AGREEMENT AND RELEASE IN FULL

This Agreement and Release in Full ("Agreement") is entered into between FRANK WELTE, JAMES BARBOUR, and BRANDON BIGGS (hereafter "Claimants") represented by DISABILITY RIGHTS ADVOCATES (hereafter "DRA" or "Claimants' Counsel") on the one hand and the METROPOLITAN TRANSPORTATION COMMISSION (hereafter "MTC") and the PENINSULA CORRIDOR JOINT POWERS BOARD (hereafter "JPB") on the other hand (collectively referred to as the "Parties"). This document memorializes the agreement reached by the Parties.

SECTION 1 - RECITALS

1.1 On July 7, 2011, DRA transmitted a letter to MTC and JPB expressing concerns that the current configuration of the Clipper® fare payment system at Caltrain stations was inaccessible to blind Caltrain riders and therefore violated state and federal law.

1.2 MTC and JPB assert that all Caltrain riders, including blind Caltrain riders, are provided meaningful access to transit service on Caltrain and further deny that they have violated state or federal law. Each of the Claimants use Caltrain for transit, and MTC and JPB assert that each Claimant has meaningful access to the services provided.

1.3 As a way to avoid uncertainty and costs of litigation, the Parties worked collaboratively to resolve all claims concerning the accessibility of the Clipper® fare payment system at Caltrain stations to blind Caltrain riders, including improvements to the functionality of the Card Interface Devices ("CIDs"), as hereinafter defined, located at Caltrain stations.

1.4 MTC and JPB are committed to not engaging in unlawful discrimination and are further committed to following guidelines promulgated by the United States Department of Transportation and the United States Department of Justice. The Parties do not admit to wrongdoing, liability, or fault.
1.5 Final approval for MTC and JPB rests with each of their respective Chief Executive Officers ("CEOs") and Boards of Directors, and this Agreement shall not be binding nor effective until it is approved by each of their CEOs and Boards of Directors.

1.6 By this Agreement, the Parties intend to settle and fully dispose of any and all of Claimants' claims, demands, and causes of action arising out of, in connection with, or incident to access of blind riders to the Clipper® fare payment system at Caltrain stations.

1.7 Each of the Recitals is incorporated into this Agreement and Release in Full.

SECTION 2 - SYSTEM IMPROVEMENTS

2.1 **System Modifications.** The Parties have reached the following agreement concerning improvements to accessibility of the Clipper® fare payment system at Caltrain stations. The improvements contemplated by this Agreement are software-based. While current hardware shall be reasonably maintained, the Parties understand that MTC and JPB shall not be required to purchase and install new additional hardware or equipment in order to implement any of the Tagging Tones or the Locator Tone. The term of this agreement shall end on the later of the following two dates: (1) three years from the Effective Date of this Agreement, or (2) two years after JPB and MTC implement the changes described in Section 2.1.2 herein. If there is a change to federal, state, or local law or a court order that requires a change to the system modifications stated in this Agreement, MTC and JPB will notify the DRA and will make the necessary change. Notice will be sent by first-class mail in accordance with Section 7.8.

2.1.1 **Definitions.** As used in this Agreement, the following terms shall have the meaning ascribed to them in this Section:

(a) "Card Interface Device" or "CID" means an alternative to the available paper ticket by use of an automated fare collection device at a Caltrain station that collects passenger fares through contactless interactions with Caltrain riders' Clipper® Cards.
(b) "Clipper® Card" means a San Francisco Bay Area fare payment "smart" card owned, issued, and administered by the Metropolitan Transportation Commission, including Regional Transit Connection Cards ("RTC Cards"), that stores e-cash, multi-ride ticket books, and transit passes, which Caltrain riders may use to pay for their rides on Caltrain in lieu of paper tickets or paper passes.

(c) "Tag-On Tone" means the audible sound that a CID emits when the CID detects a Caltrain rider's Clipper® Card and records his or her trip as beginning.

(d) "Tag-Off Tone" means the audible sound that a CID emits when the CID detects a Caltrain rider's Clipper® Card and records his or her trip as completed.

(e) "Low Balance Tone" means the audible sound that a CID emits when the CID detects a Caltrain rider's Clipper® Card and determines that the Clipper® Card carries a balance of less than $10 after the fare is paid.

(f) "Error Tone" means the audible sound that a CID emits when the CID detects a Caltrain rider's Clipper® Card, but the CID is unable to record the rider's trip as beginning or completed because his or her Clipper® Card lacks sufficient funds or because of an error.

(g) "Tagging Tones" means the set of four audible responses that an operational CID may emit in response to detecting a Caltrain rider's Clipper® Card. This set of tones is comprised of the Tag-On Tone, Tag-Off Tone, Low Balance Tone, and Error Tone.

(h) "Locator Tone" means the audible sounds that CIDs emit at a fixed time interval to assist blind riders in locating CIDs such that a person with standard hearing can hear the locator tone at a distance of twenty (20) feet from the CIDs when no trains are present at the station.
(l) "Effective Date" is the date that all Parties execute and formally adopt this Agreement or the date the Executive Officers and Boards of MTC and JPB formally approve the Agreement, whichever is later.

(j) "Released Claims" means and refers to those claims released pursuant to this Agreement.

2.1.2 Obligations of MTC and JPB: Modifications to software for existing CIDS:

(a) Low Balance Tone. MTC and JPB have implemented a Low Balance Tone and Claimants find it acceptable. The Low Balance Tone shall be maintained in accordance with Section 2.1.5.

(b) Addition of Locator Tone. MTC and JPB shall cause all currently existing CIDs to be configured to emit a Locator Tone at 15-second time intervals during hours that the station housing the respective CIDs is open for transit service. Individual CIDs shall not emit Locator Tones and Tagging Tones simultaneously, and emission of Tagging Tones shall override emission of Locator Tones so that the time interval between the emission of the last Tagging Tone and emission of the next Locator Tone equals the fixed time interval between Locator Tones that the Parties established pursuant to this Agreement. The Locator Tone shall be maintained in accordance with Section 2.1.5.

(c) Modifications to Locator Tone. If the Claimants, MTC, or JPB request to alter the temporal broadcast frequency or broadcast volume of the Locator Tone after the Locator Tone is deployed at CIDs at a Caltrain station, the Parties agree to meet and confer with each other over the request, in addition to considering input from other community members. After such a meet and confer, MTC and JPB have the right, but not the obligation, to reset the frequency and broadcast volume.
(d) Addition of Tag-Off Tone. MTC and JPB have implemented a Tag-Off Tone and Claimants find it acceptable. The Tag-Off Tone shall be maintained in accordance with Section 2.1.5.

(e) Maintenance of existing Tag-On Tone. JPB and MTC shall ensure that for the term of this Agreement, all CIDs at Caltrain stations continue to emit the Tag-On Tone in the circumstances described in Section 2.1.1(c) herein. The Tag-On Tone shall remain substantially equivalent to the Tag-On Tone that the CIDs emitted before and during October 2014, which consists of a single audible beep.

(f) Maintenance of existing Error Tone. JPB and MTC shall ensure that for the term of this Agreement, all CIDs at Caltrain stations continue to emit the Error Tone in the circumstances described in Section 2.1.1(f) herein. The Error Tone shall remain substantially equivalent to the Error Tone that the CIDs emitted during and before October, 2014, which consists of three identical audible beeps.

2.1.3 MTC and JPB shall undertake all reasonably diligent efforts to complete and roll out modifications to currently existing CIDs in accordance with Section 2.1.2 of this Agreement within 12 months of the Effective Date or as soon thereafter as feasible given reasonably diligent efforts.

2.1.4 New CIDs. MTC and JPB shall ensure that, at the time that any new CIDs are made available for use by the public at Caltrain stations, the new CIDs will possess the modifications described in Section 2.1.2 or equivalent tone broadcasting capabilities. Nothing in this paragraph is intended to limit the use of other solutions to the Claimants' allegations or procuring new technology and equipment that complies with the relevant Department of Transportation regulations.

2.1.5 Maintenance of audible tones at CIDs. MTC and JPB shall make reasonably diligent efforts to maintain availability of audible Tagging Tones and Locator Tones.
at functional CID. Such efforts shall include making any necessary repairs within a reasonable time period.

**SECTION 3 - RELEASE TERMS**

3.1 **Release of All Claims and Covenant Not to Sue.** Except for the obligations of MTC and JPB contained in this Agreement, and the provisions, terms, covenants, and promises contained in this Agreement, Claimants, and each of their heirs, executors, successors, assigns, administrators, agents, and representatives hereby fully, finally, and forever release, acquit, and discharge, and agree not to file a lawsuit or take other legal or administrative action against, JPB or MTC or any of their respective present, former, or future successors, assigns, officers, directors, administrators, executors, employees, affiliates, attorneys, and each of them (hereinafter "Released Parties"), of and from any and all claims for injunctive, declaratory or any equitable relief of any kind whatsoever, and attorneys' fees, costs, or expenses of any kind whatsoever, whether known or unknown, arising from any cause referred to, connected with, or arising from causes of action, matters, events, occurrences, failures to act, or omissions concerning the accessibility of the Clipper® fare payment system at Caltrain stations to blind Caltrain riders. It is the intent of the Parties that the Agreement and this release will be broadly construed for the purpose of carrying out the intentions of the Parties. The terms and conditions of the Agreement shall survive the foregoing release.

3.2 **Civil Code Section 1542 Release.** Claimants acknowledge and agree that each is aware of and understands the provisions of Code of Civil Procedure section 1542 quoted below and freely, voluntarily, and knowingly waives the benefits of said section which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFECTED HIS SETTLEMENT WITH DEBTOR.
Thus, notwithstanding the provisions of section 1542, and for the purpose of implementing a full and complete release and discharge of the Released Parties, Claimants expressly acknowledge that this Agreement is intended to include in its effect, without limitation, all claims for injunctive, declaratory or any equitable relief of any kind that Claimants know or suspect to exist at the time this Agreement is signed concerning the accessibility of the Clipper® fare payment system at Caltrain stations to blind Caltrain riders and those claims of which Claimants do not know or suspect concerning the accessibility of the Clipper® fare payment system at Caltrain stations to blind Caltrain riders and that this Agreement contemplates the extinguishment of any and all such claims.

3.3 Full Release of Claims for Costs and Attorneys' Fees. Claimants acknowledge and agree that the Payment (Section 6.1) is inclusive of any and all attorneys' fees and costs claimed and/or incurred related to their concerns over the accessibility of the Clipper® fare payment system at Caltrain stations for blind riders.

3.4 Covenant Not To Sue. Other than a claim to enforce the terms of the Agreement, the Claimants agree not to file lawsuits or administrative complaints for any claims for injunctive, declaratory, or equitable relief of any kind concerning the accessibility of the Clipper® fare payment system at Caltrain stations to blind Caltrain riders against MTC or JPB that occurred either prior to the execution of this Agreement or during the term of the Agreement, subject of the provisions of Sections 3.6 and 7.9 of this Agreement. Any lawsuit or administrative complaint that violates this paragraph shall constitute a breach of this Agreement, and entitle the Released Parties to all relief available under the law. This paragraph shall not be construed to restrict the practice of law by Claimants' counsel and shall be interpreted in accordance with Rule 1-500 of the California Rules of Professional Conduct.

3.5 Full and Knowing Waiver. Each party consulted with an attorney of its choice and executed this Agreement with a complete understanding of its legal effect. The Parties
understand that executing this Agreement expressly waives all of the aforementioned rights and
bonds them to the terms of this Agreement.

3.6 **Substantial Alteration to Modified Locator Tone.** Notwithstanding Sections 3.1, 3.2, 3.3, 3.4 and 3.5, if MTC and JPB elect to substantially alter or reset the temporal broadcast frequency or broadcast volume of the Locator Tone under Section 2.1.2(c), JPB and MTC shall take reasonable steps to notify Claimants Counsel in a timely manner. If Claimants object to JPB and MTC’s change within thirty (30) days of receiving notice, then the parties shall attempt to resolve the dispute through the dispute resolution procedures set forth in Section 7.9 herein. Then, after notifying MTC and JPB of their concerns with any change and participating in good faith in the full resolution process contemplated under Section 7.9 (Dispute Resolution), Claimants may pursue claims and remedies that they may have under state and federal disability access laws that relate directly to the modified Locator Tone.

**SECTION 4 - WARRANTIES**

4.1 **Capacity of the Parties.** The Parties warrant that each has the full power, capacity, and authority to enter into this Agreement, and that no claim, right, demand, action, or cause of action was assigned to an entity who is not a party to this Agreement.

4.2 **Binding on Parties.** The Parties warrant that if the facts upon which this Agreement is based are found to be different from the facts now believed to be true, this Agreement will remain binding and effective. The Parties expressly accept and assume the risk of the possibility that differences exist and agree that this Agreement shall remain binding and effective.

4.3 **Voluntary Action by Parties.** The Parties enter into this Agreement knowingly and voluntarily, in order to avoid the expense of litigation.
SECTION 5 - DENIAL OF LIABILITY

5.1 Denial of Liability. MTC and JPB deny all allegations of wrongdoing. The Parties expressly represent, understand, and assent that this Agreement is a compromise of disputed claims and shall not be construed as an admission of liability by MTC or JPB. Nor shall any acts, omissions, or statements by the Parties be construed as an admission of liability. Nothing contained in this Agreement shall be admissible evidence in any judicial, administrative, or other legal proceeding (other than a proceeding to enforce this Agreement).

SECTION 6 - REASONABLE ATTORNEYS' FEES AND COSTS.

6.1 JPB and MTC agree to pay a total of $65,000.00 in reasonable attorneys' fees and costs to DRA for its work on this matter. Such amount is payable within 90 days of the effective date of this Agreement. The Claimants agree that there shall be no additional claims for attorneys' fees or costs associated with their claims.

SECTION 7 - GENERAL PROVISIONS

7.1 Entire Agreement. This Agreement constitutes the entire agreement by the Parties hereto with respect to all of the matters discussed herein, and supersedes all prior or contemporaneous discussions, communications, or agreements, expressed or implied, written or oral, by or between the Parties.

7.2 Governing Law. This Agreement shall be interpreted and governed according to the laws of the State of California and the United States of America.

7.3 Binding on Successors. The provisions of the Agreement shall be binding upon, and shall inure to the benefit of, the successors, assigns, heirs, executors, administrators, parent entities, subsidiaries, and affiliates of the respective Parties.

7.4 No Amendment Without a Writing. The Parties agree that this Agreement shall not be amended, unless that amendment is made in writing and signed by each party.
7.5 **Waiver.** The waiver of a breach of this Agreement shall not be construed as a waiver of any subsequent breach.

7.6 **Severability.** The paragraphs and provisions of this Agreement are severable; if any paragraph or provision is found unenforceable, the remaining paragraphs and provisions shall remain in full effect.

7.7 **Third Parties.** Except for Claimants' general release provided in Section 3, nothing in this Agreement shall be deemed to confer or create, either expressly or impliedly, any right or benefit to third parties who are not parties to the Agreement.

7.8 **Notices.** Any notice or communication provided under this Agreement shall be made in writing and shall be delivered or sent by registered mail or courier to the addresses below or to such other addresses as may be specified in writing by any Party.

To Claimants:

Disability Rights Advocates
2001 Center Street, Fourth Floor
Berkeley, CA 94704

To JPB:

Chuck Harvey, Deputy Chief Executive Officer
Peninsula Corridor Joint Powers Board
1250 San Carlos Avenue
P.O. Box 3006
San Carlos, CA 94070-1306

Kurt A. Franklin
Hanson Bridgett LLP
425 Market Street, 26th Floor
San Francisco, CA 94105
To MTC:

Metropolitan Transportation Commission
Attn: General Counsel
101 Eighth Street
Oakland, CA 94607

James M. Hanlon, Jr.
Glynn & Finley, LLP
100 Pringle Avenue, Suite 500
Walnut Creek, CA 94596

7.9 Dispute Resolution. Any dispute related to this Agreement between Claimants, on the one hand, and MTC and JPB, on the other hand, shall be resolved according to the following procedure:

7.9.1 Reporting. Claimants shall notify JPB and MTC if they identify problems with the accessibility modifications to the CIDs. Beginning three months after MTC and JPB complete modifications to all CIDs in accordance with Section 2.1.2 of this Agreement and continuing through the term of the Agreement, MTC and JPB shall issue a quarterly report to Claimants identifying any complaints that they receive concerning the System Modifications, identified in Section 2 of this Agreement, from riders of the Clipper® fare payment system or neighbors and other community members. Such quarterly report shall include only information otherwise available through a public records request under applicable law.

7.9.2 Meet and Confer. Prior to bringing any action to enforce this Agreement, if either Claimants, on the one hand, or JPB and MTC, on the other hand, believes that a dispute exists relating to this Agreement, the concerned Party shall notify the other Party in accordance with Section 7.8 of this Agreement. The Parties shall meet and confer in good faith in an effort to resolve the dispute.

7.9.3 Mediation. If the Parties are unable to resolve the dispute through the meet and confer process within thirty (30) days, Claimants and/or Claimants’ Counsel may bring the dispute to a mutually agreeable third-party neutral from JAMS. If the Parties cannot agree
on a neutral, then JAMS shall prepare a list of five randomly chosen neutrals with each Party having the right to strike two names from the list to determine the neutral to mediate the matter, which shall be non-binding.

7.10 **Counterparts.** This Agreement may be executed in counterparts, and authentic facsimile signatures shall be deemed to be original signatures for all purposes.

PLEASE READ CAREFULLY. THIS AGREEMENT AND GENERAL RELEASE INCLUDES A RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS.

IN WITNESS THEREOF, the Parties hereto have executed this Agreement as of the date specified below.

**CLAIMANTS**

Dated: ________________________________

Claimant FRANK WELTE

Dated: Tuesday, November 18, 2015

Claimant JAMES BARBOUR

Dated: ________________________________

Claimant BRANDON BIGGS

Dated: 9/28/15

METROPOLITAN TRANSPORTATION COMMISSION

STEVE REMINGER

Executive Director
Dated: 9/24/15
By: STUART SEABORN
MICHAEL NUNEZ
Counsel for Claimants
FRANK WELTE, JAMES BARBOUR,
and BRANDON BIGGS

Dated: 9/15/15
By: General Counsel for METROPOLITAN TRANSPORTATION COMMISSION

Dated: 9/15/15
By: KURT A. FRANKLIN
Counsel for PENINSULA CORRIDOR JOINT POWERS BOARD