

# FINAL

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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JOANNE DANIELS-FINEGOLD, ROGERA )  
ROBINSON, GENE SMITH, REGINALD )  
CLARK, MADELYN JOAN GOLDEN, )  
MYRNAIRIS CEPEDA, MAUREEN CANCEMI, )  
ANDREW FORMAN, DANFORD LARKIN, )  
ROBERT PARK, THOMAS GILBERT, )  
and BOSTON CENTER FOR INDEPENDENT )  
LIVING, individually and as class representatives, )  
 ) C.A. No. 02 CV 11504 MEL  
 )  
 ) Plaintiffs )  
 )  
 )  
 )  
 ) vs. )  
 )  
 ) MASSACHUSETTS BAY TRANSPORTATION )  
 )  
 ) AUTHORITY, )  
 )  
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 )  
 ) Defendant. )  
 )

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**AMENDED SETTLEMENT AGREEMENT**  
**(With Attachments A, B and C and Exhibit X)**  
**12/4/18**

**Introduction and Preamble**

On July 25, 2002, the plaintiffs brought this civil action for declaratory and injunctive relief against the MBTA (“the Lawsuit”). On February 17, 2004, the Court certified the plaintiffs’ proposed class in the lawsuit. On June 15, 2006, the Court entered an Order for Final Judgment approving the Settlement Agreement, “wherein [t]he Court without affecting the finality of this Order for Final Judgment, hereby retains and reserves jurisdiction over implementation and performance of the Settlement Agreement pursuant to the terms of the Settlement Agreement.” The Plaintiffs and the MBTA desire to amend the Settlement Agreement to reflect the progress that has been made since entering into the Settlement Agreement.

# FINAL

This Amended Settlement Agreement hereby amends and restates the terms and conditions of the Settlement Agreement from the date of this Amended Settlement Agreement and will remain in effect until either the MBTA demonstrates substantial compliance with all the terms, the parties agree that the terms have been satisfied or there is a Court order ending the settlement.

Both the Settlement Agreement and this Amended Settlement Agreement are based on a shared vision between plaintiffs and the MBTA to make the MBTA a model transit system accessible to all. There is a mutual commitment and desire to comply not only with the letter but also the spirit of the Americans with Disabilities Act, with the complete understanding that all people with disabilities must have every opportunity to be fully participating members of our community and that fundamental to this opportunity is the right and ability to use public transportation in an equal, effective, and dignified manner.

## **Structure of the Amended Settlement Agreement**

The plaintiffs and the MBTA agree that the MBTA has satisfied a substantial number of the obligations in the original Settlement Agreement, that more actions need to be taken to satisfy some obligations, and the objectives of the agreement are best achieved by modifying other obligations. The structure of the Amended Settlement Agreement is hereby revised to reflect this status, with three (3) Attachments, as follows:

- **Amended Settlement Agreement.** This Amended Settlement Agreement identifies and states below:
  - (1) The incomplete terms; and

# FINAL

- (2) Those terms as to which the MBTA is currently in substantial compliance, and are also critically important ongoing terms so they will remain in effect for the duration of the Amended Settlement Agreement.
- In addition, the Amended Settlement Agreement modifies certain of the incomplete tasks in order to better achieve the objectives of the Settlement Agreement; those modified terms are denoted herein as “(Amended).”
- **Attachment A.** The obligations in the original Settlement Agreement which the parties concur have been fully satisfied and/or are no longer applicable.
- **Attachment B.** The obligations in the Amended Settlement Agreement as to which the MBTA is in substantial compliance and also critically important ongoing terms so they will remain in effect for the duration of the Amended Settlement Agreement and will be monitored by MBTA and the Plaintiffs. These Attachment B terms are: “It’s Done With Ongoing Monitoring.”
- **Attachment C.** The Parties have agreed upon various accessibility commitments to become effective upon full compliance with the terms of the Amended Settlement Agreement. These post-settlement accessibility commitments shall be monitored by the newly formed community engagement group and not by the Plaintiffs or subject to federal oversight in Civil Action No. 02 CV 11504 MEL. Dispute resolution for these post-settlement commitments shall be in accordance with the terms of a Memorandum of Understanding between the MBTA and the new community engagement group.
- **Exhibit X.** This Exhibit identifies the remaining obligations from the Amended Settlement Agreement, in other words, “The To-Do List.” Note that many of the

# FINAL

original Settlement Agreement paragraphs contain multiple obligations and sometimes the MBTA has achieved substantial compliance of some, but not all of the obligations in a paragraph (as of the date of this Amended Settlement Agreement). In those instances, the substantially compliant portions of a paragraph do not appear in Exhibit X; only the incomplete obligation(s) appear in Exhibit X. These paragraphs include a notation of (“Partially Compliant”) and state whether the Partially Compliant terms appear in Attachment A (“Fully Satisfied”) and/or Attachment B (“It’s Done With Ongoing Monitoring”).

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# FINAL

## AMENDED SETTLEMENT AGREEMENT

The numbering in this Amended Settlement Agreement tracks the numbering in the original Settlement Agreement and is adopted herein for consistency and ease of reference.

Where a blank appears in the numbering sequence, it means that the original term has been fully satisfied and now appears in Attachment A.

### **Bus Operations**

1. All MBTA buses will be operated in a manner that makes them readily accessible and usable by persons with disabilities. Proper operation includes, but is not limited to, following official MBTA procedures in:
  - a. collecting fares, including purchasing and maintaining accessible automated fare system
  - b. using appropriate language;
  - c. treating passengers with disabilities with courtesy and respect;
  - d. assisting passengers who are blind and visually impaired upon request;
  - e. assisting passengers with hearing impairments upon request;
  - f. recognizing and assisting passengers with mobility impairments upon request;
  - g. requesting passengers without disabilities who occupy priority seats to vacate these seats for a passenger with a disability.
  - h. pulling buses into curbs at bus stops;
  - i. using lifts, ramps or kneelers for passengers with disabilities who do not use wheelchairs;
  - j. assisting passengers with hidden disabilities upon request;
  - k. offering and using lifts and ramps for passengers using wheelchairs and scooters;
  - l. providing and using securement devices for passengers using wheelchairs and scooters;

# FINAL

- m. maintaining all signage, including scrolling marquees in clean, visible and operable condition;
  - n. maintaining both interior and exterior audio announcement equipment in audible and operable condition;
  - o. providing cards in Braille and print indicating the bus route and destination
  - p. accommodating and assisting passengers using service animals; and,
  - q. assisting with obtaining appropriate alternative transportation when required.
3. The badge number of the bus operator for each MBTA bus shall be displayed prominently while the bus is in service.

## **Bus Maintenance**

4. All accessibility equipment and devices on buses will be maintained in operable condition and in compliance with the highest accessibility standards. All accessibility equipment and features on buses will be cleaned as required to ensure proper functioning at all times. Lifts, kneelers and ramps shall be cleaned on a daily basis. Ramps and lifts shall be vacuumed, at a minimum, every six weeks. In addition, the lifts on the Zero Series buses shall be vacuumed at least once per week during the winter months. All signage shall be cleaned to ensure that the route, destination and bus number is clearly visible at all times during operation. Securement belts, shoulder straps and flip seats shall be cleaned on a monthly basis or more often if warranted, and shall be replaced immediately when they cannot be cleaned, are worn significantly, are torn or otherwise damaged irreplaceably. (Amended)
- 5.d. The MBTA shall establish and shall continue to employ a system of regular maintenance checks for stop requests in sync with the actual stops. (Amended)

# FINAL

6. If the maintenance checks, which should include checking all accessibility equipment, disclose an inoperative lift or ramp on a vehicle, particularly if the ramp cannot be mechanically or manually deployed, the MBTA shall remove that vehicle from service for repairs and the MBTA shall not utilize the vehicle for service until the lift or ramp is repaired, unless there is a bus shortage and the Operations Control Center approves the bus going into service temporarily, but no longer than one shift. (Amended)
7. When a lift or ramp is discovered to be inoperative after a vehicle is in service it shall be removed from service as soon as possible, at the latest at the end of the operator's run, and cannot start a new service day before the lift or ramp is repaired. (Amended)

## **Emergencies**

12. The MBTA shall ensure that there is a timely and effective response to any access-related emergencies or problems that arise while passengers are using bus services, to include the provision of alternative transportation under the terms in Paragraphs 72-74, as necessary. The MBTA shall develop procedures for evacuation of persons with disabilities in the event of an emergency. (Amended)
- 12A. Substantial Compliance: For the purpose of determining Substantial Compliance with the obligations in Paragraph 12, the MBTA shall continue to ensure that all front-line employees participate in the Security Awareness & Emergency Preparedness Employee Training Program. Additionally, the MBTA shall develop and conduct a variety of emergency drills involving people with disabilities for fixed-route bus routes, and including a range of emergency scenarios and with a diversity of wheelchair types; findings and recommendations resulting from these drills shall be incorporated to the extent feasible into MBTA operations. In the event the MBTA uses a private vendor to provide alternative

# FINAL

transportation under this Paragraph, the MBTA shall require the private vendor to provide accessibility training to all bus operators and other transportation personnel responsible for operating the private vendor's transport services, and shall provide monitoring of the private vendor as to accessibility. (Amended)

## **Performance Monitoring By the MBTA**

16. The independent monitor appointed under paragraph 89 shall review quarterly reports prepared by the MBTA regarding bus operator performance. (Amended)

17 and 18. The MBTA's goal for bus operations is to ensure compliance with paragraph 1 at all times. As such, the MBTA will continue to provide accessibility training, monitor compliance (via Independent Access Monitoring Program as well as customer feedback) and enforce policies. Monitoring and complaint reports will be shared with plaintiffs on a quarterly basis. In the event the monitoring data indicates a material decline for two (2) consecutive quarters in bus operator performance on any one metric within the Internal Access Monitoring Program quarterly monitoring reports, the Department of System-Wide Accessibility (SWA) shall meet with the Operations Department and develop a remedial action plan. The Plaintiffs will be notified that the MBTA is developing a remedial action plan. Any dispute regarding the implementation and/or outcome of the remedial action plan shall be resolved in accordance with the dispute resolution procedures in Paragraph 100. (Amended)

19. Those management and supervisory personnel responsible for bus operations shall be held accountable for the performance of the personnel reporting to them as to compliance with the obligations set forth in this Amended Settlement Agreement. (Amended)

19A. Substantial Compliance: For the purpose of determining Substantial Compliance with the



# FINAL

obligations in Paragraph 19, the Superintendents at each MBTA garage shall receive periodic evaluations and feedback on the oversight of accessibility issues, which shall include input from SWA as to customer complaint and monitoring data, as may be appropriate. Additionally, the Senior Management team for Bus Operations and SWA will meet periodically and when necessary with garage supervisory staff to review complaint and monitoring data as well as garage “rankings”.

## **Bus Service Planning**

20. The Service Planning department, in conjunction with Bus Operations, Marketing or any other appropriate department, shall explicitly consider the transportation needs of persons with disabilities in planning for bus services done under the 1997 Service Delivery Policy or any subsequent planning policies. Any outreach done in conjunction with bus service planning shall include outreach to persons with disabilities.
21. The MBTA shall develop and present Service Planning Standards for discussion with the Plaintiffs, as may be amended from time to time and to achieve the general intent of the original commitment, as follows: “The MBTA shall develop a methodology to measure and count the number, general location, routes and time of day of passengers with disabilities, including passengers with disabilities that are not apparent, riding the fixed route bus and subway/light rail systems and shall use this information in the planning of route patterns, headways and other service planning considerations.” (Amended)

## **Train Operations**

22. Trains (subway and light rail) must be operated in a manner that makes them readily accessible and usable by persons with disabilities. Proper operation includes, but is not limited to, following official MBTA procedures in:

# FINAL

- a. collecting fares;
  - b. using appropriate language;
  - c. treating passengers with disabilities with courtesy and respect;
  - d. assisting passengers who are blind and visually impaired upon request;
  - e. assisting passengers with hearing impairments upon request;
  - f. recognizing and assisting passengers with mobility impairments upon request;
  - g. offering and using mobile lifts, “mini-high” platforms, ramps and other accessibility devices as needed or requested;
  - h. assisting passengers with cognitive impairments upon request;
  - i. assisting passengers with hidden disabilities upon request;
  - j. requesting passengers without disabilities who occupy priority seats to vacate these seats for a passenger with a disability;
  - k. maintaining all signage in clean, visible and operable condition;
  - l. maintaining audio and visual announcement equipment in audible and operable condition;
  - m. taking reasonable steps to eliminate any gaps between station platforms and vehicle floors that are in excess of the amount permitted by applicable regulations in accordance with Paragraph 24;
  - n. assisting passengers using service animals; and,
  - o. assisting with obtaining appropriate alternative transportation when required. (Amended)
24. The MBTA shall conduct periodic inspections of all Red, Orange, and Blue line stations to determine whether any gaps exist between station platforms and vehicle floors that are in excess of the amount permitted by applicable regulations. (Amended)

# FINAL

26. The MBTA shall perform a study concerning the future operation of the Mattapan High-Speed Trolley, including an assessment of whether and how to make the Valley Road stop on the Mattapan High-Speed Trolley accessible. (Amended)

## **Stop Announcements**

30. In the event that the automated announcement system aboard a rail vehicle is not operating, or in the event that one is not installed, rail crewmembers will be required to make manual announcements, with a PA system if installed or by speaking in a loud, clear voice if there is not a PA on the vehicle.

34. The MBTA has developed the required announcement points for all bus routes and will update as necessary. In addition, the MBTA shall promptly respond to any complaints about stop announcements and modify the announcements as suitable to include key landmarks and new developments, such as post offices, in the stop announcements along each route wherever practical. (Amended)

35. Operators who fail to comply with stop announcement policy shall be periodically monitored to determine if they are complying with the policy. MBTA disciplinary policy must be applied consistently to operators who fail to comply with the stop announcement policy. (Amended)

36. The MBTA must maintain the automated announcing systems in good working order both within and outside the bus. (Amended)

37. In the event that an installed automatic stop enunciator is not working, the MBTA shall ensure that bus operators manually make all required announcements using the installed public address (PA) system or, if the PA system is not working, in a loud voice that can be

# FINAL

heard throughout the bus and outside of the bus on the curb when the entrance doors are opened.

## **Station Management**

40. New and key stations (as defined by the ADA regulations) must be managed and maintained in a manner that makes them readily accessible and usable by persons with disabilities.

41. With respect to day-to-day maintenance, stations must be maintained in clean condition, well lighted and free of debris or material that in any way creates barriers or safety hazards for persons with disabilities. With respect to addressing significant barriers to accessibility related to deferred maintenance,<sup>1</sup> as part of the MBTA's Plan for Accessible Transit Infrastructure ("PATI") station surveys, the MBTA will survey all accessible stations and catalogue all meaningful access barriers, including those related to deferred maintenance (including, for instance, defects in walking surfaces, ramps, stairs and escalators, handrails, stair treads and doors). A prioritized plan will be developed for the barriers' repairs.

Additionally, stations will be inspected by Station Officials and defects will be entered into a maintenance control database. Certain accessibility defects will be coded as priority in the maintenance control database. In developing a prioritization plan, the MBTA will solicit feedback from the Plaintiffs'. System-Wide Accessibility will also periodically review reports of open repair requests to evaluate and update access priorities. (Amended).

42. Train platform edges at all stations other than currently inaccessible street-level Green Line stops shall have detectable warnings that are maintained in safe condition to the extent required by applicable ADA regulations. At the inaccessible Green Line street level stops,

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<sup>1</sup> "Deferred Maintenance" reflects maintenance or repairs to real property postponed or deferred to a later time until funding becomes available.

# FINAL

the MBTA will install detectable warnings as those stops are renovated. (Amended)

43. The MBTA shall ensure that there is a timely and effective response to any access-related emergencies or problems which arise while passengers are using its stations.

44. The MBTA shall ensure that appropriate MBTA personnel are available in order to assist all passengers with access.

## **Communications with Passengers**

52. The MBTA must provide at least one public TTY phone in working condition at each station that has a public pay phone. Customer service numbers shall be clearly posted at each public phone, in Braille and raised letters.

## **Elevators**

53. The parties recognize that elevators are critical station access features and are used by thousands of riders daily. For riders with more severe hidden disabilities or who use mobility devices, elevators represent the only way to access many MBTA stations and accompanying transportation lines. For many other MBTA riders, elevators make it possible to use the MBTA system easily and safely. As such, the MBTA recognizes the importance of and need for reliable elevators and agrees to the following. Elevators must be maintained and operated in a manner that makes them readily accessible and usable by persons with disabilities at all times during passenger service hours, which includes maintaining them in clean and safe condition. To accomplish the goal of providing readily accessible and usable elevator service the MBTA must design, fund and implement an elevator management plan to provide continuous, uninterrupted elevator service during all passenger service hours, subject only to temporary and isolated elevator outages for repairs, maintenance and inspections. Service interruptions for preventive maintenance and inspections shall be scheduled in a manner to

# FINAL

minimize the impact of any gaps in service and shall only occur when alternative accessible transportation is available to passengers needing to use elevators. The MBTA shall provide adequate funding for all aspects of elevator operations, including all maintenance, to achieve the goal of continuous uninterrupted service as set forth in this paragraph. The MBTA shall provide sufficient management oversight to achieve the goal of continuous uninterrupted service as set forth in this paragraph. With respect to elevator cleanliness, the MBTA shall develop and implement a plan for elevator cleanliness, with best-in-class standards in the transit industry for maintaining elevator cleanliness, and shall include adequate funding for that plan. (Amended)

53A. Substantial Compliance: For the purpose of determining Substantial Compliance with obligations in Paragraph 53, the plan for maintaining elevator cleanliness shall include details on the following components:

- How and when elevator cleanliness is checked;
- How and when an elevator is cleaned (without request) and what substances are used for cleaning;
- How quickly an elevator must be cleaned upon receipt of a complaint;
- When elevator shaft/pits receive cleaning;
- Staffing of stations where chronic elevator cleanliness issues arise; and
- The role of the MBTA Police Department in maintaining elevator cleanliness.

54. The MBTA shall be considered out of compliance with the obligations set forth in the preceding paragraph if, during any one month period, the number or duration of outages for any elevator in the MBTA passenger service system is more than insubstantial. (Amended)

55. The MBTA agrees to install the following new/redundant elevators:

# FINAL

d. The Original Settlement Agreement required the MBTA to install additional elevators at Downtown Crossing station connecting the southbound and northbound Red Line platforms to the southbound (Forest Hills) Orange Line platform, however, after extensive engineering due diligence, the MBTA concluded that it was technically infeasible to construct a connection between the Red Line Northbound and the Orange Line Southbound in the location of the “Corner Mall.” The MBTA hereby confirms and commits to a modified best alternative for that connection, as well as supplemental commitments as follows:

(i) Work Plan for Connections/Transfers

|   |  |
|---|--|
| <p><u>OLS/RLS.</u> Orange Line South to Red Line South (per Settlement Agreement obligation)</p>      | <ul style="list-style-type: none"> <li>• The elevator at the current Washington Street entrance will be replaced and will extend further below grade to the Red Line Platform.</li> </ul>  |
| <p><u>OLS/RLN.</u> Orange Line South to Red Line North (modified Settlement Agreement obligation)</p> | <ul style="list-style-type: none"> <li>• Park Street Station Elevator No. 808 will be relocated and replaced with a larger elevator which will connect directly to an improved Winter Street Concourse.</li> <li>• At the other end of the concourse, there will be a direct connection to the Orange Line.</li> <li>• Concourse improvements will include improved wayfinding.</li> </ul> |
| <p><u>OLN/RLN.</u> Orange Line North to Red Line North (Supplemental Commitment)</p>                  | <ul style="list-style-type: none"> <li>• Two new elevators at the Burnham Building are under construction.</li> </ul>  |

# FINAL

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| <u>OLN/RLS</u> . Orange Line North to Red Line South (Supplemental Commitment) | • A new elevator at the corner of the Macy’s building will be installed. |
|--|--|

(ii) If the so-called “Corner Mall” connection becomes technically feasible with the agreement of National Grid and any other impacted utility prior to a Notice to Proceed for the OLS/RLS and OLS/RLN connections, the MBTA shall revisit opportunities for a direct connection between the Orange Line Southbound to Red Line Northbound.

(iii) The MBTA shall develop and implement an effective system of wayfinding and announcements to alert and inform riders about the above connections and will share this with the Plaintiffs for their input.

(iv) The MBTA shall be considered in substantial compliance with this Paragraph 55 if:

(i) construction contracts are executed and funded to perform the work at the OLS/RLS and OLS/RLN connections and Notices –to-Proceed to Contracts have issued for all connections in the above workplan; (ii) an effective system of wayfinding and announcements is designed for implementation; and (iii) a sequencing plan is developed to maintain and maximize accessibility to the greatest extent practicable during construction.

56. The MBTA will replace the following elevators:

- a. Central Square: replace elevator 861 at Central Square station;
- d. Harvard Square: replace elevator 821.

In addition, elevator 808 at Park Street will be relocated and replaced with a larger elevator during the Downtown Crossing work described in Paragraph 55 above. (Amended)



# FINAL

59. The MBTA shall consult with the plaintiffs for the purpose of discussing which existing MBTA elevators need to be replaced or modified and which stations need additional elevators by convening a meeting with the Plaintiffs and presenting an Elevator Replacement Plan for the upcoming 20 years, for input and comment. The plan shall consider each station starting with the group including New England Medical Center, Chinatown, Oak Grove and South Station to determine which, if any, of the existing elevators in this group of stations needs to be replaced, enlarged and/or upgraded and the specifications for any such changes and to determine whether any additional elevators need to be installed in any of these stations and the specifications for such additional elevators. (Amended)
62. The MBTA must develop and operate a system for distributing information regarding elevator outages so that it is available to passengers at all train stations and so that announcements regarding elevator outages are made in a manner which enables passengers to use alternate routes.
66. The MBTA shall develop a policy and procedure regarding alternative service routing during elevator outages. Whenever there is an outage the MBTA shall advise passengers of the least inconvenient alternative means of reaching their destinations, and provide passengers with instructions, fare media or immediate response alternative paratransit service when necessary. Passengers shall not be charged for this alternative service. The procedures governing this type of situation should be publicized and made available to the public. Services established for elevator outages must also be posted on the MBTA website and included in the recorded elevator announcement. (Amended)

# FINAL

67. Should the MBTA continue to use a contractor to manage and maintain elevators and escalators, the MBTA shall develop a contractor oversight program that shall include a standard set of monthly operating and reliability reports. (Amended)

68. The MBTA shall oversee elevator and escalator maintenance contracts with staff who are independent of the contractor engaged to manage and maintain elevators. (Amended)

## **Design**

69. The MBTA will commit to the update of the comprehensive "Guide to Access" and will incorporate the guide into future standards. This guide will reflect the MBTA's commitment to a safe, reliable, and easy to use system that welcomes all riders regardless of ability and age.

**69A. Substantial Compliance.** For the purposes of determining Substantial Compliance with the obligations in Paragraph 69, the MBTA shall develop the core chapters of the updated Guide to Access (those concerning accessibility at newly constructed and/or renovated stations and bus stops) and will submit for review by the Plaintiffs.

## **Access to Vehicles and Facilities**

70. The MBTA must develop and implement a plan for collaborating with those cities and towns in which the MBTA operates for the purpose of ensuring access to MBTA vehicles and facilities by persons with disabilities. The Municipal Collaboration Plan will include a process for regular communications with the cities and towns in which the MBTA operates regarding: issues of snow removal, removal of illegally parked vehicles at bus stops; signage on public right of ways, sidewalk accessibility and curb cuts, road repairs; and other activities likely to have an adverse effect on accessibility. The plan shall include provisions to encourage and provide technical support to cities and towns to:

# FINAL

- a. ticket and tow all vehicles stopped in bus stops and develop an enforcement plan to effectuate this policy and report annually on its efforts;
- b. ensure that bus stops are unobstructed by snow at all times; and
- c. mark all bus stops with signage at the beginning and end of each stop and on a bi-annual or more frequent basis as needed, paint the pavement adjacent to and the curbs at, bus stops in a reflective yellow or other visible color and label the pavement as a tow zone.

Where there are documented or persistent problems with buses not pulling to the curb because of difficulty reentering travel lanes or vehicles blocking bus stops or their approaches, the MBTA shall provide heightened coordination with the appropriate city or town, as well as coordination with state agencies as may be appropriate, regarding the installation of partial or complete curb extensions/bulb-outs. (Amended)

## **Customer Assistance**

71. The MBTA must establish and operate a system to provide assistance to customers with disabilities. Customer assistance services must be available at all stations on the fixed route system. Customer assistance services must include a means of providing help with boarding or leaving trains and buses, using accessibility features, arranging for alternative transportation when necessary, and other assistance to facilitate use of the system by persons with disabilities. The MBTA must ensure that customer assistance services are available to persons with disabilities during all hours of operation.

## **Alternative Transportation**

72. The MBTA must provide alternative transportation to persons with disabilities when the fixed route system is not readily accessible or usable, in accordance with applicable ADA

# FINAL

regulations. The system for providing alternative transportation must be designed and managed in a manner that ensures that customers are promptly advised of their right to alternative transportation, that the need for such services is promptly communicated to the responsible officials, and that services are provided in a timely manner.

73. The MBTA must have vehicles suitable for providing alternative transportation for persons with disabilities immediately available whenever there is a need to provide alternative transportation. In the event the MBTA uses a private vendor to provide alternative transportation under this Paragraph, the MBTA shall require the private vendor to provide accessibility training to all bus operators and other transportation personnel responsible for operating the private vendor's transport services, and shall provide monitoring of the private vendor as to accessibility. (Amended)

74. In any case where there is a planned or evident long-term situation when the fixed route system is not readily accessible or usable, the MBTA must establish, publicize and provide a dedicated ready means of alternative transportation to mitigate such an interruption.

## **Complaints**

75. The MBTA must maintain the system for receiving complaints and providing prompt responses and, where complaints are found to be valid, effective remedies for persons with disabilities who do not receive adequate service. The MBTA will submit the complaint system for review and comment by the plaintiffs. (Amended)

## **Personnel**

76. a. ADA compliance training for all managers and staff must be fully integrated into the regular training programs. (Amended)

# FINAL

h. The pre-trip inspection (circle check) training must be enhanced to emphasize the checking of all accessible equipment, not just lifts.

j. New trainings for bus operators and other transportation personnel must include first person perspectives and videos from customers with disabilities within the curriculum. Additionally, SWA will work with the Community Engagement Group to encourage customers with disabilities to attend these trainings to participate in the “hands on” portion of the trainings. (Amended)

77. The Plaintiffs will provide input when training programs are modified, updated or implemented.

In the event the MBTA uses a private vendor to provide transit services affecting people with disabilities, the MBTA shall require the private vendor to provide accessibility training to all bus operators and other transportation personnel responsible for operating the private vendor’s transport services, and shall provide monitoring of the private vendor as to accessibility. (Amended)

## **Management**

80. SWA will develop a written statement of the Department’s roles and responsibilities.

(Amended)

81. The MBTA shall establish the position of Assistant General Manager for System

Accessibility. This individual shall report directly to the General Manager and shall be responsible for assisting the General Manager to ensure compliance with this settlement and coordination of the implementation of its various components; for developing further means to improve accessibility to MBTA services compatible with this settlement and state and federal law; and to ensure that all departments and components of the MBTA, as part of their regular duties and responsibilities, understand and comply with all disability access

# FINAL

requirements as mandated by this settlement, state and federal law, and any other accessibility policies and programs established by the MBTA.

## **Marketing, Outreach and Public Relations**

86. The MBTA must conduct a marketing campaign to educate customers with disabilities about all existing MBTA accessibility services. The marketing campaign must have a component to encourage greater use of the fixed route system by people with disabilities.
87. The MBTA must work in collaboration with organizations representing and providing services to persons with disabilities to encourage greater use of the fixed route system.
88. The MBTA must develop and conduct a public relations program to educate all customers about its plans for providing services to persons with disabilities. The public relations program must include a component for encouraging public awareness in providing accessible services to persons with disabilities.

## **Independent Monitor**

89. The Hon. Patrick J. King (Ret.) was appointed by the federal district court in February 2007 as the Independent Monitor to assess compliance with the 2006 Settlement Agreement. In addition to the powers explicitly set forth in the 2006 Settlement Agreement, the Monitor is responsible to assess compliance by the MBTA with all aspects of the agreement and issue findings as necessary. Such findings include a determination whether the MBTA was in substantial compliance, partial compliance or out of compliance with the various requirements and to indicate the general trend of improvement or degradation of compliance in each area monitored. In discharging his responsibilities the Monitor serves as a resource to the MBTA and its staff to improve accessibility and customer service, comment on and be able to recommend possible solutions to access problems, and to inform the MBTA of access

# FINAL

problems or conditions which negatively affect passenger travel. The Monitor shall serve for the duration of the Amended Settlement Agreement with the same responsibilities as in the 2006 Settlement Agreement, including determination of whether the MBTA is in substantial compliance with the terms of this agreement as specified in paragraph 98 below. However, given the significant level of compliance with the MBTA's obligations under the 2006 Settlement Agreement, it is anticipated that the amount of time required by the Monitor to fulfill his responsibilities in the future will be significantly reduced as he focuses his efforts on assessing compliance with the terms of this Amended Settlement Agreement using definitions of Substantial Compliance as may be agreed upon by the Parties. In the event Judge King is unable to continue as Independent Monitor through close-out of this Amended Settlement Agreement, the Parties shall mutually agree upon a new Independent Monitor.

(Amended)

89A. The process for submittals during the period after amendment of the Settlement Agreement shall be as follows:

- (1) For any Amended Settlement Agreement term as to which the MBTA believes it has achieved substantial compliance, the MBTA shall deliver a submittal memorandum with supporting documentation to Judge King and Plaintiff's counsel on or about June 1 and December 1 of each year, or earlier if possible. This biannual submission schedule will continue so long as may be necessary.
- (2) Upon receipt of a submittal, Plaintiffs shall have sixty (60) days to provide a written response to both Judge King and the MBTA, either concurring with substantial compliance or objecting thereto. In the case of any objection, the Plaintiffs shall include an explanation as to the basis for objection.

# FINAL

(3) Upon request by either Party or upon request by Judge King, the Parties shall meet and confer promptly together with Judge King.

(4) Judge King shall issue a written determination as to substantial compliance for each submittal within thirty (30) days of receipt of the Plaintiffs' response and may request additional time or information as may be necessary for a thorough evaluation.

92. The MBTA shall provide the monitor with sufficient information, in a suitable format, and access to MBTA facilities and personnel to enable the monitor to discharge any duties under this agreement. All information provided to the monitor shall also be provided to the plaintiffs.

(Amended)

93. All reports prepared by the monitor shall be provided to the plaintiffs.

94. The MBTA, in conjunction with the Independent Monitor, shall conduct public meetings every six months during the time when this Amended Settlement Agreement is in effect to report on compliance reports and on progress in implementing the provisions of this agreement. (Amended)

95. For the duration of this Amended Settlement Agreement, the MBTA shall pay for monitoring for assistance and support up to a maximum of \$150,000.00 per year, including direct services by the Independent Monitor and funding for the position of facilitator as contemplated by the memorandum of understanding between the MBTA and the new community engagement group.(Amended)

## **Attorneys' Fees, Litigation Expenses and Costs**

97. The MBTA shall pay plaintiffs' attorneys' fees at a rate of \$75,000 per year so long as the Amended Settlement Agreement remains in effect. (Amended)



# FINAL

## **Duration**

98. The parties recognize that the MBTA's principal obligations to ensure accessibility are established by law. In addition, the particular obligations established by this Amended Settlement Agreement will remain in effect until: (a) the Independent Monitor determines that the MBTA is in substantial compliance with the terms of the Amended Settlement Agreement; (b) agreement of the parties that the conditions sought by the Amended Settlement Agreement have been satisfied; or (c) order of the Court upon the application of one or more of the parties. (Amended)

98A. When the MBTA is in substantial compliance with the terms of the Amended Settlement Agreement, the Parties shall convene a close-out ceremony. As appropriate, the Parties shall file a Stipulation of Dismissal with the Federal Court reciting that the MBTA is in substantial compliance with the terms of the Amended Settlement Agreement. (Amended)

## **Jurisdiction of Court**

99. The Court shall retain jurisdiction to enforce the terms of this Amended Settlement Agreement so long as it remains in effect under Paragraph 98, above. (Amended)

## **Dispute Resolution**

100. Any dispute concerning interpretation, implementation, compliance assessments by the monitor and/or compliance with this agreement shall be resolved as follows: (a) the party initiating the dispute resolution process shall notify the other party in writing of the nature of the dispute and shall provide a reasonable explanation of the factual and legal basis for the party's position; (b) within thirty days of the notice of dispute counsel for the parties shall confer to attempt to resolve the matter; (c) if counsel are unable to resolve the dispute, the MBTA and the plaintiffs shall meet in an effort to resolve the matter within 30 days of

# FINAL

the date on which counsel concur that they cannot resolve the dispute; and (d) if the parties are unable to resolve the dispute they will request that the Court refer the matter to a Magistrate Judge for mediation; and (e), if the dispute has still not been resolved, counsel for the parties will submit the matter to the Court for formal resolution.

## **Force Majeure**

101. The MBTA shall not be liable for failure to perform any obligation under this agreement, and any such failure shall not be considered a breach of or non-compliance with any term of this agreement, if such failure results from any act of God, riot, war, civil unrest, flood, earthquake, third party not subject to the MBTA's control, or other causes beyond the MBTA's reasonable control.

## **Release**

102. Plaintiffs, individually and for and on behalf of all persons with mobility, vision and hearing disabilities, fully, finally and forever release, relinquish, discharge, and waive any and all accessibility and accessibility-related claims for injunctive and declaratory relief concerning MBTA fixed route bus and subway systems which they now have or may have ever had against the MBTA, its officers, board members, employees, attorneys, and agents, arising out of any act, omission, or occurrence, from the beginning of the world until the effective date of this agreement, including without limitation any and all claims for injunctive or declaratory relief arising out of or relating to the facts, transactions, occurrences or subject matter described in the Amended Complaint filed in the Lawsuit, and all claims under 42 U.S.C. § 12131 et seq. (the Americans with Disabilities Act), 29 U.S.C. § 794 (the Rehabilitation Act), or any other federal or state law that addresses the accessibility of fixed route bus and subway systems for individuals with mobility, vision or hearing disabilities.

# FINAL

## **Entire Agreement**

103. This Amended Settlement Agreement modifies the agreements, conditions, promises and covenants among the MBTA, Plaintiffs, and their respective counsel regarding matters as set forth herein from and after the date of execution. (Amended)

## **Miscellaneous**

104. The parties hereto waive any right to appeal or collaterally attack the final judgment approving this settlement agreement. (formerly Paragraph 109)

105. The parties hereto have participated in the drafting of this Amended Settlement Agreement and, accordingly, any claimed ambiguity should not be presumptively construed for or against any of the parties hereto. (formerly Paragraph 110)

106. This Amended Settlement Agreement may be signed in counterparts. (formerly Paragraph 11)

# FINAL

## For Plaintiffs:

\_\_\_\_\_  
Joanne Daniels-Finegold  
Plaintiff

\_\_\_\_\_  
Andrew Forman  
Plaintiff

\_\_\_\_\_  
Reginald Clark  
Plaintiff

\_\_\_\_\_  
Thomas Gilbert  
Plaintiff

\_\_\_\_\_  
Myrnairis Cepeda  
Plaintiff

\_\_\_\_\_  
Boston Center for Independent Living  
Plaintiff  
By William H. Henning, Executive Director

\_\_\_\_\_  
Gene Smith  
Plaintiff

## APPROVED AS TO FORM AND CONTENT:

\_\_\_\_\_  
Daniel S. Manning  
Greater Boston Legal Services  
Attorney for Plaintiffs

\_\_\_\_\_  
Taramattie Doucette  
Greater Boston Legal Services  
Attorney for Plaintiffs

## For Defendant MBTA:

\_\_\_\_\_  
Luis Ramirez  
General Manger  
Massachusetts Bay Transportation Authority

## APPROVED AS TO FORM:

\_\_\_\_\_  
Marie Breen  
General Counsel  
Massachusetts Bay Transportation Authority

Date: \_\_\_\_\_

# FINAL

## Attachment A

12/4/18

The following obligations from Settlement Agreement which have been fully satisfied:

Paragraph 2. The MBTA shall revise the Bus Operations Rules for Operators and other Employees of Bus Operations (October 1, 2001) and any regulations, general and special orders, or bulletins related to the procedures set forth in paragraph 1 in accordance with the terms of Addendum A to this agreement.

Paragraph 5. The MBTA shall establish and shall continue to employ a system of regular and frequent maintenance checks of all accessibility features on all buses. The system for maintenance checks shall include records documenting the operation, inspection, maintenance and repair of all accessibility devices including the date of any action or observation, a description of actions taken, and the names of employees involved. The items checked shall include, but not be limited to:

- a. Lifts and ramps
- b. Securement belts, shoulder straps and flip seats
- c. Public address systems or annunciators and variable message systems
- d. Stop request systems must be maintained in sync with the actual stops. (Amended)
- e. Clear and lighted destination and bus route number signs
- f. Kneelers
- g. Internal and external decals
- h. Lift and stairwell lights

# FINAL

Paragraph 6. With respect to lifts and ramps, the maintenance checks shall include daily lift and ramp cycling to occur at the onset of each service day. Every bus with a lift or a ramp shall be cycled at least once per week at the end of the day.

Paragraph 8. All repairs to accessibility equipment must be made promptly, as required by 49 C.F.R. §37.16 1(b). The MBTA shall maintain a sufficient stock of repair parts and equipment to meet the requirement for prompt repairs. Equipment that cannot be repaired must be replaced promptly. In the event that inoperable accessible equipment reduces the general level of accessibility of any service, this shall trigger appropriate provisions for alternative services.

Paragraph 9. The MBTA shall purchase new low-floor buses so that it may, at least, maintain its current fleet size and existing service levels but comply with the following schedule for removing existing buses from its service fleet: a) all buses without lifts retired within 90 days after the effective date of this agreement, except for the existing inaccessible trackless trolleys which shall be replaced by new low-floor trackless trolleys by July 1, 2006 (except for five of the existing inaccessible trackless trolleys, which the MBTA may continue to use as a contingency fleet); b) all 8000 series buses (including all GMC and TMC buses, series 84 through 89) with lifts retired by January 1, 2007; and c) all 94 and 95 Nova buses retired in accordance with the schedule attached hereto as Addendum D. All future new low-floor buses shall provide an MBTA system map and locations for the display of pertinent information such as bus route maps, schedules and other system-wide information, and handles and grab bars in adequate quantity and of contrasting color and texture throughout the vehicles. The MBTA agrees to engage in a discussion with the plaintiffs about designing future new low-floor buses so that: (1) there is the highest degree of maneuverability possible for passengers using wheelchairs and

# FINAL

scooters from the front door to the designated seating area: and (2) the wheelchair seating area exceeds 48” long to accommodate scooters and full size power wheelchairs.

Paragraph 10. All Nova buses with lifts must have new state-of-the-art lifts (VE-2 models or equivalent) installed by June 30, 2007, except for the following: (a) Nova buses that have already had new state-of-the-art lifts installed on them through either the Midwest contract or at the MBTA’s Everett shops, through the in-house rehabilitation effort; (b) the contingency fleet of up to 50 Nova buses which the MBTA intends to maintain; and (c) the MBTA has purchased new floor buses and has retired all 94 and 95 Nova buses.

Paragraph 11. The MBTA shall establish a group of qualified personnel independent of garage maintenance personnel, who shall conduct random surprise bus lift inspections on an ongoing basis. Such inspections shall be conducted for 10% of the fleet every month, the results of such inspections to be reported to senior management of each garage and senior agency management.

Paragraph 13. The MBTA shall devise and implement an internal system for monitoring bus operator compliance with the Bus Operations Rules for Operators (as amended) and any applicable regulations, general and special orders, or bulletins. The monitoring shall specifically assess performance in the areas covered by paragraph 0. Reports of the results of monitoring shall be compiled on a quarterly basis, with the first results reported six months after the effective date of this agreement.

Paragraph 14. The MBTA shall review all current systems for monitoring bus operations, including ride checks, observations done following training and observations made as a result of complaints and modify those systems to incorporate observations about passenger service in general and service to individuals with disabilities in particular. Reports of the results of these

# FINAL

observations shall be compiled on a quarterly basis, with the first results reported six months after the effective date of this agreement.

Paragraph 15. Reports summarizing complaints regarding bus services to passengers with disabilities shall be compiled according to nature of the complaint, bus route, operator, location and time of day on a quarterly basis.

Paragraph 23. The MBTA shall revise the Subway Operations Rules for Trainpersons – Heavy Rail (July 1, 2004) and the Rules for Trainpersons – Light Rail (January 1, 2000) and any regulations, general and special orders, or bulletins related to the procedures set forth in paragraph 1 in accordance with the terms of Addendum A to this agreement.

Paragraph 25. The MBTA shall, within six months after the effective date of this agreement, install fixed ramps and platforms (i.e. “mini-high” platforms) for use in boarding light rail vehicles other than the Type 8 – Breda vehicles as follows : BU Central (1), Washington St. (2), St. Mary’s (1), Coolidge Corner (1), Washington Square (1), Brookline Hills (2), Newton Center (1), Museum (1), Cleveland Circle (1) and Fenway (1). The commitments in this paragraph are contingent on the MBTA receiving any needed variances from the Architectural Access Board or any other permitting authority and are also contingent on the MBTA not encountering any unexpected circumstances, such as underground utility conflicts, in attempting to implement the mini-highs.

Paragraph 27. The MBTA shall implement a regular and thorough preventive maintenance program for all mobile lifts that remain in operation after the date of this agreement. Each mobile lift shall be inspected on a daily basis and the inspection shall include actual operation of the lift. All MBTA personnel with any responsibility regarding mobile lifts shall be given training on their use and shall be given refresher training as needed. Train operators or station



# FINAL

personnel shall notify the operations control center whenever a passenger boards using a lift and arrangements shall be made to have an official available at the passenger's destination waiting with a mobile lift at the door if no other means of disembarking is available. A monitoring system tracking all use of lifts and recording the amount of time taken to board or leave the train and any problems encountered shall be established.

Paragraph 28. The MBTA shall include one low-floor Type 8 Breda car in each train set or consist on the Green Line, to the extent such cars are actually available for service, following completion of any work necessary to enable Type 8 cars to run on each branch. All work necessary to enable Type 8 cars to operate on the D and E branches shall be completed as soon as possible.

Paragraph 29. The MBTA shall ensure that there is a timely and effective response to any access-related emergencies or problems which arise while passengers are using train services. The MBTA shall develop procedures for evacuation of persons with disabilities in the event of an emergency.

Paragraph 31. The MBTA shall develop detailed procedures governing the provision of, and shall provide, alternative transportation services for passengers forced to detour because of failure of any piece of accessibility related equipment aboard any rail vehicle or at any rail station which results in the inaccessibility of an otherwise accessible station accordance with the requirements of 49 C.F.R. § 37.161(b).

Paragraph 32. All accessibility equipment and devices on trains must be maintained in operable condition. This includes regular preventative maintenance programs, daily checks, signage checks, prompt repair of equipment failures, the stocking of a reasonable supply of repair parts and maintaining a comprehensive maintenance record keeping system.

# FINAL

Paragraph 33. Pending the introduction of automated stop announcement devices, bus drivers and train operators will announce stops at transfer points with other fixed routes, major intersections, approaching train stations, the name of the station when the train is standing, destination points and at intervals along routes sufficient to enable passengers with visual impairments and other disabilities to be oriented to their location. The route number and destination of buses must be announced at stops serving more than one route. Stop announcements should include the names of commonly known landmarks near stops wherever practical. Stop announcements shall also be made for any stop at the request of an individual with a disability.

Paragraph 38. The MBTA shall ensure that PA systems onboard vehicles are interoperable with all new visual display systems such that the auditory announcement is simultaneously displayed visually.

Paragraph 39. The MBTA shall continue its Stop Announcement Monitoring Program (SAMP) even when all buses are fully automated. The program shall continuously monitor both buses and the MBTA's rail services to ensure equipment is working properly and the MBTA staff makes the appropriate announcements when requested and when automated equipment is not working.

Paragraph 45. The MBTA shall develop and implement an improved and standardized system for signage, wayfinding and navigation in MBTA stations that will enable passengers to determine how to navigate the station.

Paragraph 46. The MBTA will hire a nationally known "wayfinding" expert or firm with documented experience with creating effective wayfinding systems and graphic standards for users, including people with disabilities and older people by September 30, 2006 to conduct an

# FINAL

evaluation of the existing navigation systems in all stations. The scope of work for the evaluation shall include the items contained in Addendum B.

Paragraph 47. The MBTA shall adopt and implement all reasonable recommendations of the expert hired under paragraph 0 unless it can clearly demonstrate that a particular recommendation would create an undue financial burden in relation to the MBTA operating and capital budgets considered in their entirety or that a particular recommendation would not result in an improvement to the navigation, signage and wayfinding systems in MBTA stations.

Paragraph 48. Within 90 days after the effective date of this agreement, the MBTA shall designate a person on staff whose primary responsibility is “navigation and wayfinding”. The staff person should have an architectural background. The staff member will have direct responsibility for ensuring compliance with this agreement.

Paragraph 49. The new public address (PA) systems being installed in MBTA stations shall adjust to ambient noise levels and be interoperable with all new visual display systems such that the auditory announcement is simultaneously displayed visually. The MBTA will replace existing PA systems to meet these requirements.

Paragraph 50. The VMS equipment being installed in MBTA stations shall display visual announcements similar in content and clarity to auditory announcements where public address systems exist or are installed in the future, shall be installed on train platforms so that, to the maximum extent feasible, messages are displayed perpendicular to the right of way or not blocked by objects or vehicles, and equipment displaying next train information in station lobbies shall be located in prominent locations visible to all riders as they reach or pass through fare gates. The MBTA will replace existing systems to meet the above requirements.

# FINAL

Paragraph 51. The MBTA shall ensure that emergency call boxes (ECBs) are maintained in proper working order and are designed to be usable by people with disabilities.

Paragraph 54. If the independent monitor appointed pursuant to paragraph 89 determines that the MBTA is out of compliance with this requirement the MBTA shall, within 30 days, develop a corrective action plan to address the performance problems of the elevator or elevators found to be out of compliance and shall implement such plan promptly. If plaintiffs seek enforcement of the preceding paragraph by the Court, the MBTA shall have the burden of establishing that it has designed, funded and implemented an elevator management plan to provide continuous, uninterrupted elevator service during all passenger service hours, subject only to temporary and isolated elevator outages for repairs, maintenance and inspections.

Paragraph 55. a. Porter Square: two additional elevators at the Porter Square station, one from the street level to the fare lobby and one from the fare lobby to the subway platform b. Harvard Square: one additional elevator in the Brattle Square area of the Harvard Square station; c. Park Street: one additional elevator at the Park Street station between the surface and the Green Line westbound platform, and an additional elevator between the center Red Line platform and the Green Line westbound platform at Park Street station. If it is not feasible to install an elevator on the center Red Line platform at Park Street, elevators shall be installed on each of the two Red Line side platforms connecting to the Green Line westbound platform.

Paragraph 56. b. Porter Square: replace elevators 818 and 820; e. State Street: replace elevator 802.

Paragraph 57. The MBTA shall make best efforts to secure any approval required from any governmental entity to replace or install any of the elevators described in the agreement. If any non-governmental entity or individual seeks to block approval for the replacement or installation

# FINAL

of any of the elevators described in this paragraph, through litigation or otherwise, the MBTA shall make best efforts to oppose such action, including undertaking any necessary litigation to the extent that the MBTA believes that reasonable grounds exist for such litigation. The plaintiffs will support the MBTA in all efforts to obtain approval for replacement and installation of the elevators described in this paragraph, including assisting in and joining in any litigation that the MBTA engages in. If approval to install any particular elevator is denied, the MBTA shall discuss with the plaintiffs the feasibility of seeking approval for installing the elevator in another location of the station for which approval was denied. The MBTA is not required to engage in any litigation against any governmental entity under the terms of this paragraph.

Paragraph 58. In addition to any force majeure language in this agreement, the parties acknowledge that both new and replacement elevators require approvals that are beyond the authority of the MBTA. In order to promote station accessibility, the parties agree that, where a station will have both a new/redundant elevator and a replacement elevator as per this agreement; the MBTA will prioritize the completion of the new/redundant elevators prior to replacing existing elevators. To meet this goal, the MBTA will immediately take the necessary steps to hire a consultant to design the new/redundant elevators and agrees to advertise each elevator for construction within 30 days of completing design and obtaining all necessary approvals to permit construction of the new/redundant elevator. The MBTA will hire a design firm by July 13, 2006 and anticipates completing of the design of the elevators within one year from that date. The parties acknowledge that design for some of the elevators may be quicker or slower than others. In the event that design cannot be completed for any new/redundant elevator due to issues surrounding obtaining the requisite approvals, such as public processes controlled by other agencies/parties or litigation, or due to legitimate engineering reasons, the MBTA will meet with

# FINAL

the plaintiffs to discuss the feasibility of installing the new/redundant elevator in another location of the station or whether the MBTA should move forward with a replacement elevator instead of seeking to install the new/redundant elevator in another location of the station. The MBTA has commenced the design of the replacement elevators and will expedite their completion such that the replacement can be (1) substituted in time for the new/redundant as per this section or (2) completed as soon as practicable after the completion of the new/redundant elevator. The purpose of this provision is to ensure that the parties have the ability to reconfigure the schedule of these commitments based on the ability to secure approvals.

Paragraph 60. The MBTA shall: (a) allocate a total of \$122,000,000 in capital investment funds during fiscal years 2007 through 2011 for replacement, rehabilitation, upgrading and/or installation of additional elevators and escalators in stations in use as of the date of this agreement; and (b) award construction contracts and take any other steps necessary to spend the \$122,000,000 amount. The allocation of funds and commitment to award contracts in this paragraph does not preclude either the MBTA or the plaintiffs from seeking additional capital funds for elevators and escalators during fiscal years 2007 through 2011.

Paragraph 61. Information advising consumers when elevators are out of service, including when preventive maintenance is being performed, must be provided in a timely and accessible manner. When elevators are closed for preventative maintenance, the elevator must be listed as out of service. Chief Inspectors and Inspectors must ensure that elevator In/Out of service signs are locked. The recorded announcement system and web posting of elevator outages must be consistently synchronized and must indicate clearly what the operational impact of such outages would be (e.g. “passengers will be unable to get from the street to the outbound platform,” “Red Line passengers may transfer between inbound and outbound platforms but cannot reach the

# FINAL

street level,” or, “passengers arriving inbound on the orange line will be unable to transfer to the blue line,” etc.). Announcements must be updated every two hours or whenever there is a change in the status of an elevator.

Paragraph 63. The MBTA must also develop and operate a system for distributing information regarding elevator outages at MBTA stations requiring passengers with disabilities to use private, non-MBTA elevators in order to exit to street level from a concourse.

Paragraph 64. A sign system at the station street entrance and at each platform must advise passengers of their ability to actually access the street or platform.

Paragraph 65. The MBTA must post information about elevator and escalator outages at all station entrances. The notice must include the location of the elevator or escalator that is out of service and must advise passengers how to get assistance in getting to their intended destinations. The plaintiffs and the MBTA will continue to discuss the most effective means of providing notice of outages at stations entrances including use of large print signs.

Paragraph 76.

- b. Bus operator training relating to the ADA must be fully incorporated into the standard program and provided by the training department.
- c. All bus operators and transportation personnel must receive a refresher-training course concerning ADA requirements.
- d. Enhanced training programs regarding ADA compliance and accessibility must be developed for managers, supervisors and staff with direct contact with customers.
- e. Customer assistance training and sensitivity training must be added to the bus operator, train operator and station employee curriculum.

# FINAL

- f. Modules addressing disability awareness, customer assistance and sensitivity training must be added to the curriculum.
- g. A test measuring driver knowledge must be implemented, documenting that all operators have been “trained to proficiency” as required by the regulations.
- h. The pre-trip inspection (circle check) training must be enhanced to emphasize the checking of all accessible equipment, not just lifts.
- i. The road observation program must be modified to include planned observations of drivers providing accessible service.

Paragraph 78. All staff coming in direct contact with customers must be supervised to ensure persons with disabilities receive proper service.

Paragraph 79. Available disciplinary procedures must be used to ensure accountability for performance of job responsibilities related to accessibility and ADA compliance. Such a system shall be comparable to that used for non-ADA rules infractions. Each instance of use of disciplinary procedures regarding access and ADA compliance must be recorded in a central register and reports on actions taken must be provided to senior managers on a regular basis.

Paragraph 80. The MBTA shall design management systems and plans to ensure compliance with all aspects of this agreement, shall provide sufficient funding for all equipment, facilities, personnel and activities necessary to ensure compliance with all aspects of this agreement and shall fully implement all plans, programs and activities necessary to comply with this agreement.

Paragraph 82. The MBTA shall develop an internal management and reporting system to ensure that all ADA and accessibility related performance and policy issues are brought to the attention of senior operations managers, the Chief Operating Officer and the General Manager of the organization.



# FINAL

Paragraph 83. The plaintiffs may make proposals to the MBTA concerning: (a) the design of future new low-floor buses (*see* paragraph 9); (b) the issue of platform gaps (*see* paragraph 24); (c) the addition, replacement, or modification of elevators (*see* paragraph 59); (d) the posting of information about elevator and escalator outages (*see* paragraph 65); and (e) MBTA training programs regarding service to individuals with disabilities (*see* paragraph 77). The MBTA shall adopt any proposal made by the plaintiffs concerning any of these items (a)-(e) that is reasonable, taking into consideration the cost, feasibility, benefits, and consistency of the proposal with MBTA policies, unless the MBTA has a reasonable basis for rejecting the proposal, in which case the MBTA must send the plaintiffs a letter explaining the MBTA's basis for rejecting the proposal.

Paragraph 84. The MBTA shall meet with the plaintiffs to discuss adoption of standards for elevators. Such discussion shall include consideration of the items listed under the heading "Elevators" on Addendum B.

Paragraph 85. The MBTA must conduct a comprehensive marketing study to determine the extent of need for accessible services. The marketing study must include a component that seeks to determine why persons with disabilities who could use the fixed route system choose to use the Ride or choose to forgo using any MBTA services.

Paragraph 89. The first compliance assessment and report of findings shall be completed within six months after the effective date of this agreement. Such findings shall include a determination whether the MBTA is in substantial compliance, partial compliance or out of compliance with the various requirements and shall indicate the general trend of improvement or degradation of compliance in each area monitored. In discharging his/her responsibilities the monitor shall serve as a resource to the MBTA and its staff to improve accessibility and

# FINAL

customer service, comment on and be able to recommend possible solutions to access problems, and will inform the MBTA of access problems or conditions which negatively affect passenger travel.

Paragraph 90. The monitor will be selected by agreement of the parties. In the absence of agreement the monitor will be selected by the Court from a group of candidates proposed by each party. The monitor will be appointed by and accountable to the Court.

Paragraph 91. The monitor shall employ testers and observers to assess compliance with the provisions of this agreement, including particularly paragraph 1. Testers shall include persons with disabilities. The MBTA, the plaintiffs, and the monitor shall mutually develop a valid and reliable sampling program that uses anonymous testers with disabilities to determine the MBTA's rate of compliance with the provisions of this agreement. The sampling program shall include a component that uses comparable methodology to that used by Delta Services Group, Inc. and the Social Research Corporation in the bus system accessibility study done for the plaintiffs, as described in the report of August, 2005.

Paragraph 96. The parties will endeavor to maintain open communications regarding all aspects of implementation of this agreement. During the first year of implementation the parties will meet monthly to review progress and discuss any matter of concern to either party. After the first year the parties will meet at least 6 times a year and more often if either party requests a meeting. The parties will inform the each other of any problems or issues concerning the implementation of this agreement at the earliest opportunity. The MBTA will provide the plaintiffs with all information given to the independent monitor and will provide information in response to any reasonable requests related to implementation of this agreement. The MBTA

# FINAL

will provide the plaintiffs with reasonable access to personnel and facilities as needed for the implementation of this agreement.

Paragraph 104. The obligation of this settlement agreement will become effective 45 days after the entry of final judgment dismissing this action if a motion under Rule 59 or Rule 60 of the Federal Rules of Civil Procedure or a notice of appeal challenging this settlement agreement has not been filed or, if a motion under Rule 59 or Rule 60 of the Federal Rules of Civil Procedure or a notice of appeal challenging this settlement agreement has been filed, within 45 days after all appellate proceedings pertaining to this settlement agreement have been completed and this settlement agreement has been determined to be valid and binding. References in this settlement agreement to “the effective date of this agreement” should be construed to refer to the terms of this paragraph.

Paragraph 105. Promptly after execution of this settlement agreement, the parties shall jointly move the Court for preliminary approval of this settlement agreement. The motion shall include a copy of the settlement agreement and request that the Court: (a) approve a draft notice of settlement, a draft summary notice, and a proposed order granting preliminary approval to be attached to the motion; (b) approve mailing notice of the settlement to advocacy and service organizations working with people with disabilities in the MBTA’s service area identified by the Plaintiffs and the MBTA and the publication of a summary notice in the *Boston Globe* and the *Boston Herald* within 10 days after the entry of an order granting preliminary approval; and (c) set a date for a fairness hearing which is no less than 45 days, and no more than 60 days, after the entry of the order granting preliminary approval of this agreement.

The order of preliminary approval shall require, and the notice of settlement and summary notice shall set out, that any class member (other than named class representatives) may object to this

# FINAL

settlement agreement by mailing a written objection to the Court and plaintiffs' counsel at least 10 days before the fairness hearing. The order of preliminary approval shall also require, and the notice of settlement and summary notice shall also set out, that any class member who does not object in this manner shall be deemed to have waived his/her/its objections.

Plaintiffs' counsel shall maintain copies of any objections to this settlement agreement and, no more than five days after receipt, shall provide copies of such objections to counsel for the MBTA. The notice of settlement and the summary notice shall set out the mailing address plaintiffs' counsel. Plaintiffs' counsel shall maintain a telephone number which may be called during normal business hours by any class member who has questions about this settlement agreement. The notice of settlement and the summary notice shall set out this telephone number and state that class members with questions about this settlement agreement may call the number during normal business hours.

Paragraph 106. The order of preliminary approval shall, at a minimum, contain provisions regarding each requirement contained in paragraph 105 and:

- a. a provision preliminarily approving this settlement agreement and, subject to any objections that might be made in the manner described above, finding that the settlement agreement is fair, adequate, reasonable, and in the best interests of plaintiffs;
- b. a provision finding that the notice of settlement and summary notice described above, or such other notice as the Court determines necessary, constitutes valid, due, and sufficient notice to the class and the best notice practicable under the circumstances, complying fully with the requirements of the Federal Rules of Civil Procedure, the Constitution of the United States, and any other applicable law; and
- c. a provision providing that class members or any other person with standing may appear

# FINAL

at the fairness hearing and object to judicial approval of this settlement agreement, provided that any objectors shall have complied with the procedure for objections set out in the notice of settlement and the summary notice.

Paragraph 107. The parties agree to take such actions as are reasonably necessary to obtain final approval of this settlement agreement by the Court including, but not limited to, filing memoranda in opposition to any objections to this settlement agreement.

Paragraph 108. At the fairness hearing, the parties shall jointly submit to the Court and request entry of a final judgment that includes, at a minimum, provisions stating that:

- a. the form and method of notice given to the class complied with the requirements of Rule 23 of the Federal Rules of Civil Procedure, satisfied the requirements of due process, is the best notice practicable under the circumstances, and constitutes due and sufficient notice of the settlement agreement, the fairness hearing, and other matters referred to in the notice to all persons entitled to receive such notice;
- b. the Court has held a hearing to consider the fairness, reasonableness and adequacy of the proposed settlement;
- c. arm's-length negotiations have taken place in good faith between class counsel and MBTA counsel, and have resulted in the settlement agreement;
- d. the settlement agreement is hereby finally approved pursuant to Fed. R. Civ. P. 23(e) as fair, reasonable and adequate, and the settlement agreement shall be consummated in accordance with its terms and provisions;
- e. the class members in this case include all individuals with mobility, hearing, or visual disabilities, as defined by Title II of the Americans with Disabilities Act, 42 U.S.C. § 12131(2), who use, will use, or would use the bus, light rail, and heavy rail rapid transit

# FINAL

services operated by the MBTA who are, or will in the future be, denied equal use of these services because the services are not readily accessible to and usable by individuals with such disabilities;

- f. the class members, all and each of them (including plaintiffs), are hereby bound by the terms of the settlement agreement;
- g. in approving the settlement agreement, the Court has considered: (1) whether the proposed settlement was fairly and honestly negotiated; (2) whether serious questions of law and fact exist, placing the ultimate outcome of the litigation in doubt; (3) whether the value of the proposed settlement outweighs the mere possibility of future relief after protracted and expensive litigation; and (4) the judgment of the parties that the proposed settlement is fair and reasonable;
- h. this class action is complex with many intricate factual and legal issues and the results of litigation, including this one, can never be predicted with complete accuracy;
- i. the judgment of class counsel is that the proposed settlement is fair, reasonable and adequate;
- j. the class members are deemed to have released and forever discharged the MBTA with respect to the claims that are released in paragraph 102 in the settlement agreement, which is incorporated by reference herein and attached hereto;
- k. the class members are hereby permanently barred and enjoined from instituting or prosecuting, either directly, representatively, derivatively or in any other capacity, any action against the MBTA asserting any of the claims released by them in this settlement agreement;

# FINAL

1. the Court, without affecting the finality of this Order for Final Judgment, hereby retains and reserves jurisdiction over implementation and performance of the settlement agreement pursuant to paragraph 99 of the settlement agreement; and
- m. the Court orders the entry of final judgment dismissing this case with prejudice and without costs.

# FINAL

## Attachment B

12/4/18

**Attachment B: Settlement Terms that are Presently Substantially Compliant but will remain in effect throughout Duration of Amended Agreement  
“It’s Done With Ongoing Monitoring.”**

The following is a list of settlement terms for which, as of the date above: (1) both parties agree the MBTA is in substantial compliance; and (2) because these terms are recognized as critically important and on-going in nature, the parties have concurred that they remain in full effect throughout the duration of the amended agreement. This Attachment does not include those items which have been fully satisfied and are not ongoing in nature as listed in Attachment A. To the extent that any of these items have been amended, those amendments appear in the main body of the Amended Settlement Agreement, whereas the original Settlement Agreement terms appear in this Attachment B. In all instances, the Amended terms shall govern future MBTA obligations.

### **Bus Operations**

Paragraph 1: All MBTA buses will be operated in a manner that makes them readily accessible and usable by persons with disabilities. Proper operation includes, but is not limited to, following official MBTA procedures in:

- a. collecting fares, including purchasing and maintaining accessible automated fare system;
- b. using appropriate language;
- c. treating passengers with disabilities with courtesy and respect;
- d. assisting passengers who are blind and visually impaired upon request;
- e. assisting passengers with hearing impairments upon request;
- f. recognizing and assisting passengers with mobility impairments upon request;



# FINAL

- g. requesting passengers without disabilities who occupy priority seats to vacate these seats for a passenger with a disability.
- h. pulling buses into curbs at bus stops;
- j. assisting passengers with hidden disabilities upon request;
- k. offering and using lifts and ramps for passengers using wheelchairs and scooters;
- l. providing and using securement devices for passengers using wheelchairs and scooters;
- o. providing cards in Braille and print indicating the bus route and destination;
- p. accommodating and assisting passengers using service animals;
- q. assisting with obtaining appropriate alternative transportation when required.

Paragraph 3: The badge number of the bus operator for each MBTA bus shall be displayed prominently while the bus is in service.

Paragraph 4: All accessibility equipment and devices on buses will be maintained in operable condition and in compliance with the highest accessibility standards. All accessibility equipment and features on buses will be cleaned as required to ensure proper functioning at all times. Lifts, kneelers and ramps shall be cleaned on a daily basis. Ramps and lifts shall be vacuumed, at a minimum, every six weeks. In addition, the lifts on the Zero Series buses shall be vacuumed at least once per week during the winter months. All signage shall be cleaned at a minimum, weekly, and more often during the winter and severe weather conditions to ensure that the route, destination and bus number is clearly visible at all times during operations.

Securement belts, shoulder straps and flip seats shall be cleaned on a monthly basis or more often if warranted, and shall be replaced immediately when they cannot be cleaned, are worn significantly, are torn or otherwise damaged irreplaceably. (Amended)

# FINAL

Paragraph 16: The independent monitor appointed under paragraph 89 shall review quarterly reports prepared by the MBTA regarding bus operator performance. (Amended)

Paragraph 22: Trains (subway and light rail) must be operated in a manner that makes them readily accessible and usable by persons with disabilities. Proper operation includes, but is not limited to, following official MBTA procedures in:

- a. collecting fares;
- b. using appropriate language;
- c. treating passengers with disabilities with courtesy and respect;
- d. assisting passengers who are blind and visually impaired upon request;
- e. assisting passengers with hearing impairments upon request;
- f. recognizing and assisting passengers with mobility impairments upon request;
- g. offering and using mobile lifts, “mini-high” platforms, ramps and other accessibility devices as needed or requested;
- h. assisting passengers with cognitive impairments upon request;
- i. assisting passengers with hidden disabilities upon request;
- j. requesting passengers without disabilities who occupy priority seats to vacate these seats for a passenger with a disability;
- k. maintaining all signage in clean, visible and operable condition;
- l. maintain audio equipment in audible and operable condition
- m. taking reasonable steps to eliminate any gaps between station platforms and vehicle floors that are in excess of the amount permitted by applicable regulations in accordance with paragraph 24;
- n. assisting passengers using service animals;

# FINAL

- o. assisting with obtaining appropriate alternative transportation when required.

Paragraph 35. Operators who fail to comply with stop announcement policy shall be periodically monitored to determine if they are complying with the policy. MBTA disciplinary policy must be applied consistently to operators who fail to comply with the stop announcement policy. (Amended)

Paragraph 40: New and key stations (as defined by the ADA regulations) must be managed and maintained in a manner that makes them readily accessible and usable by persons with disabilities.

Paragraph 42: Train platform edges at all stations other than currently inaccessible street-level Green Line stops shall have detectable warnings that are maintained in safe condition to the extent required by applicable ADA regulations. At the inaccessible Green Line street level stops, the MBTA will install detectable warnings as those stops are renovated.

Paragraph 43: The MBTA shall ensure that there is a timely and effective response to any access-related emergencies or problems which arise while passengers are using its stations.

Paragraph 53: The parties recognize that elevators are critical station access features and are used by thousands of riders daily. For riders with more severe hidden disabilities or who use mobility devices, elevators represent the only way to access many MBTA stations and accompanying transportation lines. For many other MBTA riders, elevators make it possible to use the MBTA system easily and safely. As such, the MBTA recognizes the importance of and need for reliable elevators and agrees to the following. Elevators must be maintained and operated in a manner that makes them readily accessible and usable by persons with disabilities at all times during passenger service hours, which includes maintaining them in clean and safe condition. To accomplish the goal of providing readily accessible and usable elevator service the

# FINAL

MBTA must design, fund and implement an elevator management plan to provide continuous, uninterrupted elevator service during all passenger service hours, subject only to temporary and isolated elevator outages for repairs, maintenance and inspections. Service interruptions for preventive maintenance and inspections shall be scheduled in a manner to minimize the impact of any gaps in service and shall only occur when alternative accessible transportation is available to passengers needing to use elevators. The MBTA shall provide adequate funding for all aspects of elevator operations, including all maintenance, to achieve the goal of continuous uninterrupted service as set forth in this paragraph. The MBTA shall provide sufficient management oversight to achieve the goal of continuous uninterrupted service as set forth in this paragraph.

Paragraph 55: The MBTA shall develop and implement a plan for elevator cleanliness. The parties recognize that elevators are critical station access features and are used by thousands of riders daily. Elevators must be maintained and operated in a manner that makes them readily accessible and usable by persons with disabilities at all times during passenger service hours, which includes maintaining them in safe condition.

Paragraph 62: The MBTA must develop and operate a system for distributing information regarding elevator outages so that it is available to passengers at all train stations and so that announcements regarding elevator outages are made in a manner which enables passengers to use alternate routes.

Paragraph 67: Should the MBTA continue to use a contractor to manage and maintain elevators and escalators, the agency shall develop a contractor oversight program that shall include a standard set of monthly operating and reliability reports.

# FINAL

Paragraph 68: The MBTA shall manage elevator and escalator maintenance with staff who are independent of the contractor engaged to manage and maintain elevators.

Paragraph 74: In any case where there is a planned or evident long-term situation when the fixed route system is not readily accessible or usable, the MBTA must establish, publicize and provide a dedicated ready means of alternative transportation to mitigate such an interruption.

Paragraph 81: The MBTA shall establish the position of Assistant General Manager for System Accessibility. This individual shall report directly to the General Manager and shall be responsible for assisting the General Manager to ensure compliance with this settlement and coordination of the implementation of its various components; for developing further means to improve accessibility to MBTA services compatible with this settlement and state and federal law; and to ensure that all departments and components of the MBTA, as part of their regular duties and responsibilities, understand and comply with all disability access requirements as mandated by this settlement, state and federal law, and any other accessibility policies and programs established by the MBTA.

# FINAL

## Attachment C

### POST- SETTLEMENT ACCESSIBILITY COMMITMENTS To be Overseen by Community Engagement Group

12/4/18

#### **Introduction**

During the process of implementing the Settlement Agreement, both Parties have recognized that certain terms are integral to the success of the MBTA's accessibility program and should be continued in perpetuity. As such, the MBTA agrees to adopt the following commitments as an addendum to a Memorandum of Understanding with the newly formed community engagement group ("MOU"), coincident with close out of the Amended Settlement Agreement.

#### **I. Department of System-Wide Accessibility.**

A. The MBTA shall continue to provide sufficient funding and staffing for an effective Department of System-Wide Accessibility (SWA), with a permanent full-time Assistant General Manager for System-Wide Accessibility. SWA's mission is to facilitate and support the MBTA's vision of creating and sustaining a fully inclusive public transportation system that is accessible, reliable and safe for all customers. As such, SWA will continue to:

- Report to the MBTA's senior-most Executives, both the General Manager and the Deputy General Manager or Chief Operating Officer, as appropriate<sup>2</sup>;
- Be responsible for reviewing and approving public facing policies and projects which have a material impact on persons with disabilities;

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<sup>2</sup> Or functional equivalent (recognizing titles change)

# FINAL

- Be responsible for reviewing and approving all alterations and new construction related to subway and commuter rail stations and bus stops, at key milestones;
- Be responsible for reviewing and approving all revenue vehicle specifications;
- Be responsible for reviewing and revising, as needed, all employee trainings pertaining to serving customers;
- Administer the Independent Access Monitoring Program and issue quarterly reports regarding its findings across all modes of transportation;
- Provide travel instruction services and outreach about those services to the disability community and to seniors;
- Assist in providing oversight to the diligent handling and tracking of accessibility-related customer complaints;
- Participate in CIP priority setting, including without limitation, advocating for implementation of recommendations from the Plan for Accessible Transit Infrastructure (“PATI”) and the allocation of funds for these purposes; and
- Host and facilitate an annual public forum on accessibility at the MBTA.

B. SWA will be the liaison under the MOU between the MBTA and the Rider’s Transportation Access Group, the new customer engagement group, in accordance with a Memorandum of Understanding dated November 29, 2018.

**II. Elevators.** The MBTA shall continue to institute a best-in-class Elevator Maintenance Program in such a manner that provides continuous, uninterrupted elevator service during all passenger service hours, subject only to temporary and isolated elevator outages for repairs, maintenance, inspections and cleaning.

# FINAL

- Daily elevator “uptime” shall continue to be calculated as the minutes of service an elevator is operational divided by the minutes a station is open to the public.  
Elevators taken out of service temporarily for a repair, maintenance, inspection or cleaning shall not be considered in service.
  - When calculating system-uptime, elevators that are not functioning due to the following reasons shall be removed from the equation: 1.) elevators under construction for replacement, 2.) elevators out of service due to “Act of God” (e.g. severe saltwater flooding of Aquarium elevators during hurricane), and 3.) elevators that are intentionally turned off to prevent entry into a station due to security reasons
- The MBTA will be considered out of compliance with this commitment if overall “uptime” drops below 99.40% for more than 3 consecutive months.

### III. Training.

- The MBTA shall provide all new employees who have regular direct contact with customers with in-depth accessibility training on how to best serve customers with disabilities. All such staff shall receive periodic recertification trainings no less than every four (4) years. In addition, the MBTA shall provide accessibility training for any employees who have been determined to have failed to perform duties in accordance with the MBTA’s policies and procedures.
- In the event the MBTA uses a private vendor to provide transit services affecting people with disabilities, the MBTA shall require the private vendor to provide accessibility training to all bus operators and other transportation personnel



# FINAL

responsible for operating the private vendor's transport services, and shall provide monitoring of the private vendor as to accessibility.

- IV. Complaints.** The MBTA shall maintain a robust system for receiving and providing prompt responses to complaints about accessibility issues and where complaints are found to be valid, effective remedies for persons with disabilities who do not receive adequate service.

# FINAL

## EXHIBIT X

### **Remaining Obligations From The Amended Settlement Agreement**

**12/4/18**

#### **“The To-Do List”**

The following is a list of settlement terms as to which there is no agreement as to substantial compliance and/or where additional information is requested to demonstrate substantial compliance. The Parties have clarified, where feasible, definitions for Substantial Compliance for the Remaining Obligations in this Exhibit X. Note that many of the original Settlement Agreement paragraphs contain multiple obligations and sometimes the MBTA has achieved substantial compliance of some, but not all of the obligations in a paragraph (as of the date of this Amended Settlement Agreement). In those instances, the substantially compliant portions of a paragraph do not appear in Exhibit X; only the incomplete obligation(s) appear in Exhibit X. These paragraphs include a notation of (“Partially Compliant”) and state whether the Partially Compliant terms appear in Attachment A (“Fully Satisfied”) and/or Attachment B (“It’s Done With Ongoing Monitoring”).

#### **Bus Operations**

1. All MBTA buses will be operated in a manner that makes them readily accessible and usable by persons with disabilities. Proper operation includes, but is not limited to, following official MBTA procedures in:
  - i. using lifts, ramps or kneelers for passengers with disabilities who do not use wheelchairs;
  - m. maintaining all signage, including scrolling marquees in clean, visible and operable condition;

# FINAL

- n. maintaining both interior and exterior audio announcement equipment in audible and operable condition;

(Partially Compliant/Attachment B)

## **Bus Maintenance**

4. All signage shall be cleaned to ensure that the route, destination and bus number is clearly visible at all times during operation. (Amended) (Partially Compliant/Exhibit B)
5. d. The MBTA shall establish and shall continue to employ a system of regular maintenance checks for stop requests in sync with the actual stops. (Partially Compliant/Exhibit A & Amended)
6. If the maintenance checks disclose an inoperative lift or ramp on a vehicle, particularly if the ramp cannot be mechanically or manually deployed, the MBTA shall remove that vehicle from service for repairs and the MBTA shall not utilize the vehicle for service until the lift or ramp is repaired, unless there is a bus shortage and Operations Control Center approves the bus going into service temporarily, but no longer than one shift. (Partially Compliant/Exhibit A & Amended)
7. When a lift or ramp is discovered to be inoperative after a vehicle is in service it shall be removed from service as soon as possible, at the latest at the end of the operator's run, and cannot start a new service day before the lift or ramp is repaired. (Amended)

## **Bus Purchase and Rehabilitation**

N/A

## **Emergencies**

12. The MBTA shall ensure that there is a timely and effective response to any access-related emergencies or problems that arise while passengers are using bus services, to include the

# FINAL

provision of alternative transportation under the terms in Paragraphs 72-74, as necessary. The MBTA shall develop procedures for evacuation of persons with disabilities in the event of an emergency. (Amended)

12A. Substantial Compliance: For the purpose of determining Substantial Compliance with the obligations in Paragraph 12, the MBTA shall continue to ensure that all front-line employees participate in the Security Awareness & Emergency Preparedness Employee Training Program. Additionally, the MBTA shall develop and conduct a variety of emergency drills involving people with disabilities for fixed-route bus routes, and including a range of emergency scenarios and with a diversity of wheelchair types; findings and recommendations resulting from these drills shall be incorporated to the extent feasible into MBTA operations. In the event the MBTA uses a private vendor to provide alternative transportation under this Paragraph, the MBTA shall require the private vendor to provide accessibility training to all bus operators and other transportation personnel responsible for operating the private vendor's transport services, and shall provide monitoring of the private vendor as to accessibility. (Amended)

## **Performance Monitoring By the MBTA**

17 and 18. The MBTA's goal for bus operations is to ensure compliance with paragraph 1 at all times. As such, the MBTA will continue to provide accessibility training, monitor compliance (via Independent Access Monitoring Program as well as customer feedback) and enforce policies. Monitoring and complaint reports will be shared with plaintiffs on a quarterly basis. In the event the monitoring data indicates a material decline for two (2) consecutive quarters in bus operator performance on any one metric within the Internal Access Monitoring Program quarterly monitoring reports, the Department of System-Wide

# FINAL

Accessibility (SWA) shall meet with the Operations Department and develop a remedial action plan. The plaintiffs will be notified that the MBTA is developing a remedial action plan. Any dispute regarding the implementation and/or outcome of the remedial action plan shall be resolved in accordance with the dispute resolution procedures in Paragraph 100.

(Amended)

19. Those management and supervisory personnel responsible for bus operations shall be held responsible for the performance of the personnel reporting to them as to compliance with the obligations set forth in this Amended Settlement Agreement (Amended).

19A. Substantial Compliance: For the purpose of determining Substantial Compliance with the obligations in Paragraph 19, the Superintendents at each MBTA garage shall receive periodic evaluations and feedback on the oversight of accessibility issues, which shall include input from SWA as to customer complaint and monitoring data, as may be appropriate. Additionally, the Senior Management team for Bus Operations and SWA will meet periodically and when necessary with garage supervisory staff to review complaint and monitoring data as well as garage “rankings”.

## **Bus Service Planning**

20. The Service Planning department, in conjunction with Bus Operations, Marketing or any other appropriate department, shall explicitly consider the transportation needs of persons with disabilities in planning for bus services done under the 1997 Service Delivery Policy or any subsequent planning policies. Any outreach done in conjunction with bus service planning shall include outreach to persons with disabilities.

21. The MBTA shall develop and present Service Planning Standards for discussion with the Plaintiffs, as may be amended from time to time and to achieve the general intent of the

# FINAL

original commitment as follows: “ The MBTA shall develop a methodology to measure and count the number, general location, routes and time of day of passengers with disabilities, including passengers with disabilities that are not apparent, riding the fixed route bus and subway/light rail systems and shall use this information in the planning of route patterns, headways and other service planning considerations.” (Amended).

## **Train Operations**

22. Trains (subway and light rail) must be operated in a manner that makes them readily accessible and usable by persons with disabilities. Proper operation includes, but is not limited to, following official MBTA procedures in:

- o. assisting with obtaining appropriate alternative transportation when required.

(Partially Compliant/Exhibit B & Amended)

24. The MBTA shall conduct periodic inspections of all Red, Orange, and Blue line stations to determine whether any gaps exist between station platforms and vehicle floors that are in excess of the amount permitted by applicable regulations (Amended).

26. The MBTA shall perform a study concerning the future operation of the Mattapan High-Speed Trolley, including an assessment of whether to make the Mattapan High-Speed Trolley Accessible.

## **Stop Announcements**

30. In the event that the automated announcement system aboard a rail vehicle is not operating, or in the event that one is not installed, rail crewmembers will be required to make manual announcements, with a PA system if installed or by speaking in a loud, clear voice if there is not a PA on the vehicle.

34. The MBTA has developed the required announcement points for all bus routes and will update

# FINAL

as necessary. In addition, the MBTA shall promptly respond to any complaints about stop announcements and modify the announcements as suitable to include key landmarks and new developments, such as post offices, in the stop announcements along each route wherever practical. (Amended)

36. The MBTA must maintain the automated announcing systems in good working order both within and outside the bus. (Amended)

37. In the event that an installed automatic stop enunciator is not working, the MBTA shall ensure that bus operators manually make all required announcements using the installed public address (PA) system or, if the PA system is not working, in a loud voice that can be heard throughout the bus and outside of the bus on the curb when the entrance doors are opened.

## **Station Management**

41. With respect to day-to-day maintenance, stations must be maintained in clean condition, well lighted and free of debris or material that in any way creates barriers or safety hazards for persons with disabilities. With respect to addressing significant barriers and accessibility related to deferred maintenance<sup>1</sup>, as part of the MBTA's Plan for Accessible Transit Infrastructure ("PATI") station surveys, the MBTA will survey all accessible stations and catalogue all meaningful access barriers, including those related to deferred maintenance (including, for instance, defects in walking surfaces, ramps, stairs and escalators, handrails, stair treads and doors). A prioritized plan will be developed for the barriers' repairs.

Additionally, stations will be inspected by Station Officials and defects will be entered into a

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<sup>1</sup> "Deferred Maintenance" reflects maintenance or repairs to real property postponed or deferred to a later time until funding becomes available.

# FINAL

maintenance control database. Certain accessibility defects will be coded as priority in the maintenance control database. In developing a prioritization plan, the MBTA will solicit feedback from the Plaintiffs'. System-Wide Accessibility will also periodically review reports of open repair requests to evaluate and update access priorities. (Amended).

42. Train platform edges at all stations other than currently inaccessible street-level Green Line stops shall have detectable warnings that are maintained in safe condition to the extent required by applicable ADA regulations. At the inaccessible Green Line street level stops, the MBTA will install detectable warnings as those stops are renovated. (Partially Compliant/Attachment B & Amended)

44. The MBTA shall ensure that appropriate MBTA personnel are available in order to assist all passengers with access

## **Communications with Passengers**

52. The MBTA must provide at least one public TTY phone in working condition at each station that has a public pay phone. Customer service numbers shall be clearly posted at each public phone, in Braille and raised letters.

## **Elevators**

53. With respect to elevator cleanliness, the MBTA shall develop and implement a plan for elevator cleanliness, and shall include adequate funding for that plan, with best-in-class standards in the transit industry for maintaining elevator cleanliness and shall include adequate funding for the plan. (Partially Compliant/Attachment B & Amended)

53A. Substantial Compliance: For the purpose of determining Substantial Compliance with obligations in Paragraph 53, the plan for maintaining elevator cleanliness shall include details on the following components:



# FINAL

- How and when elevator cleanliness is checked;
- How and when an elevator is cleaned (without request) and what substances are used for cleaning;
- How quickly an elevator must be cleaned upon receipt of a complaint;
- When elevator shaft/pits receive cleaning;
- Staffing of stations where chronic elevator cleanliness issues arise; and
- The role of the MBTA Police Department in maintaining elevator cleanliness.

55. The MBTA agrees to install the following new/redundant elevators:

d. The Original Settlement Agreement required the MBTA to install additional elevators at Downtown Crossing station connecting the southbound and northbound Red Line platforms to the southbound (Forest Hills) Orange Line platform, however, after extensive engineering due diligence, the MBTA concluded that it was technically infeasible to construct a connection between the Red Line Northbound and the Orange Line Southbound in the location of the “Corner Mall”. The MBTA hereby confirms and commits to a modified best alternative for that connection, as well as supplemental commitments as follows:

(i.) Work Plan for Connections/Transfers

|  |   |
|--|---|
| <u>OLS/RLS.</u> Orange Line South to Red Line South (per Settlement Agreement obligation)      | <ul style="list-style-type: none"> <li>• The elevator at the current Washington Street entrance will be replaced and will extend further below grade to the Red Line Platform.</li> </ul> |
| <u>OLS/RLN.</u> Orange Line South to Red Line North (modified Settlement Agreement obligation) | <ul style="list-style-type: none"> <li>• Park Street Station Elevator No. 808 will be relocated and replaced with a larger elevator which will connect directly to an</li> </ul>          |

# FINAL

|  |   |
|--|---|
|  | <p>improved Winter Street Concourse.</p> <ul style="list-style-type: none"> <li>• At the other end of the concourse, there will be a direct connection to the Orange Line.</li> <li>• Concourse improvements will include improved wayfinding.</li> </ul> |
| <p><u>OLN/RLN</u>. Orange Line North to Red Line North (Supplemental Commitment)</p> | <ul style="list-style-type: none"> <li>• Two new elevators at the Burnham Building are under construction.</li> </ul>   |
| <p><u>OLN/RLS</u>. Orange Line North to Red Line South (Supplemental Commitment)</p> | <ul style="list-style-type: none"> <li>• A new elevator at the corner of the Macy’s building will be installed.</li> </ul>  |

(ii) If the so-called “Corner Mall” connection becomes technically feasible with the agreement of National Grid and any other impacted utility prior to a Notice to Proceed for the OLS/RLS and OLS/RLN connections, the MBTA shall revisit opportunities for a direct connection between the Orange Line Southbound to Red Line Northbound.

(iii) The MBTA shall develop and implement a system of wayfinding and announcements to alert and inform riders about the above connections and will share this with the Plaintiffs for their input.

(iv) The MBTA shall be considered in substantial compliance with this Paragraph 55 if: (i) construction contracts are executed and funded to perform the work at the OLS/RLS and OLS/RLN connections and Notices –to-Proceed to Contracts have issued for all connections in the above workplan; (ii) an effective system of wayfinding and announcements is designed for implementation; and (iii) a sequencing plan is developed to maintain and maximize accessibility to the greatest extent practicable during construction.

# FINAL

56. The MBTA will replace the following elevators:

- a. Central Square: replace elevator 861 at Central Square station;
- d. Harvard Square: replace elevator 821.

In addition, elevator 808 at Park Street will be relocated and replaced with a larger elevator during the Downtown Crossing work described in Paragraph 55 above. (Partially Compliant/Attachment A & Amended)

59. The MBTA shall consult with the plaintiffs for the purpose of discussing which existing MBTA elevators need to be replaced or modified and which stations need additional elevators by convening a meeting with the Plaintiffs and presenting an Elevator Replacement Plan for the upcoming 20 years, for input and comment. The plan shall consider each station starting with the group including New England Medical Center, Chinatown, Oak Grove and South Station to determine which, if any, of the existing elevators in this group of stations needs to be replaced, enlarged and/or upgraded and the specifications for any such changes and to determine whether any additional elevators need to be installed in any of these stations and the specifications for such additional elevators. (Amended)

66. The MBTA shall develop a policy and procedure regarding alternative service routing during elevator outages. Whenever there is an outage the MBTA shall advise passengers of the least inconvenient alternative means of reaching their destinations, and provide passengers with instructions, fare media or immediate response alternative paratransit service when necessary. Passengers shall not be charged for this alternative service. The procedures governing this type of situation should be publicized and made available to the public. Services established for elevator outages must also be posted on the MBTA

# FINAL

website and included in the recorded elevator announcement. (Amended)

67. Should the MBTA continue to use a contractor to manage and maintain elevators and escalators, the MBTA shall develop a contractor oversight program that shall include a standard set of monthly operating and reliability reports. (Partially Compliant/Attachment B & Amended)

68. The MBTA shall oversee elevator and escalator maintenance contracts with staff who are independent of the contractor engaged to manage and maintain elevators. (Partially Compliant/Attachment B & Amended)

## **Design**

69. The MBTA will commit to the update of the comprehensive "Guide to Access" and will incorporate the guide into future standards. This guide will reflect the MBTA's commitment to a safe, reliable, and easy to use system that welcomes all riders regardless of ability and age.

69A. Substantial Compliance. For the purposes of determining Substantial Compliance with the obligations in Paragraph 69, the MBTA shall develop the core chapters of the updated Guide to Access (those concerning accessibility at newly constructed and/or renovated stations and bus stops) and will submit for review by the Plaintiffs.

## **Access to Vehicles and Facilities**

70. The MBTA must develop and implement a plan for collaborating with the cities and towns in which the MBTA operates for the purpose of ensuring access to MBTA vehicles and facilities by persons with disabilities. The Municipal Collaboration Plan will include a process for regular communications with the cities and towns in which the MBTA operates regarding: issues of snow removal, removal of illegally parked vehicles at bus stops, signage

# FINAL

on public right of ways, sidewalk accessibility and curb cuts, road repairs and other activities likely to have an adverse effect on accessibility. The plan shall include provisions to encourage and provide technical support to cities and towns to:

- a. ticket and tow all vehicles stopped in bus stops and develop an enforcement plan to effectuate this policy and report annually on its efforts;
- b. ensure that bus stops are unobstructed by snow at all times; and
- c. mark all bus stops with signage at the beginning and end of each stop and on a bi-annual or more frequent basis as needed, paint the pavement adjacent to and the curbs at, bus stops in a reflective yellow or other visible color and label the pavement as a tow zone.

Where there are documented or persistent problems with buses not pulling to the curb because of difficulty reentering travel lanes or vehicles blocking bus stops or their approaches, the MBTA shall provide heightened coordination with the appropriate city or town, as well as coordination with state agencies as may be appropriate regarding the installation of partial or complete curb extensions/bulb-outs. (Amended)

## **Customer Assistance**

71. The MBTA must establish and operate a system to provide assistance to customers with disabilities. Customer assistance services must be available at all stations on the fixed route system. Customer assistance services must include a means of providing help with boarding or leaving trains and buses, using accessibility features, arranging for alternative transportation when necessary, and other assistance to facilitate use of the system by persons with disabilities. The MBTA must ensure that customer assistance services are available to persons with disabilities during all hours of operation.

# FINAL

## **Alternative Transportation**

72. The MBTA must provide alternative transportation to persons with disabilities when the fixed route system is not readily accessible or usable, in accordance with applicable ADA regulations. The system for providing alternative transportation must be designed and managed in a manner that ensures that customers are promptly advised of their right to alternative transportation, that the need for such services is promptly communicated to the responsible officials, and that services are provided in a timely manner.

73. The MBTA must have vehicles suitable for providing alternative transportation for persons with disabilities immediately available whenever there is a need to provide alternative transportation. In the event the MBTA uses a private vendor to provide alternative transportation under this Paragraph, the MBTA shall require the private vendor to provide accessibility training to all bus operators and other transportation personnel responsible for operating the private vendor's transport services, and shall provide monitoring of the private vendor as to accessibility. (Amended)

## **Complaints**

75. The MBTA must maintain the system for receiving complaints and providing prompt responses and, where complaints are found to be valid, effective remedies for persons with disabilities who do not receive adequate service. The MBTA will submit the complaint system for review and comment by the plaintiffs. (Amended)

## **Personnel**

76. a. ADA compliance training for all managers and staff must be fully integrated into the regular training programs. (Amended)
- j. New trainings for bus operators and other transportation personnel must include first

# FINAL

person perspectives and videos from customers with disabilities within the curriculum. Additionally, SWA will work with the Community Engagement Group to encourage customers with disabilities to attend these trainings to participate in the “hands on” portion of the trainings. (Partially Compliant/Attachment A & Amended)

77. The Plaintiffs will provide input when training programs are modified, updated or implemented. (Partially Compliant/Attachment B & Amended) In the event the MBTA uses a private vendor to provide transit services affecting people with disabilities, the MBTA shall require the private vendor to provide accessibility training to all bus operators and other transportation personnel responsible for operating the private vendor’s transport services, and shall provide monitoring of the private vendor as to accessibility. (Amended)

## **Management**

80. SWA will develop a written statement of the Department’s roles and responsibilities. (Partially Compliant/Attachment A & Amended)

## **Marketing, Outreach and Public Relations**

86. The MBTA must conduct a marketing campaign to educate customers with disabilities about all existing MBTA accessibility services. The marketing campaign must have a component to encourage greater use of the fixed route system by people with disabilities.

87. The MBTA must work in collaboration with organizations representing and providing services to persons with disabilities to encourage greater use of the fixed route system.

88. The MBTA must develop and conduct a public relations program to educate all customers about its plans for providing services to persons with disabilities. The public relations program must include a component for encouraging public awareness in providing accessible services to persons with disabilities.

# FINAL

89. The Hon. Patrick J. King (Ret.) was appointed by the federal district court in February 2007 as the Independent Monitor to assess compliance with the 2006 Settlement Agreement. In addition to the powers explicitly set forth in the 2006 Settlement Agreement, the Monitor is responsible to assess compliance by the MBTA with all aspects of the agreement and issue findings as necessary. Such findings include a determination whether the MBTA was in substantial compliance, partial compliance or out of compliance with the various requirements and to indicate the general trend of improvement or degradation of compliance in each area monitored. In discharging his responsibilities the Monitor serves as a resource to the MBTA and its staff to improve accessibility and customer service, comment on and be able to recommend possible solutions to access problems, and to inform the MBTA of access problems or conditions which negatively affect passenger travel. The Monitor shall serve for the duration of the Amended Settlement Agreement with the same responsibilities as in the 2006 Settlement Agreement, including determination of whether the MBTA is in substantial compliance with the terms of this agreement as specified in paragraph 98 below. However, given the significant level of compliance with the MBTA's obligations under the 2006 Settlement Agreement, it is anticipated that the amount of time required by the Monitor to fulfill his responsibilities in the future will be significantly reduced as he focuses his efforts on assessing compliance with the terms of this Amended Settlement Agreement using definitions of Substantial Compliance as may be agreed upon by the Parties. In the event Judge King is unable to continue as Independent Monitor through close-out of this Amended Settlement Agreement, the Parties shall mutually agree upon a new Independent Monitor.

(Amended)



# FINAL

89A. The process for submittals during the period after amendment of the Settlement Agreement shall be as follows:

(1) For any Amended Settlement Agreement term as to which the MBTA believes it has achieved substantial compliance, the MBTA shall deliver a submittal memorandum with supporting documentation to Judge King and Plaintiff's counsel on or about June 1 and December 1 of each year, or earlier if possible. This biannual submission schedule will continue so long as may be necessary.

(2) Upon receipt of a submittal, Plaintiffs shall have sixty (60) days to provide a written response to both Judge King and the MBTA, either concurring with substantial compliance or objecting thereto. In the case of any objection, the Plaintiffs shall include an explanation as to the basis for objection.

(3) Upon request by either Party or upon request by Judge King, the Parties shall meet and confer promptly together with Judge King.

(4) Judge King shall issue a written determination as to substantial compliance for each submittal within thirty (30) days of receipt of the Plaintiffs' response and may request additional time or information as may be necessary for a thorough evaluation.

92. The MBTA shall provide the monitor with sufficient information, in a suitable format, and access to MBTA facilities and personnel to enable the monitor to discharge any duties under this agreement. All information provided to the monitor shall also be provided to the plaintiffs.

93. All reports prepared by the monitor shall be provided to the plaintiffs. (Amended)

94. The MBTA, in conjunction with the Independent Monitor, shall conduct public meetings every six months during the time when this Amended Settlement Agreement is in effect to

# FINAL

report on compliance reports and on progress in implementing the provisions of this agreement. (Amended)

95. For the duration of this Amended Settlement Agreement, the MBTA shall pay for monitoring for assistance and support up to a maximum of \$150,000.00 per year, including direct services by the Independent Monitor and funding for the position of facilitator as contemplated by the memorandum of understanding between the MBTA and the new community engagement group.(Amended)