



METROPOLITAN
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Agenda Item 2a

Amy Rein Worth, Chair
Cities of Contra Costa County

Dave Cortese, Vice Chair
Santa Clara County

Alicia C. Aguirre
Cities of San Mateo County

Tom Azumbrado
U.S. Department of Housing
and Urban Development

Tom Bates
Cities of Alameda County

David Campos
City and County of San Francisco

Bill Dodd
Napa County and Cities

Dorene M. Giacopini
U.S. Department of Transportation

Federal D. Glover
Contra Costa County

Scott Haggerty
Alameda County

Anne W. Halsted
San Francisco Bay Conservation
and Development Commission

Steve Kinsey
Marin County and Cities

Sam Liccardo
San Jose Mayor's Appointee

Mark Luce
Association of Bay Area Governments

Jake Mackenzie
Sonoma County and Cities

Joe Pirzynski
Cities of Santa Clara County

Jean Quan
Oakland Mayor's Appointee

Bijan Sartipi
California State
Transportation Agency

James P. Spering
Solano County and Cities

Adrienne J. Tissier
San Mateo County

Scott Wiener
San Francisco Mayor's Appointee

Steve Heminger
Executive Director

Alix Bockelman
Deputy Executive Director, Policy

Andrew B. Fremier
Deputy Executive Director, Operations

OPERATIONS COMMITTEE MINUTES
April 11, 2014

ATTENDANCE

Chair Mackenzie called the MTC Operations Committee meeting to order at 9:47 a.m. Other Committee members in attendance were Commissioners Azumbrado, Haggerty, Liccardo, Luce, Spering and Tissier (who was deputized as a voting member to confirm a quorum). Commissioner Weiner was present as an ad hoc non-voting member of the Committee. Commission Chair Rein Worth was present in her ex-officio voting member capacity.

CONSENT CALENDAR:

Upon motion of Commissioner Luce, which was seconded by Commissioner Tissier, the Committee unanimously approved the consent calendar, which included the following items:

- Minutes of March 14, 2014*
- Clipper[®] Contract Actions:
 - i. Contract Change Order – AT&T Frame Relay Upgrade and Network Equipment Replacement: Cubic Transportation Systems, Inc. (\$1,500,000)
 - ii. Contract Amendment – Clipper Technical Advisor: CH2M Hill, Inc. (\$1,200,000)
 - iii. Contract Change Order – AC Transit New Vehicle Installs: Cubic Transportation Systems, Inc. (\$150,000)
- Funding Agreement – Freeway Service Patrol Overtime Services: California Highway Patrol (\$110,000)

Clipper[®] Contract Claims Settlement - Clipper[®] Phase 3 Operating Costs, Uncollected Autoload Value, Credit/Debit Card Chargebacks, and Resolution of \$2,000,000 Credit from Assignment of Contract in 2009: Cubic Transportation Systems, Inc.

Carol Kuester, MTC Director, summarized the contract claims settlement of several outstanding claims under MTC's contract with Cubic, and provided recommendations for their resolutions.

In terms of the Clipper[®] Phase 3 Operating Costs, Cubic agrees to withdraw its claim for additional compensation for operating and maintenance services related to the system's expansion to Phase 3 transit agencies listed in the Clipper[®] Contract.

In terms of the uncollected Autoload value, Cubic agrees to pay MTC the full \$102,664 of lost fare revenue from the uncollected Autoload transactions.

In terms of credit/debit card chargebacks, Cubic agrees to pay MTC \$17,000 for the uncontested customer chargeback transactions that occurred between November 2010 and May 2011. This amount represents the expected value that Cubic would have recovered had it contested the chargebacks in a timely manner. MTC and Cubic agree to enter into a change order to the Clipper[®] Contract that defines “chargebacks”, specifies Cubic’s responsibilities for contesting chargebacks, and provides that Cubic will not be responsible for future lost fare revenue related to chargebacks, as long as Cubic is carrying out the specified responsibilities. Ms. Kuester noted that the transit operators have agreed with MTC to assume primary responsibility for lost revenue due to customer chargebacks starting in FY 2013-14.

Finally, in terms of resolution of \$2,000,000 credit from assignment of contract in 2009, Cubic agreed to provide MTC with a \$2,000,000 credit to be applied to a project integrating Clipper[®] with BART parking, which is unlikely to move forward before the termination of the Clipper[®] Contract in 2019. Under the recommended settlement, MTC agrees to forego \$1,000,000 of the credit, and Cubic agrees to apply \$500,000 of the credit toward the cost of Clipper[®] Phase 3 integration for the East Bay and 101 Corridor transit operators, and \$500,000 of the credit toward the cost of Clipper[®] integration for Sonoma-Marín Area Rail Transit. Ms. Kuester noted that a mutual release and waiver of claims by Cubic and MTC related to the disputes is included in the settlement agreement.

Committee discussion:

- Commission Chair Rein Worth asked about Cubic’s rationale for not allowing the credit to be applied against other contract work. Ms. Kuester stated that Cubic’s position is that the \$2,000,000 credit was specifically meant to support a BART parking project. Steve Heminger, MTC Executive Director, also stated that that this agreement was documented in the contract, and if forced to litigate that question, MTC would not have a very strong position. MTC therefore was willing to accept a smaller amount of credit as long as it could be applied it to other projects.
- Commissioner Luce stated that all four claims in a sense are one agreement, so their willingness to settle on one item may have been related to what is discussed and settled in another item, and it is difficult to view these as independent from each other.

Commissioner Haggerty moved approval. Commissioner Tissier seconded. Motion passed with Commissioner Spering abstaining.

Public Comment/Other Business/Next Meeting/Adjournment:

There being no further business, and no public comment, Chair Mackenzie adjourned the meeting at 9:58 a.m. The next meeting of the Operations Committee is scheduled for Friday, May 9, 2014 at 9:35 a.m. in the Lawrence D. Dahms Auditorium, Joseph P. Bort MetroCenter, Oakland, CA.