

File No. 221083

Committee Item No. 2

Board Item No. 24

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: Government Audit and Oversight Date: November 17, 2022

Board of Supervisors Meeting: Date: November 29, 2022

#### Cmte Board

- |                                     |                                     |  |
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| <input type="checkbox"/>            | <input type="checkbox"/>            | Motion                                       |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Resolution                                   |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Ordinance                                    |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Legislative Digest                           |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Budget and Legislative Analyst Report        |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Youth Commission Report                      |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Introduction Form                            |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Department/Agency Cover Letter and/or Report |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | MOU - FY2022-2034 - Clean                    |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | MOU - FY2022-2034 - Redline                  |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Grant Information Form                       |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Grant Budget                                 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Subcontract Budget                           |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Contract/Agreement                           |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Form 126 – Ethics Commission                 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Award Letter                                 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Application                                  |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Public Correspondence                        |

#### OTHER

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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>MTAB Reso No. 15-113 081815</u>     |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>MTAB Reso No. 220906-079 090622</u> |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>MTA Briefing Ltr 101322</u>         |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>MTA CEQA Determination 062222</u>   |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>REFERRAL FYI 102522</u>             |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>REFERRAL YC 110422</u>              |
| <input type="checkbox"/>            | <input checked="" type="checkbox"/> | <u>YC MEMO 111522</u>                  |

Prepared by: Stephanie Cabrera

Date: November 10, 2022

Prepared by: Stephanie Cabrera

Date: November 18, 2022

Prepared by: \_\_\_\_\_

Date: \_\_\_\_\_

1 [Memorandum of Understanding - Metropolitan Transportation Commission and Bay Area  
2 Transit Operators - Next Generation Clipper® System]

3 **Resolution authorizing the San Francisco Municipal Transportation Agency Director of**  
4 **Transportation to execute the Next Generation Clipper® System Memorandum of**  
5 **Understanding with the Metropolitan Transportation Commission and Bay Area transit**  
6 **operators, including the allocation of operating and maintenance costs for the**  
7 **participating agencies, effective upon approval of this Resolution.**

8  
9 WHEREAS, The Clipper® regional fare payment system, originally named “TransLink,”  
10 was implemented in 2002 by the Metropolitan Transportation Commission (MTC); currently 24  
11 transit agencies participate in the Clipper® program; and

12 WHEREAS, On December 12, 2003, MTC and six Bay Area transit operators entered  
13 into an interagency participation agreement (IPA) to create a forum for joint agency decision-  
14 making to work towards the successful implementation of the TransLink® automated fare  
15 payment system; and

16 WHEREAS, The IPA was superseded and replaced by a Memorandum of  
17 Understanding Regarding Operations and Maintenance of Clipper® Fare Collection System  
18 dated November 10, 2011, by and among MTC and, initially, seven of the operators (the 2011  
19 MOU); the 2011 MOU delineated, among other things, MTC's responsibilities, including as  
20 contracting agency, the transit operators' responsibilities, a consultation process for amending  
21 the Clipper Operating Rules, allocation of operating expenses among the transit operators  
22 and MTC, and a dispute resolution process; and

23 WHEREAS, In 2016, the parties amended and restated the 2011 MOU to clarify their  
24 respective roles and responsibilities, define roles and responsibilities for a newly-defined  
25

1 "Contracting Agency," establish a "Clipper Executive Board," and establish a Clipper  
2 Executive Director (2016 MOU); this 2016 MOU was amended in 2017 and 2019; and

3 WHEREAS, In September 2018, MTC entered into a contract with Cubic  
4 Transportation Systems, Inc. (Cubic) to design, implement, operate, and maintain the Next  
5 Generation Clipper® System; and

6 WHEREAS, MTC and the transit agencies wish to replace the 2016 MOU with a 2022  
7 MOU, which outlines the responsibilities of the transit agencies and MTC, the Clipper®  
8 Executive Board, and the Clipper® Executive Director in support of the program, and  
9 establishes the agreement between MTC and the transit agencies for the allocation of  
10 Clipper® costs between MTC and the transit agencies; and

11 WHEREAS, The SFMTA's share of these costs is estimated at 35%, with an average  
12 annual cost of approximately \$7.6 million over the 10 years of this MOU; and

13 WHEREAS, The amended and restated Memorandum of Understanding is on file with  
14 the Clerk of the Board of Supervisors in File No. \_\_\_\_\_, which is hereby declared to be a  
15 part of this Resolution as if set forth fully herein; now, therefore, be it

16 WHEREAS, On September 6, 2022, the San Francisco Municipal Transportation  
17 Agency Board of Directors adopted Resolution No. 220906-079, which authorized the Director  
18 of Transportation to execute the MOU and refer the MOU to the Board of Supervisors for  
19 approval; now, therefore, be it

20 RESOLVED, That the San Francisco Board of Supervisors of the City and County of  
21 San Francisco authorizes the Director of Transportation to execute the Next Generation  
22 Clipper System Memorandum of Understanding with the Metropolitan Transportation  
23 Commission and participating Bay Area transit operators; and, be it

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1            FURTHER RESOLVED, That within 30 days of the MOU being fully-executed by all  
2 parties, the Director of Transportation of the Municipal Transportation Agency shall provide  
3 the final MOU to the Clerk of the Board for inclusion into the official file.

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## 2022 AMENDED AND RESTATED CLIPPER® MEMORANDUM OF UNDERSTANDING

This 2022 Amended and Restated Clipper® Memorandum of Understanding (the "MOU") is entered into as of the \_\_\_\_ day of \_\_\_\_, 2022 (the "Effective Date"), by and among the Metropolitan Transportation Commission ("MTC") and the following transit operators participating in the Clipper® Program (referred to herein individually as an "Operator" or collectively as the "Operators")<sup>1</sup>:

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 ("SFMTA"); the San Mateo County Transit District ("SamTrans"); the Santa Clara Valley Transportation Authority ("VTA"); the Peninsula Corridor Joint Powers Board ("Caltrain"); Central Contra Costa Transit Authority; City of Fairfield, as the operator of Fairfield and Suisun Transit; City of Petaluma; Eastern Contra Costa Transit Authority; Livermore/Amador Valley Transit Authority; Marin County Transit District; Napa Valley Transportation Authority; Solano County Transit; Sonoma County Transit; Sonoma-Marin Area Rail Transit; Vacaville City Coach; Western Contra Costa Transit Authority; San Francisco Bay Area Water Emergency Transportation Authority; City of Santa Rosa; and City of Union City; *and any other New Operator Participants in accordance with Article VI.A of the MOU.*

MTC and the Operators are referred to herein collectively as the "Parties" or individually as a "Party".

### Recitals

1. On July 2, 2009, MTC entered into a contract (the "Clipper Contract") with Cubic Transportation Systems, Inc., to implement, operate and maintain the Clipper fare payment system on behalf of the Operators ("Clipper Program") through November 2, 2019, which contract was extended on June 30, 2017, for a period of up to five years (November 2, 2024).
2. On February 19, 2016, MTC and the Operators entered into an Amended and Restated Clipper Memorandum of Understanding, replacing a previous MOU that delineated the MTC and Operator responsibilities for the Clipper Program, which was subsequently amended on April 17, 2017; October 1, 2020; and September 1, 2021 ("2016 MOU").
3. On September 26, 2018, MTC, as Contracting Agency under the 2016 MOU, entered into a contract (the "Next Generation Clipper Contract") with Cubic Transportation Systems, Inc. (the "Clipper Contractor") to act as system integrator for the Next Generation Clipper system, including system design, development and testing, installation and transition, operations and maintenance, and end-of-<sup>1</sup>term transition. The Next Generation Clipper system will implement an account-based payment system.
4. Effective September 1, 2021, the 2016 MOU transferred responsibility for management and oversight of the Regional Transit Connection Discount Card Program ("RTC Program"), which provides people with disabilities with discounted access to fixed-route transit, to the Clipper

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<sup>1</sup> Clipper® is a registered trademark of MTC. Henceforth, all references to Clipper, with or without the registered trademark designation, will be to the MTC registered trademark.

Executive Board and responsibility for the administration of the RTC Program to MTC, pending development and implementation of a new RTC Program database.

5. The Parties now wish to amend and restate the 2016 MOU to reflect changes to the Clipper program brought about by the implementation of the Next Generation Clipper system and the expanded use of Clipper since 2016, including a revised cost-sharing formula applicable to the RTC Program and tailored to the Next Generation Clipper account-based fare payment system.
6. For purposes of this MOU, references to the Clipper Program, Clipper fare payment system, or Clipper refer collectively to the systems implemented under the Clipper Contract, the Next Generation Clipper Contract, and other contracts to be entered into to implement and operate the Next Generation Clipper system. The term Clipper Contract refers to both the Clipper Contract and the Next Generation Clipper Contract, as appropriate.

## **ARTICLE I**

### **Operator Responsibilities**

Each Operator agrees to:

- A. Implement and operate the Clipper fare payment system in accordance with the Clipper Operating Rules, as adopted and amended from time to time, consistent with the consultation and approval process set forth in Appendix A, Process for Amending Clipper Operating Rules, attached hereto and incorporated herein by this reference. The Clipper Operating Rules establish operating parameters and procedures for the consistent and efficient operation of Clipper throughout the region. The current version of the Clipper Operating Rules is available on MTC's website at <http://clipper.mtc.ca.gov>.
- B. Pay its share of Clipper costs, including costs of the salary of additional Clipper staff necessary to support the Executive Board, according to Appendix B, Clipper® Cost and Revenue Allocation, as amended, attached hereto and incorporated herein by this reference. Changes to Appendix B require an amendment to the MOU in accordance with Article XI.A.
- C. Make its facilities and staff available for implementation and operation of Clipper. Any Operator and the Contracting Agency may agree to an Operator-specific implementation plan, setting forth specific requirements regarding implementation and operation of Clipper for such Operator.
- D. Make determinations regarding the placement of Clipper equipment on the Operator's facilities and equipment; perform necessary site preparation; attend Clipper Contractor training on the use of the Clipper equipment; and provide training to employees using the equipment.
- E. Participate in as-needed reviews of the cost and revenue allocation formula in Appendix B, to support fairness among Operators and to accommodate changes in shared operation costs.
- F. *Implement, operate and promote Clipper as its primary fare payment system, including the primary mobile payment system, and refrain from establishing other fare payment systems or fare policies that could deter or discourage frequent transit riders' preference to use Clipper. Each Operator agrees to set fares so that fares paid with Clipper are equivalent or lower than fares paid either with cash or other forms of payment. No new*

*non-Clipper prepaid fare product, other than for promotional, special event or limited-audience—e.g., tourist—fares, shall be created by any Operator without consulting with and receiving prior written approval from the Clipper Executive Board.*

- G. *Provide appropriate training to employees who have Clipper-related operations responsibilities, so that those personnel are able to carry out the requirements placed on Operators in this MOU, including, but not limited to, vehicle operators, station agents, conductors, customer service personnel, proof-of-payment officers, ticket sales staff and any other personnel responsible for interacting with customers concerning fare payment.*
- H. *Perform first-line maintenance on Clipper equipment located at their facilities or on their vehicles; promptly notify the Clipper Contractor when second-line maintenance of Clipper equipment is needed; promptly notify the Contracting Agency and the Clipper Contractor of any issues affecting daily financial reconciliation or accuracy of system reports; issue all types (including, but not limited to, cards configured as senior or youth) of Clipper cards; add value to existing Clipper cards from all customer service terminals located at their business facilities; and provide at least the same level of front-line customer service to their patrons using Clipper as to patrons using other forms of fare payment.*
- I. *Take financial responsibility for the cost of replacement of equipment damaged in-service due to vandalism or any other cause for which the risk of loss is not with the Clipper Contractor pursuant to the Clipper Contract or Next Generation Clipper Contract or covered by warranty under the applicable Clipper contract.*
- J. *Provide General Transit Feed Specifications (GTFS) for the development, implementation, operation, and maintenance of the Clipper mobile application.*
- K. Support the Contracting Agency in its administration and operation of the RTC Program, as set forth in Article III.M, and pay its share of RTC Program costs, according to Appendix B, attached hereto and incorporated herein by this reference, as *it may be amended, from time to time.*

## **ARTICLE II**

### **MTC Responsibilities**

MTC agrees to:

- A. Fund a portion of the Clipper operating and maintenance costs, including costs of the salary of additional Clipper staff necessary to support the Executive Board, as set forth in Appendix B. Subject to availability of necessary funds, inclusion of projects in the Regional Transportation Plan and Transportation Improvement Program where necessary, and receipt of all necessary Commission approvals, budget appropriations and allocations, MTC will continue to fund capital and Contracting Agency operating costs in the manner that it has funded capital and Contracting Agency operating costs to date through a dedicated allocation of federal, state and local funds, both discretionary and project-designated. Recommended annual capital allocations will be identified in the work plan approved by the Executive Board. (See Article IV.C.4.)
- B. 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 Parties upon request through reasonable means and at reasonable times. Parties may request that Materials be made available for the most recently closed fiscal year during the term of this MOU and for up to one year thereafter; provided, however, that nothing in this Article II.B is intended to limit a Party's rights to obtain records under the California Public Records Act (Government Code Section 6250 *et seq.*) or *San Francisco's Sunshine Ordinance* (see Appendix E).

- C. Continue to serve as the Contracting Agency (described in Article III), and continue to provide adequate staffing to support the Clipper program under the direction of the Clipper Executive Director (described in Article V), until such time as the Executive Board designates, and MTC's Commission approves, the assignment of MTC's duties as Contracting Agency to another Party pursuant to Article IV.D.
- D. Employ the Clipper Executive Director (described in Article V). MTC reserves the right to make decisions regarding hiring, promotion, termination, compensation, and removal of the initial Clipper Executive Director. Selection of a successor Executive Director shall be in accordance with Article III.I.
- E. Continue to create, maintain, *and protect* all copyrights and other intellectual property necessary or convenient for the operation of the Clipper fare payment system, *including the Clipper brand, trademark and design*, and provide any necessary licenses to use such intellectual property to the Contracting Agency, if other than MTC.
- F. Enter into supplemental agreements with new Operator Participants in accordance with Article VI.A.
- G. Enter into Affiliate Participant agreements in accordance with Article VI.B.

### **ARTICLE III** **Contracting Agency Responsibilities**

The Contracting Agency agrees to:

- A. On behalf of the Parties, procure, award, manage and carry out the duties and responsibilities of the Clipper Program under all contracts necessary for the expansion, modification, modernization, operation, maintenance, marketing and customer service of the Clipper fare payment system, including the Clipper Contract, *Next Generation Clipper Contract, contracts for the Next Generation customer service center, the payment gateway, fare media contracts* ("*Other Next Generation Clipper Contracts*"; see Appendix B-3), and any contracts for associated professional or technical services for the Clipper program as a whole.
- B. Establish, manage, and implement Clipper Operating Rules in accordance with Appendix A.
- C. Provide regular updates (at least quarterly) on the Clipper Program to the Parties.
- D. Support the Parties with respect to Articles I.E and II.A by providing system data affecting the cost allocation formula.



- E. Own specified Clipper Program capital equipment, as may be required by grant or funding agency rules and regulations, and transfer ownership, to the greatest extent permitted under such rules and regulations, to any successor Contracting Agency.
- F. Hold and manage the Clipper 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 on the services provided by the Operators, and for the benefit of the Operators for funds due to Operators until dispersed to such Operators.
- G. Conduct *an as-needed* contract compliance audit covering Clipper Program revenue collection and allocation and cost allocation responsibilities under the MOU and provide a copy of the complete audit report to all Parties upon conclusion of each such audit.
- 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 Parties upon request through reasonable means and at reasonable times. Parties may request that Materials be made available for the most recently closed fiscal year during the term of this MOU and for up to one year thereafter; provided, however, that nothing in this Article III.H is intended to limit a Party's rights to obtain records under the California Public Records Act (Government Code §§ 6250 *et seq.*), subject to the restrictions on the handling and confidentiality of personally identifiable information ("PII") set forth in California Streets and Highways Code Section 31490.
- I. Engage the Clipper Executive Director in accordance with Article V. The Contracting Agency reserves the right to make decisions regarding hiring, promotion, termination, compensation, and removal of the Clipper Executive Director provided that *the Contracting Agency* shall not engage the successor to the initial and successor Executive Directors without the concurrence of the Executive Board. The Contracting Agency shall collaborate with the Executive Board in considering potential candidates for Executive Director.
- J. Provide adequate staffing (including program and legal staff) to support the Clipper program. The Contracting Agency reserves the right to make decisions regarding hiring, promotion, termination, compensation and removal of program staff.
- K. Provide necessary logistical and technological support to the Executive Board and any committees thereof, except as provided in Article IV.H.
- L. On behalf of the Parties and under the direction of the Clipper Executive Board, procure, award, and manage contracts and carry out the administrative and management duties and responsibilities necessary for the operation, maintenance, marketing and customer service of the RTC Program; provided, however, that the Contracting Agency shall not assume administrative, operational (including customer service), or maintenance duties prior to its issuance of a notice to Operators that a new RTC database has been tested and deployed.
- M. *On behalf of the Parties and under the direction of the Clipper Executive Board, procure, award, and manage contracts and carry out the administrative and management duties and responsibilities necessary for the operation, maintenance, marketing and customer service of the RTC program; provided that MTC shall not assume administrative,*

*operational (including customer service), or maintenance duties prior to MTC's issuance of a notice to Operators that a new RTC database has been tested and deployed by MTC.*

#### **ARTICLE IV Clipper Executive Board**

- A. Role; Composition. The Parties agree that responsibility for the policy oversight and management of the Clipper Program and the RTC Program shall reside with a Clipper® Executive Board ("Executive Board"). The Executive Board's responsibilities shall be executed in a manner consistent with the Operator, MTC and Contracting Agency responsibilities set forth in Articles I, II and III, respectively. The Executive Board shall be comprised of nine members: one representative each from the SFMTA, BART, Caltrain/SamTrans, AC Transit, VTA, GGBHTD and MTC, and two representatives who are selected to represent all other Operators (the "Small Operators") in the sole discretion of the Small Operators. Each representative shall be at the General Manager or senior management level.
- B. Principles. The Executive Board shall adhere to the following principles:
1. The Clipper Program shall continue as the primary electronic fare collection system for the Operators.
  2. Each member of the Executive Board commits to actively advance the continued successful operation, maintenance and growth of the Clipper Program on a cost-effective, operationally efficient, and coordinated basis.
  3. Promote efforts to reduce the overall cost of the Clipper system, including operating costs, capital costs and consultant expenses.
  4. Promote regional efforts to simplify fare structures while protecting revenue levels.
- C. Duties. The Executive Board shall undertake the following duties:
1. Meet in accordance with a regular meeting schedule established by the Executive Board, not less than quarterly.
  2. Establish goals for the Clipper Program, including targets to increase market penetration and cost containment initiatives. The Program Goals and Performance Measures are attached as Appendix C, and may be amended by unanimous vote of the Executive Board from time to time.
  3. Propose for review by MTC, Operators and other funding sources (collectively, the "Funding Agencies") a biennial capital and operating budget for the Clipper Program. Revise and adopt the proposed budget in accordance with the Clipper budgets adopted and/or allocations made by each of the Funding Agencies. The biennial budget shall outline staffing requirements and resources needed to accomplish the work plan. The budget shall define required funding, identify funding sources, and specify the amount of individual agency contributions.

4. Adopt a detailed biennial work plan to implement the established goals and budget.
  5. Designate the Contracting Agency, as further described in and subject to Article IV.D, and provide policy oversight, advice, and direction to the Contracting Agency.
  6. Evaluate the performance of the Clipper Executive Director on at least an annual basis. The Board will develop goals and objectives jointly with the Clipper Executive Director, which will form the basis for the annual evaluation.
  7. Review and authorize Significant Business Matters as described in Article IV.E.
  8. Establish such procedures as shall be necessary or desirable to facilitate compliance by the Executive Board with the Ralph M. Brown Act (Government Code Section 54950 *et seq.*) (the "Brown Act") and other applicable laws.
- D. Designation of a Contracting Agency. The Executive Board shall designate one of the Parties to serve as the "Contracting Agency" with the responsibilities defined in Article III. MTC shall serve as the initial Contracting Agency. The Executive Board shall review the designation of the Contracting Agency not more often than once every three (3) years and may designate any of the Parties as a new Contracting Agency no later than one year prior to the proposed assignment date, which designation may be subject to the approval of the governing board of the proposed new Contracting Agency. In the event of a new designation, the then-current Contracting Agency shall seek approval from its governing board to assign all outstanding contracts, funding agreements, licenses, and accounts to the newly designated Contracting Agency and, if it receives approval from its governing board for such assignment, take such other actions as may be necessary or convenient to effect the transition of the Contracting Agency role. In the event of a change from the role of MTC as the Contracting Agency, the Executive Board will work with MTC and the successor Contracting Agency to protect or minimize loss or degradation of jobs for Clipper support staff at MTC.
- E. Significant Business Matters. The Executive Board shall decide all Significant Business Matters by a majority vote. "Significant Business Matter" shall mean any matter that can reasonably be expected to have a substantial financial impact (defined as an impact of \$250,000 or more) or a substantial operating impact (defined as causing operations to fall below then-current annual operational goals) on Clipper or any of the Parties. Significant Business Matters, include, but are not limited to, the following:
1. Approval of Clipper Program Contracts and Change Orders that exceed the maximum authority levels established by the Contracting Agency's procurement rules for its chief executive officer, or \$250,000, whichever is less, or that are not funded in the biennial budget. Contracting Agency governing board approval may also be required.
  2. Amendments to the Clipper Operating Rules, pursuant to Appendix A.
  3. Acceptance of new Parties to the Clipper Program. The Executive Board delegates to MTC the authority to sign supplemental agreements with new Parties accepted into the Program, as provided in Article VI.

4. Acceptance of Clipper Affiliate Participants, as described in Article VI.B, and implementation of new business ventures or opportunities for the Clipper Program.
5. Assignment of the Next Generation Clipper Contracts. Contracting Agency approval shall also be required.
6. Approval of expenses (administrative, operating and legal) incurred by the Contracting Agency if in excess of or not contemplated by the current approved budget.
7. Decision whether any other matter, not expressly included or excluded as a Significant Business Matter in this list, is a Significant Business Matter in accordance with the definition above.

The foregoing definition of Significant Business Matters may be amended by unanimous vote of the Executive Board from time to time.

- F. Quorum. Five members of the Executive Board constitute a quorum. In the absence of a quorum, a smaller number of Executive Board members may secure the attendance of absent members by video conference, teleconference, or other means compliant with the Brown Act to establish a quorum. Only eligible voting members shall be counted to establish a quorum.
- G. Voting. Each member of the Executive Board shall have one vote. A vote of a majority of the Executive Board is required for approval. Executive Board members may not abstain from voting on any matter before the Executive Board, except in cases of conflicts of interest.
- H. Board Chair; Committees. The Executive Board shall bi-annually elect a Chair and Vice Chair from its members. The Chair shall provide administrative staff support to the Executive Board, as needed as determined by the Chair and the Clipper Executive Director. The Chair may appoint advisory committees or working groups for specified projects of limited duration. The Executive Board may establish standing committees from time to time.
- I. Delegates. Executive Board members may appoint, in writing, delegates to vote on their behalf in the event of a member's absence from any Executive Board meeting, for up to four (4) meetings per calendar year. No voting rights are accorded to delegates, nor do delegates count toward a quorum of the Executive Board, when they are representing an Executive Board member for meetings after four (4) missed meetings in a calendar year.

## **ARTICLE V**

### **Clipper Executive Director**

The Clipper Executive Director shall be responsible for regional coordination of the Clipper program among the Parties, oversight of consultants and contractors retained for the design, operation and maintenance of the Clipper program, and effectuation of the goals and work plan adopted by the Executive Board in accordance with the budget. Clipper program support staff engaged by the Contracting Agency shall report to the Clipper Executive Director.

The Clipper Executive Director shall be selected and appointed by the Contracting Agency following consultation with the Executive Board to factor in any Executive Board concerns. The Contracting Agency will directly engage the Clipper Executive Director as its employee or independent contractor in accordance with any civil service or procurement rules applicable to the Contracting Agency. The Clipper Executive Director shall be Carol Kuester, *or her successor as MTC's Section Director of Electronic Payments (or comparable position)*, subject to Article III.I.

## **ARTICLE VI New Operator and Affiliate Participants**

- A. New Operator Participants. Any Bay Area transit operator not a Party to this Agreement must be approved by the Executive Board and agree to the terms of the MOU then in effect as a condition of implementing Clipper, by entering into a supplemental agreement to this MOU accepting the then-current terms of this MOU. Signature by the other Parties to the MOU is not required. MTC shall not enter into a supplemental agreement with a New Operator Participant prior to the issuance of a Change Request (*as defined in the Next Generation Clipper Contract*) to the Clipper Contractor covering all or a portion of the work required to accept such operator into the system. MTC shall provide the other Parties to the MOU with written notice of each supplemental agreement. "Bay Area transit operator," for purposes of this Article VI means a transit operator with headquarters located within the nine counties within MTC's jurisdiction.
- B. Affiliate Participants. The Executive Board must approve implementation of Clipper or use of the Clipper card, brand, or application on any transit operator with headquarters located outside the Bay Area or by a business that is not a transit operator (collectively, "Affiliate Participants"). Affiliate participants shall be required to enter into an agreement with the Contracting Agency accepting the then-current terms of the MOU and agreeing to additional terms and conditions for implementation of Clipper or use of the Clipper card, brand, or application. Any additional costs incurred by the Clipper Program shall be paid for in accordance with such agreements. In addition, the Contracting Agency shall include indemnification provisions in such agreements at least as stringent as those set forth in Article VII.

## **ARTICLE VII 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. Contracting Agency Indemnification of Other Parties. Notwithstanding the provisions of Subsection A above, the Contracting Agency shall indemnify, hold

harmless, and defend the other Parties from any and all claims or liability resulting from any action or inaction on the part of Contracting Agency relating to the Clipper Contract and the RTC Program (except as provided in Subsection F below) or from its failure to carry out its responsibilities under Article III of this MOU. With respect only to MTC as Contracting Agency, this indemnification covers action or inaction on the part of MTC relating to the Clipper Contract prior to the Effective Date of this MOU. Except as stated in the previous sentence, this indemnification only covers action or inaction on the part of a Contracting Agency while it serves as Contracting Agency under this MOU.

- C. Other Parties' Indemnification of Contracting Agency. Notwithstanding the provisions of Subsection A above, each Party hereto that is not the Contracting Agency shall indemnify, hold harmless, and defend the Contracting Agency from any and all claims or liability resulting from any action or inaction on the part of such Party relating to its responsibilities under Article I or II, as applicable, of this MOU.
- D. Operator Indemnification of MTC. Notwithstanding the provisions of Subsection A above and subject to Subsection F below, 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.
- E. MTC Indemnification of Operators. Notwithstanding the provisions of Subsection A above, MTC shall indemnify, hold harmless, and defend each Operator from any and all claims or liability resulting from any action or inaction on the part of MTC relating to its responsibilities under Article II of this MOU.
- F. Indemnification of MTC as RTC Discount Card Program Administrator. Notwithstanding the provisions of Subsections B and D above, *the Operators shall indemnify, defend, and hold harmless MTC as Contracting Agency* against any and all claims or liability related to the RTC Program resulting after MTC's assumption of the responsibilities set forth in Article III.M as administrator and operator of the RTC Program to the extent that such claims or liability relate to actions or inactions taken by the Operators or their third party medical verifier contractor to administer, manage, and operate the RTC Program **prior to** MTC's assumption of such duties.

## **ARTICLE VIII**

### **Term**

The term of the MOU shall begin upon the Effective Date and *continue for a period of ten (10) years*, unless terminated by written agreement of the Parties.

## **ARTICLE IX**

### **Dispute Resolution**

The Parties agree to abide by the dispute resolution procedures in Appendix D, Dispute Resolution, attached hereto and incorporated herein by this reference to resolve disputes between or among Parties to the MOU. To invoke the dispute resolution process, two Executive Board members must request it.

## **ARTICLE X**

### **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 Clipper 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 shall require an amendment to the MOU approved and executed by all Parties.

## **ARTICLE XI**

### **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 counterparts, 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 E, Special Provisions for the City and County of San Francisco, attached hereto and incorporated herein by this reference, sets forth the terms and conditions required by the City and County of San Francisco in *certain* contracts entered into by the City.
- 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 F, 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 F 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 VI.
- H. This MOU supersedes, amends, and restates the 2016 MOU in its entirety.

## **ARTICLE XII**

### **Legal Representation and *Common Interest***

The Parties recognize a mutuality of interest, and a need for joint cooperation in legal matters relating to Clipper. In furtherance of this common interest, any communications among Parties and

counsel for any of the Parties shall be confidential and protected from disclosure to any third party by each and every privilege – including, but not limited to, the attorney-client privilege, the attorney work product privilege, and the pooled information privilege – notwithstanding the dissemination of the communications and work product among Parties by the counsel that made the information available in the first instance. If information covered by the privileges is requested by a third party pursuant to a subpoena or other discovery request, then counsel receiving the request shall notify in a timely fashion the counsel who disclosed the information so that the privileges against disclosure may be asserted.

Should any Party withdraw from or otherwise terminate its participation in the Clipper program, such withdrawal or termination shall not impair the privileges that protect any information that has been shared prior to such action. Any Party that withdraws or terminates its participation in the Clipper program shall promptly return all privileged materials that the Party has received.

**ARTICLE XIII**  
**Confidential Information**

*Either MTC or an Operator (the “Receiving Party”) may, in the course of carrying out its responsibilities under this MOU, have access to proprietary or confidential information owned by the other Party (“the Disclosing Party”), the disclosure of which to third parties may damage the Disclosing Party. Such proprietary or confidential information must be held by the Receiving Party in confidence and used only in performing its responsibilities as provided in the MOU. The Receiving Party shall exercise at least the same standard of care it would use to protect its own proprietary or confidential information.*

SIGNATURES ON SUBSEQUENT PAGES



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

**Metropolitan Transportation Commission**

Approved as to form:  
Kathleen Kane, General Counsel

\_\_\_\_\_  
Name: Therese W. McMillan  
Title: Executive Director

\_\_\_\_\_  
Matthew Lavrinets, Senior Counsel

Date: \_\_\_\_\_

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**Appendix A**  
**Process for Amending Clipper Operating Rules**

1. The Contracting Agency shall provide written notice to the other Parties at least ninety (90) days in advance of making any changes to the Operating Rules affecting Operator Roles and Responsibilities (Section 3 of the Clipper Operating Rules). Notice shall be provided by email to the contact named in Appendix F, or as subsequently revised or updated by the Parties, as provided in Article XI.G.
2. The Contracting Agency shall provide additional notice to the other Parties on possible changes to the Operating Rules affecting Operator Roles and Responsibilities in the regular Clipper program reports furnished under Article III.C.
3. The Contracting Agency's notices shall include enough information to enable the other Parties to determine the financial and other impacts of the proposed change.
4. If requested by any Party within 30 days of issuance of such notice, the Contracting Agency will consult with all affected Parties concerning the proposed change prior to its adoption.
5. Any Party that requires additional time in excess of the notice period specified by the Contracting Agency to implement a change may notify the Contracting Agency of the additional period of time required during the initial 30-day notice period. The Contracting Agency will then work with the Party(ies) 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 Party(ies) objects to the proposed change, as modified during the consultation process, such Party(ies) may initiate one or more of the dispute resolution processes described in Appendix D.
7. The Contracting Agency shall delay the implementation of the disputed change until the conclusion of the dispute resolution process.
8. All proposed changes to the Operating Rules shall be presented for approval to the Executive Board. The Contracting Agency agrees that it shall not implement changes to the Operating Rules that have not been approved by the Executive Board.

**Appendix B**

**Clipper Cost and Revenue Allocation**  
[see applicable sub appendices on following pages]

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**Appendix B-1**  
**Clipper Cost and Revenue Allocation for Clipper Contract**

*This Appendix B-1 applies to cost and revenue allocation during the extended Operations & Maintenance (O/M) term of the Clipper Contract, which will extend through November 2, 2024, unless earlier terminated. The cost allocation formulas and principles in this Appendix B-1 were included in the 2016 MOU and apply only to the Clipper Contract.*

1. Cost Allocation Among Operators

The allocation of Clipper operating costs to each Operator shall be tied to the cost driver of each category of operating expense outlined in Section 2.B. The percent allocation in each category will be based on actuals by Operator. "Percentage of Cards Used" by Operator will be used to assess operating fees for account-based, fixed or other costs not directly attributable to either transit transactions or revenue and will be based on the number of individual cards used at least once on an Operator's system. "Fee Generating Transit Transactions" shall mean any activity in which a Clipper card is used to receive service on or from an Operator's system that results in a charge pursuant to Attachment 2 to Part I of the contract between MTC and Cubic for the operation of Clipper. "Revenue Processed" shall mean the fee collected on behalf of each Operator by the Clipper 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).

The allocation of Clipper operating costs to each Operator while the current Clipper Contract line item pricing structure is applicable shall be based on the following formula:

MOU Section 2.B.i	Fee Category	Allocation Formula
a,b,c	9.0 Cardholder Support Services	Percentage of Cards Used
d,e,f	10.0 Third Party Load Service Fees	Percentage of Cards Used
g	11.0 Autoload Services	Percentage of Cards Used
h	13.22.45 Supplemental Operations	Percentage of Cards Used
i	13.31 Clipper Transaction Fee	Percentage of Fee Generating Transit Transactions
j,k,l,m	13.60-90 Incremental Credit/Debit Card Interchange Fees	Percentage of Revenue Processed
n	Reimbursement of Bank Fees/Direct Charges	Percentage of Revenue Processed
o	Network Communication Reimbursement	Direct Charge to Operator
p	Specialized Card Printing	Direct Charge to Operator
q,r	Operator Share of Staffing	Percentage of Cards Used
s	Add Value/TVM Debit Card Interchange Fees for Non-Clipper Gateways	Percentage of Revenue Processed

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

- a. Clipper Data Server (CDS) Store operating costs specified below for any CDS Store

implemented on such Operator's site; and

- b. Incremental Clipper operating costs established by and/or resulting from Clipper Contract change orders requested and funded by an Operator for 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. Clipper Costs

### A. MTC Operating and Maintenance Costs. MTC shall pay the following Clipper operating costs under the Clipper Contract's line item pricing structure:

- i. All fixed operating costs of the Clipper clearinghouse and equipment maintenance services costs as specified in the Clipper Contract's Price Schedule (Attachment 2 to the Clipper Contract) (the "Price Schedule"), including:
  - a. Item 3.20 Program Management - Operations and Maintenance
  - b. Item 3.30 Clipper 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 Clipper operating costs as specified in the Price Schedule (Attachment 2 to the Clipper Contract), specifically:
  - a. Item 7.10-2 Senior and Youth Card Mail-In Applications
  - b. Item 8.10(a-g) Card Distribution Services
  - c. Item 8.11 Card Distribution Services
  - d. Item 8.12 Card Distribution Services
  - e. Item 8.20 Cardholder Education
  - f. Item 8.31 Location Acquisition for Completion of Distribution Network
  - g. Item 8.32 Location Acquisition for Completion of Distribution Network
  - h. Item 8.41 Pass Through of Amounts Paid for Installation of Phone Lines
  - i. Item 9.41 Fixed and Incremental Fees Per Active Card Account (50% of the invoiced amount)
  - j. Item 9.5 Service Level Standard Incentives and Abatements
  - k. Item 13.100 Mobile Website Operations and Maintenance
- iii. All other lump sum and capital expense items specified in the Price Schedule not enumerated above or covered by Section 2.B.

### B. Operator Operating Costs under the Clipper Contract's Line Item Pricing Structure.

- i. Operators shall pay the following listed Clipper operating costs in accordance with the cost sharing formula in Section I, reduced by any amounts payable by MTC

pursuant to Section 2.A. References to Item numbers refer to the corresponding prices payable to the Clipper Contractor under the Price Schedule, which are subject to annual price adjustment as specified in Article 13.6 of the Clipper Contract:

- a. Item 9.24 Balance Protection Services Registration
  - b. Item 9.25 Lock/unlock Clipper Application
  - c. Item 9.41 Fixed and Incremental Fees Per Active Card Account (50% of the invoiced amount)
  - d. Item 10.11 Clipper E-purse Load
  - e. Item 10.12 Pass/Stored Ride Load
  - f. Item 10.24 Employer Program Commission
  - g. Item 11.0 Autoload Services
  - h. Item 13.22.45 Supplemental Monthly Operations and Admin
  - i. Item 13.31 Clipper 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 Contracting Agency bank fees and direct bank charges in connection with the Clipper bank account(s) in excess of the amounts reimbursed under Section 3.A below
  - o. Direct payment or reimbursement of Contracting Agency costs for network communication.
  - p. Direct payment or reimbursement of Contracting Agency costs for materials necessary for additional printing, e.g. secondary printing or personalization, on Clipper cards
  - q. Reimbursement of Contracting Agency costs for a portion of salary and benefits of any additional staffing as approved by the Executive Board to support the Clipper program.
  - r. Reimbursement of Contracting Agency costs for a portion (at least fifty percent) of the salary and benefits of the Clipper Executive Director as approved by the Executive Board.
  - s. Reimbursement of Operator costs for credit/debit interchange fees generated through an Operator-specific gateway associated with Clipper sales through ticket officed terminal devices and add value and ticket vending machines, as long as the total average fees do not substantially exceed the average Clipper fees.
- ii. Changes or Additions to Operator Operating Costs Items. Except as reserved for Executive Board approval in 2.B(i)(q, r, s), substantive changes or additions to the Operator-paid operating cost items set forth in Section 2.B(i) require an amendment to this Appendix B and approval of all Parties to the MOU as of the date of the change or addition.
  - iii. Contracting Agency shall invoice each Operator on a monthly basis for its share of the operating costs. The Operators shall pay Contracting Agency within fifteen (15) calendar days of receipt of such invoice.
3. Cost Allocation of Time and Materials Payments to Clipper Contractor during Clipper Contract O&M Extension Period

Any payments to the Clipper Contractor on a time and materials basis during the Clipper Contract O&M Extension Period, exclusive of pass-through fees, will be split equally (50%/50%) between MTC and the Operators. The Operators' share shall then be further allocated to each Operator based 50% on its Percentage of Cards Used and 50% on its percentage of Fee-Generating Transit Transactions.

Pass-through fees shall be allocated to Operators as set forth Sections 1 and 2 above.

#### 4. Revenue Allocation

Revenues generated by Clipper 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 Contracting Agency's bank fees and direct bank charges related to the managing of the Clipper accounts;
- B. After deduction of Contracting Agency's bank fees and charges under Section 4.A above, To reduce the Operators' Clipper operating costs listed in Section 2.B(i) above or in Section 3 above; and
- C. After payment of Operators' Clipper operating costs listed in Section 2.B(i) or in Section 3 above, to be allocated to Operators by applying the percentage of cards used by Operator specified in Section I herein, unless otherwise authorized by the Executive Board.

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.)

## Appendix B-2

### RTC Program Cost Allocation

#### 1. RTC Program Cost Allocation Among Operators

*"Percentage of RTC Cards Used" by Operator will be used to assess operating fees for account-based, fixed or other costs not directly attributable to either transit transactions or revenue and will be based on the number of individual RTC cards used at least once on an Operator's system during the specified billing period. The allocation of RTC Program operating costs (as defined in Section 2 below) to Operators shall be based on both an equivalent 1% share of RTC Program Operating Costs for each Operator with the remaining costs allocated based on a Percentage of RTC Cards Used by Operator during the specified billing period, initially a calendar month.*

#### 2. RTC Program Operating Costs

Operators shall pay the following listed RTC Program Operating Costs to the Contracting Agency, in accordance with the cost sharing formula in Section 1 above:

- A. Reimbursement of the RTC Program medical verifier contract costs;
- B. Card Fees for RTC Clipper Card Customization, currently Clipper Contract Price Schedule Item 7.10-1, Per-Card Fee for RTC Clipper Card Customization (subject to annual price adjustment as specified in Article 13.6 of the Clipper Contract);
- C. Reimbursement of the Salesforce Operations & Maintenance costs and license fees;
- D. \$75,000 annually for staff time for administration of the RTC Program; and
- E. Reimbursement of claims against MTC, in accordance with the indemnification provision in Article VII, Indemnification, Subsection F, resulting from actions or inactions taken by the Operators or their third party medical verifier contractor to administer, manage, and operate the RTC program **prior to** MTC's assumption of such duties.



## Appendix B-3

### Next Generation Clipper Cost and Revenue Allocation

#### 1. Allocation of Fixed Monthly Accelerated Deployment O/M Payments

Payments to the Clipper Contractor for Accelerated Deployment Operations and Maintenance (O/M) and *Post-Revenue Ready Accelerated Deployment O/M* under the Next Generation Clipper Contract, Articles 3.8.4, Scaling of O/M Payments, and 3.8.5, O/M Payments for Accelerated C2 System Deployment and Attachment C-5, Payment Form for C2 System Operations & Maintenance will be allocated in accordance with this Appendix B-3.1.

- a. Accelerated Deployment fixed monthly O/M payments triggered by issuance of the Accelerated C2 System Deployment Mobile O/M NTP shall be split 50%/50% between MTC and the Operators. Each Operator's share shall then be determined based 50% on its Percentage of Cards Used and 50% on its Percentage of Fee-Generating Transit Transactions. *"Percentage of Cards Used" by Operator will be based on the number of individual cards used at least once on an Operator's system during the specified billing period. "Fee Generating Transit Transactions" shall mean any activity in which a Clipper card is used to receive service on or from an Operator's system that results in a charge pursuant to Attachment 2 to Part I of the Clipper Contract between MTC and Cubic.*
- b. Accelerated Deployment fixed monthly O/M payments triggered by issuance of Accelerated C2 System Deployment Equipment O/M NTP shall be split 50%/50% between MTC and the Operators. Each Operator's share would then be determined based 50% on its Percentage of Cards Used and 50% on its Percentage of Fee-Generating Transit Transactions (excluding BART's Fee-Generating Transit Transactions from the total count).
- c. *Post-Revenue Ready Accelerated Deployment fixed monthly O/M payments triggered by issuance of a notice by MTC that Revenue Ready has been achieved shall be split 50%/50% between MTC and the Operators. Each Operator's share shall then be determined based on its Percentage of Clipper Ridership. "Percentage of Clipper Ridership" by Operator will be based on the number of transit trips taken on an Operator's system and reported through the Clipper fare system during the specified billing period.*
- d. MTC shall pay for 100% of the pass-through fees associated with the conversion of physical Clipper cards to virtual mobile cards and on-going pass-through fees associated with the use of virtual mobile cards and the Clipper mobile app.

#### 2. Allocation of Capital Costs

- a. MTC shall pay for the following Clipper capital costs:
  - i. *Capital costs associated with the initial design, development and testing, installation and transition, and end of term transition under the Next Generation Clipper Contract*
  - ii. *Clipper Program equipment included in Attachment C-8, Payment Form for Equipment, not purchased by an Operator pursuant to Article 8.7 of the*

*Next Generation Clipper Contract, Purchase and Ownership of Equipment by Transit Operators*

- iii. *Capital costs associated with the initial implementation and ongoing costs of the Other Next Generation Clipper Contracts, not including capital costs associated with the purchase of limited use fare cards (tickets)*
- iv. *Clipper Capital costs established by and/or resulting from Clipper Contract or Other Next Generation Clipper Contract change orders requested and funded by the region for the region's use and benefit*
- v. *All other lump sum and capital expense items in Attachment C, Payment Forms of the C2 SI Contract not enumerated above or covered under Appendix B-3.2(b) below*

*b. The Operators shall pay for the following Clipper capital costs:*

- i. *Capital costs associated with the purchase of limited use fare cards (tickets)*
- ii. *Clipper Program equipment purchased by an Operator pursuant to Article 8.7 of the Next Generation Clipper Contract, Purchase and Ownership of Equipment by Transit Operators*
- iii. *Clipper Capital costs established by and/or resulting from Clipper Contract or Other Next Generation Clipper Contract change orders requested and funded by an Operator for Operator's use and benefit*

**3. Allocation of Monthly Account-Based O/M Payments**

*Payments to the Clipper Contractor for Account-Based Operations and Maintenance of the Next Generation Clipper system under the Next Generation Clipper Contract, Article 3.8 and Attachment C-5, Payment Form for Operations & Maintenance, will be triggered by issuance of a C2 System Transition Notice to Proceed (NTP) from MTC to the Clipper Contractor setting the agreed-upon O/M Commencement Date as set forth in Article 8.2, Commencement, and indicating that Customer Transition to the Next Generation Clipper system can occur.*

- a. *Account-Based fixed monthly O/M payments shall be split 50%/50% between MTC and the Operators. Each Operator's share shall then be determined based on its Percentage of Clipper Ridership.*
- b. *Account-Based variable monthly KPI/SLA and retail incentive payments shall be split 50%/50% between MTC and the Operators. Each Operator's share shall then be determined based on its Percentage of Clipper Ridership.*
- c. *Operators shall pay for 100% of on-going pass-through fees associated with retailer commissions. Each Operator's share would then be determined based on its Percentage of Revenue Processed. "Percentage of Revenue Processed" shall mean the fee collected on behalf of each Operator by the Clipper 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) during the specified billing period.*
- d. *MTC shall pay for 100% of ongoing pass-through fees associated with the conversion of physical Clipper cards to virtual mobile cards and on-going pass-through fees associated with the use of virtual mobile cards and the Clipper mobile app.*

**4. Allocation of O/M Payments for Other Next Generation Clipper Contracts**

- a. Customer Service Center.
  - i. Fixed monthly O/M payments shall be split 50%/50% between MTC and the Operators. Each Operator's share shall then be determined based on its Percentage of Clipper Ridership.
  - ii. Variable monthly KPI/SLA incentive payments shall be split 50%/50% between MTC and the Operators. Each Operator's share shall then be determined based on its Percentage of Clipper Ridership.
- b. Payment Services. Operators shall pay for 100% of on-going pass-through fees associated with payment services. Each Operator's share would then be determined based on its Percentage of Revenue Processed.
- c. Fare Media. MTC shall pay for 100% of monthly O/M payments associated with the fare media fulfillment contract.

**5. Additional Operating Costs to be Paid by Operators**

- a. Reimbursement of Contracting Agency bank fees and direct bank charges in connection with the Clipper bank account(s) in excess of the amounts reimbursed under Section 6.A below
- b. Direct payment or reimbursement of Contracting Agency costs for network communication.
- c. Direct payment or reimbursement of Contracting Agency costs for materials necessary for additional printing, e.g. secondary printing or personalization, on Clipper cards
- d. Reimbursement of Contracting Agency costs for a portion of salary and benefits of any additional staffing as approved by the Executive Board to support the Clipper program.
- e. Reimbursement of Contracting Agency costs for a portion (at least fifty percent) of the salary and benefits of the Clipper Executive Director as approved by the Executive Board.
- f. Reimbursement of Operator costs for credit/debit interchange fees generated through an Operator-specific gateway associated with Clipper sales through customer service terminal devices and add value and ticket vending machines, as long as the total average fees do not substantially exceed the average Clipper fees.
- g. Reimbursement of incremental Clipper operating costs established by and/or resulting from Clipper Contract or Other Next Generation Clipper Contract change orders requested and funded by an Operator for 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 in Appendix B-3.3 and Appendix B-3.4 above.

**6. Revenue Allocation**

Revenues generated by the Clipper Program, exclusive of revenues related to the Clipper Contract addressed in Appendix B-1.4, 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 Contracting Agency's bank fees and direct bank charges related to the managing of the

*Clipper accounts;*

- B. After deduction of Contracting Agency's bank fees and charges under Section 6.A above, to reduce the Operators' Clipper operating costs listed in Section 3 above or in Section 4 above; and*
- C. After payment of Operators' Clipper operating costs listed in Section 3 or in Section 4 above, to be allocated to Operators by applying the Percentage of Cards Used by Operator, unless otherwise authorized by the Executive Board.*

*Notwithstanding the above, fees charged cardholders for card acquisition, card replacement, balance restoration, card refund processing, and other card- related activities shall be reserved to pay for fare media procurements and pass-through fees associated with virtual mobile cards and the Clipper mobile app; provided, however, that surcharges on limited use cards 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.)*

## **Appendix C**

### **Program Goals and Performance Measures**

*The performance standards below are intended to guide the development and ongoing operations of Clipper, however, specific actions and targets may be constrained by legal, fiscal and system limitations.*

#### **Goal: Provide an intuitive, efficient, and familiar experience**

- Electronic fare payment is the primary payment method for all transportation fares and fees
  - ✓ Mobile fare payment is integrated into and branded as Clipper
  - ✓ Parking at transit stations can be paid with Clipper
  - ✓ Bikeshare at transit stations can be paid with Clipper
  - ✓ Paratransit trips can be paid with Clipper
- Transit systems to move 100% to Clipper or incentivize use of Clipper, depending on mode
  - ✓ Heavy commuter rail and ferry systems accept only Clipper (extended and limited use)
  - ✓ Bus/light rail operators to adopt fare differentials to incentivize use of Clipper and transition remaining products to Clipper
- *Transit mobile payments are made primarily through the Clipper system once the account-based features are made available through the Clipper mobile app*
- *Acceptance of open payment is available primarily through the Clipper system*

#### **Goal: Provide excellent, proactive customer service**

- Customers can easily obtain and use Clipper
  - ✓ Media dispensing and reloading options are widely available
  - ✓ Clipper vending machines offering new cards and add-value are located at all heavy rail and ferry locations
  - ✓ Online transactions are immediately available for use
  - ✓ Third-party vendor locations are easily accessible in all service areas
  - ✓ Streamline process for refunds and replacements
  - ✓ Support payment for families, groups, institutional programs, and events

#### **Goal: Create a transparent, consistent, inclusive and timely decision-making process**

- Implement process for operator involvement in work plan development, field equipment procurement and change order process

#### **Goal: Govern the program efficiently and cost-effectively**

- Adopt standard fare categories and discount levels
  - ✓ Minimum \$0.50 discount for full-fare adult transfer customers to bus and light rail
  - ✓ Establish uniform youth discount for ages five to 18 and senior discount for ages 65 and older
  - ✓ *Establish uniform eligibility requirements for means-based discount program*
- Evaluate staffing plan to enhance internal program resources and reduce reliance on consultants

#### **Goal: Ensure that accurate and complete data is available to support decision making at every level**

- System integrates with vehicle on-board equipment to incorporate route, location and revenue information where necessary
- Clipper data is accessible to operators and the public to the full extent contemplated by the Clipper privacy policy

#### **Goal: Ensure program flexibility and responsiveness**

- System design and contract includes a streamlined process for common changes such as fare adjustments and route changes and additions

**Goal: Ensure operational efficiency and reliability**

- Ensure continued competitive equipment availability, automated status reporting and remote diagnostics
- Utilize open architecture

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## **Appendix D 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, and whether documents are exchanged in preparation for the ADR session. 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 complete their ADR process 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, as applicable, and to the state or federal courts to resolve their dispute.

### **3. Financial Obligations**

A Party who disputes amounts claimed by the Contracting Agency to be due under the MOU agrees to pay the amount claimed pending dispute resolution.

**Appendix E**  
**Special Provisions for the City and County of San Francisco**  
**(References to "City" in Paragraphs 1, 2 and 3 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. *Large Vehicle Driver Safety Training Requirements. The City and County of San Francisco requires that the employees its contractors and their subcontractors driving "large vehicles" within the City and County of San Francisco shall successfully complete either (a) the SFMTA's Large Vehicle Urban Driving Safety training program or (b) a training program that meets the SFMTA's approved standards for large vehicle urban driving safety. The SFMTA's approved standards for large vehicle urban driving safety is available for download at [www.SFMTA.com/largevehicletestingstandards](http://www.SFMTA.com/largevehicletestingstandards). This requirement does not apply to drivers providing delivery services who are not employees or subcontractors of the contractor. For purposes of this section, "large vehicle" means any single vehicle or combination of vehicle and trailer with an unladen weight of 10,000 pounds or more, or a van designed to carry 10 or more people. MTC, as Contracting Agency, has confirmed with its contractors that no equipment purchased from its*



*Next Generation Clipper Contract, Cubic Transportation System, Inc. will be delivered on large vehicles, as defined herein.*

5. *Protection of Private Information. San Francisco Administrative Code Chapter 12M establishes restrictions for City contractors on the use and disclosure of “private information” as defined in Chapter 12M. MTC, as Contracting Agency, is subject to restrictions on the use, disclosure, and storage of “personally identifiable information” protected under California Streets and Highways Code Section 31490. To that end, MTC has adopted a Clipper Privacy Policy, posted on the Clipper website, and Special Conditions Regarding Personally Identifiable Information, incorporated into the Clipper Operating Rules applicable to MTC and Clipper Operators, which are passed along to all Clipper contractors. Such efforts embody privacy protections at least as strict as Chapter 12M.*

6. *Payment Card Industry (PCI) Requirements. MTC, as Contracting Agency, shall to the extent applicable comply with, and require its contractors and service providers to comply with, current Payment Card Industry (PCI) standards, including the then in effect Payment Application Data Security Standard (PA-DSS), or the Software Security Framework (SSF), which includes the Secure Software Standard and the Secure Software Lifecycle (Secure SLC) Standard. PCI DSS standards apply to all system components, people, and processes that store, process, and transmit cardholder data, including any system components, people, and processes that could impact the security of the Cardholder Data Environment. Current compliant PCI attestations of compliance and PCI audits then in effect shall be provided to SFMTA upon request.*

*Bank Accounts. Collections that represent funds belonging to the City and County of San Francisco shall be deposited into a City and County of San Francisco bank account designated by the Office of the Treasurer and Tax Collector.*

**Appendix F**  
**Notices**

DRAFT

**AMENDMENT NO. 2 to****AMENDED AND RESTATED CLIPPER® MEMORANDUM OF UNDERSTANDING**

This is Amendment No. 2, effective as of October 1, 2020 (“Amendment No. 2 Effective Date”) to the Amended and Restated Clipper Memorandum of Understanding (the "MOU") dated February 19, 2016, as amended on April 17, 2017, by and among the Metropolitan Transportation Commission ("MTC") and the following transit operators participating in the Clipper program (referred to herein individually as an "Operator" or collectively as the "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 ("SFMTA"); the San Mateo County Transit District ("SamTrans"); the Santa Clara Valley Transportation Authority ("VTA"); the Peninsula Corridor Joint Powers Board ("Caltrain"); Central Contra Costa Transit Authority; City of Fairfield, as the operator of Fairfield and Suisun Transit; City of Petaluma; Eastern Contra Costa Transit Authority; Livermore/Amador Valley Transit Authority; Marin County Transit District; Napa Valley Transportation Authority; Solano County Transit; Sonoma County Transit; Sonoma-Marin Area Rail Transit; Vacaville City Coach; Western Contra Costa Transit Authority; San Francisco Bay Area Water Emergency Transportation Authority; City of Santa Rosa; and City of Union City; and any other transit operators that implement Clipper and execute a Supplemental Agreement to the MOU.

MTC and the Operators are referred to herein collectively as the "Parties" or individually as a "Party".

Recitals

1. *On September 26, 2018, MTC, as Contracting Agency under this MOU, entered into a contract (the “Next-Generation Clipper Contract”) with Cubic Transportation Systems, Inc. (the “Clipper Contractor”), to act as system integrator for the next-generation Clipper fare payment system (the “Next-Generation Clipper System”), including system design, development and testing, installation and transition, operations and maintenance, and end-of-term transition.*
2. *In order to ensure a smooth transition from the current Clipper fare payment system to the Next-Generation Clipper system, MTC extended its contract with the Clipper Contractor – to implement, operate and maintain the Clipper fare payment system through November 2, 2019 (the “Clipper Contract”) – for a period of up to five years (“Clipper Contract O&M Extension Period”), through November 2, 2024.*
3. *During the four years since the Parties entered into the MOU, the use of Clipper has expanded beyond public transit and outside the nine counties represented by the Operators.*

4. *The Parties now wish to amend the MOU to address changes to the Clipper program, including the expanded use of Clipper and the implementation, operation and maintenance of the Next-Generation Clipper fare payment System. Such changes affect cost allocation agreements among MTC and the Operators to pay for the Accelerated Deployment operation and maintenance costs associated with the implementation of a Clipper mobile app, and procurement and installation of next-generation devices during the Clipper Contract O&M Extension Period.*
5. *The purpose of the amendment to Appendix B-3 of the MOU is to identify and define the cost allocation agreements among MTC and the Operators during the Clipper Contract O&M Extension Period. The Clipper Contract O&M Extension Period includes two payment mechanisms: a line item based price structure as described in the Clipper Contract and a time and materials reimbursement. Under the terms of the Clipper Contract O&M Extension, the line item price structure will apply through at least November 2, 2021. Thereafter, payment may continue in accordance with the Clipper Contract line item price structure, or, if mutually agreed to by MTC and the Clipper Contractor, and with one year's advance notice, transition to time and materials payment. Sections 1 and 2 of Appendix B-3 establish the cost allocation agreements among the Parties through at least November 2, 2021, and apply also to any subsequent Clipper Contract O&M Extension Period years paid for according to the line item price structure in the Clipper Contract. Section 3 of Appendix B-3 allocates costs among the Parties during any time and materials payment years in the Clipper Contract O&M Extension Period. Section 4 of Appendix B-3 allocates revenue from the Clipper Contract, regardless of the form of payment to the Clipper Contractor.*
6. *For purposes of this Amendment No. 2, references to the "Clipper program" or "Clipper" refer collectively to the systems implemented under the Clipper Contract, the Next- Generation Clipper Contract, and other contracts to be entered into to implement and operate the current and Next- Generation Clipper System.*

*The MOU is amended as follows:*

1. Article I, Operator Responsibilities, is deleted in its entirety and replaced by a new Article I, Operator Responsibilities, to read as follows:

#### **ARTICLE I, Operator Responsibilities**

Each Operator agrees to:

- A. Implement and operate the Clipper program in accordance with the Clipper Operating Rules, as adopted and amended from time to time, consistent with the consultation and approval process set forth in Appendix A, Process for Amending Clipper Operating Rules, attached hereto and incorporated herein by this reference. The Clipper Operating Rules establish operating parameters and procedures for the consistent and efficient operation of Clipper throughout the region. The current version of the Clipper Operating Rules is available on MTC's website at <http://clipper.mtc.ca.gov>

- B. Pay its share of Clipper costs, including costs of the salary of additional Clipper staff necessary to support the Executive Board, according to Appendix B, Clipper Cost and Revenue Allocation, as amended, attached hereto and incorporated herein by this reference. Changes to Appendix B require an amendment to the MOU in accordance with Article XI.A.
- C. Make its facilities and staff available for implementation and operation of Clipper. Any Operator and the Contracting Agency may agree to an Operator-specific implementation plan, setting forth specific requirements regarding implementation and operation of Clipper for such Operator.
- D. Make determinations regarding the placement of Clipper equipment on the Operator's facilities and equipment; perform necessary site preparation; attend Clipper Contractor training on the use of the Clipper equipment; and provide training to employees using the equipment.
- E. ~~Beginning two years after the effective date of this Agreement, and every two years thereafter, p~~Participate in a ~~regular~~ *as-needed* reviews of the cost and revenue allocation formulas in Appendix B; to support fairness among Operators and to accommodate changes in shared operation costs.
2. Article II, MTC Responsibilities, is amended to add subsection G, as follows:
- G. *Enter into Affiliate Participant agreements in accordance with Article VI.B.*
3. Article IV, Clipper Executive Board, is deleted in its entirety and replaced by a new Article IV, Clipper Executive Board, to read as follows:

#### **ARTICLE IV, Clipper Executive Board**

- A. Role; Composition. The Parties agree that responsibility for the *policy oversight and* management of the ~~current~~ Clipper program ~~as well as the strategic planning effort to procure and implement a future system on or before the termination of the current Clipper Contract,~~ shall reside with a Clipper Executive Board ("Executive Board"). The Executive Board's responsibilities shall be executed in a manner consistent with the Operator, MTC and Contracting Agency responsibilities set forth in Articles I, II and III, respectively. The Executive Board shall be comprised of nine members: one representative each from SFMTA, BART, Caltrain/SamTrans, AC Transit, VTA, GGBHTD and MTC, and two representatives who are selected to represent all other Operators (the "Small Operators") in the sole discretion of the Small Operators. Each representative shall be at the General Manager or Senior Management level.
- B. Principles. The Executive Board shall adhere to the following principles:
1. The Clipper program shall continue as the primary electronic fare collection system for the Operators.

2. Each member of the Executive Board commits to actively advance the continued successful operation, maintenance and growth of the Clipper program on a cost effective, operationally efficient, and coordinated basis.
3. Promote efforts to reduce the overall cost of the Clipper program, including operating costs, capital costs and consultant expense.
4. Promote regional efforts to simplify fare structures while protecting revenue levels.

C. Duties. The Executive Board shall undertake the following duties:

1. Meet in accordance with a regular meeting schedule established by the Executive Board, not less than quarterly.
2. Establish goals for the Clipper program, including targets to increase market penetration and cost containment initiatives. The Program Goals and Performance Measures are attached as Appendix C, and may be amended by unanimous vote of the Executive Board from time to time.
3. Propose for review by MTC, Operators and other funding sources (collectively, the "Funding Agencies") a biennial capital and operating budget for the Clipper program. Revise and adopt the proposed budget in accordance with the Clipper budgets adopted and/or allocations made by each of the Funding Agencies. The biennial budget will outline staffing requirements and resources needed to accomplish the work plan. The budget will define required funding, identify funding sources, and specify the amount of individual agency contributions.
4. Adopt a detailed biennial work plan to implement the established goals and budget.
5. Designate the Contracting Agency, as further described in and subject to Article IV.D, and provide policy oversight, advice, and direction to the Contracting Agency.
6. Evaluate the performance of the Clipper Executive Director on at least an annual basis. The Board will develop goals and objectives jointly with the Clipper Executive Director, which will form the basis for the annual evaluation.
7. Review and authorize Significant Business Matters as described in Article IV.E.
8. Establish such procedures as shall be necessary or desirable to facilitate compliance by the Executive Board with the Ralph M. Brown Act (Government Code Section 54950 *et seq.*) (the "Brown Act") and other applicable laws.

- D. Designation of a Contracting Agency. The Executive Board shall designate one of the Parties to serve as the "Contracting Agency" with the responsibilities defined in Article III. MTC shall serve as the initial Contracting Agency. The Executive Board shall review the designation of the Contracting Agency not more often than once every three (3) years and may designate any of the Parties as a new Contracting Agency no later than one year prior to the proposed assignment date, which designation may be subject to the approval of the governing board of the proposed new Contracting Agency. In the event of a new designation, the then-current Contracting Agency shall seek approval from its governing board to assign all outstanding contracts, funding agreements, licenses, and accounts to the newly designated Contracting Agency and, if it receives approval from its governing board for such assignment, take such other actions as may be necessary or convenient to effect the transition of the Contracting Agency role. In the event of a change from the role of MTC as the Contracting Agency, the Executive Board will work with MTC and the successor Contracting Agency to protect or minimize loss or degradation of jobs for Clipper support staff at MTC.
- E. Significant Business Matters. The Executive Board shall decide all Significant Business Matters by a majority vote. "Significant Business Matter" shall mean any matter that can reasonably be expected to have a substantial financial impact (defined as an impact of \$250,000 or more) or a substantial operating impact (defined as causing operations to fall below then-current annual operational goals) on Clipper or any of the Parties. Significant Business Matters, include, but are not limited to the following:
1. Approval of Clipper *Program Contracts and Change Orders* that exceed the maximum authority levels established by the Contracting Agency's procurement rules for its chief executive officer, or \$250,000, whichever is less, or that are not funded in the biennial budget. Contracting Agency governing board approval may also be required.
  2. Amendments to the Clipper Operating Rules, pursuant to Appendix A.
  3. Acceptance of new Parties to the Clipper program. The Executive Board delegates to MTC the authority to sign supplemental agreements with new Parties accepted into the program, as provided in Article VI.
  4. *Acceptance of Clipper Affiliate Participants, as described in Article VI.B, and implementation of new business ventures or opportunities for the Clipper program.*
  - ~~5. Contract awards for contract amounts that exceed the maximum authority levels established by the then-current Contracting Agency's procurement rules for its chief executive officer, or \$250,000, whichever is less. Contracting Agency governing board approval may also be required.~~
  5. Assignment of the *Next-Generation Clipper Contracts*. Contracting Agency approval shall also be required.

6. Approval of expenses (administrative, operating and legal) incurred by the Contracting Agency if in excess of or not contemplated by the current approved budget.
- ~~7. Approval of the Clipper® 2.0 rollout strategy.~~
7. Decision whether any other matter, not expressly included or excluded as a Significant Business Matter in this list, is a Significant Business Matter in accordance with the definition above.

The foregoing definition of “Significant Business Matters” may be amended by unanimous vote of the Executive Board from time to time.

- F. Quorum. Five members of the Executive Board constitute a quorum. In the absence of a quorum, a smaller number of Executive Board members may secure the attendance of absent members by video conference, teleconference or other means compliant with the Brown Act to establish a quorum. Only eligible voting members shall be counted to establish a quorum.
  - G. Voting. Each member of the Executive Board shall have one vote. A vote of a majority of the Executive Board is required for approval. Executive Board members may not abstain from voting on any matter before the Executive Board, except in cases of conflicts of interest.
  - H. Board Chair; Committees. The Executive Board shall bi-annually elect a Chair and Vice Chair from its members. The Chair shall provide administrative staff support to the Executive Board, as needed as determined by the Chair and the Clipper Executive Director. The Chair may appoint advisory committees or working groups for specified projects of limited duration. The Executive Board may establish standing committees from time to time.
  - I. Delegates. Executive Board members may appoint, in writing, delegates to vote on their behalf in the event of a member's absence from any Executive Board meeting, for up to four (4) meetings per calendar year. No voting rights are accorded to delegates, nor do delegates count toward a quorum of the Executive Board, when they are representing an Executive Board member for meetings after four (4) missed meetings in a calendar year.
4. Article VI, New Operator Participants, is amended as follows:

The title of Article VI is amended to read: “*New Operator and Affiliate Participants*,” and a new subsection B is added to Article VI, entitled “*Affiliate Participants*”.

- A. *New Operator Participants.* Any Bay Area transit operator not a Party to this Agreement must be approved by the Executive Board and agree to the terms of the MOU then in effect as a condition of implementing Clipper, by entering into a supplemental agreement to this MOU accepting the then-current terms of this MOU. Signature by the other Parties to the MOU is not required. MTC shall not enter into a supplemental agreement



with a particular operator prior to the issuance of a Change Notice to the Clipper Contract covering all or a portion of the work required to accept such operator into the system. MTC shall provide the other Parties to the MOU with written notice of each supplemental agreement. *“Bay Area transit operator”, for purposes of this Article VI means a transit operator with headquarters located within the nine counties within MTC’s jurisdiction.*

- B. *Affiliate Participants. The Executive Board must approve implementation of Clipper or use of the Clipper card, brand, or application on any transit operator with headquarters located outside the Bay Area or by a business that is not a transit operator (collectively, “Affiliate Participants”), with the exception of institutional programs such as university or employee programs. Affiliate Participants shall be required to enter into an agreement with the Contracting Agency accepting the then-current terms of the MOU and agreeing to additional terms and conditions for implementation of Clipper or use of the Clipper card, brand, or application. Any additional costs incurred by the Clipper program shall be paid for in accordance with such agreements. In addition, the Contracting Agency shall include indemnification provisions in such agreements at least as stringent as those set forth in Article VII.*

5. Article VIII, Term, is amended as follows:

The term of the MOU shall begin on the Effective Date and continue through *February 19, 2026*~~June 30, 2025~~, unless terminated by written agreement of the Parties.

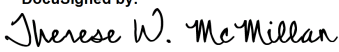
6. Appendix B-3, Clipper Cost and Revenue Allocation Effective January 1, 2017, is deleted in its entirety and replaced with a new Appendix B-3, attached hereto and incorporated herein by this reference.
7. A new Appendix B-4, Next-Generation Clipper Contract Operations & Maintenance (O&M) Cost Allocation, is added, attached hereto and incorporated herein by this reference.
8. All other terms of the MOU not amended herein shall remain in full force and effect.


SIGNATURES ON SUBSEQUENT PAGES

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


**Metropolitan Transportation Commission**

Approved as to form:  
Adrienne D. Weil, General Counsel


DocuSigned by:  
  
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Name: Therese W. McMillan  
Title: Executive Director  
  
Date: 8/13/2020

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Leslie G. Miessner, Senior Counsel

**Alameda-Contra Costa Transit District**

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Name: Michael A. Hursh  
Title: General Manager  
Date: 8/31/2020

Approved as to form:

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Jill A. Sprague, General Counsel

**Golden Gate Bridge, Highway and  
Transportation District**

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*Denis Mulligan*

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Name: Denis J. Mulligan

Title: General Manager

Date: 10/2/2020

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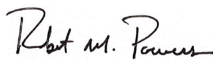
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*Kim Manolius*

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Kimon Manolius, General Counsel

**San Francisco Bay Area Rapid Transit District**


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Name: Robert M. Powers

Title: General Manager

Date: 9/10/2020

Approved as to form:

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Matthew Burrows, General Counsel

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

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Name: Jeffrey Tumlin

Title: Director of Transportation

Date: 8/14/2020

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

DocuSigned by:



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Robin M. Reitzes, Deputy City Attorney

**San Mateo County Transit District**

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*Jim Hartnett*

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Name: Jim Hartnett

Title: General Manager / CEO

Date: 8/17/2020

Approved as to form:

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*Joan L. Cassman*

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Joan L. Cassman, General Counsel

**Santa Clara Valley Transportation Authority**

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*Nuria I. Fernandez*

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Name: Nuria I. Fernandez

Title: General Manager/ Chief Executive Officer

Date: 8/14/2020

Approved as to form:

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*Shannon Smyth-Mendoza*


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Shannon Smyth-Mendoza, Sr. Assistant Counsel



**Peninsula Corridor Joint Powers Board**

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Name: Jim Hartnett  
Title: Executive Director  
Date: 8/17/2020

Approved as to form:  
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Joan L. Cassman, General Counsel

**Central Contra Costa Transit Authority**

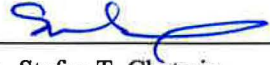
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*Rick Ramacier*  
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Name: Rick Ramacier  
Title: General Manager  
Date: 8/28/2020


Approved as to form:

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*Madeline Chun*  
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Madeline Chun, General Counsel

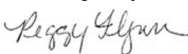
**City of Fairfield  
Fairfield and Suisun Transit**

Approved as to form:

*PK*   
\_\_\_\_\_  
Name: Stefan T. Chatwin  
Title: City Manager  
Date: 9/17/20

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Greg Stepanicich, City Attorney

**City of Petaluma**

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Name: Peggy Flynn

Title: City Manager


Date: 9/27/2020

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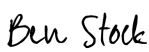
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Eric W. Danly, City Attorney

**Eastern Contra Costa Transit Authority**

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Name: Jeanne Krieg  
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Ben Stock, General Counsel

**Livermore/Amador Valley Transit Authority**

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Name: Michael S. Tree

Title: Executive Director

Date: 9/16/2020

Date: \_\_\_\_\_

Approved as to form:

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*Michael N. Conneran*  
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Michael N. Conneran, General Counsel

**Marin County Transit District**

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*Nancy E. Whelan*

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Name: Nancy E. Whelan

Title: General Manager

Date: 9/3/2020

Approved as to form:

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*Brian Case*

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Brian Case, Deputy County Counsel

**Napa Valley Transportation Authority**

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*Kate Miller*

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Name: Kate Miller

Title: Executive Director

Date: 8/23/2020

Approved as to form:

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*DeeAnne Glick*

B1318679F0D243C...

DeeAnne Glick, General Counsel



**Solano County Transit**

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*Beth Kranda*  
B48C81AGFG3F41D...

Name: Beth Kranda  
Title: Executive Director

Date: 8/24/2020

Approved as to form:

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*Bernadette Curry*  
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Bernadette Curry, General Counsel

**Sonoma County Transit**

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Name: Bryan Albee

Title: Transit Systems Manager

8/25/2020

Date: \_\_\_\_\_

Approved as to form:

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Jeremy Fonseca, General Counsel

**Sonoma-Marin Area Rail Transit District**

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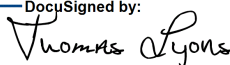
Name: Farhad Mansourian

Title: General Manager

8/19/2020

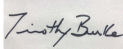
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Thomas Lyons, General Counsel

**Vacaville City Coach**

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Name: Tim Burke  
Title: Interim Director of Public Works  
Date: 10/22/2020

Approved as to form:

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Melinda C. H. Stewart, General Counsel

**Western Contra Costa Transit Authority**

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*Charles Anderson*

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Name: Charles Anderson

Title: General Manager

9/11/2020

Date: \_\_\_\_\_

Approved as to form:

DocuSigned by:

*Michael N. Conneran*

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Michael N. Conneran, General Counsel

**San Francisco Bay Area Water Emergency  
Transportation Authority**

DocuSigned by:  
*Nina Rannells*  
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Name: Nina Rannells

Title: Executive Director

Date: 9/8/2020

Approved as to form:

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*Steve Miller*  
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Steven Miller, General Counsel

**City of Santa Rosa**

*Sean McGlynn*

Sean McGlynn (Dec 27, 2020 09:28 PST)

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Name: Sean McGlynn

Title: City Manager

Date: \_\_\_\_\_

Approved as to form:

*Jess Mullan*

Jessica Mullan (Dec 15, 2020 11:47 PST)

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Jessica Mullan, City Attorney

**City of Union City**

DocuSigned by:

*Joan Malloy*

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Name: Joan Malloy

Title: City Manager

9/4/2020

Date: \_\_\_\_\_

Approved as to form:

DocuSigned by:

*Kristopher J. Kokotaylo*

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Kristopher J. Kokotaylo, City Attorney



**Appendix B-3, Clipper Contract Cost and Revenue Allocation Effective January 1, 2017****1. Cost Allocation Among Operators**

The allocation of Clipper operating costs to each Operator shall be tied to the cost driver of each category of operating expense outlined in Section 2.B. The percent allocation in each category will be based on actuals by Operator. "Percentage of Cards Used" by Operator will be used to assess operating fees for account-based, fixed or other costs not directly attributable to either transit transactions or revenue and will be based on the number of individual cards used at least once on an Operator's system. "Fee-Generating Transit Transactions" shall mean any activity in which a Clipper card is used to receive service on or from an Operator's system that results in a charge pursuant to Attachment 2 to Part I of the contract between MTC and Cubic for the operation of Clipper. "Revenue Processed" shall mean the fee collected on behalf of each Operator by the Clipper 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).

The allocation of Clipper operating costs to each Operator *while the current Clipper Contract line item pricing structure is applicable* shall be based on the following formula:

<b>MOU Section 2.B.i</b>	<b>Fee Category</b>	<b>Allocation Formula</b>
a,b,c	9.0 Cardholder Support Services	Percentage of Cards Used
d,e,f	10.0 Third Party Load Service Fees	Percentage of Cards Used
g	11.0 Autoload Services	Percentage of Cards Used
h	13.22.45 Supplemental Operations	Percentage of Cards Used
i	13.31 Clipper Transaction Fee	Percentage of Fee-Generating Transit Transactions
j,k,l,m	13.60-90 Incremental Credit/Debit Card Interchange Fees	Percentage of Revenue Processed
n	Reimbursement of Bank Fees/Direct Charges	Percentage of Revenue Processed
o	Network Communication	Direct Charge to Operator
p	Specialized Card Printing	Direct Charge to Operator
q,r	Operator Share of Staffing	Percentage of Cards Used
s	Add Value/TVM Debit Card Interchange Fees for Non-Clipper Gateways	Percentage of Revenue Processed

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

- a. Clipper Data Server (CDS) Store operating costs specified below for any CDS Store implemented on such Operator's site; *and*

- ~~b. Credit/debit interchange fees charged through ticket office terminal devices using an Operator specific credit/debit gateway. This responsibility is subject to review pursuant to Article I.E to ensure that no single Operator is unfairly burdened by such fees; and~~
- b. Incremental Clipper operating costs established by and/or resulting from Clipper Contract change orders requested and funded by an Operator for 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. Clipper Costs

### A. MTC Operating and Maintenance Costs. MTC shall pay the following Clipper operating costs *under the Clipper Contract's line item pricing structure*:

- i. All fixed operating costs of the Clipper clearinghouse and equipment maintenance services costs as specified in the Clipper Contract's Price Schedule (Attachment 2 to the Clipper Contract) (the "Price Schedule"), including:
- a. Item 3.20 Program Management – Operations and Maintenance
  - b. Item 3.30 Clipper 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 Clipper operating costs as specified in the Price Schedule (Attachment 2 to the Clipper Contract), specifically:
- a. Item 7.10-2 Senior and Youth Card Mail-In Applications
  - b. Item 8.10(a-g) Card Distribution Services
  - c. Item 8.11 Card Distribution Services
  - d. Item 8.12 Card Distribution Services
  - e. Item 8.20 Cardholder Education
  - f. Item 8.31 Location Acquisition for Completion of Distribution Network
  - g. Item 8.32 Location Acquisition for Completion of Distribution Network
  - h. Item 8.41 Pass Through of Amounts Paid for Installation of Phone Lines
  - i. Item 9.41 Fixed and Incremental Fees Per Active Card Account (50% of the invoiced amount)

- j. Item 9.5 Service Level Standard Incentives and Abatements
  - k. Item 13.100 Mobile Website Operations and Maintenance
- iii. All other lump sum and capital expense items specified in the Price Schedule not enumerated above or covered by Section 2.B.

B. Operator Operating Costs under the Clipper Contract's Line Item Pricing Structure.

- i. Operators shall pay the following listed Clipper operating costs in accordance with the cost sharing formula in Section I, reduced by any amounts payable by MTC pursuant to Section 2.A. References to Item numbers refer to the corresponding prices payable to the Clipper Contractor under the Price Schedule, which are subject to annual price adjustment as specified in Article 13.6 of the Clipper Contract:
  - a. Item 9.24 Balance Protection Services Registration
  - b. Item 9.25 Lock/unlock Clipper Application
  - c. Item 9.41 Fixed and Incremental Fees Per Active Card Account (50% of the invoiced amount)
  - d. Item 10.11 Clipper E-purse Load
  - e. Item 10.12 Pass/Stored Ride Load
  - f. Item 10.24 Employer Program Commission
  - g. Item 11.0 Autoload Services
  - h. Item 13.22.45 Supplemental Monthly Operations and Admin
  - i. Item 13.31 Clipper 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 Contracting Agency bank fees and direct bank charges in connection with the Clipper bank account(s) in excess of the amounts reimbursed under Section 34.A below
  - o. Direct payment or reimbursement of Contracting Agency costs for network communication.
  - p. Direct payment or reimbursement of Contracting Agency costs for materials necessary for additional printing, e.g. secondary printing or personalization, on Clipper cards
  - q. Reimbursement of Contracting Agency costs for a portion of salary and benefits of any additional staffing as approved by the Executive Board to support the Clipper program.
  - r. Reimbursement of Contracting Agency costs for a portion (at least fifty percent) of the salary and benefits of the Clipper Executive Director as approved by the Executive Board.
  - s. Reimbursement of Operator costs for credit/debit interchange fees ~~charged through an Operator-specific gateway associated with Clipper sales through generated through an Operator-specific gateway associated with~~ *Clipper sales through ticket office terminal (TOT)*

*devices and add value and ticket vending machines, as long as the total average fees do not substantially exceed the average Clipper fees. ~~Reimbursement procedures are subject to the adoption by the Clipper Executive Board at least 90 days in advance.~~*

- ii. Changes or Additions to Operator Operating Costs Items. Except as reserved for Executive Board approval in 2.B(i)(q, r, s), substantive changes or additions to the Operator-paid operating cost items set forth in Section 2.B(i) require an amendment to this Appendix B and approval of all Parties to the MOU as of the date of the change or addition.
- iii. Contracting Agency shall invoice each Operator on a monthly basis for its share of the operating costs. The Operators shall pay Contracting Agency within fifteen (15) calendar days of receipt of such invoice.

**3. *Cost Allocation of Time and Materials Payments to Clipper Contractor during Clipper Contract O&M Extension Period***

*Any payments to the Clipper Contractor on a time and materials basis during the Clipper Contract O&M Extension Period, exclusive of pass-through fees, will be split equally (50%/50%) between MTC and the Operators. The Operators' share shall then be further allocated to each Operator based 50% on its Percentage of Cards Used and 50% on its percentage of Fee-Generating Transit Transactions.*

*Pass-through fees shall be allocated to Operators as set forth Sections 1 and 2 above.*

**4. *Revenue Allocation***

Revenues generated by Clipper 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 Contracting Agency's bank fees and direct bank charges related to the managing of the Clipper accounts;
- B. After deduction of Contracting Agency's bank fees and charges under Section 34.A above, To reduce the Operators' Clipper operating costs listed in Section 2.B(i) or in Section 3 above; and
- C. After payment of Operators' Clipper operating costs listed in Section 2.B(i) or in Section 3 above, to be allocated to Operators by applying the percentage of cards used by Operator specified in Section I herein, unless otherwise authorized by the Executive Board.

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.)

**Review**

~~The Parties acknowledge that this Appendix B is based upon and specific to the payment terms of the existing Clipper Contract which has a term through November 2, 2019. Therefore, the Parties agree to commence timely, good faith negotiations to implement revisions to this Appendix B necessitated by any Executive Board approval of (a) any extension to the existing Clipper contract or (b) any contracts that succeed or replace the existing Clipper contract, whether in whole or in part, that would take effect on such successor contract's effective date."~~

**Appendix B-4*****Next-Generation Clipper Contract Operations & Maintenance (O&M) Cost Allocation*****1. *Allocation of Fixed Monthly Accelerated Deployment O&M Payments***

*Payments to the Clipper Contractor for Accelerated Deployment of the Next-Generation Clipper system under the Next-Generation Clipper Contract will be triggered by issuance of a Notice to Proceed (NTP) from MTC to the Clipper Contractor for the Accelerated Deployment Mobile Application and another NTP for Accelerated Deployment of Next-Generation Clipper System equipment.*

- a. Accelerated Deployment fixed monthly O&M payments triggered by MTC issuance of an NTP for the Clipper mobile application shall be split 50%/50% between MTC and the Operators. Each Operator's share would then be determined based 50% on its Percentage of Unique Cards Used and 50% on its percentage of Fee-Generating Transit Transactions.*
- b. Accelerated Deployment fixed monthly O&M payments triggered by issuance of an NTP for the procurement and installation of Next-Generation Clipper equipment shall be split 50%/50% between MTC and the Operators. Each Operator's share would then be determined based 50% on its Percentage of Cards Used and 50% on its percentage of Fee-Generating Transit Transactions (excluding BART's Fee-Generating Transit Transactions from the total count).*
- c. MTC shall pay for 100% of the pass-through fees associated with the conversion of physical Clipper cards to virtual mobile cards.*
- d. On-going pass-through fees associated with the use of virtual mobile cards shall be split 50%/50% between MTC and the Operators. Each Operator's share would then be determined based on its Percentage of Unique Cards Used.*

## AMENDED AND RESTATED CLIPPER® MEMORANDUM OF UNDERSTANDING

This Amended and Restated Clipper® Memorandum of Understanding (this "MOU") is entered into as of the ~~14<sup>th</sup>~~ day of February, 2016 (the "Effective Date"), by and among the Metropolitan Transportation Commission ("MTC") and the following transit operators participating in the Clipper® program (referred to herein individually as an "Operator" or collectively as the "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 ("SFMTA"); the San Mateo County Transit District ("SamTrans"); the Santa Clara Valley Transportation Authority ("VTA"); the Peninsula Corridor Joint Powers Board ("Caltrain"); Central Contra Costa Transit Authority; City of Fairfield, as the operator of Fairfield and Suisun Transit; City of Petaluma; Eastern Contra Costa Transit Authority; Livermore/Amador Valley Transit Authority; Marin County Transit District; Napa County Transportation and Planning Agency; Solano County Transit; Sonoma County Transit; Sonoma-Marin Area Rail Transit; Vacaville City Coach; Western Contra Costa Transit Authority; San Francisco Bay Area Water Emergency Transportation Authority; City of Santa Rosa; and City of Union City; and any other transit operators that implement Clipper® and execute a Supplemental Agreement to the MOU.

MTC and the Operators are referred to herein collectively as the "Parties" or individually as a "Party".

### Recitals

1. Clipper® (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 entered into a contract (the "Clipper® Contract") with Cubic Transportation Systems, Inc. (the "Clipper® Contractor"), to implement, operate and maintain the Clipper® fare payment system through November 2, 2019.
3. On December 12, 2003, MTC and six of the Operators entered into an interagency participation agreement (the "IPA") to create a forum for joint agency decision-making (the "TransLink® Consortium") to work towards the successful implementation of the TransLink® automated fare payment system. The IPA was superseded and replaced by a Memorandum of Understanding Regarding Operations and Maintenance of Clipper® Fare Collection System dated November 10, 2011, by and among MTC and, initially, seven of the Operators (the "2011 MOU"). The 2011 MOU delineated, among other things, MTC's responsibilities, including as contracting agency, the Operators' responsibilities, a consultation process for amending the Clipper® Operating Rules, allocation of operating expenses among the Operators and MTC, and a dispute resolution process.
4. The Parties have examined the successes and challenges of the program to date and have identified certain areas in which existing arrangements should be modified or clarified to maximize the benefits to the Parties and Bay Area transit customers of the continued expansion, modification, operation and maintenance of the Clipper® program.

5. The Parties now wish to amend and restate the 2011 MOU in its entirety to clarify their respective roles and responsibilities, define roles and responsibilities for a newly-defined "Contracting Agency," establish a "Clipper® Executive Board," and establish a Clipper® Executive Director to ensure the successful operation and maintenance of Clipper®.

## ARTICLE I Operator Responsibilities

Each Operator agrees to:

- A. Implement and operate the Clipper® fare payment system in accordance with the Clipper® Operating Rules, as adopted and amended from time to time, consistent with the consultation and approval process set forth in Appendix A, Process for Amending Clipper® Operating Rules, attached hereto and incorporated herein by this reference. The Clipper® Operating Rules establish operating parameters and procedures for the consistent and efficient operation of Clipper® throughout the region. The current version of the Clipper Operating Rules® is available on MTC's website at <http://www.mtc.ca.gov/planning/tcip/>.
- B. Pay its share of Clipper® costs, including costs of the salary of additional Clipper® staff necessary to support the Executive Board, according to Appendix B, Clipper® Cost and Revenue Allocation, attached hereto and incorporated herein by this reference. Changes to Appendix B require an amendment to the MOU in accordance with Article XI.A.
- C. Make its facilities and staff available for implementation and operation of Clipper®. Any Operator and the Contracting Agency may agree to an Operator-specific implementation plan, setting forth specific requirements regarding implementation and operation of Clipper® for such Operator.
- D. Make determinations regarding the placement of Clipper® equipment on the Operator's facilities and equipment; perform necessary site preparation; attend Clipper® Contractor training on the use of the Clipper® equipment; and provide training to employees using the equipment.
- E. Beginning two years after the effective date of this Agreement, and every two years thereafter, participate in a review of the cost and revenue allocation formula in Appendix B, to support fairness among Operators and to accommodate changes in shared operation costs.

## ARTICLE II MTC Responsibilities

MTC agrees to:

- A. Fund a portion of the Clipper® operating and maintenance costs, including costs of the salary of additional Clipper® staff necessary to support the Executive Board, as set forth in Appendix B. Subject to availability of necessary funds, inclusion of projects in the Regional Transportation Plan and Transportation Improvement Program where necessary, and receipt of all necessary Commission approvals, budget appropriations and



allocations, MTC will continue to fund capital and Contracting Agency operating costs in the manner that it has funded capital and Contracting Agency operating costs to date, through a dedicated allocation of federal, state and local funds, both discretionary and project designated. Recommended annual capital allocations will be identified in the work plan approved by the Executive Board. (See Article IV.C.4.)

- B. 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 Parties upon request through reasonable means and at reasonable times. Parties may request that Materials be made available for the most recently closed fiscal year during the term of this MOU and for up to one year thereafter; provided, however, that nothing in this Article II.B is intended to limit a Party's rights to obtain records under the California Public Records Act (Government Code Section 6250 *et seq.*).
- C. Continue to serve as the Contracting Agency (described in Article III), and continue to provide adequate staffing to support the Clipper® program under the direction of the Clipper® Executive Director (described in Article V), until such time as the Executive Board designates, and MTC's Commission approves, the assignment of MTC's duties as Contracting Agency to another Party pursuant to Article IV.D.
- D. Employ the initial Clipper® Executive Director (described in Article V). MTC reserves the right to make decisions regarding hiring, promotion, termination, compensation, and removal of the initial Clipper® Executive Director. Selection of a successor Executive Director shall be in accordance with Article III.J.
- E. Continue to create and maintain all copyrights and other intellectual property necessary or convenient for the operation of the Clipper® fare payment system and provide any necessary licenses to use such intellectual property to the Contracting Agency, if other than MTC.
- F. Enter into supplemental agreements with new operator participants in accordance with Article VI.

### **ARTICLE III Contracting Agency Responsibilities**

The Contracting Agency agrees to:

- A. On behalf of the Parties, procure, award, manage and carry out the duties and responsibilities of the Clipper® program counterparty under all contracts necessary for the expansion, modification, modernization, operation, maintenance, marketing and customer service of the Clipper® fare payment system, including the Clipper® Contract and any successor contract and any contracts for associated professional services for the Clipper® program as a whole.
- B. Establish, manage and implement Clipper® Operating Rules in accordance with Appendix A.
- C. Provide regular updates (at least quarterly) on the Clipper® program to the Parties.

- D. Support the Parties with respect to Articles I.E and II.A by providing system data affecting the cost allocation formula.
- E. Own specified Clipper® program capital equipment, as may be required by grant or funding agency rules and regulations, and transfer ownership, to the greatest extent permitted under such rules and regulations, to any successor Contracting Agency.
- F. Hold and manage the Clipper® 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 on the services provided by the Operators, and for the benefit of the Operators for funds due to Operators until dispersed to such Operators.
- G. Conduct an annual contract compliance audit covering Clipper® program revenue collection and allocation and cost allocation responsibilities under the MOU and provide a copy of the complete audit report to all Parties upon conclusion of each such annual audit.
- 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 Parties upon request through reasonable means and at reasonable times. Parties may request that Materials be made available for the most recently closed fiscal year during the term of this MOU and for up to one year thereafter; provided, however, that nothing in this Article III.H is intended to limit a Party's rights to obtain records under the California Public Records Act (Government Code Section 6250 *et seq.*).
- I. Serve as the Application Issuer and Card Issuer, as those terms are defined in the Clipper® Operating Rules.
- J. Engage the Clipper® Executive Director in accordance with Article V. The Contracting Agency reserves the right to make decisions regarding hiring, promotion, termination, compensation, and removal of the Clipper® Executive Director provided that it shall not engage the successor to the initial and successor Executive Directors without the concurrence of the Executive Board. The Contracting Agency shall collaborate with the Executive Board in considering potential candidates for Executive Director.
- K. Provide adequate staffing (including program and legal staff) to support the Clipper® program. The Contracting Agency reserves the right to make decisions regarding hiring, promotion, termination, compensation and removal of program staff.
- L. Provide necessary logistical and technological support to the Executive Board and any committees thereof, except as provided in Article IV.H.

#### **ARTICLE IV**

##### **Clipper® Executive Board**

- A. Role; Composition. The Parties agree that responsibility for the management of the current Clipper® program, as well as the strategic planning effort to procure and implement a future system on or before the termination of the current Clipper® Contract, shall reside with a Clipper® Executive Board ("Executive Board"). The Executive Board's responsibilities shall be executed in a manner consistent with the Operator, MTC

and Contracting Agency responsibilities set forth in Articles I, II and III, respectively. The Executive Board shall be comprised of nine members: one representative each from SFMTA, BART, Caltrain/SamTrans, AC Transit, VTA, GGBHTD and MTC, and two representatives who are selected to represent all other Operators (the "Small Operators") in the sole discretion of the Small Operators. Each representative shall be at the General Manager or Senior Management level.

**B. Principles.** The Executive Board shall adhere to the following principles:

1. The Clipper® program shall continue as the primary electronic fare collection system for the Operators.
2. Each member of the Executive Board commits to actively advance the continued successful operation, maintenance and growth of the Clipper® program on a cost effective, operationally efficient, and coordinated basis.
3. Promote efforts to reduce the overall cost of the Clipper® system, including operating costs, capital costs and consultant expense.
4. Promote regional efforts to simplify fare structures while protecting revenue levels.

**C. Duties.** The Executive Board shall undertake the following duties:

1. Meet in accordance with a regular meeting schedule established by the Executive Board, not less than quarterly.
2. Establish goals for the Clipper® program, including targets to increase market penetration and cost containment initiatives. The Program Goals and Performance Measures are attached as Appendix C, and may be amended by unanimous vote of the Executive Board from time to time.
3. Propose for review by MTC, Operators and other funding sources (collectively, the "Funding Agencies") a biennial capital and operating budget for the Clipper® program. Revise and adopt the proposed budget in accordance with the Clipper® budgets adopted and/or allocations made by each of the Funding Agencies. The biennial budget will outline staffing requirements and resources needed to accomplish the work plan. The budget will define required funding, identify funding sources, and specify the amount of individual agency contributions.
4. Adopt a detailed biennial work plan to implement the established goals and budget.
5. Designate the Contracting Agency, as further described in and subject to Article IV.D, and provide policy oversight, advice, and direction to the Contracting Agency.
6. Evaluate the performance of the Clipper® Executive Director on at least an annual basis. The Board will develop goals and objectives jointly with the Clipper® Executive Director, which will form the basis for the annual evaluation.
7. Review and authorize Significant Business Matters as described in Article IV.E.

8. Establish such procedures as shall be necessary or desirable to facilitate compliance by the Executive Board with the Ralph M. Brown Act (Government Code Section 54950 *et seq.*) (the "Brown Act") and other applicable laws.
- D. Designation of a Contracting Agency. The Executive Board shall designate one of the Parties to serve as the "Contracting Agency" with the responsibilities defined in Article III. MTC shall serve as the initial Contracting Agency. The Executive Board shall review the designation of the Contracting Agency not more often than once every three (3) years and may designate any of the Parties as a new Contracting Agency no later than one year prior to the proposed assignment date, which designation may be subject to the approval of the governing board of the proposed new Contracting Agency. In the event of a new designation, the then-current Contracting Agency shall seek approval from its governing board to assign all outstanding contracts, funding agreements, licenses, and accounts to the newly designated Contracting Agency and, if it receives approval from its governing board for such assignment, take such other actions as may be necessary or convenient to effect the transition of the Contracting Agency role. In the event of a change from the role of MTC as the Contracting Agency, the Executive Board will work with MTC and the successor Contracting Agency to protect or minimize loss or degradation of jobs for Clipper® support staff at MTC.
- E. Significant Business Matters. The Executive Board shall decide all Significant Business Matters by a majority vote. "Significant Business Matter" shall mean any matter that can reasonably be expected to have a substantial financial impact (defined as an impact of \$250,000 or more) or a substantial operating impact (defined as causing operations to fall below then-current annual operational goals) on Clipper® or any of the Parties. Significant Business Matters, include, but are not limited to the following:
1. Approval of Clipper® Contract Change Orders that exceed the maximum authority levels established by the Contracting Agency's procurement rules for its chief executive officer, or \$250,000, whichever is less, or that are not funded in the biennial budget. Contracting Agency governing board approval may also be required.
  2. Amendments to the Clipper® operating rules, pursuant to Appendix A.
  3. Acceptance of new Parties to the Clipper® program. The Executive Board delegates to MTC the authority to sign supplemental agreements with new Parties accepted into the program, as provided in Article VI.
  4. Implementation of new business ventures or opportunities for the Clipper® program.
  5. Contract awards for contract amounts that exceed the maximum authority levels established by the then-current Contracting Agency's procurement rules for its chief executive officer, or \$250,000, whichever is less. Contracting Agency governing board approval may also be required.
  6. Assignment of the Clipper® Contract. Contracting Agency approval shall also be required.
  7. Approval of expenses (administrative, operating and legal) incurred by the Contracting Agency if in excess of or not contemplated by the current approved budget.

8. Approval of the Clipper® 2.0 rollout strategy.
9. Decision whether any other matter, not expressly included or excluded as a Significant Business Matter in this list, is a Significant Business Matter in accordance with the definition above.

The foregoing definition of “Significant Business Matters” may be amended by unanimous vote of the Executive Board from time to time.

- F. Quorum. Five members of the Executive Board constitute a quorum. In the absence of a quorum, a smaller number of Executive Board members may secure the attendance of absent members by video conference, teleconference or other means compliant with the Brown Act to establish a quorum. Only eligible voting members shall be counted to establish a quorum.
- G. Voting. Each member of the Executive Board shall have one vote. A vote of a majority of the Executive Board is required for approval. Executive Board members may not abstain from voting on any matter before the Executive Board, except in cases of conflicts of interest.
- H. Board Chair; Committees. The Executive Board shall annually elect a Chair and Vice Chair from its members. The Chair shall provide administrative staff support to the Executive Board, as needed as determined by the Chair and the Clipper® Executive Director. The Chair may appoint advisory committees or working groups for specified projects of limited duration. The Executive Board may establish standing committees from time to time.
- I. Delegates. Executive Board members may appoint, in writing, delegates to vote on their behalf in the event of a member's absence from any Executive Board meeting, for up to two (2) meetings per calendar year. No voting rights are accorded to alternates, nor do alternates count toward a quorum of the Executive Board, when alternates are representing an Executive Board member for meetings after two (2) missed meetings in a calendar year.

## ARTICLE V Clipper® Executive Director

The Clipper® Executive Director shall be responsible for regional coordination of the Clipper® program among the Parties, oversight of consultants and contractors retained for the design, operation and maintenance of the Clipper® program, and effectuation of the goals and work plan adopted by the Executive Board in accordance with the budget. Clipper® program support staff engaged by the Contracting Agency shall report to the Clipper® Executive Director.

The Clipper® Executive Director shall be selected and appointed by the Contracting Agency following consultation with the Executive Board to factor in any Executive Board concerns. The Contracting Agency will directly engage the Clipper® Executive Director as its employee or independent contractor in accordance with any civil service or procurement rules applicable to the Contracting Agency. The initial Clipper® Executive Director shall be Carol Kuester and shall be an employee of MTC.

## ARTICLE VI New Operator Participants

Any Bay Area transit operator not a Party to this Agreement must be approved by the Executive Board and agree to the terms of the MOU then in effect as a condition of implementing Clipper®, by entering into a supplemental agreement to this MOU accepting the then-current terms of this MOU. Signature by the other Parties to the MOU is not required. MTC shall not enter into a supplemental agreement with a particular operator prior to the issuance of a Change Notice to the Clipper® Contract covering all or a portion of the work required to accept such operator into the system. MTC shall provide the other Parties to the MOU with written notice of each supplemental agreement.

## ARTICLE VII 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. Contracting Agency Indemnification of Other Parties. Notwithstanding the provisions of Subsection A above, the Contracting Agency shall indemnify, hold harmless, and defend the other Parties from any and all claims or liability resulting from any action or inaction on the part of Contracting Agency relating to the Clipper® Contract or from its failure to carry out its responsibilities under Article III of this MOU. With respect only to MTC as Contracting Agency, this indemnification covers action or inaction on the part of MTC relating to the Clipper® Contract prior to the Effective Date of this MOU. Except as stated in the previous sentence, this indemnification only covers action or inaction on the part of a Contracting Agency while it serves as Contracting Agency under this MOU.
- C. Other Parties' Indemnification of Contracting Agency. Notwithstanding the provisions of Subsection A above, each Party hereto that is not the Contracting Agency shall indemnify, hold harmless, and defend the Contracting Agency from any and all claims or liability resulting from any action or inaction on the part of such Party relating to its responsibilities under Article I or II, as applicable, of this MOU.
- D. 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.
- E. MTC Indemnification of Operators. Notwithstanding the provisions of Subsection A above, MTC shall indemnify, hold harmless, and defend each Operator from any and all claims or liability resulting from any action or inaction on the part of MTC relating to its responsibilities under Article II of this MOU.

**ARTICLE VIII**  
**Term**

The term of the MOU shall begin upon the Effective Date and continue through June 30, 2025, unless terminated by written agreement of the Parties.

**ARTICLE IX**  
**Dispute Resolution**

The Parties agree to abide by the dispute resolution procedures in Appendix D, Dispute Resolution, attached hereto and incorporated herein by this reference to resolve disputes between or among Parties to the MOU. To invoke the dispute resolution process, two Executive Board members must request it.

**ARTICLE X**  
**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 Clipper® 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 shall require an amendment to the MOU approved and executed by all Parties.

**ARTICLE XI**  
**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 counterparts, 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 E, Special Provisions for the City and County of San Francisco, 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 expenditure contracts entered into by the City.
- 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 F, 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 F 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 VI.
- H. This MOU supersedes and replaces the Memorandum of Understanding Regarding Operations and Maintenance of Clipper Fare Collection System dated November 10, 2011, as amended, in its entirety.
- I. By its execution of this MOU, each Party (i) acknowledges that, although the City of Rio Vista executed a Supplemental Agreement to the 2011 MOU, it subsequently declined to have Clipper® implemented on its bus system, (ii) waives the requirement for 240 days' advance notice to it of the City of Rio Vista's withdrawal from the 2011 MOU, and (iii) acknowledges that the City of Rio Vista is therefore not a Party to this MOU upon its initial execution and delivery.

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

**Metropolitan Transportation Commission**

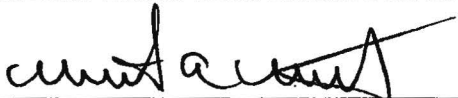
  
 \_\_\_\_\_  
 Steve Heminger, Executive Director

Date: 2/19/16

Approved as to form:

  
 \_\_\_\_\_  
 Adrienne Weil, General Counsel

**Alameda-Contra Costa Transit District**

  
 \_\_\_\_\_

Name: MICHAEL A. HURST

Title: GENERAL MANAGER

Date: 9/23/2015

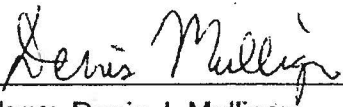
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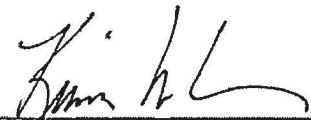
Denise C. Standridge, General Counsel



**Golden Gate Bridge, Highway and  
Transportation District**

  
Name: Denis J. Mulligan  
Title: General Manager  
Date: October 9, 2015

Approved as to form:

  
Kimon Manolius, General Counsel

**San Francisco Bay Area Rapid Transit District**

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
Matthew Burrows, General Counsel

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

Name: Edward D. Reiskin  
Title: Director of Transportation  
Date: \_\_\_\_\_

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

\_\_\_\_\_  
Name: Robin M. Reitzes  
Title: Deputy City Attorney

Municipal Transportation Agency Board of Directors  
Resolution No. \_\_\_\_\_  
Dated: \_\_\_\_\_

\_\_\_\_\_  
Secretary, SFMTAB

**San Mateo County Transit District**

Name: Jim Hartnett  
Title: General Manager/CEO  
Date: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
Joan L. Cassman, General Counsel

**Golden Gate Bridge, Highway and  
Transportation District**

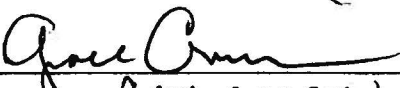
Approved as to form:


\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_, General Counsel

**San Francisco Bay Area Rapid Transit District**

Approved as to form:

  
\_\_\_\_\_  
Name: GRACE CRONICAN  
Title: GENERAL MANAGER  
Date: 12/9/15

  
\_\_\_\_\_  
Matthew Burrows, General Counsel

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

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

\_\_\_\_\_  
Name: Edward D. Reiskin  
Title: Director of Transportation  
Date: \_\_\_\_\_

\_\_\_\_\_  
Name: Robin M. Reitzes  
Title: Deputy City Attorney

Municipal Transportation Agency Board of Directors  
Resolution No. \_\_\_\_\_  
Dated: \_\_\_\_\_

\_\_\_\_\_  
Secretary, SFMTAB

**San Mateo County Transit District**

Approved as to form:

\_\_\_\_\_  
Name: Jim Hartnett  
Title: General Manager/CEO  
Date: \_\_\_\_\_

\_\_\_\_\_  
Joan L. Cassman, General Counsel

**Golden Gate Bridge, Highway and  
Transportation District**

Approved as to form:

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_, General Counsel

**San Francisco Bay Area Rapid Transit District**


Approved as to form:

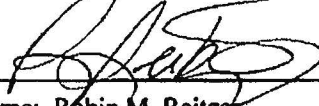
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Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Matthew Burrows, General Counsel


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

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

  
\_\_\_\_\_  
Name: Edward D. Reiskin  
Title: Director of Transportation  
Date: December 1, 2015

  
\_\_\_\_\_  
Name: Robin M. Reitzes  
Title: Deputy City Attorney

Municipal Transportation Agency Board of Directors  
Resolution No. 15-113  
Dated: August 18, 2015

  
\_\_\_\_\_  
Secretary, SFMTAB

**San Mateo County Transit District**

Approved as to form:

\_\_\_\_\_  
Name: Jim Hartnett  
Title: General Manager/CEO  
Date: \_\_\_\_\_

Joan L. Cassman, General Counsel

**Golden Gate Bridge, Highway and  
Transportation District**

Approved as to form:

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_, General Counsel

**San Francisco Bay Area Rapid Transit District**

Approved as to form:

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Matthew Burrows, General Counsel

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

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

\_\_\_\_\_  
Name: Edward D. Reiskin  
Title: Director of Transportation  
Date: \_\_\_\_\_

\_\_\_\_\_  
Name: Robin M. Reitzes  
Title: Deputy City Attorney

Municipal Transportation Agency Board of Directors  
Resolution No. \_\_\_\_\_  
Dated: \_\_\_\_\_

\_\_\_\_\_  
Secretary, SFMTAB

**San Mateo County Transit District**

Approved as to form:

\_\_\_\_\_  
Name: Jim Hartnett  
Title: General Manager/CEO  
Date: 8/14/2015

\_\_\_\_\_  
Joan L. Cassman, General Counsel

**Santa Clara Valley Transportation Authority**

Approved as to form:

Nuria I. Fernandez  
Name: NURIA I. FERNANDEZ  
Title: GM/CEO  
Date: November 2, 2015

Robert Fisher  
\_\_\_\_\_, General Counsel

**Peninsula Corridor Joint Powers Board**

Approved as to form:

\_\_\_\_\_  
Name: Jim Hartnett  
Title: Executive Director  
Date: \_\_\_\_\_

\_\_\_\_\_  
Joan L. Cassman, General Counsel

**Central Contra Costa Transit Authority**

Approved as to form:

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
Madeline Chun, General Counsel

**City of Fairfield  
Fairfield and Suisun Transit**

Approved as to form:

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_, General Counsel

**City of Petaluma**

Approved as to form:

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_, General Counsel

**Santa Clara Valley Transportation Authority**

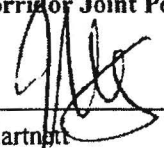
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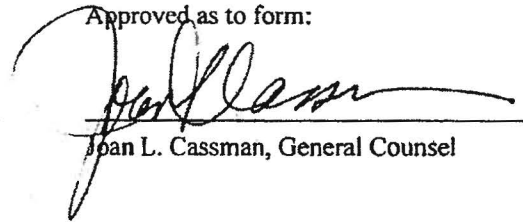
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Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_, General Counsel

**Peninsula Corridor Joint Powers Board**

Approved as to form:

  
\_\_\_\_\_  
Name: Jim Hartnett  
Title: Executive Director  
Date: 9/14/2015

  
\_\_\_\_\_  
Joan L. Cassman, General Counsel

**Central Contra Costa Transit Authority**

Approved as to form:

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
Madeline Chun, General Counsel

**City of Fairfield  
Fairfield and Suisun Transit**

Approved as to form:

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_, General Counsel

**City of Petaluma**

Approved as to form:

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_, General Counsel

**Santa Clara Valley Transportation Authority**

Approved as to form:

\_\_\_\_\_  
Name: \_\_\_\_\_  
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\_\_\_\_\_, General Counsel

**Peninsula Corridor Joint Powers Board**


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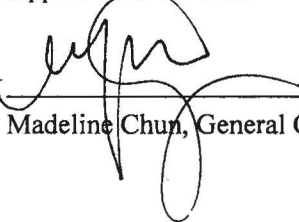
\_\_\_\_\_  
Name: Jim Hartnett  
Title: Executive Director  
Date: \_\_\_\_\_

\_\_\_\_\_  
Joan L. Cassman, General Counsel

**Central Contra Costa Transit Authority**

Approved as to form:

  
\_\_\_\_\_  
Name: Rick Romo  
Title: General Manager  
Date: 10/28/15

  
\_\_\_\_\_  
Madeline Chun, General Counsel

**City of Fairfield  
Fairfield and Suisun Transit**

Approved as to form:

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_, General Counsel

**City of Petaluma**

Approved as to form:

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_, General Counsel

**Santa Clara Valley Transportation Authority**

Approved as to form:

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_, General Counsel

**Peninsula Corridor Joint Powers Board**

Approved as to form:

\_\_\_\_\_  
Name: Jim Hartnett  
Title: Executive Director  
Date: \_\_\_\_\_

\_\_\_\_\_  
Joan L. Cassman, General Counsel

**Central Contra Costa Transit Authority**

Approved as to form:

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
Madeline Chun, General Counsel

**City of Fairfield  
Fairfield and Suisun Transit**

Approved as to form:

*David*  
\_\_\_\_\_  
Name: **David A. White**  
Title: **City Manager**  
*KWB* Date: **10/15/15**

*Trisha Ortiz*  
\_\_\_\_\_  
**TRISHA ORTIZ**, General Counsel

**City of Petaluma**

Approved as to form:

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_, General Counsel



**Santa Clara Valley Transportation Authority**

Approved as to form:

Name: \_\_\_\_\_

\_\_\_\_\_, General Counsel

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Peninsula Corridor Joint Powers Board**

Approved as to form:

Name: Jim Hartnett

Joan L. Cassman, General Counsel

Title: Executive Director

Date: \_\_\_\_\_

**Central Contra Costa Transit Authority**

Approved as to form:

Name: \_\_\_\_\_

Madeline Chun, General Counsel

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**City of Fairfield  
Fairfield and Suisun Transit**

Approved as to form:

Name: \_\_\_\_\_

\_\_\_\_\_, General Counsel

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**City of Petaluma**

Approved as to form:



Name: John C. Brown

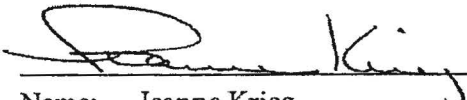
Eric D. Smith, General Counsel

Title: City Manager


Date: 2/9/16

City of Petaluma

**Eastern Contra Costa Transit Authority**

  
Name: Jeanne Krieg  
Title: CEO  
Date: 10-6-2015

Approved as to form:

  
Ben Stock, General Counsel

**Livermore/Amador Valley Transit Authority**

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Approved as to form:

Michael N. Conneran, General Counsel

**Marin County Transit District**

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_, General Counsel

**Napa County Transportation and Planning Agency**

Approved as to form:

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_, General Counsel

**Solano County Transit**

Approved as to form:

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_, General Counsel

**Eastern Contra Costa Transit Authority**


Approved as to form:

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_, General Counsel

**Livermore/Amador Valley Transit Authority**

Approved as to form:

  
\_\_\_\_\_  
Name: Michael S Trce  
Title: Executive Director  
Date: \_\_\_\_\_

  
\_\_\_\_\_  
Michael N. Conncran, General Counsel

**Marin County Transit District**

Approved as to form:

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_, General Counsel

**Napa County Transportation and Planning Agency**

Approved as to form:

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_, General Counsel

**Solano County Transit**

Approved as to form:

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_, General Counsel

**Eastern Contra Costa Transit Authority**

Approved as to form:

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_, General Counsel

**Livermore/Amador Valley Transit Authority**

Approved as to form:

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
Michael N. Conneran, General Counsel

**Marin County Transit District**

Approved as to form:

*Nancy E. Whelan*  
Name: Nancy E. Whelan  
Title: General Manager  
Date: September 25, 2015

*Brian Case*  
\_\_\_\_\_  
BRIAN CASE, General Counsel

**Napa County Transportation and Planning Agency**

Approved as to form:

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_, General Counsel

**Solano County Transit**

Approved as to form:

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_, General Counsel

**Eastern Contra Costa Transit Authority**

Approved as to form:

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_, General Counsel

**Livermore/Amador Valley Transit Authority**

Approved as to form:

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Michael N. Conneran, General Counsel

**Marin County Transit District**


Approved as to form:

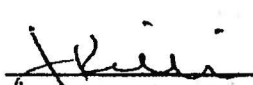
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Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_, General Counsel

**Napa County Transportation and Planning Agency**

Approved as to form:

  
Name: Wade Miller  
Title: Executive Director  
Date: 11/18/2015

  
\_\_\_\_\_, General Counsel

**Solano County Transit**

Approved as to form:

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_, General Counsel

**Eastern Contra Costa Transit Authority**

Approved as to form:

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_, General Counsel

**Livermore/Amador Valley Transit Authority**

Approved as to form:

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
Michael N. Conneran, General Counsel

**Marin County Transit District**

Approved as to form:

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_, General Counsel

**Napa County Transportation and Planning Agency**


Approved as to form:

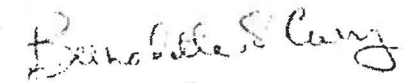
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Date: \_\_\_\_\_

\_\_\_\_\_, General Counsel

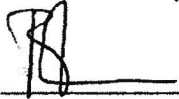
**Solano County Transit**

Approved as to form:

  
\_\_\_\_\_  
Name: Diana Sabarita  
Title: Executive Director  
Date: 10/16/2015

  
\_\_\_\_\_  
Bernadette Curry, General Counsel

**Sonoma County Transit**

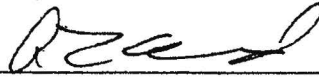


Name: BRYAN AUBEE

Title: TRANSIT SYSTEMS MANAGER

Date: 10.23.15

Approved as to form:



ADAM BRAND, General Counsel

**Sonoma-Marin Area Rail Transit District**

Approved as to form:

Name: \_\_\_\_\_

\_\_\_\_\_, General Counsel

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Vacaville City Coach**

Approved as to form:

Name: \_\_\_\_\_

\_\_\_\_\_, General Counsel

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Western Contra Costa Transit Authority**

Approved as to form:

Name: \_\_\_\_\_

\_\_\_\_\_, General Counsel

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**San Francisco Bay Area Water Emergency  
Transportation Authority**

Approved as to form:

Name: \_\_\_\_\_

Stanley S. Taylor III, General Counsel

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Sonoma County Transit**


Approved as to form:

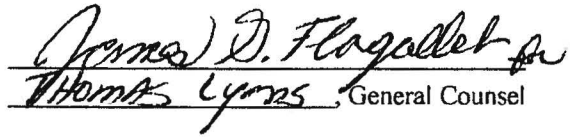
\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_, General Counsel

**Sonoma Marin Area Rail Transit District**

Approved as to form:

  
Name: FARHAD MANSOURIAN  
Title: General Manager  
Date: 9-25-15

  
\_\_\_\_\_, General Counsel

**Vacaville City Coach**

Approved as to form:

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_, General Counsel

**Western Contra Costa Transit Authority**

Approved as to form:

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_, General Counsel

**San Francisco Bay Area Water Emergency  
Transportation Authority**

Approved as to form:

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
Stanley S. Taylor III, General Counsel



**Sonoma County Transit**

Approved as to form:

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_, General Counsel

**Sonoma-Marin Area Rail Transit District**


Approved as to form:

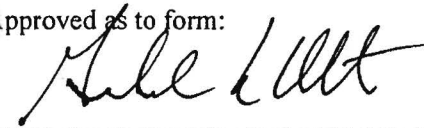
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Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_, General Counsel

**Vacaville City Coach**

Approved as to form:

  
Name: Steven L. Hart  
Title: Public Works Director  
Date: 9/10/2015

  
Gerald L. Hobrecht General Counsel

**Western Contra Costa Transit Authority**

Approved as to form:

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_, General Counsel

**San Francisco Bay Area Water Emergency  
Transportation Authority**

Approved as to form:

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
Stanley S. Taylor III, General Counsel

**Sonoma County Transit**

Approved as to form:

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_, General Counsel

**Sonoma-Marina Area Rail Transit District**

Approved as to form:

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_, General Counsel

**Vacaville City Coach**

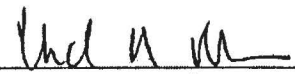
Approved as to form:

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_, General Counsel

**Western Contra Costa Transit Authority**

Approved as to form:

  
\_\_\_\_\_  
Name: CHARLES ANDERSON  
Title: GENERAL MANAGER  
Date: 9-30-2015

  
\_\_\_\_\_  
Michael Conner, General Counsel

**San Francisco Bay Area Water Emergency  
Transportation Authority**

Approved as to form:

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
Stanley S. Taylor III, General Counsel

**Sonoma County Transit**

Approved as to form:

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_, General Counsel

**Sonoma-Marin Area Rail Transit District**

Approved as to form:

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_, General Counsel

**Vacaville City Coach**

Approved as to form:

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_, General Counsel

**Western Contra Costa Transit Authority**

Approved as to form:

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_, General Counsel

**San Francisco Bay Area Water Emergency  
Transportation Authority**

Approved as to form:

*Nina Bannells*  
\_\_\_\_\_  
Name: NINA BANNELLS  
Title: EXECUTIVE DIRECTOR  
Date: 10/29/15

*Stanley S. Taylor III*  
\_\_\_\_\_  
Stanley S. Taylor III, General Counsel

City of Santa Rosa

*Gloria Hurtado*  
Name: GLORIA HURTADO  
Title: DEPUTY CITY MANAGER  
Date: 1/20/2016

Approved as to form:

*Rogelio Arceveda, A.C.*  
Assistant City, General Counsel  
Attorney

City of Union City

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
\_\_\_\_\_, General Counsel

City of Santa Rosa


Approved as to form:

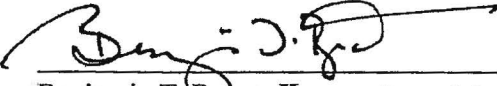
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Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_, General Counsel

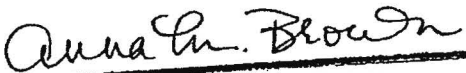
City of Union City

Approved as to form:

  
\_\_\_\_\_  
Name: Antonio E. Acosta  
Title: City Manager  
Date: 12 OCTOBER 2015

  
\_\_\_\_\_  
Benjamin T. Reyes, II, General Counsel  
CITY ATTORNEY

**ATTEST:**

  
\_\_\_\_\_  
Anna M. Brown, City Clerk

## Appendix A

### Process for Amending Clipper® Operating Rules

1. The Contracting Agency shall provide written notice to the other Parties at least ninety (90) days in advance of making any changes to the Operating Rules affecting Operator Roles and Responsibilities (Section 3 of the Clipper® Operating Rules). Notice shall be provided by email to the contact named in Appendix F, or as subsequently revised or updated by the Parties, as provided in Article XI.G.
2. The Contracting Agency shall provide additional notice to the other Parties on possible changes to the Operating Rules affecting Operator Roles and Responsibilities in the regular Clipper® program reports furnished under Article III.C.
3. The Contracting Agency's notices shall include enough information to enable the other Parties to determine the financial and other impacts of the proposed change.
4. If requested by any Party within 30 days of issuance of such notice, the Contracting Agency will consult with all affected Parties concerning the proposed change prior to its adoption.
5. Any Party that requires additional time in excess of the notice period specified by the Contracting Agency to implement a change may notify the Contracting Agency of the additional period of time required during the initial 30-day notice period. The Contracting Agency will then work with the Party(ies) 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 Party(ies) objects to the proposed change, as modified during the consultation process, such Party(ies) may initiate one or more of the dispute resolution processes described in Appendix D.
7. The Contracting Agency shall delay the implementation of the disputed change until the conclusion of the dispute resolution process.
8. All proposed changes to the Operating Rules shall be presented for approval to the Executive Board. The Contracting Agency agrees that it shall not implement changes to the Operating Rules that have not been approved by the Executive Board.
9. Upon MTC's approval of this MOU, MTC Commission approval of changes to the Operating Rules will no longer be required.

## **Appendix B**

**Clipper Cost and Revenue Allocation [see applicable sub-appendices on following pages]**

## Appendix B-1

### Clipper<sup>®</sup> Cost and Revenue Allocation Effective upon execution of Amended and Restated MOU through June 30, 2016

#### 1. Cost Allocation Among Operators

The allocation of Clipper<sup>®</sup> 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 Clipper<sup>®</sup> 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 Clipper<sup>®</sup> 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 monthly pass to ride BART will be attributed to SFMTA. All fee payment transactions are included for purposes of allocating Clipper<sup>®</sup> operating costs, regardless of whether the transaction results in a reduction of the amount of stored value or stored rides on a Clipper<sup>®</sup> 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 Clipper<sup>®</sup> operating costs shall be allocated to Operators based on each Operator's share of total revenue collected by the Clipper<sup>®</sup> clearinghouse, as defined above. Two-thirds (2/3) of Clipper<sup>®</sup> operating costs shall be allocated to Operators based on each Operator's share of total fee payment transactions processed by the Clipper<sup>®</sup> clearinghouse, as defined above.

In addition to the Clipper<sup>®</sup> operating costs allocated in accordance with Section 2.B(i) herein, each Operator shall be responsible for payment of:

- a. Clipper<sup>®</sup> Data Server (CDS) Store operating costs specified below for any CDS Store implemented on such Operator's site;
- b. Credit/debit interchange fees charged through an Operator-specific credit/debit gateway associated with Clipper<sup>®</sup> sales through add value machines, ticket office terminal devices and ticket vending machines. This responsibility is subject to review pursuant to Article I.E of the MOU to ensure that no single Operator is unfairly burdened by such fees; and
- c. Incremental Clipper<sup>®</sup> operating costs established by and/or resulting from Clipper<sup>®</sup> 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 in Section 2.A herein.

## 2. **Clipper<sup>®</sup> Costs**

### A. MTC Operating and Maintenance Costs. MTC shall pay the following Clipper<sup>®</sup> operating costs:

- i. All fixed operating costs of the Clipper<sup>®</sup> clearinghouse and equipment maintenance services costs as specified in the Clipper<sup>®</sup> Contract's Price Schedule (Attachment 2 to the Clipper<sup>®</sup> Contract) (the "Price Schedule"), including:
  - a. Item 3.20 Program Management – Operations and Maintenance
  - b. Item 3.30 Clipper<sup>®</sup> 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 Clipper<sup>®</sup> operating costs as specified in the Price Schedule (Attachment 2 to the Clipper<sup>®</sup> Contract), specifically:
  - a. Item 7.10-2 Senior and Youth Card Mail-In Applications
  - b. Item 8.10(a-g) Card Distribution Services
  - c. Item 8.11 Card Distribution Services
  - d. Item 8.12 Card Distribution Services
  - e. Item 8.20 Cardholder Education
  - f. Item 8.31 Location Acquisition for Completion of Distribution Network
  - g. Item 8.32 Location Acquisition for Completion of Distribution Network
  - h. Item 8.41 Pass Through of Amounts Paid for Installation of Phone Lines
  - i. Item 9.41 Fixed and Incremental Fees Per Active Card Account (50% of the invoiced amount)
  - j. Item 9.5 Service Level Standard Incentives and Abatements
  - k. Item 13.100 Mobile Website Operations and Maintenance
- iii. All other lump sum and capital expense items specified in the Price Schedule not enumerated above or covered by Section 2.B.

### B. Operator Operating Costs.

- i. Operators shall pay the following listed Clipper<sup>®</sup> operating costs in accordance with the cost sharing formula in Section 1, reduced by any amounts payable by MTC pursuant to Section 2.A. References to Item numbers refer to the corresponding prices payable to the Clipper<sup>®</sup> Contractor under the Price Schedule, which are subject to annual price adjustment as specified in Article 13.6 of the Clipper<sup>®</sup> Contract:
  - a. Item 9.24 Balance Protection Services Registration

- b. Item 9.25 Lock/unlock Clipper® Application
- c. Item 9.41 Fixed and Incremental Fees Per Active Card Account (50% of the invoiced amount)
- d. Item 10.11 Clipper® E-purse Load
- e. Item 10.12 Pass/Stored Ride Load
- f. Item 10.24 Employer Program Commission
- g. Item 11.0 Autoload Services
- h. Item 13.22.45 Supplemental Monthly Operations and Admin
- i. Item 13.31 Clipper® 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 Contracting Agency bank fees and direct bank charges in connection with the Clipper® bank account(s) in excess of the amounts reimbursed under Section 3.A below
- o. Direct payment or reimbursement of Contracting Agency costs for network communication.
- p. Direct payment or reimbursement of Contracting Agency costs for materials necessary for additional printing, e.g. secondary printing or personalization, on Clipper® cards
- q. Reimbursement of Contracting Agency costs for a portion of salary and benefits of any additional staffing as approved by the Executive Board to support the Clipper® program.

- ii. Changes or Additions to Operator Operating Costs Items. Except as reserved for Executive Board approval in Section 2.B(i)(q), substantive changes or additions to the Operator-paid operating cost items set forth in Section 2.B(i) 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. Contracting Agency shall invoice each Operator on a monthly basis for its share of the operating costs. The Operators shall pay Contracting Agency within fifteen (15) calendar days of receipt of such invoice.

### 3. Revenue Allocation

Revenues generated by Clipper® 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 Contracting Agency's bank fees and direct bank charges related to the managing of the Clipper® accounts;
- B. After deduction of Contracting Agency's bank fees and charges under Section 3.A, to reduce the Operators' Clipper® operating costs listed in Section 2.B(i); and
- C. After payment of Operators' Clipper® operating costs listed in Section 2.B(i), to be allocated to Operators using the formula specified in Section 1.

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. Review**

The Parties acknowledge that this Appendix B is based upon and specific to the payment terms of the existing Clipper® Contract which has a term through November 2, 2019. Therefore, the Parties agree to commence timely, good-faith negotiations to implement revisions to this Appendix B necessitated by any Executive Board approval of (a) any extension of the existing Clipper contract or (b) any contracts that succeed or replace the existing Clipper contract, whether in whole or in part.

## Appendix B-2

### Clipper<sup>®</sup> Cost and Revenue Allocation Effective July 1, 2016 through December 31, 2016

#### 1. Cost Allocation Among Operators

The allocation of Clipper<sup>®</sup> 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 Clipper<sup>®</sup> 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 Clipper<sup>®</sup> 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 monthly pass to ride BART will be attributed to SFMTA. All fee payment transactions are included for purposes of allocating Clipper<sup>®</sup> operating costs, regardless of whether the transaction results in a reduction of the amount of stored value or stored rides on a Clipper<sup>®</sup> 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 Clipper<sup>®</sup> operating costs shall be allocated to Operators based on each Operator's share of total revenue collected by the Clipper<sup>®</sup> clearinghouse, as defined above. Two-thirds (2/3) of Clipper<sup>®</sup> operating costs shall be allocated to Operators based on each Operator's share of total fee payment transactions processed by the Clipper<sup>®</sup> clearinghouse, as defined above.

In addition to the Clipper<sup>®</sup> operating costs allocated in accordance with Section 2.B(i) herein, each Operator shall be responsible for payment of:

- a. Clipper<sup>®</sup> Data Server (CDS) Store operating costs specified below for any CDS Store implemented on such Operator's site;
- b. Credit/debit interchange fees charged through ticket office terminal devices using an Operator specific credit/debit gateway. This responsibility is subject to review pursuant to Article I.E of the MOU to ensure that no single Operator is unfairly burdened by such fees; and
- c. Incremental Clipper<sup>®</sup> operating costs established by and/or resulting from Clipper<sup>®</sup> 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. Clipper® Costs

### A. MTC Operating and Maintenance Costs. MTC shall pay the following Clipper® operating costs:

i. All fixed operating costs of the Clipper® clearinghouse and equipment maintenance services costs as specified in the Clipper® Contract's Price Schedule (Attachment 2 to the Clipper® Contract) (the "Price Schedule"), including:

- a. Item 3.20 Program Management – Operations and Maintenance
- b. Item 3.30 Clipper® 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 Clipper® operating costs as specified in the Price Schedule (Attachment 2 to the Clipper® Contract), specifically:

- a. Item 7.10-2 Senior and Youth Card Mail-In Applications
- b. Item 8.10(a-g) Card Distribution Services
- c. Item 8.11 Card Distribution Services
- d. Item 8.12 Card Distribution Services
- e. Item 8.20 Cardholder Education
- f. Item 8.31 Location Acquisition for Completion of Distribution Network
- g. Item 8.32 Location Acquisition for Completion of Distribution Network
- h. Item 8.41 Pass Through of Amounts Paid for Installation of Phone Lines
- i. Item 9.41 Fixed and Incremental Fees Per Active Card Account (50% of the invoiced amount)
- j. Item 9.5 Service Level Standard Incentives and Abatements
- k. Item 13.100 Mobile Website Operations and Maintenance

iii. All other lump sum and capital expense items specified in the Price Schedule not enumerated above or covered by Section 2.B.

### B. Operator Operating Costs.

i. Operators shall pay the following listed Clipper® operating costs in accordance with the cost sharing formula in Section 1, reduced by any amounts payable by MTC pursuant to Section 2.A. References to Item numbers refer to the corresponding prices payable to the Clipper® Contractor under the Price Schedule, which are subject to annual price adjustment as specified in Article 13.6 of the Clipper® Contract:

- a. Item 9.24 Balance Protection Services Registration
- b. Item 9.25 Lock/unlock Clipper® Application

- c. Item 9.41 Fixed and Incremental Fees Per Active Card Account (50% of the invoiced amount)
- d. Item 10.11 Clipper<sup>®</sup> E-purse Load
- e. Item 10.12 Pass/Stored Ride Load
- f. Item 10.24 Employer Program Commission
- g. Item 11.0 Autoload Services
- h. Item 13.22.45 Supplemental Monthly Operations and Admin
- i. Item 13.31 Clipper<sup>®</sup> 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 Contracting Agency bank fees and direct bank charges in connection with the Clipper<sup>®</sup> bank account(s) in excess of the amounts reimbursed under Section 3.A below
- o. Direct payment or reimbursement of Contracting Agency costs for network communication.
- p. Direct payment or reimbursement of Contracting Agency costs for materials necessary for additional printing, e.g. secondary printing or personalization, on Clipper<sup>®</sup> cards
- q. Reimbursement of Contracting Agency costs for a portion of salary and benefits of staffing to support the Clipper program as approved by the Executive Board.
- r. Reimbursement of Contracting Agency costs for a portion of (at least fifty percent) of the salary and benefits of the Clipper Executive Director as approved by the Executive Board.
- s. Reimbursement of Operator costs for credit/debit interchange fees charged through an Operator-specific gateway associated with Clipper<sup>®</sup> sales through add value and ticket vending machines, as long as the total average fees do not substantially exceed the average Clipper fees. Reimbursement procedures are subject to the adoption by the Clipper<sup>®</sup> Executive Board at least 90 days in advance.

- ii. Changes or Additions to Operator Operating Costs Items. Except as reserved for Executive Board approval in 2.B(i)(q, r, s), substantive changes or additions to the Operator-paid operating cost items set forth in Section 2.B(i) 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. Contracting Agency shall invoice each Operator on a monthly basis for its share of the operating costs. The Operators shall pay Contracting Agency within fifteen (15) calendar days of receipt of such invoice.

### 3. Revenue Allocation

Revenues generated by Clipper<sup>®</sup> 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 Contracting Agency's bank fees and direct bank charges related to the managing of the Clipper® accounts;
- B. After deduction of Contracting Agency's bank fees and charges under Section 3.A above, to reduce the Operators' Clipper® operating costs listed in Section 2.B(i) above; and
- C. After payment of Operators' Clipper® operating costs listed in Section 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. Review**

The Parties acknowledge that this Appendix B is based upon and specific to the payment terms of the existing Clipper® Contract which has a term through November 2, 2019. Therefore, the Parties agree to commence timely, good-faith negotiations to implement revisions to this Appendix B necessitated by any Executive Board approval of (a) any extension of the existing Clipper contract or (b) any contracts that succeed or replace the existing Clipper contract, whether in whole or in part.

### Appendix B-3

#### Clipper<sup>®</sup> Cost and Revenue Allocation Effective January 1, 2017

#### 1. Cost Allocation Among Operators

The allocation of Clipper<sup>®</sup> operating costs to each Operator shall be tied to the cost driver of each category of operating expense outlined in Section 2.B. The percent allocation in each category will be based on actuals by Operator. "Percentage of Cards Used" by Operator will be used to assess operating fees for account-based, fixed or other costs not directly attributable to either transit transactions or revenue and will be based on the number of individual cards used at least once on an Operator's system. "Fee Generating Transit Transactions" shall mean any activity in which a Clipper<sup>®</sup> card is used to receive service on or from an Operator's system that results in a charge pursuant to Attachment 2 to Part I of the contract between MTC and Cubic for the operation of Clipper<sup>®</sup>. "Revenue Processed" shall mean the fee collected on behalf of each Operator by the Clipper<sup>®</sup> 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).

The allocation of Clipper<sup>®</sup> operating costs to each Operator shall be based on the following formula:

MOU Section 2.B.i	Fee Category	Allocation Formula
a,b,c	9.0 Cardholder Support Services	Percentage of Cards Used
d,e,f	10.0 Third Party Load Service Fees	Percentage of Cards Used
g	11.0 Autoload Services	Percentage of Cards Used
h	13.22.45 Supplemental Operations	Percentage of Cards Used
i	13.31 Clipper Transaction Fee	Percentage of Fee Generating Transit Transactions
j,k,l,m	13.60-90 Incremental Credit/Debit Card Interchange Fees	Percentage of Revenue Processed
n	Reimbursement of Bank Fees/Direct Charges	Percentage of Revenue Processed
o	Network Communication Reimbursement	Direct Charge to Operator
p	Specialized Card Printing	Direct Charge to Operator
q,r	Operator Share of Staffing	Percentage of Cards Used
s	Add Value/TVM Debit Card Interchange Fees for Non-Clipper Gateways	Percentage of Revenue Processed

In addition to the Clipper<sup>®</sup> operating costs allocated in accordance with Section 2.B(i) herein, each Operator shall be responsible for payment of:

- a. Clipper<sup>®</sup> Data Server (CDS) Store operating costs specified below for any CDS Store implemented on such Operator's site;



- b. Credit/debit interchange fees charged through ticket office terminal devices using an Operator specific credit/debit gateway. This responsibility is subject to review pursuant to Article I.E to ensure that no single Operator is unfairly burdened by such fees; and
- c. Incremental Clipper<sup>®</sup> operating costs established by and/or resulting from Clipper<sup>®</sup> 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. Clipper<sup>®</sup> Costs

### A. MTC Operating and Maintenance Costs. MTC shall pay the following Clipper<sup>®</sup> operating costs:

- i. All fixed operating costs of the Clipper<sup>®</sup> clearinghouse and equipment maintenance services costs as specified in the Clipper<sup>®</sup> Contract's Price Schedule (Attachment 2 to the Clipper<sup>®</sup> Contract) (the "Price Schedule"), including:
  - a. Item 3.20 Program Management – Operations and Maintenance
  - b. Item 3.30 Clipper<sup>®</sup> 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 Clipper<sup>®</sup> operating costs as specified in the Price Schedule (Attachment 2 to the Clipper<sup>®</sup> Contract), specifically:
  - a. Item 7.10-2 Senior and Youth Card Mail-In Applications
  - b. Item 8.10(a-g) Card Distribution Services
  - c. Item 8.11 Card Distribution Services
  - d. Item 8.12 Card Distribution Services
  - e. Item 8.20 Cardholder Education
  - f. Item 8.31 Location Acquisition for Completion of Distribution Network
  - g. Item 8.32 Location Acquisition for Completion of Distribution Network
  - h. Item 8.41 Pass Through of Amounts Paid for Installation of Phone Lines
  - i. Item 9.41 Fixed and Incremental Fees Per Active Card Account (50% of the invoiced amount)
  - j. Item 9.5 Service Level Standard Incentives and Abatements
  - k. Item 13.100 Mobile Website Operations and Maintenance
- iii. All other lump sum and capital expense items specified in the Price Schedule not enumerated above or covered by Section 2.B.

B. Operator Operating Costs.

- i. Operators shall pay the following listed Clipper® operating costs in accordance with the cost sharing formula in Section 1, reduced by any amounts payable by MTC pursuant to Section 2.A. References to Item numbers refer to the corresponding prices payable to the Clipper® Contractor under the Price Schedule, which are subject to annual price adjustment as specified in Article 13.6 of the Clipper® Contract:
  - a. Item 9.24 Balance Protection Services Registration
  - b. Item 9.25 Lock/unlock Clipper® Application
  - c. Item 9.41 Fixed and Incremental Fees Per Active Card Account (50% of the invoiced amount)
  - d. Item 10.11 Clipper® E-purse Load
  - e. Item 10.12 Pass/Stored Ride Load
  - f. Item 10.24 Employer Program Commission
  - g. Item 11.0 Autoload Services
  - h. Item 13.22.45 Supplemental Monthly Operations and Admin
  - i. Item 13.31 Clipper® 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 Contracting Agency bank fees and direct bank charges in connection with the Clipper® bank account(s) in excess of the amounts reimbursed under Section 3.A below
  - o. Direct payment or reimbursement of Contracting Agency costs for network communication.
  - p. Direct payment or reimbursement of Contracting Agency costs for materials necessary for additional printing, e.g. secondary printing or personalization, on Clipper® cards
  - q. Reimbursement of Contracting Agency costs for a portion of salary and benefits of any additional staffing as approved by the Executive Board to support the Clipper® program.
  - r. Reimbursement of Contracting Agency costs for a portion (at least fifty percent) of the salary and benefits of the Clipper Executive Director as approved by the Executive Board.
  - s. Reimbursement of Operator costs for credit/debit interchange fees charged through an Operator-specific gateway associated with Clipper® sales through add value and ticket vending machines, as long as the total average fees do not substantially exceed the average Clipper fees. Reimbursement procedures are subject to the adoption by the Clipper® Executive Board at least 90 days in advance.
- ii. Changes or Additions to Operator Operating Costs Items. Except as reserved for Executive Board approval in 2.B(i)(q, r, s), substantive changes or additions to the Operator-paid operating cost items set forth in Section 2.B(i) 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. Contracting Agency shall invoice each Operator on a monthly basis for its share of the operating costs. The Operators shall pay Contracting Agency within fifteen (15) calendar days of receipt of such invoice.

### **3. Revenue Allocation**

Revenues generated by Clipper® 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 Contracting Agency's bank fees and direct bank charges related to the managing of the Clipper® accounts;
- B. After deduction of Contracting Agency's bank fees and charges under Section 3.A above, to reduce the Operators' Clipper® operating costs listed in Section 2.B(i) above; and
- C. After payment of Operators' Clipper® operating costs listed in Section 2.B(i) above, to be allocated to Operators by applying the percentage of cards used by Operator specified in Section 1 herein, unless otherwise authorized by the Executive Board.

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. Review**

The Parties acknowledge that this Appendix B is based upon and specific to the payment terms of the existing Clipper® Contract which has a term through November 2, 2019. Therefore, the Parties agree to commence timely, good-faith negotiations to implement revisions to this Appendix B necessitated by any Executive Board approval of (a) any extension to the existing Clipper contract or (b) any contracts that succeed or replace the existing Clipper contract, whether in whole or in part, that would take effect on such successor contract's effective date."

## Appendix C

### Program Goals and Performance Measures

*The program goals and performance measures below are intended to guide the development and ongoing operations of Clipper®, however, specific actions and targets may be constrained by legal, fiscal and system limitations.*

**Goal: Provide an intuitive, efficient, and familiar experience**

- Electronic fare payment is the primary payment method for all transportation fares and fees
  - ✓ Mobile fare payment is integrated into and branded as Clipper®
  - ✓ Parking at transit stations is paid with Clipper®
  - ✓ Bikeshare at transit stations can be paid with Clipper®
  - ✓ Paratransit trips can be paid with Clipper®
- Transit systems to move 100% to Clipper or incentivize use of Clipper® depending on mode
  - ✓ Heavy commuter rail and ferry systems accept only Clipper® (extended and limited use)
  - ✓ Bus/light rail operators to adopt fare differentials to incentivize use of Clipper® and transition remaining products to Clipper®

**Goal: Provide excellent, proactive customer service**

- Customers can easily obtain and use Clipper®
  - ✓ Media dispensing and reloading options are widely available
  - ✓ Ticket vending machines offering new cards and add-value are located at all heavy rail and ferry locations
  - ✓ Online transactions are immediately available for use
  - ✓ Third-party vendor locations are easily accessible in all service areas
  - ✓ Streamline process for refunds and replacements
  - ✓ Support payment for families, groups, institutional programs, and events

**Goal: Create a transparent, consistent, inclusive and timely decision-making process**

- Implement process for operator involvement in work plan development, field equipment procurement and change order process

**Goal: Govern the program efficiently and cost-effectively**

- Adopt standard fare categories and discount levels
  - ✓ Minimum \$0.50 discount for full-fare adult transfer customers to bus and light rail
  - ✓ Establish uniform youth discount for ages five to 18 and senior discount for ages 65 and older
- Evaluate staffing plan to enhance internal program resources and reduce reliance on consultants

**Goal: Ensure that accurate and complete data is available to support decision making at every level**

- System integrates with vehicle on-board equipment to incorporate route, location and revenue information where necessary
- Clipper® data is accessible to operators and the public to the full extent contemplated by the Clipper® privacy policy

**Goal: Ensure program flexibility and responsiveness**

- System design and contract includes a streamlined process for common changes such as fare adjustments and route changes and additions

**Goal: Ensure operational efficiency and reliability**

- Ensure continued competitive equipment availability, automated status reporting and remote diagnostics
- Utilize open architecture

## **Appendix D**

### **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. Financial Obligations**

A Party who disputes amounts claimed by the Contracting Agency to be due under the MOU agrees to pay the amount claimed pending dispute resolution.

## Appendix E

### Special Provisions for the City and County of San Francisco

(References to "City" in Paragraphs 1, 2 and 3 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.

## Appendix F

### Notices

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3.8.16 NOTE: NCTPA will be changing to Napa Valley Transportation Authority (NVTA) in the next couple of weeks.

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**AMENDMENT NO. 1 to**

**AMENDED AND RESTATED CLIPPER® MEMORANDUM OF UNDERSTANDING**

This is Amendment No. 1 ("Amendment"), effective as of April 17, 2017 ("Amendment No. 1 Effective Date") to the Amended and Restated Clipper® Memorandum of Understanding (the "MOU") dated February 19, 2016, by and among the Metropolitan Transportation Commission ("MTCs") and the following transit operators participating in the Clipper® program (referred to herein individually as an "Operator" or collectively as the "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 ("SFMTA"); the San Mateo County Transit District ("SamTrans"); the Santa Clara Valley Transportation Authority ("VTA"); the Peninsula Corridor Joint Powers Board ("Caltrain"); Central Contra Costa Transit Authority; City of Fairfield, as the operator of Fairfield and Suisun Transit; City of Petaluma; Eastern Contra Costa Transit Authority; Livermore/Amador Valley Transit Authority; Marin County Transit District; Napa Valley Transportation Authority; Solano County Transit; Sonoma County Transit; Sonoma-Marin Area Rail Transit; Vacaville City Coach; Western Contra Costa Transit Authority; San Francisco Bay Area Water Emergency Transportation Authority; City of Santa Rosa; and City of Union City; and any other transit operators that implement Clipper® and execute a Supplemental Agreement to the MOU.

MTC and the Operators are referred to herein collectively as the "Parties" or individually as a "Party".

1. The Parties hereto agree to amend the MOU as follows: Article IV, **Clipper® Executive Board**, is amended in part as follows:

a. Subarticles H, Board Chair; Committees, and I, Delegates, are amended to read:

H. Board Chair; Committees. The Executive Board shall bi-annually elect a Chair and Vice Chair from its members. The Chair shall provide administrative staff support to the Executive Board, as needed as determined by the Chair and the Clipper® Executive Director. The Chair may appoint advisory committees or working groups for specified projects of limited duration. The Executive Board may establish standing committees from time to time.

I. Delegates. Executive Board members may appoint, in writing, delegates to vote on their behalf in the event of a member's absence from any Executive Board meeting, for up to four (4) meetings per calendar year. No voting rights are accorded to delegates, nor do delegates count toward a quorum of the Executive Board, when they are representing an Executive Board member for meetings after four (4) missed meetings in a calendar year.

2. A new Article XII, **Common Interest**, is added to the MOU, as follows:

**ARTICLE XII**  
**Common Interest**

The Parties recognize a mutuality of interest, and a need for joint cooperation in legal matters relating to Clipper®. In furtherance of this common interest, any communications among Parties and counsel for any of the Parties shall be confidential and protected from disclosure to any third party by each and every privilege – including, but not limited to, the attorney-client privilege, the attorney work product privilege, and the pooled information privilege – notwithstanding the dissemination of the communications and work product among Parties by the counsel that made the information available in the first instance. If information covered by the privileges is requested by a third party pursuant to a subpoena or other discovery request, then counsel receiving the request shall notify in a timely fashion the counsel who disclosed the information so that the privileges against disclosure may be asserted.

Should any Party withdraw from or otherwise terminate its participation in the Clipper® program, such withdrawal or termination shall not impair the privileges that protect any information that has been shared prior to such action. Any Party that withdraws or terminates its participation in the Clipper® program shall promptly return all privileged materials that the Party has received.

3. All other terms of the MOU not amended herein shall remain in full force and effect.

SIGNATURES ON SUBSEQUENT PAGES

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

**Metropolitan Transportation Commission**

DocuSigned by:  
**Steve Heminger**  
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Name: Steve Heminger  
Title: Executive Director

Date: 8/24/2017

Approved as to form:  
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**Melanie Morgan**  
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Melanie J. Morgan, Senior Counsel

**Alameda-Contra Costa Transit District**

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Denise C. Standridge, General Counsel

**Golden Gate Bridge, Highway and  
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Name: Denis J. Mulligan

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Date: 9/12/2017

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Kimon Manolius, General Counsel

**San Francisco Bay Area Rapid Transit District**

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Name: Grace Crunican

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

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Date: 8/30/2017

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Robin M. Reitzes, Deputy City Attorney

**San Mateo County Transit District**

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Date: 8/31/2017

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**Santa Clara Valley Transportation Authority**

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**Peninsula Corridor Joint Powers Board**

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Name: Jim Hartnett

Title: Executive Director

Date: 8/31/2017

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**Central Contra Costa Transit Authority**

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Date: 9/18/2017

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Madeline Chun, General Counsel

**City of Fairfield  
Fairfield and Suisun Transit**

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Title: City Manager

Date: 4/7/2018

Approved as to form:

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Greg Stepanicich, City Attorney

**City of Petaluma**

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Title: City Manager

10/18/2017

Date: \_\_\_\_\_

Approved as to form:

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Eric W. Danly, City Attorney

**Eastern Contra Costa Transit Authority**

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Approved as to form:

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Ben Stock, General Counsel



**Livermore/Amador Valley Transit Authority**

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*Kate Miller*

AF020AD5FBEA48E...

Name: Kate Miller

Title: Executive Director

9/5/2017

Date: \_\_\_\_\_

Approved as to form:

DocuSigned by:  
*Jennifer Gore*

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Jennifer Gore, General Counsel

**Solano County Transit**

DocuSigned by:  
*Beth Kranda*

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Name: Beth Kranda  
Title: Executive Director

Date: 8/30/2017

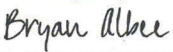
Approved as to form:

DocuSigned by:  
*Bernadette Curry*


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Bernadette Curry, General Counsel

**Sonoma County Transit**

DocuSigned by:  
  
01B224D4F1AA4B8...  
Name: Bryan Albee  
Title: Transit Systems Manager  
Date: 9/5/2017

Approved as to form:

DocuSigned by:  
  
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Lesley Pak, General Counsel

**Sonoma-Marin Area Rail Transit District**

DocuSigned by:  
*Farhad Mansourian*  
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Name: Farhad Mansourian

Title: General Manager

9/5/2017

Date: \_\_\_\_\_

Approved as to form:

DocuSigned by:  
*Thomas Lyons*  
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Thomas Lyons, General Counsel

**Vacaville City Coach**

DocuSigned by:  
*Shawn Cunningham*  
612C6526499A448...

Name: Shawn L. Cunningham

Title: Public Works Director

9/8/2017

Date: \_\_\_\_\_

Approved as to form:

DocuSigned by:  
*Melinda C. H. Stewart*  
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Melinda C. H. Stewart, General Counsel

**Western Contra Costa Transit Authority**

DocuSigned by:  
*Charles Anderson*  
7018945E1F824A9...  
Name: Charles Anderson  
Title: General Manager  
Date: \_\_\_\_\_ 9/6/2017 \_\_\_\_\_

Approved as to form:

DocuSigned by:  
*Michael Conneran*  
ACAFAC8B7E0C47C...  
Michael N. Conneran, General Counsel



**San Francisco Bay Area Water Emergency  
Transportation Authority**

DocuSigned by:  
*Nina Rannells*

D658EBAD2E2B4AA...  
Name: Nina Rannells  
Title: Executive Director

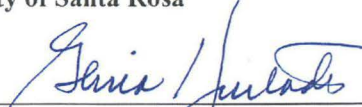
Date: 9/8/2017

Approved as to form:


DocuSigned by:  
*Madeline Chun*

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Madeline Chun, General Counsel

City of Santa Rosa

  
\_\_\_\_\_  
for Name: Sean McGlynn  
Title: City Manager  
Date: May 16, 2018

Approved as to form:

  
\_\_\_\_\_  
Sue A. Gallagher, City Attorney

**City of Union City**

DocuSigned by:  
*Antonio Acosta*  
7C3ECBB88BB745D...  
Name: Antonio E. Acosta  
Title: City Manager  
Date: 9/5/2017

Approved as to form:

DocuSigned by:  
*K Kokotaylo*  
7650B481ADF141E...  
Kristopher J. Kokotaylo, Interim City Attorney

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

RESOLUTION No. 15-113

WHEREAS, Clipper<sup>®</sup> is the 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 20 transit systems; and

WHEREAS, The Metropolitan Transportation Commission (MTC) entered into a contract with Cubic Transportation Systems, Inc. to implement, operate and maintain the Clipper<sup>®</sup> fare payment system through November 2, 2019; and

WHEREAS, In November 2011, a Memorandum of Understanding Regarding Operations and Maintenance of Clipper<sup>®</sup> Fare Collection System was adopted by participating operators and MTC to delineate the responsibilities of MTC and the transit operators; and

WHEREAS, The Parties have examined the successes and challenges of the program to date and have identified certain areas in which existing arrangements should be modified or clarified; and

WHEREAS, The proposed Memorandum of Understanding (MOU) establishes a Clipper<sup>®</sup> Executive Board made up of one representative from the SFMTA, BART, Caltrain/SamTrans, AC Transit, Santa Clara Valley Transportation Agency, the Golden Gate Bridge District, and MTC, and two representatives selected to represent all other participating agencies; and

WHEREAS, The MOU also establishes a position of Clipper<sup>®</sup> Executive Director and goals for the next generation system; and

WHEREAS, The revised Cost Allocation Formula between operators more equitably distributes costs among the various operators based on actual usage, revenues and trip transactions; now, therefore, be it;

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors approves the Amended and Restated Memorandum of Understanding with the Metropolitan Transportation Commission and Bay Area transit operators to clarify their respective roles and responsibilities, define roles and responsibilities for a newly defined Contracting Agency, establish a Clipper<sup>®</sup> Executive Board, establish a Clipper<sup>®</sup> Executive Director, and revise the cost allocation formula to ensure the successful operation and maintenance of Clipper<sup>®</sup>; and be it

FURTHER RESOLVED, That the SFMTA Board of Directors commends the MOU to the Board of Supervisors for its approval.

I certify that the foregoing resolution was adopted by the Municipal Transportation Agency Board of Directors at their meeting of August 18, 2015.

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Secretary to the Board of Directors  
San Francisco Municipal Transportation Agency

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

RESOLUTION No. 220906-079

WHEREAS, The Clipper® regional fare payment system, originally named “TransLink,” was implemented in 2002 by the Metropolitan Transportation Commission (MTC); currently 24 transit agencies participate in the Clipper® program; and

WHEREAS, On December 12, 2003, MTC and six Bay Area transit operators entered into an interagency participation agreement (IPA) to create a forum for joint agency decision-making to work towards the successful implementation of the TransLink® automated fare payment system; and

WHEREAS, The IPA was superseded and replaced by a Memorandum of Understanding Regarding Operations and Maintenance of Clipper® Fare Collection System dated November 10, 2011, by and among MTC and, initially, seven of the operators (the 2011 MOU); The 2011 MOU delineated, among other things, MTC's responsibilities, including as contracting agency, the transit operators' responsibilities, a consultation process for amending the Clipper Operating Rules, allocation of operating expenses among the transit operators and MTC, and a dispute resolution process; and

WHEREAS, In 2016, the parties amended and restated the 2011 MOU to clarify their respective roles and responsibilities, define roles and responsibilities for a newly defined "Contracting Agency," establish a "Clipper Executive Board," and establish a Clipper Executive Director (2016 MOU); this 2016 MOU was amended in 2017 and 2019; and

WHEREAS, In September 2018, MTC entered into a contract with Cubic Transportation Systems, Inc. (Cubic) to design, implement, operate, and maintain the Next Generation Clipper® System; and

WHEREAS, MTC and the transit agencies wish to replace the 2016 MOU with a 2022 MOU, which outlines the responsibilities of the transit agencies and MTC, the Clipper® Executive Board, and the Clipper® Executive Director in support of the program, and establishes the agreement between MTC and the transit agencies for the allocation of Clipper® costs between MTC and the transit agencies; and

WHEREAS, The Cubic contract includes a flat fee operation and maintenance structure, replacing the current combination structure of variable transaction-based and flat fees; and

WHEREAS, MTC has committed to funding 50% of the operating and 100% of mobile card fee costs; and

WHEREAS, Credit card fees will be allocated based on the percentage of revenue processed by a transit agency, and remaining fees will be allocated based on the percentage of total trips using the Clipper® system by customers of the agency; and

WHEREAS, The SFMTA's share of these costs is estimated at 35%, with an average annual cost of approximately \$7.6 million over the 10 years of this MOU; and

WHEREAS, On June 22, 2022, the SFMTA, under authority delegated by the Planning Department, determined that the Next Generation Clipper® System Memorandum of Understanding is not a "project" under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b); and

WHEREAS, A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors and is incorporated herein by reference; and

WHEREAS, The Next Generation Clipper® System will greatly improve the customer experience and flexibility for operators, including implementation of virtual Clipper® cards, an increased retail network for in-person cash transactions, real-time loading of fares purchased online, new fare products, and the ability to use credit cards to pay fares on vehicles; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Director of Transportation to execute the Next Generation Clipper® System Memorandum of Understanding with the Metropolitan Transportation Commission and participating Bay Area transit operators, including the allocation of operating and maintenance costs; and be it further

RESOLVED, That the SFMTA Board of Directors directs the Director of Transportation to forward the Memorandum of Understanding to the Board of Supervisors for its approval.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of September 6, 2022.



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Secretary to the Board of Directors  
San Francisco Municipal Transportation Agency



London Breed, Mayor

Gwyneth Borden, Chair  
Amanda Eaken, Vice Chair  
Stephanie Cajina, Director

Steve Heminger, Director  
Fiona Hinze, Director  
Manny Yekutieli, Director

Jeffrey Tumlin, Director of Transportation

October 13, 2022

The Honorable Members of the Board of Supervisors  
City and County of San Francisco  
1 Dr. Carlton Goodlett Place, Room 244  
San Francisco, CA 94102

*Subject: Request for Approval – Next Generation Clipper Memorandum of Understanding*

Honorable Members of the Board of Supervisors:

The San Francisco Municipal Transportation Agency (SFMTA) requests that the San Francisco Board of Supervisors authorize the Director of Transportation to execute the Next Generation Clipper® System Memorandum of Understanding with the Metropolitan Transportation Commission and Bay Area transit operators, including the allocation of operating and maintenance costs for the participating agencies.

## BACKGROUND

The Clipper<sup>1</sup> regional fare payment system, originally named "TransLink," was implemented in 2002 by the Metropolitan Transportation Commission (MTC). Currently 24 transit operators in the Bay Area participate in the program. In Fiscal Year 2019, an average of 23 million trips and \$53 million in revenue was processed through the system per month.

On December 12, 2003, MTC and six Bay Area transit operators entered into an interagency participation agreement (IPA) to create a forum for joint agency decision-to work towards the successful implementation of the TransLink® automated fare payment system. The IPA was superseded and replaced by a Memorandum of Understanding Regarding Operations and Maintenance of Clipper® Fare Collection System dated November 10, 2011, by and among MTC and, initially, seven of the operators (the 2011 MOU). The 2011 MOU delineated, among other things, MTC's responsibilities, including as contracting agency, the transit operators' responsibilities, a consultation process for amending the Clipper Operating Rules, allocation of operating expenses among the transit operators and MTC, and a dispute resolution process. In 2016, the parties approved an amended and restated MOU to clarify their respective roles and responsibilities, define roles and responsibilities for a newly defined "Contracting Agency," establish a "Clipper Executive Board," and establish a Clipper Executive Director. This MOU was amended in 2017 and 2019.



MTC entered into a contract with Cubic Transportation Systems, Inc. (Cubic) to implement, operate and maintain the Clipper fare payment system through November 2, 2019. In September 2018, MTC entered into a system integrator contract with Cubic Transportation Systems, Inc. (Cubic) to design, implement, operate, and maintain the Next Generation Clipper System.

This 2022 Memorandum of Understanding (MOU) will replace the existing 2016 MOU (as amended). The document outlines the responsibilities of the transit operators and MTC, the Clipper Executive Board, and the Clipper Executive Director in support of the program. In addition, the MOU establishes the agreement between MTC and the transit operators for the allocation of Clipper costs between MTC and the transit operators.

#### *Cost Allocation*

As explained below, the Cubic contract includes a flat fee operation and maintenance structure, replacing the current combination structure of variable transaction-based and flat fees. Separate contracts will be issued through a competitive procurement for customer service operations and fare media. The allocation of these fees will also be based on Clipper usage by operator and the estimated costs are included in the fiscal impact provided. MTC has committed to funding 50% of the operating and 100% of mobile card fee costs (under the Cubic contract). Credit card fees will be allocated based on the percentage of revenue processed by an agency. Participating transit operators have agreed to allocate the remaining fees based on the percentage of total trips taken by customers using the Clipper system. We expect the SFMTA's share of these costs to be approximately 35%, with an average annual cost of approximately \$7.6 million over the 10 years of this MOU. As a comparison, the annual fees in Fiscal Years 2018 and 2019 were approximately \$8.5 million per year.

#### *System Improvements*

The functionality of the Next Generation Clipper System will greatly improve the access and functionality of fare payment in the Bay Area and will address the most important concerns that customers have voiced through extensive public outreach conducted annually by MTC, as well as public feedback received directly from the SFMTA.





The system will be “account-based,” similar to a credit card where transactions are sent in real-time and processed in a back-end system. Currently, all transaction and account information is stored on the card itself and must be downloaded to every individual card reader or ticket vending machine. This process can often lead to delays in passes and cash values being downloaded to the individual Clipper card. Moving to an account-based system provides for a great degree of flexibility by reduced development and testing requirements for even minor changes.

Prior to the full system launch in Fall 2024, customers will begin seeing incremental improvements to their experience. The first of these improvements, implemented in May 2021, is the ability for customers to transfer or set-up a virtual Clipper card on a smart phone, replacing the plastic card. The next phase of improvements, including testing and implementation of new card reader equipment, has begun on Muni vehicles, with completion estimated by the end of 2022. This new equipment will be connected in real-time using wi-fi technology, eliminating the frustration of having to wait up to five days for value or products purchased online to be available for use. In addition, the readers will be connected to the on-board vehicle communications system, providing improved data at the route level for service planning.

Access to in-person locations for purchasing products and loading value using cash, a long-standing frustration for Muni customers, will be expanded under the current contract requirements, including a focus on areas with a higher percentage of people of color and low incomes. In addition, new retail equipment will eliminate the archaic requirement for vendors to maintain a separate hard-wired phone line to process transactions, which is a significant barrier for participation in the current system.

In addition, the new system will finally allow the SFMTA to provide access to existing fare products not on the current Clipper system, such as the Lifeline monthly pass for people with low-incomes, and the one-day Muni pass. In addition, the system will enable the ability to implement fare-capping, allowing customers to pay as they go until they spend an amount equivalent to a monthly pass, after which all remaining travel for that month will be free. Special fares for late-night or non-peak travel time/days and other promotional fares will also be configurable under the Next Generation Clipper System, eliminating the historically lengthy and costly development costs under the current system. Chip-enabled credit cards will be accepted for payment; however, the initial implementation will be limited to full-fare single rides (no transfers or discounts). The system will also provide for approved third-party integration to allow payments, with priority given to paratransit fares and parking



on transit properties. Additional opportunities to extend the technology to bike sharing and other shared mobility services will be evaluated.

FUNDING IMPACT

The estimated SFMTA share of the Clipper program fees range from \$6.5 million in year one of the contract to \$8.5 million in year 10 and will continue to be budgeted in the Finance and Information Technology budget.

*ESTIMATED CLIPPER FEES*

YEAR	Operating & Maintenance	Credit/Debit Fees	Annual Total*	SFMTA Share**
1	957,638	600,000	18,691,652	6,542,078
2	1,059,581	615,000	20,094,966	7,033,238
3	1,091,165	630,375	20,658,482	7,230,469
4	1,113,764	646,134	21,118,776	7,391,572
5	1,124,874	662,288	21,445,938	7,506,078
6	1,151,873	678,845	21,968,621	7,689,017
7	1,179,543	695,816	22,504,303	7,876,506
8	1,207,898	713,211	23,053,309	8,068,658
9	1,236,956	731,042	23,615,973	8,265,591
10	1,266,735	749,318	24,192,635	8,467,422
TOTAL	11,390,025	6,722,029	217,344,654	76,070,629

*\*Assumes 5% annual escalation*

*\*\*Assumes 35% SFMTA share*

SFMTA BOARD ACTION

On September 6, 2022, the SFMTA Board of Directors approved Resolution No. 220906-079, authorizing the Director of Transportation to execute the Next Generation Clipper® System Memorandum of Understanding with the Metropolitan Transportation Commission and participating Bay Area transit operators, and forward the Memorandum of Understanding to the Board of Supervisors for approval.

REQUEST FOR APPROVAL

The SFMTA respectfully requests that the Board of Supervisors authorize the Director of Transportation to execute the Next Generation Clipper® System Memorandum of



Understanding with the Metropolitan Transportation Commission and participating Bay Area transit operators.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Jeffrey P. Tumlin'.

Jeffrey P. Tumlin  
Director of Transportation



## Next Generation Clipper System Memorandum of Understanding

The San Francisco Municipal Transportation Agency (SFMTA) proposes to execute the Next Generation Clipper System Memorandum of Understanding with the Metropolitan Transportation Commission and Bay Area transit operators, including the allocation of operating and maintenance costs for the participating agencies.

The Clipper regional fare payment system, originally named “TransLink” was implemented in 2002 by the Metropolitan Transportation Commission (MTC). Twenty-four transit agencies in the Bay Area participate in the program, with approximately 337,000 weekday trips and \$22 million in revenue processed on the system in May 2022. The new contract includes a flat fee operation and maintenance structure, replacing the current hybrid structure of variable transaction based and flat fees.

Not a “project” under CEQA pursuant to CEQA Guidelines Sections 15060(c) and 15378(b) because the action would not result in a direct or a reasonably foreseeable indirect physical change to the environment.

*Andrea Contreras*

6/22/2022

Andrea Contreras  
San Francisco Municipal Transportation Agency

Date



## YOUTH COMMISSION MEMORANDUM

**TO:** Stephanie Cabrera, Assistant Clerk, Government Audit and Oversight Committee  
Honorable Supervisor Dean Preston

**CC:** Alisa Somera, Legislative Deputy Director, Board of Supervisors  
Melissa Hernandez, Legislative Aide to Supervisor Dean Preston

**FROM:** 2022-2023 Youth Commission

**DATE:** Tuesday, November 15th, 2022

**RE:** SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS

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At its virtual meeting on Monday, November 14th, 2022, the San Francisco Youth Commission Housing & Land Use Committee supports the approval of File No. 221083 with the following feedback and recommendations:

1. The Youth Commission supports creating a forum where multiple agencies can come together to create seamless transit. However, the Youth Commission noted that the Free Muni for All Youth program, which allows youth to ride Muni for free, has rendered the Clipper cards obsolete for youth.
2. However, youth still need Clipper cards to access other modes of transit, such as the Bay Area Rapid Transit (BART) system. The Youth Commission noted that the BART ticket vending machines (TVMs) do not produce Youth Discount Clipper cards which provide discounts on BART, Golden Gate Transit, and other transit agencies, and they only sell adult Clipper cards.
3. The Metropolitan Transportation Commission (MTC) and San Francisco Municipal Transportation Agency (SFMTA) should work and collaborate to expand access to Youth Discount Clipper Cards.
4. The agencies should increase locations where Youth Discount Clipper Cards are available for purchase, such as at Muni Metro stations, BART stations, and third-party retail outlets in order to properly grant access to Clipper cards for all demographics throughout the city, especially youth.

Youth Commission  
City Hall ~ Room 345  
1 Dr. Carlton B. Goodlett Place



(415) 554-6446  
(415) 554-6140 FAX

5. The Youth Commission is especially supportive of “Fare Capping” proposed as part of the Clipper 2.0 agreement that would allow riders to “pay-as-you-go” and cap the amount riders are charged to the current daily and monthly pass prices that currently must be paid for upfront.

6. “Fare Capping” allows for a more seamless and equitable rider experience as riders are not required to decide or be able to afford to pay for the full cost of a pass at the beginning of the month and still always pay the most affordable fare.

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Please do not hesitate to contact Youth Commissioners or Youth Commission staff (415) 554-6446 with any questions. Thank you.

BOARD of SUPERVISORS



City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, CA 94102-4689  
Tel. No. (415) 554-5184  
Fax No. (415) 554-5163  
TDD/TTY No. (415) 554-5227

## MEMORANDUM

TO: Jeffrey Tumlin, Executive Director, Municipal Transportation Agency  
Therese McMillan, Executive Director, Metropolitan Transportation Commission

FROM: Stephanie Cabrera, Assistant Clerk, Government Audit and Oversight Committee, Board of Supervisors

DATE: October 24, 2022

SUBJECT: LEGISLATION INTRODUCED

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The Board of Supervisors' Government Audit and Oversight Committee has received the following proposed legislation, introduced by Mayor Breed on October 18, 2022:

**File No. 221083**

**Resolution authorizing the San Francisco Municipal Transportation Agency Director of Transportation to execute the Next Generation Clipper® System Memorandum of Understanding with the Metropolitan Transportation Commission and Bay Area transit operators, including the allocation of operating and maintenance costs for the participating agencies, effective upon approval of this Resolution.**

If you have any comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: [Stephanie.Cabrera@sfgov.org](mailto:Stephanie.Cabrera@sfgov.org)

cc: Kate Breen, Municipal Transportation Agency  
Janet Martinsen, Municipal Transportation Agency  
Joel Ramos, Municipal Transportation Agency  
Christine Silva, Municipal Transportation Agency  
Alix Bockelman, Metropolitan Transportation Commission  
Bradford Paul, Metropolitan Transportation Commission

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689
Tel. No. (415) 554-5184
Fax No. (415) 554-5163
TDD/TTY No. (415) 554-5227

MEMORANDUM

TO: Alondra Garcia, Esquivel, Director, Youth Commission
FROM: Stephanie Cabrera, Assistant Clerk, Government Audit and Oversight Committee
DATE: November 4, 2022
SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS

The Board of Supervisors has received the following proposed legislation which is being referred to the Youth Commission as per Charter, Section 4.124 for comment and recommendation. The Commission may provide any response it deems appropriate within 12 days from the date of this referral.

File No. 221083

Resolution authorizing the San Francisco Municipal Transportation Agency Director of Transportation to execute the Next Generation Clipper® System Memorandum of Understanding with the Metropolitan Transportation Commission and Bay Area transit operators, including the allocation of operating and maintenance costs for the participating agencies, effective upon approval of this Resolution.

Please return this cover sheet with the Commission's response to Stephanie Cabrera, Assistant Clerk, Government Audit and Oversight Committee.

\*\*\*\*\*

RESPONSE FROM YOUTH COMMISSION Date: \_\_\_\_\_

- No Comment
Recommendation Attached

Chairperson, Youth Commission