

**SETTLEMENT AGREEMENT
BETWEEN
THE UNITED STATES OF AMERICA
AND
ACADEMY EXPRESS, LLC**

BACKGROUND

1. The parties to this Settlement Agreement are the United States of America (“United States”) and Academy Express, LLC (“Academy”).
2. This Settlement Agreement arose from a complaint filed with the United States Department of Justice and investigated by the U.S. Attorney’s Office for the District of New Jersey (USAO Complaint No. 2019V00135 / DJ No. 202-48-356) alleging that Academy failed to provide wheelchair accessible bus service in violation of title III of the Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. §§ 12181 *et seq.*, and relevant implementing regulations implementing title III, 28 C.F.R. pt. 36 and 49 C.F.R. pts. 37 and 38.
3. The parties agree that it is in their best interests, and the United States believes that it is in the public interest, to resolve this dispute without engaging in litigation. The parties have therefore voluntarily entered into this Agreement, as follows:

THE PARTIES

4. Academy is a New Jersey limited liability corporation, primarily engaged in the business of private transportation, and headquartered at 111 Paterson Avenue, Hoboken, New Jersey 07030.
5. The Attorney General of the United States is responsible for enforcing title III of the ADA, 42 U.S.C. §§ 12181-89, and the relevant regulations implementing title III, 28 C.F.R. pt. 36 and 49 C.F.R. pts. 37 and 38.

TITLE III COVERAGE AND DETERMINATIONS

6. Academy is an over-the-road bus (“OTRB”) operator within the meaning of 42 U.S.C. § 12181(5) and 49 C.F.R. § 37.3, a “large” Class I motor carrier within the meaning of 49 C.F.R. § 369.3, and a demand-responsive OTRB operator within the meaning of 42 U.S.C. § 12181(3).
7. “Demand-responsive operators shall ensure that, beginning one year from the date on which the requirements of this subpart begin to apply to the entity, any individual with a disability who requests service in an accessible OTRB receives such service. This requirement applies to both large and small

operators.” 49 C.F.R. § 37.189(b). “The operator may require up to 48 hours’ advance notice to provide this service.” 49 C.F.R. § 37.189(c). “If the individual with a disability does not provide the advance notice the operator requires under paragraph ([c]) of this section, the operator shall nevertheless provide the service if it can do so by making a reasonable effort.” 49 C.F.R. § 37.189(d).

8. OTRB operators are required to establish a system of regular and frequent maintenance checks of lifts sufficient to determine if they are operative. 49 C.F.R. § 37.203.
9. OTRB operators are required to train their employees “to proficiency” regarding the proper operation and maintenance of accessibility features and equipment, boarding assistance, securement of mobility aids, sensitive and appropriate interaction with passengers with disabilities, handling and storage of mobility devices, and familiarity with the requirements of 49 C.F.R. pt. 37. OTRB operators are required to provide refresher training to personnel as needed to maintain proficiency. 49 C.F.R. § 37.209.
10. The ADA’s implementing regulations require OTRB operators to repair wheelchair lifts “promptly if they are damaged or out of order [, and w]hen an accessibility feature is out of order, the entity shall take reasonable steps to accommodate individuals with disabilities who would otherwise use the feature.” 49 C.F.R. § 37.161(b). Hand-carrying is not an appropriate accommodation when a wheelchair lift is inoperable. 49 C.F.R. § Pt. 37, App. E. Operators must ensure “safety, dignity, and privacy” to individuals with disabilities. *Id.*
11. Through its investigation, the United States has determined:
 - a. On or about July 19, 2018, a military reunion organizer for the 189th Assault Helicopter Company (the “Group”) contracted with Academy to provide two demand-responsive OTRBs over the course of two days, October 4 and 5, 2018, for an “Honor Flight” to provide a unit of Vietnam veterans access to several historic places in the Washington, D.C. metropolitan area.
 - b. At the time of the booking, the organizer requested one (1) bus have a wheelchair lift.
 - c. Complainant, a 74-year-old Vietnam veteran, was among dozens of other veterans scheduled to attend the Honor Flight. When Complainant’s helicopter was shot down in Vietnam, he was paralyzed for two years and suffered skull fractures and brain damage. After recovering enough to become paraplegic and able to use a wheelchair, Complainant has since suffered from Post-Traumatic Stress Disorder.
 - d. On October 4, 2018, Complainant waited with other members of his unit for the Academy buses to arrive so that he could join his fellow

unit members in visiting historic sites in the Washington, D.C. region that honored their service. It was to Complainant's dismay and embarrassment that neither of the buses that Academy provided that day had functional wheelchair lifts.

- e. Academy did not provide a replacement bus. Nor did Academy provide an alternate means of transportation or any type of accommodation. Instead, while the drivers transported the veteran passengers who did not require a wheelchair lift to their Honor Flight, Complainant sat in his wheelchair on the sidewalk and watched them go. On that day, Complainant missed a trip to Arlington National Cemetery, the changing of the guard at the Tomb of the Unknown Soldier, a visit to the Vietnam War Memorial wall, meeting elected officials, and his Helicopter Company's 2018 reunion.
- f. Again, on October 5, 2018, the second day of the Honor Flight, the first two buses Academy sent to the group lacked functional wheelchair lifts. While this time Academy sent a replacement bus, the driver was unable to operate the lift. After the driver worked out how to lower the lift, Complainant rolled his wheelchair onto the lift, and was then secured in the lift. But the driver could not successfully raise the lift. The driver then called Academy for assistance. After approximately one hour, the driver was able to operate the lift enough to allow Complainant to board. However, once the vehicle arrived at its first destination, the driver was unable to operate the lift to allow Complainant to disembark. The driver then drove Complainant back to his hotel, and again spent at least another hour trying to operate the lift enough to allow Complainant to disembark. Complainant spent most of that hour suspended above the ground while the driver tried to operate the lift. While suspended, he feared falling off of the lift.
- g. When Complainant was finally able to disembark, he spent another day of the Honor Flight at his hotel, away from his unit, missing visits to other landmarks, monuments, and unit events. Over the course of two days, for upwards of four hours, Complainant waited patiently for bus access that he never received. To this day, he remembers and relives the fear he had of falling off of the lift. Recalling sitting in the hotel lobby instead of joining in the Honor Flight, Complainant summed up his experience: "I have never been so humiliated in all my life."
- h. Academy provided no alternate means of transportation or any type of accommodation. Although USAO acknowledges that the Department of Defense ("DOD") has restrictions on vehicle access within the Arlington National Cemetery, Academy made no effort to provide alternate transportation or access to the cemetery. Nor did Academy

offer Complainant a refund of any of the costs incurred by Complainant for the Honor Flight.

- i. Academy failed to provide Complainant with accessible service, in violation of 42 U.S.C. § 12184 and 49 C.F.R. § 37.189.
- j. Academy's pre-trip inspection procedures do not include a requirement that the wheelchair lift in accessible buses be fully tested for functionality prior to a trip where a lift was requested. Nothing in Academy's driver manual and classroom training syllabus demonstrate proper lift operation on Academy buses or any requirement that lifts be fully tested for functionality prior to trips requiring a wheelchair lift.

12. Academy disputes that it has violated the ADA, but nevertheless agrees to enter into this Agreement while setting forth its allegations and assertions as follows:

- a. On October 4, 2018, Academy provided round trip charter service to the Group from the Hilton Washington Dulles Hotel to the Arlington National Cemetery. Due to heightened security screening procedures, the DOD required Academy to provide the Vehicle Identification Number(s) for the buses used for this charter prior to the date of the visit and the names of the drivers. The buses were subject to a security sweep and the DOD specifically instructed Academy that neither the buses nor the drivers could be changed.
- b. Due to the DOD's security policy, Academy could not apply its usual policy of timely dispatching another bus with a functioning wheelchair lift. Academy drivers offered to stow Complainant's wheelchair on the bus and lift him up and place him in a seat on the bus. Complainant declined that offer of assistance. Accordingly, Complainant did not use the bus service and was unable to attend the group trip to Arlington National Cemetery, the changing of the guard at the Tomb of the Unknown Soldier, a visit to the Vietnam War Memorial wall, meeting elected officials, and his Helicopter Company's 2018 reunion.
- c. Academy provides two (2) hours of ADA/Sensitivity Training to all of its drivers as part of the Academy Bus Operator Training Program. Drivers are trained on the non-discrimination requirements of the ADA and an array of topics addressing interacting with passengers with disabilities, including wheelchair lift operation and procedures and assisting passengers with disabilities who use mobility devices.
- d. Academy's usual maintenance procedures provides for the full cycling of the wheelchair lift on its buses every 2500 miles.

- e. Academy denies that a second incident occurred with the Complainant on October 5, 2018 or any date thereafter.

ACTIONS TO BE TAKEN BY ACADEMY

- 13. Academy shall not exclude persons with disabilities from participation in, or deny them benefits of, transportation services in violation of title III of the ADA, 42 U.S.C. § 12184, 28 C.F.R. pt. 36, and 49 C.F.R. pts. 37 and 38.
- 14. Academy shall comply with all of its obligations under title III of the ADA, 42 U.S.C. § 12184, 28 C.F.R. pt. 36 and 49 C.F.R. pts. 37 and 38.
- 15. Within 60 days of the effective date of this Agreement, Academy shall draft written policies and procedures, to be approved by the United States, that specify the procedures by which Academy will ensure that persons with disabilities receive accessible transportation on the day and at the time and place requested. Such policies and procedures shall provide that Academy will accommodate all requests for accessible direct-response bus service made with advance notice of 48 hours or more and that Academy will attempt to accommodate any such requests on shorter notice. Such policies and procedures shall identify the Academy employees (with their job titles) responsible for implementing those procedures and specify the procedures for documenting and handling accessibility-related complaints. Such policies and procedures shall include a provision prohibiting Academy employees from hand-carrying or offering to hand-carry passengers except in emergency situations.
- 16. Within 90 days of the effective date of this Agreement, and once a year thereafter for the duration of this Agreement, Academy shall train all employees who are directly or indirectly responsible for providing accessible service to Academy customers about the requirements of the ADA and how they apply to Academy. The training shall address the policies, practices, and procedures to be adopted as the result of this Agreement, and shall provide the same training to all such employees within 30 days of hiring. Academy will train such personnel to proficiency, as appropriate to their duties, so that they operate vehicles and equipment safely and properly assist and treat individuals with disabilities who use the service in a respectful and courteous way, with appropriate attention to the difference among individuals with disabilities. Such training shall include instruction indicating that Academy employees are not permitted to hand-carry except in emergency situations. Academy shall maintain records relating to all the trainings conducted pursuant to this paragraph, including the date and time the training occurred, the name of the individuals who attended such training, and the topics covered. Such documents shall be furnished to counsel for the United States upon request.

17. Within 60 days of the effective date of this Agreement, Academy shall post a notice, to be approved by the United States, on any website it operates, at any stations and pick-up locations it controls, and in any promotional materials and brochures it provides to the public that is ordered for printing 60 days after the effective date of this Agreement, indicating its obligation to provide accessible transportation to persons with disabilities, how to reserve accessible transportation, and that it does not discriminate on the basis of disability in the provision of its transportation services.
18. Within 30 days of the effective date of this Agreement, Academy shall revise its pre-trip inspection procedures to require drivers to test the functionality of the wheelchair lift by fully operating the lift (replicating actual use) prior to using the bus to provide direct-response service to anyone who gives at least 48 hours advance notice that they need a wheelchair lift for such bus service in accordance with 49 C.F.R. §§ 37.189(a) and (b), and 49 C.F.R. § 37.189(c). *See 49 C.F.R. § 37.203(a).* If the individual with a disability does not provide the advance notice, Academy shall nevertheless provide the service if it can do so by making a reasonable effort. 49 C.F.R. §§ 37.189(d).
19. Within 30 days of the effective date of this Agreement, Academy shall revise its procedures to require drivers of demand-responsive buses whose lifts fail to function properly—during pre-trip inspection or during a trip involving transportation of any passenger who requested a wheelchair accessible bus—immediately to contact a dispatcher to have a replacement vehicle with wheelchair lift functionality to provide the requested service. *See 49 C.F.R. § 37.203(b).*
20. Upon notice of a lift failure (to include mechanical failure and driver aptitude) prior to or during a trip requiring a wheelchair lift under this Agreement, Academy shall, as soon as practicable, provide a replacement bus and/or driver, as necessary to accommodate the needs of the passenger. If no Academy bus is available, Academy shall procure through other means, such as an alternate carrier, a replacement bus and/or driver, at no extra cost to the customer. *See 49 C.F.R. § 37.203.*
21. If, after taking all of the actions required by this Agreement Academy becomes aware that a bus's wheelchair lift has become non-functional, Academy shall not allow that bus to stay in service for more than five days from the date of awareness. *See 49 C.F.R. § 37.203(d).*
22. Within 30 days of the effective date of this Agreement, Academy shall make payment of a civil penalty in the amount of ten thousand dollars (\$10,000) to the United States, pursuant to 42 U.S.C. § 12188(b)(2)(C). Academy shall deliver the check or money order, via overnight mail, to counsel for the United States at 970 Broad Street, Suite 700, Attn: Victor Williamson,

Newark, New Jersey, 07102. Within 10 days after receiving Complainant's signed release (attached as Exhibit A), Academy will deliver a check in the total amount of ten thousand dollars (\$10,000) payable to Complainant pursuant to 42 U.S.C. § 12188(b)(2)(B). Academy shall provide written notification to counsel for the United States, including a copy of the check, within seven (7) days of completing the actions described in this paragraph.

23. Academy shall report to the United States on its progress in implementing this Agreement 90 days from the effective date of this Agreement and will notify the United States as soon as it has completed the actions described in paragraphs 15-22.

IMPLEMENTATION

24. In consideration for entering this Agreement, the United States will refrain from filing a civil action based on the allegations set forth above. The United States may review Academy's compliance with this Agreement or title III of the ADA at any time. If the United States believes that this Agreement or any material portion of it has been violated, it may institute a civil action in the appropriate United States District Court to enforce this Agreement and/or title III of the ADA.

25. Failure by the United States to enforce any provision in this Agreement is not a waiver of its right to enforce any provision in this Agreement.

26. This Agreement is binding on Academy, including all principals, officers and owners, successors in interest, and assigns. In the event that Academy seeks to sell, transfer, or assign all or part of its interest during the term of this Agreement, as a condition of sale, transfer, or assignment, Academy will obtain the written agreement of the successor, buyer, transferee, or assignee to all obligations remaining under this Agreement for the remaining term of this Agreement.

27. The signatory for Academy represents that he or she is authorized to bind Academy to this Agreement.

28. This Agreement is the entire agreement between the United States and Academy on the matters raised herein and no other statement, promise or agreement, either written or oral, made by any party or agents of any party, is enforceable. This Agreement can be modified only by mutual written agreement of the parties.

29. This Agreement is not intended to remedy any other potential violations of the ADA or any other law that is not specifically addressed in this

Agreement. Nothing in this Agreement relieves Academy of its obligation to otherwise comply with the requirements of the ADA.

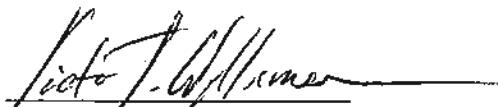
EFFECTIVE DATE/TERMINATION DATE

30. The effective date of this Agreement is the date of the last signature below.
31. The duration of this Agreement will be three years from the effective date.

AGREED AND CONSENTED TO:

UNITED STATES OF AMERICA

CRAIG CARPENITO
United States Attorney



Victor J. Williamson

Special Assistant United States Attorney

Dated: 2/6/2020

ACADEMY BUS, LLC



Frank DiPalma

Chief Financial Officer

Dated: 1/31/20