

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement"), which is effective as of February 7, 2012, is entered into between Plaintiff Ruby Elaine Culpepper ("Plaintiff") on the one hand, and the City of Central, Colorado ("Central City") and Colorado Coach Transportation, LLC ("CCT") on the other (collectively "Defendants").

RECITALS

A. Plaintiff claims that she is an individual with a disability that requires her to use a motorized scooter for mobility.

B. Defendant Central City is a public entity as defined under the ADA.

C. Defendant CCT is a private entity that provides vehicles for transportation of the public and operates certain public transportation services.

D. Defendants have entered into a contract for the purposes of operating the CCFR service.

E. The CCFR service is a fixed route Shuttle service that provides transportation to the public at scheduled times along a prescribed route in the towns of Central City, Colorado and Blackhawk, Colorado.

F. Plaintiff has visited Central City, Colorado and Black Hawk, Colorado and has attempted to use the CCFR service. Plaintiff intends to visit these towns in the future and asserts that she will use the CCFR service if it is operated in compliance with this Agreement.

G. On or about August 23, 2011, Plaintiff filed an action against Defendants in the United States District Court for the District of Colorado, Civil Action No. 11-cv-02204-MSK-MJW (the "Lawsuit"), in which she alleges that Defendants violated the Americans with Disabilities Act ("ADA") and that Defendant CCT also violated the Colorado Anti-Discrimination Act ("CADA") by discriminating against individuals who use wheelchairs in Defendants' operation of the Central City Free Ride ("CCFR").

H. Prior to filing the lawsuit, Plaintiff submitted an administrative complaint to the Federal Transportation Administration regarding the wheelchair accessibility of the CCFR.

I. Defendants have denied and continue to deny any and all liability or wrongdoing to Plaintiff. By entering into this Agreement, Defendants do not admit any impropriety, wrongdoing or liability of any kind whatsoever, including any as to the claims raised in the Lawsuit, and on the contrary, expressly deny the same. Defendants have entered into this Agreement solely for the purpose of avoiding the expense, inconvenience, distraction and delay of the Lawsuit, without admitting any wrongdoing or liability whatsoever.

J. The Parties have entered into this Agreement as a compromise of disputed claims.

DEFINITIONS

Any term not defined in this Agreement that relates to the provision of transportation services for individuals with disabilities shall have the meaning set forth in the ADA and its implementing regulations. As used in this Agreement the following terms have the meanings set forth in this Section:

- A. "Accessible" shall have the meaning ascribed thereto in 49 C.F.R. § 37.3.
- B. "CCFR" shall mean Central City Free Ride, or, if Defendants operate this service under a different name/s, the name/s under which the service operates.
- C. "Parties" shall refer to Plaintiff and both Defendants collectively.
- D. "Party" shall refer to any single Plaintiff or Defendant.
- E. "Shuttle" shall mean any motorized vehicle Defendants utilize in the operation of the CCFR for the transportation of passengers.

AGREEMENT

NOW THEREFORE, the Parties agree as follows:

1. Release and Discharge from Plaintiff. In consideration of the good and adequate consideration provided for herein, the sufficiency of which is hereby acknowledged and confessed, Plaintiff does hereby for herself, her administrators, predecessors, successors, assigns, agents, servants, and all other persons, firms, corporations, associations or partnerships and any and all other parties claiming through or under her, unequivocally and without reservation, release, acquit, and forever discharge Defendants and their employees, assigns, agents, predecessors, personal representatives, heirs, successors, servants, administrators, attorneys, subsidiaries, obligees and all other persons, firms, corporations, associations and partnerships of and from any and all liability, actions, causes of action, claims, demands, damages, costs, loss of services, loss of properties, expenses, compensation and any and all consequential damages or injuries, that Plaintiff now has, or which may hereafter arise, be discovered or accrue, known or unknown, contingent or liquidated, suspected or unsuspected, which were or could have been asserted in the Lawsuit, including but not limited to claims under the Americans with Disabilities Act and/or the Colorado Anti-Discrimination Act, [including claims for attorney's fees] any other federal, state statute or common law, and any other claims arising out of Ms. Culpepper's use of or attempts to utilize the CCFR up through and including the date of Plaintiff's signature to this Agreement.

2. Representations Relating to Plaintiff's Release. The Plaintiff hereby acknowledges and agrees that the release set forth above in paragraph 1 is a GENERAL RELEASE, and that she further expressly waives any and all claims for damages which exist as

of this date, but of which she does not know or suspect to exist, whether through ignorance, oversight, error, negligence, or otherwise, and which, if known, would materially affect her decision to enter into this Agreement. Plaintiff further agrees that she has accepted the benefit of the consideration called for herein as a complete compromise of matters involving disputed issues of law and fact, and she assumes the risk that the facts or law may be otherwise than she believes. It is understood and agreed that this settlement is a compromise of a disputed claim, and the consideration provided for herein is not to be construed as an admission of liability on the part of Defendants, by whom liability is expressly denied.

3. Shuttle Service Operation. In consideration for Plaintiff's release of claims and other promises, Defendants agree to utilize only ADA Accessible Shuttles in the operation of the CCFR at all times during the regular hours of operation, in compliance with all applicable provisions of 49 C.F.R., Subtitle A, Part 37 (hereinafter "Part 37") ("Transportation Services for Individuals with Disabilities (ADA)") and 49 C.F.R., Subtitle A, Part 38 (hereinafter "Part 38") ("Americans with Disabilities Act (ADA) Accessibility Specifications for Transportation Vehicles"). In the event Central City enters into any additional or different agreements with any private or public transportation provider for the CCFR operation, Central City agrees that any subsequent provider of the CCFR operation must comply with this paragraph.

4. Payment to Plaintiff. As further consideration, Defendants shall tender to Plaintiff a total of Two Thousand Dollars (\$2,000.00) ("Settlement Funds") via check made payable to Ruby Elaine Culpepper, which check shall be delivered to Plaintiff's attorney of record within five (5) days of execution of this Agreement.

5. Dismissal of Actions. In consideration of the releases set forth in this Agreement and the other good and adequate consideration provided for herein, the sufficiency of which is hereby acknowledged and confessed, Plaintiff agrees to file a motion for the voluntary dismissal of the Lawsuit with prejudice upon a) Plaintiff's attorney's receipt of the settlement amount and b) resolution of Plaintiff's request for attorneys fees and costs, including full payment of those attorneys fees and costs. The motion will indicate that the parties have resolved claims for attorneys fees and costs between Plaintiff and Defendants and vice versa. The motion, however, shall not be deemed a releases or waiver of claims between Central City and CCT.

6. Warranty of Capacity to Execute Agreement. Plaintiff represents and warrants that no other person or entity has or has had any interest to the claims, demands, obligations, or causes of action referred to in this Agreement, and that Plaintiff has the sole right and exclusive authority to execute this Agreement, and that she has not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations, or causes of action released or referred to in this Agreement. In the event a third party seeks to assert claims under a transferred or subrogated interest, Plaintiff will defend and hold harmless Defendants and their employees and agents for any such claims.

7. Attorneys Fees. Defendants shall tender to Plaintiff a total of \$17,302.00 via check made payable to Colorado Cross-Disability Coalition, which check shall be delivered to Plaintiff's attorney of record within five (5) days of execution of this Agreement.

8. Entire Agreement and Successors in Interest. This Agreement contains the entire agreement between the Parties, and the terms of this Agreement are contractual and not a mere recital. This Agreement shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, devisees, agents, employees, officers, directors, trustees, conservators, guardians, beneficiaries, heirs, successors and assigns of each Party.

9. No Admission of Liability. It is understood and agreed that this Agreement is a compromise of disputed claims, and that consideration thereon is not to be construed as an admission of liability on the part of Defendants or their employees and agents, all of whom expressly deny liability.

10. Mistake. The Parties expressly assume all risks that this Agreement was a result of any mistake of any kind, waiving all claims or defenses based upon the doctrine of mistake. This Agreement shall act as an accord and satisfaction with respect to the Parties and all claims designated herein.

11. Severability. If any provision of this Agreement shall be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired thereby.

12. Headings. The headings of the various paragraphs contained herein are for convenience of reference only and shall not affect the meaning or construction of any of the provisions of this Agreement.

13. Enforcement. If any party believes that another party has violated the terms of this Agreement, the non-breaching party may commence an action in Gilpin County District Court. The prevailing party in any such action will be entitled to its reasonable costs and attorneys fees, in addition to actual damages and an injunction, where applicable. As a condition precedent to filing such an action, the non-breaching party shall provide notice to the breaching party in order to cure any breach of this Agreement. The breaching party shall have ten (10) days to rectify any alleged breach of this Agreement. If not cured, the non-breaching party may then commence suit under this paragraph. This remedy will not preclude Plaintiff from seeking relief under the ADA or the CADA for future conduct of the Defendants.

14. Communication to the Parties. Any notifications or communications required or permitted to be given to any party under this Agreement shall be given in writing by depositing it in the U.S. Mail, and via e-mail, addressed as follows:

To Defendant Central City:

Josh A. Marks
Berg Hill Greenleaf & Ruscitti, LLP
1712 Pearl Street
Boulder, Colorado 80302
jam@bhgrlaw.com

Linda C. Michow
Widner, Michow & Cox, LLP
13133 East Arapahoe Road, Suite 100
Centennial, CO 80112
lmichow@wmcattorneys.com

To Defendant CCT:

Charles Kimball
Kimball & Nespor, P.C.
5400 Ward Road
Bldg. 3, Suite 150
Arvada, Colorado 80002
knpc@qwestoffice.net

To Plaintiffs:

Kevin W. Williams
Andrew C. Montoya
Colorado Cross-Disability Coalition
655 Broadway, Suite 775
Denver, Colorado 80202
kwilliams@ccdconline.org
amontoya@ccdconline.org

If any of the above addresses change, it is the responsibility of the Party whose address is changing to give written notice of said change to all other Parties within thirty (30) business days following the effective date of said change.

15. Construction of Agreement. Except to the extent modified herein, this entire Agreement shall be construed and interpreted in accordance with the laws of the State of Colorado. Further, the language of this Agreement shall be construed as a whole, according to its intent, and not strictly for or against any of the Parties, regardless of who drafted or was primarily responsible for drafting any of the language in this Agreement. The Parties have been given the opportunity to object to, request modification of, or reject any clause or provision herein to which they do not agree. Should any court find any provision in this Agreement to be ambiguous, then such provision shall be determined in accordance with the Parties' express intention that this Agreement be construed in the broadest possible manner, in accordance with the Parties' express intention that all disputes asserted by Plaintiff against Defendants and/or their employees and agents in the Lawsuit be forever resolved.

16. Representation of Comprehension of Document. In entering into this Agreement, the Parties each represent that they have relied upon the legal advice of their own respective attorneys, who were the attorneys of their own choice, and that the terms of the Agreement have been completely read and explained to them by their respective attorneys, and that the terms are fully understood and voluntarily accepted by them, and that they have signed the Agreement as

their own free acts. Except as provided for herein, the Parties have not relied upon any statements or representations made by any other Party or by any of their agents, attorneys, employees or other persons representing her in the course of negotiating this Agreement.

17. Additional Documents. The Parties have agreed to cooperate fully and execute any and all supplementary documents and to take all additional actions which may be necessary or appropriate to give full force and effect to the terms of this Agreement, including filing any stipulated or voluntary motion to dismiss the Lawsuit and the FTA Complaint with prejudice.

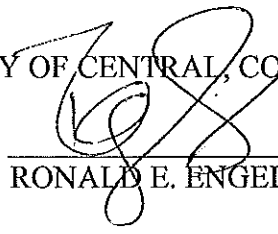
18. Facsimile. Signatures hereunder received by facsimile with proof of receipt shall be deemed to represent originals. In addition to facsimile signatures, the Parties hereby agree to provide original signatures upon request.

19. Execution of Agreement. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute the same instrument.

20. Term of Agreement. This Agreement shall be effective for a term of one year from the date of Plaintiffs' signature hereto. The Obligations contained in paragraph 3 shall also terminate in the event that the CCFR operation ceases before the one year term of this Agreement.

CITY OF CENTRAL, COLORADO

COLORADO COACH TRANSPORTATION, LLC

By: 
RONALD E. ENGELS, Mayor

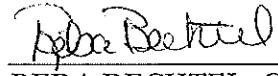
By: _____

Its: _____

Date: Feb 7, 2012

Date: _____

ATTEST:

By: 
REBA BECHTEL, City Clerk


RUBY ELAINE CULPEPPER

Date: _____

APPROVAL AS TO FORM:

BERG HILL GREENLEAF & RUSCITTI, LLP

KIMBALL & NESPOR, P.C.


Josh A. Marks
Berg Hill Greenleaf & Ruscitti, LLP
1712 Pearl Street
Boulder, CO 80302
jam@bhgrlaw.com

Charles Kimball
Kimball & Nespor, P.C.
5400 Ward Road, Bldg 3, Suite 150
Denver, CO 80202
knpc@qwestoffice.net

COLORADO CROSS-DISABILITY COALITION LEGAL PROGRAM

Kevin W. Williams
Andrew C. Montoya
655 Broadway, Suite 775
Denver, CO 80203
kwilliams@ccdconline.org
amontoya@ccdconline.org

CITY OF CENTRAL, COLORADO

COLORADO COACH TRANSPORTATION, LLC

By: _____

By: Patrick Barton

Its Mayor:

Its: manager

Date: _____

Date: 1-31-2012

RUBY ELAINE CULPEPPER

Date: _____

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CITY OF CENTRAL, COLORADO

COLORADO COACH TRANSPORTATION, LLC

By: RONALD E. ENGELS, Mayor

By: _____

Its: _____

Date: _____

Date: _____

ATTEST:

By: REBA BECHTEL, City Clerk

RUBY ELAINE CULPEPPER

Ruby Elaine Culpepper

Date: Feb 02 2012

APPROVAL AS TO FORM:

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amontoya@ccdconline.org

CITY OF CENTRAL, COLORADO

COLORADO COACH TRANSPORTATION, LLC

By: _____
RONALD E. ENGELS, Mayor

By: _____

Its: _____

Date: _____

Date: _____

ATTEST:

By: _____
REBA BECHTEL, City Clerk

RUBY ELAINE CULPEPPER

Date: _____

APPROVAL AS TO FORM:

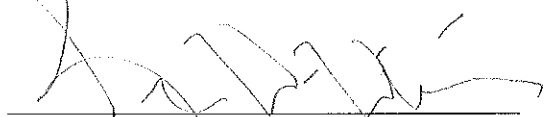
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