

**SETTLEMENT AGREEMENT
UNDER THE AMERICANS WITH DISABILITIES ACT
BETWEEN
THE UNITED STATES OF AMERICA
AND
THE CITY OF DOWAGIAC
DJ # 204-38-136**

BACKGROUND

1. The parties to this settlement agreement (“Agreement”) are the United States of America and the City of Dowagiac.
2. The United States Attorney’s Office (“USAO”) for the Western District of Michigan initiated an investigation of the City of Dowagiac, which is responsible for the intercity rail (Amtrak) station in Dowagiac, Michigan (“Station”), for its compliance with Title II of the Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. § 12131-12165, and its implementing regulations, 28 C.F.R. Part 35; 49 C.F.R. Parts 37 and 38 (Department of Transportation (“DOT”) regulations). Pursuant to this investigation, the USAO reviewed available information about the Station. The USAO investigation revealed that the City of Dowagiac has failed to make the Station, for which it is responsible, readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

JURISDICTION

3. The United States Department of Justice, of which the USAO is a component, is responsible for administering and enforcing Title II of the ADA, 42 U.S.C. § 12131-12165, and its implementing regulation, 28 C.F.R. Part 35 and 49 C.F.R. Parts 37 and 38.
4. The United States is authorized to investigate alleged violations of Title II of the ADA. The United States is also authorized under the ADA to determine the City of Dowagiac’s compliance with Title II of the ADA and Title II’s implementing regulations, and where appropriate, to resolve the matter by informal resolution, such as through the terms of this Agreement. If informal resolution is not achieved, the United States is authorized to issue findings, and to initiate negotiations to secure voluntary compliance. 28 C.F.R. pt. 35, Subpart F. The Attorney General is authorized, under 42 U.S.C. § 12133, to bring a civil action to enforce Title II of the ADA. *Id.*
5. Title II of the ADA prohibits public entities from discriminating against any individual on the basis of disability, including by excluding such individual from participation in or denying such individual the benefits of the services, programs, or activities of the public entity. 42 U.S.C. § 12132; 28 C.F.R. § 35.130(a).
6. The City of Dowagiac is a public entity within the meaning of Title II of the ADA, 42 U.S.C. § 12131(1)(C), 28 C.F.R. § 35.104, and 49 C.F.R. § 37.3. The City of Dowagiac owns, and is therefore responsible for, the Station (*see* 42 U.S.C. § 12161(5)), an intercity

rail station as defined by 42 U.S.C. § 12161(3).

7. The ADA required the City of Dowagiac to make all intercity rail station facilities for which the City of Dowagiac is responsible readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, by July 26, 2010. 42 U.S.C. § 12162(e)(2)(A)(ii)(I); 49 C.F.R. § 37.55. Station facilities include the station structure and any parking facility.
8. If a station facility is more than 50 percent owned by a public entity, such as the City of Dowagiac, then that public entity is the “responsible person” that must make the station facility accessible. 42 U.S.C. §§ 12161(5)(A), 12162(e)(2)(A); 49 C.F.R. §§ 37.49(b), 37.55.
9. A transportation facility is readily accessible to and usable by individuals with disabilities if it meets the requirements set forth in the ADA Standards for Transportation Facilities, set out at Appendices B and D to 36 CFR part 1191, Appendix A to 49 C.F.R. Part 37 (the “DOT Standards”). 49 C.F.R. § 37.9(a). The United States assessed this facility’s compliance with the former Appendix A to 49 C.F.R. Part 37, as codified in the October 1, 2006, edition of the Code of Federal Regulations, which was the 1991 ADA Standards, 28 C.F.R. Part 36. 49 C.F.R. § 37.9(c)(1). But any identified violations shall be remedied to bring the facility into compliance with the current DOT Standards.
10. The City of Dowagiac has fully cooperated with the United States’ investigation. The United States and the City of Dowagiac agree that it is in the parties’ best interest, and the United States believes that it is in the public interest, to resolve this investigation on mutually agreeable terms without litigation and have therefore agreed to the terms of this Agreement. Accordingly, the City of Dowagiac has agreed to resolve this matter as set forth below.

INVESTIGATION

11. The Station is located at 200 Depot Dr., Dowagiac, MI 49047 and serves passengers using Amtrak trains along the Blue Water and Wolverine lines. The United States’ investigation revealed the following accessibility issues:

Parking

12. The Station has two parking lots. The number of accessible parking spaces provided is insufficient and the existing accessible parking spaces are not compliant with the Standards. The Standards require that at least four parking spaces be accessible. 1991 ADA Standards § 4.6.1, 4.6.3; DOT Standards § 208.1 and 208.2.

Accessible Routes to the Station

13. The Station does not have accessible routes from the Public Right of Way (“PROW”), public transit, accessible parking, and passenger loading zone to at least one accessible

building entrance as required by the Standards. 1991 ADA Standards § 4.1.2(1) and 4.3.2(1); DOT Standards § 206.2.1.

Toilet Rooms

14. The Station has two toilet rooms, one for women and one for men. Neither toilet room is compliant with the Standards. The Standards require that the Station's toilet rooms be accessible. 1991 ADA Standards § 4.1.3(11), 4.22.1; DOT Standards § 213.1, 213.2 and 213.3.

Signage

15. The Station currently lacks signage necessary to comply with the Standards. 1991 ADA Standards §§ 4.1.3(16)(a)(b), 10.3.2; DOT Standards § 216.6.

REMEDIAL ACTIONS TO BE TAKEN BY THE CITY OF DOWAGIAC

16. To resolve this matter, the City of Dowagiac agrees to take the following steps to make the Station readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, within three years of the execution of the Agreement:

Parking

17. The City of Dowagiac shall remediate as necessary to ensure that:
 - a. at least four accessible parking spaces complying with Section 502 are located in the parking lots, and at least two of these accessible parking spaces complying with Section 502 are located in the parking lot adjacent to the station, pursuant to the DOT Standards §§ 208.1, 208.2, 208.3, 502;
 - b. at least two accessible van parking spaces complying with Section 502 are located in the parking lots, and at least one of these accessible van parking spaces complying with Section 502 is located in the parking lot adjacent to the station, pursuant to the DOT Standards §§ 208.2.4 and 502;
 - c. all accessible parking spaces and access aisles serving them do not have slopes steeper than 1:48 pursuant to the DOT Standards §§ 208.1, 208.2, 502.4; and
 - d. all openings or gaps in the ground in parking spaces and access aisles serving them do not exceed ½ inch in diameter pursuant to the DOT Standards §§ 208.1, 208.2, 502.4, 302.3.

Accessible Routes to the Station

18. To improve accessibility to the Station, the City of Dowagiac shall remediate as necessary to ensure that:
 - a. there exists at least one accessible route from the PROW, public transportation, accessible parking, and the passenger loading zone to at least one accessible Station entrance pursuant to the DOT Standards § 402.2;

- b. all accessible routes have cross slopes no greater than 1:48, running slopes no greater than 1:20, pavement gaps no greater than ½ inch, gratings with openings no greater than ½ inch, and vertical changes in level no greater than ¼ inch pursuant to the DOT Standards §§ 302.3, 303.1 and 403.3;
- c. all curb ramps along the accessible routes have cross slopes no greater than 1:48 and running slopes no greater than 1:12 pursuant to the DOT Standards §§ 406.1, 405.2 and 405.3;
- d. all curb ramps have a landing at the top with a clear length of at least 36 inches, or, alternatively, have curb ramp flares with slopes no greater than 1:12 pursuant to the DOT Standards § 406.4;
- e. thresholds at accessible entrances do not exceed ½ inch in height pursuant to the DOT Standards § 404.2.5; and
- f. all accessible routes are maintained to be readily accessible and usable by persons with disabilities.

Toilet Rooms

19. The City of Dowagiac shall remediate the following areas as necessary to ensure that the men's and women's toilet rooms comply with the DOT Standards, or alternatively, shall design and construct a single user restroom that is fully compliant with the DOT Standards:
- a. bathroom door and stall handles, pulls, latches, and locks are operable with one hand and shall not require tight grasping, pinching, or twisting of the wrist pursuant to §§ 309.4 and 404.2.7;
 - b. accessible stall door pulls on both sides pursuant to § 604.8.1.2;
 - c. wheelchair accessible toilet compartments are at least 60 inches wide pursuant to § 604.8.1;
 - d. rear grab bars pursuant to §§ 604.5.2 and 609.3;
 - e. lavatory faucet handles pursuant to §§ 606.4 and 309;
 - f. lavatory drain pipes in the women's restroom are insulated or configured to protect against contact pursuant to § 606.5;
 - g. mirrors located above lavatories in the men's restroom pursuant to § 603.3; and
 - h. paper towel dispensers with clear floor space and controls within accessible reach ranges pursuant to §§ 308.2, and 308.3.

Signage

20. The City of Dowagiac shall remediate as necessary to ensure that the Station has directional signage to the accessible station entrance, the International Symbol of Accessibility identifies the accessible entrance, permanent room signage, exit signage, and station identification signage that fully complies with the DOT Standards §§ 216, 703.1 and 810.6.1.

IMPLEMENTATION AND ENFORCEMENT

21. In consideration of the terms of this Agreement, the United States agrees to refrain from

filing a civil suit in this matter, except as provided in paragraph 22 of this Agreement.

22. The United States may review compliance with this Agreement at any time. If the United States believes that this Agreement or any portion of it has been violated, the United States will raise its concern with the City of Dowagiac and will attempt to resolve its concern with The City of Dowagiac in good faith. If the United States is unable to reach a satisfactory resolution of the issue or issues within 30 days of the date it provides notice to the City of Dowagiac, the United States may institute a civil action in federal district court.
23. For the purposes of the immediately preceding paragraph, it is a violation of this Agreement for the City of Dowagiac to fail to comply in a timely manner with any of the requirements in this Agreement without obtaining sufficient advance written agreement with the United States for an extension of the relevant timeframe imposed by the Agreement.
24. Failure by the United States to enforce any provision of this Agreement will not be construed as a waiver of the United States' right to enforce that provision or any other provision of this Agreement.
25. This Agreement constitutes the entire agreement between the parties. This Agreement may not be amended except by written consent of the parties. This Agreement shall not be considered an admission of wrongdoing or liability by the City of Dowagiac but is entered into to resolve a disputed claim.
26. All notices, demands, or other communications, including reporting materials, to be provided under this Agreement shall be in writing and delivered by email or overnight delivery to the following persons and addresses (or such other persons and addresses as any party may designate in writing from time to time):

For the United States:

LAURA A. BABINSKY
Assistant United States Attorney
U.S. Attorney's Office
Western District of Michigan
330 Ionia Ave. NW, Ste 501
P.O. Box 208
Grand Rapids, MI 49501-0208

For the City of Dowagiac

KEVIN ANDERSON
City Manager
Dowagiac City Hall
241 S. Front Street
Dowagiac, MI 49047

27. This is a public document and may be made available to the public by either party.
28. A signatory to this Agreement for the City of Dowagiac represents that they are authorized to bind the City of Dowagiac to the terms of this Agreement.
29. The effective date of this Agreement is the date of the last signature below.
30. This Agreement shall remain in effect for three years from its effective date.

[Signatures on the next page]

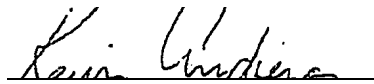
FOR THE UNITED STATES

/s/

LAURA A. BABINSKY
Assistant United States Attorney
U.S. Attorney's Office
Western District of Michigan
330 Ionia Ave. NW, Ste 501
P.O. Box 208
Grand Rapids, MI 49501-0208

Date: 1/19/2022

FOR THE CITY OF DOWAGIAC



KEVIN ANDERSON
City Manager
Dowagiac City Hall
241 S. Front Street
Dowagiac, MI 49047

Date: 12/23/2021