

**SETTLEMENT AGREEMENT  
UNDER THE AMERICANS WITH DISABILITIES ACT  
BETWEEN  
THE UNITED STATES OF AMERICA  
AND  
CITY OF FRESNO**

**BACKGROUND**

1. The parties to this settlement agreement ("Agreement") are the United States of America and the City of Fresno ("City").
2. The United States Attorney's Office ("USAO") for the Eastern District of California initiated an investigation of the Fresno Amtrak intercity rail station ("Station"), for 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 Station is not 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'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 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 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 to make all intercity rail station facilities for which the City 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 the City, 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 has fully cooperated with the United States' investigation. The United States and the City 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 has agreed to resolve this matter as set forth below.

## INVESTIGATION

### Description of the Station

11. The Station is located 2650 Tulare Street, Fresno, CA 93721 and serves passengers using Amtrak trains along the San Joaquins Route.
12. The Station is comprised of a station structure, a parking area, and two boarding platforms. The station structure contains a waiting room and restrooms. The boarding platforms are owned and managed by the National Railroad Passenger Corporation doing business as Amtrak.
13. As part of the USAO investigation the following violations ("Violations") were originally identified at the Station.

## Exterior

### Parking Area

14. One of the seven designated accessible parking spaces does not have an adjacent marked access aisle. 1991 ADA Standards § 4.1.2(5)(a), 4.6.3; DOT Standards §§ 208.2, 502.2, 502.3.

### Exterior Route from Passenger Loading Zone to Front Entrance

15. The transition between the gutter and the curb ramp is not at the same level. 1991 ADA Standards § 4.1.2(1), 4.3.8, 4.7.2; DOT Standards §§ 206.2.1, 402.2, 406.2

### Exterior Route from Santa Fe Avenue and Tulare Street to Front Entrance

16. The transition between the gutter and the curb ramp is not at the same level. 1991 ADA Standards § 4.1.2(1), 4.3.8, 4.7.2; DOT Standards §§ 206.2.1, 402.2, 406.2.

### Exterior Route from Santa Fe Avenue and Tulare Street to Platform

17. The transition between the gutter and the curb ramp is not at the same level. 1991 ADA Standards § 4.1.2(1), 4.7.2; DOT Standards §§ 206.2.1, 402.2, 406.2.

## Station

### Waiting Room

18. The ticket counter and fireplace mantel are protruding objects. 1991 ADA Standards § 4.1.3(2), 4.4.1; DOT Standards §§ 204.1, 307.2.
19. The telephone is not equipped with a volume control. 1991 ADA Standards § 4.1.3(17)(b), 4.31.5, 4.30.7; DOT Standards §§ 217.3, 704.3.
20. The numerals on the clock face are less than 3 inches high. 1991 ADA Standards § 10.3.1(15), 4.30.3; DOT Standards §§ 218.3, 810.8, 703.5.5.

### Men's Restroom

21. A tactile sign in raised characters and Braille identifying the restroom is not located on the wall on the latch side of the door. 1991 ADA Standards § 4.1.3(16)(a), 4.30.1 – 4.30.6; DOT Standards §§ 216.2, 703.1, 703.2, 703.5.
22. The maneuvering clearance on the latch side of the restroom door is less than 18 inches for a forward approach to the pull side of the door. 1991 ADA Standards § 4.1.3(7)(b), 4.13.6; DOT Standards §§ 206.5.2, 404.2.4.1.
23. The toilet compartment door is not self-closing. DOT Standards §§ 213.2, 213.3.1, 604.8.1.2.

24. The surface of the diaper changing station is not between 28 inches and 34 inches above the floor. 1991 ADA Standards § 4.1.3(18), 4.32.4; DOT Standards §§ 226.1, 902.3.

#### Women's Restroom

25. The bottom edge of the reflecting surface of the mirror exceeds 40 inches above the floor. 1991 ADA Standards § 4.1.3(11), 4.22.6, 4.19.6; DOT Standards §§ 213.2, 213.2.5, 603.3.
26. The toilet compartment door is not self-closing. DOT Standards §§ 213.2, 213.3.1, 604.8.1.2.

### REMEDIAL ACTIONS TO BE TAKEN BY THE CITY OF FRESNO

27. To resolve this matter, the City represents and warrants that it has taken the following steps to make the Station readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs:

#### Exterior

##### Parking Area

28. The City has repaired the designated accessible parking space identified *supra* so that it has an adjacent marked access aisle greater than or equal to 96 inches wide. DOT Standards §§ 208.2, 502.2, 502.3.

##### Exterior Route from Passenger Loading Zone to Front Entrance

29. The City has repaired the transition between the gutter and the curb ramp so that they are at the same level. DOT Standards §§ 206.2.1, 402.2, 406.2

##### Exterior Route from Santa Fe Avenue and Tulare Street to Front Entrance

30. The City has repaired the transition between the gutter and the curb ramp so that they are at the same level. DOT Standards §§ 206.2.1, 402.2, 406.2.

##### Exterior Route from Santa Fe Avenue and Tulare Street to Platform

31. The City has repaired the transition between the gutter and the curb ramp so that they are at the same level. DOT Standards §§ 206.2.1, 402.2, 406.2.

#### Station

##### Waiting Room

32. The City has repaired the ticket counter and fireplace mantel so that they are not protruding objects. DOT Standards §§ 204.1, 307.2.
33. The City has removed the noncompliant telephone.

34. The City has repaired the numerals on the clock face so that they are greater than or equal to 2 inches high. DOT Standards §§ 218.3, 810.8, 703.5.5.

#### Men's Restroom

35. The City has installed a tactile sign in raised characters and Braille identifying the restroom so that it is located on the wall on the latch side of the door. DOT Standards §§ 216.2, 703.1, 703.2, 703.5.
36. The City has installed an automatic door opener. DOT Standards §§ 206.5.2, 404.2.4.1.
37. The City has repaired the toilet compartment door so that it is self-closing. DOT Standards §§ 213.2, 213.3.1, 604.8.1.2.
38. The City has removed the noncompliant diaper changing station.

#### Women's Restroom

39. The City has repaired the bottom edge of the reflecting surface of the mirror so that it does not exceed 40 inches above the floor. DOT Standards §§ 213.2, 213.2.5, 603.3.
40. The City has repaired the toilet compartment door so that it is self-closing. DOT Standards §§ 213.2, 213.3.1, 604.8.1.2.

### IMPLEMENTATION AND ENFORCEMENT

41. In consideration of the terms of this Agreement, the United States agrees to refrain from filing a civil suit regarding the aforementioned violations, except as provided in paragraph 42 of this Agreement.
42. 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 and will attempt to resolve its concern with the City 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, the United States may institute a civil action in federal district court.
43. For the purposes of the immediately preceding paragraph, it is a violation of this Agreement for the City 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.
44. 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.
45. This Agreement constitutes the entire agreement between the parties. This Agreement shall not be considered an admission of wrongdoing or liability by the City 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.

46. 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:

Emilia P. E. Morris  
Assistant United States Attorney  
United States Attorney's Office  
2500 Tulare Street, Suite 4401  
Fresno, CA 93721

For the City of Fresno:

Joseph D. Rubin  
Whitney Thompson & Jeffcoach  
970 W. Alluvial Ave.  
Fresno, CA 93711

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

*[Signatures on the next page]*

FOR THE UNITED STATES

PHILLIP A. TALBERT  
United States Attorney

By: Emilia P. E. Morris  
EMILIA P. E. MORRIS  
Assistant United States Attorney

DATED: 9/26/23

FOR THE CITY OF FRESNO

By: [Signature]

DATED: 12/6/23

Its: City manager