

**2021 AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA AND
THE CITY AND COUNTY OF DENVER, COLORADO
UNDER THE AMERICANS WITH DISABILITIES ACT**

DJ # 204-13-298

A. BACKGROUND AND JURISDICTION

1. The Parties to this 2021 Agreement (“Agreement”) are the United States of America (“United States”) and the City and County of Denver, Colorado (“Denver”) (collectively “Parties”).
2. The Americans with Disabilities Act (“ADA”) applies to Denver because it is a “public entity” as defined by Title II of the ADA. *See* 42 U.S.C. § 12131(1).
3. Title II of the ADA requires that Denver facilities for which alterations or construction commenced after January 26, 1992 be readily accessible to and usable by people with disabilities and comply with the Department of Justice’s Title II implementing regulations, 28 C.F.R. §§ 35.150-151, and the 1991 ADA Standards for Accessible Design (which are the requirements set forth in Appendix D to 28 C.F.R. Part 36), the Uniform Federal Accessibility Standards (“UFAS”), *see* 41 C.F.R. § 101-19.6, App. A, or the 2010 ADA Standards for Accessible Design (which are the requirements set forth in 28 C.F.R. § 35.151 and appendices B and D to 36 C.F.R. Part 1191), depending on the date the construction or alteration commenced. *See* 28 C.F.R. §§ 35.104 and 35.151(c).
4. The United States is authorized to determine Denver’s compliance with Title II of the ADA, 42 U.S.C. §§ 12131-12165, and the Department of Justice’s Title II implementing regulations, 28 C.F.R. §§ 35.101-35.190, to issue findings, and, where appropriate, to negotiate and secure voluntary compliance agreements. *See* 28 C.F.R. §§ 35.172-35.173. Further, the Attorney General is authorized to bring a civil action enforcing Title II of the ADA. *See* 42 U.S.C. § 12133.
5. On January 8, 2018, the United States and Denver executed a settlement agreement (“2018 Agreement”) with a three-year term under Title II of the ADA and the implementing regulations. Paragraph 45 of the 2018 Agreement required Denver to, *inter alia*:

hire an Independent Licensed Architect (“ILA”) to survey Denver’s facilities constructed or altered after January 26, 1992 and facilities that house Denver programs that the United States did not survey;

submit to the United States a report (“2020 ILA Report”) that lists deviations from the 1991 or 2010 ADA Standards for Accessible Design, or UFAS, at these facilities;
and

enter into a supplemental agreement with the United States to correct any ADA violations at these facilities.

6. The United States reviewed the 2020 ILA Report and determined that the elements identified in Attachment A to this Agreement are inaccessible to persons with disabilities in violation of the ADA. The United States and Denver agree that, to achieve compliance with the ADA with respect to such elements, Denver must complete the remedial actions set forth in Attachment B.
7. The Parties intend this Agreement, including attachments, to satisfy Denver's obligation under paragraph 45 of the 2018 Agreement to enter into a supplemental agreement with the United States.¹
8. In consideration of, and consistent with, the terms of this Agreement, during the term of this Agreement, the Attorney General agrees to refrain from filing a civil suit against Denver regarding the accessibility under Title II of the ADA of the facilities identified in Attachment A, except as provided in the section entitled "Implementation and Enforcement."

B. REMEDIAL ACTIONS

9. Attachment A lists from the 2020 ILA Report inaccessible elements of Denver facilities constructed or altered after January 26, 1992.
10. For each element listed in Attachment A, Denver shall complete the remedial actions indicated by the corresponding remedial code no later than the corresponding completion date to make the affected facilities accessible to and usable by individuals with disabilities.
11. The remedial actions indicated by each remedial code in Attachment A are set forth in Attachment B.

C. INDEPENDENT LICENSED ARCHITECT

12. Within three months of the effective date of this Agreement, Denver shall retain and bear all costs for an ILA, approved by the United States, who is knowledgeable about the architectural accessibility requirements of the ADA including specifically the 1991 and 2010 ADA Standards for Accessible Design. The ILA shall be a neutral inspector for purposes of issuing certifications required by this Agreement and act independently and impartially in conducting all work related to this Agreement, including basing its certifications solely on its independent inspections and the applicable architectural accessibility requirements of the ADA and the ADA Standards for Accessible Design.

¹ The 2018 Agreement required Denver to enter into a supplemental agreement within 30 months of the date of the 2018 Agreement, but the Parties agreed to extend the time for entering into a supplemental agreement to December 31, 2020.

Denver's compensation of the ILA shall be without regard to Denver's agreement or disagreement with the ILA's decisions concerning such certifications.

13. The ILA shall inspect each element listed in Attachment A after Denver is required to complete the remedial action for that element according to the timeframes in Attachment A. During such inspection, the ILA shall complete a certification in the form of Attachment C and take photographs of the element that clearly show the reasons for the ILA's certification as to whether the element has been remediated in conformance with the applicable ADA Standards for Accessible Design, including all applicable measurements with a tape measure or other measuring device fully visible.
14. Upon request by the United States, Denver shall provide the United States at least 5 business days prior notice of inspections by the ILA and allow representatives of the United States to be present for such inspections.
15. When reasonably necessary and upon consultation with Denver, the ILA shall be reasonably available to the United States to discuss the ILA's work related to this Agreement, including its inspections, certifications, and photographs. The United States may also, in its discretion, provide technical assistance to the ILA. Reasonably necessary consultations between the United States and the ILA include, but are not limited to, consultations with the ILA that occur after the United States first attempts to resolve questions or requests with Denver but cannot adequately resolve the questions or requests without the ILA's involvement.
16. Denver is responsible for ensuring that the ILA timely completes the inspections, photographs, and certifications required under this Agreement. The ILA's performance shall not excuse any failure by Denver to comply with a requirement of this Agreement.

D. COMPLIANCE REPORTS

17. Within 60 days after January 7, 2022 and every one-year interval thereafter, Denver shall submit to the United States by email a written report, including a summary of its actions pursuant to this Agreement during the preceding one-year interval and ILA certifications and photographs prepared pursuant to paragraph 11 for each element required to be remediated during that one-year interval.
18. If Denver fails to timely complete the remedial action required for any element in Attachment A, Denver shall include in that one-year report a detailed explanation as to why it failed to fully remediate the element, the efforts it is making to complete the remedial action, and the date by which each untimely remedial action will be completed.

E. MISCELLANEOUS PROVISIONS

19. With the sole exception of the notice period for violations of this Agreement set forth in paragraph 23, nothing in this Agreement shall be interpreted as limiting or estopping the United States from future investigation or litigation concerning Denver's compliance or lack of compliance with the ADA or any other federal laws.

20. Notifications or communications to any Party under this Agreement shall be in writing by email or by overnight courier delivery, addressed as follows, unless the receiving Party has requested in writing that the sending Party send such notifications or communications to a different contact.

For Denver:

Derek Okubo
Executive Director
Agency for Human Rights & Community Partnerships
201 W Colfax, Dept 1102
Denver, CO 80202
derek.okubo@denvergov.org

Mitch Behr
Assistant City Attorney
Denver City Attorney's Office
201 W. Colfax Ave. Dept. 1207
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For the United States:

Cheryl Rost
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U.S. Department of Justice
Civil Rights Division
Disability Rights Section
DJ# 204-13-298
150 M Street, NE, 9th Floor
Washington, DC 20002

F. IMPLEMENTATION AND ENFORCEMENT

21. The United States may review compliance with this Agreement at any time. Denver will cooperate with the United States, including by providing within a reasonable time documents requested by the United States related to Denver's compliance and access to individuals with knowledge of Denver's compliance.

22. It is a violation of this Agreement for Denver to fail to comply in a timely manner with any of the requirements of this Agreement.
23. If the United States determines that Denver has failed to comply with any part of this Agreement based on reports, ILA certifications, or photographs provided pursuant to this Agreement or any other information, then the United States will notify Denver in writing of the alleged noncompliance and seek a resolution with Denver. If the Parties are unable to resolve the alleged noncompliance within 60 days of the date of the United States' written notification, then 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.
24. 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.
25. This Agreement, including its three attachments, is the entire agreement between the Parties on the matters raised herein, and no prior statement, promise, or agreement, either written or oral, made by either Party shall be enforceable. This Agreement does not remedy any other potential violations of the ADA or other federal law. This Agreement does not relieve Denver of its continuing obligation to comply with all aspects of Title II of the ADA.
26. If any term of this Agreement is determined by any court to be unenforceable, the other terms of this Agreement shall nonetheless remain in full force and effect, provided, however, that if the severance of any such provision materially alters the rights or obligations of the Parties, the Parties shall engage in good faith negotiations in order to adopt mutually agreeable amendments to this Agreement as may be necessary to restore the Parties as closely as possible to the initially agreed upon relative rights and obligations.
27. This Agreement is a public document. Denver will provide a copy of it to any person, upon request.
28. The effective date of this Agreement is January 8, 2021. This Agreement will remain in effect until July 8, 2025.
29. Notwithstanding paragraph 28, above, this Agreement will terminate earlier than July 8, 2025 if the United States determines that Denver has demonstrated durable compliance with Title II of the ADA with respect to Denver's facilities listed in Attachment A. Durable compliance means that the United States determines that Denver has completed the remedial actions required under section B of this Agreement and has substantially complied with the related administrative and reporting requirements in sections C and D of this Agreement. Regardless of this Agreement's specific requirements, this Agreement will terminate upon a showing by Denver that it has come into durable compliance with the requirements of the ADA that gave rise to this Agreement and maintained that compliance for one year. Early termination of this Agreement for

durable compliance shall be within the United States' sole discretion and shall only occur upon written notice to Denver from the United States.

30. Notwithstanding paragraphs 28 and 29 of this Agreement, if the United States determines that Denver has demonstrated durable compliance with a part of the Agreement and also determines that said part is sufficiently severable from the other requirements of the Agreement, the Parties agree to terminate that part of the Agreement. In determining whether Denver has demonstrated durable compliance with a part of the Agreement, the United States may assess collectively all the requirements of the Agreement to determine whether the intended outcome of the part has been achieved. Regardless of this Agreement's specific requirements, substantive parts of this Agreement will terminate upon a showing by Denver that it has come into compliance with the requirements of the ADA that gave rise to this Agreement and maintained that compliance for one year, and a determination that said part is sufficiently severable from the other requirements of the Agreement. In determining whether Denver has demonstrated durable compliance with a part of the Agreement, the Department may assess collectively all the requirements of the Agreement to determine whether the intended outcome of the part has been achieved. Early termination of a part of this Agreement for durable compliance shall be within the United States' sole discretion and shall only occur upon written notice to Denver from the United States.
31. The person signing this Agreement for Denver represents that they are authorized to bind Denver to this Agreement.

For Denver:

/s/

DEREK OKUBO
Executive Director
Agency for Human Rights and
Community Partnerships
City and County of Denver, CO
201 W Colfax, Dept 1102
Denver, CO 80202

Date: 1/5/21

/s/

MITCH BEHR
Assistant City Attorney
City Attorney's Office
City and County of Denver, CO
201 W. Colfax Ave. Dept. 1207
Denver, CO 80202

Date: 1/5/21

For the United States:

REBECCA B. BOND, Chief
KATHLEEN P. WOLFE, Special Litigation Counsel
KEVIN J. KIJEWSKI, Deputy Chief

/s/

Cheryl Rost, Trial Attorney
Disability Rights Section
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue, N.W. – 4 CON
Washington, DC 20530
(202) 616-5311
(202) 307-1197 (fax)

Date: 1/8/21

Attachment C

Certification of ADA Compliance for Element [item code]

I, [full name], in my capacity as an Independent Licensed Architect retained by the City and County of Denver, Colorado and approved by the United States, pursuant to the 2021 Agreement Between the United States of America and the City and County of Denver, Colorado under the Americans with Disabilities Act, hereby certify that, on [mm/dd/yyyy], I inspected the element with item code _____ identified in Attachment A to the 2021 Agreement and, to the best of my knowledge, information, and belief, said element [has/has not] been remediated in conformity with the remedial action applicable to that element in Attachments A and B of the 2021 Agreement and the Americans with Disabilities Act.

Description of element:

Location of element:

Reason[s] for determination:

Signed: _____

[full name]

[job title]

[business address]

[phone number]

[email address]

Dated: _____