

## CONSTRUCTION COST ESTIMATE AND ANALYSIS

As can be seen in the exhibits to this analysis, the total construction cost for the *Alteration* project is \$790,324.11. However, under the state statute, section 553.512, Fla. Stat., that sets forth the standard for economic hardship to be granted a waiver, and federal regulation incorporated therein, 28 C.F.R. § 36.403(f)(1), this sum contains costs that are outside those that should be considered and therefore is artificially high. The discussion below identifies which components of the overall project cost should and should not be considered and then provides the appropriate costs to demonstrate economic hardship.

Section 553.512, Florida Statutes provides that “if an applicant for a waiver demonstrates economic hardship in accordance with 28 C.F.R. § 36.403(f)(1), a waiver shall be granted.” 28 C.F.R. § 36.403(f) states as follows:

(f) Disproportionality.

(1) Alterations made to provide an accessible path of travel to the altered area will be deemed disproportionate *to the overall alteration* when the cost exceeds 20% *of the cost of the alteration to the primary function area*.

(2) *Costs that may be counted as expenditures required to provide an accessible path of travel may include:*

(i) *Costs associated with providing an accessible entrance and an accessible route to the altered area, for example, the cost of widening doorways or installing ramps;*

(ii) *Costs associated with making restrooms accessible, such as installing grab bars, enlarging toilet stalls, insulating pipes, or installing accessible faucet controls;*

(iii) *Costs associated with providing accessible telephones, such as relocating the telephone to an accessible height, installing amplification devices, or installing a text telephone (TTY);*

(iv) *Costs associated with relocating an inaccessible drinking fountain.*

Emphasis added.

The subject property is a warehouse building with a two-story office area. In the warehouse (non-office) area the work being performed is strictly limited to replacing mechanical and electrical systems, and adding insulation to comply with energy conservation requirements. The mechanical/electrical/insulation costs are as follows:

Mechanical in warehouse portion	\$ 249,000.00
Electrical work in warehouse	56,275.00
Insulation throughout warehouse ceiling	63,000.00
<u>Scissor lift rental (to facilitate installation)</u>	<u>3,000.00</u>
<b><i>Mech/Elec/Energy Conservation cost in warehouse section</i></b>	<b>\$ 371,275.00</b>

The reason the mechanical/electrical/energy conservation costs in the warehouse are being itemized and extracted is based on the definition of *alteration* in the ADA regulations (28 C.F.R. § 36.402) and the Florida Building Code-Accessibility (“Florida Accessibility Code” or “F.A.C.”), § 106.5. It is an *alteration* that triggers the requirement to make the *path of travel* accessible which in turn triggers the obligation to provide vertical accessibility. The disproportionate cost defense component of the *Alterations: Path of Travel* regulation that provides the financial hardship grounds for a waiver as set forth in Section 553.512, Fla. Stat.

Included in both the ADA and F.A.C.’s definition of *Alteration is the following*: “[n]ormal maintenance, reroofing, painting or wallpapering, asbestos removal, or changes to mechanical and electrical systems are not alterations unless they affect the usability of the building or facility.” 28 C.F.R. § 36.402(b)(1). Since the work in the warehouse (as opposed to the office area) is limited to mechanical and electrical repair and replacement (the insulation is part of the mechanical system in concert with the new HVAC equipment), and it is not affecting the usability of the facility, the work in the warehouse area does not constitute an *alteration* by definition. If it is not an *alteration*, it cannot trigger a *path of travel* requirement and so its cost should not contribute to the cost analysis set forth in 28 C.F.R. § 36.403(f)(1) as incorporated by Section 553.512, Fla. Stat.

Regarding the remainder (and relevant portion) of the facility:

Cost of alteration to office area of subject building:

Total Project Cost	\$790,324.00
Less Permits	16,100.00
<u>Less Mech/Elec in warehouse section</u>	<u>371,275.00</u>
<b>Cost of <i>Alteration</i> to Office Section</b>	<b>\$402,949.00</b>

***Disproportionality*** as set forth in 28 C.F.R. § 36.403 applies to the cost of alteration to the primary function area(s). The following definition sets forth what is an area containing a primary function as well as describes what areas of the facility are not areas containing a primary function.

**Primary Function.** A major activity for which the *facility* is intended. Areas that contain a *primary function* include, but are not limited to, the customer services lobby of a bank, the dining area of a cafeteria, the meeting rooms in a conference center, as well as offices and other work areas in which the activities of the *public entity, public accommodation* or other *private entity* using the *facility* are carried out. Mechanical rooms, boiler rooms, supply storage rooms, employee lounges or locker rooms, janitorial closets, *entrances*, and corridors are not areas containing a *primary function*. Restrooms are not areas containing a *primary function* unless the provision of restrooms is a primary purpose of the area, e.g., in highway rest stops...

28 C.F.R. § 36.403(b); Florida Building Code-Accessibility, § 106.5.

The cost hardship set forth in Section 553.512, Florida Statutes, upon which the financial hardship that grants entitlement to a waiver is premised on the costs of alterations to areas containing primary functions. The cost of alterations to areas not containing primary functions are not considered. Therefore, the costs of altered areas that do not contain a primary function may be subtracted from the cost of the overall alteration to determine the value upon which disproportionate cost is based. Areas that do not contain primary functions include, but are not limited to corridors, stairwells, closets, ramps and restrooms. Applying these definitions to the Project results in the following calculation:

Cost of <i>Alteration</i> to Office Section (total)	\$ 402,949.00
Less cost to build accessible restrooms	(37,952.00)
Less cost to provide and install Hi-Lo drinking fountain	(3,250.00)
Less cost to construct accessible entrance ramp with handrails	(12,250.00)
<u>Less cost of walls to enclose stairwells</u>	<u>(15,560.00)</u>

**Cost of *Alterations* to areas contain a primary function \$ 333,937.00**

**Therefore, the *path of travel* cost basis set forth in 28 C.F.R. § 36.403(f)(1) for the Project is \$333,937.00.**

The *path of travel* includes a continuous, unobstructed way of pedestrian passage by means of which the altered area may be approached, entered, and exited, and which connects the altered area with an exterior approach (including sidewalks, streets, and parking areas), an entrance to the facility, and other parts of the facility. It includes a continuous, unobstructed way of pedestrian passage by means of which the altered area may be approached, entered, and exited, and which connects the altered area with an exterior approach (including sidewalks, streets, and parking

areas), an entrance to the facility, and other parts of the facility. The term "path of travel" also includes the *restrooms*, telephones, and *drinking fountains serving the altered area*. 28 C.F.R. § 36.403(e). And finally, *path of travel* includes a means of providing vertical accessibility where appropriate.

As calculated above, the amount that the Project is obligated to spend up to, for *path of travel* accessibility alterations including, but not limited to providing vertical accessibility is:

Cost of <i>Alterations to areas containing a primary function</i> :	\$333,937.00
Disproportionate cost factor as set forth in 28 C.F.R. § 36.403(f)(1)	x <u>0.20</u>
	\$ 66,787.40
<b>Disproportionate Cost threshold</b>	<b>\$ 66,787.40</b>
Less cost of accessible restrooms (\$37,952), drinking fountain (\$3,250) and <u>accessible entrance ramp (\$12,250)</u>	<u>( 53,452.00)</u>

**Disproportionate cost amounts remaining for vertical accessibility \$13,335.40**

**Vertical accessibility cannot be provided for \$13,335.00** [This amount tracks the methodology mandated by 28 C.F.R. § 36.403(f)(1) as incorporated into Section 553.512, Fla. Stat.

However, if you approach this differently by subtracting out the Mechanical, Electrical and associated Energy Conservation costs in the warehouse storage area, then subtracting costs not incurred by areas containing a primary function, take 25% of the total—but apply the cost of vertical accessibility before other *path of travel* improvements, you get this calculation and result:

Cost of *Alteration* minus mech/elec/energy cons. = \$402,949

\$402,949 \* 20% = \$80,898 to apply to vertical accessibility and other *path of travel* accessibility alterations.<sup>1</sup>

One final approach is to take the total project cost (excluding permit fees) and do not exclude the costs of mechanical/electrical/energy conservation improvements to the warehouse, but do subtract out the cost of alterations to areas not containing a primary function. Take the total and multiply by 20% disproportionate cost factor. Finally, apply the

<sup>1</sup> While this method provides a higher amount of money to apply to vertical accessibility in theory, it does not follow the methodology prescribed in Section 553.512, Fla. Stat.

total to the necessary accessibility improvements to the *path of travel*, the calculation is as follows:

$\$774,224.00 - 37,952$  (restrooms) –  $3,250$  (drinking fountain) –  $12,250$  (entrance ramp with handrails) –  $15,560$  (walls to enclose stairwells) =  $\$705,120.00$

$\$705,120.00 * 20\% = \$141,042$  to apply to vertical accessibility and other *path of travel* accessibility alterations.

$\$141,042 - 37,952$  (accessible restrooms) –  $3,250$  (hi-lo drinking fountain) –  $12,250$  (accessible entrance ramp with handrails) =  $\$87,590^2$

### CONCLUSION

Strictly following the methodology prescribed in 28 C.F.R. § 36.403(f)(1) as mandated by Section 553.512, Fla.Stat., the cost obligation to improve the accessibility to the *path of travel* including providing vertical accessibility is  $\$66,787.40$ . If other path of travel accessibility deficiencies are remedied before vertical accessibility, the remaining funds available would be  $\$13,335.40$ .

Using other priorities than those allowed or mandated by 28 C.F.R. § 36.403(f)(1), higher cost obligations to be applied to vertical accessibility can be obtained (such as \$ 80,898 and \$ 87,590) but the values determined initially (\$66,787.40, reduced to \$13,335.40 if providing vertical accessibility is not given first priority) are the correct sums as determined by the methodology set forth in 28 C.F.R. § 36.403(f)(1) as adopted by Section 553.512, Fla. Stat.

---

<sup>2</sup> While this method provides an even higher amount of money to apply to vertical accessibility in theory, it does not follow the methodology prescribed in Section 553.512, Fla. Stat.