

**AMENDMENT NO. 1 TO COST-SHARING AGREEMENT
FOR PARATRANSIT SERVICES BETWEEN THE CITY AND COUNTY OF SAN
FRANCISCO AND THE SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT**

THIS AMENDMENT, entered into this 4th day of June 2013, is Amendment No. 1 ("Amendment No. 1") to the Cost-Sharing Agreement For Paratransit Services Between the City and County of San Francisco ("CITY"), acting through its Municipal Transportation Agency ("SFMTA"), and the San Francisco Bay Area Rapid Transit District ("BART") (collectively, the "Parties") entered into on November 22, 2011 (the "Agreement").

RECITALS

- A. On November 22, 2011, the Parties entered into the Agreement for the purpose of memorializing their understanding regarding SFMTA's agreement to cover BART's obligation under the Americans with Disabilities Act to provide paratransit services and BART's agreement to share in the costs of SFMTA's Paratransit Program.
- B. The Agreement provides that BART shall pay 8.8% of the "Net Operating Expenses" of providing services to eligible paratransit individuals in the CITY's service area. The 8.8% cost-sharing percentage is based on a 1994 study of the CITY's paratransit program that was commissioned by BART.
- C. The Agreement further provides that BART shall pay SFMTA an Administration Fee equal to 5% of the Annual BART Share Net Operating Expenses.
- D. Paragraph IV.A of the Agreement provides that either BART or SFMTA may commission a new study of paratransit services and costs at any time. It further provides that if the results of the new study determine that the 8.8% cost-sharing percentage or the 5% Administration Fee should change, either upward or downward, the Parties shall amend the Agreement to reflect the new percentages.
- E. In Spring 2012, BART, with the concurrence of SFMTA, commissioned Nelson Nygaard to perform a new study of paratransit services and costs ("2012 Nelson Nygaard Study"). The 2012 Nelson Nygaard Study was issued in June 2012.
- F. The 2012 Nelson Nygaard Study concluded that the 8.8% cost sharing percentage should be adjusted down to 7.9% and that the 5% Administration Fee should be adjusted down to 4.7%.
- G. The purpose of this Amendment No. 1 is to revise the Agreement to reflect the results of the 2012 Nelson Nygaard Study.

AGREEMENT

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

1. Section I.A of the Agreement is amended to read as follows:
 - A. BART shall pay 7.9% of the “Net Operating Expenses” of providing services to eligible paratransit individuals in the CITY’s service area, as calculated below. For purposes of this Agreement, this amount shall be known as the “Annual BART Share Net Operating Expenses”.
2. Section I.C.1 and I.C.2 of the Agreement are amended to read as follows:
 - C. Billing of Annual BART Share Net Operating Expenses
 1. SFMTA shall bill BART for one quarter of 7.9% of the estimated Net Operating Expenses for each of the following three fiscal year quarters: Quarter 1 (July through September) (“Q1”), Quarter 2 (October through December) (“Q2”), and Quarter 3 (January through March) (“Q3”), as provided in Section II.B below.
 2. Following the end of each fiscal year SFMTA shall calculate the actual amount of Net Operating Expenses according to the formula in Section I.B above. For Quarter 4 (April through June) (“Q4”), BART shall be billed an amount equal to 7.9% of actual Net Operating Expenses less amounts already billed for Q1, Q2, and Q3. The amount may be more or less than the amounts billed in the previous three quarters depending whether actual Net Operating Expenses were more or less than the estimated Net Operating Expenses.
3. Section II.A.2 of the Agreement is amended to read as follows:
 2. Pay to SFMTA an Administration Fee equal to 4.7% of the Annual BART Share Net Operating Expenses, in quarterly payments. BART’s payments for the Administration Fee will be due at the same time as the payments described in Section II.A.1 above.
4. Section II.B of the Agreement is amended to read as follows:
 - B. City shall:
 1. By February 1 of each year, submit an estimate to BART for 7.9% of the Net Operating Expenses for the following fiscal year.
 2. Prior to the beginning of Q1, Q2, and Q3 of each fiscal year, submit an invoice to BART in the amount of one quarter of 7.9% of the estimated Net Operating Expenses, for a total of three invoices for Q1, Q2, and Q3.
 3. Following the end of the fiscal year and calculation of the Actual Net Operating Expenses, submit a final invoice to BART for the fiscal year for the

difference between 7.9% of the Actual Net Operating Expense and the amount billed in Q1, Q2, and Q3.

4. Include with each invoice, an amount owed for the Administration Fee for that quarter. For Q1, Q2, Q3, this amount will be 4.7% of the Annual BART Share Net Operating Expenses billed for that quarter. The amount owed for the Administration Fee shall be adjusted with the final invoice so that the Administration Fee equals 4.7% of the Actual Annual BART Share Net Operating Expense for the fiscal year.
5. Provide paratransit services in the CITY and fulfill BART's obligation to ADA Paratransit in the limits of MUNI's service area and in Daly City in compliance with ADA requirements.
6. Apply for, and administer, all forms of grants or revenues, including but not limited to, TDA and STA funds, to fund the paratransit services in the CITY.
7. Credit the amount of STA and TDA funds for which BART is eligible for paratransit in the City and County of San Francisco to BART's 7.9% share of the cost of the provision of services to ADA paratransit eligible individuals.
8. Provide an annual report of service level statistics.
9. Provide an annual report of all funds received and disbursed under this Agreement in accordance with generally accepted accounting principles upon request by BART.

5. Section IV.A of Agreement is amended to read as follows:

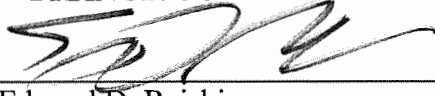
- A. BART or SFMTA may commission a study of paratransit services and costs at any time for the purpose of determining the continuing validity of the cost-sharing percentage contained in Section I.A above and, if requested by either BART or SFMTA, for the purpose of examining the Administration Fee described in Section II.A.2 above to determine if the Administration Fee is reasonable based on, but not limited to, examining actual SFMTA staff and overhead costs associated with the provision of paratransit. The study shall employ the same or better methodology, as mutually determined by staff, as that used in determining the original cost-sharing percentage (see Exhibit A, Allocation of Local ADA Paratransit Costs in San Francisco County, Final Report, September 29, 1994). Prior to beginning such study, the parties agree to approve the study methodology in writing and parties agree that such approval will not be unreasonably withheld. If the results of the study determine that the cost-sharing percentage or the Administration Fee should change, either upward or downward, the parties shall amend this Agreement to reflect the new percentages. Such Amendment shall be approved by BART and by the SFMTA on behalf of the CITY. The new cost-sharing percentage or Administration Fee shall not apply retroactively but will apply only in fiscal years for which payment has not been completed. The new cost-sharing percentage and Administration Fee shall remain in effect until such time that a new study pursuant to this Section IV is completed or this Agreement is terminated, whichever is earlier.

6. This Amendment shall be effective as of July 1, 2012.

7. Except as expressly amended, all other terms and conditions of the Agreement shall remain in full force and effect.

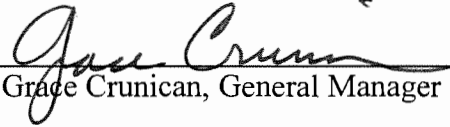
IN WITNESS WHEREOF, the Parties have caused this Amendment No. 1 to be executed by their duly authorized officers.

**CITY AND COUNTY OF SAN
FRANCISCO**



Edward D. Reiskin
Director of Transportation

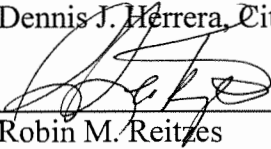
**SAN FRANCISCO BAY AREA
RAPID TRANSIT DISTRICT**



Grace Crunican, General Manager

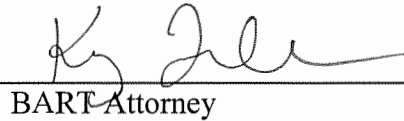
Approved as to Form:

Dennis J. Herrera, City Attorney



Robin M. Reitzes
Deputy City Attorney

Approved as to Form:



BART Attorney