

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into between [REDACTED] (hereafter “Claimant”), represented by TRE LEGAL PRACTICE (hereafter “TRE” or “Claimant’s Counsel”) on the one hand, 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.

Recitals

1. On January 19, 2018, TRE transmitted a letter (“the Letter”) to MTC expressing concerns that the current configuration of the application and renewal processes for Regional Transit Connection (“RTC”) cards were inaccessible to blind persons and therefore violated state and federal law. The Letter expressed a further concern that blind persons could not use the Clipper® website with the same ease as non-blind users, which the letter posited also violated state and federal law.
2. MTC asserts that all qualifying persons, including blind persons, are provided meaningful access to RTC cards and further deny that they have violated state or federal law. MTC further asserts that blind persons are provided meaningful access to Clipper® cards, including through the Clipper® website.
3. As a way to avoid uncertainty and costs of litigation, the Parties worked collaboratively to resolve all claims concerning the accessibility of the application and renewal processes for RTC cards and the Clipper® website.
4. MTC is committed to not engaging in unlawful discrimination. MTC does not admit to wrongdoing, liability, or fault.
5. Final approval for MTC rests with its Executive Director (“ED”) and this Agreement shall not be binding nor effective until it is approved by the ED.
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 arising out of, in connection with, or incident to access of blind persons concerning the application and renewal processes for RTC cards and the Clipper® website.
7. Each of the Recitals is incorporated into this Agreement.

A. Definitions

The following terms shall have the following meanings with respect to this Agreement; all other terms shall be interpreted according to their plain and ordinary meaning:

1. “MTC” means and refers to Metropolitan Transportation Commission.
2. “Claimant” means and refers to [REDACTED], an individual resident of the State of California.
3. “Claimant’s Counsel” means and refers to TRE Legal Practice with offices at 1155 Market Street, Tenth Floor, San Francisco, CA 94103.
4. “Effective Date” means the date of the last signature on this Agreement.
5. “Agreement” means this agreement.

6. “Accessibility Guidelines” means technical standards that, when followed, ensure that technology is usable by blind persons, and refers to the Web Consortium Accessibility Guidelines (WCAG) 2.0 Level AA with respect to websites and website applications (available at <https://www.w3.org/TR/WCAG20/>), as well as PDFs (available at <https://www.w3.org/WAI/GL/WCAG20-TECHS/pdf.html>).
7. “Screen Access Software” means software that renders textual and graphical information into Braille or audible speech so that blind persons can independently interact with the Internet and software programs, access information, and engage in transactions using nonvisual means. “Screen Access Software” refers to TalkBack on Android devices; VoiceOver on iOS and macOS devices; and JAWS, NVDA, and Narrator on Windows devices.
8. “Clipper® Website” refers to the website available at <https://www.clippcard.com>.
9. “511 Website” refers to the website available at <https://www.511.org>.
10. “Accessible” means, with respect to the Clipper® Website, 511 Website, and electronic PDF documents, that the design and underlying code conform to Accessibility Guidelines, as required by Cal. Gov. Code § 7405(a), which incorporates the requirements of Section 508 of the Rehabilitation Act of 1973, 29 U.S.C. § 794d, and its technical standards codified at 36 C.F.R. Part 1194.
11. “BAPAC” refers to the Bay Area Partnership Accessibility Committee and its comprising agencies, including Alameda-Contra Costa Transit District (AC Transit), Bay Area Rapid Transit District (BART), Central Contra Costa Transit Authority (CCCTA), Eastern Contra Costa Transit Authority (ECCTA), Livermore/Amador Valley Transit Authority (LAVTA), Marin County Transit District (Marin Transit), San Francisco Municipal Transportation Agency (SFMTA), San Mateo County Transit District (SamTrans), and any other transit agencies that participate in BAPAC.
12. “RTC” refers to the Regional Transit Connection program.
13. “RTC Card” refers to the Fare/ID card issued to participants in RTC.

B. Service Modifications

The Parties have reached agreement concerning the accessibility of the Clipper® Website, electronic PDF and postal documents concerning RTC participation, and processes concerning RTC application, enrollment, and renewal as follows:

1. **Clipper® Website Accessibility.**
 - (a) By the Effective Date, MTC shall engage or continue to engage an accessibility consultant to assist in the design and testing of the Clipper® website.
 - (b) By March 1, 2020, MTC shall make any changes necessary to ensure that the Clipper® website is Accessible.
2. **Clipper® Website Contact Updates.** By December 31, 2019, MTC shall add contact information to the Clipper® Website for:
 - (a) Inquiries concerning a person’s application for an RTC card; and
 - (b) Reports of access barriers on the Clipper® Website.

3. **Electronic PDF Documents.** By the Effective Date, MTC shall:
 - (a) Ensure that all electronic PDF documents posted on the Clipper® Website and the 511 Website are Accessible;
 - (b) Ensure that Accessible electronic PDF documents concerning RTC eligibility, application, and RTC Card renewal and replacement are posted on the 511 Website; and
 - (c) Ensure that its policies and procedures require the review and testing of electronic PDF documents to ensure that they are Accessible prior to making them available to the public.
4. **Clipper® Customer Service.** By the Effective Date, MTC shall:
 - (a) Instruct Clipper® customer service representatives to determine what type of card a customer possesses (i.e., RTC card or some other type of card) before providing information on balance transfer fees because RTC participants are not required to pay balance transfer fees to transfer balances from one RTC card to another; and
 - (b) Ensure that such instruction is added to the policy and/or training manual for Clipper® customer service representatives.
5. **Recommended BAPAC Changes.** During the Term of this Agreement, MTC will support and recommend that BAPAC take the following actions:
 - (a) **Removal of Renewal Requirement for RTC Participants with Permanent Disabilities.** By December 31, 2019, change RTC policies and processes such that, after implementation of such changes, RTC Cards issued to participants with permanent disabilities will not expire until the participant is eligible for a Senior Discount Card at age 65. MTC shall support a BAPAC working group to effect such policy and process changes.
 - (b) **Accessible Alternative RTC Communications and Materials.** By December 31, 2019, change RTC policies and processes, including any necessary modifications to RTC databases and forms, to ensure that participants may choose to receive RTC communications and materials in Accessible alternative formats such as braille, large print, or Accessible electronic documents through e-mail. The following steps, at a minimum, are necessary:
 - i) Update the RTC database to include field(s) necessary to indicate a participant's choice for alternative Accessible format material and communication;
 - ii) Update RTC application and RTC Card renewal and replacement forms to request from RTC participants (A) the participant's choice of braille, large print, or e-mail format to receive RTC material and communications, and (B) the participant's e-mail address;
 - iii) Request all current RTC participants to provide an e-mail address if they wish to receive RTC card material and communications through e-mail; and
 - iv) Ensure that the RTC database is updated to reflect such choices and information, and that RTC processes and procedures honor such choices.

- (c) **Accessible Electronic PDF Documents.** By the Effective Date, ensure that all electronic PDF documents concerning RTC eligibility, application, and RTC Card renewal and replacement that are posted on BAPAC agency websites are Accessible.
- 6. **Updated Electronic and Printed Information.** Before or upon completion of the modifications described in sections B.2 through B.5 of this Agreement:
 - (a) MTC shall update FAQs and other RTC-related pages and electronic documents on the Clipper® Website and 511 Website, as well as any other relevant electronic and printed informational documents under its control, to reflect the modifications described in sections B.2 through B.5 of this Agreement;
 - (b) MTC shall assist BAPAC in updating any FAQs and RTC-related pages and electronic documents on BAPAC agency websites, as well as any other relevant electronic and printed informational documents under BAPAC control, to reflect the modifications described in sections B.2 through B.5 of this Agreement; and
 - (c) MTC shall recommend that BAPAC update the FAQs, pages, and electronic and printed documents described in section B.6(ii) of this Agreement.

C. **Term of the Agreement**

The term of this Agreement shall be two years from the Effective Date.

D. **Enforcement of Agreement**

All disputes concerning compliance with this Agreement shall be resolved according to the following process:

1. Counsel for a Party shall notify counsel for the other Party in writing of any perceived non-compliance with the terms of this Agreement, or any other perceived dispute related to the terms, processes, or obligations set forth in this Agreement.
2. Unless otherwise agreed to by the Parties, with respect to any particular dispute, the Parties agree to meet and confer in good faith within fifteen (15) business days after receipt of a written notification of a dispute pursuant to the previous paragraph.
3. For disputes concerning perceived non-compliance with sections B.5 and/or B.6(iii) of this Agreement:
 - (a) MTC shall undertake reasonable efforts to act as an intermediary between Claimant and BAPAC in an attempt to resolve the dispute.
 - (b) In the event that the dispute cannot be resolved after 45 days of meet and confer negotiations, Claimant may submit the dispute to a court of competent jurisdiction in San Francisco for resolution. Claimant shall not require MTC to be a party in any such proceeding. This Agreement does not restrict Claimant's right to recover attorneys' fees and/or costs in any such proceeding, to the extent available under applicable law.
4. For all other disputes:
 - (a) If the Parties are unable to resolve the dispute through the meet-and-confer process within thirty (30) days, any party 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. MTC shall bear the cost of any such mediation.

- (b) In the event that the parties are unable to resolve their dispute through such mediation, any party may submit the dispute to a court of competent jurisdiction in San Francisco for resolution. Reasonable fees and costs in connection with any such proceeding may be claimed and recovered by either party in accordance with applicable law.

E. **Payment of Claimant's Attorneys' Fees**

Within 90 days of the Effective Date, MTC shall make a payment of \$25,000.00 to Claimant's Counsel for Claimant's reasonable Attorneys' Fees and Costs, as negotiated by the Parties. MTC shall mail the above payment to TRE Legal Practice, 1155 Market Street, Tenth Floor, San Francisco, CA 94103. Claimant agrees that there shall be no additional claims for attorneys' fees or costs associated with her claims for time incurred through the Effective Date.

F. **Releases**

1. **MTC Release.** Except for the obligations of MTC contained in this Agreement, and the provisions, terms, covenants, and promises contained in this Agreement, Claimant, and each of her 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, MTC or any of their respective present, former, or future successors, assigns, officers, directors, administrators, executors, employees, affiliates, attorneys, and each of them (hereinafter "MTC 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 application and renewal processes for RTC cards and the Clipper® website. 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.
2. **Limited BAPAC Release.** Provided that BAPAC proceeds with and continues the Service Modifications described in Sections B(5) and B(6)(iii), Claimant, and each of her 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, each BAPAC member or any of their respective present, former, or future successors, assigns, officers, directors, administrators, executors, employees, affiliates, attorneys, and each of them (hereinafter "BAPAC 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 application and renewal processes for RTC cards and the Clipper® website. 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.

3. **Civil Code Section 1542 Waiver.** With respect to both the MTC Release and the Limited BAPAC Release, Claimant expressly waives the rights provided under California Civil Code Section 1542, relating to the subject matter of the Letter as to MTC's Released Parties and BAPAC's Released Parties, which states:

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 IS KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

4. **Covenant Not to Sue.** Other than a claim to enforce the terms of the Agreement, Claimant agrees not to file lawsuits or administrative complaints for any claims for injunctive, declaratory, or equitable relief of any kind concerning the accessibility of the application and renewal processes for RTC cards and the Clipper[®] website against the MTC Released Parties that occurred either prior to the execution of this Agreement or during the term of the Agreement. Any lawsuit or administrative complaint that violates this paragraph shall constitute a breach of this Agreement, and entitle the MTC Released Parties to all relief available under the law. This paragraph shall not be construed to restrict the practice of law by Claimant's counsel and shall be interpreted in accordance with Rule 5.6 of the California Rules of Professional Conduct.
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.

G. **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 Claimant:

TRE Legal Practice
1155 Market Street, Tenth Floor
San Francisco, CA 94103

To MTC:

Metropolitan Transportation Commission
Attn: General Counsel
375 Beale Street, #800
San Francisco, CA 94105
With copies to:
James M. Hanlon, Jr.
Glynn & Finley, LLP

100 Pringle Avenue, Suite 500
Walnut Creek, CA 94596

H. Warranties

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.
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.

I. Miscellaneous

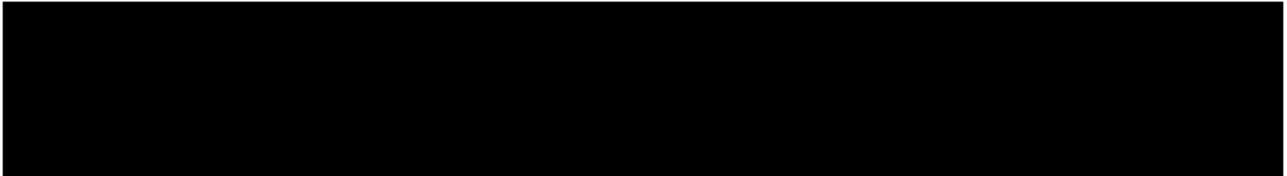
1. **Voluntary Action by Parties.** The Parties enter into this Agreement knowingly and voluntarily in order to avoid the expense of litigation.
2. **Denial of Liability.** MTC denies all allegations of wrongdoing. The Parties expressly represent, understand, and assent that this Agreement is a compromise of disputed claims. Neither this Agreement, nor any acts, omissions, or statements by the Parties, shall 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).
3. **Entire Agreement.** This Agreement contains the entire agreement between the Parties. The terms of this Agreement supersede any prior discussions, understandings, or agreements between the Parties relating to this matter.
4. **No Amendment Without a Signed Writing.** No modifications or limits will be binding on the Parties unless expressly provided for in this Agreement or made by writing signed by all of the Parties.
5. **Binding on Successors.** The provisions of this 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.
6. **Waiver.** The waiver of a breach of this Agreement shall not be construed as a waiver of any subsequent breach.
7. **Interpretation.** This Agreement is deemed to have been drafted by all Parties hereto, as a result of arm's length negotiations among the Parties. Whereas all Parties have contributed to the preparation of this Agreement, it shall not be construed more strictly against one party than another. The headings in this Agreement are solely for convenience and will not be considered in its interpretation. Where required by context, the plural includes the singular and the singular includes the plural.
8. **Governing Law.** This Agreement shall be governed, construed, and interpreted in accordance with the laws of California.

9. **Severability.** In the event any portion of this Agreement is deemed to be unenforceable, or is in conflict with applicable law, the remainder of this Agreement will be enforced and will remain in full force and effect. Nothing in this Agreement shall be construed to require MTC to act contrary to state or federal laws, regulations, or guidelines.
10. **Third Parties.** Except for Claimant's releases provided in Section F, 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.
11. **Execution.** The Parties, having carefully read this Agreement, and having consulted or having been given an opportunity to consult legal counsel, hereby acknowledge their agreement to all of the foregoing terms and conditions by executing this Agreement. This Agreement may be executed in any number of counterparts, and each such counterpart shall be an original and together they shall constitute one agreement. Facsimile and PDF signatures on this Agreement shall be treated as original signatures. A copy of this Agreement shall be treated as an original.

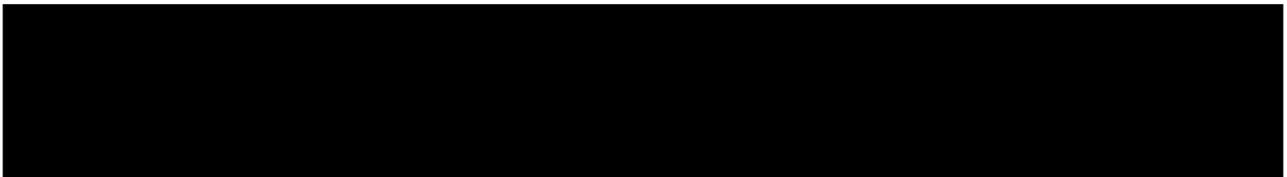
PLEASE READ CAREFULLY. THIS AGREEMENT AND GENERAL RELEASE INCLUDES A RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS.

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

CLAIMANT



**METROPOLITAN TRANSPORTATION
COMMISSION**



APPROVED AS TO FORM:

TRE LEGAL PRACTICE



TIMOTHY R. ELDER
ALBERT ELIA
Counsel for Claimant 

**OFFICE OF GENERAL COUNSEL
METROPOLITAN TRANSPORTATION
COMMISSION**

