



TOWN OF ELIZABETH

HARMONY MALAKOWSKI, DEPUTY TOWN CLERK

TO: Honorable Mayor, Mayor Pro Tem, and Board of Trustees
FROM: Harmony Malakowski, Deputy Town Clerk
DATED: April 23, 2024
SUBJECT: Digital Accessibility Statement of Work – Allyant

BACKGROUND

In 2021, the Colorado General Assembly passed House Bill 21-1110 making it a civil rights violation for a government agency to exclude people with disabilities from receiving services or benefits because of a lack of accessibility. Any Colorado government entity that does not meet the Colorado Office of Information Technology accessibility standards could be subject to injunctive relief.

In the 2023 legislative session, Senate Bill 23-244 cleaned up and clarified some of the changes required by HB 1110. The Due Date for compliance with these standards is July 1, 2024.

ANALYSIS

In February of 2023, the Town entered into an agreement with a service called AudioEye who purported to have the tools and resources for our website to meet all eligibility requirements. As the due date for compliance has approached, and more information has been shared from the Colorado Office of Information Technology, Staff has discovered that this service does not meet the accessibility requirements. Since this discovery, Clerk Staff have attended several accessibility training courses and reached out to multiple sources to find out what is required. It was determined that Digital Accessibility is a huge project with many layers and laws and is currently outside of Staff's experience and training. We will need a partner to help us navigate these new responsibilities.

After receiving recommendations from other clerks and municipalities, as well as other research via the internet, four companies were vetted to determine what services they provide to help with accessibility. We needed to know if they understood the nuances of Colorado's laws and how they differ from national laws. While all four companies offer accessibility services in different capacities, Allyant is the only company from our research which covers all the different items needed under one umbrella and in fact, knows exactly what Colorado requires.

Allyant is offering a partnership with the Town to help us navigate the accessibility requirements. Services that will be included are:

- 1) A one-time audit of our website using both a sighted and legally blind team to provide a page-by-page analysis of what needs to be corrected and the priority order of those

changes. They have also agreed to hold off on the audit until our new website is built out with CivicPlus so we can become compliant from the ground up.

- 2) A digital HUB that Staff and partners can access outlining errors found and suggestions for how to correct them.
- 3) Ongoing automatic and periodic scans of our website.
- 4) Knowledge base training and accessibility help.
- 5) Partnership in developing any accessibility statements needed on our website.
- 6) Partnership in developing an accessibility plan.
- 7) A “Reviewed By” badge to be placed on our website to show partnership and commitment to digital accessibility.
- 8) Free third-party digital product and software procurement assessments of how well those companies meet digital accessibility.
- 9) Access to unique accessible print materials (Braille as one example) for an additional cost if needed.
- 10) Remediation of PDF documents for an additional cost if needed.

Staff is also working with another branch of Allyant to purchase licenses for Word and PDF remediation software called CommonLook that will allow Staff to create our own accessible documents. The approximate cost for these software licenses will be \$5,567.50. The Statewide Internet Portal Authority (SIPA), in partnership with Allyant, is also offering grants for these licenses. Staff have applied for and received 5 licenses through this grant opportunity. This grant will cover the cost of the first year for the licenses.

STAFF RECOMMENDATION

Staff feels that partnering with a digital accessibility expert will help ensure the best compliance with HB 1110. Tools and widgets that are attached to a website do not meet Colorado’s Accessibility Standards. We need to create a website that is compliant on its own and need the services of someone who is trained in accessibility standards. Allyant has been very responsive to all questions asked and is familiar with the differences between National and Colorado law around accessibility. Staff recommends approval of Resolution 24R23.

BUDGET CONSIDERATION

Allyant’s Digital Accessibility partnership services will cost \$9,500 over the next 2 years.

Year 1 - \$3500 Audit/\$1500 HUB/\$375 per quarter for ongoing services.

Year 2 - \$1500 HUB/\$375 per quarter for ongoing services.

An additional \$5,567.50 will be needed for CommonLook licenses starting the second year.

If approved, these fees will come out of the budgeted \$25,000 for ADA Technology Upgrades.

ATTACHMENT(S)

- Resolution 24R23 Authorizing the Town Administrator to Enter into an Agreement with Allyant for Digital Accessibility Services
- Exhibit A – Allyant Digital Accessibility Audit, HUB Platform & Ongoing Support Statement of Work & Master Subscription and Services Agreement
- Copy of email with CommonLook software license quote

- Attorney Memo Dated January 22, 2024, regarding Update on Accessibility Laws
- Attorney Memo Dated March 18, 2024, regarding Final Digital Accessibility Rules

RESOLUTION 24R23

A RESOLUTION AUTHORIZING THE TOWN ADMINISTRATOR TO ENTER INTO AN AGREEMENT WITH ALLYANT FOR DIGITAL ACCESSIBILITY SERVICES

WHEREAS, the Town of Elizabeth is required to abide by the framework and digital accessibility rules set by Colorado House Bill 21-1110 and Senate Bill 23-244; and

WHEREAS, the 2024 adopted budget anticipated a need for services to help the Town come into compliance within the budget year, and a total sum of \$25,000 was earmarked for this expense; and

WHEREAS, the Town has received a Scope of Work from Allyant to help assess, develop/remediate, and report on digital accessibility in an effort to conform with Colorado House Bill 21-1110 and Senate Bill 23-244 in a total amount not to exceed \$9,500 over the next two years.

WHEREAS, the Town has received a quote for five (5) CommonLook software licenses to help Staff remediate and create accessible documents of approximately \$5,567.50; and

NOW THEREFORE BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF ELIZABETH, COLORADO AS FOLLOWS:

SECTION 1. The Board of Trustees authorizes the Town Administrator to enter into an agreement with Allyant for Digital Accessibility Services as more fully set forth in attached **Exhibit A** in an amount not to exceed nine thousand five hundred dollars (\$9,500) over the next two years and to purchase software licenses in an amount of approximately five thousand five hundred sixty seven dollars and fifty cents (\$5,567.50) starting the second year.

PASSED, APPROVED, and ADOPTED this 23rd day of April 2024, by the Board of Trustees of the Town of Elizabeth, Colorado, on first and final reading, by a vote of _____ for and _____ against.

Tammy Payne, Mayor

ATTEST:

Michelle M. Oeser, Town Clerk



Digital Accessibility

Audit, HUB Platform & Ongoing Support
Statement of Work

Town of Elizabeth

Provided by A360 Enterprises, LLC (dba Allyant)

Contact Information:

Allison Norton
anorton@allyant.com

April 16th, 2024

Overview

A360 Enterprises, LLC (Allyant) is providing this proposal to **Town of Elizabeth** ("Client") in order to help you assess, develop/remediate and report on digital accessibility in an effort to conform to WCAG 2.1, Level AA guidelines and mitigate risk. This effort will be led by experienced, live accessibility auditors and consultants. This document outlines the steps required to create a full and successful experience for all.

Allyant is in a unique position to help the Client through this process by providing:

1. **Experienced Accessibility Engineers**, both sighted and native screen reader auditors to fully assess websites, mobile apps, IoT products, kiosks & other digital platforms. This approach is far superior to automated tools which only test for a fraction of the WCAG success criteria, return many false positives and are limited in their ability to accurately test for usability and/or compliance.
2. **Detailed Reporting** via the [Allyant HUB](#), a fully accessible customer portal, to help all members of your team manage your digital accessibility project(s), get training and track progress.
3. The **Allyant HUB Audit & QA Reports** provide accessibility issues, screenshots, severity, an estimated level of effort to fix and most importantly: practical, developer-focused remediation solutions, built-in Help Desk & links to a Knowledge Base for additional learning per issue.
4. A **Customer Success Manager (CSM)** is assigned to every Allyant Client, bringing senior-level staff to help plan, facilitate and consult throughout the remediation effort, keeping the process as smooth and efficient as possible so that your goals are achieved. We also offer a higher level of Design and Development Support, which is leveraged by those organizations tackling the most difficult equitable access problems within complex digital products.
5. Further, **Allyant's Legal Support Group** pioneered the service of helping clients navigate through any legal notifications like demand letters, and complaints, and filed lawsuits to test claims and support them through defense strategy

Process

The Allyant Roadmap is a proven process distilled from thousands of accessibility projects over years of industry-leading services provided to clients across all business verticals around the world. This approach will lead your organization to become digitally accessible, as quickly as possible, while working with your specific needs, development processes and available resources.

Accessibility Audit

Allyant will conduct a manual disabled-user audit of the digital properties outlined in the [audit scope](#). The accessibility audit satisfies requirements for screen readers, visual, hearing and cognitive impairment, and keyboard-only users using standards established in [WCAG 2.1 Level AA](#).

The Audit Reports delivered via the Allyant HUB provide your team the information necessary to remediate any accessibility concerns, and serves as the governance tool for tracking your progress of this business compliance requirement. Allyant will provide the following assistance and deliverables with the audit:

- **Audit Issue Report**
 - URL, mobile view or component audited
 - Specific non-compliant elements on each & the WCAG guideline(s) it violates
 - User audience affected by the issue (e.g., screen reader, keyboard-only, hearing impaired, color contrast)
 - A detailed recommendation to remediate each issue
 - Priority level for fixing the issue
 - Link to the related Allyant HUB Knowledge Base articles
 - Screenshots where appropriate

- **Audit Summary Report**

- A narrative document summarizing the audit and highlighting common issues that were found, steps of the recommended remediation plan and an estimated level of effort
- Global issues and suggestions that would improve ongoing maintenance, Search Engine Optimization, overall usability and more

Allyant HUB Access

The HUB is your personalized customer portal and is provided to authorized users within your organization and partner organizations. In the Allyant HUB your related staff will have access to the project results outlined here, Knowledge Base, Video Training Series and Help Desk staff, (if Ongoing Support hours are purchased).

- **“Reviewed By Allyant” Badge**

- Used along with an Accessibility Statement, also included, to indicate to users that an accessibility audit is underway
- Can be placed anywhere on the digital property, including home page, footer or the accessibility statement page. Recommendations for verbiage within mobile apps also available.
- Available to those organizations subscribing to the Allyant HUB.

- **Allyant HUB Toolkit:**

- The HUB Toolkit is a Chrome Developer Extension downloaded from the Chrome Web Store helping identify and learn about common accessibility issues on your pages.
- The extension can run on any page your browser can access including local environments, behind firewalls, logins and different page contexts.
- While there is no substitute for a live user audit, automated testing can identify some of the most common accessibility issues. In conjunction with access to Allyant’s accessibility engineers, these automated assessments can help you identify and remediate some issues more quickly.
- The toolkit extension includes

- **Accessibility Tools:**

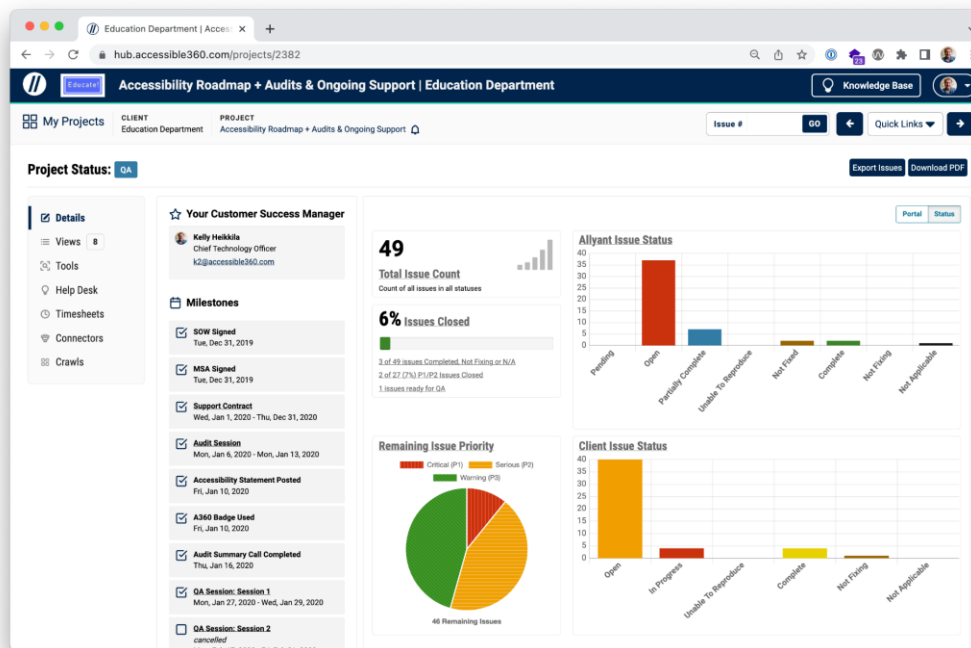
- **Image Descriptions:** View all images on the page in one place grouped by images with descriptions, those marked as decorative and those missing descriptions.
 - **Heading Levels:** View the current page heading level structure to more easily identify where levels may have been skipped or are otherwise incorrect.
 - **ARIA Usage:** ARIA is used to help describe elements on the page to a screen reader. Determining where these attributes are used in your HTML is helpful when identifying problems.
 - **Components:** Quickly identify components used on the page including third-party such as Google Maps or Yotpo, along with other items such as the slick-slider carousel.
 - **External Links:** View a list of links on your page that point to external resources.

- **Automated Accessibility Testing:**

- Live accessibility scans of web pages/sites to find common accessibility issues.
 - An ever-expanding library of validation rules the extension checks for curated by our experienced live user audits and real-world scenarios
 - An unlimited number of scans can be run from the extension on any site.
 - The scan uses the current page context including page size and any dynamic elements activated
 - Scan results exactly mimic the structure of issues found by our live user audits including fix, categorization, guidelines, affected users and more.

- Links to Knowledge base articles from the rules, results and tools help learn about and accessibility issues more quickly
- Set up “Scan Templates” such as: “Content Manager” which will only run certain rulesets that can likely be remediated by this profile group. Smart light and dark modes
- Users of the extension must have an active Allyant HUB account
- **Knowledge Base:**
 - Direct links from the Issues found during Audit or QA to this self-paced learning section
 - Checklists, Accessibility Statement Helpers and other accessibility documents
 - Detailed articles are continually added and updated as accessibility guidelines change
- **Help Desk:**
 - Client may submit general inquiries at the project level or directly linked to specific audit results
 - Comments are threaded to ensure clear communication and allow for collaboration
 - Manned by senior-level screen-reader and sighted Accessibility Engineers
- **Technical Video Training:** Access to Allyant's video training series of technical accessibility design and development topics and best practices
 - Overview look at the laws and emerging trends pertaining to digital accessibility, crucial topics for development organizations and the business. This includes an introduction to WCAG 2.1 Level AA
 - Introduction to accessibility, Design guidelines and Developer know-how to create accessibility within new builds along with best practices for content managers and code examples to leverage during your Remediation effort
 - Additional resources to continue to expand your knowledge of digital accessibility are added often and every client gets immediate access to all video training content

Screenshot of Sample Project Dashboard in HUB



Ongoing Accessibility Support

Once a project has begun, you will get immediate access to the Allyant Accessibility HUB (Allyant HUB), the Knowledge Base, Training Videos and more. You are able to take steps immediately to begin your accessibility initiative.

During this phase, Allyant will also partner with **Town of Elizabeth** to, first, assist in assessing product fixes through QA testing and technical support, and, second, to establish processes for ongoing, long-term digital accessibility compliance.

Support Services

The level of support and specific activities required varies dramatically from client to client based on type of digital properties, testing cadence, developer availability and many other factors. As such, Allyant provides a set of support hours to help you reach your goals. How an organization uses these hours in the activities below is up to the organization and can shift over time. The recommended number of Ongoing Support Hours can be found in the [assumptions](#) section of this SOW.

Typical support activities and deliverables are listed below:

Development Team Support and Accessibility Roadmap Planning

Following the Allyant audit, the client will schedule and perform internal remediation for the digital properties in scope based on results from the audit. Allyant will support this development effort through as-needed technical support for internal technical teams and/or external vendors of the client.

Allyant will provide the following assistance and deliverables during the support services:

- **Remediation Planning Support:** Your Allyant Customer Success Manager will partner to create a remediation/project plan. This will outline the Client's approach to resolving issues, highlight dates for subsequent QA testing for Allyant and define the target date by which all issues are remediated.
- **Help Desk via the Allyant HUB:** Senior Allyant technicians to consult, mentor and collaborate with Client's internal team and/or external vendors on the following:
 - Ask technical questions related to your project via Help Desk integrated into Allyant HUB
 - Pairing with an auditor
 - Sample code
 - Proactive review/QA of new pages and other content
 - Other related activities determined valuable to the success of our engagement
- **Remediation Support Calls** with your developers to discuss technical issues and solutions
- **Q&A Workshop:** Once your design and/or development staff has watched the training videos, they are able to work directly with our auditing and help desk staff via a one-hour remote workshop. During this Q & A workshop, training concepts can be discussed more in-depth, specific development/remediation issues can be discussed or other accessibility questions asked.

Note on Expediting Remediation: *Because content and design are continually evolving, Allyant strongly encourages our Clients to remediate their digital properties as soon as possible after accessibility auditing in order for it to be as applicable as possible.*

Quality Assurance Reassessment

Allyant will work with clients to schedule QA within your development process whether that is in sprints or waterfall or a combination. Once the Client is ready to test, Allyant will reassess the digital properties in scope. QA consists of checking issues found in the initial audit or previous rounds of QA. It is the clients' responsibility to apply fixes globally across your digital properties.

At this step, Allyant will provide the following assistance and deliverables:

- **QA Testing:** Allyant will provide manual-user Accessibility QA testing to confirm that the fixes have successfully been applied and the site, app or other digital property is usable by affected audiences.
- **Updated Audit Issue Report:** Updated Accessibility Audit Report in the Allyant HUB which contains any additional fixes and existing issues that are still not complete.
- **Letter of Accessibility Conformance:** States that as of the review date on the specified server, Allyant found URLs and/or views within scope substantially conform with Level A and Level AA of the Web Content Accessibility Guidelines (WCAG) version 2.1.
- **Responsive Mobile Web QA:** For responsive sites, where code is shared between desktop and mobile, and there is no additional or unique functionality (e.g., a carousel or different mobile-only menu) Allyant can also provide a walkthrough of the RWD mobile experience (UX).
 - For sites where mobile and desktop templates are different, the appropriate testing methodology should be discussed with your Customer Success Manager. In this case, specific mobile testing will be necessary for the mobile apps to receive Letters of Conformance.

Note on Letter of Conformance: Allyant uses a 1-3 scale for level of priority for each issue. Priority 1 indicates a complete blocker for one or more audiences, Priority 2 indicates a partial blocker that presents significant barriers and challenges for one or more audiences and Priority 3 indicates a WCAG issue that does not significantly impact the ability to use the site. In order to receive a Letter of Conformance, all Priority 1 and Priority 2 issues must be satisfactorily resolved regardless of when uncovered by Allyant. Additionally, the audit team must be able to successfully complete a walkthrough resulting in no additional P1 or P2 issues. We encourage a plan for Priority 3 items to be in place and documented in Allyant HUB.

Audio Descriptions for pre-recorded videos pose unique and complex accessibility challenges. Allyant recognizes the difficulties for clients to achieve conformance with WCAG requirements (SC 1.2.3, 1.2.5) for Audio Descriptions. As such, Allyant will indicate in the audit results when Audio Descriptions are required by WCAG, but any indications shall be assigned a Warning-level priority and will not be required to receive an Allyant Letter of Conformance.

Note on QA Testing & Hours Used: In a typical engagement, a significant percentage of the Ongoing Support hours outlined in this Statement of Work will be used within the first 3-6 months after QA activities begin. Despite this, Allyant's pricing model is designed to minimize the financial disruption to your organization by spreading this cost across the duration of the contract.

Post-Conformance Manual Accessibility Maintenance

Through the hours in your ongoing support contract, Allyant can provide comprehensive manual-user maintenance of in-scope views following a successful QA for long-term accessibility compliance. Views for maintenance generally consist of the Home Page & primary user flows within the given digital property. A specific set of views will be chosen by the Allyant team following a successful QA and approved by the Client, prior to performing Maintenance Assessments and other services.

At this step Allyant can provide the following assistance and deliverables:

- **Accessibility Assessments:** Manual-user re-assessments.
- **Accessibility Issue Report** if new issues have been introduced.

Compliance Support

In addition to ongoing support and manual-user maintenance, Allyant will help **Town of Elizabeth** stay accessible and support in mitigating risk through additional compliance support including:

- **Compliance Reporting:** Allyant can help your organization report on your progress toward accessibility for any legal requirements that may arise. This includes:
 - **Affidavit of Accessibility Activities** outlining the activities and milestones within your project with Allyant as you work toward accessibility. When required, this is generally provided prior to a successful QA.

- **Expert Rebuttal Report:** Through our Accessibility Claims Team, Allyant can provide disabled auditor reviews of accessibility legal claims and provide an expert rebuttal of any claims made against your digital property if needed following a successful QA.
- **Updated Letter of Conformance** provided the digital property continues to be in good standing with no Priority 1 or 2 issues based on testing based on scope and your Post Conformance maintenance activities.

Proposed Timeline

Allyant will begin as soon as possible after receiving a signed Master Subscription and Services Agreement (MSSA), this signed Statement of Work (SOW) and payment for the first invoice. The proposed project dates are below. Dates are subject to change based on delivery of executed documents, payment, Client environment readiness, required credentials and other related factors.

Our experience has shown your team's engagement is a major factor in finalizing the Proposed Timeline and for the overall success of the project. In addition, Allyant has identified Key Success Factors to help ensure your success. Allyant will review these with your team during the Project Kick-Off Meeting and throughout the project.

Process Steps		Project Start Date	Project End Date
SOW & MSSA fully executed		Upon signature by both parties	
Access to Allyant Reviewed by Badge		Upon signature by both parties	
Client Environment Prepared & Project Kick-Off Meeting		1-2 weeks following signature	
Accessibility Audit	townofelizabeth.org	To be determined following project kickoff	
HUB Toolkit Subscription		Upon signature by both parties	2 years from contract signature
Ongoing Accessibility Support			

Pricing

Service		Fee
Accessibility Audit <ul style="list-style-type: none"> Manual, disabled-user Accessibility Audit Reports detailing the findings & recommended fixes Automated Testing scan of in-scope pages Accessibility Statement template Audit & QA Allyant training completion certificate, if desired 	Audit townofelizabeth.org	\$3,500
Annual HUB Toolkit Subscription Includes: <ul style="list-style-type: none"> Usage of Allyant "Reviewed By" badge Issue reporting & workflow management system Compliance Governance of Project Milestones Allyant Video Training Series Allyant Knowledge Base Access Unlimited scanning via Chrome extension 	HUB Subscription	\$1,500/year
Ongoing Accessibility Support [townofelizabeth.org] Support can be used for any of the below services: <ul style="list-style-type: none"> Remediation Project Planning Development Team support Quality Assurance via manual-user testing Letter(s) of Conformance Affidavit of Accessibility Activity or Expert Rebuttal Report(s), if required Remote accessibility workshop Periodic Monitoring per Remediation Plan Integrated Allyant Help Desk FREE ProcureEnsure Software Assessment <ul style="list-style-type: none"> Future digital product and software procurement assessments under ProcureEnsure product upon request at no charge to Allyant clients. 		\$375 per Quarter / 8 Qtrs
		<i>*Reduced rate when purchased with Audit.</i>

All invoices will be billed under NET THIRTY (N30) DAY terms.

Upon acceptance, which is indicated by signing this SOW, Allyant will invoice the HUB subscription and Accessibility Audit fees. The second annual HUB subscription will be billed annually following contract execution.

Allyant will invoice for the first quarterly fee for Ongoing Accessibility Support on the Contract Start Date. Each subsequent quarter will be invoiced to the Client under the above terms. The client is agreeing to Allyant's HUB subscription and services for two years.

As a courtesy, Allyant may begin or continue services prior to receipt of any payments due; beginning or continuing work does not waive any rights. In addition, Allyant has the right to suspend services if payments are not received on time.

Agreement

This document is a Statement of Work (“SOW”) for Services to be performed herein and in accordance with the Master Service Agreement between **Town of Elizabeth** (“Client”) and A360 Enterprises, LLC (“Allyant”). The pricing and scope information in this SOW is valid for 60 days.

Town of Elizabeth has engaged Allyant to provide Digital Accessibility services (“Project”) as defined in this SOW. Allyant can provide separate estimates if any additional services are desired. Although Allyant will provide estimates in good faith, all invoices and fees are based upon time actually spent performing Services.

This SOW is in effect as of the date below; Client-signed authorization is considered permission to initiate Services listed above.

A360 Enterprises, LLC

Client

Signature

Signature

Name

Name

Title

Title

Date

Date

Audit Scope

The following views are based on a preliminary review of the domain(s) outlined in this Statement of Work. The scope is meant to be a collaborative effort between Client and Allyant to ensure the UX and unique functionality are accurately represented.

View Description	URL
Homepage	https://www.townofelizabeth.org/
Court	https://www.townofelizabeth.org/Court
Calendar	https://www.townofelizabeth.org/calendar
Employment	https://www.townofelizabeth.org/employment
Contact Us	https://www.townofelizabeth.org/contact
Accessibility Statement	TBD

The scope outlined above is accurate, has been reviewed and is approved by Client.
Client, please Initial above.

Assumptions

- Scope and pricing outlined in this SOW are based in part on information provided by the client. This includes information shared by the client in digital and verbal communications or obtained via a scoping call or testing credentials provided to Allyant. Any facts contrary to the information provided by client and/or the Scope agreed to herein, by way of signature, may result in future Change Orders (CO) and may impact timeline, pricing and/or hours
- Third-party content and services will not be audited unless specified in the [audit scope](#). This includes iframes, external links, pop-ups, chat, blogs, and other references. When appropriate, Allyant will list any third-party content found in the audit report
- Client acknowledges that 3rd party components in the Core User Path can prevent Allyant from issuing a Letter of Conformance for the digital property and steps should be taken now to interact with those vendors so they comply as well.
- Core User Path is defined as a mutually agreed upon ordered list of URLs for the main or primary use case for the site/application and will be fully outlined following audit delivery
- Client will be responsible for providing Allyant with any test data required for an audit and QA prior to beginning work. This could include user credentials, dummy credit cards, transaction history and other data. Delays of this information or readiness of test environments will result in delays & time deducted for rescheduling from support hours
- Desktop website audits use the page content displayed in a browser at 1280px wide
- Responsive Web Design (RWD) allows for the same core code from a desktop site to be leveraged in a mobile view.
 - If a site is mobile responsive, and there is no additional or unique functionality (i.e., carousel, mobile-only menu), Allyant will provide a walkthrough of the site and the RWD mobile experience
 - If additional or unique functionality is present: Additional scoping is required
- Users of the Allyant HUB must be directly related to the project scope of this SOW. Logins are based on email addresses and cannot be shared between Client staff
- Total hours of work performed by Allyant during the audit based upon scope is not to exceed **22 hours**.
- Total hours of work performed by Allyant during the entire Ongoing Support services contract is not to exceed **20 hours**.
- Ongoing Support Hours purchased separately of this SOW or via Time & Materials invoicing will be billed at \$175/hour
- Allyant will provide Client with a monthly report detailing Ongoing Support hours consumed
- Client may use hours for any digital accessibility review work under contract with Allyant
- If additional Ongoing Support hours are needed, your Allyant CSM will collaborate with you on a Change Order (CO). In the event that a Client does not execute a CO, additional hours will be billed at a rate of \$175/hour
- Early termination by Client will result in Allyant issuing a final invoice for any unbilled hours for services provided up until date of termination
- No refunds are granted for Annual Allyant HUB Subscriptions

All of the following are out-of-scope services:

- All services not explicitly defined in this proposal
- Travel, lodging and per diem costs affiliated with this project
- Any out-of-pocket costs associated with the effort (e.g. printing, binding, displays, etc.)
- Review or Remediation of any digital materials such as emails, pdf's, statements or marketing content not listed in Pricing.
- Allyant is not a law firm; we do not provide legal advice. Allyant encourages Client to work with experienced legal counsel to understand and apply the law to Client's situation

Allyant's reports and recommendations reflect Allyant's experience and understanding in the field of accessible technology. Client is responsible for the operation of its own business, and Client is always free to adopt Allyant's recommendations, in whole, in part, or not at all, as Client sees fit in its legal and business judgment.

Allyant Reviewed By Badges



The **Reviewed By Allyant** badge may be used on an Accessibility Statement Page, the footer of your site or other locations as needed. **Allyant** does not allow our Badge to be on a digital property where an [Overlay](#) is present or any other accessibility vendor badging.

Usage Guidelines:

- The image should link back to <https://allyant.com/digital-accessibility-auditing/>
- The image should have an alt attribute of "Reviewed By Allyant for Accessibility"
- The aspect ratio of the image should be retained (no stretching to fit)
- The badge may only be used on the site(s) or mobile apps indicated in this Statement of Work after the desired documents are executed.
- Continued use is granted as long as Client continues to subscribe to ongoing support services and the account continues to be in good standing.



simple // seamless // accessibility

MASTER SUBSCRIPTION AND SERVICES AGREEMENT

Effective as of: Client Signature Date, 2024

Parties:

“CONSULTANT” OR “Allyant”	“CLIENT”
A360 Enterprises, LLC	Name:
d/b/a as Allyant	Corporate Address:
4600 W. 77th Street Suite 295	
Edina, MN 55435	Accounts Payable Contact:
Invoice Remittance Address:	Accounts Payable Address:
Allyant Accounts Receivable	
806 Commerce Park Drive	
Ogdensburg, NY 13669	Accounts Payable Email:
Payment Email: accountsreceivable@allyant.com	Tele:
T: 1-800-563-0668 X5276	Account Contact Name:
	Account Contact Email:

Background:

1. **A360 Enterprises, LLC (Consultant and/or: Allyant)** is experienced in the field of web, mobile and other technology accessibility assessment, testing, reporting, monitoring, and technical training regarding accessibility.
2. Allyant has developed and hosts a Software as a Service (or “SaaS”) based issue and process management and knowledge-based platform, which contains a range of proprietary content, modules, and features relating to accessible technology, including but not limited to: issue identification and resolution tracking, automated testing, training videos and content, white papers, audit reports, and related information and data as determined by Allyant from time to time (collectively, the “Allyant HUB”).
3. CLIENT wishes to engage Allyant to perform accessibility testing, reporting, training, monitoring and/or other consulting services (collectively, the “Services”) as described in accompanying Scope of Work (SOW’s) and subject to the terms of this Master Subscription & Services Agreement and one or more Statements of Work as mutually agreed by the parties: Allyant & CLIENT, (collectively the “Agreement”). The Services may include access on a subscription and SaaS basis to such specific features and portions of the Allyant HUB as may be specifically identified on a SOW.

Agreement:

Allyant and CLIENT hereby enter into this Agreement for Services as of the Effective Date written above and agree as follows:

1. **Consulting Services and Fees:**



simple // seamless // accessibility

- 1.1. Accessibility Testing / Reporting / Quality Assurance Testing, /Monitoring Services as Described in SOW. Allyant will perform for CLIENT the Services described on each Statement of Work or Work Order (collectively a “SOW”) entered into and signed by the parties, and each SOW is subject to the terms of this Master Subscription & Services Agreement, except that in the event of a direct conflict between the terms of this Agreement and any SOW, the terms of the SOW shall prevail as to such SOW.
- 1.2. Subscription-Based Access to Allyant HUB. For the period specified in the applicable SOW and so long as this Agreement is in effect and CLIENT has not breached this Agreement, CLIENT may access such specific features and portions of the Allyant HUB as may be specifically identified on a SOW. If a SOW includes volume or use limitations (for example, X number of training sessions, or Y number of maximum users) then CLIENT’S access is subject to such limitations, and CLIENT shall not violate or exceed such limitations. Such subscription-based access is for CLIENT’S employees and directly-related agencies only, for the sole purpose of supporting CLIENT’S effort to make its technology more accessible to users. Upon termination of the SOW or this Agreement, CLIENT must immediately discontinue its use of the Allyant HUB. CLIENT’S access to and use of the Allyant HUB is contingent upon and subject to CLIENT’S compliance with the restrictions and limitations on Allyant Provided Items as described in Section 2. Allyant may suspend access to the Allyant HUB in the event CLIENT has not paid fees when due or has otherwise breached this Agreement or in the event of technical or maintenance issues or an external threat (e.g., hacking) to the Allyant HUB.
- 1.3. Fees, Expenses, and Invoicing. CLIENT will pay Allyant the project fee, subscription/access fee, and/or hourly rates or other fees identified on each SOW. CLIENT will reimburse Allyant for its reasonable and pre-approved expenses in performing Services under this Agreement. Allyant will invoice CLIENT and all invoices are due as described in any related SOW.

2. Rights in Allyant HUB, Deliverables and Data; Allyant Provided Items:

- 2.1. Reports, Deliverables, and Allyant Provided Items. CLIENT understands and agrees that Allyant has developed the Allyant HUB, its report formats, testing templates, methodologies, dashboards, strategies, subject matter expertise, badging, knowledge base, videos, audit summary reports remediation recommendations, recorded training sessions and other related documents and items (collectively: “Allyant Provided Items”) at substantial effort & expense prior to entering into this Agreement with CLIENT, and the existence of the Allyant Provided Items permits Allyant to perform services for CLIENT more efficiently and cost-effectively, and are used for multiple Allyant clients. The parties agree that the Allyant Provided Items are confidential, proprietary, and trade secret information and the property of Allyant.
 - 2.1.1. CLIENT may Use the Allyant Provided Items as defined above, that are in fact provided to CLIENT, for CLIENT’S internal purposes. For all Allyant Provided Items that Allyant in fact provides to CLIENT hereunder, Allyant grants CLIENT a limited right to use, copy and distribute the Allyant Provided Items, for the term of the Agreement, for CLIENT’S internal use for the purpose of improving the accessibility of its website and/or other technology, but not for the benefit of or use by any third party (although CLIENT may not copy or distribute the Allyant HUB itself, only the content and information made available to CLIENT through the Allyant HUB). Allyant retains ownership of all rights, including



simple // seamless // accessibility

all intellectual property rights including copyright, patent and trade secret rights, in and to the Allyant Provided Items. CLIENT may not remove or alter any content, copyright, confidential information or other proprietary notice appearing on an Allyant Provided Items.

2.1.2.

CLIENT may not use or permit others to use or access the Allyant Provided Items in conjunction with services or work products competitive to those provided by Allyant. If CLIENT wishes to share any Allyant Provided Items (such as an audit report and recommended fixes) with a third party (for example, CLIENT's e-commerce platform service or a website development/remediation service, but excluding any parent, affiliate, or subsidiary of CLIENT), CLIENT shall take all reasonable & appropriate measures to ensure that any third party receiving any Allyant Provided Items uses said content exclusively for the benefit of CLIENT and only as permitted in this Agreement. CLIENT is responsible for any improper act or omission by third parties selected by CLIENT to receive access to any Allyant Provided items. CLIENT may not access or attempt to access any portion of the Allyant HUB to which CLIENT has not been explicitly granted access in a SOW. CLIENT may not interfere with the functioning of the Allyant HUB, attempt to copy or reverse engineer the Allyant HUB, or use the Allyant HUB in violation of any user instructions or rules provided by Allyant.

3. Confidentiality, Publicity and Non-Solicitation - Mutual

- 3.1.** Regarding information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party") identified by the Disclosing Party as "confidential" or "proprietary" or that under the circumstances ought reasonably to be treated as confidential or proprietary including but not limited to documents, data, business operations, pricing, discounts and customer lists, (collectively, "Confidential Information"), the Receiving Party shall not, without the prior written consent of the Disclosing Party: (i) disclose such Confidential Information to any third person or entity other than in the proper course of performance under this Agreement, nor (ii) use such Confidential Information for any purpose other than performance or receipt of performance hereunder, nor (iii) use such Confidential Information in any manner that would be adverse to the interests of the Disclosing Party. The Allyant Provided Items are the Confidential Information of Allyant. The terms of this Agreement are also confidential. The confidentiality obligations of this Section 3.1 do not apply to any information or development that the Receiving Party can demonstrate: (i) is or subsequently becomes available to the general public other than through a breach by the Receiving Party; (ii) is already known to the Receiving Party before disclosure by the Disclosing Party; (iii) is developed through the independent efforts of the Receiving Party without reference to the Disclosing Party's Confidential Information; or (iv) the Receiving Party receives rightfully from third parties that are not subject to any restriction as to use or disclosure of the information.
- 3.2.** Upon termination or expiration of this Agreement, CLIENT and Allyant will return or destroy all Confidential Information, and all copies of, obtained from the other party.
- 3.3. No Solicitation.** CLIENT agrees that, during the Term of this Agreement and for a period of twelve (12) months after the expiration of this Agreement, it will not directly solicit the services of, or otherwise attempt to employ or engage any personnel of Allyant to perform services similar to those provided by Allyant, unless the employee is responding to a publicly posted position.



simple // seamless // accessibility

4. **Warranty, etc.** Allyant warrants that the Services will be performed and Allyant Provided Items shall be provided in a professional and diligent manner. This warranty is applicable to the Services and Allyant Provided Items at the time delivered. In the event of a breach of the foregoing warranty, CLIENT will give prompt written notice to Allyant, and as Allyant's sole liability and CLIENT'S sole and exclusive remedy, Allyant will substantially correct or cure the applicable Services or Allyant Provided Items at no additional cost to CLIENT, or if the foregoing is not feasible in Allyant's judgment then Allyant will return to CLIENT all pre-paid fees paid for the particular Services or Allyant Provided Item not meeting the above warranty. THE WARRANTY ABOVE IS EXCLUSIVE AND IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE WITH RESPECT TO THE SERVICES OR Allyant PROVIDED ITEMS PROVIDED UNDER THIS AGREEMENT, AND Allyant DISCLAIMS ALL OTHER WARRANTIES INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, AVAILABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, OR THAT ANY PARTICULAR BUSINESS OR LEGAL RESULT WILL BE ACHIEVED. Allyant MAY MODIFY OR CHANGE THE CONTENT AND FUNCTIONALITY OF THE Allyant HUB AT ANY TIME, WITH OR WITHOUT NOTICE. Allyant DOES NOT REPRESENT OR WARRANT THAT COMMUNICATIONS OVER THE INTERNET, THE Allyant HUB, OR THE SERVICES WILL BE ALWAYS AVAILABLE, SECURE, OR ERROR-FREE. **No Legal Advice.** Allyant does not provide legal advice, and no Services or Allyant Provided Items shall be considered to be legal advice. Allyant is not responsible for any claim or allegation a third party may make regarding CLIENT'S website or other technology. For legal conclusions or advice, Allyant recommends CLIENT seek advice from qualified legal counsel.
5. **Limitation of Liability - Mutual.** IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, OR PUNITIVE DAMAGES (INCLUDING BUT NOT LIMITED TO LOST PROFITS), REGARDLESS OF WHETHER SUCH LIABILITY IS BASED ON BREACH OF CONTRACT, TORT, STRICT LIABILITY, BREACH OF WARRANTIES, FAILURE OF ESSENTIAL PURPOSE OR OTHERWISE AND EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
6. **Indemnification.** Allyant agrees to indemnify CLIENT from all claims, losses, expenses, fees (including reasonable legal fees and expenses), costs, and judgments, brought from an unrelated third party that may be asserted against the CLIENT which arise directly as a result of : (i) any violation of applicable laws or regulations by Allyant regarding data protection; or (ii) the gross negligence or willful misconduct of Allyant and (iii) additionally Allyant agrees to indemnify CLIENT against any claims that the use or possession of the Service or Allyant Provided Items as-permitted by CLIENT infringes or violates the copyright, patent, trade secret or other proprietary rights of any third party. In the event of such a claim or if Allyant believes such a claim of infringement may be asserted, Allyant may, at its option (I) obtain a license from the applicable third party; (II) modify the item at issue so as to be non-infringing; or (III) terminate the SOW applicable to such item and refund to CLIENT any pre-paid fees applicable to the such terminated item.

In the event of any claim or action relating to any matter for which Allyant has agreed to provide indemnification under this Agreement, CLIENT shall promptly provide notice of such claim or action to Allyant, and the CLIENT shall provide Allyant, at no out-of-pocket expense to CLIENT, reasonable assistance in the defense of such action. Allyant shall control such litigation and at its sole option, negotiate a settlement or compromise thereof. Any counsel retained by the CLIENT to



simple // seamless // accessibility

consult or participate in the defense will be retained by the CLIENT solely at its own expense, which expense is not included in the indemnity.

7. Term and Termination.

- 7.1.** The term (“Term”) of this Agreement shall be twelve (12) months from the Effective Date (unless earlier terminated pursuant to the terms hereof). Thereafter, this Agreement shall automatically renew for additional terms of 12 months each so long as any SOW under this Agreement remains in effect (and this Agreement has not been previously terminated).
- 7.2.** Either party may terminate this Agreement or any SOW upon sixty (60) days prior to written notice to the other party.
- 7.3.** Either party may terminate this Agreement or any SOW: (i) if the other party is in material breach or default of any obligation hereunder, which breach or default is not cured within thirty (30) days of written notice from the other party; (ii) if the other party becomes insolvent, upon five (5) days written notice from the other party; or (iii) if the other party files as a debtor under any bankruptcy, insolvency or liquidation law, whether domestic or foreign or such a filing is made against the such party and such involuntary filing is not dismissed within sixty (60) days of commencement thereof.
- 7.4.** The terms of Sections 1.3, 2, 3, 4, 5, 6, 7, and 8, including all subparts, shall survive the termination or expiration of this Agreement.
- 7.5.** Upon termination or expiration of this Agreement or of any SOW, CLIENT shall pay Allyant in full for all Services and Allyant Provided Items delivered to CLIENT, or any of CLIENT’S representatives, prior to the date of termination. In the event termination is due to CLIENT’S breach or default, CLIENT shall become immediately liable for any and all sums described in any SOW or Agreement document for the remainder of the then-current Term. This final payment shall include all expenses accrued, including unbilled QA testing, training or other ongoing support hours (which may have been amortized under the SOW and Ongoing Support agreements). CLIENT access to the Allyant HUB terminates on the date of termination. Upon termination, CLIENT shall immediately remove Allyant “badges” on all pages/views on all sites and applications.

8. Miscellaneous.

- 8.1.** Applicable Law; Venue. This Agreement as well as any and all claims or disputes between the parties shall be governed by the laws of the State of Colorado. Any action arising in connection with or related to this Agreement will be brought in the federal court in Denver or state courts located within Elbert County, Colorado, and the parties consent to the jurisdiction and appropriate venue of such courts.
- 8.2.** Entire Agreement. This Agreement and any SOWs constitute the entire agreement between Allyant and CLIENT regarding its subject matter. The terms on any purchase order, confirmation, or other form submitted by a party to the other party shall not apply to this Agreement and are rejected. Neither this Agreement nor any SOW or WO may be modified except by a written agreement signed by both parties.
- 8.3.** Independent Contractor; Use of Name. Allyant shall act at all times as an independent contractor, and shall be responsible for any and all social security, unemployment, Workers’ Compensation, and other withholding taxes for any and all of its employees. Neither CLIENT nor Allyant will use the trademark(s), trade name(s) or service mark(s)



simple // seamless // accessibility

(whether registered or not) of the other party without the express prior written consent of the other party, except that each party may include the name of the other party on its list of vendors/customers.

- 8.4.** Signatures. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signature pages may be exchanged by letter/hard-copy, photocopy, email/pdf scan, fax, or similar technology, all of which shall be deemed valid and binding upon a party. Signatures may be by hand (a “wet” signature) or by any electronic or digital method, all of which shall be deemed binding upon a party.

IN WITNESS WHEREOF the parties have executed this Master Subscription & Services Agreement.

A360 Enterprises, LLC

CLIENT

Signature

Signature

Name

Name

Title

Title

Date

Date

Hi Harmony,

Our CommonLook Office tool is a direct plug-in to Word and PPT and allows you to start authoring/creating your documents with accessibility in mind. You can definitely save some money by bundling a purchase together with CommonLook PDF. Here is a demo video you can watch of the software in action along with some pricing information:

- [CL Office Demo](#)

Product	Number of licenses	Price per License	Percentage Discount
CommonLook Office	1-24	\$385.00	0%
CommonLook Office	25-49	\$327.25	15%
CommonLook Office	50-99	\$288.75	25%
CommonLook Office	100-499	\$250.25	35%
CommonLook Office	500-999	\$192.50	50%
CommonLook Office	1000-1499	\$96.25	75%
CommonLook Office	1500+	\$38.50	90%

Here is some pricing information if you were to package the two solutions together:

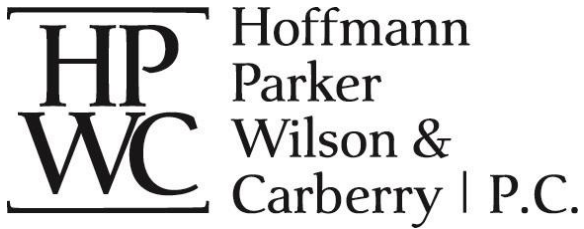
Product	Number of licenses	Price per License	Percentage Discount
CommonLook Suite (CommonLook PDF & CommonLook Office)	1-24	\$1,113.50	0% times 5 licenses
CommonLook Suite (CommonLook PDF & CommonLook Office)	25-49	\$946.48	15%
CommonLook Suite (CommonLook PDF & CommonLook Office)	50-99	\$835.13	25%
CommonLook Suite (CommonLook PDF & CommonLook Office)	100-499	\$723.78	35%
CommonLook Suite (CommonLook PDF & CommonLook Office)	500-999	\$556.75	50%
CommonLook Suite (CommonLook PDF & CommonLook Office)	1000-1499	\$278.38	75%
CommonLook Suite (CommonLook PDF & CommonLook Office)	1500+	\$111.35	90%

We can also absolutely assist with your website accessibility situation. I have copied my colleague Allison who specializes in those solutions on this email so you can setup some time to chat at your convenience. Please let me know if you have any other questions about the document/PDF side of things for now.

Best,

Eugene Matusevitch
Account Executive, Document Accessibility

Allyant was formed by combining the best web and document accessibility brands (T-Base, CommonLook, and Accessible360). [Read our story.](#)



Corey Y. Hoffmann
Kendra L. Carberry
Jefferson H. Parker
M. Patrick Wilson
Hilary M. Graham
Kathryn M. Sellars


Of Counsel
J. Matthew Mire

511 16th Street, Suite 610
Denver, CO 80202-4260
(303) 825-6444

Daniel P. Harvey
Ruthanne H. Goff
Katharine J. Vera
Elizabeth G. LeBuhn
Austin P. Flanagan
Kunal A. Parikh
Bria I. May
Nicholas A. Hartman

TOWN OF ELIZABETH
MEMORANDUM

**TO: MAYOR AND BOARD OF TRUSTEES
PATRICK DAVIDSON, TOWN ADMINISTRATOR
MICHELLE OESER, TOWN CLERK**

**FROM: COREY Y. HOFFMANN, TOWN ATTORNEY 
KUNAL A. PARIKH, ESQ.**

DATE: JANUARY 22, 2024

RE: UPDATE ON ACCESSIBILITY LAWS

This memorandum discusses recent Colorado legislation imposing new standards for digital accessibility to protect individuals with disabilities. The Town of Elizabeth (the "Town") has until July 1, 2024, to comply with the WCAG 2.1 technical standards and two years from the date of the adoption and publication of these proposed new accessibility rules to conform with the new standards, unless the Town implements a technology accessibility plan while also providing reasonable accommodations or if the Town can demonstrate an undue burden. More specifically, this memorandum addresses: (1) whether all material on the Town's website must be accessible; and (2) whether all internally stored electronic documents must meet the new accessibility standards.

In 2021, the Colorado General Assembly passed House Bill 21-1110 ("HB 1110") which established the initial framework for the accessibility rules. In the 2023 legislative session, the Colorado General Assembly passed Senate Bill 23-244 ("SB 244"), which cleaned up some of the changes made by HB 1110. Then, as required by SB 244, the Governor's Office of Information Technology ("OIT") adopted the Proposed Colorado Technology Accessibility Rules (the "Proposed Rules"). [8 CCR 1501-11 Technology Accessibility Rules: Summary of Changes from the First Draft Rules Released 11/16/2023 to the Proposed Rules Released 12/15/2023](#), (last visited Dec, 29, 2023). We sent a memorandum on HB 1110 and SB 244 to the Town on August 21, 2023 ("Accessibility Memorandum") and a copy is attached hereto for reference.

The federal Department of Justice ("DOJ") issued a Notice of Proposed Ruling on August 4, 2023, regarding accessibility of web information for state and local governments. While this memorandum addresses only the Proposed Rules, we will keep you updated on the federal rulemaking.

Applicability

The Proposed Rules apply to any Colorado state or local government, department, agency, special district, and any other instrumentality of a local government for the purpose of determining whether an individual with a disability has been subjected to discrimination. C.R.S. § 24-23-802(1)(c). Public entities must make reasonable modifications to their policies, practices, or procedures to make the public entities programs, services, or activities accessible for a person with a disability unless the public entity can demonstrate that alternative methods of access would result in a fundamental alteration in the nature of a program or activity or undue financial and administrative burdens.

The Proposed Rules apply to all Information and Communication Technology ("ICT"), hardware, and software that is both public-facing and internal-facing. This includes any technology provided by or procured by the Town that is used by the public or a Town employee who exhibits needs for the requirements, including without limitation websites, applications, kiosks, digital signage, documents, video, audio, and third-party tools. [FAQ: HB21-1110 Colorado Laws for Persons With Disabilities](#), (last visited Dec. 7, 2023). All technology must also meet one or more of the following standards: (1) the World Wide Web Consortium's (the "WC3") Web Content Accessibility Guidelines ("WCAG") (for all web content and software WCAG 2.1 level AA or higher) or (2) the technical standards contained in § 508 of the Rehabilitation Act of 1973, Chapter 3: Functional Performance Criteria, Chapter 4: Hardware, and Chapter 6: Support Documentation and Services. [Technical Standard for Technology Accessibility for Persons with Disabilities](#), (last visited Dec. 7, 2023). The Proposed Rules require all ICT to meet the WC3 WCAG 2.1 guidelines by July 1, 2024. Beginning on October 5, 2025, all ICT must meet the [W3C WCAG 2.2 guidelines](#) conformance levels A and AA.

The WCAG has 13 guidelines that are organized under four principles: (1) perceivable; (2) operable; (3) understandable; and (4) robust. WCAG 2 Overview, World Wide Web Consortium <https://www.w3.org/WAI/standards-guidelines/wcag/> (last visited Dec. 19, 2023). For each guideline, there are testable "success criteria" ranging from "A" (the lowest level of accessibility) to "AAA" (the highest level of accessibility). Web Content Accessibility Guidelines 2.2, World Wide Web Consortium (Oct. 5, 2023) <https://www.w3.org/TR/WCAG22/>. The success criteria determines conformance to WCAG. Unlike the WCAG, the Proposed Rules have been promulgated by OIT through a formal rulemaking process and incorporate the WCAG.

Compliance

If a Town is unable to comply with the WCAG 2.1 technical standards by July 1, 2024, the Town may still comply with the Proposed Rules as long as a person with a disability is able to access the same or substantially equivalent information and enjoy the same services through a Town's ICT as someone without disabilities. The Town may use conforming alternate versions of ICT to comply with the Proposed Rules, but only when it is not possible to make websites and web content directly accessible due to technical or legal limitations. In general, conforming alternate versions should be avoided.

Instead, the Town can demonstrate compliance with the Proposed Rules if the Town publicly publishes, annually updates, and makes meaningful progress on implementing a technology accessibility transition plan while also providing reasonable accommodations. The technology accessibility transition plan must include at a minimum: (1) annual status updates demonstrating progress on advancing the transition plan; (2) prioritization of ICT according to community impact and strategic impact including the following categories: legal requirements, importance to the program, service, or activity, user impact, and usage metrics; (3) the steps the Town is taking to remove accessibility barriers in their digital technology; (4) timelines which clearly communicate when inaccessible technology will be addressed and the plan for providing reasonable accommodation and modification in the interim; (5) policies for a regular cadence of testing and remediation of ICT; (6) a process where customers can report inaccessible ICT or request an accommodation or modification for inaccessible ICT; and (7) a notice, prominently and directly linked from the Town's website or other prominent location in the ICT, instructing how to request reasonable accommodations or modifications or to report inaccessible ICT. The notice shall provide more than one method to request accessible information.

Further, the Town shall make reasonable accommodations or modifications for alternative access when the modifications are necessary to avoid discrimination on the basis of disability, unless the Town can demonstrate that making such modification would fundamentally alter the service, program, or activity or present an undue financial, technical, or administrative burden. The Town shall post a notice prominently and directly linked from the Town's website or other prominent location in the ICT describing the methods to request accommodations or modifications.

Importantly, the Town may not provide services or benefits to individuals with disabilities through separate programs, unless the separate programs are necessary to ensure that services are equally effective. In addition, the Town cannot require an individual with a disability to cover the cost of measures that are required to provide that individual with nondiscriminatory treatment, such as providing auxiliary aids or barrier removal. Examples of auxiliary aids and services that may be provided include: (1) qualified interpreters; (2) note takers; (3) screen readers; (4) Computer Aided Real-Time Transcription services; (5) video interpreting services; (6) assistive listening headsets; (7) television captioning and decoders; (8) telecommunication devices for deaf persons; and (9) videotext displays, readers, taped texts, audio recordings, and written materials in Braille, large print, or electronic formats.

Undue Burden

In those circumstances where the Town believes that conformance with the Proposed Rules would fundamentally alter the service, program, or activity, the Town has the burden to prove that full compliance would result in such a fundamental alteration or undue burden. This decision must be made by the Town Administrator or designee after considering all resources available for use in the funding and operation of the service, program, or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. And the Town would still need to ensure that individuals with disabilities receive the benefits or services provided by the public entity to the maximum extent possible.

Undue financial, technical, or administrative burden may be demonstrated when at least one of the following applies: (1) the resources of the program, service, or activity are not readily and legally available or the use of such funds would fundamentally alter the nature of the program, service, or activity; (2) contractual constraints prevent the modification of the program, service, or activity; or (3) when the necessary auxiliary aids or services are not feasibly available. Essentially, the Town must consider the extent to which compliance with the Proposed Rules would impose significant difficulty or expense considering the agency resources available to the program.

Importantly, ICT or portions of ICT for which full conformance with the technical standards may potentially create an undue burden for public entities may include the following examples:

1. Archived web content. Archived web content is content that is: (1) maintained exclusively for reference, research, or recordkeeping; (2) is not altered or updated after the date of archiving; and (3) is organized and stored in a dedicated area or areas clearly identified as being archived. *Nondiscrimination on the Basis of Disability: Accessibility of Web Information and Services of State and Local Government Entities*, 88 Fed. Reg. 51948 (proposed Aug. 4, 2023) (to be codified at 40 C.F.R. pt. 35).

2. Pre-existing conventional electronic documents and time-based media. These documents and media are created by or for a public entity that are available on a public entity's website or mobile app before the date the public entity is required to comply with these rules or before the updated standards go into effect, unless such documents or time-based media are currently used by members of the public to apply for, gain access to, or participate in a public entity's services, programs, or activities. Documents and media in this category are: (1) maintained exclusively for reference, research, or recordkeeping; (2) not altered or updated after the date of publication and (3) include portable document formats, word processor file formats, presentation file formats, spreadsheet file formats, and database file formats. *Id.*

3. Content contributed by a third party not under the control of the Town that is available on the Town's website or applications, and third-party content linked from the Town's website or application.

4. Password-protected class or course content of public educational institutions and individualized, password-protected, conventional electronic documents that are about a specific individual, their property, or their account.

5. Complex or atypical images and diagrams, including blueprints, architectural drawings, technical drawings, site plans, development plans, maps, complex comprehensive tables and charges, handwritten documents, and any image where there is no logical methodology to create an alternate description that will make the image understandable to assistive technology.

6. Reproductions of items in a heritage collection that cannot be made fully accessible.

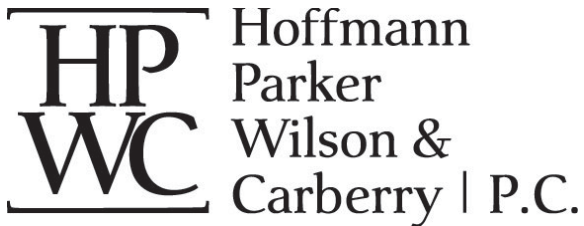
7. Information and Communication Technology ("ICT") functions located in maintenance or monitoring spaces and ICT for which the Town has determined that full conformance with the accessibility standards would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens. Where ICT fully conforming to the accessibility standards is not commercially available, the Town must procure the ICT that best meets the accessibility standards consistent with the Town's business needs.

8. Agendas and packets that were posted on the Town's website prior to July 1, 2024, and archived agendas and packets may also meet the undue burden requirements. However, in order to remain an undue burden, these documents must be maintained exclusively for reference and must not be updated once archived.

Conclusion

By July 1, 2024, the Town must comply with the WCAG 2.1 technical standards, and within two years of when the Proposed Rules are formally adopted the Town must comply with the Proposed Rules, so that all electronic documents are accessible to those with certain disabilities. Although compliance with the WCAG 2.1 technical standards is not necessarily required if the Town can demonstrate it is implementing a technology accessibility transition plan while providing reasonable accommodations or if complying with the standards results in an undue burden, the Town should be prepared to make reasonable accommodations for alternative access to any excluded online technologies upon request. As OIT continues to provide additional information and guidance, we will update this memorandum.

As always, please feel free to contact us if this memorandum raises any additional questions.



Corey Y. Hoffmann
Kendra L. Carberry
Jefferson H. Parker
M. Patrick Wilson
Hilary M. Graham
Kathryn M. Sellars


Of Counsel
J. Matthew Mire

511 16th Street, Suite 610
Denver, CO 80202-4260
(303) 825-6444

Daniel P. Harvey
Ruthanne H. Goff
Katharine J. Vera
Elizabeth G. LeBuhn
Austin P. Flanagan
Kunal A. Parikh
Bria I. May
Nicholas A. Hartman

TOWN OF ELIZABETH
MEMORANDUM

**TO: MAYOR AND BOARD OF TRUSTEES
PATRICK DAVIDSON, TOWN ADMINISTRATOR
MICHELLE OESER, TOWN CLERK**

**FROM: COREY Y. HOFFMANN, TOWN ATTORNEY 
KUNAL A. PARIKH, ESQ.**

DATE: MARCH 18, 2024

RE: FINAL DIGITAL ACCESSIBILITY RULES

This memorandum serves as an update to our previous memorandum dated January 22, 2024 (copy attached for reference). This update addresses the final Colorado Technology Accessibility Rules (the "Final Rules") adopted by the Governor's Office of Information Technology ("OIT") on February 23, 2024.

In 2021, the Colorado General Assembly passed House Bill 21-1110 ("HB 1110") which established the initial framework for the accessibility rules. In the 2023 legislative session, the Colorado General Assembly passed Senate Bill 23-244 ("SB 244"), which cleaned up some of the changes made by HB 1110. Then, as required by SB 244, OIT adopted the Final Rules. [8 CCR 1501-11 Rules Establishing Technology Accessibility Standards](#), (last visited Feb. 26, 2024).

Applicability

The Final Rules apply to all Information and Communication Technology ("ICT") in active use on or after July 1, 2024, and any ICT that is newly created, developed, acquired, or purchased on or after July 1, 2024. For ICT not in active use (e.g., archived content), the Final Rules apply when the ICT is altered or updated, or when an accessible version is requested by an individual with a disability. However, the Final Rules do not require a public entity to take any action that

would fundamentally alter the nature of its programs, services, or activities, impose an undue burden, or pose a direct threat to the health or safety of others.

Compliance

Public entities must comply with the following technical standards for digital accessibility for ICT: (1) W3C WCAG 2.1 conformance levels A and AA; and (2) the technical standards contained in the U.S. Section 508 of the Rehabilitation Act of 1973 Chapter 4: Hardware, as applicable.

Compliance with the technical standards for ICT accessibility is not required if a public entity is forced to take any action that would fundamentally alter the nature of its programs or services, impose an undue burden, or pose a direct threat to the health or safety of others. Importantly, if the public entity cannot fully conform to the technical standards, the public entity can still comply with the Final Rules for ICT when:

- (1) An individual with a disability is not substantially hindered from accessing or engaging effectively in the same or substantially equivalent services, programs, and activities that the public entity offers through its ICT to those without disabilities, with substantially equivalent ease of use.
- (2) The public entity meets the requirements of the technology accessibility statement while also providing reasonable accommodations or modifications for ICT that does not fully conform with the technical standards, and the public entity can provide evidence of making good faith progress on its technology accessibility plan to remove accessibility barriers across its inventory of ICT. A technology accessibility plan may include the following:
 - (a) Annual status updates demonstrating progress on advancing technology accessibility;
 - (b) Prioritization of ICT considering how the ICT will impact the public entity and its users, including aspects such as legal requirements, user impact, usage metrics, and importance to the program, service, or activity;
 - (c) The steps the public entity is taking to remove accessibility barriers in their ICT;
 - (d) Timelines when inaccessible ICT will be addressed and the plan for providing reasonable accommodation and modification in the interim; and
 - (e) Policies for regularly testing and remediating ICT.

- (3) The public entity procures and provides reasonable accommodations or modifications if needed for the ICT that best meet the technical standards and the public entity's business needs, which may include audience needs, capacity, reliability, interoperability, organizational needs, privacy, and security.
- (4) The public entity has created and provides a conforming alternate version.
- (5) Making the ICT fully conform with the technical standards would constitute an undue burden, fundamental alteration, or pose a direct threat, or is otherwise exempted from the technical standards.

A public entity may also use conforming alternate versions of ICT to comply with the Final Rules only when it is not possible or practical to make the ICT directly accessible due to undue burden, safety, or legal limitations. Examples of conforming alternate versions could include a website that provides identical information to a geographic information system in a non-graphical format, or a web application that uses accessible controls as an alternative to one with inaccessible controls.

Technology Accessibility Statement

Public entities are no longer required to develop a technology accessibility plan. Instead, the Final Rules require public entities to develop and publicly post in a conspicuous place a technology accessibility statement. The technology accessibility statement shall include: (1) a commitment to a timely response to reports of inaccessible ICT or requests for a reasonable accommodation or modification; and (2) a prominent notice informing individuals with disabilities on how to request reasonable accommodations or modifications or to report inaccessible ICT. The notice shall provide more than one contact method, which could include an accessible form to submit feedback, or alternatively, an email address or toll-free phone number to contact personnel knowledgeable about the accessibility of the ICT.

Reasonable Accommodation or Modification

In accordance with the Americans with Disabilities Act Titles I and II (42 U.S.C. § 12101 *et seq.*) (the "ADA") and the Final Rules, if an individual with a disability cannot access or does not have equal access, on the basis of a disability, to a program, service, or activity through a public entities ICT, the public entity must make reasonable accommodations or modifications for alternative access when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making such modifications would fundamentally alter the nature of the service, program, or activity, present an undue burden, or pose a direct threat to the health or safety of others. The public entity must post a prominent notice describing the methods to request reasonable accommodations or modifications for ICT. The public entity may not provide services or benefits to individuals with disabilities through programs that are separate or different, unless the separate programs are necessary to ensure that services are

equally effective. The public entity cannot require an individual with a disability to pay to cover the cost of measures, such as providing auxiliary aids or barrier removal, and must provide that individual with nondiscriminatory treatment.

Undue Burden

When the public entity believes that conformance with the Final Rules or a reasonable accommodation or modification would fundamentally alter the service, program, or activity, the public entity must demonstrate that full compliance would result in such a fundamental alteration or undue burden. In making this decision, the public entity must consider all resources available to the program or components for which the ICT is procured, developed, maintained, or used. In addition, the public entity would still need to ensure that individuals with disabilities receive the benefits or services provided by the public entity to the maximum extent possible.

Undue financial, technical, or administrative burden may be demonstrated when at least one of the following applies: (1) the resources of the program, service, or activity are not readily and legally available, or the use of such funds would fundamentally alter the nature of the program, service, or activity; (2) contractual, legal, regulatory, or technical constraints prevent the modification of the program, service, or activity; or (3) when the necessary auxiliary aids or services are not feasibly available.

In determining whether an action is in conformance with the Final Rules, or a reasonable accommodation or modification would pose a direct threat to the health or safety of others, the public entity must make an individualized assessment, based on reasonable judgment that relies on the best available objective evidence, to ascertain: (1) the nature, duration, and severity of the risk; (2) the probability that the potential injury will actually occur; and (3) whether reasonable modifications of policies, practices, or procedures or the provision of auxiliary aids or services will mitigate the risk.

If an action would result in a fundamental alteration, undue burden, or a direct threat, the public entity must take any other reasonable action, including providing reasonable accommodations or modifications that would not result in such an alteration, such burden, or such a direct threat, but would nevertheless ensure that individuals with disabilities receive the benefits or services provided by the public entity. Essentially, the public entity must consider the extent to which compliance with the Final Rules would impose significant difficulty or expense considering the agency resources available to the program.

Conclusion

By July 1, 2024, the Town of Elizabeth (the "Town") must comply with the Final Rules, so that all electronic documents are accessible to those with certain disabilities; this includes developing a technology accessibility statement that must be publicly posted. Alternatively, the Town may also comply with the Final Rules if the Town can:

- (1) Demonstrate it is making good progress on a technology accessibility plan;
- (2) Provide reasonable accommodations for alternative access to online technologies upon request to an individual with a disability; or
- (3) Demonstrate that complying with the Final Rules would result in an undue burden that would fundamentally alter the service, program, or activity.

As always, please feel free to contact us if this memorandum raises any additional questions.