

Date: February 28, 2007
W.I.: 1512
Referred by: P&A

ABSTRACT
Resolution No. 3795

This Resolution approves an Agreement amongst MTC, BART, and SamTrans to resolve disputes between BART and SamTrans associated with the BART SFO Extension Project. The Resolution rescinds the Comprehensive Agreement between BART and SamTrans, rescinds a Memorandum of Understanding dated March 11, 1999 amongst MTC, BART, and SamTrans (MTC Resolution No. 3147), and except for a deletion of a reference to the rescinded Memorandum of Understanding, reaffirms that the Loan Extension and Repayment Agreement between BART and MTC, effective June 28, 2006, (MTC Resolution No 3767), shall continue in full force and effect.

Further discussion of the Agreement approved herein is contained in the Executive Director's memorandum dated February 14, 2007.

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Re: Agreement Among the Metropolitan Transportation Commission (MTC), the San Francisco Bay Area Rapid Transit District (BART) and the San Mateo County Transit District (SamTrans)

METROPOLITAN TRANSPORTATION COMMISSION
RESOLUTION NO. 3795

WHEREAS, the Metropolitan Transportation Commission (MTC) is the regional transportation planning agency for the San Francisco Bay Area pursuant to Government Code Section 66500 et seq.; and

WHEREAS, the San Francisco Bay Area Rapid Transit District (BART) and the San Mateo County Transit District (SamTrans) are parties to a Comprehensive Agreement that allocates responsibilities between the two agencies regarding the BART extension into San Mateo County (SFO Extension); and

WHEREAS, MTC, BART, and SamTrans are parties to a Memorandum of Understanding dated March 1999, pertaining to additional funding for the SFO Extension, approved pursuant to MTC Resolution No. 3147; and

WHEREAS, MTC and BART are parties to a Loan Extension and Repayment Agreement, effective June 28, 2006, approved pursuant to MTC Resolution No. 3767; and

WHEREAS, disputes have arisen between BART and SamTrans over the interpretation of the Comprehensive Agreement; and

WHEREAS MTC, through its Executive Director, has assisted BART and SamTrans in working to resolve their disagreements arising from the Comprehensive Agreement; and

WHEREAS, MTC, BART, and SamTrans staff have collaboratively and in good faith prepared an Agreement, as set forth in Attachment A to this Resolution, attached hereto and incorporated herein as though set forth at length, that addresses all of the outstanding issues arising from the Comprehensive Agreement between BART and SamTrans, rescinds the Memorandum of Understanding dated March 1999, and retains the referenced Loan Extension and Repayment Agreement between MTC and BART, now therefore be it

RESOLVED, that MTC approves the Agreement as set forth in Attachment A;
and be it further

RESOLVED, that the Memorandum of Understanding dated March 11, 1999, as
approved by MTC Resolution No. 3147, is hereby rescinded consistent with the terms set
forth in Attachment A; and be it further

RESOLVED, that the Loan Extension and Repayment Agreement effective June
28, 2006, as approved by MTC Resolution No. 3767, shall remain in full force and effect,
except as modified by Attachment A in regards to a reference to the rescission of the
Memorandum of Understanding dated March 11, 1999; and be it further

RESOLVED, that subject to review by MTC's General Counsel for form, the
Executive Director is authorized to execute Attachment A on behalf of MTC.

METROPOLITAN TRANSPORTATION COMMISSION

Jon Rubin, Chair

The above resolution was entered into by the
Metropolitan Transportation Commission
at a regular meeting of the Commission held
in Oakland, California on February 28, 2007.

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Agreement Among the Metropolitan Transportation Commission, the San Francisco Bay Area Rapid Transit District, and the San Mateo County Transit District Regarding the BART San Francisco Airport Extension Project

WHEREAS, the San Francisco Bay Area Rapid Transit District ("BART") and the San Mateo County Transit District ("SamTrans") are parties to a Comprehensive Agreement Pertaining to the BART System dated March 1, 1990, and as it has subsequently been amended ("Comprehensive Agreement"), which allocates responsibilities between the parties for proceeding with necessary environmental work, funding, construction and operation of the BART extension in San Mateo County from Daly City to Millbrae, with intermediate stations at Colma, South San Francisco and San Bruno, and to the San Francisco International Airport ("SFO Extension"); and

WHEREAS, the Comprehensive Agreement provides for payment of a \$145 million remaining balance for the BART Warm Springs Extension Project to be paid from and to the extent of any net operating surplus from revenue operations on the SFO Extension and used; and

WHEREAS, the Metropolitan Transportation Commission ("MTC"), BART and SamTrans are parties to a Memorandum of Understanding pertaining to additional funding for the Project, dated March 1999, and as it has subsequently been amended as described below ("MOU"); and

WHEREAS, on May 13, 2004, SamTrans and BART entered into an agreement, pursuant to which an Operating Plan for Fiscal Year 2005 was approved ("Fiscal Year 2005 Agreement"); and

WHEREAS, BART and MTC are parties to a Loan Extension and Repayment Agreement, effective June 28, 2006 (the Loan Extension Agreement), that amended, in part, the MOU and provides for repayment by BART to MTC of monies loaned to BART for the SFO Extension from bridge toll funds; and

WHEREAS, construction on the SFO Extension was completed in 2003, and the SFO Extension began revenue operation on June 22, 2003; and

WHEREAS, disputes have arisen between BART and SamTrans regarding the interpretation of the Comprehensive Agreement; and

WHEREAS, the Executive Director of MTC, in his capacity of mediator, has assisted BART and SamTrans in the development of a permanent resolution of all outstanding issues between them;

(2)

NOW, THEREFORE, MTC, BART and SamTrans (“Parties”) hereby agree to the following understandings:

A. Financial Commitments

1. MTC shall allocate to BART, subject to the appropriate MTC allocation procedures, a total of \$24 million in funds made available from the proceeds created with the issuance of State Infrastructure Bonds authorized by the voter approved passage of Proposition 1B on November 7, 2006. Such funds are apportioned to MTC based on State Transit Assistance (STA) capital funds (Public Utilities Code Section 99313) and are known as the population based funds. Said allocation shall be paid in two installments, the first in the amount of \$15 million by the end of FY 2007, and the second in the amount of \$9 million by the end of FY 2008. If such funds are not available by legislative action, then MTC will fund eligible BART capital projects with Regional Measure 2 toll funds under the provisions contained in Streets and Highway Code Section 30914(f) as necessary in order to allow BART to redirect an equal amount of its funds for SFO Extension operating expenses as described in Section A.5.

2. a. SamTrans shall assign to BART \$32 million in funds made available from the proceeds created with the issuance of State Infrastructure Bonds authorized by the voter approved passage of Proposition 1B on November 7, 2006. Such funds, which are apportioned to SamTrans based on State Transit Assistance (STA) capital funds (Public Utilities Code Section 99314) and are known as the revenue based funds, shall be allocated in the following manner:

SamTrans shall identify SamTrans capital projects in an amount equal to no less than \$16 million to be funded in equal amounts in Fiscal Year 2008 and Fiscal Year 2009, and shall “swap” an equal amount of SamTrans funds to BART eligible to be used for SFO operating expenses as described in Section A.5. To the extent SamTrans is unable to identify sufficient capital projects to meet the balance of the \$32 million allocation, BART shall identify capital projects on which to expend any part of such allocation so as to offset SFO Extension operating expenses as described in Section A.5.

b. To expedite fulfilling the \$32 million commitment from SamTrans to BART, as set forth in Section A.2.a., MTC and SamTrans agree that any STA revenue-based funds made available legislatively beginning in Fiscal Year 2008, or in any subsequent year, for allocation by MTC to SamTrans as a result of “spillover” funds, shall be allocated by MTC to BART, and shall be credited against SamTrans’ \$32 million obligation on a dollar-for-dollar basis. MTC and BART agree to take all steps necessary to effectuate any and all such allocations to BART.

c. The Parties shall work cooperatively to identify capital projects that can be funded with bond proceeds in an expedited manner so that the need to “swap” funds is minimized.

(3)

3. MTC shall allocate to BART additional STA revenue-based funds (Public Utilities Code Section 90314), beginning in Fiscal Year 2009, which would otherwise be available for allocation to SamTrans as a result of the completion of the Traffic Congestion Relief Program projects, in an amount of \$801,024 annually. These funds shall be used to pay Operating Costs for the SFO Extension, as defined in Section A.5.b. These allocations to BART shall continue until the \$145 million commitment to the Warm Springs Extension described in Section A.5 has been satisfied as described in Section A.5.c, provided there is no deficit in the Net Operating Result, in which case the payments shall continue as needed in order to fund the deficit.

4. SamTrans, in its capacity as project sponsor, shall seek the requisite approval of the San Mateo County Transportation Authority (SMTA) to enter into an agreement with BART providing that commencing on January 1, 2009, and continuing for a period of 25 years thereafter, SMTA shall allocate 2% of the total revenue generated each year by SMTA's one-half cent transactions and use tax (net of collection and distribution costs and expenses charged by the Authority's collection agent) to BART, for the purposes related to the Extension specified in the Transportation Expenditure Plan approved by the voters of San Mateo County on November 2, 2004. These funds shall be used to pay Operating Costs for the SFO Extension, as defined in Section A.5.b.

5. a. BART shall establish a segregated SFO Extension/Warm Springs Extension reserve account, identified separately in BART's financial reports and budgets, wherein BART shall deposit all funds received by BART pursuant to Sections A.1 and A.2 of this Agreement, along with the interest earned thereon. Said account shall be used to assist in funding the operating expenses of the SFO Extension and in funding the Warm Springs Extension.

b. The Net Operating Result for the SFO Extension shall be computed according to the formula below:

Net Operating Result = Actual Net Fare Revenue, less Operating Costs;

Actual Net Fare Revenue = fare revenue net of system wide discounts taken for all trips entering or exiting the five San Mateo county stations (Colma, South San Francisco, San Bruno, SFIA, Millbrae), excluding SFIA Premium Fare;

Operating Costs = Comprehensive Agreement FY07 cost, inflated by 3.0% per annum.

The Parties agree that BART may supplement the Net Operating Result with other revenues arising from the SFO Extension, in amounts and/or at times it may choose, all in BART's sole discretion.

(4)

c. At such time as the SFO Extension generates a surplus from the Net Operating Result, all remaining funds in the segregated reserve account, along with all future surpluses from the Net Operating Result, shall be applied towards satisfying the \$145 million commitment to the Warm Springs Extension Project. Surplus funds from the Net Operating Result also shall be deposited into the reserve account. BART's obligations under this paragraph shall terminate once the \$145 million commitment to the Warm Springs Extension Project has been satisfied.

d. BART will maintain full and complete accounting and supporting records, showing how funds in the reserve account have been spent and/or allocated, and shall provide to MTC on an annual basis an audit performed reflecting reserve account expenditures for SFO Extension Operating Costs and the accrual of funds for the Warm Springs Extension Project. BART will make available to MTC and its auditors work papers and supporting source documents relevant to the foregoing purpose at mutually agreeable times for the purpose of auditing and verifying expenditures and accruals. Prior to the beginning of each fiscal year during which the segregated reserve account is operational, BART will provide to MTC a schedule of estimated monthly drawdowns and, within 60 days of the close of the fiscal year, shall provide a reconciliation of such drawdowns.

6. MTC shall reaffirm its policy as currently represented in the adopted 2005 Regional Transportation Plan, that San Mateo County shares a responsibility with the other three BART counties to fund BART's net future capital shortfalls in an equitable manner.

7. The Parties agree that BART has the authority, right, discretion or ability to seek funding from grants or any other sources to assist with future capital or operating expenses arising out of the SFO Extension or BART system, provided that BART agrees not to seek either TDA or STA revenue based funds associated with San Mateo County for SFO Extension Operating Costs, except as provided in Section A.2.

B. Additional Agreements:

1. The Loan Extension Agreement (with the exception of Section III.2), attached hereto as Exhibit A, is incorporated herein by reference and shall continue in full force and effect. Subject to the foregoing, MTC, SamTrans and BART agree that the MOU shall terminate and shall be of no further force and effect for any purpose whatsoever.

2. The Parties shall enter in such other agreements as they deem appropriate or necessary to resolve all outstanding issues arising from the Comprehensive Agreement and the MOU.

3. This Agreement and all its provisions shall be null and void if MTC makes a determination by December 31, 2007, that funding from State Infrastructure Bonds authorized by the voter approved passage of Proposition 1B on November 7, 2006, will

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(5)

not be available to meet the obligations of this Agreement. In the event MTC makes such determination, any deficit in the Net Operating Result from February 28, 2007, through and including the date of MTC's determination, will be shared equally by MTC, SamTrans and BART. Furthermore, in the event of such determination, the Comprehensive Agreement, the MOU, the Fiscal Year 2005 Agreement, and Section III.2 of the Loan Extension Agreement will be reinstated on the date of MTC's determination, and all statutes of limitation related to the aforementioned agreements between BART and SamTrans shall be deemed to have been tolled from February 28, 2007, to and including the date of MTC's determination, or December 31, 2007, whichever occurs earlier. The Parties' agreement to share equally any deficits in the Net Operating Result from February 28, 2007, to and including the date of MTC's determination, or December 31, 2007, whichever occurs earlier, shall survive and remain in effect notwithstanding the reinstatement of the foregoing agreements.

IN WITNESS WHEREOF, this Agreement is effective February 28, 2007, and executed by the Parties as signed below.

Metropolitan Transportation Commission

Steve Heminger
Executive Director

San Francisco Bay Area Rapid Transit District

Thomas E. Margro
General Manager

San Mateo County Transit District

Michael J. Scanlon
General Manager

**LOAN EXTENSION AND REPAYMENT AGREEMENT
BETWEEN THE SAN FRANCISCO BAY AREA RAPID TRANSIT
DISTRICT AND THE METROPOLITAN TRANSPORTATION COMMISSION**

RECITALS

1. The San Francisco Bay Area Rapid Transit District (hereinafter BART), the Metropolitan Transportation Commission (hereinafter MTC), and the San Mateo County Transit District (hereinafter SamTrans), entered into a Memorandum of Understanding, dated March 1999, (hereinafter the "MOU"), to provide additional funds to assist in delivering the BART San Francisco International Airport Extension Project (hereinafter "project").
2. The MOU consists of an Agreement of All Parties, an Agreement of BART and SamTrans, and an Agreement between BART and MTC.
3. Pursuant to that portion of the MOU that is the Agreement between BART and MTC, a \$60 million loan for project cash flow requirements was made by MTC to BART, with BART agreeing to repay MTC contemporaneously upon BART's receipt of the final \$60 million dollars from the Federal Transit Administration under the project's federal Full Funding Grant Agreement (hereinafter FFGA). Funding for the MTC loan to BART consisted of bridge toll funds from the East Bay Rail Extension Reserve Account.
4. On May 24, 2006, MTC revised MTC Resolution No. 2451, to approve BART's Fiscal Year 2005-2006 request for \$80,230,986 in Federal New Starts funding, which includes substantially the final \$60 million dollars under the project's FFGA.
5. BART has acknowledged that the \$60 million loan made by MTC to BART pursuant to the MOU will be due when BART receives the federal funds approved pursuant to MTC Resolution 2451, as revised on May 24, 2006, but has advised MTC that it will be unable to make timely repayment to MTC.
6. BART has requested that the schedule for retirement of the \$60 million MTC loan to BART made pursuant to the MOU (hereinafter "the \$60 million loan") be revised.
7. BART and MTC have worked cooperatively to complete the project, and wish to continue to maintain a cooperative working relationship. Both BART and MTC recognize that the repayment of the \$60 million loan is essential because the proceeds from the repayment will be returned to the East Bay Rail Extension Reserve Account to fulfill MTC's commitment, consistent with California Streets and Highway Code Section 30919(b), and MTC Resolution No. 3434, Revised, to allocate bridge toll revenues to assist in funding the BART to Warm Springs Extension project, the BART to Oakland Airport Extension project, the e-BART project, and for Tri-Valley Transit Access Improvements to and from BART.

(2)

BART and MTC herein agree to the following:

SECTION I

BART AGREES:

1. To repay the \$60 million loan by making an initial payment of \$3 million on June 30, 2006, and thereafter according to the schedule of payments as fully set forth in Attachment A to this Agreement, attached hereto, and incorporated herein as though set forth at length (hereinafter Attachment A).
2. To pay, beginning on June 30, 2007; interest on the outstanding remaining principal balance of \$57 million, and thereafter annually each June 30 on the outstanding principal balance, at the rate of three percent per annum simple interest on the prior year balance, in accordance to the schedule of payments as fully set forth in Attachment A.
3. That if it makes principal payments in advance of the schedule set forth in Attachment A prior to June 30, 2007, no interest shall accrue on such payment.
4. That it shall make an advance principal payment pursuant to paragraph 3 if there are revenue-based State Transit Assistance (hereinafter STA) funds available to BART above the specific amounts identified in MTC Resolution No. 3727 and the Governor's FY 2006-2007 May Budget Revision. In that event, MTC shall allocate the first \$10 million of such STA funds to make an advance principal payment pursuant to paragraph 3 of this Section.
5. That if it makes principal payments in advance of the schedule set forth in Attachment A on or after June 30, 2007, interest will be computed to the payment date.
6. That except as to advanced principal payment or payments made pursuant to paragraph 4 of this Section, of up to \$10 million, it has the option to apply any advance payment as prepayment of the next due payment or payments of principal consistent with the schedule set forth in Attachment A. Interest would continue to accrue and be due consistent with the provisions of this Section I.

(3)

SECTION II

MTC AGREES:

1. That in the event a natural disaster or catastrophic event results in the extended cessation of BART revenue service, upon BART's request, MTC will extend the loan repayment schedule of the then remaining outstanding balance subject to terms and conditions to be mutually agreed to by both parties, in a manner that will recognize the time needed by BART to resume the affected revenue service, so long as the further extension of the loan repayment accounts for the full payment of the outstanding balance in time as not to affect the delivery of any project dependent on the receipt of East Bay Rail Extension Reserve Account funds.
2. That the interest payment rate of three percent per annum on the outstanding balance due beginning June 30, 2007, and annually thereafter, as set forth in paragraph 2 of Section I of this Agreement, is intended to mitigate the effects of inflation on the outstanding principal balance, and shall remain fixed for the term of this Agreement.
3. That it will waive interest upon receipt of any advance principal payment made by BART pursuant to paragraph 3 or 4 of Section I of this Agreement and will re-compute interest due, upon receipt of any advance principal payments made by BART pursuant to paragraphs 3, 4 or 5 of Section I of this Agreement, or as necessary for a payment made by BART pursuant to paragraph 6 of Section I of this Agreement, and adjust Attachment A accordingly by administrative MTC staff action.

SECTION III

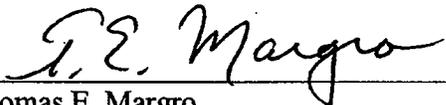
BART & MTC MUTUALLY AGREE:

1. That except as provided for in paragraph 1 of Section II of this Agreement, if BART fails to make any payments on schedule as required pursuant to Attachment A, or if BART fails to make any required interest payment when due as required pursuant to paragraph 2 of Section I of this Agreement, MTC shall allocate and direct either (1) bridge toll funds available for allocation to BART pursuant to Streets and Highway Code Section 30912 (b) (referred to as AB 664 funds), or (2) STA revenue based funds available for allocation to BART pursuant to Public Utilities Code Section 99314, or both, if BART qualifies for such funds, in amounts as necessary, to make the specific scheduled principal payments and interest payments owed by BART.
2. That the Agreement between BART and MTC in the MOU is hereby amended consistent with this Agreement. No other portion of the MOU is revised.

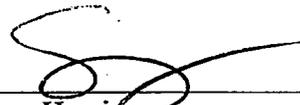
(4)

This Agreement shall be effective June 28, 2006.

San Francisco Bay Area Rapid Transit District Metropolitan Transportation Commission



Thomas E. Margro
General Manager



Steve Heminger
Executive Director

As Amended
01/01/07

(5)

**REVISED ATTACHMENT A - PRINCIPAL AND INTEREST
PAYMENTS AT 3.0% ANNUM ON \$60 MILLION MTC LOAN**

Payment Due June 30:	Principal	Interest 3.00%	Total Payments	Principal Balance
2006	\$ 3,000,000	\$ -	\$ 3,000,000	\$ 57,000,000
2007	10,000,000	1,410,000	11,410,000	47,000,000
2008	5,000,000	1,410,000	6,410,000	42,000,000
2009	5,000,000	1,260,000	6,260,000	37,000,000
2010	8,000,000	1,110,000	9,110,000	29,000,000
2011	8,000,000	870,000	8,870,000	21,000,000
2012	8,000,000	630,000	8,630,000	13,000,000
2013	8,000,000	390,000	8,390,000	5,000,000
2014	5,000,000	150,000	5,150,000	-
2015	-	-	-	-
	\$ 60,000,000	\$ 7,230,000	\$ 67,230,000	\$ 67,230,000