

THIS PRINT COVERS CALENDAR ITEM NO. :

**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 SFMTA and the San Francisco Bay Area Rapid Transit District (BART), with a term from January 1, 2010 through June 30, 2014, subject to approval from the Board of Supervisors.

SUMMARY:

- Under the prior Fast Pass[®] Agreement, the SFMTA reimburses BART \$1.02 for each Adult Fast Pass[®] trip taken on BART within San Francisco.
- BART Board policy allowed for biennial fare increases based on the inflation rate less ½ percent for productivity improvements. Reimbursement rates have generally increased correspondingly; however, on July 1, 2009, BART advanced its regularly-scheduled fare increase by six months and raised its base fare 17 percent. BART has requested a similar increase in the reimbursement rate from \$1.02 to \$1.19 per trip.
- This proposed Agreement would raise the reimbursement rate to \$1.19 per trip retroactively to January 1, 2010 and would result in a payment to BART \$9.2 million for Fiscal Year 2012. The SFMTA will make a one-time retroactive payment of \$3.4 million to cover the difference in rates applied to trips taken between January 2010 and June 2012.
- Based on recent inflation levels, a subsequent reimbursement rate increase to \$1.21 would occur retroactively on July 1, 2012.
- The contract includes a not-to-exceed amount of \$14 million per fiscal year.
- BART will reimburse the SFMTA for Clipper[®] Card transaction costs related to the use of the equivalent of the Adult Fast Pass[®] on BART.

ENCLOSURES:

1. SFMTAB Resolution
2. Proposed Fast Pass[®] Agreement

APPROVALS:

DATE

DIRECTOR _____

11/13/12

SECRETARY _____

11/13/12

ASSIGNED SFMTAB CALENDAR DATE: November 20, 2012

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PURPOSE

Authorizing the Director of Transportation to execute the Special Transit Fare (Fast Pass[®]) Agreement between the SFMTA and the San Francisco Bay Area Rapid Transit District (BART), from January 1, 2010 through June 30, 2014.

GOAL

This item will meet the following goal and objectives of the SFMTA Strategic Plan:

- Goal 1: Customer Focus: To provide safe, accessible, clean, environmentally sustainable service and encourage the use of auto-alternative modes through the Transit First Policy

DESCRIPTION

The SFMTA and BART have an agreement that allows Muni Adult Fast Pass[®] users (using the Clipper[®] Card) to ride BART within San Francisco at no additional cost. The SFMTA reimburses BART at a fixed rate per trip, which historically has represented a discount of slightly above 30% over the standard BART ticket price. The most recent agreement between the SFMTA and BART, which expired on December 31, 2009, set the reimbursement rate at \$1.02 per trip. Based on ridership volumes of approximately 7.7 million trips annually, the total reimbursement from the SFMTA to BART is approximately \$7.9 million under the existing rate but would increase to \$9.2 million under the proposed contract.

On May 22, 2003, the BART Board adopted a Productivity-Adjusted Consumer Price Index (CPI) Based Fare Rates and Charges policy. This policy specified a formula for adjusting fares biennially based on the inflation rate less ½ percent for productivity improvements. Nevertheless, on July 1, 2009, BART advanced its regularly-scheduled fare increase by six months and raised its base fare 25¢ within San Francisco from \$1.50 to \$1.75 – a 17 percent increase between December 31, 2005 and December 31, 2010, the base BART fare within San Francisco grew from \$1.25 to \$1.75 – a 40 percent cumulative increase or a compounded average of 7 percent per year.

Previous Proposed Agreement

On January 4, 2011, the SFMTA Board approved a proposed Agreement retroactive to January 1, 2010, which included the following terms:

- Reimbursement Rate (until 2012) – The reimbursement rate would have increased 17 percent from \$1.02 to \$1.19 per trip retroactive to January 1, 2010, to reflect a fare increase in the regular BART fare from \$1.50 to \$1.75 on July 1, 2009. In 2012, the reimbursement rate would have increased again per BART's existing CPI-based fare increase policy, presumably at a rate tracking inflation.

- Reimbursement Rate (after 2012) – BART’s existing CPI-based fare increase policy will expire in 2012. The previously proposed Agreement would have set Fast Pass[®] reimbursement rate increases to whatever subsequent fare increase policy the BART Board approved in 2012. While BART staff had expressed confidence that the BART Board would authorize a long-term fare increase program similar to the current policy, they could not guarantee what the specifics of that policy would be.
- Reimbursement Rate Growth Cap – The previously proposed Agreement included a 10-percent annual reimbursement rate growth cap every year. The actual payments to BART could still have grown faster than 10-percent annually if ridership increased; for example, a 10-percent reimbursement rate increase combined with 5-percent ridership growth would result in a 15.5 percent payment increase to BART.
- Clipper[®] Card Transaction Fees – BART agreed to absorb any transaction fees associated with using the Clipper[®] Card on BART.

Any contract with expenditures expected to exceed \$10 million annually requires approval from the San Francisco Board of Supervisors.

On May 4, 2011, the Board of Supervisors tabled the approval of this agreement and requested that SFMTA staff renegotiate the terms of this agreement along with the Feeder Agreement and bring both renegotiated agreements back for approval together.

Revised Proposed Agreement

The proposed Fast Pass[®] Agreement has been renegotiated with BART. It contains the following provisions:

- Contract Term – The contract would be in effect retroactively from January 1, 2010 to June 30, 2014.
- January 2010-June 2012 Reimbursement Rate – A \$1.19 reimbursement rate would apply retroactively to January 1, 2010 and would last until June 30, 2012 or when BART raises its fares, whichever occurs later. This \$1.19 rate represents a 17 percent increase over the current \$1.02 rate. The SFMTA estimates that this will result in a one-time retroactive payment of \$3.4 million to cover the difference in rates applied to trips taken between January 2010 and June 2012.
- Based on BART’s Consumer Price Index (CPI) adjustment formula less a 0.5 percent factor for BART productivity improvements, a \$1.21 reimbursement rate would commence retroactive to July 1, 2012 and remain in effect through June 30, 2014. Assuming ridership remains constant, total reimbursement to BART would increase by 2 percent annually to \$9.3 million in Fiscal Years 2013 and 2014. If ridership grew by 5 percent annually, reimbursement would increase to \$9.8 million in Fiscal Year 2013 and \$10.3 million in Fiscal Year 2014.
- The SFMTA and BART have committed to begin negotiations by January 1, 2014 for a new Fast Pass[®] Agreement. If both parties cannot agree on the terms of a new contract effective July 1, 2014, then the contract shall continue on a month-to-month basis with a reimbursement rate adjustment based on BART’s CPI formula effective on the date of a BART fare increase on or after July 1, 2014.

- There is a reimbursement payment cap of \$14 million per fiscal year. Based on actual ridership, the SFMTA would pay BART \$9.6 million for Fiscal Year 2011 Fast Pass® trips.
- Clipper® Card Transaction Fees – BART has agreed to absorb any transaction fees associated with using the Clipper® Card on BART. At the current level of Clipper® transactions (less than 15 million monthly regionwide), the transaction fee is 1.5¢ per trip. If there are between 15 and 30 million Clipper® transactions per month, the fee becomes 1.2¢ per trip. If there are more than 30 million Clipper® transactions per month, the fee lowers to 0.35¢ per trip. Transaction fees are estimated at \$130,000 annually based on current ridership volumes. BART would deduct the applicable transaction fees from the billed reimbursement fees on its invoices.

The SFMTA and BART have now negotiated changes to the Feeder Agreement as well which is before the SFMTA Board of Directors for consideration as a separate report.

Comparison of BART Fast Pass® Agreement Provisions

| Subject | Prior Agreement Provisions | Proposed Contract Provisions | Annual Financial Impact Assuming Current Ridership Volumes | Annual Financial Impact Assuming 5% Annual Ridership Increase |
|---|--|---|--|--|
| Reimbursement Rate (through June 2012) | \$1.02 per trip | \$1.19 per trip retroactive to January 1, 2010 | Fast Pass reimbursements are \$9.6 million in FY 2011 and \$9.2 million in FY 2012 | |
| Reimbursement Rate (July 2012 and after) | \$1.02 per trip | \$1.21 per trip | Annual SFMTA payments increase to \$9.3 million in FY 2013 and FY 2014 | Annual SFMTA payments increase to \$9.8 million in FY 2013 and \$10.3 million in FY 2014 |
| Reimbursement Rate Growth Cap | None | \$14 million | SFMTA payments cannot exceed \$14 million annually | SFMTA payments cannot exceed \$14 million annually |
| ClipperSM Card Transaction Fees | SFMTA absorbs all fees (1.5¢ per transaction at current volumes) | BART would absorb transaction fees for Clipper SM Cards with the Adult Fast Pass® used on BART | Approximately \$ 120,000 annually in transaction fees absorbed by BART | Approximately \$125,000 annually in transaction fees absorbed by BART by FY 2014 |

ALTERNATIVES CONSIDERED

Various alternatives were discussed between BART and SFMTA during the two-year negotiations process and both agencies agreed to the proposal summarized in this report. It is highly unlikely that further negotiations would result in a different outcome. The primary alternative to the proposed Agreement would be to discontinue accepting the Adult Fast Pass® on BART within San Francisco. This would result in a large fare increase for customers using both Muni and BART within San Francisco, possibly reducing transit ridership and increasing automobile usage and congestion.

FUNDING IMPACT

The funding impact of this Agreement varies based on Adult Fast Pass[®] ridership on BART. Assuming current ridership levels of approximately 7.7 million, the 17-percent increase in the reimbursement rate from \$1.02 to \$1.19 will result in an increase in annualized payments to BART of \$9.3 million for Fiscal Year 2014. If ridership levels increase 5 percent, payments would increase to \$10.3 million by Fiscal Year 2014. In no case will the annual payments exceed \$14 million per the cap established by the Agreement.

The Table below includes payments made to BART in prior fiscal years.

| | |
|---------|--------------|
| FY 2007 | \$11,230,096 |
| FY 2008 | \$12,476,602 |
| FY 2009 | \$12,986,214 |
| FY 2010 | \$10,575,817 |

The ridership declined in FY 2010 when the SFMTA created a separate Muni-Only Pass for customers who did not ride BART. Prior to that time, the BART/Muni Adult Fast Pass had been the only monthly pass option available regardless of whether or not a customer rode BART. . Fast Pass ridership also declined by approximately 4.3% between Fiscal Years 2011 and 2012.

The table below details projected reimbursement expenses during each fiscal year of the Agreement based on ridership levels.

| Fiscal Year | Reimbursement Rate | Reimbursement Expenses (millions) (Assuming No Ridership Growth*) | Reimbursement Expenses (Assuming 5% Annual Ridership Growth) |
|--------------------------------|--------------------|---|--|
| FY 2010 (2 nd half) | \$1.19 | \$5.3 M | \$5.3 M |
| FY 2011 | \$1.19 | \$9.6 M | \$9.6 M |
| FY 2012 | \$1.19 | \$9.2 M | \$9.2 M |
| FY 2013 | \$1.21 | \$9.3 M | \$9.8 M |
| FY 2014 | \$1.21 | \$9.3 M | \$10.3 M |

* Current Adult Fast Pass[®] ridership is approximately 7.7 million annually.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

The City Attorney’s Office has reviewed the item. This Agreement will also require approval from the San Francisco Board of Supervisors because expenditures under the contract are expected to exceed \$10 million annually.

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RECOMMENDATION

The SFMTA Board of Directors authorizes the Director of Transportation to execute the Fast Pass[®] Agreement between the City and BART, subject to approval from the San Francisco Board of Supervisors.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, SFMTA Adult Fast Pass[®] users currently make approximately 7.7 million trips on BART within San Francisco each year under the Special Transit Fare (Fast Pass[®]) Agreement (“Agreement”) between the SFMTA and the San Francisco Bay Area Rapid Transit District (BART), which expired on December 31, 2009; and

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

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

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

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

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

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

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

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 for the period January 1, 2010 through December 31, 2014 (the “2010-2014 Fast Pass[®] Agreement” or “Agreement”) is made and entered into this ____day of _____, 201_, between the San Francisco Municipal Transportation Agency (“SFMTA”) (hereinafter referred to collectively as “SFMTA”), and the San Francisco Bay Area Rapid Transit District (“BART”) (collectively, the “Parties”).

RECITALS

1. City is a municipal corporation chartered under the Constitution of the State of California and empowered by the Constitution and the San Francisco Charter to operate a local transit system, the San Francisco Municipal Railway (“Muni”), through its Municipal Transportation Agency (SFMTA).
2. BART is a rapid transit district duly created and acting under the laws of the State of California, charged by law with the operation of a regional rapid transit system for the San Francisco Bay Area.
3. Both SFMTA and BART operate transit services within the City and County of San Francisco and, pursuant to Section 29142.4(a) of the Public Utilities Code of the State of California, intend to coordinate Muni and BART transit services and fares between Muni and BART stations within San Francisco.
4. SFMTA and BART agree that an inter-operator monthly pass (“Fast Pass[®]”) 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 2008-2009 Fast Pass[®] Agreement) expired on December 31, 2009.
8. Since December 31, 2009, the Parties have continued the Fast Pass[®] program in accordance with the 2008-2009 Fast Pass[®] Agreement.
9. Effective January 1, 2010, the City began to sell two monthly Fast Pass[®] magnetic stripe tickets: the Adult “A” Fast Pass[®], good on both Muni and BART within San Francisco and currently priced at Seventy-Four Dollars (\$74), and the Adult “M” Fast Pass[®], good only on Muni and currently priced at Sixty-Four Dollars (\$64). 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.
10. For purposes of this Agreement, “Fast Pass[®]” refers only to the Adult “A” Fast Pass[®].
11. 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 Clipper[®] program collects the revenue from Fast Pass[®] on Clipper[®] sales, electronically transferring said revenue to SFMTA on a daily basis.
12. SFMTA agrees to reimburse BART for all trips made on BART within San Francisco by passengers using the Fast Pass[®] on Clipper[®].
13. The Clipper[®] program is being administered by MTC. Certain transaction fees are associated with the Clipper[®] program. BART agrees to reimburse SFMTA for Clipper[®] transaction fees incurred when passengers use the Fast Pass[®] on Clipper[®] to make a BART trip within San Francisco.
14. SFMTA and BART recognize that it is important for the Fast Pass[®] program to be financially sustainable for both agencies.
15. BART has adopted a schedule of regular fare increases whereby, every two years, fares increase by a Productivity-Adjusted Consumer-Price-Index (CPI) based percentage. Under

the schedule, the third such increase took effect on July 1, 2009, and the last such increase took effect on July 1, 2012.

16. SFMTA and BART have agreed on reimbursement rates retroactive to January 1, 2010, and continuing through June 30, 2014, based on a Productivity-Adjusted CPI formula, as described in Section 2 below.
17. SFMTA and BART agree that imposing a cap on the reimbursement amount in each fiscal year during the term of the Agreement would help ensure budgetary certainty for SFMTA.

AGREEMENT

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

SECTION 1: DEFINITIONS

- A. “Data Acquisition System” (“DAS”) is defined to mean BART’s computerized system, which automatically records the number of Trips as defined below.
- B. “The Fast Pass[®] Program” is defined as the program in which the Adult “A” Fast Pass[®] is 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 2010-2014 Fast Pass[®] Agreement.
- C. “Trip” is defined to mean an exit from the BART system by a passenger who used either a Fast Pass[®] magnetic stripe ticket or a Fast Pass[®] on Clipper[®] to enter and exit a BART rail station within the City and County of San Francisco.
- D. “Trip Estimate” is defined to mean an estimate of Trips based upon statistical analysis of recent station data. All detail supporting such Trip Estimates will be provided to SFMTA with BART’s invoice for reimbursement for SFMTA's review.

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

- A. Initial Rate of Reimbursement: Retroactive to January 1, 2010, and continuing on a monthly basis through June 30, 2012. SFMTA agrees to reimburse BART One Dollar and Nineteen Cents (\$1.19) per trip for each Fast Pass® trip on BART, as counted by BART's DAS.
- B. Adjusted Rate of Reimbursement: Effective with the 2012 fare increase, which took effect on July 1, 2012, and through June 30, 2014, SFMTA agrees to reimburse BART One Dollar and Twenty-One Cents (\$1.21) per trip for each Fast Pass® trip on BART, as counted by BART's DAS. This reimbursement rate adjustment from \$1.19 to \$1.21 is based upon BART's productivity-adjusted CPI-based increase formula as calculated for 2012 and as described in the attached Exhibit A "New Fare Rates and Charges: Productivity-Adjusted CPI-Based Increases."
- C. Reimbursement Cap: Under no circumstances shall the total reimbursement from the SFMTA to BART exceed \$14 million in any fiscal year of this Agreement.
- D. Negotiation of New Agreement: The Parties agree to commence negotiations no later than January 1, 2014 to determine the terms of a new Fast Pass® Agreement to take effect on July 1, 2014. If a new agreement cannot be approved by the Parties by June 30, 2014, then this Agreement shall remain in effect on a month-to-month basis. If BART implements a fare increase on or after July 1, 2014, the reimbursement rate shall be increased by the formula in Exhibit A, effective on the date of the BART fare increase. This reimbursement rate would remain in effect until a new Agreement is approved by the Parties.
- E. Required Data: When a Fast Pass® paper ticket or a Fast Pass® on Clipper® is processed through a BART fare gate, DAS records the station of exit, the station of origin, the time of exit, and the type of ticket used. After each revenue day, the data is processed into Microsoft Excel files for tabulation and monitoring. No charges will be incurred under this 2010-2014 Fast Pass® 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.

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 by DAS. 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 fifteen (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 fifteen (15) million and thirty (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 thirty (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:

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

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

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

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

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

C. In the event that the Clipper® transaction fee schedule or methodology is altered during the term of this Agreement, BART and the SFMTA agree to renegotiate the formula as established in Section 3.B above so that BART will continue to reimburse the SFMTA for all Clipper® transaction fees associated with using the Fast Pass® on BART.

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

A. Distribution: The Clipper® program will have the responsibility for Fast Pass® on Clipper® distribution.

B. Billing, Accounting, Auditing: SFMTA and BART each will bear its own internal administrative billing, accounting and auditing costs associated with Fast Pass® use on BART and administration of this 2010-2014 Fast Pass® Agreement.

A. Fast Pass® on Clipper® Maintenance of Equipment and Accounting of Trips:

BART will be responsible for the following:

A. Ensuring proper maintenance of smart card reader hardware and electronic equipment to enable Fast Pass® use in the BART system.

B. Providing accurate accounting of trips taken with the Fast Pass® in accordance with the procedures set forth in Section 6.A, below.

SECTION 5: COORDINATION REQUIREMENTS

SFMTA and BART believe a harmonious relationship to be essential to faithful execution of this 2010-2014 Fast Pass[®] Agreement. Both Parties also agree that good relations will be jeopardized by failure to act in concert on all matters affecting Fast Pass[®] use on BART. Therefore, SFMTA and BART commit themselves to continued efforts to provide sufficient notice of any action by either Party related to the Fast Pass[®] that has the potential to impact the other.

SECTION 6: 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 DAS data; or (2) available DAS data and total trip estimates, in the absence of complete DAS data. BART will submit all data relied on to compute the number of Fast Pass[®] trips for each month with the monthly invoice via e-mail, with an electronic file containing these trip data reported by origin and destination station, date, and time of day.
4. If the calculated reimbursement amount above exceeds \$14 million cumulatively in any single fiscal year during the term of this 2010-2014 Fast Pass[®] Agreement, BART shall not invoice the SFMTA for the amount above \$14 million.

B. SFMTA Payments.

1. SFMTA agrees to pay BART in full within thirty (30) calendar days of the Effective Date for Fast Pass[®] trips taken on BART from January 1, 2010 through June 30, 2011, as reported in monthly invoices previously submitted to SFMTA.

2. After receipt of a satisfactory invoice, SFMTA agrees to pay BART in full for Fast Pass[®] trips taken on BART from July 1, 2011 through June 30, 2012 by June 30, 2013.
 3. SFMTA agrees to pay BART in full within thirty (30) calendar days of the Effective Date for Fast Pass[®] trips taken on BART from July 1, 2012 through November 30, 2012.
 4. Notwithstanding the amounts due to BART from SFMTA under subsections 1 through 3 above, SFMTA will make future payment of any balance due within thirty (30) calendar days of receipt of each monthly invoice, including the data specified in Section 2.E above, from BART.
- C. BART shall submit all data relied on to compute the number of Fast Pass[®] trips for each month with the monthly invoice. If SFMTA contests BART's monthly trip estimate, SFMTA agrees to pay the undisputed invoice amount within said time, pending the Parties' resolution of the disputed trip estimate. In that event, SFMTA and BART agree to resolve such dispute in accordance with the terms set forth in Section 7, below.

SECTION 7: RESOLUTION OF DISPUTES

If any dispute under this 2010-2014 Fast Pass[®] 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, unless SFMTA designates otherwise in writing. For BART, the first level person will be the Manager of Operating Budgets and Analysis, unless BART designates otherwise in writing. The first level person for the initiating Party will submit a written request to the first level person of the other Party setting forth the disagreement and requesting resolution. Each Party will respond within five (5) working days of receipt of a request for resolution from the other Party, or within such other period as the first level persons may agree. Each designated first level person may contact his or her counterpart at the same level at any time to raise any apparent disagreement related to the 2010-2014 Fast Pass[®] Agreement.

- B. Second Level: Each Party will designate an individual to whom matters not resolved at the first level will be referred. For SFMTA, the second level person will be the Chief Financial Officer, unless SFMTA designates otherwise in writing. For BART, the second level person will be the Executive Manager, Planning and Budget, unless BART designates otherwise in writing. The second level person for the initiating Party will submit a written request to the second level person of the other Party setting forth the disagreement and requesting resolution. Each Party will respond within five (5) working days of receipt of a request for resolution from the other Party, or within such other period as the second level persons may agree. Each designated second level person may contact his or her counterpart at the same level at any time to raise any apparent disagreement related to the 2010-2014 Fast Pass[®] Agreement.
- C. Third Level: Each Party will designate individuals to whom matters not resolved at the second level will be referred. These designated third level persons will constitute the final internal level within BART and SFMTA for resolution of issues between the Parties. Each designated third level person may contact his or her counterpart at the same level at any time to raise any apparent disagreement related to the 2010-2014 Fast Pass[®] Agreement. For SFMTA, the third level person will be the Director of Transportation, unless SFMTA designates otherwise in writing. For BART, the third level person will be the General Manager unless BART designates otherwise in writing. The third level person for the initiating Party will submit a written request to the third level person of the Party setting forth the disagreement and requesting resolution. Each Party will respond within ten (10) working days of receipt of a request for resolution from the other Party.
- D. Alternative Dispute Resolution. If the dispute is not resolved at the Third Level, the General Manager of BART and the Director of Transportation of SFMTA may agree to a method of non-binding, alternative dispute resolution, including, but not limited to, mediation or non-judicial arbitration.
- E. Judicial Remedies. It is the intent of the Parties that litigation be avoided as a method of dispute resolution to the extent possible. However, nothing herein will foreclose or limit the ability of either Party to pursue judicial remedies.

SECTION 8: GENERAL PROVISIONS

- A. Records and Audits: BART will maintain trip data documentation consisting of DAS Passenger Reports. SFMTA will have the right to audit BART's accounts, primary and secondary papers regarding collection and compilation of trip data, and relevant cost accounting data during and up to three (3) years after the invoice date of the period in question. BART's monthly invoice to SFMTA will indicate the total number of trips actually counted by the DAS system or, in the absence of complete DAS data, the available DAS data and total trip estimates.
- B. Term; Termination:
1. Term. Subject to Section 2.D, the term of this Agreement shall be from January 1, 2010 through June 30, 2014, unless earlier terminated as provided below.
 2. Termination. Either SFMTA or BART may terminate this 2010-2014 Fast Pass[®] Agreement at any time upon giving the other Party ninety (90) calendar days written notice.
- C. Notices: All invoices, notices or other communications to either Party by the other will be deemed given when made in writing and delivered or mailed to such Party at their respective addresses as follows:

TO: BART

San Francisco Bay Area Rapid Transit District
300 Lakeside Drive
P. O. Box 12688
Oakland, CA 94604-2688
Notices: Attention General Manager

TO: San Francisco Municipal Transportation Agency
1 South Van Ness, 7th Floor
San Francisco, CA 94103
Invoices: Attention Chief Financial Officer
Notices: Attention Director of Transportation

- D. Entire Agreement: The provisions of this 2010-2014 Fast Pass[®] 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 2010-2014 Fast Pass[®] Agreement, SFMTA and BART will provide the services specified in this 2010-2014 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 2010-2014 Fast Pass[®] Agreement.
- F. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation: This 2010-2014 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 2010-2014 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 2010-2014 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 2010-2014 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 2010-2014 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 9: Effective Date

The effective date of this 2010-2014 Fast Pass[®] Agreement is January 1, 2010.

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

**SAN FRANCISCO BAY AREA RAPID
TRANSIT DISTRICT**

By: _____
Grace Crunican
General Manager

APPROVED AS TO FORM:
Office of the General Counsel

By: _____
Patricia McCoy Smith
Attorney

**CITY AND COUNTY OF SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

By: _____
Edward D. Reiskin
Director of Transportation

SFMTA Board of Directors
Resolution No. _____
Dated: _____

Attest:

Roberta Boomer
Secretary, SFMTA Board

APPROVED AS TO FORM:
Dennis J. Herrera, City Attorney

By: _____
Robin M. Reitzes
Deputy City Attorney

Board of Supervisors
Resolution No. _____
Dated: _____

Attest:

Clerk of the Board