

UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

Civil Action No. 99-Z-1247

TIMOTHY RICHARDSON

and

JONATHAN STEELE,

Plaintiffs,

and

THE UNITED STATES OF AMERICA,

Plaintiff-Intervenor,

v.

CITY OF STEAMBOAT SPRINGS,

Defendant.

CONSENT DECREE

I. INTRODUCTION

On July 1, 1999, Timothy Richardson and Jonathan Steele ("Individual Plaintiffs") filed a Complaint against the City of

Steamboat Springs, Colorado ("City"), alleging that the City had discriminated against them on the basis of disability in connection with the provision of transit service and certain other City services, in violation of Title II of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§ 12131-12149 and Section 504 of the Rehabilitation Act of 1973 ("Rehabilitation Act"), 29 U.S.C. § 794. By Order dated April 20, 2000, the United States intervened in Individual Plaintiffs' action against the City to the extent that it alleged violations of transportation provisions of the ADA and the Rehabilitation Act.

The United States, the Individual Plaintiffs, and the City desire to settle the action between them without the burden of prolonged litigation. This Consent Decree resolves all allegations raised by the United States in its Complaint, and the allegations of Individual Plaintiffs in their Complaint that deal with the transportation issues raised in the Complaint of the United States. This Consent Decree also resolves the Individual Plaintiffs' allegations concerning the non-transportation issues in which the United States did not join. The parties waive, for the purposes of this Consent Decree only, a hearing and findings of fact and conclusions of law on all issues raised by the United States in its Complaint and the like issues raised by the Individual Plaintiffs in their Complaint. For purposes of this Consent Decree, the City acknowledges that Individual Plaintiffs are prevailing parties under 42 U.S.C. § 12205. At any hearing on a motion for attorney fees and costs,

the City shall not assert that the Individual Plaintiffs were not prevailing parties.

It is therefore ORDERED ADJUDGED AND DECREED as follows:

II. PROSPECTIVE RELIEF

A. By August 1, 2002, the City shall ensure that all vehicles in its active inventory of vehicles used in its fixed route system are readily accessible to and usable by individuals with disabilities who use wheelchairs.

B. The City shall maintain in operative condition the wheelchair lifts on all existing vehicles and all vehicles acquired in the future for use on the City's fixed route system, provided that the City may decommission its TMC buses for use of parts from the wheelchair lifts thereon for purposes of maintaining other buses' wheelchair lifts.

C. Within thirty (30) days of the entry of this Consent Decree and for a minimum term of five (5) months, the City shall lease for use on the fixed route system two (2) vans or minibuses, and shall, at the same time, retire two of the five inaccessible Ford vans which the City purchased in 1996 and 1997 without engaging in good faith efforts required under the ADA to locate accessible used vans. The City agrees that until it can permanently replace the three remaining inaccessible Ford vans in accord with its recent purchase of new accessible vans for anticipated delivery by Summer 2001, the remaining inaccessible vans will be used only on a reserve basis in case of emergency.

D. The City has established and shall continue to employ a system of regular and frequent maintenance checks of wheelchair lifts on all vehicles. The maintenance checks shall include daily lift cycling to occur at the outset of each service day. If the maintenance checks disclose an inoperative lift on a given vehicle, the City shall promptly remove said vehicle from service for repairs, and the City shall not utilize the vehicle for service until the repairs are accomplished. When a wheelchair lift is discovered to be inoperative after the bus is in service, the City shall remove said vehicle from service for repairs at the end of that service day or as soon as a spare vehicle with an operative lift can take its place, whichever occurs sooner; provided that if there is no spare vehicle with an operative lift available to be substituted, and taking the vehicle out of service will substantially delay the transportation service the City has scheduled, the City may keep the vehicle with an inoperative lift in service for up to two service days.

E. Effective immediately upon the entry of this Consent Decree, the City shall make and maintain for the duration of this Consent Decree records relating to wheelchair lift operation, maintenance and repair, including the number of the vehicle involved, the date of each lift cycling and each lift operation; the date and time of each report of lift malfunction; the date and time the vehicle was removed from service for repair; if the vehicle was kept in service due to delay in scheduled service, the amount of delay; a description of the

cause of malfunction and the repair performed; the date the vehicle was returned to service after repair; and the names of the employees conducting lift cycling and operation, reporting lift malfunctions, and performing the repairs.

F. Effective upon the entry of this Consent Decree, whenever a disabled individual using a wheelchair encounters a City bus or van without a wheelchair lift or with a lift that does not operate for any reason, the City shall continue its practice of promptly dispatching an accessible vehicle to provide transportation to the individual unable to board the previous vehicle. At the time the City operator requests dispatch of such alternate transportation, the operator shall inform the disabled individual of the expected time of arrival of the accessible vehicle, and when the dispatcher is on duty, the dispatcher shall record the times of the request and the dispatch of alternate transportation.

G. The City shall continue to provide comprehensive training for all bus and van operators, dispatchers, and mechanics. The City shall also provide said training upon hiring of any new operator or mechanic, whether or not said employee previously worked for the City. The City shall also provide timely refresher training for any operator or mechanic if and when said employee demonstrates a lack of knowledge of proper wheelchair lift operation, maintenance, and repair. Refresher training for operators shall also be provided at or about the beginning of winter. The training shall include courses available from wheelchair lift and/or bus manufacturers

to cover the proper operation, maintenance, and repair of lifts. The training shall also include hands-on training for all operators that includes proper deployment and stowing of wheelchair lifts utilizing both hydraulic and manual systems, if they exist; proper operation of lifts during inclement weather; procedures in compliance with paragraph F, above, for dispatching of alternate transportation when disabled individuals using wheelchairs cannot board a City vehicle; and the provision of adequate time in operating the lifts to allow individuals with disabilities to safely complete boarding and disembarking from the vehicle. The training shall also include general information about applicable Department of Transportation regulations under Title II of the ADA and appropriate behavior in interacting with individuals with disabilities. To insure the effectiveness of its training, the City shall utilize a self-evaluation program to establish criteria and test each trainee's competency at the conclusion of the training. The City shall make and maintain for the duration of this Consent Decree records showing the dates and hours of training, names of instructors and students, and the subject matter covered.

H. The City shall continue working directly with organizations representing persons who are mobility-impaired, to develop and implement a public education program to promote the use of the City's transit system by individuals with mobility impairments.

I. The United States, the City and the Individual

Plaintiffs agree and hereby acknowledge that, since the United States did not intervene in the non-transportation allegations of the Individual Plaintiffs' Complaint, the United States is not party to Section II(J) of this Consent Decree and that only the City and Individual Plaintiffs are party to Section (II(J)).

J. By agreeing to and voluntarily entering into this section (II(J)) of the Consent Decree, there is no admission or concession by the City, express or implied, that it has in any way violated the ADA or the Rehabilitation Act, or any other federal, state, or local law, regulation, order, or rule. The City denies and continues to deny that it has violated any such laws pertaining to the access issues addressed in this section (II(J)) of the Consent Decree. The City denies and continues to deny any and all liability to Individual Plaintiffs for any such claims. As part of this Consent Decree, the City agrees to the following:

1. The three, accessible parking spaces on the east side of the rodeo grounds at Howelsen Hill complex shall continue to exist as designated, accessible spaces for the term of this Consent Decree.
2. On or before June 22, 2001, the City shall construct an all-weather, compacted fines trail surface from the east side to the west side of the rodeo grounds, with removable hard surfacing access across the rodeo arena livestock entry and track, with associated 32-inch clear gates or other openings.
3. In order to provide access to people who use

wheelchairs or other mobility aids, effective upon entry of this Consent Decree and, as an ongoing requirement of the Decree, the City shall snowplow or shovel all walkways of the rodeo grounds, including the area referenced in Section II(J) (2) of this Decree and the areas referenced in Sections II(J) (6), II(J) (7), II(J) (8), and II(J) (10) of this Decree.

4. On or before June 22, 2001, the City shall install in the accessible, modular seating platform adjacent to the rodeo grandstand a sign that states that the security officer, who is stationed at this location, will provide umbrellas to those individuals requesting them.

5. On or before June 22, 2001, the City shall modify, as needed to comply with the Americans with Disabilities Act Accessibility Guidelines ("ADAAG"), a men's and a women's restroom on the east side of the rodeo grounds.

6. On or before June 22, 2001, the City shall re-configure the concrete ramp to the overflow seating area at the rodeo grounds so that such ramp has a slope that complies with ADAAG. In addition, on or before June 22, 2001, the City shall add ADAAG-compliant, accessible seating in the overflow seating area by painting stripes on the landing to the overflow seating area.

7. On or before January 25, 2001, the City shall construct an all-weather, compacted fines trail surface around the north side of the poma lift house on the Howelsen Hill complex to the bleachers to the ski-jumping,

viewing area, and to, and through, the existing fence on the north side of the poma lift house, for access to the concert venue/amphitheater.

8. On or before January 25, 2001, the City shall place removable, hard-surfacing access across ski-able terrain during World Cup events, from the Howelsen Hill Lodge parking lot to the bleachers, for access to the ski-jumping, viewing area.

9. Upon entry of this Consent Decree, the City shall modify in compliance with ADAAG the fire doors to Howelsen Hill Lodge.

10. Effective upon entry of this Consent Decree, the City shall prohibit parking along the fence in front of and to the east of Howelsen Hill Lodge during winter and summer scheduling of the Lodge, as well as during special events, to ensure that safe access is available for the public to the main, entry doors to the Lodge.

11. On or before January 25, 2001, the City shall install automatic door openers to the restroom doors on the first floor of Howelsen Hill Lodge or turn those doors in such a manner to ensure that they comply with ADAAG.

12. On or before September 3, 2001, the City shall create two ADAAG-compliant parking spaces at the Alpine Slide/stables area.

13. On or before September 3, 2001, the City shall ramp or otherwise provide access to the restrooms at the Alpine Slide/stables area.

14. On or before September 3, 2001, the City shall modify the existing restrooms located between the rodeo grounds overflow seating and the Alpine Slide/stables parking lot so that such restrooms comply with ADAAG.

15. Effective upon entry of this Consent Decree, the City shall require its bus drivers to stop at the accessible, bus loading zone located just west of the bus shelter at 7th Street and Lincoln Avenue in the City to pick up and drop off people with disabilities in wheelchairs or other mobility aids.

16. To the extent that it has not already been accomplished, effective upon entry of this Consent Decree, the City shall request the Steamboat Ski & Resort Corporation to post an "ADA Loading Only" zone sign at the curbside of the extreme south end of the Gondola Transit Center, where City buses, before proceeding into whatever stall they would normally use for loading and unloading at the Transit Center, must stop if a person in a wheelchair or other mobility aid is waiting to board a City bus or exit a City bus that is entering the Gondola Transit Center.

17. The City does not contest that Individual Plaintiffs are entitled to their reasonable attorneys' fees and costs. If the parties cannot otherwise reach agreement as to the amount of Plaintiffs' attorneys' fees and costs, the parties agree that the amount of such fees and costs will be determined by Judge Weinshienk, and the City shall pay

those attorneys' fees and costs awarded by Judge Weinshienk within ten (10) days after the date of the Order entering such award or within ten (10) days of the resolution of any appeal of such Order.

III. INDIVIDUAL REMEDIAL RELIEF

The City shall pay Mr. Richardson the sum of \$ 9,500.00, and Mr. Steele the sum of \$ 2,750.00 in compensatory damages relating to the claims contained in the two Complaints.

IV. IMPLEMENTATION OF DECREE

It is further ORDERED that:

A. Within ninety (90) days of the entry of this Consent Decree, the City shall submit its first report to counsel for the United States and for Individual Plaintiffs detailing the actions it has taken to comply with this Consent Decree. Within one hundred-eighty (180) days of the entry of this Consent Decree, the City shall submit its second report to counsel for the United States and for Individual Plaintiffs detailing the actions it has taken to comply with this Consent Decree.

B. During the four-year period following the entry of this Consent Decree, the City shall summarize and send to counsel for the United States and Individual Plaintiffs on an annual basis, measured from the date of entry of the Consent Decree, a list of wheelchair lift malfunctions and repairs, the dates and times of the provision of alternate transportation as

provided in paragraph II(F), above, vehicle purchases, and vehicle leases, along with dates thereof.

C. As and for the final annual report, the City shall provide a report to counsel for the United States and the Individual Plaintiffs forty-five (45) days prior to the expiration date of the Consent Decree, detailing all actions taken to comply with this Consent Decree.

D. The City shall retain during the life of this Consent Decree records required by this Consent Decree, and any other records necessary to document the implementation of and continued compliance with this Consent Decree. The City shall allow counsel for the United States and Individual Plaintiffs to review and copy such records upon reasonable notice.

E. Within thirty (30) days of the entry of this Consent Decree by the Court, Timothy Richardson and Jonathan Steele shall provide to the undersigned counsel for the City an executed Release Form in the form attached as Appendix A to this Consent Decree.

F. Within ten (10) days of the receipt by the City's counsel of Mr. Richardson's and Mr. Steele's executed Release Forms, they shall be paid the amount described in paragraph III. Payment shall be forwarded to Mr. Richardson and Mr. Steele via certified mail, return receipt requested, for receipt by their counsel within the ten days described above. A copy of any check and any accompanying correspondence shall be mailed to counsel for the United States.

G. The parties shall attempt to resolve informally any dispute that may occur under this Consent Decree. If the parties are unable to reach agreement to resolve a dispute within thirty (30) days after the issue has been raised, the dispute may be submitted to the Court for resolution.

H. The Court shall retain jurisdiction over this Consent Decree for the purposes of enforcing it, resolving any dispute that may arise under this Consent Decree, and entering such further orders as may be appropriate.

I. This Consent Decree shall terminate four (4) years from the date of its entry unless, before its termination, the Court finds good cause to extend any provision herein.

J. This Consent Decree shall be final and binding on the parties to this action, including all principals, agents, employees of the City.

K. Nothing in this Consent Decree shall preclude the United States from filing a separate action under the ADA and/or the Rehabilitation Act for any future alleged violation occurring after the date of entry of this Consent Decree.

L. The United States and the City shall bear their own costs, including attorneys' fees, except that all parties retain the right to seek costs for any matter that, in the future, may arise from this Consent Decree and require resolution by the Court.

Respectfully submitted,

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Dated: _____

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Dated: _____

It is so ORDERED, this ____ day of _____, 2000.

ZITA L. WEINSHIENK
United States District Judge

APPENDIX A

RELEASE FORM

Timothy Richardson and Jonathan Steele, and United States
v. _____
City of Steamboat Springs, Colorado

STATE OF COLORADO

For and in consideration of the payment of compensatory damages pursuant to the provisions of the Consent Decree entered by the Honorable Zita L. Weinshienk, United States District Judge, on [date], in the above-styled case, I, [name of plaintiff], hereby release and forever discharge the City of Steamboat Springs, Colorado, from those legal and equitable claims that are raised in the Complaints of the United States and of Timothy Richardson and Jonathan Steele, in Timothy Richardson and Jonathan Steele, and United States v. City of Steamboat Springs, Colorado, Civil Action No. 99-Z-1247.

This Release constitutes the entire agreement between myself and the City of Steamboat Springs, Colorado, without exception or exclusion. I acknowledge that a copy of the Consent Decree in this action has been made available to me.

I HAVE READ THIS RELEASE AND UNDERSTAND THE CONTENTS THEREOF AND I EXECUTE THIS RELEASE OF MY OWN FREE ACT AND DEED.

Signed this _____ day of _____, 2000.

[name of plaintiff]

Sworn and subscribed to before me this _____ day of _____, 2000.

NOTARY PUBLIC

My commission expires:_____