

THE CITY OF PROVIDENCE  
STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

# RESOLUTION OF THE CITY COUNCIL

No. 313

Approved June 8, 2012

RESOLVED, That His Honor the Mayor, is hereby authorized to execute a Settlement Agreement with the United States Department of Justice making certain commitments about compliance with the Americans with Disabilities Act over the next three years.

IN CITY COUNCIL

JUN 07 2012

READ AND PASSED

M. S. G.  
PRES.

A. M. S.  
CLERK

I HEREBY APPROVE.

Angel Taveras  
Mayor

Date: 6/8/12

**SETTLEMENT AGREEMENT BETWEEN**  
**THE UNITED STATES OF AMERICA**  
**AND**  
**PROVIDENCE, RHODE ISLAND**  
**UNDER THE AMERICANS WITH DISABILITIES ACT**  
**DJ 204-66-47**

**BACKGROUND**

***SCOPE OF THE INVESTIGATION***

The United States Department of Justice (Department) initiated this matter in 2004, as a compliance review of Providence, Rhode Island, under title II of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12131-12134, and the Department's implementing regulation, 28 C.F.R. Part 35. Because the City received financial assistance from the Department of Justice, the review was also conducted under the authority of section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and the Department's implementing regulation, 28 C.F.R. Part 42, Subpart G. On July 25, 2005, a Settlement Agreement (2005 Agreement) between the United States and the City of Providence, Rhode Island was executed. The Agreement included findings of ADA violations and a commitment by the City to take specific remedial actions. Despite the City's commitment outlined in the 2005 Agreement, the City failed to comply with several requirements of the 2005 Agreement. The Department initiated a subsequent review of the City's compliance as an appropriate enforcement step. The subsequent review was conducted in 2010 by the Disability Rights Section of the Department's Civil Rights Division and focused on the City's compliance with the following title II requirements:

- to conduct a self-evaluation of its services, policies, and practices by July 26, 1992, and make modifications necessary to comply with the Department's title II regulation, 28 C.F.R. § 35.105;
- to notify applicants, participants, beneficiaries, and other interested persons of their rights and the City's obligations under title II and the Department's regulation, 28 C.F.R. § 35.106;
- to designate a responsible employee to coordinate its efforts to comply with and carry out the City's ADA responsibilities, 28 C.F.R. § 35.107(a);

- to establish a grievance procedure for resolving complaints of violations of title II, 28 C.F.R. § 35.107(b);
- to operate each program, service, or activity so that, when viewed in its entirety, it is readily accessible to and usable by individuals with disabilities, 28 C.F.R. §§ 35.149 - 35.150, by:
  - delivery of services, programs, or activities in alternate ways, including, for example, redesign of equipment, reassignment of services, assignment of aides, home visits, or other methods of compliance or, if these methods are not effective in making the programs accessible,
  - physical changes to buildings (required to have been made by January 26, 1995), in accordance with the Department's title II regulation, 28 C.F.R. §§ 35.150 and 35.151, and the 1991 ADA Standards for Accessible Design (Standards), 28 C.F.R. pt. 36, App. D (2011), or the Uniform Federal Accessibility Standards (UFAS), 41 C.F.R. § 101-19.6, App. A.
- to ensure that facilities for which construction or alteration was begun after January 26, 1992, are readily accessible to and usable by people with disabilities, in accordance with 1) the Department's title II regulation and 2) the Standards, UFAS, or 2010 Standards, as applicable, 28 C.F.R. § 35.151;
- to ensure that communications with applicants, participants, and members of the public with disabilities are as effective as communications with others, including furnishing auxiliary aids and services when necessary, 28 C.F.R. § 35.160;
- to provide direct access via TTY (text telephone) or computer-to-telephone emergency services, including 9-1-1 services, for persons who use TTYs, 28 C.F.R. § 35.162;
- to provide information for interested persons with disabilities concerning the existence and location of the City's accessible services, activities, and facilities, 28 C.F.R. § 35.163(a); and
- to provide signage at all inaccessible entrances to each of its facilities, directing users to an accessible entrance or to information about accessible facilities, 28 C.F.R. § 35.163(b).

The Department reviewed the following facilities in 2004, which – because construction or alterations commenced after January 26, 1992 – must comply with the ADA's new construction or alterations requirements: Providence Public Safety Complex and Roger Williams Park and Zoo. In 2010, the Department reviewed the following facilities which must comply with the ADA's new construction or alterations requirements: Providence Pier, Providence Public Safety Complex, Rochambeau Library, Providence Career & Technical Academy, Providence Animal Care and Control, and Providence Fire Department.

The Department's program access review in 2004 covered those of the City's programs, services, and activities that operate in the following facilities: City Hall, Office of Inspections and Standards, Paul Cabral Water Park, and Vincent Brown Recreation Center. In 2010, the Department's program access review covered those of the City's programs, services, and activities that operate in the following facilities: City Hall, Washington Park Library, Washington Park Community Center, Fox Point Neighborhood Center, Fox Point Library, Office of Inspection and Standards, Museum of Natural History, Public Works, Dalrymple Paddle Boat Area, Billy Taylor Park, Bank of America Skating Center, India Point Park, Planning and Development, Providence School Department, Vincent Brown Recreation Center, and Columbia Park.

The Department conducted a program access review in 2010 of the following polling places: Jewish Community Center, Engine 15, and Engine 6. This review was limited to the areas of the facilities used by the voting public: parking, the route from the parking area to the area used for voting, and the area used for voting.

In 2010, the Department also conducted a program access review of the Providence Career and Technical Academy because it has been designated as an emergency shelter.

In 2004 and 2010, the Department reviewed the City's policies and procedures regarding voting, emergency management and disaster prevention, and sidewalk maintenance to evaluate whether persons with disabilities have an equal opportunity to utilize these programs.

Finally, in 2004 and 2010, the Department reviewed the City's policies and procedures regarding providing effective communication to persons who are deaf or hard-of-hearing.

### ***JURISDICTION***

1. The ADA applies to the City because it is a "public entity" as defined by title II. 42 U.S.C. § 12131(1).
2. The Department is authorized under 28 C.F.R. Part 35, Subpart F, to determine the compliance of the City with title II of the ADA and the Department's title II implementing regulation, to issue findings, and, where appropriate, to negotiate and secure voluntary compliance agreements. Furthermore, the Attorney General is authorized, under 42 U.S.C. § 12133, to bring a civil action enforcing title II of the ADA should the Department fail to secure voluntary compliance pursuant to Subpart F.
3. The Department is authorized under 28 C.F.R. Part 42, Subpart G, to determine the City's compliance with section 504 of the Rehabilitation Act of 1973, to issue findings, and, where appropriate, to negotiate and secure voluntary compliance agreements. Furthermore, the Attorney General is authorized, under 29 U.S.C. § 794 and 28 C.F.R. §§ 42.530 and 42.108-110, to suspend or terminate financial assistance to the City

provided by the Department of Justice should the Department fail to secure voluntary compliance pursuant to Subpart G or to bring a civil suit to enforce the rights of the United States under applicable federal, state, or local law.

4. The parties to this Agreement are the United States of America and Providence, Rhode Island.
5. In order to avoid the burdens and expenses of an investigation and possible litigation, the parties enter into this Agreement.
6. In consideration of, and consistent with, the terms of this Agreement, the Attorney General agrees to refrain from filing a civil suit in this matter regarding all matters contained within this Agreement, except as provided in the section entitled "Implementation and Enforcement."

#### **SUBSEQUENT VIOLATIONS**

7. Certain of the facilities surveyed in 2004 were re-surveyed in 2010. The 2010 survey revealed several instances where the violations noted in the 2005 Agreement had not been remedied as agreed. Violations remain in the following re-surveyed facilities:
  - A. Providence Public Safety Complex (door force, locker room benches, stage access in auditorium, protruding objects, and the use of assistive listening systems);
  - B. City Hall (signage, accessible lift, door force, door hardware, protruding objects, counter height, and computer accessibility);
  - C. Office of Inspections and Standards (accessible parking, exterior entrance threshold);
  - D. Vincent Brown Recreation Center (parking); and
  - E. Washington Park Community Center (parking, ramp handrails and edge protection, entrance width).

The complete list of specific violations for these facilities appears in Attachments J and K, as appropriate.

#### **REMEDIAL ACTION**

#### ***NOTIFICATION***

8. Within two (2) months of the effective date of this Agreement, the City will adopt the attached Notice (Attachment A); distribute it to all agency heads; publish the Notice in a local newspaper of general circulation serving the City; post the Notice on its Internet Home Page; and post copies in conspicuous locations in its public buildings. It will refresh the posted copies, and update the contact information contained on the Notice, as necessary, for the life of this Agreement. Copies will also be provided to any person upon request.
9. Within three (3) months of the effective date of this Agreement, and on yearly anniversaries of this Agreement until it expires, the City will implement and report to the Department its written procedures for providing information for interested persons with disabilities concerning the existence and location of the City's accessible programs, services, and activities.

#### ***ADA COORDINATOR***

10. Within three (3) months of the effective date of this Agreement, the City will appoint or hire one or more ADA Coordinator(s). The ADA Coordinator(s) will coordinate the City's effort to comply with and carry out its responsibilities under the ADA, including any investigation of complaint communicated to it alleging its noncompliance with title II or alleging any actions that would be prohibited under title II. The City will make available to all interested individuals the name(s), office address(es), and telephone number(s) of the ADA Coordinator(s).

#### ***GRIEVANCE PROCEDURE***

11. Within three (3) months of the effective date of this Agreement, the City will adopt the attached ADA Grievance Procedure (Attachment B), distribute it to all agency heads, and post copies of it in conspicuous locations in each of its public buildings. It will refresh the posted copies, and update the contact information contained on it, as necessary, for the life of the Agreement. Copies will also be provided to any person upon request.

#### ***GENERAL EFFECTIVE COMMUNICATION PROVISIONS***

12. Within three (3) months of the effective date of this Agreement, the City will identify sources of qualified sign language and oral interpreters, real-time transcription services, and vendors that can put documents in Braille, and will implement and report to the Department its written procedures, with time frames, for fulfilling requests from the public for sign language or oral interpreters, real-time transcription services, and documents in alternate formats (Braille, large print, cassette tapes, accessible electronic format (*e.g.*, HTML), etc.).
13. The City will take steps to ensure that all appropriate employees are trained and practiced in using the Rhode Island Relay Service to make and receive calls.

### ***9-1-1***

14. Within three (3) months of the effective date of this Agreement, the City will ensure that each 9-1-1 call station is equipped with a TTY or computer equivalent.
15. Within three (3) months of the effective date of this Agreement, the City will develop procedures for answering 9-1-1 calls that include training all call takers to use a TTY to take 9-1-1 calls, to recognize a "silent" open line as a potential TTY call and respond by TTY, and to ensure that TTY calls are answered as quickly as other calls received.
16. The City will monitor its incoming 9-1-1 TTY calls to ensure they are answered as quickly and accurately as other calls received.
17. The City will incorporate correct TTY call-taking procedures into 9-1-1 call takers' performance evaluations and will amend its personnel policies to include written disciplinary procedures for call takers who fail to perform TTY call-taking consistent with the training and procedures. The City will implement and report to the Department its evaluation and procedures within three (3) months of the effective date of this Agreement.

### ***LAW ENFORCEMENT AND EFFECTIVE COMMUNICATION***

18. Within three (3) months of the effective date of this Agreement, the City will adapt for its own use and implement the "Providence Police Department's Policy Statement on Effective Communication with People Who are Deaf or Hard of Hearing" (Attachment C) and distribute to all police department officers the "Guide for Law Enforcement Officers When in Contact with People Who are Deaf or Hard of Hearing" (Attachment D).
19. Within three (3) months of the effective date of this Agreement, the City will contract with one or more local qualified oral/sign language interpreter agencies to ensure that the interpreting services will be available on a priority basis, twenty-four (24) hours per day, seven (7) days a week, to its police department or make other appropriate arrangements (such as contracting directly with or hiring qualified interpreters).
20. Within three (3) months of the effective date of this Agreement, the City will ensure that each police station or substation and each jail is equipped with a working TTY to enable persons who are deaf, hard of hearing, or who have speech impairments to make outgoing telephone calls. Where inmate telephone calls are time-limited, the City will adopt policies permitting inmates who use TTYs a longer period of time to make those calls, due to the slower nature of TTY communications compared with voice communications.

### ***EMPLOYMENT***

21. Within three (3) months of the effective date of this Agreement, the City will amend its employment policies, as necessary, to comply with the regulations of the U.S. Equal Employment Opportunity Commission implementing title I of the Americans with Disabilities Act of 1990, codified at 29 C.F.R. Part 1630. At minimum, those policies will provide that the City:
- A. will not discriminate on the basis of disability in its hiring or employment practices;
  - B. will not ask a job applicant about the existence, nature, or severity of a disability. Applicants may be asked about their ability to perform specific job functions. Medical examinations or inquiries may be made, but only after a conditional offer of employment is made and only if required of all applicants for the position;
  - C. will make reasonable accommodations for the known physical or mental limitations of a qualified applicant or employee with a disability upon request unless the accommodation would cause an undue hardship on the operation of the City's business. If an applicant or an employee requests a reasonable accommodation and the individual's disability and need for the accommodation are not readily apparent or otherwise known, the City may ask the individual for information necessary to determine if the individual has a disability-related need for the accommodation;
  - D. will maintain any employee's medical records separate from personnel files and keep them confidential; and
  - E. will make an individualized assessment of whether a qualified individual with a disability meets selection criteria for employment decisions. To the extent the City's selection criteria have the effect of disqualifying an individual because of disability, those criteria will be job-related and consistent with business necessity.

#### ***POLLING PLACES***

22. Some of the City polling places may be owned or operated by other public entities subject to title II or by public accommodations subject to title III and, as such, would be subject to the obligation to provide program access or to remove barriers to accessibility under the ADA. This Agreement does not limit future enforcement action against the owners or operators of these polling places by any person or entity, including the Department.
23. Before designating any site as a new polling place, the City will survey the site using the survey instrument at Attachment F to determine whether the site contains barriers to access by people with disabilities in the parking, exterior route to the entrance, entrance, interior route to the voting area, or voting area. The City will not designate any such site as a polling place until all such barriers have been removed.

24. The Department surveyed certain of City's polling places. Barriers to access at such polling places owned by the City and the dates by which the City will remove barriers are noted in Attachments I, J, and K.
25. Barriers to access at the polling places not owned by the City which were surveyed by the Department are noted in Attachment E. Within one (1) month of the effective date of this Agreement, the City will request in writing that each of the owners and operators of the polling places listed in Attachment E remove the noted barriers to access for persons with disabilities within one year of the effective date of this Agreement. The City will provide a copy of the Department's ADA Checklist for Polling Places ([www.ada.gov/votingck.htm](http://www.ada.gov/votingck.htm)) with the written request. The City will simultaneously send a courtesy copy of the request to the Department.
26. Within nine (9) months of the effective date of this Agreement, the City will survey all facilities listed in Attachment E to determine whether the barriers noted have been removed. If not, for each polling place that still contains inaccessible parking, exterior route to the entrance, entrance, interior route to the voting area, or voting area, the City will identify within eighteen (18) months of the effective date of this Agreement an alternate location where these elements are accessible. That identification will utilize the survey instrument that appears as Attachment F to this Agreement. The City will then take immediate steps to change its polling place to the new location. Under this provision of the Agreement, the City will ensure that barriers at each polling place identified in Attachment E are either removed or a substitute accessible polling place is in operation before the next election occurring more than three (3) months after the effective date of this Agreement.
27. Within twelve (12) months of the effective date of this Agreement, using the survey instrument at Attachment F, the City will survey all polling places not surveyed by the Department to identify barriers to access by people with disabilities in the parking, exterior route to the entrance, entrance, interior route to the voting area, and voting area. Within eighteen (18) months of the effective date of this Agreement, for each such polling place, the City will then either (1) ensure that all barriers to access by people with disabilities have been removed or (2) identify an alternate polling place with no barriers to access by people with disabilities. That identification of accessible polling places will utilize the survey instrument that appears at Attachment F to this Agreement. The City will then take immediate steps to change each inaccessible polling place to a new accessible location. Under this provision of the Agreement, the City will ensure that barriers at each polling place the Department did not survey are either removed or a substitute accessible polling place is in operation before the next election occurring more than twelve (12) months after the effective date of this Agreement.
28. Until all polling places in each precinct or voting district have accessible parking, exterior routes, entrances, interior routes to the voting area, and voting area, prior to each election,

the City will identify and widely publicize to the public and to persons with disabilities and organizations serving them the most accessible polling place(s) for each precinct or voting district.

29. Within three (3) months of the effective date of this Agreement, the City will provide opportunities for same-day balloting for voters with disabilities whose assigned polling place does not have accessible parking, exterior route to entrance, entrance, interior route to the voting area, and voting area. The method for providing these opportunities may include allowing the individual to vote at another nearby location that is accessible, allowing individuals with disabilities to vote by an absentee ballot that is accepted if postmarked on the day of the election (or picked up by election officials at the home of the voter on the same day as the election), providing curbside voting at the inaccessible polling place, or any other method that ensures that voters with disabilities have the same degree of information available to them when casting their ballots as others. If curbside assistance is provided and a polling place official is not stationed outside to provide assistance to people with disabilities in curbside voting, it must include a reliable, effective mechanism by which individuals with disabilities can summon election officials to provide curbside assistance without leaving their vehicles and ensure prompt response and assistance with curbside voting from polling officials.
30. Within three (3) months of the effective date of this Agreement, the City will survey its voter registration locations for accessibility to persons with disabilities by using the form provided at Attachment F and will report the results of this survey to the Department. If barriers to access are identified, the City will implement and report to the Department its plan to provide program access, which may include allowing persons to register to vote through alternative means or at alternative locations.
31. Within six (6) months of the effective date of this Agreement, the City will make all voter registration materials available in alternate formats, including Braille, large print, audio tape, and accessible electronic format (*e.g.*, HTML).
32. Within the month prior to the next election that utilizes the City's polling places, and at yearly anniversaries of the effective date of this Agreement until it expires, the City will train poll workers on the rights of people with disabilities and the practical aspects of assuring those rights. The training will cover, at minimum, the need to maintain the physical accessibility of polling locations; how to assist people with disabilities, as necessary; and how to operate any non-standard voting equipment or accessible features of standard equipment (particularly new, accessible equipment).

#### ***EMERGENCY MANAGEMENT PROCEDURES AND POLICIES***

33. The Department will work collaboratively with the City to ensure that the City's Emergency Operations Plan (EOP), provided by the Providence Emergency Management Agency, will be in compliance with ADA requirements. The touchstone for compliance

with ADA requirements relating to emergency management is Chapter 7 of the Department's *ADA Best Practices Tool Kit for State and Local Government (ADA Tool Kit)*, which addresses in detail key ADA obligations that apply to all aspects of emergency management, including planning, preparedness, evacuation, shelters, medical and social services, lodging and housing programs, recovery, and rebuilding.

34. The City is committed to compliance with the ADA requirements as described in Chapter 7 of the *ADA Tool Kit*. Within 60 days of the effective date of this Agreement, the City will revise its EOP so that it conforms with Chapter 7 of the *ADA Tool Kit*, and the City will provide a copy of its revised EOP (including supporting documents) to the Department. The Department will review the revised EOP to ensure compliance with title II of the ADA and its implementing regulation.
35. If the City contracts with another entity, such as the American Red Cross or another local government, to provide its emergency preparedness plans and emergency response services, the City will ensure that the other entity complies with the following provisions on its behalf.
36. Within three (3) months of the effective date of this Agreement, the City will implement and report to the Department its written procedures that ensure that it regularly solicits and incorporates input from persons with a variety of disabilities and those who serve them regarding all phases of its emergency management plan (preparation, notification, response, and clean up).
37. Within three (3) months of the effective date of this Agreement, the City will implement and report to the Department its written procedures that ensure that its community evacuation plans enable those who have mobility disabilities, are blind or have low vision, are deaf or hard of hearing, have cognitive disabilities, mental illness, or other disabilities to safely self-evacuate or be evacuated by others. Some communities are instituting voluntary, confidential registries of persons with disabilities who may need individualized evacuation assistance or notification. If the City adopts or maintains such a registry, its report to the Department will discuss its procedures for ensuring voluntariness, appropriate confidentiality controls, and how the registry will be kept updated, as well as its outreach plan to inform persons with disabilities of its availability. Whether or not a registry is used, the City plan should address accessible transportation needs for persons with disabilities.
38. Within three (3) months of the effective date of this Agreement, the City will implement and report to the Department its written procedures that ensure that if its emergency warning systems use sirens or other audible alerts, it will also provide ways to inform persons who are deaf or hard of hearing of an impending disaster. The use of auto-dialed TTY messages to pre-registered individuals who are deaf or hard of hearing, text messaging, e-mails, open-captioning on local TV stations and other innovative uses of technology may be incorporated into such procedures, as well as lower-tech options such

as dispatching qualified sign language interpreters to assist with emergency TV broadcasts.

39. Within three (3) months of the effective date of this Agreement, the City will implement and report to the Department its written procedures that ensure that emergency shelters have a back-up generator and a way to keep medications refrigerated (such as a refrigerator or a cooler with ice). Access to back-up power and refrigeration at such shelters will be made available to persons whose disabilities require access to electricity and refrigeration, for example, for using life-sustaining medical devices, providing power to motorized wheelchairs, and preserving certain medications, such as insulin, that require refrigeration. The written procedures will include a plan for notifying persons of the location of such shelters.
40. Within three (3) months of the effective date of this Agreement, the City will implement and report to the Department its written procedures that ensure that persons who use service animals are not separated from their service animals when sheltering during an emergency, even if pets are normally prohibited in shelters. The procedures will not segregate persons who use service animals from others but may take into account the potential presence of persons who, for safety or health reasons, should not be in contact with certain types of animals.
41. Within three (3) months of the effective date of this Agreement, the City will develop, implement, and report to the Department its plans for providing equivalent opportunities for accessible post-emergency temporary housing to persons with disabilities. Within one (1) year of the effective date of this Agreement, the City will ensure that information it makes available regarding temporary housing includes information on accessible housing (such as accessible hotel rooms within the community or in nearby communities) that could be used if people with disabilities cannot immediately return home after a disaster if, for instance, necessary accessible features such as ramps or electrical systems have been compromised.

### ***PHYSICAL CHANGES TO EMERGENCY SHELTERS***

42. Some of the of the City's emergency shelters may be owned or operated by other public entities subject to title II or by public accommodations subject to title III and, as such, are subject to the obligation to provide program access or remove barriers to accessibility under the ADA. This Agreement does not limit such future enforcement action against the owners or operators of these facilities by any person or entity, including the Department.
43. The Department surveyed one of the City's emergency shelters. Barriers to access at this City owned shelter, and the dates by which the City will remove barriers, are noted in Attachment I.
44. Within six (6) months of the effective date of this Agreement, using the survey instrument entitled *ADA Checklist for Emergency Shelters* (Attachment N), the City will survey all of its emergency shelters (including those owned or operated by other entities) to identify barriers to access by people with disabilities in the parking; exterior route to the entrance; entrance; interior route to the emergency shelter area, including the route to the drinking fountains, eating areas, sleeping areas, toilet rooms, and shower/bathing rooms designated for those seeking shelter; and the emergency shelter area itself, including the drinking fountains, eating areas, sleeping areas, toilet rooms, and shower/bathing rooms designated for those seeking shelter.
45. Within twelve (12) months of the effective date of this Agreement, for each such emergency shelter identified and surveyed in the paragraph directly above, the City will then either (1) ensure that all barriers to access by people with disabilities have been removed or (2) identify and designate an alternate emergency shelter with no barriers to access by people with disabilities, using the survey instrument entitled *ADA Checklist for Emergency Shelters* (Attachment N).
46. Within three (3) months of the effective date of this Agreement and until all emergency shelters have accessible parking, exterior routes, entrances, interior routes to the shelter area, and toilet rooms serving the shelter area, the City will identify and widely publicize to the public and to persons with disabilities and the organizations that serve them the most accessible emergency shelters.

### ***SIDEWALKS***

47. Within three (3) months of the effective date of this Agreement, the City will implement and report to the Department its written process for soliciting and receiving input from persons with disabilities regarding the accessibility of its sidewalks, including, for example, requests to add curb cuts at particular locations.

48. Within three (3) months of the effective date of this Agreement, the City will identify and report to the Department all streets, roads, and highways that have been constructed or altered since January 26, 1992. Paving, repaving, or resurfacing a street, road, or highway is considered an alteration for the purposes of this Agreement. Filling a pothole is not considered an alteration for the purposes of this Agreement. Within three (3) years of the effective date of this Agreement, the City will provide curb ramps or other sloped areas complying with the Standards, UFAS, or the 2010 Standards, as applicable, at all intersections of the streets, roads, and highways identified under this paragraph having curbs or other barriers to entry from a street level pedestrian walkway. See paragraph 57 for more details regarding applicable standards.
49. Beginning no later than three (3) months after the effective date of this Agreement, the City will provide curb ramps or other sloped areas complying with the Standards, UFAS, or the 2010 Standards, as applicable, at any intersection having curbs or other barriers to entry from a street level pedestrian walkway, whenever a new street, road, or highway is constructed or altered.
50. Within three (3) months of the effective date of this Agreement, the City will identify all street level pedestrian walkways that have been constructed or altered since January 26, 1992. Paving, repaving, or resurfacing a walkway is considered an alteration for the purposes of this Agreement. Within three (3) years of the effective date of this Agreement, the City will provide curb ramps or other sloped areas complying with the Standards, UFAS, or the 2010 Standards, as applicable, at all places where a street level pedestrian walkway identified under this paragraph intersects with a street, road, or highway. See paragraph 57 for more details regarding applicable standards.
51. Beginning no later than three (3) months after the effective date of this Agreement, the City will provide curb ramps or other sloped areas complying with the Standards, UFAS, or the 2010 Standards, as applicable, at all newly constructed or altered pedestrian walkways where they intersect a street, road, or highway.

#### ***WEB-BASED SERVICES AND PROGRAMS***

52. Within one (1) month of the effective date of this Agreement, and on subsequent anniversaries of the effective date of this Agreement, the City will distribute to all persons – employees and contractors – who design, develop, maintain, or otherwise have responsibility for content and format of its website(s) or third party websites used by the City (Internet Personnel) the technical assistance document, “Accessibility of State and Local Government Websites to People with Disabilities,” which is Attachment H to this Agreement (it is also available at [www.ada.gov/websites2.htm](http://www.ada.gov/websites2.htm)).
53. Within three (3) months of the effective date of this Agreement, and throughout the life of the Agreement, the City will do the following:

- A. Establish, implement, and post online a policy that its web pages will be accessible and create a process for implementation;
- B. Ensure that all new and modified web pages and content are accessible;
- C. Develop and implement a plan for making existing web content more accessible;
- D. Provide a way for online visitors to request accessible information or services by posting a telephone number or e-mail address on its home page; and
- E. Periodically (at least annually) enlist people with disabilities to test its pages for ease of use.

***NEW CONSTRUCTION, ALTERATIONS,  
AND PHYSICAL CHANGES TO FACILITIES***

- 54. The City will ensure that all buildings and facilities constructed by or on behalf of the City are constructed in full compliance with the requirements of 28 C.F.R. § 35.151, including applicable architectural standards.
- 55. The City will ensure that alterations to City facilities are made in full compliance with the requirements of 28 C.F.R. § 35.151, including applicable architectural standards.
- 56. The elements or features of the City's facilities that do not comply with the Standards, including those listed in Attachments I, J, and K of the 2005 Agreement, and Attachments I, J, and K of this Agreement prevent persons with disabilities from fully and equally enjoying the City's services, programs, or activities and constitute discrimination on the basis of disability within the meaning of 42 U.S.C. § 12132 and 28 C.F.R. §§ 35.149 and 35.150.
- 57. When taking the actions required by this agreement from the effective date of this Agreement until March 14, 2012, the City may use either the 1991 Standards or the 2010 Standards. During this time, the City must designate which of these two accessibility standards it elects to use, use the same accessibility standard throughout a facility in making alterations and architectural changes, and report to the Department which Standards will be used for each facility. As of March 15, 2012, the City must use the 2010 Standards when making the architectural changes required by this Agreement.
- 58. Within six (6) months of the effective date of this Agreement, the City will install signage as necessary to comply with 28 C.F.R. § 35.163(b), after having surveyed all facilities that are the subject of this Agreement for the purpose of identifying those that have multiple entrances not all of which are accessible.

59. Newly Constructed Facilities: In order to ensure that the following spaces and elements in City facilities for which construction was commenced after January 26, 1992, are readily accessible to and usable by persons with disabilities, the City will take the actions listed in Attachments I and M.
60. Altered Facilities: In order to ensure that the following spaces and elements in City facilities for which alterations commenced after January 26, 1992, are readily accessible to and usable by persons with disabilities, the City will take the actions listed in Attachments J and M.
61. Program Access in Existing Facilities: In order to ensure that each of the City's programs, services, and activities operating at a facility that is the subject of this Agreement, when viewed in its entirety, is readily accessible to and usable by persons with mobility impairments, the City will take the actions listed in Attachments K and M.
62. Facilities and Programs Not Surveyed by the Department: The City will review compliance with the requirements of title II of the ADA for those City facilities and programs that were not reviewed by the Department. Within eighteen (18) months of the effective date of this Agreement, the City will submit for review by the Department a detailed report listing the access issues identified during its review together with the corrective actions and completion dates proposed to resolve such issues. The review conducted by the City, the access issues identified, and the corrective actions and completion dates proposed will be consistent with the requirements of title II of the ADA; the review of City facilities and programs conducted by the Department for purposes of this Agreement; and the access issues, corrective actions, and completion dates reflected in Attachments I, J, K, and M.

#### ***PROGRAM MODIFICATIONS***

63. Access to Programs Housed in Others' Facilities: In order to ensure that the City's programs, services, and activities that are the subject of this Agreement and that are operated by the City at facilities owned or controlled by other entities, when viewed in its entirety, are readily accessible to and usable by persons with mobility impairments, the City will take the actions listed in Attachments L and M.

#### ***PROGRAMS FOR VICTIMS OF DOMESTIC VIOLENCE AND ABUSE***

64. If the City owns or operates any programs that provide shelter, counseling, or other assistance or supportive services to victims of domestic violence or abuse and their families (hereafter referred to as Domestic Violence Programs), within three (3) months of the effective date of this Agreement, it will do the following:

- A. Whatever written information is provided regarding its Domestic Violence Programs will also be provided in alternate formats, including Braille, large print, audio recording, and electronic formats (*e.g.*, HTML), upon request.
- B. Enter into contracts or make other arrangements with qualified sign language and oral interpreters to ensure their availability when required for effective communication with persons who are deaf or hard of hearing. The type of aid that will be required for effective communication will depend on the individual's usual method of communication, and the nature, importance, and duration of the communication at issue. In many circumstances, oral communication supplemented by gestures and visual aids, an exchange of written notes, use of a computer, or use of an assistive listening device may be effective. In other circumstances, qualified sign language or oral interpreters are needed to communicate effectively with persons who are deaf or hard of hearing. The more lengthy, complex, and important the communication, the more likely it is that a qualified interpreter will be required for effective communication with a person whose primary means of communication is sign language or speech reading.
- C. If the City's Domestic Violence Programs operate a hotline to take telephone calls of an emergency nature, the City shall ensure that it provides equivalent service for persons who use TTYs, including providing direct-connection service for TTY users with hotline operators, without requiring TTY users to call through a third party operator, such as through the state or local Telecommunication Relay Services. The City will obtain the necessary equipment, establish the written procedures, and provide the training necessary to ensure effective communication by Hotline staff with direct-connection callers using TTYs, as well as the training necessary to respond to callers who use the Telecommunication Relay Services.
- D. Survey facilities used as shelters or designated as potential shelters – or for counseling, job training, education, clothing or household provisioning, or other aspects of Domestic Violence Programs – to ensure that adequate arrangements are available for potential clients and family members with disabilities, including adults and children who have mobility impairments, who are blind or have low vision, and who are deaf or hard of hearing. Within one (1) year of the effective date of this Agreement, modify each such facility to remove the barriers or, alternatively, procure another, fully accessible facility to ensure that potential clients and family members with disabilities have integrated options when participating in a sheltering or other Domestic Violence program. Nothing in this Agreement requires any modifications that would compromise the confidentiality of a shelter or counseling center. Until there is a sufficient stock of accessible housing and other facilities within the sheltering program, the City will implement written procedures ensuring that it has identified temporary accessible housing (such as accessible hotel rooms within the community or in nearby communities) and other facilities that could be used if people with disabilities need sheltering or

in service access to a Domestic Violence Program. The cost to potential clients of being housed or otherwise served in alternate accessible facilities shall not exceed any costs normally attributed to clients of the City's Domestic Violence Programs.

- E. Implement written procedures and modify, as appropriate, eligibility criteria, to ensure that no person with a disability is turned away from a shelter or otherwise denied the opportunity to benefit from the services of the City's Domestic Violence Programs on the basis of disability.
  - F. Implement written procedures to ensure that persons with disabilities who use service animals are not denied or discouraged from participating in Domestic Violence Programs, are able to be housed and served in an integrated environment, and are not separated from their service animals while participating in the City's Domestic Violence Programs even if pets are normally not permitted in the facilities where such programs are conducted. The procedures will not unnecessarily segregate persons who use service animals from others but may take into account the potential presence of persons who, for safety or health reasons, should not be in contact with certain types of animals. If the City's Domestic Violence Programs require clients to make any payments for shelter or other services they provide, clients shall not be required to make additional payments because they or their family members use service animals.
  - G. Implement written procedures to ensure that reasonable modifications are made to the City's Domestic Violence Programs when necessary for a client or family member with a disability to participate in such Programs, unless doing so would fundamentally alter the nature of the program.
  - H. Implement written policies to ensure that despite any "drug-free" policy of the City's Domestic Violence Programs, persons with disabilities who use medication prescribed for their use are able to continue using such medication while participating in such Programs or being housed in a shelter.
65. If the City contracts with another entity to provide Domestic Violence Programs, it will ensure that the other entity complies with the preceding provisions on its behalf. If that entity will not comply with the following provisions, the City will nonetheless take all necessary steps to ensure that its program is accessible to persons with disabilities.
66. Some of the of the City's shelters may be owned or operated by other public entities subject to title II or by public accommodations subject to title III and, as such, are subject to the obligation to provide program access or remove barriers to accessibility under the ADA. This Agreement does not limit such future enforcement action against the owners or operators of these facilities by any person or entity, including the Department.

67. This Agreement shall not be construed to require the City to divulge confidential information relating to the location or existence of any Domestic Violence Programs, beyond what is otherwise required by applicable law or what is necessary for the Department to effectively enforce this Agreement.

#### ***MISCELLANEOUS PROVISIONS***

68. Except as otherwise specified in this Agreement, at yearly anniversaries of the effective date of this Agreement until it expires, the City will submit written reports to the Department summarizing the actions the City has taken pursuant to this Agreement. Reports will include detailed photographs showing measurements, architectural plans, work orders, notices published in the newspaper, copies of adopted policies, and proof of efforts to secure funding/assistance for structural renovations or equipment.
69. Throughout the life of this Agreement, consistent with 28 C.F.R. § 35.133(a), the City will maintain the accessibility of its programs, activities, services, facilities, and equipment, and will take whatever actions are necessary (such as routine testing of accessibility equipment and routine accessibility audits of its programs and facilities) to do so. This provision does not prohibit isolated or temporary interruptions in service or access due to maintenance or repairs. 28 C.F.R. § 35.133(b).
70. Within six (6) months of the effective date of this Agreement, the City will develop or procure a two-hour training program on the requirements of the ADA and appropriate ways of serving persons with disabilities. The City will use the ADA technical assistance materials developed by the Department and will consult with interested persons, including individuals with disabilities, in developing or procuring the ADA training program.
71. Within eighteen (18) months of the effective date of this Agreement, the City will deliver its training program to all City employees who have direct contact with members of the public. At the end of that period, the City will submit a copy of its training curriculum and materials to the Department, along with a list of employees trained and the name, title, and address of the trainer.

#### **IMPLEMENTATION AND ENFORCEMENT**

72. If at any time the City desires to modify any portion of this Agreement because of changed conditions making performance impossible or impractical or for any other reason, it will promptly notify the Department in writing, setting forth the facts and circumstances thought to justify modification and the substance of the proposed modification. Until there is written Agreement by the Department to the proposed modification, the proposed modification will not take effect. These actions must receive the prior written approval of the Department, which approval will not be unreasonably withheld or delayed.

73. The Department may review compliance with this Agreement at any time. If the Department believes that the City has failed to comply in a timely manner with any requirement of this Agreement without obtaining sufficient advance written agreement with the Department for a modification of the relevant terms, the Department will so notify the City in writing and it will attempt to resolve the issue or issues in good faith. If the Department is unable to reach a satisfactory resolution of the issue or issues raised, it may institute a civil action in federal district court to enforce the terms of this Agreement, or it may initiate appropriate steps to enforce title II and section 504 of the Rehabilitation Act.
74. For purposes of the immediately preceding paragraph, it is a violation of this Agreement for the City to fail to comply in a timely manner with any of its requirements without obtaining sufficient advance written agreement with the Department for an extension of the relevant time frame imposed by the Agreement.
75. Failure by the Department to enforce this entire Agreement or any provision thereof with regard to any deadline or any other provision herein will not be construed as a waiver of the Department's right to enforce other deadlines and provisions of this Agreement.
76. This Agreement is a public document. A copy of this document or any information contained in it will be made available to any person by the City or the Department on request.
77. This Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or agents of either party, that is not contained in this written Agreement (including its Attachments, which are hereby incorporated by reference), or the 2005 Agreement, including its Attachments, will be enforceable. This Agreement does not purport to remedy any other potential violations of the ADA or any other federal law. This Agreement does not affect the City's continuing responsibility to comply with all aspects of the ADA and section 504 of the Rehabilitation Act.
78. All materials sent to the United States pursuant to this Agreement shall be sent to the following address by common carrier Federal Express, prepaid delivery, or other means agreeable to both parties: Disability Rights Section, Attn: Susan Quinn, Investigator, Disability Rights Section, Civil Rights Division, U.S. Department of Justice, 1425 New York Avenue, N.W., Washington, D.C. 20005. The cover letter shall include a subject line referencing DJ# 204-66-47.
79. This Agreement will remain in effect for three (3) years or until the parties agree that all actions required by the Agreement have been completed, whichever is later.

80. The person signing for the City represents that he or she is authorized to bind the City to this Agreement.
81. The effective date of this Agreement is the date of the last signature below.

For the City:

For the United States:

THOMAS E. PEREZ  
Assistant Attorney General for Civil Rights

ALLISON J. NICHOL, Chief  
KATHLEEN P. WOLFE, Acting Special Legal Counsel  
DOV LUTZKER, Acting Deputy Chief  
Disability Rights Section

By: \_\_\_\_\_  
ANGEL TAVERAS, Mayor

By: \_\_\_\_\_  
JENNIFER K. McDANNELL, Supervisory Attorney  
Disability Rights Section

By: \_\_\_\_\_  
MICHAEL SOLOMAN  
City Council President

By: \_\_\_\_\_  
SUSAN GEIPE QUINN, Investigator  
BRIAN RYU, Architect  
Disability Rights Section - NYA  
Civil Rights Division  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530  
(202) 307-0663  
(202) 514-7821 (fax)

Approved as to form and correctness:

\_\_\_\_\_  
Jeffrey M. Padwa, City Solicitor

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

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