

File No. 121187

Committee Item No. 9

Board Item No. \_\_\_\_\_

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee

Date 01/30/2013

Board of Supervisors Meeting

Date \_\_\_\_\_

#### Cmte Board

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Completed by: Victor Young Date January 25, 2013

Completed by: Victor Young Date \_\_\_\_\_

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

3 **Resolution retroactively approving the Special Transit Fare (Fast Pass) Agreement**  
4 **between the City and County of San Francisco and the Bay Area Rapid Transit District,**  
5 **with a term from January 1, 2010, to June 30, 2014.**  
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; and

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

20 WHEREAS, Commencing July 1, 2012, a subsequent reimbursement rate increase  
21 from \$1.19 to \$1.21 per trip, based on BART's Productivity-Adjusted Consumer Price Index  
22 (CPI) Based Fare Rates and Charges policy, became effective for intra-San Francisco trips on  
23 BART; and  
24  
25

1           WHEREAS, SFMTA and BART have negotiated an agreement reflecting the foregoing  
2 rate increases, including a \$14 million cap on the annual reimbursement rate; which  
3 agreement is on file with the Clerk of the Board of Supervisors in File No. 121187, and is  
4 hereby declared to be a part of this motion as if set forth fully herein; and,

5           WHEREAS, On November 20, 2012, the SFMTA Board of Directors adopted  
6 Resolution No. 12-143, which authorized the Director of Transportation to execute the Special  
7 Transit Fare (Fast Pass<sup>®</sup>) Agreement between the City and BART, with a term from January  
8 1, 2010 to June 30, 2014, subject to approval from the Board of Supervisors of this  
9 Agreement and a separate Feeder Agreement; now, therefore, be it

10           RESOLVED, That the Board of Supervisors retroactively approves the Special Transit  
11 Fare (Fast Pass) Agreement between the City and BART, with a term from January 1, 2010,  
12 to June 30, 2014.

**Items 8 and 9 -  
Files 12-1186 & 12-1187**

**Department:  
Municipal Transportation Agency (SFMTA)**

**EXECUTIVE SUMMARY**

**Legislative Objective**

- 12-1186: The proposed resolution would approve a 10-year Feeder agreement retroactively from July 1, 2010 through June 30, 2020 between the City, on behalf of the Municipal Transportation Agency (SFMTA), and Bay Area Rapid Transit (BART), in which BART partially reimburses SFMTA for the costs of passenger transfer trips between the San Francisco Municipal Railway (MUNI) and BART.
- 12-1187: The proposed resolution would approve the Fast Pass agreement between the City, on behalf of SFMTA, and BART, for a 4.5-year term retroactive to January 1, 2010 through June 30, 2014, in which SFMTA partially reimburses BART for BART trips in San Francisco taken by Adult Fast Pass users who purchase the Fast Pass from SFMTA with the option to take unlimited monthly rides on BART within San Francisco.

**Key Points**

- A proposed resolution approving a new Fast Pass agreement with an 8.5-year term retroactive from January 1, 2010 through June 30, 2018 was considered by the Budget and Finance Committee on May 4, 2011 (File 11-0201). The Budget and Finance Committee tabled the proposed resolution and requested that SFMTA staff renegotiate the terms of this agreement along with the Feeder agreement discussed below and bring back both agreements jointly to the Board of Supervisors for approval.
- Under the proposed Feeder agreement (File 12-1186), BART pays SFMTA to offset a portion of SFMTA's costs to provide MUNI feeder services to BART stations located in San Francisco. The proposed Feeder agreement includes retroactive payments by BART to SFMTA of \$2,654,357 in FY 2010-11 and \$2,667,629 in FY 2011-12. From FY 2012-2013 through FY 2019-20, payments are adjusted annually based on the percentage change of ridership and the San Francisco Bay Area Consumer Price Index (CPI), up to a maximum of 5 percent annually. Feeder ridership changes would be calculated using the number of MUNI feeder trips taken by passengers who then transfer to BART which were tracked on the Clipper Card for the two preceding years.
- Under the proposed Fast Pass agreement (File 12-1187), SFMTA pays BART \$1.19 for each BART trip in San Francisco using the Fast Pass with the option to take unlimited trips on BART within San Francisco, retroactively from January 1, 2010 through June 30, 2012, increasing to \$1.21 per BART trip retroactively from July 1, 2012 through June 30, 2014. There is an annual reimbursement cap on payments by SFMTA to BART of \$14 million per fiscal year.

**Fiscal Analysis**

- 12-1186: Payments by BART to SFMTA for SFMTA providing feeder service to BART stations in San Francisco are estimated to total \$32,069,140 under the proposed 10-year Feeder agreement assuming a 2.88 annual increase in CPI and a 3 percent ridership increase, resulting in annual increases in payments of five percent due to the cap limiting increases in payments to five percent annually.
- 12-1187: SFMTA would be required to reimburse BART an estimated \$42,763,704 under the proposed Fast Pass agreement, less the \$8,690,297 which has previously been paid by SFMTA to BART for a net retroactive payment by SFMTA to BART of \$34,073,407.

- Based on the estimated payments from FY 2010-11 through FY 2013-14 for both the proposed Fast Pass, an estimated payment of \$37,498,332 by SFMTA to BART and the Feeder agreement, an estimated payment of \$11,054,057 by BART to SFMTA, SFMTA would pay approximately \$26,444,275 in total net payments to BART, the overlapping time period of the proposed Fast Pass and Feeder agreements.

### **Policy Considerations**

- 12-1186: The proposed Feeder agreement limits increases in annual payments by BART to SFMTA to five percent. However, there is no limit to the decrease in annual payments. Since FY 1998-99, the annual change in feeder ridership has ranged between a 6.8 percent decrease and a 13.4 percent increase. Therefore, the Budget and Legislative Analyst recommends a five percent floor on decreases in payments from BART to SFMTA to stabilize Feeder payments by BART to SFMTA.
- 12-1187: In the Budget and Legislative Analyst's report to the May 4, 2011 Budget and Finance Committee, the Budget and Legislative Analyst recommended that the Budget and Finance Committee request that SFMTA staff renegotiate the terms of the Fast Pass agreement, including (1) adjusting annual reimbursements by SFMTA to BART based on the rate of inflation rather than increases in BART fares, and (2) capping annual SFMTA's reimbursement increases to BART. As noted above, the proposed Fast Pass agreement includes an annual reimbursement payment cap of \$14,000,000, as previously recommended by the Budget and Legislative Analyst, but continues to adjust annual reimbursements by SFMTA to BART based on the percentage increase in BART fares rather than the rate of inflation.
- 12-1187: The annual cap of \$14,000,000 payable by SFMTA to BART is \$4,390,842, or 45.7 percent, more than any estimated annual payment, the maximum being \$9,609,158, under the proposed Fast Pass agreement. Therefore, the annual cap of \$14,000,000, which would likely not serve to contain payment increases in a significant way, should be reduced to \$10,000,000.
- 12-1187: Because SFMTA's FY 2011-12 incremental revenues of \$3,608,840 from the \$10 additional fee for purchasing a Fast Pass with the option to take unlimited monthly rides on BART within San Francisco are \$5,584,544 less than SFMTA's FY 2011-12 payment to BART of \$9,193,384 under the Fast Pass agreement, the Budget and Legislative Analyst considers approval of the proposed resolution to be a policy matter for the Board of Supervisors.

### **Recommendations**

#### 12-1186

- Amend the proposed resolution to specify that the proposed Feeder agreement will be revised to correct the formula for payment increases from FY 2012-13 through FY 2019-20, as agreed to by SFMTA.
- Amend the proposed resolution to require that the proposed Feeder agreement be revised to include a floor of no more than five percent on decreases in payments from BART to SFMTA.
- Approve the proposed resolution as amended.

#### 12-1187

- Amend the proposed resolution to require that the proposed Fast Pass agreement be revised to reduce the amount of the annual cap by \$3,500,000 to \$10,500,000 to reflect actual anticipated payments by SFMTA to BART. Approval of the proposed resolution, as amended, is a policy decision for the Board of Supervisors.

## MANDATE STATEMENT/ BACKGROUND

### Mandate Statement

12-1186: In accordance with Charter Section 9.118(a), City agreements, or amendments to such City agreements, with anticipated revenue of \$1,000,000 or more are subject to approval of the Board of Supervisors.

12-1187: 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

#### 12-1186: Feeder Agreement

Since 1987, Bay Area Rapid Transit (BART) and the San Francisco Municipal Transportation Agency (SFMTA) have entered into annual Feeder agreements, in which BART pays the SFMTA to offset a portion of SFMTA's costs to provide Municipal Railway (MUNI) services to BART stations located in San Francisco. The original methodology for calculating BART's Feeder agreement payment to the SFMTA was based on the difference between SFMTA's operating costs and fare revenues for each passenger trip resulting from a transfer between BART and MUNI, multiplied by the number of trips.

Since 1991, BART's Feeder agreement payments to the SFMTA have been adjusted annually by the percentage change in Sales Tax revenue allocated to BART<sup>1</sup> for the two years prior to the current year's Feeder agreement, irrespective of the actual number of transfer trips between BART and MUNI. Under that method, in August 2011 the Board of Supervisors approved a resolution authorizing the payment by BART to SFMTA of \$2,641,151 for FY 2009-10 based on a FY 2008-09 payment of \$2,904,092 minus \$262,941, the 9.1 percentage decrease in the Sales Tax allocation to BART in FY 2008-09 compared to FY 2007-08 (Resolution No. 348-11). However, the resolution "urge[d] the SFMTA and BART to renegotiate the methodology for the FY 2011 and FY 2012 Feeder agreements to provide a clear nexus between the actual number of transfers trips between BART and Muni and the related Feeder agreement payment by BART to the SFMTA."

#### 12-1187: Fast Pass Agreement

The Fast Pass agreement between BART and SFMTA allows Adult Fast Pass users who purchase the Fast Pass with the BART option<sup>2</sup> to take an unlimited number of monthly rides on BART within San Francisco city limits at no additional cost to the rider, with reimbursements for each trip to be made by the SFMTA to BART at a fixed reimbursement rate. According to Mr. Jason Lee, SFMTA Financial Services Manager, approximately 34.4 percent of Fast Passes sold in FY 2011-12 were Fast Passes with the BART option. The most recent Fast Pass agreement, with a two-year term from December 21, 2007 through December 31, 2009, provided that

<sup>1</sup> BART collects 0.5 percent Sales Tax from San Francisco, Alameda, and Contra Costa counties. Of this amount, BART retains 75 percent and the remaining 25 percent is split evenly between AC Transit and SFMTA.

<sup>2</sup> The Adult Fast Pass with the BART option costs, \$74, \$10 more than the \$64 MUNI-only Adult Fast Pass.

SFMTA pay BART a fixed reimbursement rate of \$1.02 per trip.<sup>3</sup> SFMTA continued to pay BART at the same \$1.02 reimbursement rate until December, 2010. Since December, 2010, no payments by SFMTA to BART have been made because SFMTA did not have the contractual authority to continue payments.

A proposed resolution approving a new Fast Pass agreement with an 8.5-year term retroactive from January 1, 2010 through June 30, 2018 was considered by the Budget and Finance Committee on May 4, 2011 (File 11-0201). Key provisions of that new Fast Pass agreement included:

- Prior to July 1, 2012 - An increase in the reimbursement rate payable by SFMTA to BART from \$1.02 per trip to \$1.19 per trip retroactive to January 1, 2010 through June 30, 2012, resulting in a reimbursement rate discount of \$0.56 or 32 percent from the BART fare in San Francisco of \$1.75.
- Beginning on July 1, 2012 – An increase in the reimbursement rate payable by SFMTA to BART by the same amount as BART fare increases, rather than being tied to the rate of inflation. However, BART's fare policy expired on July, 2012 and the structure of a new fare policy was not yet known;
- Annual reimbursement rate increases limited to ten percent; and
- No not-to-exceed amount capping SFMTA's reimbursements to BART on an annual basis.

As a result, the Budget and Finance Committee tabled the proposed resolution and requested that SFMTA staff renegotiate the terms of this agreement along with the Feeder agreement discussed below and to bring back both renegotiated agreements jointly to the Board of Supervisors for approval.

## DETAILS OF PROPOSED LEGISLATION

12-1186: The proposed resolution would retroactively approve a 10-year Feeder agreement between the City, on behalf of SFMTA, and BART for payment by BART to SFMTA for transfer trips made on San Francisco Municipal Railway (MUNI) to BART stations located in San Francisco with a term retroactive from July 1, 2010 through June 30, 2020 (Fiscal Years 2010-11 through 2019-20). The proposed Feeder agreement's key provisions include:

- FY 2010-11: Payment by BART to SFMTA of \$2,654,357 (an increase of 0.5 percent above the FY 2009-10 reimbursement amount of \$2,641,151);
- FY 2011-12: Payment by BART to SFMTA of \$2,667,629 (an increase of 0.5 percent above the FY 2010-11 reimbursement amount of \$2,654,357);
- FY 2012-13 through FY 2019-20: Payments by BART to SFMTA are adjusted annually based on the percentage change of ridership and the San Francisco Bay Area Consumer

<sup>3</sup> From December 21, 2007 through June 30, 2009, the BART fare in San Francisco was \$1.50, or \$0.48 more than the SFMTA reimbursement of \$1.02 made to BART. From July 1, 2009 through December 31, 2009, when the prior agreement expired, the BART fare in San Francisco was \$1.75, or \$0.73 more than the SFMTA reimbursement to BART of \$1.02.

Price Index (CPI), up to a maximum of 5 percent annually<sup>4</sup>. Feeder ridership changes would be calculated by the number of MUNI feeder trips to BART tracked on the Clipper Card<sup>5</sup> for the two preceding years.

According to Mr. Lee, the proposed Feeder agreement is a negotiated agreement between SFMTA and BART which is entered into voluntarily.

Based on inquiries by the Budget and Legislative Analyst, Mr. Lee advises that the formula currently included in the proposed Feeder agreement is incorrect. Therefore, the Budget and Legislative Analyst recommends that the proposed Feeder agreement should be amended to accurately reflect the method for calculating annual payment<sup>6</sup>.

12-1187: The proposed resolution would approve a new 4.5-year Fast Pass agreement which allows Adult Fast Pass users who purchase the Fast Pass with the BART option<sup>7</sup> to take an unlimited number of monthly rides on BART within San Francisco city limits at no additional cost to the rider, between the City, on behalf of SFMTA, and BART, with a term retroactive to January 1, 2010 through June 30, 2014. Either SFMTA 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 Fast Pass agreement's key provisions include:

- A \$1.19 reimbursement rate payable by SFMTA to BART would apply retroactively to January 1, 2010 and would be in effect until June 30, 2012. This \$1.19 rate represents a 16.7 percent increase over the current \$1.02 rate. 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.
- A \$1.21 reimbursement rate payable by SFMTA to BART, an increase of 1.7 percent, based on BART's most recent July, 2012 fare increase of 1.4 percent, would commence retroactive to July 1, 2012 and remain in effect through June 30, 2014.<sup>8</sup> However, the BART fares for trips within San Francisco stayed the same at \$1.75 per trip other than trips between Market Street stations and the Balboa Park station, which increased by \$0.05 to \$1.80 per trip or 2.9 percent increase. Those trips comprise approximately 37 percent of trips taken by Fast Pass riders on BART.
- SFMTA and BART must begin negotiations by January 1, 2014 for a new Fast Pass agreement. If both parties cannot agree on the terms of a new agreement effective July 1, 2014, then the Fast Pass agreement shall continue on a month-to-month basis with a reimbursement rate adjustment based on BART's CPI formula effective on the date of a

<sup>4</sup> The formula in the proposed Feeder agreement states that: Annual Feeder payment = Previous Year's Feeder payment \*(((1 + Percentage Change in Ridership with 1 being 100 percent)\*(1+Percentage Change in CPI)) -1). This formula incorrectly subtracts the previous year's feeder payment from the calculation.

<sup>5</sup> The Clipper Card is an all-in-one transit card for Bay Area transit systems, including BART and MUNI, that keeps track of passes, discount tickets, ride books and cash value that are loaded onto it, while applying all applicable fares, discounts and transfer rules.

<sup>6</sup> The formula which correctly calculates the annual Feeder payment is: Annual Feeder payment = Previous Year's Feeder payment \*((1 + Percentage Change in Ridership with 1 being 100 percent)\*(1+Percentage Change in CPI)).

<sup>7</sup> The Adult Fast Pass with the BART option costs, \$74, \$10 more than the \$64 MUNI-only Adult Fast Pass.

<sup>8</sup> \$1.19 x 1.014 percent = \$1.2067, rounded to \$1.21.



BART fare increase on or after July 1, 2014.

- There is an annual reimbursement payment cap of \$14 million per fiscal year payable by SFMTA to BART. Based on actual ridership, the SFMTA would pay BART \$9,609,158 for FY 2010-11 Fast Pass trips.

In the Budget and Legislative Analyst's report to the May 4, 2011 Budget and Finance Committee, the Budget and Legislative Analyst recommended that the Budget and Finance Committee request that SFMTA staff renegotiate the terms of this agreement, including (1) adjusting annual reimbursements by SFMTA to BART based on the rate of inflation rather than increases in BART fares, and (2) capping annual SFMTA's reimbursement increases to BART. As noted above, the proposed Fast Pass agreement includes an annual cap on reimbursements made by SFMTA to BART of \$14,000,000, as previously recommended by the Budget and Legislative Analyst, but continues to adjust annual reimbursements by SFMTA to BART based on the percentage increase in BART fares rather than the rate of inflation.

## FISCAL ANALYSIS

### **12-1186: BART Feeder Agreement Payments to SFMTA from FY 2010-11 through FY 2019-20 Are Estimated to be \$32,069,140**

As previously noted, the formula included in the proposed feeder agreement is incorrect. As shown below in Table 1 below, based on the SFMTA-corrected formula included in the proposed Feeder agreement, the payments by BART to SFMTA are estimated to total \$32,069,140 over the ten-year term of the agreement. According to Mr. Lee, these estimates are based on two assumptions:

1. Ridership will increase at an average of 3 percent annually, based on recent BART ridership trends.
2. CPI annual adjustments will average 2.88 percent based on fluctuations in CPI between 2.5 and 3.25 percent.

Table 1 below summarizes payments both constrained by the 5 percent annual increase cap and unconstrained by any payment increase cap.

**Table 1: Estimated Payments by BART to SFMTA under Feeder Agreement**

	Estimated Payment to SFMTA by BART Without Cap	Estimated Payment to SFMTA by BART with 5% Cap	Difference
FY 2010-11	\$2,654,357	\$2,654,357	\$0
FY 2011-12	2,667,629	2,667,629	0
FY 2012-13	2,826,790	2,801,010	25,780
FY 2013-14	2,995,448	2,941,061	54,387
FY 2014-15	3,174,168	3,088,114	86,054
FY 2015-16	3,363,552	3,242,520	121,032
FY 2016-17	3,564,235	3,404,646	159,589
FY 2017-18	3,776,892	3,574,878	202,014
FY 2018-19	4,002,236	3,753,622	248,614
FY 2019-20	4,241,025	3,941,303	299,722
<b>Total</b>	<b>\$33,266,333</b>	<b>\$32,069,140</b>	<b>\$1,197,193</b>

Given an average CPI of 2.88 percent, a 2.1 percent increase in ridership would result in actual additional payments by BART to SFMTA under the proposed Feeder agreement due to the five percent cap on annual payment increases. If ridership increases beyond that 2.1 percent in any given year, SFMTA would not be additionally reimbursed for that increase. In addition, it is possible that ridership could decrease and the proposed Feeder agreement does not include a floor on decreases in annual payments.

Without the 5 percent annual cap on payment increases, payments would increase approximately 6 percent annually and result in a total of \$33,266,333 in payments by BART to SFMTA, an increase of approximately \$1,197,193 in payments over the term of the proposed Feeder agreement with the five percent cap in place (See Table 1 above). While the Budget and Legislative Analyst believes that the five percent cap is reasonable, the Budget and Legislative Analyst notes that there is currently no floor limiting how much the annual payments by BART to SFMTA could decrease over the 10-year term included in the proposed Feeder agreement.

**12-1187: The Proposed Fast Pass Agreement Would Result in Total Estimated Payments by SFMTA to BART of \$42,763,704**

As shown in Table 2 below, SFMTA would pay BART an estimated \$42,763,704 under the proposed Fast Pass agreement from January 1, 2010 through June 30, 2014, less the \$8,690,297 which has already been paid by SFMTA to BART, or a net of \$34,073,407. If the proposed agreement is approved, SFMTA would be required to make an initial one-time retroactive payment of \$15,377,617 to BART (See Table 2 below)

**Table 2: Total Estimated Payments by SFMTA to BART from January 1, 2010 through June 30, 2014**

	Trips	Amount Previously Paid by SFMTA to BART at \$1.02 Reimbursement Rate	Proposed Annual Reimbursement by SFMTA to BART	Amount SFMTA Would Owe BART Retroactively if Proposed Agreement is Approved
<b>\$1.19 Per Trip Reimbursement Rate</b>				
January 1, 2010 – June 30, 2010	4,424,682	\$4,513,175	\$5,265,372	\$752,197
July 1, 2010 – June 30, 2011	8,074,923	4,177,122	9,609,158	5,432,036
July 1, 2011 – June 30, 2012	7,725,533	0	9,193,384	9,193,384
<b>Subtotal for Retroactive Payments</b>	<b>20,225,138</b>	<b>\$8,690,297</b>	<b>\$24,067,914</b>	<b>\$15,377,617</b>
<b>\$1.21 Per Trip Reimbursement Rate</b>				
July 1, 2012 – June 30, 2013	7,725,533	\$0	\$9,347,895	\$0
July 1, 2013 – June 30, 2014	7,725,533	0	9,347,895	0
<b>Subtotal for Estimated Payments</b>	<b>15,451,066</b>	<b>\$0</b>	<b>\$18,695,790</b>	<b>\$0</b>
<b>Total</b>	<b>35,676,204</b>	<b>\$8,690,297</b>	<b>\$42,763,704</b>	<b>\$15,377,617</b>

**Two Agreements Result in Estimated Annual Net Payments of \$6,406,834 to \$6,954,801 by SFMTA to BART from FY 2010-11 through FY 2013-14**

As shown in Table 3 below, based on the estimated payments for both the proposed Fast Pass and Feeder agreements, SFMTA would pay approximately \$26,444,275 in total net payments to BART from FY 2010-11 through FY 2013-14, the overlapping time period of the proposed Fast Pass and Feeder agreements.

**Table 3: Net Payments to BART from FY 2010-11 through FY 2013-14**

	Estimated Payments by BART to SFMTA Under Proposed Feeder Agreement	Estimated Payments by SFMTA to BART Under Proposed Fast Pass Agreement	Net Payments by SFMTA to BART
<b>FY 2010-11</b>	\$2,654,357	\$9,609,158	\$6,954,801
<b>FY 2011-12</b>	2,657,629	9,193,384	6,535,755
<b>FY 2012-13</b>	2,801,010	9,347,895	6,546,885
<b>FY 2013-14</b>	2,941,061	9,347,895	6,406,834
<b>Total</b>	<b>\$11,054,057</b>	<b>\$37,498,332</b>	<b>\$26,444,275</b>

**POLICY CONSIDERATIONS****12-1186: The Proposed Feeder Agreement Only Includes a Cap on Increases in Payments but Does not Cap Decreases**

As previously noted, the proposed Feeder agreement limits increases in annual payments by BART to SFMTA to five percent. According to Mr. Lee, this five percent cap was agreed upon during negotiations<sup>9</sup>. However, there is no limit to the decrease in annual payments payable by BART to SFMTA. While Mr. Lee advises that electronically tracked feeder ridership is not available for previous years, the total number of San Francisco exits from San Francisco BART stations is available and would serve as an approximation for potential future changes in feeder ridership. Based on the available San Francisco BART exit data, ridership on MUNI could potentially fluctuate significantly from year to year. Since FY 1998-99, the annual change has ranged between a 6.8 percent decrease and a 13.4 percent increase. Therefore, the Budget and Legislative Analyst recommends revising the proposed resolution to require a five percent floor on decreases in payments to stabilize payments by BART to SFMTA under the proposed Feeder agreement.

**12-1187: The \$14,000,000 Annual Cap in Payments by SFMTA to BART is Too High**

The proposed Fast Pass agreement includes a cap on payments by SFMTA to BART, as previously recommended by the Budget and Legislative Analyst. However, the annual cap of \$14,000,000 is \$4,390,842, or 45.7 percent, more than any estimated annual payment, the maximum being \$9,609,158, under the proposed Fast Pass agreement. Therefore, the annual cap of \$14,000,000 payable by SFMTA to BART, which would likely not serve to contain payment increases in a significant way, should be reduced.

In order to establish an annual cap which serves to contain payments payable by SFMTA to BART, the proposed Fast Pass agreement should be amended to reduce the cap from \$14,000,000 to a cap of \$10,500,000, a reduction of \$3,500,000, which is more practically linked to possible fluctuations in payments under a Fast Pass agreement.

**12-1187: SFMTA's Payment to BART under the Fast Pass Agreement is Less than SFMTA's Incremental Revenues from the Fast Pass**

Because SFMTA's FY 2011-12 incremental revenues of \$3,608,840 from the \$10 additional fee for purchasing the Fast Pass with the Bart option are \$5,584,544 less than SFMTA's FY 2011-12 payment to BART of \$9,193,384 under the Fast Pass agreement, the Budget and Legislative Analyst considers approval of the proposed resolution to be a policy matter for the Board of Supervisors.

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<sup>9</sup> Mr. Lee advises that SFMTA originally proposed a cap of 6 to 7 percent annually.

**RECOMMENDATIONS**12-1186

1. Amend the proposed resolution to specify that the proposed Feeder agreement will be revised to correct the formula for payment increases from FY 2012-13 through FY 2019-20, as agreed to by SFMTA.
2. Amend the proposed resolution to require that the proposed Feeder agreement be revised to include a floor of no more than 5 percent on decreases in payments from BART to SFMTA.
3. Approve the proposed resolution as amended

12-1187

1. Amend the proposed resolution to require that the proposed Fast Pass agreement be revised to reduce the amount of the annual cap from \$14,000,000 to \$10,500,000, a reduction of \$3,500,000, to reflect actual anticipated payments by SFMTA to BART.
2. Approval of the proposed resolution, as amended, is a policy decision for the Board of Supervisors.



December 3, 2012

**Angela Calvillo, Clerk of the Board**  
**Board of Supervisors**  
**City and County of San Francisco**  
**1 Carlton B. Goodlett Place, Room 244**  
**San Francisco, California 94102**

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO  
2012 DEC - 3 PM 12:22

**Re: *Special Transit Fare (Fast Pass®) and Feeder Agreements between the City and County of San Francisco and the Bay Area Rapid Transit System***

**Dear Ms. Calvillo:**

Attached please find an original and four copies of two proposed resolutions for consideration by the Board of Supervisors. The resolutions request approval of the two agreements aforementioned above. We respectfully request that this item be scheduled for the first appropriate committee hearing scheduled in 2013.

Enclosed are the following:

1. Proposed Resolutions (two)
2. Special Transit Fare (Fast Pass®) Agreement between the City and County of San Francisco and the Bay Area Rapid Transit System
3. Feeder Agreement between the City and County of San Francisco and the Bay Area Rapid Transit System
4. SFMTA Board Resolutions (two)
5. SFEC 126 Form (two)

Please contact Janet Martinson of my staff at 701-4693 if you have any questions regarding this matter.

Thank you.

Sincerely,

**Edward D. Reiskin**  
**Director of Transportation**

Enclosures

- Edwin M. Lee  
*Mayor*
- Tom Nolan  
*Chairman*
- Cheryl Brinkman  
*Vice-Chairman*
- Leona Bridges  
*Director*
- Malcolm Heinicke  
*Director*
- Jerry Lee  
*Director*
- Joél Ramos  
*Director*
- Cristina Rubke  
*Director*
- Edward D. Reiskin  
*Director of Transportation*



12/18/12

# **SPECIAL TRANSIT FARE (FAST PASS®) AGREEMENT**

## **BETWEEN**

**THE SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY AND**

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

This Special Transit Fare (Fast Pass®) Agreement for the period January 1, 2010 through December 31, 2014 (the "2010-2014 Fast Pass® Agreement" or "Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 201\_, between the City and County of San Francisco, a municipal corporation ("the City"), acting by and through its Municipal Transportation Agency ("SFMTA"), and the San Francisco Bay Area Rapid Transit District ("BART") (collectively, the "Parties").

## **RECITALS**

1. 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®") 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-Four Dollars (\$74), and the Adult "M" Fast Pass<sup>®</sup>, good only on Muni and currently priced at Sixty-Four Dollars (\$64). Effective July 2011, the Adult "A" Fast Pass<sup>®</sup> is only electronically stored on the Clipper<sup>®</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. 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. Under the schedule, the third such increase took effect on July 1, 2009, and the last such increase took effect on July 1, 2012.
16. SFMTA and BART have agreed on reimbursement rates retroactive to January 1, 2010, and continuing through June 30, 2014, based on a Productivity-Adjusted CPI formula, as described in Section 2 below.
17. SFMTA and BART agree that imposing a cap on the reimbursement amount in each 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 Pass<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 through June 30, 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 took effect on July 1, 2012, and through July 14, 2014, 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 \$14 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 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 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® transaction fees shall be as follows:

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

where, for the month for which transaction fee reimbursement is to be made,

A = Percentage of total monthly regional Clipper® transactions for which a fee of 1.5 cents per transaction is charged

B = Percentage of total monthly regional Clipper® transactions for which a fee of 1.2 cents per transaction is charged

C = Percentage of total monthly regional Clipper® transactions for which a fee of 0.35 cents per transaction is charged

- 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.

C. Fast Pass<sup>®</sup> on Clipper<sup>®</sup> Maintenance of Equipment and Accounting of Trips:

BART will be responsible for the following:

1. Ensuring proper maintenance of smart card reader hardware and electronic equipment to enable Fast Pass<sup>®</sup> use in the BART system.
2. Providing accurate accounting of trips taken with the Fast Pass<sup>®</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 2010-2014 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 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 \$14 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 \$14 million.

B. SFMTA Payments.

1. SFMTA agrees to pay BART in full within thirty (30) calendar days of the Effective Date for Fast Pass<sup>®</sup> trips taken on BART from January 1, 2010 through June 30, 2011, as reported in monthly invoices previously submitted to SFMTA.
2. After receipt of a satisfactory invoice, SFMTA agrees to pay BART in full for Fast Pass<sup>®</sup> trips taken on BART from July 1, 2011 through June 30, 2012 by June 30, 2013.
3. SFMTA agrees to pay BART in full within thirty (30) calendar days of the Effective Date for Fast Pass<sup>®</sup> trips taken on BART from July 1, 2012 through November 30, 2012.
4. Notwithstanding the amounts due to BART from SFMTA under subsections 1 through 3 above, SFMTA will make future payment of any balance due within thirty (30) calendar days of receipt of each monthly invoice, including the data specified in Section 2.E above, from BART.

- C. 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 Director of Transportation, 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 Director of Transportation 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

By: \_\_\_\_\_  
Grace Crunican  
General Manager

CITY AND COUNTY OF SAN FRANCISCO  
MUNICIPAL TRANSPORTATION  
AGENCY

By: \_\_\_\_\_  
Edward D. Reiskin  
Director of Transportation

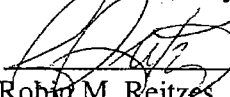
SFMTA Board of Directors  
Resolution No. \_\_\_\_\_  
Dated: \_\_\_\_\_

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

APPROVED AS TO FORM:  
Office of the General Counsel

By: \_\_\_\_\_  
Patricia McCoy Smith  
Attorney

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

**EXHIBIT A—NEW FARE RATES AND CHARGES: PRODUCTIVITY-ADJUSTED CPI-BASED INCREASES**

Productivity-adjusted CPI-based fare rates and charges shall be calculated according to the following process.

**The Formula:**

The following formula accounts for changes in inflation, less a productivity factor valued at 0.005 (½ percent). Changes in inflation are measured over a two-year period, with the first productivity-adjusted CPI-based fare increase to become effective January 1, 2006.

**Step One: Productivity-Adjusted CPI-Based Fare Increase Factor =**

$$\left( \frac{\frac{(\text{NCPIU}_2 - \text{NCPIU}_0)}{\text{NCPIU}_0} + \frac{(\text{BACPIW}_2 - \text{BACPIW}_0)}{\text{BACPIW}_0}}{2} \right) - 0.005$$

Productivity  
Factor

**Step Two: Productivity-Adjusted CPI-Based Fare Rates and Charges** are calculated by increasing all components of fares then in effect, except the San Mateo County surcharge and SFIA Premium Fare, by the Productivity-Adjusted CPI-Based Fare Increase Factor and then rounding these fares to the nearest \$0.05.

**Definitions:**

**NCPIU** is the **National CPI-U Annual Average** which is the annual average over a calendar year of the U.S. City Average consumer price index for all urban consumers, for all items, with an index base period of 1982-84 = 100 as reported by the Bureau of Labor Statistics, U.S. Department of Labor.

**BACPIW** is the **Bay Area CPI-W Annual Average** which is the annual average over a calendar year of the San Francisco-Oakland-San Jose, CA local consumer price index for urban wage earners and clerical workers, for all items, with an index base period of 1982-84 = 100 as reported by the Bureau of Labor Statistics, U.S. Department of Labor.

The “0” of **NCPIU<sub>0</sub>** and **BACPIW<sub>0</sub>** signifies the respective calendar year from which the change in inflation is calculated (e.g., 2002 for the FY06 fare increase and 2004 for the FY08 fare increase)

The “2” of **NCPIU<sub>2</sub>** and **BACPIW<sub>2</sub>** signifies the respective calendar year against which the change in inflation is calculated (e.g., 2004 for the FY06 fare increase and 2006 for the FY08 fare increase).

**Productivity Factor** is an adjustment representing BART’s anticipated continual improvements in the efficiency of its labor force and operations to the extent of

reducing its inflation-adjusted costs of operation by 0.005 (½ percent) every two years.

### **Effective Dates:**

The productivity-adjusted CPI-based fare increases will be effective on January 1<sup>st</sup> of 2006, 2008, 2010, and 2012, for a total of four calculations of the productivity-adjusted CPI-based fare increase formula. If application of the formula returns a positive result, i.e., it does not reflect deflation, the resulting factor is the amount fares are to be increased across-the-board (with each actual fare rounded to the nearest \$0.05). Productivity-adjusted CPI-based fares are to be implemented on January 1<sup>st</sup> of fiscal years 2006, 2008, 2010, and 2012, or as soon thereafter as the fare schedule can be implemented.

### **Sample Methodology:**

The following is a sample methodology that illustrates how to calculate the productivity-adjusted CPI-based fare increase factor and resulting fares. The process will be followed during the preparation of the budget for each even-numbered fiscal year from 2006 through 2012. This example describes the process for FY06; the same process will be followed for the other even-numbered fiscal years.

In February 2005, the change over two years in the National CPI-U Annual Average and the Bay Area CPI-W Annual Average will be calculated as follows:

- The change to be measured will be for calendar years 2003 and 2004.
- Index change during this two-year period is measured by the change in the annual average of the index. For example, if
  - The annual average of the National CPI-U for 2002 is 100, and
  - The annual average of the National CPI-U for 2004 is 106, then
  - The change is 0.06 (or 6.0%) for the two-year period between 2002 and 2004.
- The change in the Bay Area CPI-W Annual Average for the two-year period is to be calculated in the same way.
- The changes in the National CPI-U Annual Average and the Bay Area CPI-W Annual Average are then averaged to capture change in both national and local pricing patterns.
- From the average of the national and local pricing increases, a productivity factor of 0.005 (½ percent) is deducted. For example, if the average of the change in the National CPI-U Annual Average and the change in the Bay Area CPI-W Annual Average for the two-year period is 0.06 (or 6.0%), the result of the formula is a productivity-adjusted CPI-based fare increase factor of 0.055, or 5.5%.
- The productivity-adjusted CPI-based fare increase factor is the increase to be applied across-the-board to the components of the fare rates and charges then in effect, except the San Mateo County surcharge and SFIA Premium Fare. The resulting station-to-station fares will then be rounded to the nearest nickel to produce the new productivity-adjusted CPI-based fare rates and charges.

**EXHIBIT A—NEW FARE RATES AND CHARGES:  
PRODUCTIVITY-ADJUSTED CPI-BASED INCREASES**



SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

RESOLUTION No. 12-142

WHEREAS, The San Francisco Municipal Transportation Agency (SFMTA) and the San Francisco Bay Area Rapid Transit District (BART) provide an integrated transit network in San Francisco; and

WHEREAS, The SFMTA provides extensive transit services to BART stations, allowing customers to use transit to reach locations away from BART stations; and

WHEREAS, Since 1989, BART has paid a lump sum to the SFMTA for the provision of feeder bus and rail services to BART stations under the Feeder Agreement based on the percentage change in sales tax revenues BART collected during the two previous years; and

WHEREAS, In 2011 the SFMTA Board and San Francisco Board of Supervisors approved a feeder payment from BART to the SFMTA for fiscal year 2010 based on a sales tax methodology and asked future payments to be based on a ridership methodology; and

WHEREAS, The SFMTA and BART are proposing that feeder payments for fiscal years 2011 through 2012 increase by 0.5% over the previous respective fiscal years in the amounts of \$2,654,357 for FY 2011 and \$2,667,629 for FY 2012; and

WHEREAS, For fiscal years 2013 through 2020, the SFMTA and BART are proposing to adjust Feeder Agreement payments annually based on the San Francisco Bay Area Consumer Price Index (CPI) and the percentage change of Muni feeder ridership to BART stations using the Clipper® Card, with a maximum five percent increase in payments in any given year; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors authorizes the Director of Transportation to execute the Agreement between the City and County of San Francisco and the San Francisco Bay Area Rapid Transit District for Payment of Transfer Trips (Feeder Agreement), for the term from July 1, 2010 to June 30, 2020; and be it

FURTHER RESOLVED, That the SFMTA Board of Directors authorizes the Director of Transportation to submit the Agreement to the Board of Supervisors for its approval.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of November 20, 2012.

*R. Bowmer*

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Secretary to the Board of Directors  
San Francisco Municipal Transportation Agency

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

RESOLUTION No. 12-143

WHEREAS, SFMTA Adult Fast Pass<sup>®</sup> users currently make approximately 7.7 million trips on BART within San Francisco each year under the Special Transit Fare (Fast Pass<sup>®</sup>) Agreement (“Agreement”) between the SFMTA 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 biennially based on the inflation rate less ½ percent for productivity improvements; and

WHEREAS, BART advanced its most second-to-last biennial 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, A subsequent reimbursement rate increase from \$1.19 to \$1.21 per trip based on BART’s Productivity-Adjusted Consumer Price Index (CPI) Based Fare Rates and Charges policy is effective as of July 1, 2012; and

WHEREAS, The Agreement includes a \$14 million cap on the annual reimbursement payment; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors authorizes the Director of Transportation to execute the Special Transit Fare (Fast Pass<sup>®</sup>) Agreement between the SFMTA and BART that allows Muni Adult Fast Pass<sup>®</sup> users (using the Clipper<sup>®</sup> Card) to ride BART within San Francisco at no additional cost for a term from January 1, 2010 to June 30, 2014, subject to approval from the San Francisco Board of Supervisors of this Agreement and a separate Feeder Agreement.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of November 20, 2012.

*R. Pozman*

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Secretary to the Board of Directors  
San Francisco Municipal Transportation Agency

**FORM SFEC-126:**

File No. 121187

**NOTIFICATION OF CONTRACT APPROVAL**  
(S.F. Campaign and Governmental Conduct Code § 1.126)

<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, Rebecca Saltzman, Robert Raburn, John McPartland, Thomas Blalock, Zakhary Mallett, James Fang, Tom Radulovich; (2) General Manager: Grace Crunican; 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 \$9.3-9.8 million in FY 2013 and \$9.3-10.3 million in FY 2014, based on ridership.
Describe the nature of the contract that was approved: The SFMTA currently reimburses BART \$1.02 per Fast Pass® trip taken on BART within San Francisco. Under the contract, in effect through FY 2014, this rate would increase to \$1.19 retroactive to January 1, 2010 and through June 30, 2012 and thereafter would increase based on adjustments to the Bay Area Consumer Price Index (CPI) subject to BART fare increase(s) for the remainder of the contract. Because ridership is unknown at this time, exact contract expenditures are also unknown.	
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 San Francisco Board of Supervisors  
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: City Hall Room 244 1 Dr. Carlton B. Goodlett Pl. San Francisco CA 94102	E-mail: Board.of.Supervisors@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

