

**SETTLEMENT AGREEMENT
BETWEEN THE UNITED STATES OF AMERICA
AND THE CITY OF WAUKESHA
REGARDING THE ACCESSIBILITY OF POLLING PLACES**

This settlement agreement (the “Agreement”) is entered into between the United States of America and the City of Waukesha (collectively, the “Parties”).

BACKGROUND

1. The United States Department of Justice (the “Department”) opened an investigation of the City of Waukesha (the “City”) under title II of the Americans with Disabilities Act of 1990, as amended (“ADA”), 42 U.S.C. §§ 12131 - 12134, and Title II’s implementing regulation, 28 C.F.R. pt. 35, to determine the physical accessibility of City’s polling places for people with mobility and vision disabilities. Title II of the ADA prohibits a public entity from excluding individuals with disabilities from participation in or denying them the benefits of its voting program or subjecting them to discrimination on the basis of disability. 42 U.S.C. § 12132; 28 C.F.R. §§ 35.130(a) & 35.149. Title II also prohibits a public entity from selecting facilities to be used as polling places that have the effect of excluding individuals with disabilities from or denying them the benefits of the voting program or otherwise subjecting them to discrimination. 28 C.F.R. § 35.130(b)(4). Title II requires a public entity to administer its services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities. 28 C.F.R. § 35.130(d).
2. The City is a “public entity” within the meaning of the ADA, 42 U.S.C. § 12131(1), and 28 C.F.R. § 35.104, and is, therefore, subject to title II of the ADA, 42 U.S.C. §§ 12131 – 12134, and its implementing regulation, 28 C.F.R. pt. 35.
3. The Department is authorized under the ADA to determine the City’s compliance with title II of the ADA and title II’s implementing regulation and to resolve this matter by informal resolution, such as through the terms of this settlement agreement. If informal resolution is not achieved, the Department is authorized to issue findings, and, where appropriate, to negotiate and secure voluntary compliance agreements. 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.
4. The City, through the office of its Clerk, is responsible for reviewing the accessibility of each polling place and selecting each polling place. The City has 15 polling place locations for Election Day or early voting.
5. During the April 5, 2016 election, the Department surveyed all of the City’s polling place locations. The Department found that the City’s polling places contain barriers to access for individuals with disabilities; the Department thus concluded that the City violated title II by failing to select facilities to be used as polling places that are accessible to persons with disabilities.

6. Following the Department's survey during the April 5, 2016 election, the City as well as the School District of Waukesha (which owns and/or operates several buildings that serve as polling place locations) remedied many of the barriers identified by the Department and further committed to take additional actions to provide permanent or temporary remedies to the remaining barriers. These remaining barriers identified by the Department during its survey are identified in Exhibit 1. The City will remedy the remaining barriers existing at facilities owned by it. The Parties acknowledge that remedying the remaining barriers at School District of Waukesha properties is the responsibility of the School District. The City acknowledges that if the School District does not remedy the barriers at its properties, the City will be responsible for securing alternate, compliant locations for polling places.

TERMS OF SETTLEMENT

Consideration

7. In consideration of the mutual promises contained in this Agreement, which the parties acknowledge constitute good and valuable consideration, and to avoid the costs, expenses, and uncertainty of litigation, the Parties, intending to be legally bound, enter into this Agreement.

Definitions

8. "Accessible on Election Day" means that a polling place is compliant with the 2010 ADA Standards for Accessible Design ("2010 Standards") on Election Day, whether such compliance is achieved through permanent architectural measures or through the use of temporary measures such as those provided for in Paragraph 15 below.
9. "Effective Date" of this Agreement is the date of the last signature below.
10. "Election" or "Election Day" as used in this Agreement shall include both the period of Early Voting and Election Day.
11. "Election Day Surveyors" or "EDSs" are City personnel (or contractors) who will review compliance at polling place locations where temporary measures are to be implemented on Election Day.

Obligations of City

A. Accessible Voting Program

12. The City shall not exclude individuals with disabilities from participation in or deny them the benefits of the voting program, or subject them to discrimination, on the basis of disability. 42 U.S.C. § 12132; 28 C.F.R. §§ 35.130(a) & 35.149. The City shall select facilities to be used as polling places that do not exclude individuals with disabilities from or deny them the benefits of the polling place, or otherwise subject them to discrimination. 42 U.S.C. § 12132; 28 C.F.R. § 35.130(b)(4). The City shall administer its voting program in the most integrated setting appropriate to the needs of persons with disabilities. 28 C.F.R. § 35.130(d).

13. For all elections occurring after the Effective Date of this Agreement, the City will: (a) implement temporary measures to remediate the violations at the polling places identified in Attachment 1 to make those polling place locations accessible on Election Day; (b) implement permanent measures to remediate the violations at the City-owned and/or City-operated polling places identified in Attachment 2; or (c) will relocate polling places to an alternative accessible location pursuant to the process established in Paragraph 17 of this Agreement. Nothing in this Agreement limits the City from making ADA-compliant, permanent modifications to its polling place locations instead of providing temporary remedial measures or relocating a polling place location. If the City believes, and the United States agrees, that remediation as listed on Attachments 1 or 2 or relocation to an accessible facility is impossible, then City agrees to comply with title II's program accessibility requirements.
14. The City shall maintain in operable working condition on Election Day those features of facilities and equipment (including, but not limited to, permanent equipment such as lifts and elevators, and temporary equipment such as portable ramps, traffic cones, signs, wedges, and door stops) that are required to make polling places accessible to and usable by persons with disabilities. 28 C.F.R. § 35.133(a). If circumstances arise such that a polling place location that was previously accessible is no longer accessible because a feature of the facility or equipment is no longer operable, then the City shall purchase new equipment or relocate the polling place to an alternative, accessible location pursuant to the process established in Paragraph 17 of this Agreement. If remediation or relocation to an accessible facility is impossible, as agreed to by the United States, then the City agrees to comply with Title II's program accessibility requirements.
15. The City will cooperate fully with the United States' efforts to monitor compliance with this Agreement, including, but not limited to, providing the United States with timely access to polling places (including on Election Day), maps, surveys, and other requested information.
16. The City agrees that the following measures are reasonable and will be implemented where necessary to make an otherwise inaccessible polling place accessible on Election Day. The list of measures is not exhaustive; the City may propose other reasonable temporary measures subject to the review and approval of the United States.
 - a. Portable ramps (including curb ramps) up to and including ramps six feet long, with side edge protection.
 - b. Portable wedges or wedge ramps.
 - c. Floor mats.
 - d. Traffic cones.
 - e. Relocating furniture or other moveable barriers.
 - f. Door stops.

- g. Propping open doors.
- h. Unlocking doors.
- i. Signage, including parking signage.
- j. Portable buzzers or door bells.
- k. Removing astragals (door posts) that are not a permanent part of the structure from doorways.

B. Survey and Review of Polling Place Locations

- 17. The City will develop a survey instrument to assess whether new polling place locations are or can be made accessible on Election Day. The survey instrument shall be applicable to the selection of new polling place locations, and not to polling place locations existing as of the date of this Agreement, as listed in Exhibit 1. The survey instrument will be based on the 2010 Standards and the Department's "ADA Checklist for Polling Places" publication. The survey instrument will include a requirement to include photographs and will also require the identification of appropriate remedial provisions, including the remedial provisions in Paragraph 15 of this Agreement. The survey instrument will be submitted to the United States for review and approval within 21 days of the Effective Date of this Agreement. The City shall incorporate in its survey instrument any changes, additions, or modifications proposed by the United States.
- 18. The City shall review any newly proposed polling place location to determine whether it is accessible to persons with disabilities or could be made accessible on Election Day through the use of the remedial measures provided for in Paragraph 15 of this Agreement or through permanent modifications, before selecting the location as a polling place. The City shall use the survey instrument referenced in Paragraph 16 of this Agreement to make all future polling place location selections. If the City ultimately determines that a newly proposed location is inaccessible (as defined by the survey instrument) and cannot be made accessible on Election Day, then the City will reject the location and continue searching until an accessible location or one that can be made accessible on Election Day can be found.
- 19. For the duration of this Agreement, when the City selects a new polling place location, the City will provide the United States notice within twenty-one (21) days of the decision. The City will provide the United States with copies of all surveys and photographs conducted within twenty-one (21) days of the decision to use the location as a polling place. The United States' approval must be obtained prior to the location being used in an election. The United States' approval will be based exclusively on whether the proposed polling place location satisfies the survey instrument referenced in Paragraph 16 of this Agreement.
- 20. If the City finds that it cannot implement a previously agreed to or approved remedial provision regarding a specific polling place location, the City will immediately notify the United States and, upon request, meet and confer with the United States. If the issue cannot be resolved to the United States' satisfaction, the City will relocate the polling place

location to an alternative accessible location pursuant to the process established by Paragraph 17 of this Agreement.

C. Training

21. Prior to each election during the term of this Agreement, as part of its training program for election officers and poll workers (hereinafter, “election officials”), the City will provide training concerning temporary remedial measures, including: (a) why such measures are necessary; (b) how the measures must be implemented (*e.g.*, how to install ramps; the placement of mats over, and not in front of, thresholds); and (c) a description of the role of the City’s Election Day Surveyors (EDSs), as set forth in Paragraph 25 of this Agreement, and the need to follow the instructions of the EDSs regarding the implementation of temporary measures on Election Day.
22. The City will request that all election officials who will be assigned to a polling place location that includes one or more temporary remedies sign a form in which they are asked to swear or affirm that in performing Election Day duties the election official will make sure that all temporary measures at their polling place location be installed where instructed, be in place before the opening of the polls, and be maintained in place until the polling place closes to provide independent access to voters with disabilities.
23. After the first election occurring after the Effective Date of this Agreement, and for each election thereafter during the term of this Agreement, the City will identify each election official whose polling place was the subject of a report from the previous election indicating that a temporary modification was not implemented properly and will explain the noncompliance to the election official and what must be done to remedy the identified issue(s) on Election Day. The election official will be asked to initial the noncompliance report.
24. Prior to each election during the term of this Agreement, the City will provide training to all EDSs designated pursuant to Paragraph 25 of this Agreement. The training of the EDSs will address: (a) temporary measures, including why they are needed and how the measures must be implemented (*e.g.*, how to install ramps, the placement of mats over, and not in front of, thresholds); (b) how to resolve errors in the implementation of temporary measures on Election Day; (c) how to document the implementation of temporary measures on Election Day using checklists or compliance review forms referenced in Paragraph 24; and (d) what the EDSs are required to do to implement the requirements of this Agreement.

D. Election Day Compliance Review

25. The City shall develop a checklist of any temporary measures to be implemented by election officials on Election Day at each polling place location where such measures are required. Copies of these checklists must be provided to the United States within twenty-one (21) days of the election.
26. Beginning with the first election occurring after the Effective Date of this Agreement, and throughout the duration of this Agreement, the City will designate City personnel (or

contractors) as EDSs to review compliance at the polling place locations where temporary measures are to be implemented on Election Day. The City and the EDSs will use the checklist developed pursuant to Paragraph 24 of this Agreement to review compliance on Election Day. The EDSs will be required to document their compliance reviews (both compliant and non-compliant polling place locations) with photographs. After documenting a non-compliant polling place location, the EDSs shall remedy any non-compliant implementation of a temporary remedy when possible. Copies of these compliance reviews will be provided to the Department within twenty-one (21) days after the election.

27. If the City does not properly implement the temporary remedial measures necessary at a particular polling place location on Election Day in two (2) consecutive elections, and the City does not make permanent architectural changes to remediate the access issue(s) at the polling place location, then the City will no longer use the polling place location and will relocate it to an accessible location or one that can be made accessible on Election Day pursuant to Paragraph 17 of this Agreement. If remediation or relocation to an accessible facility is impossible, as agreed to by the United States, then the City agrees to comply with Title II's program accessibility requirements.

E. Enforcement Provisions

28. If at any time one of the Parties to this Agreement desires to modify any portion of this Agreement, it will promptly notify the other Party in writing, setting forth the facts and circumstances thought to justify modification and the substance of the proposed modification. The Party receiving a request to modify the Agreement will not unreasonably delay notifying the requesting Party as to whether it will agree to the proposed modification. No modification will take effect unless and until the Parties memorialize the agreed upon modification in writing.
29. 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:

U.S. Attorney's Office
Assistant United States Attorney Michael Carter
517 E. Wisconsin Ave., Suite 530
Milwaukee, WI 53202

For City of Waukesha:

City Attorney
201 Delafield Street, Suite 206
Waukesha, WI 53188

30. The United States may review compliance with this Agreement at any time. If the United States believes that the City has failed to comply in a timely manner with any requirement

of this Agreement, or that any requirement has been violated, the United States will so notify the City in writing and will attempt to resolve the issue in good faith. If the United States is unable to reach a satisfactory resolution of the issue within thirty (30) days of the date it notifies the City, the United States may file a civil action in federal district court to enforce the terms of this Agreement or take any other action to enforce title II of the ADA.

31. Failure by the United States to enforce a deadline or provision in this Agreement will not be construed as a waiver of the United States' right to enforce any deadlines or provisions of this Agreement.
32. A copy of this document will be made available to any person by the City on request.
33. This Agreement shall be applicable to and binding upon the City, its officers, agents, employees, and assigns.
34. This Agreement constitutes the entire agreement between the Parties on the matters raised herein, and no other statement or promise, written or oral, made by any party or agents of any party, that is not contained in this written Agreement, including its attachments, shall be enforceable.
35. This Agreement is limited to resolving claims under title II of the ADA related to the facts specifically set forth in Paragraphs 1-5 above concerning physical accessibility of polling places. Nothing in this Agreement relates to other provisions of the ADA or affects the City's obligations to comply with any other federal, state, or local statutory, administrative, regulatory, or common law obligation, including those relating to nondiscrimination against individuals with disabilities.
36. This Agreement will remain in effect for five years from the Effective Date.
37. The person signing for the City represents that he or she is authorized to bind the City to this Agreement.

FOR THE UNITED STATES

GREGORY J. HAANSTAD
United States Attorney

By: _____

Date: _____

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FOR CITY OF WAUKESHA:

Shawn N. Reilly, Mayor

Date: _____

Gina L. Kozlik, City Clerk-Treasurer

Date: _____

Exhibit 1

District(s)	Ward(s)	Name of Polling Place	Address	Space / Element Name	Subject / Issue	Noncompliant Item / Component	§§ 1991 ADA Standards	Description of Issue / 2010 ADA Requirement	§§ 2010 ADA Standards	Temporary Remedy, if applicable
2	3,4,5 & early voting	Waukesha City Hall	201 Delafield St. Waukesha, WI 53188	Ramp	Handrails	No rails within prescribed height range	4.8.5; 4.8.5.5	Top of gripping surfaces of hand-rails shall be 34" minimum & 38" maximum vertically above walking surfaces, stair nosings, and ramp surfaces.	303.4; 405.8; 505.4	
4	9, 10 & 11	Hawthorne School	1111 Maitland Dr. Waukesha, WI 53188	Sidewalk & walkways	Accessible route	1-1/4" change in level in walk at door	4.5.2	Changes in level greater than 1/2" high shall be ramped.	303.4	Temporary remedy for election day: cone
				Voting area	Protruding object	Hand sanitizer dispenser protrudes more than allowed	4.4	Objects with leading edges more 27" & not more than 80" above the finish floor or ground shall protrude 4" maximum horizontally into the circulation path.	307	
5	12 & 13	Meadowbrook School	3130 Rolling Ridge Dr. Waukesha, WI 53188	Parking	Signage	No van accessible sign	4.6.4; 4.1.2(5)(b)	Signs identifying van parking spaces shall contain the designation "van accessible."	502.6	Temporary remedy for election day: van accessible sign
				Hallways & corridors	Protruding object	Hand sanitizer dispenser protrudes more than allowed	4.4	Objects with leading edges more 27" & not more than 80" above the finish floor or ground shall protrude 4" maximum horizontally into the circulation path.	307	Temporary remedy for election day: cone
				Ramp	Handrails	No handrails on ramp	4.8.5	Ramp runs with a rise greater than 6 inches shall have handrails.	303.4; 405.8; 505	
7	16, 17, 41 & 48	Prairie School	1801 Center Rd. Waukesha, WI 53189	Parking	Accessible route: from parking	Designated parking not on shortest route	4.6.2	Parking spaces...that serve a particular building or facility shall be located on the shortest accessible route...to an entrance.	208.3	

District(s)	Ward(s)	Name of Polling Place	Address	Space / Element Name	Subject / Issue	Noncompliant Item / Component	§§ 1991 ADA Standards	Description of Issue / 2010 ADA Requirement	§§ 2010 ADA Standards	Temporary Remedy, if applicable
				Hallways & corridors	Protruding objects	Defibrillator & hand sanitizer dispenser protrude more than allowed	4.4	Objects with leading edges more 27" & not more than 80" above the finish floor or ground shall protrude 4" maximum horizontally into the circulation path.	307	Temporary remedy for election day: cone
9	20, 21 & 42	Heyer School	1209 Heyer Dr. Waukesha, WI 53186	Building entrance	Landing area and Maneuvering	3% slope in front of door. (Auto door opener not working.)	4.8.6	Changes in level are not permitted. EXCEPTION: Slopes not steeper than 1:48 shall be permitted.	405.7	Temporary remedy for election day: cone
				Hallways & corridors	Protruding object	Shelf with coat hooks protrudes more than allowed	4.4	Objects with leading edges more 27" & not more than 80" above the finish floor or ground shall protrude 4" maximum horizontally into the circulation path.	307	
10	22, 23, 24 & 43	Waukesha South High School	401 E. Roberta Ave. Waukesha, WI 53186	Parking	Signage	No van accessible sign	4.6.4; 4.1.2(5)(b)	Signs identifying van parking spaces shall contain the designation "van accessible."	502.6	Temporary remedy for election day: van accessible sign
				Parking	Slope	5% slope in space & aisle	4.6.3	For parking spaces and access ramps, changes in level are not permitted. EXCEPTION: Slopes not steeper than 1:48 shall be permitted.	502.4 & EX	Temporary remedy for election day: directional sign
				Building entrance	Signage	No directional sign at inaccessible entrance	4.1.6(1)(h)	Directional signs that indicate the location of the nearest entrance shall be provided at entrances that do not comply	703.5	

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12	30, 31, 40 & 45	Waukesha West High School	3301 Saylesville Rd. Waukesha, WI 53189	Parking	Signage	No van accessible sign	4.6.4; 4.1.2(5)(b)	Signs identifying van parking spaces shall contain the designation "van accessible."	502.6	Temporary remedy for election day: van accessible sign
13	32, 33, 34 & 39	Bethesda School	730 S. University Dr. Waukesha, WI 53188	Parking	Signage	No van accessible sign	4.6.4; 4.1.2(5)(b)	Signs identifying van parking spaces shall contain the designation "van accessible."	502.6	Temporary remedy for election day: van accessible sign
				Hallways & corridors	Protruding object	Coatracks in hallway outside voting area protrude more than allowed	4.4	Objects with leading edges more 27" & not more than 80" above the finish floor or ground shall protrude 4" maximum horizontally into the circulation path.	307	Temporary remedy for election day: cone
				Ramp	Handrails	Pavement in front of building entrance has rise greater than 6" but no handrails	4.8.5	Ramp runs with a rise greater than 6 inches shall have handrails.	303.4; 405.8; 505	
14	35 & 36	Fire Station #5	3051 Summit Ave. Waukesha, WI 53188	Building entrance	Door	Maneuvering clearance less than 18" to the side of the latch on the pull side of the door	4.13.6, Fig. 25	Minimum maneuvering clearances at doors shall extend the full width of the doorway & the required latch side or hinge side clearance.	404.2.4; 404.2.4.1 & Table	Temporary remedy for election day: use of fire engine door

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15	37 & 38	Blair School	301 Hyde Park Ave. Waukesha, WI 53188	Parking	Signage	No van accessible sign	4.6.4; 4.1.2(5)(b)	Signs identifying van parking spaces shall contain the designation "van accessible."	502.6	Temporary remedy for election day: van accessible sign
				Parking	Slope	Both space & access aisle exceed 1:48 slope	4.6.3	For parking spaces and access ramps, changes in level are not permitted. EXCEPTION: Slopes not steeper than 1:48 shall be permitted.	502.4 & EX	
				Building entrance	Doors	Insufficient width. Doors 29" wide	4.13.4; 4.13.5; 413.6	Door openings shall provide a clear width of 32" minimum. Clear openings of doorways with swinging doors shall be measured between the face of the door and the stop, with the door open 90 degrees. Openings more than 24" deep shall provide a clear opening of 36" minimum.	404.2.2; 404.2.3; 404.2.4	

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1	1 & 2	Elks Lodge	2301 Springdale Rd. Waukesha, WI 53186	Building entrance	Door opening force	10 lbs of force needed	4.13.11	The force for pushing or pulling open a door shall be 5 lbs maximum.	404.2.9	Temporary remedy for election day: door bell
				Hallways & corridors	Protruding object	Shelf protrudes more than allowed	4.4	Objects with leading edges more 27" & not more than 80" above the finish floor or ground shall protrude 4" maximum horizontally into the circulation path.	307	Temporary remedy for election day: cone
				Voting area	Protruding objects	Food service counter & wall scones protrude more than allowed	4.4	Objects with leading edges more 27" & not more than 80" above the finish floor or ground shall protrude 4" maximum horizontally into the circulation path.	307	Temporary remedy for election day: cone
3	18 & 19	St. Mary's Church	225 S. Hartwell Ave. Waukesha, WI 53186	Parking	Signage	No van accessible sign	4.6.4; 4.1.2(5)(b)	Signs identifying van parking spaces shall contain the designation "van accessible."	502.6	Temporary remedy for election day: cone
				Parking	Space & access aisle	No marked 96" access aisle; at angle. Space is 105"	4.1.2(5)(b); 4.6.3, Fig. 9	Van parking spaces shall be 132" wide minimum, shall be marked to define the width, & shall have an adjacent access aisle. EXCEPTION: Van parking spaces shall be permitted to be 96" wide minimum where the access aisle is 96" wide minimum.	502.1; 502.2; 502.3	Temporary remedy for election day: cone
				Building entrance	Signage	No directional sign on inaccessible door	4.1.6(1)(h)	Directional signs...that indicate the location of the nearest entrance... shall be provided at entrances that do not comply...	703.5	Temporary remedy for election day; Directional sign

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				Hallways & corridors	Protruding object	Drinking fountain protrudes more than allowed	4.4	Objects with leading edges more 27" & not more than 80" above the finish floor or ground shall protrude 4" maximum horizontally into the circulation path.	307	Temporary remedy for election day: cone
11	25, 26, 27, 28 & 29	E & RUCC Church	413 Wisconsin Ave. Waukesha, WI 53186	Parking	Signage	No van accessible sign	4.6.4; 4.1.2(5)(b)	Signs identifying van parking spaces shall contain the designation "van accessible."	502.6	Temporary remedy for election day: van accessible sign
				Parking	Signage	Missing sign at space with access aisle	4.6.4; 4.30.7	Parking space identification signs shall include the International Symbol of Accessibility.	502.6; 703.7.2.1	Temporary remedy for election day: accessible sign