

**AGREEMENT BETWEEN ALAMEDA CONTRA COSTA TRANSIT DISTRICT
AND THE SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT
FOR PAYMENT FOR TRANSFER TRIPS (FEEDER AGREEMENT)**

This Agreement is entered into this ____ day of _____, 2022 (the “Effective Date”) by and between the Alameda-Contra Costa Transit District, ("AC TRANSIT"), and the SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT ("BART") (collectively, the “Parties”).

RECITALS

1. WHEREAS, AC TRANSIT is a rapid transit district duly created and acting under the California Public Utilities Code Sections 24501 *et seq.*, operating a public transit system serving 13 cities and adjacent unincorporated areas in Alameda and Contra Costa counties; and
2. WHEREAS, BART is a rapid transit district duly created and acting under the laws of the State of California, operating a regional rapid transit system for the San Francisco Bay Area; and
3. WHEREAS, both AC TRANSIT and BART operate public transit services in the San Francisco Bay Area and pursuant to Section 29142.4(a) of the Public Utilities Code of the State of California coordinate routes, schedules, fares, and transfers within their overlapping service areas; and
4. WHEREAS, in response to AB842, approved by the Legislature in 1979, MTC determined that a payment by BART to AC TRANSIT for feeder service would facilitate the coordination of transit service, furnish an incentive for providing enhanced feeder service between AC TRANSIT and BART stations in the areas served by AC TRANSIT, and therefore encourage transit use and improve the quality of transit service ; and
5. WHEREAS, the history of transfer payments and how BART and AC TRANSIT arrived at the current agreement is summarized in the attached Appendix A (attached herein).
6. WHEREAS, system connectivity is important to both BART and AC TRANSIT; twenty-five BART stations are located in the AC TRANSIT service area; and over eighty AC TRANSIT

routes, the majority of total service, provide transfer opportunities at the twenty-five BART stations, allowing passengers to access both systems; and

7. WHEREAS, because the Clipper[®] program electronically tracks ridership by transit agency; and
8. WHEREAS, the previous Agreement governed the feeder payments from BART to AC TRANSIT for Fiscal Years 2015 through 2020; and
9. WHEREAS, due to COVID-19 Pandemic and the resulting financial crisis, BART and AC TRANSIT entered into a one-year agreement for Fiscal Year 2021 reflective of the uncertainty in the recovery from the pandemic's negative impacts on funding and ridership.
10. WHEREAS, this Agreement will govern the feeder payments from BART to AC TRANSIT for Fiscal Years 2022 and 2023.

AGREEMENT

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

SECTION I. DEFINITIONS

For the purpose of this Agreement, the following definitions apply:

1. **Fiscal Year ("FY")** is the year starting on July 1 of one year and ending on June 30 of the following year.

SECTION II. PAYMENTS

1. The Parties agree on these payments:
 - a. The amount of \$2.7 million by BART to AC TRANSIT for FY22
 - b. The amount of \$2.7 million by BART to AC TRANSIT for FY23
2. BART agrees to pay AC TRANSIT the full Feeder Payment amount directly, upon provision of an invoice by AC TRANSIT. BART and AC Transit agree to the following payment schedule:

- a. FY22: 100% of full Feeder Payment as soon as practicable after signing of agreement
- b. FY23: 25% of the full Feeder Payment amount per quarter

SECTION III. OTHER COSTS ASSOCIATED WITH AGREEMENT

1. AC TRANSIT and BART will each bear its own internal costs associated with administration of this Agreement including, without limitation, reporting, billing, accounting, and auditing costs.
2. AC TRANSIT and BART will each continue to bear its own internal costs associated with administration of transfer discounts, including, without limitation, reporting, billing, accounting, auditing, maintenance of transfer ticket machines, and supply of transfer tickets.

SECTION IV. OTHER PROVISIONS

1. BART and AC TRANSIT agree to make a good faith effort to work as members of the regional Fare Integration Task Force towards a regional fare coordination solution that benefits transit riders in the region.
2. BART and AC TRANSIT agree to begin working as soon as possible on an agreement for FY23 and beyond, with the goal to find a mutually beneficial way to incentivize transfers between systems.

SECTION V. RECORDS AND AUDITS

The Parties will adhere to generally accepted accounting principles as required by the uniform system of accounts and records adopted by the State Controller pursuant to Section 99243 of the Public Utilities Code, and as required by Section 15 of the Urban Mass Transportation Administration Act of 1964, as amended. Pursuant to California Government Code Section 8546.7, the Parties to this Agreement will be subject to the examination and audit of the Auditor General of the State of California for a period of three (3) years after the final payment under this Agreement.

SECTION VI. TIME PERIOD AND CONDITION OF AGREEMENT

1. It is agreed and understood that there is no obligation under this Agreement on the part of BART to make any payment to AC TRANSIT for fiscal years other than fiscal years 2022 and 2023.

SECTION VII. GENERAL PROVISIONS

A. Responsibility:

AC TRANSIT will be solely responsible for the maintenance, safety, and operation of vehicles providing connecting feeder service to BART stations and for the training and supervision of all personnel involved in providing connecting feeder service to BART stations. AC TRANSIT will be responsible for the operation of all of AC TRANSIT's transit services connecting with BART stations.

B. 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: BART
P.O. Box 12688
Oakland, CA 94604-2688

Invoices: Assistant Controller
P.O. Box 12688
Oakland, CA 94604-2688

All Other Notices: Robert Powers
General Manager
P.O. Box 12688
Oakland, CA 94604-2688

To AC TRANSIT: Alameda Contra Costa Transit District
1600 Franklin Street
Oakland, CA 94612

Invoices: Chief Financial Officer

Alameda Contra Costa Transit District
1600 Franklin Street
Oakland, CA 94612

All Other Notices: Michael Hursh
General Manager
Alameda Contra Costa Transit District
1600 Franklin Street
Oakland, CA 94612

C. Indemnity:

AC TRANSIT agrees to indemnify, hold 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 AC TRANSIT, 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.

BART agrees to indemnify, save harmless and defend AC TRANSIT, 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 AC TRANSIT, its officers, agents, or employees.

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.

D. Compliance with ADA:

BART and AC TRANSIT acknowledge that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Without limiting any other provision of this Agreement, BART and AC TRANSIT will provide the services specified in this Agreement in a manner that complies with the Americans With Disabilities Act of 1990 (“ADA”) 42 U.S.C §12143 is and any and all other applicable federal,

state, and local disability rights legislation. BART and AC TRANSIT agree not to discriminate against disabled persons in the provision of services, benefits, or activities provided under this Agreement and further agree that any violation of this prohibition on the part of BART and AC TRANSIT, their employees, agents or assigns will constitute a material breach of this Agreement.

E. Compliance with Other State and Federal Regulations:

BART and AC TRANSIT agree to ensure compliance with 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 BART's and AC TRANSIT's responsibility for Title VI analyses assessing the impacts on all riders affected by any new fare product or fare discount implemented jointly by the Parties.

SECTION VIII. TERM OF THE AGREEMENT

This Agreement covers the period from July 1, 2021, through June 30, 2023.

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

SAN FRANCISCO BAY AREA RAPID
TRANSIT DISTRICT

ALAMEDA-CONTRA COSTA
TRANSIT DISTRICT

Date: _____
Robert Powers
General Manager

Date: _____
Michael Hursh
General Manager

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Date: _____
BART Attorney

Date: _____
AC TRANSIT Attorney

Authorized by BART Board Resolution
No.:

Date: _____

APPENDIX A – HISTORY OF PAYMENTS

The history of feeder payments is as described below:

1. In 1977 the California State Legislature enacted AB1107, which made permanent a ½-cent sales tax originally imposed in 1969 to help pay for the construction of BART and extended it in 1976 through 1978 for BART operation. AB1107 also split the proceeds, with 75% to BART and the remaining 25% to BART, SFMTA and AC TRANSIT for service improvements, to be allocated by MTC.
2. In 1979 the State Legislature enacted AB842. It called for cooperative financial management planning among MTC, BART, and the SFMTA and established the “Coordinated Fare Principle” and the first transfer payments. As stated in AB842, the latter “helped balance BART surpluses and AC TRANSIT and MUNI deficits, consistent with the coordinated fare principle” and “were intended to provide a financial incentive for bus operators to emphasize feeder service to BART.”
3. The first feeder service transfer payment of \$3 million (M) BART made to AC TRANSIT in 1985 was based on estimates of the number of riders transferring between AC TRANSIT and BART. The original intent was to validate these estimates with actual passenger counts. Over the years, adjustments to feeder payment amounts have mostly been linked to BART’s sales tax growth; however, at times, baselines have been renegotiated and reset.
4. Since actual numbers of transferring riders were not available, in 1989 MTC directed that the feeder service payment be linked to BART’s sales tax growth. At the time, both agencies agreed to the sales tax methodology, which had been applied to calculate feeder payment amounts since 1989.
5. The payment was increased to \$5.5M in 1986, to \$6.7M by 1990 and then lowered to \$4.7M and \$2.4M in 1991 and 1992 respectively. BART proposed to terminate payment in 1993. MTC instead reset the payment to \$4.0M and deducted it from BART’s State Transit Assistance (STA) share. In 1993, MTC began to transfer feeder service payments from BART’s State Transportation Assistance (STA) apportionment directly to AC TRANSIT

6. MTC Resolution 2672, which directed over \$450M in grants to BART for the District's Renovation Program, stipulated that transfers from BART's STA share to AC TRANSIT would be made until the grant commitments to BART were met. Although those commitments were completed, the transfers have continued. Since then, the payment continued to be adjusted annually by the sales tax growth rate.
7. In 2004, when the payment would have been nearly \$6.0M, staff negotiated a new \$4.5M baseline, again to be adjusted annually by sales tax growth, until MTC directed in 2010 that BART and AC TRANSIT negotiate a multi-year agreement.
8. In FY10, STA funds were not available, and instead BART made a \$3.6M payment out of stimulus money to AC TRANSIT to support transfer services in that year.
9. On August 16, 2010, BART and AC TRANSIT signed an Interim Agreement to establish the FY11 BART feeder payment to AC TRANSIT. The agreed-upon amount was \$3.6M, of which \$1.14M was placed in a reserve by MTC pending a formal multi-year agreement between BART and AC TRANSIT to develop a rational and fair formula for ongoing transfer payments.
10. In February 2011, the Parties agreed to amend the Interim Agreement to extend the deadline until December 31, 2011.
11. The Interim Agreement expired and no agreement on methodology was reached, however payments continued between FY11 and FY14 as shown in the table below.
12. The FY15-FY20 Agreement used a new methodology for calculating payments. The formula for the current fiscal year adjusted the previous fiscal year's feeder service payment by the year-to-year percentage change in actual individual trips transferring from AC Transit to BART based on Clipper® data plus the year-to-year percentage change in inflation based on the San Francisco Bay Area Consumer Price Index ("CPI"), with a maximum increase or decrease of five percent (5%) annually. Provisions were also added to release funds that had previously been placed in reserve. A percentage of subsequent payments would be placed in a reserve fund (the "Fare Coordination Fund") held by MTC, to be used towards fare coordination efforts between the two agencies, with an amount not to exceed \$1M. Only a small portion of these funds were used during the agreement period.

13. Due to the COVID-19 pandemic and the resulting collapse in ridership and fare revenue, BART and AC Transit mutually agreed to a one-year extension of the feeder service agreement with a fixed amount of \$2.7M paid to AC Transit by BART, and to mutually request that MTC release the remaining funds in the fare coordination reserve (approximately \$830,000) to AC Transit for a total of approximately \$3.5M.

The following table shows the Annual Feeder Payments from BART to AC Transit

Fiscal Year	Payment	Intent
1985	\$3.0m	AB842 BART surplus. Based upon transfers
1986	\$5.5m	
1990	\$6.7m	Linked to sales tax
1991	\$4.7m	
1992	\$2.4m	
1993	\$4.0m	1993: BART proposes to terminate payment, MTC resets amount deducts from BART STA
2004	\$4.5m	Tied to sales tax growth
2010	\$3.6m	
2011	\$2.46m	Held in reserve by MTC: \$1.14M
2012	\$2.86m	Held in reserve by MTC: \$0.74M
2013	\$2.46m	Held in reserve by MTC: \$1.14M
2014	\$3.6m	
2015	\$3.6m	Increase based on inflation/ridership, +/- 5% maximum. Includes \$360,000 held by MTC for fare coordination
2016	\$3.78m	Increase based on inflation/ridership, +/- 5% maximum. Includes \$378,000 held by MTC for fare coordination
2017	\$3.97m	Increase based on inflation/ridership, +/- 5% maximum. Includes \$262,000 held by MTC for fare coordination
2018	\$4.17m	Increase based on inflation/ridership, +/- 5% maximum.
2019	\$4.4m	Increase based on inflation/ridership, +/- 5% maximum.
2020	\$4.6m	Increase based on inflation/ridership, +/- 5% maximum.
2021	\$3.5m	Fixed agreement of \$2.7m from BART and approx. \$830k remaining in fare coordination reserve