



METROPOLITAN  
TRANSPORTATION  
COMMISSION

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*Memorandum*

TO: Commission

DATE: December 16, 2014

FR: Operations Committee

W.I. 1221

RE: Custom Clipper<sup>®</sup> Card Evaluation Policy and Clipper<sup>®</sup> Card Advertising Standards

The Operations Committee referred the Clipper<sup>®</sup> Card Evaluation Policy set forth in Attachment A hereto (the "Policy") to the Commission for approval. The staff recommendation was amended as reflected in Attachment A (1) to include the objectives of the Policy as expressed in the Executive Director's memorandum to the Operations Committee dated December 5, 2014, attached as Attachment B, and (2) to clarify that custom Clipper<sup>®</sup> Cards are intended to provide a nonpublic forum limited to commercial and governmental-purpose messages.

Staff recommended approval of the Policy and delegation of authority to the Executive Director or his designee to implement the Policy and to revise the Policy as may be required from time to time due to changes in law, regulation or procedures relating to the Clipper<sup>®</sup> program. Staff also recommended authorization for the Executive Director or his designee to negotiate and enter into a contract with World Wrestling Entertainment, Inc., for the custom card opportunity described in Attachment B.

SH: BA

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## ATTACHMENT A

### Custom Clipper® Card Evaluation Policy

Objectives and criteria for evaluation of proposals for production of non-standard or custom Clipper® cards are set forth below. Custom Clipper® card opportunities will be evaluated based on these objectives and criteria and in accordance with the Advertising Standards attached as Exhibit A. MTC reserves the right to reject any content submitted for display on custom Clipper® cards based upon the criteria in this Evaluation Policy and the Advertising Standards (collectively, this “Policy”).

#### Custom card program objectives:

- Expand the reach of the Clipper® program to infrequent and out of region riders;
- Increase the visibility of Clipper® within the Bay Area among local residents and visitors;
- Enhance connections between Clipper® and the Bay Area (history, local icons, events, etc.); and
- Create non-revenue partnership opportunities and/or revenue generation opportunities for MTC/transit agencies.

#### General restrictions on custom cards are as follows:

- MTC does not approve custom Clipper® card proposals from non-governmental entities if the subject matter and intent of said proposal is non-commercial. Specifically, acceptable proposals must promote for sale, lease or other form of financial benefit a product, service, event or other property interest in primarily a commercial manner for primarily a commercial purpose.
- Governmental entities, meaning public agencies located in the nine-county Bay Area or a federal or State of California governmental agency, may propose a custom Clipper® card that advances specific government purposes. It is MTC’s intent that governmental entity-sponsored custom Clipper® cards will not be used for comment on issues of public debate.

#### Types of custom cards:

- A “**commemorative**” card is defined as a custom Clipper® card, such as the Bay Bridge or America’s Cup cards, that is put into general circulation at the regular card price.
- A “**collectible**” card is defined as a custom Clipper® card, such as the Golden State Warriors or San Jose Sharks cards, that is produced in smaller quantities, can be printed using secondary printing and is distributed either via promotional giveaway, sold for less than the value on the card or (if possible) sold at a premium price.

#### Review and approval process:

Once staff has reviewed an opportunity for a custom Clipper® card and found it consistent with this Policy, staff recommends production of the card to the Section Director. If agreed by the Section Director, the recommendation is presented to the Executive Director or his designee for approval.

## Custom card proposal evaluation criteria:

- **Level of staff time required**
  - Staff time commitment for production of commemorative cards is generally limited to the development of card graphics.
  - Staff time commitment for collectible cards involves more time to develop a partnership, negotiate cost sharing and in-kind trades.
  
- **Card production**
  - MTC may pay licensing fees for use of partner brands logos/artwork, subject to agency contracting policies.
  - MTC retains final approval over proposed artwork.
  - Commemorative cards, when possible, should be ordered as regular card orders to avoid secondary printing costs (timing – 5-6 months for card orders).
  - Collectible cards may be printed using secondary printing, due to the smaller quantities and timing involved (timing – 3-4 weeks for printing, depending on quantity).
    - Where possible, partners and sponsors should pay for card printing costs; MTC may choose to pick up some of these costs, depending on overall cost, and the promotional/advertising opportunities offered in return.
  
- **Card distribution**
  - Commemorative cards should be distributed via normal channels, at the regular card cost.
  - Collectible cards can be used as promotional cards, or if possible, sold through special distribution outlets. Extra caution will be exercised in reviewing/recommending cards to be sold at a premium price, due to the limitations of the website and retail distribution networks. For cards that are intended to be promotional in nature and will be given away for free, or sold for less than the value on the card, Clipper® staff will encourage the sponsor or partner to offer the cards to as broad an audience as possible. This will largely depend on the funding and distribution channels available to the sponsor/partner and Clipper®.
  
- **Opportunities for promoting the Clipper® brand**
  - Commemorative cards do not necessarily need to meet this criteria, since they should involve little to no extra cost and limited staff time.
  - For collectible cards, associations with high-profile brands or events and in-kind and promotional opportunities can be very valuable in raising the profile of Clipper®.
  - Co-branding or commercial advertising opportunities will also be evaluated in a viewpoint-neutral manner following the Advertising Standards.
  
- **Increasing use of transit**
  - For either type of card, opportunities that encourage or promote use of public transit (special event or discount/promotional partnerships) can be valuable partnerships and help to increase the market penetration of Clipper®.

General:

MTC reserves the right, from time to time, to suspend, modify, or revoke the application of any or all of this Policy as it deems necessary to comply with legal mandates, or to fulfill the goals and objectives referred to herein. All provisions of this Policy shall be deemed severable.

It is also MTC's policy and practice to assure equal application of this Policy without regard to race, color, marital status, sexual orientation, religion, national origin, ancestry, age, sex, gender identity, disability, medical condition, or Vietnam Era veterans' status.

**Exhibit A to Attachment A**  
**Custom Clipper® Card Advertising Standards:**

MTC intends that the Clipper® card constitute a nonpublic forum and that advertising or other content printed on the Clipper® card be subject to the viewpoint-neutral restrictions set forth below. Certain content will not be permitted for placement or display on the Clipper® card. Clipper® cards shall **not** display or maintain any content that falls within one or more of the following categories:

1. Demeaning or Disparaging. The advertisement contains material that demeans or disparages an individual or group of individuals. For purposes of determining whether an advertisement contains such material, Clipper® will determine whether a reasonably prudent person, knowledgeable of the Clipper® customer profile and using prevailing community standards, would believe that the advertisement contains material that ridicules or mocks, is abusive or hostile to, or debases the dignity or stature of, an individual or group of individuals.
2. Tobacco. The advertisement promotes the sale or use of tobacco or tobacco-related products, or depicts such products.
3. Alcoholic Beverages. The advertisement promotes or encourages the consumption of alcoholic beverages including, but not limited to beer, wine, and distilled spirits, or depicts such products.
4. Profanity. The advertisement contains words recognized by the community as vulgar, indecent or profane for display in a public setting that includes minors.
5. Inappropriate Graphics. The advertisement contains graphics recognized by the community as inappropriate including, but not limited to, the depiction of human or animal bodies or body parts, or fetuses, in states of mutilation, dismemberment, decomposition, or disfigurement.
6. Firearms. The advertisement either (a) contains an image of a firearm in the foreground of the main visual or (b) contains image(s) of firearms that occupy 15% or more of the overall advertisement.
7. Violence. The advertisement either (a) contains an image or description of graphic violence, including, but not limited to, the depiction of weapons or other implements or devices used in the advertisement in an act or acts of violence or harm on a person or animal or (b) the advertisement, or any material contained in it, incites or encourages, or appears to incite or encourage, violence or violent behavior.
8. Unlawful Goods or Services. The advertisement, or any material contained in it, promotes or encourages, or appears to promote or encourage, the use or possession of unlawful or illegal goods or services.
9. Unlawful or Detrimental Conduct. The advertisement, or any material contained in it, promotes or encourages, or appears to promote or encourage, unlawful or illegal behavior or activities, or behavior that promotes activities which are detrimental to the maintenance and safe operation of the Clipper® system.
10. False, Misleading, or Deceptive Commercial Speech. The advertisement proposes a commercial transaction, and the advertisement, or any material contained in it, is clearly false, misleading, or deceptive.
11. Libelous Speech, Copyright Infringement, etc. The advertisement, or any material contained in it, is libelous or an infringement of copyright, or is otherwise unlawful or illegal or likely to subject Clipper® to litigation.

12. Obscenity or Nudity. The advertisement contains obscene material or images of nudity. For purposes of these Guidelines, the term “obscene matter” shall have the meaning set forth in the California Penal Code Section 311.
13. Prurient Interest. The advertisement contains material that describes, depicts, or represents sexual activities, or aspects of the human anatomy in a way that the average adult, applying contemporary community standards, would find appeals to the prurient interest of minors or adults. For purposes of these Guidelines, the term “minor” shall have the meaning contained in California Penal Code Section 313.
14. “Adult”-oriented Goods or Services. The advertisement promotes or encourages, or appears to promote or encourage, a transaction related to, or uses brand names, trademarks, slogans or other materials which are identifiable with, films rated “X” or “NC-17,” adult book stores, adult video stores, nude dance clubs and other adult entertainment establishments, adult telephone services, adult internet sites, and escort services.
15. Endorsement. The advertisement, or any material contained in it, implies or declares an endorsement by Clipper<sup>®</sup>, its directors, management, or employees, of any service, product, or point of view, without prior written authorization of the MTC Executive Director.
16. Injurious to Clipper<sup>®</sup> and its mission. The advertisement proposes a commercial transaction and the advertisement, or any material contained in it, denigrates Clipper<sup>®</sup> or promotes alternatives to Clipper<sup>®</sup> in a manner that directly impairs Clipper<sup>®</sup> customers and/or revenue.



**ATTACHMENT B**

**METROPOLITAN  
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COMMISSION**

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***Memorandum***

Agenda Item 3

TO: Operations Committee

DATE: December 5, 2014

FR: Executive Director

W.I. 320-1221

RE: Custom Clipper® Card Evaluation Policy and Clipper® Card Advertising Standards

Staff requests Committee approval of the Custom Clipper® Card Evaluation Policy set forth in Attachment 2 (the “Policy”), which has been used by Clipper® staff to evaluate custom card opportunities to date. The goal of this policy is to support requests for custom cards while protecting and promoting the Clipper® brand, and encouraging use of transit. Staff also requests that the Committee authorize the Executive Director or his designee to negotiate and enter into a contract with World Wrestling Entertainment, Inc. (WWE) for the custom card opportunity described below. Finally, staff requests that the Committee delegate authority to the Executive Director or his designee to implement the Policy and to revise the Policy as may be required from time to time due to changes in law, regulation or procedures relating to the Clipper® program.

**Background**

Several transit agencies around the world have issued transit payment cards with custom graphics. In MTC’s region, requests for custom cards have come from transit agencies, event authorities and interested retail partners. Since 2012, MTC has produced the ten custom Clipper® cards in Attachment 1. Card quantities have ranged from 500 to 250,000, with distribution strategies ranging from giveaways at promotional events to distribution through the Clipper® retail network. Cards that are promotional in nature (e.g., Sharks and Warriors cards) may or may not have value on them, and the card and value are generally given away for free or sold for less than the value on the card. Cards that are distributed through the regular retail network (e.g., Bay Bridge and America’s Cup) are distributed for the regular \$3 card fee. The cost of printing the custom cards has been absorbed by either MTC or its partners, depending on the agreement for producing the cards.

Only one card has been sold for a higher price point than the regular \$3 card fee. The Golden Gate commemorative card produced in 2012 was sold for \$7 instead of the regular \$3 and distributed through select channels. However, this resulted in very low sales of the card. Out of 10,000 cards produced only about 30% have been sold to date.

**Discussion**

In early 2012, staff established objectives for issuance of custom Clipper® cards:

- Expand the reach of the Clipper® program to infrequent and out of region riders;

- Increase the visibility of Clipper® within the Bay Area among local residents and visitors;
- Enhance connections between Clipper® and the Bay Area (history, local icons, events, etc.); and
- Create non-revenue partnership opportunities and/or revenue generation opportunities for MTC/transit agencies.

Based on experience to date, there is very little potential to generate revenue from cards. Cards that are “commemorative” in nature (e.g., Golden Gate Bridge or Bay Bridge cards) are not unique enough to warrant a higher price. Cards that are more “collectible” in nature (e.g., Sharks or Warriors cards) might sell at a higher price, but to actually sell the cards, MTC would need to pay licensing fees to the NHL or NBA, which would offset or even exceed any additional revenue generated by a higher price point. Therefore, cards of this type have been given away as promotional items.

Going forward, staff would like to continue to evaluate opportunities for custom Clipper® cards in accordance with the Policy. Staff will use this Policy to carefully assess the opportunities as they arise. Staff will exercise additional caution before recommending cards be sold at a premium price point. Currently, the Clipper® website and retail network are not capable of selling cards at different price points. Significant investments would need to be made to these areas in order to do so, or alternate retail channels would need to be developed (which is what was done for the Golden Gate Bridge card).

### **Current Collectible Card Opportunity**

World Wrestling Entertainment, Inc. (WWE) is holding WrestleMania in San Jose in March 2015, with an expected attendance of 70,000. In partnership with VTA and Levi’s Stadium, WWE would like to order 2,700 custom Clipper® cards. Of the 2,700 cards, 2,500 would be loaded with \$4 and given out with visitor packets sent out prior to the event, and 200 would have no value and be given away through other channels. WWE would pay for the printing of the cards, as well as the value loaded onto the cards. MTC would retain final approval of the proposed artwork. Staff has evaluated this opportunity and believes it meets the criteria of promoting use of transit and increasing the visibility of Clipper® for infrequent and out-of-area riders while also providing a connection between Clipper® and a prominent Bay Area event. The card also helps to further the partnership among Clipper®, VTA and Levi’s Stadium.

### **Recommendation**

Staff recommends Committee approval of the Policy set forth in Attachment 2, with the goal of continuing to produce custom cards that raise the profile of Clipper® and build partnerships within the community. Staff also recommends that the Committee authorize the Executive Director or his designee to negotiate and enter into a contract with WWE for the custom card opportunity, described herein. Finally, staff recommends that the Committee delegate authority to the Executive Director or his designee to implement the Policy and to revise the Policy as may be required from time to time due to changes in law, regulation or procedures relating to the Clipper® program.

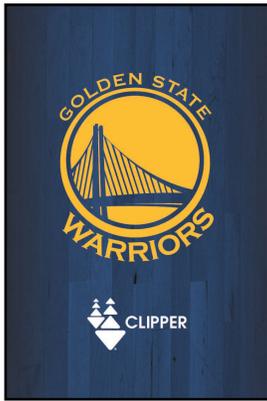
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Steve Heminger

SH: jw

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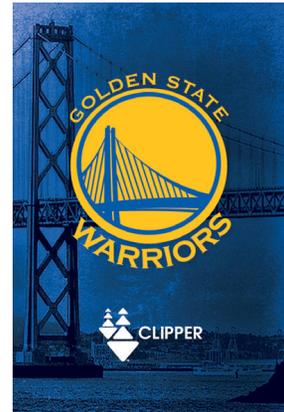
**Attachment 1**  
**Custom Clipper® Cards – November 2014**



Warriors Card I - 500



75th Anniversary – 10,000



Warriors Card II - 500



Sharks Card – 1,000



100th Anniversary – 5,000



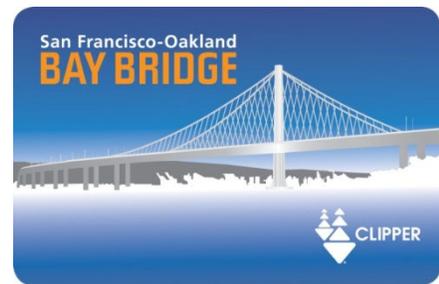
Jazz Fest - 500



Bay Bridge Limited Edition – 37,000



America's Cup – 4,000



Bay Bridge General Circ. – 250,000



Levi's Stadium – 5,000

## Attachment 2

### Custom Clipper® Card Evaluation Policy

Non-standard or custom Clipper® cards will be evaluated based on the criteria set forth below and in accordance with the advertising standards attached as Exhibit A.

- A “**commemorative**” card is defined as a custom Clipper® card, such as the Bay Bridge or America’s Cup cards, that is put into general circulation at the regular card price
- A “**collectible**” card is defined as a custom Clipper® card, such as the Golden State Warriors or San Jose Sharks cards, that is produced in smaller quantities, can be printed using secondary printing and is distributed either via promotional giveaway, sold for less than the value on the card or (if possible) sold at a premium price.

Once staff has reviewed an opportunity for a custom Clipper® card and found it to meet the criteria as well as the advertising standards, staff recommends production of the card to the Section Director. If agreed by the Section Director, the recommendation is presented to the Executive Director or his designee for approval.

- **Level of staff time required**
  - Staff time commitment for production of commemorative cards is generally limited to the development of card graphics.
  - Staff time commitment for collectible cards involves more time to develop a partnership, negotiate cost sharing and in-kind trades.
- **Card production**
  - MTC may pay licensing fees for use of partner brands logos/artwork, subject to agency contracting policies.
  - MTC retains final approval over proposed artwork.
  - Commemorative cards, when possible, should be ordered as regular card orders to avoid secondary printing costs (timing – 5-6 months for card orders).
  - Collectible cards may be printed using secondary printing, due to the smaller quantities and timing involved (timing – 3-4 weeks for printing, depending on quantity).
    - Where possible, partners and sponsors should pay for card printing costs; MTC may choose to pick up some of these costs, depending on overall cost, and the promotional/advertising opportunities offered in return.
- **Card distribution**

- Commemorative cards should be distributed via normal channels, at the regular card cost.
  - Collectible cards can be used as promotional cards, or if possible, sold through special distribution outlets. Extra caution will be exercised in reviewing/recommending cards to be sold at a premium price, due to the limitations of the website and retail distribution networks. For cards that are intended to be promotional in nature and will be given away for free, or sold for less than the value on the card, Clipper® staff will encourage the sponsor or partner to offer the cards to as broad an audience as possible. This will largely depend on the funding and distribution channels available to the sponsor/partner and Clipper®.
- **Opportunities for promoting the Clipper® brand**
- Commemorative cards do not necessarily need to meet this criteria, since they should involve little to no extra cost and limited staff time.
  - For collectible cards, associations with high-profile brands or events and in-kind and promotional opportunities can be very valuable in raising the profile of Clipper®.
  - Co-branding opportunities will also be evaluated on whether or not they are injurious to the Clipper® brand and/or its mission, or are offensive. See advertising standards below for guidelines.
- **Increasing use of transit**
- For either type of card, opportunities that encourage or promote use of public transit (special event or discount/promotional partnerships) can be valuable partnerships and help to increase the market penetration of Clipper®.

## Exhibit A

### Custom Clipper<sup>®</sup> Card Advertising Standards:

MTC intends that images on the Clipper<sup>®</sup> card be subject to the viewpoint-neutral restrictions set forth below. (These standards are adapted from advertising content guidelines BART has adopted.) Certain forms of advertising will not be permitted for placement or display on the Clipper<sup>®</sup> card. Clipper<sup>®</sup> shall **not** display or maintain any advertisement that falls within one or more of the following categories:

17. Demeaning or Disparaging. The advertisement contains material that demeans or disparages an individual or group of individuals. For purposes of determining whether an advertisement contains such material, Clipper<sup>®</sup> will determine whether a reasonably prudent person, knowledgeable of the Clipper<sup>®</sup> customer profile and using prevailing community standards, would believe that the advertisement contains material that ridicules or mocks, is abusive or hostile to, or debases the dignity or stature of, an individual or group of individuals.
18. Tobacco. The advertisement promotes the sale or use of tobacco or tobacco-related products, or depicts such products.
19. Alcoholic Beverages. The advertisement promotes or encourages the consumption of alcoholic beverages including, but not limited to beer, wine, and distilled spirits, or depicts such products.
20. Profanity. The advertisement contains words recognized by the community as vulgar, indecent or profane for display in a public setting that includes minors.
21. Inappropriate Graphics. The advertisement contains graphics recognized by the community as inappropriate including, but not limited to, the depiction of human or animal bodies or body parts, or fetuses, in states of mutilation, dismemberment, decomposition, or disfigurement.
22. Firearms. The advertisement either (a) contains an image of a firearm in the foreground of the main visual or (b) contains image(s) of firearms that occupy 15% or more of the overall advertisement.
23. Violence. The advertisement either (a) contains an image or description of graphic violence, including, but not limited to, the depiction of weapons or other implements or devices used in the advertisement in an act or acts of violence or harm on a person or animal or (b) the advertisement, or any material contained in it, incites or encourages, or appears to incite or encourage, violence or violent behavior.
24. Unlawful Goods or Services. The advertisement, or any material contained in it, promotes or encourages, or appears to promote or encourage, the use or possession of unlawful or illegal goods or services.
25. Unlawful or Detrimental Conduct. The advertisement, or any material contained in it, promotes or encourages, or appears to promote or encourage, unlawful or illegal behavior or activities, or behavior that promotes activities which are detrimental to the maintenance and safe operation of the Clipper<sup>®</sup> system.
26. False, Misleading, or Deceptive Commercial Speech. The advertisement proposes a commercial transaction, and the advertisement, or any material contained in it, is clearly false, misleading, or deceptive.

27. Libelous Speech, Copyright Infringement, etc. The advertisement, or any material contained in it, is libelous or an infringement of copyright, or is otherwise unlawful or illegal or likely to subject Clipper® to litigation.
28. Obscenity or Nudity. The advertisement contains obscene material or images of nudity. For purposes of these Guidelines, the term “obscene matter” shall have the meaning set forth in the California Penal Code Section 311.
29. Prurient Interest. The advertisement contains material that describes, depicts, or represents sexual activities, or aspects of the human anatomy in a way that the average adult, applying contemporary community standards, would find appeals to the prurient interest of minors or adults. For purposes of these Guidelines, the term “minor” shall have the meaning contained in California Penal Code Section 313.
30. “Adult”-oriented Goods or Services. The advertisement promotes or encourages, or appears to promote or encourage, a transaction related to, or uses brand names, trademarks, slogans or other materials which are identifiable with, films rated “X” or “NC-17,” adult book stores, adult video stores, nude dance clubs and other adult entertainment establishments, adult telephone services, adult internet sites, and escort services.
31. Endorsement. The advertisement, or any material contained in it, implies or declares an endorsement by Clipper®, its directors, management, or employees, of any service, product, or point of view, without prior written authorization of the Contract Administrator.
32. Injurious to Clipper® and its mission. The advertisement proposes a commercial transaction and the advertisement, or any material contained in it, denigrates Clipper® or promotes alternatives to Clipper® in a manner that directly impairs Clipper® customers and/or revenue.

## Summary of Proposed Contract

Work Item No.: 320-1221

Contractor: World Wrestling Entertainment (WWE)  
Stamford, CT

Project Title: Co-Branded WWE-Clipper<sup>®</sup> Card

Purpose of Sole-Source Contract: Partnership with WWE for distribution of co-branded WWE-Clipper<sup>®</sup> cards.

Brief Scope of Work: Provide 2,700 co-branded WWE-Clipper<sup>®</sup> cards for distribution by WWE, including 100 to be distributed to MTC.

Funding Source: WWE

Fiscal Impact: None. WWE will cover costs of card production and distribution. MTC will receive benefits for the Clipper<sup>®</sup> program of up to \$10,000, but no outlay of funds is required.

Motion by Commission: That the Executive Director or his designee is authorized to negotiate and enter into a contract with WWE for the purposes described herein and in the Executive Director's December 5, 2014 memorandum, and the Chief Financial Officer is authorized to take all necessary and appropriate actions to implement such contract.

Commission:

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Amy Rein Worth, Chair

Approved:

Date: December 17, 2014