

**Before the
Federal Motor Carrier Safety Administration**

In the Matter of:)	HQ Tracking No.:
)	FMCSA-ADA-0001-TORNADO
TORNADO BUS COMPANY, INC.)	
535 East Jefferson Boulevard)	DOT No.: 565859
Dallas, Texas 75203)	MC No.: 276747

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 TORNADO BUS COMPANY, INC., DOT No. 565859 (hereinafter “**TORNADO**”) 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 May 6, 2010, FMCSA conducted an investigation of TORNADO's compliance with 49 C.F.R. Part 37 Subpart H. FMCSA found that TORNADO was in significant non-compliance with these regulations.
 - B. FMCSA has cited TORNADO for violations of the ADA OTRB regulations contained in 49 C.F.R. Part 37, Subpart H.
 - C. On June 8, 2010, FMCSA issued an Order to Show Cause (OSC) to TORNADO, pursuant to 49 U.S.C. § 14701, providing TORNADO with an opportunity to show cause why FMCSA should not revoke TORNADO's motor carrier registration/operating authority, pursuant to 49 U.S.C. § 13905(d)(1), for TORNADO's failure to comply with the ADA OTRB regulations. To avoid revocation of its operating authority, TORNADO was ordered, within 30 days of service of the OSC, to present evidence sufficient to demonstrate that:
 - i. No less than 50 percent of TORNADO'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);
 - ii. The new OTRBs TORNADO purchased or leased 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);
 - iii. TORNADO has established a lift maintenance system pursuant to the requirements of 49 C.F.R. §37.203(a); and
 - iv. TORNADO has trained its personnel, including its drivers, pursuant to the requirements of 49 C.F.R. §§ 37.173 and 37.209.
 - D. On or about July 2, 2010, TORNADO filed its Reply to FMCSA's OSC. In its Reply, Tornado requested an extension of time to comply with the 50 percent accessibility requirement of 49 C.F.R. § 37.185(a); stated it entered into a contract to purchase 9 wheelchair accessible OTRBs to replace 9 OTRBs that are not in compliance with the ADA, alleged its new vehicles purchased within the last 12 months were not new; stated

its lift maintenance program was maintained and progressing from an informal system of regular and frequent maintenance checks to a formalized systemic program and procedure for regular and frequent maintenance checks; and stated it had trained its staff, and 43 of its 110 OTRB drivers, pursuant to the requirements of 49 C.F.R. §§ 37.173 and 37.209. (See Tornado Reply to OSC at pp. 1-6).

- E. On or about August 9, 2010, TORNADO, represented by counsel, participated in discussions with FMCSA concerning the cited ADA OTRB violations. TORNADO submitted further documentation regarding its fleet of OTRBs, its training program, its purchases of buses in the last 12 months, its contracts to purchase 10 additional wheelchair accessible OTRBs, and its lift maintenance program. As of August 9, 2010, Tornado claimed to have 2 wheelchair accessible OTRBs out of a fleet of 53 OTRBs (3.77 percent).
- F. TORNADO 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).
- G. TORNADO 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;
- H. TORNADO has gross annual transportation revenues of approximately \$24,064,460.00;
- I. One-hundred percent of TORNADO's OTRB fleet is used in fixed route service;
- J. TORNADO is subject to the ADA OTRB regulations contained in 49 C.F.R. Part 37, Subpart H; and
- K. FMCSA has provided TORNADO with written information about the ADA regulations for OTRB companies.

4. FMCSA, DOJ, and TORNADO hereby agree that:
- A. At the time the OSC was issued, TORNADO was in willful noncompliance with 49 C.F.R. § 37.185(a) for its failure to ensure that no less than 50 percent of TORNADO's OTRB fleet, with which it provides fixed-route service, was readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. Tornado remains in significant noncompliance with 49 C.F.R. § 37.185 as of the date of this agreement;
 - B. By signing this consent agreement, TORNADO waives any right it has to subsequently challenge the validity of FMCSA's claim that TORNADO is or was in violation of 49 C.F.R. § 37.185(a);
 - C. As of the date of this agreement, TORNADO acknowledges that it has no more than 4 wheelchair accessible OTRBs out of TORNADO's fleet of 53 OTRBs that provide fixed-route service;
 - D. As a result of TORNADO's noncompliance with the ADA OTRB regulations, FMCSA is authorized to immediately revoke TORNADO's motor carrier registration/operating authority pursuant to 49 U.S.C. 13905(d)(1);
 - E. As a result of TORNADO'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. TORNADO shall pay a civil penalty in the amount of **\$55,000.00**, in three payments described below, 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:

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

TORNADO'S SECOND PAYMENT, in the amount of **\$25,000.00** shall be paid on or before February 1, 2011;

TORNADO'S THIRD PAYMENT, in the amount of **\$25,000.00** shall be paid on or before May 1, 2011.

The payments shall be made by check payable to the U.S. Department of Justice 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 TORNADO fails to make any payment of the aforementioned civil penalty, as agreed to herein and described above, Tornado agrees that FMCSA may proceed to revoke TORNADO's motor carrier registration/operating authority;
- H. No later than February 1, 2011, TORNADO 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 TORNADO 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 TORNADO purchased or leased in the 12 months preceding February 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. TORNADO 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 TORNADO, by the most immediate means available, any failure of lift service; and
 - iv. TORNADO 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. TORNADO shall serve by overnight mail the aforementioned evidence of compliance, on or before February 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 TORNADO fails to provide sufficient evidence by mail on or before February 1, 2011, Tornado agrees that FMCSA may proceed to revoke TORNADO's motor carrier registration/operating authority pursuant to 49 U.S.C. § 13905.
 - K. FMCSA will not take action to revoke TORNADO's motor carrier registration/operating authority based on a violation of 49 C.F.R. §§ 37.173, 37.183(a), 37.185(a), 37.203(a), 37.209 prior to February 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 TORNADO 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 TORNADO 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 TORNADO's registration/operating authority. An order revoking TORNADO's motor carrier registration/operating authority will

prohibit TORNADO from transporting passengers for compensation in interstate commerce. In the exercise of its discretion, FMCSA may conduct an onsite review to determine whether Tornado is in compliance with the ADA OTRB regulations, as referenced herein.

- M. In consideration for the Agreement, set forth above, 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 TORNADO and the Parties will attempt to resolve the concerns in good faith. The United States will give TORNADO 30 days from the date it notifies TORNADO 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 TORNADO it may institute a civil action in the appropriate United States district court to enforce this Agreement or title III of the ADA.
5. TORNADO waives any and all rights to challenge any FMCSA final determination and/or order resulting from TORNADO's failure to submit sufficient evidence of ADA compliance on or before February 1, 2011.
 6. Nothing in this consent agreement shall be construed to relieve or limit TORNADO'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 TORNADO is in violation of 49 C.F.R. §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. This consent agreement, including all enumerated conditions, shall apply to, be binding upon, and enforceable against TORNADO and TORNADO's successors and assigns, including but not limited to, subsequent purchasers, transferees, and/or any successor or affiliated entities. In the event that TORNADO seeks to sell, transfer, or assign all or part of itself during the term of this consent agreement, as a condition of sale, transfer, or assignment, TORNADO shall obtain the written accession of the successor or assignee to any obligation remaining under this consent agreement for the remaining term of this consent agreement.
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. TORNADO 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 he or she is authorized to act on behalf of, and bind TORNADO 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. TORNADO agrees that it will accept service of documents by facsimile to TORNADO's legal counsel, the Mark K. Vasquez Law Firm, fax number (214) 722-2299, including but not limited to correspondence, motions, pleadings, and orders, in, and any other documents related to the above-described matter. TORNADO agrees that service of any document in, or related to, the above

described matter by FMCSA to the facsimile number specified by TORNADO in this consent agreement shall constitute valid service. TORNADO 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 **TORNADO BUS COMPANY, INC.**

By:  _____ Date: Sep 14, 2010
Name: Juan Vasquez
Title: President

The facsimile number for service to TORNADO BUS COMPANY, INC. is the facsimile number for TORNADO's legal counsel, the Mark K. Vasquez Law Firm, fax no. **(214) 722-2299**.

**PLEASE FAX THE SIGNED AGREEMENT TO FMCSA AT
FAX NO. (202) 366-3375 to:**

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: 9/16/10
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: 9/23/10
JOHN L. WODATCH, Chief
Allison Nichol, Deputy Chief
Philip L. Breen, Special Legal Counsel
David W. Knight, Trial Attorney
Disability Rights Section
Civil Rights Division