

AGREEMENT AND RELEASE OF CLAIMS

This Agreement and Release of Claims ("Agreement") is entered into by Lighthouse for the Blind and Visually Impaired, James Barbour, and Frank Welte (hereafter "Claimants"), represented by Disability Rights Advocates (hereafter "Claimants' Counsel") on the one hand and the San Francisco Bay Area Rapid Transit District (hereafter "BART") and the Metropolitan Transportation Commission (hereafter "MTC") 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 March 30, 2012, Claimants' Counsel transmitted a letter to BART and MTC expressing concerns that the current configuration of the Clipper[®] fare payment system at BART stations was inaccessible to blind BART riders and therefore violated state and federal law.

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

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

1.4 BART and MTC 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 BART and MTC rests with each of their respective Executive Officers and Boards of Directors, and this Agreement shall not be binding nor effective until it is approved by each of their Executive Officers and Boards of Directors.

1.6 By this Agreement, the Parties intend to settle and fully dispose of any and all of Claimant's claims, demands, and causes of action for injunctive and/or declaratory relief arising out of, in connection with, or incident to access of blind riders to the Clipper® fare payment system at BART 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 BART stations. The improvements contemplated by this Agreement are software-based. While current hardware shall be reasonably maintained, the Parties understand that BART and MTC shall not be required to purchase and install new additional hardware or equipment in order to implement any of the Tagging Tones. 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 BART 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, BART and MTC 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 automated fare collection device integrated into BART faregates that collects passenger fares through contactless interactions with BART riders' Clipper® Cards.

(b) "Clipper® Card" means a San Francisco Bay Area fare payment "smart" card owned, issued, and administered by MTC, including Regional Transit Connection

Cards ("RTC Cards"), that stores e-cash, multi-ride ticket books, and transit passes, which BART riders may use to pay for their rides on BART in lieu of paper tickets.

(c) "Tag-On Tone" means the audible sound that a CID emits when the CID detects a BART rider's Clipper® Card during a Tone-Triggering Tag 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 BART rider's Clipper® Card during a Tone-Triggering Tag 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 BART rider's Clipper® Card during a Tone-Triggering Tag 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 BART rider's Clipper® Card, but 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 BART rider's Clipper® Card during a Tone-Triggering Tag. This set of tones is comprised of the Tag-On Tone, the Tag-Off Tone, the Low Balance Tone, and the Error Tone.

(h) "Tone-Triggering Tag" means a continuous, uninterrupted tag between a Clipper® Card and a CID that is sufficiently long to trigger a Tagging Tone.

(i) "Effective Date" is the date that all Parties execute and formally adopt this Agreement and the CEOs and Boards of BART and MTC 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 BART and MTC. Modifications to software for existing

CIDs:

(a) Addition of Tag-On Tone. BART and MTC shall cause all currently existing CIDs to be configured to emit a Tag-On Tone in response to a Tone-Triggering Tag that begins a BART rider's trip. The Tag-On Tone shall be audibly distinct from other Tagging Tones that CIDs emit.

(b) Addition of Tag-Off Tone. BART and MTC shall cause all currently existing CIDs to be configured to emit a Tag-Off Tone in response to a Tone-Triggering Tag that ends a BART rider's trip. The Tag-Off Tone shall be audibly distinct from all other tones that CIDs emit.

(c) Addition of Low-Balance Tone. BART and MTC shall cause all currently existing CIDs to be configured to emit a Low-Balance Tone in response to a Tone-Triggering Tag that either begins or ends a trip when the balance on the rider's Clipper[®] Card is below \$10. The Low-Balance Tone shall be audibly distinct from all other tones that CIDs emit.

(d) Addition of Error Tone. BART and MTC shall cause all currently existing CIDs to be configured to emit an Error Tone after a Tone-Triggering Tag in the circumstances described in Section 2.1.1.(f) herein. The Error Tone shall be audibly distinct from all other tones that CIDs emit.

(e) Duration of Tone-Triggering Tags. BART and MTC shall initially set the duration of a Tone-Triggering Tag at approximately one second in length.

(f) Alteration of Tagging Tones. If the Claimants, BART, or MTC request to alter one or more Tagging Tones or the duration of a Tone-Triggering Tag, 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, BART and MTC have the

right, but not the obligation, to alter one or more of the Tone-Triggering Tags or the duration of a Tone-Triggering Tag.

2.1.3 BART and MTC 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 6 months of the Effective Date or as soon thereafter as feasible given reasonably diligent efforts.

2.1.4 New CIDs. BART and MTC shall ensure that, at the time that any new CIDs are made available for use by the public at BART 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. BART and MTC shall make reasonably diligent efforts to maintain availability of audible Tagging Tones at functional CIDs. 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 BART and MTC 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, fully, finally, and forever release, acquit, and discharge, and agree not to file a lawsuit or take other legal or administrative action against, BART or MTC or any of their respective present, former, or future successors, assigns, officers, directors, administrators, 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 BART stations to blind BART 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 AFFECTED 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 regarding any and all claims for injunctive or declaratory relief, 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 BART stations to blind BART riders and those claims of which Claimants do not know or suspect concerning the accessibility of the Clipper® fare payment system at BART stations to blind BART 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 BART 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 BART stations to blind BART riders against BART or MTC 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 binds them to the terms of this Agreement.

3.6 Substantial Alteration to Modified TaggingTone. Notwithstanding Sections 3.1, 3.2, 3.3, 3.4, and 3.5, if BART and MTC elect to substantially alter or reset the Tagging Tones under Section 2.1.2(f), BART and MTC shall take reasonable steps to notify Claimants' Counsel in a timely manner. If Claimants object to BART 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 BART and MTC 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 Tagging Tone or Tagging Tones.

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. BART and MTC 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 BART or MTC. 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 BART and MTC agree to pay a total of \$60,000.00 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, with the exception of claims brought pursuant to Section 3.6 and claims to enforce the terms of this Agreement.

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 BART:

Bay Area Rapid Transit District
Office of the General Counsel
300 Lakeside Drive
P.O. Box 12688
Oakland, CA 94604-2688

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

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 BART and MTC, on the other hand, shall be resolved according to the following procedure:

7.9.1 Reporting. Claimants shall notify BART and MTC if they identify problems with the accessibility modifications to the CIDs. Beginning three months after BART and MTC complete modifications to all CIDs in accordance with Section 2.1.2 of this Agreement and continuing through the term of the Agreement, BART and MTC 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 BART and MTC, on the other hand, believe that a

dispute exists relating to this Agreement, the concerned party shall notify the other parties 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: _____

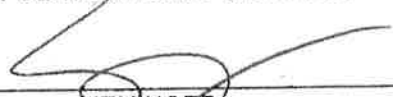
Claimant JAMES BARBOUR

Dated: _____

Claimant LIGHTHOUSE FOR THE BLIND
AND VISUALLY IMPAIRED

Dated: 10/2/15

METROPOLITAN TRANSPORTATION COMMISSION



STEVE HEMINGER
Executive Director

Dated: _____

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

GRACE CRUNICAN
General Manager

APPROVED AS TO FORM:

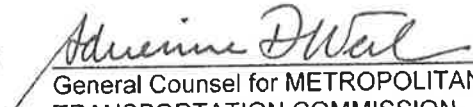
DISABILITY RIGHTS ADVOCATES

Dated: _____

By: _____
STUART SEABORN
Counsel for Claimants
FRANK WELTE, JAMES BARBOUR,
and LIGHTHOUSE FOR THE BLIND AND
VISUALLY IMPAIRED

**OFFICE OF GENERAL COUNSEL
METROPOLITAN TRANSPORTATION COMMISSION**

Dated: 9/29/15

By: 

General Counsel for METROPOLITAN
TRANSPORTATION COMMISSION

**OFFICE OF GENERAL COUNSEL
SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT**

Dated: _____

By: _____
General Counsel for SAN FRANCISCO
BAY AREA RAPID TRANSIT DISTRICT

METROPOLITAN TRANSPORTATION COMMISSION

Dated: _____

STEVE HEMINGER
Executive Director

Dated: 9/23/15

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT



GRACE CRUNICAN
General Manager

APPROVED AS TO FORM:

DISABILITY RIGHTS ADVOCATES

Dated: _____

By: _____
STUART SEABORN
Counsel for Claimants
FRANK WELTE, JAMES BARBOUR,
and LIGHTHOUSE FOR THE BLIND AND
VISUALLY IMPAIRED

**OFFICE OF GENERAL COUNSEL
METROPOLITAN TRANSPORTATION COMMISSION**

Dated: _____

By: _____
General Counsel for METROPOLITAN
TRANSPORTATION COMMISSION

**OFFICE OF GENERAL COUNSEL
SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT**

Dated: 9/16/15

By: 

General Counsel for SAN FRANCISCO
BAY AREA RAPID TRANSIT DISTRICT