

**THIS PRINT COVERS CALENDAR ITEM NO. : 10.5**

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Finance & Information Technology

**BRIEF DESCRIPTION:**

Authorizing the Director of Transportation to execute the Amended and Restated Clipper<sup>®</sup> Memorandum of Understanding with the Metropolitan Transportation Commission and Bay Area transit operators to clarify their respective roles and responsibilities, define roles and responsibilities for a newly defined Contracting Agency, establish a Clipper<sup>®</sup> Executive Board, establish a Clipper<sup>®</sup> Executive Director, and revise the cost allocation formula to ensure the successful operation and maintenance of Clipper<sup>®</sup>.

**SUMMARY:**

- Clipper<sup>®</sup> is the automated fare payment system for intra- and inter-Operator transit trips in the San Francisco Bay Area that is currently being operated on 20 transit systems.
- The Metropolitan Transportation Commission (MTC) entered into a contract (the "Clipper<sup>®</sup> Contract") with Cubic Transportation Systems to implement, operate and maintain the Clipper<sup>®</sup> fare payment system through November 2, 2019.
- In November 2011, a Memorandum of Understanding Regarding Operations and Maintenance of Clipper<sup>®</sup> Fare Collection System was adopted by participating operators and MTC to delineate the responsibilities of MTC and the transit operators using Clipper<sup>®</sup>.
- The Parties have examined the successes and challenges of the program to date and have identified certain areas in which existing arrangements should be modified or clarified.
- The changes include clarifying and defining roles and responsibilities, establishing a Clipper<sup>®</sup> Executive Board and a Clipper<sup>®</sup> Executive Director, stating goals for the next generation system, and modifying the existing Cost Allocation Formula.

**ENCLOSURES:**

1. SFMTAB Resolution
2. Amended and Restated Memorandum of Understanding

**APPROVALS:**

**DATE**

DIRECTOR \_\_\_\_\_ 8/10/15

SECRETARY \_\_\_\_\_ 8/10/15

**ASSIGNED SFMTAB CALENDAR DATE:** August 18, 2015

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## **PURPOSE**

Authorizing the Director of Transportation to execute the Amended and Restated Clipper® Memorandum of Understanding with the Metropolitan Transportation Commission and Bay Area transit operators (Operators) to clarify their respective roles and responsibilities, define roles and responsibilities for a newly defined Contracting Agency, establish a Clipper® Executive Board, establish a Clipper® Executive Director, and revise the cost allocation formula to ensure the successful operation and maintenance of Clipper®.

## **GOAL**

This item supports all of the Strategic Plan Goals.

Goal 1: Create a safer transportation experience for everyone

Goal 2: Make transit, walking, bicycling, taxi, ridesharing and carsharing the most attractive and preferred means of travel

Goal 3: Improve the environment and quality of life in San Francisco

Goal 4: Create a workplace that delivers outstanding service

## **DESCRIPTION**

Clipper® is the automated regional fare payment system for intra- and inter-Operator transit trips in the San Francisco Bay Area that has been implemented and is currently being operated on 20 transit systems. More than 20 million trips and 43 million dollars in revenue are processed per month on the Clipper® system. The program is managed by MTC, which has contracted with Cubic Transportation Systems, Inc. to implement, operate and maintain the Clipper fare payment system through November 2, 2019.

On November 10, 2011, participating transit agencies entered into a Memorandum of Understanding Regarding Operations and Maintenance of Clipper® Fare Collection System (the "2011 MOU"). The 2011 MOU delineated, among other things, MTC's responsibilities, including as contracting agency, the Operators' responsibilities, a consultation process for amending the Clipper® Operating Rules, allocation of operating expenses among the Operators and MTC, and a dispute resolution process.

The participating agencies have examined the successes and challenges of the program to date and have identified certain areas in which existing arrangements should be modified or clarified to maximize the benefits to the transit agencies and Bay Area transit riders for the continued expansion, modification, operation and maintenance of the Clipper® program. The primary goal of the Amended and Restated MOU is to create a formal structure whereby transit agencies have a role in planning and policy decisions related to the regional fare payment system. The current MOU delegates this authority solely to MTC.

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Changes to the basic provisions of the existing MOU are as follows (the provisions of the current MOU are contained in the italicized bullet):

### 1. *Clipper<sup>®</sup> Executive Board*

- Establishes a nine-member Executive Board comprised of one representative from SFMTA, BART, Caltrain/SamTrans, AC Transit, Santa Clara Valley Transportation Agency (VTA), the Golden Gate Bridge District, and MTC, and two representatives selected to represent all other participating agencies.
- The Executive Board will be responsible for developing and evaluating performance goals, adopting a detailed biennial work plan and budget, designating the “Contracting Agency”, and approval of all business matters expected to have a substantial fiscal or operating impact.
- *Under the current MOU, MTC maintains sole authority for these actions.*

### 2. *Contracting Agency*

- Establishes a Contracting Agency to procure, award, manage and carry out the duties and responsibilities of the Clipper<sup>®</sup> program necessary for the expansion, modification, modernization, operation, maintenance, marketing and customer service.
- The Contracting Agency will be responsible for holding and managing the Clipper<sup>®</sup> bank accounts and act as an agency in trust for the funds deposited by the cardholders for the ultimate use with the Operators, and for the benefit of the Operators for funds due.
- Provide adequate staffing to support the Clipper<sup>®</sup> program.
- *The role of the Contracting Agency is currently held by MTC, however, this MOU would allow this role to be assigned to a transit agency, upon approval of the Executive Board and the governing bodies of the participating agencies.*

### 3. *Clipper Executive Director*

- The Clipper<sup>®</sup> Executive Director shall be responsible for regional coordination of the program among the Agencies, oversight of consultants and contractors retained for the design, operation and maintenance of the program, and effectuation of the goals and work plan adopted by the Executive Board in accordance with the budget.
- The Clipper<sup>®</sup> Executive Director will be selected and appointed by the Contracting Agency following consultation with the Executive Board. The initial Clipper<sup>®</sup> Executive Director will be Carol Kuester, an employee of MTC.
- *Currently, there is no Executive Director.*

### 4. *Cost and Revenue Allocation Formula*

- *The current allocation of Clipper<sup>®</sup> operating costs was developed prior to wide scale implementation of the program and is based on a formula of 2/3 transactions and 1/3 revenue.*
- Credit card fees for agencies operating ticket vending or add-value machines outside of the Clipper<sup>®</sup> gateway are absorbed by those agencies and currently exceed two million dollars per year.

## **PAGE 4.**

- Agencies have determined that the current allocation formula is not equitable and have developed a revised formula, outlined in Appendix B of the MOU, that aligns actual cost drivers and usage of the system with the allocation amounts.
- As the proposed change will result in increased costs to most agencies, it is proposed that the increases be phased in, with the addition of agency credit card fees effective July 1, 2016 and the implementation of the new model effective January 1, 2017.

### *5. Performance Standards*

- The MOU includes Performance Standard Requirements intended to guide the development and ongoing operations of Clipper<sup>®</sup>.
- Goals include expanding electronic payment to all modes of transportation, enhanced access for customers to load value, establishing consistent fare categories and discounts, and improving the operation and integration options for the system.
- *The current MOU does not contain performance standards.*

### *6. Extend the Term of the MOU*

- The MOU is effective on the date when all parties have signed the MOU and will terminate on June 30, 2025, unless otherwise terminated by the parties.
- *The current MOU terminates on November 2, 2019, but will be superseded by this MOU.*

## **PUBLIC OUTREACH**

None.

## **ALTERNATIVES CONSIDERED**

A variety of governance models including a Joint Powers Authority and consortium models were discussed.

## **FUNDING IMPACT**

Changes to the Cost Allocation Formula will result in an estimated additional cost of \$730,000 over the approximately \$6.6 million in annual Clipper<sup>®</sup> operating costs that SFMTA will expend beginning in Fiscal Year 2017 and each year thereafter until the expiration of the Clipper<sup>®</sup> Contract in November 2019. If approved by the SFMTA Board of Directors, these additional expenses will be included in the FY17 Operating Budget.

## **ENVIRONMENTAL REVIEW**

The San Francisco Planning Department concurs with the SFMTA's determination that approval of this MOU is not a "project" for purposes of environmental review under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Section 15060(c).

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**OTHER APPROVALS RECEIVED OR STILL REQUIRED**

The Board of Supervisors must approve this MOU under Charter Section 9.118. That section provides that all contracts in excess of ten years or \$10 million dollars, and amendments to those contracts with an impact of over \$500,000 must be approved by the Board of Supervisors.

This MOU must be approved by the governing boards of all participating agencies.

The City Attorney has reviewed this calendar item.

**RECOMMENDATION**

Approve the Amended and Restated Clipper® Memorandum of Understanding.

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

RESOLUTION No. \_\_\_\_\_

WHEREAS, Clipper<sup>®</sup> is the automated fare payment system for intra- and inter-operator transit trips in the San Francisco Bay Area that has been implemented and is currently being operated on 20 transit systems; and

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

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

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

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

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

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

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

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

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

\_\_\_\_\_  
Secretary to the Board of Directors  
San Francisco Municipal Transportation Agency

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

This Amended and Restated Clipper® Memorandum of Understanding (this "MOU") is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2015 (the "Effective Date"), by and among the Metropolitan Transportation Commission ("MTC") and the following transit operators participating in the Clipper® program (referred to herein individually as an "Operator" or collectively as the "Operators"):

Alameda-Contra Costa Transit District ("AC Transit"); Golden Gate Bridge Highway and Transportation District ("GGBHTD"); the San Francisco Bay Area Rapid Transit District ("BART"); the City and County of San Francisco, acting by and through its Municipal Transportation Agency ("SFMTA"); the San Mateo County Transit District ("SamTrans"); the Santa Clara Valley Transportation Authority ("VTA"); the Peninsula Corridor Joint Powers Board ("Caltrain"); Central Contra Costa Transit Authority; City of Fairfield, as the operator of Fairfield and Suisun Transit; City of Petaluma; Eastern Contra Costa Transit Authority; Livermore/Amador Valley Transit Authority; Marin County Transit District; Napa County Transportation and Planning Agency; Solano County Transit; Sonoma County Transit; Sonoma-Marin Area Rail Transit; Vacaville City Coach; Western Contra Costa Transit Authority; San Francisco Bay Area Water Emergency Transportation Authority; [and City of Santa Rosa]; and any other transit operators that implement Clipper® and execute a Supplemental Agreement to the MOU.

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

Recitals

1. Clipper® (formerly TransLink®) is an automated fare payment system for intra- and inter-Operator transit trips in the San Francisco Bay Area that has been implemented and is currently being operated on Operators' transit systems.
2. MTC entered into a contract (the "Clipper® Contract") with Cubic Transportation Systems, Inc. (the "Clipper® Contractor"), to implement, operate and maintain the Clipper® fare payment system through November 2, 2019.
3. On December 12, 2003, MTC and six of the Operators entered into an interagency participation agreement (the "IPA") to create a forum for joint agency decision-making (the "TransLink® Consortium") to work towards the successful implementation of the TransLink® automated fare payment system. The IPA was superseded and replaced by a Memorandum of Understanding Regarding Operations and Maintenance of Clipper® Fare Collection System dated November 10, 2011, by and among MTC and, initially, seven of the Operators (the "2011 MOU"). The 2011 MOU delineated, among other things, MTC's responsibilities, including as contracting agency, the Operators' responsibilities, a consultation process for amending the Clipper® Operating Rules, allocation of operating expenses among the Operators and MTC, and a dispute resolution process.
4. The Parties have examined the successes and challenges of the program to date and have identified certain areas in which existing arrangements should be modified or clarified to maximize the benefits to the Parties and Bay Area transit riders of the continued expansion, modification, operation and maintenance of the Clipper® program.
5. The Parties now wish to amend and restate the 2011 MOU in its entirety to clarify their respective roles and responsibilities, define roles and responsibilities for a newly-defined "Contracting

Agency," establish a "Clipper® Executive Board," and establish a Clipper® Executive Director to ensure the successful operation and maintenance of Clipper®.

## **ARTICLE I**

### **Operator Responsibilities**

Each Operator agrees to:

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



**ARTICLE II**  
**MTC Responsibilities**

MTC agrees to:

- A. Fund a portion of the Clipper® operating and maintenance costs, including costs of the salary of additional Clipper® staff necessary to support the Executive Board, as set forth in Appendix B. Subject to availability of necessary funds, inclusion of projects in the Regional Transportation Plan and TIP where necessary, and receipt of all necessary Commission approvals, budget appropriations and allocations, MTC will continue to fund capital and Contracting Agency operating costs in the manner that it has funded capital and Contracting Agency operating costs to date, through a dedicated allocation of federal, state and local funds, both discretionary and project designated. Recommended annual capital allocations will be identified in the work plan approved by the Executive Board. (See Article IV.C.4.)
  
- B. Retain all books, papers, records, documents, and other materials pertaining to its responsibilities under Appendix B (the “Materials”) in accordance with federal grant and audit requirements and generally accepted accounting principles and make the Materials available to Parties upon request through reasonable means and at reasonable times. Parties may request that Materials be made available for the most recently closed fiscal year during the term of this MOU and for up to one year thereafter; provided, however, that nothing in this Article II.B is intended to limit a Party's rights to obtain records under the California Public Records Act (Government Code Section 6250 *et seq.*).
  
- C. Continue to serve as the Contracting Agency (described in Article III), and continue to provide adequate staffing to support the Clipper® program under the direction of the Clipper® Executive Director (described in Article V), until such time as the Executive Board designates, and MTC's Commission approves, the assignment of MTC's duties as Contracting Agency to another Party pursuant to Article IV.D.
  
- D. Employ the initial Clipper® Executive Director (described in Article V). MTC reserves the right to make decisions regarding hiring, promotion, termination, compensation, and removal of the initial Clipper® Executive Director. Selection of a successor Executive Director shall be in accordance with Article III.J.
  
- E. Continue to create and maintain all copyrights and other intellectual property necessary or convenient for the operation of the Clipper® fare payment system and provide any necessary licenses to use such intellectual property to the Contracting Agency, if other than MTC.
  
- F. Enter into supplemental agreements with new operator participants in accordance with Article VI.

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

The Contracting Agency agrees to:

- A. On behalf of the Parties, procure, award, manage and carry out the duties and responsibilities of the Clipper® program counterparty under all contracts necessary for the expansion, modification, modernization, operation, maintenance, marketing and customer service of the Clipper® fare payment system, including the Clipper® Contract and any successor contract and any contracts for associated professional services for the Clipper® program as a whole.
- B. Establish, manage and implement Clipper® Operating Rules in accordance with Appendix A.
- C. Provide regular updates (at least quarterly) on the Clipper® program to the Parties.
- D. Support the Parties with respect to Articles I.E and II.A by providing system data affecting the cost allocation formula.
- E. Own specified Clipper® program capital equipment, as may be required by grant or funding agency rules and regulations, and transfer ownership, to the greatest extent permitted under such rules and regulations, to any successor Contracting Agency.
- F. Hold and manage the Clipper® bank accounts and act as an agency in trust for the benefit of the cardholders for funds deposited by the cardholders for the ultimate use on the services provided by the Operators, and for the benefit of the Operators for funds due to Operators until dispersed to such Operators.
- G. Conduct an annual contract compliance audit covering Clipper® program revenue collection and allocation and cost allocation responsibilities under the MOU and provide a copy of the complete audit report to all Parties upon conclusion of each such annual audit.
- H. Retain all books, papers, records, documents, and other materials pertaining to its responsibilities under Appendix B (the “Materials”) in accordance with federal grant and audit requirements and generally accepted accounting principles and make the Materials available to Parties upon request through reasonable means and at reasonable times. Parties may request that Materials be made available for the most recently closed fiscal year during the term of this MOU and for up to one year thereafter; provided, however, that nothing in this Article III.G is intended to limit a Party's rights to obtain records under the California Public Records Act (Government Code Section 6250 *et seq.*).
- I. Serve as the Application Issuer and Card Issuer, as those terms are defined in the Clipper® Operating Rules.
- J. Engage the Clipper® Executive Director in accordance with Article V. The Contracting Agency reserves the right to make decisions regarding hiring, promotion, termination, compensation, and removal of the Clipper® Executive Director provided that it shall not engage the successor to the initial and successor Executive Directors without the concurrence of the Executive Board. The Contracting Agency shall collaborate with the Executive Board in considering potential candidates for Executive Director.

- K. Provide adequate staffing (including program and legal staff) to support the Clipper® program. The Contracting Agency reserves the right to make decisions regarding hiring, promotion, termination, compensation and removal of program staff.
- L. Provide necessary logistical and technological support to the Executive Board and any committees thereof, except as provided in Article IV.H.

**ARTICLE IV**  
**Clipper® Executive Board**

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

biennial budget will outline staffing requirements and resources needed to accomplish the work plan. The budget will define required funding, identify funding sources, and specify the amount of individual agency contributions.

4. Adopt a detailed biennial work plan to implement the established goals and budget.
5. Designate the Contracting Agency, as further described in and subject to Article IV.D, and provide policy oversight, advice, and direction to the Contracting Agency.
6. Evaluate the performance of the Clipper® Executive Director on at least an annual basis. The Board will develop goals and objectives jointly with the Clipper® Executive Director, which will form the basis for the annual evaluation.
7. Review and authorize Significant Business Matters as described in Article IV.E.
8. Establish such procedures as shall be necessary or desirable to facilitate compliance by the Executive Board with the Ralph M. Brown Act (Government Code Section 54950 *et seq.*) (the “Brown Act”) and other applicable laws.

D. Designation of a Contracting Agency. The Executive Board shall designate one of the Parties to serve as the "Contracting Agency" with the responsibilities defined in Article III. MTC shall serve as the initial Contracting Agency. The Executive Board shall review the designation of the Contracting Agency not more often than once every three (3) years and may designate any of the Parties as a new Contracting Agency no later than one year prior to the proposed assignment date, which designation may be subject to the approval of the governing board of the proposed new Contracting Agency. In the event of a new designation, the then-current Contracting Agency shall seek approval from its governing board to assign all outstanding contracts, funding agreements, licenses, and accounts to the newly designated Contracting Agency and, if it receives approval from its governing board for such assignment, take such other actions as may be necessary or convenient to effect the transition of the Contracting Agency role. In the event of a change from the role of MTC as the Contracting Agency, the Executive Board will work with MTC and the successor Contracting Agency to protect or minimize loss or degradation of jobs for Clipper® support staff at MTC.

E. Significant Business Matters. The Executive Board shall decide all Significant Business Matters by a majority vote. "Significant Business Matter" shall mean any matter that can reasonably be expected to have a substantial financial impact (defined as an impact of \$250,000 or more) or a substantial operating impact (defined as causing operations to fall below then-current annual operational goals) on Clipper® or any of the Parties. Significant Business Matters, include, but are not limited to the following:

1. Approval of Clipper® Contract Change Orders that exceed the maximum authority levels established by the Contracting Agency's procurement rules for its chief executive officer, or \$250,000, whichever is less, or that are not funded in the biennial budget. Contracting Agency governing board approval may also be required.
2. Amendments to the Clipper® operating rules, pursuant to Appendix A.

3. Acceptance of new Parties to the Clipper® program. The Executive Board delegates to MTC the authority to sign supplemental agreements with new Parties accepted into the program, as provided in Article VI.
4. Implementation of new business ventures or opportunities for the Clipper® program.
5. Contract awards for contract amounts that exceed the maximum authority levels established by the then-current Contracting Agency's procurement rules for its chief executive officer, or \$250,000, whichever is less. Contracting Agency governing board approval may also be required.
6. Assignment of the Clipper® Contract. Contracting Agency approval shall also be required.
7. Approval of expenses (administrative, operating and legal) incurred by the Contracting Agency if in excess of or not contemplated by the current approved budget.
8. Approval of the Clipper® 2.0 rollout strategy.
9. Decision whether any other matter, not expressly included or excluded as a Significant Business Matter in this list, is a Significant Business Matter in accordance with the definition above.

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

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

**ARTICLE V**  
**Clipper® Executive Director**

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

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

**ARTICLE VI**  
**New Operator Participants**

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

**ARTICLE VII**  
**Indemnification**

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

stated in the previous sentence, this indemnification only covers action or inaction on the part of a Contracting Agency while it serves as Contracting Agency under this MOU.

- C. Other Parties' Indemnification of Contracting Agency. Notwithstanding the provisions of Subsection A above, each Party hereto that is not the Contracting Agency shall indemnify, hold harmless, and defend the Contracting Agency from any and all claims or liability resulting from any action or inaction on the part of such Party relating to its responsibilities under Article I or II, as applicable, of this MOU.
- D. Operator Indemnification of MTC. Notwithstanding the provisions of Subsection A above, each Operator shall indemnify, hold harmless, and defend MTC from any and all claims or liability resulting from any action or inaction on the part of such Operator relating to its responsibilities under Article I of this MOU.
- E. MTC Indemnification of Operators. Notwithstanding the provisions of Subsection A above, MTC shall indemnify, hold harmless, and defend each Operator from any and all claims or liability resulting from any action or inaction on the part of MTC relating to its responsibilities under Article II of this MOU.

**ARTICLE VIII**  
**Term**

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

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

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

**ARTICLE X**  
**Changed Circumstances**

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

**ARTICLE XI**  
**General Provisions**

- A. The entire Agreement between and among the Parties is contained herein, and no change in or modification, termination or discharge of this MOU shall be valid or enforceable unless it is approved by the Parties and made in writing and signed by the Parties.
- B. Headings in this MOU are for convenience only and not intended to define, interpret or limit the terms and conditions herein.
- C. This MOU may be executed in one or more counterparts, each of which shall be considered an original and all of which shall constitute a single instrument.
- D. This MOU is intended for the sole benefit of the Parties and is not intended to nor shall be construed to confer any benefit or create any right in any third party.
- E. Appendix E, Special Provisions for the City and County of San Francisco, attached hereto and incorporated herein by this reference, sets forth the terms and conditions required by the City and County of San Francisco in any expenditure contracts entered into by the City.
- F. If any provision of this MOU or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this MOU, or the application of such provision to persons, entities or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this MOU shall be valid and be enforceable to the fullest extent permitted by law.
- G. Notices provided under the MOU shall be provided to the individuals listed in Appendix F, Notices, attached hereto and incorporated herein by this reference. Each Party to the MOU is responsible for notifying other Parties of a change in the individual designated to receive notices in writing. Changes to Appendix F may be made by any Party without an amendment to this MOU. MTC will distribute to every other Party the notice information of new Parties to the MOU added pursuant to Article VI.
- H. This MOU supersedes and replaces the Memorandum of Understanding Regarding Operations and Maintenance of Clipper Fare Collection System dated November 10, 2011 in its entirety.
- I. By its execution of this MOU, each Party (i) acknowledges that, although the City of Rio Vista executed a Supplemental Agreement to the 2011 MOU, it subsequently declined to have Clipper® implemented on its bus system, (ii) waives the requirement for 240 days' advance notice to it of the City of Rio Vista's withdrawal from the 2011 MOU, and (iii) acknowledges that the City of Rio Vista is therefore not a Party to this MOU upon its initial execution and delivery.



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

**Metropolitan Transportation Commission**

Approved as to form:

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

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

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

**Alameda-Contra Costa Transit District**

Approved as to form:

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

\_\_\_\_\_  
Denise C. Standridge, General Counsel

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

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

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

Approved as to form:

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

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

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

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

**San Francisco Bay Area Rapid Transit District**

Approved as to form:

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

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

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

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

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

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

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

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

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

\_\_\_\_\_  
Roberta Boomer, Secretary

**San Mateo County Transit District**

Approved as to form:

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

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

**Santa Clara Valley Transportation Authority**

Approved as to form:

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

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

**Peninsula Corridor Joint Powers Board**

Approved as to form:

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

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

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

**Central Contra Costa Transit Authority**

Approved as to form:

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

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

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

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

**City of Fairfield  
Fairfield and Suisun Transit**

Approved as to form:

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

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

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

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

**City of Petaluma**

Approved as to form:

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

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

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

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

**Eastern Contra Costa Transit Authority**

Approved as to form:

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

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

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

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

**Livermore/Amador Valley Transit Authority**

Approved as to form:

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

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

**Marin County Transit District**

Approved as to form:

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

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

**Napa County Transportation and Planning Agency**

Approved as to form:

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

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

**Solano County Transit**

Approved as to form:

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

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

**Sonoma County Transit**

Approved as to form:

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

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

**Sonoma-Marin Area Rail Transit District**

Approved as to form:

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

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

**Vacaville City Coach**

Approved as to form:

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

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

**Western Contra Costa Transit Authority**

Approved as to form:

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

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

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

Approved as to form:

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

Stanley S. Taylor III, General Counsel

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

[City of Santa Rosa

Approved as to form:

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

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

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

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