



Members of the Board

Charlene Haught Johnson, Chair
Anthony J. Intintoli, Jr., Vice Chair
Gerald Bellows
Beverly Johnson
John O'Rourke

**MEETING AGENDA FOR THE
WETA BOARD OF DIRECTORS**

BOARD OF DIRECTORS' MEETING
Thursday, January 5, 2012 at 1:00 P.M.

**San Francisco Bay Area
Water Emergency Transportation Authority
9 Pier, Suite 111
San Francisco**

The full agenda packet is available for download at www.watertransit.org.

AGENDA

This information will be made available in alternative formats upon request. To request an agenda in an alternative format, please contact the Board Secretary at least five (5) working days prior to the meeting to ensure availability.

PUBLIC COMMENTS The Water Emergency Transportation Authority welcomes comments from the public. Speakers' cards and a sign-up sheet are available. Please forward completed speaker cards and any reports/handouts to the Board Secretary.

Non-Agenda Items: A 15 minute period of public comment for non-agenda items will be held at the end of the meeting. Please indicate on your speaker card that you wish to speak on a non-agenda item. No action can be taken on any matter raised during the public comment period. Speakers will be allotted no more than three (3) minutes to speak and will be heard in the order of sign-up.

Agenda Items: Speakers on individual agenda items will be called in order of sign-up after the discussion of each agenda item and will be allotted no more than three (3) minutes to speak. You are encouraged to submit public comments in writing to be distributed to all Directors.

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| 1. <u>CALL TO ORDER – BOARD CHAIR</u> | <i>Information</i> |
| 2. <u>ROLL CALL/PLEDGE OF ALLEGIANCE</u> | <i>Information</i> |
| 3. <u>REPORT OF BOARD CHAIR</u> | <i>Information</i> |
| 4. <u>REPORTS OF DIRECTORS</u> | <i>Information</i> |
| 5. <u>REPORTS OF STAFF</u>
a. Executive Director's Report
b. Legislative Update | <i>Information</i> |
| 6. <u>CONSENT CALENDAR</u>
a. Minutes December 8, 2011 | <i>Action</i> |

Water Emergency Transportation Authority
January 5, 2012 Meeting of the Board of Directors

7. ADOPT FARE SCHEDULE FOR THE VALLEJO FERRY SERVICE **Action**
8. APPROVE THE PURCHASE OF INSURANCE FOR THE SOUTH SAN FRANCISCO FERRY TERMINAL **Action**
9. AUTHORIZE THE EXECUTIVE DIRECTOR TO EXECUTE A SUPPLEMENTAL AGREEMENT TO THE CLIPPER MEMORANDUM OF UNDERSTANDING WITH MTC AND OTHER TRANSIT OPERATORS **Action**
10. RECESS INTO CLOSED SESSION
 - a. CONFERENCE WITH REAL PROPERTY NEGOTIATORS **Action**
Property: Mare Island Maintenance Facility at Building 477 and Building 165 sites, City of Vallejo
Agency Negotiators: Nina Rannells
San Francisco Bay Area Water Emergency Transportation Authority
Negotiating Parties: City of Vallejo
Under Negotiation: Terms and conditions of the Authority's proposed lease
To Be Determined
11. REPORT OF ACTIVITY IN CLOSED SESSION **Action**
Chair will report any action taken in closed session that is subject to reporting at this time. Action may be taken on matters discussed in closed session. **To Be Determined**
12. OPEN TIME FOR PUBLIC COMMENTS FOR NON-AGENDA ITEMS

ADJOURNMENT

Water Emergency Transportation Authority (WETA) meetings are wheelchair accessible. Upon request WETA will provide written agenda materials in appropriate alternative formats to individuals with disabilities. Please send a written request to contactus@watertransit.org or call (415) 291-3377 at least five (5) days before the meeting.

Participation in a meeting may be available at one or more locations remote from the primary location of the meeting. See the header of this Agenda for possible teleconference locations. In such event, the teleconference location or locations will be fully accessible to members of the public. Members of the public who attend the meeting at a teleconference location will be able to hear the meeting and testify in accordance with applicable law and WETA policies.

Under Cal. Gov't. Code sec. 84308, Directors are reminded that they must disclose on the record of the proceeding any contributions received from any party or participant in the proceeding in the amount of more than \$250 within the preceding 12 months. Further, no Director shall make, participate in making, or in any way attempt to influence the decision in the proceeding if the Director has willfully or knowingly received a contribution in an amount of more than \$250 within the preceding 12 months from a party or such party's agent, or from any participant or his or her agent, provided, however, that the Director knows or has reason to know that the participant has a financial interest in the decision. For further information, Directors are referred to Government Code section 84308 and to applicable regulations.



MEMORANDUM

TO: WETA Board Members

FROM: Nina Rannells, Executive Director

DATE: January 5, 2012

RE: Executive Director's Report

PROJECT UPDATES

Service Transition Implementation – The Transition Plan guides the consolidation of the Vallejo, Alameda/Oakland and Harbor Bay ferry services under WETA and presents a five year financial outlook of WETA operating and expansion activities. The WETA Board of Directors adopted the final Transition Plan on June 18, 2009, in compliance with Senate Bills 976 and 1093 requirements.

All escrow requirements for the Alameda Transition were completed in April and the Alameda services were transferred to WETA on April 29, 2011. The WETA Board of Directors approved the Vallejo Transfer Agreement on October 6, and the Vallejo City Council approved it on October 11. WETA legal counsel and staff are working to finalize the document for execution in the coming weeks and continue to work on necessary due diligence and pre-closing activities required prior to the close of escrow and transfer of the service to WETA. The system transfer is anticipated to be completed in early 2012.

Vessels - Two 149-passenger vessels, *Gemini* and *Pisces*, and two 199-passenger vessels, *Scorpio* and *Taurus*, have been constructed by Nichols Brothers Boat Builders and Kvichak Marine Industries for use in WETA services and to expand WETA's emergency response capabilities. One of these vessels is currently chartered to the City of Vallejo for utilization in the Vallejo Baylink service while two of their ferries undergo midlife rehabilitation work.

South San Francisco Ferry Service - This service will provide access to biotech and other jobs in South San Francisco for East Bay commuters and expand the geographic reach of emergency ferry transportation response capabilities on the San Francisco Bay. Construction is proceeding according to schedule. Both contractors are completing their work at the site and beginning the clean-up process. Staff and the Owner's representative will be preparing the "punch lists" of items the contractors will need to address before both are released and the contracts can be closed out.

Berkeley Ferry Service – This service will provide an alternative transportation link between Berkeley and downtown San Francisco. The environmental and conceptual design work includes plans for shared of an existing City owned parking lot at the terminal site between ferry and local restaurant (H^s Lordships) patrons. City participation is required in order to move the project forward and reach agreement on a shared use concept. WETA has engaged the services of a transportation consultant to develop a draft parking management plan for the shared use which will be distributed to the City and restaurant representatives for review and discussion in early December. Staff is also working with the Berkeley City Manager's office to identify and reach agreement on the respective roles and responsibilities of WETA and the City in order for the proposed ferry service to move forward.

The Draft EIS/EIR was published in October 2008. Staff has been working with the environmental consultant to prepare a re-evaluation of the Draft EIS/EIR. The purpose of the re-evaluation is to demonstrate that conditions near the preferred terminal location have not changed enough since publication of the Draft EIS/EIR to warrant preparation of a supplemental environmental document. Staff will be submitting the re-evaluation to the FTA for review in December.

Treasure Island Service – This project, implemented by the Treasure Island Development Authority (TIDA), the Mayor's Office of Economic and Workforce Development and the prospective developer, will institute new ferry service between Treasure Island and downtown San Francisco in connection with planned Island development.

Staff recently met with TIDA to review operating and budgeting scenarios for future Treasure Island ferry service. TIDA and WETA staff are working to prepare a draft Memorandum of Understanding (MOU) outlining each agencies' roles and responsibilities for moving forward with the project. The MOU will be subject to review and approval by the WETA Board.

Downtown San Francisco Ferry Berthing Expansion - This project will expand berthing capacity at the Downtown San Francisco Ferry Terminal in order to support new ferry services to San Francisco as set forth in WETA's Implementation and Operations Plan. The proposed project would also include landside improvements needed to accommodate expected increases in ridership and to support emergency response capabilities if a catastrophic event occurs.

The project team is in the process of preparing a Draft EIR/EIS based on scoping comments received to date that is scheduled to be completed and released for public review in early 2012. In conjunction with the FTA, staff hosted the first agency coordination meeting for the project in December pursuant to federal requirements.

Pier 9 Berthing Facility - This project will construct two layover berths for mooring and access to ferry vessels on Pier 9 alongside the northern pier apron and adjacent to the WETA Administrative Offices. Guide piles, floats and gangways have been installed and final project work was completed in November and awaits final permits from the City Fire Marshall and Port of San Francisco.

Central Bay Operations and Maintenance Facility - This project will develop an operations and maintenance facility at Alameda Point to serve as the base for WETA's existing and future central bay ferry fleet. The proposed project would provide running maintenance services such as fueling, engine oil changes, concession supply, and light repair work for WETA vessels and serve as WETA's Operations Control Center for day-to-day management and oversight of service, crew, and facilities. In the event of a regional disaster, the facility would function as an Emergency Operations Center, serving passengers and sustaining water transit service for emergency response and recovery.

Staff is coordinating with the FTA as the federal lead agency for the project to complete environmental review of the project under NEPA.

Ridership Forecast Model Update – This project will update the existing ridership forecast model developed by WETA in 2002 to generate new ridership forecast projections based on the most recent transportation and demographic data available from ABAG, MTC and local land use jurisdictions. Staff has worked closely with representatives of various stakeholder cities to confirm model assumptions and review preliminary model results.

Hercules Environmental Review/Conceptual Design -This project is currently on hold awaiting clarification from the City as to its plans and ability to build the multimodal transportation center that is a necessary precondition to any ferry terminal. In early March, WETA staff met with City staff to discuss the City's phasing plans for building the adjacent multi-modal station. Based upon this discussion, it appears that in the event that sufficient funds are available to move this project forward,

the work required to be done on the multi-modal facility prior to ferry terminal construction will not be completed until FY 2014/15 at the earliest. Staff met with the City of Hercules in early December to receive project status update.

Antioch, Martinez, Redwood City, and Richmond Ferry Service Expansion Projects – These projects involve conceptual design and environmental review for potential future ferry services to the cities of Antioch, Martinez, Redwood City and Richmond. WETA staff has coordinated with staff from each city throughout the respective planning processes. Concept designs for each proposed terminal are informed by projections of the ridership forecast model update currently in process. Ridership projections are used to determine appropriate capacity for terminal components such as, parking facilities, terminal access, passenger waiting areas, and passenger loading and unloading facilities. The updated ridership projections are also used to forecast appropriate service levels and related operational costs for the potential new services.

WETA staff has engaged in early consultation with applicable state and federal agencies for all of the expansion projects. Early consultation will help to identify concerns of the state and federal agencies to be addressed in the conceptual design and environmental review processes. The consultation will also help to streamline the permit processes after environmental review is complete.

Considerations identified above will also be discussed in the short-range transit plan (described below). The plan will identify the projects that are feasible in the short-term versus long-term visions for WETA. WETA staff is coordinating with staff from each city to determine next steps for terminal planning and environmental review.

Clipper Fare Media Implementation – WETA is coordinating with MTC to implement Clipper fare media on the future South San Francisco ferry service and its existing Alameda/Oakland and Alameda Harbor Bay ferry services.

WETA is preparing sites for the installation of Clipper fare collection equipment and is in the process of finalizing its design requirements and business rules for Clipper. This project is scheduled to be completed in spring 2012..

Short-Range Transit Plan – WETA is required to prepare a short-range transit plan (SRTP) now that the agency is a transit service operator. The main purpose of the SRTP is to serve as a management and policy document for the transit operator, as well as a means of annually providing FTA and MTC with information necessary to meet regional fund programming and planning requirements. Staff has started to prepare the draft SRTP in accordance with MTC guidelines. In the coming months, staff will be bringing informational items before the Board to provide updates on the draft SRTP and to obtain direction from the Board on policy-related decisions. WETA adoption of the SRTP is expected to be in the summer or fall of 2012, pending further details on the schedule from MTC.

UPDATE ON RELEVANT PROJECTS IMPLEMENTED BY OTHER AGENCIES

Vallejo Station - Vallejo Station is a compact, transit-oriented mixed-use project in the City of Vallejo that includes two major transit elements – a bus transfer facility that will consolidate local, regional and commuter bus services and a 1,200 space parking garage for ferry patrons and the general public.

The Bus Transfer Facility portion of the project is now complete and in operation. The parking structure construction has been split into two phases. Construction of Phase A, which began in June 2010, is approximately 80% complete and is on schedule to be completed in February 2012. The original contract amount is \$16.7 million. Due to unforeseen conditions, design changes, and upgrades, another \$3.7 million will be expended. The City has hired a consultant develop a Parking Management Plan and recommend a revenue control system to be integrated into the parking structure and surrounding area in order to cover facility operating and maintenance costs. Paid parking is anticipated to begin in fall 2012. Phase B of the Parking Structure is in the final design

stage. Construction of this project phase is dependent upon relocation of the Post Office property and securing full project funding.

Mare Island Ferry Maintenance Facility – This project will construct a new ferry maintenance facility located at Building 165 on Mare Island in Vallejo in three phases. Phase 1 constructs a 48,000 gallon fuel storage and delivery system. Phase 2 includes construction of a system of modular floats and piers, demolition of Building 855, and construction of a new warehouse/shop in its place. Phase 3 will renovate Building 165 into a permanent office and shop space.

The City issued an RFP for construction of Phases 1 and 2 of this project in October 2011 and bids were received on December 2. All bids and bid alternatives exceeded both the Engineer's Estimate and the City's project budget. The City and its consultants are involved in post-bid analysis and will be examining alternative project strategies. On December 15 the CTC approved the City's request for a 20 month extension for the \$4.2 million STIP grant allocated to the project in June 2011 to provide time to evaluate bids and potentially re-design and re-bid the project.

OPERATIONS

Alameda Harbor Bay Ferry – On January 1, Harbor Bay/San Francisco ferry operations were transferred to Blue and Gold Fleet from Harbor Bay Maritime. Harbor Bay Maritime had operated the service under contract with the City of Alameda, and more recently WETA, since 1992.

OTHER ACTIVITIES / ITEMS

America's Cup – The City of San Francisco will host the 34th America's Cup race and related events in 2012 and 2013. WETA staff is participating on the City's interagency task force for event transportation in order to support transportation planning and identify the role that WETA's ferry system might play in supporting this event. The City's Planning Commission approved the Final EIR in December 2011.

ADMINISTRATION

November and December financial statements will be distributed with the February 2012 Executive Director's report.

BROAD & GUSMAN, LLP
ATTORNEYS AT LAW

To: Members of the WETA Board

From: Barry Broad
Shane Gusman

Date: December 29, 2011

Re: Possible Legislation to Stagger Board Member Terms

Current Law

Government Code section 66540.12 provides that members of the WETA Board are appointed to six-year terms, commencing on January 11, 2008. Three members are appointed by the Governor, and one each are appointed by the Assembly Speaker and Senate President Pro Tem.

Therefore all of the board members' terms will expire in January 2014 unless the statute is modified.

The terms of the members of almost all boards and commissions in state government are staggered to keep continuity of board policy, maintain institutional memory and expertise among board members, and to make transitions when there is a change in administration more gradual. This applies to both appointed and elected boards. Examples of Boards with staggered terms are the San Francisco Bay Area Rapid Transit District (Pub. Util. Code section 28748.2), Los Angeles County Metropolitan Transportation Authority (Pub. Util. Code section 30201), San Diego Transit District (Pub. Util. Code section 90193), San Mateo County Transit District (Pub. Util. Code section 103108), Alameda-Contra Cost County Transit District (Pub. Util. Code section 24862). There are, of course, many other examples.

In nearly all cases, the provision requiring staggered terms of directors was included in the initial statutory authorization. Typically, members of the first board to be appointed would have either a short or long term and then be subject to reappointment for a fixed length of term.

The following options for creating staggered board appointments are identified for discussion purposes.

Options

1. Create one-time short or long terms upon expiration of members' current six year terms. There are many ways to stagger the terms. A reasonably balanced approach is as follows: Of the three members appointed by the Governor, two would be designated to serve two year terms and one would be designated to serve a six year term. The two legislative appointees would serve four year terms. At the conclusion this staggered second term all

subsequent terms would be for a six year period as originally defined in WETA's enabling legislation.

Pros: This would generally mirror how it was done throughout the rest of state government and would be seen as fair. It also fairly allocates appointments to the appointing powers.

Cons: The entire current Board would still be termed out in January 2014, unless re-appointed.

2. Change the terms of the current board members. This would involve shortening or lengthening the first terms of current members. At the conclusion this staggered first term all subsequent terms would be for a six year period as originally defined in WETA's enabling legislation.

Pros: This approach would accomplish the goal of staggering the Board terms sooner than Option 1.

Cons: The six year terms of WETA Board Members are quite long (most terms are four years) and so if we were to suggest lengthening existing terms this approach could be seen as giving current board members terms that were just too long. If we were to shorten terms, some members would see their terms shortened and would be subject to reappointment earlier than under their current terms.

Legislative Deadlines

The following deadlines are applicable to the introduction of new legislation. Draft language must be submitted to the Legislative Counsel by January 27, 2011. The bill must be introduced by February 24, 2011.

SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSPORTATION AUTHORITY

MINUTES OF THE BOARD OF DIRECTORS MEETING

(December 8, 2011)

The Board of Directors of the San Francisco Bay Area Water Emergency Transportation Authority met in regular session at the WETA offices at Pier 9, Suite 111, San Francisco, CA.

1. ROLL CALL AND CALL TO ORDER

Chair Charlene Haught Johnson called the meeting to order at 2:15 p.m. Directors present were Vice Chair Anthony Intintoli, Director Gerald Bellows and Director John O' Rourke. Director Beverly Johnson arrived at 2:25 p.m. WETA representative Stanley Taylor III of Nossaman, LLP led the pledge of allegiance.

2. REPORT OF BOARD CHAIR

None.

3. REPORT OF DIRECTORS

None.

4. REPORTS OF STAFF

On request of the Board Chair, Executive Director Nina Rannells reviewed the status of the potential Richmond ferry service, noting that WETA staff Manager of Planning and Development John Sindzinski, Manager of Operations Keith Stahnke and Planner/Analyst Chad Mason had visited the potential terminal site the previous week.

Mr. Stahnke stated that the possibility of using the existing terminal looked promising, although it would require some modifications including the replacement of the float. He noted that reutilizing an existing facility would minimize the difficulty in obtaining permits from BCDC. He said that the current terminal was in use by excursion boats servicing Ford Point, which frequently hosted events for firms such as Twitter and Google. Mr. Stahnke added that the existing terminal location was very close to WETA's previously identified site and that it could also act as a placeholder for a future facility.

Mr. Sindzinski said that the entire area near the potential terminal site was undergoing a transformation, including the construction of nearby housing and an underpass to be built by the City to provide uninterrupted access to the area, which would also be a key consideration for ferry service. He noted that the developer was very supportive of a ferry service and also controlled the parking facilities near the terminal location.

Director Johnson asked who the developer was. Mr. Sindzinski replied that Eddie Orton of Orton Redevelopment had developed several areas surrounding the potential terminal including Ford Point and the Rosie the Riveter Museum and that there was also housing under development about ¼ mile away by a different developer.

Vice Chair Intintoli asked if Richmond was being considered as an alternative to Berkeley. Mr. Sindzinski said that it could be either an alternative service or in addition to Berkeley. Ms. Rannells noted that if details of an agreement for the existing terminal could be worked out with the site

owner, that this along with a supportive city government and developer could make implementation of a Richmond service happen much more quickly than service in Berkeley. She also noted that Richmond service had the highest projected ridership aside from Treasure Island and slightly higher than that of Berkeley. Chair Johnson said that she had been impressed by Mr. Orton's enthusiasm. Ms. Rannells said that it was time to sit down and discuss a plan for how service could move forward.

Vice Chair Intintoli asked at what point the viability a Berkeley terminal should be reassessed. He noted that WETA had already put considerable resources into the project with another \$500,000 budgeted for the coming year. Ms. Rannells stated that staff was currently putting together a comprehensive list for the Board in order to facilitate a discussion regarding which planned services may need to be reassessed.

Director Johnson asked if it WETA should stop spending on the Berkeley project until there was more progress made by the city on the parking issue. Ms. Sindzinski noted that almost everything was already on hold pending resolution of the parking issue with the exception of a National Marine Fisheries biological opinion, which would cost between \$25,000 and \$30,000. Mr. Mason said that the report had already been submitted and that aside from this expense there was no additional activity at present.

Ms. Rannells pointed out that the remaining hang-up was the parking plan with H^s Lordships and that WETA anticipated receiving an updated parking study soon. Vice Chair Intintoli observed that Richmond appeared enthusiastic to implement a ferry service while focusing on Berkeley had yielded nothing but delays.

Director Johnson suggested that staff consider putting an item on the January 2012 meeting agenda to suspend additional work on the Berkeley project. Ms. Rannells said that she felt it should be part of the larger discussion about the current viability of all the planned services. She noted that as there was not currently any significant spending in Berkeley, that it should be considered in such a discussion along with the other services.

Chair Johnson asked for a status update on the parking arrangement with H^s Lordships. Mr. Sindzinski said that there appeared to be a change in attitude where they were seeing the ferry terminal as a positive but that they continued to have reservations about sharing the lot. He said that as the leaseholder, it had taken the City of Berkeley a while to become proactively involved. Chair Johnson said that the city had had plenty of time to step in to push things forward.

State Legislative Report

WETA legislative representative Barry Broad of Broad and Gusman, LLP delivered a comprehensive update to the Board regarding state legislative activities.

Mr. Broad discussed the issue of Board member terms expiring simultaneously, characterizing this as an error in the original legislation that was imperative to repair in order for the Board to retain institutional knowledge during future transitions. He recommended a legislative fix to take effect before the initial term expirations occur in January 2014. Mr. Broad suggested an approach calling for a staggered round of appointments for two two-year, two four-year, and one six-year term, and have the Governor simply pick who gets what. Mr. Broad said that he did not believe it would be a controversial item and that he wanted to get a sense from the Board if they felt that this would be an appropriate approach.

Vice Chair Intintoli asked if there was a risk that the legislation offered to fix this issue could be altered to affect WETA in other ways. Mr. Broad replied that that was unlikely but in the event that

this occurred the sponsor could simply withdraw the bill. As an example, Vice Chair Intintoli asked if someone could alter the number of board members. Mr. Broad said that they would have to introduce their own bill.

Mr. Broad said that in all likelihood such a bill would sail through without opposition as it was apparent to all that this was simply an oversight in the original legislation. Ms. Rannells further noted that it would be kept simple and to the point, and that it would address only this issue. Mr. Broad said that it would be what is known as a "district bill" addressing local concerns and that if someone did want to change it, they would need to talk to the bill's sponsor who could then either pull the bill or reject the change and move it forward as-is.

Director Johnson asked if an immediate decision was required. Ms. Rannells replied that this was informational but that it was a direction that Mr. Broad recommended and an important item for the Board to be thinking about.

Public Comment

Veronica Sanchez of Masters, Mates & Pilots asked if there had been any issues regarding the Prop 1B bond funding. Mr. Broad replied that there had not. Ms. Rannells added that the actual flow of the funds to WETA had not been consistent but that they had been regularly allocated in the budget.

Chair Johnson thanked Mr. Broad for his report and also noted that there was a federal legislative update included in the board packet from WETA federal legislative representative Peter Friedmann of Lindsay, Hart, Neil & Weigler, LLP.

5. CONSENT CALENDAR

Vice Chair Intintoli made a motion to approve minutes from the November 3, 2011 Board of Directors meeting. Director O' Rourke seconded the motion and the item carried unanimously.

6. AUTHORIZE EXECUTION OF A PASS-THROUGH AGREEMENT WITH THE CITY OF VALLEJO TO PROVIDE PROPOSITION 1B FUNDS TO SUPPORT THE VALLEJO FERRY MAINTENANCE FACILITY PROJECT

Ms. Rannells presented this item noting that since it had been written the situation regarding the Vallejo Maintenance Facility had changed. She reported that bids submitted to the City of Vallejo for construction of Phase 1 and 2 of the project had come in higher than expected and that the current funding commitments were insufficient to support the project.

Ms. Rannells noted that the City of Vallejo had come out with a revised engineering estimate several months before but that even the revision had not anticipated the bids that were received. She said that bids came in between \$15.8 and \$19.7 million but that the overall funding commitment between the City and WETA had been \$9 million. She reported that WETA had engaged both the City and the Solano Transportation Authority to seek out other potential funding options and that even if additional funding is available staff would need to consider if any of the lower bids received for project segments are worth pursuing. Ms. Rannells said that additional meetings had been scheduled to discuss these options, noting that she was also interested in seeing if it would make sense to redesign any components of the project and offer it for bid again.

Ms. Rannells said that at this point WETA had been asked if they would be able to access any additional funding for the balance of the project, noting that the authorization request at hand for the Board to grant a \$5 million pass-through agreement did not immediately require action. She said that WETA did have access to some additional funding through Prop 1B for non-specific maintenance projects and that some of this had already been budgeted with an eye toward Phase 3

of the Vallejo maintenance facility as well as for the planned Alameda/Central Bay maintenance facility. Noting that WETA would be the organization that would be operating out of the facility going forward, Ms. Rannells said that WETA first needed to perform due diligence in examining the bids and project options with City staff. She said that she hoped to expedite this conversation and resolve it within the next several weeks.

Director Johnson asked if the contract was design/build. Ms. Rannells indicated that it was for construction only. Director Johnson noted that she liked design/build. She said it was great to design something without thought to how much it would cost to build but that it would also need to be built. She recommended looking at whether it could be rebid as a design/build project or if there were value engineering options that could lower any of the bids that had been already been received.

Ms. Rannells said that there were two major cost factors at play in the high bids. First, the project was designed to require below grade fuel tanks which require significant excavation and construction of an expensive vaulting system. Second, the waterside facilities were designed to be constructed about 50' into the channel in order to avoid dredging work near waterfront properties. The resulting design requires significant and expensive pile work. She said that WETA needed to find out if alternative approaches existed to these design elements that that could result in savings to the project.

Vice Chair Intintoli asked if Ms. Rannells was recommending that the item be continued. Ms. Rannells said that it was up to the Board but that staff would be returning with this issue again soon, and that she wouldn't recommend entering into the pass-through until WETA could be certain that there was a project.

Vice Chair Intintoli asked if the pass-through agreement was required to keep the project alive. Ms. Rannells responded that as far as she was aware, it was not, as the funds were for construction only and no construction contract had been awarded. Vice Chair Intintoli asked staff to bring this item back as soon as plans to move the project forward are developed.

No action was taken.

7. OVERVIEW OF THE SOUTH SAN FRANCISCO FERRY SERVICE IMPLEMENTATION ACTIVITIES

Mr. Sindzinski led this informational presentation with assistance from Ms. Rannells, Mr. Stahnke and Manager of Transportation Services Ernest Sanchez regarding the launch of WETA's first expansion ferry service.

Regarding the Clipper implementation schedule, Director Johnson asked if it was true that eventually one would be able to use a single ticket for various transportation agencies. Mr. Sindzinski replied yes.

Regarding the draft schedule for the two-boat service which would be required to provide more than two trips per commute, Director Johnson asked if there was sufficient ridership projected to support such a service. Mr. Sindzinski replied that any lower level of service could deter potential riders.

Public Comment

Vice Mayor Pedro Gonzalez of South San Francisco asked Mr. Stahnke to elaborate on the "bus bridge". Mr. Stahnke explained that contracts would be put in place to provide a backup mode for commuters on days when weather prohibited ferry service, which he noted was a very rare event.

Vice Chair Intintoli asked if the parking lots in Alameda and Oakland were free for ferry commuters. Ms. Rannells said that they were.

Public Comment

Denise Turner of the Port of San Francisco asked what the terms were for free parking in Oakland, specifically if they could be changed without notice. Ms. Rannells noted that the parking was provided through an agreement negotiated with the Port of Oakland and was based on an occupancy rate which if exceeded would result in a nominal fee to WETA. She added that the garage at Jack London Square was currently far from the point where a fee would be triggered and that it would certainly be a point of discussion if reaching the occupancy rate became foreseeable.

Regarding the currently projected cash fare of \$9, Vice Chair Intintoli asked if that meant that a round-trip would cost \$18 and Director Johnson asked how the fare compared to other transit. Ms. Rannells said that the cash fare as noted was correct and said that a BART fare to South San Francisco would depend on where the starting point was but that it averaged \$4 per trip. Mr. Sanchez offered that Rockridge to South San Francisco cost \$8.40 round trip.

Director Johnson asked that since the ferry fare would be substantially higher why WETA would charge more for cash fares than the \$7.50 fare for Clipper users. She said that if the boats were not anticipated to be full initially that she didn't see the reason to deter riders with a higher cash fare. Ms. Rannells said that moving forward, the concept would be for the Clipper card to be used as the vehicle for discounted fares, and that she anticipated that most commuters would use the discounted Clipper fare. Ms. Rannells also pointed out that discounted fares such as senior and youth fares were derived from the cash fare, and that this was consistent with how other transit services using Clipper offered their discounted fares.

Director Johnson said that people would choose to drive if confronted with an \$18 round trip cash fare. Vice Chair Intintoli said that that was why WETA expected commuters to use Clipper. Director Johnson said that her concern was for the occasional riders. Vice Chair Intintoli pointed out that the Oyster Point area was primarily an employment center and that there would not likely be many casual riders.

Public Comment

Marina Secchitano of Inland Boatmen's Union asked how much the current Oakland/Alameda Ferry cost versus BART. Director Johnson said that BART would be about \$7.50 round trip. Mr. Sanchez responded that a discounted fare on the Alameda Ferry would be between \$5 and \$5.20 each way. He pointed out that there was no BART station in Alameda, which would create an additional cost for Alameda residents taking BART and that some BART stations also had parking fees for those who drove to their departure points.

Director O'Rourke asked about employer commitments to transit benefits. Mr. Sindzinski replied that an employer could provide a transit benefit to the commuters capped at \$125 a month. Director O'Rourke then asked for a status update regarding other corporate sponsorship of the service. Mr. Sindzinski said that while meetings with Genentech would continue, the company's perspective was that they already had a \$6-10 million bus operation in place. Ms. Rannells clarified that Genentech was running luxury bus services from the East Bay to South San Francisco.

Director Johnson asked if they would consider operating a bus service to the Oakland ferry terminal. Mr. Sindzinski said that the subject had been broached and that Genentech had responded that they would not reroute any current busses to the terminal. He said that they indicated that they would consider it if new bus services were added in the future. Vice Chair Intintoli asked for clarification that WETA would be in direct competition with an employer provided

luxury bus. Mr. Sindzinski said that only one bus service could be considered direct competition to the ferry, a newly implemented route leaving from near the Rockridge BART station to South San Francisco.

8. RECESS INTO CLOSED SESSION AND REPORT ON CLOSED SESSION

Chair Johnson called the meeting into closed session at 3:50 p.m. Upon reopening of the meeting at 4:10 p.m., she reported that the Board had approved a settlement of the claim between Moffatt & Nichol and Manson Construction Co. with respect to the design and construction of the Pier 9 berthing facility.

9. ADJOURNMENT

All business having concluded, the meeting was adjourned at 4:10 p.m.

Respectfully Submitted,
Board Secretary

MEMORANDUM

TO: Board Members

FROM: Nina Rannells, Executive Director
John Sindzinski, Manager, Planning & Development
Lauren Duran, Policy Analyst

SUBJECT: Adopt Fare Schedule for the Vallejo Ferry Service

Recommendation

Adopt a fare structure for the Vallejo Ferry Service that is consistent with the same rates currently charged by the City of Vallejo.

Background

WETA's approach to system consolidation and transition emphasizes a commitment to ensure continuity in programs, services and activities of the existing ferry services. The Transition Plan laid out several key elements to ensure a seamless transition, including WETA's intent to adopt the existing fare structures to the greatest extent possible.

In developing the proposed fare structure for Alameda services some modifications were required in order to comply with Federal Transit Administration's 50% fare policy. WETA posted information about the proposed changes and held a public hearing on the fare change in the City of Alameda before adopting the new fare schedule. In the case of the Vallejo Ferry Service, the existing fare structure is already in compliance with FTA's 50% fare policy so no changes are proposed to these fares.

Discussion

Last October staff presented an item to the Board detailing a process to establish WETA fares for the Vallejo Ferry Service (to be implemented once the service is transferred to WETA) at the same rate as is currently charged by the City of Vallejo, as provided in *Attachment 1*, and informing the Board that staff would begin the public review process for establishing these fares. The work conducted is summarized below.

Public Notification Process

Since October, the following steps were taken to notify the public and solicit comments regarding WETA's intent to adopt the existing fare structure and rates for the transferred Vallejo Ferry Service:

- On November 17 WETA posted a notice on WETA's website with contact information for the public to provide comments.

- On November 22, 29, and 30 notices were placed on the vessels with copies available on the concessionaire counter, and the Captains made over-head announcements to the passengers while en route.
- On November 29, the notice was posted in the window of the Vallejo Ferry Terminal ticket office with copies available for customers at the counter.
- Additionally, the notice was also posted to Baylink's homepage of the website, announced to riders via passenger email updates, and posted on the Facebook page for the Vallejo Ferry Service.

Public Comments

As of December 29, we received one public comment on the proposed fare structure. This comment suggests that WETA, alternatively, lower fares and notes concern over the City of Vallejo's proposal to start charging for parking once the new parking garage is open. Staff does not find this suggestion practical as the August 2011 service cuts were implemented in an effort to address an existing multi-million dollar service deficit and were considered as an alternative to raising fares.

Any other comments received prior to the scheduled meeting will be provided to the Board of Directors at that time.

Title VI Analysis

Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color and national origin in programs and activities receiving federal financial assistance. WETA is not proposing any changes to the fare structure or rates charged on the Vallejo Ferry Service. WETA is establishing fares for the transferred Vallejo Ferry Service at the same rate as is currently charged by the City of Vallejo. As there are no proposed changes, this action will not cause a disparate impact to minority, low income, or disadvantaged communities under Title VI of the Civil Rights Act of 1964.

California Environmental Quality Act (CEQA) Analysis

Staff has analyzed the proposal to adopt the existing fare structure and fares for the transferred Vallejo Ferry Service for possible impacts under the California Environmental Quality Act (CEQA). An overview of the staff analysis is shown in *Attachment 2*. Actions to establish or change fares are statutorily exempt as per CEQA statute. As a result, no further actions or analysis will be required at this time under CEQA.

Staff recommends that the Board adopt the proposed fare structure for the Vallejo ferry service as provided in *Attachment 1* to this report.

Fiscal Impact

There is no fiscal impact associated with this item.

Attachment 1

Proposed Vallejo Ferry Service Fares

WETA Fares for Vallejo Ferry Service	
One-Way Tickets	
Adult (13-64 yr)	\$13.00
Youth (6-12 yr), Senior (65+ yr), Disabled/Medicare	\$6.50
Child (0-5 yr)	FREE
Day Passes (Ferry, Vallejo Local Buses and Route 80)	
Adult Day Pass	\$24.00
Reduced Fare Day Pass (Youth, Senior, Disabled/Medicare)	\$13.00
Monthly Pass	
Vallejo Ferry	\$290.00
San Francisco Muni Sticker	\$57.00
10 Ride Punch Cards (One-Way Trip on the Ferry)	
10-Ride	\$103.00
Reduced 10-Ride (Youth, Senior, Disabled/Medicare)	\$65.00
Group Fares (15+ Passengers, 72 hour pre-approval required)	
Group Day Pass Adult - Ferry only	\$20.00
Reduced Fare Group Day Pass - Ferry only (Youth, Senior, Disabled/Medicare)	\$11.00
One-way Group Adult	\$10.50
Reduced Fare One-way Group (Youth, Senior, Disabled/Medicare)	\$5.75

Recreational/Special Event Service	
SF Giants/CAL Bears Game Ferry Service	
Adult	\$27.00
Youth, Senior, Disabled/Medicare	\$13.50
Angel Island State Park Ferry Service	
Adult	\$30.50
Youth, Senior, Disabled/Medicare	\$21.00
Six Flags Discovery Kingdom Round Trip Packages	
Adult (13-64 yr)	\$62.00
Senior (65+ yr)	\$55.00
Child (6-12 yr)	\$49.00
Child (3-5 yr)	\$33.00
Child (0-2 yr)	FREE

Attachment 2

Analysis of Possible California Environmental Quality Act (CEQA) Impacts

Regulatory Context

The California Environmental Quality Act (CEQA) defines a “project” in Section 21065 of the Public Resources code as “an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.” Thus, as a general rule, CEQA only applies to activities that have the potential to cause a significant effect on the environment.

Establishing Vallejo Fares

As per CEQA Code of Regulations 15273, *Rates, Tolls, Fares, and Charges*, “CEQA does not apply to the establishment, modification, structuring, restructuring, or approval of rates, tolls, fares, or other charges by public agencies for the purpose of: (1) meeting operating expenses, including employee wage rates and fringe benefits.” The proposal to establish fares for the transferred Vallejo Ferry Service at the same rate as is currently charged by the City of Vallejo is for the purpose of meeting the Vallejo Ferry Service’s current operating expenses. As such, this action is statutorily exempt from CEQA and no further action is required.

RESOLUTION NO. 2012-01

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE
SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSPORTATION AUTHORITY**

ADOPT FARE SCHEDULE FOR THE VALLEJO FERRY SERVICE

WHEREAS, the San Francisco Bay Area Water Emergency Transportation Authority's ("Authority") enabling legislation authorizes the board to establish rates, charges, and classifications for or in connection with any transportation facility owned, operated, or controlled by the Authority.

WHEREAS, the Authority has proposed a fare structure and rates for the Vallejo Ferry Service, once transferred to WETA, as outlined in the Attached January 5, 2012 memorandum to the Board of Directors.

WHEREAS, the Board has established and implemented a process for taking public input on proposed rates, schedules, or changes and has followed this process in soliciting input.

WHEREAS, the Authority has provided written notification of the proposed rates, schedules, or changes to the public at least 30 days prior to the public hearing.

WHEREAS, the Authority is proposing to establish the same fare structure and rates as is currently charged by the City of Vallejo.

WHEREAS, as per CEQA Code of Regulations 15273, Rates, Tolls, Fares, and Charges, "CEQA does not apply to the establishment, modification, structuring, restructuring, or approval of rates, tolls, fares, or other charges by public agencies meeting operating expenses, including employee wage rates and fringe benefits," since the proposal to establish the same fare structure and rates as is currently charged by the City of Vallejo is for the purpose of meeting current operating expenses, this action is statutorily exempt from CEQA.

NOW, THEREFORE, BE IT RESOLVED THAT:

The Board of Directors hereby establishes the existing fare structure and rates for the Vallejo Ferry Service to be utilized once the service is transferred to the Authority.

CERTIFICATION

The undersigned, the Board Secretary, does hereby certify that the foregoing is a full, true and correct copy of a resolution duly and regularly adopted at a meeting of the San Francisco Bay Area Water Emergency Transportation Authority held on January 5, 2012.

AYE:

NAY:

ABSTAIN:

ABSENT:

/s/ Board Secretary

2012-01

END

MEMORANDUM

TO: Board Members

FROM: Nina Rannells, Executive Director
Keith Stahnke, Manager, Operations

SUBJECT: Approve the Purchase of Insurance for South San Francisco Ferry Terminal

Recommendation

Approve the purchase of property insurance for physical damage to the piers, gangways, floats, and pilings at the South San Francisco ferry terminal from Alliant Insurance Services, Inc. in an amount not to exceed \$30,000.

Background

The South San Francisco ferry terminal is in the final phases of construction and once construction has been satisfactorily completed WETA will need to have liability and property insurance coverage for this facility in place.

During the transition of the City of Alameda ferry services to WETA, staff explored multiple options for providing property insurance for the Alameda ferry terminals including: 1) continuing to use the City of Alameda's joint powers insurance pool; 2) requiring the contracted operator to procure this insurance; and 3) WETA direct procurement of property insurance. Staff found that continuing the use of the City's policies would not be feasible as the City's joint powers insurance pool has a deductible of \$500,000 and does not allow the City to name any other party as additional insureds. The insurance brokers for the contracted operators could not procure property insurance for the terminal areas since the contracted operators do not have operational control of these areas. Given these limitations, staff recommended, and the Board approved, direct procurement of insurance policies by WETA through Wells Fargo Insurance Services.

WETA's insurance program currently includes policies through Alliant Insurance Services, Inc. (Alliant) and Wells Fargo Insurance Services (Wells Fargo). Alliant provides WETA's office insurance policies for public official's errors and omissions, employment practices liability, property and workers' compensation. Wells Fargo provides WETA's property insurance coverage for physical damage for the Alameda, Oakland and Harbor Bay ferry terminals and Marine Terminal Operations (liability) insurance for all of WETA's terminals.

Discussion

In seeking coverage for liability insurance, staff found that we could add the South San Francisco Terminal to the existing Marine Terminal Operator's Liability policy through Wells Fargo at no cost and is prepared to do so.

With regard to property insurance for the South San Francisco Ferry Terminal, staff requested quotes for adding the South San Francisco Terminal to the agency's existing property insurance policies held for the Alameda/Oakland and Harbor Bay facilities as well as new and separate policies.

Staff solicited quotes from Wells Fargo Insurance Services, Alliant Insurance Services, and John Sutak Risk Services, and only received quotes from Wells Fargo and Alliant. Wells Fargo provided two quotes for property insurance for the South San Francisco Terminal both of which had high deductibles (\$250,000 and \$500,000) and were more expensive to purchase than Alliant's policy. Alliant's quote for property insurance for the South San Francisco Ferry Terminal was approximately \$30,000 with a \$1,000 deductible which is more in line with our budget and expectations and meets our general insurance needs.

The ferry terminal assets covered under the Alliant policy include piers, gangways, floats and pilings that will be insured for their replacement values. The proposed property insurance has a Total Insured Value of \$18,973,405. A summary of the proposed property insurance, as well as the liability insurance add-on through Wells Fargo, is provided in **Attachment 1**.

Fiscal Impact

Funding for the purchase of liability and property insurance is included in the approved FY 2011/2012 operating budget.

END

Attachment 1

**Water Emergency Transportation Authority
South San Francisco Ferry Terminal Schedule of Insurance**

Policy Type	Description	Location	Liability Limit or Insured Value	Deductible	Estimated Annual Premium
Marine Terminal Operators Liability	To defend and indemnify against third party claims for bodily injury and property damage that arise from WETA's operations at the scheduled location.	South San Francisco Ferry Terminal at Oyster Point Marina	\$5,000,000 each occurrence \$5,000,000 general aggregate	\$10,000 any one occurrence	No cost to add location to current policy
Property, Physical Damage to Piers, Floats, Gangways and Pilings	To pay for loss or damage of physical property owned by WETA at the scheduled location.	South San Francisco Ferry Terminal at Oyster Point Marina	\$18,973,405 Total Insured Value	\$1,000 Per Occurrence	\$30,000

RESOLUTION NO. 2011-02

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE
SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSPORTATION AUTHORITY**

**APPROVE THE PURCHASE OF PROPERTY INSURANCE POLICIES FOR THE SOUTH SAN
FRANCISCO FERRY TERMINAL**

WHEREAS:

The San Francisco Bay Area Water Emergency Transportation Authority ("Authority") is expecting the South San Francisco Ferry Terminal construction to be complete in early 2012; and

WHEREAS:

The Authority will need to provide property insurance for the floats, gangways and pilings at the South San Francisco Ferry Terminal; and

WHEREAS:

The San Francisco Bay Area Water Emergency Transportation Authority ("Authority") is expected to start South San Francisco ferry services in 2012; and

WHEREAS:

Direct procurement of Property Insurance for the associated floats, gangways and pilings is recommended; and

WHEREAS:

Surveys will need to be conducted to obtain a formal quote for the purchase of these services, which is expected to be completed in the beginning of January; and

WHEREAS:

The Authority's has been provided an estimated annual cost for insurance not to exceed the amount of \$30,000; Now

THEREFORE, BE IT RESOLVED THAT:

The Board of Directors hereby approves the purchase of Property Insurance for the floats, gangways and pilings at the South San Francisco Ferry Terminal through Alliant Insurance Services, Inc. and authorizes the Executive Director to negotiate and execute the agreement for this coverage.

CERTIFICATION

The undersigned, Board Secretary, does hereby certify that the foregoing is a full, true and correct copy of a resolution duly and regularly adopted at a meeting of the San Francisco Bay Area Water Emergency Transportation Authority held on January 5, 2012.

AYE:

NAY:

ABSTAIN:

ABSENT:

/s/ Board Secretary

2012-02

END

MEMORANDUM

TO: Board Members

FROM: Nina Rannells, Executive Director
John Sindzinski, Manager, Planning & Development

SUBJECT: Authorize the Executive Director to Execute a Supplemental Agreement to Clipper Memorandum of Understanding with MTC and Other Transit Operators

Recommendation

Authorize the Executive Director to execute a Supplemental Agreement to the Clipper Memorandum of Understanding (MOU) with the Metropolitan Transportation Commission (MTC) and other transit operators to implement the Clipper fare collection system at WETA.

Background

Clipper is an all-in-one reloadable transit fare payment card that is currently in operation at several Bay Area transit operators (Clipper Operators) including:

- Alameda-Contra Costa Transit District (AC Transit)
- Golden Gate Bridge Highway and Transportation District (GGBHTD)
- San Francisco Bay Area Rapid Transit District (BART)
- San Francisco Municipal Transportation Agency (MTA)
- San Mateo County Transportation District (SamTrans)
- Santa Clara Valley Transportation Authority (VTA)
- Peninsula Corridor Joint Power Board (Caltrain)

MTC has entered into a contract with Cubic Transportation Systems, Inc. (Cubic) to operate and maintain Clipper through November 2, 2019. MTC and Clipper Operators have entered into a MOU to identify each party's roles and obligations regarding the implementation, operation, and maintenance of Clipper. Article III of the MOU permits MTC to accept additional Bay Area transit operators into the Clipper program by means of a supplemental agreement with MTC, provided that MTC has issued a Change Notice to the Cubic covering the work required to accept such operator into this system.

In April 2011, the Board of Directors authorized the Executive Director to negotiate and execute a Cooperative Agreement with MTC to Implement Clipper on WETA ferry services. This Cooperative Agreement between MTC and WETA allowed MTC to issue a Contract Change Notice to MTC's master contract with Cubic in order to set the scope of work for Cubic to develop the software and procure the fare collection equipment needed to implement Clipper for WETA. On September 9, 2011, MTC's Operations Committee approved the Contract Change Notice with Cubic.

Discussion

The Supplemental Agreement to the Clipper MOU lists MTC's responsibilities as the administrator of the Clipper program. It also details each transit agency's responsibilities relating to the operation and maintenance of the Clipper system, including:

- Adhering to the Clipper Operating Rules
- Paying its share of Clipper costs
- Making staff and facilities available to MTC and the Clipper contractor
- Providing training to employees using the Clipper equipment
- Participating in periodic reviews of the cost and revenue allocation formula, among other responsibilities.

All of the provisions of this agreement are consistent with the "*Update on WETA Clipper Implementation Project*" that was presented to the Board on September 15, 2011.

Fiscal Impact

MTC estimates WETA's share of costs associated with operating and maintain the Clipper system to be \$153,600 per year once Clipper is fully implemented at WETA. There are sufficient funds in the FY 2011/12 Operating Budget to cover current fiscal year's cost and future years will be budgeted accordingly.

END

Attachment 1

MEMORANDUM OF UNDERSTANDING REGARDING OPERATIONS AND MAINTENANCE OF CLIPPERSM FARE COLLECTION SYSTEM

This ClipperSM Memorandum of Understanding (“MOU”) is entered into as of the date on which all Parties listed below have signed the MOU (“Effective Date”), by and among the Metropolitan Transportation Commission (“MTC”) and the following transit operators participating in the ClipperSM program (referred to herein as “Operator” or “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 (“MTA”); the San Mateo County Transit District (“SamTrans”); the Santa Clara Valley Transportation Authority (“VTA”); the Peninsula Corridor Joint Powers Board (“Caltrain”); and any other transit operators that implement Clipper and execute this MOU after the Effective Date.

MTC and the Operators are referred to herein as “the Parties” or individually, as a “Party”.

Recitals

1. ClipperSM (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 has entered into a contract (“the ClipperSM Contract”) with Cubic Transportation Systems, Inc. (“ClipperSM Contractor”) to operate and maintain ClipperSM through November 2, 2019.
3. On December 12, 2003, MTC and six of the Operators entered into an interagency participation agreement (“IPA”) to create a forum for joint agency decision-making called the TransLink[®] Consortium to work towards the successful implementation of ClipperSM, which agreement was terminated by the Consortium as of the Effective Date.
4. The IPA included provisions assigning responsibilities to MTC and the Operators relative to the implementation, operation and maintenance of the program, including the payment of the operating fees due the ClipperSM Contractor.
5. MTC and the Operators now wish to agree to their continuing obligations to ensure the successful operation and maintenance of ClipperSM.

Article I Operator Responsibilities

Each Operator that is a signatory to this MOU agrees to:

- A. Implement and operate the ClipperSM fare payment system in accordance with the ClipperSM Operating Rules, as adopted and amended from time to time by MTC, consistent with the consultation and approval process set forth in Appendix A, Process for Amending ClipperSM Operating Rules, attached hereto and incorporated herein by this reference. The ClipperSM Operating Rules establish operating parameters and procedures for the consistent and efficient operation of ClipperSM throughout the region and the current version is available on MTC's website at <http://www.mtc.ca.gov/planning/tcip/>.
- B. Pay its share of ClipperSM costs, according to Appendix B, ClipperSM Cost and Revenue Allocation, attached hereto and incorporated herein by this reference. Notwithstanding any contrary survival provisions of the IPA, Appendix B shall supersede Appendix A to the IPA, as of the Effective Date. Changes to Appendix B require an amendment to the MOU in accordance with Article VIII.A.
- C. Make its facilities and staff available to MTC and the ClipperSM Contractor for implementation and operation of ClipperSM. Any Operator and MTC may agree to an operator-specific implementation plan, setting forth specific requirements regarding implementation and operation of ClipperSM for such Operator.
- D. Make determinations regarding the placement of ClipperSM equipment on the Operator's facilities and equipment; perform necessary site preparation; attend ClipperSM Contractor training on the use of the ClipperSM equipment; and provide training to employees using the equipment.
- E. Accept transfer of ownership of equipment one year following Conditional Acceptance by each Operator, as defined in Section 8.3 of the ClipperSM Contract (or for Phase 3 or other new Operators one year following Acceptance, as established by contract change order.) Maintain and track a list of all equipment in accordance with Federal Transit Administration requirements.
- F. Participate in periodic reviews of the cost and revenue allocation formula in Appendix B.1, to support fairness among Operators and to accommodate changes in shared operation costs.

Article II MTC Responsibilities

MTC agrees to:

- A. Operate the ClipperSM fare payment system on behalf of the Operators and carry out the duties and responsibilities of contracting agency for the ClipperSM Contractor through the Term of the Clipper Contract.

- B. Notify and consult with the Operators concerning changes to the Operating Rules affecting Operator Roles and Responsibilities, consistent with the process described in Appendix A.
- C. Fund a portion of the ClipperSM operating and maintenance costs, as set forth in Appendix B.
- D. Transfer ownership of capital equipment to each Operator receiving such equipment one year following Conditional Acceptance of such equipment under the ClipperSM Contract as defined in Section 8.3 of the ClipperSM Contract (or for Phase 3 or other new Operators, one year following Acceptance, as established by contract change order), in accordance with FTA requirements.
- E. Provide regular updates (at least quarterly) on the ClipperSM program to the Operators.
- F. Support the Operators with respect to Article I.F, by providing system data affecting the cost allocation formula.
- G. Hold and manage the ClipperSM 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 with the Operators and for the benefit of the Operators for funds due to Operators until dispersed to such Operators.
- 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 Operators upon request through reasonable means and at reasonable times. Operators may request that Materials be made available for the most recently closed fiscal year during the Term and for up to one year thereafter; provided, however, that nothing in this Article II.H is intended to limit an Operator’s rights to obtain records under the California Public Records Act (Government Code Section 6250 *et seq.*)
- I. Conduct an annual contract compliance audit covering MTC revenue collection and allocation and cost allocation responsibilities under the MOU and provide a copy of the complete audit report to all Operators upon conclusion of each such annual audit.

Article III

New Operator Participants

Any Bay Area transit operator not a Party to this Agreement must agree to the terms of the MOU then in effect as a condition of implementing ClipperSM, by entering into a supplemental agreement with MTC. Signature by the other Parties to the MOU is not required. MTC agrees that it will not enter into a supplemental agreement with a particular operator prior to the issuance of a Change Notice to the ClipperSM Contract covering the work required to accept such operator into the system. MTC agrees to provide the other Parties to the MOU with written notice of each supplemental agreement.

Article IV 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. **MTC Indemnification of Operators.** Notwithstanding the provisions of Subsection A above, MTC shall indemnify, hold harmless, and defend the Operators from any and all claims or liability resulting from any action or inaction on the part of MTC relating to the ClipperSM Contract or from its failure to carry out its responsibilities under Article II of this MOU. This indemnification covers action or inaction on the part of MTC relating to the ClipperSM Contract prior to the Effective Date of the MOU.
- C. **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.

Article V Term and Termination/Withdrawal

- A. **Term.** The term of the MOU shall begin upon the Effective Date and continue through November 2, 2019 (“the Term”), unless terminated by written agreement of the Parties or as provided in Article V.B below.
- B. **Withdrawal.** A Party to the MOU may withdraw from the MOU by two hundred forty (240) day advance written notice to all current signators to the MOU. Articles IV and VI and Appendices B and C shall survive a Party’s withdrawal from the MOU.

Article VI Dispute Resolution

The Parties agree to abide by the dispute resolution procedures in Appendix C, **Dispute Resolution**, attached hereto and incorporated herein by this reference, to resolve disputes between or among Parties to the MOU.

Article VII Changed Circumstances

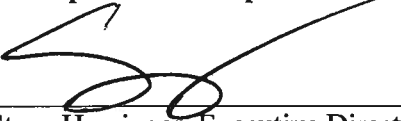
Any Party may initiate informal discussions among the Parties concerning the provisions of this MOU, based on its assessment that changes in technology or other factors external to the MOU or the ClipperSM Contract indicate that it would be in the best interests of one or more Parties to consider revisions 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 would require an amendment to the MOU approved by all Parties.

Article VIII 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 counterpart, 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 D, Special Provisions, 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 contracts or agreements entered into by them.
- 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 E, 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 E 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 III.
- H. This MOU supersedes and replaces the IPA or, if the TransLink[®] Consortium has been terminated by its members, the surviving provisions of the IPA.

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


Metropolitan Transportation Commission



Steve Heminger, Executive Director

Date: 6/26/10

Approved as to Form:



Melanie J. Morgan
Deputy General Counsel

Alameda Contra Costa Transit District

Mary King, Interim General Manager

Date: _____

Approved as to Form:

Ken Scheidig, General Counsel

Golden Gate Bridge Highway and Transportation District

Celia G. Kupersmith, General Manager

Date: _____

Approved as to Form:

David J. Miller
General Counsel

San Francisco Bay Area Rapid Transit District

Dorothy Dugger, General Manager

Date: _____

Approved as to Form:
Office of the General Counsel

Matt Burrows
General Counsel

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

Nathaniel P. Ford Sr.
Executive Director/CEO

Date: _____

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

Robin M. Reitzes
Deputy City Attorney

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

Metropolitan Transportation Commission

Approved as to Form:

Steve Heminger, Executive Director

Melanie J. Morgan
Deputy General Counsel

Date: _____

Alameda Contra Costa Transit District

Approved as to Form:



Mary King, Interim General Manager



Ken Scheidig, General Counsel

Date: 8-24-10

Golden Gate Bridge Highway and Transportation District

Approved as to Form:

Celia G. Kupersmith, General Manager

David J. Miller
General Counsel

Date: _____

San Francisco Bay Area Rapid Transit District

Approved as to Form:
Office of the General Counsel

Dorothy Dugger, General Manager

Matt Burrows
General Counsel

Date: _____

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

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

Nathaniel P. Ford Sr.
Executive Director/CEO

Robin M. Reitzes
Deputy City Attorney

Date: _____

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

Metropolitan Transportation Commission

Approved as to Form:

Steve Heminger, Executive Director

Melanie J. Morgan
Deputy General Counsel

Date: _____

Alameda Contra Costa Transit District

Approved as to Form:

Mary King, Interim General Manager

Ken Scheidig, General Counsel

Date: _____

Golden Gate Bridge Highway and Transportation District

Approved as to Form:


for Celia G. Kupersmith, General Manager


David J. Miller
General Counsel

Date: Sept 1, 2010

San Francisco Bay Area Rapid Transit District

Approved as to Form:
Office of the General Counsel

Dorothy Dugger, General Manager

Matt Burrows
General Counsel

Date: _____

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

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

Nathaniel P. Ford Sr.
Executive Director/CEO

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Melanie J. Morgan
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Alameda Contra Costa Transit District

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Mary King, Interim General Manager

Ken Scheidig, General Counsel

Date: _____

Golden Gate Bridge Highway and Transportation District

Approved as to Form:


Celia G. Kupersmith, General Manager

David J. Miller
General Counsel

Date: _____

San Francisco Bay Area Rapid Transit District

Approved as to Form:
Office of the General Counsel



~~Dorothy Dugger~~, Grace Crunican, General Manager



Matt Burrows
General Counsel

Date: 11-10-11

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

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

Nathaniel P. Ford Sr.
Executive Director/CEO

Robin M. Reitzes
Deputy City Attorney

Date: _____

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Celia G. Kupersmith, General Manager

David J. Miller
General Counsel

Date: _____

San Francisco Bay Area Rapid Transit District

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Office of the General Counsel

Dorothy Dugger, General Manager

Matt Burrows
General Counsel

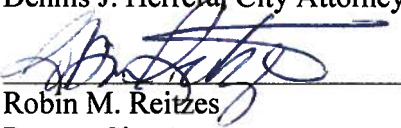
Date: _____

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

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



Nathaniel P. Ford Sr.
Executive Director/CEO



Robin M. Reitzes
Deputy City Attorney

Date: 9.7.10

Municipal Transportation Agency Board of Directors

Resolution No. 10-092

Dated: 6-15-10

R. Boomer

Secretary, MTAB

San Mateo County Transit District

Approved as to Form:

Michael Scanlon, General Manager and
Chief Executive Officer

David J. Miller
General Counsel

Date: _____

Santa Clara Valley Transportation Authority

Approved as to Form:

Michael T. Burns, General Manager

Kevin Allmand
General Counsel

Date: _____

Peninsula Corridor Joint Powers Board

Approved as to Form:

Michael Scanlon, Executive Director

David J. Miller
General Counsel


Date: _____

Municipal Transportation Agency Board of Directors
Resolution No. _____

Dated: _____

Secretary, MTAB

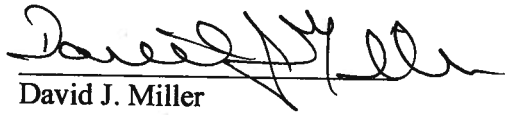
San Mateo County Transit District



Michael Scanlon, General Manager and
Chief Executive Officer

Date: 8/25/2010

Approved as to Form:



David J. Miller
General Counsel

Santa Clara Valley Transportation Authority

Michael T. Burns, General Manager

Date: _____

Approved as to Form:

Kevin Allmand
General Counsel

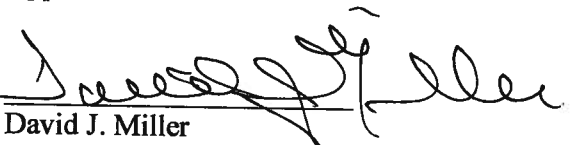
Peninsula Corridor Joint Powers Board



Michael Scanlon, Executive Director

Date: 8/25/2010

Approved as to Form:



David J. Miller
General Counsel

Municipal Transportation Agency Board of Directors

Resolution No. _____

Dated: _____

Secretary, MTAB

San Mateo County Transit District

Approved as to Form:

Michael Scanlon, General Manager and
Chief Executive Officer

David J. Miller
General Counsel


Date: _____

Santa Clara Valley Transportation Authority

Approved as to Form:



Michael T. Burns, General Manager



Kevin Allmand
General Counsel

Date: 8/27/10

Peninsula Corridor Joint Powers Board

Approved as to Form:

Michael Scanlon, Executive Director

David J. Miller
General Counsel

Date: _____

Appendix A – Process for Amending ClipperSM Operating Rules

Appendix B - ClipperSM Cost and Revenue Allocation

Appendix C – Dispute Resolution

Appendix D – Special Provisions

Appendix E – Notices

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Appendix A

Process for Amending ClipperSM Operating Rules

1. MTC will provide written notice to Operators at least ninety (90) days in advance of making any changes to the Operating Rules affecting Operator Roles and Responsibilities (Section 3 of the ClipperSM Operating Rules). Notice shall be provided by email to the contact named in Appendix E, or as subsequently revised or updated by the Operators, as provided in Article VIII.G.
2. MTC will endeavor to provide additional notice to Operators on possible changes to the Operating Rules affecting Operator Roles and Responsibilities in the regular ClipperSM program reports furnished under Article II.E.
3. MTC's notice shall include enough information to enable Operators to determine the financial and other impacts of the proposed change.
4. If requested by any Operator within 30 days of issuance of such notice, MTC will consult with all affected Operators concerning the proposed change prior to its adoption.
5. Any Operator that requires additional time in excess of the notice period specified by MTC to implement a change may notify MTC of the additional period of time required during the initial 30-day notice period. MTC will then work with the Operator(s) 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 Operator(s) objects to the proposed change, as modified during the consultation process, such Operator(s) may initiate one or more of the dispute resolution processes described in Appendix C.
7. MTC agrees to delay the implementation of the disputed change until the conclusion of the dispute resolution process.

Appendix B

ClipperSM Cost and Revenue Allocation

1. Cost Allocation Among Operators

The allocation of ClipperSM operating costs to each Operator shall be based on a combination of revenue collected and the number of fee payment transactions processed. "Revenue collected" shall mean the fee collected on behalf of each Operator by the ClipperSM clearinghouse (*e.g.*, the price charged to ride on the Operator's transit system, the value of pass sales, the amount of parking fees paid). A "fee payment transaction" shall mean any activity in which a ClipperSM card is used to receive service on or from an Operator's system (*e.g.*, to ride on the Operator's transit system, to park on the Operator's property). A fee payment transaction shall be attributed to the Operator on whose system the service was provided, except that a transaction in which a patron uses a Muni Fast Pass to ride BART will be attributed to MTA. All fee payment transactions are included for purposes of allocating ClipperSM operating costs, regardless of whether the transaction results in a reduction of the amount of stored value or stored rides on a ClipperSM card (*e.g.*, use of a monthly pass on a transit system, intra-operator transfers, entry and exit transactions for a single ride where both transactions are required to compute the appropriate fare payment).

One-third (1/3) of ClipperSM operating costs shall be allocated to Operators based on each Operator's share of total revenue collected by the ClipperSM clearinghouse, as defined above. Two-thirds (2/3) of ClipperSM operating costs shall be allocated to Operators based on each Operator's share of total fee payment transactions processed by the ClipperSM clearinghouse, as defined above.

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

- a. ClipperSM Data Server (CDS) Store operating costs specified below for any TDS Store implemented on such Operator's site; and
- b. Credit/debit interchange fees charged through an Operator-specific credit/debit gateway associated with ClipperSM sales through add value machines, ticket office terminal devices and ticket vending machines. This responsibility is subject to review pursuant to Article I.F to ensure that no single Operator is unfairly burdened by such fees.
- c. Incremental ClipperSM operating costs established by and/or resulting from ClipperSM Contract change orders requested and funded by an Operator for such Operator's use and benefit shall be the responsibility of such Operator. This applies to costs or portions of costs that would otherwise be MTC's responsibility as described below.

2. ClipperSM Costs

- A. MTC Operating and Maintenance Costs. MTC shall pay the following ClipperSM operating costs:
- i. All fixed operating costs of the ClipperSM clearinghouse and equipment maintenance services costs as specified in the ClipperSM Contract's Price Schedule (Attachment 2 to the ClipperSM Contract) (the "Price Schedule"), including:
 - a. Item 3.20 Program Management – Operations and Maintenance
 - b. Item 3.30 ClipperSM 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 ClipperSM operating costs as specified in the Price Schedule (Attachment 2 to the ClipperSM Contract), specifically:
 - a. Item 8.0 Card Distribution Services
 - b. Item 9.41 Fixed and Incremental Fees Per Active Card Account (50% of the invoiced amount)
 - iii. All other lump sum and capital expense items specified in the Price Schedule not enumerated above or covered by Section 2.B; and
 - iv. \$7,120,000 in incentives to be allocated to Operators to pay operating costs, as shown in Section 4, Incentive Payments, below.
- B. Operator Operating Costs.
- i. Operators shall pay the following listed ClipperSM operating costs in accordance with the cost sharing formula in Appendix B.1, reduced by any amounts payable by MTC pursuant to 2.A(iv) above. References to Item numbers refer to the corresponding prices payable to the ClipperSM Contractor under the ClipperSM Contract Price Schedule, which are subject to annual price adjustment as specified in Article 13.6 of the ClipperSM Contract:
 - a. Item 9.24 Balance Protection Services Registration
 - b. Item 9.25 Lock/unlock ClipperSM Application

- c. Item 9.41 Fixed and Incremental Fees Per Active Card Account (50% of the invoiced amount)
 - d. Item 10.11 ClipperSM E-purse Load
 - e. Item 10.12 Pass/Stored Ride Load
 - f. Item 11.0 Autoload Services
 - g. Item 12.22.89 Fixed Monthly Service Fee to Support ClipperSM Data Server Store
 - h. Item 13.22.45 Supplemental Monthly Operations and Admin (except as reduced by MTC in accordance with Section 4.1, Incentive Payments)
 - i. Item 13.31 ClipperSM 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 MTC bank fees and direct bank charges in connection with the ClipperSM bank account(s) in excess of the amounts reimbursed under Section 3.A below
 - o. Direct payment or reimbursement of MTC costs for network communication.
- ii. Changes or Additions to Operator Operating Costs Items. Substantive changes or additions to the Operator-paid operating cost items set forth in B(i)(a-o) require an amendment to this Appendix B and approval of all Parties to the MOU as of the date of the change or addition.
- C. MTC shall invoice each Operator on a monthly basis for its share of the operating costs. The Operators shall pay MTC within fifteen (15) calendar days of receipt of such invoice.

3. Revenue Allocation

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

Notwithstanding the above, fees charged cardholders for card acquisition, card replacement, balance restoration, failed Autoload funding recovery, card refund processing, and other card-related activities shall be reserved to pay for future card procurements; provided, however, that surcharges on limited use cards or other fare media imposed by an Operator to pay for the acquisition, implementation, administration and replacement of such fare media shall be distributed to and retained by such Operator. (For clarity, any surcharge imposed by an Operator as part of its fare structure shall be considered "fare revenue" and shall be distributed to and retained by such Operator.)

4. Incentive Payments

MTC's \$10,000,000 in incentive funds shall be allocated to pay operating costs associated with Phase II as follows:

- (1) \$2,880,000 contingency to Contractor (for payment of ClipperSM Contract Price Schedule Item No. 13.22.45) for transaction assurances in the event minimum transaction volumes (20,000,000 transactions/month) are not achieved. If the minimum transaction volumes are met and these funds are not needed, MTC may reallocate the remaining funds to other purposes; and
- (2) \$7,120,000 to individual Operators, to be applied as a credit against Phase II variable operating costs, a portion of which has already been credited to certain individual Operators:

AC Transit	\$862,227
BART	2,128,016
Caltrain/SamTrans	484,744
Golden Gate Transit	634,239
MTA	2,327,503
SCVTA	683,271

Appendix C

Dispute Resolution

The Parties agree to resolve disputes concerning this MOU between or among one or more Parties based on the following dispute resolution principles.

1. Informal Dispute Resolution

The Parties agree to attempt to resolve informally all disputes. In the event of a dispute among any Parties to the MOU, those Parties shall notify every other Party in writing about the substance of the dispute. The Parties to the dispute shall meet and confer by exchanging written positions on the dispute, and by meeting in person thereafter to discuss and resolve the dispute. If those representatives are unable to resolve the dispute, the chief executives of those Parties shall be informed of the substance of the dispute and provided all writings that have been exchanged regarding the dispute. The chief executives shall meet and confer in person or by telephone concerning the dispute, and may choose to exchange letters in preparation for the meet and confer.

2. Mediation

If the dispute is not resolved, the Parties may avail themselves by mutual consent to mediation, arbitration (binding or non-binding), or any other dispute resolution resource (collectively "Alternate Dispute Resolution (ADR) processes"). All procedures and methodologies in ADR processes shall be by mutual consent of the Parties, including but not limited to the choice of the mediator or arbitrator, dates and times and timelines, whether documents are exchanged in preparation for the ADR session, etc. Fees and expenses of the mediator will be borne equally, unless otherwise agreed. The Parties to the dispute shall be represented by individuals of their choosing, except that the Parties must agree on the question of whether lawyers are present or not. The entire process shall be confidential and treated as a compromise negotiation for purposes of federal and state rules of evidence. If ADR processes are agreed on, the Parties shall agree on the identity of the mediator or arbitrator within 30 days of agreeing on the ADR process. The Parties shall not unreasonably withhold consent as to the choice of the mediator or arbitrator. Unless the schedule of the mediator or arbitrator does not permit, the Parties shall have their ADR process completed within 60 days after agreement on the choice of the mediator or arbitrator. Nothing in this MOU affects the rights or abilities of the Parties to avail themselves of all rights and remedies they have under the law of California or federal law, and to the state or federal courts to resolve their dispute.

3. Operator Obligations

An Operator who disputes amounts claimed by MTC to be due under the MOU agrees to pay the amount claimed pending dispute resolution.

Appendix D

Special Provisions for the City and County of San Francisco.

(References to "City" in Paragraphs 1 and 2 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. Prohibition on Political Activity with City Funds. In accordance with San Francisco Administrative Code Chapter 12.G, no funds appropriated by the City and County of San Francisco for this Agreement may be expended for organizing, creating, funding, participating in, supporting, or attempting to influence any political campaign for a candidate or for a ballot measure. The terms of San Francisco Administrative Code Chapter 12.G are incorporated herein by this reference.

Appendix E

Notices

Contact:

Mailing Address

Metropolitan Transportation Commission:

Melanie Crotty
Director, Traveler Coordination and Information
Email: mcrotty@mtc.ca.gov
Fax: 510-817-5848
Phone: 510-817-5880

101 – 8th St.
Oakland, CA 94607

Alameda Contra Costa Transit District

Mary King
Interim General Manager
Email: mking@actransit.org
Fax: 510-891-7157
Phone: 510-891-4793

1600 Franklin St.
Oakland, CA 94612

Golden Gate Bridge Highway and Transportation District

Celia G. Kupersmith
General Manager
Email: ckup@goldengate.org
Fax: 415-923-2367
Phone: 415-923-2212

Box 9000, Presidio Station
San Francisco, CA 94129-0601

San Francisco Bay Area Rapid Transit District

Larry Kozimor
Project Manager, Transit System Development
Email: lkozimo@bart.gov
Fax: 510-287-4860
Phone: 510-287-4723

300 Lakeside Drive, 21st
Floor,
Oakland, CA 94612

City and County of San Francisco Municipal Transportation Agency

Nathaniel P. Ford Sr.
Executive Director/CEO
Email: Nathaniel.ford@sfmta.com
Fax: 415-701-4502
Phone: 415-701-4687

1 South Van Ness Ave.
7th Floor
San Francisco, CA 94103

San Mateo County Transit District

Virginia Harrington

Deputy CEO

Email: harringtong@samtrans.com

Fax: 650-508-6415

Phone: 650-508-7950

1250 San Carlos Avenue,

P.O. Box 3006

San Carlos, CA 94070-2468

Santa Clara Valley Transportation Authority

Ali Hudda

Deputy Director of Accounting

Email: Ali.Hudda@vta.org

Fax: 408-955-9750

Phone: 408-546-7922

3331 North First St.

San Jose, CA 95134-1906

Peninsula Corridor Joint Powers Board

Virginia Harrington

Deputy CEO

Email: harringtong@samtrans.com

Fax: 650-508-6415

Phone: 650-508-7950

1250 San Carlos Avenue,

P.O. Box 3006

San Carlos, CA 94070-2468

RESOLUTION NO. 2012-03

RESOLUTION OF THE BOARD OF DIRECTORS OF THE
SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSPORTATION AUTHORITY

AGREEING TO TERMS OF CLIPPER® MEMORANDUM OF UNDERSTANDING
SUPPLEMENTAL AGREEMENT

WHEREAS, Clipper® 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; and

WHEREAS, the Metropolitan Transportation Commission (MTC) has entered into a contract ("the Clipper® Contract") with Cubic Transportation Systems, Inc. ("Clipper® Contractor") to operate and maintain Clipper® through November 2, 2019; and

WHEREAS, MTC, 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 ("MTA"); the San Mateo County Transit District ("SamTrans"); the Santa Clara Valley Transportation Authority ("VTA"); and the Peninsula Corridor Joint Powers Board ("Caltrain") (collectively, the "Clipper® Operators") have entered into the Clipper® Memorandum of Understanding ("MOU") to identify their obligations relative to the implementation, operation, maintenance of the Clipper® program, including payment of operating fees due the Clipper® Contractor; and

WHEREAS, Article III of the MOU permits MTC to accept additional Bay Area transit operators into the Clipper® program by means of a supplemental agreement with MTC, on behalf of itself and the Clipper® Operators, provided that MTC has issued a Change Notice to the Clipper® Contractor covering the work required to accept such operator into the system; and

WHEREAS, MTC has issued such Change Notice to the San Francisco Bay Area Water Emergency Transportation Authority (WETA); and

WHEREAS, WETA wishes to participate in the Clipper® program and understands that agreement to abide by the terms and conditions of the MOU is a condition of such participation;

NOW THEREFORE, BE IT RESOLVED, that WETA hereby authorizes the Executive Director, acting on its behalf, to negotiate and sign the Supplemental Agreement to the Clipper® Memorandum of Understanding, agreeing to be bound by the terms and conditions of the MOU, a copy of which is provided as **Attachment 1**, to this Agreement and incorporated in full and to take such other and further actions, including negotiation and execution of related documents and agreements necessary to implement the intent of this resolution.

CERTIFICATION

The undersigned, the Board Secretary, does hereby certify that the foregoing is a full, true and correct copy of a resolution duly and regularly adopted at a meeting of the San Francisco Bay Area Water Emergency Transportation Authority held on January 5, 2012.

AYE:

NAY:

ABSTAIN:

ABSENT:

/s/ Board Secretary

2012-03

END