

August 4, 2011

Judge Michael R. Hogan
5700 United States Courthouse
405 East Eighth Avenue
Eugene, OR 97401-2706

Re: FULKERSON, et al. v. CITY OF BEND, et al.
Case No. 06:06-CV-6325-HO
STIPULATED MOTION FOR DISMISSAL OF RETENTION
OF JURISDICTION FOR THE PURPOSE OF ENFORCING
COMPLIANCE WITH THE SETTLEMENT AGREEMENT

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WWW.CI.BEND.OR.US

Dear Judge Hogan:

Enclosed is your copy of the Stipulated Motion for Dismissal of Retention of Jurisdiction for the Purpose of Enforcing Compliance with the Settlement Agreement.

JEFF EAGER
Mayor

JODIE BARRAM
Mayor Pro Tem

TOM GREENE
City Councilor

KATHIE ECKMAN
City Councilor

JIM CLINTON
City Councilor

MARK CAPELL
City Councilor

SCOTT RAMSAY
City Councilor

ERIC KING
City Manager

Thank you for your courtesies.

Sincerely,



Mary A. Winters – City Attorney
City of Bend
541 693 2100
mwinters@ci.bend.or.us

MAW/nf

Enclosure

cc: Kathleen L. Wilde (via email only)
Theodore E. Wenk (via email only)
James Forbes (via email only)

MARY WINTERS, Lead Counsel, OSB No. 076824

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Attorneys for Defendants

JUDGE'S COPY

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Disability Rights Oregon

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Attorney for Plaintiffs

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON EUGENE DIVISION

CAROL FULKERSON, ANNA COLE, by and through
her father and next friend **JEFF COLE, MICHELE
ROMEO, SANDRA HURST, THELMA OSBORN,
SIGNE BRANT, ANASTASIA PERONE**, and
UNITED SENIOR CITIZENS OF BEND,

Plaintiffs,

v.

THE CITY OF BEND and BEND AREA TRANSIT,

Defendants.

Case No. CV 06:06-CV-6325-HO

**STIPULATED MOTION FOR
DISMISSAL OF RETENTION OF
JURISDICTION FOR THE
PURPOSE OF ENFORCING
COMPLIANCE WITH THE
SETTLEMENT AGREEMENT**

UNOPPOSED

Pursuant to LR 7 the parties certify that this Stipulated Motion for the Dismissal of Retention of Jurisdiction for the Purpose of Enforcing Compliance with the Settlement Agreement is filed jointly by both parties and is unopposed.

STIPULATED MOTION FOR DISMISSAL OF RETENTION OF JURISDICTION

Pursuant to Fed. R. Civ. P. 41(1)(a)(ii), Defendants and Plaintiffs, by and through their designated counsel of record, stipulate and move the court for an order granting dismissal of retention of jurisdiction for the purpose of enforcing compliance with the settlement agreement.

This stipulated and joint motion for dismissal of retention of jurisdiction for the purpose of enforcing compliance with the settlement agreement is based on the fact that the parties have resolved this action in its entirety.

DATED this 4th day of August, 2011.

IT IS SO STIPULATED:

s/Mary Winters
MARY WINTERS, OSB NO. 872211
(541) 388-5505
Attorney for Defendants

s/Kathleen L. Wilde
KATHLEEN L. WILDE, OSB NO. 97105
(503) 243-2081
Attorney for Plaintiffs

EXHIBIT A
TERMINATION OF SETTLEMENT AGREEMENT

Recitals:

1. In December of 2006, Plaintiffs filed a Complaint for Declaratory and Injunctive Relief -- Civil Rights under the 1990 Americans with Disabilities Act and Section 504 of the Rehabilitation Act, against the City of Bend and Bend Area Transit (BAT), alleging a lack of access for people with disabilities to public transportation in violation of law.
2. Plaintiffs, represented by Disability Rights Oregon (ORO), formerly the Oregon Advocacy Center, and the City of Bend (City) entered into a Settlement Agreement effective May 8, 2007, dismissing the case with prejudice and incorporating the Settlement Agreement in the Final Order.
3. In relevant part, the Settlement Agreement requires the City to construct compliant bus stop pads at fixed route stops where sidewalks exist, and two ADA compliant curb ramps at each bus stop near key facilities, and to maintain deteriorated sidewalks and remove mail boxes, signs and other physical protrusions on the sidewalks adjacent to the bus stop.
4. The Settlement Agreement expressly does not require the City to either remove or construct new sidewalks.
5. The Settlement Agreement provides that the Committee on Accessible Transportation (CAT) help identify and prioritize on the completion of those stops, and have input on the location of the two compliant curb ramps at each bus stop near a key facility.
6. Commencing on September 1, 2010, the Central Oregon Intergovernmental Council (COIC) assumed responsibility for all BAT operations. The agreement between the City and COIC provides that at the end of the first year of the Agreement, the City will transfer its rights in all BAT bus stops and associated facilities to COIC, which must meet ADA requirements. Therefore, the City maintained responsibility for the bus stop/curb ramp improvements required by the ORO Settlement for all existing routes. At the time of the 2010 agreement with COIC, BAT operated and served seven fixed routes, which COIC presently operates.
7. The Settlement Agreement requires that all bus stops be compliant within 5 years of the execution of the Agreement (2012), and that all curb ramp and sidewalk work be completed by September 2014. It further provides that "the 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." (Page 5).

8. The bus stops, curb ramps and accessible routes of travel on the fixed route system have now all been completed and made compliant ahead of schedule, and reviewed and signed off by CAT. The Plaintiffs find that all the conditions contained in Sections 3 and 4 of the Settlement Agreement have been accomplished, either satisfying or exceeding the expectations contained in the Settlement Agreement between the parties.
9. Due to the settlement, Improvements include a total of 182 bus stops, 618 curb ramps and 11 sidewalk repairs creating interconnectivity and accessible routes of travel, are now fully ADA compliant.
10. The Plaintiffs and the City therefore desire to terminate the Settlement Agreement and all obligations and responsibilities thereunder.
11. The District Court Order incorporating the Settlement Agreement dismissed the case with prejudice and provided that the federal district court would retain Jurisdiction for the sole purpose of enforcing compliance with the Settlement Agreement.

NOW THEREFORE, the parties agree that the Settlement Agreement has been fully and fairly satisfied and is therefore terminated, and that the Court's continuing jurisdiction should be ended as well.

IT IS HEREBY STIPULATED AND AGREED:


CITY OF BEND

By: 

Mary A. Winters, City Attorney, OSB #076824
Gary Firestone, Assistant City Attorney, OSB #872211

Dated: July 19, 2011

DISABILITY RIGHTS OREGON

By: 

Kathleen L. Wilde, Counsel for Plaintiffs, OSB #97105

Dated: August 2, 2011

DRO SETTLEMENT AGREEMENT

Sign off by Committee for Accessible Transportation (CAT) Members

I, (We) agree that the City of Bend and Bend Area Transit have fulfilled the obligations of the Disability Rights Oregon (DRO) Settlement Agreement requirements regarding bus stops, curb ramps and accessible routes of travel on the fixed bus route system.

Carol Fulkerson
Carol Fulkerson

July 19/11

Date

Shelley Palmer by C. Fulkerson
Shelley Palmer

July 19/11

Date

Thomas A. Eichorst
Thomas Eichorst

JULY 19/11/2011

Date

Earl Williams
Earl Williams

July 19, 2011

Jordan Ohlde
Jordan Ohlde

JULY 14/2011