

**SETTLEMENT AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA
AND THE CITY OF ABERDEEN
USAO #2019v00476; DJ #204-82-311**

I. BACKGROUND AND JURISDICTION

1. This Settlement Agreement (“Agreement”) is made and entered into by and between the United States of America (“United States”), and the City of Aberdeen (“City”) (collectively, “the Parties”), through their authorized representatives.

2. The United States Attorney’s Office for the Western District of Washington, a component of the United States Department of Justice (“United States”), opened an investigation regarding the City of Aberdeen, pursuant to the American’s with Disabilities Act (“ADA”), 42 U.S.C. §§ 12131-12134, as amended. The United States initiated an investigation upon receipt of a complaint from an individual who alleged the City’s sidewalks were not accessible to individuals with mobility and vision disabilities.

3. Complainant, who has a vision impairment, is an individual with a “disability” within the meaning of the ADA, 42 U.S.C. § 12102.

4. The City of Aberdeen is a “public entity” within the meaning of the ADA, 42 U.S.C. § 12131(1) and 28 C.F.R. § 35.104, and is, therefore, subject to Title II and its implementing regulation.

5. Title II of the ADA bars discrimination against persons with disabilities by public entities, 42 U.S.C. § 12132, and establishes that “no qualified individual with a disability shall, because a public entity’s facilities are inaccessible to or unusable by individuals with disabilities, be excluded from participation in, or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by a public entity.” 28 C.F.R. § 35.149.

6. The City has cooperated with the United States throughout its investigation. The Parties agree that it is in their best interest, and the United States believes that it is in the public interest, to resolve this dispute without engaging in litigation and, therefore, agree to enter this Agreement.

II. INVESTIGATION AND DETERMINATIONS

7. The United States is authorized to investigate alleged violations of Title II of the ADA, conduct compliance reviews of public entities, where appropriate, attempt informal resolution, and if informal resolution is not achieved an a violation is found, issue a Letter of Findings to the public entity. 28 C.F.R. § 35.172. If the United States fails to secure voluntary

compliance, the Attorney General is authorized under 42 U.S.C. § 12133 to bring a civil action enforcing Title II of the ADA.

8. The Department reviewed information provided by the City on July 16, 2019, and conducted a site visit of the public sidewalks of certain portions of the City on October 3, 2019. The determinations from the site visit constitute the “Covered Conduct” resolved by this Agreement and addressed by the equitable relief detailed in 10-18 and Section III below.

III. REMEDIAL ACTIONS

9. The City will complete the modifications identified in Sections A and B, in conformance with the standards and regulations cited therein as to each modification, by August 1, 2020. If the City is unable to complete the modifications identified in Sections A and B by August 1, 2020 despite reasonable efforts, it shall notify and negotiate with the United States pursuant to the terms set forth in Paragraph 20.

A. STREET LEVEL ELECTRICAL BOXES

10. Northeast Corner of Broadway Street and Market Street. The electrical box attached to the light pole located at the Northeast corner of Broadway Street and Market Street is located approximately 42 inches above the ground, and protrudes approximately 21 inches into the circulation path beyond the base of the light pole. The City shall ensure that the electrical box at this location complies with 2010 ADA Standards § 307.3 (free-standing objects mounted on posts or pylons shall overhang circulation paths 12 inches maximum when located 27 inches minimum and 80 inches maximum above the ground).

11. Southwest Corner of South F Street and East Heron Street. The electrical box attached to the light pole on located at the Southwest Corner of South F Street and East Heron Street is located approximately 38 inches above the ground, and protrudes approximately 15 inches into the circulation path beyond the base of the light pole. The City shall ensure that the electrical box at this location complies with 2010 ADA Standards § 307.3 (free-standing objects mounted on posts or pylons shall overhang circulation paths 12 inches maximum when located 27 inches minimum and 80 inches maximum above the ground).

12. Northwest Corner of East Market Street and North F Street. The leading edge of the electrical box located at the northwest corner of East Market Street and North F Street is located approximately 50 inches above the ground, and protrudes approximately 19 inches into the circulation path beyond the base of the light pole. The City shall ensure that the electrical box at this location complies with 2010 ADA Standards § 307.3 (free-standing objects mounted on posts or pylons shall overhang circulation paths 12 inches maximum when located 27 inches minimum and 80 inches maximum above the ground).

13. Northwest Corner of East Market Street and North G Street. The leading edge of the electrical box attached to the pole on the northwest corner of East Market Street and North G

Street is approximately 49 inches above the ground, and protrudes approximately 19 inches into the circulation path beyond the base of the pole. The City shall ensure that the electrical box at this location complies with 2010 ADA Standards § 307.3 (free-standing objects mounted on posts or pylons shall overhang circulation paths 12 inches maximum when located 27 inches minimum and 80 inches maximum above the ground).

14. Northwest Corner of East Market Street and North H Street. The leading edge of the electrical box is located approximately 39 inches above the ground, and protrudes approximately 19 inches into the circulation path beyond the base of the pole. The City shall ensure that the electrical box at this location complies with 2010 ADA Standards § 307.3 (free-standing objects mounted on posts or pylons shall overhang circulation paths 12 inches maximum when located 27 inches minimum and 80 inches maximum above the ground).

B. TREES LOCATED ON CITY SIDEWALKS

15. Broadway Street between Wishkah Street and Heron Street. The tree located on Broadway Street between Wishkah Street and Heron Street, outside of Quilt Harbor, has a vertical clearance of 74 inches. The City shall ensure that this area complies with 2010 ADA Standards § 307.4 (The vertical clearance shall be 80 inches high minimum. Guardrails or other barriers shall be provided where the vertical clearance is less than 80 inches high. The leading edge of such guardrail or barrier shall be located 27 inches maximum above the ground).

16. Broadway Street between Wishkah Street and Heron Street. The middle tree, located in front of the furniture store, has a vertical clearance of 74 inches. The City shall ensure that this area complies with 2010 ADA Standards § 307.4 (The vertical clearance shall be 80 inches high minimum. Guardrails or other barriers shall be provided where the vertical clearance is less than 80 inches high. The leading edge of such guardrail or barrier shall be located 27 inches maximum above the ground).

17. East Heron Street. The vertical clearance under the tree located southeast of the Les Schwab Tire Center on East Heron Street has a vertical clearance of 67 inches. The City shall ensure that this area complies with 2010 ADA Standards § 307.4 (The vertical clearance shall be 80 inches high minimum. Guardrails or other barriers shall be provided where the vertical clearance is less than 80 inches high. The leading edge of such guardrail or barrier shall be located 27 inches maximum above the ground).

18. East Market Street, between North G Street and North H Street. The tree located on East Market Street, between North G Street and North H Street has a vertical clearance of 68 inches. The City shall ensure that this area complies with 2010 ADA Standards § 307.4 (The vertical clearance shall be 80 inches high minimum. Guardrails or other barriers shall be provided where the vertical clearance is less than 80 inches high. The leading edge of such guardrail or barrier shall be located 27 inches maximum above the ground).

C. COMPLAINTS

19. The City shall notify counsel for the United States in writing within thirty (30) days of receipt, for a period of one (1) year after the Effective Date of this Agreement, of any written or oral complaint against the City regarding physical accessibility or other requirements of Title II of the ADA. If the complaint is written, the City shall provide a copy of it with the notification. The notification shall include the full details of the complaint, including the complainant's name, address, and telephone number if the complainant provides them. The City shall promptly provide the United States with all requested information regarding such complaint, and shall inform the United States in writing within thirty (30) days of the terms of any resolution of such complaint.

IV. IMPLEMENTATION AND ENFORCEMENT OF THE AGREEMENT

20. Certification.

- a. At any time on or prior to August 1, 2020, the City shall certify to the United States, in writing, that it has fulfilled to completion all of its obligations under Sections A and B of this Agreement. The certification shall describe the steps that were taken to fulfill those obligations and shall be accompanied by photographs depicting the completed remedial work. The Parties expressly agree that providing such certification is essential to the enforcement of this Agreement, and that, subject to Paragraphs 20 (b) below, the United States may consider a failure to provide the certification required by this paragraph to be a breach of this Agreement sufficient to warrant enforcement of the Agreement pursuant to Paragraph 23.
- b. Upon occurrence of a force majeure event, the City shall promptly notify the United States that such event has occurred and the Parties shall confer in good faith regarding a reasonable extension of time for completion and certification, with such extension to be at least as long as the period of delay caused by the force majeure event. For purposes of this Agreement, a force majeure event shall include acts of God, strikes, unusual weather conditions, and other events beyond the City's control.

21. Communications. All communications to be provided to the United States pursuant to this Agreement shall be in writing and delivered by U.S. mail or electronic mail to the following:

Christina Fogg, Assistant U.S. Attorney
U.S. Attorney's Office, Western District of Washington
700 Stewart Street, Suite 5220
Seattle, WA 98101-1271
Christina.Fogg@usdoj.gov

22. Forebearance. In consideration of the terms of this Agreement as set forth above, the United States agrees to refrain from undertaking further investigation or from filing a civil suit under Title II in this matter, except as provided in Paragraph 23. Nothing contained in this Agreement is intended or shall be construed as a waiver by the United States of any right to institute proceedings against the City for violations of any statutes, regulations, or rules administered by the United States, or to prevent or limit the right of the United States to obtain relief under the ADA, for violations unrelated to this matter.

23. Compliance Review and Enforcement.

- a. The United States may review compliance with certified portions of this agreement any time within **120 days** of the date of certification (Paragraph 20).
- b. If the United States believes that the City is in non-compliance with any part of the Agreement, it will raise its claim(s) of noncompliance in writing with the City, and the Parties will attempt to resolve the concern(s) in good faith.
- c. The United States will allow the City **sixty (60) days** from the date it is notified of non-compliance to cure said non-compliance. Should the City be unable to cure the alleged non-compliance within that time despite reasonable efforts, the City will notify the United States prior to the close of the 60-day period of the status of its efforts and an estimated date of completion, and the Parties will attempt to resolve any outstanding concern(s) in good faith. If the Parties cannot reach agreement, the United States can institute a civil action to enforce this Agreement in U.S. District Court.
- d. If there are no remaining issues of non-compliance within **one (1) year** of the Effective Date of this Agreement, the United States will issue a closing letter indicating that no further action will be taken with respect to the Covered Conduct of this Agreement.

24. Entire Agreement. This Agreement and the attachments hereto constitute 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, shall be enforceable. This Agreement does not purport to remedy any other potential violations of the ADA or any other federal law unrelated to this matter.

25. Binding. This Agreement is final and binding on the Parties, including all principals, agents, executors, administrators, representatives, successors in interest, beneficiaries, assigns, heirs, and legal representatives thereof. Each party has a duty to so inform any such successor in interest.

26. Non-Waiver. Failure by any party to seek enforcement of this Agreement pursuant to its terms with respect to any instance or provision shall not be construed as a waiver to such enforcement with regard to other instances or provisions.

27. Duration of Agreement. The effective date of this Agreement is the date of the last signature below. The Agreement will terminate no later than two (2) years from the effective date.


28. Execution. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement. Electronically transmitted signatures shall constitute acceptable, binding signatures for purposes of this Agreement

FOR THE UNITED STATES:



Christina Fogg
Assistant United States Attorney
U.S. Attorney's Office, W.D. of Washington

6-16-20
Date

FOR THE CITY OF ABERDEEN


Pete Schawe, Mayor

6-15-2020
Date

ATTEST: 

M. Patrice Kent
Acting City Clerk / Corporation Counsel.

06/15/2020