

INTER OFFICE MEMO

To: Board of Directors

Date: 09/07/2022

From: Melody Reeb, Director of Planning, Marketing, & Innovation

Reviewed by: *Ref*

SUBJECT: 2022 Amended and Restated Clipper MOU

Background:

The Amended and Restated Clipper Memorandum of Understanding (MOU) was entered into on February 19, 2016 by and among the Metropolitan Transportation Commission (MTC) and the transit operators participating in the Clipper program, including County Connection. In addition to defining roles and responsibilities related to the Clipper program, the MOU, which was originally approved by County Connection's Board of Directors in October 2015, defines the operating cost and revenue allocation formulas among the operators and MTC.

Next Generation Clipper:

In 2018, MTC began work on the Next Generation Clipper (C2) system, which will implement an account-based payment system. A new MOU was developed to incorporate implementation of the C2 system, including a revised cost-sharing formula. Operations and Maintenance (O&M) costs for the account-based system will be split 50/50 between MTC and the transit operators. Subsequent allocation amongst the operators will mainly be based on Clipper ridership, whereas the formula for the current system is based on a combination of cards used, transactions, and revenue processed. Some costs, such as those for payment services (i.e., credit card fees), will continue to be allocated based on revenue.

The MOU and cost sharing agreements were approved by the Clipper Executive Board at its August meeting and are now being circulated to the transit operators for approval. The MOU has also been reviewed by County Connection's legal counsel. All transit operators are required to approve this MOU in order to continue participation in the Clipper program. Per Resolution No. 3866, "MTC is required to evaluate an operator's compliance with coordination improvements prior to an operator receiving allocations for State Transit Assistance (STA) funds." Failure to approve the MOU would risk County Connection's eligibility for STA funds.

Financial Implications:

While O&M costs for the C2 system are expected to be higher due to the additional functionality, MTC will be covering a larger portion of those costs compared to the current system. County Connection's share of Clipper ridership is around 1%, which is similar to our current share of fees. Thus, staff does not anticipate any significant impact as a result of the change to the allocation formula.

Recommendation:

The A&F Committee and staff recommend that County Connection continue participation in the Clipper program and execute the 2022 Amended and Restated Clipper Memorandum of Understanding.

Action Requested:

The A&F Committee and staff request that the Board approve Resolution No. 2023-009 authorizing the General Manager to sign the Clipper MOU.

Attachments:

Attachment 1: 2022 Amended and Restated Clipper Memorandum of Understanding

Attachment 2: Resolution No. 2023-009

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")¹:

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-Marín 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-¹term 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

¹ *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, as defined in the Next Generation Clipper Contract, 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 Clipper 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 Clipper 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 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: _____

DRAFT

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]

DRAFT

**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 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 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

DRAFT

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. 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