

**SETTLEMENT AGREEMENT  
BETWEEN THE UNITED STATES OF AMERICA  
AND THE CITY OF ESPAÑOLA, NEW MEXICO**

**DJ # 205-49-23**

1. The parties to this Settlement Agreement are the United States of America and the City of Española, New Mexico.
2. The United States Department of Justice is referred to as the "United States" or "Department"; the City of Española as "City"; and the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §§ 12101 *et seq.*, as the "ADA".
3. This Settlement Agreement ("Agreement") resolves an investigation and compliance review conducted by the United States of the City under Title I of the ADA, 42 U.S.C. §§ 12111-12117, and its implementing regulations, 29 C.F.R. § 1630 *et seq.*
4. The parties agree that it is in their best interest, and the United States believes that it is in the public interest, to voluntarily enter into this Agreement, and agree as follows:

**I. BACKGROUND**

5. The City is a person within the meaning of 42 U.S.C. § 12111(7) and 42 U.S.C. § 2000e(a), an employer within the meaning of 42 U.S.C. § 12111(5), and a covered entity within the meaning of 42 U.S.C. § 12111(2).
6. Under Title I of the ADA, it is unlawful for an employer to make inquiries as to whether an applicant is an individual with a disability or as to the nature of such

disability before making a conditional offer of employment. 42 U.S.C.

§ 12112(d); 29 C.F.R. § 1630.13(a).

7. On June 4, 2013, the Department notified the City that it was investigating the job application procedures of the City. At that time, the City's Employment Application required applicants to answer the following inquiries: "Do you have any physical limitations to perform the job applied for? (If Yes, explain the type of accommodations required.) ( ) Yes ( ) No Accommodation\_\_\_\_\_".

"Have you received Worker's Compensation during the last ten years? ( ) Yes ( ) No If yes, state the nature and date of injury, recurring effects, and degree of disability."

8. The United States alleges that the City has engaged in a pattern or practice of discrimination under the ADA by requiring applicants to disclose disabilities and/or medical information in their applications prior to making a conditional offer of employment.

9. The City has fully cooperated with the compliance review.

## II. GENERAL AGREEMENT

10. The City, by and through its officials, agents, employees, and all persons in active concert or participation with the City in the performance of employment or personnel functions, agrees that it shall not discriminate against an individual on the basis of disability in violation of Title I of the ADA, 42 U.S.C. §§ 12111-12117.

### Applicants

11. The City agrees that it will not conduct any medical examination or make any disability-related inquiry of a job applicant before an offer of employment has been made to the job applicant, except as addressed in Paragraphs 12 and 13. 42 U.S.C. § 12112(d); 29 C.F.R. § 1630.13(a).
12. During the job application process, the City may describe the hiring process to applicants, and may ask applicants whether they will need a reasonable accommodation for the process (such as a request for the employer to reformat an examination, or a request for an accommodation in connection with a job demonstration). If the need for accommodation is not obvious, the City may require applicants to provide documentation from an appropriate professional, such as a doctor or a rehabilitation counselor, on the applicant's disability and functional limitations. Disclosure of any medical or disability-related information received from an applicant requesting a reasonable accommodation for an interview or employment test shall be limited to personnel specified in Paragraph 15 below. Any medical information elicited or collected from applicants shall be maintained as specified in Paragraph 15 below.

### Conditional Offers

13. If the City withdraws a job offer based on medical or disability-related information, the City agrees to document and show either that the reasons for the exclusion are job-related and consistent with business necessity and the job cannot be performed with reasonable accommodation, or that the individual is

being excluded to avoid a "direct threat" to health or safety that cannot be eliminated or reduced by reasonable accommodation. *See* 42 U.S.C. §§ 12111(3), 12112, 12113; 29 C.F.R. §§ 1630.2(r), 1630.10, 1630.14, 1630.15. A reasonable accommodation is not required if the City can demonstrate that the accommodation would impose an undue hardship, i.e., significant difficulty or expense, on the operation of its business. 42 U.S.C. §§ 12112(b)(5)(A), 12111(10); 29 C.F.R. §§ 1630.2(o)(4), (p), 1630.9.

#### Employees

14. The City shall not require a medical examination or make inquiries of an employee as to whether such employee is an individual with a disability or as to the nature or severity of the disability, unless such examination or inquiry is shown to be job-related and consistent with business necessity. The City agrees that, to the extent that any medical information is elicited or collected from any source for use in any medical examination or disability-related inquiry of employees, it will be limited in scope to exploring an employee's medical condition only to the extent necessary to confirm, if warranted: (a) the individual's ability to perform job-related functions, with or without a reasonable accommodation; or (b) whether the individual poses a direct threat to the health or safety of the individual or others in the workplace. *See* 42 U.S.C. §12112(d)(4), 12213; 29 C.F.R. §§ 1630.2(r), 1630.14(c), 1630.15.

**Collection of Medical or Disability-Related Information**

15. The City agrees that any medical or disability-related information elicited or collected from any source regarding an applicant or employee will be collected and maintained on separate forms and in separate medical files and treated as a confidential medical record. Medical information collected from an applicant or an employee, including regarding an occupational injury or workers' compensation claim, can only be disclosed to: (a) supervisors and managers who may be informed about necessary restrictions on the work or duties of the employee and necessary accommodations; (b) first aid and safety personnel, when appropriate, if the disability might require emergency treatment; and (c) government officials investigating compliance with the ADA on request. *See* 42 U.S.C. §§ 12112(d)(3)(B), 12112(d)(4)(C); 29 C.F.R. §§ 1630.14(b)(1), 1630.14(c)(1), 1630.14(d)(1).

**Training**

16. The City shall provide training on the ADA ("ADA Training") to all current supervisory employees and all employees who participate in making hiring or personnel decisions (collectively, "Supervisors"). The City shall provide such ADA Training to all Supervisors within ninety (90) days of the effective date of this Agreement. Such ADA Training shall also be provided to new Supervisors (whether by hire or promotion), following the effective date of this Agreement, within thirty (30) days after the start of their employment as Supervisors. The City shall maintain attendance logs reflecting the date of the training and the

names of all training attendees, along with the attendees' job titles. The ADA Training shall cover the City's responsibilities under the ADA and include instruction on procedures for: (1) conducting medical examinations and disability-related inquiries of employees and applicants; (2) engaging in an interactive process to determine appropriate reasonable accommodations to the known physical or mental impairments of otherwise qualified applicants or employees with disabilities to allow those applicants or employees to perform the essential functions of their jobs; and (3) complying with the prohibition on retaliation against employees based on their protected activity, as defined by the ADA. *See, e.g.*, <http://www.eeoc.gov/policy/docs/accommodation.html>;  
<http://www.eeoc.gov/policy/docs/guidance-inquiries.html>;  
<http://www.eeoc.gov/policy/docs/qanda-inquiries.html>;  
<http://www.eeoc.gov/policy/docs/preemp.html>;  
[http://www.eeoc.gov/laws/statutes/adaaa\\_notice.cfm](http://www.eeoc.gov/laws/statutes/adaaa_notice.cfm); and  
<http://www.eeoc.gov/laws/types/facts-retal.cfm>.

17. Within thirty (30) days of the effective date of this Agreement, the City shall submit to the Department for approval, which shall not be unreasonably withheld, the trainer it seeks to use, including the individual's Curriculum Vitae. The trainer shall be knowledgeable about Title I of the ADA.

**Employee for ADA Compliance**

18. Within sixty (60) days of the effective date of this Agreement, the City agrees to designate an employee (or employees) or consultant to address ADA compliance

matters. The City shall identify the designated individual to the United States for approval, which shall not be unreasonably withheld. The designated employee(s) or consultant shall be knowledgeable about or receive training on the ADA, shall serve as the primary contact(s) on disability-related issues and concerns raised by applicants for employment with the City and by City employees, and shall oversee and coordinate implementation of the requirements of this Agreement.

19. The City agrees that all training manuals, written materials, and online materials addressing City employees and hiring policies and practices shall be consistent with the provisions of this Agreement.

#### Reporting

20. Six (6) months after the effective date of this Agreement, and every six (6) months thereafter during the term of this Agreement, the City shall provide a written report ("Report") which shall include the following:
  - (a) Any lawsuit, written complaint, charge, or grievance alleging that the City conducted an unlawful inquiry as to whether an applicant is an individual with a disability or as to the nature of such disability before making a conditional offer of employment. The Report shall include, at a minimum, a description of the nature of the allegation, the name and contact information of the individual bringing the allegation, and documents in the City's possession relevant to the allegation;
  - (b) A list of withdrawn job offers based on medical or disability-related information. The Report shall detail the reasons for the exclusion, for

example, that the reason for the exclusion is job-related and consistent with business necessity and the job cannot be performed with reasonable accommodation, or that the individual is being excluded to avoid a "direct threat" to health or safety that cannot be eliminated or reduced by reasonable accommodation, or that such an accommodation would cause undue hardship; and

(c) The attendance logs reflecting the dates of the training referenced in Paragraph 16 above, and the names of all training attendees, along with the attendees' job titles.

21. The City shall not retaliate against any person because that person has opposed the City's allegedly discriminatory policies or practices in any manner, or because that person has cooperated with the Department's investigation of the City's employment practices or any proceedings connected with that investigation or with the administration of this Agreement. 42 U.S.C. §12203, 29 C.F.R. § 1630.12.

### **III. IMPLEMENTATION AND ENFORCEMENT**

22. The United States may review compliance with this Agreement at any time. If the United States believes that the City has violated this Agreement, the United States will notify the City in writing and will attempt to resolve the issues in good faith. If the United States' concerns are not fully resolved within thirty (30) days of the written notice, the United States may institute a civil action in federal district court to enforce the terms of this Agreement, or to otherwise enforce the ADA.
23. This Agreement is not intended to remedy any other violations or potential



violations of the ADA or any other federal or state law other than the violations alleged by the United States in this Agreement.

24. This Agreement contains the entire agreement between the United States and the City on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by any party or agent of any party, that is not contained in this Agreement shall be enforceable.
25. This Agreement does not affect the City's continuing responsibility to comply with all aspects of the ADA.
26. If any provision of this Agreement is determined to be invalid, unenforceable, or otherwise contrary to applicable law, such provision shall be deemed restated to reflect as nearly as possible, and to the fullest extent permitted by law, its original intent, and shall not affect any other provisions of the Agreement, all of which shall remain in full force and effect.
27. Failure by the United States to seek enforcement of any provision of this Agreement shall not be construed as a waiver of the United States' right to enforce any provisions of this Agreement.
28. A copy of this Agreement or any information contained herein may be made available to any person, and the City shall provide a copy of the Agreement to any person upon request.
29. The effective date of this Agreement is the date of the last signature below.
30. The duration of this Agreement shall be three (3) years from the effective date.
31. This Agreement shall be binding upon the City, its agents, and employees.

32. The signatories represent that they have the authority to bind the respective parties identified below to the terms of this Agreement.

For the City of Española:

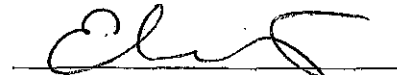
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Date 3-10-15

Date 5.5.15

