

SETTLEMENT AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA
AND
THE CITY OF OMAHA, NEBRASKA
UNDER THE AMERICANS WITH DISABILITIES ACT
DJ 204-45-74

BACKGROUND

SCOPE OF THE INVESTIGATION

The United States Department of Justice (Department) initiated this matter as a compliance review of the City of Omaha, Nebraska 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 receives 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.

The review was conducted 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. § 35.150, 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. § 35.151, and the ADA Standards for Accessible Design (Standards), 28 C.F.R. pt. 36, App. A, 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 or UFAS, 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 TTY’s and computer modems, 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).

As part of its compliance review, the Department reviewed the following facilities, which – because construction or alterations commenced after January 26, 1992 – must comply with the ADA’s new construction or alterations requirements:

New:

- Northeast Police Precinct
- Southeast Police Precinct
- Benson Library
- Millard Library
- Household Hazardous Waste Building
- Southwest Street Maintenance Facility

Park Maintenance Building
Columbus Park Community Center
Zorinsky Lake Recreation Area
Miller's Landing Park/ River City Star
Lewis and Clark Landing:
Fire Station #3
Fire Station 63
Fire Station #65
OmahaPark Four
OmahaPark Five
OmahaPark Six
OmahaPark Seven
OmahaPark Eight
Henry and Gail Koch Family Tennis Center

Altered:

W. Dale Clark Library
Montclair Community Center and Millard Senior Center
Vehicle Impound Lot
Central Maintenance Facility
Elmwood Park (Pool & Pavilion Only)
Miller Park (Golf Course, Pavilion, & Pool)
N. P. Dodge Memorial Park
Camelot Community Center
Fontenelle Park (Golf Course, Pavilion, & Pool)
Hanscom Park (Pool, Pavilion, & Tennis Center)
Gallagher Park (Pool Only)
Fire Station #41
Abrahams Library
Fire Station #55
Blue Lion Center
Adams Park Community Center
Benson Park, Pavilion, and Ice Arena
Benson Community Center
Hitchcock Park and Motto McLean Ice Arena
Rosenblatt Stadium

The Department's program access review covered those of the City's programs, services, and activities that operate in the following facilities:

Police Department Headquarters
OmahaPark Three
Swanson Library
A. V. Sorenson Community Center and Library

Sherman Community Center
Tranquility Park Soccer Complex
Columbus Park
Johnny Goodman Golf Course
Fire Station #1
Roanoke Estates Park
Christie Heights Park Community Center
North Senior Center

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, the Department reviewed the City Police Department'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 the City of Omaha, Nebraska.
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.”

ACTIONS TAKEN BY CITY

7. In the early 1990's, as required by the ADA, the City of Omaha conducted a Self-Evaluation of its programs, services, and facilities. Based on the findings of that Self-Evaluation, the City implemented a Transition Plan.
8. The City has an ADA Coordinator.
9. During the last procurement of its 9-1-1 computer system, the City acquired a system that enabled each 9-1-1 operator to have computerized TTY (telecommunications equipment for deaf persons) capability at his or her call station. Each such computerized call station has pre-programmed TTY messages for operator use, such as the standard greeting, “9-1-1, what is your emergency?” and standard messages, such as “We are sending an ambulance.” Each 9-1-1 operator has been trained in appropriate TTY etiquette.
10. Routinely since 1992, the City has solicited and received input from persons with disabilities regarding the accessibility of its sidewalks, including, for example, requests to add curb cuts at particular locations.
11. Since 1995 the City has had the Mayor’s Commission for Citizen’s with Disabilities. This Commission acts as a liaison between the Mayor and citizens with disabilities. The Commission assists citizens with program and access concerns throughout the City and advises the Mayor of these concerns. The Commission also recommends policies that affect citizens with disabilities including accessibility, employment, etc.
12. The City has had a long standing policy against discrimination and harassment in the workplace; including persons with disabilities. In addition, the City has a specific policy regarding accommodating persons with disabilities. This policy provides that the City shall provide reasonable accommodation to ensure equal employment opportunity to any applicant or employee who is an individual with a disability and to any employee with permanent medical restrictions affecting the ability to perform the employee’s essential job functions.
13. The Mayor's Hotline, which receives citizens' complaints and comments, is fully accessible in person or through communication devices which include a dedicated, 24-hour TTY telephone, telephone facsimile, and Internet website.

REMEDIAL ACTION

NOTIFICATION

14. Within two 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.
15. Within three 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.

GRIEVANCE PROCEDURE

16. Within three 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

17. Within three 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, etc.).
18. The City will take steps to ensure that all appropriate employees are trained and practiced in using the Nebraska Relay Service to make and receive calls.

LAW ENFORCEMENT AND EFFECTIVE COMMUNICATION

19. Within three months of the effective date of this Agreement, the City will adapt for its own use and implement the City of Omaha Police Department's Policy Statement on

Effective Communication with People Who are Deaf or Hard of Hearing [Attachment C] and distribute to all officers the *Guide for Law Enforcement Officers When in Contact with People Who are Deaf or Hard of Hearing* [Attachment D].

20. Within three 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 hours per day, seven days a week, to its police or make other appropriate arrangements (such as contracting directly with or hiring qualified interpreters).
21. Within three months of the effective date of this Agreement, the City will ensure that each police station or substation and each detention facility housing City inmates 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 TTY's a longer period of time to make those calls, due to the slower nature of TTY communications compared with voice communications.

EMPLOYMENT

22. Within three 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:
 - will not discriminate on the basis of disability in its hiring or employment practices.
 - 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.
 - 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.

- will maintain any employee’s medical records separate from personnel files and keep them confidential.
- 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.

SIDEWALKS

23. Within three 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 nine years of the effective date of this Agreement, the City will provide curb ramps or other sloped areas complying with the Standards or UFAS 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.
24. Beginning no later than three months after the effective date of this Agreement, the City will provide curb ramps or other sloped areas complying with the Standards or UFAS 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.
25. Within three 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 9 years of the effective date of this Agreement, the City will provide curb ramps or other sloped areas complying with the Standards or UFAS at all places where a street level pedestrian walkway identified under this paragraph intersects with a street, road, or highway.
26. Beginning no later than three months after the effective date of this Agreement, the City will provide curb ramps or other sloped areas complying with the Standards or UFAS at all newly constructed or altered pedestrian walkways where they intersect a street, road, or highway.

WEB-BASED SERVICES AND PROGRAMS

27. Within 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).

28. Within three 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.

PHYSICAL CHANGES TO FACILITIES

29. The elements or features of the City’s facilities that do not comply with the Standards, including those listed in Attachments I, J, K, and L, 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.
30. The City will comply with the cited provisions of the Standards when taking the actions required by this Agreement.
31. Within three 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.
32. 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 Attachment I.
33. 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 Attachment J.

34. Program Access in City 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 Attachment K.

MISCELLANEOUS PROVISIONS

35. 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.
36. 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).
37. Within six 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.
38. Within one year 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

39. 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.

40. 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 within 30 days of the date it provides notice to the City, 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.
41. 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.
42. 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.
43. 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.
44. 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), 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.

- 45. This Agreement will remain in effect for 10 years.
- 46. The person signing for the City represents that he or she is authorized to bind the City to this Agreement.
- 47. The effective date of this Agreement is January 1, 2006.

For the City:

For the United States:

By: _____

MIKE FAHEY, Mayor
1819 Farnam Street
Suite 300
Omaha, NE 68183

By: _____

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Date: _____

Date: _____