

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

COUNCIL FOR DISABILITY RIGHTS, <i>et</i>)	
<i>al.</i> ,)	
)	
Plaintiffs,)	No. 05 C 5689
)	
v.)	Judge Wayne Andersen
)	
CITY OF CHICAGO,)	Magistrate Judge Nan Nolan
)	
Defendant.)	

RELEASE AND SETTLEMENT AGREEMENT

Plaintiffs, Council for Disability Rights, *et al.*, by their attorneys, Woerthwein & Miller and Heberle & Finnegan, PLLC, and Defendant, the City of Chicago (the "City"), by its attorney Mara S. Georges, Corporation Counsel of the City of Chicago, herein stipulate and agree to the following:

1. This action has been brought by plaintiffs against defendant, and makes certain allegations regarding the City's compliance with the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.*, and the regulations promulgated thereunder (the "ADA"), and with Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794(a), in connection with the City's installation and maintenance of curb cuts and sidewalks, which allegations are contained in plaintiffs Second Amended Complaint.
2. Defendant denies each and every allegation of wrongdoing or violation of law as stated in plaintiffs' Second Amended Complaint, and further, denies liability.
3. The parties and their respective attorneys acknowledge that settlement of this case is not an admission of liability or of unlawful conduct by or on the part of defendant, and shall

not serve as evidence or notice of any wrongdoing by or on the part of defendant. The parties and their respective attorneys further acknowledge that settlement is made to avoid the uncertain outcome of litigation and the expense in time and money of further litigation and for the purpose of judicial economy. Plaintiffs and their attorneys agree that they, or any entity with which either or both of them is affiliated or with which either or both of them may later become affiliated, shall not use this settlement as notice of wrongdoing or violation of any law on the part of defendant, and/or any of its current or former officials, agents, or employees, or for any other purpose in any other litigation, and that any such use is inconsistent with the terms of this Release and Settlement Agreement.

4. For the purpose of settlement of this action and in consideration of plaintiffs' agreement to dismiss their claims, defendant agrees to the following:

- a. The City will continue, for at least the next five years, to take the lead in convening the Curb-Cut Advisory Committee ("the Committee"), and will consult with and provide information to the Committee as set forth below.
- b. Wholly apart from and in addition to moneys spent on its annual street resurfacing and on its streetscape projects,¹ in each of the years 2007-20011 (inclusive), the

¹ During 2006, the City spent approximately eighteen million dollars (\$18,000,000) installing curb ramps and sidewalks as a part of the City's annual resurfacing work. Based upon past experiences, the City anticipates spending a comparable amount on installing curb ramps and sidewalks as part of the City's annual resurfacing work during each of the next five years. The exact amount that the City spends on installing curb ramps and sidewalks each year depends upon the scope of the City's annual capital project budget for street resurfacing, which in turn is dependent upon many factors, including, without limitation, funding from other levels of government.

At the conclusion of the second calendar year of the operation of this Release and Settlement Agreement, and at the conclusion of every subsequent calendar year of the operation of this Release and Settlement Agreement, if the City's average annual expenditures (on a

City shall allocate and expend at least an additional ten million dollars (\$10,000,000) for installing retrofitted curb ramps and sidewalks that meet all the standards and requirements set forth in this Settlement Agreement pertaining to curb ramps and sidewalks (“Additional Ramps”). These Additional Ramps shall be installed/retrofitted in the priority areas that the Committee has identified, which are shown in the maps attached as Exhibit 1. The Committee shall decide upon the allocation of the \$10 million among the priority areas. Expenditures shall, to the maximum extent feasible, take place in the year of allocation; provided, that in the event of contractor default or other occurrences not in the City’s control, the expenditures may be made in the following year, in which case the events requiring the delay shall be documented and disclosed to the Committee. The expenditures of these monies for retrofitting shall remain independent of the City’s normal expenditures in each of the five years for resurfacing and sidewalk work.

- c. The City shall ensure that from the year 2007 and thereafter, whenever it alters or resurfaces² any streets, intersections, sidewalks, or curb ramps, each portion of

calendar-year basis) for installing curb ramps and sidewalks as a part of the City’s annual resurfacing work for the years in which this Release and Settlement Agreement has been operational is significantly less than \$18 million, plaintiffs may bring such reduction in expenditures to the Court’s attention and request that the City provide an explanation for the reduction in such expenditures.

² As used throughout this Release and Settlement Agreement, the term “alter” shall have the meaning set forth in the ADAAG section 3.5 and the term “resurface” shall have the definition given by the United States Department of Justice Title II Technical Assistance Manual § II-6.6000: “Resurfacing beyond normal maintenance is an alteration. Merely filling potholes is considered to be normal maintenance.”

such project, to the maximum extent feasible,³ shall be altered in such a manner that the altered portion of the facility is readily accessible to and usable by individuals with disabilities.⁴ Each such alteration shall comply with all ADA requirements, including 28 C.F.R. §§ 35.151(b),(c),(e)(1) and (e)(2), 28 C.F.R. Part 36, App. A, and the ADA Accessibility Guidelines for Buildings and Facilities (“ADAAG”). The City shall install curb ramps into intersections of each cross street at its intersection with the alteration or resurfacing, so that the altered or resurfaced intersections are fully accessible to mobility-impaired persons with disabilities. The City shall ensure that all plans and specifications under its jurisdiction for such work shall include the specific requirements set forth above. The City shall ensure, to the maximum extent feasible, that all ADA-compliant curb ramps and sidewalks are installed during the same construction season as the street resurfacing or other alteration, and in any event all curb ramps and sidewalks shall be installed within twelve (12) months of the triggering alterations. The date of street resurfacing and other triggering alterations shall be set forth in the Annual Report described in paragraph 4.i., *infra*.

³ As used throughout this Release and Settlement Agreement, the term “to the maximum extent feasible” shall have the meaning set forth at 28 C.F.R. § 36.402(c).

⁴ As used throughout this Release and Settlement Agreement, the term “readily accessible to and usable by persons with disabilities” shall have the meaning set forth at Section II06.1000 of the United States Department of Justice ADA Title II Technical Assistance Manual, and set forth at 28 C.F.R. Appendix B § 36.401.

With respect to curb ramps installed in the 2006 construction season,⁵ any curb ramps installed prior to July 17, 2006 that do not comply with the preceding specifications shall be treated like other existing, non-compliant curb ramps, and may, as appropriate, be subject to remedy as part of the Committee's allocation of the annual \$10 million for Additional Ramps in priority areas. All curb ramps installed as part of the 2006 construction season after July 17, 2006 ("post July 17, 2006 curb ramps") were installed pursuant to the standards set forth in paragraph 4.c. using the procedures set forth in paragraphs 4.d., 4.e., and 4.g. If plaintiffs locate any post July 17, 2006 curb ramps that, in their view, do not comply with the standards set forth in this paragraph 4.c., the City, upon being informed of the location of those ramps, shall replace any such ramps that do not so comply so that they do comply with the standards set forth in this paragraph 4.c. or shall provide an explanation as to why, in its view, those ramps cannot be constructed in full compliance with the standards set forth in this paragraph 4.c. For streets altered or resurfaced as part of the 2006 Aldermanic Menu, also known as the "CDOT 2006 In-House Construction Resurfacing Program," which streets are set forth in Exhibit 3, if appurtenant curb ramps have not yet been installed, ramps shall be installed during the 2007 construction season.

- d. The City will continue, for at least three (3) years, its retention of independent advisors LCM Architects or another similar entity to serve as ADA compliance

⁵ All curb ramps installed during the 2006 calendar year are set forth in Exhibit 2, which includes date of completed installation.

specialists and consultants with regard to the City's activities. At the end of three years the City will evaluate, in consultation with the Committee, whether LCM's or the successor entity's continued retention is appropriate.

- e. The City will continue, for at least three (3) years, its retention of independent consultants HNTB Corporation or another similar entity(s) to perform construction quality assurance. At the end of three years the City will evaluate whether HNTB Corp.'s or the successor quality assurance firm's continued retention is appropriate.
- f. The City will continue to prepare, implement, and regularly update as necessary, ADA-compliant design standards, and will make such design standards available on-line and to the Committee.
- g. For at least the next three (3) years, the City will adhere to a multi-step process for installing ADA-compliant curb ramps and sidewalks, including consultation with ADA compliance specialists and separate Quality Control and Quality Assurance processes.
- h. For the next five years, the City will ensure that all relevant City supervisors, employees, and contractors attend mandatory training sessions to explain design specifications (including updates thereto) required by this Settlement Agreement, as well as explaining inspection and record-keeping and reporting requirements under this Settlement Agreement. These training sessions will occur on at least an annual basis. The City will provide to the Committee information concerning the scheduling, content, and progress of the training sessions, including without

limitation information concerning who conducted the training, the agenda, training materials, and sign-in sheets.

- i. For the next five (5) years, at the end of each construction season, and no later than February 28 of the year following the construction season in question, the City shall prepare and submit to the Committee, plaintiffs, plaintiffs' counsel, and the Court a report listing each intersection, street or section thereof or sidewalk or section thereof altered or resurfaced⁶ during the construction season, as well as each curb ramp installed or expected to be installed, along with dates the work was done, and shall set forth the total amount that the City spent that year installing curb ramps and sidewalks as part of the City's annual resurfacing work. In a separate section of this Annual Report, the City will list all Additional Ramps, and shall set forth the total amount that the City spent that year as part of that work in the priority areas. In a separate section of the Annual Report, the City will list the locations of each curb ramp requested that year on the 311 telephone system, as well as the location of each ramp installed that year pursuant to a 311 telephone system request. A representative from the entity described in paragraph 4.e., or another appropriate person if such entity is no longer engaged by the City, shall certify that all curb ramps and sidewalk sections installed during the preceding year and listed in the annual report comply with the specifications set forth in paragraph 4.c., with the exception of any specifically identified curb

⁶ For the purposes of the contents of the Annual Report, "alter[ed]" and "resurface[d]" shall have the meanings set forth in the applicable law as described in footnote 2, *infra*.

ramps and sidewalks where absolute compliance was not possible. If plaintiffs or plaintiffs' counsel do not receive the Annual Report on or prior to February 28 of each year, or if they believe that the report does not contain the required components set forth above, they shall approach the City to request the report and/or discuss the contents of the report, and allow the City to respond, prior to approaching the Court. If, upon review of this Annual Report, plaintiffs or plaintiffs' counsel have any questions or concerns with respect to the City's compliance with this Settlement Agreement, plaintiffs shall promptly notify the City of their questions or concerns prior to approaching the Court.

- j. For the next five (5) years, the City will make a record of all 311 telephone system requests for installation or alteration of curb ramps, and will make available on request information concerning the locations that are the subjects of 311 requests and the City's responses thereto. With respect to 311 requests, the City will make a good faith effort to investigate and take appropriate corrective action as required, as promptly as possible, recognizing that specific site considerations and ongoing projects might preclude an immediate response.
- k. In the event that the City, in consultation with LCM or other similar entity, believes that a curb ramp or sidewalk section cannot be constructed in full compliance with this Settlement Agreement's requirements, the City shall identify such deviating ramps, document the reasons for such deviation, and provide the deviating measurements thereof in the annual report referenced in paragraph 4.i., *supra*. Such identifications may be provided as an attachment to the annual

report. If the City builds any deviating or non-ADA compliant ramp(s) or sidewalk (“noncomplying project”) at any location(s), the noncomplying project may be challenged by Plaintiffs before this Court.

5. For the purpose of settlement of this action and in consideration of defendant’s successful completion of each of the agreements as set forth in this Release and Settlement Agreement, and upon advice of counsel, plaintiffs agree to promptly dismiss their claims against the City, with leave to reinstate solely in the event that the Chicago City Council rejects this Release and Settlement Agreement. Plaintiffs agree that they will be required to execute this Release and Settlement Agreement and effect said dismissal of this action prior to the City’s presentation of this Release and Settlement Agreement to the Chicago City Council and that plaintiffs’ offer to settle on the terms set forth in this Release and Settlement Agreement shall not be revoked or otherwise repudiated unless the Chicago City Council rejects this Release and Settlement Agreement.

6. The City shall pay plaintiffs’ counsel \$130,000 in full consideration and satisfaction of their time claimed to have been expended on this matter through the signing of this Release and Settlement Agreement. Such payment shall be made as expeditiously as possible. Nothing in this Release and Settlement Agreement authorizes plaintiffs’ counsel to receive, or requires the City to pay, additional payments for plaintiffs’ attorneys fees and costs pertaining to future work. Nothing in this Release and Settlement Agreement prevents plaintiffs’ counsel from seeking additional payments for plaintiffs’ attorneys fees and costs pertaining to future work or for noncomplying project(s).

7. The City’s obligations pursuant to this Release and Settlement Agreement are

conditioned on approval of this Release and Settlement Agreement by the Chicago City Council. The City will not be obligated to perform its obligations pursuant to this Release and Settlement Agreement until the following events occur: (a) the City receives a copy of this Release and Settlement Agreement executed by plaintiffs and their attorney(s); (b) the Chicago City Council enacts an ordinance authorizing settlement and payment of the funds agreed upon in this Release and Settlement Agreement; and (c) the City receives a Final Agreed Order of Dismissal from the United States District Court dismissing all of plaintiffs' claims against the City.

8. This Release and Settlement Agreement and any documents that may be executed under paragraph 11 herein contain the entire agreement between the parties with regard to the settlement of this action, and shall be binding upon and inure to the benefit of the parties hereto, jointly and severally, and the heirs, executors, administrators, personal representatives, successors, assigns, employees, officials, and agents of each.

9. This Release and Settlement Agreement is entered into in the State of Illinois and shall be construed and interpreted in accordance with its laws. Terms contained herein shall not be construed against a party solely because that party is or was the principal drafter.

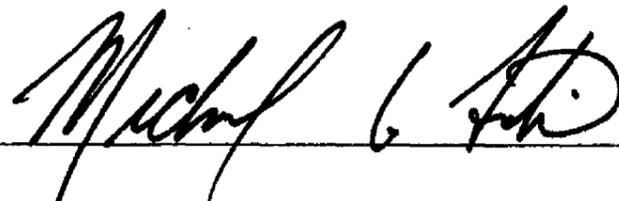
10. In entering into this Release and Settlement Agreement, plaintiffs represent that they have relied upon the advice of their attorneys, who are the attorneys of their own choice, that they have read and understand the terms of this Release and Settlement Agreement, that their attorneys have explained those terms to them, and that they voluntarily accept those terms. Plaintiffs also represent and warrant that no other person or entity has or has had any interest in the claims or causes of action referred to herein, that they and their attorneys have the sole right and exclusive authority to execute this Release and Settlement Agreement and to accept the

terms specified herein, and that they have not sold, assigned, transferred, conveyed, or otherwise disposed of any of the claims or causes of action referred to herein.

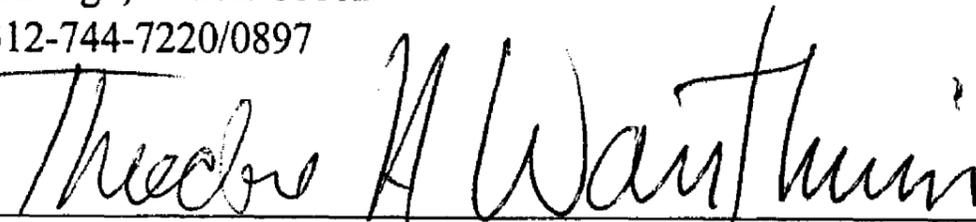
11. All parties agree to cooperate fully and to execute a Stipulation of Dismissal and any and all supplemental documents and to take all additional actions which are consistent with and which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Release and Settlement Agreement.

12. The parties and the Court agree that the Court, per Judge Wayne Andersen, shall retain jurisdiction to hear and to resolve matters arising under enforcement of this Release and Settlement Agreement.

DATED: April 24, 2007

BY:  _____

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J. Mark Finnegan April 16, 2007

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