

File No. 101539

Committee Item No. 4

Board Item No. 12

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee

Date: October 12, 2011

Board of Supervisors Meeting

Date 10/18/11

Cmte Board

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<input type="checkbox"/>	<input type="checkbox"/>	Ordinance
<input type="checkbox"/>	<input type="checkbox"/>	Legislative Digest
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Budget & Legislative Analyst Report
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Completed by: Victor Young

Date: October 7, 2011

Completed by: Victor Young

Date: 10-13-11

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

FILE NO. 101539

RESOLUTION NO.

[Cost-Sharing Agreement - BART - Paratransit Services]

Resolution retroactively approving a Cost-Sharing Agreement for Paratransit Services between the City and County of San Francisco and the San Francisco Bay Area Rapid Transit District for a period of up to ten years.

WHEREAS, Section 223 of the Americans with Disabilities Act of 1990 (ADA) requires that the San Francisco Bay Area Rapid Transit District (BART) and the San Francisco Municipal Transportation Agency (SFMTA) provide paratransit services within their service areas to individuals whose disabilities will not allow them to use regular fixed route transit service; and

WHEREAS, The SFMTA administers a Paratransit Program for ADA paratransit-eligible individuals in San Francisco through its Paratransit Broker and has provided these services to eligible individuals in BART's service area since 1994; and

WHEREAS, The City has applied for and received from the Metropolitan Transportation Commission, State Transit Assistance (STA) funds and Transportation Development Act (TDA) funds to implement paratransit services in San Francisco; and

WHEREAS, BART has agreed to continue to contribute its share of the cost of providing ADA paratransit services in San Francisco, less the value of its share of STA and TDA funds which the MTC has allocated to the City for this purpose; and

WHEREAS, BART commissioned a study of taxi, lift-van, group van and Commission on the Aging paratransit services to determine how much of the paratransit costs in San Francisco would be attributable to BART, the results of which indicated that approximately 8.8 percent of the overall costs for ADA paratransit should be borne by BART; and

1 WHEREAS, The SFMTA and BART are entering into this cost-sharing arrangement
2 under which BART will reimburse the SFMTA for providing BART's mandated ADA paratransit
3 services within San Francisco for up to a 10-year period, which reimbursement will exceed
4 \$1,000,000 over the term of the Agreement; a copy of the Agreement is on file with the Clerk
5 of the Board of Supervisors in File No. 101539, which is hereby declared to be a part of this
6 motion as if set forth fully herein; and

7 WHEREAS, On November 16, 2010, the SFMTA Board of Directors adopted
8 Resolution No. 10-144, which authorized the Executive Director/CEO of the SFMTA to
9 execute a Cost-Sharing Agreement for Paratransit Services with BART; and

10 WHEREAS, The SFMTA and BART shall complete a study of paratransit services and
11 costs, as described in Section IV.A of the Cost-Sharing Agreement, by June 30, 2012; and

12 WHEREAS, The BART Board of Directors approved the Cost-Sharing Agreement on
13 December 2, 2010; now, therefore, be it

14 RESOLVED, That the Board of Supervisors, retroactive to July 1, 2010, approves the
15 Cost-Sharing Agreement for Paratransit Services between the City and BART, requiring
16 BART to reimburse the SFMTA for providing BART's share of ADA paratransit services within
17 San Francisco for a period of up to ten years

Item 4
File 10-1539

Departments:
San Francisco Municipal Transportation Agency (MTA);

EXECUTIVE SUMMARY

Legislative Objective

- The proposed resolution would approve a new cost-sharing agreement between MTA and Bay Area Rapid Transit (BART), in which (1) MTA would continue to provide paratransit services in the BART service areas within the City, (2) BART would continue to pay 8.8 percent of MTA's net operating expenditures for such paratransit services, and (3) BART would begin paying MTA an additional 5.0 percent of that 8.8 percent for MTA's administrative costs with a one-year term retroactive from July 1, 2010 through June 30, 2011, and nine one-year automatic renewal options, that could extend the proposed agreement through June 30, 2020 for a maximum term of ten years.

Key Points

- On February 22, 2001, MTA and BART entered into a second cost-sharing agreement in which (1) MTA continued to provide paratransit services in areas where MTA's San Francisco Municipal Railway (MUNI) and BART service areas overlap, and (2) BART continued to pay MTA 8.8 percent of MTA's costs for providing BART's share of paratransit services within the City, for a one year period retroactive to July 1, 2000 through June 30, 2001, with nine one-year automatic renewal options that extended the cost-sharing agreement through June 30, 2010, for a maximum term of ten years. BART's payments are based on a 1994 cost-sharing study that determined BART's responsibility at 8.8 percent of total MTA paratransit net operating costs. Although required in accordance with the City's Charter, the 2001 cost-sharing agreement between MTA and BART was not submitted by the MTA to the Board of Supervisors for approval.
- Since July 1, 2010, when the previous cost-sharing agreement expired, BART has continued paying MTA according to the previous cost-sharing agreement's terms, with BART paying 8.8 percent of MTA's net operating expenditures for the Paratransit Program, excluding MTA's administrative costs.
- The proposed reimbursement rate to be paid by BART to MTA of 5.0 percent of the 8.8 percent share for MTA's administrative costs mirrors a separate agreement between MTA and BART in which BART maintains both MUNI Metro and BART stations and MTA reimburses BART for MTA's portion of the maintenance costs and MTA also pays BART an additional 5.0 percent to pay a portion of BART's administrative costs associated with conducting that maintenance.

Fiscal Impact

- Under the proposed resolution, BART would continue to pay 8.8 percent of MTA's costs paid to Veolia Transportation Services, MTA's paratransit service provider, for providing paratransit services where MTA and BART service areas overlap in San Francisco plus BART will pay MTA an additional 5.0 percent of the 8.8 percent share to partially reimburse MTA for administrative expenses retroactive from July 1, 2010 through June 30, 2012, or for two years, unless a new cost-sharing study is completed. If a new cost-sharing study is completed, BART would be responsible for reimbursing MTA, according to the new rates determined by that new cost-sharing study, for the remaining 8 years

of the proposed agreement.

- Assuming the reimbursement rates remain the same, BART would reimburse MTA an estimated total of \$12,243,577 from FY 2010-11 through FY 2019-20, including \$583,029 for MTA's administrative expenses.

Policy Considerations

- MTA has recently replaced the taxi scrip program under MTA's Paratransit Program with a debit card system, which will provide MTA and BART with accurate data on trip origins and destinations for taxi services. As a result of the new debit card system and the need to re-evaluate the reimbursement rate for MTA's administrative costs, MTA anticipates completing a new cost-sharing study by June 30, 2012, based on the improved and more accurate data.
- Given that the proposed agreement only provides that BART reimburse MTA for administrative expenses through June 30, 2012 unless a new cost-sharing study is completed, in the professional judgment of the Budget and Legislative Analyst the proposed agreement should be amended to require that a new cost-sharing study be completed prior to June 30, 2012.
- The Budget and Legislative Analyst also recommends that the proposed agreement be amended to require that any future changes to the proposed cost-sharing agreement that result in fiscal impacts to the City be subject to Board of Supervisors approval. Under the proposed agreement, MTA and BART, without first obtaining Board of Supervisors approval, can in the future amend the proposed cost-sharing agreement, if the results of a new cost-sharing study determine that the percentage to be paid by BART to MTA should be changed, either up or down.

Recommendations

- Amend the proposed resolution to provide for retroactivity to July 1, 2010.
- Continue the proposed amended resolution as amended and request the MTA to:
 - (a) Amend the proposed cost-sharing agreement to require that a new cost-sharing study be completed to determine how much of the costs of the MTA's Paratransit Program, including MTA's administrative expenses, should be reimbursed by BART to the MTA. Such a new study should be completed by June 30, 2012.
 - (b) Amend the proposed cost-sharing agreement between MTA and BART to reflect that any future changes to the cost-sharing agreement, which have fiscal impacts to the City, be subject to Board of Supervisors approval. As noted above, under the proposed agreement, MTA and BART, without first obtaining Board of Supervisors approval, can in the future amend the proposed cost-sharing agreement, if the results of a new cost-sharing study determine that the percentage to be paid by BART to MTA should be changed, either up or down.

MANDATE STATEMENT / BACKGROUND**Mandate Statement**

City Charter Section 9.118 (a) requires that any agreement having anticipated revenue to the City and County of \$1,000,000 or more is subject to approval by resolution of the Board of Supervisors.

Background

The Americans with Disabilities Act of 1990¹ (ADA) requires the Bay Area Rapid Transit (BART) and the Municipal Transportation Agency (MTA) to provide door-to-door paratransit transportation to individuals within their service areas who are unable to independently use fixed-route public transportation some or all of the time due to a disability or health-related condition. Paratransit is an alternative mode of passenger transportation that (1) does not follow fixed routes or schedules, and (2) is usually provided by vans, buses, and taxis. Individuals must be certified for paratransit services based on ADA eligibility criteria pertaining to disabilities and health-related conditions.

Since 1978, MTA has operated the City's Paratransit Program to provide paratransit services for eligible individuals in areas where MTA's Municipal Railway (MUNI) and BART service areas overlap. According to Ms. Annette Williams, Manager of the Accessible Services Program at MTA, MUNI and BART service areas overlap along the BART corridor in the City, consisting of (a) Market Street between the Embarcadero and Civic Center BART stations, (b) Mission Street in the Mission District, and (c) the areas around the Glen Park, Balboa Park, and Daly City BART stations. Because of the overlap, in 1994, MTA and BART agreed that MTA would provide paratransit services within the City, while BART would reimburse MTA a negotiated amount representing BART's share of responsibility for providing such paratransit services.

San Francisco's Paratransit Program consists of three components: (1) San Francisco Access, which provides pre-scheduled, door-to-door van services, (2) Group Van Services, which provide pre-scheduled group trips to and from 35 San Francisco social service agencies using vans and buses, and (3) Taxi Services, which provides paratransit services through the San Francisco Taxi Fleet².

In 1994, MTA and BART contracted with a consulting firm, Craine and Associates, Incorporated, to conduct a cost-sharing study to determine how much of the costs of MTA's Paratransit Program would be attributable to BART. The study analyzed a random sample of paratransit trips in the City to determine which specific transit routes a paratransit customer was likely to take if that paratransit customer were completing their trips on either MTA or BART. According to the 1994 cost-sharing study, 8.8 percent of the overall costs of San Francisco's Paratransit Program should be paid by BART to MTA, with the remaining 91.2 percent of the overall Paratransit Program costs paid by MTA.

¹ The Americans with Disabilities Act of 1990 became effective in 1992 and required full implementation of paratransit services by 1997.

² The San Francisco Taxi Fleet consists of 1,400 sedans and 100 wheelchair accessible ramped minivans, according to Ms. Williams of the MTA. The City's Transportation Code, Division II, Article 1100, Section 1106(j) requires that the Taxi Fleet participate in the Paratransit Program.

On February 1, 1995, the Board of Supervisors approved the original cost-sharing agreement between MTA and BART, effective for the six-year period from July 1, 1994 through June 30, 2000. Under this original agreement MTA agreed to provide paratransit services in areas where MUNI and BART service areas overlap, while BART agreed to pay 8.8 percent of MTA's costs for providing BART's share of paratransit services within the City. Under the original agreement, BART did not pay the MTA for any portion of MTA's administrative costs.

The 8.8 percent is applied to the MTA and BART cost-sharing formula after MTA's Paratransit Program estimated total operating expenditures are first reduced by (1) the amount of State funds provided to MTA's Paratransit Program from State Transit Assistance and Transportation Development Act funding, (2) an estimate of paratransit fare revenues received by the MTA for the fiscal year, and (3) the difference between estimated paratransit fare revenues and the amount that would be generated if the maximum paratransit fares were charged.³ According to Ms. Williams, such reductions are made in order to arrive at MTA's estimated net operating expenditures for the Paratransit Program. MTA then bills BART 8.8 percent of these estimated net operating expenditures for the first three quarters of the fiscal year. At the end of the fiscal year (fourth quarter), MTA determines the actual net operating expenditures for that fiscal year, deducts BART's payments from the first three quarters and BART pays the difference.

On February 22, 2001, MTA and BART entered into a second cost-sharing agreement in which (1) MTA continued to provide paratransit services in areas where MTA's MUNI and BART service areas overlap, and (2) BART continued to pay 8.8 percent of MTA's costs for providing BART's share of paratransit services within the City, for a one year period from July 1, 2000 through June 30, 2001, with nine one-year automatic renewal options that extended this second cost-sharing agreement through June 30, 2010, for a maximum term of ten years. According to Ms. Williams, both MTA and BART reviewed the above-mentioned 1994 cost-sharing study at that time and determined that no substantial changes in BART or MTA transit routes or paratransit services had occurred that warranted a new cost-sharing study or a change of terms in the second cost-sharing agreement.

Ms. Williams, in consultation with the City Attorney's Office, states that although the 2001 cost-sharing agreement between MTA and BART had anticipated revenues of more than \$1,000,000 to the MTA, this second cost-sharing agreement was not submitted by the MTA to the Board of Supervisors for approval. As noted above in the Mandate Statement section of this report, in accordance with Charter Section 9.118 (a), any agreement having anticipated revenue to the City and County of \$1,000,000 or more is subject to approval, by resolution, of the Board

³ Under the ADA, MTA and BART are allowed to charge paratransit riders up to twice the adult fixed route fare for paratransit services. Historically, MTA has not charged the maximum allowable fare to paratransit riders because the vast majority of paratransit riders are low-income. Ms. Williams advises that, MTA currently charges paratransit riders \$2 per one-way ride, rather than the maximum allowable fare of \$4 per ride because charging the maximum of \$4 per ride would place an undue burden on those paratransit customers. BART maintains that it would charge its maximum fare of \$3.50 if BART were to provide its own paratransit services within the City. Therefore, in determining the cost-sharing formula, MTA includes a fare differential, which is the difference between the estimated paratransit fare revenues collected and the amount of revenue that would be generated if the maximum \$3.50 fares were charged, to determine the estimated net operating expenditures. Ms. Williams states that taxi fares are not included in this fare differential because taxi fares are (1) not fixed fares and (2) vary by the length of the trip. Ms. Williams estimates that MTA would receive an additional \$78,000 in annual revenue if MTA charged BART's maximum rate under the proposed cost-sharing agreement.

of Supervisors. Ms. Williams states that neglecting to seek Board of Supervisors approval was an oversight.

MTA Contracts Out the Portion of the Paratransit Program to which BART Contributes

On June 29, 2009, MTA began conducting a competitive Request For Proposals (RFP) process to choose a contractor to administer the Paratransit Program and subsequently selected and entered into an agreement with Veolia Transportation Services, a private firm. MTA's existing agreement with Veolia Transportation Services extends for five years and three-months from April 1, 2010 through June 30, 2015 for a not-to-exceed amount of \$118,599,170. Under that agreement, which was previously approved by the Board of Supervisors, MTA pays Veolia Transportation Services (a) the costs of providing paratransit services within MUNI's entire service area, including portions where BART and MUNI service areas don't overlap, and (b) the Veolia Transportation Service's administrative fees. According to Ms. Kate Toran, Paratransit Manager for MTA, MTA paid a total of \$17,050,801 to Veolia Transportation Services in FY 2010-11. However, Ms. Toran also advises that \$89,120⁴ of the \$17,050,801 in paratransit services expended under the existing agreement with Veolia Transportation Services are not considered by MTA or BART to be part of the total operating expenditures for paratransit services which BART shares the cost of providing. Therefore, the Paratransit Program's total operating expenditures for the Paratransit Program which are part of MTA's cost-sharing agreement with BART were \$16,961,681 in FY 2010-11 (\$17,050,801 minus \$89,120). According to Ms. Toran, MTA's \$16,961,681 total operating expenditures only accounts for Veolia Transportation Services' operating costs and does not include MTA's administrative costs, which were \$677,938. In addition, as described above, specified costs are deducted from the \$16,961,681 total operating expenditures to determine net operating expenditures before BART's 8.8 percent payments are calculated.

As shown in Table 1 below, in FY 2010-2011, after accounting for the specified costs and paratransit revenue reductions as described above, MTA's net operating expenditures were \$11,558,586, which were subject to the 8.8 percent calculation to determine BART payments of \$1,017,156 to MTA. As shown in Table 1 below, BART has paid a total of \$7,270,947 to MTA from FY 2005-2006 through FY 2010-2011 under the existing cost-sharing agreement, or an average of \$1,211,825 per year.

⁴ Under MTA's existing agreement with Veolia Transportation Services, \$57,715 was expended to provide Shopping Shuttle services, a new service which provides trips for eligible seniors and people with disabilities to/from grocery shopping locations and \$31,405 was expended to provide weekend services to Laguna Honda Hospital from the Forest Hill BART station until Laguna Honda Hospital is able to expand their shuttle operation to cover weekend service, equal to a total of \$89,120 (\$57,715 plus \$31,405). Therefore, the total operating expenditures for FY 2010-11 subject to cost-sharing as part of MTA's agreement with BART is \$16,961,681 (\$17,050,801 minus \$57,715 minus \$31,405)

Table 1: Paratransit Costs Under the Existing Cost-sharing Agreement between MTA and BART from FY 2005-6 through FY 2010-2011

Fiscal Year	Total Trips	MTA Net Operating Expenditures	BART Share Payable to MTA at 8.8 Percent of MTA's Net Operating Expenditures
2005-2006	1,218,312	\$ 14,294,057	\$ 1,257,877
2006-2007	1,158,482	13,680,471	1,203,881
2007-2008	1,167,955	14,042,749	1,235,762
2008-2009	1,139,999	15,238,923	1,341,025
2009-2010	1,038,866	13,809,617	1,215,246
2010-2011	904,598	11,558,586	1,017,156
Total	6,628,212	\$82,624,403	\$7,270,947

The Budget and Legislative Analyst notes that the total number of paratransit trips has decreased by 313,714 trips from FY 2005-06 through FY 2010-11. According to Ms. Toran, this reduced number of paratransit trips is due to a combination of factors, including (a) the poor economy which has resulted in eligible individuals decreasing the number of trips they take, (b) the decreased availability of adult day care programs⁵ due to budget cuts resulting in decreased paratransit trips to and from those programs, and (c) the replacement of the taxi scrip program with a new debit card system now used to record paratransit service provided by MTA via taxi, which has eliminated the opportunity for fraud in the system. Ms. Toran advises that the number of paratransit trips going forward is uncertain.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve a new cost-sharing agreement between the San Francisco Municipal Transportation Agency (MTA) and the Bay Area Rapid Transit (BART), in which (1) the MTA would continue to provide paratransit services in the BART service areas within the City, (2) BART would continue to pay 8.8 percent of the MTA's net operating expenditures for such paratransit services, and (3) BART would, for the first time, begin paying MTA five percent of that 8.8 percent for MTA's administrative costs with a retroactive one-year term from July 1, 2010 through June 30, 2011, and nine one-year automatic renewal options, that could extend the proposed agreement through June 30, 2020 for a maximum term of ten years.

As previously discussed, the existing cost-sharing agreement between the MTA and BART expired on June 30, 2010 and, since July 1, 2010, BART has continued paying MTA according to the existing cost-sharing agreement's terms, with BART paying 8.8 percent of MTA's net operating expenditures for the Paratransit Program, excluding MTA's administrative costs. Therefore, the subject resolution needs to be amended for retroactivity to July 1, 2010.

It should be noted that approximately ten months of the delay in bringing the proposed resolution to the Board of Supervisors is because a previous version of the proposed resolution was originally introduced on December 14, 2010, which did not include BART reimbursing

⁵ Adult day care programs provide supervision, medical and psychological care, and social activities for older adults who live at home or in another family setting, but cannot be alone or prefer to be with others during the day.

MTA for any of its administrative costs. According to Ms. Toran, MTA made the decision to delay submitting the proposed resolution to the Board of Supervisors in order to resume negotiations with BART so the MTA could obtain compensation from BART for MTA's administrative expenses. Both BART and MTA have now agreed to have BART reimburse MTA 5.0 percent of the 8.8 percent share for MTA's administrative costs retroactive from July 1, 2010 through June 30, 2012, or for two years, unless a new cost-sharing study is completed. If a new cost-sharing study is completed, BART would be responsible for reimbursing MTA, according to the new rates determined by that new cost-sharing study, for the remaining 8 years of the proposed agreement.

According to Ms. Williams, this proposed reimbursement rate to be paid by BART to MTA of 5.0 percent of the 8.8 percent share for MTA's administrative costs is not based on BART's actual share of MTA's costs to provide such administrative services. Rather, Ms. Williams advises that this 5.0 percent administrative rate mirrors a separate agreement between MTA and BART in which BART maintains both MUNI Metro and BART stations and MTA reimburses BART for MTA's portion of the maintenance costs and MTA also pays BART an additional 5.0 percent to pay a portion of BART's administrative costs associated with conducting that maintenance. However, the proposed agreement only specifies that the additional 5.0 percent of the 8.8 percent share of MTA's administrative costs to be paid by BART to the MTA would be paid by BART for FY 2010-11 and FY 2011-12, unless a new cost-sharing study is completed by June 30, 2012. If a new cost-sharing study is completed, BART would be responsible for reimbursing MTA, according to the new rates determined by that new cost-sharing study, for the remaining 8 years of the proposed agreement. Ms. Williams advises that both MTA and BART agree to revisit the percentage as part of a new cost-sharing study MTA and BART intend to complete before June 30, 2012 and to adjust the percentage if, after evaluation, MTA's administrative costs are more or less than the agreed-upon 5.0 percent.

FISCAL IMPACT

Under the proposed resolution, BART would continue to pay MTA at the rate of 8.8 percent of MTA's costs paid to Veolia Transportation Services, MTA's paratransit provider, for Veolia Transportation Service's operating costs of providing paratransit services where MTA and BART service areas overlap in San Francisco. Additionally, for the first time, BART would pay MTA 5.0 percent of BART's 8.8 percent share to reimburse MTA for MTA's administrative costs retroactive from July 1, 2010 through June 30, 2012 or for two years unless a new cost-sharing study is completed. If a new cost-sharing study is completed, BART would be responsible for reimbursing MTA, according to the new rates determined by that new cost-sharing study for the remaining 8 years of the proposed agreement. As shown in Table 2 below, BART would be responsible for paying MTA an additional \$50,858 for paratransit services provided in FY 2010-2011 due to the proposed agreement's requirement of having BART pay for a portion of MTA's administrative costs. If BART continues to reimburse MTA at the same 5.0 percent of 8.8 percent rate for administrative expenses after June 30, 2012, based on the results of a new cost-sharing study, as shown in Table 2 below, an estimated \$583,029 would be paid by BART to MTA over the entire ten-year term of the proposed agreement for MTA's administrative expenses.

As shown in Table 2 below, if BART continues to pay MTA at the same 5.0 percent rate of 8.8 percent for administrative expenses after June 30, 2012, BART is estimated to reimburse MTA a total of \$12,243,577 under the proposed new ten-year agreement between MTA and BART from July 1, 2010 through June 30, 2020. The Budget and Legislative Analyst notes that the estimated \$12,243,577 reimbursement over the term of the proposed agreement from FY 2010-11 through FY 2019-20 is an estimate only and may increase or decrease based on the number of trips provided in a given fiscal year and based on the outcome of the new cost-sharing study.

Table 2: Estimated Paratransit Costs Under the Proposed Cost-sharing Agreement between MTA and BART, FY 2010- 2011 through FY 2019-2020				
Fiscal Year	Estimated Net Operating Expenditures*	8.8 Percent of Estimated Net Operating Expenditures BART would Reimburse MTA Under Proposed Cost-Sharing Agreement	5 Percent of BART's 8.8 Percent Share	Total BART Reimbursement Under Proposed Agreement
2010-2011	\$11,558,586	\$1,017,156	\$50,858	\$1,068,014
2011-2012 Projected	11,905,343	1,047,670	52,384	1,100,054
2012-2013 Projected	12,262,504	1,079,100	53,955	1,133,055
2013-2014 Projected	12,630,379	1,111,473	55,574	1,167,047
2014-2015 Projected	13,009,290	1,144,818	57,241	1,202,059
2015-2016 Projected	13,399,569	1,179,162	58,958	1,238,120
2016-2017 Projected	13,801,556	1,214,537	60,727	1,275,264
2017-2018 Projected	14,215,603	1,250,973	62,549	1,313,522
2018-2019 Projected	14,642,071	1,288,502	64,425	1,352,927
2019-2020 Projected	15,081,333	1,327,157	66,358	1,393,515
Total	\$132,506,234	\$11,660,548	\$583,029	\$12,243,577

* According to Ms. Williams, MTA estimated net operating expenditures from FY 2010-11 through FY 2019-20 are assumed to increase three percent annually based on average CPI increases expected over the ten year period.

POLICY CONSIDERATIONS

The Proposed Cost-Sharing Agreement Relies on a 17 Year-Old Cost-Sharing Study

According to Ms. Williams, both MTA and BART staff have reviewed the results of the original 1994 cost-sharing study and found no substantial changes in current BART or MTA transit routes and services that would invalidate the results of the 1994 study and require a new cost-sharing study at this time to re-evaluate the costs of MTA's paratransit services that are

attributable to BART. As such, BART would continue to pay 8.8 percent of MTA's costs for providing paratransit services within the agencies' overlapping service areas.

However, the recommendations from the 1994 cost-sharing study stated that "once significant changes to the taxi scrip program are implemented, it would make sense to reconsider the calculation of BART's cost-share." As previously discussed, the City's Paratransit Program includes taxi services and until recently, utilized a taxi scrip program, which is a paper scrip system where the paratransit trip information was recorded manually on a trip report by the customer and driver. According to Ms. Williams, paratransit trip information may not have been accurately reported on the paper scrip system. However, Ms. Williams advises that the taxi scrip program has recently been replaced by a debit card system, which will provide MTA and BART with accurate data on trip origins and destinations for taxi services.

As a result of the new debit card system now being utilized by the MTA's Paratransit Program as well as the need to re-evaluate the reimbursement rate for MTA's administrative costs, Ms. Williams anticipates that MTA will be requesting a new cost-sharing study within the next year, based on the improved and more accurate data to be derived from the debit card system for taxi trips under the Paratransit Program. The subject proposed new agreement provides that BART or MTA may undertake such a cost-sharing study, to reassess the percentage of MTA's paratransit program that BART is responsible for paying, including MTA's administrative expenses. However, under the proposed agreement, such a new cost-sharing study is not required. Ms. Williams advises that the estimated cost of a new cost-sharing study is \$30,000, which would be equally paid by MTA and BART, under the terms of the proposed cost-sharing agreement.

Under the proposed agreement, MTA and BART, without first obtaining Board of Supervisors approval, can, in the future, amend the proposed cost-sharing agreement, if the results of a new cost-sharing study determine that the percentage to be paid by BART to MTA should be changed, either up or down.

Given that the proposed agreement only provides that BART reimburse MTA for administrative expenses through June 30, 2012, unless new cost-sharing study is completed, in the professional judgment of the Budget and Legislative Analyst the proposed agreement should be amended to require that a new study be completed prior to June 30, 2012. The Budget and Legislative Analyst further recommends that the proposed agreement be amended to require that any future changes to the proposed cost-sharing agreement that have fiscal impacts to the City be subject to Board of Supervisors approval.

RECOMMENDATIONS

1. Amend the proposed resolution to provide for retroactivity to July 1, 2010.
2. Continue the proposed amended resolution as amended and request the MTA to:
 - (a) Amend the proposed cost-sharing agreement to require that a new cost-sharing study be completed to determine how much of the costs of the MTA's Paratransit Program, including MTA's administrative expenses, should be reimbursed by BART to the MTA. Such a new study should be completed by June 30, 2012.

(b) Amend the proposed cost-sharing agreement between MTA and BART to reflect that any future changes to the cost-sharing agreement, which have fiscal impacts to the City, be subject to Board of Supervisors approval. Under the proposed agreement, MTA and BART, without first obtaining Board of Supervisors approval, can in the future amend the proposed cost-sharing agreement, if the results of a new cost-sharing study determine that the percentage to be paid by BART to MTA should be changed, either up or down.

AGREEMENT No.
COST-SHARING AGREEMENT FOR PARATRANSIT SERVICES
BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO
AND THE SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

This Agreement is entered into this _____ day of _____ 2010, between the City and County of San Francisco ("CITY"), a municipal corporation, acting through its Municipal Transportation Agency ("SFMTA"), and the San Francisco Bay Area Rapid Transit District ("BART"), a rapid transit district established pursuant to California Public Utilities Code, Sections 28500 et seq.

RECITALS

A. The CITY is a municipal corporation chartered under the Constitution of the State of California and empowered by the Constitution and the CITY Charter to operate the Municipal Railway ("Muni").

B. The SFMTA is empowered by the CITY Charter to manage and control all public transportation functions of Muni.

C. BART operates in Alameda, Contra Costa, San Francisco and San Mateo Counties.

D. Section 223 of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. § 12143, requires that BART and the CITY provide paratransit services within their service areas to individuals who are unable because of their disability to use regular transit service.

E. The SFMTA administers a Paratransit Program for ADA paratransit-eligible individuals in San Francisco through a Paratransit Broker. Since 1994, the SFMTA has provided paratransit services in San Francisco, through its Paratransit Broker, to all certified ADA paratransit eligible users in areas where MUNI and BART service areas overlap.

F. The CITY has applied for and received from the Metropolitan Transportation Commission ("MTC") State Transit Assistance ("STA") funds and Transportation Development Act ("TDA") funds to assist in funding paratransit services in San Francisco.

G. In 1994, BART commissioned a study of the CITY's Paratransit Program, which included paratransit services provided by taxi, lift van, group van and the Commission on Aging to determine how much of the costs of the CITY's Paratransit Program would be attributable to BART. The results of the study indicated that approximately 8.8% of the CITY's overall costs for ADA paratransit should be borne by BART.

I. The CITY and BART are in accord with the results of the study and are entering into this Agreement to memorialize (1) SFMTA's agreement to cover BART's obligation under the ADA to provide paratransit services, and (2) BART's agreement to share in the costs of SFMTA's Paratransit Program.

FOR AND IN CONSIDERATION of the mutual promises contained herein, the parties agree as follows:

I. COST SHARING FORMULA

A. BART shall pay 8.8% of the "Net Operating Expenses" of providing services to eligible paratransit individuals in the CITY's service area, as calculated below.

B. Calculation of Net Operating Expenses.

1. On or about February 1, the CITY shall estimate the annual operating budget for SFMTA's Paratransit Broker Contract for the following fiscal year (July 1 through June 30) ("Total Operating Expenses").
2. The Total Operating Expenses shall be reduced by the following to arrive at the Net Operating Expenses:
 - a. an estimate of STA population based revenue allocated to the CITY for paratransit as approved by MTC,
 - b. an estimate of TDA Article 4.5 funds allocated to the CITY as approved by MTC,
 - c. an estimate of paratransit fare revenues for the fiscal year, as submitted in the revenue line items in MUNI's budget request,
 - d. except for trips on paratransit taxi service, the difference between estimated fare revenues as calculated in SFMTA's budget request and the amount that would be generated if maximum fares were charged, if the fare charged for ADA SF Access services is less than the maximum amount allowed under ADA rules (i.e., twice the undiscounted fixed route fare).

C. Billing of Net Operating Expenses

1. SFMTA shall bill BART for one quarter of 8.8% 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 8.8% 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.

- D. Notwithstanding the above, if for any fiscal year SFMTA's annual budget contribution is less than 91.2% of the total "Net Operating Expenses," BART's share of the costs would also be reduced proportionally so that the cost sharing between BART and SFMTA would remain the same.

II. RESPONSIBILITIES

A. BART shall:

1. Pay to the SFMTA its annual monetary contribution for the paratransit services as described in Section I in quarterly payments. BART's payments shall be due on August 1 for Q1, on November 1 for Q2, on February 1 for Q3, and on August 15 for Q4.

B. City shall:

1. By February 1 of each year, submit an estimate to BART for 8.8% 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 8.8% 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 8.8% of the Actual Net Operating Expense and the amount billed in Q1, Q2, and Q3.
4. 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.
5. 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.
6. 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 8.8% share of the cost of the provision of services to ADA paratransit eligible individuals.
7. Provide an annual report of service level statistics.
8. Provide an annual report of all funds received and disbursed under this Agreement in accordance with generally accepted accounting principles upon request by BART.

III. TERM OF AGREEMENT; AMENDMENT

- A. The term of this Agreement shall be for one year from its Effective Date, with automatic renewals for up to ten (10) years unless terminated by either party with a 180-day notice of termination.
- B. This Agreement may not be amended except by mutual written agreement of the parties.

IV. STUDY OF PARATRANSIT DEMAND; AUDIT OF PARATRANSIT COSTS

- A. BART or 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, above. 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). If the results of the study determine that the percentage should change, either upward or downward, the parties shall amend this Agreement to reflect the new percentage. Such Amendment shall be approved by BART and by the SFMTA on behalf of the CITY. The cost of the study shall be borne equally by the CITY and BART. Charges to the CITY for the cost of the study will accrue only after prior written authorization certified by the CITY's Controller, and the amount of the CITY's obligation for such study shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization.
- B. BART shall have the right to inspect and audit all accounts, records and data relating to the CITY's paratransit program, including the records of the CITY's paratransit broker. The records shall be made available for any such inspection or audit during normal business hours. BART's rights hereunder are expressly made subject to confidentiality and disclosure provisions of applicable Federal and State statutes and regulations. The CITY shall preserve and maintain such records for a period of three (3) years after the fiscal year for which such payments are made. The Auditor General of the State of California under California Government Code Section 8546.7 shall have the same rights conferred upon BART by this Section.

V. LIABILITY

- A. Neither BART nor any officer, director, agents, or employees thereof, shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by the CITY, its Paratransit Broker or any subcontractor in connection with providing the paratransit service pursuant to this Agreement. It is also agreed that pursuant to Government Code Section 895.4, the CITY shall indemnify, defend and hold BART harmless from any liability imposed for injury (as defined in Government Code

Section 810.8) occurring by reason of anything done or omitted to be done by the CITY, its paratransit broker or any subcontractor in connection with providing the paratransit service pursuant to this Agreement.

- B. Neither the CITY nor any officer, employee or agent thereof, shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by BART in connection with this Agreement. It is also agreed that pursuant to Government Code Section 895.4, BART shall indemnify, defend and hold the CITY harmless from any liability imposed for injury (as defined in Government Code Section 810.8) occurring by reason of anything done or omitted to be done by BART in connection with this Agreement.

VI. GENERAL PROVISIONS

- A. This Agreement shall be deemed to be made in, and shall be construed in accordance with the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.
- B. The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.
- C. All captions are for reference only and shall not be considered in construing this Agreement.
- D. This Agreement sets further the entire agreement between the parties, and supersedes all other oral or written provisions. This Agreement may be modified only as provided in Section III.B.
- E. Should any part of this Agreement be declared invalid by a court of law, such decision shall not affect the validity of any remaining portion which shall remain in full force and effect. Should the severance of any part of this Agreement materially affect any other rights and obligations of the parties hereunder, the parties will negotiate in good faith to amend this Agreement in a manner satisfactory to the parties.
- F. The CITY and BART shall each bear its own internal costs associated with administration of this Agreement, including, without limitation, reporting, billing, accounting and auditing costs.
- G. This Agreement shall bind and benefit the parties hereto and their assignees, successors, and permitted assigns.

- H. This Agreement and any documents supplied hereunder are subject to public inspection under the California Public Records Act and the City's Sunshine Ordinance (see San Francisco Administrative Code §67.24(e)) unless exempted by law.

VII. NOTICES

All notices to be given by the parties hereto shall be in writing and delivered or mailed, postage prepaid, as follows:

To CITY: San Francisco Municipal Transportation Agency
1 South Van Ness Ave, 7th floor
San Francisco, CA 94103

Attn: Annette Williams, Manager
Accessible Services Program

To BART: BART
800 Madison Street
P.O. Box 12688
Oakland, CA 94604-2688

Attn: Laura Timothy, Manager of Access and Accessible Services

VI. EFFECTIVE DATE OF AGREEMENT

This Agreement is effective as of July 1, 2010.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed, in triplicate, by their duly authorized officers, on the day and year first hereinabove written.

CITY AND COUNTY OF SAN FRANCISCO

Municipal Transportation Agency

By: _____
Nathaniel P. Ford Sr.
Executive Director/CEO

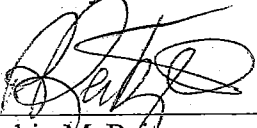
Municipal Transportation Agency
Board of Directors
Resolution No. _____
Dated: _____

ATTEST:

Secretary, SFMTA Board of Directors

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 BAY AREA RAPID TRANSIT DISTRICT

By: _____
Dorothy Dugger, General Manager

APPROVED AS TO FORM:

Office of the General Counsel

By: _____
BART Attorney

32651.2

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. 10-144

WHEREAS, Section 223 of the Americans with Disabilities Act of 1990 (ADA) requires that BART and the San Francisco Municipal Transportation Agency (SFMTA) provide paratransit services within their service areas to individuals whose disabilities will not allow them to use regular fixed route transit service; and,

WHEREAS, The SFMTA administers a Paratransit Program for ADA paratransit-eligible individuals in San Francisco through its Paratransit Broker and has provided these services to eligible individuals in BART's service area since 1994; and,

WHEREAS, The City has applied for and received from the Metropolitan Transportation Commission, State Transit Assistance (STA) funds and Transportation Development Act (TDA) funds to implement paratransit services in San Francisco; and,

WHEREAS, BART has agreed to continue to contribute its share of the cost of providing ADA paratransit services in San Francisco, less the value of its share of STA and TDA funds which the MTC has allocated to the City for this purpose; and,

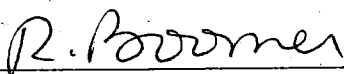
WHEREAS, BART commissioned a study of taxi, lift-van, group van and Commission on the Aging paratransit services to determine how much of the paratransit costs in San Francisco would be attributable to BART; the results of which indicated that approximately 8.8 percent of the overall costs for ADA paratransit should be borne by BART; and,

WHEREAS, The SFMTA and BART are entering into this Agreement for the purpose of continuing a cost-sharing arrangement whereby BART reimburses the SFMTA for providing BART's mandated ADA paratransit services within San Francisco for up to an additional 10-year period; now, therefore, be it

RESOLVED, That the Executive Director/CEO is authorized to execute a Cost-Sharing Agreement for Paratransit Services with BART requiring BART to reimburse the SFMTA for providing BART's ADA Paratransit services within San Francisco for a period of up to 10 years, and be it

FURTHER RESOLVED, That the SFMTA Board authorizes the Executive Director/CEO to submit the Cost-Sharing Agreement to the Board of Supervisors for approval.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of NOV 16 2010.



Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

----- Forwarded by Laura Timothy/LMA/Oak/BART on 12/13/2010 02:12 PM -----

Kimberly Talvola/LMA/Oak/BART

To Laura Timothy/LMA/Oak/BART@BART

cc

12/13/2010 02:11 PM

Subject Cost-Sharing Agmt for Paratransit- Approved as
to Form

Please be advised that the attached Cost-Sharing Agreement for Paratransit Services Between the City and County of San Francisco and the San Francisco Bay Area Rapid Transit District has been approved as to form by BART's Office of the General Counsel.

Regards,
Kimberly Talvola

Kimberly Talvola
Office of the General Counsel
San Francisco Bay Area Rapid Transit District
300 Lakeside Drive, 23rd Floor, Oakland, CA 94612
P.O. Box 12688 (LKS-23) Oakland, CA 94604-2688
Telephone: (510) 287-4965
Fax: (510) 464-6049

Notice:

This message, together with any attachments, is an attorney-client communication and/or attorney work product and is, therefore, intended only for the review and use of the individual or entity to which it is addressed. If you are not the intended recipient, you are hereby notified that the sender does not waive any privilege accorded to this information, and that you are strictly prohibited from any use, storage, dissemination, distribution, or copying of this message and any attachment. If you have received this email message in error, please immediately notify the original sender or the San Francisco Bay Area Rapid Transit District General Counsel's Office (510) 464-6050 immediately by telephone or by return e-mail, delete this message, along with any attachments, from your computer and destroy all forms of the email.