 to \$1.44, or an 11.6 percent rather than a corresponding 8 percent increase. However, the proposed ten percent annual reimbursement rate growth cap included in the proposed Agreement would limit this increase to ten percent.

Table 4 below estimates BART's fare increases and MTA's reimbursement rates over the 8.5-year term of the proposed Agreement, based on (a) BART's five-year history from December 31, 2005 through December 31, 2010, when fares within San Francisco increased by 40 percent or an average of eight percent annually and (b) the inclusion of a ten percent annual reimbursement rate growth cap in the proposed Agreement, such that reimbursement rates would not increase more than ten percent annually. As shown in Table 4, the Budget and Legislative Analyst estimates that MTA's reimbursement rate discount would decrease from 32 percent in 2012 to 23.7 percent in 2018. However, the Budget and Legislative Analyst notes that it is not certain how much BART will increase fares over the term of the proposed Agreement.

<b>Date</b>	<b>BART Fares</b>	<b>Reimbursement Rate from MTA to BART Under Proposed Agreement</b>	<b>Reimbursement Rate's Discount (In Percent) Over Standard BART Fare</b>
<b>2010</b>	1.75	1.19	32%
<b>2011</b>	1.75	1.19	32
<b>2012</b>	1.90	1.29	32
<b>2013</b>	2.05	1.42	30.7
<b>2014</b>	2.20	1.56	29.1
<b>2015</b>	2.40	1.72	28.3
<b>2016</b>	2.60	1.89	27.3
<b>2017</b>	2.80	2.08	25.7
<b>2018</b>	3.00	2.29	23.7%
<b>Percent Increase (Decrease) from 2013 through 2018</b>	<b>46.3%</b>	<b>61.3%</b>	<b>(22.8%)</b>

<sup>7</sup> BART standard fare-setting methodology is to round the fare increase to the nearest 5 cents.

### Estimated Increase in Payments by MTA to BART after 2012

Based on data provided by Mr. Lee, a one-time conservative five percent increase in BART ridership in 2011, coupled with the projected reimbursement rates shown in Table 4 above MTA's annual payments to BART are projected to increase in 2018 to \$20,551,474 which is \$11,833,443 or a 135.7 percent increase more than the \$8,718,031 reimbursements paid to BART in 2010, as shown in Table 5 below.

Year	Ridership	Reimbursement Rate	Reimbursement Amount	Annual Percentage Increase in Reimbursement Amount	Cumulative Percentage Increase in Reimbursement Amount
2010	8,547,089	\$1.02	\$ 8,718,031	N/A	N/A
2010	8,547,089	1.19	10,171,036	16.7%	16.7%
2011	8,974,443	1.19	10,679,587	5.0	22.5
2012	8,974,443	1.29 <sup>1</sup>	11,577,031	8.4	32.3
2013	8,974,443	1.42 <sup>2</sup>	12,743,709	10.1	46.2
2014	8,974,443	1.56 <sup>2</sup>	14,000,131	9.9	60.6
2015	8,974,443	1.72 <sup>2</sup>	15,436,042	10.3	77.1
2016	8,974,443	1.89 <sup>2</sup>	16,961,697	9.9	94.6
2017	8,974,443	2.08 <sup>2</sup>	18,666,841	10.1	114.1
2018	8,974,443	2.29 <sup>2</sup>	20,551,474	10.1%	135.7%

<sup>1</sup> - Assumes a one-time 8 percent fare increase, per BART's last 5-year fare-increase history.

<sup>2</sup> - Assumes an annual 10 percent increase in the reimbursement rate, per the proposed agreement's 10 percent reimbursement rate growth cap

### Estimated Increase in Payments by MTA to BART after 2012 Based on Change in Methodology to Determine Reimbursement Rates

Table 6 below compares MTA's reimbursement rates paid to BART and MTA's costs, if the rates under the proposed Agreement increase by either (a) the same amount as BART's fare increases or (b) the same percentage as BART's fare increases. If the reimbursement rate paid by MTA to BART is calculated by increasing it by the same amount as BART fare increases, which is the method included in the proposed Agreement after 2012, MTA would reimburse BART an estimated \$6,910,319 or 5.6 percent more over the term of the proposed Agreement (\$130,787,548 less \$123,877,229) than if the methodology for calculating the reimbursement rate with each BART fare increase were to stay the same and increase by the same percentage as BART fare increases, as has been the case since 2002.

**Table 6: Comparison of Estimated Reimbursement Amounts from 2010-2018**

	Ridership Assuming a One-Time Five Percent Increase	Reimbursement Rate Increasing by Same Percentage as 8 Percent BART Fare Increase	Reimbursement Amount with Reimbursement Rate Increasing by Same Amount as 8 Percent BART Fare Increase	Reimbursement Rate Increasing by Same Percentage as 8 Percent BART Fare Increase	Reimbursement Amount with Reimbursement Rate Increasing by Same Percentage as 8 Percent BART Fare Increase	Difference between Reimbursement Amounts
2010	8,547,089	\$1.19	\$10,171,036	\$1.19	\$10,171,036	0
2011	8,974,443	1.19	10,679,587	1.19	10,679,587	0
2012	8,974,443	1.29 <sup>1</sup>	11,577,031	1.29 <sup>1</sup>	11,577,031	0
2013	8,974,443	1.42 <sup>2</sup>	12,743,709	1.39	12,474,476	\$269,233
2014	8,974,443	1.56 <sup>2</sup>	14,000,131	1.50	13,461,665	\$538,466
2015	8,974,443	1.72 <sup>2</sup>	15,436,042	1.62	14,538,598	897,444
2016	8,974,443	1.89 <sup>2</sup>	16,961,697	1.75	15,705,275	1,256,422
2017	8,974,443	2.08 <sup>2</sup>	18,666,841	1.89	16,961,697	1,705,144
2018	8,974,443	2.29 <sup>2</sup>	20,551,474	2.04	18,307,864	2,243,610
<b>Total</b>			<b>\$130,787,548</b>		<b>\$123,877,229</b>	<b>\$6,910,319</b>

<sup>1</sup> - Assumes a one-time 5 percent fare increase, per BART's last 5-year fare-increase history.  
<sup>2</sup> - Assumes a reimbursement rate increase by same amount as BART's 8 percent fare increases

Given the significant additional potential costs of the proposed change in methodology on the MTA and the uncertainty of BART's future fare increases, the Budget and Finance Sub-Committee should request BART and MTA recommence negotiations to develop a Fast Pass Agreement that establishes a reimbursement rate that is tied to the rate of inflation, comparable to BART's existing fare policy, rather than being directly tied to future unknown BART fare increases.

**BART will be Responsible for Estimated Annual Clipper Transaction Fees**

Under the proposed Agreement, BART would absorb all transaction fees associated with using the BART-MUNI Fast Pass via the Clipper Card (see Footnote 4 above) on BART. Currently, MTA is paying for all Clipper Card transaction fees within San Francisco resulting from the use of the Adult monthly BART-MUNI Fast Pass. As shown in Table 7 below, these fees vary based on the number of Clipper Card transactions throughout the entire Bay Area per month.

Regional Transactions Per Month	Fee per Transaction
Less than 15,000,000	\$0.015
15,000,000 – 30,000,000	\$0.012
More than 30,000,000	\$0.0035

In 2010, the first year that data is available on Clipper usage, there were 1,873,929 Clipper transactions, or approximately 156,161 per month resulting in \$28,109 in Clipper transaction fees. According to Mr. Lee, annual Clipper transactions are likely to increase significantly because MTA did not transition its Adult Fast Pass from a paper ticket onto the Clipper Card

until November, 2010 for the general public. Since that transition, Clipper transactions have been averaging approximately 628,630 transactions per month, with transaction fees averaging \$9,429 per month, currently paid to the Metropolitan Transportation Commission (MTC) by MTA, or approximately \$113,148 annually. Based on estimated Fast Pass ridership of 8,547,089 for FY 2009-2010, the MTA estimates that transaction fees could amount to \$128,206 annually. The 2010-2011 fee per transaction could decrease if total regional Clipper Card transactions exceed 15 million per month (See Table 7 above).

## **POLICY CONSIDERATIONS**

### **Importance of San Francisco to BART System**

According to Mr. Lee, despite having only eight of BART's 44 stations, San Francisco is essential to the viability of the BART system. Approximately 70 percent of all BART trips involve travel to and/or from a San Francisco BART station. Over 15 percent of all BART travel is internal to San Francisco, and about half of these customers use the Muni Adult Fast Pass.

In addition, Mr. Lee advises that, at the local level, BART helps pay for operations by collecting a 0.5 percent Sales Tax in the following three counties: San Francisco, Alameda and Contra Costa. Of the 0.5 percent Sales Tax collected, 75 percent goes directly to BART while 12.5 percent is allocated each to the MTA and AC Transit.

### **BART's Future Fare Increase Policy is Currently Unknown**

As previously discussed, on May 22, 2003, the BART Board of Directors adopted a ten-year fare policy which states that fares should increase every two years by a percentage consistent with the Consumer Price Index (CPI) less a 0.5 percent adjustment for BART productivity improvements. BART's existing fare policy expires in 2012. At this time, it is unknown how the BART Board would structure its fare policy after 2012. However, the Budget and Legislative Analyst notes that even if the BART Board were to extend its existing CPI-based fare policy, there is no guarantee that BART would hold general fare increases to the rate of inflation given BART's recent five-year history of increasing rates a total of 40 percent or an average of eight percent annually.

The proposed Agreement would extend for 8.5 years, retroactive to January 1, 2010 through June 30, 2018. However, the proposed Agreement, as currently structured, would commit MTA to reimbursing BART for costs based on a policy which has yet to be determined. Given that the BART Board of Directors will not be deciding BART's fare increase policy by which MTA would reimburse BART until after July 1, 2012, the Budget and Legislative Analyst considers it premature for MTA to enter into the proposed 8.5-year Agreement under the current provisions. The Budget and Legislative Analyst notes that, as shown in Table 6 above, the proposed Agreement, left as-is, has the potential to result in costs of \$20,551,474 by 2018 to MTA, which is 135.7 percent or \$11,833,443 more than the \$8,718,031 paid in 2010, assuming a conservative one-time BART ridership increase of five percent. Thus, tying MTA's reimbursement rate to an unknown BART fare policy in the future – the essence of the

proposed Agreement – would continue to expose the MTA to unknown, but potentially escalating cost increases.

### **A Total Not-To-Exceed Amount Should Be Included**

The previous two-year Agreement, which expired on December 31, 2009, contained a not-to-exceed amount of \$28,000,000 for the MTA to reimburse BART or an average of \$14,000,000 annually. The proposed Agreement does not include a total not-to-exceed amount for the MTA to reimburse BART. Because total payments to BART would be calculated by multiplying the reimbursement rate by ridership, by not including a not-to-exceed amount this could further expose the MTA to rapid potential cost increases if ridership increases substantially and reimbursement rates increase at above the rate of inflation. According to Mr. Lee, BART ridership in San Francisco grew 24 percent between FY 2005-2006 and FY 2008-2009.

Therefore, the Budget and Legislative Analyst recommends that the MTA and BART negotiate a total not-to-exceed amount for each year of the term of the proposed Agreement that reflects (a) reimbursement rate increases that do not exceed the rate of inflation, and (b) ridership increases that do not exceed five percent annually or a mutually-agreed upon amount.

## **RECOMMENDATIONS**

1. Request that BART and MTA recommence negotiations to develop a Fast Pass Agreement that establishes reimbursement rates that are tied to the rate of inflation, comparable to BART's existing fare policy, rather than being directly tied to future unknown BART fare increases.
2. Request that MTA and BART negotiate a total not-to-exceed amount for each year of the term of the Fast Pass Agreement that reflects (a) reimbursement rate increases tied to the rate of inflation, and (b) ridership increases that do not exceed five percent annually or a mutually-agreed upon amount.

Edwin M. Lee | Mayor

Tom Nolan | Chairman

Jerry Lee | Vice-Chairman

Cameron Beach | Director

Leona Bridges | Director

Cheryl Brinkman | Director

Malcolm Heintzke | Director

Bruce Oka | Director

Nathaniel P. Ford Sr. | Executive Director/CEO

February 28, 2010

Angela Calvillo, Clerk of the Board  
Board of Supervisors  
City and County of San Francisco  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, CA 94102-4689

Subject: BART/SFMTA Fast Pass Agreement

Dear Ms. Calvillo:

The San Francisco Municipal Transportation Agency (SFMTA) respectfully requests that this item be heard at the earliest possible meeting of the Budget and Finance Committee of the San Francisco Board of Supervisors.

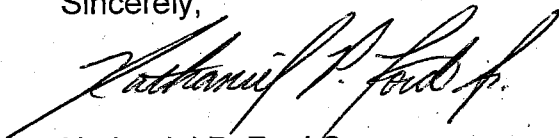
Attached please find an original and four copies for proposed resolution for Board of Supervisors consideration. The resolution requests approval of the Special Transit Fare (Fast Pass<sup>®</sup>) Agreement between the City and County of San Francisco and the Bay Area Rapid Transit District (BART), which permits customers with a Muni Adult Fast Pass<sup>®</sup> to ride BART within San Francisco. The SFMTA Board of Directors approved the agreement on January 4, 2011.

In addition to the resolution, please find enclosed the following attachments:

1. Briefing Memorandum
2. Proposed Fast Pass<sup>®</sup> Agreement
3. SFMTA Board of Directors Resolution approving the Agreement

Please feel free to contact Sonali Bose at 415.701.4617 if you have any questions regarding this matter.

Sincerely,



Nathaniel P. Ford Sr.  
Executive Director/CEO

Attachments

cc: Board of Supervisors Budget Analyst

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO  
FEB 28 AM 11:30

Edwin M. Lee | Mayor

Tom Nolan | Chairman

Jerry Lee | Vice-Chairman

Cameron Beach | Director

Leona Bridges | Director

Cheryl Brinkman | Director

Malcolm Heinicke | Director

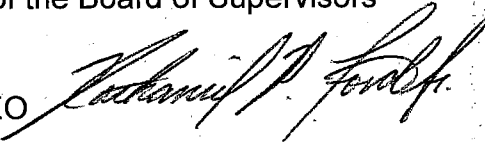
Bruce Oka | Director

Nathaniel P. Ford Sr. | Executive Director/CEO

## MEMORANDUM

DATE: February 28, 2011

TO: Honorable Members of the Board of Supervisors

FROM: Nathaniel P. Ford Sr.  
Executive Director/CEO

SUBJECT: Request for Approval of Fast Pass® Agreement with BART

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO  
2011 FEB 28 AM 11:30

Pursuant to Section 9.118 of the City Charter, the San Francisco Municipal Transportation Agency (SFMTA) requests that the Board of Supervisors authorize the SFMTA to enter into a Special Transit Fare (Fast Pass®) Agreement with the San Francisco Bay Area Rapid Transit District (BART). The SFMTA Board of Directors approved the agreement on January 4, 2011.

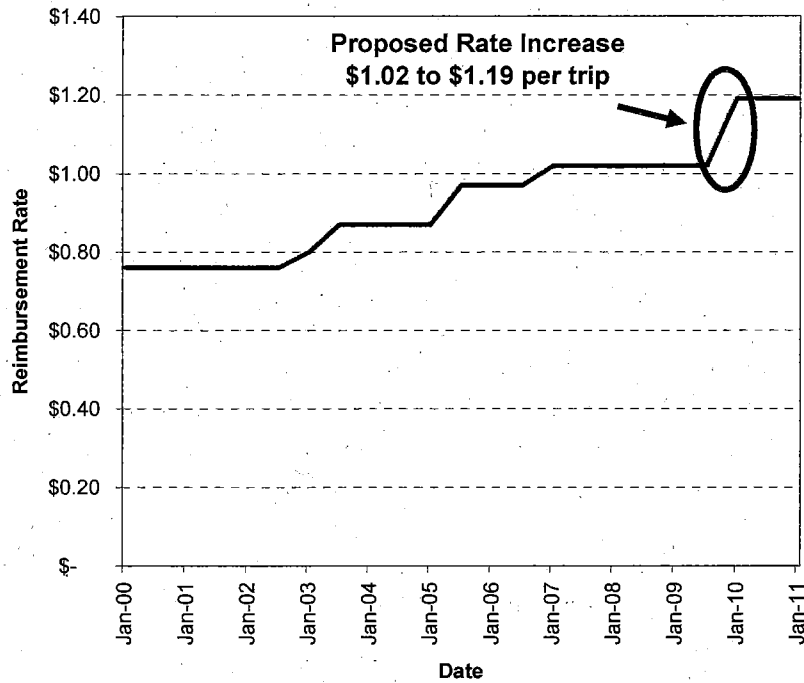
**Background**

The SFMTA and BART have an agreement that allows Muni Adult Fast Pass® users to ride BART within San Francisco city limits at no additional cost. The SFMTA reimburses BART at a fixed rate per trip (currently \$1.02), which historically has represented a discount of slightly above 30 percent over the standard BART ticket price. Based on current annual ridership for 2010 of approximately 8.8 million trips, the SFMTA is paying BART approximately \$9.0 million per year under the existing contract and reimbursement rate. Based on the \$1.02 per trip reimbursement rate, in recent years ridership has been as high as 12.8 million annually, requiring a \$13.0 million payment to BART.

On May 22, 2003, the BART Board adopted a Productivity-Adjusted Consumer Price Index (CPI) Based Fare Rates and Charges policy. This policy specified a formula for adjusting fares bi-annually based on the inflation rate less ½ percent for productivity improvements. Until 2009, BART fares (and the Fast Pass reimbursement rate) had gone up roughly at the rate of inflation per this policy. However, on July 1, 2009, BART advanced its regularly-scheduled fare increase by six months and raised its base fare 25¢ within San Francisco from \$1.50 to \$1.75 – a 17 percent increase. As a result, BART proposed that the SFMTA absorb a corresponding 17 percent increase in the reimbursement rate from \$1.02 to \$1.19 per trip under a new agreement that would be effective retroactive to the date the current

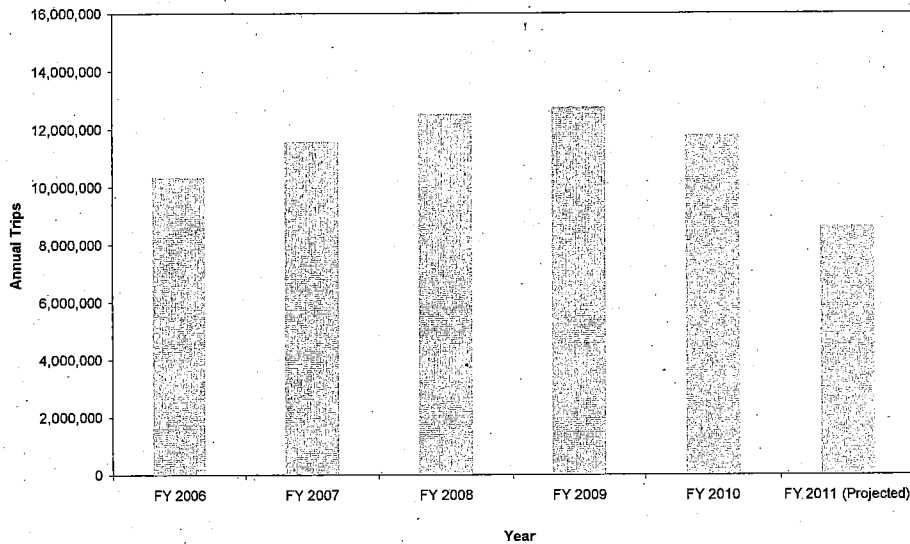
agreement expired (January 1, 2010). Between FY 2006 and 2009, payments to BART grew at an annualized rate of nearly 13 percent due to a combination of ridership growth and increases in the reimbursement rate. However, BART Fast Pass<sup>®</sup> ridership has declined by approximately 30 percent during the past year. The SFMTA raised the price of the Adult Fast Pass<sup>®</sup> from \$45 to \$55 in July 2009, and then to \$70 in January 2010, partly in response to both a cumulative 44 percent increase in payments to BART between FY 2006 and FY 2010 and operating funding cutbacks. The following charts illustrate the historical changes in reimbursement rates and ridership.

**Historical Fast Pass<sup>®</sup> Reimbursement Rates**





### Historic Fast Pass® Ridership



### Proposed Agreement Provisions

The proposed Fast Pass® Agreement contains the following provisions:

- Reimbursement Rate (until 2012) – Reimbursement rates would increase 17 percent from \$1.02 to \$1.19 per trip retroactive to January 1, 2010. In 2012, the reimbursement rate would increase again per BART's existing CPI-based fare increase policy, presumably at a rate tracking inflation. Assuming that ridership remains constant, this provision will result in an immediate increase in annualized payments to BART from \$9.0 million to \$10.5 million, as well as a subsequent inflation-adjusted increase in 2012. If ridership were to grow by 5 percent next year, reimbursement would increase to \$11.0 million.
- Reimbursement Rate (after 2012) – BART's existing CPI-based fare increase policy will expire in 2012. The Agreement would set Fast Pass® reimbursement rate increases to whatever subsequent fare increase policy the BART Board approves in 2012. BART staff anticipates that the BART Board will authorize a long-term fare increase program similar to the current policy, but there is no guarantee what the specifics of that policy might be. (Under the existing fare policy, for example, BART implemented a 17 percent rate increase for intra-San Francisco travel in July 2009.) Therefore, the SFMTA is unable to determine the long-term financial impact of this provision at this time.
- Reimbursement Rate Growth Cap – The Agreement proposes a 10-percent annual reimbursement rate growth cap every year. The actual payments to BART might grow faster than 10-percent annually if ridership increases; for example, a 10-percent reimbursement rate increase combined with 5-percent

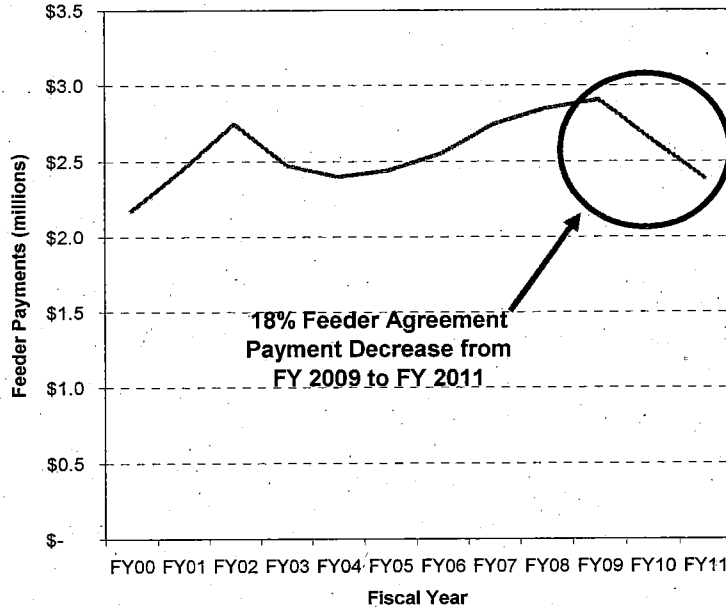
ridership growth would result in a 15.5 percent payment increase to BART. If rate increases reached the 10-percent annual cap after 2012, the per-trip reimbursement rate could reach \$2.23 by 2018 compared to \$1.02 today. At current ridership volumes, annual payments to BART would increase from \$9.0 million to \$19.7 million by 2018. If ridership were to increase 5 percent per year, payments would increase to \$29.1 million.

- Clipper<sup>SM</sup> Card Transaction Fees – BART has agreed to absorb any transaction fees associated with using the Clipper<sup>SM</sup> Card on BART. At the current level of Clipper<sup>SM</sup> transactions (less than 15 million monthly regionwide), the transaction fee is 1.5¢ per trip. If there are between 15 and 30 million Clipper<sup>SM</sup> transactions per month, the fee becomes 1.2¢ per trip. If there are more than 30 million Clipper<sup>SM</sup> transactions per month, the fee lowers to 0.35¢ per trip. Transaction fees are estimated at \$130,000 annually based on current ridership volumes. BART would deduct the applicable transaction fees from the billed reimbursement fees on its invoices.

### ***Feeder Agreement***

Because both Muni and BART provide an integrated transit network in San Francisco, BART also pays the SFMTA for providing feeder transit services to its stations. Unlike the Fast Pass<sup>®</sup> Agreement, however, BART's payment to the SFMTA (\$2.9 million in FY 2009) is adjusted each year based upon the percentage change in BART sales tax revenues. BART projects that feeder payments will decrease by approximately \$262,941 (9.1 percent) from FY 2009 to FY 2010 and a further \$254,616 (9.6 percent) from FY 2010 to FY 2011. In total, feeder payments will have decreased by \$517,557 (17.8 percent) from FY 2009 to FY 2011. Overall reimbursement from BART to SFMTA in FY 2011 is projected to be below levels a decade earlier. Unless there is a modification to the Feeder Agreement methodology, future payments from BART to the SFMTA could continue to be impacted by declining sales tax receipts even if Fast Pass<sup>®</sup> payments increase feeder ridership growth.

**Historical Feeder Agreement Reimbursement from BART to SFMTA**



The SFMTA will be proposing a change to the Feeder Agreement methodology in the upcoming year and will attempt to link the methodology to service levels, instead of sales taxes, which have no correlation to service.

Comparison of BART Fast Pass® Agreement Provisions

Subject	Current Provisions	Proposed Contract Provisions	Annual Financial Impact Assuming Current Ridership Volumes	Annual Financial Impact Assuming 5% Annual Ridership Increase
Reimbursement Rate (through 2012)	\$1.02 per trip	\$1.19 per trip retroactive to January 1, 2010; inflation-based increase effective January 1, 2012	SFMTA payments immediately increase from \$9.0 million to \$10.5 million	SFMTA payments immediately increase from \$9.0 million to \$11.0 million
Reimbursement Rate (after 2012, when BART's CPI-based Fare Increase Policy expires)	\$1.02 per trip	BART staff anticipates that the BART Board will authorize a similar long-term fare increase program and is proposing that the reimbursement rate increase by the same amount.	There is no guarantee that the BART Board will continue a CPI-based fare policy or what the specifics of that policy might be. Therefore, the long-term financial impact cannot be determined at this time but may be as high as \$29.1 million by 2018 (assuming a 10% reimbursement rate and 5% ridership increases per year).	SFMTA payments immediately increase from \$9.0 million to \$11.0 million
Reimbursement Rate Growth Cap	None	Reimbursement rate would increase no more than 10% every year	SFMTA payments increase to \$19.7 million by 2018 (+119%), assuming reimbursement rates reach the 10% annual cap after 2012	SFMTA payments increase to \$29.1 million by 2018 (+223%), assuming reimbursement rates reach the 10% annual cap after 2012
Clipper <sup>SM</sup> Card Transaction Fees	SFMTA absorbs all fees (1.5¢ per transaction at current volumes)	BART would absorb transaction fees for Clipper <sup>SM</sup> Cards with the Adult Fast Pass <sup>®</sup> used on BART	\$130,000 annually in transaction fees absorbed by BART	\$200,000 annually in transaction fees absorbed by BART in 2018
Feeder Agreement Reimbursement	Payment from BART to the SFMTA for Muni feeder services to BART stations adjusts based on the annual percentage change in sales tax revenues.	Not addressed	Payments to the SFMTA (\$2.9 million in FY 2009) will decrease by 9.1 percent in FY 2010 and a further 9.6 percent in FY 2011, resulting in a cumulative \$517,557 (17.8 percent) revenue loss over two years. Future payments from BART to the SFMTA could continue to decrease or stagnate depending on sales tax receipts	Payments to the SFMTA (\$2.9 million in FY 2009) will decrease by 9.1 percent in FY 2010 and a further 9.6 percent in FY 2011, resulting in a cumulative \$517,557 (17.8 percent) revenue loss over two years. Future payments from BART to the SFMTA could continue to decrease or stagnate depending on sales tax receipts

## **Financial Impact**

Under the proposed Agreement, reimbursement rate increase from \$1.02 to \$1.19 will result in an increase in annualized payments to BART from \$9.0 million to \$10.5 million retroactive to January 1, 2010, assuming current ridership levels. If ridership levels increase 5 percent, payments would increase to \$11.0 million.

The proposed Agreement would set Fast Pass® reimbursement rate increases to a CPI-based fare increase policy that BART staff expects the BART Board will approve in 2012. However, there is no guarantee that the BART Board will continue a CPI-based fare policy or what the specifics of that policy might be. Therefore, the long-term financial impact cannot be determined at this time.

Over the eight-year term of the proposed Agreement, the per trip reimbursement rate could increase from \$1.02 today to \$2.23 by 2018 given the annual 10-percent rate-cap provision of the proposed fare increase. This assumes a 2010 rate increase to \$1.19, an inflationary increase to \$1.26 in 2012, and subsequent fare increases reaching the proposed 10-percent annual rate cap.

At current ridership volumes, total payments to BART would increase from \$9.0 million today to \$19.7 million in 2018, assuming reimbursement rates reach the 10 percent annual cap after 2012 (a 119% increase). If ridership were to increase 5 percent annually, SFMTA payments would increase to \$29.1 million by 2018 (a 224% increase).

## **Alternatives Considered**

Alternatives to the proposed Agreement include:

- Discontinue the Fast Pass® Agreement with BART – The Adult Fast Pass® product on the Clipper<sup>SM</sup> Card would no longer be valid on BART within San Francisco. This would result in a large fare increase for customers using both Muni and BART within San Francisco, possibly reducing transit ridership and increasing automobile usage and congestion.
- Further Negotiations – Continue negotiations with BART with the risk that BART may decide to discontinue accepting Adult Fast Passes on BART within San Francisco.

## **Status**

On January 4, 2011, the SFMTA Board of Directors adopted Resolution No. 11-003, which authorized the Executive Director/CEO of the SFMTA to enter into a Special

Transit Fare (Fast Pass®) Agreement with the San Francisco Bay Area Rapid Transit District (BART).

**Recommendation**

Staff recommends that the San Francisco Board of Supervisors authorize the SFMTA Executive Director/CEO to execute the Fast Pass® Agreement between the City and BART.

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

## **BETWEEN**

### **THE CITY AND COUNTY OF SAN FRANCISCO AND**

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

This Special Transit Fare (Fast Pass<sup>®</sup>) Agreement (the "2010 Fast Pass<sup>®</sup> Agreement" or "Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2011, between the City and County of San Francisco ("City"), a municipal corporation, by and through its 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. 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 priced at Seventy Dollars (\$70), and the Adult "M" Fast Pass<sup>®</sup>, good only on Muni and priced at Sixty Dollars (\$60).
9. For purposes of this Agreement, "Fast Pass<sup>®</sup>" refers only to the Adult "A" Fast Pass<sup>®</sup>.
10. The City also accepts as payment for Muni trips the two monthly Fast Pass<sup>®</sup> products electronically stored on the Clipper<sup>SM</sup> smart card: the Adult "A" Fast Pass<sup>®</sup>, good on both Muni and BART within San Francisco and priced at Seventy Dollars (\$70), and the Adult "M" Fast Pass<sup>®</sup>, good only on Muni and priced at Sixty Dollars (\$60). The Clipper<sup>SM</sup> smart card is sold and distributed through the Clipper<sup>SM</sup> program, which is operated by Cubic Transportation Systems under contract with the Metropolitan Transportation Commission (MTC). The Clipper<sup>SM</sup> program collects the revenue from Fast Pass<sup>®</sup> on Clipper<sup>SM</sup> sales, electronically transferring said revenue to SFMTA on a daily basis.
11. Until such time as the Fast Pass<sup>®</sup> on Clipper<sup>SM</sup> fully replaces the Fast Pass<sup>®</sup> magnetic stripe ticket, the Fast Pass<sup>®</sup> magnetic stripe ticket will continue to be distributed by SFMTA, and any revenue from these Fast Pass<sup>®</sup> magnetic stripe ticket sales will be collected by SFMTA.
12. SFMTA agrees to reimburse BART for all trips made on BART within San Francisco by passengers using either the Fast Pass<sup>®</sup> magnetic stripe ticket or the Fast Pass<sup>®</sup> on Clipper<sup>SM</sup>.
13. The Clipper<sup>SM</sup> program is being administered by MTC. Certain transaction fees are associated with the Clipper<sup>SM</sup> program. BART agrees to reimburse SFMTA for Clipper<sup>SM</sup> transaction fees incurred when passengers use the Fast Pass<sup>®</sup> on Clipper<sup>SM</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. BART has adopted a schedule of regular fare increases whereby, every two years, fares increase by a Productivity-Adjusted Consumer-Price-Index (CPI) based percentage. The last such increase is planned for 2012. It is anticipated that a regular CPI-based fare increase schedule in some form will be adopted in order to guide BART fare increases beyond 2012.
16. SFMTA and BART agree that the rate of reimbursement from SFMTA to BART will increase at the same time and by the same amount as the BART fare increase planned for 2012 under the adopted BART CPI-based fare increase program.
17. SFMTA and BART agree that after 2012 the reimbursement rate will increase by the same amount as BART's anticipated long-term fare increase program based on changes in inflation.
18. SFMTA and BART also agree that imposing a cap on the reimbursement rate would help ensure budgetary certainty for SFMTA.
19. BART and the City wish to enter into this 2010 Fast Pass<sup>®</sup> Agreement, covering the period January 1, 2010 through June 30, 2018.

### 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 SFMTA sells Adult "A" Fast Pass<sup>®</sup> magnetic stripe tickets and the Clipper<sup>SM</sup> program sells Adult "A" Fast Passes<sup>®</sup> on

Clipper<sup>SM</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 Fast Pass<sup>®</sup> Agreement.

- C. “Fast Pass<sup>®</sup> magnetic stripe ticket” is defined to mean the Adult “A” Fast Pass<sup>®</sup> product sold as a magnetic stripe ticket.
- D. “Fast Pass<sup>®</sup> on Clipper<sup>SM</sup>” is defined to mean the Adult “A” Fast Pass<sup>®</sup> product that is electronically loaded onto the regional Clipper<sup>SM</sup> smart card.
- E. “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>SM</sup> to enter and exit a BART rail station within the City and County of San Francisco.
- F. “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 the date of implementation of BART’s next fare increase, currently scheduled for 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 Data Acquisition System.
- B. Rate of Reimbursement effective with the 2012 fare increase, currently scheduled for July 1, 2012: The \$1.19 rate will be in effect until it is increased by the same rate as the increase to BART’s fares that is currently scheduled for July 1, 2012; this increase is the last fare increase under the BART Board-adopted Productivity-Adjusted Consumer-Price Index (CPI)-Based fare increase program. It is anticipated that the BART Board shall authorize a similar long-term fare increase program based on changes in inflation to take effect after 2012. The exact details and formula for such a program will be discussed with the BART Board at a future date.

- C. Subsequent Rates of Reimbursement: After the rate increase in 2012 whenever it occurs, and for the remaining term of the 2010 Agreement, the reimbursement rate will increase by the same amount as BART's anticipated similar long-term fare increase program based on changes in inflation.
- D. Rate of Reimbursement Cap: In no circumstances will the percentage increase to the reimbursement rate in any one-year period exceed ten percent (10%).
- E. Required Data: When a Fast Pass<sup>®</sup> paper ticket or a Fast Pass<sup>®</sup> on Clipper<sup>SM</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 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>SM</sup> TRANSACTION FEES

- A. BART agrees to reimburse SFMTA for Clipper<sup>SM</sup> transaction fees incurred when patrons use their Fast Passes<sup>®</sup> on Clipper<sup>SM</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>SM</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, and is as follows.
  - 1. When total region wide Clipper<sup>SM</sup> transactions per month are less than fifteen (15) million, the transaction fee will be 1.5 cents per Fast Pass<sup>®</sup> on Clipper<sup>SM</sup> trip.
  - 2. When total region wide Clipper<sup>SM</sup> transactions per month are between fifteen (15) million and thirty (30) million, the transaction fee will be 1.2 cents per Fast Pass<sup>®</sup> on Clipper<sup>SM</sup> trip.

3. When total region wide Clipper<sup>SM</sup> transactions per month are greater than thirty (30) million, the transaction fee will be 0.35 cents per Fast Pass<sup>®</sup> on Clipper<sup>SM</sup> trip.

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

- A. Distribution: SFMTA will have the responsibility for Fast Pass<sup>®</sup> magnetic stripe ticket distribution, and the Clipper<sup>SM</sup> program will have the responsibility for Fast Pass<sup>®</sup> on Clipper<sup>SM</sup> distribution. Personnel and other incidental costs associated with the Fast Pass<sup>®</sup> magnetic stripe ticket will be borne by SFMTA.
- B. Billing, Accounting, Auditing: SFMTA and BART each will bear its own internal administrative billing, accounting and auditing costs associated with Fast Pass<sup>®</sup> use on BART and administration of this 2010 Fast Pass<sup>®</sup> Agreement.
- C. Fast Pass<sup>®</sup> Magnetic Stripe Ticket Procurement, Quality Control, Fast Pass<sup>®</sup> Magnetic Stripe Ticket Specifications, Maintenance of Equipment, and Accounting of Trips:
  1. SFMTA will be responsible for the following:
    - A. Procurement of all Fast Pass<sup>®</sup> magnetic stripe tickets.
    - B. Quality control, including taking all steps necessary to ensure that Fast Pass<sup>®</sup> magnetic stripe tickets are properly encoded for the time period during which they are valid.
  2. BART will be responsible for the following:
    - A. Ensuring proper maintenance of BART fare collection equipment to enable Fast Pass<sup>®</sup> magnetic stripe ticket use in the BART system.
    - B. Providing technical support for the procurement of all Fast Pass<sup>®</sup> magnetic stripe tickets to ensure their compatibility with BART fare collection equipment.
    - C. Providing accurate accounting of trips taken with Fast Pass<sup>®</sup> magnetic stripe tickets in accordance with the procedures set forth in Section 6.A, below.

D. Fast Pass<sup>®</sup> on Clipper<sup>SM</sup> 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<sup>®</sup> on Clipper<sup>SM</sup> use in the BART system.
- B. Providing accurate accounting of trips taken with the Fast Pass<sup>®</sup> on Clipper<sup>SM</sup> 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 Fast Pass<sup>®</sup> Agreement. Both Parties also agree that good relations will be jeopardized by failure to act in concert on all matters affecting Fast Pass<sup>®</sup> 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 Fast Pass<sup>®</sup> on Clipper<sup>SM</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 made using the Fast Pass<sup>®</sup> magnetic stripe ticket and the Fast Pass<sup>®</sup> on Clipper<sup>SM</sup> by the applicable rate of reimbursement specified in Section 2.
  - 2. The amount BART owes SFMTA for Fast Pass<sup>®</sup> on Clipper<sup>SM</sup> transaction fees will be calculated by multiplying the previous month's total Fast Pass trips made using the Fast Pass<sup>®</sup> on Clipper<sup>SM</sup> by the per trip Clipper<sup>SM</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.

- 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 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 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 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 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. The term of this Agreement shall be from January 1, 2010 through June 30, 2018 unless earlier terminated as provided below.
2. Termination. Either SFMTA or BART may terminate this 2010 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 Deputy General Manager, Finance & Administration  
Notices: Attention Executive Director/CEO

- D. Entire Agreement: The provisions of this 2010 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. Tropical Hardwoods: Pursuant to San Francisco Administrative Code Section 12I.5(b), the City urges contractors not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood product, virgin redwood or virgin redwood wood project.
- F. Compliance with ADA: Without limiting any other provision of this 2010 Fast Pass<sup>®</sup> Agreement, SFMTA and BART will provide the services specified in this 2010 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 Fast Pass<sup>®</sup> Agreement.
- G. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation: This 2010 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 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 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 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 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 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: \_\_\_\_\_  
Dorothy W. Dugger  
General Manager

By: \_\_\_\_\_  
Nathaniel P. Ford Sr.  
Executive Director/CEO

SFMTA Board of Directors  
Resolution No. 11-003  
Dated: 1-4-2011

Attest: R. Boomer  
Roberta Boomer  
Secretary, SFMTA Board

APPROVED AS TO FORM:  
Office of the General Counsel  
By: \_\_\_\_\_  
Patricia McCoy Smith  
Attorney, Office of the General Counsel

APPROVED AS TO FORM:  
Dennis J. Herrera, City Attorney  
By: \_\_\_\_\_  
Robin M. Reitzes  
Deputy City Attorney

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

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

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

RESOLUTION No. 11-003

WHEREAS, SFMTA Adult Fast Pass<sup>®</sup> users make approximately 8.8 million trips on BART within San Francisco each year under the Special Transit Fare (Fast Pass<sup>®</sup>) Agreement ("Agreement") between the City and County of San Francisco (City) and the San Francisco Bay Area Rapid Transit District (BART), which expired on December 31, 2009; and,

WHEREAS, Current payments from the SFMTA to BART are estimated at \$9.0 million per year based on current ridership volumes and a \$1.02 per trip reimbursement rate; and,

WHEREAS, In 2003, the BART Board adopted a Productivity-Adjusted Consumer Price Index (CPI) Based Fare Rates and Charges policy that specified a formula for adjusting fares bi-annually based on the inflation rate less ½ percent for productivity improvements, which policy will be in effect until 2012; and,

WHEREAS, BART advanced its most recent bi-annual fare increase six months, increased its intra-San Francisco fare 17 percent from \$1.50 to \$1.75 on July 1, 2009, and has requested a corresponding increase in the Adult Fast Pass<sup>®</sup> reimbursement rate from \$1.02 to \$1.19 per trip retroactive to January 1, 2010; and,

WHEREAS, The Agreement includes a 10 percent cap on the annual reimbursement rate every year; and,

WHEREAS, BART staff anticipates that the BART Board will implement a similar long-term fare increase policy to take effect upon the expiration of the existing policy in 2012, although the details of such a policy are currently unknown; and,

WHEREAS, Assuming ridership grows by 5 percent annually and reimbursement rates reach the Agreement's proposed 10-percent annual cap after 2012, total payments to BART could increase from \$9.0 million today to \$29.1 million in 2018.; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors authorizes the Executive Director/CEO to execute the Special Transit Fare (Fast Pass<sup>®</sup>) Agreement between the City and BART, with a term from January 1, 2010 to June 30, 2018, contingent upon approval from the San Francisco Board of Supervisors.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of JAN 04 2011

R. Boomer  
Secretary to the Board of Directors  
San Francisco Municipal Transportation Agency

Edwin M. Lee | Mayor

Tom Nolan | Chairman

Jerry Lee | Vice-Chairman

Cameron Beach | Director

Leona Bridges | Director

Cheryl Brinkman | Director

Malcolm Heinicke | Director

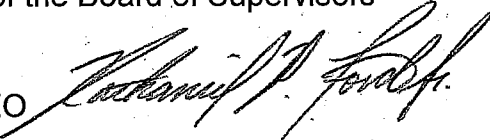
Bruce Oka | Director

Nathaniel P. Ford Sr. | Executive Director/CEO

**MEMORANDUM**

DATE: February 28, 2011

TO: Honorable Members of the Board of Supervisors

FROM: Nathaniel P. Ford Sr.  
Executive Director/CEO 

SUBJECT: Request for Approval of Fast Pass® Agreement with BART

Pursuant to Section 9.118 of the City Charter, the San Francisco Municipal Transportation Agency (SFMTA) requests that the Board of Supervisors authorize the SFMTA to enter into a Special Transit Fare (Fast Pass®) Agreement with the San Francisco Bay Area Rapid Transit District (BART). The SFMTA Board of Directors approved the agreement on January 4, 2011.

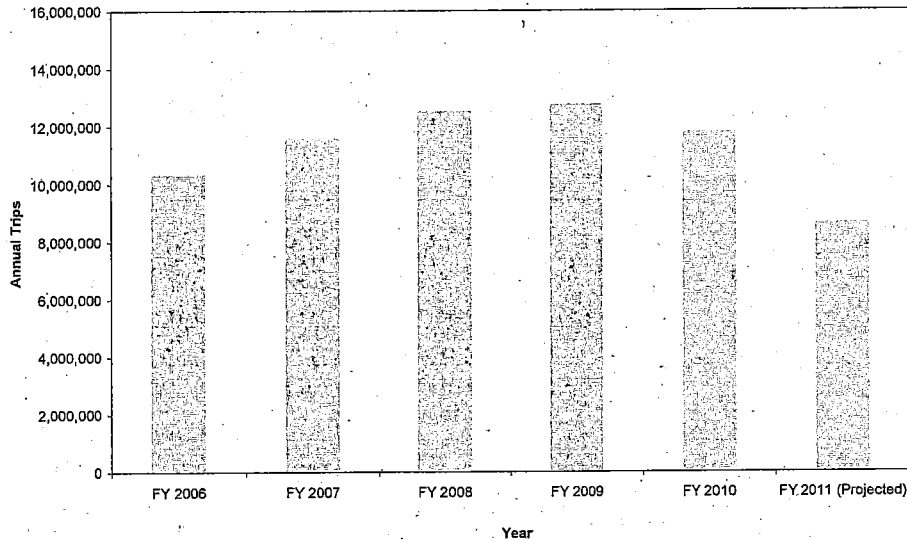
**Background**

The SFMTA and BART have an agreement that allows Muni Adult Fast Pass® users to ride BART within San Francisco city limits at no additional cost. The SFMTA reimburses BART at a fixed rate per trip (currently \$1.02), which historically has represented a discount of slightly above 30 percent over the standard BART ticket price. Based on current annual ridership for 2010 of approximately 8.8 million trips, the SFMTA is paying BART approximately \$9.0 million per year under the existing contract and reimbursement rate. Based on the \$1.02 per trip reimbursement rate, in recent years ridership has been as high as 12.8 million annually, requiring a \$13.0 million payment to BART.

On May 22, 2003, the BART Board adopted a Productivity-Adjusted Consumer Price Index (CPI) Based Fare Rates and Charges policy. This policy specified a formula for adjusting fares bi-annually based on the inflation rate less ½ percent for productivity improvements. Until 2009, BART fares (and the Fast Pass reimbursement rate) had gone up roughly at the rate of inflation per this policy. However, on July 1, 2009, BART advanced its regularly-scheduled fare increase by six months and raised its base fare 25¢ within San Francisco from \$1.50 to \$1.75 – a 17 percent increase. As a result, BART proposed that the SFMTA absorb a corresponding 17 percent increase in the reimbursement rate from \$1.02 to \$1.19 per trip under a new agreement that would be effective retroactive to the date the current



### Historic Fast Pass® Ridership

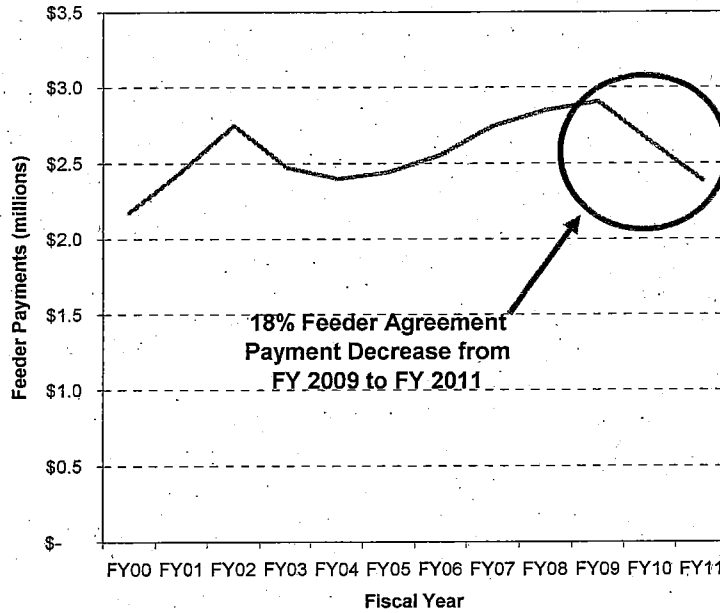


### Proposed Agreement Provisions

The proposed Fast Pass® Agreement contains the following provisions:

- Reimbursement Rate (until 2012) – Reimbursement rates would increase 17 percent from \$1.02 to \$1.19 per trip retroactive to January 1, 2010. In 2012, the reimbursement rate would increase again per BART's existing CPI-based fare increase policy, presumably at a rate tracking inflation. Assuming that ridership remains constant, this provision will result in an immediate increase in annualized payments to BART from \$9.0 million to \$10.5 million, as well as a subsequent inflation-adjusted increase in 2012. If ridership were to grow by 5 percent next year, reimbursement would increase to \$11.0 million.
- Reimbursement Rate (after 2012) – BART's existing CPI-based fare increase policy will expire in 2012. The Agreement would set Fast Pass® reimbursement rate increases to whatever subsequent fare increase policy the BART Board approves in 2012. BART staff anticipates that the BART Board will authorize a long-term fare increase program similar to the current policy, but there is no guarantee what the specifics of that policy might be. (Under the existing fare policy, for example, BART implemented a 17 percent rate increase for intra-San Francisco travel in July 2009.) Therefore, the SFMTA is unable to determine the long-term financial impact of this provision at this time.
- Reimbursement Rate Growth Cap – The Agreement proposes a 10-percent annual reimbursement rate growth cap every year. The actual payments to BART might grow faster than 10-percent annually if ridership increases; for example, a 10-percent reimbursement rate increase combined with 5-percent

Historical Feeder Agreement Reimbursement from BART to SFMTA



The SFMTA will be proposing a change to the Feeder Agreement methodology in the upcoming year and will attempt to link the methodology to service levels, instead of sales taxes, which have no correlation to service.

## Financial Impact

Under the proposed Agreement, reimbursement rate increase from \$1.02 to \$1.19 will result in an increase in annualized payments to BART from \$9.0 million to \$10.5 million retroactive to January 1, 2010, assuming current ridership levels. If ridership levels increase 5 percent, payments would increase to \$11.0 million.

The proposed Agreement would set Fast Pass® reimbursement rate increases to a CPI-based fare increase policy that BART staff expects the BART Board will approve in 2012. However, there is no guarantee that the BART Board will continue a CPI-based fare policy or what the specifics of that policy might be. Therefore, the long-term financial impact cannot be determined at this time.

Over the eight-year term of the proposed Agreement, the per trip reimbursement rate could increase from \$1.02 today to \$2.23 by 2018 given the annual 10-percent rate-cap provision of the proposed fare increase. This assumes a 2010 rate increase to \$1.19, an inflationary increase to \$1.26 in 2012, and subsequent fare increases reaching the proposed 10-percent annual rate cap.

At current ridership volumes, total payments to BART would increase from \$9.0 million today to \$19.7 million in 2018, assuming reimbursement rates reach the 10 percent annual cap after 2012 (a 119% increase). If ridership were to increase 5 percent annually, SFMTA payments would increase to \$29.1 million by 2018 (a 224% increase).

## Alternatives Considered

Alternatives to the proposed Agreement include:

- Discontinue the Fast Pass® Agreement with BART – The Adult Fast Pass® product on the Clipper<sup>SM</sup> Card would no longer be valid on BART within San Francisco. This would result in a large fare increase for customers using both Muni and BART within San Francisco, possibly reducing transit ridership and increasing automobile usage and congestion.
- Further Negotiations – Continue negotiations with BART with the risk that BART may decide to discontinue accepting Adult Fast Passes on BART within San Francisco.

## Status

On January 4, 2011, the SFMTA Board of Directors adopted Resolution No. 11-003, which authorized the Executive Director/CEO of the SFMTA to enter into a Special

**FORM SFEC-126:**  
**NOTIFICATION OF CONTRACT APPROVAL**  
(S.F. Campaign and Governmental Conduct Code § 1.126)

**FILE NO. 110201**

<b>City Elective Officer Information</b> <i>(Please print clearly.)</i>	
Name of City elective officer(s): Members, San Francisco Board of Supervisors	City elective office(s) held: Members, San Francisco Board of Supervisors
<b>Contractor Information</b> <i>(Please print clearly.)</i>	
Name of contractor: San Francisco Bay Area Rapid Transit District (BART)	
<i>Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. Use additional pages as necessary.</i>	
(1) BART Board of Directors: Gail Murray, Joel Keller, Bob Franklin, Robert Raburn, John McPartland, Thomas Blalock, Lynette Sweet, James Fang, Tom Radulovich; (2) General Manager: Dorothy Dugger, Controller/Treasurer: Scott Schroeder, Assistant General Manager of Operations: Paul Oversier; (3) none; (4) none; (5) none	
Contractor address: 300 Lakeside Dr., PO Box 12688, Oakland, CA 94604-2688	
Date that contract was approved:	Amount of contract: Varies by BART Fast Pass® ridership and per-trip reimbursement rate, whose long-term values are unknown at this time. Amount estimated at \$10.5 million in FY 2011, but amount unknown by contract expiration in FY 2018.
Describe the nature of the contract that was approved: SFMTA currently reimburses BART \$1.02 per Fast Pass® trip taken on BART within San Francisco. Under the contract, in effect through FY 2018, this rate would increase to \$1.19 retroactive to 1/1/10 and thereafter would increase based on the BART Board's fare policy subject to a 10% annual rate increase cap. BART's current fare policy expires in 2012. Because the subsequent fare policy and long-term ridership is unknown at this time, long-term contract expenditures are also unknown. If ridership were to increase 5% and reimbursement rates were to reach the 10% cap each year, annual payments by FY 2018 would increase to approximately \$29 million.	
Comments:	

This contract was approved by (check applicable):

- the City elective officer(s) identified on this form  
 a board on which the City elective officer(s) serves \_\_\_\_\_

Print Name of Board

- the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on this form sits

\_\_\_\_\_  
Print Name of Board

<b>Filer Information</b> <i>(Please print clearly.)</i>	
Name of filer: Angela Calvillo, Clerk of the Board	Contact telephone number: ( 415 ) 554-5184
Address: CityHall, Room 244 1 Dr. Carlton B. Goodlett Pl. San Francisco, CA 94102	E-mail: Board.of.Supervisor@sfgov.org

\_\_\_\_\_  
Signature of City Elective Officer (if submitted by City elective officer)

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk)

\_\_\_\_\_  
Date Signed