

## **SETTLEMENT AGREEMENT**

**between**

**THE ATTORNEY GENERAL OF THE STATE OF CALIFORNIA**

**and**

**THE UNIVERSITY OF SOUTHERN CALIFORNIA**

### **RECITALS**

- A. Parties. The parties to this Settlement Agreement ("Agreement") are the Attorney General of the State of California ("Attorney General"), on behalf of the People of the State of California, and the University of Southern California ("USC") (hereafter collectively, the "Parties" or singularly, the "Party").
- B. USC is a private university located in Southern California. USC's two primary campuses, the University Park Campus and the Health Science Campus (hereafter collectively, the "University Park and Health Science Campuses"), are located in Los Angeles, California. USC's College of Letters, Arts & Sciences and a number of professional schools are located at the University Park Campus. USC's schools of medicine and pharmacy, and its three teaching hospitals are located at the Health Science Campus, which is situated a few miles from the University Park Campus. USC conducts programs at a number of other additional locations throughout Southern California and maintains a center in Sacramento.
- C. USC operates three transportation systems for its students, faculty and staff at its University Park and Health Science Campuses. These transportation systems are as follows:
1. Tram Service: USC operates a Tram Service that students, faculty and staff can use free of charge to travel on fixed routes at fixed times around or near the University Park and Health Science Campuses, including between the University Park and Health Science Campuses and to and from Union Station. As of the date of the signing of this Agreement, USC maintains a fleet of 17 vehicles which vary in seating capacity for its Tram Service, each of which is referred to as a "Tram" for purpose of this Agreement. Currently, six of the 17 Trams are not wheelchair accessible, as they are not equipped with wheelchair lifts or ramps. USC, however, has a policy of keeping in reserve one of its Trams that is equipped with a wheelchair lift or ramp so that it can be immediately dispatched to any one of USC's fixed routes upon the request of a Tram driver who observes the need for a

wheelchair accessible Tram. Currently, riders who use wheelchairs can make advance requests of USC to ensure that a Tram with a wheelchair lift or ramp is used for a particular fixed route and regularly scheduled departure time.

2. Campus Cruisers: USC operates a fleet of vehicles known as "Campus Cruisers" to escort students, faculty and staff, free of charge, in and around the University Park and Health Science Campuses in the evenings and early morning hours. As of the date of the signing of this Agreement, none of the Campus Cruisers have wheelchair lifts or ramps. Currently, USC has a policy of dispatching walking escorts in lieu of Campus Cruisers for individuals who use wheelchairs.

3. Vanpool Program: USC operates vans that are used to pick up faculty and staff at fixed locations and transport them to and from the University Park and Health Science Campuses. Though this Vanpool Program is primarily for employees, it is also offered to students. As of the date of the signing of this Agreement, the vehicles which USC uses for the Vanpool Program are not equipped with wheelchair lifts or ramps.

- D. As a private entity providing public transportation, USC is subject to Civil Code sections 51 and 54.1. Violations of the federal Americans with Disabilities Act ["ADA"] (42 U.S.C. § 12101 et. seq.) constitute violations of Civil Code sections 51 and 54.1. USC is also subject to the ADA.
- E. The Attorney General enters into this Agreement pursuant to his constitutional status as chief law enforcement officer of the State, and pursuant to California Civil Code sections 52 and 55.1.
- F. In an effort to resolve their differences expeditiously and without the burden, expense, and delay of litigation, the Attorney General and USC have engaged in negotiations. As a result of those negotiations, the Attorney General and USC have agreed to enter into this Agreement. This Agreement is intended to and does resolve fully the matters in dispute between the Attorney General and USC as provided for in this Agreement.
- G. For purposes of this Agreement, the following additional definitions apply:
  - 1. The terms "Tram(s)" and/or "Tram Service" refer to the transportation system described in paragraph C, subdivision 1, above.
  - 2. The terms "Campus Cruiser(s)" and/or "Campus Cruiser Program" refer to the transportation system described in paragraph C, subdivision 2, above.
  - 3. The terms "van(s)," "Vanpools(s)," and/or "Vanpool Program" refer to the transportation system described in paragraph C, subdivision 3, above.
  - 4. The term "wheelchair accessible" with respect to the Trams, Campus Cruisers,

and/or vans means vehicles that are equipped with a wheelchair lift or ramp and meet the wheelchair accessibility requirements set forth in 49 Federal Code of Regulations, sections 38.1-38.39.

5. The term "first quarter of USC's 2004/05 fiscal year" means the time period July 1, 2004 through October 1, 2004.

6. The term "first quarter of USC's 2005/06 fiscal year" means the time period July 1, 2005 through October 1, 2005.

### **BACKGROUND**

1. This matter was initiated by a disability-access complaint regarding USC's transportation systems that was lodged with the Office of the Attorney General (hereafter "Complaint"). In that Complaint, it was alleged that USC was in violation of disability access laws because the trams, vans, buses or other vehicles operated by USC were not equipped with wheelchair lifts or ramps.
2. After investigating the Complaint, the Attorney General alleged that USC's Tram Service and Campus Cruiser Program violated Civil Code sections 51 and 54.1 and the ADA because they did not meet the ADA's wheelchair access requirements governing transportation systems provided by private entities to the public. The Attorney General further alleged that insufficient information was available to employees and students regarding the extent of USC's obligation to provide wheelchair accessible vehicles for its Vanpool Program.
3. USC denies that it has violated Civil Code sections 51 and 54.1 and/or the ADA.
4. No Admission. This Agreement, entered into by the Parties, shall not be construed as an admission by USC of any violation of Civil Code sections 51 and 54.1, the ADA, or of any other law, rule, or regulation respecting persons with disabilities or the rights of persons with disabilities.
5. In consideration of USC's implementation of the terms of this Agreement, the Attorney General agrees to refrain from filing any civil suit against USC regarding the Complaint, including any civil suit regarding the Complaint brought under Civil Code sections 51, 54.1 and 55.1 or Business and Professions Code section 17200 et seq.

### **TERMS, IMPLEMENTATION, AND ENFORCEMENT OF THIS AGREEMENT**

6. Tram Service: USC shall ensure that by the end of the first quarter of USC's 2004/05 fiscal year, four of the six Trams which are not currently wheelchair accessible are equipped with operative wheelchair lifts or ramps and are otherwise wheelchair accessible. USC will thereafter ensure that the remaining two Trams which are not

wheelchair accessible are equipped with operative wheelchair lifts or ramps and are otherwise wheelchair accessible by the end of the first quarter of USC's 2005/06 fiscal year. USC will meet these obligations by either retrofitting or replacing its existing Trams which are not currently wheelchair accessible. USC shall ensure that at all times, only drivers who are trained to operate the wheelchair accessible features will operate the Trams which are wheelchair accessible. USC will not add any additional Trams that are not wheelchair accessible to its Tram Service. Until all the six Trams which are not currently wheelchair accessible are equipped with wheelchair lifts or ramps as required by this Agreement, USC shall continue to dispatch wheelchair accessible Trams in a timely manner for individuals who use wheelchairs when Tram drivers observe the need for such a vehicle. USC shall also honor advance requests for wheelchair accessible Trams by individuals who use wheelchairs so that a wheelchair accessible Tram will arrive on the requested fixed route at the regularly scheduled time. Individuals who use the wheelchair accessible Trams, including those who make advance requests for wheelchair accessible Trams for regularly scheduled arrival times, will not be charged any fee in addition to that USC's charges to individuals who do not use wheelchairs who travel on the Trams on the fixed routes at the regularly scheduled times.

7. Campus Cruisers: USC shall acquire and operate a wheelchair accessible vehicle for its Campus Cruiser Program by September 1, 2004. The wheelchair accessible Campus Cruiser will be dispatched to transport individuals who use wheelchairs at all times that the inaccessible Campus Cruisers are in operation. Individuals who use the wheelchair accessible Campus Cruiser will not be charged any fee in addition to that charged individuals who use the Campus Cruisers that do not have wheelchair lifts or ramps. The same procedures for obtaining rides in Campus Cruisers that do not have wheelchair lifts or ramps shall apply for obtaining rides in the wheelchair accessible Campus Cruisers. USC shall acquire additional wheelchair accessible vehicles for the Campus Cruiser program if demand is such that individuals who use wheelchairs must wait a longer time for service than individuals who do not need wheelchair accessible Campus Cruisers. In order to assist USC in determining if additional wheelchair accessible vehicles are required under this Agreement for the Campus Cruiser Program, USC will maintain records of the use of the wheelchair accessible Campus Cruiser(s) and any complaints concerning this program that it receives. Only drivers who are trained to use the accessible features of the wheelchair accessible Campus Cruiser(s) will operate the wheelchair accessible Campus Cruiser(s).
8. Vanpools: USC shall promptly acquire a wheelchair accessible van for its Vanpool Program when a student, faculty or staff member who uses a wheelchair and who is otherwise eligible to participate in USC's Vanpool Program requests such an accommodation for a Vanpool route offered by USC. Only drivers who are trained to use the accessible features of the wheelchair accessible van(s) will operate the wheelchair accessible vans. USC shall consider an individual to be eligible to participate in the Vanpool Program if the individual is otherwise qualified under then-current Vanpool rules, is applying to participate on a route serviced by a Vanpool that has available space

pursuant to USC's Vanpool first-come, first-serve policy, and is willing to pay the regular fee charged other users.

9. Information for Students, Faculty and Staff: Within thirty (30) days of the signing of this Agreement, USC shall conspicuously display, on its Internet web sites for Transportation Services and Disability Services and Programs, the options that are available on the Tram Service, Campus Cruiser Program and Vanpool Program for individuals who use wheelchairs. The information that USC shall post on its Internet web site and other locations specified below will include the following:

- a. With respect to the Tram Services, USC shall conspicuously post, on its Internet web sites for Transportation Services and Disability Services and Programs, as well as on hard copies of USC's Tram schedules, information regarding the availability of the wheelchair accessible Trams, USC's policy of timely dispatching a wheelchair accessible Tram for individuals who use wheelchairs on any of its routes, as well as the procedures by which individuals who use wheelchairs may order accessible Trams for a particular fixed route and time.
- b. With respect to its Campus Cruiser Program, as soon as the wheelchair accessible Campus Cruiser is obtained as required by this Agreement, USC shall conspicuously post, on its Transportation Services and Disability Services and Programs websites, information regarding the availability of the wheelchair accessible Campus Cruiser(s). USC shall also include this information, in conspicuous print, on any other documents concerning the Campus Cruisers, such as postings that may be located in USC's libraries or other locations that explain how one may request a Campus Cruiser.
- c. With respect to its Vanpool Program, USC shall provide sufficient information to its student body and employees that the University will provide a wheelchair accessible van if an individual who uses a wheelchair wishes to participate in, and is eligible for, the Vanpool Program on the routes offered by USC. USC shall accomplish this by posting this information regarding the wheelchair accessible vans conspicuously on its Vanpool Program and Disability Programs and Services web sites, on the Vanpool Program's registration form, and on any regularly published Vanpool brochures or fact sheets.
- d. USC shall include on its Transportation Services and Disability Services and Programs web sites information about where complaints regarding the wheelchair accessibility of the Trams, Campus Cruisers, and Vanpools can be lodged at USC. Those complaints will be maintained by USC for three years.

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10. Attorneys Fees: Within thirty (30) days of the signing of this agreement, USC shall pay to the California Department of Justice the amount of \$20,000 pursuant to Code of Civil Procedure section 1021.8, subdivision (b) to compensate the Attorney General for attorneys fee's incurred in investigating this matter. These funds shall be deposited in the Department of Justice's Public Rights Division Law Enforcement Fund that is established under Government Code section 12530.
11. Provision of Evidence of the USC's Compliance with Agreement. By November 1, 2004, USC shall submit a letter to the Attorney General with documentation regarding the acquisition or retrofitting of the Trams, Campus Cruisers and vans as described in paragraphs 6-8, and the dissemination of information and receipt of any complaints described in paragraph 9. USC shall submit a second letter to the Attorney General addressing the issues specified in paragraphs 6-9 by November 1, 2005. Upon the Attorney General's request, USC will make its transportation systems available for on-site inspections and provide additional documentation regarding its Trams, Campus Cruisers, and vans as deemed appropriate by the Attorney General to monitor compliance with this Agreement.
12. Release of Claim. The Attorney General hereby releases and discharges USC, and any and all of USC's agents, employees, servants, attorneys, successors, assigns, and assignors (collectively the "Releasees"), jointly and severally, from any and all claims, demands, and/or causes of action, known or unknown, suspected or unsuspected, which the Attorney General has against the Releasees for USC's alleged violations of Civil Code sections 54 and 54.1, and the ADA as described in paragraphs 1 and 2.
13. This Agreement is limited to USC's alleged violations of Civil Code sections 51 and 54.1 and the ADA that are related to its Tram Service, Campus Cruisers, and Vanpool Program that are related to the Complaint, as described in paragraphs 1 and 2. This Agreement does not remedy and should not be construed to remedy any other potential violations of Civil Code sections 51 and 54.1, Title III of the ADA (42 U.S.C. §§ 12181-12186; 49 C.F.R. §§ 37.1-37.171; 49 C.F.R. §§ 38.1-38.37), or any other state or federal law.
14. If the Attorney General believes that USC has failed to comply with any provision of this Agreement, the Attorney General shall provide USC with written notification of its alleged breach of this Agreement ("written notification"). The Attorney General shall mail this written notification to USC's General Counsel and attempt to resolve the issue or issues in good faith prior to initiating a civil action to enforce the terms of the Agreement.
15. Amendment or Modification. This Agreement may be amended or modified only by an instrument in writing signed by USC's Senior Vice President for Administration and the Attorney General.

16. Any failure of the Attorney General to enforce any provision of this Agreement shall not be construed as a waiver of his right to enforce other deadlines and provisions of this Agreement.
17. This Agreement is a public document pursuant to Government Code section 6250 et seq. A copy of this Agreement, or any information contained in it, may be made available to any person.
18. Successors and Assigns. All of the terms of this Agreement shall be binding upon and inure to the benefit of USC and its successors in interest and assigns. USC has a duty to so notify all such successors in interest and assigns of this Agreement.
19. Effective Date. This Agreement shall become effective only when each named Party has executed it. This Agreement shall be effective as of the date the last Party signs it, whether that signature shall be affixed to an original or to a counterpart of the Agreement.
20. Knowing and Voluntary. The Parties to this Agreement, and each of them, acknowledge, declare, and represent that they have carefully read this Agreement and know the contents of it, and fully understand all of the terms and conditions set forth in it. The Parties further acknowledge, declare, and represent that they entered into this Agreement freely, knowingly, voluntarily, and without coercion. In executing this Agreement, USC acknowledges, declares, and represents that it relies solely on its own judgment, belief, and knowledge, and, if desired, on the advice and recommendations of its own independently selected counsel. In executing this Agreement, the Attorney General acknowledges, declares, and represents that he relies solely on his own judgment, belief, and knowledge.
21. Complete and Integrated Agreement. This instrument reflects the entire Agreement and understanding between the Parties regarding the Complaint. This Agreement supersedes and replaces all prior agreements, negotiations and/or proposed, but unexecuted agreements, whether written and/or oral. Neither any Party nor any attorney for any Party has made any promise, representation, or warranty whatsoever, express or implied, concerning the Complaint or the Agreement to induce any Party to execute this Agreement. Each Party acknowledges that he/it has not executed this Agreement in reliance on any such promise, representation, or warranty not covered in the Agreement. No other statement, promise, or agreement, either written or oral, made by either Party or agents of either Party, that is not contained in this written Agreement, shall be enforceable regarding the accessibility of USC's Tram Service, Campus Cruiser Program and Vanpools Program. This Agreement finally resolves and disposes of all issues, claims, and remedies between the Parties regarding or relating to the Complaint.
22. Governing Law. The Parties agree that this Agreement shall in all respects be interpreted, enforced, and governed under and pursuant to the laws of the State of California and the ADA, without giving effect to its conflict of laws provisions.

23. Counterparts. This Agreement may be executed in counterparts, and all such counterparts so executed shall constitute one Agreement, which shall be binding on all the Parties, notwithstanding that all the Parties are not signators to the original, or the same counterparts. Facsimile copies of this Agreement, or counterparts showing execution of the Agreement by all Parties, shall be of the same validity, force and effect as the original or originals.
24. Neutral Construction. This Agreement shall be deemed for all purposes to have been drafted equally by all Parties and no presumption shall apply as against the drafter of this Agreement or in favor of the non-drafting Party.
25. Use of Captions. The captions of titles of the various articles of this Agreement are used for convenience purposes only, and are not intended to, and shall not in any way, enlarge or diminish the obligations of the Parties, or affect the meaning or construction of this Agreement.
26. Severability. In the event any term, particular provision, or portion of a provision is found to be invalid or unenforceable by a court of competent jurisdiction, that invalidity shall not affect the validity of the remaining terms and provisions of this Agreement. This Agreement shall be valid and enforceable to the maximum extent permitted by law and shall continue to have full force and effect.

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27. Warranty of Authority. Each signer of this Agreement signing on behalf of the Parties expressly represents and warrants that s/he has authority to execute and bind the Party or Parties on behalf of which s/he executes this Agreement.

**EXECUTION OF SETTLEMENT AGREEMENT**

**AGREED AND CONSENTED TO:**

**For The People of the State of California:**

Dated: August 25, 2004

BILL LOCKYER  
Attorney General of the State of California

BY: ANGELA SIERRA  
Supervising Deputy Attorney General

**For the University of Southern California:**

Dated: August 20, 2004

BY: DENNIS F. DOUGHERTY  
Senior Vice President  
Administration