

SETTLEMENT AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA
AND
RAPID CITY, SOUTH DAKOTA
UNDER THE AMERICANS WITH DISABILITIES ACT
DJ 204-69-50

I. BACKGROUND

A. SCOPE OF THE INVESTIGATION

The parties to this Settlement Agreement (“Agreement”) are the United States of America and the City of Rapid City (“Rapid City”). The Rushmore Plaza Civic Center (“Rushmore Plaza”) is a public accommodation owned and operated by Rapid City, located in Rapid City, South Dakota.

This matter originated as a compliance review of Rapid City’s, Rushmore Plaza, under title II of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12131-12134, and the United States Department of Justice’s implementing regulation, 28 C.F.R. Part 35. Rapid City receives financial assistance from the Department of Justice, the review was also conducted under the authority of section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and the Department of Justice’s implementing regulation, 28 C.F.R. Part 42, Subpart G.

The Attorney General is authorized to investigate an alleged violation of the ADA and commence a civil action in the United States district court in any case that involves a pattern or practice of discrimination or that raises issues of general public importance, and seek injunctive relief.

Rushmore Plaza is located at 444 North Mt. Rushmore Road, Rapid City. Rushmore Plaza was built in 1977 and is a 150,000 square-foot, 10,000 seat exhibition center. Rushmore Plaza contains two arenas, a theater, and several large conference rooms and is a multi-purpose facility. The review was conducted by the Disability Rights Section of the Department of Justice’s Civil Rights Division and included reviewing Rapid City’s compliance with the following title II requirements:

- to operate each program, service, or activity so that, when viewed in its entirety, it is readily accessible to and usable by individuals with disabilities, 28 C.F.R. §§ 35.149-.150, by:
- delivery of services, programs, or activities in alternate ways, including, for example, redesign of equipment, reassignment of services, assignment of aides, or

other methods of compliance or, if these methods are not effective in making the programs accessible;

- physical changes to the Rushmore Plaza (required to have been made by January 26, 1995), in accordance with the Department of Justice’s title II regulation, 28 C.F.R. §§ 35.150-.151, and the 1991 ADA Standards for Accessible Design (1991 ADA Standards), 28 C.F.R. Part 36, App. D (2011) or the Uniform Federal Accessibility Standards (UFAS), 41 C.F.R. § 101-19.6, App. A, and the 2010 ADA Standards for Accessible Design (2010 Standards), 28 C.F.R. § 35.104;¹
- to provide signage at all inaccessible entrances to the Rushmore Plaza, directing users to an accessible entrance or to information about accessible facilities, 28 C.F.R. § 35.163(b).

B. JURISDICTION

The ADA applies to the Rapid City because it is a “public entity” as defined by title II. 42 U.S.C. § 12131(1).

1. The United States is authorized under 28 C.F.R. Part 35, Subpart F, to determine the compliance of the City with title II of the ADA and the Department of Justice’s title II implementing regulation, to issue findings, and, where appropriate, to negotiate and secure voluntary compliance agreements. Furthermore, the Attorney General is authorized, under 42 U.S.C. § 12133, to bring a civil action enforcing title II of the ADA.
2. The United States is authorized under 28 C.F.R. Part 42, Subpart G, to determine Rapid City’s compliance with section 504 of the Rehabilitation Act of 1973, to issue findings, and, where appropriate, to negotiate and secure voluntary compliance agreements. Furthermore, the Attorney General is authorized, under 29 U.S.C. § 794 and 28 C.F.R. §§ 42.530 and 42.108-110, to suspend or terminate financial assistance to Rapid City provided by the Department of Justice should the United States fail to secure voluntary compliance pursuant to Subpart G or should the United States bring a civil suit to enforce the rights of the United States under applicable federal, state, or local law.
3. The parties to this Agreement are the United States of America and Rapid City, South Dakota as the owner/operator of the Rushmore Plaza Civic Center.
4. In order to avoid the burdens and expenses of a further investigation and possible litigation, the parties enter into this Agreement.
5. In consideration of, and consistent with, the terms of this Agreement, the Attorney General agrees to refrain from filing a civil suit in this matter regarding paragraphs 10

1 Section 35.104 defines the 2010 ADA Standards as the requirements set forth in appendices B and D to 36 C.F.R. part 1191 and the requirements contained in subpart D of 28 C.F.R. part 36.

through 20, except as provided in the section entitled “Implementation and Enforcement.”

C. INDEPENDENT LICENSED ARCHITECT

7. Within three (3) months of the effective date of this Agreement, Rapid City will retain an Independent Licensed Architect (ILA), approved by the United States, who is knowledgeable about the architectural accessibility requirements of the ADA and the Rehabilitation Act. The ILA must act independently to certify whether any alterations, additions, or modifications made by the City to Rushmore Plaza during the term of this Agreement comply with the applicable standard pursuant to 28 C.F.R. § 35.151(c) and the Appendix to 28 C.F.R. § 35.151(c). The City will bear all costs and expenses of retaining and utilizing the ILA, including the costs and expenses of any consultants and staff. The City will compensate this ILA without regard to the outcome.
8. In issuing certifications pursuant to this Agreement, the ILA will impartially prepare reports with photographs identifying that the violation has been remediated and will use the certification form at Attachment C. The ILA will be considered a neutral inspector for purposes of issuing certifications of compliance and will be reasonably available to the United States to discuss findings in the reports, photographs, and certifications. The United States may also, in its discretion, provide technical assistance to the ILA throughout the term of this Agreement. Upon request by the United States, the City will provide prior notice to the United States of inspections by the ILA to allow representatives of the United States to be present.
9. The City will submit ILA certifications along with its reporting requirements as set forth in this Agreement.

D. PHYSICAL CHANGES TO THE RUSHMORE PLAZA

10. Rapid City represents that it is considering constructing a new Civic Center and that the decision on this project will be made on or before June 30, 2015.
 - a. In the event that Rapid City decides to build a new Civic Center, it will provide all construction plans for the project to the Department at least sixty (60) days prior to the commencement of construction.
 - b. Should Rapid City continue to use the current Rushmore Plaza during construction of the new facility, it will make all of the architectural changes identified in Attachment A in accordance with the timeframes set forth therein.
11. Any construction or alterations to the Rushmore Plaza building and facilities by it or on its behalf will fully comply with the requirements of 28 C.F.R. § 35.151, including applicable architectural standards.

12. Any part of the Rushmore Plaza that does not comply with the 2010 ADA Standards (or the 1991 ADA Standards, as applicable), including those listed in Attachment A, which prevent people with disabilities from fully and equally enjoying Rapid City’s services, programs, or activities and constitute discrimination on the basis of disability within the meaning of 42 U.S.C. § 12132 and 28 C.F.R. §§ 35.149 and 35.150.
13. All architectural changes by Rapid City to the Rushmore Plaza made on or after March 15, 2012, must comply with the 2010 ADA Standards.
14. In the event that the Rapid City has already undertaken an alteration, addition, or other modification to any element identified in Attachments after January 26, 1992, and prior to the Effective Date of this Agreement, Rapid City will submit, within six (6) months, a written report to the United States pursuant to paragraph 17 below summarizing the actions taken and providing evidence establishing each individual element’s compliance with the applicable architectural standard as permitted by 28 C.F.R. § 35.151(c) and its Appendix, copied below:

Compliance Date for New Construction or Alterations	Applicable Standards
Before September 15, 2010	1991 ADA Standards or UFAS
On or after September 15, 2010, and before March 15, 2012	1991 ADA Standards, UFAS, or 2010 ADA Standards
On or after March 15, 2012	2010 ADA Standards

15. Within six (6) months of the effective date of this Agreement, Rapid City will have the ILA survey the Rushmore Plaza for the purpose of identifying all entrances not all of which are accessible. Also within six (6) months of the effective date of this Agreement, Rapid City will install directional signage at all inaccessible entrances at the Rushmore Plaza and will place the international symbol for accessibility at each accessible entrance to the facility, in accordance with 28 C.F.R. § 25.163 (b)
16. Program Access in Existing Facilities: Rapid City will take the actions listed in Attachment A and B to make each of Rapid City’s programs, services, and activities operating at the Rushmore Plaza that is the subject of this Agreement, when viewed in its entirety, readily accessible to and usable by people with disabilities.

II. MISCELLANEOUS PROVISIONS

17. Except as otherwise specified in this Agreement, six months after the effective date of this Agreement and annually thereafter until it expires, Rapid City will submit written reports to the United States summarizing its actions pursuant to this Agreement. Reports will include reports with certifications from the Independent Licensed Architect, photographs showing measurements, architectural plans, notices published in the newspaper, copies of adopted policies, and proof of efforts to secure funding or assistance for structural renovations and equipment.
18. Throughout the term of this Agreement, consistent with 28 C.F.R. § 35.133(a), Rapid City will maintain the accessibility of its programs, activities, services, facilities and equipment, including routinely testing accessibility equipment and routinely auditing the accessibility of its programs and facilities within the Rushmore Plaza. This provision, however, does not prohibit isolated or temporary interruptions in service or access due to maintenance or repairs. 28 C.F.R. § 35.133(b).
19. Within six (6) months of the effective date of this Agreement, Rapid City will submit for pre-approval by the United States a proposed day long training program on the requirements of the ADA and appropriate ways of serving people with disabilities. The submission will include a description of the training, the agenda, any handouts, and the name, title, and address of the trainer.
20. Within one (1) year of the effective date of this Agreement and annually thereafter, after approval of the training program by the United States, all Rapid City employees who have direct contact with members of the public will be trained for at least a half day on the requirements of the ADA and appropriate ways of serving people with disabilities. Within thirty (30) days after each training Rapid City will submit the list of employees trained.

III. IMPLEMENTATION AND ENFORCEMENT

21. Rapid City may seek to modify this Agreement because of changed conditions making performance impossible by notifying the United States in writing, setting forth the modification and the facts to support it. Until there is written Agreement by the United States to the modification, no modification will take effect. The United States' agreement will not be unreasonably withheld.
22. The United States may review compliance with this Agreement at any time. Rapid City will cooperate with the United States. If the United States believes that Rapid City has failed to comply with this Agreement, then the United States will notify Rapid City in writing and it will attempt to resolve the non-compliance. If the United States is unable to resolve the non-compliance within 30 days, then it may institute a civil action in federal district court to enforce the terms of this Agreement and may take appropriate steps to enforce title II and section 504 of the Rehabilitation Act.
23. It is a violation of this Agreement for Rapid City to fail to comply in a timely manner with any of the requirements of this Agreement.

24. Failure by the United States to enforce any provision of this Agreement is not a waiver of the United States' right to enforce other provisions of this Agreement.
25. This Agreement is a public document. Upon request, a copy of this Agreement will be made available to any person by Rapid City or the United States.
26. This Agreement is the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party will be enforceable. This Agreement does not remedy any other potential violations of the ADA or other federal law. This Agreement does not relieve Rapid City of its continuing obligation to comply with all aspects of the ADA and section 504 of the Rehabilitation
27. This Agreement will remain in effect for three (3) years.
28. The person signing for Rapid City represents that he or she is authorized to bind Rapid City to this Agreement.

29. The effective date of this Agreement is the date of the last signature below.

FOR RAPID CITY:

SAMUEL KOOIKER,
Mayor Rapid City, South Dakota

By: _____

300 Sixth Street
Rapid City, South Dakota 57701

Date: _____

ATTEST:

Pauline Sumption, Finance Officer

Date: _____

FOR THE UNITED STATES:

VANITA GUPTA
Acting Assistant Attorney General for Civil Rights
EVE L. HILL,
Deputy Assistant Attorney General

REBECCA B. BOND, Chief
KEVIN J. KIJEWSKI, Deputy Chief

By: _____

PAULA RUBIN, TRIAL ATTORNEY
Disability Rights Section - NYA
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530
(202) 307-0663
(202) 514-7821 (fax)

Date: _____