

**UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK**

**EASTERN PARALYZED VETERANS
ASSOCIATION n/k/a UNITED
SPINAL ASSOCIATION,**

Plaintiffs,

-against-

THE CITY OF NEW YORK,

Defendant.

94 CV 0435 (GBD) (KNF)

**SETTLEMENT AGREEMENT
AND RELEASE OF CLAIMS**

**CENTER FOR INDEPENDENCE OF THE
DISABLED, NEW YORK, a nonprofit
organization; DUSTIN JONES, an individual;
MYRNA DRIFFIN, an individual; on behalf
of themselves and all others similarly situated,**

Plaintiffs,

-against-

**THE CITY OF NEW YORK, NEW YORK
CITY DEPARTMENT OF
TRANSPORTATION, and POLLY
TROTTEBERG, in her official capacity as
Commissioner of the New York City
Department of Transportation,**

Defendants.

14 CV 5884 (GBD) (KNF)

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This Settlement Agreement and Release of Claims (the "Settlement Agreement") is made and entered into by and between: (i) The City of New York (the "City"); (ii) Eastern Paralyzed Veterans Association n/k/a United Spinal Association ("EPVA"), on behalf of itself and the Plaintiff Class as defined in paragraph 34 of the Stipulation of Settlement so ordered in *Eastern Paralyzed Veterans Association v. City of New York*, Case No. 94CV0435 (TPG) (S.D.N.Y.) ("the 2002 Stipulation") on September 10, 2002, and (iii) Center for Independence of the Disabled, New York ("CIDNY"), Dustin Jones and Myrna Driffin.

I. DEFINITIONS

For purposes of this Settlement Agreement, the following terms have the following definitions:

A. "Accessibility Laws" means all state and federal accessibility laws and regulations requiring, promoting, and/or encouraging equal or improved access to persons with disabilities, including, without limitation, the following: (1) the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101, *et seq.* ("ADA") and all of its implementing regulations and technical requirements which are existing and current at the time of any pedestrian ramp installation or Upgrade (as defined in Section I(HH)); and (2) the Rehabilitation Act of 1973, 29 U.S.C. §§ 790, *et seq.* and all of its implementing regulations and design standards.

B. "Alteration" or "alterations" means an "alteration," as defined in the Accessibility Laws, to the public right of way, that affects or could affect pedestrian access. This includes, without limitation, any resurfacing, repaving, reconstruction, or widening of any streets, as described in

the “U.S. Department of Justice/U.S. Department of Transportation Joint Technical Assistance on the Title II of the Americans with Disabilities Act Requirements to Provide Curb Ramps when Streets, Roads, or Highways are Altered through Resurfacing” found at <https://www.ada.gov/doj-fhwa-ta.htm> and <https://www.ada.gov/doj-fhwa-ta-glossary.htm>.

C. “Class Counsel” means, collectively, the law firms of Broach & Stulberg, LLP (or a successor thereto) and Disability Rights Advocates, subject to Court approval.

D. “Complaint” means a request made by a member of the public for installation or Upgrade of a pedestrian ramp or ramps at a specified corner.

E. “Complex Corner” means a corner for which a unique design drawing must be prepared in order to install or Upgrade a pedestrian ramp(s) at that corner, due to an unusual site condition that makes it “technically infeasible” within the meaning of the Accessibility Laws governing alterations, or “structurally impracticable” within the meaning of the Accessibility Laws governing new construction, to make the corner readily accessible to and usable by the Plaintiff Class. Complex corners subject to the Accessibility Laws governing new construction must be made readily accessible to and usable by the Plaintiff Class to the extent not “structurally impracticable” within the meaning of the Accessibility Laws. Complex corners subject to the Accessibility Laws governing alterations must be made readily accessible to and usable by the Plaintiff Class “to the maximum extent feasible” within the meaning of the Accessibility Laws.

F. “Conflict” or “Conflicts” means any disagreement relating to any alleged violation of or alleged failure to perform any of the provisions of this Settlement Agreement and/or conflicts between the Parties concerning the interpretation, implementation, monitoring, compliance, and

any subsequent modification of the Settlement Agreement. All Conflicts will be resolved using the Conflict Resolution Procedure outlined in Section 23 of the Settlement Agreement.

G. "Department of Transportation" or "DOT" means the New York City Department of Transportation.

H. "Fairness Hearing" means the hearing to be held by the District Court, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, to determine whether the settlement set forth in this Settlement Agreement should be approved.

I. "Final" as applied to the term "Judgment," (as defined in Section I(L)), means that (i) the time for appeal or writ has expired and no appeal or petition for review has been taken, or (ii) if an appeal or petition for review is taken and the settlement set forth in this Settlement Agreement has been affirmed in full, the time period during which any further appeal or review can be sought (including through any appeal, petition for review, writ of certiorari or otherwise) has expired and no such further appeal or review has been sought. In the event that no objections to this Settlement Agreement are raised prior to or at the Fairness Hearing, that any objections that have been raised have been fully and formally withdrawn, or that no viable objections otherwise exist at the time of the Fairness Hearing, the Judgment will become "final" as of the District Court's issuance of the Judgment. If the Judgment is set aside, materially modified, disapproved or overturned by any court, and is not fully reinstated on further appeal or review, the Judgment will not become or be "final."

J. "Final Approval" means the order by the District Court, after notice and the holding of the Fairness Hearing, granting approval of this Settlement Agreement under Rule 23(a) of the

Federal Rules of Civil Procedure. The hearing at which such final approval is considered or granted, should a hearing be held, will be called the “final approval hearing.”

K. “Fiscal Year” (“FY”) means the accounting period on which a budget is based. The City’s Fiscal Year commences on July 1st and ends on June 30th.

L. “Judgment” means the order and judgment entered by the District Court in the *Eastern Paralyzed Veterans Association v. the City of New York* (94 Civ. 0435) (“EPVA Action”) and the *Center for Independence of the Disabled, New York, et al, v. The City of New York, et. al.* (14 Civ. 5884) (“CIDNY Action”) actions, respectively, substantially in the form attached to this Settlement Agreement as Exhibit A, that, among other things, fully approves the terms of this Settlement Agreement, and retains the District Court’s jurisdiction to enforce the Settlement Agreement throughout the term, for the purpose of, *inter alia*, determining attorneys’ fees and costs. The Parties recognize and agree that the text set forth in Exhibit A is subject to review and approval by the District Court.

M. “Mobility disability” or “mobility disabilities” means any impairment or medical condition that limits a person’s ability to walk, ambulate, maneuver around objects, or to ascend or descend steps or slopes. A person with a mobility disability may or may not use a wheelchair, scooter, electric personal assisted mobility device, crutches, walker, cane, brace, orthopedic device, or similar equipment or device to assist her or his navigation along sidewalks and streets, or may be semi-ambulatory.

N. “Monitor” means the person appointed by the Court to oversee compliance with this Settlement Agreement pursuant to Section 22 of the Settlement Agreement.

O. "New Construction" means "new construction" as defined in the Accessibility Laws to or on any street or corner.

P. "Notice of Settlement" means the notice substantially in the form attached to this Settlement Agreement as Exhibit B-1, and/or the short form of notice substantially in the form attached to this Settlement Agreement as Exhibit B-2, to be provided to the Plaintiff Class and designated disability rights organizations, as set forth in the Order of Preliminary Approval.

Q. "Objectors" means American Council of the Blind, Harlem Independent Living Center, Center for the Independence of the Disabled in New York, Bronx Independent Living Services, United for Equal Access, Inc., Brooklyn Center for Independence of the Disabled, American Council of the Blind of New York, Inc., and Disabled in Action of Metropolitan New York, Inc., collectively.

R. "Party" means either the Plaintiffs, inclusive of the Plaintiff Class, or the Defendants; collectively, "Parties."

S. "Pedestrian ramp" means any ramp, cut, or slope where a pedestrian walkway crosses a curb that is, in whole or in part, owned, controlled or maintained by or otherwise within the responsibility of the City.

T. "Plaintiffs" means EPVA, CIDNY, Dustin Jones, Myrna Driffin and the Plaintiff Class, collectively.

U. "Plaintiff Class" means, as set forth in paragraph 34 of the 2002 Stipulation, "qualified individuals with a disability," as defined in Section 201(2) of the ADA, 42 U.S.C. § 12131(2), who use or seek to use pedestrian ramps in the City.

V. "Preliminary approval" means the preliminary approval of this Settlement Agreement by the District Court as described in Section 5(b), substantially in the form attached to this Settlement Agreement as Exhibit C. The Parties recognize and agree that the text set forth in Exhibit C is subject to review and approval of the District Court.

W. "Related Entities" means any and all departments, divisions, agencies, commissions, offices, corporations, commissioners, officers, employees, agents, representatives, officials, assigns, assignors, attorneys, predecessors, or successors of the City and any other person or entity acting or purporting to act by, through, under, in concert with or on behalf of the City, or any of them, with respect to the matters described in this Settlement Agreement.

X. "Resurfacing" means an Alteration that involves work on a roadway spanning from one intersection to another, which includes overlays of additional material to the road surface, with or without milling, consistent with the July 8, 2013 "U.S. Department of Justice/U.S. Department of Transportation Joint Technical Assistance on the Title II Requirements to Provide Curb Ramps When Street Roads or Highways are Altered Through Resurfacing", and the Supplement thereto dated December 1, 2015.

Y. "Resurfacing Operation" means the process by which Resurfacing is accomplished and consists of four distinct phases, in no particular order: milling of the roadway; paving of the roadway; installation of thermoplastic pavement markings on the roadway; installation or Upgrade of pedestrian ramps.

Z. "Self-evaluation" means the self-assessment required of public entities under Title II of the ADA.

AA. "Standard Corner" means any corner that does not require a unique design drawing to be prepared for that location in order to install or Upgrade a pedestrian ramp or pedestrian ramps at that corner, for the reasons set forth in Section I(E). Each corner will be considered to be a Standard corner unless it is expressly designated as a Complex corner pursuant to Section I(E).

BB. "Standard design drawing" or "Standard design drawings" means the engineering standard design drawings prepared by the City to comport with the Accessibility Laws in order to provide guidance for engineers, contractors and/or developers in connection with the installation or Upgrade of pedestrian ramps at Standard corners.

CC. "Survey" or "Surveys" means the collection of detailed data concerning corners and pedestrian ramps in the City and assessment of that data to determine the extent to which the corners and pedestrian ramps comply with the Accessibility Laws, subject to the terms of this Settlement Agreement, including, without limitation, Section 9.

DD. "Term" means the term of this Settlement Agreement, which will begin with the date of Final Approval and will expire upon completion of the schedule detailed in Section 11.

EE. "Transition Plan" means the transition plan required under Title II of the ADA pursuant to 28 CFR §35.150(d)(2), outlining the City's pedestrian ramp plan.

FF. "DOT's 2002 Transition Plan" means the transition plan the City issued on December 9, 2002, as amended.

GG. "Updated Transition Plan" means the transition plan outlining the City's pedestrian ramp plan that DOT will complete by the end of the evaluation period, pursuant to the terms of Section 18 of the Settlement Agreement and 28 C.F.R. §35.150(d)(2).

HH. "Upgrade" or "Upgrades" means a repair, replacement, or other improvement to one or more elements of an existing pedestrian ramp which will bring the pedestrian ramp into compliance with the Accessibility Laws.

II. "Vision disability" or "vision disabilities" means any impairment or medical condition that limits a person's ability to see. A person with a vision disability may or may not use corrective devices, alternative techniques, or assistive technology for tasks done visually by persons without a vision impairment to assist with her or his navigation along sidewalks, streets and paths of travel.

JJ. "WCAG" means version 2.0 levels A and AA of the "Web Content Accessibility Guidelines" published by the Web Accessibility Initiative (WAI) of the World Wide Web consortium (w3c), or any subsequent version(s) or technologies that are adopted during the Term.

KK. "2002 Stipulation" means the Stipulation of Settlement executed by EPVA, on behalf of the Plaintiff Class, and the City on August 27, 2002 and so ordered in *Eastern Paralyzed Veterans Association v. City of New York*, Case No. 94CV0435 (TPG) (S.D.N.Y.) on September 10, 2002.

LL. "2016 Stipulation" means the So Ordered Stipulation Resolving Disputes executed by EPVA, on behalf of the Plaintiff Class, and the City on January 28, 2016 and so ordered in *Eastern Paralyzed Veterans Association v. City of New York*, Case No. 94CV0435 (TPG) (S.D.N.Y.) on February 11, 2016.

II. AGREEMENT

Now, therefore, for good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the Parties agree as follows:

1. **Recitals**

The definitions set forth above are incorporated by reference in this section and made a part of this Settlement Agreement.

2. **No Admission of Liability**

The City has denied and disputed, and continues to deny and dispute, the claims and contentions by Plaintiffs. By agreeing to and voluntarily entering into this Settlement Agreement, there is no admission or concession by the City, direct or indirect, express or implied, that its pedestrian walkways located in the public right of way are inaccessible to individuals. Moreover, inclusion of obligations or requirements in this Settlement Agreement will not be construed as a concession or admission that, absent this Settlement Agreement, the City would otherwise have an obligation to make pedestrian walkways accessible where pedestrian walkways cross curbs. Notwithstanding any statement in this section, the City agrees that Plaintiffs are the prevailing parties for purposes of reasonable attorneys' fees and costs.

3. **No Findings of Liability or Wrongdoing**

The Parties understand and agree that the District Court has made no findings of any liability or wrongdoing by the City.

4. **Purpose of Settlement**

The federal government, in enacting the ADA, found that the installation of pedestrian ramps at all locations in the City where pedestrian walkways cross curbs is essential to the

integration of individuals with disabilities, particularly those who use wheelchairs, into the commerce of daily life. Accordingly, the Parties are committed to the implementation of a program that will result in the mutually advantageous, efficient and expeditious (a) installation of pedestrian ramps at all remaining locations that do not have pedestrian ramps where pedestrian walkways cross curbs, (b) Upgrade of all pedestrian ramps that require upgrading in order to comply with the Accessibility Laws, and (c) ongoing maintenance of all pedestrian ramps in order to keep them in compliance with the Accessibility Laws as described in Section 12. The Parties agree that the terms and conditions of settlement set forth in this Settlement Agreement are to be implemented in a manner that will best achieve the goals and commitments referenced in this section. This Settlement Agreement will be binding upon the City, Plaintiffs, and all members of the Plaintiff Class, will extinguish all released claims as defined in this Settlement Agreement, and will constitute the final and complete resolution of all issues addressed herein.

5. **Conditions Precedent**

The Parties agree that this Settlement Agreement will be conditioned upon, and will be effective only upon, the occurrence of each and every one of the following events:

- (a) The Settlement Agreement has been fully executed by the Parties.
- (b) Plaintiffs have moved for and the City has consented to an order granting Preliminary Approval of the Settlement Agreement, and such motion has been fully granted by the District Court.
- (c) Plaintiffs have moved for and the City has consented to Final Approval of the Settlement Agreement and entry of the Judgment.

(d) A final approval hearing has been conducted by the District Court, and the Judgment has been entered by the District Court and has become Final.

6. **Effect of Final Approval Order**

This Settlement Agreement will supplement the 2002 Stipulation, except that any provisions of the 2002 Stipulation which are contradicted by this Settlement Agreement, whether specifically or by their terms, will be superseded by this Settlement Agreement. This Settlement Agreement will supersede the 2016 Stipulation, except that the ongoing financial commitments for installation and Upgrade of pedestrian ramps set forth in the 2016 Stipulation are incorporated as part of the commitments and obligations set forth in this Settlement Agreement.

7. **Enforcement of Settlement Agreement**

The District Court will have continuing jurisdiction over this Settlement Agreement throughout the Term and for the purposes of determining an award of attorneys' fees and costs. Nothing in this section will bar either Party from moving for an extension of the Term to enforce any obligations herein.

8. **Release of Claims**

8.1. **Release of Claims Through the Term**

Effective upon the entry of Judgment by the District Court, Plaintiffs and the Plaintiff Class members (and their respective heirs, assigns, successors, executors, administrators, agents and representatives) ("releasing parties"), in consideration of the relief set forth herein, the sufficiency of which is expressly acknowledged, do fully and finally release, acquit and discharge the City and its Related Entities from any and all claims, rights, demands, charges, complaints, actions, suits

and causes of action, whether known or unknown, suspected or unsuspected, accrued or unaccrued, for injunctive or declaratory relief, or damages to members of the Plaintiff Class for denial of access to, exclusion from participation in, or denial of the benefits of pedestrian access where pedestrian walkways cross curbs, during the period starting on the date of the filing of the EPVA Action through the date on which the Plaintiffs sign this Settlement Agreement (the "released claims"). This release of claims will not apply to claims based on accessibility barriers to and/or in the City's pedestrian ramps that remain in or come into existence after the expiration of the Term. Moreover, the release will not apply to any claims for negligence, personal injury and damages attendant thereto, or claims related to midblock barriers, or snow removal on or around City sidewalks.

The released claims will not include any claims to enforce the terms of this Settlement Agreement.

The release of claims will apply and be binding upon the members of the Plaintiff Class throughout the Term.

9. **Surveys of the City's Pedestrian Ramps**

9.1. **The Purpose and Scope of the Surveys**

DOT will conduct Surveys of all pedestrian ramps to capture data on all corners across the City's five boroughs. The data will identify all corners that contain pedestrian ramps and all corners that do not contain pedestrian ramps. As to those corners that do contain pedestrian ramps, the data will measure the following thirteen (13) elements of those corners' pedestrian ramps' compliance with the Accessibility Laws: (i) curb reveal; (ii) pedestrian ramp running slope; (iii) detectable warning surfaces; (iv) gutter slope; (v) landing dimensions (including width and length);

(vi) landing cross slope; (vii) roadway grade; (viii) ramp width; (ix) flare slope; (x) ramp length; (xi) ramp cross slope; (xii) presence of ponding; and (xiii) presence of obstruction. Those pedestrian ramps and corners that are not in compliance with the Accessibility Laws will be scheduled for installation or Upgrade of pedestrian ramps as part of this Settlement Agreement and the Updated Transition Plan as described in Section 18 of this Settlement Agreement.

9.2. **Survey Tool**

The survey tool for the initial Survey as described in Section 9.1 and Section 9.3.1 will be accomplished using mobile LiDAR technology, which utilizes laser technology to capture terrain information. Key points are placed on high-resolution imaging and correspond to various pedestrian ramp attributes that will be measured for each pedestrian ramp. Each pedestrian ramp's dimensions and measurements are thereby extracted through the use of a software calculator. For subsequent Surveys as described in Section 9.3.2, the survey tool utilized will be agreed upon by the Parties.

9.3. **Timeline for Completing Surveys**

9.3.1. **Initial Survey**

The City will complete the initial Survey data collection on measurements as described in Section 9.1 by no later than October 31, 2019. The City will concurrently assess this data to determine compliance with the Accessibility Laws, and will share with the Class Counsel and the Monitor all data gathered, including the measurements detailed in Section 9.1, related to pedestrian ramp compliance with the Accessibility Laws as it becomes available and, in total, by no later than October 31, 2020.

9.3.2 Subsequent Surveys

The City will conduct two additional Surveys of all pedestrian ramps to capture data on all corners across the City's five boroughs, in order to assess compliance with the Accessibility Laws. The second Survey will be completed by the close of FY 2033. The third Survey will be completed by the close of FY 2046. The Parties will reconvene no later than FY 2030 for the second Survey and no later than FY 2043 for the third Survey to discuss the survey tool and how the City will address pedestrian ramps that are identified in such Surveys and assessed as non-compliant with the Accessibility Laws, as well as mutual agreement on the parameters and reporting of such information.

9.4. Public Access to Information Gathered Through Survey

Information related to pedestrian ramps gathered through the initial Survey as discussed in Sections 9.1 and 9.3.1, will be maintained in a City-wide database and shared with the public via DOT's public webpage concerning pedestrian ramps (the "Website"). The Website will be accessible in accordance with the WCAG and any other relevant definitions set forth in Section I above. Assessed information based on the initial Survey results will be posted as it becomes available, but in no event later than October 31, 2020. The information posted will include the location of all existing pedestrian ramps, the City's assessment of whether those pedestrian ramps are compliant with the Accessibility Laws, the locations of all pedestrian ramps that have been installed or Upgraded per this Settlement Agreement, and the completion dates of all those installations and Upgrades. The information posted will also include the planned interim schedule of pedestrian ramp installations and Upgrades referenced in Section 11.4.

9.5 Prioritization Criteria for Installation and Upgrades of Pedestrian Ramps

In furtherance of this settlement process, the City has developed a GIS-based prioritization plan to address installations and Upgrades of pedestrian ramps. The purpose of the plan is to provide, based on a scoring system, priority order for scheduling the installation or Upgrades of pedestrian ramps. The scoring system is based on (a) a condition score derived from the data collected in the course of the initial Survey described in Sections 9.1 through 9.3.1 and (b) a geographic score encompassing a variety of geographic factors concerning pedestrian ramps. Geographic factors will include, but not be limited to: (i) the concentration of people with mobility disabilities, visual disabilities, and the senior population; (ii) the proximity of key locations for people with disabilities, such as emergency shelters and District 75 schools; (iii) the proximity of public facilities and other places of interest/recreation (*e.g.*, hospitals, clinics and senior services, government sites, child and youth services, libraries and cultural institutions); and (iv) the proximity of transit facilities.

9.5.1. Prioritization Criteria Results

Upon completion of the initial Survey referenced in Sections 9.1 and 9.3.1, and analysis of the data by the City, the City will provide Class Counsel with documentation related to the prioritization criteria as detailed in Section 9.5 by no later than December 31, 2020. The Parties will reconvene by no later than January 30, 2021 to discuss the prioritization criteria results. The City will give good faith consideration to the comments provided by Class Counsel but will not be bound to make any adjustments to the prioritization criteria results or to re-run the prioritization criteria.

10. **Applicable Accessibility Laws**

To the extent that any of the Accessibility Laws have conflicting technical specifications for the design and construction of pedestrian ramps, compliance will be measured, and installations or Upgrades, and ongoing maintenance under this Settlement Agreement, will be performed in accordance with the technical specifications that provide the greatest degree of access to individuals with disabilities. For detectable warning surfaces, the City will follow guidelines set forth in the Public Right of Way Accessibility Guidelines (“PROWAG”), found at <https://www.access-board.gov/guidelines-and-standards/streets-sidewalks/public-rights-of-way/proposed-rights-of-way-guidelines>.

11. **Installation and Upgrade of Pedestrian Ramps**

11.1. **The Standard for Installations or Upgrades**

Each installation and Upgrade of a pedestrian ramp referenced in this Settlement Agreement will be conducted in accordance and in compliance with the Accessibility Laws.

11.2. **Continuation of Installation and Upgrades of Pedestrian Ramps During Initial Survey Period**

Commencing on the date of the Settlement Agreement’s execution and continuing through the initial Survey period as described in Section 9.3.1, the City will continue to install and Upgrade pedestrian ramps to comply with the Accessibility Laws as described in this section and Section 12, which will include the City’s ongoing installation program under the 2002 Stipulation.

11.3. **Installation of Pedestrian Ramps During Initial Survey Period**

Commencing at the beginning of FY 2018 and continuing through June 30, 2020, the City will complete installation of pedestrian ramps at not less than 800 corners where pedestrian ramps are missing and are required by the Accessibility Laws.

11.4. Installation and Upgrade of Pedestrian Ramps During the Term of the Settlement Agreement

Per the timelines set forth in Sections 11.4.1 through 11.4.4, the City will complete the installation or Upgrade of pedestrian ramps that are identified through the initial Survey described in Sections 9.1 through 9.3.1 as requiring an installation or an Upgrade to achieve compliance with the Accessibility Laws. This will include: (1) installations or Upgrades of pedestrian ramps at Standard Corners, and (2) installation or Upgrades of pedestrian ramps at Complex Corners. Each of the timelines identified in Sections 11.4.1 through 11.4.4 will be subject to an interim schedule that will be reported publicly on DOT's Website described in Section 9.4 (and/or a subsequent website maintained by the City).

For all of the installations and Upgrades referenced in Sections 11.4.1 through 11.4.4, the City will continue to look to innovations in the industry and will make best efforts to use such innovations to complete installations and Upgrades of pedestrian ramps at earlier interim and final dates than those set forth herein.

11.4.1. Installation of Pedestrian Ramps at Standard Corners

By the close of FY 2021, the City will complete the installation of all pedestrian ramps at Standard Corners as required by the Accessibility Laws and that are currently missing.

11.4.2. Installation of Pedestrian Ramps at Complex Corners

By the close of FY 2030, the City will complete the installation of all pedestrian ramps at Complex Corners as required by the Accessibility Laws and that are currently missing. The schedule for these installations will be as follows:

- A. Pedestrian ramps at Complex Corners will be installed consistent with the Accessibility Laws, at no less than 914 Complex Corners between FY 2018 and the close of FY 2022.
- B. Pedestrian ramps at Complex Corners will be installed consistent with the Accessibility Laws, at no less than 2,163 Complex Corners between FY 2018 and the close of FY 2027.
- C. All remaining pedestrian ramps at Complex Corners will be installed, consistent with the Accessibility Laws, between FY 2018 and the close of FY 2030.

11.4.3. Upgrades of Pedestrian Ramps at Standard Corners

The City will Upgrade all pedestrian ramps at Standard Corners that are not in compliance with the Accessibility Laws through the use of (a) contractors managed by the City (“City-managed contractors”) and (b) in-house crews employed by DOT (“in-house crews”).

For pedestrian ramps at Standard Corners, the City will complete such Upgrades by the close of FY 2032. These pedestrian ramps will be remediated through any of the means described in Sections 12, 13 and 14. Nothing herein is intended to prevent the City from varying the operational methods for upgrading pedestrian ramps, provided that the pedestrian ramps are upgraded according to the same completion deadlines, and all other criteria set forth in this Settlement Agreement.

The schedule for these Upgrades will be as follows:

- A. Pedestrian ramps at Standard Corners will be upgraded consistent with the Accessibility Laws, at no less than 35,000 corners, between FY 2018 and the close of FY 2022.

B. Pedestrian ramps at Standard Corners will be upgraded, consistent with the Accessibility Laws, at no less than 62,000 corners, between FY 2018 and the close of FY 2025.

C. Pedestrian ramps at Standard Corners will be upgraded, consistent with the Accessibility Laws, at no less than 89,000 corners, between FY 2018 and the close of FY 2028.

D. Pedestrian ramps at Standard Corners will be upgraded, consistent with the Accessibility Laws, at no less than 108,590 corners, between FY 2018 and the close of FY 2032.

The total number of Standard Corners identified in this Section 11.4.3 as requiring pedestrian ramp Upgrades is currently an estimate, pending the outcome of the initial Survey identified in Sections 9.1 through 9.3.1. Notwithstanding the volume of Standard Corners specified to be repaired in Subsections "A" through "D" of Section 11.4.3, nothing in this Section shall obligate the City to Upgrade any pedestrian ramps that comply with the Accessibility Laws and have detectable warning surfaces that comply with PROWAG.

11.4.4. Upgrades of Pedestrian Ramps at Complex Corners

By the close of the schedule set forth below, the City will complete the Upgrade of all pedestrian ramps at Complex Corners that are not in compliance with the Accessibility Laws. These Upgrades will be remediated through any of the means described in Section 12, 13 and 14.

The schedule for these Upgrades will be as follows:

A. Pedestrian ramps at Complex Corners will be upgraded, consistent with the Accessibility Laws, at no less than 700 corners between FY 2018 and the close of FY 2025.

B. Pedestrian ramps at Complex Corners will be upgraded, consistent with the Accessibility Laws, at no less than 1,300 corners between FY 2018 and the close of FY 2028.

C. Pedestrian ramps at Complex Corners will be upgraded, consistent with the Accessibility Laws, at no less than 3,100 corners between FY 2018 and the close of FY 2031.

D. Pedestrian ramps at Complex Corners will be upgraded, consistent with the Accessibility Laws, at no less than 5,500 corners between FY 2018 and the close of FY 2034.

E. From FY 2035 until completion of all remaining pedestrian ramps at Complex Corners, pedestrian ramps at Complex Corners will be upgraded, consistent with the Accessibility Laws, at the rate of no less than 815 corners per Fiscal Year, provided that the City will not be deemed to be in breach of this obligation so long as it (i) does not fall short of the obligation by more than ten percent (10%) in any Fiscal Year (covered by this paragraph 11.4.4E), and (ii) cures any such shortfall within the two Fiscal Years immediately following the Fiscal Year in which the shortfall occurred.

Notwithstanding the volume of Complex Corners specified to be repaired in Section 11.4.4, nothing in this Section shall obligate the City to Upgrade any pedestrian ramps that comply with the Accessibility Laws and have detectable warning surfaces that comply with PROWAG.

11.4.5. Schedule and Completion Date Adjustments

It is understood that the total number of corners identified in this section as requiring installation or Upgrades is an FY 2018 estimated number, pending the outcome of the initial

Survey described in Sections 9.1 through 9.3.1. The Parties may propose that final completion dates set forth in Section 11.4.1 through Section 11.4.4 be adjusted if the results of the initial Survey as described in Sections 9.1 through 9.3.1 show that the total number of corners identified in this section as requiring installation or Upgrades has been overestimated or underestimated. If the Parties cannot agree to adjusted completion date(s), either Party may seek to adjust the schedule and completion dates through the Conflict Resolution Process described in Section 23.

12. **Maintenance of Pedestrian Ramps**

12.1. The schedule and completion dates of installations and Upgrades of pedestrian ramps as detailed in Section 11 will be achieved through remediation of: (i) corners which require installation or Upgrade adjacent to Resurfacing as discussed in Section 13; (ii) corners which require installation or Upgrade through the pedestrian ramp Complaint program as discussed in Section 14; (iii) corners which require installation or Upgrade through priority-based work as discussed in Sections 9.5 and 9.5.1; (iv) corners which require installation or Upgrade within the scope of any Alteration or New Construction, including Resurfacing of roadways; and (v) corners which require installation or Upgrade by third party construction as described in Section 15.

12.2. In addition to the installations and Upgrades referenced in Section 12.1 and elsewhere in this Settlement Agreement, the City will maintain its pedestrian ramps as required by the Accessibility Laws, both during and after the Term of this Settlement Agreement so that members of the Plaintiff Class will be able to access them safely and independently. The maintenance will be performed on an ongoing, indefinite, and regular basis as required by the Accessibility Laws.

12.3. Detectable warnings will be installed as described in Section 16, as needed, each time the City installs or Upgrades a pedestrian ramp. The newly installed detectable warnings will comply with technical standards, including PROWAG, as outlined in Section 10.

12.4. The City will inspect for ponding conditions as set forth in Section 9.1 and will make its best efforts to mitigate or resolve such conditions as part of the installation or Upgrade of the subject pedestrian ramp. For purposes of this sub-Section, "ponding conditions" means unwanted pooling of water at the base of the pedestrian ramp where it meets the roadway for longer than 48 hours after rainfall.

12.5. The City will routinely inspect and install or Upgrade pedestrian ramps where required at all corners adjacent to planned Resurfacing for compliance with the Accessibility Laws.

12.6. The City will install or Upgrade pedestrian ramps where required in connection with Complaints under the pedestrian ramp Complaint program, as described in Section 14.

12.7. The City will install or Upgrade pedestrian ramps where required whenever it undertakes an Alteration or a New Construction, including but not limited to, a street or infrastructure reconstruction project in compliance with the Accessibility Laws.

12.8. The City will require that private developers and private utility companies install or Upgrade pedestrian ramps where required as part of the private developers' or private utility companies' construction projects in compliance with the Accessibility Laws.

13. **Installations or Upgrades of Pedestrian Ramps on Resurfacing Stretches**

The Parties agree that the City will install or Upgrade pedestrian ramps at Standard Corners and Complex Corners, in accordance with the Accessibility Laws and conforming thereto, whenever it is performing Resurfacing and pedestrian ramp installations or Upgrades are required

adjacent to the resurfaced roadway. Such pedestrian ramp installations and Upgrades at Standard Corners and Complex Corners will be performed and completed as required and permitted by the Accessibility Laws. For pedestrian ramps at Complex Corners, such installations or Upgrades will be planned for and placed in the next immediate engineering design contract. Nothing herein shall prevent the City from addressing accessibility at any location through the use of equivalent facilitation, if available and appropriate and as provided in the Accessibility Laws and referenced in Section 17, or from providing a temporary accessible solution as appropriate and compliant with the Accessibility Laws.

14. **Pedestrian Ramp Complaint Program**

14.1. **Scope and Procedure**

The City will maintain a procedure for a member of the public to request installation or Upgrade of a pedestrian ramp. The City will record and track all such requests. For tracking purposes, a Complaint shall not include (i) a request which is duplicative of another Complaint concerning the same corner, and (ii) a request which does not contain a valid or identifiable address or location. If a Complaint concerns pedestrian ramps at more than one corner, each corner complained of will be recorded as a separate Complaint. All Complaints will be addressed as set forth in this Section 14.

14.2. **Submission of Complaints**

Requests for installation or Upgrades of pedestrian ramps may be made in-person, via phone call to the City's 3-1-1 system, by submission of an online form, by email, or by letter. The City will offer Complaint forms in electronic formats that are accessible to people with disabilities and will provide such forms on the Website.

14.3. Timing of Response to a Complaint

14.3.1. The City will acknowledge receipt of each Complaint within fifteen (15) business days of receiving it and provide an estimated temporary repair date, where possible.

14.3.2. Temporary Repairs for Complaints Received After March 15, 2019: The City will provide temporary repairs, as appropriate and compliant with the Accessibility Laws, within 45 days of receiving the Complaint.

14.3.3. Permanent Repairs at Standard Corners for Complaints Received After March 15, 2019: The City will install or Upgrade pedestrian ramps at Standard Corners by dedicating, at a minimum, one crew consisting of at least five construction workers with necessary equipment unless during public emergencies, to perform installations and Upgrades at Standard Corners in response to Complaints, as needed. Permanent repairs will be completed through priority-based work as described in Sections 9.5, 9.5.1, Section 12, and/or through other efficient operational methods. For Standard Corners received through Complaints which are not permanently repaired within the same Fiscal Year the Complaint was received, the City will install or Upgrade pedestrian ramps where required as soon as possible, as such term is used in the Accessibility Laws, through priority-based work as described in Sections 9.5 and, 9.5.1, Section 12, and/or through other efficient operational methods.

14.3.4. Temporary and Permanent Repairs for Complaints Received Prior to March 15, 2019: The City will provide temporary repairs at corners in connection with Complaints received prior to March 15, 2019, as appropriate and compliant with the Accessibility Laws, by no later than March 15, 2019. The City will provide permanent repairs at Standard Corners, and at adjacent corners where needed, in connection with Complaints received prior to March 15, 2019 as soon as

possible, as such term is used in the Accessibility Laws, and in no event later than the close of FY24, at a rate of no less than 244 corners per year, as needed.

14.3.5. Adjustments to Temporary Repairs and Permanent Repairs: A Party may propose to adjust the timeframe for providing temporary repairs specified in Subsection 14.3.2 in the event of an unprecedented increase or decrease in the number of Complaints, or for the timeframe for providing permanent repairs specified in Subsection 14.3.3, or the timeframe for providing permanent repairs specified in Subsection 14.3.4. If the Parties cannot agree to adjusted timeframes, any Party may seek such adjustments through the Conflict Resolution Process described in Section 23.

14.3.6. Permanent Repairs at Complex Corners: The City will install or Upgrade pedestrian ramps at Complex Corners in response to Complaints as soon as possible, as such term is used in the Accessibility Laws, after it receives the request, and in accordance with the Accessibility Laws through priority-based work as discussed in Sections 9.5, 9.5.1, Section 12 and/or through other efficient operational methods. Nothing herein shall prevent the City from addressing accessibility at any location through the use of equivalent facilitation, if available and appropriate and as provided in the Accessibility Laws and referenced in Section 17.

15. **Third Parties**

15.1. The City will require private developers and private utility companies to install or Upgrade pedestrian ramps where required as part of the private developers' and private utility companies' construction projects, consistent with the Accessibility Laws.

15.2. The City will ensure that its process for issuing permits requires that all third parties who install or Upgrade pedestrian ramps comply with the Accessibility Laws.

15.3. Upon receipt of any Complaint made by an individual member of the public concerning accessibility barriers to pedestrian ramps caused by private developers, private utility companies or other third parties, the City will communicate in writing with the third party to request removal of the barrier.

15.4. **City's Standard Design Drawings**

The City will ensure that the Standard Design Drawings for accessible pedestrian ramp design and construction comply with the Accessibility Laws in effect at the time the work is performed, except as provided in Section 10 of this Settlement Agreement. The City will continue to make available a copy of the Standard Design Drawings on the Website.

16. **Obligation To Install Detectable Warning Surfaces**

The City will install detectable warning surfaces, where they are missing, cracked or otherwise needed, each time it installs or Upgrades pedestrian ramps pursuant to this Settlement Agreement. The detectable warning surfaces will comply with the requirements of the Accessibility Laws, including, without limitation, PROWAG, as described in Section 10.

17. **Equivalent Facilitation**

For installations and Upgrades at Complex Corners, including but not limited to those performed per the Schedule set forth in Section 11, those performed during Resurfacing Operations as set forth in Section 13, and those performed in response to Complaints as set forth in Section 14, the City may use alternative designs, such as raised crosswalks, provided such alternative designs result in substantially equivalent or greater accessibility and usability, as provided in the Accessibility Laws.

18. **Updated Transition Plan**

18.1. **Creation and Content of the Transition Plan**

DOT will create an Updated Transition Plan, incorporating the City's assessment of each pedestrian ramp's compliance with the Accessibility Laws, and which will identify corners that need pedestrian ramp installation or Upgrades as required by the Accessibility Laws, including the prioritization criteria or methodology of pedestrian ramp installation or Upgrades at Standard Corners and Complex Corners as described in Section 9.5. Additionally, the Updated Transition Plan will identify the schedule and targets for the installation and Upgrades of pedestrian ramps as set forth in Section 11.4, and the program for ongoing pedestrian ramp maintenance as set forth in Sections 12, 13, and 14. The Updated Transition Plan will be shared with the public via the Website.

18.2. **Public Hearings and Public Input**

The City's DOT will hold at least one (1) public hearing before issuance of the Updated Transition Plan to seek input from community members. Additionally, the City will enable people who wish to provide input, but who cannot attend public hearings, to submit input through the City's 3-1-1 telephonic system and the Website, and will provide instructions for how to do so through its Website.

18.3. **Class Counsel and Monitor Input**

At least three months before completing the Updated Transition Plan, the City will provide a copy for review and comment to Class Counsel and the Monitor. Class Counsel and the Monitor may provide feedback no later than thirty (30) days from the day of receipt. The City will give

good faith consideration to all comments provided by Class Counsel and the Monitor before finalizing the Updated Transition Plan.

18.4. Completion Date of Updated Transition Plan

The City's DOT will complete the Updated Transition Plan no later than December 15, 2020. In the event the preparation of the Updated Transition Plan is delayed due to the process of obtaining input from community members, Plaintiffs, the Plaintiff Class, Class Counsel, or Monitor, the City's DOT will have a reasonable extension of the deadline to complete the Updated Transition Plan, consistent with the length of the delay. Once completed, the Updated Transition Plan will remain publicly available and posted on the Website.

19. Associate Deputy Commissioner

19.1. The General Duties of the Associate Deputy Commissioner

The DOT Associate Deputy Commissioner will oversee the Pedestrian Ramp Program Unit within the DOT's Division of Sidewalk and Inspection Management. Throughout the Term, the Associate Deputy Commissioner (or his or her successors) will (i) implement tasks relating to the Surveys as set forth in Section 9; (ii) develop and finalize the Updated Transition Plan as set forth in Section 18; (iii) execute schedules and completion dates as set forth in Section 11; (iv) develop and implement the City's ongoing pedestrian ramp maintenance program as set forth in Section 12, its Resurfacing program as detailed in Section 13, and its Complaint program as detailed in Section 14; (v) develop and implement the City's policies and procedures regarding third party construction as set forth in Section 15; and (vi) maintain a reporting system tracking all such work. The job title, requirements and duties of the position are subject to change in order to address the

needs of DOT or any successor agency, but any such change must be consistent with the objectives, obligations and purpose of this Settlement Agreement.

19.2. Coordination Between Departments

The Associate Deputy Commissioner or his/her designee will coordinate between DOT and Related Entities regarding installation or Upgrades of pedestrian ramps and other duties described in Section 19.1 in order to ensure the enforcement of consistent and effective practices and policies throughout the City.

19.3. Cooperation with the Monitor

The Associate Deputy Commissioner or his/her designee will ensure that the Monitor has access to all relevant non-privileged documents, information, and personnel, consistent with the parameters set forth in Section 22.

20. Training

The City will develop and provide training for existing staff and new hires involved in ensuring that the City's pedestrian ramp system complies with the Accessibility Laws. The training will discuss applicable current and pending federal and state requirements regarding the accessibility of pedestrian ramps. The City will include this training in its new hire orientation for employees whose tasks are expected to include ensuring system-wide accessibility of the City's pedestrian ramps.

21. Reporting of Progress

21.1. The City will maintain a detailed record of all pedestrian ramp installations or Upgrades requested, planned, scheduled, performed, and completed under this Settlement Agreement.

21.2. On a semi-annual basis throughout the Term, the City will provide Class Counsel with non-privileged documents and data concerning installations and Upgrades of pedestrian ramps pursuant to Sections 11 through 14 of this Settlement Agreement, including, but not limited to, information related to temporary and permanent repairs in connection with Complaints, as referenced in Section 14 of this Settlement Agreement.

21.3. On a semi-annual basis throughout the Term, the City will post on the Website a report of progress under the Settlement Agreement. On an annual basis throughout the Term, the City will post on the Website an end-of-year report. The information to be contained in the reports required under this Section is contained in Exhibit D.

22. **Monitoring Compliance**

22.1. **Structure for Monitoring Compliance**

To ensure full, effective and adequate implementation of the terms of this Settlement Agreement, the Court will appoint a Monitor to oversee, but not manage, the City's compliance with this Settlement Agreement by assessing (i) the City's compliance with Survey requirements described in Section 9; (ii) the methodology for classification of Complex Corners; (iii) the classification of specific Complex Corners through a sampling of up to five percent (5%) of the newly classified corners within one six-month period; (iv) the schedule and completion dates for the installation and Upgrade of pedestrian ramps as detailed in Section 11; (v) the pedestrian ramp ongoing maintenance program as detailed in Section 12; (vi) the pedestrian ramp resurfacing program as detailed in Section 13; and (vii) the pedestrian ramp Complaint program as detailed in Section 14. The Monitor shall have timely access to all non-privileged relevant information about

the City's efforts and progress toward completion and compliance with each of the terms of this Settlement Agreement, as further specified in Section 22.3.

22.2. Selection, Qualifications, and Term of the Monitor

22.2.1. The Monitor will be a New York State licensed Professional Civil Engineer selected jointly by the Parties or, if the Parties cannot agree on a Monitor, by the Court. Plaintiffs maintain that a qualified candidate is one who has experience evaluating or assisting public entities regarding accessibility and who is knowledgeable of current federal accessibility standards. Defendants maintain that a qualified candidate is one who possesses a minimum of ten (10) years of experience working on real estate development projects within New York City or infrastructure projects involving public utilities with facilities located under or above ground in New York City.

22.2.2. The Parties will jointly select a person or firm to fill the Monitor position no later than 45 days after Final Approval of the Settlement Agreement by the District Court. If the Parties cannot agree on the selection of the Monitor, then within 30 days thereafter, and upon notice to the other Party, the Plaintiff Class and the Defendants may each submit to the District Court the names and qualifications of up to three (3) proposed Monitors. Both Parties shall have three weeks to submit comments to the Court concerning any or all of the proposed candidates, and the Court will thereafter select a Monitor from the names provided.

22.2.3. The Monitor position will remain in place for the later of: (i) fifteen (15) years from the date of appointment; or (ii) until the City completes all installations of pedestrian ramps at Standard Corners and Complex Corners that were identified in the Initial Survey as detailed in Sections 9.1 through 9.3.1 as well as all Upgrades of pedestrian ramps at Standard Corners that were identified in the Initial Survey as detailed in Section 9.1 through 9.3.1, as required by this

Settlement Agreement. The Monitor appointment may be extended thereafter if the City is not in substantial compliance with any material part of the Settlement Agreement. The person appointed as Monitor will assume his or her duties as soon as the District Court approves the selection (or on another date set by the Court). Should any person appointed as Monitor resign from his/her appointment before the expiration of the Monitor period, a successor Monitor will be selected and appointed using the procedure set forth in Section 22.2.2.

22.3. Access to Information

The Monitor shall have access, through the Associate Deputy Commissioner and/or his or her designee, to relevant non-privileged information and documents as requested and necessary to assess compliance with the Settlement Agreement consistent with the parameters set forth in Section 22.1. If the Monitor is denied access to requested information, he or she shall inform Class Counsel, who may dispute the denial through the Conflict Resolution Process.

22.4. Monitor Reviews

22.4.1. Annual Reviews

The Monitor will conduct semi-annual reviews for the first five (5) years of his or her term, and annual reviews thereafter of the City's compliance with the Settlement Agreement's requirements, including those relating to the Surveys described in Section 9, installation or Upgrades of pedestrian ramps described in Sections 11 and 13, the maintenance of pedestrian ramps described in Section 12, and the pedestrian ramp Complaint program described in Section 14. Within 30 days of the annual review, the Monitor will report the assessment of compliance to Defendants' Counsel, Class Counsel and the Court.

22.5 Notice of Deficiency

If the Monitor believes that the City is not in compliance with any material term of the Settlement Agreement within the parameters set forth in Section 22.1, or anticipates that the City will fail to comply with any such term, the Monitor will promptly provide written notice of deficiency or anticipated deficiency ("Deficiency Notice") to Defendants' Counsel and to Class Counsel. The Deficiency Notice will identify with reasonable particularity ways in which the City's compliance is deficient. In his or her reasonable discretion, the Monitor may also in the Deficiency Notice recommend a corrective action or other plan for the City to achieve compliance. Class Counsel and Defendants' Counsel will attempt to reach a resolution of any Conflict regarding a noticed deficiency event, in accordance with the Conflict Resolution Process set forth in Section 23 of this Settlement Agreement.

22.6. Monitor's Fees and Expenses in Connection with Implementation

All reasonable fees and expenses incurred by the Monitor in connection with implementation of the Settlement Agreement shall be paid by the City, in accordance with an Order of this Court appointing a Monitor. Upon reasonable notice, the Monitor will provide to the City an accounting of all his or her fees and expenses incurred in connection with implementation of the Settlement Agreement. Any conflict as to the reasonableness of such fees and expenses will be submitted to the Court, after a good faith attempt to resolve the conflict without Court involvement.

22.7. Class Counsel's Fees and Expenses in Connection with Implementation

All reasonable fees and expenses incurred by Class Counsel in connection with implementation of the Settlement Agreement shall be paid by the City. Upon reasonable notice, Class Counsel will provide to the City an accounting of all his or her fees and expenses incurred

in connection with implementation of the Settlement Agreement. Any conflict as to the reasonableness of such fees and expenses will be submitted to the Court, after a good faith attempt to resolve the conflict without Court involvement. Nothing in this Section shall be construed as in any way limiting the City's right to oppose requests for fees, in whole or in part.

23. Conflict Resolution Process and Force Majeure

All Conflicts regarding the implementation, interpretation, monitoring, compliance and modification of the Settlement Agreement shall be resolved as follows:

23.1. Notice of Deficiency

Upon receiving a Deficiency Notice from the Monitor, Class Counsel will promptly conduct an assessment to determine whether the City has failed to comply with any of the Settlement Agreement's terms. If Class Counsel believes that the City is violating, or failing to perform, those terms, it will notify the City in writing and describe the alleged violation or failure to perform no later than 30 days from the receipt of the Deficiency Notice from the Monitor. The City shall provide a written response within thirty (30) business days of receipt of Class Counsel's notice. The City shall have a period of sixty (60) days from the receipt of Class Counsel's notice to cure the alleged violation or failure to perform or other deficiency.

23.2. Notice of Conflict by the Parties

During and after the Monitor's term, Class Counsel or Defendants' Counsel may, on its own initiative, initiate a written notice to counsel for the other Party, alleging a Conflict and describing the basis for the Conflict ("Notice of Conflict"). The receiving Party shall provide a written response within thirty (30) business days of receipt of the Notice of Conflict. The receiving Party shall have a period of sixty (60) days from the receipt of the Notice of Conflict to cure the

alleged violation or alleged failure to perform or other deficiency, or otherwise respond to the Notice of Conflict.

23.3. Meet and Confer Obligation

If a response to the Notice of Deficiency and/or to a Notice of Conflict described in Section 23 fails to resolve the alleged deficiency and/or other basis for the Conflict, respectively, Class Counsel and City Counsel shall meet and confer, in person or by telephone, and attempt to resolve the Notice of Deficiency and/or Notice of Conflict for a period of at least thirty (30) days from receipt of the response. The Parties may jointly waive the meet-and-confer obligation if they believe it would not be productive to resolving the Conflict in question.

23.4. Resolution by the District Court

If the Parties are unable to resolve a Notice of Deficiency or Conflict through the processes described in the Settlement Agreement, either Party may make a motion to the District Court to enforce or seek relief from a provision of the Settlement Agreement, in order to resolve the Conflict. The Court may award to Class Counsel their reasonable attorneys' fees and costs incurred in the event that the District Court determines that Plaintiffs are the prevailing parties on such motion in accordance with prevailing party standards under the ADA. Nothing in this section shall be construed as in any way limiting the City's right to oppose requests for fees, in whole or in part.

23.5. Accounting of Attorneys' Fees and Costs

Class Counsel will provide to the City an accounting of all attorneys' fees and costs sought to be recovered under this Section 23. Any Conflict as to the reasonableness or necessity of such fees and costs will be resolved using the Conflict resolution procedure in this Section 23.

23.6. Force Majeure

If the City claims that it is impossible to meet a deadline set forth in this Settlement Agreement, due to causes beyond the control of the City, the City shall notify the Monitor and Class Counsel, providing detailed evidence for a proposed deadline extension (“Force Majeure Notice”). In response, within thirty (30) days of receipt of the Force Majeure, the Monitor may transmit a Notice of Deficiency to Defendants, and /or Class Counsel may transmit a Notice of Conflict to Defendants, which will be addressed in accordance with the Conflict Resolution Procedures of this Section 23.

24. Attorneys’ Fees and Costs through Final Approval

With respect to attorneys’ fees and costs (i) that Plaintiff EPVA and the Plaintiff Class incurred in the above-captioned actions from April 1, 2015 to Final Approval of this Settlement Agreement (excluding fees and costs arising as a result of monitoring, reviews, implementation and/or the Conflict resolution process referenced in Section 23, and payment thereof by the City); (ii) that Plaintiffs CIDNY *et al.* incurred in the above-captioned actions from March 1, 2014 to Final Approval of this Settlement Agreement (excluding fees and costs arising as a result of monitoring, reviews, implementation and/or the Conflict resolution process referenced in Section 23, and payment thereof by the City); and (iii) that Objectors incurred in the above-captioned actions from April 1, 2016 to Final Approval of this Settlement Agreement, the Parties agree to the following provisions as a complete resolution of the issue.

24.1. Plaintiffs Are Prevailing Parties

The City agrees that, conditioned upon the District Court granting Final Approval of this Settlement Agreement, and the Judgment becoming Final, Plaintiffs are prevailing parties in the above-captioned actions for purposes of awarding reasonable attorneys’ fees, expenses, and costs.

24.2. Motion for Attorneys' Fees, Expenses, and Costs

If the Parties are unable to reach agreement as to payment of reasonable attorneys' fees, expenses, and costs, Plaintiffs will move or apply for approval by the District Court of the reasonable attorneys' fees, expenses, and costs incurred by Plaintiffs and Objectors pursuant to Rule 23(h) of the Federal Rules of Civil Procedure. The City reserves the right to oppose the amount of reasonable attorneys' fees, expenses, and costs to be awarded to Plaintiffs for work performed by Plaintiffs' and Objectors' Counsel up to Final Approval of the Settlement Agreement.

24.3. Payment of Attorneys' Fees, Expenses, and Costs

24.3.1. The City will pay the amounts of fees, expenses and costs awarded by the District Court after: (i) the District Court has issued a written order granting Final Approval of this Settlement Agreement; (ii) the Judgment has become Final; and (iii) the District Court has approved an award of attorneys' fees, expenses, and costs in response to Plaintiffs' motion or application for reasonable attorneys' fees, expenses, and costs. All Parties reserve the right to appeal the District Court's order on attorneys' fees, expenses, and costs.

24.3.2. The City's payment of the amounts awarded by the District Court for reasonable attorneys' fees, expenses, and costs is in full and complete satisfaction of any and all claims for attorneys' fees, expenses, and costs incurred by Plaintiffs' Counsel in the EPVA action and the CIDNY action, and Plaintiffs (on behalf of themselves and the Plaintiff Class) and Class Counsel expressly waive any right to recover any additional attorneys' fees, expenses, and costs of any kind in connection with the EPVA Action, the CIDNY Action or this Settlement Agreement, except for attorneys' fees, expenses, and costs recoverable by Plaintiffs and Class Counsel as expressly

provided in this Settlement Agreement in connection with monitoring and implementation under Section 22 or the Conflict resolution process in Section 23.

25. Enforcement

Nothing in this Settlement Agreement, express or implied, is intended to or will confer upon any person or entity not a party to this Settlement Agreement any right, benefit or remedy of any nature whatsoever under or by reason of this Settlement Agreement. Only the Class Representatives and Class Counsel may seek to enforce the terms of this Settlement Agreement through the Conflict resolution process provided for in Section 23, up to and including a motion before the District Court. To the extent individual members of the Plaintiff Class have complaints regarding the City's compliance with the terms of this Settlement Agreement, they must bring them to the attention of Class Counsel directly. Class Counsel will have the sole and complete discretion to seek to enforce any right, benefit or remedy under or by reason of this Settlement Agreement.

26. Entire Agreement

This Settlement Agreement, and the documents attached to or expressly referred to in this Settlement Agreement, constitute the final and complete written expression and exclusive statement of all the agreements, conditions, promises, representations, and covenants between the Parties with respect to the matters referenced in this Settlement Agreement, and supersede all prior or contemporaneous negotiations, promises, covenants, agreements or representations of any nature whatsoever with respect to such matters, except as otherwise provided in Section 6. Each of the Parties understands and agrees that in the event of any subsequent litigation, controversy, or Conflict concerning any of the terms, conditions or provisions of this Settlement Agreement, no

Party will be permitted to offer or introduce any oral evidence concerning any oral promises or oral agreements between the Parties relating to the subject matters of this Settlement Agreement not included or referred to in this Settlement Agreement and not reflected in a writing. This Settlement Agreement cannot be amended, modified or supplemented except by a written document signed by all Parties and approved by the District Court.

27. No Other Representations

Each of the Parties represents, warrants and agrees that, in executing this Settlement Agreement, he, she or it has relied solely on the statements expressly set forth in this Settlement Agreement, and has placed no reliance whatsoever on any statement, representation, or promise of any other Party, or any other person or entity, not expressly set forth in this Settlement Agreement, or upon the failure of the other Party, or any other person or entity, to make any statement, representation or disclosure of anything whatsoever. The Parties have included this provision: (i) to preclude any claim that any Party was in any way fraudulently induced to execute this Settlement Agreement; and (ii) to preclude the introduction of parole evidence to vary, interpret, supplement, or contradict the terms of this Settlement Agreement.

28. Notice

Any notice to be provided between or among the Parties in accordance with the terms of this Settlement Agreement will be given by electronic mail or first-class U.S. mail to the following addresses:

To Plaintiffs:

**Robert B. Stulberg, Esq.
Broach & Stulberg, LLP
One Penn Plaza, Suite 2601
New York, NY 10119**

rstulberg@brostul.com

Michelle Caiola, Esq.
Disability Rights Advocates
655 Third Avenue, 14th Floor
New York, NY 10017
mcaiola@dralegal.org

To the City:

Sherrill Kurland, Esq.
New York City Law Department
100 Church Street, Room 5-167
New York, New York 10007
skurland@law.nyc.gov

and

Michelle Goldberg-Cahn, Esq.
New York City Law Department
100 Church Street, Room 5-165
New York, New York 10007
migoldbe@law.nyc.gov

Any Party may subsequently designate other individuals or entities for receipt of notice, provided that 10 days' written notice of such designation is provided to all other parties in accordance with the terms of this Section 28.

29. **Drafting of this Agreement**

The Parties acknowledge and agree that this Settlement Agreement will for all purposes be deemed jointly drafted and fully negotiated, and as a result, will not in any manner be interpreted in favor of, or as against, any particular Party by reason of being the drafting party. Any rule of law, legal decision or principle of common law that would require interpretation of any ambiguities or uncertainties in this Settlement Agreement against one of the Parties, will have no application and is hereby expressly waived.

30. **Voluntary Agreement**

Each of the Parties represents, warrants and agrees that he, she or it has read this Settlement Agreement carefully, and knows and understands its contents, that this Settlement Agreement has been voluntarily entered into, that he, she or it has received legal advice from his, her or its attorneys with respect to the advisability of executing this Settlement Agreement, and that any and all investigation and analysis of the facts deemed necessary or desirable have been conducted prior to the execution of this Settlement Agreement.

31. **Binding Effect**

All of the terms and provisions of this Settlement Agreement will be binding upon and will inure to the benefit of the Parties.

32. **Authority**

Each of the Parties represents, warrants and agrees that he, she or it has the full right and authority to enter into this Settlement Agreement, and that the person executing this Settlement Agreement has the full right and authority to commit and bind such Party.

33. **Execution by Facsimile and in Counterparts**

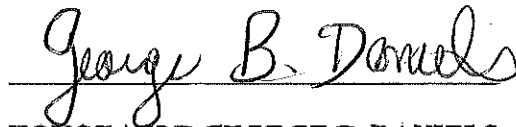
This Settlement Agreement may be executed by the Parties in separate counterparts, and all such counterparts taken together will be deemed to constitute one and the same Settlement Agreement.

34. Facsimile and pdf signatures shall be deemed original signatures for all purposes under this Settlement Agreement.

IN WITNESS WHEREOF, the Parties hereto have approved and executed this Settlement Agreement on the dates set forth opposite their respective signatures.

Executed By Counsel, The Parties and The Objectors As Set Forth In The Attached Signature Pages.

SO ORDERED



**HONORABLE GEORGE B. DANIELS
UNITED STATES DISTRICT JUDGE**

Dated: MAR 19 2019

**SIGNATURE PAGES TO SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS
IN EASTERN PARALYZED VETERANS ASSOCIATION n/k/a UNITED SPINAL
ASSOCIATION v. THE CITY OF NEW YORK, 94 CV 0435 (GBD) (KNF), and CENTER
FOR INDEPENDENCE OF THE DISABLED, NEW YORK etc. et al. v. THE CITY OF
NEW YORK et al., 14 CV 5884 (GBD) (KNF)**

ACCEPTED AND AGREED:

ZACHARY W. CARTER
Corporation Counsel of the City of New York
Attorney for Defendant
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New York, New York 10007
Fax: (212) 356-2019

BY: Sherrill Kurland
SHERRILL KURLAND, ESQ.
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Dated: March 12, 2019

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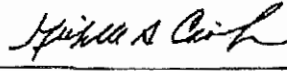
BROACH & STULBERG, LLP
Counsel to the Plaintiff Class; Counsel to Plaintiff and Plaintiff Class Representative Eastern
Paralyzed Veterans Association n/k/a United Spinal Association
One Penn Plaza, Suite 2601
New York, New York 10119

BY: Robert B. Stulberg
ROBERT B. STULBERG, ESQ.
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Tel: (212) 268-1000 Fax: (212) 947-6010

Dated: March 5, 2019

DISABILITY RIGHTS ADVOCATES

Co-Counsel to the Plaintiff Class; Co-Counsel to Plaintiff and Co-Plaintiff Class Representative
Center for Independence of the Disabled, New York; Counsel to Individual Plaintiffs
Myrna Driffin and Dustin Jones; Co-Counsel to Objectors
655 Third Avenue, 14th Floor
New York, New York 10017

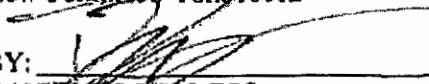
BY: 
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Dated: 3/6/2019

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SHEPPARD MULLIN

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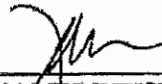
Dated: 3/7/2019

CRAVATH, SWAIN & MOORE LLP

Co-Counsel to Objectors
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New York, New York 10019

BY: 
DARIN P. MCATEE, ESQ.
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Dated: 3/6/2019



Date: 3/6/19

JAMES WEISMAN, President & CEO

**ON BEHALF OF EASTERN PARALYZED VETERANS ASSOCIATION m/a UNITED
SPINAL ASSOCIATION, as PLAINTIFF and PLAINTIFF CLASS
REPRESENTATIVE**

120-34 Queens Blvd. #320
Kew Gardens, NY 11415
718-803-3782 ext. 7208 Fax 718-803-0414
jweisman@unitedspinal.org

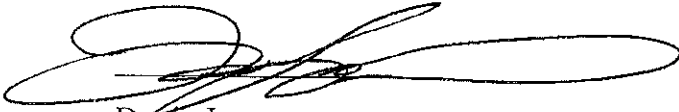


Date: 3-7-19

SUSAN DOOHA, Executive Director

**ON BEHALF OF CENTER FOR INDEPENDENCE OF THE DISABLED, NEW YORK, as
PLAINTIFF, CO-PLAINTIFF CLASS REPRESENTATIVE, and OBJECTING
ORGANIZATION**

841 Broadway, Suite 301
New York, NY 10003
sdooha@cidny.org

A handwritten signature in black ink, appearing to read 'Dustin Jones', with a large, stylized flourish extending to the right.

Dustin Jones

INDIVIDUAL PLAINTIFF

534 Flushing Avenue

Apartment 6C

Brooklyn, New York 11206



Myrna Driffin

INDIVIDUAL PLAINTIFF

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Box 91

New York, NY 10011

DocuSign Envelope ID: D3504A6E-8CDD-48FF-8AE3-2690A370CE13

DocuSigned by:
Kim Charlson 3/4/2019
9839A1C48F03413
Kim Charlson

President

ON BEHALF OF THE OBJECTING ORGANIZATION:

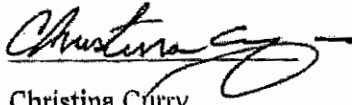
American Council of the Blind

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Alexandria, VA 22201

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Christina Curry

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Brett Eisenberg

Brett Eisenberg

Executive Director

ON BEHALF OF THE OBJECTING ORGANIZATION:

Bronx Independent Living Services

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A handwritten signature in black ink, appearing to read 'Dustin Jones', with a large, stylized flourish extending to the right.

Dustin Jones

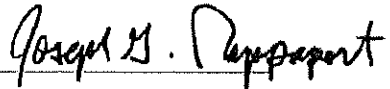
Principal & Founder

ON BEHALF OF THE OBJECTING ORGANIZATION:

United for Equal Access, Inc.

735 Garden Street, Apt. 6U

Bronx, NY 10457



Joseph G. Rappaport

Executive Director

ON BEHALF OF THE OBJECTING ORGANIZATION:

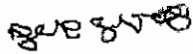
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Lori Scharff

President

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Sean Ryan

President

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