

SETTLEMENT AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA
AND
THE CITY OF VIRGINIA BEACH, VIRGINIA
UNDER THE AMERICANS WITH DISABILITIES ACT
DJ 204-79-366

I. BACKGROUND

1. The parties to this Agreement are the United States of America and the City of Virginia Beach, Virginia (“City”).
2. The United States reviewed the City of Virginia Beach’s compliance with Title II of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12131-12134 (“Title II”), and its implementing regulation, 28 C.F.R. Part 35.
3. The City of Virginia Beach is the principal city of the Hampton Roads Metropolitan Statistical Area and is adjacent to seven military installations.
4. The Department of Justice evaluated the City’s compliance with the following Title II requirements:
 - 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. §§ 35.149-150.
 - Ensuring 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 of Justice’s Title II regulation and 2) the 1991 ADA Standards or UFAS, or the 2010 ADA Standards, as applicable, 28 C.F.R. § 35.151;
 - Making physical changes to buildings, in accordance with the Department of Justice’s Title II regulation, 28 C.F.R. §§ 35.150-.151, and the 1991 ADA Standards for Accessible Design (1991 ADA Standards), 28 C.F.R. Part 36, App. D (2011) or the Uniform Federal Accessibility Standards (UFAS), 41 C.F.R. § 101-19.6, App. A, and the 2010 ADA Standards for Accessible Design (2010 Standards), 28 C.F.R. § 35.104;¹ and/or

¹ Section 35.104 defines the 2010 ADA Standards as the requirements set forth in appendices B and D to 36 C.F.R. part 1191 and the requirements contained in subpart D of 28 C.F.R. part 36.

- Delivering 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.
- To ensure that communications with people with disabilities, including, City program participants and members of the public, 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 to the City's emergency services, including 911 services, 28 C.F.R. § 35.162;
- To provide information for interested people with disabilities concerning the existence and location of the City's accessible services, activities, and facilities, 28 C.F.R. § 35.163(a);
- To provide signage at all inaccessible entrances to any facility, directing users to an accessible entrance or to information about accessible facilities, 28 C.F.R. § 35.163(b);
- To notify applicants, participants, beneficiaries, and other interested people, including veterans with disabilities, of their rights and the City's obligations under Title II and the Department of Justice'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); and
- To establish a grievance procedure for resolving complaints of Title II violations, 28 C.F.R. § 35.107(b).

5. The United States reviewed compliance with the ADA's program access, new construction and alterations requirements at the following facilities:

Farmers Market
 Human Services Building
 Judicial Center, Building #10
 Kempsville Recreation Center
 Museum of Contemporary Art
 Parks and Recreation Administration Building
 Police Department, 2nd Precinct
 Princess Anne Fire Station #21
 Princess Anne Library
 Sandler Performing Arts Center
 Virginia Aquarium

Virginia Beach Convention Center

6. The United States also reviewed the City's emergency management and disaster prevention policies and the City's curb ramp installation program and sidewalk maintenance policies to evaluate compliance with Title II of the ADA.
7. The ADA applies to the City because it is a "public entity" as defined by Title II. 42 U.S.C. § 12131(1).
8. The United States is authorized under 28 C.F.R. Part 35, Subpart F, to determine the City's compliance with Title II of the ADA and the Department of Justice's Title II implementing regulation, to issue findings, and, where appropriate, to negotiate and secure voluntary compliance agreements.
9. The United States' investigation identified failures by the City to comply with Title II's nondiscrimination requirements.
10. The Parties agree that it is in their best interest, and the United States believes it is in the public interest, to resolve this matter without further litigation. Accordingly, the Parties have agreed to resolve this matter as set forth below.
11. 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 paragraphs 12 through 43, during the term of this agreement, except as provided in the section entitled "Implementation and Enforcement."

II. REMEDIAL ACTIONS AND ONGOING OBLIGATIONS

A. NOTIFICATION

12. Within two (2) months of the effective date of this Agreement, the City will adopt the attached *Notice Under The ADA*, Attachment A (Notice); distribute it to all its Department heads; publish the Notice in a local newspaper of general circulation serving the City; post the Notice on its Internet Home Page; and post the Notice in conspicuous locations at the main entrance to its public buildings. It will refresh each posted Notice, and update the contact information contained on each Notice, as necessary, during the term of this Agreement. The City will provide the Notice to any person upon request.

B. ADA COORDINATOR

13. Within three (3) months of the effective date of this Agreement, the City will continue to provide one or more ADA Coordinators. 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 ADA-related complaints. The City will make available to all interested individuals, by posting to its websites and in announcements, the name(s), office address(es), and telephone number(s) of the ADA Coordinator(s). If the City changes who it appoints as ADA Coordinator(s), it will notify the United States in writing, and update the name and contact information anywhere it appears, within one (1) day of making such a change.

C. ADA TRAINED CITY STAFF

14. Within five (5) months of the effective date of this Agreement, the City will provide training to appropriate City staff, including but not limited to engineers, planners, and facility staff, to ensure they are knowledgeable about the architectural accessibility requirements of the ADA. Trained staff will gather information, including measurements and photographs, of the corrections made to deficiencies identified by the United States and the City's audit of facilities during the pendency of this agreement.

D. INDEPENDENT LICENSED ARCHITECT

15. Within six (6) months of the effective date of this Agreement, the City will retain an Independent Licensed Architect (ILA), approved by the United States, which may be an architect or architect firm already under contract with the City, who is knowledgeable about the architectural accessibility requirements of the ADA. The ILA shall perform a review of corrections and certify the deficiencies identified in the attachments to this Agreement have been corrected. The City will bear all costs and expenses of retaining and utilizing the ILA, including the costs and expenses of any consultants and staff.

16. In issuing certifications pursuant to this Agreement, the ILA will prepare reports with photographs identifying that the specific architectural violation has been remediated and will use the certification form at Attachment F. The ILA will be considered a neutral inspector for purposes of issuing certifications of compliance and will be reasonably available to the United States to discuss findings in the reports, photographs, and certifications. The United States may also, in its discretion, provide technical assistance to the ILA and/or the City throughout the term of this Agreement. Upon request by the United States, the City will provide prior notice to the United States of inspections by the ILA to allow representatives of the United States to be present.

17. The City will submit ILA certifications to the United States along with its reporting requirements as set forth in this Agreement.

E. GENERAL EFFECTIVE COMMUNICATION PROVISIONS

18. The City shall take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as

communications with others.

19. Within three (3) months of the effective date of this Agreement, the City will identify sources of qualified sign language and oral interpreters, qualified readers, real-time transcription services, and vendors able to put documents in Braille. Within this time, the City will develop, and submit its written procedures, with time frames, for fulfilling requests for sign language or oral interpreters, qualified readers, real-time transcription services, and documents in alternate formats, including Braille, large print, cassette tapes, and accessible electronic format (*e.g.*, HTML) to the United States for review and approval. Within ten (10) days of receiving comments from the United States, the City shall incorporate in its written procedures any additions or modifications proposed by the United States that bring the procedures into compliance with the ADA. The City will implement the procedures and timeframes as approved by the United States.

20. The City will ensure that all appropriate employees are trained and practiced in using the Virginia Relay Service to make and receive calls, and report to the United States the details of the trainings and employees trained.

F. EMERGENCY MANAGEMENT PROCEDURES AND POLICIES

21. Within sixty (60) days of the effective date of this Agreement, the City will ensure that the City's Emergency Operations Plan (EOP) complies with the ADA, and will provide a copy (including supporting documents) to the United States for review and approval. Within ten (10) days of receiving comments from the United States, the City shall incorporate in its EOP any additions or modifications proposed by the United States that bring the EOP into compliance with the ADA. The City's EOP will include the following:

- a. A statement that the City of Virginia Beach requires that emergency services should be provided in the most integrated setting appropriate to the needs of individuals with disabilities, and specific procedures to ensure integration.
- b. Procedures to solicit, receive, and use input from people with a variety of disabilities on its emergency management plan (preparation, notification, response, and clean-up).
- c. Community evacuation plans to enable people 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.
- d. If the City's emergency warning system uses sirens or other audible alerts, then procedures to effectively inform people who are deaf or hard of hearing of an impending disaster.
- e. A requirement that when the City provides announcements, updates, and related communications regarding emergencies, consistent with the City's obligations to provide effective communication, those announcements, updates, and related communications, must be provided in accessible formats, which may include sign

language interpreters for people who are deaf or hard of hearing, and aural communication for people who are blind or have low vision.

- f. A requirement that emergency shelters have a back-up generator and a way to keep medications refrigerated, as well as a process for notifying people of the location of such shelters. Access to back-up power and refrigeration at such shelters will be made available to people 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.
- g. Procedures ensuring that people 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 people who use service animals from others but may consider the potential presence of people who, for safety or health reasons, should not be in contact with certain types of animals.
- h. Plans for providing equivalent opportunities for accessible post-emergency temporary housing to people with disabilities. 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. The City will ensure that any post-emergency housing it provides to people with disabilities is provided in the most integrated setting appropriate to their needs and does not require receipt of housing in institutional settings, such as nursing facilities.

G. SIDEWALKS

22. Within six (6) months of the effective date of this Agreement, the City will implement and report to the United States its written process for requesting and receiving input from people with disabilities regarding the accessibility of its sidewalks, including requests to add curb ramps at particular locations. The United States will review and approve the written process.

23. Within twenty-four (24) months of the effective date of this Agreement, the City will provide curb ramps or other sloped areas complying with the applicable architectural standards as permitted by 28 C.F.R. § 35.151(c) and its Appendix, copied below, at all intersections of the streets, roads, and highways constructed or altered since January 26, 1992, that have curbs or other barriers from a street level pedestrian walkway.

Date of Construction or Alteration	Applicable Standards
Before September 15, 2010	1991 ADA Standards or UFAS
On or after September 15, 2010, and before March 15, 2012	1991 ADA Standards, UFAS, or 2010 ADA Standards

On or after March 15, 2012	2010 ADA Standards
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24. From the effective date of this Agreement and continuing thereafter, the City will provide curb ramps or other sloped areas complying with the 2010 ADA Standards at any intersection having curbs or other barriers to entry from a street level pedestrian walkway, whenever a street, road, or highway is constructed or altered.

H. WEB CONTENT AND MOBILE APPS, SERVICES AND PROGRAMS

25. Within one (1) month of the effective date of this Agreement, the City will designate an employee as the web accessibility coordinator for the City who will be responsible for coordinating the City’s compliance with the requirements of Section I of this Agreement. The web accessibility coordinator shall have knowledge and experience with the requirements of Title II of the ADA. The coordinator shall also have knowledge and experience with the Web Content Accessibility Guidelines (WCAG), and other voluntary guidelines regarding website accessibility generally.

26. Within six (6) months of the effective date of this Agreement, and annually thereafter, the City will:

- a. Adopt, implement, and post online a policy that its web content and mobile apps will comply with the ADA and WCAG 2.1 Level AA;
- b. Distribute the policy to all employees and contractors who design, develop, maintain, or otherwise have responsibility for its websites and mobile apps, or provide website or mobile app content, technical support, or customer service;
- c. Provide training to web content personnel on how to ensure that all web content, mobile apps, and services comply with Title II of the ADA, WCAG 2.1 Level AA, and the terms of this Agreement;
- d. Incorporate provisions ensuring that all the City’s webpages and mobile apps comply with the ADA and WCAG 2.1 Level AA into the performance evaluations of the web accessibility coordinator and all employees and contractors who design, develop, maintain, or otherwise have responsibility for its websites and mobile apps, or provide website or mobile app content, technical support, or customer service;
- e. Assess all existing web content and online services for compliance with the ADA, and WCAG 2.1 Level AA, as follows:
 - (1) The web accessibility coordinator, or their designee who has knowledge and experience with WCAG 2.1 Level AA, will perform automated accessibility tests of the City’s web content, using an automated tool approved by the United States,

- to identify any instances where the web content does not conform with WCAG 2.1 Level AA; (2) the web accessibility coordinator, or their designee who has knowledge of WCAG 2.1 Level AA, will conduct manual testing of the City’s web content to identify instances where the web content does not conform with WCAG 2.1 Level AA; and (3) the City will enlist individuals with different disabilities, including at a minimum, individuals who are blind, deaf, and have physical disabilities (such as those limiting the ability to use a mouse), to test its web content for ease of use and accessibility barriers;
- f. Provide a notice, prominently and directly linked from its homepage, instructing visitors to its websites on how to request accessible information. The link shall provide several methods to request accessible information, including an accessible form to submit feedback, an email address, and a toll-free phone number (with TTY) to contact personnel knowledgeable about the accessibility of the website; and
 - g. Provide a notice, prominently and directly linked from its homepage, soliciting feedback from visitors to its websites or mobile apps on how to improve web content accessibility. The link shall provide several methods to provide feedback, including an accessible form to submit feedback, an email address, and a toll-free phone number (with TTY) to contact personnel knowledgeable about the accessibility of the web content.

27. Within twelve (12) months after assessment of all existing web content and online services for compliance with the ADA, and WCAG 2.1 Level AA is complete, the City will:

- a. Ensure that its web content and mobile apps, including web content and mobile apps that the City, directly or through contractual, licensing, or other arrangements, provides to or makes available to members of the public, comply with the ADA and WCAG 2.1 Level AA; and
- b. Assess all proposed new online services before they are made available to the public for conformance with the ADA and WCAG 2.1 Level AA, as follows: (1) the web accessibility coordinator, or their designee who has knowledge and experience with WCAG 2.1 Level AA, will perform automated accessibility tests of the City’s web content using an automated tool approved by the United States, to identify any instances where the web content does not conform with WCAG 2.1 Level AA; (2) the web accessibility coordinator, or their designee who has knowledge and experience with WCAG 2.1 Level AA, will conduct manual testing of the City’s web content to identify instances where the web content does not conform to WCAG 2.1 Level AA; and (3) enlist individuals with different disabilities, including at a minimum individuals who are blind, deaf, and have physical disabilities (such as those limiting the ability to use a mouse), to test its content and mobile apps for ease of use and accessibility barriers.

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

28. Any construction or alterations to City buildings and facilities by the City or on its behalf will fully comply with the requirements of 28 C.F.R. § 35.151, including applicable architectural standards.

29. Within six (6) months of the effective date of this Agreement, Trained City Staff will survey all facilities that are the subject of this Agreement to identify those that have multiple entrances not all of which are accessible. For those facilities with one or more entrances that are not accessible, the City will install directional signage at all inaccessible entrances to each of its facilities and will place the international symbol for accessibility at each accessible entrance to a facility, in accordance with 28 C.F.R. § 35.163(b). This work will be reviewed and certified by Trained City Staff and contained in the reports prepared as set forth in paragraphs 16 and 17 above.

30. Newly Constructed Facilities: The City will take the actions listed in Attachment C to make the newly constructed City facilities for which construction was commenced after January 26, 1992, readily accessible to and usable by people with disabilities.

31. Altered Facilities: The City will take the actions listed in Attachment D to make the altered parts of City facilities for which alterations commenced after January 26, 1992, readily accessible to and usable by people with disabilities.

32. In the event that the City has already undertaken an alteration, addition, or other modification to any element identified in Attachments or otherwise after January 26, 1992, and prior to the Effective Date of this Agreement, the City will submit, within twelve (12) months, a written report to the United States pursuant to paragraph 35 below summarizing the actions taken and providing evidence establishing each individual element's compliance with the applicable architectural standard as permitted by 28 C.F.R. § 35.151(c) and its Appendix, copied below:

Date of Construction or Alteration	Applicable Standards
Before September 15, 2010	1991 ADA Standards or UFAS
On or after September 15, 2010, and before March 15, 2012	1991 ADA Standards, UFAS, or 2010 ADA Standards
On or after March 15, 2012	2010 ADA Standards

33. Facilities and Programs that the United States Did Not Survey: Trained City Staff will survey all the City's newly constructed (i.e., constructed after January 26, 1992) facilities that the United States did not survey for compliance with the applicable architectural standards as permitted by 28 C.F.R. § 35.151(c) and its Appendix, copied above. Within one (1) year of the effective date of this Agreement, the City will submit to the United States a detailed report listing the access issues identified during the review together with the corrective actions and completion dates proposed to resolve such issues. The proposed corrective actions must be completed no later than six (6)

months prior to the termination of this Agreement. Within sixty (60) days of receipt of the report, the United States will review the proposed corrective action and the timeframes for completion. The City will be responsible for the corrective actions identified by the United States.

34. Program Access in Existing Facilities: The City will take the actions listed in Attachment E to make 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, readily accessible to and usable by people with disabilities.

III. MISCELLANEOUS PROVISIONS

35. Except as otherwise specified in this Agreement, six (6) months after the effective date of this Agreement and annually thereafter until it expires, the City will submit written reports to the United States summarizing its actions pursuant to this Agreement. Reports will include certifications from the ILA, photographs showing measurements, architectural plans, notices published in the newspaper, confirmation that the City has provided curb ramps and other sloped areas required by Paragraphs 28 and 29, and copies of adopted policies, among other things.

36. Throughout the term 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, including routinely testing accessibility equipment and routinely auditing the accessibility of its programs and facilities. This provision, however, does not prohibit isolated or temporary interruptions in service or access due to maintenance or repairs. 28 C.F.R. § 35.133(b).

37. Within six (6) months of the effective date of this Agreement, the City will submit for pre-approval by the United States proposed training on the requirements of the ADA, this Agreement, and appropriate ways of serving people with disabilities. The City will provide PowerPoints for trainings which may vary by Department and/or type of service being provided. In addition, the City will provide the name, title, and address of the trainer.

38. Within one (1) year of the effective date of this Agreement and annually thereafter, after approval of the training program by the United States, all City employees who have direct contact with members of the public will be trained on the requirements of the ADA, this Agreement, and appropriate ways of serving people with disabilities. Within thirty (30) days after each training, the City will submit to the United States the list of employees trained.

IV. IMPLEMENTATION AND ENFORCEMENT

39. The United States may review compliance with this Agreement at any time. The City will cooperate with the United States. It is a violation of this Agreement for the City to fail to comply in a timely manner with any of the requirements of this Agreement. If the United States finds that the City has failed to comply with this Agreement, based on reports provided by the City pursuant to this Agreement or other information, the United States agrees to notify the City in writing of the alleged noncompliance and attempt to seek a resolution of the matter with the City. If the parties are unable to reach a resolution within sixty (60) days of the date of the United States' written notification, the United States may seek enforcement of the terms of this

Agreement in federal district court or seek to enforce compliance with the ADA and its implementing regulation.

40. Failure by the United States to enforce any provision of this Agreement is not a waiver of the United States' right to enforce any provision of this Agreement.

41. This Agreement is a public document. The City will provide a copy of this Agreement to any person, upon request.

42. Any timelines for performance fixed by, or pursuant to, this Agreement may be modified by mutual consent.

43. This Agreement (including its Attachments) constitutes the entire agreement between the parties on the matters raised herein, and no other statement or promise, written or oral, made by either party that is not contained in this written agreement (other than adjustments to timelines pursuant to Paragraph 42), will be enforceable. This Agreement does not remedy any other potential violations of the ADA or other federal law. This Agreement does not relieve the City of its continuing obligation to comply with all aspects of Title II of the ADA.

44. Agreement will remain in effect for three (3) years.

45. The person signing for the City represents that they are authorized to bind the City to this Agreement.

46. The effective date of this Agreement is the date of the last signature below.

For the City of Virginia Beach:

Patrick A. Duhaney, City Manager
2403 Courthouse Drive
Virginia Beach, VA 23456

By: /s/Patrick A. Duhaney

Date: April 18, 2024

For the United States:

REBECCA B. BOND, Chief
AMANDA MAISELS, Deputy Chief

By: /s/Beth A. Esposito

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Date: April 18, 2024

JESSICA D. ABER, United States Attorney

By: /s/Steven Gordon

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Date: April 18, 2024