

THIS PRINT COVERS CALENDAR ITEM NO: 10.7

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Finance and Information Technology

BRIEF DESCRIPTION:

Authorizing the Director of Transportation to execute the Special Transit Fare “Fast Pass” Agreement between the City and County of San Francisco and the San Francisco Bay Area Rapid Transit District (BART) in an amount not to exceed \$9.8 million and a five-year term.

SUMMARY:

- The Fast Pass Program facilitates the coordination of transit service and regional fare integration, encourages transit use, and improves the quality of transit service between Muni and BART stations within San Francisco.
- The SFMTA and BART originally entered into an agreement in March 1983 to implement the Fast Pass Program to allow Muni customers to travel within San Francisco on BART.
- The Program allows customers who purchase this pass to travel on all Muni and BART service within San Francisco.
- The new agreement would replace the existing month-to-month agreement to provide the Fast Pass Program for a five-year term, confirm the terms of reimbursement between BART and the SFMTA, and set a not-to-exceed amount for budget and planning purposes.
- Under the proposed agreement, the SFMTA will reimburse BART 68 percent of the BART fare for travel within San Francisco, currently \$1.47 for each trip taken using the pass, and BART will reimburse SFMTA for Clipper transaction fees incurred when patrons use their Fast Passes for BART Trips within San Francisco according to 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.
- The Fast Pass includes a surcharge above the standard Muni Monthly pass, and the funds from the surcharge on the Fast Pass, along with operating funds will be used to support the Fast Pass Program.

ENCLOSURES:

1. SFMTAB Resolution
2. Proposed Fast Pass Agreement

APPROVALS:

DATE

DIRECTOR	<u><i>Viktoriya Wise</i></u>	<u>June 12, 2024</u>
SECRETARY	<u><i>[Signature]</i></u>	<u>June 12, 2024</u>

ASSIGNED SFMTAB CALENDAR DATE: June 18, 2024

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PURPOSE

To authorize the Director of Transportation to execute the Special Transit Fare “Fast Pass” Agreement between the City and County of San Francisco and the San Francisco Bay Area Rapid Transit District (BART) in an amount not to exceed \$9.8 million and a five-year term.

STRATEGIC PLAN GOALS AND TRANSIT FIRST POLICY PRINCIPLES

This item supports the following Strategic Plan Goals:

Goal 5: Deliver reliable and equitable transportation services.

Goal 6: Eliminate pollution and greenhouse gas emissions by increasing use of transit, walking and bicycling.

Goal 10: Position the agency for financial success.

This item will support the following Transit First Policy Principles:

1. To ensure quality of life and economic health in San Francisco, the primary objective of the transportation system must be the safe and efficient movement of people and goods. Public transit, including taxis and vanpools, is an economically and environmentally sound alternative to transportation by individual automobiles. Within San Francisco, travel by public transit, by bicycle and on foot must be an attractive alternative to travel by private automobile.
2. Public transit, including taxis and vanpools, is an economically and environmentally sound alternative to transportation by individual automobiles. Within San Francisco, travel by public transit, by bicycle and on foot must be an attractive alternative to travel by private automobile.
3. The City and County shall encourage innovative solutions to meet public transportation needs wherever possible and where the provision of such service will not adversely affect the service provided by the Municipal Railway.

DESCRIPTION

The Fast Pass Program facilitates the coordination of transit service and regional fare integration, encourages transit use, and improves the quality of transit service between Muni and BART stations within San Francisco.

On March 23, 1983, the City and BART authorized implementation of the Fast Pass Program and execution of a Fast Pass agreement (the 1983 Fast Pass Agreement) by a Motion adopted by the BART Board of Directors and by City's Public Utilities Commission Resolution No. 83-0110, respectively. Since 1983, the City and BART have entered into subsequent Fast Pass Agreements - the latest of which (the FY14-FY20 Fast Pass Agreement) has continued a month-to-month basis since June 30, 2020, as authorized by the FY14-FY20 Fast Pass Agreement.

The Program allows customers who purchase this pass to travel on all Muni and BART service within San Francisco. The proposed agreement provides the Fast Pass Program for a five-year term, confirms the terms of reimbursement between BART and the SFMTA, and includes a not-to-exceed amount for budget and planning purposes.

Under the proposed agreement, the SFMTA will reimburse BART 68 percent of the BART fare for travel within San Francisco, currently \$1.47 for each trip taken using the pass, and BART will reimburse SFMTA for Clipper transaction fees incurred when patrons use their Fast Passes for BART Trips within San Francisco according to 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, currently \$0.02 per ride. Clipper transaction fees are deducted from the reimbursement amount.

The Fast Pass (available on Clipper only) is priced at rate 20 percent higher than the standard Muni Monthly pass, and funds from the 20 percent surcharge on the Fast Pass will be used to support the Fast Pass Program. The 20 percent surcharge on the Pass recovers approximately 82 percent of charges paid to BART for this service. Based on actuals through May 2024, it is estimated that in Fiscal Year (FY) 2024, approximately 930,000 BART trips are expected to be taken using the Fast Pass, and approximately 75,000 passes will be sold.

Table 1 provides the estimated costs and pass surcharge recovery for the five-year agreement term. Projections are based on an estimated annual increases of 5 percent ridership and pass sales, 6.5 percent for BART fares, and 4 percent increases in the Fast Pass cost.

Table 1: BART Fast Pass Agreement Cost and Revenue Recovery

Revenue	FY25	FY26	FY27	FY28	FY29
Estimated Pass Sales (#)	75,406	79,176	83,135	87,292	91,656
20% Pass Surcharge	17.00	18.00	19.00	20.00	21.00
Total Revenue Recovery	1,281,898	1,425,169	1,579,562	1,745,832	1,924,779

Expense	FY25	FY26	FY27	FY28	FY29
Estimated Trips	928,499	974,923	1,023,670	1,074,853	1,128,596
Estimated Reimbursement Rate	1.66	1.77	1.88	2.01	2.14
FY24 Estimated Cost	1,542,463	1,724,697	1,928,461	2,156,299	2,411,055
Difference (Pass Surcharge vs. Cost)	(260,565)	(299,528)	(348,899)	(410,468)	(486,276)

STAKEHOLDER ENGAGEMENT

Public outreach occurred regarding the fare policy and pricing as part of the SFMTA two-year budget process, including fares for and related to the Fast Pass.

ALTERNATIVES CONSIDERED

The SFMTA could consider discontinuing the Fast Pass Agreement with BART, however, this would result in a large fare increase for customers using both Muni and BART within San Francisco, reducing transit ridership and increasing automobile usage and congestion. Additionally, such a change is inconsistent with SFMTA’s goal of improving integration of regional transit agencies.

FUNDING IMPACT

As noted above, the not-to-exceed amount under the agreement is \$9.8 million; this represents the total estimated cost of the Fast Pass Program over the five-year term. Approximately \$8 million is expected to be recovered through the 20 percent pass surcharge, leaving a net cost of \$1.8 million over five years. The difference is covered by SFMTA operating funds. Staff may propose additional increases to the surcharge in the next budget to recover additional revenue.

ENVIRONMENTAL REVIEW

On May 9, 2024, the SFMTA, under authority delegated by the Planning Department, determined that the proposed Special Transit Fare “Fast Pass” Agreement is not a project under Section 21065 of the California Environmental Quality Act (CEQA) and Sections 15060(c) and 15378(b) of the CEQA Guidelines.

A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors and is incorporated herein by reference.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

This agreement requires approval by the BART Board of Directors.

The City Attorney’s Office has reviewed this calendar item.

RECOMMENDATION

Staff recommends that the SFMTA Board of Directors authorize the Director of Transportation to execute the Special Transit Fare “Fast Pass” Agreement between the City and County of San Francisco and the San Francisco Bay Area Rapid Transit District (BART) in an amount not to exceed \$9.8 million and a five-year term.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The Fast Pass Program facilitates the coordination of transit service and regional fare integration, encourages transit use, and improves the quality of transit service between Muni and the San Francisco Bay Area Rapid Transit District (BART) stations within San Francisco; and,

WHEREAS, The SFMTA and BART originally entered into an agreement in March 1983 to implement the Fast Pass Program to allow Muni customers to travel within San Francisco on BART; and,

WHEREAS, The Program allows customers who purchase this pass to travel on all Muni and BART service within San Francisco; and,

WHEREAS, The new agreement will replace the existing month-to-month agreement to provide the Fast Pass Program for a five-year term, confirm the terms of reimbursement between BART and the SFMTA, and set a not-to-exceed amount for budget and planning purposes, and,

WHEREAS, Under the new agreement, the SFMTA will reimburse BART 68 percent of the BART fare for travel within San Francisco, currently \$1.47 for each trip taken using the pass, and BART will reimburse SFMTA for Clipper transaction fees incurred when patrons use their Fast Passes for BART Trips within San Francisco according to the transaction fee structure as stated in the Metropolitan Transportation Commission/Cubic Transportation Systems, Inc. Contract, Part I, Revised Terms and Conditions (Change Order 118), Attachment 2, Price Schedule, dated June 30, 2009; and,

WHEREAS, On May 9, 2024, the SFMTA, under authority delegated by the Planning Department, determined that the proposed Special Transit Fare “Fast Pass” Agreement is not a “project” under Section 21065 of CEQA and Sections 15060(c) and 15378(b) of the CEQA Guidelines; and,

WHEREAS, A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors and is incorporated herein by reference; now, therefore be it

RESOLVED, The San Francisco Municipal Transportation Agency Board of Directors approves the Special Transit Fare “Fast Pass” Agreement between the City and County of San Francisco and BART to reimburse BART for travel within San Francisco using the pass at a rate of 68 percent of the regular BART fare, and BART will reimburse SFMTA for Clipper transaction fees incurred when patrons use their Fast Passes for BART Trips within San Francisco according to the transaction fee structure as stated in the Metropolitan Transportation Commission/Cubic Transportation Systems, Inc. Contract, Part I, Revised Terms and Conditions (Change Order 118), Attachment 2, Price Schedule, dated June 30, 2009; and be it further

RESOLVED, The Director of Transportation is authorized to execute the Special Transit Fare “Fast Pass” Agreement between the City and County of San Francisco and BART.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of June 18, 2024.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

**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 (the “FY25-FY29 Fast Pass Agreement” or "Agreement") is made and entered into this ____ day of _____, 2023, between the City and County of San Francisco (“City”), by and through its Municipal Transportation Agency (“SFMTA”) (hereinafter referred to collectively as “SFMTA”), and the San Francisco Bay Area Rapid Transit District (“BART”) (collectively, the “Parties”).

RECITALS

1. City is a municipal corporation chartered under the Constitution of the State of California and empowered by the Constitution and the San Francisco Charter to operate a local transit system, the San Francisco Municipal Railway (“Muni”), through the 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 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 program and execution of a Fast Pass agreement (the “1983 Fast Pass 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 Agreements - the latest of which (the FY14-FY20 Fast Pass Agreement) expired June 30, 2020 and has continued on a month-to-month basis as authorized by the FY14-FY20 Fast Pass Agreement since that time.
8. The SFMTA offers two monthly Fast Pass products: the Adult “A” Fast Pass, good on both Muni and BART within San Francisco and priced by SFMTA at Ninety-Eight Dollars (\$98) for FY24, and the Adult “M” Fast Pass, good only on Muni and priced by SFMTA at Eighty-One Dollars (\$81) for FY24.
9. For purposes of this Agreement, “Fast Pass” refers only to the Adult “A” Fast Pass.
10. The Clipper smart card is sold and distributed through the Clipper program, which is operated by Cubic Transportation Systems under contract with the Metropolitan Transportation Commission (MTC). The MTC Clipper program collects the revenue from Fast Pass on Clipper sales, electronically transferring said revenue to SFMTA on a daily basis.
11. Effective July 2011, the Adult “A” Fast Pass is only electronically stored on the Clipper smart card and is no longer available as a magnetic ticket.
12. SFMTA agrees to reimburse BART for all trips made on BART within San Francisco by passengers using the Fast Pass on Clipper.
13. SFMTA and BART recognize that it is important for the Fast Pass program to be financially sustainable for both agencies.
14. SFMTA and BART agree the reimbursement rate will be 68% of the BART fare within San Francisco. Any subsequent changes to the reimbursement rate will be made subject to Section 2.B, below, through the term of this Agreement.

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. “The Fast Pass Program” is defined as the program in which the Adult “A” Fast Passes are electronically loaded on Clipper to patrons and BART receives a portion of the revenues from Fast Pass use in accordance with the terms of this FY25-FY29 Fast Pass Agreement.
- B. “Trip” is defined to mean an exit from the BART system by a passenger who used a Fast Pass on Clipper to enter a BART rail station within the City and County of San Francisco.
- C. “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.
- D. “Fiscal Year” is defined as July 1 through June 30. For example, Fiscal Year 2024 (“FY25”) is July 1, 2024 through June 30, 2025.

SECTION 2: SFMTA REIMBURSEMENT TO BART FOR FAST PASS TRIPS TAKEN ON BART

- A. Initial Rate of Reimbursement: Commencing on July 1, 2024, and continuing on a monthly basis, SFMTA agrees to reimburse BART One Dollar and Forty-Seven Cents (\$1.47) per Trip for each Fast Pass Trip on BART, as counted by BART’s ridership reporting system.
- B. Adjusted Rate of Reimbursement: The rate of reimbursement shall be adjusted in accordance with BART fare changes for travel for a total reimbursement fee per Trip of 68% of the BART fare for travel within San Francisco.
- C. Total Reimbursement Cap: Commencing July 1, 2025, the total reimbursement from the SFMTA to BART shall not exceed \$9.8 million.
- D. Required Data: When a Fast Pass on Clipper is processed through a BART fare gate, the

station of exit, the station of origin, the time of exit, and the type of ticket used are recorded. No charges will be incurred under this FY25-FY29 Fast Pass Agreement, nor will any payments become due to BART, until the data required under this Fast Pass Agreement is received from BART and approved by SFMTA as being in compliance with this Agreement, which approval will not be unreasonably withheld or delayed.

SECTION 3: BART REIMBURSEMENT TO SFMTA FOR FAST PASS ON CLIPPER TRANSACTION FEES

A. BART agrees to reimburse SFMTA for Clipper transaction fees incurred when patrons use their Fast Passes for BART Trips within San Francisco as recorded. The amount of the transaction fee to be paid by BART for each Fast Pass on Clipper 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 transactions per month are 15 million or less, the transaction fee will be 1.5 cents for each Fast Pass Trip on BART.
2. When total region-wide Clipper transactions per month are between 15 million and 30 million, the transaction fee for each Fast Pass 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 transactions per month are greater than 30 million, the transaction fee for each Fast Pass 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:

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

where

A = Percentage of regional Clipper transaction fees charged at 1.5 cents per transaction

B = Percentage of regional Clipper transaction fees charged at 1.2 cents per transaction

C = Percentage of regional Clipper transaction fees charged at 0.35 cents per transaction

C. In the event that the Clipper transaction fee schedule or methodology is altered during the term of this Agreement, BART and the SFMTA agree to adjust 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 AND RESPONSIBILITIES 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 FY25-FY29 Fast Pass Agreement.

C. BART will be responsible for the following:

1. Ensuring proper maintenance of smart card reader hardware and electronic equipment to enable Fast Pass use in the BART system.
2. Providing accurate accounting of Trips taken with the Fast Pass in accordance with the procedures set forth in Section 5.A, below.
3. Providing demographic data to SFMTA of BART Fast Pass riders in order to facilitate compliance with state and federal reporting requirements, including Title VI of the Civil Rights Act of 1964 ("Title VI").

D. SFMTA will be responsible for the following:

1. Pricing of the Fast Pass and ensuring compliance with related state and federal fare requirements regarding fare changes, including, but not limited to, Title VI, 49 CFR

Part 21, and current FTA implementing guidance. Such compliance shall include SFMTA's responsibility for Title VI analyses assessing the impacts on all Fast Pass riders affected by Fast Pass pricing changes, which analyses will be subject to BART review.

SECTION 5: BILLING AND PAYMENT PROCEDURES

- A. Invoice and Supporting Data. Following each month Fast Pass use is accepted on BART, BART will invoice SFMTA for the reimbursement owed by SFMTA to BART for Fast Pass Trips taken on BART, less the amount BART owes SFMTA for Clipper transaction fees.
1. The reimbursement owed by SFMTA to BART for Fast Pass Trips taken on BART will be calculated by multiplying the previous month's total Fast Pass Trips by the applicable rate of reimbursement specified in Section 2.
 2. The amount BART owes SFMTA for Clipper transaction fees will be calculated by multiplying the previous month's total Fast Pass Trips by the per Trip Clipper transaction fee specified in Section 3.
 3. The number of Fast Pass Trips will be based upon either: (1) the ridership data; or (2) available ridership data and total Trip estimates, in the absence of complete ridership data. BART will submit all data relied on to compute the number of Fast Pass Trips for each month with the monthly invoice via e-mail, with an electronic file containing Trip data reported by origin and destination (exit) station, date, and time of day.
- B. SFMTA Payments. SFMTA will make payment of any balance due within thirty (30) calendar days of receipt of each monthly invoice, including the data specified in Section 2.C and 5.A3 above, from BART. BART shall submit all data relied on to compute the number of Fast Pass 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 6, below.

SECTION 6: RESOLUTION OF DISPUTES

If any dispute under this FY25-FY29 Fast Pass 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 FY25-FY29 Fast Pass 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 Assistant General Manager, Administration 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 FY25-FY29 Fast Pass 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 FY25-FY29 Fast Pass 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 7: GENERAL PROVISIONS

- A. Records and Audits: BART will maintain Trip data documentation consisting of reports from the ridership reporting system. 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 ridership reporting system or, in the absence of complete ridership data, the available ridership data and total Trip estimates.
- B. Term; Termination:
 - 1. Term. The term of this Agreement shall be from the effective date through June 30, 2029, unless extended or earlier terminated as provided below.
 - 2. Termination. Either SFMTA or BART may terminate this FY25-FY29 Fast Pass Agreement at any time upon giving the other Party ninety (90) calendar days written notice.
 - 3. Extension. The Parties may extend this Agreement by mutual written agreement for a combined period no more than five years.

- 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
2150 Webster Street P. O. Box 12688
Oakland, CA 94612
Notices: Attention General Manager

TO: San Francisco Municipal Transportation Agency
1 South Van Ness, 8th Floor
San Francisco, CA 94103
Invoices: Invoices@sfmta.com
Notices: Diana Hammons, Senior Manager,
Revenue Collection

- D. Entire Agreement: The provisions of this FY25-FY29 Fast Pass Agreement constitute the entire agreement between the Parties relating to this matter, and will apply to Fast Pass 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 FY25-FY29 Fast Pass Agreement, SFMTA and BART will provide the services specified in this FY25- FY29 Fast Pass 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 FY25-FY29 Fast Pass Agreement.
- F. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation: This FY25-FY29 Fast Pass 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 FY25-FY29 Fast Pass 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 FY25-FY29 Fast Pass 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 FY25-FY29 Fast Pass 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 FY25-FY29 Fast Pass 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 8: Effective Date

The FY25-FY29 Fast Pass Agreement will be effective when signed by both Parties. Prior to the FY25-FY29 Fast Pass Agreement, the parties agree that during the period prior to the effective date of the current Agreement, the month-to-month basis payments shall be processed under the terms of the FY14-FY20 Fast Pass Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

SAN FRANCISCO BAY AREA RAPID
TRANSIT DISTRICT

By: _____
Robert Powers
General Manager

CITY AND COUNTY OF SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY

By: _____
Jeffrey Tumlin
Director of Transportation

SFMTA Board of Directors
Resolution No. _____
Dated: _____

Attest:

Christine Silva Secretary,
SFMTA Board

APPROVED AS TO FORM:
Office of the General Counsel

By: _____
Raymond Pascual
Attorney, Office of the General Counsel

APPROVED AS TO FORM:
David Chiu, City Attorney

By: _____
Lillian A. Levy
Deputy City Attorney