

## SETTLEMENT AGREEMENT

WHEREAS both parties recognize that it is in the public interest that people with disabilities be afforded access to accessible transportation, and

WHEREAS, the City has begun to embark, in good faith, on a program that is intended to make its fixed route system accessible to people with disabilities, and to that end, has appropriated \$200,000 for the 2006-2007 fiscal year to bring bus stops into compliance with the Americans with Disabilities Act ("ADA"), and the Department of Public Works has asked that City Council allocate \$500,000 to be used to create accessible curb ramps, \$200,000 to maintain and expand its sidewalks, and \$100,000 to bring bus stops into compliance with the ADA for fiscal year 2007-2008; and

WHEREAS both parties believe that it is in their best interest to spend city resources on increasing the accessibility of the transit system rather than spending money on further litigation; and

WHEREAS, the City has entered into a settlement agreement with the United States Department of Justice (DOJ) to make curb ramps installed or altered after January 26, 1992 to be accessible according to the applicable design standard by 2014; and

WHEREAS, the City would like to efficiently implement its obligations under the DOJ settlement agreement to maximize expenditure of funds in the most efficient manner to facilitate a transit system that can be used by persons with disabilities;

THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

## Section One. Governing Principle.

This Agreement is intended to make the fixed route bus system fully accessible and ensure that there is an accessible route from all bus stops to the sidewalk, pedestrian way and/or street and that bus stops at key facilities have compliant curb ramps.

## Section 2. Definitions

"Bus stop" means a boarding and alighting area on a fixed route transit system.

"Key Facilities" means all state and local government offices, places of public accommodation and employers, the downtown and high usage/high priority areas.

"Places of public accommodation" is defined at 42 U.S.C. §12181 and includes restaurants, theaters, parks, health care providers and retail establishments.

## Section 3. The Creation of an Accessible Fixed Route Transit System

(A) There are 172 bus stops on the City's fixed route system. The City agrees to use its best efforts in good faith to bring these stops into compliance with the regulations of the Department of Transportation. More specifically, the City will evaluate compliance with the standards that were in effect on September 29, 2006. For those stops that do not comply with the September 29, 2006 standards, improvements shall be made in compliance with the standards set forth in the newly adopted FTA ADA Accessibility Guidelines for bus stops.

Specifically, the City agrees that within 3 years of the date of this Agreement, not less than seventy (70%) percent of the bus stops will:

(1) Have a firm stable surface with a clear length of 96 inches minimum, measured perpendicular to the curb or vehicle roadway edge, and a clear width of 60 inches minimum, measured parallel to the vehicle roadway;

(2) Be connected to streets, sidewalks or pedestrian paths by an accessible route;

(3) Have a slope perpendicular to the roadway not to exceed 1:48.

(B) The City agrees that within five (5) years after the execution of this agreement, all bus stops will be in compliance with the applicable standard pursuant to Section 3(A) of this Agreement.

(C) It is agreed that bus stop pads must only be constructed where sidewalks exist, and that removal of grass, weeds or cinders at a stop to create a firm, stable surface shall not constitute construction or alteration triggering the requirements of the new ADAAG bus stop standards.

(D) It is specifically understood by the parties that construction of some of the bus pads will require entering into agreements with adjoining landowners and the Oregon Department of Transportation, and that that may affect the prioritization and/or completion of certain bus stops. For that reason, the City agrees, in good faith, that it will immediately begin identifying the stops requiring such agreements, and to set a timetable for obtaining such agreements. However, nothing in this Agreement shall require the City to condemn property to make a bus stop or to complete an accessible route; in those situations, the City must either move the bus stop or make the stop as accessible as possible.

#### Section 4 - Transit-Related Accessible Routes

(A) The parties agree that some of the bus stops are located near "key facilities." The parties agree that access to the nearby key facilities is problematic due to noncompliant or nonexistent curb ramps, in other instances due to deteriorating sidewalks, and in other instances due to obstacles on sidewalks which reduce the path of travel below 36 inches. In order to address those problems, the City will provide two compliant curb ramps at each bus stop near a key facility. The location of the curb ramps will be selected to maximize the usefulness of the

bus stop. The City will also maintain deteriorated sidewalks and remove mail boxes, signs and other physical protrusions on the sidewalks adjacent to the bus stop. This Agreement does not require the City to either remove sidewalks or construct new sidewalks.

(B) In implementing Section 4(A), the City agrees that not less than 50% of the monies appropriated for curb ramps and sidewalks will be used to create transit-related accessible routes of travel, until all such work is completed. All work shall be completed not later than September 2014.

(C) It is specifically agreed that an accessible route of travel does not require the construction of sidewalks where no sidewalks exist and all persons boarding and deboarding the stop must access the bus and the facilities it serves from the shoulder.

#### Section 5. Committee on Accessible Transportation

The Committee on Accessible Transportation (CAT) is in the process of identifying important bus stops and prioritizing the completion of those stops. The CAT will also have input into the location of the two compliant curb ramps at each bus stop near a key facility. To the extent that particular bus stop pads and/or accessible routes are selected by the CAT, neither party shall dispute the selection of such projects or the expenditure of funds on such projects.

#### Section 6. Reporting Requirements

The City shall provide written reports to plaintiffs' counsel at least semi-annually on the City's progress in meeting the targets, and shall specifically identify all stops made accessible and all transit-related accessible routes completed as of the time of the report.

#### Section 7. Modification of this Agreement

The parties agree that above numbers constitute the targets that both parties believe are achievable based on the information now available to the parties. In the event that the City

cannot meet any of the targets for the bus stops and transit-related accessible routes, it shall immediately and in writing notify Plaintiffs of that fact, along with the reasons that the target cannot be met and a proposed modification to the Agreement. The City shall also detail what efforts it has made to date to meet the target or targets despite the obstacle.

This Agreement shall be subject to modification if, inter alia, (1) completion of 70% of the stops in the first three years would require the City to modify different stops than those prioritized by the city and the disability community, in which event the percentage required to be completed in the first three years may be modified, so long as all stops are made accessible by the end of the five year period; (2) the construction of the bus pads are not within the City's control and it requires additional time to obtain necessary easements or agreements with adjoining landowners or the Oregon Department of Transportation, despite the City's best efforts; and (3) any other circumstance unforeseen by both of the parties as of the date this Agreement is signed, other than the cost of bringing the system into compliance with the ADA.

Plaintiffs will then have 15 days following receipt of the written notice to respond in writing. Thereafter, the parties will meet and in good faith enter into negotiations to alter the time frames at issue in a way satisfactory to both parties. An attempt at informal resolution shall be a prerequisite to either party's request for relief from the court for an alleged material breach of this agreement. If the parties cannot reach agreement, either party may, after providing 15 days written notice to opposing counsel, pursue relief before the United States District Court for the District of Oregon, or participate in an alternative dispute resolution mechanism agreed upon by the parties.

The court will retain jurisdiction solely for the purpose of enforcing compliance with this agreement.

Unless otherwise agreed between the parties, this Agreement shall terminate when the fixed route system has been made fully compliant in accordance with the terms of this Agreement as written or as modified by agreement of the parties or order of the Court.

Section 9. Compromise of Disputed Claim

This Agreement is the compromise of disputed claims and shall not be deemed to be an admission of liability or wrongdoing by any party for any purpose.

Section 10. Attorneys Fees and Costs

Each party shall be responsible for its own attorneys fees expended in litigating this case up through and including the date on which this Agreement is finalized.

PLAINTIFFS:	DATE:	CITY OF BEND:	DATE:
<u>Carol Fulkerson</u> Carol Fulkerson	<u>5/3/07</u>	_____	_____
		City Manager	
<u>Anna Cole by Jeff Cole</u> Anna Cole, by Jeff Cole	<u>5/07/07</u>	_____	_____
		Peter M. Schannauer	
		Attorney for City of Bend	
<u>Michele Romeo</u> Michele Romeo	<u>05/07/07</u>		
<u>Sandra Hurst</u> Sandra Hurst	<u>5/4/07</u>		
<u>Thelma Osborn</u> Thelma Osborn	<u>5/31/07</u>		
<u>Signe Bryant</u> Signe Bryant	<u>5/03/07</u>		
<u>A Perone</u> Anastasia Perone	<u>5/4/07</u>		

UNITED SENIOR CITIZENS OF BEND

John Jones      5/7/07  
President

OREGON ADVOCACY CENTER

Kathleen L. Wilde

5/8/07

Kathleen L. Wilde  
Counsel for Plaintiffs