

**SETTLEMENT AGREEMENT  
UNDER THE AMERICANS WITH DISABILITIES ACT BETWEEN  
THE UNITED STATES OF AMERICA  
AND  
TIDEWATER COMMUNITY COLLEGE**

**BACKGROUND**

1. The parties to this Agreement are the United States of America and Tidewater Community College, located at 1700 College Crescent in Virginia Beach, Virginia.
2. The United States reviewed Tidewater Community College's (TCC) compliance with Title II of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12131-12134, and its implementing regulation, 28 C.F.R. Part 35. Specifically, the U.S. Department of Justice reviewed whether TCC operates each program, service, or activity so that, when viewed in its entirety, it is readily accessible to and usable by individuals with disabilities, such as by making physical changes to buildings and conducting new construction in accordance with the Department of Justice's Title II Regulation. 28 C.F.R. §§ 35.149-151.
3. The United States reviewed compliance with the ADA's new construction and alterations requirements at the following TCC facilities:
  - Virginia Beach Campus
  - Norfolk Campus
  - College Crescent open space between building D and College Crescent
  - Building G: Virginia Beach Building
  - Building H: Advanced Technology Center
  - Building K: Student Center
  - Building L: Joint-Use Library
  - Building M: Regional Health Professions Center
  - Building D: Kempsville (including TCC Center for Military and Veterans Education)
  - Building A: Princess Anne
  - Building C: Blackwater
  - Building E: Lynnhaven/Math Lab, Language Lab, Writing Center & Tutoring
  - Building B: Bayside/Enrollment/Student Services
  - Building I: Observatory
  - Building J: Science
  - TCC Virginia Beach parking areas and lots
  - Norfolk Campus Student Center
4. The United States reviewed compliance with Title II program access requirements with respect to TCC programs, services, and activities that operate in the following TCC facilities constructed prior to January 26, 1992:
  - College Crescent sidewalks/walkways between buildings D&G, B&D

- Building F: Pungo
5. The United States interviewed TCC students and staff with disabilities at Tidewater Community College. These individuals complained about barriers to physical access at TCC in the following elements:
    - Sidewalks and walkways
    - Level landings
    - Doorways
    - Desks
  6. The ADA applies to TCC because it is a “public entity” as defined by Title II. 42 U.S.C. § 12131(1).
  7. The United States is authorized under 28 C.F.R. Part 35, Subpart F and G, to investigate complaints under 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. 28 C.F.R. § 35.172.
  8. The United States’ review identified failures by TCC to comply with Title II’s nondiscrimination requirements.
  9. The Parties agree that it is in their best interests, and the United States believes that 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.
  10. 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 11 through 26, except as provided in the section entitled “Implementation and Enforcement.”

## **REMEDIAL ACTIONS**

### **Independent Licensed Architect**

11. Within three (3) months of the effective date of this Agreement, TCC will retain an Independent Licensed Architect (ILA), approved by the United States, who is knowledgeable about the architectural accessibility requirements of the ADA. The ILA must act independently to certify whether any alterations, additions, or modifications identified in the attachments to this agreement, made by TCC during the term of this Agreement comply with the applicable standard pursuant to 28 C.F.R. § 35.151(c) and the Appendix to 28 C.F.R. § 35.151(c). TCC will bear all costs and expenses of retaining and utilizing the ILA, including the costs and expenses of any consultants and staff. TCC will compensate this ILA without regard to outcome.
12. In issuing certifications pursuant to this Agreement, the ILA will impartially prepare

reports with photographs identifying that the violation has been remediated and will use the certification form at Attachment D. 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 TCC throughout the term of this Agreement. Upon request by the United States, TCC will provide prior notice to the United States of inspections by the ILA to allow representatives of the United States to be present.

13. TCC will submit ILA certifications along with its reporting requirements as set forth in this Agreement.

### **Sidewalks**

14. Within three (3) months of the effective date of this Agreement, TCC will implement and report to the ILA and 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 cuts at particular locations. The United States will review and approve the written process.
15. Within six (6) months of the effective date of this Agreement, TCC will identify and report to the ILA and the United States: (1) a plan for identifying all TCC streets, and street level pedestrian walkways that have been constructed or altered since January 26, 1992; and (2) a timetable for providing curb ramps or other sloped areas complying with the applicable architectural standards at all intersections of those streets, roads, highways, and street level pedestrian walkways that have been constructed or altered since January 26, 1992, that have curbs or other barriers from a street level pedestrian walkway. The plan and timetable must be approved by the United States and will specify completion of all required curb ramps or other sloped areas complying with the applicable architectural standards within twenty-four (24) months of such approval from the United States months of the effective date of this agreement. The plan and timetable are incorporated by reference herein, and are enforceable pursuant to paragraph 27 of this Agreement.
16. Within twenty-four (24) months of the effective date of this Agreement, TCC 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.

<b>Date of Construction or Alteration</b>	<b>Applicable Standards</b>
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

17. Whenever a street or road or intersection is constructed or altered from the effective date of this Agreement and thereafter, TCC 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. Every three months following the effective date of this Agreement, the ILA will confirm to the United States that TCC has provided curb ramps or other sloped areas where required by this paragraph that are in compliance with the 2010 ADA Standards.

**New Construction, Alterations, and Physical Changes to Facilities**

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

19. In the event that TCC has already undertaken an alteration, addition, or other modification to any element identified in Attachments A, B, and C or otherwise after January 26, 1992, and prior to the Effective Date of this Agreement, TCC will submit, within six (6) months, a written report to the ILA and the United States pursuant to paragraph 25 below summarizing the actions taken and providing evidence establishing each individual element’s compliance with the applicable architectural standard as required by 28 C.F.R. § 35.151(c) and its Appendix, copied below:

<b>Date of Construction or Alteration</b>	<b>Applicable Standards</b>
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

20. Within six (6) months of the effective date of this Agreement, TCC will survey all facilities that are the subject of this Agreement to identify those that have multiple entrances. For those facilities with one or more entrances which are not accessible, TCC will install directional signage at each inaccessible entrance to a facility 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 the ILA and contained in the reports prepared as set forth in paragraphs 11 and 12, above.

21. Newly Constructed Facilities. TCC will take the actions listed in attachment A to make the newly constructed parts of TCC facilities for which construction was commenced after January 26, 1992, readily accessible to and usable by people with disabilities. If any element is incorrectly listed in Attachment A, TCC will notify the United States and the parties will determine in which attachment to place the element in question.

22. Altered Facilities. TCC will take the actions listed in Attachment B to make the altered parts of TCC facilities for which alterations commenced after January 26, 1992, readily accessible to and usable by people with disabilities. If any element is incorrectly listed in

Attachment B, TCC will notify the United States and the parties will determine in which attachment to place the element in question.

23. Program Access in Existing Facilities. TCC will take the actions listed in Attachment C to make each of TCC'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. If any element is incorrectly listed in Attachment C, TCC will notify the United States and the parties will determine in which attachment to place the element in question.
24. Facilities and Programs that the United States Did Not Survey. The ILA will survey all TCC's newly constructed facilities at its Norfolk and Virginia Beach Campuses 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 in paragraph 19. Within one (1) year of the effective date of this Agreement, TCC will submit to the United States a detailed report from the ILA listing the access issues identified during the ILA's review together with the corrective actions and completion dates proposed to resolve such issues. The United States will review the proposed corrective action with completion dates and make the determination of what corrective action is required. TCC will be responsible for those corrective actions identified by the United States. The proposed completion dates may be no later than six (6) months prior to the termination of this Agreement.

### **REPORTING AND MAINTENANCE OF ACCESSIBLE FEATURES**

25. Except as otherwise specified in this Agreement, six (6) months after the effective date of this Agreement and annually thereafter until it expires, TCC 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, and prepared architectural plans, if any, and confirmation that TCC has provided all curb ramps and other sloped area requirements required by paragraphs 14 and 15 of this Agreement.
26. Throughout the term of this Agreement, consistent with 28 C.F.R. § 35.133(a), TCC 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).

### **IMPLEMENTATION AND ENFORCEMENT**

27. The United States may review compliance with this Agreement at any time. TCC will cooperate with the United States. If the United States believes that TCC has failed to comply with this Agreement, then the United States will notify TCC in writing. If, after 30 days of providing TCC with written notice of non-compliance, the United States determines that TCC has failed to come into compliance, the United States may institute a civil action in federal district court to enforce the terms of this Agreement and may take

appropriate steps to enforce Title II.

28. It is a violation of this Agreement for TCC to fail to comply in a timely manner with any of the requirements of this Agreement.
29. Failure by the United States to enforce any provision of this Agreement is not a waiver of the United States' right to enforce any provisions of this Agreement.
30. This Agreement is a public document. TCC will provide a copy of this Agreement to any person, upon request.
31. If at any time TCC 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.
32. This Agreement (including its Attachments) is 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 will be enforceable. This Agreement does not remedy any other potential violations of the ADA or other federal law. This Agreement does not relieve TCC of its continuing obligation to comply with all aspects of the ADA.
33. This Agreement will remain in effect for three (3) years.
34. The person signing for TCC represents that they are authorized to bind TCC to this Agreement.
35. The effective date of this Agreement is the date of the last signature below.

**For Tidewater Community College:**

**For the United States of America:**

REBECCA B. BOND, Chief  
KATHLEEN WOLFE, Special Litigation Counsel  
AMANDA MAISELS, Deputy Chief

By: /s/  
Dr. Marcia Conston, President

By: /s/  
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Date: 05/04/2021

Date: 05/06/2021