

**SETTLEMENT AGREEMENT
UNDER THE AMERICANS WITH DISABILITIES ACT
BETWEEN
THE UNITED STATES OF AMERICA
AND
THE CITY OF FULLERTON, CALIFORNIA
DJ # 204-12C-486, USAO # 2017V02117**

I. BACKGROUND

1. The parties to this settlement agreement (“Agreement”) are the United States of America and the City of Fullerton, California (“Fullerton”).
2. The United States Attorney’s Office (“USAO”) for the Central District of California initiated an investigation of Fullerton, which is responsible for the Fullerton Transportation Center intercity rail station (“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 March 31, 2017. The USAO investigation revealed that Fullerton’s station contains architectural barriers to access for individuals with mobility 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 Fullerton’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. Fullerton 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. Fullerton 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). Fullerton also maintains the Station, with the exception of the Station's depot structure's lobby, restaurant, and restroom and the Station platform.

7. The ADA requires Fullerton to make all intercity rail station facilities for which Fullerton 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 parking facilities as outlined herein.
8. If a station facility is more than 50 percent owned by a public entity, such as Fullerton, 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. Fullerton asserts that, working with funding from its partner organizations has continued to invest in accessibility for the Station including recent completion of the Station's Elevator Project and current Stairway Improvement Project.
11. Fullerton has fully cooperated with the United States' investigation. This Agreement is neither an admission of liability by Fullerton nor a concession by the United States that its claims are not well-founded. The United States and Fullerton 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, Fullerton has agreed to resolve this matter as set forth below.

III. INVESTIGATION

12. The Station is located 120 East Santa Fe Avenue, Fullerton, California 92832, and serves passengers using Amtrak trains along the Pacific Surfliner and Southwest Chief lines and Metrolink trains along the 91/Perris Valley and Orange County lines.
13. The Station area that is the subject of this Agreement includes the following elements, as well as the associated paths of travel:
 - a. The Station building located at 120 East Santa Fe Avenue in Fullerton, and
 - b. Four parking lots and one parking structure as depicted in Exhibit A (marked with TC).

14. 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, that there was no accessible door to the Station building, that some drinking fountains and telephones were too high, and that one of the parking lots had insufficient accessible parking, among other accessibility concerns.
15. Based on its review of the Station, the United States has determined that Fullerton 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 FULLERTON

16. To resolve this matter, Fullerton agrees to take the following steps to make the Station readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.
17. Within 60 days after the effective date of this Agreement, the City of Fullerton shall provide the accessibility survey of the Station completed by an entity hired by Fullerton that has been agreed to by the United States. The survey shall identify all components of the Station area that are inaccessible to or unusable by individuals with disabilities in violation of Title II of the ADA, its implementing regulations, the Department of Transportation standards (“DOT Standards”).
18. Within 30 days after the survey is provided to the USAO, the USAO will determine if the accessibility survey is acceptable. If it is deemed unacceptable by USAO, USAO will identify the survey’s deficiencies. The City of Fullerton will have 30 days from receipt of said notice to correct deficiencies within report and resubmit. Once the survey is deemed acceptable by USAO, and in no event later than 180 days after this Agreement’s effective date, Fullerton shall send the United States a list of all remediations identified by the accessibility survey. This list shall include, for each remediation identified, a description of the finding, the DOT Standards at issue, and Fullerton’s proposed remedial action. Fullerton shall include with this list a copy of the completed survey.
19. Within three years after this Agreement’s effective date, Fullerton shall remedy all items identified by in the accepted survey of the Station, as described in paragraphs 17–18 above. Notwithstanding the foregoing, Fullerton shall remedy all issues related to directional signage no later than 1 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. The agreed-to entity, described in paragraph 17, will conduct an annual inspection regarding the implementation of the Station improvements in order to ensure compliance with this Agreement. Within 60 days after each annual inspection, the firm will complete a written report with photographs showing the remediation status of each finding identified

in the survey, and will use the certification form attached to this Agreement at Exhibit B to certify any items that have been remediated (“certification of compliance”). Fullerton will send copies of each completed inspection report, with supporting documentation including photographs and certifications of compliance completed in accordance with this paragraph, to the United States upon completion.

V. INDEPENDENT CONSULTING FIRM

22. The parties agree that Fullerton shall retain a firm, which has already been agreed-to by the United States, to provide technical assistance as a subject matter expert. In the event the City’s consultant cannot fulfill all of the duties required under this Settlement Agreement, Fullerton and the United States will meet and confer within fourteen days to decide on a suitable approach to replacement of the firm.
23. The firm will be considered a subject matter expert for purposes of identifying potential findings and issuing certifications of compliance as set forth in paragraph 20. The firm’s survey as set forth in paragraph 16, and the annual reports set forth in paragraph 20 must be impartial, and their findings must be made independently of Fullerton.
24. The United States may, in its discretion, provide technical assistance to the firm or Fullerton in carrying out the remedial actions set forth in paragraphs 16–21 of this Agreement.

VI. IMPLEMENTATION AND ENFORCEMENT

25. 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.
26. 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 Fullerton and will attempt to resolve its concern with Fullerton 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 Fullerton, the United States may institute a civil action in federal district court.
27. For the purposes of the immediately preceding paragraph, it is a violation of this Agreement for Fullerton 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.
28. 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.
29. This Agreement is applicable to and binding on Fullerton, including its officers, agents, employees, transferees, successors, and assigns. In the event that Fullerton seeks to

transfer or assign ownership or responsibility for the operation of the Station, or any part of it, Fullerton shall obtain the written accession of the successor or assignee to any obligations remaining under this Agreement for the remaining term of this Agreement.

30. This Agreement constitutes the entire agreement between the parties. This Agreement shall not be considered an admission of wrongdoing or liability by Fullerton 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.
31. 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 Fullerton's obligation to comply with the requirements of the ADA.
32. 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:

Karen P. Ruckert
Assistant United States Attorney
Chief, 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
karen.ruckert2@usdoj.gov

For Fullerton:

Meg McWade
Director of Public Works
City of Fullerton
303 West Commonwealth Avenue
Fullerton, CA 92832
Mmcwade@cityoffullerton.com

With a copy to:

Richard Jones
Jones & Mayer
3777 N. Harbor Boulevard
Fullerton, CA 92835
RDJ@jones-mayer.com

33. This is a public document and may be made available to the public by either party.

34. The effective date of this Agreement is the date of the last signature below.
35. If at any time Fullerton seeks 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 United States in a 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 United States to the proposed modification, the proposed modification will not take effect. The United States' approval will not be unreasonably withheld or delayed.
36. This Agreement shall remain in effect for three years from its effective date, unless modified through an amendment process.

37. Notwithstanding the previous paragraph, this Agreement will terminate earlier than three years if the USAO determines that Fullerton has demonstrated durable compliance with the obligation to make the Station accessible to and useable by individuals with disabilities, including individuals who use wheelchairs.

For the United States of America:

DATED: 2/28/2022

Tracy L. Wilkison
Acting United States Attorney

/s/
Karen P. Ruckert
Assistant United States Attorney
Chief, 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: karen.ruckert2@usdoj.gov
Telephone: (213)894-3552

For City of Fullerton, California

DATED: 2/14/2022

/s/
Bruce Whitaker
Mayor, City of Fullerton
303 West Commonwealth Avenue
Fullerton, CA 92832

/s/
Richard Jones
City Attorney, City of Fullerton
Jones & Mayer
3777 N. Harbor Boulevard
Fullerton, CA 92835