

**Before the  
Federal Motor Carrier Safety Administration**

In the Matter of:	)	HQ Tracking No.:
	)	FMCSA-ADA-0002-
AUTOBUSES EJECUTIVOS, L.L.C.	)	AUTOBUSES EJECUTIVOS, L.L.C.
DBA OMNIBUS EXPRESS	)	
3200 Telephone Road	)	DOT No.: 1044521
Houston, Texas 77023	)	MC No.: 436404

**CONSENT AGREEMENT**

The FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION, Office of Enforcement & Program Delivery (hereinafter “**FMCSA**”), the UNITED STATES DEPARTMENT OF JUSTICE, Civil Rights Division, Disability Rights Section (hereinafter “**DOJ**” or “**United States**”) and AUTOBUSES EJECUTIVOS, L.L.C. DBA OMNIBUS EXPRESS, DOT No. 1044521 (hereinafter “**OMNIBUS EXPRESS**”) hereby agree as follows:

1. FMCSA’s statutory and regulatory authority: the U.S. Department of Transportation (USDOT) is a designated agency with regulatory responsibilities under the Americans with Disabilities Act of 1990 (ADA), Pub. L. 101-336, 104 Stat. 327 (July 26, 1990). USDOT has issued regulations governing Over-the-Road Bus (OTRB) operations at 49 C.F.R. Part 37, Subpart H. The Over-the-Road Bus Transportation Accessibility Act of 2007, Pub. L. 110-291, 122 Stat 2915 (July 30, 2008), amended U.S. Code Title 49 making a motor carrier’s compliance with the ADA accessibility requirements a condition of its registration. Pursuant to 49 U.S.C. § 13905(e), FMCSA is authorized to revoke a motor carrier’s registration/operating authority after the motor carrier has been issued an order under 49 U.S.C. § 14701 to comply with the accessibility requirements and willfully does not comply with the order for a period of 30 days.
2. DOJ’s statutory and regulatory authority: The Attorney General is responsible for administrating and enforcing title III of the ADA, 42 U.S.C. §§ 12181-12189, and the relevant regulations implementing title III, 28 C.F.R. Part 36 and 49 C.F.R. Parts 37 and 38. Pursuant to 42 U.S.C. § 12188(b)(1)(B), the Attorney General may commence a civil action in any appropriate United States district court if the Attorney General believes that “any person or group of persons is engaged in a pattern or practice of discrimination ... or any person or group of persons has been discriminated against ... and such discrimination raises an issue of general public importance.”

In consideration of the following facts:

3. A. On or about January 11, 2011, FMCSA conducted an investigation of OMNIBUS EXPRESS’S compliance with 49 C.F.R. Part 37 Subpart H. FMCSA found OMNIBUS EXPRESS in significant non-compliance with these regulations.

- B. On February 10, 2011, FMCSA issued an Order to Show Cause (OSC) to OMNIBUS EXPRESS, pursuant to 49 U.S.C. § 14701, providing OMNIBUS EXPRESS with an opportunity to show cause why FMCSA should not revoke OMNIBUS EXPRESS'S motor carrier registration/operating authority, pursuant to 49 U.S.C. § 13905(d)(1), for OMNIBUS EXPRESS'S failure to comply with the ADA OTRB regulations contained in 49 C.F.R. Part 37, Subpart H. To avoid revocation of its operating authority, OMNIBUS EXPRESS was ordered, within 30 days of service of the OSC, to present evidence sufficient to demonstrate that:
- i. No less than 50 percent of OMNIBUS EXPRESS'S OTRB fleet, which provides fixed-route service, is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, pursuant to 49 C.F.R. § 37.185(a); and
  - ii. The new OTRBs OMNIBUS EXPRESS leased or purchased in the last 12 months are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, pursuant to 49 C.F.R. § 37.183(a);
- C. OMNIBUS EXPRESS is a private entity providing specified public transportation services, is primarily engaged in the business of transporting people, and its operations affect commerce, pursuant to the ADA (42 U.S.C. §§ 12181(10) and 12184(a)), and its implementing regulations, 28 C.F.R. § 36.104 and 49 C.F.R. § 37.5(f).
- D. OMNIBUS EXPRESS is a large operator of OTRBs, operating over fixed routes, within the meaning of 42 U.S.C. §§ 12181(4) and (5) and 49 C.F.R. §§ 37.3 and 369.3;
- E. OMNIBUS EXPRESS has gross annual transportation revenues of approximately \$17,461,117.00;
- F. Ninety to ninety-five percent of OMNIBUS EXPRESS'S OTRB fleet is used in fixed route service;
- G. OMNIBUS EXPRESS is subject to the ADA OTRB regulations contained in 49 C.F.R. Part 37, Subpart H; and
- H. FMCSA has provided OMNIBUS EXPRESS with written information about the ADA regulations for OTRB companies.
4. FMCSA, DOJ, and OMNIBUS EXPRESS hereby agree that:

- A. At the time the OSC was issued, OMNIBUS EXPRESS was in willful noncompliance with 49 C.F.R. §§ 37.185(a) and 37.183(a) for its failure to ensure that no less than 50 percent of its OTRB fleet, with which it provides fixed-route service, was readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs; and for leasing new OTRBs in the last 12 months that were not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. OMNIBUS EXPRESS remains in significant noncompliance with 49 C.F.R. §§ 37.185(a) and 37.183(a) as of the date of this agreement;
- B. By signing this consent agreement, OMNIBUS EXPRESS waives any right it has to subsequently challenge the validity of FMCSA's claim that OMNIBUS EXPRESS is or was in violation of 49 C.F.R. §§ 37.185(a) and 37.183(a);
- C. As of the date of this agreement, OMNIBUS EXPRESS acknowledges that it has reduced its fleet to 25 OTRBs, 4 of which are wheelchair accessible OTRBs;
- D. As a result of OMNIBUS EXPRESS'S noncompliance with the ADA OTRB regulations, FMCSA is authorized to immediately revoke OMNIBUS EXPRESS'S motor carrier registration/operating authority pursuant to 49 U.S.C. 13905(d)(1);
- E. As a result of OMNIBUS EXPRESS'S noncompliance with the ADA OTRB regulations, DOJ is authorized to commence a civil action in any appropriate United States district court, but the Parties have reached agreement that it is in the Parties' best interests, and the United States believes that it is in the public interest, to resolve this dispute without engaging in protracted litigation;
- F. OMNIBUS EXPRESS shall pay a civil penalty in the amount of **\$55,000.00** as authorized by 42 U.S.C. § 12188(b)(2)(C) and 28 C.F.R. § 36.504(a)(3), as amended, in order to vindicate the public interest:

OMNIBUS EXPRESS' FIRST PAYMENT, in the amount of **\$5,000.00**, shall be paid within 30 days of the date of OMNIBUS EXPRESS', DOJ's, or FMCSA's execution of this Agreement, whichever date is latest;

OMNIBUS EXPRESS' SECOND PAYMENT, in the amount of **\$25,000.00** shall be paid on or before July 1, 2011;

OMNIBUS EXPRESS' THIRD PAYMENT, in the amount of **\$25,000.00** shall be paid on or before October 1, 2011.

The payments shall be made by check payable to the U.S. Treasury and sent by overnight courier to:

David W. Knight  
U.S. Department of Justice  
Disability Rights Section, Room 4040  
1425 New York Ave., NW  
Washington, DC 20005  
(202) 307-0663

or by U.S. Postal Service to:

David W. Knight  
U.S. Department of Justice  
Disability Rights Section  
950 Pennsylvania Ave., NW – NYA  
Washington, DC 20530

- G. If OMNIBUS EXPRESS fails to make any payment of the aforementioned civil penalty, as agreed to herein and described above, OMNIBUS EXPRESS agrees that FMCSA may proceed to revoke OMNIBUS EXPRESS' motor carrier registration/operating authority;
- H. No later than **JULY 1, 2011**, OMNIBUS EXPRESS shall provide written evidence (including but not limited to sworn affidavits, vehicle purchase records, inventory of the OTRB fleet providing fixed route service, records identifying the OTRBs that have wheelchair lifts, training records, training expense receipts, and lift maintenance records) sufficient to establish that:
- i. No less than 50 percent of the OMNIBUS EXPRESS OTRB fleet, with which it provides fixed-route service, is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, pursuant to 42 U.S.C. § 12184(b)(4)(A) and 49 C.F.R. § 37.185(a);
  - ii. All new OTRBs OMNIBUS EXPRESS purchased or leased in the 12 months preceding **JULY 1, 2011** are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, pursuant to 42 U.S.C. § 12184(b)(4)(A) and 49 C.F.R. § 37.183(a);
  - iii. OMNIBUS EXPRESS has established a lift maintenance system pursuant to the requirements of 49 C.F.R. § 37.203(a) for all of its wheelchair accessible OTRBs, including but not limited to, ensuring a system of regular and frequent maintenance checks of lifts sufficient to determine if they are operative, and ensuring that operators report to OMNIBUS EXPRESS, by the most immediate means available, any failure of lift service; and

- iv. OMNIBUS EXPRESS has trained its personnel, including all of its drivers, 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, pursuant to the requirements of 49 C.F.R. §§ 37.173 and 37.209,
- I. OMNIBUS EXPRESS shall serve by overnight mail the aforementioned evidence of compliance, on or before **JULY 1, 2011**, upon the Associate Administrator for Enforcement & Program Delivery, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave, SE, Washington, DC 20590.
- J. If OMNIBUS EXPRESS fails to provide sufficient evidence by mail on or before **JULY 1, 2011**, OMNIBUS EXPRESS agrees that FMCSA may proceed to revoke OMNIBUS EXPRESS'S motor carrier registration/operating authority pursuant to 49 U.S.C. § 13905.
- K. FMCSA will not take action to revoke OMNIBUS EXPRESS'S motor carrier registration/operating authority based on a violation of 49 C.F.R. §§ 37.183(a) or 37.185(a) prior to **JULY 1, 2011**.
- L. FMCSA, in its sole discretion, shall determine if the aforementioned submission of evidence shows compliance with the ADA OTRB regulations referenced herein. If OMNIBUS EXPRESS makes each of its payments as described herein, and if FMCSA finds there is sufficient evidence of compliance with the ADA OTRB regulations, FMCSA shall issue a Final Order finding OMNIBUS EXPRESS in compliance with the ADA OTRB regulations. If FMCSA finds insufficient evidence of compliance with the ADA OTRB regulations, FMCSA shall issue a Final Order revoking OMNIBUS EXPRESS'S registration/operating authority. An order revoking OMNIBUS EXPRESS'S motor carrier registration/operating authority will prohibit OMNIBUS EXPRESS from transporting passengers for compensation in interstate commerce. In the exercise of its discretion, FMCSA may conduct an onsite review to determine whether OMNIBUS EXPRESS is in compliance with the ADA OTRB regulations, as referenced herein.
- M. In consideration for this Agreement, the United States will refrain from filing a civil action alleging discrimination based on the facts set forth above, except as provided in paragraph N below.
- N. The United States may review compliance with this Agreement or title III of the ADA at any time. If the United States believes that this Agreement or any portion of it has been violated, it will raise its concerns with OMNIBUS EXPRESS and

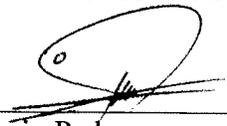
the Parties will attempt to resolve the concerns in good faith. The United States will give OMNIBUS EXPRESS 30 days from the date it notifies OMNIBUS EXPRESS of any breach of this Agreement to cure that breach before instituting an enforcement action. If the United States is unable to reach a satisfactory resolution of the issue or issues raised within 30 days of the date it provides notice to OMNIBUS EXPRESS, it may institute a civil action in the appropriate United States district court to enforce this Agreement or title III of the ADA.

5. OMNIBUS EXPRESS waives any and all rights to challenge any FMCSA final determination and/or order resulting from OMNIBUS EXPRESS'S failure to submit sufficient evidence of ADA compliance on or before **JULY 1, 2011**.
6. Nothing in this consent agreement shall be construed to relieve or limit OMNIBUS EXPRESS'S duty to comply with all applicable United States Department of Transportation statutes and implementing regulations, including the Federal Motor Carrier Safety Regulations (FMCSRs), Hazardous Material Regulations (HMRs), Federal Motor Carrier Commercial Regulations (FMCCRs), and the ADA OTRB regulations.
7. This consent agreement is an enforceable contract voluntarily entered into by the Parties.
8. Any forbearance by FMCSA in exercising any right or remedy under this consent agreement or provided by law, shall not act as a waiver of or preclude the exercise of any right or remedy hereunder or otherwise available by law, nor shall it in any way affect the validity of this consent agreement or any part thereof.
9. This consent agreement is not binding upon FMCSA and DOJ until executed by FMCSA and DOJ. Upon execution of this consent agreement by all three parties, the consent agreement will become a binding Order of FMCSA.
10. Execution of this consent agreement will constitute an admission by the Parties that OMNIBUS EXPRESS is in violation of 49 C.F.R. §§ 37.183(a) and 37.185(a).
11. A signatory to this document in a representative capacity for a Party to this consent agreement represents that he or she is authorized to bind that Party to this consent agreement.
12. The term of this consent agreement shall commence on the date it is signed by the last of the three parties and shall continue until the FMCSA issues its Final Order pursuant to Section 4.L. of this consent agreement. In the event OMNIBUS EXPRESS seeks to sell, transfer, or assign all or part of its corporate identity during the term of this consent agreement, as a condition of such sale, transfer, or assignment, OMNIBUS EXPRESS shall obtain and forward to FMCSA and DOJ a written statement from the proposed purchaser, transferee, assignee, controlling affiliate or other successor entity indicating it agrees to assume any and all duties and obligations of OMNIBUS EXPRESS remaining under this consent agreement

for the remaining term of the Agreement. This consent agreement, including all enumerated conditions, shall apply to, and be binding upon and enforceable against, OMNIBUS EXPRESS and OMNIBUS EXPRESS'S successors and assigns, including but not limited to, purchasers, transferees, assignees, controlled or controlling affiliates, or other successor entities.

13. This consent agreement may be executed in counterparts, all of which when taken together shall constitute a fully executed original. A facsimile signature of this consent agreement shall constitute an original signature for purposes of execution.
14. OMNIBUS EXPRESS hereby acknowledges, presents, and warrants that its representative has carefully read and understands this consent agreement, all of its terms and conditions, and its binding effect, and has been afforded sufficient time and opportunity to review this consent agreement with its attorneys, has had an opportunity to negotiate with regard to the terms of this consent agreement, is fully competent to enter into this consent agreement, and has signed this consent agreement knowingly, freely, and voluntarily. Each signatory acting on behalf of a partnership, corporation, limited liability Company, or other entity represents and warrants that he or she is authorized to act on behalf of, and bind, OMNIBUS EXPRESS in the signing of this consent agreement.
15. Should any provision of this consent agreement be held invalid or illegal, such illegality shall not invalidate the whole consent agreement, but, rather, the consent agreement shall be construed as if it did not contain the invalid or illegal part, and the rights and obligations of the Parties shall be construed and enforced accordingly.
16. OMNIBUS EXPRESS agrees that it will accept service of documents by facsimile to OMNIBUS EXPRESS'S legal counsel, Kenneth R. Hoffman, at Dysart Taylor Lay Cotter & McMonigle, PC, fax number (816) 931-7377, including but not limited to correspondence, motions, pleadings, orders and any other documents related to the above-described matter. OMNIBUS EXPRESS agrees that service of any document in, or related to, the above described matter by FMCSA to the facsimile number specified by OMNIBUS EXPRESS in this consent agreement shall constitute valid service. OMNIBUS EXPRESS further recognizes that this agreement to service by facsimile shall allow, but not require, FMCSA to use facsimile service. FMCSA, at its discretion, may serve any document in this matter by mail, facsimile, personal delivery or electronic mail.

For **AUTOBUSES EJECUTIVOS, L.L.C. DBA OMNIBUS EXPRESS**

By:  \_\_\_\_\_ Date: 2/25/2011  
Name: Mario Pedraza  
Title: General Manager

The facsimile number for service to AUTOBUSES EJECUTIVOS, L.L.C. DBA OMNIBUS EXPRESS is the facsimile number for OMNIBUS EXPRESS'S legal counsel, Kenneth R. Hoffman, at Dysart Taylor Lay Cotter & McMonigle, PC: (816) 931-7377.

**PLEASE FAX THE SIGNED AGREEMENT TO FMCSA AT (202) 366-3375, attn:**

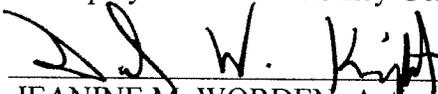
William A. Quade  
Associate Administrator for Enforcement & Program Delivery  
Federal Motor Carrier Safety Administration  
1200 New Jersey Ave, SE, Washington, DC 20590

For the **FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

By:  \_\_\_\_\_ Date: 3/3/2011  
WILLIAM A. QUADE  
Associate Administrator for Enforcement & Program Delivery

For the **UNITED STATES DEPARTMENT OF JUSTICE**

THOMAS E. PEREZ  
Assistant Attorney General  
SAMUEL R. BAGENSTOS  
Deputy Assistant Attorney General

By:  \_\_\_\_\_ Date: 3/9/2011  
JEANINE M. WORDEN, Acting Chief  
KATHERINE M. NICHOLSON, Acting Deputy Chief  
KATHLEEN P. WOLFE, Acting Special Legal Counsel  
DAVID W. KNIGHT, Trial Attorney  
Disability Rights Section  
Civil Rights Division