

To: Administration & Finance Committee

Date: 7/22/2020

From: Melody Reeb, Manager of Planning

Reviewed by: *Nish*

SUBJECT: Clipper MOU Amendment No. 2

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.

MOU Amendment:

The Next-Generation Clipper system is currently in development, and the amendment addresses the allocation of costs related to the initial "accelerated" phase of the new system, which is being deployed over the next couple years. This includes a mobile app scheduled to be released at the end of this year, as well as new onboard equipment scheduled to be installed starting late next year. The amendment also addresses costs related to the extension of the current system contract.

County Connection staff participated in a Working Group with MTC and other transit operator staff to develop the proposed cost allocation formulas. They largely mimic the existing formulas that are in place, which aim to align actual cost drivers, such as usage of the system, with allocation amounts. The amendment and cost sharing agreements were approved by the Clipper Executive Board at its June meeting and is now being circulated to the parties for approval. The amendment 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 amendment would risk County Connection's eligibility for STA funds.

Financial Implications:

The amendment will result in increased costs to all participating agencies due to the additional operating costs associated with the accelerated deployment phase. Actual amounts will depend on usage, but staff has estimated that County Connection's share will be an additional \$15,000 per year. This increase in Clipper fees has been included in the FY 2021 budget.

Recommendation:

Staff proposes the A&F Committee recommend the Board authorize the General Manager to execute Amendment No. 2 to the Amended and Restated Clipper Memorandum of Understanding.

Action Requested:

Staff requests the A&F Committee forward this item to the Board for approval.

Attachments:

Amendment No. 2 to Amended and Restated Clipper® Memorandum of Understanding

AMENDMENT NO. 2 to

AMENDED AND RESTATED CLIPPER® MEMORANDUM OF UNDERSTANDING

This is Amendment No. 2, effective as of _____, 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*~~the term of the Next Generation Clipper Contract~~, 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

Name: Therese W. McMillan
Title: Executive Director

Leslie G. Miessner, Senior Counsel

Date: _____

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:

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	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 8.1.1 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

- j. (50% of the invoiced amount)
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.*