

**SETTLEMENT AGREEMENT
UNDER THE AMERICANS WITH DISABILITIES ACT
BETWEEN
THE UNITED STATES OF AMERICA
AND
THE CITY OF POMONA, CALIFORNIA
DJ # 204-12C-487, USAO # 2017V02124**

I. BACKGROUND

1. The parties to this settlement agreement (“Agreement”) are the United States of America and the City of Pomona, California (“Pomona”).
2. The United States Attorney’s Office (“USAO”) for the Central District of California initiated an investigation of Pomona—which includes the rail station located at 100 West Commercial Street, Pomona, California, 91768, as well as the parking lot south of the station and to the east of Main Street (collectively, “Rail Station” or “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 and conducted an on-site survey of the Station on April 25, 2017. The USAO investigation revealed that Pomona 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.

II. 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 Pomona’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. Pomona 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. Pomona 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). Pomona also operates the Station and its parking facility, with the exception of the Station's wheelchair lift stations on the platforms adjacent to the tracks.

7. The ADA requires Pomona to make all intercity rail station facilities for which Pomona 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, the platform, and any parking facility.
8. If a station facility is more than 50 percent owned by a public entity, such as Pomona, 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. Pomona has fully cooperated with the United States' investigation. The United States and Pomona 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, Pomona has agreed to resolve this matter as set forth below.

III. INVESTIGATION

11. The Station is located 100 West Commercial Street, Pomona, California, 91768, and serves passengers using Amtrak trains along the Sunset Limited and Texas Eagle lines, as well as Metrolink trains along the Riverside Line.
12. The Station comprises the following elements:
 - a. The Station building located at 100 West Commercial Street in Pomona, which is part of the City's Transit Center;
 - b. The bus transit facilities located at 100 West Commercial Street in Pomona; and
 - c. The parking lot located to the south of the station and east of Main Street in Pomona.

13. When the USAO conducted an on-site survey of the Station, it identified that there was insufficient directional signage indicating the location of accessible entrances or paths of travel, station entrances that were not accessible, a missing ramp handrail in the parking lot south of the station, missing accessible signage for an accessible bathroom, and two broken elevators on the path of travel from the accessible parking lot to the rail platforms, among other accessibility concerns.
14. Based on its review of the Station, the United States has concluded that Pomona violated Title II of the ADA by failing to operate the Station so that the services at the Station, when viewed in their entirety, were readily accessible to and usable by individuals with disabilities.

IV. REMEDIAL ACTIONS TO BE TAKEN BY POMONA

15. To resolve this matter, Pomona agrees to take the following steps to make the Station readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.
16. Pomona has hired, with the United States' approval, the Owen Group, LP to serve as the Independent Licensed Architect ("ILA") for the purposes of the Agreement. In its capacity as the ILA, the Owen Group conducted a survey of the Station in April 2021 and prepared a report with its findings in June 2021. The ILA identified components of the Station that are inaccessible to or unusable by individuals with disabilities in violation of Title II of the ADA, its implementing regulations, and the 2010 ADA Standards for Accessible Design.
17. In September 2021, Pomona sent the United States a copy of the ILA's report outlining violations it identified, descriptions of the violations, and the standards at issue for each violation.
18. Within 90 days after executing this Agreement, Pomona shall provide a list that shall include, for each violation identified by the ILA survey discussed in paragraph 16 above, Pomona's proposed remedial action for addressing the violation, as well as the timeframe for addressing it.
19. Within three years after this Agreement's effective date, Pomona shall remedy all violations identified by the ILA in the survey discussed in paragraph 16 above. Notwithstanding the foregoing, Pomona shall remedy all issues related to directional signage, broken and unusable elevators, vending machines with unreachable operable parts, and stair striping no later than one year after this Agreement's effective date.
20. Any future alterations or renovations undertaken at Station shall comply with Title II of the ADA and its implementing regulation, including the DOT Standards.
21. For the duration of this Agreement, the ILA will conduct annual inspections of the Station in order to ensure compliance with this Agreement. Within 30 days after each annual inspection, the ILA will complete a written report with photographs showing the remediation status of each violation identified in the survey, and will use the certification

form attached to this Agreement at Attachment A to certify any violations that have been remediated (“certification of compliance”). Pomona will send copies of each completed ILA report, with supporting documentation including photographs and certifications of compliance completed in accordance with this paragraph, to the United States upon completion.

V. INDEPENDENT LICENSED ARCHITECT

22. The ILA shall provide Pomona with technical assistance as a subject matter expert. In the event the ILA cannot fulfill all of the duties required under this Settlement Agreement, Pomona and the United States will meet and confer within 14 days to decide on a suitable replacement.
23. If the ILA steps down or can no longer fulfill its duties under this Agreement, Pomona shall submit to the United States the name, contact information, and professional certification(s) of at least one proposed replacement ILA.
24. Within 30 days after the receiving the name(s) of the proposed replacement ILA(s) from Pomona, the United States shall inform Pomona whether it approves or disapproves of Pomona’s proposed choices. Pomona may only hire a replacement ILA that the United States has approved through this process.
25. The ILA will be considered a subject matter expert for purposes of identifying potential violations and issuing certifications of compliance as set forth in paragraph 21. The ILA’s annual reports set forth in paragraph 21 must be impartial, and their findings must be made independently of Pomona.
26. The United States may, in its discretion, provide technical assistance to the ILA or Pomona in carrying out the remedial actions set forth in this Agreement.

VI. IMPLEMENTATION AND ENFORCEMENT

27. 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 28 of this Agreement.
28. 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 Pomona and will attempt to resolve its concern with Pomona 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 Pomona, the United States may institute a civil action in federal district court.
29. For the purposes of the immediately preceding paragraph, it is a violation of this Agreement for Pomona 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.

30. 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.
31. This Agreement is applicable to and binding on Pomona, including its officers, agents, employees, transferees, successors, and assigns. In the event that Pomona seeks to transfer or assign ownership or responsibility for the operation of the Station, or any part of it, Pomona shall obtain the written accession of the successor or assignee to any obligations remaining under this Agreement for the remaining term of this Agreement.
32. This Agreement constitutes the entire agreement between the parties. This Agreement shall not be considered an admission of wrongdoing or liability by Pomona but is entered into to resolve a disputed claim. No other statement, promise, or agreement, either written or oral, made by any party or agents of any party, that is not contained in this written Agreement shall be enforceable.
33. This Agreement is not intended to remedy any other potential violations of the ADA or any other law that is not specifically addressed in this Agreement. Nothing in this Agreement changes Pomona's obligation to comply with the requirements of the ADA.
34. 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:

Matthew Nickell
Assistant United States Attorney
Civil Rights Section, Civil Division
United States Attorney's Office for the Central District of California
300 North Los Angeles Street, Suite 7516
Los Angeles, CA 90012
matthew.nickell@usdoj.gov

For Pomona:

Linda Matthews
Human Resources/Risk Management Director
Pomona City Hall
505 S. Garey Avenue
Pomona, CA 91766

35. This is a public document and may be made available to the public by either party.
36. The effective date of this Agreement is the date of the last signature below.

37. This Agreement shall remain in effect for three years from its effective date.
38. Notwithstanding the previous paragraph, this Agreement will terminate earlier than three years if the USAO determines that Pomona has demonstrated durable compliance with the obligation to make the Station accessible to and useable by individuals with disabilities, including individuals who use wheelchairs.
39. The parties may agree in writing to extend any applicable deadlines specified in this Agreement, as well as the duration of this Agreement. The United States will not unreasonably deny requested extensions, if made reasonably in advance of any deadline, so long as Pomona acts diligently and in good faith to meet the requirements of this Agreement.

[Signatures on the next page]

For the United States of America:

DATED: 2/25/2022

Tracy L. Wilkison
United States Attorney

Karen P. Ruckert
Chief, Civil Rights Section, Civil Division

/s/
Matthew Nickell
Assistant United States Attorney
Civil Rights Section, Civil Division
United States Attorney's Office
Central District of California
300 N. Los Angeles Street, Suite 7516
Los Angeles, CA 90012
Email: matthew.nickell@usdoj.gov
Telephone: (213) 894-8805

For City of Pomona, California

DATED: 2/24/2022

By: /s/
James Makshanoff
City Manager
City of Pomona

By: /s/
Sonia Carvalho
City Attorney
Best, Best & Krieger, LLP
18101 Von Karman Ave #1000
Irvine, CA 92612
sonia.carvalho@bbklaw.com

ATTACHMENT A

Certification of ADA Compliance

I, [insert name], in my capacity as an Independent Licensed Architect, retained by the City of Pomona and approved by the United States, pursuant to the Settlement Agreement executed by the parties on _____ (USAO No. 2017V02124, DJ No. 204-12C-487), hereby certify to the best of my knowledge, information, and belief that the following element identified below is in compliance with the physical accessibility requirements of the Settlement Agreement and the Department of Transportation Standards as of the date shown below.

Element As Identified in List Provided to United States Pursuant to paragraph 17 of the

Settlement Agreement: _____

Description of Element: _____

Location of Element: _____

Date

Signature of Independent Licensed Architect