

**AGREEMENT BETWEEN THE UNITED STATES OF AMERICA, THE
COUNTY OF HAWAI‘I, AND THE COUNTY OF HAWAI‘I MASS TRANSIT AGENCY
UNDER THE AMERICANS WITH DISABILITIES ACT**

BACKGROUND

1. The parties to this Agreement are the United States of America, the County of Hawai‘i, and the County of Hawai‘i Mass Transit Agency (“MTA”) (collectively, “the Parties”).

2. Under Title II of the Americans with Disabilities Act (ADA), no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity, or be subjected to discrimination by any such entity. 42 U.S.C. § 12132. MTA and the County are public entities within the meaning of the ADA, and are therefore subject to Title II of the ADA, 42 U.S.C. §§ 12131-34 (“Title II”), and its implementing regulation at 28 C.F.R. Part 35.

3. Further, MTA and the County are the primary providers of public transportation in the County of Hawai‘i. As public entities that provide public transportation services, MTA and the County are also subject to 42 U.S.C. §§ 12141-50 and 49 C.F.R. Parts 37 and 38. Specifically, “[n]o entity shall discriminate against an individual with a disability in connection with the provision of transportation service.” 49 C.F.R. § 37.5(a).

4. The United States Department of Justice (“Department”) is responsible for administering and enforcing Title II and its implementing regulations.

5. The Parties agree that it is in their best interests, and the United States believes that it is in the public interest, to fully and finally resolve this matter on mutually agreeable terms. The Parties have therefore voluntarily entered into this Agreement.

INVESTIGATION AND
DETERMINATIONS

6. The Department initiated an investigation following receipt of a complaint alleging that the transportation services provided by the County and MTA were not ADA-compliant. The investigation substantiated the complainant's allegations that the County and MTA have failed to provide accessible transportation to individuals with disabilities in violation of 42 U.S.C. § 12132 including as enumerated below.

- a. Fixed Route Bus System: The County's and MTA's fixed-route bus system (known as the Hawai'i Island Hele-On Bus service) has discriminated against individuals with disabilities in connection with the provision of transportation service, in violation of 42 U.S.C. § 12132 and 49 C.F.R. Part 37. The County and MTA have, among other things, failed to:
 - i. Maintain in operative condition those features of vehicles that are required to make the vehicles readily accessible to and usable by individuals with disabilities. These features include lifts. 49 C.F.R. § 37.161(a). The County and MTA frequently deployed buses with chronically inoperable lifts.
 - ii. Promptly repair accessibility features when damaged or out of order and take reasonable steps to accommodate individuals with disabilities who would otherwise use the feature. 49 C.F.R. § 37.161(b). The County and MTA repeatedly failed to repair damaged or out of order lifts, and failed to accommodate individuals when this occurred.
 - iii. Ensure that vehicle operators report, by the most immediate means available, any lift failure. 49 C.F.R. § 37.163(c); *see also* 49 C.F.R. pt. 37,

app. D. Operators did not report lift failures by the most immediate means available (such as by calling in the failure real-time).

- iv. Take vehicles with inoperable lifts out of service before the beginning of the vehicle's next service day and ensure that the lift is repaired before the vehicle is returned to service. 49 C.F.R. §§ 37.163(d)-(f). In numerous instances, MTA returned buses with inoperative lifts to service on subsequent service days, without successful repairs having been made, including for periods in excess of 30 days.
- v. Announce any stop on request of an individual with a disability and announce at least at transfer points with other fixed routes, other major intersections and destination points, and intervals along a route sufficient to permit individuals with visual impairments or other disabilities to be oriented to their location. 49 C.F.R. §§ 37.167(b)-(c). Operators do not routinely carry out these requirements.
- vi. Provide a means (where vehicles for more than one route serve the same stop) by which an individual with a vision-related disability or other disability can identify the proper vehicle to enter or by which such individual can be identified to the vehicle operator as a person seeking a ride on a particular route. 49 C.F.R. § 37.167(c). MTA has failed to do this, including where an individual who is legally blind boarded an incorrect route and traveled miles before realizing the error and having to arrange personal transportation for a pickup.

- b. Service Under Contract: The County and/or MTA have contracted with private entities to provide vehicles and operators for the Hawai‘i Island Hele-On Bus service, but have failed to ensure that the private entities meet the requirements that would apply to the County and/or MTA if they themselves provided the service, in violation of 49 C.F.R. § 37.23. Specifically, numerous accessibility issues identified in this Agreement have involved contractor-owned vehicles and operators.
- c. Training: The County and MTA have failed to ensure that all personnel are trained to proficiency, as appropriate to their duties, so that they operate vehicles and equipment safely and properly assist and treat individuals with disabilities who use the service in a respectful and courteous way, with appropriate attention to the difference among individuals with disabilities (49 C.F.R. § 37.173). This includes numerous instances where operators failed to operate lifts they erroneously reported as non-functioning and where operators failed to accommodate passengers who were unable to board due to an inoperable lift.
- d. Responsible Employee/Complaint Procedures: The County and MTA have failed to designate at least one person (“responsible employee”) to coordinate its efforts to comply with the ADA and have failed to adopt complaint procedures that incorporate appropriate due process standards and provide for the prompt and equitable resolution of disability-related complaints, in violation of 49 C.F.R. § 37.17. Numerous disability-related complaints brought to MTA’s attention during the relevant period have gone without resolution, and at times without any response.

- e. Paratransit Service: The County's and MTA's paratransit service (known as Hele-On Kako'o Paratransit) has failed to provide service that is "comparable to the level of designated public transportation services provided to individuals without disabilities using such system." 42 U.S.C. § 12143(a); 49 C.F.R. § 37.121(a). In their operation of Hele-On Kako'o Paratransit, the County and MTA have failed to:
- i. Make reservation service available during at least all normal business hours of MTA's administrative offices and during times comparable to normal business hours on days when MTA's offices are not open before a service day. 49 C.F.R. §37.131(b)(1). MTA accepts reservation calls for Hele-On Kako'o Paratransit (and schedules rides) Monday through Friday, leaving individuals who wish to lodge a request on Sunday (for Monday travel) without an equivalent scheduling option.
 - ii. Provide paratransit service to ADA paratransit-eligible individuals that is free from unlawful "capacity constraints." 49 C.F.R. § 37.131(f). MTA has a substantial number of significantly untimely pickups or dropoffs, in violation of 49 C.F.R. § 37.131(f)(3)(i)(a). This includes many pickups or dropoffs that were more than 45 minutes early or late and others that were hours early or late.
 - iii. Limit suspension of paratransit service to "a reasonable period of time" where, pursuant to an established process including notice and an opportunity to be heard, the agency determines that an ADA-eligible individual has engaged in a pattern or practice of missing scheduled trips.

49 C.F.R. § 37.125(h). Rather, Hele-On Kako‘o Paratransit suspends individuals for 30 days after three no-shows or late cancels in a 90-day period; 60 days for a pattern of no-shows or late cancels within two years of the first suspension; 90 days for a pattern of no-shows or late cancels within two years of the second suspension; and an indefinite suspension for a pattern of no-shows or late cancels within two years of the third suspension, pending demonstration of correction.

- f. Shared Ride Taxi Service: The County and MTA have unnecessarily imposed requirements on individuals with disabilities that are not imposed on others. 42 U.S.C. § 12132; 49 C.F.R. pt. 37, app. D (Nondiscrimination). The County and MTA provide a Shared Ride Taxi Service to the general public, which allows passengers to travel by taxi at a reduced fare by purchasing vouchers in advance. Passengers who do not require an accessible vehicle need only purchase vouchers and request a taxi ride. In contrast, passengers who require an accessible taxi must first apply through the County, provide medical documentation, and make other disability-related disclosures to get an identification card. Once a passenger with a disability has an identification card, the vouchers issued to those passengers are different in color than those issued to passengers without disabilities. This system subjects passengers with disabilities to an onerous barrier to entry via the application process and continues to unnecessarily differentiate them via the coupon system thereafter.
- g. Bus Stops: The County and MTA have denied individuals with disabilities, by reason of those disabilities, the benefits of the County’s and MTA’s public

transportation program, in violation of 42 U.S.C. § 12132. The County and MTA failed to site public transportation stops at locations that connect in an accessible manner to the pedestrian routes used by the general public. As a result, passengers who use wheelchairs cannot use the public transportation program to access a hospital complex that houses the County's leading providers of inpatient and outpatient care, for example.

TERMS OF AGREEMENT

General Obligations

7. The County and MTA will ensure that no qualified individual with a disability is, by reason of such disability, excluded from participation in or denied the benefits of the County's or MTA's services, programs, or activities, or subjected to discrimination by the County or MTA. 42 U.S.C. § 12132. Specifically, the County and MTA will comply with their transportation-related obligations under the ADA and its implementing regulations. The County and MTA will:

- a. Maintain, promptly repair, and keep vehicle lifts on fixed-route buses in operative condition, including by performing regular maintenance of vehicle lifts. 49 C.F.R. § 37.161(a);
- b. When accessibility features such as vehicle lifts are not operative, take reasonable steps to accommodate individuals with disabilities who would otherwise use the lifts. 49 C.F.R. § 37.161(b); 49 C.F.R. § 37.163(f);
- c. Ensure that vehicle operators report, by the most immediate means available, any failure of a lift. 49 C.F.R. § 37.163(c);

- d. Take vehicles with inoperable lifts out of service before the beginning of the vehicle's next service day in accordance with the regulatory requirements and ensure that the lift is repaired before the vehicle is returned to service. 49 C.F.R. §§ 37.163(d)-(e);
- e. Announce stops on all fixed routes to ensure that individuals with disabilities (which disabilities may or may not be known or visible to the operator) may be oriented to their location. 49 C.F.R. §§ 37.167(b);
- f. Provide a means (where vehicles for more than one route serve the same stop) by which an individual with a vision-related disability or other disability can identify the proper vehicle to enter or by which such individual can be identified to the vehicle operator as a person seeking a ride on a particular route. 49 C.F.R. § 37.167(c);
- g. For any contractual or other arrangement or relationship the County and/or MTA enters into with a private entity to operate fixed route or demand responsive service, the County and/or MTA will ensure that the private entity meets the requirements that would apply to the County and/or MTA if they themselves provided the service. 49 C.F.R. § 37.23;
- h. Ensure that all personnel are trained to proficiency, as appropriate to their duties, so that they operate vehicles and equipment safely and properly assist and treat individuals with disabilities who use the service in a respectful and courteous way. 49 C.F.R. § 37.173. This includes personnel who are providing transportation service through contractual arrangement with the County and/or MTA but who are not themselves County or MTA employees. 49 C.F.R. § 37.23;

- i. Designate a Responsible Employee to coordinate MTA's efforts to comply with this Agreement and 49 C.F.R. Part 37, and adopt complaint procedures that incorporate appropriate due process standards and provide for the prompt and equitable resolution of disability-related complaints. Such procedures will meet the following requirements: (1) The process for filing a complaint (including the name, address, telephone number, and email address of the employee designated to coordinate its efforts to comply with their ADA responsibilities) must be sufficiently advertised to the public, such as on MTA's website; (2) the procedures must be accessible to and usable by individuals with disabilities; and (3) MTA must promptly communicate its response to the complaint allegations, including its reasons for the response, to the complainant and must ensure that it has documented its response. 49 C.F.R. § 37.17(b);
- j. Provide paratransit service to individuals with disabilities that is sufficient to provide such individuals a level of service that is comparable to the level of service provided to individuals without disabilities who use the fixed route system. 42 U.S.C. § 12143(a); 49 C.F.R. § 37.121(a);
- k. Schedule and provide paratransit service to any ADA paratransit-eligible person at any requested time within MTA's normal operating hours on a particular day in response to a request for service made the previous day, including by allowing for reservations during MTA's normal business hours and during times comparable to normal business hours on days when MTA's offices are not open before a service day. 49 C.F.R. § 37.131(b)(1);

- l. Eliminate all unlawful “capacity constraints” in the provision of paratransit service to ADA paratransit-eligible individuals, including substantial numbers of significantly untimely pickups. 49 C.F.R. § 37.131(f);
- m. Only suspend “for a reasonable period of time,” via established administrative process, the provision of complementary paratransit service to ADA-eligible individuals with a pattern or practice of missing scheduled trips, as required by 49 C.F.R. § 37.125(h); and
- n. Cease the practice of imposing requirements on individuals with disabilities (for access to transit programs that are available to members of the general public) that are not imposed on others. 42 U.S.C. § 12132.

Injunctive Relief

8. Changes to Policies. Within 90 days of the Effective Date of this Agreement, the County and MTA shall revise their policies to ensure compliance with the ADA and this Agreement and send the full text of the revised policies to the Department for review and approval. The County and MTA will ensure that all additional materials published, and/or used during the Term of this Agreement comply with the ADA and this Agreement.

9. Publication/Dissemination of Revised Policies. Within 30 days of the Department’s approval of the revised policies submitted pursuant to Paragraph 8, MTA and the County shall adopt and implement the approved policies and shall incorporate all revisions into the online versions of written materials and in all hard copy versions that are used and/or distributed.

10. ADA Training. Within 90 days of the Effective Date of this Agreement, MTA and the County will develop a training program (“ADA Training”) that shall be provided to the

individuals identified in this paragraph within 180 days of the Effective Date of this Agreement and every year thereafter for the Term of this Agreement.

- a. MTA and the County shall provide ADA Training to 1) all MTA employees and 2) all individuals who provide any transit-related services or work on behalf of MTA or the County, including through contractual arrangements (*e.g.*, operators or schedulers not employed by MTA or the County) (“Personnel”).
- b. The ADA Training will provide instruction on the ADA’s nondiscrimination mandate and the requirements of this Agreement. The ADA Training will ensure that Personnel are trained to proficiency, as appropriate to their duties, so that they properly assist and treat individuals with disabilities who use the service in a respectful and courteous way, with appropriate attention to the difference among individuals with disabilities. 42 U.S.C. § 12184; 49 C.F.R. § 37.173.
- c. The ADA Training shall be conducted by an individual or individuals with substantive legal knowledge of the transportation-related provisions of the ADA, who will be pre-approved by the Department. The ADA Training shall be conducted live, with a group opportunity to pose questions to the individual(s) conducting the training at the conclusion of the training session.
- d. For persons who must receive ADA Training pursuant to this Agreement, but who did not receive training on a designated annual training date required under this Agreement (for instance, because they were on leave or because they began their affiliation with MTA, the County, or an entity that has contracted with MTA or the County subsequent to the training date), MTA and the County shall provide the ADA Training to such persons within 60 days after the individual’s hire or

return from leave. Any training provided under this subparagraph may either be provided live or via a video recording of a previous live session of the ADA Training. If the ADA Training is provided via a video recording, the trainer(s) meeting the requirements of the immediately preceding subparagraph shall be accessible to directly answer any questions a participant may have after viewing the video presentation.

- e. MTA and the County shall send to the Department the proposed curriculum for the ADA Training, as well as the name(s), qualifications (including resume(s)), and contact information of the individual(s) who they propose will conduct the training, no later than 90 days after the Effective Date of this Agreement. MTA's and the County's proposal for individual(s) who will conduct the training and training curriculum will be subject to approval by the United States. MTA and the County will adopt any changes to the curriculum or requests for changes to trainers made by the United States.
- f. For each session of the ADA Training conducted under this Agreement (including for each instance of the ADA Training conducted on a non-designated training date pursuant to subsection "d" of this paragraph), MTA and the County shall maintain attendance logs reflecting the date of the training, names and titles of attendees, and the attendees' signatures.

11. Technical Training. By no later than 180 days following the Effective Date, and every year thereafter for the Term of this Agreement, MTA and the County will require all individuals identified in this paragraph to attend training regarding the proper and effective

operation of all vehicle accessibility features potentially relevant to his or her duties (“Technical Training”).

- a. MTA and the County shall provide Technical Training to all individuals who may be involved in operating the accessibility features of any vehicle (such as lifts or securement devices) in furtherance of MTA’s and the County’s provision of transportation services. This includes MTA or County employees, as well as those who provide these services through MTA’s or the County’s contractual arrangements with their employer (*e.g.*, operators or mechanics not employed by MTA or the County) (“Technical Personnel”).
- b. The Technical Training will include a demonstration of the proper and effective operation of each of those accessibility features. At the conclusion of each Technical Training, attendees will be asked to personally operate the accessibility features that were the subject of the Technical Training under the supervision of the trainer.
- c. The County and MTA will collect a written certification from each Technical Training attendee within one week of the completion of the Technical Training whereby each such person will certify his or her attendance at the Technical Training and his or her completion of the operation of the relevant accessibility features.
- d. For Technical Personnel who must receive Technical Training pursuant to this Agreement, but who did not receive training on a designated annual training date required under this Agreement (for instance, because they were on leave or because they began their affiliation with MTA, the County, or an entity that has

contracted with MTA or the County subsequent to the training date), MTA and the County shall provide the Technical Training to such persons within five business days after the individual's commencement or re-joining of a position covered by the Technical Training.

- e. The Technical Training must be provided "live" (rather than via recording) by a person with experience and superior knowledge of the proper and effective operation of each of the accessibility features being demonstrated.
- f. MTA and the County will maintain attendance logs reflecting the names and titles of attendees for each session of the Technical Training conducted under this Decree and will maintain the written certifications required under section a) of this paragraph.

12. Shared Ride Taxi Service. Within 30 days of the Effective Date, the County and MTA will revise the requirements for participating in the Shared Ride Taxi Service for those individuals who need accessible taxis to be no more burdensome than the requirements for those individuals who do not need accessible taxis. Also within 30 days of the Effective Date, the County and MTA will revise the appearance of the vouchers issued in connection with the Shared Ride Taxi Service so that vouchers issued to individuals who need accessible taxis are not obviously different (*e.g.*, by color) than vouchers issued to individuals who do not need accessible taxis. Starting no later than 45 days after the Effective Date, the County and MTA will publicize the revised requirements and issue only revised vouchers.

13. Accessibility Review of Bus Stops. Within 180 days of the Effective Date, the County and MTA will conduct a review of every bus stop within the Hawai'i Island Hele-On Bus fixed-route service system (comprised of all bus shelters and locations where bus stop signs

are located) to determine compliance with Title II, including ensuring access from each bus stop to the locations of interest next to which fixed route bus stops have strategically been located. Within 240 days of the Effective Date, the County and MTA will complete a written report to accompany the review (“Bus Stop Accessibility Report”) that, for each bus stop, will include photographic documentation and a written determination regarding the compliance of each bus stop with Title II. The County and MTA will ensure that all bus stops comply with Title II by no later than two (2) years following the Effective Date.

14. Record Keeping and Reporting.

- a. Complaint Log. MTA will collect in a centralized and easily searchable electronic format a log of every complaint it, or any of its Contractors, receives (whether formal or informal, and regardless of the format in which the complaint was received) regarding disability-related issues or services provided by MTA to persons with disabilities. The log will include the following information for each complaint: i) name of complainant; ii) name of affected individual (if different from the name of the complainant); iii) physical address, phone number, and email address of affected individual; iv) date(s) of incident(s); v) detailed substance of complaint; vi) name of transportation personnel involved in incident(s); vii) resolution of complaint; and ix) any other information relevant to the complaint. MTA will provide a copy of this log to the Department at the intervals described below for Reporting.
- b. Reporting: Within 180 days of the Effective Date, and every 90 days thereafter, the Responsible Employee will submit a report to the Department regarding the County’s and MTA’s compliance efforts undertaken pursuant to this Agreement.

The report will include, for the period subsequent to its immediately prior report to the Department, the following:

- i. A copy of the Complaint Log;
- ii. By month, the number of paratransit trips: (a) that arrived early, that arrived on-time, and that arrived after the pickup window; (b) that arrived before or arrived after the requested drop off-time; (c) that resulted in a no-show by a passenger;
- iii. A status update regarding progress of the review of bus stops (including a copy of the Bus Stop Accessibility Report, once completed) and implementation of the plan to achieve compliance with Title II, to the extent there are identified areas of noncompliance;
- iv. The dates of ADA Training and Technical Training;
- v. All attendance logs associated with ADA Training and Technical Training;
- vi. All written certifications gathered pursuant to Technical Training; and
- vii. Any obstacles encountered in complying with the Agreement.

OTHER PROVISIONS

15. Effective Date. The effective date of this Agreement is the date of the last signature below.
16. Term. The duration of this Agreement will be three (3) years from the Effective Date.
17. Delivery of Information to the Department. All reports and materials required pursuant to this Agreement to be delivered to the Department shall be delivered to the

undersigned counsel via electronic mail at anne.langford@usdoj.gov and nabina.sinha@usdoj.gov or other persons subsequently specified by the Department.

18. Non-Waiver. Failure by the United States to enforce any provision or deadline of this Agreement shall not be construed as a waiver of its right to enforce any provisions or deadlines of the Agreement.

19. Titles. Titles and other headings contained in this Agreement are included only for ease of reference and shall have no substantive effect.

20. Timelines. Any timelines for performance fixed by, or pursuant to, this Agreement may be extended by mutual written agreement of the Parties.

21. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same Agreement. Electronic signatures are acceptable.

22. Severability. If any term of this Agreement is determined by any court to be unenforceable, the other terms of this Agreement shall nonetheless remain in full force and effect.

23. Binding Nature of Agreement. This Agreement shall be binding upon the County and MTA (as well as the agents and employees of the County and MTA).

24. Authority. The signatories represent that they have the authority to bind the respective parties identified below to the terms of this Agreement.

25. Entire Agreement. This Agreement constitutes the entire agreement between the Parties on the matters raised herein and no other statement or promise written or oral, made by any party or agents of any party, that is not contained in this written Agreement, including its attachments, shall be enforceable.

26. Consideration. In consideration of the terms of this Agreement as set forth above, the United States agrees to refrain from filing a civil suit under Title II as a result of the

investigation leading to this Agreement, except as provided in this Paragraph and in Paragraph

27. Nothing contained in this Agreement is intended or shall be construed as a waiver by the United States of any right to institute proceedings against the County or MTA for violations of any statutes, regulations, or rules administered by the United States or to prevent or limit the right of the United States to obtain relief under the ADA for violations unrelated to this matter.

27. Review and Enforcement. The United States may review or monitor MTA's and the County's compliance with this Agreement or the ADA at any time, including (but not limited to) conducting testing at any location in which personnel interact with the public and/or any location where transit service is provided or facilitated. If the United States believes that the Agreement or any requirement thereof has been breached, the United States can enforce this Agreement by instituting a civil action in U.S. District Court. If the United States identifies any such breaches, it will raise its claim(s) in writing with MTA and the County, and the Parties will attempt to resolve the concerns in good faith. The United States will allow MTA and the County 30 days from the date it notifies MTA and the County of any breach of this Agreement to cure said breach, prior to instituting any court action to enforce the ADA or the terms of the Agreement.

28. Other Violations. This Agreement shall have no impact upon the rights or claims of any individual not identified in this Agreement who has made, or may make, claims against the County or MTA for issues discussed herein. This Agreement is not intended to remedy any potential violations of the ADA or any other law, other than those specifically addressed by this

Agreement. Nothing in this Agreement shall preclude the United States from filing a separate action under the ADA for any alleged violation not covered by this Agreement.

29. Continuing Responsibility. This Agreement does not affect the County's and MTA's continuing responsibility to comply with all aspects of the ADA.

By their signatures below, the Parties respectfully consent to the execution of all aspects of this Agreement.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

FOR THE UNITED STATES OF AMERICA:

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District of Hawaii

/s/

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Date: 8/24/21

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Dated: 8/24/21

FOR THE COUNTY OF HAWAI'I:

MITCHELL D. ROTH
Mayor
County of Hawai'i
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Hilo, HI 96720

Date: 8/23/21

FOR THE COUNTY OF HAWAI'I MASS TRANSIT AGENCY:

JOHN ANDOH
Interim Mass Transit Administrator
County of Hawai'i Mass Transit Agency
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Date: 8/18/21

APPROVED AS TO FORM FOR THE COUNTY AND THE MASS TRANSIT AGENCY:

/s/
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Date: 8/23/21