

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

SUSAN GOODLAXSON, JANICE JACKSON,
KEYONNA MAYO, and THE IMAGE
CENTER, on behalf of themselves and all others
similarly situated,

Plaintiffs,

vs.

MAYOR AND CITY COUNCIL OF
BALTIMORE,

Defendants.

Civil Action No.: 1:21-cv-01454-JKB

CLASS ACTION

PARTIAL CONSENT DECREE

This Partial Consent Decree and Release of Claims (the “Partial Consent Decree”) is made and entered into by and between Plaintiffs Susan Goodlaxson, Janice Jackson, Keyonna Mayo, and the IMAGE Center, on behalf of themselves and a proposed Settlement Class (“Plaintiffs”) on the one hand, and the Mayor & City Council of Baltimore (the “City”) on the other hand. The City and Plaintiffs shall be referred to in this Partial Consent Decree individually as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, Named Plaintiff Susan Goodlaxson lives in Baltimore, has a mobility disability that substantially limits her ability to walk, and uses a wheelchair for mobility due to her disability. Plaintiff Goodlaxson is a “qualified person with a disability” and a person with a “disability” within the meaning of all applicable statutes and regulations, including 42 U.S.C. § 12131(2), 28 C.F.R. § 35.108, and 29 U.S.C. § 705(20)(B).

WHEREAS, Named Plaintiff Janice Jackson lives in Baltimore, has a mobility disability that substantially limits her ability to walk, and uses a wheelchair for mobility due to her disability. Plaintiff Jackson is a “qualified person with a disability” and a person with a “disability” within the meaning of all applicable statutes and regulations, including 42 U.S.C. § 12131(2), 28 C.F.R. § 35.108, and 29 U.S.C. § 705(20)(B).

WHEREAS, Named Plaintiff Keyonna Mayo lives in Baltimore, has a mobility disability that substantially limits her ability to walk, and uses a wheelchair for mobility due to her disability. Plaintiff Mayo is a “qualified person with a disability” and a person with a “disability” within the meaning of all applicable statutes and regulations, including 42 U.S.C. § 12131(2), 28 C.F.R. § 35.108, and 29 U.S.C. § 705(20)(B).

WHEREAS, Named Plaintiff The IMAGE Center of Maryland is an independent living center located in Baltimore County that advocates and promotes independent living for all persons with disabilities living in Central Maryland. The IMAGE Center is a non-profit, consumer-controlled organization.

WHEREAS, on October 15, 2020, Plaintiffs sent the City a letter asserting that Plaintiffs and similarly situated people with mobility disabilities have been denied access to the City's pedestrian right of way because of a lack of accessible Pedestrian Walkways and curb ramps throughout the City (the "Dispute").

WHEREAS, on June 10, 2021, Plaintiffs filed their class action complaint in the United States District Court, District of Maryland, Case No. 1:21-cv-01454-JKB, alleging violations of the Americans with Disabilities Act ("ADA") and Section 504 of the Rehabilitation Act of 1973 ("Section 504"). The City filed its Answer to Plaintiffs' Complaint on August 11, 2021.

WHEREAS, since the filing of Plaintiffs' Complaint, the Parties have engaged in extensive good faith settlement discussions, including with the assistance of Magistrate Judge Susan Gauvey, and shared relevant information regarding the Dispute. The Parties have conducted a thorough examination and investigation of the facts and law relating to the matters set forth in this Partial Consent Decree and have engaged in vigorous arms-length negotiations.

WHEREAS, the City denies that it has violated or failed to comply with the ADA or Section 504 relating to accessibility for persons with Mobility Disabilities to the City's pedestrian right of way. Neither this Partial Consent Decree nor any of its terms or provisions, nor any of the negotiation connected with it, shall be construed as an admission or concession by the City of any such violation or failure to comply with any applicable law. This Partial Consent Decree and its terms and provisions shall not be offered or received as evidence for any purpose whatsoever against the City in any action or proceeding, other than a proceeding to enforce the terms of this Partial Consent Decree.

WHEREAS, based on the extensive analysis of facts and the applicable law and taking into account the risks and uncertainties associated with litigation and the delays that may result from trial and appeals, as well as the fair, cost-effective and assured method of resolving the potential claims of the Settlement Class represented by this Partial Consent Decree, Class Counsel has concluded that this Partial Consent Decree provides substantial benefits to the Settlement Class and is fair, reasonable, and adequate and is in the best interests of Plaintiffs and the Settlement Class.

WHEREAS, the City has similarly concluded that this Partial Consent Decree is desirable to avoid the time, risk, and expense of defending protracted litigation, to fulfill its long-standing commitment to promoting and enhancing the rights of those with disabilities, to ensure compliance with laws protecting the rights of individuals with Mobility Disabilities, and to resolve potential claims of Plaintiffs and the Settlement Class.

WHEREAS, the Parties recognize, and the Court by entering this Partial Consent Decree finds, that this Partial Consent Decree has been negotiated by the Parties in good faith and will

avoid costly litigation between the Parties on the claims addressed in the Partial Consent Decree, and that this Partial Consent Decree is fair, adequate, and reasonable and in the public interest.

WHEREAS, this Partial Consent Decree will be submitted to the United States District Court for the District of Maryland for preliminary and final approval under Rule 23 of the Federal Rules of Civil Procedure, as described in Section XIII., below.

AGREEMENT

NOW, THEREFORE, before taking testimony and without adjudication or admission of any issue of fact or law and with the consent of the Parties, and for good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, IT IS HEREBY ADJUDGED, ORDERED and DECREED as follows:

I. JURISDICTION

A. This Court has jurisdiction over the subject matter of the claims of Plaintiffs and putative class in this action pursuant to 42 U.S.C. Sections 1331 and 1343. The Court has personal jurisdiction over the Parties to this Partial Consent Decree.

B. The Court shall retain jurisdiction over this Partial Consent Decree throughout its Term for the purposes of resolving disputes arising under this Decree, entering orders modifying this Decree, or effectuating or enforcing compliance with the terms of this Decree. Nothing in this Section shall bar either Party from moving for an extension of the Term to enforce any obligations herein.

II. DEFINITIONS

For purposes of this Partial Consent Decree, the following terms have the following definitions:

A. “Accessible” with respect to the installation or modification of Curb Ramps and remediation of Pedestrian Walkways required by this Partial Consent Decree, means compliant with the applicable provisions of Title II of the Americans with Disabilities Act, 42 U.S.C. § 12101, *et seq.*, codified at 28 C.F.R. § 35.151 and 36 C.F.R. part 1191, and Appendices B and D (hereafter “2010 ADA Standards”), or any ADA standards adopted by the U.S. Department of Justice and U.S. Department of Transportation for application in the pedestrian right-of-way.

B. “Alter,” “Altered,” or “Alteration”:

1. When used in reference to work performed as part of street, roadway, or highway resurfacing, the terms Alter, Altered or Alteration refer to a facility that has undergone an alteration treatment as described in the 2013 Department of Justice/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>; <https://www.ada.gov/doj-fhwa-ta-supplement-2015.html>; and <https://www.ada.gov/doj-fhwa-ta-glossary.htm>, a true and correct copy of which is attached hereto as Exhibit A.

2. When used in reference to work performed on a Pedestrian Walkway or Existing Curb Ramp, the terms Alter, Altered or Alteration refer to any change to an Existing Pedestrian Facility that affects or could affect its usability.

C. “Best Efforts” means taking in good faith all reasonable steps to achieve an objective, and carrying the process to its logical conclusion, in light of the goal of ensuring access to Baltimore residents and visitors who have Mobility Disabilities.

D. “Capital Costs” means the direct costs that are expended on construction, design, inspection, and direct supervision of specific physical improvements to the City’s Pedestrian Walkways and Curb Ramps, and does not include operational costs that support the day-to-day activities of City departments, services or activities.

E. “Class Counsel” or “Plaintiffs’ Counsel” means collectively Disability Rights Advocates (DRA), Disability Rights Maryland (DRM), and the law firms Goldstein, Borgen, Dardarian & Ho and Fox & Robertson.

F. “Compliant” in reference to a Curb Ramp or Pedestrian Walkway designed, built or altered between March 15, 2012 and the Effective Date, means built in compliance with the 2010 ADA Standards. For a Curb Ramp or Pedestrian Walkway built or altered prior to March 15, 2012, “Compliant” means a Curb Ramp or Pedestrian Walkway that is compliant with either the 2010 ADA Standards or the 1991 Americans with Disabilities Act Standards for Accessible Design (“ADAAG”), codified at 28 C.F.R., Part 36, including Appendix A.

G. “Curb Ramp” shall have the same meaning found in 36 C.F.R. part 1191, Appendix A, § 106.5, *i.e.*, “a short ramp cutting through a curb or built up to it.”

H. “Effective Date” means the date upon which the Partial Consent Decree becomes a final judgment of the District Court presiding over this Action. In the event that any non-frivolous objection to the Settlement is filed, the Partial Consent Decree becomes effective when the time to appeal the final approval order expires without the filing of an appeal; or, if an appeal is filed, when the appeal is finally adjudicated or resolved in favor of affirming the approval of the Partial Consent Decree.

I. “Existing Curb Ramp,” or “Existing Pedestrian Walkway” for purposes of this Partial Consent Decree, means any Curb Ramp or Pedestrian Walkway constructed prior to the Effective Date.

J. “High Priority Curb Ramp Barriers” means any one or more of the following Curb Ramp conditions: (1) missing Curb Ramps; (2) Curb Ramps with less than 32 inches of clear width; (3) Curb Ramps with running slopes exceeding 10%; (4) Curb Ramps with cross slopes exceeding 4%; (5) Curb Ramps with non-flush transitions; (6) Curb Ramps with counter slopes exceeding 10%; (7) Curb Ramps with side flare slopes exceeding 12.5% where top landings are provided; (8) Curb Ramps with side flare slopes exceeding 10% where top landings are not provided; (9) Curb Ramps with gaps or vertical edges greater than 1 inch; (10) parallel Curb Ramps with bottom landings that have slopes exceeding 4%; (11) parallel Curb Ramps with top landings that have slopes exceeding 4%; (12) parallel Curb Ramps with top landings

that have running slopes exceeding 10%; or (13) Curb Ramps that project into vehicular traffic lanes Any Curb Ramp with a combination of conditions is a highest priority barrier for removal.

K. “High Priority Pedestrian Walkway Barriers” means any one or more of the following conditions: (1) cross-slopes exceeding 4%; (2) broken and/or uneven pavement in the Pedestrian Walkway resulting in gaps deeper and/or wider than 1 inch; (3) vertical or horizontal displacement or upheaval of the sidewalk or crosswalk surface resulting in changes in level greater than 1 inch (including sidewalk flags, curbs, and utility covers); (4) protruding and overhanging objects and/or obstructions that narrow the Pedestrian Walkway to less than 4 feet of accessible width exclusive of the width of the curb; and (5) sections of the Pedestrian Walkway that are narrower than 4 feet of accessible width exclusive of the width of the curb. Any Pedestrian Walkway segment with a combination of these conditions is the highest priority for removal.

L. “Install” or “Installation” means the construction of a new Accessible Curb Ramp or sidewalk within City’s pedestrian right-of-way at a location where there was no Curb Ramp or sidewalk.

M. “Mobility Disability” means any impairment or medical condition, as defined by the ADA, that limits a person’s ability to walk, ambulate, maneuver around objects, or 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 their navigation along a Pedestrian Walkway or may be semi-ambulatory.

N. “New Construction and Alterations” means all work required to be performed pursuant to 28 C.F.R. § 35.151 in conjunction with newly constructed or Altered intersections, streets roads, highways, and Pedestrian Facilities in the City during the Term of this Partial Consent Decree.

O. “Obstructions” means any fixed or moveable object or vegetation that narrows a Pedestrian Walkway to less than four feet of passable width.

P. “Pedestrian Facility” or “Pedestrian Facilities” means any portion of an intersection or street that is provided for pedestrian travel, and any Pedestrian Walkway, crosswalk, curb, Curb Ramp, walkway, pedestrian right of way, pedestrian undercrossing, pedestrian overcrossing, or other pedestrian pathway or walk of any kind, that is, in whole or in part, owned, controlled, or maintained by or otherwise within the responsibility of the City of Baltimore.

Q. “Pedestrian Walkway” means any portion of a sidewalk or other prepared exterior surface provided for pedestrian travel in the public right of way that is, in whole or in part, owned, controlled, or maintained by or otherwise within the responsibility of the City of Baltimore.

R. “Program Access Improvements” means all work performed by or on behalf of the City to bring the City’s Existing Pedestrian Facilities into compliance with the Program Access requirements of the ADA and Section 504.

S. “Remediate” or “Remediation” means the correction of an Existing non-Compliant Curb Ramp or associated Curb Ramp landings to create an Accessible Curb Ramp, or the correction of an Existing non-Complaint Pedestrian Walkway to create an Accessible Pedestrian Walkway, as applicable.

T. “Settlement Class” means the class of individuals ultimately defined and certified by a Court in this matter, which shall consist of all persons (including residents of and/or visitors to the City of Baltimore) with any Mobility Disability, who, at any time prior to court judgment granting final approval to this Partial Consent Decree have been denied full and equal access to the City’s pedestrian right of way due to the lack of a Curb Ramp or a Pedestrian Walkway or Curb Ramp that was damaged, in need of repair, or otherwise in a condition not suitable or sufficient for use.

U. “Structural Impracticability” or “Structurally Impracticable” has the same definition as under 28 C.F.R. § 35.151, *i.e.*, when the unique characteristics of terrain prevent incorporation of Accessible Curb Ramps or Accessible Pedestrian Walkways into New Construction of Pedestrian Facilities.

V. “Technical Infeasibility” or “Technically Infeasible” means instances when an Accessible Curb Ramp or Accessible Pedestrian Walkway cannot be constructed during Alterations to Existing Curb Ramps or Existing Pedestrian Walkways because of physical or site constraints.

W. “Transition Plan” means a transition plan that complies with 28 C.F.R. § 35.150(d), 45 C.F.R. § 84.22(e), and 28 C.F.R. § 41.57(c).

X. “WCAG 2.1 Level AA” means version 2.1 Level AA of the Web Content Accessibility Guidelines published by the Web Accessibility Initiative (WAI) of the World Wide Web Consortium (W3C), available at www.w3c.org/TR/WCAG21/.

III. TERM OF THE PARTIAL CONSENT DECREE AND FUTURE NEGOTIATIONS

A. The Partial Consent Decree will be in effect as of its Effective Date and shall remain in effect for 4 years from that date, unless otherwise extended by a further written agreement of the Parties.

B. If Class Counsel dispute that the City has fulfilled all of its obligations under this Partial Consent Decree, the Partial Consent Decree shall remain in effect pending the conclusion of any dispute resolution proceedings or action to enforce the Partial Consent Decree.

C. On a date 12 months before the expiration of the Term of the Partial Consent Decree, the Parties shall commence meeting and conferring to develop a plan to further Install and/or Remediate Curb Ramps and Pedestrian Walkways throughout the City’s pedestrian right of way so that all Curb Ramps and Pedestrian Walkways that are owned or controlled by the City in whole or in part will be Accessible (“Future Negotiations”).

1. As part of this meet and confer process, the City will provide Plaintiffs with all information reasonably requested regarding the implementation of any of the City's obligations under this Partial Consent Decree.

2. If the Parties have not reached agreement on this issue within 120 days of commencing the meet and confer, or if there are any disputes about the exchange of information needed for this meet and confer process, the Parties shall notify the Court and request that the Court institute further proceedings, including either litigation, negotiations with the assistance of a magistrate judge, or both.

3. Any agreement that results from these Future Negotiations shall be set forth in a further proposed Consent Decree, shall comply with any applicable requirements under Federal Rule of Civil Procedure 23(b)(2), and shall be submitted to the United States District Court for the District of Maryland for approval.

IV. ADA COORDINATOR FOR PEDESTRIAN RIGHT OF WAY

A. Throughout the Term of the Agreement, the City will appoint an ADA Coordinator for the Department of Transportation to oversee ADA Compliance within the City's right-of-way and implementation of the Partial Consent Decree. In addition, throughout the Term of the Agreement, the City will appoint an ADA Coordinator for the Pedestrian Right of Way and maintain at least two engineers who have a background in civil engineering, accessible facilities, and knowledge of up-to-date ADA accessibility standards. The City shall have final authority in hiring the ADA Coordinators and engineers.

B. Any ADA Coordinator for the Department of Transportation should have the following minimum qualifications:

1. Experience in evaluating or assisting public entities in evaluating the accessibility of facilities under Title II of the ADA and Section 504;
2. Knowledge of current federal and state disability access standards; and
3. A minimum of two years of experience related to ADA-accessible facilities.

C. The ADA Coordinator for the Pedestrian Right of Way should have the following preferred qualifications:

1. A background in civil engineering, urban planning, or architecture;
2. Knowledge of current federal and state disability access standards; and
3. Experience in evaluating or assisting public entities in evaluating the accessibility of facilities under Title II of the ADA and Section 504.

V. PEDESTRIAN WALKWAY REMEDIATION AND CURB RAMP INSTALLATION AND REMEDIATION

A. Annual Commitment for Program Access Improvements to Existing Pedestrian Walkways and Crossings

1. The City agrees to spend the following amounts of money per fiscal year throughout the Term of this Partial Consent Decree (“Annual Commitment”) on the Capital Costs to Install Accessible Curb Ramps at Existing corners of the City’s pedestrian right of way and Remediate Non-Compliant Existing Curb Ramps and Pedestrian Walkways (hereinafter collectively referred to as “Install and Remediate Existing Curb Ramps and Pedestrian Walkways”). This Annual Commitment is in addition to any amounts that may be spent to fulfill the City’s New Construction and Alterations obligations set forth in Section V.E., below.

2. The Annual Commitment is the minimum amount the City will spend each year of the Partial Consent Decree to Install and Remediate Existing Curb Ramps and Pedestrian Walkways. Nothing herein limits the City from committing more than these amounts in any of these years if it secures further additional funding to apply to Installing and Remediating Existing Curb Ramps and Pedestrian Walkways.

3. The Annual Commitment is as follows:

FISCAL YEAR	ANNUAL COMMITMENT
July 1, 2024 to June 30, 2025	\$ 8 million
July 1, 2025 to June 30, 2026	\$12 million
July 1, 2026 to June 30, 2027	\$12 million
July 1, 2027 to June 30, 2028	\$12 million

4. In addition, if in any of the Fiscal Years listed below the City receives more from the state of Maryland in Highway User Revenue funding than the City anticipated when creating its Preliminary Budget for that Fiscal Year, the City will commit the first amount of that excess, unanticipated funding to the Installation and Remediation of Existing Curb Ramps and Pedestrian Walkways as follows: In Fiscal Year 2024-25, the first \$2 million, to bring the total Annual Commitment expenditure up to \$10 million; in Fiscal Year 2025-26, the first \$500,000, to bring the total Annual Commitment expenditure up to \$12.5 million; in Fiscal Year 2026-27, the first \$500,000, to bring the total Annual Commitment expenditure up to \$12.5 million; and in Fiscal Year 2027-28, the first \$3 million of that excess, unanticipated funding, to bring the total Annual Commitment expenditure up to \$15 million. These additional contingent amounts are set forth below.

FISCAL YEAR	ANNUAL COMMITMENT	ADDITIONAL CONTINGENT AMOUNT	TOTAL POTENTIAL ANNUAL COMMITMENT
July 1, 2024 to June 30, 2025	\$ 8 million	\$2 million	\$10 million
July 1, 2025 to June 30, 2026	\$12 million	\$500,000	\$12.5 million
July 1, 2026 to June 30, 2027	\$12 million	\$500,000	\$12.5 million
July 1, 2027 to June 30, 2028	\$12 million	\$3 million	\$15 million

5. If the City does not receive enough excess Highway User Funding in any of the Fiscal Years set forth above to satisfy the entire annual contingent amount, the City will remain in compliance with this provision of the Partial Consent Decree as long as the City spends whatever amount of excess Highway User Revenue funding it actually receives that Fiscal Year, up to the amounts stated above, on Installation and Remediation of Existing Curb Ramps and Pedestrian Walkways.

6. If in any fiscal year during the Term of this Partial Consent Decree the City is unable to appropriate the funds to meet the Annual Commitment due to a recession or elimination of a significant funding source for Installation and Remediation of Curb Ramps and Pedestrian Walkways, the City shall provide Class Counsel with notice of such deficiency, and the Parties shall meet and confer about an alternative Annual Commitment for the period that will be affected by the decrease in funding, as set forth in the Dispute Resolution provision of Section XII.A, below. If the Parties cannot resolve the matter through the meet and confer process, they shall submit the matter to the Court as set forth in Section XII.B. The City shall remain compliant with the Partial Consent Decree despite its inability to meet the Annual Commitment for that fiscal year if the City agrees to an additional appropriation over the next two fiscal years that makes up for the deficiency.

B. Expenditure of Annual Commitment

1. Allocation of Annual Commitment

From July 1, 2024 to June 30, 2025, the City shall spend seventy percent (70%) of the Annual Commitment on Installing Accessible Curb Ramps at Existing corners of the pedestrian right of way and Remediating Non-Compliant Existing Curb Ramps. The City shall spend the remaining thirty percent of the Annual Commitment (30%) on Remediating Non-Compliant Existing Pedestrian Walkways. Throughout the remaining Term of this Decree, the City shall use sixty-five percent (65%) of the Annual Commitment each Fiscal Year on Installing and Remediating Existing Non-Compliant Curb Ramps and thirty-five percent (35%) on Remediating Existing Non-Compliant Pedestrian Walkways.

2. Annual Allocation for Curb Ramps

Consistent with the Allocation set forth in Section V.B.1, above, the City will spend the following amounts on Installing and Remediating Existing Curb Ramps:

FISCAL YEAR	ANNUAL COMMITMENT FOR CURB RAMPS
July 1, 2024 to June 30, 2025	\$5.6 million OR \$7 million
July 1, 2025 to June 30, 2026	\$7.8 million OR \$8.125 million
July 1, 2026 to June 30, 2027	\$7.8 million OR \$8.125 million
July 1, 2027 to June 30, 2028	\$7.8 million OR \$9.75 million

3. Annual Allocation for Pedestrian Walkways

a. As of the Effective Date of this Partial Consent Decree, the average cost to the City of Remediating Pedestrian Walkways is \$31.50 per square foot, and the average cost of Remediating curbs is \$94.50 per linear foot. The Parties agree that the cost of Remediating curbs that run adjacent to Remediated Pedestrian Walkways will be paid from the Annual Commitment, but that not all curbs adjacent to Remediated Pedestrian Walkways will need to be Remediated themselves. Accordingly, the Parties agree that the City’s allocation for the Annual Commitment for Remediating Existing Pedestrian Walkways per Fiscal Year throughout the Term of this Partial Consent Decree shall be as follows:

FISCAL YEAR	ANNUAL COMMITMENT FOR PEDESTRIAN WALKWAYS
July 1, 2024 to June 30, 2025	\$2.4 million OR \$3 million
July 1, 2025 to June 30, 2026	\$4.2 million OR \$4.325 million
July 1, 2026 to June 30, 2027	\$4.2 million OR \$4.325 million
July 1, 2027 to June 30, 2028	\$4.2 million OR \$5.25 million

b. Throughout the Term of this Partial Consent Decree, the City will provide Plaintiffs with construction contracts and remediation projections for the upcoming fiscal year to apprise Plaintiffs of how the Pedestrian Walkway portion of the Annual Commitment will be spent. In addition, the City will provide Plaintiffs with post-inspection documentation of the actual costs of all Pedestrian Walkways remediated as a result of Annual Commitment expenditures.

C. Goals for Installation and Remediation of Curb Ramps

1. As of the Effective Date of this Partial Consent Decree, the average cost to the City of Installing and Remediating Curb Ramps is \$10,500 per ramp. Accordingly, the City will have a goal throughout the Term of this Decree of Installing or Remediating the following number of Accessible Curb Ramps per fiscal year (“Goal” or “Annual Curb Ramp Goal”). The

Goal may be met through a combination of work paid through the Annual Commitment, as well as New Construction and Alterations performed by the City or its contractors:

FISCAL YEAR	ANNUAL GOAL INCLUDING RAMPS INSTALLED OR REMEDIATED THROUGH ANNUAL COMMITMENT	ANNUAL GOAL INCLUDING RAMPS INSTALLED OR REMEDIATED THROUGH ANNUAL COMMITMENT WITH ANNUAL CONTINGENT AMOUNT
July 1, 2024 to June 30, 2025	533 curb ramps	667 curb ramps
July 1, 2025 to June 30, 2026	742 curb ramps	773 curb ramps
July 1, 2026 to June 30, 2027	742 curb ramps	773 curb ramps
July 1, 2027 to June 30, 2028	742 curb ramps	928 curb ramps

2. Because the benchmarks set forth above are goals and future material and labor costs cannot be predicted, the City will remain in compliance with the Partial Consent Decree if it expends the entire Curb Ramp portion of the Annual Commitment in an applicable Fiscal Year on Installing or Remediating Non-Compliant Existing Curb Ramps but misses the Goal by a maximum of six percent (6%) of the Curb Ramp Goal in that Fiscal Year. In any year that the City believes that it may not reach the Goal because of cost increases, it will provide Plaintiffs with backup data and contracts to explain such material deviations. The Parties will meet and confer about an alternative Goal. If the Parties cannot reach agreement on an alternative Goal, they will submit the matter to dispute resolution pursuant to Section XII of this Partial Consent Decree.

D. Additional Programs to Remediate Non-Compliant Existing Pedestrian Walkways

In addition to the Remediation of Existing Pedestrian Walkways that will be accomplished through the Annual Commitment, the City shall implement the following measures to achieve additional Remediation of Pedestrian Walkways:

1. Within 4 months of the Effective Date of this Decree, the City will implement a program to inspect and document the Accessibility of each of the City’s Pedestrian Walkways on a 10-year cycle.

2. Within 3 months of the Effective Date of this Decree, the City will commence meetings with each of its partners (*i.e.*, utilities, other City agencies that have a role in constructing or maintaining portions of the City’s thoroughfare, and private property owners) who have been responsible in whole or in part for placement or maintaining of fixed Obstructions in Pedestrian Walkways that narrow the Pedestrian Walkway to less than four feet of accessible width. Within 6 months of the Effective Date of this Decree, the City will produce

to the Plaintiffs a list with the number and locations of Obstructions in its Pedestrian Walkways, and to the extent possible the identification whether the Obstructions are owned by the City or another entity.

3. Within 12 months of producing the list of Obstructions to the Plaintiffs, the City will provide the Plaintiffs with a written plan to address removing, relocating, or creating passing zones around the street signs that are Obstructions in the pedestrian right of way.

4. Within 12 months of the Effective Date of this Decree, the City will launch a program to clear vegetation and overgrowth that create Obstructions or protrude into Pedestrian Walkways. This will include but not be limited to tree and shrub trimming and edging to keep grass and weeds from growing over the Walkways. The City will continue to implement this program throughout the Term of the Decree.

5. Within 6 months of the Effective Date of this Decree, the City's service crews in the Department of Transportation's Footways group and Maintenance Division will be trained to remove moveable Obstructions (including but not limited to trash and recycling bins, scooters and bicycles) from Pedestrian Walkways during their routine work efforts. This training will take place upon initial hire, and refresher training will be provided to all service crew members on an annual basis. The City will continue to implement this program throughout the Term of the Partial Consent Decree.

6. Within 14 months of the Effective Date of this Partial Consent Decree, the City will implement a plan to assess the need to prune or remove street trees that are Obstructions to the Pedestrian Right of Way or are causing greater than 1 inch of upheaval or displacement of the Walkway surface that cannot be remedied by horizontal grinding and assess the impact of tree removal where necessary.

7. Within 6 months of the Effective Date of this Partial Consent Decree, the City will present a proposed ordinance to the City Council for adoption to require that when real property within the City is sold or permitted for remodeling or upgrades, the property owner will Remediate the adjacent Pedestrian Walkway, if necessary, to ensure that it is Accessible. Any Remediation performed under this ordinance will be subject to the City's inspection and certification that it is Compliant.

8. Within 6 months of the Effective Date of this Partial Consent Decree, the City will commence distributing public service announcements to notify all commercial and residential real property owners in Baltimore City about their obligation to Remediate the Pedestrian Walkways adjacent to their properties. The announcements will also provide information about all grant or financial assistance programs that are available to help property owners defray the Remediation costs. This message shall be delivered through press releases, press conferences, on social media, in directed mailings, in newsletters, radio and television, on City websites, and all other methods that the Mayor's Office uses to convey information that is critical to residents' health and safety. The content of the announcements will be developed in cooperation between the Parties.

E. New Construction and Alteration Obligations

1. Obligation When Newly Constructing or Altering Roadways

Throughout the Term of the Partial Consent Decree, whenever the City, the City’s contractors, or another party permitted by the City, Newly Constructs or performs an Alteration to a street, road, or highway within City right-of-way as defined in Section II.B.1, the City will Install or Remediate, or require the Installation or Remediation of, Accessible Curb Ramps where a Pedestrian Walkway adjacent to the constructed or altered street, road or highway crosses a curb and no Accessible Curb Ramp currently exists. The City’s Installation or Remediation of Accessible Curb Ramps pursuant to New Construction or Alteration of streets, roads, or highways shall not count towards the City’s Annual Commitment but will count toward the Annual Curb Ramp Goal.

2. Obligation When Newly Constructing or Altering Pedestrian Walkways

Throughout the Term of the Partial Consent Decree, whenever the City, the City’s contractors, or another party permitted by the City constructs a new Pedestrian Walkway, or Alters a Pedestrian Walkway as defined in Section II.B.2, the City will ensure that the new or Altered Walkway is Accessible. In addition, the City will Install or Remediate, or ensure the Installation or Remediation of, Accessible Curb Ramps if and where the Altered or Newly Constructed portion of the Pedestrian Walkway crosses a curb or is adjacent to a corner where pedestrians are permitted to cross the street. The City’s Installation or Remediation of Accessible Curb Ramps pursuant to New Construction or Alteration of Pedestrian Walkways shall not count towards the City’s Annual Commitment but will count toward the Annual Curb Ramp Goal.

3. Obligation When Newly Constructing or Altering Curb Ramps

Throughout the Term of this Partial Consent Decree, whenever the City, the City’s contractors, or another party permitted by the City Alters an Existing Curb Ramp or Installs a new Curb Ramp, the City will ensure that the Installed or Remediated Curb Ramp is Accessible. The Installation or Remediation of Accessible Curb Ramps by the City or its contractors shall not count towards the City’s Annual Commitment but will count toward the Annual Curb Ramp Goal.

4. Exceptions to New Construction and Alteration Obligations

The City’s obligation to Install or Remediate an Accessible Curb Ramp or Pedestrian Walkway segment shall be subject to the following exceptions:

- a. **Technical Infeasibility:** Where the Partial Consent Decree would otherwise require the City to Install or Remediate a Curb Ramp or Pedestrian Walkway segment in connection with an Alteration, but existing physical or site constraints prohibit such Installation or Remediation, then the City shall complete any accessibility improvements within the scope of the Alteration project to the maximum extent feasible. *See* 2010 ADA Standards for Accessible Design, DOJ Technical Assistance Manual for Title II of the ADA, II-6.3100(4) (9-

12-06). Such accessibility improvements shall be performed at the same time that the Alteration project is being performed or reasonably thereafter. The City will document findings of Technical Infeasibility and make this documentation available to Class Counsel.

b. Structural Impracticability: In the rare circumstances when the unique characteristics of terrain prevent the Installation of an Accessible Curb Ramp or Pedestrian Walkway segment during New Construction, the City shall comply to the extent that is not structurally impracticable, as further described in 28 C.F.R. § 35.151(a)(2)(i). The City will document findings of Structural Impracticability and make this documentation available to Class Counsel.

c. Force Majeure: The obligations of the City with respect to Installing or Remediating Accessible Curb Ramps or Remediating Pedestrian Walkway segments at a particular location may also be postponed if the postponement is caused by or attributable to a force majeure—that is, due to acts of God, pandemic, war, government regulations (other than regulations by the City), terrorism, disaster (including power outages), strikes, civil disorder, government declared fiscal emergency, or an emergency beyond the City’s control, that make it illegal or impossible for the City to perform construction, Alteration, or repair work. Under this provision, the City’s obligations may be tolled for the period of the force majeure’s effect.

F. Program Access Obligations

In addition to the New Construction and Alteration obligations set forth above, throughout the Term of the Partial Consent Decree, the City will perform Program Access Improvements to bring its existing Pedestrian Facilities into compliance with the Program Access requirements of the ADA and Section 504. The City’s Installation or Remediation of Accessible Curb Ramps pursuant to this Program Access obligation shall count towards the City’s Annual Commitment.

The selection, timing, and location of projects for Program Access Improvements shall be determined by the City in its discretion, subject to the following priorities:

1. Program Access Improvements

Consistent with 28 C.F.R. § 35.150, all Program Access Improvements shall be prioritized in a manner that gives preference to Pedestrian Walkways and Curb Ramps that serve the following facilities in the order below:

- a. City government offices and facilities that are open to the public (including the pedestrian rights of way adjacent to facilities owned and operated by the City, and the paths of travel leading from such adjacent pedestrian rights of way to the primary entrances to such facilities), including but not limited to parks, libraries, and schools;
- b. Transportation corridors;
- c. Hospitals, medical facilities, assisted living facilities, and other similar facilities;

- d. Places of public accommodation such as commercial and business zones;
- e. Facilities containing employers; and
- f. Residential neighborhoods.

2. **Equity Considerations**

Within each of the prioritization criteria set forth in Section V.E.1., above, the City will further prioritize Program Access Improvements consistent with the following equity considerations, based upon land use and demographic factors throughout the City, in order to ensure that the benefits of this Partial Consent Decree are spread fairly to the City’s residents and visitors with Mobility Disabilities.

a. **Equity Priority Areas**

The City will give highest priority to Program Access Improvements in the “equity priority areas” established using Baltimore City’s Equity Composite Score and Healthy Food Priority Areas.

b. **Pedestrian Hazards**

Within the equity priority areas, the City will give priority to Program Access Improvements within the City’s “hazard density heat map,” which identifies area that are the most hazardous to pedestrians based upon the City’s crash data.

3. **Prioritization of Curb Ramp Barriers**

In addition, to the extent practicable, the City shall prioritize the Remediation of Curb Ramps that contain High Priority Curb Ramp Barriers over those Curb Ramps that do not contain High Priority Curb Ramp Barriers. Within those Curb Ramp locations that have High Priority Curb Ramp Barriers, the City shall give highest priority to Remediating missing Curb Ramps, and then any Existing Curb Ramps that have multiple High Priority Barriers.

4. **Prioritization of Pedestrian Walkway Barriers**

Also to the extent practicable, the City shall prioritize the Remediation of Pedestrian Walkways that contain High Priority Pedestrian Walkway Barriers over those that do not contain High Priority Pedestrian Walkway Barriers. Pedestrian Walkway segments that have multiple High Priority Pedestrian Walkway Barriers will be given higher priority over those that do not.

G. **Curb Ramp and Pedestrian Walkway Inspections**

Throughout the term of the Partial Consent Decree, all Curb Ramps and Pedestrian Walkways Installed or Remediated by the City, its contractors, or any other third parties acting within the City’s authority, or on its behalf, or pursuant to a permit issued by the City, shall be

Accessible Curb Ramps and Accessible Pedestrian Walkways. The City shall ensure compliance as follows:

1. The City shall require that the design and construction of all Curb Ramps and Pedestrian Walkways to be Installed or Remediated during the Term of this Partial Consent Decree be subject to the City's review and approval.

2. Within thirty (30) days of the City's Department of Transportation receiving notice of the completion of a Curb Ramp or Pedestrian Walkway, the City shall perform an initial inspection to determine whether the recently Installed or Remediated Curb Ramp or Pedestrian Walkway is Accessible ("Access Inspection"). For purposes of these Access Inspections, the City shall use a two-foot-long electronic (digital) level to measure slopes, and slopes shall be measured at their steepest point.

3. The City shall conduct a second Access Inspection of each Installed or Remediated Curb Ramp or Pedestrian Walkway prior to the expiration of the one-year warranty period applicable to that work to verify whether remains Accessible. For purposes of these Access Inspections, the City shall use a two-foot-long electronic (digital) level to measure slopes, and slopes shall be measured at their steepest point. The City shall only give approval to verified Accessible Curb Ramps and Accessible Pedestrian Walkways.

4. In the event that the City determines that any of the Curb Ramps or Pedestrian Walkways evaluated as part of the Access Inspection and approval process are not Accessible, it shall notify the entity that constructed or Remediated the Curb Ramp or Pedestrian Walkway and require its replacement within thirty (30) days of the notification.

5. Any applicable Curb Ramp or Pedestrian Walkway Installed or Remediated pursuant to this Partial Consent Decree shall count toward fulfillment of the City's Annual Commitment only after it has passed the Access Inspection and approval process.

VI. TRANSITION PLAN

A. During the Term of this Partial Consent Decree, the City shall present an ADA Title II Transition Plan to the City for adoption. During the period before the adoption of the Transition Plan, the City must continue to fund and perform Accessible Curb Ramp and Pedestrian Walkway Installation and Remediation consistent with the obligations set forth in Section V.

B. The Transition Plan will include a schedule for Accessible Curb Ramp and Pedestrian Walkway Installation and Remediation that is consistent with this Partial Consent Decree, including the prioritization criteria set forth in Section V.F., above. The Transition Plan shall take into account locations of planned New Construction or Alterations that trigger the obligation to construct Accessible Curb Ramps and Pedestrian Walkways.

C. The City shall provide a draft of the Transition Plan to Class Counsel for their review and comment at least thirty (30) calendar days prior to the presentation of the Transition Plan to the City Council for adoption. The City will meet and confer with Class Counsel about comments on the Transition Plan and will give good faith consideration to such comments.

D. The City shall solicit public comment on the Transition Plan from community members who have Mobility Disabilities.

VII. PEDESTRIAN WALKWAY AND CURB RAMP ACCESS REQUEST SYSTEM

A. Throughout the Term of the Partial Consent Decree, the City shall continue to maintain a program through which requests for the Installation or maintenance of Accessible Curb Ramps and the Remediation of non-Compliant Curb Ramps and Pedestrian Walkways (“Access Request System”) may be submitted by or on behalf of people with Mobility Disabilities. Access Requests may be submitted through an easily locatable form on the City’s 3-1-1 website, 3-1-1 telephone number, or other electronic format. The 3-1-1 website shall comply with WCAG 2.1 Level AA. The request (whether online or as a list of questions on the 3-1-1 telephone) form or script will require the following information: (i) the requestor’s name, address and other contact information; (ii) a statement that the requestor is a person with a Mobility Disability or is making the request on behalf of a person with a Mobility Disability; (iii) the location of the requested Pedestrian Walkway segment or Curb Ramp; and (iv) the method preferred by the requestor to receive the City’s response to the Access Request (*e.g.*, by telephone, text message, electronic mail, or standard mail).

B. The City shall continue to document receipt of each Access Request, assign each request a specific identification number (or other identifying information), and log the request into a software program or other electronic database that records the requestor’s name and contact information, the date of the request, and the location of the requested Curb Ramp Installation, or Curb Ramp or Pedestrian Walkway Remediation or maintenance. The City’s program shall continue to immediately notify the requestor that their request has been received and provide the requestor with the identification number or other identifying information assigned to the request and notify the requestor that the request will be investigated within sixty (60) days of receipt. The notice shall also provide the requestor with the name and contact information for the City representative that they may contact for further information.

C. The City will investigate each request within sixty (60) days of its submission. Within ten (10) days of completing the investigation, the City will provide the requestor with information about when the City estimates that the requested Installation, Remediation, or maintenance will be completed. The City shall use Best Efforts to Install each requested Curb Ramp or Remediate each identified non-Compliant Pedestrian Walkway segment or Curb Ramp within nine months of the submission of the request.

D. In any such circumstance where the Installation of an Accessible Curb Ramp would be Structurally Impracticable, or Remediation of a requested Pedestrian Walkway segment or Curb Ramp pursuant to the City’s Access Request System would be Technically Infeasible, the subject Pedestrian Walkway segment or Curb Ramp shall be made Accessible to the maximum extent feasible, and physical or site constraints shall be addressed by alternative designs that meet applicable federal and state Access standards. If the City determines that Installation of a requested Curb Ramp or Remediation of a Curb Ramp or Pedestrian Walkway segment is Technically Infeasible or Structurally Impracticable, the City shall notify the requestor that the facility shall be made Accessible to the maximum extent feasible. The City

will document findings of Technical Infeasibility and Structural Impracticability and make that finding and the basis for it available to Class Counsel.

E. Through the Term of this Partial Consent Decree, the City shall maintain a website, or an equivalent manner of electronic communication to the general public, which describes the methods for making Access Requests and the process and timeline for fulfilling those Requests. The webpage(s) describing the Access Request System shall, at a minimum, be available from an easily findable location on the Baltimore City website homepage. All pages and content that are part of the Access Request System shall comply with WCAG 2.1 Level AA.

F. The City's Remediation of Existing Curb Ramps or Installation of Accessible Curb Ramps pursuant to the Access Request System shall count towards the City's Annual Commitment.

VIII. TEMPORARY ACCESSIBLE ROUTES

Throughout the Term of the Partial Consent Decree, whenever the City, the City's contractors, or any other party acting within the City's authority, on its behalf, or pursuant to a permit issued by the City newly constructs or Alters Pedestrian Facilities, or conducts Program Access Improvements or adjacent construction projects that obstruct the pedestrian right of way, the City shall ensure that Accessible temporary routes are provided through and around such projects with appropriate signage directing persons with Mobility Disabilities to such Accessible temporary routes.

IX. MAINTENANCE

A. Throughout the Term of the Partial Consent Decree, the City shall maintain all Accessible Curb Ramps and Pedestrian Walkways over which it has responsibility, ownership, and control so that those facilities are readily accessible to and usable by persons with Mobility Disabilities, except for isolated or temporary interruptions in access due to maintenance or repairs. Prior to the Effective Date, the City will develop and provide to Class Counsel a draft policy and procedure for maintaining Accessible Curb Ramps and Pedestrian Walkways for Class Counsel's review and comment. The policy and procedure will specifically instruct City personnel on the types of work on Pedestrian Facilities that constitute Alterations versus maintenance activities. Class Counsel will provide the City with any written comments on the draft policy and procedure within forty-five (45) days of receipt. The City will meet and confer with Class Counsel about their comments on the policy and procedure and will give good faith consideration to such comments. The final policy and procedure will be attached as an Exhibit to this Partial Consent Decree.

B. In circumstances where Accessible Curb Ramps or Pedestrian Walkways are not available due to construction, maintenance, or repairs, the City shall provide an alternative temporary Accessible route.

C. Throughout the Term of the Partial Consent Decree, the City will engage in an annual public initiative to educate the public regarding the necessity for timely removal of snow and other debris from Curb Ramps and from Pedestrian Walkways that provide access to bus

stops and other public transportation stations. The City will also use Best Efforts to ensure timely removal of such snow and debris.

D. Throughout the Term of the Partial Consent Decree, the City will promptly respond to and investigate complaints made through the City's 3-1-1 system that concern puddles of water forming on Curb Ramp landings. Within thirty days of receiving the complaint, the City will confirm whether the Curb Ramp is non-Compliant. Any such complaint regarding a Curb Ramp that the City determines is non-Compliant will be treated as an Access Request subject to the terms of Section VII above and prioritized in accordance therewith.

X. PEDESTRIAN FACILITIES ASSET MANAGEMENT DATABASE

A. The City shall maintain a database of Pedestrian Facilities within the City that identifies and tracks the conditions of aspects of the Pedestrian Facilities, including Curb Ramps and Pedestrian Walkways. Throughout the Term of the Partial Consent Decree, the City shall provide Class Counsel with requested information from the City's asset management database(s) or equivalent databases upon Plaintiffs' reasonable request, which may include a sample or samples of the database(s) of information that is maintained by the City. The information should be provided in .csv format or in such other searchable/sortable electronic format as the Parties mutually agree upon.

B. The Pedestrian Facilities Asset Management Database shall include, at minimum, the following information:

1. For Curb Ramps:
 - a. Whether the Curb Ramp is a parallel ramp, a perpendicular ramp, a diagonal ramp, or a combination ramp;
 - b. The Curb Ramp position (*e.g.*, diagonal or unidirectional, and if unidirectional, which direction);
 - c. The maximum running slope and cross slope of each run within the Curb Ramp;
 - d. The width of each run within the Curb Ramp;
 - e. The maximum slope in any direction of the Curb Ramp's top landing;
 - f. Whether the length and width of the clear space within the four-foot square area at the Curb Ramp's top landing are compliant based on the 2010 ADA Standards for Accessible Design, as well as the surface condition of that four-foot square area;
 - g. Whether the Curb Ramp has side-flares, and if so, the slope of each;
 - h. The existence and condition of any detectible warnings;

- i. The gutter slope at the bottom transition of the Curb Ramp;
- j. The counter-slope of the four-foot square area extending into the street from the bottom transition of the Curb Ramp;
- k. The existence of any lip (*i.e.*, abrupt change of elevation) at the bottom landing of the Curb Ramp;
 - l. Whether the four-foot lower landing of the Curb Ramp (*i.e.*, the four-foot square extending into the street from the bottom transition of the ramp) is entirely within any striped crosswalk; and
 - m. The existence of any objects or barriers within the path of travel at the top landing, within the Curb Ramp, or at the bottom landing, including utility or signal poles, hydrants, storm drains, trees, electrical boxes, benches, trash receptacles, etc.
 - n. Raised Traffic Islands, the existence of raised traffic islands without a level cut-through or without Curb Ramps.
- 2. For Pedestrian Walkways:
 - a. The maximum cross-slope;
 - b. The minimum accessible width;
 - c. Broken and/or uneven pavement deeper and/or wider than 1 inch;
 - d. Vertical or horizontal displacement or upheaval of the Pedestrian Walkway or crosswalk surface greater than 1 inch (including Pedestrian Walkway flags, curbs, and utility covers); and
 - e. The existence of any protruding or overhanging objects, or obstructions that narrow the Pedestrian Walkway to less than four feet of accessible width.

XI. ANNUAL REPORTING AND MONITORING

A. Data from Pedestrian Right of Way Survey: Within 10 days execution of the Partial Consent Decree, the City will provide Class Counsel with the results of the Cyclomedia survey of the City's pedestrian right of way that was conducted in 2023, along with the cross-checks or changes in the survey data's measurements the City made as a result of its verification of the Cyclomedia data. During the Term of the Partial Consent Decree, the City will provide Class Counsel with the results of each subsequent stage of Cyclomedia's survey of the pedestrian right of way and the City's verification of or changes to the results within 30 days of the City's verification of those results.

B. Annual Reporting: On an annual basis, the City will provide a written Annual Report to Class Counsel regarding the status of the City's compliance with the terms of the Partial Consent Decree by each of the City's fiscal years. The Annual Report shall be due to

Class Counsel six months after the close of the applicable fiscal year. The Annual Report shall include the following detailed information:

1. The number of Accessible Curb Ramps Installed and/or Remediated and square footage of Pedestrian Walkways Remediated during the reporting year; the locations of those Curb Ramps and Pedestrian Walkways; and the number and locations of Accessible Curb Ramps Installed and/or Remediated and the location and square footage of Pedestrian Walkways Remediated via the Access Request System.

2. Detailed information demonstrating the total and average unit cost of each Installed Curb Ramp, Remediated Curb Ramp, and square foot of Remediated Pedestrian Walkways performed by the City, its contractors, or third parties, the source of funding for that Installation/Remediation (*i.e.*, Annual Commitment, private party, non-City public entity or agency, or other third party, other New Construction or Alterations), and, if from the Annual Commitment, the total and average per unit amount of Annual Commitment funding spent on each Accessible Curb Ramp and square foot of Pedestrian Walkway Installed or Remediated during the reporting year. The average cost information shall include a breakdown of the neat construction costs, construction contingency, design, construction management and inspection, and administration costs for each Curb Ramp and each square foot of Pedestrian Walkway and curb (if applicable). Links to view the design data, measurements taken as part of the second Access Inspection after completion of Installation or Remediation of the Curb Ramps and Pedestrian Walkways as set forth in Section V.G, and photographs, and sign-offs for each Curb Ramp and Pedestrian Walkway.

3. Documentation, including photographs, demonstrating for a sampling of Curb Ramps and Pedestrian Walkways how measurements were taken in order to evaluate compliance with applicable standards.

4. Documentation demonstrating locations where Curb Ramps and Pedestrian Walkways have been Installed or Remediated to the maximum extent feasible, or were not Installed due to Technical Infeasibility or Structural Impracticability.

5. Documentation showing the number of Curb Ramps or Pedestrian Walkways subject to a request under the Pedestrian Walkway and Curb Ramp Access Request System and respective response timelines from notification of receipt through the time of Installation or Remediation.

6. Documentation of all inspections of Pedestrian Walkways and Curb Ramps Installed or Remediated as part of the City's Annual Commitment during the reporting year, including whether any Pedestrian Walkways or Curb Ramps were deemed not to be Accessible and if so, whether such Pedestrian Walkways or Curb Ramps were corrected; and including measurements of each of the features listed in Section XI.B.1 & 3, above.

7. Documentation of all requests for funding that the City submits to other governmental agencies for financial assistance for work on City streets, roadways, Pedestrian Walkways, and/or Curb Ramps, and the agencies' responses thereto.

8. Documentation of all financial assistance that the City receives from any other governmental agency for performing work on City streets, roadways, Pedestrian Walkways, and/or Curb Ramps.

9. Documentation of all City budgetary requests and appropriations for performing work on City streets, roadways, Pedestrian Walkways, and/or Curb Ramps.

C. Within forty-five (45) calendar days of the City's issuance of the Annual Report to Class Counsel, if so needed, Class Counsel may request to meet with the City via telephone or videoconference, or if reasonable, in person, to discuss the City's efforts to implement the Partial Consent Decree and attempt to resolve any disputes. Class Counsel may request additional documentation to support the Annual Report, such as photographs demonstrating how particular measurements were taken at particular Curb Ramps or Pedestrian Walkways identified in the Annual Report.

D. **Monitoring:** Throughout the term of the Partial Consent Decree, the City shall notify Class Counsel of any changes to the City's drawings and/or designs regarding Accessible Curb Ramps or Pedestrian Walkways. Plaintiffs and Class Counsel may also inspect work being done in the City's Pedestrian Facilities in order to monitor compliance with the Partial Consent Decree. Additionally, as set forth above, the City will provide requested information from its relevant asset management database(s) to Class Counsel for their review upon reasonable request.

XII. DISPUTE RESOLUTION

A. If any Party believes that a dispute exists relating to any violation of or failure to perform any of the provisions of this Partial Consent Decree, it shall notify the other Party in writing and describe the alleged violation or failure to perform with particularity. The Party alleged to have committed the violation or failure to perform shall provide a written response within ten (10) business days of receipt of such notice, and shall have a period of thirty (30) days to cure the alleged violation or failure to perform. In the event the alleged violation cannot reasonably be cured within thirty (30) days, the Parties shall meet and confer to attempt to agree on an appropriate period of time required to cure the alleged violation or failure to perform. If the Party alleging a violation or failure to perform maintains that the violation or failure to perform has not been cured, the Parties shall meet and confer, in person or by telephone, and attempt to resolve the dispute on an informal basis for a period of at least thirty (30) days.

B. If the Parties are unable to resolve a dispute regarding either Party's performance under the Partial Consent Decree through the process described in the prior sub-section, either Party may provide the other with written notice of its intent to enforce the Partial Consent Decree. Thereafter, either Party may file a motion with the District Court to enforce the Partial Consent Decree.

C. The terms of this Partial Consent Decree shall be construed pursuant to the laws of the State of Maryland with respect to principles of common law contract interpretation, and in accordance with the substantive law of Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973, as applicable.

XIII. SETTLEMENT APPROVAL PROCESS

A. This Partial Consent Decree will be subject to approval by the District Court. However, nothing in this Partial Consent Decree will be deemed to authorize the District Court to change or modify any of its terms. Any change, modification or rejection of any of the provisions of this Partial Consent Decree by the District Court or any other court will constitute a material modification of this Partial Consent Decree, will prevent the Judgment from becoming final, and will give any Party the right to terminate this Partial Consent Decree in its entirety.

B. Within ten (10) days of circulating the fully executed Partial Consent Decree, the Parties will jointly move the court for preliminary approval of this Partial Consent Decree, certification of the Settlement Class as defined in Section II.T of this Partial Consent Decree under Federal Rule of Civil Procedure 23(b)(2) and (e), appointment of Class Counsel and Plaintiffs to represent the Settlement Class, and approval of the form and content of notice (substantially in the form attached to this Partial Consent Decree as Exhibit B), a plan for distribution of notice to the Settlement Class, and a stay of proceedings. Along with their joint motion for preliminary approval, the Parties will submit the proposed Preliminary Approval Order attached to this Partial Consent Decree as Exhibit C (the "Preliminary Approval Order."). Alternatively, Plaintiffs may file the motion for preliminary approval, which the City agrees not to oppose.

C. Within ten (10) days of the filing of the motion for preliminary approval of this Partial Consent Decree, the City will cause Notice of the Settlement and other required documentation to be provided to the Attorneys General of the United States and Appropriate State Officials, U.S. Department of Justice and attorneys general of relevant states as required by Section 1715 of the Class Action Fairness Act of 2005 (28 U.S.C. § 1715). The City will pay the costs of that notice.

D. The Parties agree that the Settlement Class will be certified in accordance with the standards applicable under Rule 23(b)(2) of the Federal Rules of Civil Procedure and that, accordingly, no Settlement Class member may opt out of any of the provisions of this Partial Consent Decree.

E. Following the District Court's issuance of the Preliminary Approval Order, the Parties will circulate the Notice of Settlement, advising the members of the Settlement Class of the terms of the proposed Partial Consent Decree and their right to object to the proposed Partial Consent Decree. This Notice will be published as follows:

1. Within thirty (30) days after the District Court has issued the Preliminary Approval Order, the City will cause Notice of the Settlement to be published once each week for four (4) consecutive weeks in The Baltimore Sun, The Baltimore Banner and The Daily Record. The City will also cause Notice of the Settlement to be published in additional publications as the District Court may order.

2. The Notice will include the terms required by the District Court, which are anticipated to be as follows: (i) a brief statement of the *Goodlaxson* Action, the settlement embodied in this Partial Consent Decree, and the claims of Settlement Class members that are

being stayed; (ii) the date and time of the fairness hearing and/or final approval hearing of the proposed Partial Consent Decree; (iii) the deadline for submitting objections to the proposed Partial Consent Decree; and (iv) the web page, address, and telephone and fax numbers that may be used to obtain a copy of the Partial Consent Decree. The City will pay the costs for the publication of the Notice.

3. Within twenty (20) days after the District Court has issued the Preliminary Approval Order, the City will cause a copy of the Notice of Settlement to be posted and remain posted on the City's official website (www.baltimorecity.gov) for four (4) consecutive weeks. The website will also make a copy of the Notice of Settlement available in English, Spanish, and Korean, and in an accessible electronic format that can be recognized and read by software commonly used by individuals with visual impairments to read web pages. All pages or content on these websites that are part of the process for accessing the information in the Notice of Settlement will comply with WCAG 2.1 Level AA. The City will pay the costs for the publication of the Notice.

4. Within ten (10) days after the District Court has issued the Preliminary Approval Order, Class Counsel will cause a copy of the Notice of Settlement to be provided (via email or U.S. Mail) to the organizations listed on Exhibit D to this Partial Consent Decree.

5. Within twenty (20) days after the District Court has issued the Preliminary Approval Order, each firm making up Class Counsel will post on its website a copy of the Notice of Settlement in English, Spanish, and Korean, and in an accessible electronic format that can be recognized and read by software commonly used by individuals with visual impairments to read web pages. In addition, the websites will provide information about how Settlement Class Members may obtain a copy of the Partial Consent Decree. All pages or content on the websites that are part of the process for accessing the information in the notice will comply with WCAG 2.1 Level AA.

F. Prior to the fairness hearing, and as directed by the District Court, Plaintiffs will file a motion for an award of attorneys' fees, costs, and expenses, and service awards to Plaintiffs consistent with the terms of this Partial Consent Decree. Plaintiffs' motion will seek service awards to Plaintiffs of no more than \$10,000 each (as set forth in Section XIV, below). The Parties will also file a joint motion requesting that the District Court schedule and conduct a fairness hearing to decide whether the Court will grant final approval of the Partial Consent Decree and stay proceedings, as set forth below.

G. Prior to the fairness hearing, the Parties will jointly move for a Final Approval Order (substantially in the form as attached to this Partial Consent Decree as Exhibit E) providing for: (i) final approval of this Partial Consent Decree as fair, adequate, and reasonable; (ii) final certification of the Settlement Class for settlement purposes only; (iii) final approval of the form and method of notice of the Partial Consent Decree to the Settlement Class; (iv) final approval of the appointment of Class Counsel for the Settlement Class; (v) final approval of the appointment of Plaintiffs as representatives of the Settlement Class; (vi) a stay of proceedings pending the completion of the Partial Consent Decree's Term; (vii) final approval of an order that the Plaintiffs and Settlement Class members will be enjoined and barred from asserting any of the Stayed Claims (as defined in Section XVI.A, below) against the City following entry of

the Final Approval Order and up to and including the completion of the Term; (viii) the Parties and all members of the Settlement Class to be bound by the Partial Consent Decree; and (ix) the District Court's retention of jurisdiction over the Parties to enforce the terms of the Partial Consent Decree throughout its Term.

H. Members of the Settlement Class will have an opportunity to object to the proposed Partial Consent Decree but may not opt-out. The Parties will request that the District Court order the following procedures for assertion of objections, if any, to the Partial Consent Decree:

1. Any Settlement Class member may object to this Partial Consent Decree by filing, within sixty (60) calendar days of the commencement of the issuance of the Notice to the Settlement Class, written objections with the District Court, with a copy of such objections served concurrently on Class Counsel by messenger delivery, FedEx or other overnight carrier delivery, or First Class U.S. Mail delivery; and/or by appearing at the Court's fairness hearing and speaking to the Court.

2. With respect to any and all objections to this Partial Consent Decree received by Class Counsel, Class Counsel will provide a copy of each objection to counsel of record for the City, by messenger delivery or electronic-mail delivery, within two (2) court days after receipt of such objection.

3. Responses by Class Counsel and/or the City to any timely-filed objections may be filed with the District Court no less than five (5) days before the fairness hearing, or as otherwise ordered by the Court.

I. The Parties will take all procedural steps regarding the fairness hearing that may be requested by the District Court and will otherwise use their respective Best Efforts to consummate the settlement embodied in this Partial Consent Decree, and to obtain final approval of this Partial Consent Decree.

J. The Parties agree that, upon final approval, the District Court shall have continuing jurisdiction to resolve any Dispute regarding compliance with this Partial Consent Decree that cannot be resolved through the Dispute Resolution Process set forth in Section XII herein, and to rule on Plaintiffs' motion for reasonable attorneys' fees, costs, and expenses, and application for service awards. Also upon final approval, the District Court will administratively close the case, which may be reopened upon a motion or request by either party as set forth in Section XVI.A.2, below.

K. The City will not assert that the District Court lacks jurisdiction to enforce the terms of this Partial Consent Decree or raise any jurisdictional defense to any enforcement proceedings permitted under the terms of this Partial Consent Decree.

L. Should this Partial Consent Decree not receive final approval by the District Court for any reason, or should this Partial Consent Decree not become final for any reason in accordance with its terms: (i) this Partial Consent Decree will be null and void and of no force and effect; (ii) nothing in this Partial Consent Decree will be deemed to prejudice the position of any of the Parties with respect to any matter; and (iii) neither the existence of this Partial Consent

Decree, nor its contents, will be admissible in evidence, referred to for any purpose in any litigation or proceeding, or be deemed an admission by the City of any fault, wrongdoing, or liability.

M. This Partial Consent Decree, upon final approval, will be binding upon the City, Plaintiffs, and all Settlement Class members and, to the extent specifically set forth in this Partial Consent Decree, upon Class Counsel and will constitute the final and complete resolution of all issues addressed herein.

XIV. NAMED CLAIMANT PAYMENTS

In exchange for the Release of Claims set forth in Section XVI, below, and for all services rendered to the Settlement Class, and conditioned upon the District Court granting final approval of the Partial Consent Decree as well as Plaintiffs' application for service awards to Plaintiffs Goodlaxson, Jackson, Mayo and Image Center in the amounts set forth in this Section, within thirty (30) days of the Effective Date, the City will pay each of the Named Plaintiffs \$10,000.00. This payment shall be in full and final settlement of Plaintiffs' claims that are being released in Section XVI, below.

XV. REASONABLE ATTORNEYS' FEES, EXPENSES AND COSTS

A. Attorneys' Fees, Costs, and Expenses Up to the Effective Date

The City agrees that for the purpose of awarding attorneys' fees, costs, and expenses, Plaintiffs are to be considered the prevailing parties in the entry of this Partial Consent Decree. Plaintiffs' Counsel are entitled to an award of reasonable attorneys' fees, costs, and expenses incurred for work performed through the Effective Date, the amount of which will be determined by the District Court. Within thirty (30) days of the Effective Date, and conditioned upon the District Court's granting final approval of this Partial Consent Decree and issuance of an order on Plaintiffs' application(s) for an award of attorneys' fees, costs, and expenses, the City shall deliver payment to Plaintiffs' Counsel for the full amount of their reasonable attorneys' fees, costs, and expenses awarded by the District Court in connection with this matter incurred up to the Effective Date. No additional amounts shall be owed to Plaintiffs or their Counsel in attorney's fees, expenses, or costs for time or expenses incurred up to the Effective Date.

B. Attorneys' Fees, Costs, and Expenses for Implementing the Partial Consent Decree

Subject to the following terms, the City shall pay Plaintiffs' Counsel their reasonable attorneys' fees, costs, and expenses incurred between the Effective Date and the expiration of the Term of Partial Consent Decree for performing all work reasonably necessary to monitor, implement, and administer the Partial Consent Decree, and perform other tasks described below.

1. No later than thirty (30) days after the first anniversary of the Effective Date, and annually thereafter during the Term of the Partial Consent Decree, Plaintiffs' Counsel shall submit to the City a statement of reasonable attorneys' fees, costs, and expenses incurred during the prior 12-month period for performing all work reasonably necessary to monitor, implement, and administer the Partial Consent Decree, subject to a maximum amount of

\$100,000 per year for the first through third years of this Partial Consent Decree (“Annual Monitoring Fees Cap”). Plaintiffs’ Counsel shall not seek more than \$25,000 per year in attorneys’ fees for the limited tasks of reviewing the Annual Report and having one or more telephonic conferences totaling fewer than four hours. The rates charged by Plaintiffs’ Counsel shall be the rates approved by the District Court in connection with an award of fees and costs pursuant to Section XV.A above, adjusted annually based on the Consumer Price Index in the Baltimore-Columbia-Towson area starting from 2024 dollars. This cap does not include fees and costs incurred for enforcing the Partial Consent Decree, which are subject to the provision of Section XV.C., below.

2. Plaintiffs’ Counsel shall move the Court for the attorneys’ fees, costs, and expenses that Plaintiffs’ Counsel incur in the fourth year of this Partial Consent Decree for monitoring, implementing, and administering the Partial Consent Decree, engaging in Future Negotiations, and preparing and submitting for Court approval any further agreement of the Parties. The City agrees that for purposes of that motion as well, Plaintiffs are to be considered the prevailing parties and that Plaintiffs’ Counsel are entitled to an award of reasonable attorneys’ fees, costs, and expenses incurred for that work.

C. Attorneys’ Fees, Costs, and Expenses for Dispute Resolution

In the event either Party finds that it is necessary to seek resolution of a dispute through a motion for enforcement before the District Court, the prevailing party shall be entitled to reasonable attorneys’ fees, costs, and expenses in accordance with the standards of the Americans with Disabilities Act and *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412, 421-22 (1978) for all time, costs, and expenses reasonably incurred pursuing their position in the dispute under Section XII.

D. Attorneys’ Fees, Costs, and Expenses to Defend Against Frivolous Objections

In the event that a Settlement Class member files an objection to the Partial Consent Decree that the District Court overrules and finds frivolous, the Settlement Class member then takes an appeal from that ruling, and Plaintiffs’ Counsel assist the City with defending the Decree on appeal, the City shall not contest Plaintiffs’ Counsel’s entitlement to seek payment of their reasonable attorneys’ fees, expenses and costs incurred in assisting the City with that defense, although the City may contest the amount of attorneys’ fees, expenses and costs that Plaintiffs request.

XVI. STAY/RELEASE OF CLAIMS

A. Stay of Class Claims

1. On the Effective Date, and in consideration for the City’s commitments set forth in the Partial Consent Decree, the Parties shall request that the District Court stay the claims of all Plaintiffs and Settlement Class Members for injunctive, declaratory, or other non-monetary relief, however described, that were brought or could have been brought relating to or arising from any of the City’s alleged actions, omissions, incidents, or conduct related to the Accessibility of Curb Ramps and Pedestrian Walkways in the City’s pedestrian right of way at any time prior to the Effective Date and through the end of the Term of this Partial Consent

Decree (the “Stayed Claims”). The Stayed Claims shall not include any claims to enforce the terms of the Partial Consent Decree, any claims for relief arising from the City’s violation of any term of the Partial Consent Decree, or any claims related to monetary damages, personal injuries, or property damage.

2. This Stay will be in effect during the pendency of this Partial Consent Decree, and the case will remain on the Court’s inactive docket (or administratively closed) until reactivated by either party by way of any of the following: a) a motion to enforce the Partial Consent Decree, as set forth in Section XII.B., above, b) a motion to approve any further settlement that the Parties may enter into as a result of the Future Negotiations set forth in Section III, above, or c) a request by either party to re-open litigation if, at the end of the 120 day negotiation period that will take place during the 12 months prior to the expiration of the Term of this Partial Consent Decree as set forth in Section III, the Parties have failed to reach a further agreement for Installation and Remediation of Curb Ramps and Pedestrian Walkways throughout the City’s pedestrian right of way.

B. Named Plaintiff Release of Claims

The Named Plaintiffs will, upon the Effective Date, fully and finally release, acquit, and discharge the City from any and all claims, allegations, demands, charges, complaints, actions, arising at any time prior to the Effective Date for monetary relief relating to or arising from any of the City’s alleged actions, omissions, incidents, or conduct related to the Accessibility of Curb Ramps and Pedestrian Walkways in the City’s pedestrian right of way.

XVII. MEDIA COMMUNICATIONS REGARDING

The Parties shall negotiate a joint press release to announce the Partial Consent Decree at the time that it is submitted for preliminary approval to the District Court.

XVIII. MISCELLANEOUS PROVISIONS

A. Drafting of this Consent Decree

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

B. Voluntary Agreement

Each of the Parties represents, warrants, and agrees that they have read this Partial Consent Decree carefully and know and understand its contents, that this Partial Consent Decree has been voluntarily entered into, that they have received independent legal advice from their attorneys with respect to the advisability of executing this Partial Consent Decree, and that any and all investigation and analysis of the facts deemed necessary or desirable have been conducted prior to the execution of this Partial Consent Decree.

C. Authority

Each of the Parties represents, warrants, and agrees that they have the full right and authority to enter into this Partial Consent Decree, and that the person executing this Partial Consent Decree has the full right and authority to commit and bind such Party.

D. Paragraph Headings

The headings, or lack thereof, preceding each of the paragraphs in this Partial Consent Decree are for convenience only, and shall not be considered in the Partial Consent Decree's construction or interpretation.

E. Counterparts

This Partial Consent Decree may be executed by the Parties in separate counterparts, and all such counterparts taken together shall be deemed to constitute one and the same Partial Consent Decree.

F. Notices

For Plaintiffs:

Linda M. Dardarian
Ginger L. Grimes
GOLDSTEIN, BORGEN, DARDARIAN & HO
155 Grand Avenue, Suite 900
Oakland, CA 94612
510-763-9800

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FOX & ROBERTSON
1 Broadway Suite B205
Denver, CO 80203
303-951-4164

Gabriel Rubenstein
DISABILITY RIGHTS MARYLAND
1500 Union Avenue, Suite 2000
Baltimore, MD 21211
410-727-6352

Jinny Kim
Madeleine Reichmann
DISABILITY RIGHTS ADVOCATES
655 3rd Avenue, 14th Floor
New York, NY 10017
212-644-8644

For the Mayor and City Council of Baltimore:

Stephen Salisbury
BALTIMORE CITY LAW DEPARTMENT
100 N. Holliday Street, Suite 101
Baltimore, MD 21202

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


EXECUTED by the Parties as follows:

Dated: 11/04/2024

THE MAYOR AND CITY COUNCIL OF
BALTIMORE

By: 
Ebony Thompson
Acting City Solicitor

Dated: 10/15/2024

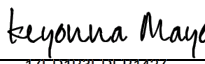
DocuSigned by:

By: _____
Susan Goodlaxson

Dated: 10/16/2024

DocuSigned by:

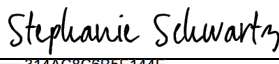
By: _____
Janice Jackson

Dated: 10/16/2024

DocuSigned by:

By: _____
Keyonna Mayo

Dated: 10/16/2024


THE IMAGE CENTER

Signed by:

By: _____
Stephanie Schwartz

APPROVED AS TO FORM:

Dated: 10/15/2024

GOLDSTEIN BORGEN DARDARIAN & HO

Signed by:

By: _____
Linda M. Dardarian
Ginger L. Grimes
Attorneys for Plaintiffs

Dated: 10/15/2024

FOX & ROBERTSON

Signed by:
By: Timothy Fox
2360394735BC472...
Timothy Fox
Attorneys for Plaintiffs

Dated: 10/16/2024

DISABILITY RIGHTS MARYLAND

Signed by:
By: Gabriel Rubenstein
5BE3231CB9F54A3...
Gabriel Rubenstein
Attorneys for Plaintiffs

Dated: 10/15/2024

DISABILITY RIGHTS ADVOCATES

Signed by:
By: Jinny Kim
104D099F4AE1436...
Jinny Kim
Madeleine Reichmann
Attorneys for Plaintiffs

Dated:

NELSON MULLINS

By: Thurman W. Zollicoffer
Thurman Zollicoffer
Attorneys for the City of Baltimore

EXHIBIT A

U.S. Department of Transportation

Federal Highway Administration

1200 New Jersey Avenue, SE
Washington, DC 20590
202-366-4000

FHWA Office of Civil Rights



U.S. Department of Justice
Civil Rights Division
Disability Rights Section



U.S. Department of Transportation
Federal Highway Administration

Department of Justice/Department of Transportation Joint Technical Assistance¹ on the Title II of the Americans with Disabilities Act Requirements to Provide Curb Ramps when Streets, Roads, or Highways are Altered through Resurfacing

Title II of the Americans with Disabilities Act (ADA) requires that state and local governments ensure that persons with disabilities have access to the pedestrian routes in the public right of way. An important part of this requirement is the obligation whenever streets, roadways, or highways are *altered* to provide curb ramps where street level pedestrian walkways cross curbs.² This requirement is intended to ensure the accessibility and usability of the pedestrian walkway for persons with disabilities.

An alteration is a change that affects or could affect the usability of all or part of a building or facility.³ Alterations of streets, roads, or highways include activities such as reconstruction, rehabilitation, *resurfacing*, widening, and projects of similar scale and effect.⁴ Maintenance activities on streets, roads, or highways, such as filling potholes, are not alterations.

Without curb ramps, sidewalk travel in urban areas can be dangerous, difficult, or even impossible for people who use wheelchairs, scooters, and other mobility devices. Curb ramps allow people with mobility disabilities to gain access to the sidewalks and to pass through center islands in streets. Otherwise, these individuals are forced to travel in streets and roadways and are put in danger or are prevented from reaching their destination; some people with disabilities may simply choose not to take this risk and will not venture out of their homes or communities.

Because resurfacing of streets constitutes an alteration under the ADA, it triggers the obligation to provide curb ramps where pedestrian walkways intersect the resurfaced streets. See *Kinney v. Yerusalim*, 9 F 3d 1067 (3rd Cir. 1993). This obligation has been discussed in a variety of technical assistance materials published by the Department of Justice beginning in 1994.⁵ Over the past few years, state and local governments have sought further guidance on the scope of the alterations requirement with respect to the provision of curb ramps when streets, roads or highways are being resurfaced. These questions have arisen largely due to the development of a variety of road surface treatments other than traditional road resurfacing, which generally involved the addition of a new layer of asphalt. Public entities have asked the Department of Transportation

and the Department of Justice to clarify whether particular road surface treatments fall within the ADA definition of alterations, or whether they should be considered maintenance that would not trigger the obligation to provide curb ramps. This Joint Technical Assistance addresses some of those questions.

Where must curb ramps be provided?

Generally, curb ramps are needed wherever a sidewalk or other pedestrian walkway crosses a curb. Curb ramps must be located to ensure a person with a mobility disability can travel from a sidewalk on one side of the street, over or through any curbs or traffic islands, to the sidewalk on the other side of the street. However, the ADA does not require installation of ramps or curb ramps in the absence of a pedestrian walkway with a prepared surface for pedestrian use. Nor are curb ramps required in the absence of a curb, elevation, or other barrier between the street and the walkway.

When is resurfacing considered to be an alteration?

Resurfacing is an alteration that triggers the requirement to add curb ramps if it involves work on a street or roadway spanning from one intersection to another, and includes overlays of additional material to the road surface, with or without milling. Examples include, but are not limited to the following treatments or their equivalents: addition of a new layer of asphalt, reconstruction, concrete pavement rehabilitation and reconstruction, open-graded surface course, micro-surfacing and thin lift overlays, cape seals, and in-place asphalt recycling.

What kinds of treatments constitute maintenance rather than an alteration?

Treatments that serve solely to seal and protect the road surface, improve friction, and control splash and spray are considered to be maintenance because they do not significantly affect the public's access to or usability of the road. Some examples of the types of treatments that would normally be considered maintenance are: painting or striping lanes, crack filling and sealing, surface sealing, chip seals, slurry seals, fog seals, scrub sealing, joint crack seals, joint repairs, dowel bar retrofit, spot high-friction treatments, diamond grinding, and pavement patching. In some cases, the combination of several maintenance treatments occurring at or near the same time may qualify as an alteration and would trigger the obligation to provide curb ramps.

What if a locality is not resurfacing an entire block, but is resurfacing a crosswalk by itself?

Crosswalks constitute distinct elements of the right-of-way intended to facilitate pedestrian traffic. Regardless of whether there is curb-to-curb resurfacing of the street or roadway in general, resurfacing of a crosswalk also requires the provision of curb ramps at that crosswalk.

¹ The Department of Justice is the federal agency with responsibility for issuing regulations implementing the requirements of title II of the ADA and for coordinating federal agency compliance activities with respect to those requirements. Title II applies to the programs and activities of state and local governmental entities. The Department of Justice and the Department of Transportation share responsibility for enforcing the requirements of title II of the ADA with respect to the public right of way, including streets, roads, and highways.

² See 28 CFR 35.151(i)(1) (Newly constructed or altered streets, roads, and highways must contain curb ramps or other sloped areas at any intersection having curbs or other barriers to entry from a street level pedestrian walkway) and 35.151(i)(2) (Newly constructed or altered street level pedestrian walkways must contain curb ramps or other sloped areas at intersections to streets, roads, or highways).

³ 28 CFR 35.151(b)(1).

⁴ 2010 ADA Accessibility Standards, section 106.5.

⁵ See 1994 Title II Technical Assistance Manual Supplement, Title II TA Guidance: The ADA and City Governments: Common Problems; and ADA Best Practices Tool Kit for State and Local Governments: Chapter 6, Curb Ramps and Pedestrian Crossings under Title II of the ADA, available at ada.gov.

BRIEFING MEMO

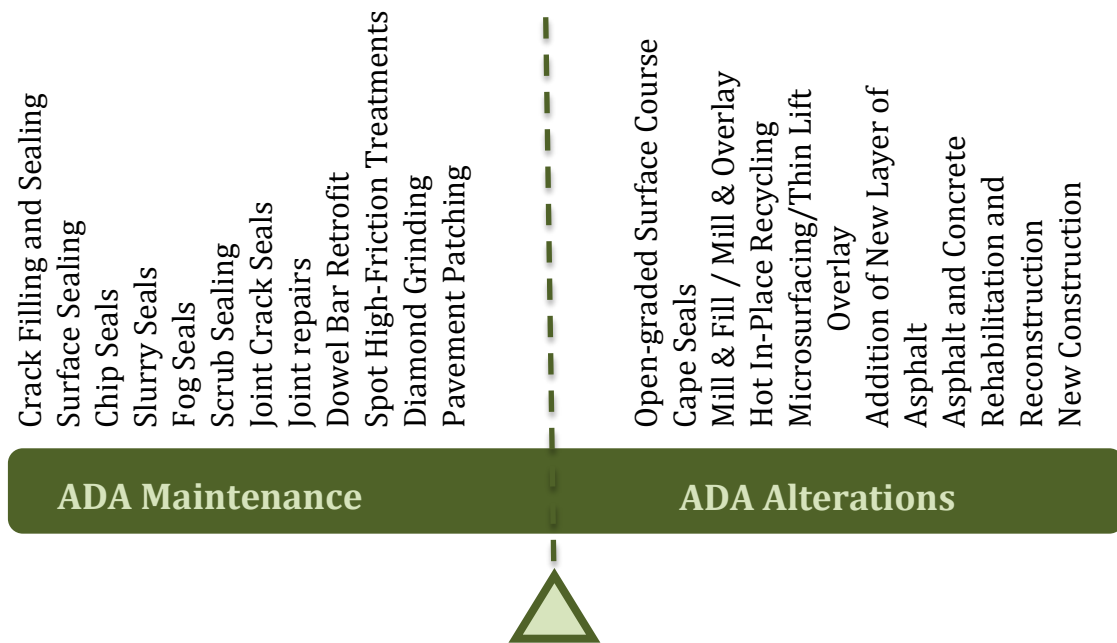
SUBJECT: Department of Justice/Department of Transportation Joint Technical Assistance on Title II of the Americans with Disabilities Act Requirements to Provide Curb Ramps when Streets, Roads, or Highways are Altered through Resurfacing

ISSUE: Throughout the nation, there are different interpretations and inconsistencies in enforcement of when curb ramps are required.

BACKGROUND: The Americans with Disabilities Act of 1990 (ADA) is a civil rights statute prohibiting discrimination against persons with disabilities in all aspects of life, including transportation, based on regulations promulgated by the United States Department of Justice (DOJ). DOJ's regulations require accessible planning, design, and construction to integrate people with disabilities into mainstream society. Further, these laws require that public entities responsible for operating and maintaining the public rights-of-way do not discriminate in their programs and activities against persons with disabilities. FHWA's ADA program implements the DOJ regulations through delegated authority to ensure that pedestrians with disabilities have the opportunity to use the transportation system's pedestrian facilities in an accessible and safe manner.

FHWA and DOJ met in March 2012 and March 2013 to clarify guidance on the ADA's requirements for constructing curb ramps on resurfacing projects. Projects deemed to be alterations must include curb ramps within the scope of the project.

SUMMARY OF GUIDANCE CLARIFICATION: This clarification provides a single Federal policy that identifies specific asphalt and concrete-pavement repair treatments that are considered to be alterations—requiring installation of curb ramps within the scope of the project—and those that are considered to be maintenance, which do not require curb ramps at the time of the improvement.



This approach clearly identifies the types of structural treatments that both DOJ and FHWA agree require curb ramps (when there is a pedestrian walkway with a prepared surface for pedestrian use and a curb, elevation, or other barrier between the street and the walkway) and furthers the goal of the ADA to provide increased accessibility to the public right-of-way for persons with disabilities. This single Federal policy will provide for increased consistency and improved enforcement.

MOVING FORWARD:

Divisions are expected to initiate discussions with their Partnering Agency / State to:

- 1) Disseminate this clarification with regard to when curb ramps are required
 - a. States are expected to inform/assist local agencies
- 2) Establish a plan to implement this single Federal policy as soon as practical
 - a. FHWA Headquarters is not providing a set deadline for all projects to comply with this policy.
 - b. Projects that are ready for Construction Advertisement or are under contract may proceed.
 - c. The Division should evaluate the projects in the state pavement preservation/resurfacing program and agree on projects to comply with this policy.
 - d. The Division should work with its Partnering Agencies / States to evaluate and modify, if necessary, their existing resurfacing ADA policies to comply with this policy.

POINTS OF CONTACT:

Brooke Struve, RC Safety & Design Team, CTSRC-LAK, 720-963-3270, Brooke.Struve@dot.gov
Candace Groudine, Director-External Civil Rights, HCR, 202-366-4634, Candace.Groudine@dot.gov
Robert Mooney, Pre-Construction Team Leader, HIPA, 202-366-2221, Robert.Mooney@dot.gov



U.S. Department of Justice
Civil Rights Division
Disability Rights Section



U.S. Department of Transportation
Federal Highway Administration

QUESTIONS & ANSWERS

Supplement to the 2013 DOJ/DOT 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

The Department of Justice (DOJ)/Department of Transportation (DOT) [*Joint Technical Assistance on the Title II of the Americans with Disabilities Act \[ADA\] Requirements to Provide Curb Ramps when Streets, Roads, or Highways are Altered through Resurfacing*](#) (Joint Technical Assistance) was published on July 8, 2013. This document responds to frequently asked questions that the Federal Highway Administration (FHWA) has received since the technical assistance document was published. In order to fully address some questions, the applicable requirements of Section 504 of the Rehabilitation Act of 1973 that apply to public entities receiving Federal funding from DOT, either directly or indirectly, are also discussed. This document is not a standalone document and should be read in conjunction with the [2013 Joint Technical Assistance](#).

Q1: *When a pavement treatment is considered an alteration under the ADA and there is a curb ramp at the juncture of the altered road and an existing sidewalk (or other prepared surface for pedestrian use), but the curb ramp does not meet the current ADA Standards, does the curb ramp have to be updated to meet the current ADA Standards at the time of the pavement treatment?*

A1: It depends on whether the existing curb ramp meets the appropriate accessibility standard that was in place at the time it was newly constructed or last altered.

When the Department of Justice adopted its revised title II ADA Regulations including the updated ADA Standards for Accessible Design (2010 Standards,¹ as defined in 28 CFR 35.151), it specified that “(e)lements that have not been altered in existing facilities on or after March 15, 2012, and that comply with the corresponding technical and scoping specifications for those elements in either the 1991 Standards or in the Uniform Federal Accessibility Standards (UFAS) ... are not required to be modified in order to comply with the requirements set forth in the 2010 Standards.” 28 C.F.R. 35.150(b)(2)(i). As a result of this “safe harbor” provision, if a curb ramp was built or altered prior to March 15, 2012, and complies with the requirements for curb ramps in either the 1991 ADA Standards for Accessible Design (1991 Standards, known prior to 2010 as the 1991 ADA Accessibility Guidelines, or the 1991 ADAAG) or UFAS, it does **not** have to be modified to comply with the requirements in the 2010 Standards. However, if that existing curb ramp did not comply with either the 1991 Standards or UFAS as of March 15, 2012, then the safe harbor does not apply and the curb ramp must be brought into compliance with the requirements of the 2010 Standards concurrent with the road alteration. See 28 CFR 35.151(c) and (i).

Note that the requirement in the 1991 Standards to include detectable warnings on curb ramps was suspended for a period between May 12, 1994, and July 26, 1998, and again between December 23, 1998, and July 26, 2001. If a curb ramp was newly constructed or was last altered when the detectable warnings requirement was suspended, and it otherwise meets the 1991 Standards, Title II of the ADA does not require that the curb ramp be modified to add detectable warnings in conjunction with a road resurfacing alteration project. See Question #14 however, for a discussion of the DOT Section 504 requirements, including detectable warnings.

Q2: *The Joint Technical Assistance states that “[r]esurfacing is an alteration that triggers the requirement to add curb ramps if it involves work on a street or roadway spanning from one intersection to another, and includes overlays of additional material to the road surface, with or without milling.” What constitutes “overlays of additional material to the road surface” with respect to milling, specifically, when a roadway surface is milled and then overlaid at the same height (i.e., no material is added that exceeds the height of what was present before the milling)?*

A2: A project that involves milling an existing road, and then overlaying the road with material, regardless of whether it exceeds the height of the road before milling, falls within the definition of “alteration” because it is a change to the road surface that affects or could affect the usability of the pedestrian route (crosswalk). See *Kinney v. Yerusalim*, 9 F.3d 1067 (3rd Cir. 1993). Alterations require the installation of curb ramps if none previously existed, or upgrading of non-compliant curb ramps to meet the applicable standards, where there is an existing pedestrian walkway. See also Question 8.

Q3: *If a roadway resurfacing alteration project does not span the full width of the road, do I have to put in curb ramps?*

A3: It depends on whether the resurfacing work affects a pedestrian crosswalk. If the resurfacing affects the crosswalk, even if it is not the full roadway width, then curb ramps must be provided at both ends of the crosswalk. See 28 CFR 35.151(i).

Public entities should not structure the scope of work to avoid ADA obligations to provide curb ramps when resurfacing a roadway. For example, resurfacing only between crosswalks may be regarded as an attempt to circumvent a public entity’s obligation under the ADA, and potentially could result in legal challenges.

If curb ramp improvements are needed in the vicinity of an alteration project, it is often cost effective to address such needs as part of the alteration project, thereby advancing the public entity’s progress in meeting its obligation to provide program access to its facilities. See Question 16 for further discussion.

Q4: *When a road alteration project triggers the requirement to install curb ramps, what steps should public (State or local) entities take if they do not own the sidewalk right-of-way needed to install the required curb ramps?*

A4: The public entity performing the alteration is ultimately responsible for following and implementing the ADA requirements specified in the regulations implementing title II. At the time an alteration project is scoped, the public entity should identify what ADA requirements apply and whether the public entity owns sufficient right-of-way to make the necessary ADA modifications. If the public entity does not control sufficient

right-of-way, it should seek to acquire the necessary right-of-way. If a complaint is filed, the public entity will likely need to show that it made reasonable efforts to obtain access to the necessary right-of-way.

Q5: *The Joint Technical Assistance is silent on when it becomes effective. Is there an effective date for when States and local public entities must comply with the requirements discussed in the technical assistance?*

A5: The Joint Technical Assistance, as well as this Supplement to it, does not create any new obligations. The obligation to provide curb ramps when roads are altered has been an ongoing obligation under the regulations implementing title II of the ADA (28 CFR 35.151) since the regulation was initially adopted in 1991. This technical assistance was provided to respond to questions that arose largely due to the development of a variety of road surface treatments, other than traditional road resurfacing, which generally involved the addition of a new layer of asphalt. Although the Joint Technical Assistance was issued on July 8, 2013, public entities have had an ongoing obligation to comply with the alterations requirements of title II and should plan to bring curb ramps that are or were part of an alteration into compliance as soon as possible.

Q6: *Is the curb ramp installation work required to be a part of the Plans, Specifications and Estimate package for an alteration project or can the curb ramp work be accomplished under a separate contract?*

A6: The curb ramp installation work can be contracted separately, but the work must be coordinated such that the curb ramp work is completed prior to, or at the same time as, the completion of the rest of the alteration work. See 28 CFR 35.151(i).

Q7: *Is a curb ramp required for a sidewalk that is not made of concrete or asphalt?*

A7: The Joint Technical Assistance states that “the ADA does not require installation of ramps or curb ramps in the absence of a pedestrian walkway with a prepared surface for pedestrian use.” A “prepared surface for pedestrian use” can be constructed out of numerous materials, including concrete, asphalt, compacted soil, decomposed granite, and other materials. Regardless of the materials used to construct the pedestrian walkway, if the intent of the design was to provide access to pedestrians, then curb ramps must be incorporated where an altered roadway intersects the pedestrian walkway. See 28 CFR 35.151(i).

Q8: *If an existing curb ramp is replaced as part of a resurfacing alteration, is there an obligation to address existing obstacles on the adjacent sidewalk at the same time?*

A8: No. The Joint Technical Assistance addresses those requirements that are triggered when a public entity alters a roadway where the roadway intersects a street level pedestrian walkway (28 CFR 35.151(i)). Public entities are required to address other barriers on existing sidewalks, such as steep cross slopes or obstructions, as part of their on-going program access and transition plan obligations under title II of the ADA and Section 504 and in response to requests for reasonable modifications under the ADA or reasonable accommodations under Section 504. See 28 CFR 35.105, 35.130(b)(7), and 35.150(d); see also 49 CFR 27.7(e), 27.11(c)(2).

Q9: *Several pavement preservation treatment types are not listed in the technical assistance. If the treatment type is not specifically on the list of maintenance treatments, is it an alteration?*

A9: New treatments are always being developed and the best practice is for the City or other local public entity conducting the work, the State transportation agency, and FHWA to work together to come to an agreement on a reasonable determination of whether the unlisted treatment type is an alteration or maintenance and document their decisions. If the new treatment can be deemed to be the equivalent of any of the items listed as alterations, it is a reasonable interpretation that they are in fact alterations and should be treated as such.

Q10: *When does a combination of two or more ‘maintenance’ treatments rise to the level of being an alteration?*

A10: The list of the pavement types that are considered maintenance, as stated in the 2013 Joint Technical Assistance document, are Chip Seals, Crack Filling and Sealing, Diamond Grinding, Dowel Bar Retrofit, Fog Seals, Joint Crack Seals, Joint Repairs, Pavement Patching, Scrub Sealing, Slurry Seals, Spot High-Friction Treatments, and Surface Sealing. The combination of two or more maintenance treatments may rise to the level of being an alteration.

The best practice is for the City or other local public entity conducting the work, the State transportation agency, and FHWA to work together to come to an agreement on a reasonable determination, document their policies, and apply that determination consistently in their locality.

Q11: *When will utility trench work require compliance with ADA curb ramp requirements?*

A11: The answer to this question depends on the scope and location of the utility trench work being done. If the utility trench work is limited to a portion of the pavement, even including a portion of the crosswalk, repaving necessary to cover the trench would typically be considered maintenance and would not require simultaneous installation or upgrading of curb ramps. Public entities should note that the ADA requires maintenance of accessible features, and as such, they must ensure that when the trench is repaved or other road maintenance is performed, the work does not result in a lesser level of accessibility. See 28 CFR 35.133(a). If the utility work impacts the curb at a pedestrian street crossing where no curb ramp exists, the work affecting the curb falls within the definition of “alteration,” and a curb ramp must be constructed rather than simply replacing the curb. See 28 CFR 35.151(b) and 35.151(i).

If a public entity is unsure whether the scope of specific trench work and repair/repaving constitutes an alteration, the best practice is for the public entity to work together with the State transportation agency and the FHWA Division to come to an agreement on how to consistently handle these situations and document their decisions.

Q12: *Is full-depth pavement patching considered maintenance?*

A12: The answer to this question depends on the scope and location of the pavement patch. If the pavement patch work is limited to a portion of the pavement, even including a portion of the crosswalk, patching the pavement would typically be considered maintenance and would not require simultaneous installation or upgrading of curb ramps. Public entities should note that the ADA requires maintenance of accessible features, and as such, they should ensure that when the pavement is patched or other road maintenance is performed, the work does not result in a lesser level of accessibility. See 28 CFR 35.133(a). If the pavement

patching impacts the curb at a pedestrian street crossing where no curb ramp exists, the work affecting the curb falls within the definition of “alteration,” and a curb ramp must be constructed rather than simply replacing the curb. See 28 CFR 35.151(b) and 35.151(i).

If a public entity is unsure whether the scope of specific full-depth pavement patching constitutes an alteration, the best practice is for the public entity to work together with the State transportation agency and the FHWA Division to come to an agreement on how to consistently handle these situations and document their decisions.

Q13: Do any other requirements apply to road alteration projects undertaken by public entities that receive Federal financial assistance from DOT either directly or indirectly, even if such financial assistance is not used for the specific road alteration project at issue?

A13: Yes, if a public entity receives any Federal financial assistance from DOT whether directly or through another DOT recipient, then the entity must also apply DOT’s Section 504 requirements even if the road alteration project at issue does not use Federal funds. See 49 CFR 27.3 (applicability of DOT’s Section 504 requirements) and 27.5 (definition of “program or activity”).

DOT’s Section 504 disability nondiscrimination regulations are found at 49 CFR Part 27. These regulations implement Section 504 of the Rehabilitation Act of 1973 (Section 504). In 2006, DOT updated its accessibility standards by adopting the 2004 Americans with Disabilities Act Accessibility Guidelines (2004 ADAAG²) into its Section 504 regulations at 49 CFR 27.3 (referencing 49 CFR Part 37, Appendix A). These requirements replaced the previously applicable ADA Standards for Accessible Design (1991) (formerly known as 1991 ADAAG). At that time, DOT’s regulation adopted a modification to Section 406 of the 2004 ADAAG which required the placement of detectable warnings on curb ramps.

The revised DOT Section 504 regulation also provided a “safe harbor” provision (similar to the ADA provision discussed in Question 1) that applies to curb ramps that were newly constructed or altered by entities receiving Federal financial assistance from DOT and that were in compliance with the 1991 ADAAG requirements prior to November 29, 2006. If the “safe harbor” applies, these curb ramps are still considered compliant and do not have to be modified to add detectable warnings unless they are altered after November 29, 2006. The DOT “safe harbor” provision is found at 49 CFR 37.9(c). DOT’s Section 504 regulations (49 CFR 27.19(a)) require compliance with 49 CFR Part 37.

The Section 504 safe harbor does not apply, however, if, at the time of the road alteration project, the existing curb ramp does not comply with the 1991 ADAAG and at that time it must be brought into compliance with the current DOT Section 504 requirements (2004 ADAAG) including detectable warnings.

Q14: Does the Section 504 safe harbor apply to curb ramps built in compliance with 1991 ADAAG during the time period when the requirement for detectable warnings was suspended and the roadway is now being resurfaced where it intersects the pedestrian walkway?

A14: If the curb ramps that were built or altered prior to November 29, 2006 were fully compliant with 1991 ADAAG at the time that the detectable warnings requirements were suspended, then the DOT Section 504

safe harbor applies to them and the recipient does not have to add detectable warnings as a result of a resurfacing project.

Q15: *In addition to the obligations triggered by road resurfacing alterations, are there other title II or Section 504 requirements that trigger the obligation to provide curb ramps?*

A15: In addition to the obligation to provide curb ramps when roads are resurfaced, both DOJ's title II ADA regulation and DOT's Section 504 regulation (applicable to recipients of DOT Federal financial assistance), require the provision of curb ramps if the sidewalk is installed or altered at the intersection, during new construction, as a means of providing program accessibility, and as a reasonable modification under title II or a reasonable accommodation under Section 504.

New Construction and Alterations

DOJ's title II ADA regulation provides that newly constructed or altered streets, roads, and highways must contain curb ramps or other sloped areas at any intersection having curbs or other barriers to entry from a street level pedestrian walkway. In addition, the regulation provides that newly constructed or altered street level pedestrian walkways must contain curb ramps or other sloped areas at intersections to streets, roads, or highways. See 28 CFR 35.151(i). These curb ramps must comply with the 2010 Standards.³

DOT's Section 504 Federally assisted regulation also requires the provision of curb ramps in new construction and alterations. See 49 CFR 27.19(a) (requiring recipients of DOT financial assistance to comply with DOJ's ADA regulation at 28 CFR Part 35, including the curb ramp requirements at 28 CFR 35.151(i)); 49 CFR 27.75 (a)(2) (requiring all pedestrian crosswalks constructed with Federal financial assistance to have curb cuts or ramps).

Program Accessibility

Both DOJ's title II ADA regulation and DOT's Section 504 regulation require that public entities/recipients operate each service, program, or activity so that the service, program, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. This obligation, which is known as providing "program accessibility," includes a requirement to evaluate existing facilities in the public right-of-way for barriers to accessibility, including identifying non-existent or non-compliant curb ramps where roads intersect pedestrian access routes (sidewalks or other pedestrian walkways). After completing this self-evaluation, a public entity/recipient must set forth a plan for eliminating such barriers so as to provide overall access for persons with disabilities. See 28 CFR 35.150, and 49 CFR 27.11(c).

Since March 15, 2012, the DOJ title II regulation requires the use of the 2010 Standards for structural changes needed to provide program access. However, in accordance with the ADA safe harbor discussed in Question 1, if curb ramps constructed prior to March 15, 2012 already comply with the curb ramp requirements in the 1991 Standards, they need not be modified in accordance with the 2010 Standards in order to provide program access, unless they are altered after March 15, 2012.

Similarly, DOT's Section 504 "safe harbor" allows curb ramps that were newly constructed or altered prior to November 29, 2006, and that meet the 1991 ADAAG to be considered compliant.⁴ Elements not covered

under the safe harbor provisions may need to be modified to provide program access and should be incorporated into a program access plan for making such modifications. 49 CFR 27.11(c)(2).

Under Section 504, self-evaluations and transition plans should have been completed by December 29, 1979. Under the ADA, transition plans should have been completed by July 26, 1992, and corrective measures should have been completed by January 26, 1995. While these deadlines have long since passed, entities that did not develop a transition plan prior to those dates should begin immediately to complete their self-evaluation and develop a comprehensive transition plan.

Reasonable Modification /Accommodation

In addition to alteration and program accessibility obligations, public entities may have an obligation under title II and Section 504 to undertake curb ramp construction or alteration as a “reasonable modification/accommodation” in response to a request by, or on behalf of, someone with a disability. Such a request may be made to address a non-compliant curb ramp outside of the schedule provided in the public entity’s transition plan. A public entity must appropriately consider such requests as they are made. 28 CFR 35.130(b)(7); 49 CFR 27.7(e).

¹ The 2010 Standards can be found on DOJ’s website at

http://www.ada.gov/2010ADASTandards_index.htm.

² In 2004, the United States Architectural and Transportation Barriers Board (U.S. Access Board) published the Americans with Disabilities Act Accessibility Guidelines (2004 ADAAG), which serve as the basis of the current enforceable ADA standards adopted by both DOT and DOJ.

³ The 2010 Standards include a provision on equivalent facilitation that allows covered entities to use other designs for curb ramps if such designs provide equal or greater access. *See* section 103 of the [2010 Standards](#).

⁴ The DOT “safe harbor” provision is found at 49 CFR 37.9(c). DOT’s Section 504 regulations (49 CFR 27.19(a)) require compliance with 49 CFR Part 37.

The Americans with Disabilities Act authorizes the Department of Justice (the Department) to provide technical assistance to individuals and entities that have rights or responsibilities under the Act. This document provides informal guidance to assist you in understanding the ADA and the Department's regulations.

This guidance document is not intended to be a final agency action, has no legally binding effect, and may be rescinded or modified in the Department's complete discretion, in accordance with applicable laws. The Department's guidance documents, including this guidance, do not establish legally enforceable responsibilities beyond what is required by the terms of the applicable statutes, regulations, or binding judicial precedent.

December 1, 2015

Glossary of Terms for DOJ/DOT Joint Technical Assistance on the ADA Title II Requirements to Provide Curb Ramps When Streets Roads or Highways are Altered Through Resurfacing

This glossary is intended to help readers understand certain road treatments referenced on page 2 of the DOJ/FHWA Joint Technical Assistance on the ADA Title II Requirements to Provide Curb Ramps When Streets Roads or Highways are Altered Through Resurfacing. The definitions explain the meaning of these terms from an engineering perspective and are provided in the order in which they appear in the Technical Assistance document.

Treatments that are considered alterations of the road surface

Reconstruction – Reconstruction refers to removing all or a significant portion of the pavement material and replacing it with new or recycled materials. This may include full-depth reclamation, where the pavement surface is demolished in place and new pavement surface is applied. In addition, reconstruction may also include grinding up a portion of the pavement surface, recycling it and placing it back, and then adding a wearing surface, such as in cold in-place asphalt recycling. Reconstruction often includes widening or geometrical changes to the roadway profile.

Rehabilitation - Rehabilitation refers to significant repairs made to a road or highway surface, including activities such as full slab replacement, filling voids under slabs (slabjacking), widening, and adding additional structural capacity.

Open-graded surface course – Open-graded surface course, also known as “open-graded friction course,” involves a pavement surface course that consists of a high-void, asphalt concrete mix that permits rapid drainage of rainwater through the course and off the shoulder of the road. The mixture consists of either Polymer-modified or rubber-modified asphalt binder, a large percentage of one-sized coarse aggregate, and a small amount of fibers. This treatment prevents tires from hydroplaning and provides a skid-resistant pavement surface with significant noise reduction.

Microsurfacing – Microsurfacing involves spreading a properly proportioned mixture of polymer modified asphalt emulsion, mineral aggregate, mineral filler, water, and other additives, on a paved surface. Microsurfacing differs from slurry seal in that it can be used on high volume roadways to correct wheel path rutting and provide a skid resistant pavement surface.

Thin lift overlays – Thin lift overlays are thin applications of mixtures of hot mix asphalt. Thin lift overlays may also require some milling along curbs, manholes, existing curb cuts, or other road structures to assure proper drainage and cross slopes.

Cape seal – A cape seal is a thin surface treatment constructed by applying a slurry seal or microsurfacing to a newly constructed chip seal. It is designed to be an integrated system where the primary purpose of the slurry is to fill voids in the chip seal.

In-place asphalt recycling - In-place asphalt recycling is a process of heating and removing around 1-2 inches of existing asphalt and remixing the asphalt with the addition of a binder additive and possible aggregate to restore the wearing surface for placement and compaction. All of this is performed in a train of equipment.

Treatments that are considered maintenance of the road surface

Crack filling and sealing – Crack filling and sealing involves placing elastomeric material directly into cracks in pavement.

Surface sealing - Surface sealing involves applying liquid sealant to pavement surface in order to stop water penetration and/or reduce oxidation of asphalt products. Sand is sometimes spread over liquid to absorb excess material.

Chip seals – Chip Seals involve placing graded stone (chips) on liquid emulsified asphalt sprayed on pavement surface. The surface is rolled to enable seating of chips.

Slurry seal – Slurry seals involve spraying a mixture of slow setting emulsified asphalt, well graded fine aggregate, mineral filler, and water on the pavement surface. It is used to fill cracks and seal areas of old pavements, to restore a uniform surface texture, to seal the surface to prevent moisture and air intrusion into the pavement, and to improve skid resistance.

Fog seals – Fog seals are a type of surface sealing.

Scrub sealing – Scrub sealing is type of surface sealing

Joint crack seals – Joint crack seals are usually associated with concrete pavement. This work consists of routing and cleaning existing cracks and joints and resealing to prevent water and non-compressibles from entering into the pavement joints and subgrade materials.

Joint repairs – Joint repairs are usually associated with concrete pavement. This work consists of selectively repairing portions of the pavement where the slabs are generally in good condition, but corners or joints are broken. The depth of the patch could be full depth or partial depth.

Dowel retrofit – Dowel retrofits are usually associated with concrete pavement. This work involves the installation of dowel bars connecting slabs in existing pavements. Pavement with dowel bar retrofits can have life extensions of as much as 20 years. Its application is almost exclusively on high-speed Interstate highways.

Spot high-friction treatments – Spot high-friction treatments involve using epoxy based resin liquids as a binder for an aggregate with high-friction properties. These are used in locations where drivers are frequently braking and the pavement surface has less resistance to slipping.

Diamond grinding – Diamond grinding involves using a gang saw to cut grooves in the pavement surface to restore smoothness and eliminate any joint faulting.

Pavement patching – Pavement patching involves selectively repairing portions of the pavement where the slabs are generally in good condition, but corners or joints are broken. The depth of the patch could be full depth or partial depth.

The Americans with Disabilities Act authorizes the Department of Justice (the Department) to provide technical assistance to individuals and entities that have rights or responsibilities under the Act. This document provides informal guidance to assist you in understanding the ADA and the Department's regulations.

This guidance document is not intended to be a final agency action, has no legally binding effect, and may be rescinded or modified in the Department's complete discretion, in accordance with applicable laws. The Department's guidance documents, including this guidance, do not establish legally enforceable responsibilities beyond what is required by the terms of the applicable statutes, regulations, or binding judicial precedent.

July 8, 2013

EXHIBIT B

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

ATTENTION: ALL PERSONS WITH A MOBILITY DISABILITY: If you have used, tried to use, or think you will use any of the City of Baltimore’s sidewalks, crosswalks, curbs, curb ramps, walkways, pedestrian rights of way, pedestrian under-crossings, pedestrian overcrossings, or other pedestrian pathways, and have had or will have difficulty using them because they were too steep, narrow, damaged, or in need of repair, **you may be a member of the proposed settlement class in this lawsuit.** This is a court-authorized notice.

PLEASE READ THIS NOTICE CAREFULLY. YOUR RIGHTS MAY BE AFFECTED.

NOTICE OF CLASS ACTION

This notice is to inform you of a proposed settlement in a pending class action lawsuit brought on behalf of persons with mobility disabilities against the Mayor and City Council of Baltimore (“the City”). The proposed class action settlement is set out in a document called a “Partial Consent Decree.” The Partial Consent Decree, which must be approved by the United States District Court before it goes into effect, was reached in the case entitled *Goodlaxson, et al. v. Mayor and City Council of Baltimore*, Case No. 1:21-cv-01454-JKB, pending in the United States District Court for the District of Maryland.

BASIC INFORMATION

In 2021, a lawsuit was filed alleging that the City did not follow federal disability access laws because it failed to install or maintain curb ramps and sidewalks (pedestrian walkways) that were accessible to people with mobility disabilities. The City disputes this and denies that it has violated the law.

This case is a class action. In a lawsuit of this type, one or more “Class Representatives” (in this case Susan Goodlaxson, Janice Jackson, Keyonna Mayo and the Image Center), sue for Class Members with similar issues. One court resolves the issues for all Class Members. United States District Judge James K. Bredar is in charge of this class action. The Court did not decide in favor of either the Class Representatives or the City. Instead, both sides agreed to a settlement.

THE SETTLEMENT CLASS

The Settlement Class includes all persons (including residents of and/or visitors to the City) with any mobility disability, who, at any time prior to the court judgment granting final approval to the Partial Consent Decree, have been denied full and equal access to the City’s pedestrian right of way due to the lack of a curb ramp, or due to a pedestrian walkway or curb ramp that was damaged, in need of repair, or otherwise in a condition not suitable or sufficient for use.

SUMMARY OF THE PROPOSED PARTIAL CONSENT DECREE

The City has agreed to changes that will improve curb ramps and pedestrian walkways for people with mobility disabilities. Below is a summary of the settlement. To access a copy of the Partial Consent Decree, see the “Further Information” section below.

1. Pedestrian Walkway Fixes and Curb Ramp Installation and Fixes

The proposed Partial Consent Decree requires the City to spend a minimum amount of money per fiscal year for four (4) years on improving the accessibility of curb ramps and pedestrian walkways to people with mobility disabilities according to the following schedule: a minimum of \$8 million per year for the 2024-2025 fiscal year and a minimum of \$12 million per year for the 2025-2028 fiscal years. But, if the City receives more Highway User Revenue funding than it anticipates when putting together its annual budgets, the City will spend the following minimum amount of money in each of those fiscal years on improving the accessibility of curb ramps and pedestrian walkways to people with mobility disabilities: \$10 million for the 2024-2025 fiscal year, \$12.5 million for the 2025-2026 and 2026-2027 fiscal years and \$15 million for the 2027-2028 fiscal year.

During the 2024-2025 fiscal year, the City will use 70% of that money for accessible curb ramps and 30% of that money for accessible pedestrian walkways. After the first year, the City shall spend 65% of its money for accessible curb ramps and 35% on accessible pedestrian walkways.

The City has also agreed to inspect and document the accessibility of its pedestrian walkways on a 10-year cycle. The City will also remove plants, overgrown areas, and things blocking the pathways. It will also let property owners know to fix the pedestrian walkways next to their properties.

2. New Construction and Alteration Obligations and Inspections

All future work on curb ramps and pedestrian walkways must follow disability access standards. The City shall approve the design and construction as well as inspect and replace newly constructed curb ramps and pedestrian walkways that are inaccessible to people with mobility disabilities. The City is also required to install or fix curb ramps when building new or fixing existing streets or pedestrian walkways, and will install accessible curb ramps when resurfacing City streets.

3. Program Access Obligations and Prioritization

When improving its existing curb ramps and pedestrian walkways, the City will prioritize the following locations: (1) City government offices and facilities; (2) transportation corridors; (3) hospitals, medical, assisted living and similar facilities; (4) public accommodations such as commercial and business zones; (5) facilities containing employers; and (6) residential neighborhoods. The City will give highest priority to “equity priority areas” and will ensure that the benefits of the settlement are spread across the City fairly.

4. ADA Coordinators

The City will appoint an ADA coordinator for the Department of Transportation and an ADA Coordinator for the Pedestrian Rights of Way. Both ADA coordinators will be experienced and knowledgeable about current disability access standards.

5. Access Request System

People with mobility disabilities can submit requests to have pedestrian right of way access barriers removed or fixed. The City will review requests within sixty (60) days of when they are made. The City will try its best to finish each request within nine (9) months but if the removal or fix is impossible, it will make it as accessible as it can.

6. Maintenance and Asset Management Database

The City will develop a policy for maintaining accessible curb ramps and pedestrian walkways and create a database of information about the accessibility of curb ramps and pedestrian walkways including slopes, widths and any access barriers in the curb ramps or pedestrian walkways.

7. Monitoring

The City will provide Class Counsel with regular reports about its compliance with these obligations and Class Counsel will meet with and inspect the City's work.

8. Future Negotiations

Twelve months before the Partial Consent Decree ends, the Parties shall begin negotiating to make the City's remaining curb ramps and pedestrian walkways accessible to people with mobility disabilities. Any agreement will be part of the next consent decree.

STAY OF CLASS CLAIMS

All claims for non-monetary relief that could have been brought in this lawsuit related to the accessibility of curb ramps and pedestrian walkways are stayed. The settlement does not release or stay any claims for monetary damages that settlement class members may have.

PAYMENTS TO CLASS REPRESENTATIVES

The City has agreed to pay Susan Goodlaxson, Janice Jackson, Keyonna Mayo and The Image Center a service award in the amount of \$10,000 each for their service to the settlement class. The Court will decide if they should get the \$10,000 and any the payments will not come from the money being used to install and fix curb ramps and pedestrian walkways.

REASONABLE ATTORNEYS' FEES, COSTS AND EXPENSES

The settlement class is represented by Disability Rights Advocates, Disability Rights Maryland and the law firms Goldstein, Borgen, Dardarian & Ho and Fox & Robertson (who together are “Class Counsel”). Class Counsel will ask the Court to order the City to pay them for their reasonable attorneys’ fees, costs and expenses based on the amount of time, costs and expenses Class Counsel have spent on bringing, negotiating, and resolving the case. Class Counsel will not ask for more than \$_____ for their attorneys’ fees, costs and expenses through the date that the Court approves the Partial Consent Decree. The Court will decide how much they should get. The amount the Court awards will not come from money being used to install and fix curb ramps and pedestrian walkways.

Class Counsel shall also be entitled to be paid for their time and costs spent on monitoring the work that the City does to meet the promises in the Partial Consent Decree. The amount that Class Counsel are paid for that work will not come from money being used to install and fix curb ramps and pedestrian walkways either.

THE COURT’S FINAL APPROVAL HEARING

The Court has preliminarily approved the Partial Consent Decree and has scheduled a hearing for _____, 2025 at _____. in the Courtroom of the Honorable James K. Bredar, United States District Court for the District of Maryland, 101 West Lombard Street, Chambers 5A, Baltimore, MD 21201, to decide whether the settlement is fair, reasonable, and adequate, and should be finally approved, as well as whether to award service payments to the Class Representatives and how much to award to Class Counsel in reasonable attorneys’ fees, costs and expenses. At the hearing, the Court will consider any objections to the settlement and listen to people who wish to speak. You have a right to be heard at this hearing, but you are not required to attend.

This hearing date is subject to change without further notice. If you wish to be informed of any changes to the schedule, please notify Class Counsel at the addresses listed below. You may also check [website] or the public court records on file in this action at <https://www.pacer.gov/> for any updates.

OBJECTIONS TO THE SETTLEMENT

You can ask the Court to not approve the Partial Consent Decree by filing an objection. You cannot ask the Court to order different terms; the Court can only approve or reject the Partial Consent Decree. If the Court denies approval, the City will not be required to make changes to the pedestrian rights of way as set out in the Partial Consent Decree. Instead, the lawsuit will continue. If that is what you want to happen, you must object.

Any objection to the proposed Partial Consent Decree must be in writing. If you file a timely written objection, you may, but are not required to, appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and paying that attorney. All written objections must (a) clearly identify the case name and number (*Goodlaxson, et al. v. Mayor and City Council of Baltimore*, Case Number 1:21-cv-01454-JKB), (b) be submitted to the Court, with a copy to Class Counsel, either

by mailing them to the Clerk, United States District Court for the District of Maryland, 101 West Lombard Street, Baltimore, MD 21201, or by filing them in person at any location of the United States District Court for the District of Maryland and (c) be filed or postmarked on or before _____ [60 days]. You may also appear at the hearing on _____ to object to the Partial Consent Decree.

IF YOU DO NOT TIMELY MAKE AN OBJECTION AS DESCRIBED ABOVE, YOU WILL HAVE WAIVED YOUR OBJECTION AND SHALL BE PREVENTED FROM MAKING ANY OBJECTION TO THE PARTIAL CONSENT DECREE.

IF YOU DO NOT OPPOSE THIS SETTLEMENT, YOU NEED NOT APPEAR OR FILE ANYTHING IN WRITING.

FURTHER INFORMATION

This notice only summarizes the terms of the Partial Consent Decree. If you want more details, please see the Partial Consent Decree available at [website], or by accessing the Court docket on this case through the Court's Public Access to Electronic Records (PACER) system at <https://ecf.mdd.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the District of Maryland, 101 West Lombard Street, Baltimore, MD 21201, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

For more details or a copy of the Partial Consent Decree, you can contact Class Counsel at the following addresses, emails and telephone numbers:

Linda M. Dardarian
Ginger L. Grimes
GOLDSTEIN, BORGEN, DARDARIAN & HO
155 Grand Avenue, Suite 900
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Timothy Fox
FOX & ROBERTSON
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tfox@foxrob.com
303-951-4164

Gabriel Rubinstein
DISABILITY RIGHTS MARYLAND
1500 Union Avenue, Suite 2000
Baltimore, MD 21211
GabrielR@disabilityrightsmd.org
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Madeleine Reichmann
DISABILITY RIGHTS ADVOCATES
655 3rd Avenue, 14th Floor
New York, NY 10017
mreichman@dralegal.org

Jinny Kim
DISABILITY RIGHTS ADVOCATES
2001 Center Street, Third Floor
Berkeley, CA 94704
jkim@dralegal.org
(510) 519-9790

Please do not call the Court or the Court Clerk's office to ask about this settlement.

To obtain copies of this Notice in alternative accessible formats, please contact Class Counsel listed above.

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

ATTENTION: ALL PERSONS WITH A MOBILITY DISABILITY: If you have used, tried to use, or believe you will in the future use or try to use any of the City of Baltimore’s sidewalks, crosswalks, curbs, curb ramps, walkways, pedestrian rights of way, pedestrian under-crossings, pedestrian overcrossings, or other pedestrian pathways, and have had or will have difficulty using them because they were too steep, narrow, damaged, or in need of repair, **you may be a member of the proposed settlement class affected by this lawsuit.** This is a court-authorized notice.

PLEASE READ THIS NOTICE CAREFULLY. YOUR RIGHTS MAY BE AFFECTED.

What is this Case About?

Filed in 2021, this lawsuit alleges that the Mayor and City Council of Baltimore (“the City”) did not follow federal disability access laws because it failed to install or maintain curb ramps and pedestrian walkways that are accessible to people with mobility disabilities. The City disputes this and denies it has violated the law.

Who is Included in the Partial Consent Decree?

The settlement includes all persons with any mobility disability, who have been denied full and equal access to the City’s curb ramps and pedestrian walkways.

What does the Partial Consent Decree Provide?

The Partial Consent Decree, which is similar to a settlement agreement, will be in effect for four (4) years. The City has agreed to changes that will improve curb ramps and pedestrian walkways for people with mobility disabilities including by spending at least \$8 million - \$12 million per year to install and fix curb ramps and pedestrian walkways to make sure they are accessible to people with mobility disabilities, approving the design and construction of curb ramps and pedestrian walkways as well as inspecting and replacing new construction that is inaccessible, improvements to existing access barriers in the pedestrian right of way, a system to request access fixes to curb ramps and sidewalks, and appointing ADA coordinators to oversee this access work. In three years, both sides will discuss further changes to the City’s curb ramps and pedestrian walkways which will be included in a future consent decree.

The Partial Consent Decree also stays all non-monetary claims about access for people with mobility disabilities to the City’s pedestrian right of way, but does not release claims for money damages for the Settlement Class. The Plaintiffs’ attorneys will ask the Court to order the City to pay their attorneys’ fees and costs, and the Class Representatives will receive payments for their time and efforts representing people with mobility disabilities in this case. The payments will not be made without the Court’s approval.

What are my rights?

The Court has preliminarily approved the Partial Consent Decree and has scheduled a hearing for ____ at __ with the Honorable James K. Bredar, U.S. District Court, 101 West Lombard Street, Chambers 5A, Baltimore, MD 21201, to decide whether the proposed Partial Consent Decree should be finally approved. The deadline to object is _____. You can also appear at the hearing to object. If you do nothing, you will be bound by the Court’s decision. If you do not

oppose the settlement, you do not have to do anything. Please check [website] for changes to the hearing date.

For More Detailed Information

The terms of the Partial Consent Decree are only summarized in this notice. For the complete terms and conditions, please see the Partial Consent Decree available at _____, or by contacting _____.

EXHIBIT C

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

SUSAN GOODLAXSON, *et al.*,

Plaintiffs,

v.

MAYOR AND CITY COUNCIL OF
BALTIMORE,

Defendants.

Civil Action No.: 1:21-cv-01454-JKB

**[PROPOSED] ORDER (1) GRANTING MOTION FOR PRELIMINARY APPROVAL OF
PARTIAL CONSENT DECREE; (2) CERTIFYING SETTLEMENT CLASS; (3)
DIRECTING NOTICE TO THE CLASS; AND (4) SETTING DATE FOR FAIRNESS
HEARING**

I. INTRODUCTION

Before the Court is the Parties' Joint Motion for Preliminary Approval of Proposed Partial Consent Decree and certification of a Settlement Class. This lawsuit and the proposed Partial Consent Decree address Plaintiffs' allegations that the City of Baltimore has systemically failed to provide full and equal access to its pedestrian right of way to individuals with mobility disabilities in violation of Title II of the Americans with Disabilities Act ("ADA") and Section 504 of the Rehabilitation Act of 1973 ("Section 504"). Following extensive negotiations that have been taking place since November 2021, the Parties have reached a proposed Partial Consent Decree, which is in the best interest of all Parties and satisfies the requirements of Federal Rule of Civil Procedure 23.

The Parties now ask that the Court enter an order: (1) granting preliminary approval of the Partial Consent Decree; (2) provisionally certifying the proposed Settlement Class and appointing Plaintiffs' attorneys as Class Counsel, pending final approval; (3) approving the Parties' proposed forms of notice and directing notice to the class; (4) setting deadlines for notice, objections, and a final fairness hearing; and (5) staying litigation and administratively closing this case pending completion of the Partial Consent Decree's term or either Party's request that the Court reopen the case for the Court's approval of a further settlement agreement or for further litigation after the Parties engage in future negotiations, or if the Parties need the Court to resolve disputes during the Partial Consent Decree's term.

Having presided over the proceedings in the above-captioned action and having reviewed all of the arguments, pleadings, records, and papers on file, this Court finds and orders as follows:

II. FINDINGS

A. **The Proposed Settlement Class Meets the Requirements of Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure**

To grant preliminary approval, the court must first determine whether the proposed settlement class is proper and, if so, whether to preliminarily certify the class. *See Curtis v. Genesis Engineering Solutions, Inc.*, Case No. GJH-21-722, 2022 WL 1062024, at *3 (D. Md. Apr. 8, 2022). To support class certification, a court must find that each of Rule 23(a)'s four requirements has been satisfied: (1) numerosity; (2) commonality; (3) typicality; and (4) adequacy of representation. *Berry v. Schulman*, 807 F.3d 600, 608 (4th Cir. 2015). In addition to these requirements, the parties must show that the class action is maintainable under Federal Rule of Civil Procedure 23(b)(1), (2), or (3). *Id.* The applicable provision here is Rule 23(b)(2), which permits class actions for declaratory or injunctive relief where “the party opposing the class has acted or refused to act on grounds that apply generally to the class.” Fed. R. Civ. P. 23(b)(2).

Here, the Parties have stipulated to seek certification of the following class, for purposes of settlement only, pending final approval:

All persons (including residents of and/or visitors to the City of Baltimore) with any Mobility Disability, who, at any time prior to court judgment granting final approval to this Partial Consent Decree have been denied full and equal access to the City's pedestrian right of way due to the lack of a Curb Ramp or a Pedestrian Walkway or [c]urb [r]amp that was damaged, in need of repair, or otherwise in a condition not suitable or sufficient for use.

Dardarian Decl., Ex. 1 (“Partial Consent Decree”) at § II(T).

The Settlement Class is defined slightly differently than the class originally proposed in Plaintiffs' Complaint. *Compare* Partial Consent Decree at § II(T) *with* ECF No. 1 at ¶ 6. This modification clarifies the class definition and will not materially impact the class membership or prejudice any class member. The Court finds that the modification to the class definition is

appropriate.

In addition, the Court finds that the proposed Settlement Class meets the requirements of Rule 23(a) and Rule 23(b)(2), as discussed below, and it hereby conditionally certifies the proposed Settlement Class pending final approval.

1. The Proposed Settlement Class Satisfies the Requirements of Rule 23(a)

a. *The Settlement Class Is Sufficiently Numerous*

Rule 23(a)(1) requires that the proposed class be so numerous that joinder of all members is impracticable. Fed. R. Civ. P. 23(a). Data indicates that approximately 47,326 non-institutionalized Baltimore residents—over 11% of the City’s population—had an “ambulatory difficulty.” Dardarian Decl. at ¶ 38. This figure does not include the many people with mobility disabilities who currently travel or commute to Baltimore, or future residents, visitors, or commuters with mobility disabilities. *See Coreas v. Bounds*, No. TDC-20-0780, No. TDC-20-1304, 2020 WL 5593338, at *10 (D. Md. Sept. 18, 2020) (“[T]he fact that the class includes unknown, unnamed future members . . . weighs in favor of certification”) (quoting *Pederson v. La. State Univ.*, 213 F.3d 858, 868 n.11 (5th Cir. 2000)). Given that the total class likely exceeds 49,392 members, the Court finds that joinder of all class members is impracticable. *See In re Under Armour Sec. Litig.*, No. RDB-17-0388, 2022 WL 4545286, at *7.

b. *The Settlement Class Satisfies Commonality*

The “commonality” requirement of Rule 23(a)(2) is satisfied if class members have “suffered the same injury” and present a “common contention capable of being proven or disproven in ‘one stroke.’” *Brown v. Nucor Corp.*, 785 F.3d 895, 909 (4th Cir. 2015) (internal quotation marks omitted) (citing *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 349-50 (2011)). This means showing that “there is only one answer to the question of why [members of a marginalized community] were consistently disfavored.” *Brown*, 785 F.3d at 915. The Court

finds that Plaintiffs meet Rule 23(a)(2)'s commonality requirement. The Complaint alleges that the City has systematically failed to provide people with mobility disabilities full and equal access to its pedestrian right of way program by installing, remediating, and maintaining curb ramps and sidewalks as required by the ADA, Section 504, and their implementing regulations. ECF No. 1 at ¶ 3. Moreover, the sole reason for putative class members' exclusion from the City's pedestrian right of way program is their disability. *See Brown*, 785 F.3d at 915. The same factual allegations form the basis of each class member's claims and the legality of these policies and practices under the ADA and Section 504 is a question capable of class-wide resolution. Therefore, the Court finds that Rule 23(a)(2) has been satisfied because they have alleged a "systemwide pattern or practice of discrimination," binding class members' claims. *Id.* at 914 (internal quotation marks and citations omitted).

c. *Named Plaintiffs' Claims Are Typical of the Settlement Class*

Rule 23(a)(3)'s typicality requirement, which requires that class representatives' claims be typical of the claims of absent class members, helps ensure that the interests of absent class members will be advanced by the class representatives' prosecution of their own case. *Deiter v. Microsoft Corp.*, 436 F.3d 461, 466-67 (4th Cir. 2006). Here, the Court finds that as alleged, Named Plaintiffs and all members of the class have suffered alleged injuries that are attributable to the same "course of conduct": the City's failures to, *inter alia*, install, remediate and maintain curb ramps that are accessible to people with mobility disabilities and to ensure that the pedestrian right of way remains free of conditions that impede access to people with mobility disabilities. *See* ECF No. 1. Moreover, Named Plaintiffs, including the IMAGE Center, Inc., seek the same declaratory and injunctive relief as absent class members, which will benefit all equally. *See Coreas*, No. TDC-20-0780, No. TDC-20-1304, 2020 WL 5593338, at *13; *Harris v.*

Rainey, 299 F.R.D. at 486, 490 (W.D. Va. 2014). The Court finds that Plaintiffs have therefore satisfied Rule 23(a)(3)'s typicality requirement.

d. *Named Plaintiffs and Their Counsel Will Fairly and Adequately Protect the Interests of the Settlement Class*

Rule 23(a) requires that the named plaintiffs “fairly and adequately protect the interests” of absent class members. Fed. R. Civ. P. 23(a)(4). This factor requires the court to consider whether (1) there are any fundamental conflicts of interest between the named plaintiffs and putative class members; (2) the named plaintiffs will prosecute the action vigorously on behalf of the class; and (3) class counsel is competent to litigate the action. *In re Marriott Int’l, Inc. Customer Data Sec. Breach Litig.*, 341 F.R.D. 128, 150 (D. Md. 2022); *Coreas*, No. TDC-20-0780, No. TDC-20-1304, 2020 WL 5593338, at *14.

As discussed *supra*, the Court finds that the Named Plaintiffs and members of the proposed class share common objectives, have the same interest in establishing the City’s liability, and rely on the same factual and legal positions. *See* Sections II.A.1.b–c, *supra*. The goal of all Named Plaintiffs is to have the City fix its citywide pedestrian right of way network so that it is accessible to all people with mobility disabilities. *See* ECF No. 1 at ¶¶ 89–90; Dardarian Decl. at ¶ 67; Goodlaxson Decl. at ¶ 9; Jackson Decl. at ¶ 9; Mayo Decl. at ¶ 8; Winmond Decl. at ¶ 6. The Named Plaintiffs have no known conflicts with the proposed settlement class and their interests are aligned with those of the other class members. Dardarian Decl. at ¶ 68; Goodlaxson Decl. at ¶¶ 10–11; Jackson Decl. at ¶¶ 10–11; Mayo Decl. at ¶¶ 9–10; Winmond Decl. at ¶¶ 7–8.

“Absent contrary proof, class counsel are presumed competent and sufficiently experienced to prosecute the action on behalf of the class.” *Cuthie v. Fleet Reserve Ass’n*, 743 F. Supp. 2d 486 (D. Md. 2010) (citation omitted); *see* 1 William B. Rubenstein, *Newberg and*

Rubenstein on Class Actions 3:72 (6th ed 2022). The Court recognizes that Plaintiffs’ counsel have “significant experience in the field of civil rights class action lawsuits,” particularly those involving the accessibility of pedestrian rights of way for persons with mobility disabilities, and have been appointed class counsel in dozens of disability rights cases across the country. *See* Dardarian Decl. at ¶¶ 39–60 (describing counsel’s experience). In addition, Disability Rights Advocates, Disability Rights Maryland, Fox & Robertson and Goldstein Borgen Dardarian and Ho, the organizations and law firms seeking to be appointed as class counsel, have zealously advocated for the class throughout the litigation and settlement discussions. *Id.* at ¶ 63. Thus, the Court finds that the proposed class representatives and Plaintiffs’ counsel are adequate to represent the class.

2. The Proposed Settlement Class Satisfies Rule 23(b)(2)

A Rule 23(b)(2) class is appropriate where “the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.” Fed. R. Civ. P. 23(b)(2).

Here, the proposed settlement class seeks broad declaratory and injunctive relief involving City-wide policy changes and systems development and implementation, such as ensuring that the City adopts policies and practices to install and maintain accessible curb ramps and sidewalks, that will inevitably apply to and benefit all class members. ECF No. 1 at ¶ 90. The Court concludes that certifying this class under Rule 23(b)(2) is appropriate because the injunctive and declaratory relief provided for in the Partial Consent Decree is responsive to each class member’s claims regarding the accessibility of the City’s pedestrian right of way.

Accordingly, the Court certifies the Settlement Class as defined above, conditioned upon entry of an order granting final approval of the Partial Consent Decree.

B. Preliminary Approval of the Partial Consent Decree Is Proper

Under Federal Rule of Civil Procedure 23(e)(2), a court may approve a proposed class action settlement “only after a hearing and only on finding that it is fair, reasonable, and adequate.” At the preliminary approval stage, the parties need only show that the proposed agreement is “‘within the range of possible approval,’ subject to further consideration at the final fairness hearing after interested parties have had an opportunity to object.” *CASA de Maryland, Inc. v. Arbor Realty Trust, Inc.*, No. DKC 21-1778, 2023 WL 7089916, at *3 (D. Md. Oct. 26, 2023) (quoting *Benway v. Res. Real Estate Servs., LLC*, No. 05-cv-3250-WMN, 2011 WL 1045597, at *4 (D. Md. Mar. 16, 2011)); see also *Boger, . Citrix Sys., Inc.*, No. 19-CV-01234-LKG, 2023 WL 1415625, at *3 (D. Md. Jan. 31, 2023). Rule 23(e)(2) requires the Court to consider the following factors when determining whether a proposed class settlement is fair, reasonable, and adequate:

- (A) the class representatives and class counsel have adequately represented the class;
- (B) the proposal was negotiated at arm’s length;
- (C) the relief provided for the class is adequate, taking into account:
 - (i) the costs, risks, and delay of trial and appeal;
 - (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
 - (iii) the terms of any proposed award of attorney’s fees, including timing of payment; and
 - (iv) any agreement required to be identified under Rule 23(e)(3);and
- (D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2).

Similarly, under the Fourth Circuit’s multifactor test, proponents of a proposed class action settlement must show that the agreement is fair, reasonable, and adequate. *In re: Lumber Liquidators, Chinese-Manufactured Flooring Prod. Mktg., Sales Pracs. & Prod. Liab. Litig.*, 952 F.3d 471, 484 (4th Cir. 2020). To evaluate fairness, courts must analyze “(1) the posture of the

case at the time settlement was proposed; (2) the extent of discovery that had been conducted; (3) the circumstances surrounding the negotiations; and (4) the experience of counsel in the area of [the] class action litigation.” *Id.* To evaluate adequacy, courts must analyze “(1) the relative strength of the plaintiffs’ case on the merits; (2) the existence of any difficulties of proof or strong defenses the plaintiffs are likely to encounter if the case goes to trial; (3) the anticipated duration and expense of additional litigation; (4) the solvency of the defendant[] and the likelihood of recovery on a litigated judgment; and (5) the degree of opposition to the settlement.” *Id.* The Fourth Circuit has not enumerated specific factors for assessing an agreement’s reasonableness.

For the following reasons, the Court finds the proposed Partial Consent Decree is fair, reasonable, and adequate under both Rule 23(e)(2) and the Fourth Circuit’s test.

1. The Class Representatives and Class Counsel Have Adequately Represented the Class

As discussed in Section I.A.1.d, *supra*, the Court finds that Named Plaintiffs and Class Counsel have adequately represented the proposed class in satisfaction of Rule 23(e)(2)(A) and the Fourth Circuit’s test.

2. The Proposed Consent Decree Is Fair and Was Negotiated at Arm’s Length

“In evaluating the fairness of a proposed settlement, the court must determine whether ‘the settlement was reached as a result of good-faith bargaining at arm’s length, without collusion.’” *Alloways v. Cruise Web, Inc.*, No. CBD-17-2811, 2019 WL 1902813, at *9 (D. Md. Apr. 29, 2019) (quoting *In re Jiffy Lube Sec. Litig.*, 927 F.2d 155, 158–59 (4th Cir. 1991)); *see also* Rule 23(e)(2)(B). In the Fourth Circuit, this involves analyzing “(1) the posture of the case at the time settlement was proposed, (2) the extent of discovery that had been conducted, (3) the circumstances surrounding the negotiations, and (4) the experience of counsel in the [particular]

area of [] class action litigation.” *Alloways*, 2019 WL 1902813, at *9 (citation omitted).

Each of these factors weighs in favor of finding that the proposed Partial Consent Decree was negotiated at arm’s length. While this Partial Consent Decree was reached “at a very early stage in the litigation and prior to any formal discovery,” *In re Jiffy Lube Sec. Litig.*, 927 F.2d at 159, the Court finds that the Parties engaged in a robust informal discovery process that gave them “sufficient opportunity to understand the issues and the evidence in this case, and to reach a well-informed settlement.” *Boger*, 2023 WL 1415625, at *8; *see In re Jiffy Lube Sec. Litig.*, 927 F.2d at 159; *Brent, v. Advanced Med. Mgmt., LLC*, No. JKB-23-3254, 2024 WL 3161745, at *5 (D. Md. June 25, 2024) (Bredar, J.); Dardarian Decl. at ¶¶ 10-11. In addition, settlement negotiations, conducted by counsel experienced in complex class action disability rights litigation, were “hard-fought” and thus conducted at arm’s length. *Brent*, 2024 WL 3161745, at *5; *see also* Dardarian Decl. at ¶ 10. Finally, many of the settlement negotiation sessions were supervised by Magistrate Judge Susan K. Gauvey, with the initial mediation session supervised by Magistrate Judge Charles B. Day, both of whom the Court selected. Dardarian Decl. at ¶ 10. This further supports the conclusion that settlement negotiations were fair and without collusion.

3. The Relief Provided for the Class Weigh in Favor of Approval

When evaluating a class settlement agreement’s adequacy, “[t]he most important factors . . . are the relative strength of the plaintiffs’ claims on the merits and the existence of any difficulties of proof or strong defenses.” *Brent*, 2024 WL 3161745, at *5 (quoting *Sharp Farms v. Speaks*, 917 F.3d 276, 299 (4th Cir. 2019)). Additional factors include “the anticipated duration and expense of litigation,” “the solvency of the defendant[] and the likelihood of recovery on a litigated judgment,” as well as “the degree of opposition to the settlement.”¹ *In re*:

¹ Since class notice has not yet been effected, this factor must be evaluated on the Parties’ forthcoming motion for final approval. *See Brent*, 2024 WL 3161745, at *6 (deferring

Lumber Liquidators, 952 F.3d at 484. The Court understands that the Partial Consent Decree requires the City to create and enhance systems to build its capacity to remediate, to the maximum extent feasible, all access barriers in curb ramps and pedestrian walkways under its control, and to remediate such access barriers on an increasing basis throughout the Partial Consent Decree’s four-year term, with future negotiations during the term to develop a plan for further remediation toward a fully compliant pedestrian right of way. *See* Partial Consent Decree at §§ III, V. The Partial Consent Decree also requires the appointment of ADA coordinators, enhancement of the City’s access request system, an asset management database, and a maintenance policy, among other relief that will benefit all settlement class members. *Id.* at §§ IV, VII, IX–X. The Partial Consent Decree also provides for monitoring by Class Counsel and a dispute resolution procedure for resolving any issues that arise during the settlement term. *Id.* at §§ XI–XII. In sum, the Court finds that the Partial Consent Decree addresses all claims raised in Plaintiffs’ complaint.

a. *The Potential Costs, Risks, and Delays Associated with Litigation, Trial, and Appeal Weigh in Favor of Approval*

In contrast, the Court finds that the risks, expense, and likely duration of protracted litigation in this case would be significant in the absence of the Parties’ settlement. In addition, there is the possibility that Defendant would prevail in the litigation, and the case would end with no benefits to the class.

4. The Partial Consent Decree’s Attorneys’ Fees Provisions Also Weigh in Favor of Approval

The Court finds that the terms of the proposed award of attorneys’ fees also support the adequacy of the Partial Consent Decree. The Partial Consent Decree provides that Class Counsel

assessment of degree of opposition to final approval hearing).

shall be considered “prevailing parties” and may apply to the Court for an award of fees, costs, and expenses for work performed through the Effective Date, as well as for work performed in the fourth year of the Decree. Partial Consent Decree at §§ XV.A, B.2. The City shall pay Class Counsel for work performed during the first through third years of the Decree subject to a cap of \$100,000 per year. *Id.* at § XV.B.1. That the Partial Consent Decree does not include a negotiated amount for attorneys’ fees, but rather, leaves the amount to be adjudicated by the Court, and subjects Class Counsel’s fees to a cap during the monitoring and implementation phase, weighs in favor of finding that the Partial Consent Decree is reasonable and fair.

5. The Proposed Consent Decree Treats All Class Members Equitably

The Court finds that because the Partial Consent Decree provides purely injunctive relief for the class, it treats all class members equitably: all stand to benefit from the same improvements to the pedestrian right of way. *See Hutton v. Nat’l Bd. of Exam’rs in Optometry, Inc.*, No. JKB-16-3025, No. JKB-16-3146, No. JKB-17-1964, 2019 WL 3183651, at *6 (D. Md. July 15, 2019). That the Partial Consent Decree allows Plaintiffs to seek modest service awards for the Class Representatives requires no different conclusion. *Id.* at *8 (approving service awards to class representatives to “compensate them for their time and effort” consulting with class counsel and advocating for the settlement class; settlement otherwise gave class representatives same benefits as unnamed class members).

The proposed service awards are reasonable given the service the Named Plaintiffs have performed. Each of the Named Plaintiffs expended considerable time and effort initiating this litigation, participating in numerous settlement meetings, including many where they faced hostility, and consulted with Plaintiffs’ counsel. *See Dardarian Decl.* at ¶ 11; *Goodlaxson Decl.* at ¶¶ 12–13, 15–16; *Jackson Decl.* at ¶¶ 12–13, 15; *Mayo Decl.* at ¶¶ 11–12, 15; *Winmond Decl.* at ¶ 9. That the service awards were not negotiated until after the substantive terms further

weighs in favor of their reasonableness. *See Berry*, 807 F.3d at 614; Dardarian Decl. at ¶ 69. Moreover, the service awards of \$10,000 each are in line with other awards in this District. *See Boger*, 2023 WL 3763974, at *11; *Feinberg v. T. Rowe Price Group, Inc.*, 610 F. Supp. 3d 758, 774 (D. Md. 2022). Therefore, the Court finds that it is reasonable to award Named Plaintiffs modest service awards in the amount of \$10,000 each.²

III. DISTRIBUTION OF NOTICE AND FAIRNESS HEARING

Distribution of the Notice of settlement and scheduling of the Fairness Hearing is justified now that the Court has certified the Class and preliminarily approved the proposed Partial Consent Decree. *See* Rule 23(e)(1)(B). It is generally expected in this District that notice will (1) provide a “sufficiently clear and concise description” of the case, the terms of settlement, and the class member’s rights and responsibilities; (2) be distributed “through the best means practicable”; and (3) be “reasonably calculated to apprise [class members of the lawsuit] and “their right to participate in, object to, or exclude themselves from” the settlement. *Dickman v. Banner Life Ins. Co.*, No. 1:16-cv-00192-RDB, 1:17-cv-02026-GLR, 2020 WL 13094954, at *3 (D. Md. May 20, 2020); *see also Robinson v. Nationstar Mortgage LLC*, No. TDC-14-3667, 2020 WL 13430476, at *1 (D. Md. April 13, 2020). Class members must also be notified of the proposed terms for payment of attorneys’ fees and costs. Fed. R. Civ. P. 23(h)(1).

Here, the Parties have agreed to the form that the Notice of Partial Consent Decree will take and its method of distribution, both of which the Court finds reasonable. *See* Partial Consent

² The remaining factors under Rule 23(e)(2) and the Fourth Circuit tests—the effectiveness of any proposed method of distributing relief to the class, Rule 23(e)(2)(C)(ii), and the degree of opposition to the settlement, *In re: Lumber Liquidators*, 952 F.3d at 484—are not relevant at this stage, given that the Partial Consent Decree does not provide monetary relief to the class, and notice has not yet gone out to the class, *see Brent*, 2024 WL 3161745, at *6 (in preliminary approval decision, deciding to assess the degree of opposition to the proposed settlement at the final approval hearing).

Decree at Exhibit B. The proposed Notice informs potential class members and third parties of the primary features of the Partial Consent Decree in plain language. *See id.* at § XIII.E.2. The Notice also informs class members about the proposed terms for payment of attorneys' fees and service awards. *Id.* The Notice shall be translated into Spanish and Korean, and shall be made accessible for blind and low vision individuals. *Id.* at § XIII.E.3.

The Parties have agreed on a notice distribution plan that will effectively inform class members about the partial settlement and their right to object by mailing the Notice to stakeholder organizations, publishing the Notice on the City's and Class Counsel's websites and in newspapers. *Id.* at § XIII.E.3; XIII.E.5; XIII.E.1.

The Court finds that the distribution of Class Notice in the manner and form set forth in the Partial Consent Decree meets the requirements of due process and Federal Rules of Civil Procedure 23(c)(2) and 23(e) and is the best notice practicable under the circumstances. The Class Notice is thus approved as to form and the Court adopts the Parties' proposed distribution plan. The Parties may make non-substantive changes to this Notice—such as to insert dates and times consistent with this Order, as well as website addresses—without further approval from this Court.

IV. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. Unless stated otherwise, the terms in this Order have the meaning set forth in the Partial Consent Decree.

2. The Court hereby conditionally certifies the proposed Settlement Class pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2) as follows:

a. The Court hereby conditionally appoints Plaintiffs Susan Goodlaxson, Janice Jackson, Keyonna Mayo, and the IMAGE Center of Maryland as Settlement Class

representatives.

b. The Court hereby conditionally appoints Disability Rights Advocates, Disability Rights Maryland, Fox & Robertson, P.C., and Goldstein, Borgen, Dardarian & Ho, Plaintiffs' attorneys of record, as Class Counsel.

3. The Court hereby grants preliminary approval to the terms and conditions contained in the Partial Consent Decree, attached as Exhibit 1 to the Declaration of Linda M. Dardarian in Support of the Parties' Joint Motion for Preliminary Approval.

4. The Court finds that the Partial Consent Decree is fair, reasonable and adequate to all potential Settlement Class members and warrants the dissemination of notice to the Settlement Class apprising them of the Partial Consent Decree.

5. The Court hereby approves, as to form and content, the proposed Class Notice, attached as Exhibit B to the Partial Consent Decree.

6. The Class Notice shall be disseminated to the Settlement Class, substantially in the form attached as Exhibit B to the Partial Consent Decree, by the following means:

a. Within 10 days of this Order, Defendant will cause the Notice and other required documentation to be provided to the Attorneys General of the United States and Appropriate State Officials, U.S. Department of Justice and attorneys general of relevant states as required by Section 1715 of the Class Action Fairness Act of 2005.

b. Within 10 days of this Order, Class Counsel will mail the Notice to the stakeholder organizations listed in Exhibit D to the Partial Consent Decree.

c. Within 20 days of this Order, Defendant shall publish the Notice on the City's website for 4 consecutive weeks, and Class Counsel shall publish the Notice on their websites. The Notice will be posted in English, Spanish, and Korean. The Notice will comply

with WCAG 2.1 Level AA.

d. Within 30 days of this Order, Defendant shall cause the Notice to be published once a week for 4 consecutive weeks in *The Baltimore Sun*, *The Baltimore Banner* and *The Daily Record*.

7. Counsel for both Parties shall submit declarations to the Court as part of the Parties' Motion for Final Approval confirming compliance with the above notice provisions.

8. Any Settlement Class member may object to any aspect of the Partial Consent Decree either on their own or through an attorney hired at their expense. Any Settlement Class Member who wishes to object to the fairness, reasonableness, or adequacy of the Partial Consent Decree or any aspect of it, the attorneys' fees and costs to be requested by Class Counsel, or the service payments for the Class Representatives must submit an Objection no later than 70 days after the date of this Order.

a. Objections should include:

i. The case name or case number: *Goodlaxson, et al. v. Mayor and City Council of Baltimore*, Case Number 1:21-cv-01454-BPG;

ii. The Objector's name, address, and if available, telephone number and e-mail address of the Objector;

iii. If represented by counsel, the name, address, telephone number and e-mail address of the Objector's counsel;

iv. The specific grounds for the objection

v. A statement of whether the objection applies to the Objector, to a specific subset of the class, or to the entire class; and

vi. Whether the Objector wishes to speak at the Fairness Hearing.

b. Objections must be submitted through one of the following methods:

i. Written Objections may be submitted in person at the U.S. District

Court for the District of Maryland or by mail to the United States District Court for the District of Maryland, 101 West Lombard Street, Baltimore, MD 21201.

c. Settlement Class members may also appear to present their objections at the Fairness Hearing. Any Settlement Class member who fails to timely submit objections or appear at the Fairness Hearing shall be deemed to have waived any objections and shall be foreclosed from objecting to the Partial Consent Decree, unless otherwise ordered by the Court.

d. Class Counsel and counsel for Defendant will respond to any timely filed objections no less than **5** days before the Fairness Hearing.

e. The procedures and requirements for filing objections in connection with the Fairness Hearing are intended to ensure the efficient administration of justice and the orderly presentation of any Settlement Class Member's objection to the Partial Consent Decree, in accordance with the due process rights of all Settlement Class Members.

9. A hearing is appropriate to determine whether this Court should grant final approval of the Partial Consent Decree, and to allow adequate time for Settlement Class members to support or oppose this settlement.

10. Pending the Fairness Hearing, all proceedings in this Action, other than proceedings necessary to carry out and enforce the terms and conditions of the Partial Consent Decree and this Order are hereby stayed.

a. A Fairness Hearing pursuant to Rule 23(e) of the Federal Rules of Civil Procedure to determine whether the Partial Consent Decree is fair, reasonable, and adequate, and whether it should be finally approved by the Court, shall be held before the undersigned on

[REDACTED], 2024, at [REDACTED].

11. Plaintiffs will file their Motion for Attorneys' Fees and Costs and their Motion for Service Awards no later than 40 days of this Order.

12. The Parties will file their Joint Motion for Final Approval of the Partial Consent Decree no later than two weeks before the Fairness Hearing.

13. If for any reason the Court does not grant the Motion for Final Approval of the Partial Consent Decree, the proposed Partial Consent Decree and all evidence and proceedings in connection therewith shall be null and void.

14. The Court enjoins all Settlement Class Members from asserting any claims to be released by the Partial Consent Decree until the date of the Fairness Hearing.

IT IS SO ORDERED.

DATED: [REDACTED], 2024

The Honorable James K. Bredar

EXHIBIT D

EXHIBIT D

Organizations to Receive Notice of Settlement

The following organizations will be provided with a copy of the Notice of Settlement, sent via email or U.S. Mail by Class Counsel, within ten (10) days after the Court has issued the Preliminary Approval Order.

1. Accessible Resources for Independence
2. The Arc Baltimore
3. The Arc of Maryland
4. Baltimore Adapted Recreation and Sports (BARS)
5. Bay Area Center for Independent Living
6. By Their Side
7. The Brain Injury Association of Maryland
8. Citizens Advisory Committee for Accessible Transportation (CACAT)
9. Comprehensive Housing Assistance, Inc. (CHAI)
10. Consumers for Accessible Ride Services (CARS)
11. The Coordinating Center
12. Easterseals DC MD VA
13. The Freedom Center, Inc
14. The IMAGE Center of Maryland
15. Independence Now, Inc
16. Kennedy Krieger Institute
17. The League for People with Disabilities
18. Living in a Free Environment (L.I.F.E.)
19. Maryland Association of Community Services
20. The Maryland Developmental Disabilities Council
21. Maryland Statewide Independent Living Council (MSILC)
22. Meals on Wheels of Central Maryland
23. The Parents' Place of Maryland
24. People On the Go Maryland
25. Resources for Independence, Inc.
26. Service Coordination, Inc.

27. Shared Support Maryland, Inc.
28. Southern Maryland Center for Independent Living (SMCIL)
29. United Community Connections

EXHIBIT E

NCAmato
Clerk, Board of Estimates

11-20-2024

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

SUSAN GOODLAXSON, *et al.*,

Plaintiffs,

v.

MAYOR AND CITY COUNCIL OF
BALTIMORE,

Defendants.

Civil Action No.: 1:21-cv-01454-JKB

**[PROPOSED] ORDER (1) GRANTING MOTION FOR FINAL APPROVAL OF
PARTIAL CONSENT DECREE; (2) CERTIFYING SETTLEMENT CLASS; AND (3)
STAYING LITIGATION**

I. INTRODUCTION

Before the Court is the Parties' Joint Motion for Final Approval of Proposed Partial Consent Decree. This lawsuit and the proposed Partial Consent Decree address Plaintiffs' allegations that the City of Baltimore has systemically failed to provide full and equal access to its pedestrian right of way to individuals with mobility disabilities in violation of Title II of the Americans with Disabilities Act ("ADA") and Section 504 of the Rehabilitation Act of 1973 ("Section 504"). Following extensive negotiations that have been taking place since November 2021, the Parties have reached a proposed Partial Consent Decree, which is in the best interest of all Parties and satisfies the requirements of Federal Rule of Civil Procedure 23.

On _____, 2024, this Court (1) granted preliminary approval of the Partial Consent Decree; (2) provisionally certified the Settlement Class and appointed Plaintiffs Susan Goodlaxson, Janice Jackson, Keyonna Mayo, and the IMAGE Center, Inc. as Settlement Class representatives, and appointed Disability Rights Advocates, Disability Rights Maryland, Fox & Robertson, and Goldstein, Borgen, Dardarian & Ho as Class Counsel; (3) found that the proposed Partial Consent Decree is fair and warranted dissemination of notice to the Settlement Class; (4) approved the Parties' proposed forms of notice and notice distribution plan; and (5) scheduled a Fairness Hearing for _____, 2025. Dkt No. ____ (Order Granting Prelim. Approval). The Court directed Plaintiffs' counsel to submit a motion for attorneys' fees, expenses, and costs, which they did on _____, 2025. Dkt No. _____. The Parties now ask that the Court enter an order (1) granting Final Approval of the Partial Consent Decree; (2) certifying the Settlement Class and appointing Plaintiffs' attorneys as Class Counsel; (3) staying litigation and administratively closing this case pending completion of the Partial Consent Decree's term or either Party's request that the Court reopen the case for the Court's approval of a further settlement agreement or for further litigation after the Parties engage in

future negotiations, or if the Parties need the Court to resolve disputes during the Partial Consent Decree's term.

Having presided over the proceedings in the above-captioned action and having reviewed all of the arguments, pleadings, records, and papers on file, this Court finds and orders as follows:

II. FINDINGS

A. Notice was Effectuated to the Settlement Class.

Class Counsel and Defendant Mayor, and City Council of Baltimore (the "City") distributed the notice in accordance with the Partial Consent Decree and this Court's Preliminary Approval Order. Class Counsel published a copy of the class notice in English, Spanish and Korean on their respective websites in a format compliant with WCAG 2.1 Level AA. *See* Declaration of Linda M. Dardarian in Support of Parties' Joint Motion for Final Approval of Partial Consent Decree ("Dardarian FA Decl."), ¶ ___. Class Counsel also sent the class notice to the stakeholder organizations specified in the Partial Consent Decree. Dardarian FA Decl. ¶ ___. The City published the class notice (Dkt. No. ___, p. ___) for four consecutive weeks in *The Baltimore Sun*, *The Baltimore Banner* and *The Daily Record*. *See* Declaration of Thurman Zollicoffer in Support of Parties' Final Approval of Partial Consent Decree ("Zollicoffer Decl."). The City also complied with the notice requirements of the Class Action Fairness Act. Zollicoffer Decl. ¶ ___.

This Court finds that the Parties distributed notice to the Settlement Class in a manner and form "reasonably calculated to apprise [class members of the lawsuit] and "their right to participate in, object to, or exclude themselves from" the settlement. *Dickman v. Banner Life Ins. Co.*, No. 1:16-cv-00192-RDB, 1:17-cv-02026-GLR, 2020 WL 13094954, at *3 (D. Md. May 20,

2020), and that meets the requirements of due process and Federal Rules of Civil Procedure 23(c)(2) and 23(e).

B. The Settlement Class Meets the Requirements of Rule 23(a), 23(g), and (b)(2) of the Federal Rules of Civil Procedure

To grant final approval, the court must determine whether the proposed settlement meets the requirements under Federal Rule of Civil Procedure 23. *See Feinberg v. T. Rowe Price Group, Inc.*, 610 F. Supp. 2d 758, 766 (D. Md. 2022) (J. Bredar). The Court previously granted the Joint Motion for Preliminary Approval and found that each of Rule 23(a)'s four requirements has been satisfied: (1) numerosity; (2) commonality; (3) typicality; and (4) adequacy of representation. *Berry v. Schulman*, 807 F.3d 600, 608 (4th Cir. 2015); Dkt. No. _____. Accordingly, the Court affirms and incorporates by reference its prior analysis under Rules 23(a) and (b)(2) as set forth in its Order Granting Preliminary Approval. *See* Dkt. No. ____ at _____.

C. Final Approval of the Partial Consent Decree Is Proper

Under Federal Rule of Civil Procedure 23(e)(2), a court may approve a proposed class action settlement “only after a hearing and only on finding that it is fair, reasonable, and adequate.” Rule 23(e)(2) requires the Court to consider the following factors when determining whether a proposed class settlement is fair, reasonable, and adequate:

- (A) the class representatives and class counsel have adequately represented the class;
- (B) the proposal was negotiated at arm's length;
- (C) the relief provided for the class is adequate, taking into account:
 - (i) the costs, risks, and delay of trial and appeal;
 - (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
 - (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
 - (iv) any agreement required to be identified under Rule 23(e)(3);

and
(D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2).

Similarly, under the Fourth Circuit’s multifactor test, proponents of a proposed class action settlement must show that the agreement is fair, reasonable, and adequate. *In re: Lumber Liquidators Chinese-Manufactured Flooring Prod. Mktg., Sales Pracs. & Prod. Liab. Litig.*, 952 F.3d 471, 484 (4th Cir. 2020). To evaluate fairness, courts must analyze “(1) the posture of the case at the time settlement was proposed; (2) the extent of discovery that had been conducted; (3) the circumstances surrounding the negotiations; and (4) the experience of counsel in the area of [the] class action litigation.” *Id.* To evaluate adequacy, courts must analyze “(1) the relative strength of the plaintiffs’ case on the merits; (2) the existence of any difficulties of proof or strong defenses the plaintiffs are likely to encounter if the case goes to trial; (3) the anticipated duration and expense of additional litigation; (4) the solvency of the defendant[] and the likelihood of recovery on a litigated judgment; and (5) the degree of opposition to the settlement.” *Id.*

In its Preliminary Approval Order, the Court found the Partial Consent Decree fair, reasonable and adequate under both Rule 23(e)(2) and the Fourth Circuit’s test. *See* Dkt. No. at _____. Here, the Partial Consent Decree requires the City to create and enhance systems to build its capacity to remediate, to the maximum extent feasible, all access barriers in curb ramps and pedestrian walkways under its control, and to remediate such access barriers on an increasing basis throughout the four-year term, with future negotiations during the term to develop a plan for further remediation toward a fully compliant pedestrian right of way. The Partial Consent Decree also requires the appointment of ADA coordinators, enhancement of the City’s access request system, an asset management database and a maintenance policy, among other relief that

will benefit all settlement class members. The Partial Consent Decree also provides for monitoring by Class Counsel and a dispute resolution procedure for resolving any issues that arise during the settlement term. In sum, the Court finds that the Partial Consent Decree addresses all claims raised in Plaintiffs' complaint. The only difference in recovery between the Plaintiffs and other class members is a service award in the amount of \$10,000 for each Class Representative. The Partial Consent Decree, however, preserves unnamed class members' rights to sue for individual damages, in contrast to Named Plaintiffs, who otherwise waive the right to sue for additional damages.

Significantly, no class members have filed objections to the Partial Consent Decree. *See Boyd v. Coventry Health Care Inc.*, 299 F.R.D. 451, 461 (D. Md. 2014) ("The fact that no class member objected supports final approval of the Settlement as fair, adequate and reasonable."). This factor weighs in favor of final approval.

Because no pertinent facts have changed, and no objections have been filed, the Court reaffirms and incorporates by reference its analysis of the Rule 23(e) and Fourth Circuit requirements as set forth in its Preliminary Approval Order. *See* Dkt. No. ____ at ____.

Accordingly, the Court finds the settlement to be "fair, reasonable, and adequate."

III. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. Unless stated otherwise, the terms in this Order have the meaning set forth in the Partial Consent Decree.

2. The Court hereby certifies the proposed Settlement Class pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2) as follows:

All persons (including residents of and/or visitors to the City of Baltimore) with any Mobility Disability, who, at any time prior to court judgment granting final approval to this Partial Consent Decree have been denied full and equal access to the City's

pedestrian right of way due to the lack of a Curb Ramp or a Pedestrian Walkway or [c]urb [r]amp that was damaged, in need of repair, or otherwise in a condition not suitable or sufficient for use.

a. The Court hereby appoints Plaintiffs Susan Goodlaxson, Janice Jackson, Keyonna Mayo, and the IMAGE Center, Inc. as Settlement Class representatives.

b. The Court hereby appoints Disability Rights Advocates, Disability Rights Maryland, Fox & Robertson, P.C., and Goldstein, Borgen, Dardarian & Ho, Plaintiffs' attorneys of record, as Class Counsel pursuant to Federal Rule of Civil Procedure 23(g).

c. The Court hereby grants final approval of the terms and conditions contained in the Partial Consent Decree, attached as Exhibit 1 to the Declaration of Linda M. Dardarian in Support of the Parties' Joint Motion for Preliminary Approval, Dkt. No. _____, Exh. 1 at ___ and is attached to this Order. The Parties' Joint Motion for Final Approval of the Partial Consent Decree (Dkt No. ___) is GRANTED.

d. In accordance with the terms of the Partial Consent Decree, which is attached hereto, the Court reserves exclusive and continuing jurisdiction over the Plaintiffs, the Settlement Class Members, the City, and the Partial Consent Decree. The Court will stay litigation and administratively close this case pending completion of the Partial Consent Decree's term or either Party's request that the Court reopen the case for the Court's approval of a further settlement agreement or for further litigation after the Parties engage in future negotiations, or if the Parties need the Court to resolve disputes during the Partial Consent Decree's term. In that regard, any challenges to the Partial Consent Decree's terms or implementation, whether under state or federal law, shall be subject to the exclusive and continuing jurisdiction of this Court.

IT IS SO ORDERED.

DATED: _____

The Honorable James K. Bredar