

To: Administration & Finance Committee

Date: 12/27/2021

From: Melody Reeb, Manager of Planning

Reviewed by: *RF*

SUBJECT: Clipper MOU Amendment No. 3

Background:

County Connection participates in the Regional Transit Card (RTC) Discount Program, which allows people with disabilities, those traveling with an attendant, and certain veterans to ride at reduced fares on all Bay Area transit systems. The program is currently administered by AC Transit with policy input from the Bay Area Partnership Accessibility Committee (BAPAC), which is comprised of representatives from the participating transit agencies.

RTC Program Transition:

In 2020, the transit operators requested that MTC assume administrative responsibility of the RTC program in order to modernize the program and have more consistency with the youth and senior fare discounts on Clipper. MTC has agreed to incorporate the RTC program into the Clipper program, and policy-making authority will be placed with the Clipper Executive Board (CEB).

In order to make this transition, the Clipper Memorandum of Understanding (MOU) must be amended to include the RTC program. In addition to transferring program oversight, the amendment establishes the cost-sharing formula among the transit operators. Based on feedback from the operators and direction from CEB, the cost allocation formula from the 2017 RTC MOU will continue to be used. However, this allocation will be reviewed as part of the future MOU for the next-generation Clipper system.

Financial Implications:

None, the amendment will not change the current cost allocation formula, and County Connection's share will remain at 4% of the program operating costs, which has been about \$18,000 annually.

Recommendation:

Staff proposes the A&F Committee recommend the Board authorize the General Manager to execute Clipper MOU Amendment No. 3.

Action Requested:

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

Attachments:

Amendment No. 3 to Amended and Restated Clipper® Memorandum of Understanding

AMENDMENT NO. 3 to

AMENDED AND RESTATED CLIPPER® MEMORANDUM OF UNDERSTANDING

This is Amendment No. 3, effective as of September 1, 2021 (“Amendment No. 3 Effective Date”) to the Amended and Restated Clipper Memorandum of Understanding (the "MOU") dated February 19, 2016, as amended on April 17, 2017 and October 1, 2020, 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-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 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. The Regional Transit Connection (RTC) program is currently administered by AC Transit as the lead administrative and contracting agency, with policy input from the Bay Area Partnership Accessibility Committee (BAPAC).
2. In 2020, the Operators currently managing the RTC program requested that MTC assume administrative and contracting responsibility for the RTC program. MTC agreed, contingent upon moving the program’s policy-making authority to the Clipper Executive Board consistent with other programs managed by MTC.
3. The Parties therefore wish to amend the MOU to place policy-making authority for the RTC program with the Clipper Executive Board and to include RTC program costs in Appendix B, Clipper Contract Cost and Revenue Allocation, continuing to apply, pursuant to direction from the Clipper Executive Board, the current cost allocation formula set forth in the RTC Program Memorandum of Understanding.

The MOU is hereby amended as follows, with additions appearing in *italics* and deletions in ~~strikethrough~~.

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1. Article I, Operator Responsibilities, is amended to add subsection F, as follows:
 - F. Beginning September 1, 2021, support the Contracting Agency in its administration and operation of the Regional Transit Connection (RTC) discount card program, as set forth in Article III.M, and pay its share of RTC program costs, according to Appendix B, as amended, attached hereto and incorporated herein by this reference.*

2. Article III, Contracting Agency Responsibilities, is amended to add subsection M, as follows:
 - 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.*

3. Subsection A of Article IV, Clipper Executive Board, is deleted in its entirety and replaced by a new Subsection A, to read as follows:
 - 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 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.

4. Article VII, Indemnification, is revised to read as follows:
 - 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 discount card 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 Parties intend that MTC as Contracting Agency shall be indemnified, held harmless and defended against any and all claims or liability related to the RTC discount card program resulting after its 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.*
5. A new Appendix B-5, RTC Program Cost Allocation Effective July 1, 2021, is added, attached hereto and incorporated herein by this reference.
6. All other terms of the MOU not amended herein shall remain in full force and effect.

SIGNATURES ON SUBSEQUENT PAGES

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Appendix B-5

RTC Program Cost Allocation Effective September 1, 2021

1. Cost Allocation Among Operators

The allocation of RTC program operating costs (as defined in Section 2 below) to Operators shall be based on the cost allocation formula set forth in the Agreement Regarding Management of the Regional Transit Discount Program dated April 5, 2017 (the “RTC MOU, as follows:

Agency	Percentage
<i>AC Transit</i>	24%
<i>BART</i>	16%
<i>Central Contra Costa Transit Authority</i>	4%
<i>Eastern Contra Costa Transit Authority</i>	2%
<i>GGBHTD</i>	2%
<i>Livermore/Amador Valley Transit Authority</i>	1%
<i>City of Petaluma (Petaluma Transit)</i>	1%
<i>SFMTA</i>	24%
<i>SamTrans</i>	4%
<i>City of Santa Rosa (Santa Rosa Transit)</i>	1%
<i>Sonoma-Marin Area Rail Transit (SMART)</i>	1%
<i>Solano County Transit (SolTrans)</i>	1%
<i>Solano Transportation Authority</i>	1%
<i>VTA</i>	18%
Total	100%

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.
- 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.*