

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

THIS AGREEMENT is made as of this 27th day of April, 2007, by and between the SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT ("BART") and the SAN MATEO COUNTY TRANSIT DISTRICT ("SamTrans").

RECITALS

WHEREAS, SamTrans and BART ("the parties") are parties to a Comprehensive Agreement Pertaining to BART System Extension dated March 1, 1990 ("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 has been amended by the parties on five separate occasions; and

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

WHEREAS, on May 13, 2004, the parties entered into an Agreement under the mediated auspices of Metropolitan Transportation Commission ("MTC") Executive Director Steve Heminger, pursuant to which an Operating Plan for Fiscal Year 2005 was approved ("Fiscal Year 2005 Agreement"); and

WHEREAS, the Fiscal Year 2005 Agreement implemented new service arrangements intended to generate reductions in the costs of operating the SFO Extension, while postponing resolution of disputes that had arisen between the parties; and

WHEREAS, disputes remain between the parties regarding the interpretation of the Comprehensive Agreement, including amounts owed by BART to SamTrans for SFO Extension Project activities, amounts owed by SamTrans to BART for non-SFO Extension Project activities and the amount charged by BART for operating costs through and including Fiscal Year 2007; 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, the key principles of which include the following elements:

1. The Comprehensive Agreement as amended and the Fiscal Year 2005 Agreement will be terminated and replaced in their entirety by this Agreement;
2. SamTrans will be relieved of any and all responsibility for payment of operating costs, as well as capital costs, associated with the SFO Extension;
3. Funds from sources described herein, including in the Three-Party Financial Agreement among MTC, BART and SamTrans, and the Funding Agreement between the San Mateo County Transportation Authority ("TA"), BART and SamTrans shall be allocated to BART;
4. BART shall assume full responsibility for future capital and operating costs associated with the SFO Extension as described herein;
5. BART shall assume sole responsibility for establishing schedules, service levels, service standards and fares (including surcharges) for the SFO Extension in accordance with BART system-wide policies, and shall have sole right to all revenues arising from the Extension including, but not limited to fares, surcharges and ancillary revenues, which include but are not limited to parking charges, concessions, advertising and joint development; and

6. BART and SamTrans will release claims against each other in full settlement of outstanding disputes, with the exception of those items explicitly excluded from the releases as provided for in this Agreement.

AGREEMENT

NOW, THEREFORE, the parties agree as follows:

I. TERMINATION OF COMPREHENSIVE AGREEMENT. AS AMENDED. AND FISCAL YEAR 2005 AGREEMENT

The parties agree that, subject to those specific exceptions and exclusions set forth in Section IV (A) below, effective upon the date that all Conditions Precedent enumerated in Section IV(C)(3) are satisfied, the Comprehensive Agreement, as amended, and the Fiscal Year 2005 Agreement shall terminate by this mutual agreement of the parties and shall be of no further force and effect for any purpose whatsoever.

II. OPERATING PRINCIPLES

A. Service Standards and Revenue Generating Powers and Responsibilities.

BART shall assume sole operational control over the SFO Extension. BART agrees to exercise its power and authority over the schedules, service levels and service standards and to continue to provide service at all stations on the SFO Extension in a manner consistent with BART's system-wide operating policies. BART, in its discretion, shall have the power and authority to set fares (including surcharges) and parking charges and develop other revenue sources to support operating and capital expenses. BART agrees that fares and surcharges applicable to the SFO Extension will be reasonable in accordance with the BART Act and all other applicable laws and will be determined and adjusted in accordance with BART's system-wide fare policy. By way of

example, the fare policy as applied to the SFO Extension requires BART to consider, among other factors, "... preserving fare structure continuity so that fare structure changes do not increase some customers' fares while decreasing the fares of other customers..... " BART shall have sole right to all revenues associated with the SFO Extension including, but not limited to fares, surcharges and ancillary revenues, which include but are not limited to parking charges, concessions, advertising and joint development.

B. Financial Responsibilities.

Upon the effective date of this Settlement Agreement and Release, SamTrans will be relieved of any obligation to pay operating or capital costs associated with the SFO Extension with the further understanding that the maximum operating costs to be paid by SamTrans for services operated by BART during Fiscal Year 2007 will be Five Million Dollars (\$5,000,000). BART will assume responsibility for all operating and capital costs associated with the SFO Extension, including but not limited to responsibility for all cost and payment obligations under that certain agreement entitled Lease, Use and Operating Agreement for BART Station and Related Facilities and Grant of Easement at the San Francisco International Airport between BART and the City and County of San Francisco, with a reference date of April 8, 1997, with the sole exception that SamTrans will be responsible, at no cost to BART, for continued provision of paratransit services to meet paratransit obligations associated with the BART service in the SFO Extension corridor.

III. FINANCIAL ELEMENTS

To facilitate the assumption by BART of responsibility for all future operating and capital costs associated with the SFO Extension and permanent relief to SamTrans of any cost responsibilities associated therewith, MTC has identified certain funding sources to be made

available to BART. These funding sources are described in detail in a separate agreement among MTC, BART and Sam Trans, a copy of which is attached as Exhibit A and incorporated herein by this reference (the "Three-Party Financial Agreement").

Upon execution thereof, a copy of the Funding Agreement between BART, SamTrans and the TA will be attached to this Settlement Agreement and Release of Claims as Exhibit B and incorporated herein by this reference.

IV. OTHER TERMS AND CONDITIONS

A. The Repayment by BART of Sums Advanced By SamTrans for Right of Way Acquisition, Transfer of Property and Other SFO Extension Project Activities

1. Repayment by the End of Fiscal Year 2007. The parties acknowledge and agree that the balance of the amount owed by BART to SamTrans for repayment of sums advanced by SamTrans for right of way acquisition and other SFO Extension Project costs is equal to \$3,044,123.91, plus interest of \$ 2,556,393.55, for a total of \$ 5,600,517.46. The interest was calculated quarterly on the existing outstanding principal based on SamTrans' weighted average investment yield for each quarter. For the quarter ended December 31, 2006, the rate was 5.24% which was then applied to the period of January 1, 2007 to June 30, 2007. If BART should pay all or a portion of the sum owed before June 30, 2007, interest charged on the paid amount beyond the date of the payment will be prorated and credited to BART. The parties acknowledge and agree that, with respect to BART's obligations to repay the sums that SamTrans advanced on BART's behalf as set forth in the Fiscal Year 2005 Agreement, BART has satisfied its obligations regarding payment of the first installment of \$6 million due in Fiscal Year 2006. BART agrees to make the balance of the payment by no later than June 30, 2007. To the extent,

if at all, additional legal services are performed by the firm of Erickson, Beasley, & Hewitt LLP subsequent to the effective date of this Settlement Agreement and Release of Claims in connection with right of way acquisition matters, the costs for those services will be borne by BART and paid directly to said law firm.

2. Transfer of Property. Upon BART's payment of the sum identified in Section IV.A.1 above, BART will be entitled to have title, via quitclaim deed, to all property to which SamTrans currently holds title that was acquired by SamTrans on behalf of the SFO Extension Project, and SamTrans shall not voluntarily create, or cause or permit to be created, any pledge, lien, charge or encumbrance on said properties unless requested by BART to do so. SamTrans and BART will make best efforts to expedite actions to finalize and record the conveyance documents, with responsibility for preparation of conveyance documents to be borne by BART. SamTrans shall make available to BART (at no cost to BART) copies of all title insurance policies in SamTrans' possession relative to property so acquired on behalf of the SFO Extension Project. Upon BART's payment of the sum identified in Section IV.A.1 above, BART will be entitled to all revenue, income or proceeds of any kind associated with the property to be conveyed, regardless of whether deeds have been recorded, and SamTrans expressly disclaims any interest in such revenue, income or proceeds. Also upon BART's payment of the sum identified in Section IV.A.1 above, BART shall assume sole responsibility for all costs associated with the real property, including payment of taxes and assessments as well as all liability that is associated with ownership and/or occupancy.

B. Carry Over of Specified Provisions of Comprehensive Agreement, as Amended.

Notwithstanding the termination of the Comprehensive Agreement, as amended, provided for in Section I hereinabove, the parties agree that the following provisions, more particularly delineated on Exhibit C attached and incorporated herein by this reference, shall remain in full force and effect and shall be enforceable, as between the parties, by their terms:

1. Real Property Acquisition Indemnity. The indemnity provision set forth in Section II (A)(2)(g) of the 1990 Comprehensive Agreement shall remain in full force and effect on a permanent basis.
2. Insurance and Indemnity in Connection with Design, Construction and Procurement. The insurance and indemnity protections accorded by BART to SamTrans as specified in Section III(C) of the 1990 Comprehensive Agreement shall remain in full force and effect on a permanent basis.
3. Indemnification/Defense of Claims Arising Out of SFO Extension Operations. The indemnification/defense of claims provided by BART to SamTrans, its directors, officers, agents, and employees, specified in Section VII (E) of the 1990 Comprehensive Agreement, shall remain in full force and effect on a permanent basis with the exception of the second sentence thereof, which hereby is repealed.
4. 13(c) Indemnification. The 13(c) reciprocal indemnities specified in Section VII (E) of the 1990 Comprehensive Agreement shall remain in full force and effect on a permanent basis.

5. Audit and Records. The rights and obligations of the parties concerning audits and retention of records, specified in Section VIII (A) of the 1990 Comprehensive Agreement, shall remain in full force and effect on a permanent basis.

C. Other Agreements

1. Payment of Capital Contribution and SFO Extension Capital Costs. The parties acknowledge and agree that SamTrans is relieved of any further obligations relative to payment of capital contribution to the BART basic system contemplated by Section V of the 1990 Comprehensive Agreement, as amended by Section 6 of the 1996 Amendment and Section (D) of the 1999 Amendment, relative to the extension of the BART system in San Mateo County, as well as its share of capital costs associated with design and construction of the SFO Extension.

2. The Payment by SamTrans of Sums Expended by BART for Non-SFO Extension Project Activities. The parties acknowledge and agree SamTrans shall repay BART \$207,828 for sums advanced by BART for costs related to the Bike Path as referenced in the Comprehensive Agreement and for costs of parking ticket vending machines for the Colma, South San Francisco, San Bruno and Millbrae BART stations, plus \$13,513 in interest on the outstanding amount, for a total of \$221,341. The parties further agree that said amount shall be paid in full upon receipt of full repayment of sums advanced by SamTrans for right of way acquisition and other SFO Extension Project costs, as provided in Section IV.A.1 of this Agreement. If SamTrans should pay all or a portion of the sum owed before June 30, 2007, interest charged on the paid amount beyond the date of payment will be prorated and credited to SamTrans.

3. Termination. This Agreement (including Section IV.C.4 below, Releases of Claims) will automatically terminate, and all its provisions shall be null and void if, and when,

MTC makes a determination in accordance with Section B.3 of the Three-Party Financial Agreement that funding from State Infrastructure Bonds authorized by the voter approved passage of Proposition IB on November 7, 2006, will not be available to meet the obligations of that Three-Party Financial Agreement. In the event MTC makes such determination on or before December 31, 2007, the Comprehensive Agreement, as amended, and the Fiscal Year 2005 Operating Agreement will be reinstated, and all statutes of limitation related to the foregoing 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.

4. Releases of Claims.

a. BART. BART hereby releases all claims, liabilities, demands, causes of action known or unknown, fixed or contingent, which BART has or claims to have against SamTrans arising out of the Comprehensive Agreement, as amended, and the Fiscal Year 2005 Agreement except as noted below. BART, therefore, is releasing, by way of example and not limitation, claims concerning past or current capital costs, any claims regarding past or current service standards or revenue generating powers and responsibilities, or any other financial obligations arising out of the Comprehensive Agreement, as amended, and the Fiscal Year 2005 Agreement which could have been asserted up to the date of the execution of this Agreement.

By entering this Agreement, BART is not releasing any claims, liabilities, demands, causes of action known or unknown, fixed or contingent, as to those matters under the Comprehensive Agreement, as amended, that will continue in force after the execution of this Agreement. These matters are set forth in this Agreement at Section IV. Other Terms and Conditions, A. Carryover

of Specified Provisions of Comprehensive Agreement, as Amended, and as more particularly delineated at Exhibit C to this Agreement.

b. SamTrans. SamTrans hereby releases all claims, liabilities, demands, causes of action known or unknown, fixed or contingent, which SamTrans has or claims to have against BART arising out of the Comprehensive Agreement, as amended, and the Fiscal Year 2005 Agreement, except as noted below. SamTrans, therefore, is releasing, by way of example and not limitation, claims concerning past or current capital costs, any claims regarding past or current service standards or revenue generating powers and responsibilities, or any other financial obligations arising out of the Comprehensive Agreement, as amended, and the Fiscal Year 2005 Agreement, which could have been asserted up to the date of the execution of this Agreement.

By entering this Agreement, SamTrans is not releasing any claims, liabilities, demands, causes of action known or unknown, fixed or contingent, as to those matters under the Comprehensive Agreement, as amended, that will continue in force after the execution of this Agreement. These matters are set forth in this Agreement at Section IV. Other Terms and Conditions, A. Carryover of Specified Provisions of Comprehensive Agreement, as Amended, and as more particularly delineated at Exhibit C to this Agreement.

c. Mutual Section 1542 Release. With the exception of those matters in subsections a. and b., above, which are excepted from this release, BART and SamTrans understand and expressly agree that this release extends to claims that either has against the other, of whatever nature and kind, known or unknown, suspected or unsuspected, vested or contingent, past, present, or future, arising from or attributable to an incident or event, occurring in whole or in part, on or before the effective date of this Agreement and that any and all rights granted here under any state

or federal law or regulation limiting the effect or release, including the provisions of Section 1542 of the California Civil Code, are hereby expressly waived. Section 1542 of the California Civil Code reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.


Thus, notwithstanding the provisions of Section 1542, and for the purpose of implementing a full and complete release and discharge of BART and SamTrans, respectively, BART and SamTrans expressly acknowledge that this release is intended to include in its effect, without limitation, all claims of which either BART or SamTrans is not yet aware or suspect to exist against the other at the time this Agreement is signed and this Agreement contemplates the extinguishment of any and all such claim or claims, except as explicitly limited in subsections a. and b., above.

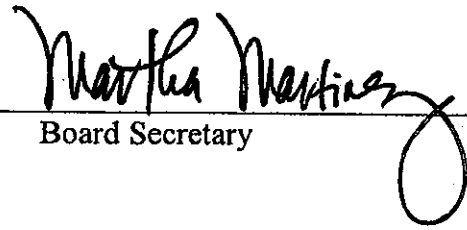
5. Conditions Precedent to Effectiveness of Agreement. This Settlement Agreement and Release of Claims will not become effective unless and until the following actions have occurred:

- a. Approval of this Agreement by the Board of Directors of BART;
- b. Approval of this Agreement by the Board of Directors of SamTrans;
- c. Approval of the Three-Party Financial Agreement by the Boards of Directors of MTC, BART and SamTrans;
- d. Approval of the Funding Agreement among the TA, BART and SamTrans by the Boards of Directors of the TA, BART and SamTrans.


IN WITNESS WHEREOF the parties hereto have executed this Settlement Agreement and Release of Claims by their duly authorized officers as of the day and year first above written.

SAN MATEO COUNTY TRANSIT DISTRICT


By: 
General Manager/CEO

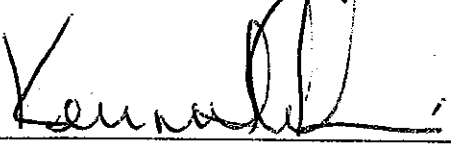
By: 
Board Secretary

APPROVED AS TO FORM:


Attorney for the District

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

By: 
General Manager

By: 
Board Secretary

APPROVED AS TO FORM:


General Counsel

EXHIBIT A

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 for the BART Warm Springs Extension Project; 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;

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. 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.

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

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.

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.

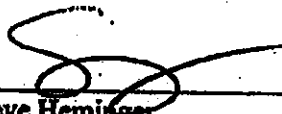
(4)

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

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

(5)

Payment Due June 30:	Principal	Interest 3.00%	Total Payments	Principal Balance
2006	\$ 3,000,000	\$ -	\$ 3,000,000	\$ 60,000,000
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

EXHIBIT B

THREE PARTY AGREEMENT FOR DISTRIBUTION OF SAN MATEO COUNTY MEASURE A FUNDS TO SUPPORT EXISTING SAN MATEO COUNTY/SFO BART EXTENSION

THIS THREE PARTY AGREEMENT ("Agreement") is made as of this 27th day of April 2007, by and between the SAN MATEO COUNTY TRANSPORTATION AUTHORITY ("Authority"), the SAN MATEO COUNTY TRANSIT DISTRICT ("SamTrans") and the SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT ("BART").

RECITALS

WHEREAS, at the General Election of June 7, 1988, the voters of San Mateo County approved Measure A, "An ordinance providing for the Creation of the San Mateo County Transportation Authority, for the Imposition of a One-Half of One Percent Transactions and Use Tax, for the Issuance of Limited Tax Bonds, and for Other Purposes;" and

WHEREAS, Measure A contained the San Mateo County Transportation Expenditure Plan, authorizing the collection and distribution by the Authority of a 1/2-cent transactions and use tax (the "Tax"); and

WHEREAS, at the General Election of November 2, 2004, the voters of San Mateo County approved a new 2004 Transportation Expenditure Plan, to become operative in 2009, together with an extension of the Tax for 25 years, commencing January 1, 2009 (the "Plan"); and

WHEREAS, the Plan includes an allocation of 2% of the revenue generated by the Tax (net of collection and distribution costs charged by the collection agent), to provide financial assistance for operating expenditures or as SamTrans' local match for capital investments associated with BART's SFO Extension (the "TA-BART Funds"); and

WHEREAS, the SFO Extension consists 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, and that was opened for revenue operations on June 22, 2003 ("SFO Extension"); and

WHEREAS, SamTrans and BART are parties to a Comprehensive Agreement Pertaining to BART System Extension dated March 1, 1990, as amended; and an Agreement Pertaining to FY 2005 Operating Plan and Related Matters, that provides

each of them with certain rights and obligations in connection with the SFO Extension; and

WHEREAS, the Metropolitan Transportation Commission ("MTC"), BART and SamTrans entered into an agreement effective February 28, 2007, regarding the BART SFO Extension (the "Three-Party Financial Agreement"); and

WHEREAS, BART and SamTrans contemplate executing a Settlement Agreement and Release of Claims by and between BART and SamTrans (the "Settlement and Release of Claims") concurrently with the execution of this Agreement; and

WHEREAS, the Three-Party Financial Agreement and the Settlement and Release of Claims are collectively referred to herein as the "Settlement Agreements".

WHEREAS, pursuant to the Settlement Agreements SamTrans and BART propose to significantly revise the rights and obligations between them concerning the SFO Extension; and

WHEREAS, in connection with the Settlement Agreements, SamTrans has proposed, in its capacity as project sponsor, that Authority agree that the TA-BART Funds be allocated to BART for the purposes related to the SFO Extension as specified in the Plan, including assistance in funding the operating expenditures associated with the SFO Extension; and

WHEREAS, subject to the terms and conditions contained in this Agreement, the Authority is willing to approve allocation to BART of the TA-BART Funds; and

WHEREAS, pursuant to this Agreement, the parties desire to formalize the process and the associated terms and conditions governing the allocation of the TA-BART Funds by the Authority.

AGREEMENT

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

I. SAMTRANS ACKNOWLEDGES AND AGREES:

A. SamTrans is the project sponsor for the TA-BART Funds, and such funds are identified as a funding source to be made available to BART in the Settlement Agreements.

B. As project sponsor, SamTrans has recommended and requested that the entirety of the TA-BART Funds be dedicated to and allocated to BART by the Authority, commencing on January 1, 2009 and continuing for a period of twenty-five (25) years thereafter (or such longer period during which the revenues of the Tax allocable to such 25 year collection period are received), for the purposes related to the SFO Extension specified in the Plan; and that these TA-BART Funds be used to provide for operating expenditures, or for a local match for capital investments, or for both, associated with the SFO Extension.

II. AUTHORITY AGREES:

A. Commencing on January 1, 2009 and continuing for a period of twenty-five (25) years thereafter (or such longer period during which the revenues of the Tax allocable to such 25 year collection period are received), to pay or cause to be paid the TA-BART Funds to BART, for the sole purpose of providing for operating expenditures, or for a local match for capital investments, or for both, associated with the SFO Extension.

B. To facilitate the payment of the TA-BART Funds on a "pay as you go" basis through a third party collection agent in accordance with procedures and protocols implemented from time to time by contract between the Authority and a third party collection agent charged with responsibility for allocation of the Tax.

III. BART AGREES:

A. To expend the TA-BART funds it receives pursuant to this Agreement in accordance with the requirements of the Plan. Specifically, BART agrees that said funds will be expended in San Mateo County and used solely for purposes of operating expenditures, or for a local match for capital investments, or for both, associated with the SFO Extension.

B. To exercise its power and authority over the SFO Extension in a manner consistent with the Settlement Agreements.

C. To recognize that as a result of the Authority's commitment to pay funds under this Agreement, the taxpayers of San Mateo County will be providing ongoing financial assistance to BART's SFO Extension. In return, BART agrees to exercise its power and authority over the schedules, service levels and service standards and to continue to provide service at all stations on the SFO Extension in a manner consistent with BART system-wide operating policies, and BART further agrees that fares and

surcharges applicable to the SFO Extension will be reasonable in accordance with the BART Act and all other applicable laws and will be determined and adjusted in accordance with BART's system-wide fare policy.

D. To maintain full and complete records reflecting the purposes for which funds received by BART under this Agreement are spent. All records shall be maintained for four (4) years.

E. To make available to the Authority and its auditors, agents and authorized representatives, work papers and supporting source documents relative to this Agreement at mutually agreed-upon times for the purpose of auditing or verifying that expenditures are made strictly in accordance with the terms and conditions of this Agreement.

F. To defend, indemnify and hold harmless the Authority, its directors, officers, agents and employees from any and all suits, actions, claims, costs or liability arising out of third-party claims arising out of the acts or omissions of BART, its directors, officers, agents or employees in the operation, maintenance, repair, construction or other activity associated with the BART system, including the SFO Extension. BART further agrees to defend any and all such actions, suits or claims and pay all charges of attorneys and all other costs and expenses arising therefrom or incurred in connection therewith; and if any judgment be rendered against the Authority or any of the other individuals enumerated above in any such action, BART shall, at its expense, satisfy and discharge the same. In no event shall BART be liable for the defense of the Authority, its directors, officers, agents and employees or for any defense costs or claims, whether reduced to judgment or not, which result from any intentional or negligent acts or omissions of the Authority, its directors, officers, agents or employees.

IV. MUTUAL AGREEMENTS

A. Assignment. All of the terms, provisions and conditions of this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors, assigns, and legal representatives.

B. Governing Law. This Agreement shall be governed by the laws of the State of California as applied to contracts that are made and performed entirely in California.

C. Modifications. This Agreement may only be modified in a writing executed by all parties affected by the modification.

D. No Waiver. No waiver of any default or breach of any covenant of this Agreement by any party shall be implied from any omission by any party to take action on account of such default if such default persists or is repeated. No express waiver shall affect any default not specified in the waiver, and the waiver shall be operative only for the time or extent stated. The consent or approval by any party to or of any act by another party requiring further consent or approval shall not be deemed to waive or render unnecessary consent or approval from any other party, or to any subsequent, similar acts.

E. No Representation or Warranty Concerning Annual 1/2-Cent Transactions and Use Tax Amount. It is understood and agreed by the parties that the funds to be made available by the Authority pursuant to Section II above (i.e., the TA-BART Funds) will fluctuate from year to year based upon the state of the economy in general. The Authority makes no representation or warranty that any specific amount will be realized or that the Authority or the Plan will not be subject to changes beyond the control of the Authority.

F. BART and the Authority also acknowledge and agree that any bonds or other financing obligations issued by the Authority and secured by the Tax shall have priority over payment of the TA-BART Funds to BART. The Authority, when it issues financing obligations secured by the Tax, will exclude TA-BART Funds from the estimates of Tax revenues available for debt service. Any amount of TA-BART Funds used to pay such financing instruments due to a decrease in estimated Tax revenues shall remain as an outstanding obligation of the Authority owing to BART to be repaid as soon as sufficient Tax revenues are available, together with simple interest thereon at 3% per annum. The Authority agrees to cooperate with BART with respect to any financing that BART may undertake secured in whole or in part by the TA-BART Funds. The parties agree to cooperate with each other with respect to any financing that may be undertaken with regard to the TA-BART Funds and the issuer of any obligations will reimburse the other party for any incurred external costs.

G. Notices. All notices required or permitted to be given under this Agreement, excluding monthly reports, the final report, and invoices, shall be in writing and mailed postage prepaid by certified or registered mail, return receipt requested, or by personal delivery or overnight courier to the appropriate address indicated below or at such other place(s) that the parties may designate in written notice to the other. Notices shall be deemed received upon delivery if personally served, one (1) day after mailing if delivered via overnight courier, or two (2) days after the mailing date if mailed as provided above.

To SamTrans: San Mateo County Transit District
1250 San Carlos Avenue
P.O. Box 3006
San Carlos, CA 94070-1306
Attn: Executive Director

To Authority: San Mateo County Transportation Authority
1250 San Carlos Avenue
P.O. Box 3006
San Carlos, CA 94070-1306
Attn: Executive Director

To BART: San Francisco Bay Area Rapid Transit District
300 Lakeside Drive, 23rd Floor
P.O. Box 12688
Oakland, CA 94604-2688
Attn: General Manager

H. Conditions Precedent. This Agreement will not become effective unless and until the following actions have occurred: 1. Approval of this Agreement by the Board of Directors of BART; 2. Approval of this Agreement by the Board of Directors of SamTrans; 3. Approval of this Agreement by the Board of Directors of the Authority; 4. Approval of the Settlement Agreement and Release of Claims by the Boards of Directors of BART and SamTrans;

I. Termination. This Agreement, and all of its provisions, shall be null and void if the Three Party Financial Agreement or the Settlement Agreement becomes null or void.

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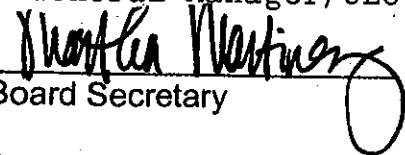
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IN WITNESS WHEREOF the parties have executed this Agreement by their duly authorized officers as of the day and year first above written.

SAN MATEO COUNTY TRANSIT DISTRICT

By: 
General Manager/CEO

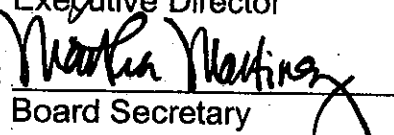
By: 
Board Secretary

APPROVED AS TO FORM:

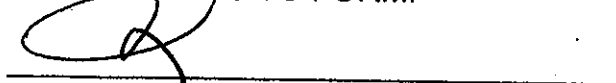

District Counsel

SAN MATEO COUNTY TRANSPORTATION AUTHORITY

By: 
Executive Director

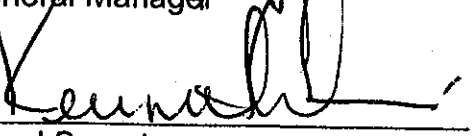
By: 
Board Secretary

APPROVED AS TO FORM:


San Mateo County Counsel
Special Counsel for the Authority

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

By: 
General Manager

By: 
Board Secretary

APPROVED AS TO FORM:


General Counsel for BART

EXHIBIT C

CARRYOVER PROVISIONS OF COMPREHENSIVE AGREEMENT, AS AMENDED

1(B) INSURANCE AND INDEMNITY IN CONNECTION WITH DESIGN,
CONSTRUCTION AND PROCUREMENT -
(Section II(A) and II(B) of 1990 Comprehensive Agreement)

II. REAL PROPERTY ACQUISITION AND OWNERSHIP

A. Colma Project

Sections 1 and 2(a)-(f) are deleted.

(g) SamTrans agrees to defend, indemnify and hold harmless BART, its officers, directors, employees and agents from and against any and all claims, loss, damage, charge or expense, whether direct or indirect arising out of Colma Project real property acquisition or relocation assistance activities, including without limitation, inverse condemnation claims and repayment of any grant funds required by the grant agency to be repaid, provided that SamTrans, at its election, may assume the defense or prosecution of any proceedings that give rise to, or which challenge, any such grant repayment requirements.

B. SFO Project

The parties agree that real property acquisition and relocation assistance activities for the SFO Project shall be undertaken by SamTrans under the same terms and conditions as are set forth in Section II.A.2 modified to apply to SFO Project property acquisition and relocation assistance, unless SamTrans notifies BART before 30% of Preliminary Engineering is complete that SamTrans does not wish to undertake the SFO Project real property acquisition and relocation activities.

2. INDEMNIFICATION/DEFENSE OF CLAIMS ARISING OUT OF
SFO EXTENSION OPERATIONS -
(Section III(C) of the 1990 Comprehensive Agreement)

BART shall provide public liability insurance for the Project in an amount and with such coverages and self-insured retentions and deductibles as may be agreed to by the parties, either with wrap-up insurance or through contractors employed on the Project. SamTrans and its directors, officers, agents and employees shall be named as additional insureds on all insurance policies relating to the design,

construction and procurement of the Project and shall be accorded the same contractual protections with respect to liability and indemnity as are accorded to BART under all design, construction and procurement agreements relating to the Project. SamTrans, at its discretion, reserves the right to tender to BART the defense of any claims asserted against SamTrans in connection with or arising out of the design, construction and procurement of the Project. In such event BART, to the extent permitted by law, shall have the duty to defend any and all such claims at no expense to SamTrans and to fully indemnify and hold harmless SamTrans and its directors, officers, agents and employees against any cost, expense or liability whatsoever resulting from the settlement, or entry of judgment upon, any and all such claims. BART shall honor the foregoing defense and indemnity obligations unless BART is ordered not to do so by a court of competent jurisdiction in an action or proceeding not instigated, brought or funded by BART.

3. **INDEMNIFICATION/DEFENSE OF CLAIMS**
(Section VII(E) of 1990 Comprehensive Agreement)

At such time as any part of the SFO Extension becomes operational, it is anticipated that certain claims may be presented from time to time by third parties in the course of operation and service. ~~A factor has been included in the operating cost formulas in Exhibits D and E to cover such costs.~~ Therefore, BART agrees to defend, indemnify and hold harmless SamTrans, its directors, officers, agents and employees from any and all suits, actions, claims, costs, or liability arising out of third-party claims arising out of the acts or omissions of BART, its directors, officers, agents or employees in the operation of the SFO Extension. BART further agrees to defend any and all such actions, suits or claims and pay all charges of attorneys and all other costs and expenses arising therefrom or incurred in connection therewith; and if any judgment be rendered against SamTrans or any of the other individuals enumerated above in any such action, BART shall, at its expense, satisfy and discharge the same. In no event shall BART be liable for the defense of SamTrans, its directors, officers, agents and employees or for any defense costs or claims whether reduced to judgment or not which result from any intentional or negligent acts or omissions of SamTrans, its directors, officers, agents or employees.

4. **13(c) INDEMNIFICATION**
(Section VII(E) of 1990 Comprehensive Agreement)

SamTrans shall defend, indemnify and hold harmless BART, its directors, officers, agents and employees, from any and all claims, costs, suits, judgments and liability arising under Section 13(c) of the Urban Mass Transportation Act of 1964, as amended, as a result of the Project, insofar as those claims are presented by SamTrans

employees or employees of SamTrans contractors providing public transportation services in San Mateo County at such time as the claims arise. With the exception of the foregoing, BART shall defend, indemnify, and hold harmless SamTrans, its directors, officers, agents and employees from any and all other claims, costs, suits, judgments and liability arising from Section 13(c) of the Urban Mass Transportation Act of 1964, as amended, as a result of the Project.

5. AUDIT AND RECORDS

Section VIII(A) of 1990 Comprehensive Agreement

1. BART Obligations. BART will maintain full and complete accounting and supporting records showing actual time devoted, other direct costs incurred, and revenue generated under this agreement in accordance with generally accepted accounting principles and practices and to a standard no less than BART uses for its own accounting.

BART will make available to SamTrans and its auditors, work papers and supporting source documents relevant to this Agreement at mutually agreed upon times for the purpose of auditing and verifying statements, invoices, or bills. SamTrans may, at its sole discretion and at its own cost and expense, request a special audit by an auditor to be chosen by SamTrans with BART's concurrence which shall not unreasonably be withheld. In the event the audit discloses that SamTrans has underpaid or overpaid during the applicable period under audit, a reconciliation payment will be made by SamTrans or BART, as the case may be, within 30 days after receipt of the audit report by BART and SamTrans, unless either party disagrees with the audit findings. Payment will be made on the basis of any uncontested audit findings.

2. SamTrans Obligations. SamTrans will maintain full and complete accounting and supporting records showing actual time devoted and other cost incurred under this agreement in accordance with generally accepted accounting principles and practices and to a standard no less than SamTrans uses for its own accounting. SamTrans will make available to BART and its auditors, work papers and supporting source documents relevant to this agreement at mutually agreed upon times for the purpose of auditing and verifying statements, invoices, or bills.

SamTrans will be responsible for additional audit costs incurred by BART to audit SamTrans' records, if required, relating to the federally required single audit required by the Single Audit Act of 1984, or any amendments thereto.

3. Retention of Records. Each party shall retain in tact all financial records and supporting documents for three years following any payments to which such records relate or such further times as may

be required by any state or federal grant agreements under which any portion of the Project is funded.