

File No. 100805

Committee Item No. 7

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: BUDGET AND FINANCE

Date: July 14, 2010

BOARD OF SUPERVISORS MEETING

Date: _____

Cmte Board

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OTHER

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Completed by: Andrea S. Ausberry

Date Friday, July 9, 2010

Completed by: _____

Date _____

An asterisked item represents the cover sheet to a document that exceeds 25 pages. The complete document is in the file.

1 [Memorandum of Understanding – Clipper Program Operations and Maintenance]

2
3 **Resolution approving the Memorandum of Understanding with the Metropolitan**
4 **Transportation Commission, and other Bay Area transit agencies, for the future**
5 **operation and maintenance of the Clipper Program.**

6
7 WHEREAS, SB 1474 (Statutes 1996, Chapter 256; adding Government Code §
8 66516.5) authorizes the Metropolitan Transportation Commission (MTC) to identify those
9 functions performed by individual public transit systems that could be consolidated to improve
10 the efficiency of regional transit service, and recommend that those functions be consolidated
11 and performed through inter-operator agreements or as services contracted to a single entity;
12 and

13 WHEREAS, TransLink® is an automated fare collection system for intra- and inter-
14 operator transit trips to be implemented and operated on Bay Area transit systems; and

15 WHEREAS, On December 12, 2003, MTC and various Bay Area transit operators
16 entered into the TransLink® Interagency Participation Agreement (IPA) to establish the
17 TransLink® Consortium, which created a forum for joint agency decision-making for the
18 successful implementation of TransLink®; and

19 WHEREAS, The TransLink® Consortium has been governed by a TransLink®
20 Management Group (TMG) comprised of the general managers of the transit operators and
21 the Executive Director of MTC; and

22 WHEREAS, Under the IPA, MTC and the transit operators agreed to share the variable
23 operating costs of the TransLink® fare collection system according to the cost allocation
24 formula set forth in the IPA; and

1 WHEREAS, Full rollout of TransLink®, which has been renamed ClipperSM, will
2 improve regional accessibility to transit by simplifying fare payment and customer transfers
3 across multiple operators; and

4 WHEREAS, MTC is the contracting agency for the ClipperSM contract with Cubic
5 Transportation Systems, Inc.; and

6 WHEREAS, On November 13, 2009, MTC gave formal notice of its intention to
7 withdraw from the TransLink® Consortium and take over sole governance of the Program,
8 effective July 1, 2010; and

9 WHEREAS, MTC has negotiated a proposed Memorandum of Understanding (MOU)
10 with the SFMTA and other transit agencies that are parties to the IPA for the future operation
11 and maintenance of the ClipperSM Program, a copy of which is on file with the Clerk of the
12 Board of Supervisors in File No. 1008105, which is hereby declared to be a part of this motion
13 as if set forth fully herein; and

14 WHEREAS, On June 28, 2010, the TMG voted to terminate the IPA, effective upon
15 final execution of the proposed MOU by all parties; and

16 WHEREAS, On July 6, 2010, the SFMTA Board of Directors adopted Resolution No.
17 10-___, which authorized the Executive Director/CEO of the SFMTA to execute the MOU; now,
18 therefore, be it;

19 RESOLVED, That the Board of Supervisors approves the Memorandum of
20 Understanding with MTC, the Alameda-Contra Costa Transit District, the Golden Gate Bridge
21 Highway and Transportation District, the San Francisco Bay Area Rapid Transit District, the
22 City and County of San Francisco, acting by and through its Municipal Transportation Agency,
23 the San Mateo County Transit District, the Santa Clara Valley Transportation Authority, and
24 the Peninsula Corridor Joint Powers Board for the future operation and maintenance of the
25 ClipperSM Program.

Item 7
File 10-0805

Department:
San Francisco Municipal Transportation Agency (SFMTA)

EXECUTIVE SUMMARY

Legislative Objective

- Resolution approving a Memorandum of Understanding (MOU) between the San Francisco Municipal Transportation Agency (SFMTA) and the Metropolitan Transportation Commission (MTC), six other Bay Area transit operators, and any other transit operators that implement the Clipper program and execute the MOU after its effective date for the future operation and maintenance of the Clipper program.

Key Points

- The Clipper program, which is the new name for the TransLink program, is a regional program to create a smart card-based fare collection system common to all transit operators serving the Bay Area, including the SFMTA.
- The Clipper program allows transit passengers to use a single form of payment for all participating transit operators.
- The proposed MOU is required to continue implementation of the Clipper program under the sole governance of the MTC.

Fiscal Impact

- Under the proposed MOU, the SFMTA estimates that it would incur \$43,809,908 in total expenditures consisting of payments to be made to the MTC from FY 2010-2011 through FY 2018-2019.
- The SFMTA further estimates that it would save \$17,222,500 in reduced expenditures as a result of the proposed MOU from FY 2010-2011 through FY 2018-2019, resulting in a net cost of \$26,587,408 from FY 2010-2011 through FY 2018-2019 (\$43,809,908 less \$17,222,500).
- The source of funding for the estimated net cost of \$26,587,408 would be the SFMTA Operating Fund.

Policy Consideration

- Should the Board of Supervisors choose to not approve the proposed MOU, the MTC would consider sanctions against the SFMTA, including the ineligibility of Federal and State grant funds that are disbursed by the MTC to the SFMTA and account for the majority of the SFMTA's Federal and State grant monies.

Recommendation

- Approve the proposed resolution.

MANDATE STATEMENT

Charter Section 9.118(c) requires the Board of Supervisors to approve City agreements that exceed \$10,000,000 or ten years. Under the proposed Memorandum of Understanding (MOU), the San Francisco Municipal Transportation Agency (SFMTA) would make total estimated payments of \$43,809,908 to the Metropolitan Transportation Commission (MTC), for costs incurred as a result of implementation of the Clipper program from FY 2010-2011 through FY 2018-2019. Therefore, because the proposed MOU would result in total payments that exceed \$10,000,000, the proposed resolution is subject to Board of Supervisors approval.

BACKGROUND

The Clipper program, which is the new name for the TransLink program, is a regional program to create a smart card-based fare collection system common to all transit systems serving the Bay Area, including the SFMTA. As the regional transportation and coordination agency for the Bay Area, the MTC, created by the California State Legislature in 1970, is the entity managing the implementation of the Clipper program.

The Clipper program allows transit passengers to use a single form of payment for all participating transit operators. Rather than having to purchase separate tickets for the SFMTA, the Bay Area Rapid Transit District (BART), Alameda-Contra Costa County Transit District (AC Transit), etc., passengers can use a single Clipper card for a seamless transfer from one transit operator to the next.

In 2003, the SFMTA entered into the TransLink Interagency Participation Agreement (IPA), which (a) established the TransLink Consortium, which was governed by the TransLink Management Group (TMG), and (b) managed the development of the TransLink payment system, which has now been fully implemented with five Bay Area transit operators - including AC Transit, Golden Gate Bridge Highway and Transportation District (GGBHTD), BART, the Peninsula Corridor Joint Powers Board (CalTrain), and SFMTA - that represent the majority of Bay Area transit passengers. The TransLink IPA is in effect until either (a) it is replaced by the proposed MOU or (b) the expiration of the MTC's contract with Cubic Transportation Systems (see Details of Proposed Legislation section below). The TMG was comprised of the general managers, or their designees, of AC Transit, GGBHTD, BART, the San Mateo County Transit District (SamTrans), the Santa Clara Valley Transportation Authority (VTA), and CalTrain, as well as the SFMTA.

According to Deputy City Attorney Robin Reitzes, the TransLink IPA was not subject to Board of Supervisors approval because such an agreement was not required to receive Board of Supervisors approval prior to the passage of voter-approved Proposition A in 2008.

According to Ms. Diana Hammons, SFMTA Senior Manager for Revenue Collections and Sales, the TransLink program is being renamed as the Clipper program to (a) make it more appealing to potential customers, (b) take away confusion with other local programs such as FasTrak and the SFMTA's Fast Pass, and (c) distinguish the Bay Area program from other programs around the world with the "TransLink" name.

According to Ms. Hammons, in November of 2009 the MTC gave formal notice that it would withdraw from the TransLink Consortium and instead take over sole governance of the new Clipper program. Deputy City Attorney Robin Reitzes advises that although other forms of governance of the new Clipper program were discussed by the TMG, they eventually agreed that the MTC would take over sole governance of the program.

Ms. Hammons advises that the proposed MOU is required to continue implementation of the Clipper program under the sole governance of the MTC. In addition, because the SFMTA would make an estimated \$43,809,908 in total payments to the MTC for costs incurred as a result of implementation of the Clipper program, the proposed MOU is subject to Board of Supervisors approval.

In August of 2009, the Board of Supervisors approved a resolution authorizing the execution of Federal and State grants and a cooperative agreement between the SFMTA and the MTC in the amount of \$29,150,000, for the purchase and installation of equipment under the TransLink program. (File No. 09-0918, adopted on August 18, 2009 by the Board of Supervisors). Ms Hammons advises that since the Board of Supervisors approval of this grant and cooperative agreement, the MTC has been purchasing and installing equipment (including Clipper-only fare gates) at SFMTA stations, and the SFMTA has been utilizing the previously authorized Federal and State grant monies to reimburse the MTC for SFMTA's share of such costs.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve an MOU between the SFMTA and the MTC for the future operation and maintenance of the Clipper program for approximately nine years, from the date on which all parties to the MOU have signed the MOU until November 2, 2019. Other parties to the proposed MOU between the SFMTA and the MTC include the following Bay Area transit operators: (a) AC Transit District, (b) GGBHTD, (c) BART, (d) SamTrans, (e) VTA, (f) CalTrain, and (g) any other transit operators that implement the Clipper program and execute the MOU after its effective date.

Under the proposed MOU, MTC, as the contracting agency for the Clipper program, will continue to contract with Cubic Transportation Systems, Inc. (Cubic), to oversee and administer the Clipper program until November 2, 2019. Once approved, the proposed MOU would replace the TransLink Interagency Participation Agreement (IPA) that was approved by the SFMTA in 2003. As noted above, the IPA was not subject to Board of Supervisors approval.

FISCAL ANALYSIS

Under the proposed MOU, the SFMTA estimates making \$43,809,908 in total payments to the MTC for the SFMTA's share of costs, as shown in the following Table 1. According to Ms. Hammons, these payments constitute the SFMTA's share of the Clipper program operating and maintenance costs, including: (a) cardholder support and customer service, (b) third-party vendor sales and network support, (c) transaction fees, and (d) credit/debit and website transaction processor fees. Ms. Hammons advises that the source of funds for all Clipper program costs, as shown in the following Table 1, would be the SFMTA Operating Fund.

Attachment No. 1 to this report, provided by Ms. Hammons, provides greater detail for how the SFMTA's share of \$43,809,908 has been calculated.

Table 1: Estimated payments to be paid by the SFMTA to the MTC under the proposed MOU for the Clipper program

FY 2010-2011	\$1,311,312
FY 2011-2012	\$3,816,826
FY 2012-2013	\$5,138,476
FY 2013-2014	\$5,307,191
FY 2014-2015	\$5,362,289
FY 2015-2016	\$5,490,827
FY 2016-2017	\$5,623,924
FY 2017-2018	\$5,792,642
FY 2018-2019	\$5,966,421
TOTAL	\$43,809,908

According to Ms. Hammons, the annual payments shown in Table 1 above represent SFMTA's estimated share of the total Clipper program operations and maintenance costs based on the formula included in the proposed MOU. The SFMTA's estimated annual payment of \$1,311,312 in FY 2010-2011 is net of the \$1,352,224 Federal grant incentive funds that the MTC is allocating to participating transit operators to partially defray the Clipper program's participation costs. Without the \$1,352,224 Federal incentive funds, the MTA's FY 2010-2011 payment would be \$2,663,536.

As shown in Table 2 below, Ms. Hammons advises that, under the proposed MOU, the SFMTA would realize total estimated savings of \$17,222,500 from FY 2010-2011 through FY 2018-2019 in reduced expenditures for (a) production of fare media, which includes printed single-use tickets, passports, and monthly passes; (b) distribution of fare media, which includes commissions paid to third-party vendors for their distribution primarily of monthly passes; and (c) reduced fraud. As stated in Attachment No. II provided by Ms. Hammons, "In a recent fare evasion study, the SFMTA found fraudulent use of monthly passes and passports account for approximately \$1.9 million in lost revenue annually." Ms. Hammons advises that the SFMTA's fare media, such as the monthly fast pass, is more susceptible to fraud than the Clipper card; therefore, the SFMTA estimates a reduction in lost revenue resulting from reduced fraud under

the Clipper program. According to Ms. Hammons, as a result of the Clipper program the SFMTA would realize up to an estimated total annual savings of \$2,075,000 beginning in FY 2012-2013, including (a) \$775,000 for reductions in production of tickets, passports, and monthly passes, or "fare media;" (b) \$900,000 for elimination of vendor commissions, which, as stated in Attachment II, are paid to third-party vendors at a rate of \$0.50 per fare media item sold; and (c) \$400,000 of lost revenues from fraudulent fare media. While these estimated annual savings would not be fully realized until FY 2012-2013, the SFMTA would realize a portion of these savings in FY 2010-2011 and FY 2011-2012, as shown in the following Table 2.

Attachment No. II explains in greater detail how the \$17,222,500 in estimated reduced expenditures was calculated from FY 2010-2011 through FY 2018-2019.

Table 2: Estimated savings to be realized by the SFMTA under the proposed MOU for the Clipper program

FY 2010-2011	\$1,037,500
FY 2011-2012	\$1,660,000
FY 2012-2013	\$2,075,000
FY 2013-2014	\$2,075,000
FY 2014-2015	\$2,075,000
FY 2015-2016	\$2,075,000
FY 2016-2017	\$2,075,000
FY 2017-2018	\$2,075,000
FY 2018-2019	\$2,075,000
TOTAL	\$17,222,500

As shown in Table 3 below, the net estimated cost to the SFMTA under the Clipper program from FY 2010-2011 through FY 2018-2019 will be \$26,587,408.

Table 3: Net increase in SFMTA expenditures as a result of the proposed MOU

	Payments (see Table 1)	Savings (see Table 2)	Net Cost to the SFMTA
FY 2010-2011	\$1,311,312	\$1,037,500	\$273,812
FY 2011-2012	\$3,816,826	\$1,660,000	\$2,156,826
FY 2012-2013	\$5,138,476	\$2,075,000	\$3,063,476
FY 2013-2014	\$5,307,191	\$2,075,000	\$3,232,191
FY 2014-2015	\$5,362,289	\$2,075,000	\$3,287,289
FY 2015-2016	\$5,490,827	\$2,075,000	\$3,415,827
FY 2016-2017	\$5,623,924	\$2,075,000	\$3,548,924
FY 2017-2018	\$5,792,642	\$2,075,000	\$3,717,642
FY 2018-2019	\$5,966,421	\$2,075,000	\$3,891,421
TOTAL	\$43,809,908	\$17,222,500	\$26,587,408

As stated previously, Ms. Hammons advises that the source for the above increase in net costs incurred by the SFMTA would be the SFMTA's Operating Fund.

According to Ms. Hammons, the SFMTA has not incurred any operating expenditures to implement the Clipper program to date, because the SFMTA utilized \$975,279 in Federal grant incentive funds for Clipper program expenses incurred to date. The \$975,279 in Federal grant incentive funds were in addition to the \$1,352,224 in incentive funds which the SFMTA intends to utilize in FY 2010-2011 to defray Clipper program operating and maintenance expenditures, which is a total of \$2,327,503 in incentive funds that have been allocated to the SFMTA by the MTC, according to the terms of both the existing TransLink IPA and the proposed MOU.

POLICY CONSIDERATION

The MTC has approved a resolution (Resolution No. 3866) that specifies sanctions, including the ineligibility for Federal and State grant monies that are disbursed by the MTC to the SFMTA, in the event that the SFMTA did not enter into the proposed MOU. As stated in the MTC's resolution: "The sanction of withholding, restricting or reprogramming funds to enforce cooperation will be exercised by MTC..." in order to ensure that all transit operators fully participate in the implementation of the Clipper program. Ms. Hammons advises that the majority of the SFMTA's Federal and State grant monies are disbursed to the SFMTA by the MTC, which means that disapproval of the proposed MOU could result in the SFMTA being ineligible for the majority of future Federal and State grant monies.

RECOMMENDATION

Approve the proposed resolution.

Estimated Annual Payment by Category

	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	Total (FY2010/11 - 20018/19)
Cardholder Support and Customer Service	234,818	562,130	724,315	724,137	709,410	764,780	763,826	778,074	807,271	6,068,760
Third-Party Vendor Sales Network Support	211,861	566,503	727,639	755,949	704,976	760,651	750,740	773,262	790,254	6,041,834
Transaction Fee (Software support, financial reconciliation, etc.)	372,819	1,311,050	2,059,487	2,175,404	2,262,944	2,280,473	2,357,177	2,461,247	2,565,414	17,846,015
Credit/Debit and Website Transaction Processor Fees	491,814	1,377,143	1,627,036	1,651,701	1,684,959	1,684,923	1,752,181	1,780,059	1,803,483	13,853,299
Total	\$1,311,312	\$3,816,826	\$5,138,476	\$5,307,191	\$5,362,289	\$5,490,827	\$5,623,924	\$5,792,642	\$5,966,421	\$43,809,908

Estimated Annual Savings by Category

	Fare Media Production	Fraud Reduction	Vendor Commission	TOTAL
FY 2010-2011	387,500	200,000	450,000	\$1,037,500
FY 2011-2012	620,000	320,000	720,000	\$1,660,000
FY 2012-2013	775,000	400,000	900,000	\$2,075,000
FY 2013-2014	775,000	400,000	900,000	\$2,075,000
FY 2014-2015	775,000	400,000	900,000	\$2,075,000
FY 2015-2016	775,000	400,000	900,000	\$2,075,000
FY 2016-2017	775,000	400,000	900,000	\$2,075,000
FY 2017-2018	775,000	400,000	900,000	\$2,075,000
FY 2018-2019	775,000	400,000	900,000	\$2,075,000
TOTAL	\$6,432,500	\$3,320,000	\$7,470,000	\$17,222,500

The SFMTA estimates approximately \$2 million in annual savings associated with the fare media transition to Clipper. The basis for these savings is as follows:

- * The SFMTA expends approximately \$775,000 annually in the production of monthly passes, passports and single ride ticket books. These costs will be eliminated as these passes are transitioned to Clipper.
- * In a recent fare evasion study, the SFMTA found fraudulent use of monthly passes and passports account for approximately \$1.9 million in lost revenue annually. The SFMTA estimates that transitioning fare media to Clipper will assist in the recovery of at least \$400,000 of this revenue per year by eliminating counterfeit passes and tightening controls over the distribution of discount passes.
- * Approximately 1.75 million fare media items are sold through third-party vendors to the public each year. At a vendor commission rate of \$0.50 per item sold, transitioning this program to Clipper will save the SFMTA approximately \$900,000 in vendor payments.
- * Based on a staggered fare media transition schedule, the SFMTA expects to realize approximately 50% of the full cost savings of \$2,075,000 a year in Fiscal Year 2011, 80% in FY 2012 and full recovery in FY 2013.

**MEMORANDUM OF UNDERSTANDING
REGARDING OPERATIONS AND MAINTENANCE OF
CLIPPERSM FARE COLLECTION SYSTEM**

This ClipperSM Memorandum of Understanding (“MOU”) is entered into as of the date on which all Parties listed below have signed the MOU (“Effective Date”), by and among the Metropolitan Transportation Commission (“MTC”) and the following transit operators participating in the ClipperSM program (referred to herein as “Operator” or “Operators”):

Alameda-Contra Costa Transit District (“AC Transit”); Golden Gate Bridge Highway and Transportation District (“GGBHTD”); the San Francisco Bay Area Rapid Transit District (“BART”); the City and County of San Francisco, acting by and through its Municipal Transportation Agency (“MTA”); the San Mateo County Transit District (“SamTrans”); the Santa Clara Valley Transportation Authority (“VTA”); the Peninsula Corridor Joint Powers Board (“Caltrain”); and any other transit operators that implement Clipper and execute this MOU after the Effective Date.

MTC and the Operators are referred to herein as “the Parties” or individually, as a “Party”.

Recitals

1. ClipperSM (formerly TransLink[®]) is an automated fare payment system for intra- and inter-operator transit trips in the San Francisco Bay Area that has been implemented and is currently being operated on Operators’ transit systems.
2. MTC has entered into a contract (“the ClipperSM Contract”) with Cubic Transportation Systems, Inc. (“ClipperSM Contractor”) to operate and maintain ClipperSM through November 2, 2019.
3. On December 12, 2003, MTC and six of the Operators entered into an interagency participation agreement (“IPA”) to create a forum for joint agency decision-making called the TransLink[®] Consortium to work towards the successful implementation of ClipperSM, which agreement was terminated by the Consortium as of the Effective Date.
4. The IPA included provisions assigning responsibilities to MTC and the Operators relative to the implementation, operation and maintenance of the program, including the payment of the operating fees due the ClipperSM Contractor.
5. MTC and the Operators now wish to agree to their continuing obligations to ensure the successful operation and maintenance of ClipperSM.

Article I
Operator Responsibilities

Each Operator that is a signatory to this MOU agrees to:

- A. Implement and operate the ClipperSM fare payment system in accordance with the ClipperSM Operating Rules, as adopted and amended from time to time by MTC, consistent with the consultation and approval process set forth in Appendix A, Process for Amending ClipperSM Operating Rules, attached hereto and incorporated herein by this reference. The ClipperSM Operating Rules establish operating parameters and procedures for the consistent and efficient operation of ClipperSM throughout the region and the current version is available on MTC's website at <http://www.mtc.ca.gov/planning/tcip/>.
- B. Pay its share of ClipperSM costs, according to Appendix B, ClipperSM Cost and Revenue Allocation, attached hereto and incorporated herein by this reference. Notwithstanding any contrary survival provisions of the IPA, Appendix B shall supersede Appendix A to the IPA, as of the Effective Date. Changes to Appendix B require an amendment to the MOU in accordance with Article VIII.A.
- C. Make its facilities and staff available to MTC and the ClipperSM Contractor for implementation and operation of ClipperSM. Any Operator and MTC may agree to an operator-specific implementation plan, setting forth specific requirements regarding implementation and operation of ClipperSM for such Operator.
- D. Make determinations regarding the placement of ClipperSM equipment on the Operator's facilities and equipment; perform necessary site preparation; attend ClipperSM Contractor training on the use of the ClipperSM equipment; and provide training to employees using the equipment.
- E. Accept transfer of ownership of equipment one year following Conditional Acceptance by each Operator, as defined in Section 8.3 of the ClipperSM Contract (or for Phase 3 or other new Operators one year following Acceptance, as established by contract change order.) Maintain and track a list of all equipment in accordance with Federal Transit Administration requirements.
- F. Participate in periodic reviews of the cost and revenue allocation formula in Appendix B.1, to support fairness among Operators and to accommodate changes in shared operation costs.

Article II
MTC Responsibilities

MTC agrees to:

- A. Operate the ClipperSM fare payment system on behalf of the Operators and carry out the duties and responsibilities of contracting agency for the ClipperSM Contractor through the Term of the Clipper Contract.

- B. Notify and consult with the Operators concerning changes to the Operating Rules affecting Operator Roles and Responsibilities, consistent with the process described in Appendix A.
- C. Fund a portion of the ClipperSM operating and maintenance costs, as set forth in Appendix B.
- D. Transfer ownership of capital equipment to each Operator receiving such equipment one year following Conditional Acceptance of such equipment under the ClipperSM Contract as defined in Section 8.3 of the ClipperSM Contract (or for Phase 3 or other new Operators, one year following Acceptance, as established by contract change order), in accordance with FTA requirements.
- E. Provide regular updates (at least quarterly) on the ClipperSM program to the Operators.
- F. Support the Operators with respect to Article I.F, by providing system data affecting the cost allocation formula.
- G. Hold and manage the ClipperSM bank accounts and act as an agency in trust for the benefit of the cardholders for funds deposited by the cardholders for the ultimate use with the Operators and for the benefit of the Operators for funds due to Operators until dispersed to such Operators.
- H. Retain all books, papers, records, documents, and other materials pertaining to its responsibilities under Appendix B (“the Materials”) in accordance with federal grant and audit requirements and generally accepted accounting principles and make the Materials available to Operators upon request through reasonable means and at reasonable times. Operators may request that Materials be made available for the most recently closed fiscal year during the Term and for up to one year thereafter; provided, however, that nothing in this Article II.H is intended to limit an Operator’s rights to obtain records under the California Public Records Act (Government Code Section 6250 *et seq.*)
- I. Conduct an annual contract compliance audit covering MTC revenue collection and allocation and cost allocation responsibilities under the MOU and provide a copy of the complete audit report to all Operators upon conclusion of each such annual audit.

Article III
New Operator Participants

Any Bay Area transit operator not a Party to this Agreement must agree to the terms of the MOU then in effect as a condition of implementing ClipperSM, by entering into a supplemental agreement with MTC. Signature by the other Parties to the MOU is not required. MTC agrees that it will not enter into a supplemental agreement with a particular operator prior to the issuance of a Change Notice to the ClipperSM Contract covering the work required to accept such operator into the system. MTC agrees to provide the other Parties to the MOU with written notice of each supplemental agreement.

**Article IV
Indemnification**

- A. Mutual Indemnification. No Party to this MOU (including any of its directors, commissioners, officers, agents or employees) shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by any other Party under or in connection with this Agreement. Pursuant to Government Code Section 895.4, each Party agrees to fully indemnify and hold other Parties harmless from any liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted to be done by such indemnifying Party under or in connection with this Agreement and for which such indemnifying Party would otherwise be liable.
- B. MTC Indemnification of Operators. Notwithstanding the provisions of Subsection A above, MTC shall indemnify, hold harmless, and defend the Operators from any and all claims or liability resulting from any action or inaction on the part of MTC relating to the ClipperSM Contract or from its failure to carry out its responsibilities under Article II of this MOU. This indemnification covers action or inaction on the part of MTC relating to the ClipperSM Contract prior to the Effective Date of the MOU.
- C. Operator Indemnification of MTC. Notwithstanding the provisions of Subsection A above, each Operator shall indemnify, hold harmless, and defend MTC from any and all claims or liability resulting from any action or inaction on the part of such Operator relating to its responsibilities under Article I of this MOU.

**Article V
Term and Termination/Withdrawal**

- A. Term. The term of the MOU shall begin upon the Effective Date and continue through November 2, 2019 ("the Term"), unless terminated by written agreement of the Parties or as provided in Article V.B below.
- B. Withdrawal. A Party to the MOU may withdraw from the MOU by two hundred forty (240) day advance written notice to all current signators to the MOU. Articles IV and VI and Appendices B and C shall survive a Party's withdrawal from the MOU.

**Article VI
Dispute Resolution**

The Parties agree to abide by the dispute resolution procedures in Appendix C, Dispute Resolution, attached hereto and incorporated herein by this reference, to resolve disputes between or among Parties to the MOU.

**Article VII
Changed Circumstances**

Any Party may initiate informal discussions among the Parties concerning the provisions of this MOU, based on its assessment that changes in technology or other factors external to the MOU or the ClipperSM Contract indicate that it would be in the best interests of one or more Parties to consider revisions to the MOU. If a majority of Parties agree, the Parties will then jointly evaluate the changed circumstances to determine what, if any, revisions to the MOU are necessary or desirable. Any agreed-upon changes would require an amendment to the MOU approved by all Parties.

**Article VIII
General Provisions**

- A. The entire Agreement between and among the Parties is contained herein, and no change in or modification, termination or discharge of this MOU shall be valid or enforceable unless it is approved by the Parties and made in writing and signed by the Parties.
- B. Headings in this MOU are for convenience only and not intended to define, interpret or limit the terms and conditions herein.
- C. This MOU may be executed in one or more counterpart, each of which shall be considered an original and all of which shall constitute a single instrument.
- D. This MOU is intended for the sole benefit of the Parties and is not intended to nor shall be construed to confer any benefit or create any right in any third party.
- E. Appendix D, Special Provisions, attached hereto and incorporated herein by this reference, sets forth the terms and conditions required by the City and County of San Francisco in any contracts or agreements entered into by them.
- F. If any provision of this MOU or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this MOU, or the application of such provision to persons, entities or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this MOU shall be valid and be enforceable to the fullest extent permitted by law.
- G. Notices provided under the MOU shall be provided to the individuals listed in Appendix E, Notices, attached hereto and incorporated herein by this reference. Each Party to the MOU is responsible for notifying other Parties of a change in the individual designated to receive notices in writing. Changes to Appendix E may be made by any Party without an amendment to this MOU. MTC will distribute to every other Party the notice information of new Parties to the MOU added pursuant to Article III.
- H. This MOU supersedes and replaces the IPA or, if the TransLink[®] Consortium has been terminated by its members, the surviving provisions of the IPA.

IN WITNESS WHEREOF, this MOU has been duly authorized and executed by the Parties hereto on the dates specified below.

Metropolitan Transportation Commission

Approved as to Form:

Steve Heminger, Executive Director

Melanie J. Morgan
Deputy General Counsel

Date: _____

Alameda Contra Costa Transit District

Approved as to Form:

Mary King, Interim General Manager

Ken Scheidig, General Counsel

Date: _____

Golden Gate Bridge Highway and Transportation District

Approved as to Form:

Celia G. Kupersmith, General Manager

David J. Miller
General Counsel

Date: _____

San Francisco Bay Area Rapid Transit District

Approved as to Form:
Office of the General Counsel

Dorothy Dugger, General Manager

Matt Burrows
General Counsel

Date: _____

**City and County of San Francisco
Municipal Transportation Agency**

Approved as to Form:
Dennis J. Herrera, City Attorney

Nathaniel P. Ford Sr.
Executive Director/CEO

Robin M. Reitzes
Deputy City Attorney

Date: _____

Municipal Transportation Agency Board of Directors
Resolution No. _____
Dated: _____

Secretary, MTAB

San Mateo County Transit District

Approved as to Form:

Michael Scanlon, General Manager and
Chief Executive Officer

David J. Miller
General Counsel

Date: _____

Santa Clara Valley Transportation Authority

Approved as to Form:

Michael T. Burns, General Manager

Kevin Allmand
General Counsel

Date: _____

Peninsula Corridor Joint Powers Board

Approved as to Form:

Michael Scanlon, Executive Director

David J. Miller
General Counsel

Date: _____

- Appendix A – Process for Amending ClipperSM Operating Rules***
- Appendix B - ClipperSM Cost and Revenue Allocation***
- Appendix C – Dispute Resolution***
- Appendix D – Special Provisions***
- Appendix E – Notices***

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Appendix A

Process for Amending ClipperSM Operating Rules

1. MTC will provide written notice to Operators at least ninety (90) days in advance of making any changes to the Operating Rules affecting Operator Roles and Responsibilities (Section 3 of the ClipperSM Operating Rules). Notice shall be provided by email to the contact named in Appendix E, or as subsequently revised or updated by the Operators, as provided in Article VIII.G.
2. MTC will endeavor to provide additional notice to Operators on possible changes to the Operating Rules affecting Operator Roles and Responsibilities in the regular ClipperSM program reports furnished under Article II.E.
3. MTC's notice shall include enough information to enable Operators to determine the financial and other impacts of the proposed change.
4. If requested by any Operator within 30 days of issuance of such notice, MTC will consult with all affected Operators concerning the proposed change prior to its adoption.
5. Any Operator that requires additional time in excess of the notice period specified by MTC to implement a change may notify MTC of the additional period of time required during the initial 30-day notice period. MTC will then work with the Operator(s) during the consultation period to modify the effective date and/or content of the Operating Rules change, as necessary.
6. Following such consultation process, if any Operator(s) objects to the proposed change, as modified during the consultation process, such Operator(s) may initiate one or more of the dispute resolution processes described in Appendix C.
7. MTC agrees to delay the implementation of the disputed change until the conclusion of the dispute resolution process.

Appendix B

ClipperSM Cost and Revenue Allocation

1. Cost Allocation Among Operators

The allocation of ClipperSM operating costs to each Operator shall be based on a combination of revenue collected and the number of fee payment transactions processed. "Revenue collected" shall mean the fee collected on behalf of each Operator by the ClipperSM clearinghouse (e.g., the price charged to ride on the Operator's transit system, the value of pass sales, the amount of parking fees paid). A "fee payment transaction" shall mean any activity in which a ClipperSM card is used to receive service on or from an Operator's system (e.g., to ride on the Operator's transit system, to park on the Operator's property). A fee payment transaction shall be attributed to the Operator on whose system the service was provided, except that a transaction in which a patron uses a Muni Fast Pass to ride BART will be attributed to MTA. All fee payment transactions are included for purposes of allocating ClipperSM operating costs, regardless of whether the transaction results in a reduction of the amount of stored value or stored rides on a ClipperSM card (e.g., use of a monthly pass on a transit system, intra-operator transfers, entry and exit transactions for a single ride where both transactions are required to compute the appropriate fare payment).

One-third (1/3) of ClipperSM operating costs shall be allocated to Operators based on each Operator's share of total revenue collected by the ClipperSM clearinghouse, as defined above. Two-thirds (2/3) of ClipperSM operating costs shall be allocated to Operators based on each Operator's share of total fee payment transactions processed by the ClipperSM clearinghouse, as defined above.

In addition to the ClipperSM operating costs allocated in accordance with Appendix B.2.B(i) herein, each Operator shall be responsible for payment of:

- a. ClipperSM Data Server (CDS) Store operating costs specified below for any TDS Store implemented on such Operator's site; and
- b. Credit/debit interchange fees charged through an Operator-specific credit/debit gateway associated with ClipperSM sales through add value machines, ticket office terminal devices and ticket vending machines. This responsibility is subject to review pursuant to Article I.F to ensure that no single Operator is unfairly burdened by such fees.
- c. Incremental ClipperSM operating costs established by and/or resulting from ClipperSM Contract change orders requested and funded by an Operator for such Operator's use and benefit shall be the responsibility of such Operator. This applies to costs or portions of costs that would otherwise be MTC's responsibility as described below.

2. **ClipperSM Costs**

A. MTC Operating and Maintenance Costs. MTC shall pay the following ClipperSM operating costs:

- i. All fixed operating costs of the ClipperSM clearinghouse and equipment maintenance services costs as specified in the ClipperSM Contract's Price Schedule (Attachment 2 to the ClipperSM Contract) (the "Price Schedule"), including:
 - a. Item 3.20 Program Management – Operations and Maintenance
 - b. Item 3.30 ClipperSM Testbed Operations & Maintenance
 - c. Item 5.31 Operator Help Desk
 - d. Item 5.32 Reporting
 - e. Item 5.33 Asset Management
 - f. Item 6.0 Equipment Maintenance Services
 - g. Item 10.21(a) Location Acquisition
 - h. Item 10.22 Location Servicing and Support
 - i. Item 10.23 (a) Acquisition Payment for Third Party Location
 - j. Item 12.0 Network Management
 - k. Item 13.22 Basic Monthly Operations and Admin
- ii. Variable ClipperSM operating costs as specified in the Price Schedule (Attachment 2 to the ClipperSM Contract), specifically:
 - a. Item 8.0 Card Distribution Services
 - b. Item 9.41 Fixed and Incremental Fees Per Active Card Account (50% of the invoiced amount)
- iii. All other lump sum and capital expense items specified in the Price Schedule not enumerated above or covered by Section 2.B; and
- iv. \$7,120,000 in incentives to be allocated to Operators to pay operating costs, as shown in Section 4, Incentive Payments, below.

B. Operator Operating Costs.

- i. Operators shall pay the following listed ClipperSM operating costs in accordance with the cost sharing formula in Appendix B.1, reduced by any amounts payable by MTC pursuant to 2.A(iv) above. References to Item numbers refer to the corresponding prices payable to the ClipperSM Contractor under the ClipperSM Contract Price Schedule, which are subject to annual price adjustment as specified in Article 13.6 of the ClipperSM Contract:
 - a. Item 9.24 Balance Protection Services Registration
 - b. Item 9.25 Lock/unlock ClipperSM Application

- c. Item 9.41 Fixed and Incremental Fees Per Active Card Account (50% of the invoiced amount)
 - d. Item 10.11 ClipperSM E-purse Load
 - e. Item 10.12 Pass/Stored Ride Load
 - f. Item 11.0 Autoload Services
 - g. Item 12.22.89 Fixed Monthly Service Fee to Support ClipperSM Data Server Store
 - h. Item 13.22.45 Supplemental Monthly Operations and Admin (except as reduced by MTC in accordance with Section 4.1, Incentive Payments)
 - i. Item 13.31 ClipperSM Transaction Fee
 - j. Item 13.60 Incremental Gateway Fees
 - k. Item 13.70 Incremental Debit Card Interchange Fees
 - l. Item 13.80 Incremental Credit Card Interchange Fees
 - m. Item 13.90 Pass Through Website Credit Card Processing Fees
 - n. Reimbursement of MTC bank fees and direct bank charges in connection with the ClipperSM bank account(s) in excess of the amounts reimbursed under Section 3.A below
 - o. Direct payment or reimbursement of MTC costs for network communication.
- ii. Changes or Additions to Operator Operating Costs Items. Substantive changes or additions to the Operator-paid operating cost items set forth in B(i)(a-o) require an amendment to this Appendix B and approval of all Parties to the MOU as of the date of the change or addition.

- C. MTC shall invoice each Operator on a monthly basis for its share of the operating costs. The Operators shall pay MTC within fifteen (15) calendar days of receipt of such invoice.

3. Revenue Allocation

Revenues generated by ClipperSM during any period of time, including interest earnings on funds held by the clearinghouse and excluding fare revenues or parking fees collected on behalf of and distributed to Operators, shall be utilized as follows:

- A. To offset MTC's bank fees and direct bank charges related to the managing of the ClipperSM accounts;
- B. After deduction of MTC's bank fees and charges under 3.A above, to reduce the Operators' ClipperSM operating costs listed in 2.B(i) above; and
- C. After payment of Operators' ClipperSM operating costs listed in 2.B(i) above, to be allocated to Operators using the formula specified in Section 1 herein.

Notwithstanding the above, fees charged cardholders for card acquisition, card replacement, balance restoration, failed Autoload funding recovery, card refund processing, and other card-related activities shall be reserved to pay for future card procurements; provided, however, that surcharges on limited use cards or other fare media imposed by an Operator to pay for the acquisition, implementation, administration and replacement of such fare media shall be distributed to and retained by such Operator. (For clarity, any surcharge imposed by an Operator as part of its fare structure shall be considered "fare revenue" and shall be distributed to and retained by such Operator.)

4. Incentive Payments

MTC's \$10,000,000 in incentive funds shall be allocated to pay operating costs associated with Phase II as follows:

- (1) \$2,880,000 contingency to Contractor (for payment of ClipperSM Contract Price Schedule Item No. 13.22.45) for transaction assurances in the event minimum transaction volumes (20,000,000 transactions/month) are not achieved. If the minimum transaction volumes are met and these funds are not needed, MTC may reallocate the remaining funds to other purposes; and
- (2) \$7,120,000 to individual Operators, to be applied as a credit against Phase II variable operating costs, a portion of which has already been credited to certain individual Operators:

AC Transit	\$862,227
BART	2,128,016
Caltrain/SamTrans	484,744
Golden Gate Transit	634,239
MTA	2,327,503
SCVTA	683,271

Appendix C

Dispute Resolution

The Parties agree to resolve disputes concerning this MOU between or among one or more Parties based on the following dispute resolution principles.

1. Informal Dispute Resolution

The Parties agree to attempt to resolve informally all disputes. In the event of a dispute among any Parties to the MOU, those Parties shall notify every other Party in writing about the substance of the dispute. The Parties to the dispute shall meet and confer by exchanging written positions on the dispute, and by meeting in person thereafter to discuss and resolve the dispute. If those representatives are unable to resolve the dispute, the chief executives of those Parties shall be informed of the substance of the dispute and provided all writings that have been exchanged regarding the dispute. The chief executives shall meet and confer in person or by telephone concerning the dispute, and may choose to exchange letters in preparation for the meet and confer.

2. Mediation

If the dispute is not resolved, the Parties may avail themselves by mutual consent to mediation, arbitration (binding or non-binding), or any other dispute resolution resource (collectively "Alternate Dispute Resolution (ADR) processes"). All procedures and methodologies in ADR processes shall be by mutual consent of the Parties, including but not limited to the choice of the mediator or arbitrator, dates and times and timelines, whether documents are exchanged in preparation for the ADR session, etc. Fees and expenses of the mediator will be borne equally, unless otherwise agreed. The Parties to the dispute shall be represented by individuals of their choosing, except that the Parties must agree on the question of whether lawyers are present or not. The entire process shall be confidential and treated as a compromise negotiation for purposes of federal and state rules of evidence. If ADR processes are agreed on, the Parties shall agree on the identity of the mediator or arbitrator within 30 days of agreeing on the ADR process. The Parties shall not unreasonably withhold consent as to the choice of the mediator or arbitrator. Unless the schedule of the mediator or arbitrator does not permit, the Parties shall have their ADR process completed within 60 days after agreement on the choice of the mediator or arbitrator. Nothing in this MOU affects the rights or abilities of the Parties to avail themselves of all rights and remedies they have under the law of California or federal law, and to the state or federal courts to resolve their dispute.

3. Operator Obligations

An Operator who disputes amounts claimed by MTC to be due under the MOU agrees to pay the amount claimed pending dispute resolution.

Appendix D

Special Provisions for the City and County of San Francisco.

(References to "City" in Paragraphs 1 and 2 refer to the City and County of San Francisco)

1. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation. This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

2. Guaranteed Maximum Costs. The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by laws governing emergency procedures, officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, Commodities or Services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law. Officers and employees of the City are not authorized to offer or promise, nor is the City required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

3. Sunshine Ordinance. In accordance with San Francisco Administrative Code §67.24(e), contracts, contractors' bids, responses to solicitations and all other records of communications between City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

4. Prohibition on Political Activity with City Funds. In accordance with San Francisco Administrative Code Chapter 12.G, no funds appropriated by the City and County of San Francisco for this Agreement may be expended for organizing, creating, funding, participating in, supporting, or attempting to influence any political campaign for a candidate or for a ballot measure. The terms of San Francisco Administrative Code Chapter 12.G are incorporated herein by this reference.

Appendix E

Notices

Contact:

Metropolitan Transportation Commission:

Melanie Crotty
Director, Traveler Coordination and Information
Email: mcrotty@mtc.ca.gov
Fax: 510-817-5848
Phone: 510-817-5880

Alameda Contra Costa Transit District

Mary King
Interim General Manager
Email: mking@actransit.org
Fax: 510-891-7157
Phone: 510-891-4793

Golden Gate Bridge Highway and Transportation District

Celia G. Kupersmith
General Manager
Email: ckup@goldengate.org
Fax: 415-923-2367
Phone: 415-923-2212

San Francisco Bay Area Rapid Transit District

Larry Kozimor
Project Manager, Transit System Development
Email: lkozimo@bart.gov
Fax: 510-287-4860
Phone: 510-287-4723

City and County of San Francisco Municipal Transportation Agency

Nathaniel P. Ford Sr.
Executive Director/CEO
Email: Nathaniel.ford@sfmta.com
Fax: 415-701-4502
Phone: 415-701-4687

Mailing Address

101 – 8th St.
Oakland, CA 94607

1600 Franklin St.
Oakland, CA 94612

Box 9000, Presidio Station
San Francisco, CA 94129-0601

300 Lakeside Drive, 21st
Floor,
Oakland, CA 94612

1 South Van Ness Ave.
7th Floor
San Francisco, CA 94103

San Mateo County Transit District

Virginia Harrington

Deputy CEO

Email: harringtong@samtrans.com

Fax: 650-508-6415

Phone: 650-508-7950

1250 San Carlos Avenue,

P.O. Box 3006

San Carlos, CA 94070-2468

Santa Clara Valley Transportation Authority

Ali Hudda

Deputy Director of Accounting

Email: Ali.Hudda@vta.org

Fax: 408-955-9750

Phone: 408-546-7922

3331 North First St.

San Jose, CA 95134-1906

Peninsula Corridor Joint Powers Board

Virginia Harrington

Deputy CEO

Email: harringtong@samtrans.com

Fax: 650-508-6415

Phone: 650-508-7950

1250 San Carlos Avenue,

P.O. Box 3006

San Carlos, CA 94070-2468

**Clipper MOU Board Approval Schedule
Updated June 14, 2010**

Agency	Board Meeting	Comment
AC Transit Committee Board	June 9 June 23	Committee review completed
BART	July 1	
MTC Operations Committee Commission	May 14 May 26	Completed - Board approved
Caltrain	June 3	Completed - Board approved.
GGT Finance Committee Board	June 24 June 25	
SFMTA SFMTA Board Board of Supervisors		Seeking concurrent approval at SFMTA and Board of Supervisors in July
SamTrans	June 9	Completed – Board approved
VTA Committee Board	No mtg in Jul Aug 5	VTA has notified MTC of requirements related TVM Integration and Day Pass Accumulator that will need to be met prior to VTA bringing the MOU to their Board. MTC is in discussions with VTA.

Gavin Newsom | Mayor

Tom Nolan | Chairman

Jerry Lee | Vice-Chairman

Cameron Beach | Director

Malcolm Heinicke | Director

Bruce Oka | Director

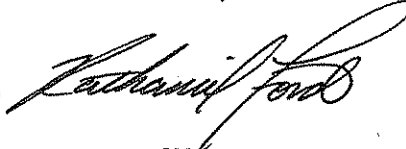
Nathaniel P. Ford Sr. | Executive Director/CEO

MEMORANDUM

DATE: June 15, 2010

file 100805

TO: Honorable Members of the Board of Supervisors

FROM: Nathaniel P. Ford Sr.
Executive Director/CEOSUBJECT: Request for approval of the ClipperSM Program Memorandum of Understanding (MOU)

The San Francisco Municipal Transportation Agency (SFMTA) requests that the Board of Supervisors approve the ClipperSM Program Memorandum of Understanding with the Metropolitan Transportation Commission (MTC) to replace the existing TransLink® Interagency Participation Agreement (IPA) that has been in place since December 12, 2003.

Background

The IPA, which was entered into by the MTC and participating transit agencies, including the SFMTA, created a TransLink® Consortium for joint agency decision-making to implement, operate and maintain the regional fare payment system in the San Francisco Bay Area. The Consortium was governed by a TransLink® Management Group (TMG) comprised of the general managers of the transit operators and the Executive Director of MTC.

Last year, in anticipation of MTC withdrawing from the Consortium, the TMG appointed a working group to begin a review of the governance model. It was agreed among the stakeholders that another vehicle would need to be put in place to continue to govern obligations of MTC and the participating transit agencies to operate and maintain TransLink®, which has been re-branded as ClipperSM. On November 13, 2009, MTC formally gave notice that it would withdraw from the TransLink® Consortium and take over sole governance of the Program, effective July 1, 2010.

Contract Details

Under the proposed MOU, MTC, as the contracting agency for the ClipperSM contract with Cubic Transportation Systems, Inc., will oversee and administer the project throughout the contract term, which ends November 2, 2019. The proposed MOU, which is based on the IPA, formalizes the respective obligations of MTC and the participating transit operators regarding the operation, maintenance and allocation of

costs and revenues for the ClipperSM automated fare payment system. The basic provisions of the MOU are as follows:

1. High-level responsibilities of MTC and the Operators:

MTC:

- confirm existing obligations under the ClipperSM Contract to collect and disperse revenues to the participating agencies, according to the stated cost and revenue sharing formula;
- acknowledge responsibility for management of bank accounts and fiduciary duty to the cardholders;
- notify Operators of changes to Operating Rules, participate in consultation process on Rules changes, and provide regular reports to the Operators;
- pay fixed operating costs, specified variable costs and other lump sum and capital costs, and operator incentive fees;
- make project records available to the Operators.

Transit Operators:

- implement and operate ClipperSM;
- pay specified variable operating costs;
- accept ownership of equipment one year after acceptance.

2. Cost and revenue allocation formula.

- The formula first adopted in the IPA is carried into the MOU with minor revisions. Operating costs allocated to MTC and the Operators are specifically described, and any changes require an amendment to the MOU. Operators agree to periodic reviews of the cost allocation formula to support fairness among Operators and accommodate changes.

3. Process for dispute resolution.

- The proposed process first calls for informal dispute resolution and then allows escalation to mediation or arbitration, binding or nonbinding, as agreed by the parties.

4. Process for Operator input on MTC-proposed changes to Operating Rules.

- MTC will provide at least 90 days notice for any changes impacting Operators' roles and responsibilities, and consult further with Operators, if requested. Disagreement about changes impacting Operators are subject to the dispute resolution process in the MOU.

5. Process for new Operator participation.

- To implement ClipperSM, an agency must sign a supplemental agreement with MTC agreeing to the terms of the MOU. MTC will not sign a supplemental agreement until Cubic and the Operator are ready to implement ClipperSM.

6. *Term of the MOU.*

- The MOU is effective on the date when all parties have signed the MOU and will terminate at conclusion of the Clipper Contract (November 2, 2019), unless otherwise terminated by the parties.

Project Costs and Revenues

Clipper costs and revenues will be allocated in a similar manner to that currently provided for under the expiring IPA. These cost allocation formula is detailed in Appendix B of the MOU. The direct costs to the SFMTA under this agreement are estimated as follows for the term of the agreement:

<i>Estimated Annual Payments</i>			
FY11	\$ 1,311,312	FY16	\$ 5,490,827
FY12	\$ 3,816,826	FY17	\$ 5,623,924
FY13	\$ 5,138,476	FY18	\$ 5,792,642
FY14	\$ 5,307,191	FY19	\$ 5,966,421
FY15	\$ 5,362,289	Total	\$ 43,809,908

Alternatives Considered

The TMG considered a variety of governance models including a Joint Powers Authority and consortium models. Based on input from TMG member agencies, none of the governance models received final recommendation. The TMG also contemplated sole governance by MTC as an option.

Status

At its July 6, 2010 meeting, the SFMTA Board of Directors will be considering a resolution authorizing the Executive Director/CEO to execute the ClipperSM Program Memorandum of Understanding with the Metropolitan Transportation Commission and Bay Area transit operators to replace the existing TransLink® Interagency Participation Agreement.

Recommendations

The SFMTA requests the Board of Supervisors approve the ClipperSM Program MOU with the MTC to replace the existing TransLink® IPA that has been in place since December 12, 2003. The MOU is effective on the date when all parties have signed the MOU and will terminate at conclusion of the Clipper Contract (November 2, 2019), unless otherwise terminated by the parties.

