

AGREEMENT

Between

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

And

ROBERT SEELEY & ASSOCIATES

To

**PROVIDE PARKING CITATION AND VEHICLE STORAGE ADMINISTRATION HEARING
EXAMINER SERVICES**

For

BART AGREEMENT NO. 6M5135

2018

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ATTACHMENTS

ATTACHMENT A: SCOPE OF SERVICES

ATTACHMENT B: PARKING CITATION AND TOW HEARING APPEALS MANUAL

ATTACHMENT C: COMPENSATION SCHEDULE

TECHNICAL SERVICES

AGREEMENT NO. 6M5135

Between

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

And

ROBERT SEELEY & ASSOCIATES

THIS AGREEMENT ("Agreement") is made and entered into this 8th day of AUGUST, 2018, by and between SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT ("BART" or "District"), a rapid transit district established pursuant to California Public Utilities Code, Section 28500 et seq., and ROBERT SEELEY & ASSOCIATES (CONTRACTOR), with offices located at 774 Superior Avenue, San Leandro, California.

RECITALS

This Agreement is made with reference to the following facts:

1. BART proposes to obtain services to provide Parking Citation and Vehicle Storage Administration Hearing Examiner Services ("Project"), as indicated in Attachment A, Scope of Services.
2. The services required for the Project cannot be performed satisfactorily by the officers and employees of BART; and
3. The parties hereto now wish to enter into this Agreement pursuant to which CONTRACTOR will furnish technical services in connection with the Project as hereinafter provided.

* * *

AGREEMENT

In consideration of the mutual promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1.0 SCOPE OF SERVICES

CONTRACTOR's services are described in Attachment A, SCOPE OF SERVICES, incorporated herein and by this reference made a part hereof. CONTRACTOR shall be responsible to perform or secure the performance of all requested services in their entirety subject to the prior approval of a work plan by Jason DeVera, BART's Police Department, or a designated representative (herein called "Project Manager").

This Agreement is not exclusive. BART expressly reserves the right to contract for performance of services such as those described herein through other contractors.

CONTRACTOR shall exercise independent discretion and judgment and shall use its own methods to accomplish the work. CONTRACTOR shall direct all questions regarding services requested to the Project Manager or a designated representative.

1.1 FINANCIAL ADMINISTRATION

CONTRACTOR and its subcontractors shall establish and maintain records pertaining to the fiscal activities of the Project. CONTRACTOR's and subcontractors' accounting systems shall conform to generally accepted accounting principles and all records shall provide a breakdown of total costs charged to the Project, including properly executed payrolls, time records, invoices and vouchers. Attention is further drawn to Article 14.0, RECORDS, and Article 15.0, AUDIT.

1.2 PROGRESS REPORTS

CONTRACTOR shall submit to the Project Manager a monthly progress report concerning the Scope of Services performed during the preceding month. The form of the progress report shall be subject to approval by the Project Manager.

2.0 TIME OF PERFORMANCE

CONTRACTOR's services hereunder shall commence on August 1, 2018 and will continue for three (3) years from that date, unless earlier terminated as hereinafter provided, or if the limit on maximum compensation set forth in Article 3.0 below is reached, with one (1) option, exercisable by the District at its sole discretion, to extend the term of this Agreement for one (1) additional one (1) year, subject to termination as provided for in the Agreement. This option must be exercised, in writing, no later than thirty (30) days prior to the end of the initial term of the Agreement, and if not so exercised will be deemed to have lapsed and be of no further force or effect.

3.0 COMPENSATION AND METHOD OF PAYMENT

3.1 COMPENSATION

- A. Compensation for these services will be computed pursuant to Attachment B, COMPENSATION SCHEDULE, attached hereto and by this reference made a part of this Agreement.

- B. The compensation specified in Attachment B shall be full compensation for all services performed, including all applicable surcharges such as taxes (including sales taxes), insurance and fringe benefits, as well as indirect costs, overhead and profit allowance, materials and supplies.
- C. Subject only to duly executed change orders, it is expressly understood and agreed that in no event will the total compensation to be paid CONTRACTOR under this Agreement exceed the sum of \$84,600.00.
- D. During the term of this Agreement the District may, at its sole discretion, incorporate additional services into this Agreement on the same terms as set forth in Attachment A, SCOPE OF SERVICES, to this Agreement. Authorization for additional services will be incorporated into this Agreement by written change order(s).
- E. BART's allocation of funds for this Agreement is on a fiscal year basis with the fiscal year commencing July 1 and ending the following June 30. BART reserves the right to terminate this Agreement if no funds are allocated for this Agreement during the following fiscal year.

3.2 METHOD OF PAYMENT

A. Monthly Invoices/Subcontractor Payment

Unless approved otherwise by the Project Manager, services shall be invoiced on a monthly basis and payment will be made within thirty (30) calendar days of receipt of an acceptable invoice with satisfactory backup documentation, approved by the Project Manager, provided a completed Form W-9 is on file with BART's Assistant Controller. As used herein, the term "invoice" shall include CONTRACTOR's bill or written request for payment under this Agreement for services performed. All invoices shall be made in writing and submitted with two (2) duplicates at a minimum. If applicable, CONTRACTOR shall submit to the District Project Manager each week, certified payroll records in accordance with the terms of Article 25, STATE OF CALIFORNIA LABOR CODE REQUIREMENTS. Failure to submit current certified payroll records may cause the suspension of progress payments during the period of non-compliance.

CONTRACTOR shall promptly pay any and all subcontractors by an instrument that guarantees availability of funds immediately upon deposit of said instrument. CONTRACTOR shall include in its monthly invoice submission to BART, amounts to pay for all subcontractors' acceptable invoices, no later than thirty (30) calendar days after receipt of such invoices. Unless otherwise approved in writing by the Project Manager, CONTRACTOR shall, within seven (7) calendar days after receipt of the payment made by BART, pay to each of its immediate subcontractors (or their respective assignees), for satisfactory performance of its contract, the amounts to which each is entitled, after deducting any prior payments and any amounts due and payable to CONTRACTOR by those subcontractors. Any delay or postponement of payment among the parties may take place only for good cause and with the District's prior written approval. If CONTRACTOR determines the work of the subcontractor to be unsatisfactory, CONTRACTOR must immediately notify, in writing, the Project Manager (and the Office of Civil Rights if the subcontractor is a MBE or WBE) and state the reasons therefor. Failure by CONTRACTOR to comply with this requirement will be construed to be a breach of contract and may result in sanctions as specified in this Agreement.

In addition, CONTRACTOR must promptly return any retentions withheld to a subcontractor within thirty (30) calendar days after the subcontractor's work is satisfactorily completed.

B. Invoice Procedures

1. CONTRACTOR invoices shall segregate current costs from other costs. Current costs are those costs which have been paid within the last sixty (60) calendar days and not previously submitted to BART for reimbursement. Other costs shall include, but not be limited to, the following:
 - a. Costs for which the District has requested additional justification for allowance; and,
 - b. Costs which have been recorded by CONTRACTOR in the current accounting period and not incurred as an obligation within the last ninety (90) calendar days.
2. In no case shall CONTRACTOR invoice for costs which BART has disallowed or otherwise indicated that it will not recognize.

C. Invoice Submittal Address

CONTRACTOR shall submit a completed Form W-9 and all invoices directly to BART's Accounts Payable Department using one (1) of the following three (3) methods:

1. **(Preferred)** E-mail a PDF version of the invoice to: **AP_Supplier@bart.gov**.
Please save the file name as your Company Name – Invoice No.
Example: ABC Company – Invoice #123456.
2. Fax the invoice to: (510) 380-7635
3. Mail the invoice to: San Francisco Bay Area Rapid Transit District
Accounts Payable Department – LKS22
Subject: Invoice Submission
300 Lakeside Drive, 22nd Floor
Oakland, CA 94612

Invoices must include: CONTRACTOR's Invoice Number and BART's Agreement Number.

Please direct questions regarding invoices and payments to BART's Project Manager, or email your questions to: **JDeVear@bart.gov**. Invoice submission samples can be viewed at www.bart.gov/bap.

D. Taxpayer Identification Number

CONTRACTOR represents that CONTRACTOR's taxpayer identification number (TIN) is evidenced by a completed Federal Form W-9 on file with BART's Assistant Controller on the date of execution of this Agreement. CONTRACTOR agrees to file such tax forms as may be reasonably requested by BART to implement Internal Revenue Code Section 3406 and to accept as a part of any compensation due, any payments made by BART to the Internal Revenue Service pursuant to that Section.

4.0 CHANGES AND EXTRA SERVICES

BART reserves the right to order changes in the services to be performed by CONTRACTOR. All such changes shall be incorporated in written change orders executed by BART and CONTRACTOR, which

shall specify the changes ordered and the adjustment of compensation and completion time required therefor.

Any services added to the scope of this Agreement by a change order shall be executed under all applicable conditions of this Agreement. No claim for additional compensation or extension of time shall be recognized unless contained in a duly executed change order.

5.0 TERMINATION

5.1 TERMINATION FOR CONVENIENCE

The performance of work or delivery of products under this Agreement may be terminated in whole or part by BART upon written notice to CONTRACTOR in accordance with this clause whenever BART determines that such termination is in its best interest. After receipt of said notice CONTRACTOR shall stop work on this Agreement on the date and to the extent specified in said notice, terminate all applicable orders and subagreements, and complete performance of all work as shall not have been terminated by said notice. After receipt of said notice, CONTRACTOR shall submit to BART its termination claim setting forth CONTRACTOR's actual and direct damages incurred as a result of said termination together with such information as may be required by BART to evaluate the claim. The determination of BART on the claim shall be final.

5.2 TERMINATION FOR CAUSE

If CONTRACTOR should be in default and fails to remedy this default within five (5) calendar days from receipt from BART of notice of such default, BART may in its discretion terminate this Agreement or such portion thereof as BART determines is most directly affected by the default.

The term "default" for purposes of this provision includes, but is not limited to, the performance of work in violation of the terms of this Agreement; abandonment, assignment or subletting of this Agreement without approval of BART; bankruptcy or appointment of a receiver for CONTRACTOR's property; failure of CONTRACTOR to perform the services or other required acts within the time specified for this Agreement or any extension thereof; refusal or failure to provide proper workmanship; failure to take effective steps to end a prolonged labor dispute; and the performance of this Agreement in bad faith.

Upon BART's termination of this Agreement for default by CONTRACTOR or any portion thereof, BART reserves the right to complete the work by whatever means it deems expedient and the expense of completing such work as well as any and all damages proximately caused by the default shall be charged to CONTRACTOR.

5.3 FORCE MAJEURE

The performance of work under this Agreement may be terminated by BART, in its discretion, upon application therefor by CONTRACTOR for unforeseen causes beyond the control and without the fault or negligence of CONTRACTOR, including acts of God, acts of the public enemy, governmental acts, fires and epidemics if such causes irrecoverably disrupt or render impossible CONTRACTOR's performance hereunder. An "act of God" shall mean an earthquake, flood, cyclone, or other cataclysmic phenomenon of nature beyond the power of CONTRACTOR to foresee or make preparation in defense against.

6.0 INSURANCE

At all times during the life of this Agreement to acceptance of the work covered by this Agreement, or as may be further required by this Agreement, CONTRACTOR, at its own cost and expense, shall provide the insurance specified by this Article 6.0.

A. Evidence Required

At or before execution of this Agreement and at such other times as the District may request, CONTRACTOR shall provide BART with a Certificate of Insurance executed by an authorized representative of the insurer(s) evidencing that CONTRACTOR's compliance with the insurance requirements in this Article 6.0. The Certificate shall reference BART's Agreement Number 6M5135 and Title to which the Certificate relates. In addition, a copy of all required endorsements shall be attached to and form a part of CONTRACTOR's Certificate of Insurance.

B. Notice of Cancellation, Reduction or Material Change in Coverage

All policies shall be endorsed to provide BART with thirty (30) calendar days prior written notice of any cancellation, reduction, or material change in coverage. Notices shall be sent to:

Department Manager, Risk and Insurance
San Francisco Bay Area Rapid Transit District
Insurance Department – LKS18
P.O. Box 12688
Oakland, California 94604-2688

CONTRACTOR shall annually submit to BART's Department Manager, Risk and Insurance, certifications confirming that the insurance required has been renewed and continues in place.

C. Qualifying Insurers

Policies shall be issued by California admitted companies which hold a current policyholders alphabetic and financial size category rating of not less than A VIII according to Best's Insurance Reports.

D. Insurance Required

1. Commercial General Liability Insurance for bodily injury (including death) and property damage which provides limits of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) annual aggregate as respects products/completed operations if applicable.

- a. Coverages shall include:

- (1) Premises and Operations;
- (2) Broad Form Property Damage;
- (3) Blanket Contractual Liability;
- (4) Products/Completed Operations;
- (5) Personal Injury Liability;
- (6) Cross-liability and Severability of Interest; and
- (7) Independent Contractor's Liability.

- b. Such insurance shall include the following endorsements, copies of which shall be provided to BART:

- (1) Inclusion of BART, its directors, officers, representatives, agents and employees as additional insureds as respects services or operations in connection with this Agreement; and
 - (2) Stipulation that the insurance is primary insurance and that no insurance or self-insurance of the District will be called upon to contribute to a loss.
2. Automobile Liability Insurance for bodily injury (including death) and property damage which provides coverage limits of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired vehicles.
 3. Statutory Workers' Compensation and Employers' Liability Insurance for not less than One Million Dollars (\$1,000,000) per occurrence applicable to Employers' Liability coverage for all employees engaged in services or operations under this Agreement. The policy shall include broad form all-states/other states coverage. Coverage shall be specifically endorsed to include the insurer's Waiver of Subrogation in favor of BART, its directors, officers, representatives, agents and employees, a copy of which shall be provided to BART. Should any such work be subcontracted, CONTRACTOR shall require each subcontractor of any tier similarly to comply with this Article, all in strict compliance with federal and state laws.

E. Special Provisions

1. The foregoing requirements as to the types and limits of insurance coverage to be maintained by CONTRACTOR, and any approval of said insurance by BART or its insurance contractor(s) are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by CONTRACTOR pursuant to this Agreement, including but not limited to the provisions concerning indemnification.
2. BART acknowledges that some insurance requirements contained in this Article may be fulfilled by a funded self-insurance program of CONTRACTOR. However, this shall not in any way limit liabilities assumed by CONTRACTOR under this Agreement. Any self-insurance program must be approved in writing by BART.
3. Should any of the work under this Agreement be subcontracted, CONTRACTOR shall require each of its subcontractors of any tier to provide the aforementioned coverages, or CONTRACTOR may insure subcontractor(s) under its own policy(ies).
4. BART reserves the right to withhold payments to CONTRACTOR in the event of material noncompliance with the insurance requirements of this Article 6.0.
5. The BART reserves the right to terminate this Agreement in the event of material noncompliance with the insurance requirements of this Article 6.0.

7.0 INDEPENDENT CONTRACTOR

CONTRACTOR is, and will at all times remain, a wholly independent contractor and not an officer or employee of BART. CONTRACTOR has no authority to bind BART in any manner, or to incur any obligation, debt or liability of any kind on behalf of or against BART, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by BART.

The personnel performing the services under this Agreement on behalf of CONTRACTOR will at all times be under CONTRACTOR's exclusive direction and control. Neither BART, nor any elected or appointed boards, officers, officials, employees or agents of BART will have control over the conduct of

CONTRACTOR or any of CONTRACTOR's officers, employees or agents, except as provided in this Agreement. CONTRACTOR agrees that it will not at any time or in any manner represent that CONTRACTOR or any of CONTRACTOR's officers, employees or agents are in any manner officials, officers, or employees of BART. CONTRACTOR shall be responsible for its own acts and those of its employees during the term of this Agreement.

For all purposes, including but not limited to the Federal Insurance Contributions Act ("FICA"), the Social Security Act, the Federal Unemployment Tax Act ("FUTA"), income tax withholding requirements, California Personal Income Tax Withholding ("PIT"), California Unemployment Insurance taxes ("UI"), California Disability Insurance ("SDI"), the Workers' Compensation Act ("WCA"), California Public Employees' Retirement Law ("PERL"), and all other applicable federal, state and local laws, rules and regulations, CONTRACTOR, and CONTRACTOR's respective employees, if any, shall be treated as independent contractors and not as employees of BART. CONTRACTOR and its personnel shall assist the District in evaluating and documenting the correct classification of CONTRACTOR's personnel as independent contractors, which assistance may include, but is not limited to, reviewing and signing a CONTRACTOR Status Evaluation form for each individual proposed to perform work under this Agreement.

Neither CONTRACTOR, nor any of CONTRACTOR's officers, employees or agents, will obtain any rights to retirement, health care or any other benefits which may otherwise accrue to BART's employees. CONTRACTOR expressly waives any claim to any such rights or benefits.

In its capacity as an independent contractor, CONTRACTOR shall comply with any and all BART operations rules and procedures which relate to the performance of its services on BART property. Prior to commencing services, the Project Manager may loan CONTRACTOR a copy of BART's Operations Rules and Procedures which shall be returned upon the completion or termination of CONTRACTOR's services hereunder.

7.1 CONFLICT OF INTEREST

CONTRACTOR, its subcontractors and suppliers shall perform all work under this Agreement in conformance with all applicable statutes and regulations pertaining to conflicts of interest including, but not limited to, the financial reporting requirements and the conflict prohibitions of federal law (see, e.g., Federal Transit Administration Circular 4220.1F, Third Party Contracting Guidance) and California law (see, e.g., Government Code Section 1090 et seq., Government Code Section 87100 et seq. and Title 2, Division 6 of the California Code of Regulations).

When, in the judgment of BART, it is necessary in order to avoid any potential conflicts of interest, CONTRACTOR, its subcontractors and suppliers may be precluded from subsequently participating as a vendor or contractor on projects for which they are providing services under this Agreement.

7.2 DISTRICT CONTRACTOR CODE OF CONDUCT:

The CONTRACTOR shall comply with the requirements of the District Contractor Code of Conduct which has been adopted by the Board of Directors of the San Francisco Bay Area Rapid Transit District. This Code of Conduct is posted at the District's website:

<http://www.bart.gov/about/business/procurement/>. The purpose of the District Contractor Code of Conduct is to protect the integrity of the procurement process, and to provide a comprehensive statement of pertinent regulations and obligations governing the conduct of contractors doing business with the District so they will be able to compete fairly and perform their work and services in an ethical manner. Failure to comply with the applicable requirements of the District Contractor Code of Conduct, could lead to, among other things, direction to remove an offending subcontractor, rescinding, voiding, or terminating the Agreement, or other reasonable and appropriate actions. CONTRACTOR shall include in its subagreements, and require its

subcontractors of every tier to include in their respective subagreements provisions incorporating the requirements of the District Contractor Code of Conduct.

8.0 INDEMNIFICATION

CONTRACTOR, to the extent permitted by law, shall defend, indemnify and hold harmless BART, its directors, officers, agents and employees from all claims, demands, suits, loss, damages, injury and liability, direct or indirect (including reasonable attorney's fees, and any and all costs and expenses in connection therewith), incurred by reason of any act, or failure to act, of CONTRACTOR, its officers, agents, employees and subcontractors or any of them, under or in connection with this Agreement; and CONTRACTOR agrees at its own cost, expense and risk to defend any and all claims, actions, suits, or other legal proceedings brought or instituted against BART, its directors, officers, agents and employees, or any of them, arising out of CONTRACTOR's services, and to pay and satisfy any resulting judgments. Such indemnification includes without limitation any violation of proprietary rights, copyrights, and rights of privacy, arising out of the publication, translation, reproduction, delivery, use or disposition of any data furnished under this Agreement.

CONTRACTOR is not an employee and will defend, indemnify and hold BART harmless for any injuries or claims suffered by CONTRACTOR and/or its officers, agents, employees and subcontractors that would otherwise be subject to the Workers' Compensation Act. Further, CONTRACTOR will defend, indemnify BART and hold it harmless for tax, wages, employee benefits, pension benefits, or other liability if CONTRACTOR or its employee, agent, subcontractor or other person providing services pursuant to this Agreement is found to be a common law employee of BART by the IRS, CalPERS, another government agency or a court administrative law judge.

9.0 DATA TO BE FURNISHED BY BART

All data, reports, surveys, studies, drawings, and any other documents and materials made available to CONTRACTOR by BART for use by CONTRACTOR in the performance of its services under this Agreement shall be made available for information only and shall be returned to BART at the completion or termination of this Agreement.

10.0 OWNERSHIP OF WORK PRODUCTS

10.1 DOCUMENTS

All drawings, designs, specifications, manuals, reports, studies, surveys, models, software (including source code), and any other documents, materials, data and products ("Work Products") prepared or assembled by CONTRACTOR or obtained from others ("Subcontractors") by CONTRACTOR in connection with the services under this Agreement shall be the property of BART; and copies shall be delivered to BART promptly upon the completion of the work or upon an earlier termination of this Agreement. CONTRACTOR shall be responsible for the preservation of any and all Work Products prior to transmittal to BART; and CONTRACTOR shall replace any such Work Products as are lost, destroyed or damaged while in its possession without additional cost to BART.

10.2 ASSIGNMENT OF RIGHTS

CONTRACTOR hereby assigns to BART all rights, title and interest including, but not limited to, copyright, patent, trademark and trade dress rights, in and to the Work Products. CONTRACTOR acknowledges BART's exclusive rights to reproduce, publish, display, create derivative works from, sell, transfer or otherwise exploit ("Use"), and permit others to Use all or any part of the Work

Products, and to obtain and hold in its own name patents, copyright and/or trademark registrations for the Work Products. CONTRACTOR shall provide all documentation, information and assistance reasonably required by BART to obtain such registrations or patents, or with respect to claims that third parties have infringed the Work Products.

10.3 WARRANTY OF WORK PRODUCT

CONTRACTOR warrants and represents that the Work Products are original to CONTRACTOR or its Subcontractors and shall not infringe the copyright, trademark, trade secret, privacy, publicity, patent or other intellectual property or proprietary rights of any third party; CONTRACTOR will not attempt to license or transfer to any person or entity any interest in the Work Products; and CONTRACTOR shall obtain from all Subcontractors written assignment of all rights, title and interest, including copyright and other intellectual property rights, in their contributions to the Work Products.

11.0 MATTERS CONFIDENTIAL AND PRIVILEGED

All of the drawings, designs, specifications, manuals, reports, studies, surveys, models, or other data and products prepared or assembled by CONTRACTOR, obtained from others by CONTRACTOR or made available to CONTRACTOR by BART in connection with the services under this Agreement, shall be treated as confidential by CONTRACTOR. At no time shall CONTRACTOR use or disclose or make available, other than in the performance of CONTRACTOR's services for BART, confidential information gained in the course of or by reason of CONTRACTOR's retention by BART and/or performance of services for BART, nor shall CONTRACTOR permit such use or disclosure, without prior written approval by BART. It is the intention of BART to preserve and make use of all applicable legal privileges, and CONTRACTOR shall make all reasonable efforts to cooperate with BART in this regard.

12.0 SUBCONTRACTS

CONTRACTOR shall not subcontract all or any portion of its services under this Agreement without the prior written approval of the Project Manager, and any attempt to do so shall be void and unenforceable. In the event that CONTRACTOR enters into one or more subcontracts pursuant to this Article, it is understood and agreed that the participating subcontractors shall be solely and directly responsible to CONTRACTOR, and BART shall have no obligation to them.

CONTRACTOR agrees that the requirements in Articles 4.0 through 26.0, inclusive, of this Agreement will be included in every subcontract entered into relating to services under this Agreement. Upon request, CONTRACTOR shall provide BART with copies of all such subcontracts within seven (7) calendar days of written request, with any changes and amendments thereto.

13.0 ASSIGNMENT OF AGREEMENT

CONTRACTOR shall not assign this Agreement, or any part thereof without prior express written consent of the Project Manager, and any attempt to do so shall be void and unenforceable.

14.0 RECORDS

CONTRACTOR shall maintain full and adequate records to show the actual time devoted and the cost incurred by CONTRACTOR with respect to the performance of services under this Agreement.

15.0 AUDIT

CONTRACTOR and its subcontractors shall permit BART and its authorized representatives to inspect, examine, make excerpts from, transcribe, and copy CONTRACTOR's and subcontractors' books, work, documents, papers, materials, payrolls, records, accounts, and any and all data relevant to this Agreement at any reasonable time for the purpose of auditing and verifying statements, invoices or bills submitted by CONTRACTOR pursuant to this Agreement, and shall provide such assistance as may be reasonably required in the course of such inspection including, but not limited to, the following:

A. Audit Interviews

CONTRACTOR shall arrange audit entrance and exit interviews in which CONTRACTOR and/or its subcontractors and BART and/or its authorized representatives will participate.

B. Accessing Documents

CONTRACTOR's and its subcontractors' accounting divisions shall provide instruction to BART on accessing documents.

C. Letter of Representation

CONTRACTOR's management, or the management of a subcontractor, as well as the management of their appropriate units, will provide at BART's request a letter of representation concerning such matters as BART determines appropriate.

BART further reserves the right, for itself and its authorized representatives, to examine and re-examine said books, work, documents, papers, materials, payrolls, records, accounts and data during the three (3) year period following the final payment under this Agreement and until all pending matters are closed; and CONTRACTOR and its subcontractors shall in no event dispose of, destroy, alter or mutilate said books, work, documents, papers, materials, payrolls, records, accounts and any and all data in any manner whatsoever for three (3) years after the final payment under this Agreement, or until all pending matters are closed, whichever is later.

Pursuant to California Government Code Section 8546.7, the parties to this Agreement shall be subject to the examination and audit of the State Auditor, at the request of BART or as part of any audit of BART by the State Auditor, for a period of three (3) years after final payment under this Agreement. The examination and audit shall be confined to those matters connected with the performance of this Agreement, including, but not limited to, the cost of administering this Agreement.

16.0 NOTICES

Except for invoices submitted by CONTRACTOR pursuant to Article 3.0, COMPENSATION AND METHOD OF PAYMENT, above and insurance notices submitted pursuant to Article 6.0 B., Notice of Cancellation, Reduction or Material Change in Coverage, above, all notices required hereunder or other communications to either party by the other may be given by personal delivery, U.S. Mail, courier service (such as Federal Express) or facsimile transmission. Notices shall be effective upon receipt at the following addresses:

To BART by U.S. Mail:

San Francisco Bay Area Rapid Transit District
P.O. Box 12688
Oakland, California 94604-2688

Attention: Jason DeVera, Project Manager

To BART by Personal
Delivery or Courier
Service:

San Francisco Bay Area Rapid Transit District
300 Lakeside Drive, 18th Floor
Oakland, California 94612

Attention: Jason DeVera, Project Manager

To CONTRACTOR:

Robert Seeley & Associates
774 Superior Avenue
San Leandro, California 94577

Attention: Robert Seeley, Program Manager

Telephone/Email Transmission:

To BART:

JDeVera@bart.gov

To CONTRACTOR:

510-569-3299

Either party may change its address for notices by giving written notice of the new address as provided above.

17.0 NON-DISCRIMINATION

In connection with the performance of services under this Agreement, CONTRACTOR shall not, on the grounds of race, religious creed, color, national origin, ancestry, handicap, medical condition, marital status, sex, sexual orientation or age, discriminate or permit discrimination against any person or group of persons in any manner prohibited by Federal, State or local laws.

For purposes of this Article "sexual orientation" shall mean a preference for heterosexuality, homosexuality or bisexuality; or having a history of, or being identified with, any such preference.

18.0 NOT USED

19.0 SITE SECURITY AND ACCESS

Prior to commencement of services, CONTRACTOR shall comply with BART's site security requirements which include, but are not limited to, requiring photographic identification badges and submitting names and dates of birth of all personnel, including subcontractors and suppliers of any tier, working on BART property or facilities. All badges shall be returned to BART at the completion of services hereunder. In the event CONTRACTOR fails to comply with BART's site security requirements, CONTRACTOR's personnel, including subcontractors and suppliers, may not be allowed on BART property or facilities. No extension of time for completion of services or additional compensation for delay claims shall be granted in the event such personnel are excluded from BART property or facilities.

20.0 LAWS AND REGULATIONS

CONTRACTOR shall comply with any and all laws, statutes, ordinances, rules, regulations, and procedural requirements of any national, state or local government, and of any agency of such government, including BART, which relate to or in any manner affect the performance of this Agreement. This Agreement and any

documents supplied hereunder are subject to public inspection of the California Public Records Act, California Government Code Section 6250 et seq., unless exempted by law.

A. District's Environmental Policy

The CONTRACTOR and its subcontractors shall comply with the District's Environmental Policy adopted on February 10, 2005 by the Board of Directors of the San Francisco Bay Area Rapid Transit District. The District's Environmental Policy is posted at the District's website:

<http://www.bart.gov/about/planning/policies>. The purpose of the District's Environmental policy is to preserve the environment by adopting feasible practices that, among other things, prevent pollution and preserve natural resources in its operating practices. BART will monitor and implement the Environmental Policy through its Environmental Management System. CONTRACTOR shall comply with all the applicable requirements and failure to do so may be regarded as a breach of the Agreement potentially leading to rescinding, voiding, or terminating the Agreement, or other reasonable and appropriate actions. Failure of a subcontractor to comply with the applicable requirements may lead to, among other things, direction to remove an offending subcontractor. Any such replacement shall be undertaken in accordance with among other things, California Public Contract Code Section 4100 et seq., as applicable. CONTRACTOR shall include in its subagreements, and require its subcontractor of every tier to include in their respective subagreements, provisions incorporating the requirements of the District's Environmental Policy.

21.0 CHOICE OF LAW

All questions pertaining to the validity and interpretation of this Agreement shall be determined in accordance with the laws of the State of California applicable to agreements made and to be performed within the State, without reference to conflicts of law principles.

22.0 SEVERABILITY

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

23.0 CAPTIONS

The captions of the Articles and paragraphs in this Agreement are for purposes of reference only, and shall not be construed to affect the meaning of any provision hereof.

24.0 BENEFIT OF AGREEMENT

This Agreement shall bind and benefit the parties hereto and their assignees, successors and permitted assigns.

25.0 STATE OF CALIFORNIA LABOR CODE REQUIREMENTS

Special attention is directed to Division 2, Part 7, Chapter 1, Article 2 of the California State Labor Code, including Section 1774 and Section 1775, concerning the payment of prevailing wages. CONTRACTOR and each Subcontractor shall pay not less than the appropriate prevailing wages to all workers performing work that is subject to the prevailing rate of wages as determined by the Director of the State Department of Industrial Relations. Pursuant to Section 1773 of the State Labor Code, the District has obtained from

the Director of the State Department of Industrial Relations the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality(ies) in which the Work is to be performed and has copies available upon request from the Procurement Department, 300 Lakeside Drive, 17th Floor, Oakland, CA 94612. The prevailing rates of wages are also available at the following website: www.dir.ca.gov/dlsr/pwd. For crafts or classifications not shown on the prevailing wage determinations, CONTRACTOR may be required to pay the wage rate of the most closely related craft or classification shown in such determinations for such work. CONTRACTOR may contact the Division of Labor Statistics and Research, Prevailing Wage Unit, P.O. Box 420603, San Francisco, CA 94142, (415) 703-4774, for questions concerning job classifications not found in the general prevailing wage determinations. CONTRACTOR shall comply with the provisions of State Labor Code Section 1776 and Section 1812, and shall be responsible for compliance by its Subcontractors. The penalties specified in subdivision (h) of State Labor Code Section 1776 for noncompliance by the CONTRACTOR or any of its Subcontractors of every tier may be deducted from any monies due or which may become due to the CONTRACTOR. Among other things, CONTRACTOR shall comply with the requirements of State Labor Code Section 1777.5 applicable to Apprentices. A certified copy of payroll records shall be provided by the CONTRACTOR in accordance with State Labor Code Section 1776 and shall be furnished to the District each week within seven (7) Days after the regular payment date of the payroll period. Failure to comply with these requirements may cause suspension of progress payments during the period of noncompliance or may delay final payment.

26.0 ENTIRE AGREEMENT

This Agreement is the entire agreement of the parties, and supersedes and replaces all prior communications, written and oral, regarding the subject matter hereof. CONTRACTOR represents that in entering into this Agreement, it has not relied on any previous representations, inducements, or understandings, written or oral, of any kind or nature.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto as of the day and year first written above.

SAN FRANCISCO BAY AREA RAPID TRANSIT
DISTRICT

By: _____

General Manager (or designee)

ROBERT SEELEY & ASSOCIATES

By: _____

Signature

Print name

Print title

ATTACHMENT A

SCOPE OF SERVICES

ATTACHMENT A
SCOPE OF SERVICES
AGREEMENT NO. 6M5135
FOR PARKING CITATION AND VEHICLE STORAGE ADMINISTRATION
HEARING EXAMINER SERVICES

The services to be performed by CONTRACTOR shall consist of services requested by the Project Manager and shall include, but not be limited to, the following:

Administrative hearing examiners will conduct administrative reviews, make findings of fact and rendering decisions for contested parking citations in accordance with California Vehicle Code Sections 40215 and 22852.

BART does not imply that in the future the level of administration hearings will equal or approximate the number of court hearings for contested BART parking citations in past years. However, BART guarantees a minimum level of services under this Agreement to amount to a compensation of \$1,000.00 per month.

Statement of Work Overview

CONTRACTOR shall provide administrative hearing services, both written and orally submitted, for all parking citations issued by the BART Police Department ("BPD"), including all requests for hearings pursuant to Sections 22500, 22651 and 22852 of the California Vehicle Code. CONTRACTOR has reviewed and is familiar with the BART "Parking Citation and Vehicle Tow Hearing Appeals Manual" (attached hereto as Attachment B), and will comply with the requirements pertaining to hearings.

The services to be performed by CONTRACTOR shall consist of services requested by the Project Manager including, but not limited to, the following:

1. Receive administrative hearing packets from the citation processing contractor (currently Data Ticket, Inc.) containing a Parking Citation Hearing Request Application, completed BART Police Administrative Review, and the citation(s). (Reference PARKING CITATION AND TOW HEARING APPEALS MANUAL, Attachment B.)
2. Receive administrative hearing requests for vehicle storage appeals from the BART Police Traffic Office.
3. Review packets and determine that all necessary information is provided to conduct the hearing.

Any questions by the hearing examiner regarding citation processing should be directed to the citation processing contractor, currently:

Data Ticket, Inc.
 4600 Campus Drive, Suite 200
 Newport Beach, CA 92660
 Phone: (949) 752-6937

Any questions by the hearing examiner regarding BART stations, parking lots, parking regulations, procedures, or BART Police related subjects should be directed to:

BART Police Department Traffic Office
 800 Madison Street
 Oakland, CA 94607
 Traffic Officer: (510) 464-7038
 Supervisor: (510) 464-7787

4. Written Hearings: An individual may request a written hearing to appeal the administrative review decision for a parking citation or to determine the validity of a tow. Upon receipt of a written hearing request, the hearing examiner will make a determination regarding the parking citations or vehicle storage appeal. The hearing determination will be recorded with any comments on an Administrative Hearing Results Form and will be attached to the original hearing packet. A copy of the Administrative Hearing Results Form is set forth in the appendix to the PARKING CITATION AND TOW HEARING APPEALS MANUAL, included herein as Attachment B. The packet will then be returned to Data Ticket (currently Data Ticket, Inc.) for citation status updates and requestor notifications.
5. In-person Hearings: An individual may request an in-person hearing to appeal the administrative review decision for a parking citation or to determine the validity of a tow. The District will provide office space at its administration building or in the immediate vicinity for the hearing examiner to conduct in-person hearings. BART will supply forms, a desk and two chairs. The hearing examiner shall direct the requestor to read and sign the Statement of Rights and Responsibilities, prior to the hearing. The requestor will be given a copy of this document. A copy of the Statement of Rights and Responsibilities is set forth in the appendix to the PARKING CITATION AND TOW HEARING APPEALS MANUAL. Upon hearing the appeal, the hearing examiner may make the determination and advise the requestor at the time by giving the second copy of the results form to the requestor. Or, the determination can be made at a later time, if the requestor is argumentative or more information needs to be obtained by the examiner before a decision can be rendered. In all cases, the results form is to be completed and forwarded with the original packet to Data Ticket, Inc.

ATTACHMENT B

PARKING CITATION AND TOW HEARING APPEALS MANUAL

PARKING CITATION, ADMINISTRATIVE
CITATION,
and
TOW HEARING
APPEALS MANUAL

BART POLICE DEPARTMENT

101 8th STREET OAKLAND, CA 94607

Traffic Office 510-464-7038

Revised April 2018

PURPOSE

The purpose of this information manual is to provide guidelines for the investigation, hearing, and disposition of all contested parking citations, administrative citations, and vehicle tow hearings involving violations of the California Vehicle Code and the applicable BART Resolutions. The BART District acknowledges that it is important that this adjudication process is fair and convenient from the viewpoint of persons contesting alleged parking violations and vehicle tows, while at the same time, being efficient and uniform.

INTRODUCTION

It is the primary goal of this adjudication process to provide all individuals who have had their vehicles towed or who have been charged with a parking or administrative violation a forum in which the facts of their cases may be reviewed fairly and a disposition rendered in a timely manner.

For those who contest a citation or vehicle tow, the adjudication process should be just, timely, and fair. This process must contribute to the overall goal of motivating proper behavior by providing a means to discourage illegal parking, driving, or other behaviors, while also providing an appropriate and impartial hearing process.

Parking Enforcement: An effective parking enforcement program must protect and fairly apportion scarce parking spaces for all legitimate users by ensuring that those who violate parking regulations are penalized for doing so. Penalties for non-payment of citations must be strong enough to discourage violators from being delinquent. For repeat offenders who fail to observe parking regulations and fail to pay outstanding parking fines, towing and DMV holds should be the expected consequences.

Towing of Vehicles: A vehicle towing policy is established to meet the requirements and obligations of the California Vehicle Code sections 22500, 22650, 22651 and the BART District to maintain effective control of abandoned vehicles, illegally parked and driven vehicles, and those vehicles towed as a result of outstanding parking violations.

Definitions:

1. **Administrative Adjudication:** The process of reviewing contested parking - citations and vehicle tows.
2. **Administrative review (Level 1 review):** The investigation conducted by the BART Police Department Traffic Office.
3. **Hearing examiner review (Level 2 review):** The review conducted by a hearing examiner employed for that purpose. This review may be by personal appearance or written declaration – online or mail-in.
4. **Civil Appeal (Level 3 review):** The review conducted by the Superior Court is the final review in the adjudication process (civil court).

5. Citation Processing Contractor: The company or entity contracted by the BART District to process parking and administrative citations (currently Dataticket Incorporated).

LEGAL IMPACT

Section 1

Effective July 1, 1993, Assembly Bill 408 decriminalized parking violations and allowed the removal of the process from the courts except as the ultimate civil appeal. The bill also established a system for administrative adjudication for contested parking violations. The process requires a no-charge review of parking citations by local police entities, offers a mail-in or personal review with a hearing examiner, and permits a final review by a civil court. Additionally, in this system, parking enforcement officers will no longer appear for hearings on contested parking citations. Vehicle tow hearings are not included in this legislation but are part of California Vehicle Code section 22852. In compliance with the legislation and with the vehicle code, the Bay Area Rapid Transit District has contracted for the services of the processing of parking citations and for the services of an administrative hearing examiner.

Section 2

Under California Vehicle Code section 40202(a), a notice of parking violation (parking citation) or copy thereof is considered to be the record kept in the ordinary course of business and is "prima facie" evidence of all of the facts contained in the citation. Because the parking violation notice represents liability for a civil penalty and not the accusation of a crime, there is no right to confront the citing officer.

Section 3

There is no burden to prove the elements of the parking violation beyond a reasonable doubt, as required in a criminal case. Parking violations are not criminal matters, therefore the civil burden of preponderance of the evidence applies.

Section 4

Other rights associated with criminal cases, such as the right to appoint a Counsel at public expense or the right to a jury trial, do not apply to this process. However, the right to be represented by counsel, employed at the defendant's expense, is retained.

Section 5

The registered owner, renter, or lessee of a vehicle cited for a parking violation is jointly liable with the actual driver of the vehicle for the civil penalty. However, if the registered owner can show that the vehicle was operated without consent, there is no joint liability (Vehicle code 40200(b)). An affidavit of non-liability must be filed with the processing agency. The administrative review will decide if the affidavit is valid.

Section 6

Per California Vehicle Code Section 22852, whenever a vehicle is towed and stored, the agency or person directing the storage shall provide the vehicle's registered and legal owners of record, or their agents, with the opportunity for a post-storage hearing to determine the validity of the storage.

PROCEDURES

The following procedures are set forth as the process for administrative adjudication of contested parking citations and post-storage tow hearings. This process must be strictly adhered to and the time limitations met; otherwise the review process will not be applicable and the citation and any delinquent assessments must be paid. No late review requests will be accepted.

PARKING CITATION

1. To request an administrative review of a parking citation, the request must be submitted on the Parking Citation Review Request form and forwarded to the parking contractor.
2. The request for review must be submitted within 21 days of the citation issuance or within 14 days of the mailing of the notice of delinquent parking citation.
3. The law makes no distinction as to whether or not the violator is a minor therefore; no guardian need be appointed for a minor violator. Minors will be treated in the same manner as an adult violator.
4. If a person who has received a notice of delinquent parking violation requests a copy of the original citation or an electronically produced facsimile of the original parking citation, that request must be honored within 15 days of the request. The request can be made either by mail or in person to the parking contractor. Once that request is received, the 14-day period of time as to item #2 above applies. The processing company is responsible for initiating the stay of processing when fulfilling the request.
5. A registered or legal owner filing an affidavit of non-liability has 30 days to return that affidavit to the parking contractor. The affidavit must be accompanied by proof of a written lease or rental agreement between a bona fide rental or leasing company and its customer. The customer must be identified by all of the following information: driver license number, name, current address, and phone number.

This information will generate a new notice of delinquent parking violation that will be sent to the customer identified in the affidavit of non-liability. Proceedings against the rental leasing officer will be terminated. If payment is not received within 15 days of the mailing of the new notice of delinquent violation, then the customer will be considered delinquent and the citation will be processed as any other delinquency.

If the affidavit of non-liability is returned with evidence from the registered owner who received the delinquency notice that a bona fide sale or transfer of the vehicle has been made and the vehicle had already been delivered to the purchaser **prior** to the date of the alleged violation, the

proceedings against the registered owner can be terminated if the registered owner has complied with California Vehicle Code Section 5602 (release of liability). If the registered owner has not complied with Section 5602, a parking penalty must be paid or contested in accordance with this procedure.

6. Administrative review (Level I): After a request for an administrative review is received by the parking contractor, a designee of the BART Police Department Traffic Office will conduct a review and render a decision. Each violation will be reviewed on its own merit following the established criteria in the Citation Dismissal Criteria and Controls section of this manual.

Whenever possible, the administrative review by police department personnel should be completed within 7 days of receipt. If no appeal is received within 21 days of the mailing of the administrative review decision, the matter is concluded.

7. Hearing Examiner Review (Level II): If the contestant is not satisfied with the results of the BART Police administrative review, that decision may be appealed to a hearing officer. This appeal must be in writing and received by the parking contractor within 21 days of the mailing or delivery of the results of the administrative review. The contestant, within 21 days, must deposit the full amount of each parking penalty. The contestant must state whether a review by mail or a personal appearance is requested.
 - A. If the contestant requests a waiver of the deposit due to inability to pay, substantial and verifiable proof of that inability must be submitted on the Request for Fine Waiver form. The citation processing contractor will be responsible for reviewing the request.
 1. If the waiver request is denied, then the contestant must submit the deposit to request the hearing examiner review.
 2. If the waiver is allowed, then the process for the hearing examiner review will be followed as detailed below, and the deposit will be waived.
 - B. If the contestant's vehicle has been impounded for unpaid parking penalties and remains under the control of a local police entity, the deposit is waived.
 - C. The citation processing contractor may accept cash, money orders, credit card payment, or single party personal checks for the penalty deposit.
8. When the citation processing contractor personnel receive a written request for a hearing examiner review (Level II), the following steps are taken:
 - A. Determine that the time limit has been met. The date of receipt by the parking contractor shall be the date used to determine the time limit;
 - B. Determine that the BART Police administrative review (Level I) has been completed;
 - C. Determine that the violator has deposited the full amount of the penalty or has been approved for a penalty waiver;
 - D. Gather all documents for the citation. This may be a separate declaration or a copy of any notes made on the citation; and

- E. Forward the packet of information to the hearing examiner. The packet must include the following:
 - 1. A copy of the completed request for administrative review (Level I appeal), including the decision rendered;
 - 2. A completed "Parking Citation Hearing Request Application" form;
 - 3. Declaration of issuing officer explaining the citation (optional);
 - 4. Affidavit of non-liability if submitted and disallowed by administrative review; and
 - 5. Certification of payment of fees, or approved waiver of deposit.
- F. If the contestant is requesting a personal appearance, an appearance date will be assigned in accordance with established procedures, and a copy mailed back to the contestant. Currently, administrative hearings are conducted once a month on the third Friday of the month.
- 9. The hearing examiner review will be conducted before an examiner contracted by the BART District on behalf of the BART Police Department.
 - A. The hearing examiner review will be conducted in accordance with the written procedure established by contract. The hearing examiner will issue a fair and impartial review of the contested parking violations following the established criteria in this manual.
 - B. The final decision may be delivered personally to the contestant by the examiner or by first class mail.
 - C. Following the hearing examiner review, the packet, along with the decision rendered, will be returned to the parking contractor.
 - D. This packet must be filed and retained for 30 days. If no appeal is received in 30 days, the matter is concluded.
- 10. If the contestant-is-not satisfied with the results of the hearing examiner, the contestant may seek civil review through the appropriate court, depending on the county where the citation was issued. This appeal must be filed in accordance with the timelines set by the court, normally between 20 to 30 days of the mailing or delivery of the examiner's decision. This review will be a trial de novo, or new trial. Should the contestant decide to seek review by this process, the following steps must be taken by the violator:
 - A. A copy of the appeal must be served by personal service or by first class mail to the parking contractor;
 - B. The contestant must pay a non-refundable \$25.00 filing fee for each citation reviewed by the court; and
 - C. If the contestant wishes the citing officer to appear, civil witness fees must be deposited. These are currently about \$150.00 per appearance.

POST STORAGE VEHICLE TOW HEARINGS

1. The registered owner or legal owner of a vehicle that has been towed and stored may request a hearing to determine the validity of the tow. The following procedure shall be adhered to:
 - A. Per Vehicle Code Section 22852(a), the contestant shall submit the request for such a hearing in person, writing, or by telephone within 10 days of the date appearing on the notice of vehicle storage mailed to them by the storing agency. This request may come via an interested third party, another department in the district or from the parking contractor.
 - B. Once the request is received a post storage hearing shall be conducted within 48 hours of the request, excluding weekends and holidays.
 1. The BART Police Department Traffic Office shall conduct the initial post storage hearing;
 2. If the BART Police Department Traffic Office is unable to make a determination on the validity of the storage, the hearing will be assigned to a hearing examiner contracted by the District;
 - a) The hearing examiner review will be conducted in accordance with the written procedure established by contract;
 - b) The hearing examiner will issue a fair and impartial review of the contested tow and storage;
 - c) The final decision may be delivered personally to the contestant by the examiner or by first-class mail. A copy of the decision shall be mailed to the BART Police Traffic Office for filing; and
 - d) Following the hearing examiner review, the decision letter will be filed and retained for 30 days. If no appeal is received in 30 days, the matter is concluded.
 - C. Failure of either the registered or legal owner, or his or her agent, to request or to attend a scheduled hearing shall satisfy the post-storage hearing requirement.

CITATION DISMISSAL CRITERIA AND CONTROLS

It is every driver's responsibility to locate legal parking. Although each parking violation will be considered on its own merit, there are some valid reasons for dismissing a parking citation:

1. The citation was issued in error.
2. An authorized police department official gave permission to park at that location.
3. The electronic parking control system at that station is not functioning correctly.
4. The contestant has a legal permit or placard, but it was not properly displayed.
5. The description of the vehicle on the parking citation does not substantially match the corresponding information on the registration card or DMV printout.

6. For the administrative reviews (Level 1), citations issued for non-validation at parking control machines, where an error was made by the violator in not validating the parking stall or entering an incorrect stall number, one warning may be allowed based on the following policy:
 - a) Within a twelve-month period, the violator may be forgiven the penalty on their first request.
7. Extraordinary circumstances such as a stolen vehicle, incapacitated vehicle, medical emergency, or the death of a vehicle owner may be dismissed if the registered owner or agent provides the appropriate documentation.
8. Occasionally a contestant will present an excuse which in effect, may be an appeal for leniency.

Some examples of these might include the out of town driver; the driver is new to BART. Generally, these pleas are not an excuse for illegal parking. Leniency should only be applied when all facts of the case have been weighed. Then the dismissal of a violation can be applied on the basis of a one-time courtesy within a twelve-month period. Excessive fine or costs -The fines are set by regulation and laws. They apply to all violators. They are not variable in the absence of a legally proper explanation. Where a vehicle has been towed, the amount of the towing and storage fees the violator has paid or must pay is not under the reviewer's or hearing examiner's jurisdiction.

The parking contractor shall contact the BART Police Traffic Office prior to the dismissal of any citation.

The parking citation contractor shall be responsible for ensuring all administrative reviews shall be logged so that a record can be kept of the number of persons who appeal their citations and the number of requests they made.

BART PARKING CONTROLS

Parking Validation Machine (PVM). These machines require drivers to validate their parking stall number once they have passed through the fare gates of the station and are in the paid area of the station. Uses of the BART parking lots are restricted to BART patrons only and the validation requirement prevents non-BART riders from legally parking in the lots.

Time Restricted Parking. There are currently three types of time-restricted parking lots at BART. The signs are posted throughout these lots.

No parking 7 AM to 10 AM (Mid-day parking) -- This lot is reserved for the use of those patrons to allow mid-day use of BART after commute hours. Since most of the station lots fill to capacity during the commute hours, it is important that these lots be preserved for use of mid-day patrons. Drivers will often attempt to park earlier to catch a specific train or ensure getting a space when the restriction is over. Sitting in the vehicle or parking just a few minutes early does not mitigate the offense.

Carpool Vehicles Only 6 AM to 10 AM -- This lot is reserved for those patrons who have and properly display on the dashboard, BART Pool Permits issued by Bay Area Rides. Two or more permits must be displayed to indicate that there are two or more patrons per vehicle who carpool to BART during the posted time limit. Single drivers who are observed parking in this lot and who display

two parking permits are in violation and are subject to citation. Drivers are not allowed to drop off passengers prior to parking in this lot; there must be a minimum of two occupants in the vehicle when the car is parked. After 10 AM the lot is open to general parking.

Attended Vehicles Only “At all times” or “4 PM to 6 PM” -- These areas allow drivers to park and wait for patrons arriving at the station by train. While time limits are in effect, vehicles are not to be left unattended. In “4 PM to 6 PM” areas, patrons may park in these spaces during the day as long as they return to the vehicle by 4 PM.

Electric Vehicle Parking 4 AM to 3PM – These areas allow drivers to park and charge their electric vehicles after purchasing, and displaying, a special EV single day reserve permit that is obtained at www.select-a-spot.com.

Commonly listed reasons for violating BART parking regulations

Below are some commonly listed reasons for violating BART parking restrictions. While these reasons may seem valid to the contestant, they do not address the laws that the District has adopted to regulate parking. These reasons generally will not result in the violation being dismissed, or the contestant being successful in a hearing.

1. **Short errands.** No errand, no matter how short or how important to the driver short of a bona fide emergency is an acceptable excuse for illegal parking. Running in to pick someone or something up is not a valid reason for illegal parking.
2. **Going to the bathroom.** This is never an adequate reason for illegal parking.
3. **Late for an appointment, a meeting, a class or catching a train.** The driver of a motor vehicle should find a way to arrive on time without having to illegally park.
4. **Doing a service for the District.** Many vendors believe that they need not adhere to parking regulations. Unless specifically exempt from parking regulations by permit, or due to the nature of their work, need to park temporarily in an illegal manner, they are not exempt.
5. **Only part of the car was parked illegally.** A violation is not based on a certain percentage of the vehicle being illegally parked. If part of the vehicle extends into a restricted area, the violation is the same as if the entire vehicle encroached.
6. **Short-stay parking situations.** Only parking for a few minutes, leaving someone in the car, leaving the parking lights on or flashing, leaving a note in the car, leaving the motor running. Many drivers seem to think that evidence of a short-stay mitigates the offense. These situations do not constitute a valid reason to park illegally and to have the citation dismissed,
7. **Nobody else got a ticket.** This excuse is sometimes raised as a discriminatory enforcement defense. Occasionally parking enforcement may not appear to have been uniformly applied. Other

vehicles may or may not have been parked illegally. Officers may have had to leave the area before checking all vehicles. The citation still stands.

8. **The entire lot was full.** The absence of a legal parking space does not exempt a driver from parking illegally. The driver has the responsibility to verify if parking at a location is legal.
9. **Someone else had my car.** Under the law, the registered owner has joint responsibility with whoever is driving the car. Unless it can be shown by the registered owner that the car was driven without their permission.
10. **An official saw me park and didn't say anything—or said it was okay for a few minutes.**
Generally, District employees have no authority to give permission to authorize illegal parking. If proper permission was determined to be given by a District official, the ticket should be dismissed. Whenever possible, a District official will caution about illegal parking, but silence by an official does not waive parking restrictions.
11. **The official apologized but wrote the ticket anyway.** This may only show that the official did not want to get into a verbal discussion about the violation. BART Police personnel have some discretion whether to cite or not. This, however, is not a valid excuse for parking illegally. Once the citation has been issued to the vehicle, and the violation is valid, the citation cannot be dismissed by field personnel.
12. **This violation has not been enforced in the past.** Sometimes neglect, inadequate staffing or other priorities may give rise to - violations not being enforced continually. Apparent failure to enforce parking laws does not constitute a valid excuse for illegal parking.
13. **I've done it for years everybody does it.** Nobody should be rewarded for getting away with prior violations.
14. **Diplomatic Immunity.** According to the U.S. Government, counsels general or other diplomatic attaches are exempt from the law of local jurisdictions only with respect to criminal acts performed in the exercise of counselor functions. Since parking violations are civil offenses, diplomatic immunity does not apply.

METHODS OF DEBT COLLECTION

If the final judgment is adverse to the contestant, BART Police may employ the following to satisfy the civil penalty:

1. Release of bank deposits for the amount deposited by the contestant. If all of the funds are not received within 30 days, the parking contractor may take the following steps on behalf of the BART District:
 - A. Send an invoice to the violator for any administrative and service fees due.
 - B. Through the Department of Motor Vehicles' (DMV) registration procedure, an itemization of unpaid parking penalties and administrative and service fees may be forwarded to DMV for collection with the vehicle registration fees.

- C. If the registration and the attendant parking fees are not paid within 60 days beyond the renewal date, and the citation penalties remain uncollected, proof of unpaid penalties and fees may be filed with the court with the same effect as a civil judgement.
2. Civil judgement debt collection:
- A. Pursuant to Vehicle Code Section 22651(i)1, the Police Department may tow any vehicle, which has five or more delinquent parking citations on record. The current policy of the police department is that this section be enforced only when there are 10 or more delinquent BART parking violations.
 - B. The vehicle is released only when the owner provides evidence of his or her identity, an address within this state at which they can be located, pays the cost of towing and storage and submits evidence of payment of all parking penalties and fees. The owner can also obtain a vehicle release if they complete an affidavit stating that the vehicle was not in possession of the legal Owner at the time of the occurrence of the parking offense;
 - C. If more than \$400.00 in unpaid penalties and fees has been accrued by any person or registered owner, proof of the penalties and fees may be filed with the court with the same effect as a civil judgement obtained through the judicial system;
 - D. Notice by first-class mail will be sent to the person who received the notice of violation or the registered owner of the vehicle indicating that a judgment will be entered for the amount due;
 - E. The notice will also state that 30 days after the mailing of the notice the judgment will have the same effect as an entry of judgement against a debtor. The debt may be collected against a debtor's assets, Liens may be placed against property, wages may be garnished, or other methods may be taken to satisfy the judgement. Other methods include interception of tax refunds and credit bureaus.

Administrative Citations

This Article provides for administrative citations as provided by Government Code Section 53069.4.

An administrative citation is issued to a violator, an applicable penalty is imposed and the responsible violator is obligated to correct the violation.

A violator has the right to appeal both the City's initial determination that he or she has violated an ordinance, and the amount of the penalty imposed by the City. Appeals are heard by a City Hearing Officer (Section 1-7.07 of this Article), and if desired, the violator can challenge in a court of law the Hearing Officer's decision.

An administrative penalty is a monetary penalty, or fine, imposed by the City but subject to review by a court. An administrative penalty is designed to deter violations of City ordinances and to create a speedy and efficient way to gain compliance. It is a civil matter, not a criminal proceeding, authorized by Article 3 of Chapter 1 of this Code, pursuant to Government Code Section 53069.4. The amounts of penalties are established by Council resolution (Section 1-7.11 of this Article).

Each Administrative Citation shall contain accurate information applicable to the circumstances of the violation and the remedies required. Such information shall include:

- a. Date, approximate time, and address, or definite description of the location where the violation(s) was observed;
- b. The Code sections or conditions violated and a description of the violation(s);
- c. An order prohibiting the continuation or repeated occurrence of the code violation described on the Administrative Citation;
- d. An order to the responsible person to correct the violations within the time specified (compliance date), and an explanation of the consequences of failure to correct the violation(s) including the fine for the violation;
- e. The amount of the fine and/or penalty and interest for the violation(s);
- f. An explanation of how the fine shall be paid and the time period by which it shall be paid;
- g. Identification of rights of appeal, including the time within which the citation may be contested and the place to obtain a Request for Hearing Form to contest Administrative Citation; and
- h. The name and signature of the Enforcement Officer.

Upon receipt of an Administrative Citation, the responsible party must do the following:

Pay the fine to the City within fifteen (15) days from the date the Administrative Citation was issued.

Any recipient of an Administrative Citation may contest that there was a violation of the Municipal Code, other ordinances adopted by the City, or conditions on entitlements; or contest that he or she is the responsible party by paying the specified fine to the City; and completing a Request for Hearing Form and returning it to the City within fifteen (28) days from the date the citation was issued.

- i. The Administrative Citation and any additional documents submitted by the Enforcement Officer shall constitute prima facie evidence of the respective facts contained in those documents. If the Enforcement Officer submits an additional written report concerning the Administrative Citation to the Hearing Officer for consideration at the hearing, then a copy of this report also shall be served by mail on the person requesting the hearing at least five days prior to the date of the hearing.
- j. The Enforcement Officer or his or her designee will be in attendance at the hearings to present the City's case; the responsible party may also have in attendance other parties if his or her choosing.
- k. The Hearing Officer may continue the hearing and request additional information from the Enforcement Officer or the recipient of the Administrative Citation prior to issuing a written decision.

I. DECISION.

- a. After considering all of the testimony and evidence submitted at the hearing, the Hearing Officer shall issue a written decision containing findings of fact and an evaluation of the sufficiency of evidence to support the finding of a violation. The written decision shall be prepared and mailed to the appellant (appealing Responsible Party) within ten days of the conclusion of the hearing to uphold or deny of the Administrative Citation and shall list in the decision the reasons for that decision. The decision of the Hearing Officer shall be final. The recipient of the Administrative Citation shall be

notified that a decision has been rendered and receive a copy of the Hearing Officer's written decision by mail.

- b. If the Hearing Officer determines that the Administrative Citation should be upheld, then the fine amount shall be paid within five working days to the City. If the Hearing Officer determines that the Administrative Citation should be invalidated, any fine already paid to the City shall be refunded within thirty (30) days.

53069.4.

(a) (1) The legislative body of a local agency, as the term "local agency" is defined in Section 54951, may by ordinance make any violation of any ordinance enacted by the local agency subject to an administrative fine or penalty. The local agency shall set forth by ordinance the administrative procedures that shall govern the imposition, enforcement, collection, and administrative review by the local agency of those administrative fines or penalties. Where the violation would otherwise be an infraction, the administrative fine or penalty shall not exceed the maximum fine or penalty amounts for infractions set forth in Section 25132 and subdivision (b) of Section 36900.

(2) The administrative procedures set forth by ordinance adopted by the local agency pursuant to this subdivision shall provide for a reasonable period of time, as specified in the ordinance, for a person responsible for a continuing violation to correct or otherwise remedy the violation prior to the imposition of administrative fines or penalties, when the violation pertains to building, plumbing, electrical, or other similar structural or zoning issues, that do not create an immediate danger to health or safety.

(b) (1) Notwithstanding Section 1094.5 or 1094.6 of the Code of Civil Procedure, within 20 days after service of the final administrative order or decision of the local agency is made pursuant to an ordinance enacted in accordance with this section regarding the imposition, enforcement, or collection of the administrative fines or penalties, a person contesting that final administrative order or decision may seek review by filing an appeal to be heard by the superior court, where the same shall be heard de novo, except that the contents of the local agency's file in the case shall be received in evidence. A proceeding under this subdivision is a limited civil case. A copy of the document or instrument of the local agency providing notice of the violation and imposition of the administrative fine or penalty shall be admitted into evidence as prima facie evidence of the facts stated therein. A copy of the notice of appeal shall be served in person or by first-class mail upon the local agency by the contestant.

(2) The fee for filing the notice of appeal shall be as specified in Section 70615. The court shall request that the local agency's file on the case be forwarded to the court, to be received within 15 days of the request. The court shall retain the fee specified in Section 70615 regardless of the outcome of the appeal. If the court finds in favor of the contestant, the amount of the fee shall be reimbursed to the contestant by the local agency. Any deposit of the fine or penalty shall be refunded by the local agency in accordance with the judgment of the court.

(3) The conduct of the appeal under this section is a subordinate judicial duty that may be performed by traffic trial commissioners and other subordinate judicial officials at the direction of the presiding judge of the court.

(c) If no notice of appeal of the local agency's final administrative order or decision is filed within the period set forth in this section, the order or decision shall be deemed confirmed.

(d) If the fine or penalty has not been deposited and the decision of the court is against the contestant, the local agency may proceed to collect the penalty pursuant to the procedures set forth in its ordinance.

ADMINISTRATIVE PROOF OF PAYMENT CITATION PROCEDURES AND PROCESSING

INTRODUCTION

The Bay Area Rapid Transit District estimates it loses millions of dollars to fare evasion each year, and fare cheaters erode the trust of honest, fare paying customers. As a result of these factors the Board of Directors adopted reasonable Proof of Payment regulations to ensure compliance with fare payment requirements.

The Board of Directors passed Proof of Payment Ordinance No. 2017-2 as part of a multipronged approach to reducing fare evasion, which includes public education, improved barriers between the free and paid areas of stations, data collection, and enforcement.

The BART Police Department will utilize the Proof of Payment Ordinance as an enforcement tool in a fair and impartial manner. This manual will outline the Proof of Payment Program and Fare Inspection protocol.

PROOF OF PAYMENT PROGRAM OVERVIEW

The primary purpose of the Proof of Payment Program is to ensure that BART passengers adhere to BART fare payment requirements and that those who do not pay fare are issued citations as a corrective measure.

Passengers are required to process valid fare media to enter and to exit the paid area of BART. Passengers are now also required to present a valid exit-coded BART ticket when requested by a BART Police employee. Individuals who fail to present proof of payment shall be in violation of BART Ordinance 1702-2. Violation of the ordinance is an infraction.

Any person who knowingly gives false information to a peace officer or District employee engaged in proof of payment inspections, and/or any person who otherwise obstructs the issuance of a proof of payment citation, shall be in violation of section 2017-2.3(b) of the Proof of Payment Ordinance. This violation is an infraction.

The goal of the Proof of Payment program is to reduce fare evasion, but it is also noted that the visible presence of BART Fare Inspectors in BART Stations and on BART trains will increase safety and security for passengers and employees alike.

Public Utilities Code Section 28766 authorizes the BART Board of Directors to regulate its transit facilities including the fixing of charges and the making and enforcement of rules for or in connection with any transit facility owned or controlled by the District. The imposition of civil administrative penalties is a typical type of charge imposed by governments to serve a regulatory purpose and to facilitate the recovery of governmental expenses incurred as a consequence of a rule violation.

Adults who fail to show proof of payment in the paid area or on a train, upon a first or second violation within a 12-month period, will be assessed an administrative penalty of seventy-five dollars (\$75) or may be required to perform 5 hours of community service.

Juveniles who fail to show proof of payment in the paid area or on a train will be assessed an administrative penalty of fifty-five dollars (\$55) or may be required to perform 4 hours of community service.

Individuals who are unable to show proof of payment may be subject to ejection from the BART system.

Fare Inspectors may take the following actions:

1. Request proof of payment from passengers;
2. Request personal identification from a passenger who does not produce proof of payment when requested;
3. Issue a civil citation;
4. Request that a passenger leave the paid area of BART when they are in violation of BART Ordinance 2017-2.

DEFINITIONS

Exit coded: The term "exit coded" means a ticket programmed with sufficient value for the minimum BART fare and which has been used in a BART fare gate to enter the BART system. Exit coded tickets remain valid for a limited period of time as designated by the BART fare schedule.

Fare: The term "fare" as used herein means the current passenger fare structure as approved by the Board of Directors.

Ticket: The term "ticket" as used herein is intended to include Clipper Cards, BART magnetic stripe tickets, BART-issued voucher or pass, or other fare media as otherwise authorized by BART.

Paid Area: The demarcated areas within the BART system accessible only to people with a valid ticket (or other approved fare media) processed for entry via a fare gate or by a station agent. The "paid area" includes; the area of the station concourse enclosed by barrier walls and

fare gates, any concourse to platform elevators which access train platforms, the train platforms, and train cars.

Proof of Payment: The term "proof of payment" means the valid ticket medium that may be requested from any individual upon entry to, or anywhere within the paid area.

ORDINANCE

Proof of Payment Ordinance No. 2017-2

Section 3: Prohibition on being in the paid area or on a train without a valid exit-coded ticket.

No individual may enter into or exit from the paid area of a BART Station other than through the use of a BART ticket at the fare gates.

- (a) Individuals in the paid area of the station or on a BART train are required to present a valid exit-coded BART ticket when requested by the District. Individuals who fail to present proof of payment shall be in violation of this ordinance. This violation is an infraction.*
- (b) Any person who knowingly gives false information to a peace officer or District employee engaged in proof of payment inspections, and/or any person who otherwise obstructs the issuance of a proof of payment citation, shall be in violation of this ordinance. This violation is an infraction.*

Section 5. Penalty for Violation

Violation of this ordinance shall be an infraction, which may result in the following:

5.1 Civil Administrative Citation

Public Utilities Code Section 28766 authorizes the BART Board of Directors to regulate its transit facilities including the fixing of charges and the making and enforcement of rules for or in connection with any transit facility owned or controlled by the District. The imposition of civil administrative penalties are a typical type of charge imposed by governments to serve a regulatory purpose and to facilitate the recovery of governmental expenses incurred as a consequence of a rule violation. A civil administrative citation shall be the preferred first option, as opposed to a criminal citation.

Adults who fail to show proof of payment in the paid area or on a train, upon a first or second violation within a 12 month period, will be assessed an administrative penalty not

to exceed one hundred and twenty dollars (\$120) or may be required to perform up to 8 hours of community service.

Juveniles who fail to show proof of payment in the paid area or on a train will be assessed an administrative penalty not to exceed sixty dollars (\$60) or may be required to perform up to 8 hours of community service.

Individuals who are unable to show proof of payment may be subject to ejection from the BART system.

5.2 Criminal Infraction Citation

- (a) Upon a third proof of payment violation within any 12 month period for an adult, a peace officer will issue a criminal citation to the adult.*
- (b) Any person who knowingly gives false information to a peace officer or District employee engaged in proof of payment inspections, and/or any person who otherwise obstructs the issuance of a proof of payment citation, shall be in violation of this ordinance and are subject to a criminal citation.*

Any person found to be in violation of this ordinance upon a criminal citation shall be guilty of an infraction, and may be punishable by a fine not to exceed two hundred fifty dollars (\$250) and by community service for a total time not to exceed 48 hours over a period not to exceed 30 days, during a time other than during the violator's hours of school attendance or employment.

PROOF OF PAYMENT ENFORCEMENT PROTOCOL

Keys elements relating to Proof of Payment Enforcement are outlined below:

1. Fare Inspectors are to greet all customers in a friendly, courteous, and professional manner.
2. Fare Inspectors are to treat every passenger with dignity and respect including those passengers without valid fare.
3. Fare Inspectors are not discriminate based on Age, Race, Religion, Gender, Physical Disability or Economic Status.
4. Fare Inspectors are required to systematically request proof of payment from one person to the next nearest person, in a fair and impartial manner.
5. Fare Inspectors will attempt to educate violators regarding BART Proof of Payment Policy.

CONCEPT OF OPERATIONS

Fare Inspector Procedures

1. Fare Inspectors work in teams consisting of at least two members.
2. They conduct fare inspections at times and locations designated by their supervisor on a day to day basis.
3. When conducting inspections, they will activate their AXON camera. Videos will be labeled with the train destination and departure station (Pittsburg train from McArthur), or the station name for platform inspections.
4. They will document the time, location, the number of persons contacted, and the number of citations issued. This information will be recorded daily.
5. All Fare Inspectors are trained to meet the expectations outlined in the Proof of Payment Manual.
6. Fare Inspectors are taught that use of their professional judgment, common sense, and limited discretion will achieve outcomes that are consistent with BART's policies and goals. Successful implementation of these policies and goals will prevent and avoid outcomes that are fundamentally unfair and/or prevent the perception and opportunity for biased or unfair treatment of customers.
7. Fare Inspections will be conducted in a fair and impartial manner.
 - a. When conducting fare inspections on a BART concourse platform, Fare Inspectors will position themselves in a conspicuous area, begin inspections by contacting the nearest person, inspect that person's ticket, then progress to the next closest person, not skipping any persons in between. Inspectors will attempt to request proof of payment from all persons in the immediate area. This process may be interrupted/curtailed when a Fare Inspector encounters a passenger who fails to provide valid proof of payment, which will result in enforcement action. Inspectors are not expected to contact other passengers during the process of identifying and issuing a citation to a violator.
 - b. When conducting fare inspections on BART trains, Fare Inspectors will commence inspections at one end of the train car, then progress from one person to the next closest person, not skipping any persons in between. Inspectors will attempt to request proof of payment from all persons in the train car. This process may be curtailed when a Fare Inspector encounters a passenger who fails to provide valid proof of payment, which will result in enforcement action. Fare Inspectors are not expected to contact all passengers on a train car when time does not allow.
8. The Fare Inspectors will attempt to accomplish the following during contact with a violator who has failed to provide valid Proof of Payment,
 - a. Educate the violator regarding BART's fare payment policy to include fare media

payment options.

- b. Request and record personal identification information from the customer.

NOTE: Fare Inspectors are instructed NEVER to photograph or record information from a passenger's credit card/credit card number or Social Security card/Security Card number. Acceptable forms of identification include but are not limited to: Government issued identification, Passport, Shelter Card, School ID, or other identification where the fare inspector has a reasonable belief that the information presented represents the true and accurate identity of the individual being cited.

- c. When a Fare Inspector has reason to believe that a subject is giving false identification, the Fare Inspector will make a reasonable effort to obtain valid identification. The Fare Inspector will determine whether the violator has prior Proof of Payment contacts, from the Data Ticket database.
 - d. Issue a civil administrative citation when applicable.
9. A Fare Inspector may request an officer to respond to the scene when there is reasonable suspicion to believe that the subject is knowingly giving false information and/or otherwise obstructing the issuance of a proof of payment citation.
 10. When conducting fare inspections on an out of service train, Fare Inspectors may check the entire consist.
 11. Fare Inspectors are instructed to never sit down during a contact with a violator. If the violator is standing or stands up, the Fare Inspectors should always use safety techniques during the contact to enhance their own safety.
 12. If a BART train car is too full for a Fare Inspection team to safely and efficiently conduct an inspection, Fare Inspectors should not perform an inspection on the train car at that time.
 13. After contacting a violator and issuing a citation, Fare Inspectors will tell violators that they need to leave the paid area of BART and process a ticket to re-enter. Fare Inspectors may escort violators out of the paid area when appropriate.
 14. Fare Inspectors will not physically detain or physically eject violators.

Police Officer Procedures

1. Police Officers may utilize the Proof of Payment Ordinance as an enforcement tool during the normal course of their duties.
2. Police Officers may ask a person inside the paid area of BART for proof of payment under the following types of circumstances:
 - a. When an officer is summoned to the scene of a criminal violation, the officer may ask the involved suspect(s) to provide proof of payment during the normal course of duty.
 - b. When conducting a welfare check, officers should ask routine questions, including the following when applicable:
 - i. What is the passenger's destination on BART?

- ii. When did the passenger enter BART?
- iii. How long has the passenger been on BART?
The response to these questions may present reasonable suspicion that the subject may not have a valid ticket in their possession.
- c. Any person who remains on an out-of-service train is in violation of 369i(b) PC, and the officer may ask to see proof of payment.
369i(b) PC: Any person who enters or remains upon any transit-related property without permission or whose entry, presence, or conduct upon the property interferes with, interrupts, or hinders the safe and efficient operation of the transit- related facility is guilty of a misdemeanor.
- d. An officer may detain a subject and ask to see proof of payment whenever the officer has reasonable suspicion to do so.

CITATION PROCESSING

- 1. Civil administrative citations will be processed by our contracted vendor, Data Ticket.
 - a. Fare Inspectors will enter citation information into the Data Ticket handheld tablet.
 - b. The citation information will be transmitted to Data Ticket.
 - c. Data Ticket will send a letter to adults who have been issued a citation and to the parents of unemancipated minors who have been issued a citation. The letter will explain the following options:
 - 1) Pay the fine within 28 calendar days (28 days) from the date that the citation was issued.
 - a) \$55 fine for juveniles
 - b) \$75 fine for adults
 - 2) Voluntarily elect to perform community service in lieu of paying the fine:
 - a) 4 hours of community service for juveniles
 - b) 5 hours of community service for adults
 - 3) Request to appeal the citation through an Administrative Hearing.
 - a) The request must be made to Data Ticket within 28 calendar days from the date the citation was issued.
 - b) The person must submit the fine at the time of the appeal request.
 - 1. If the appeal is granted, the fine payment will be refunded.
 - 2. If the appeal is denied, the fine payment will not be refunded.
 - c) The person may request that the fine submission be waived during the appeals process. Data Ticket sends the following instructions to the person: *You may request an Administrative Hearing without payment of Total Amount Due upon satisfactory proof of inability to pay.*

The person must complete and submit the following information on an Indigent Form:

- d) If Data Ticket does not receive either payment, a community service waiver, or an administrative hearing request, within 28 calendar days from the date that the citation was issued, then Data Ticket will send a second notice to the person, notifying them of a \$20 late fee. The second notice will advise the person that they have 4 additional weeks to do one of the following:
 - 4) Pay the fine plus the late fee, within 28 calendar days of the date of the second notice.
 - a) Juveniles pay \$75 fine (\$55 initial fine plus \$20 late fee)
 - b) Adults pay \$95 fine (\$75 initial fine plus \$20 late fee)
 - 5) Voluntarily elect to perform community service in lieu of paying the fine and the late fee.
 - a) community service for juveniles increased from 4 hours to 5 hours
 - b) community service for adults increased from 5 hours to 6 hours
 - e) If Data Ticket does not receive either payment or a community service waiver within 28 calendar days from the date of the second notice, then Data Ticket will report the matter to the Franchise Tax Board for collection.

COMMUNITY SERVICE IN LIEU OF PAYING A FINE, CIVIL PROCESS

Persons who have been issued a civil citation for a Proof of Payment violation may elect to perform community service rather than paying a fine, under the following conditions and terms:

1. Community service is a voluntary option.
2. Participants must locate and voluntarily select an organization that is willing to supervise and endorse completion of community service, such as:
 - a. Non-profit or social service organization
 - b. Faith-based organizations
 - c. Educational institutions
 - d. A public entity
3. Participants will not be able to perform community service directly to BART or BART Police.
4. Participants must complete and sign a waiver form prior to performing service. The form will stipulate that BART will not be held liable for any circumstances resulting from the performance of community service.
5. The participant must then mail the waiver to Data Ticket within 28 calendar days of the

date of the citation.

6. Data Ticket will then notify the participant that they cleared to perform the community service.
7. Participants must complete the required hours of community service.
8. Participants must have the receiving organization endorse the completion form:
 - a. Signature from organization representation.
 - b. Organization stamp on completion form, or attach organization card/letterhead.
9. Participants must send the completion form to Data Ticket within 56 calendar days of the date of the citation.

APPEALS PROCESS

Persons who have been issued a civil citation for a Proof of Payment violation may elect to appeal the citation as follows:

APPEALS PROCESS

There are two components to the appeals process:

1. Administrative Hearing

Persons who wish to contest the citation may request an Administrative Hearing. Data Ticket send the following information with the initial notice:

If you wish to contest the citation, you may request an Administrative Hearing by following the instructions below:

1. *Submit a request for an Administrative Hearing within 28 calendar days from the date that the citation was issued. Submit the request online at www.CitationProcessingCenter.com or via mail using this form.*
2. *Remit payment for the Total Amount Due online at www.CitationProcessingCenter.com or via mail using this form. PLEASE NOTE: The Hearing will not be scheduled if the correct Total Amount Due does not accompany the Administrative Hearing Request.*
3. *You may request an Administrative Hearing without payment of Total Amount Due upon satisfactory proof of inability to pay. To request an Indigent Form, submit the request online at www.CitationProcessingCenter.com or via mail using this form.*

Persons who request an Indigent Form (example attached as an exhibit to this manual) will be given parameters to submit proof of inability to pay to Data Ticket. If Data Ticket receives the information requested, then the Administrative Hearing will be scheduled. If the person does not meet the qualifications or does not submit the necessary information, then Data Ticket will advise the person that they are required to remit payment for the Total Amount Due in order to request an Administrative Hearing. The person will have 28 calendar days from the date of the notice to submit the Total Amount Due.

Persons who have requested an Administrative Hearing, and who have submitted a request for the hearing within 28 calendar days of the date of the citation, will be granted an Administrative Hearing. The hearing is conducted by a third-party hearing officer contracted by BART. The person requesting the hearing may elect to either appear in person or present their case in writing to the hearing officer.

The hearing officer will render a judgment and the person will be informed of the finding.

2. Court Appeal

If the citation is not dismissed through the Administrative Hearing, the person may appeal to the judicial court. Data Ticket will send a form with the following instructions to the person on how to request a court hearing:

The contestant/appellant in the above-entitled action hereby appeals to the Court identified above from the final Administrative Decision on citation no. _____ which was originally issued by the above agency on _____.

The notice of appeal must be filed within 30 days after personal delivery (The appeal will NOT be accepted if mailed) or within 35 days after mailing of the processing agency's final decision to the contestant/appellant. The fee for filing to Court Appeal is \$25 and must be paid to the Court when requesting the appeal. If the Court dismisses the citation, the full amount of the fine and the \$25 Court filing fee will be refunded by the issuing agency. When the court returns a copy of this notice to you with the date, place and the time of hearing filled in, you must file a copy of the original Proof of service of this notice with the court at least 10 days prior to the hearing date. The court may not proceed on your appeal if service has not been made.

ATTACHMENT C

COMPENSATION SCHEDULE

ATTACHMENT C
COMPENSATION SCHEDULE

AGREEMENT NO. 6M5135
FOR PARKING CITATION AND VEHICLE STORAGE ADMINISTRATION
HEARING EXAMINER SERVICES

	<u>Estimated Hearings</u>	<u>Unit Cost</u>	<u>Annual Costs</u>	<u>Item Total</u>
Year 1	480 Written	\$40.00	\$19,200.00	\$19,200.00
	180 In-Person	\$50.00	\$ 9,000.00	<u>\$ 9,000.00</u>
			Year 1 Total	\$28,200.00
Year 2	480 Written	\$40.00	\$19,200.00	\$19,200.00
	180 In-Person	\$50.00	\$ 9,000.00	<u>\$ 9,000.00</u>
			Year 2 Total	\$28,200.00
Year 3	480 Written	\$40.00	\$19,200.00	\$19,200.00
	180 In-Person	\$50.00	\$ 9,000.00	<u>\$ 9,000.00</u>
			Year 3 Total	\$28,200.00
			Subtotal Years 1 through 3	<u>\$84,600.00</u>
<u>Option Year</u>				
Year 4	480 Written	\$40.00	\$19,200.00	\$19,200.00
	180 In-Person	\$50.00	\$ 9,000.00	<u>\$ 9,000.00</u>
			Option Year 4 Total	\$28,200.00
			TOTAL COST (Years 1 through 4)	<u>\$112,800.00</u>

The quantity expressed is an annual estimate and represents the approximate current and projected number of hearings per year. The actual number may vary.