

SETTLEMENT AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA
AND
MINNEHAHA COUNTY, SOUTH DAKOTA
UNDER THE AMERICANS WITH DISABILITIES ACT
DJ 204-69-46

BACKGROUND

SCOPE OF THE INVESTIGATION

The United States Department of Justice (Department) initiated this matter as a compliance review of Minnehaha County, South Dakota (County) under title II of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12131-12134, and the Department's implementing regulation, 28 C.F.R. Part 35. Because the County 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's implementing regulation, 28 C.F.R. Part 42, Subpart G.

The review was conducted by the Disability Rights Section of the Department's Civil Rights Division and focused on the County's compliance with the following title II requirements:

- to conduct a self-evaluation of its services, policies, and practices by July 26, 1992, and make modifications necessary to comply with the Department's title II regulation, 28 C.F.R. § 35.105;
- to notify applicants, participants, beneficiaries, and other interested persons of their rights and the County's obligations under title II and the Department's regulation, 28 C.F.R. § 35.106;
- to designate a responsible employee to coordinate its efforts to comply with and carry out the County's ADA responsibilities, 28 C.F.R. § 35.107(a);
- to establish a grievance procedure for resolving complaints of violations of title II, 28 C.F.R. § 35.107(b);

- 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. § 35.150, by:
 - delivery of services, programs, or activities in alternate ways, including, for example, redesign of equipment, reassignment of services, assignment of aides, home visits, or other methods of compliance or, if these methods are not effective in making the programs accessible,
 - physical changes to buildings (required to have been made by January 26, 1995), in accordance with the Department's title II regulation, 28 C.F.R. § 35.151, and the ADA Standards for Accessible Design (Standards), 28 C.F.R. pt. 36, App. A, or the Uniform Federal Accessibility Standards (UFAS), 41 C.F.R. § 101-19.6, App. A.
- to ensure that facilities for which construction or alteration was begun after January 26, 1992, are readily accessible to and usable by people with disabilities, in accordance with 1) the Department's title II regulation and 2) the Standards or UFAS, 28 C.F.R. § 35.151;
- to ensure that communications with applicants, participants, and members of the public with disabilities are as effective as communications with others, including furnishing auxiliary aids and services when necessary, 28 C.F.R. § 35.160;
- to provide direct access via TTY (text telephone) or computer-to-telephone emergency services, including 9-1-1 services, for persons who use TTY's and computer modems, 28 C.F.R. § 35.162;
- to provide information for interested persons with disabilities concerning the existence and location of the County's accessible services, activities, and facilities, 28 C.F.R. § 35.163(a); and
- to provide signage at all inaccessible entrances to each of its facilities, directing users to an accessible entrance or to information about accessible facilities, 28 C.F.R. § 35.163(b).

As part of its compliance review, the Department reviewed the following facilities, which – because construction or alterations commenced after January 26, 1992 – must comply with the ADA's new construction or alterations requirements: the Courthouse, New Jail Facility, Correctional Center, and most of the Juvenile Detention Center.

The Department's program access review covered those of the County's programs, services, and activities that operate in the following facilities: Dakota House, Administration Building, Emergency Management Facility, Extension Building, Minnehaha Building, Old Courthouse Museum, Public Safety Building, Siouxland Library (Crooks Branch), and a portion of the Juvenile Detention Center.

The Department conducted a program access review of the following polling places: Brandon City Hall, Brandon Fire Station, Dell Rapids American Legion Hall, and Taopi Community Hall. This review was limited to the areas of the facilities used by the voting public: parking, the route from the parking area to the area used for voting, and the area used for voting.

The Department also conducted a program access review of the following facilities that are designated as emergency shelters: O’Gorman High School, Roosevelt High School, Sioux Falls Arena and Convention Center, and Washington High School. This review was limited to the areas of the facilities used by members of the public during an emergency: parking, the route from the parking area to the area used as a shelter, the area used as a shelter, and toilet facilities serving that area.

The Department reviewed the County’s policies and procedures regarding voting, emergency management and disaster prevention, and sidewalk maintenance to evaluate whether persons with disabilities have an equal opportunity to utilize these programs.

Finally, the Department reviewed the County Sheriff Department’s policies and procedures regarding providing effective communication to persons who are deaf or hard-of-hearing.

JURISDICTION

1. The ADA applies to the County because it is a “public entity” as defined by title II. 42 U.S.C. § 12131(1).
2. The Department is authorized under 28 C.F.R. Part 35, Subpart F, to determine the compliance of the County with title II of the ADA and the Department'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 should the Department fail to secure voluntary compliance pursuant to Subpart F.
3. The Department is authorized under 28 C.F.R. Part 42, Subpart G, to determine the County’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 the County provided by the Department of Justice should the Department fail to secure voluntary compliance pursuant to Subpart G or to bring a civil suit to enforce the rights of the United States under applicable federal, state, or local law.
4. The parties to this Agreement are the United States of America and Minnehaha County, South Dakota.

5. In order to avoid the burdens and expenses of an investigation and possible litigation, the parties enter into this Agreement.
6. 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 all matters contained within this Agreement, except as provided in the section entitled "Implementation and Enforcement."

ACTIONS TAKEN BY THE COUNTY

7. ADA Coordinator

In 1992, Minnehaha County designated the Human Resources Director as its ADA Coordinator. The county has also appointed a Diversity Committee comprised of interested community members. Grievances are brought to the attention of the Coordinator who then monitors the complaint process to work towards a resolution of the matter. Recommendations are made directly to the Board of County Commissioners.

8. Self Evaluation

Minnehaha County's self evaluation was originally conducted in 1984 under the requirements of Section 504 of the Rehabilitation Act of 1973, as amended. Later, another community-based team was selected to continue the self evaluation and update the transition plan in 1992. Today, there is an ongoing self-evaluation process that continues to address emerging needs.

Members of the local community, representing citizens who are deaf or hard of hearing, have visual limitations, mobility limitations, and/or cognitive disabilities, along with Minnehaha County staff have been part of the team. The evaluation began with an inventory of the county facilities, programs, and services. Subsequently, on-site inspections of county facilities were made.

9. Transition Plan

The original transition plan was completed in 1986 and was based on information gathered in the self-evaluation process. A time frame for completing action items was developed based on planned construction and renovation. A joint hearing for the public was held in cooperation with the City of Sioux Falls. Numerous projects identified in the plan have been completed since 1986. These projects include the installation of ramps, installation of elevators, and improved signage, among others. Updates were made to the plan in 1992 and 1993.

REMEDIAL ACTION

NOTIFICATION

10. Within two months of the effective date of this Agreement, the County will adopt the attached Notice ([Attachment A](#)); distribute it to all agency heads; publish the Notice in a local newspaper of general circulation serving the County; post the Notice on its Internet Home Page; and post copies in conspicuous locations in its public buildings. It will refresh the posted copies, and update the contact information contained on the Notice, as necessary, for the life of this Agreement. Copies will also be provided to any person upon request.
11. Within three months of the effective date of this Agreement, and on yearly anniversaries of this Agreement until it expires, the County will implement and report to the Department its written procedures for providing information for interested persons with disabilities concerning the existence and location of the County's accessible programs, services, and activities.

GRIEVANCE PROCEDURE

12. Within three months of the effective date of this Agreement, the County will adopt the attached ADA Grievance Procedure ([Attachment B](#)), distribute it to all agency heads, and post copies of it in conspicuous locations in each of its public buildings. It will refresh the posted copies, and update the contact information contained on it, as necessary, for the life of the Agreement. Copies will also be provided to any person upon request.

GENERAL EFFECTIVE COMMUNICATION PROVISIONS

13. Within three months of the effective date of this Agreement, the County will identify sources of qualified sign language and oral interpreters, real-time transcription services, and vendors that can put documents in Braille, and will implement and report to the Department its written procedures, with time frames, for fulfilling requests from the public for sign language or oral interpreters, real-time transcription services, and documents in alternate formats (Braille, large print, cassette tapes, etc.).
14. The County will take steps to ensure that all appropriate employees are trained and practiced in using the South Dakota Relay Service to make and receive calls.

LAW ENFORCEMENT AND EFFECTIVE COMMUNICATION

15. Within three months of the effective date of this Agreement, the County will adapt for its own use and implement the Minnehaha County Sheriff Department's Policy Statement on Effective Communication with People Who are Deaf or Hard of Hearing [[Attachment C](#)] and distribute to all officers the Guide for Law Enforcement Officers When in Contact with People Who are Deaf or Hard of Hearing [[Attachment D](#)].
16. Within three months of the effective date of this Agreement, the County will contract with one or more local qualified oral/sign language interpreter agencies to ensure that the interpreting services will be available on a priority basis, twenty-four hours per day, seven days a week, to its sheriff's department or make other appropriate arrangements (such as contracting directly with or hiring qualified interpreters).
17. Within three months of the effective date of this Agreement, the County will ensure that each sheriff's station or substation and each jail/prison/detention facility is equipped with a working TTY to enable persons who are deaf, hard of hearing, or who have speech impairments to make outgoing telephone calls. Where inmate telephone calls are time-limited, the County will adopt policies permitting inmates who use TTY's a longer period of time to make those calls, due to the slower nature of TTY communications compared with voice communications.

VOTING

18. Some of the County's polling places may be owned or operated by other public entities subject to title II or by public accommodations subject to title III and, as such, would be subject to the obligation to provide program access or to remove barriers to accessibility under the ADA. This Agreement does not limit such future enforcement action against the owners or operators of these polling places by any person or entity, including the Department. Brandon City Hall, Brandon Fire Station, Dell Rapids American Legion Hall, and Taopi Community Hall are owned or operated by other public entities.
19. Within one month of the effective date of this Agreement, the County will request in writing that each of the owners and operators of the polling places listed in [Attachment E](#) below will remove the noted barriers to access for persons with disabilities and the County will distribute to them the Department's ADA Checklist for Polling Places (www.ada.gov/votingck.htm). The request will specify that the remediation be completed within one year of the effective date of this Agreement. The County will simultaneously send a courtesy copy of the request to the Department.

20. Within 14 months of the effective date of this Agreement, the County will survey all facilities mentioned in [Attachment E](#) to determine whether the actions requested by the County have been implemented. If not, for each polling place that still contains inaccessible parking, exterior route, entrance, or interior route to the voting area, the County will identify within 18 months of the effective date of this Agreement an alternate location where these elements are accessible. That identification will utilize the survey instrument that appears as [Attachment F](#) to this Agreement. The County will then take immediate steps to change its polling place to the new location.
21. Until all polling places in each precinct or voting district have accessible parking, exterior routes, entrances, and interior routes to the voting area, prior to each election, the County will identify and widely publicize to the public and to persons with disabilities and organizations serving them the most accessible polling place(s) for each precinct or voting district.
22. Within three months of the effective date of this Agreement, the County will provide opportunities for same-day balloting for voters with disabilities whose assigned polling place does not have accessible parking, exterior route, entrance, and interior route to the voting area. The method for providing these opportunities may include allowing the individual to vote at another nearby location that is accessible, vote by an absentee ballot that is accepted if postmarked on the day of the election (or picked up by election officials at the home of the voter on the same day as the election), provide curbside voting at the inaccessible polling place, or any other method that ensures that disabled voters have the same degree of information available to them when casting their ballots as others.
23. Within two year of the effective date of this Agreement, the County will develop and implement a way for persons who are blind or have low vision to vote independently and privately, whether through ballots and instructions in alternate formats (in-person and absentee), Braille templates and audio instructions, the provision of accessible voting machines, or some other method.
24. Within three months of the effective date of this Agreement, the County will survey its voter registration locations for accessibility to persons with disabilities by using the form provided at [Attachment F](#) and will report the results of this survey to the Department. If barriers to access are identified, the County will implement and report the Department its plan to provide program access, which may include allowing persons to register to vote through alternative means or at alternative locations.
25. Starting three months from the effective date of this Agreement, when the County purchases or otherwise acquires new voting machines, one such newly-acquired machine per polling location will be the most accessible model for persons with

disabilities (including those with mobility and visual impairments) that has been approved for County use by the applicable governing authority (e.g., State Secretary of Elections or other such official).

26. Starting three months from the effective date of this Agreement, when setting up its voting equipment, the County will ensure that the equipment's accessibility to persons with disabilities is maximized, such as setting up table-top equipment on accessible tables and within the reach ranges required by the Standards, as shown in [Attachment F](#).
27. Within the month prior to the next election that utilizes the County's polling places, and at bi-annual anniversaries of the effective date of this Agreement until it expires, the County will train poll workers on the rights of people with disabilities and the practical aspects of assuring those rights. The training will cover, at minimum, the need to maintain the physical accessibility of polling locations; how to assist people with disabilities, as necessary; and how to operate any non-standard voting equipment or accessible features of standard equipment (particularly new, accessible equipment).

EMERGENCY MANAGEMENT PROCEDURES AND POLICIES

28. If the County contracts with another entity, such as the American Red Cross or another local government, to provide its emergency preparedness plans and emergency response services, the County will ensure that the other entity complies with the following provisions on its behalf.
29. Within three months of the effective date of this Agreement, the County will implement and report to the Department its written procedures that ensure that it regularly solicits and incorporates input from persons with a variety of disabilities and those who serve them regarding all phases of its emergency management plan (preparation, notification, response, and clean up).
30. Within three months of the effective date of this Agreement, the County will implement and report to the Department its written procedures that ensure that its community evacuation plans enable those who have mobility impairments, vision impairments, hearing impairments, cognitive disabilities, mental illness, or other disabilities to safely self-evacuate or be evacuated by others. Some communities are instituting voluntary, confidential registries of persons with disabilities who may need individualized evacuation assistance or notification. If the County adopts or maintains such a registry, its report to the Department will discuss its procedures for ensuring voluntariness, appropriate confidentiality controls, and how the registry will be kept updated, as well as its outreach plan to inform persons with disabilities of its availability. Whether or not a registry is used, the County's plan should address accessible transportation needs for persons with disabilities.

31. Within three months of the effective date of this Agreement, the County will implement and report to the Department its written procedures that ensure that if its emergency warning systems use sirens or other audible alerts, it will also provide ways to inform persons with hearing impairments of an impending disaster. The use of auto-dialed TTY messages to pre-registered individuals who are deaf or hard of hearing, text messaging, e-mails, open-captioning on local TV stations and other innovative uses of technology may be incorporated into such procedures, as well as lower-tech options such as dispatching qualified sign language interpreters to assist with emergency TV broadcasts.
32. Within three months of the effective date of this Agreement, the County will implement and report to the Department its written procedures that ensure that at least one emergency shelter has a back-up generator and a way to keep medications refrigerated (such as a refrigerator or a cooler with ice). Such shelter(s) will be made available to persons whose disabilities require access to electricity and refrigeration, for example, for using life-sustaining medical devices, providing power to motorized wheelchairs, and preserving certain medications, such as insulin, that require refrigeration. The written procedures will include a plan for notifying persons of the location of such shelter(s).
33. Within three months of the effective date of this Agreement, the County will implement and report to the Department its written procedures that ensure that persons who use service animals are not separated from their service animals when sheltering during an emergency, even if pets are normally prohibited in shelters. The procedures will not unnecessarily segregate persons who use service animals from others but may take into account the potential presence of persons who, for safety or health reasons, should not be in contact with certain types of animals.
34. Some of the County's emergency shelters may be owned or operated by other public entities subject to title II or by public accommodations subject to title III and, as such, are subject to the obligation to provide program access or remove barriers to accessibility under the ADA. This Agreement does not limit such future enforcement action against the owners or operators of these facilities by any person or entity, including the Department.
35. Within one month of the effective date of this Agreement, the County will request in writing that each of the owners and operators of the shelter facilities listed in [Attachment G](#) will remove the noted barriers to access for persons with disabilities. The request will specify that the remediation be completed within one year of the effective date of this Agreement. The County will simultaneously send a courtesy copy of the request to the Department.
36. Within 14 months of the effective date of this Agreement, the County will survey the shelters listed in [Attachment G](#) to determine whether the noted barriers have

been removed. If not all barriers have been removed, the County will identify within 18 months of the effective date of this Agreement an appropriate number of alternate shelters where the parking, exterior routes, entrances, interior routes to the shelter area, and toilet rooms to the shelter area comply with the Standards.

37. Within three months of the effective date of this Agreement and until all emergency shelters have accessible parking, exterior routes, entrances, interior routes to the shelter area, and toilet rooms serving the shelter area, the County will identify and widely publicize to the public and to persons with disabilities and the organizations that serve them the most accessible emergency shelters.
38. To the extent that the County provides opportunities for post-emergency temporary housing to its residents, within 3 months of the effective date of this Agreement, it will develop, implement, and report to the Department its plans for providing equivalent opportunities for accessible post-emergency temporary housing to persons with disabilities. Within one year of the effective date of this Agreement, the County will ensure that information it makes available regarding temporary housing includes information on accessible housing (such as accessible hotel rooms within the community or in nearby communities) that could be used if people with disabilities cannot immediately return home after a disaster if, for instance, necessary accessible features such as ramps or electrical systems have been compromised.

WEB-BASED SERVICES AND PROGRAMS

39. Within 1 month of the effective date of this Agreement, and on subsequent anniversaries of the effective date of this Agreement, the County will distribute to all persons – employees and contractors – who design, develop, maintain, or otherwise have responsibility for content and format of its website(s) or third party websites used by the County (Internet Personnel) the technical assistance document, “Accessibility of State and Local Government Websites to People with Disabilities,” which is [Attachment H](#) to this Agreement (it is also available at www.ada.gov/websites2.htm).
40. Within three months of the effective date of this Agreement, and throughout the life of the Agreement, the County will do the following:
 - A. Establish, implement, and post online a policy that its web pages will be accessible and create a process for implementation;
 - B. Ensure that all new and modified web pages and content are accessible;
 - C. Develop and implement a plan for making existing web content more accessible;

- D. Provide a way for online visitors to request accessible information or services by posting a telephone number or e-mail address on its home page; and
- E. Periodically (at least annually) enlist persons with disabilities to test its pages for ease of use.

PHYSICAL CHANGES TO FACILITIES

- 41. The elements or features of the County's facilities that do not comply with the Standards, including those listed in Attachments I, J, and K, may prevent persons with disabilities from fully and equally enjoying the County's services, programs, or activities and may 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.
- 42. The County will comply with the cited provisions of the Standards when taking the actions required by this Agreement.
- 43. Within three months of the effective date of this Agreement, the County will install signage as necessary to comply with 28 C.F.R. § 35.163(b), after having surveyed all facilities that are the subject of this Agreement for the purpose of identifying those that have multiple entrances not all of which are accessible.
- 44. Newly Constructed Facilities: In order to ensure that the spaces and elements in County facilities, for which construction was commenced after January 26, 1992, are readily accessible to and usable by persons with disabilities, the County will take the actions listed in [Attachment I](#) within 6 months from the effective date of this Agreement, unless otherwise indicated.
- 45. Altered Facilities: In order to ensure that the spaces and elements in County facilities, for which alterations commenced after January 26, 1992, are readily accessible to and usable by persons with disabilities, the County will take the actions listed in [Attachment J](#) within 1 year from the effective date of this Agreement, unless otherwise indicated.
- 46. Program Access in County's Existing Facilities: In order to ensure that each of the County's programs, services, and activities operating at a facility that is the subject of this Agreement, when viewed in its entirety, is readily accessible to and usable by persons with mobility impairments, the County will take the actions listed in [Attachment K](#) within 2 years from the effective date of this Agreement, unless otherwise indicated.

MISCELLANEOUS PROVISIONS

47. Except as otherwise specified in this Agreement, at yearly anniversaries of the effective date of this Agreement until it expires, the County will submit written reports to the Department summarizing the actions the County has taken pursuant to this Agreement. Reports will include detailed photographs showing measurements, architectural plans, work orders, notices published in the newspaper, copies of adopted policies, and proof of efforts to secure funding/assistance for structural renovations or equipment.
48. Throughout the life of this Agreement, consistent with 28 C.F.R. § 35.133(a), the County will maintain the accessibility of its programs, activities, services, facilities, and equipment, and will take whatever actions are necessary (such as routine testing of accessibility equipment and routine accessibility audits of its programs and facilities) to do so. This provision does not prohibit isolated or temporary interruptions in service or access due to maintenance or repairs. 28 C.F.R. § 35.133(b).
49. Within six months of the effective date of this Agreement, the County will develop or procure a two-hour training program on the requirements of the ADA and appropriate ways of serving persons with disabilities. The County will use the ADA technical assistance materials developed by the Department and will consult with interested persons, including individuals with disabilities, in developing or procuring the ADA training program.
50. Within one year of the effective date of this Agreement, the County will deliver its training program to all County employees who have direct contact with members of the public. At the end of that period, the County will submit a copy of its training curriculum and materials to the Department, along with a list of employees trained and the name, title, and address of the trainer.

IMPLEMENTATION AND ENFORCEMENT

51. If at any time the County desires 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 Department in 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 Department to the proposed modification, the proposed modification will not take effect. These actions must receive the prior written approval of the Department, which approval will not be unreasonably withheld or delayed.
52. The Department may review compliance with this Agreement at any time. If the Department believes that the County has failed to comply in a timely manner with any requirement of this Agreement without obtaining sufficient advance written agreement with the Department for a modification of the relevant terms, the Department will so notify the County in writing and it will attempt to resolve the

issue or issues in good faith. If the Department is unable to reach a satisfactory resolution of the issue or issues raised within 30 days of the date it provides notice to the County, it may institute a civil action in federal district court to enforce the terms of this Agreement, or it may initiate appropriate steps to enforce title II and section 504 of the Rehabilitation Act.

53. For purposes of the immediately preceding paragraph, it is a violation of this Agreement for the County to fail to comply in a timely manner with any of its requirements without obtaining sufficient advance written agreement with the Department for an extension of the relevant time frame imposed by the Agreement.
54. Failure by the Department to enforce this entire Agreement or any provision thereof with regard to any deadline or any other provision herein will not be construed as a waiver of the Department's right to enforce other deadlines and provisions of this Agreement.
55. This Agreement is a public document. A copy of this document or any information contained in it will be made available to any person by the County or the Department on request.
56. This Agreement constitutes 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 or agents of either party, that is not contained in this written Agreement (including its Attachments, which are hereby incorporated by reference), will be enforceable. This Agreement does not purport to remedy any other potential violations of the ADA or any other federal law. This Agreement does not affect the County's continuing responsibility to comply with all aspects of the ADA and section 504 of the Rehabilitation Act.
57. This Agreement will remain in effect for three years.

58. The person signing for the County represents that he or she is authorized to bind the County to this Agreement.

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

For Minnehaha County, South
Dakota:

For the United States:

R. ALEXANDER ACOSTA,
Assistant Attorney General for Civil Rights

By:

—

By: _____

Date:

JOHN L. WODATCH, Chief
JEANINE WORDEN, Deputy Chief
MARY LOU MOBLEY, Special Projects
Attorney
JOSH MENDELSON, Supervisory Attorney
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Civil Rights Division
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Washington, DC 20530

Date: _____