

CLASS ACTION SETTLEMENT AGREEMENT

This Class Action Settlement Agreement (“Agreement”) is made this 20th day of January, 2016, by Margaret Denny (“Named Plaintiff”), by and on behalf of a class of similarly situated persons, as more fully defined herein (“Settlement Class”); and the City and County of Denver, Colorado (“Defendant” or “City”) (collectively, the “Parties”).

RECITALS

WHEREAS, Named Plaintiff, individually and on behalf of a class of similarly situated persons, alleges and has threatened to commence legal action asserting that she has been denied the benefits of the City’s curb ramps because the City has failed to comply with Title II of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12131 *et seq.*, and Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, with regard to the installation, maintenance, and design of its curb ramps. This Settlement Agreement, and the releases contained herein, only cover curb ramps on street segments with sidewalks, and do not apply to (1) components of the City’s sidewalk system other than curb ramps, (2) street segments that do not contain sidewalks but do contain bus stops, and (3) curb ramps adjacent to roads that comprise the State Highway System as defined in Colo. Rev. Stat. § 43-2-101 and -102. This action is hereinafter defined as the “Lawsuit”;

WHEREAS, the City has denied and continues to deny any and all liability or wrongdoing to Named Plaintiff and to the Settlement Class; by entering into this Agreement, the City does not admit any impropriety, wrongdoing or liability of any kind whatsoever, including any as to the claims raised in the Lawsuit, and on the contrary, expressly denies the same; and the City has entered into this Agreement solely for the purpose of avoiding the expense, inconvenience, distraction and delay of the Lawsuit, without admitting any wrongdoing or liability whatsoever, and without conceding the Named Plaintiff’s ability to certify the alleged putative Settlement Class on its merits under Colo. R. Civ. P. 23;

WHEREAS, the Parties have conducted a thorough examination and investigation of the facts and law relating to the matters set forth in the Lawsuit;

WHEREAS, the Parties have engaged in extensive, arms-length negotiations;

WHEREAS, based upon extensive analysis of the facts and the law applicable to the Complaint, and taking into account the extensive burdens and expense of litigation, including the risks and uncertainties associated with protracted trials and appeals, as well as the fair, cost-effective and assured method of resolving the claims of the Settlement Class, Class Counsel has concluded that this Agreement provides substantial benefit to the Settlement Class and is fair, reasonable, and adequate and in the best interest of the Named Plaintiff and the Settlement Class;

WHEREAS, the City has similarly concluded that this Agreement 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 and to ensure

compliance with all laws protecting the rights of the disabled, and to resolve finally and completely the pending and potential claims of the Named Plaintiff and the Settlement Class; and

WHEREAS, the Parties desire to settle the claims asserted in the Lawsuit and to enter into a settlement agreement related to the Lawsuit and the claims giving rise thereto, in accordance with the provisions and upon the terms and conditions hereafter set forth.

AGREEMENT

I. **CONDITIONS PRECEDENT.** This Agreement shall be conditioned upon and shall be effective only upon, the occurrence of all of the following events (“Effective Date”):

- A. Class Counsel shall make, and the City shall not oppose, the court filings described in Section IV(A);
- B. Grant by the Court of preliminary approval of this settlement and issuance of notice thereof;
- C. Notice to the Settlement Class in accordance with Section V of this Agreement;
- D. A Final Approval Hearing held in accordance with Section IV(C) of this Agreement;
- E. Final approval of this Agreement by the Court following a Final Approval Hearing; and
- F. Expiration of the time to appeal the Final Approval without the filing of an appeal; or, if an appeal is filed, final adjudication or resolution of the same.

II. **DEFINITIONS.**

- A. “2013 DOJ/DOT Alteration Guidance” means 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, attached hereto as Exhibit 1.
- B. “Class Counsel” means attorneys with the Civil Rights Education and Enforcement Center (“CREEC”) and the Legal Program of the Colorado Cross-Disability Coalition (“CCDC”).
- C. “Compliance” or “compliant,” with respect to the installation or modification of curb ramps required by this Agreement, means compliant with the applicable provisions of Title II of the Americans with Disabilities Act, 42 U.S.C. § 12131 *et seq.*, 28 CFR § 35.151, and Americans with Disabilities Act standards published

by the U.S. Department of Justice in effect when the ramp was or is installed or altered. The current standards are the 2010 Americans with Disabilities Act Standards published by the Department of Justice. Existing ramps shall be deemed compliant for purposes of this Agreement notwithstanding that they do not contain truncated domes.

- D. “Independent Inspector” means a third party mutually agreeable who shall be retained as, and for the purposes, described in Section III(D)(2) below. Plaintiff will not unreasonably withhold approval of a proposed Independent Inspector.
- E. “Independent Inspector Report” means the annual report of the Independent Inspector, described in Section III(D)(2) below.
- F. “Installation” means installation of a curb ramp directly by the City or its employees, or installation by entities retained or paid by the City, including contractors.
- G. “Settlement Class” means the class of individuals, including any subclasses, ultimately defined and certified by a Court in this matter.

III. CURB RAMP PROGRAM.

A. **Survey.**

1. The City shall, at its own expense, perform a comprehensive survey of all City corners at street segments with sidewalks to identify the number and types of curb ramps at each corner as well as curb ramps that are missing or do not comply with regulations in effect when the ramp was installed or altered.
2. The City will use a reliable methodology to collect, at a minimum, the following data:
 - a. Locations that are missing curb ramps;
 - b. Running slope, cross slope, counter slope and width of curb ramps;
 - c. Location of curb ramps that are located at marked crossings;
 - d. That curb ramps are flush with the street;
 - e. Clear space and landings at the top and bottom of curb ramps;
 - f. The surface of curb ramps;
 - g. Detectable warnings;
 - h. The number and type of curb ramps at a corner;
 - i. Curb ramps or level cut-throughs at raised traffic islands; and
 - j. Raised islands without a level cut through or curb ramps.
3. The Survey shall be completed by the end of calendar year 2017.

B. Curb Ramp Installation.

1. In 2014, the City installed all ADA-required curb ramps identified on Chart 1, attached hereto as Exhibit 2.
2. For 2015, the City budgeted \$10,000,000 for the installation of curb ramps.
3. In 2014, and in future years whenever the City or the City's contractors "alter" (as defined by the 2013 DOJ/DOT Alteration Guidance) or construct a street, road or highway the City will install, or require the installation of, compliant curb ramps where a street level pedestrian walkway adjacent to the constructed or altered street, road or highway crosses a curb and no curb ramp currently exists.
4. Starting in 2014, the City will install or cause the installation of a minimum of 1,500 curb ramps per calendar year until compliant curb ramps are in place at all locations within the City and County of Denver where street level pedestrian walkways cross curbs adjacent to City owned right of way. This obligation shall not extend to curb ramps adjacent to roads that comprise the state highway system as defined in C.R.S. § 43-2-101 and -102. At T and offset intersections, ramps will be installed consistent with City and County of Denver Curb Ramp Placement Guide at Low Volume T-intersections ("Placement Guide"). The current version of the Placement Guide is attached as Exhibit 3. This minimum number does not relieve the City of its obligation under Section III(B)(3) to install curb ramps when it constructs or alters a curb or street, or causes a curb or street to be altered, even if doing so requires installation of more than 1,500 curb ramps in a given year.
 - a. A minimum of 400 of the 1,500 ramps installed each year will be installed at locations (1) requested through the City's existing request procedure, which it agrees to maintain, and/or (2) where street level pedestrian walkways cross curbs and no curb ramp currently exists. These 400 ramps will be referred to as the "Required Minimum Ramps." As between (1) and (2), ramps requested through the request line have higher priority. Each ramp installed pursuant to a request on the request line during a given year shall reduce by one the City's obligation to install 400 Required Minimum ramps for that year. For example, if in a given year City installs 150 ramps requested on the request line, then it will be obligated to install a total of 250 at additional Required Minimum Ramps in that year. When the sum of (1) requested ramps and (2) ramps to be installed where street level pedestrian walkways cross curbs and no curb ramp exists falls

below 400 the Required Minimum Ramps will adjust to the sum of requested ramps and ramps to be installed where street level pedestrian walkways cross curbs and no curb ramp exists.

- b. If the City installs, or causes the installation of, more than 1,500 curb ramps in a calendar year, the City may, in its sole discretion, use the additional ramps to satisfy the yearly requirement for future years. Nothing in this subparagraph, however, shall relieve the City of its obligation under Section III(B)(3) to install curb ramps whenever a curb or street is altered or constructed, or permit the City to reduce to below 400 the number of Required Minimum Ramps that must be installed each year.
- c. The total number of ramps installed will include all ramps installed by the City, ramps installed by the City's contractors, and ramps the City requires that others install. The City will identify ramps installed by its contractors or by third parties that it counts towards its obligation. The City remains obligated to perform the terms of this Agreement notwithstanding its use of contractors to perform road work, alterations, or curb ramp installation.
- d. Notwithstanding any other provision of this Agreement, the City's obligation to install or modify a curb ramp is subject to the following exceptions:
 - (1) Technical infeasibility: Where a curb ramp would otherwise be required to be installed or modified by this Agreement, but existing physical or site constraints prohibit modification or addition of a curb ramp which is in full and strict compliance, then the City shall provide accessibility to the maximum extent feasible. Before reaching a conclusion about technical infeasibility, the City will consider the extent to which physical or site constraints can be addressed by alternative curb ramp designs.
 - (2) A curb ramp need not be installed at an intersection where it is illegal for a pedestrian to cross the street.
 - (3) A curb ramp need not be installed on a segment of street that does not have a sidewalk or other pedestrian walkway.
 - (4) Procedure for exceptions. Where the City believes an exception exists, it will inform Class Counsel of the location of and basis for the exception in the Annual Curb Ramp Report. If Class Counsel disagrees with the City's

determination that an exception applies the Parties agree to meet and confer. In the event that the Parties are unable to reach agreement as to any exception identified in the Annual Curb Ramp Report the Parties shall follow the Dispute Resolution provisions set forth in Section VIII.

- e. The City will request sufficient budget to install the required number of ramps each year. However, if unforeseen circumstances, including, but not limited to, a significant increase in material expense, a lack of qualified contractors, or an unexpected and significant reduction in budget make it impracticable to achieve the 1,500 ramp per year target, the City will advise Class Counsel of the circumstances and the achievable level. If Class Counsel disputes the City's determination Class Counsel shall follow the Dispute Resolution provisions set forth in Section VIII. However, the City will remain obligated to install curb ramps required by Sections III(B)(3) and III(B)(4)(a) above.

- 5. This Agreement does not require that the City purchase, or otherwise acquire, property rights to install curb ramps.

C. **Prioritization.** Other than ramps requested through the request line, the City may prioritize installation of ramps at locations where street level pedestrian walkways cross curbs and no curb ramp currently exist over remediation or replacement of existing but noncompliant ramps.

D. **Verification.**

- 1. No later than March 31st of each year, the City will provide CREEC and CCDC with a report ("Annual Curb Ramp Report") identifying:
 - a. Curb ramps installed, replaced or significantly altered by the City, its contractors, or third parties in the preceding calendar year;
 - b. All streets and corners that were altered in the preceding calendar year; and
 - c. With respect to any locations where the City believes that one of the exceptions set forth in paragraph III(B)(4)(d) applies, a detailed explanation of the reasons for the City's belief. Class Counsel may request in writing and the City will provide all non-privileged records necessary for Class Counsel to assess the City's position. Where Class Counsel determines in good faith that they dispute the City's position, resolution of the issue shall be pursuant to the Dispute Resolution provisions described in Section VIII below.

2. The City will retain and pay an Independent Inspector to annually survey a random sampling of 10% of locations on which curb ramps were, or should have been, installed during the preceding year to ensure that compliant curb ramps were installed.
 - a. No later than June 30th of each year, the Independent Inspector will provide to both Parties a written report documenting its findings (“Independent Inspector Report”).
 - b. Any disputes as to whether the Independent Inspector Report indicates violations of this Agreement, and the consequences of those disputed violations, will be subject to the Dispute Resolution process outlined at Section VIII.
 3. No later than August 1st of each year, the Parties shall submit an Annual Progress Report to the Special Master and the Court regarding their status and progress in performing this Agreement.
- E. **Training.** The City will implement a yearly training program for employees responsible for road and sidewalk planning, design, construction or inspection, which will highlight ADA curb ramp requirements, federal and state requirements, and the City’s policies. The City will work in good faith with the Office of Disability Rights, CREEC, and CCDC to develop a list of topics for the training program.
- F. **Maintenance.** The City shall maintain curb ramps in operable working condition. This section does not prohibit isolated or temporary interruptions in service or access due to maintenance or repairs. In light of the unique circumstances of this Agreement, including that the Parties anticipate that the installation and remediation of ramps required by this Agreement will be completed in approximately eight years or less, and that the City will conduct a comprehensive survey of its sidewalk system to identify missing and noncompliant ramps, this provision shall be met by (1) completing the survey described in Section III(A) above; (2) remediating and installing ramps to the extent required by this Agreement; and (3) conducting outreach to the public to inform them of the availability of the request line to report noncompliant, inoperable or missing ramps. Nothing in this provision shall prevent the Term of this Agreement, as described in Section III(G) below, from ending.
- G. **Term.** The Term of this Agreement shall extend until the Independent Inspector submits a final report confirming that the City has modified or installed all compliant ramps required by this Agreement and until any disputes relating to that final report have been resolved.

IV. COURT APPROVAL.

- A. **Complaint and Initial Motions.** Within ten (10) business days of execution of this Agreement, Plaintiff shall file the Complaint, attached hereto as Exhibit 4, and the following submissions. The City shall not oppose these submissions, nor will it move to dismiss the Complaint.
1. Motion to Certify the Settlement Class for settlement purposes only;
 2. Appointment as class counsel of Timothy Fox and Sarah Morris of CREEC and Kevin Williams of CCDC;
 3. Motion for Preliminary Approval of the Proposed Class Settlement;
 4. Approval of the proposed notice of settlement and notice dissemination to the class as outlined in Section V, and a deadline for publication of the notice (the “Notice deadline”) that is no more than ten (10) business days after the grant of preliminary approval or as promptly as permitted by the Court;
 5. Approval of the procedure for objections to the proposed settlement described in Section IV(B);
 6. Motion to enjoin members of the Settlement Class from initiating or prosecuting any litigation related to the claims resolved by this Agreement against the City pending the Court’s entry of Final Order and Judgment; and
 7. Motion to Set Date for the final approval hearing as set forth in Section IV(C).
- B. **Objections.** The Parties shall ask the Court to order the following procedures for objections: Any member of the Settlement Class may object to the proposed Agreement by filing, within two months after the Notice deadline, written objections with the Clerk of the Court. Only such objecting Class Members shall have the right, if they seek it in their objection, to present objections orally at the Final Approval Hearing.
- C. **Final Approval Hearing.** Named Plaintiff and the City shall request that a Final Approval Hearing take place three months after the Notice deadline, or as soon thereafter as the Court may set the hearing.
- D. **Motion for Attorneys’ Fees.** No fewer than one (1) week before the deadline for filing objections, Plaintiff shall file a motion requesting an award of attorneys’ fees in the amount agreed to by the Parties in Section VI(A).

- E. **Motion for Final Approval.** At least two (2) weeks prior to the final approval hearing, Plaintiff shall file, and the City shall not unreasonably oppose, a mutually acceptable motion seeking final approval of the settlement and responding to any objections to the settlement.

V. NOTICE TO THE CLASS OF THE PROPOSED SETTLEMENT.

- A. No later than the Notice deadline, the City shall issue Notice to the Class as Ordered by the Court. The Parties will recommend to the Court that such Notice shall consist of the City placing the short-form Notice, attached as Exhibit 5, at its own expense, in the Denver Post, and that such notice shall be published once and shall be at least one-eighth of a page in size. The City shall send to Named Plaintiff a copy of the Notice as published.
- B. No later than the Notice deadline, the City shall mail the long-form Notice attached as Exhibit 6, to the last known addresses for the organizations listed in Exhibit 7.
- C. The notice shall also be posted on the websites of CREEC and CCDC.
- D. The Parties agree that the proposed Notice is reasonably calculated to apprise the Settlement Class of the pendency of this settlement.

VI. ATTORNEYS' FEES.

- A. **Fees and Costs for Work Done up to Execution of Agreement.** The City agrees to pay Named Plaintiff's reasonable attorneys' fees and costs incurred up to the date of execution of this Agreement, in the amount of \$70,000.00 to CREEC and \$17,000 to CCDC.
- B. **Fees and Costs Associated with Motions for Final Approval.** The City agrees to pay Named Plaintiff's reasonable attorneys' fees and costs incurred in connections with preparing and filing motions for final approval and other time spent obtaining approval of this Agreement. The Parties will negotiate in good faith to agree to Plaintiff's reasonable attorneys' fees and costs. If the Parties are able to agree on a proposed amount, Plaintiff's will not request a greater amount from the Court and the City will not oppose Plaintiff's fee request to the Court in that amount. If the Parties are unable to agree on the amount of Plaintiff's reasonable attorneys' fees and costs, Plaintiff will submit the question to the Court with the motion for final approval of the agreement. The Parties agree that the amount requested by Plaintiff will not exceed \$35,000.

C. Fees and Costs for Work Done After Execution.

1. Plaintiff will be entitled to her reasonable attorneys' fees arising from legal work performed in connection with implementation, enforcement or dispute resolution of this Agreement, if needed. Plaintiff's fees will be capped, and Plaintiff will not request and the City will not be required to pay more than \$100,000 for legal work performed in any single year of the Agreement. In year one through the end of year two of the Agreement, Plaintiff's fees will be capped, and Plaintiff will not request more than a total of \$80,000. In subsequent years Plaintiff will be entitled to up to \$40,000 plus any unused portion of the cap in prior years all subject to the \$100,000 yearly limitation.
2. **Procedure for Determining Fees.** To determine the amount of fees to which Plaintiff is entitled for work done after execution of this Agreement, the Parties will negotiate in good faith to agree to Plaintiff's reasonable attorneys' fees. If the Parties are unable to agree on an amount, the Parties agree to submit the issue of Plaintiff's reasonable fees to the Dispute Resolution Process outlined in Section VIII.

D. No Class Representative Award.

1. A class representative award (incentive award) will not be requested by, or awarded to, the Named Plaintiff.

VII. JUDGMENT AND FINAL APPROVAL.

- A. At the time of the Fairness Hearing, the Parties shall jointly request that the Court enter a Final Judgment and Order granting Final Approval of the terms of this Agreement.
- B. The Parties will request that this Final Judgment and Order be substantially in the form of Exhibit 8 ([Proposed] Order Granting Certification of a Class for Settlement Purposes Only and Preliminary Approval of Settlement Agreement), taking into account any comments or orders by the Court.

VIII. DISPUTE RESOLUTION.

A. Informal Dispute Resolution.

1. If either Party believes that a dispute exists relating to the performance or interpretation of this Agreement, it shall notify the other Party in writing, describing the dispute and clearly identifying that they are invoking the dispute resolution process.

2. The other Party shall respond in writing to such notice within 10 business days of receipt of the notice.
3. Within 10 business days of receipt of the response described in the previous paragraph, counsel for both Parties shall meet and confer by telephone or in person and attempt to resolve the issue informally.

B. **Special Master.** The Parties shall request that the Court appoint Kathryn Miller of Littleton Alternative Dispute Resolution, Inc. as the Special Master who shall have the power to make decisions in all matters pertaining to administration and enforcement of this Agreement.

1. The Special Master's resolution of any disputes under this Agreement that do not require Court approval shall be final, binding, and non-appealable.
2. If the Special Master seeks to resolve disputes that require Court approval, the Special Master shall issue a recommendation for Court approval, which the Parties shall not oppose.
3. The fees and expenses of the Special Master relating to the Agreement shall be paid by the City, except that the Named Plaintiff shall pay these fees and expenses if she submits a matter to the Special Master and the Special Master determines that the Named Plaintiff's position was frivolous, unreasonable, or without foundation.
4. Except when exceptional circumstances exist requiring a prompt resolution of a dispute by the Special Master, the Parties will submit any disputes to the Special Master once a year on or before November 1st of each year starting November 1, 2016 until the Agreement terminates.

IX. RELEASES.

A. **Release of Claims for Injunctive Relief.**

Effective on the date of Final Approval of this Agreement, Named Plaintiff, individually and on behalf of all members of the Settlement Class, and CREEC and CCDC (on behalf of themselves but not their members), and their executors, successors, heirs, assigns, agents and representatives, in consideration of the relief set forth herein, the sufficiency of which is expressly acknowledged, unconditionally and forever do fully and finally release, acquit and discharge the City and its present, former or future directors, officers, shareholders, owners, managers, supervisors, employees, attorneys, insurers, agents, representatives, and contractors retained by the City to perform the work described herein, and the respective successors, heirs, employees, attorneys, owners, insurers and assigns of the above from any and all actions, causes of action, claims, charges, demands, losses, judgments, liens, indebtedness and liabilities arising out of the subject matter of the Lawsuit for injunctive relief, declaratory relief, and any attendant

costs and attorneys' fees (except those provided in Sections VI and VIII(B)(3) above), whether known or unknown, suspected or unsuspected, pursuant to the ADA or Rehabilitation Act, asserted or unasserted, in the Lawsuit. As explained in the first paragraph of the Recitals above, this Settlement Agreement, and the releases contained herein, only cover curb ramps on street segments with sidewalks, and do not apply to (1) components of the City's sidewalk system other than curb ramps, (2) street segments that do not contain sidewalks but do contain bus stops, and (3) curb ramps adjacent to roads that comprise the State Highway System as defined in Colo. Rev. Stat. § 43-2-101 and -102. Neither Named Plaintiff nor the Settlement Class release any claims relating to (1) components of the City's sidewalk system other than curb ramps, (2) street segments that do not contain sidewalks but do contain bus stops, and (3) curb ramps adjacent to roads that comprise the State Highway System as defined in Colo. Rev. Stat. § 43-2-101 and -102. Furthermore, the Settlement Class does not release any claims for damages.

B. Release of Claims for Damages.

Within ten (10) days after Final Approval of this Agreement, the City shall pay and deliver to Class Counsel \$5,000 payable to Margaret Denny, which shall be consideration for settlement of her claim for damages effective on the date of Final Approval.

In consideration for this payment and other consideration set forth herein, the sufficiency of which is expressly acknowledged, effective on the date of Final Approval of this Agreement, CREEC and CCDC (on behalf of themselves but not their members) and Margaret Denny (on behalf of herself only and not the Settlement Class) and each of their executors, successors, heirs, assigns, agents, and representatives, and representatives unconditionally and forever do fully and finally release, acquit and discharge the City and its present, former or future directors, officers, shareholders, owners, managers, supervisors, employees, attorneys, insurers, agents, representatives, and contractors retained by the City to perform the work described herein, and the respective successors, heirs, employees, attorneys, owners, insurers and assigns of the above from any and all actions, causes of action, claims, charges, demands, losses, judgments, liens, indebtedness and liabilities arising out of the subject matter of the Lawsuit for damages, and any attendant costs and attorneys' fees (except those provided in Sections VI and VIII(B)(3) above), whether known or unknown, suspected or unsuspected, pursuant to the ADA or Rehabilitation Act, asserted or unasserted, in the Lawsuit. As explained in the first paragraph of the Recitals above, this Settlement Agreement, and the releases contained herein, only cover curb ramps on street segments with sidewalks, and do not apply to (1) components of the City's sidewalk system other than curb ramps, (2) street segments that do not contain sidewalks but do contain bus stops, and (3) curb ramps adjacent to roads that comprise the State Highway System as defined in Colo. Rev. Stat. § 43-2-101 and -102. Named Plaintiff does not release any claims relating to (1) components of the City's sidewalk system other than curb ramps, (2) street segments that do not contain sidewalks but do contain bus stops, and (3) curb ramps adjacent to roads that comprise the State Highway System as defined in Colo. Rev. Stat. § 43-2-101 and -102.

X. BEST INTERESTS OF THE CLASS

The Named Plaintiff and Class Counsel represent and affirm that they are seeking to protect the interests of the entire Settlement Class and believe that this Agreement is in the best interests of the Settlement Class.

XI. COMMUNICATIONS.

Any notice or communication required or permitted to be given to Named Plaintiff or City under this Agreement shall be given in writing by email and U.S. Mail, addressed as follows:

To City: Office of the Mayor of Denver
1437 Bannock Street, Suite 350
Denver, CO 80202

With a copy to: Denver City Attorney's Office
Attn: Robert Wheeler, Assistant City Attorney.
201 W. Colfax Ave., Dept. 1207
Denver, CO 80202

To Plaintiff: Timothy P. Fox, Esq.
Civil Rights Education and Enforcement Center
104 Broadway, Suite 400
Denver, CO 80203

Kevin W. Williams, Esq.
Legal Program Director
Colorado Cross Disability Coalition
Empire Park
1385 S. Colorado Blvd., Suite 610-A
Denver, CO 80222

If the above addresses or the appropriate contact change, it is the responsibility of the Party whose address is changing to give written notice of said change to all other Parties within thirty (30) business days following the effective date of said change.

XII. MODIFICATION OR WAIVER OF AGREEMENT.

No modification of this Agreement shall be effective unless it is pursuant to Court Order.

XIII. SEVERABILITY.

If any provision or any part of this Agreement shall at any time be held unlawful, or inconsistent with applicable law, in whole or in part, under any federal, state, county, municipal

or other law, ruling or regulation, then the remaining provisions of this Agreement shall remain effective and enforceable.

XIV. EXECUTION IN COUNTERPARTS.

This Agreement may be signed in counterpart and shall be binding and effective immediately upon the execution by all Parties of one or more counterparts.

XV. DUTY TO SUPPORT AND DEFEND DECREE.

Named Plaintiff and the City by their signatures below, each agree to abide by all of the terms of this Agreement in good faith and to support it fully, and shall use their best efforts to defend this Agreement from any legal challenge, whether by appeal or collateral attack.

XVI. CONTROLLING LAW

This Agreement shall be interpreted and enforced pursuant to the laws of the State of Colorado.

XVII. SETTLEMENT PURPOSES ONLY

This Agreement is for settlement purposes only, and neither the fact of, nor any provision contained in this Agreement or its Exhibits, nor any action taken hereunder, shall constitute, be construed as, or be admissible in evidence as any admission of the validity of any claim or any fact alleged by Plaintiff in this action or in any other action or of any wrongdoing, fault, violation of law, or liability of any kind on the part of the City of any claim or allegation made in this Action or any other action, or as any admission of the Named Plaintiff's ability to certify the putative Settlement Class on its merits under Colo. R. Civ. P. 23. This Agreement, whether or not approved by the Court or otherwise compromised, shall in no event be construed or deemed to evidence of an admission or a concession on the part of any Party with respect to any claim of any fault or liability or damages.

XVIII. CERTIFICATION OF CLASS

The Parties agree that, for settlement purposes only, the Action shall be certified and proceed as a class action under applicable jurisprudence.

XIX. JURISDICTION OF THE COURT

The Parties agree that the Court shall retain exclusive and continuing jurisdiction for the following limited purposes: (1) resolving disputes that require Court approval as set forth in paragraph VIII.B; and (2) appointing a Special Master, and appointing a replacement for that Special Master in the event that the Special Master initially appointed by the Court retires, dies or becomes incapacitated.

XX. APPROPRIATION

The Parties agree that any expenditure of the City shall extend only to funds appropriated and encumbered by the Denver City Council and paid into the Treasury of the City and County of Denver. The City, through the Department of Public Works, agrees to include in budget requests funds sufficient to fulfill its commitments herein.

XXI. ENTIRE AGREEMENT.

This Agreement contains all the agreements, conditions, promises and covenants among Named Plaintiff, the Settlement Class, and the City regarding matters set forth in it and supersedes all prior or contemporaneous agreements, drafts, representations or understandings, either written or oral, with respect to the subject matter of the present Agreement.

[Signature Page to Follow]

IN WITNESS WHEREOF, the Parties have executed this Agreement of the date first written above.

Margaret Denny

By: Margaret Alia Denny

Date: 1/15/2016

The City and County of Denver

By: _____

Its: _____

Date: _____

D. SCOTT MARTINEZ
City Attorney

By: _____
Robert Wheeler, Assistant City Attorney
Counsel for Defendant City and County of Denver

APPROVED AS TO FORM:

By: Tim Fox
Timothy P. Fox
Civil Rights Education and Enforcement Center
Counsel for Named Plaintiff Margaret Denny and Settlement Class

By: _____
Kevin W. Williams
Colorado Cross Disability Coalition Legal Program
Counsel for Named Plaintiff Margaret Denny and Settlement Class

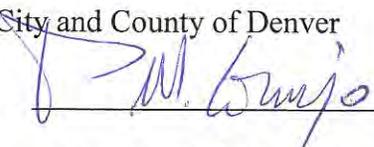
IN WITNESS WHEREOF, the Parties have executed this Agreement of the date first written above.

Margaret Denny

By: _____

Date: _____

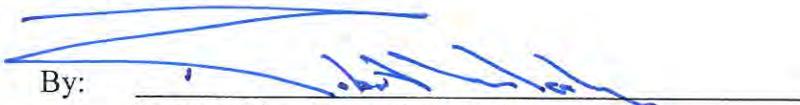
The City and County of Denver

By:  _____ Jose M. Cornejo, P.E.

Its: Executive Director of Public Works

Date: January 20, 2016

D. SCOTT MARTINEZ
City Attorney


By: _____
Robert Wheeler, Assistant City Attorney
Counsel for Defendant City and County of Denver

APPROVED AS TO FORM:

By: _____
Timothy P. Fox
Civil Rights Education and Enforcement Center
Counsel for Named Plaintiff Margaret Denny and Settlement Class

By: _____
Kevin W. Williams
Colorado Cross Disability Coalition Legal Program
Counsel for Named Plaintiff Margaret Denny and Settlement Class

IN WITNESS WHEREOF, the Parties have executed this Agreement of the date first written above.

Margaret Denny

By: _____

Date: _____

The City and County of Denver

By: _____

Its: _____

Date: _____

D. SCOTT MARTINEZ
City Attorney

By: _____
Robert Wheeler, Assistant City Attorney
Counsel for Defendant City and County of Denver

APPROVED AS TO FORM:

By: _____
Timothy P. Fox
Civil Rights Education and Enforcement Center
Counsel for Named Plaintiff Margaret Denny and Settlement Class

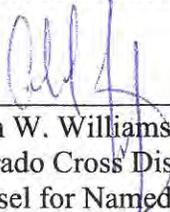
By:  _____
Kevin W. Williams
Colorado Cross Disability Coalition Legal Program
Counsel for Named Plaintiff Margaret Denny and Settlement Class

Exhibit 1



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. Yerusolim*, 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.

July 8, 2013

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.

Exhibit 2

Chart 1

Street 1 of intersection	Street 2 of intersection	Violation Type	Corner
Ash Street	E. 25th Avenue	No Ramp	NE
Ash Street	E. 25th Avenue	No Ramp	NW
Ash Street	E. 25th Avenue	No Ramp	SE
Ash Street	E. 25th Avenue	No Ramp	SW
Ash Street	E. 26th Avenue	No Ramp	SW
Ash Street	E. 26th Avenue	No Ramp	SE
Bellaire Street	E. 25th Avenue	No Ramp	NE
Bellaire Street	E. 25th Avenue	No Ramp	NW
Bellaire Street	E. 26th Avenue	No Ramp	SE
Bellaire Street	E. 26th Avenue	No Ramp	SW
Belliare Street	E. 25th Avenue	No Ramp	SE
Birch Street	E. 26th Avenue	One Ramp	SW
Cherry Street	E. 28th Avenue	No Ramp	NE
Cherry Street	E. 28th Avenue	No Ramp	NW
Cherry Street	E. 28th Avenue	No Ramp	SE
Cherry Street	E. 28th Avenue	No Ramp	SW
Clarkson Street	E. 24th Avenue	One Ramp	NW
Clermont Street	E. 26th Avenue	No Ramp	NE
Clermont Street	E. 26th Avenue	No Ramp	NW
Clermont Street	E. 26th Avenue	No Ramp	SE
Clermont Street	E. 26th Avenue	No Ramp	SW
Clermont Street	E. 28th Avenue	No Ramp	NE
Clermont Street	E. 28th Avenue	No Ramp	NW
Clermont Street	E. 28th Avenue	No Ramp	SE
Clermont Street	E. 28th Avenue	No Ramp	SW
Clermont Street	E. 30th Avenue	No Ramp	NE
Clermont Street	E. 30th Avenue	No Ramp	NW
Clermont Street	E. 30th Avenue	No Ramp	SE
Clermont Street	E. 30th Avenue	No Ramp	SW
Dahlia Street	E. 26th Avenue	No Ramp	NE
Dahlia Street	E. 26th Avenue	No Ramp	NW
Dexter Street	E. 28th Avenue	No Ramp	NE
Dexter Street	E. 28th Avenue	No Ramp	NW
Dexter Street	E. 28th Avenue	No Ramp	SE
Dexter Street	E. 28th Avenue	No Ramp	SW
Elati Street	W. 7th Avenue	No Ramp	SE
Elati Street	W. 7th Avenue	No Ramp	NE
Elati Street	W. 7th Avenue	No Ramp	NW
Elati Street	W. 7th Avenue	One Ramp	SW
Emerson Street	E. 24th Avenue	One Ramp	SE
High Street	E. 24th Avenue	No Ramp	SE
High Street	E. 24th Avenue	One Ramp	SW
High Street	E. 25th Avenue	No Ramp	NE
High Street	E. 25th Avenue	No Ramp	NW
Humboldt Street	E. 10th Avenue	No Ramp	NE

Street 1 of intersection	Street 2 of intersection	Violation Type	Corner
Humboldt Street	E. 10th Avenue	No Ramp	NW
Humboldt Street	E. 10th Avenue	No Ramp	SE
Humboldt Street	E. 10th Avenue	No Ramp	SW
Inca Street	W. 6th Avenue	One Ramp	NE
Julian Street	W. 42nd Avenue	No Ramp	NW
Julian Street	W. 42nd Avenue	No Ramp	SE
King Street	W. 39th Avenue	No Ramp	NE
King Street	W. 39th Avenue	No Ramp	NW
King Street	W. 39th Avenue	No Ramp	SE
King Street	W. 39th Avenue	No Ramp	SW
King Street	W. 40th Avenue	No Ramp	NW
King Street	W. 40th Avenue	No Ramp	SW
King Street	W. 42nd Avenue	No Ramp	NE
King Street	W. 42nd Avenue	No Ramp	SE
King Street	W. 42nd Avenue	No Ramp	NW
King Street	W. 42nd Avenue	No Ramp	SW
Knox Court	W. 42nd Avenue	No Ramp	NE
Knox Court	W. 42nd Avenue	No Ramp	NW
Knox Court	W. 42nd Avenue	No Ramp	SE
Lafayette Street	E. 10th Avenue	One Ramp	NW
Lafayette Street	E. 10th Avenue	One Ramp	NE
Lafayette Street	E. 10th Avenue	One Ramp	SW
Lincoln Street	E. 43rd Avenue	No Ramp	NE
Lincoln Street	E. 43rd Avenue	No Ramp	SE
Marion Street	E. 10th Avenue	No Ramp	NW
Marion Street	E. 10th Avenue	No Ramp	NE
Ogden Street	E. Ellsworth Avenue	No Ramp	NE
Ogden Street	E. Ellsworth Avenue	No Ramp	SE
Pearl Street	E. 11th Avenue	No Ramp	NE
Pearl Street	E. 11th Avenue	No Ramp	SE
Pearl Street	E. 11th Avenue	No Ramp	NW
Pearl Street	E. 11th Avenue	No Ramp	SW
Pearl Street	E. 1st Avenue	No Ramp	NE
Pearl Street	E. 1st Avenue	No Ramp	SE
Pearl Street	E. 1st Avenue	No Ramp	SW
Pennsylvania Street	E. 1st Avenue	No Ramp	NW
Pennsylvania Street	E. 1st Avenue	No Ramp	NE
Pennsylvania Street	E. 1st Avenue	No Ramp	SE
Pennsylvania Street	E. 2nd Avenue	No Ramp	SW
Pennsylvania Street	E. 2nd Avenue	No Ramp	SE
Pennsylvania Street	E. 2nd Avenue	No Ramp	NW
Race Street	E. 24th Avenue	One Ramp	SE
S Humboldt Street	E. Colorado Avenue	No Ramp	NE
S. Adams Street	E. Harvard Avenue	No Ramp	NE
S. Adams Street	E. Harvard Avenue	No Ramp	SE
S. Adams Street	E. Harvard Avenue	No Ramp	NW
S. Adams Street	E. Harvard Avenue	No Ramp	SW

Street 1 of intersection	Street 2 of intersection	Violation Type	Corner
S. Adams Street	E. Vassar Avenue	No Ramp	NE
S. Adams Street	E. Vassar Avenue	No Ramp	SE
S. Adams Street	E. Vassar Avenue	No Ramp	NW
S. Adams Street	E. Vassar Avenue	No Ramp	SW
S. Alcott Street	W. Center Avenue	No Ramp	NE
S. Alcott Street	W. Center Avenue	No Ramp	SE
S. Alcott Street	W. Center Avenue	No Ramp	NW
S. Alcott Street	W. Center Avenue	No Ramp	SW
S. Alcott Street	W. Dakota Street	No Ramp	SE
S. Alcott Street	W. Dakota Street	No Ramp	NE
S. Alcott Street	W. Exposition Avenue	No Ramp	NE
S. Alcott Street	W. Exposition Avenue	No Ramp	SE
S. Alcott Street	W. Exposition Avenue	No Ramp	NW
S. Alcott Street	W. Exposition Avenue	No Ramp	SW
S. Alcott Street	W. Virginia Avenue	No Ramp	NE
S. Alcott Street	W. Virginia Avenue	No Ramp	SE
S. Alcott Street	W. Virginia Avenue	No Ramp	NW
S. Alcott Street	W. Virginia Avenue	No Ramp	SW
S. Bryant Street	W. Center Avenue	No Ramp	NE
S. Bryant Street	W. Center Avenue	No Ramp	SE
S. Bryant Street	W. Center Avenue	No Ramp	NW
S. Bryant Street	W. Center Avenue	No Ramp	SW
S. Bryant Street	W. Exposition Avenue	No Ramp	NE
S. Bryant Street	W. Exposition Avenue	No Ramp	SE
S. Bryant Street	W. Exposition Avenue	No Ramp	NW
S. Bryant Street	W. Exposition Avenue	No Ramp	SW
S. Canosa Court	W. Center Avenue	No Ramp	NE
S. Canosa Court	W. Center Avenue	No Ramp	SE
S. Canosa Court	W. Center Avenue	No Ramp	NW
S. Canosa Court	W. Center Avenue	No Ramp	SE
S. Canosa Court	W. Exposition Avenue	No Ramp	NE
S. Canosa Court	W. Exposition Avenue	No Ramp	SE
S. Canosa Court	W. Exposition Avenue	No Ramp	NW
S. Canosa Court	W. Exposition Avenue	No Ramp	SW
S. Canosa Court	W. Virginia Avenue	No Ramp	NE
S. Canosa Court	W. Virginia Avenue	No Ramp	SE
S. Canosa Court	W. Virginia Avenue	No Ramp	NW
S. Canosa Court	W. Virginia Avenue	No Ramp	SW
S. Clarkson Street	E. Ellsworth Avenue	No Ramp	NE
S. Clarkson Street	E. Ellsworth Avenue	No Ramp	NW
S. Clarkson Street	E. Ellsworth Avenue	No Ramp	SE
S. Clarkson Street	E. Ellsworth Avenue	No Ramp	SW
S. Clay Street	W. Center Avenue	No Ramp	NE
S. Clay Street	W. Center Avenue	No Ramp	SE
S. Clay Street	W. Center Avenue	No Ramp	SW
S. Clay Street	W. Center Avenue	No Ramp	NW
S. Clay Street	W. Exposition Avenue	No Ramp	NE

Street 1 of intersection	Street 2 of intersection	Violation Type	Corner
S. Clay Street	W. Exposition Avenue	No Ramp	NW
S. Clay Street	W. Virginia Avenue	No Ramp	NE
S. Clay Street	W. Virginia Avenue	No Ramp	SE
S. Clayton Street	E. Harvard Avenue	No Ramp	SE
S. Columbine Street	E. Asbury Avenue	One Ramp	NE
S. Columbine Street	E. Iliff Avenue	No Ramp	NE
S. Columbine Street	E. Iliff Avenue	No Ramp	SE
S. Columbine Street	E. Iliff Avenue	No Ramp	NW
S. Columbine Street	E. Iliff Avenue	No Ramp	SW
S. Columbine Street	E. Vassar Avenue	No Ramp	SW
S. Columbine Street	E. Wesley Avenue	No Ramp	NE
S. Columbine Street	E. Wesley Avenue	No Ramp	NW
S. Cook Street	E. Harvard Avenue	No Ramp	NE
S. Cook Street	E. Harvard Avenue	No Ramp	SE
S. Cook Street	E. Harvard Avenue	No Ramp	NW
S. Cook Street	E. Harvard Avenue	No Ramp	SW
S. Cook Street	E. Vassar Avenue	No Ramp	NW
S. Cook Street	E. Vassar Avenue	No Ramp	SW
S. Cook Street	E. Vassar Avenue	No Ramp	NW
S. Cook Street	E. Vassar Avenue	No Ramp	SW
S. Cook Street	E. Wesley Avenue	No Ramp	NE
S. Cook Street	E. Wesley Avenue	No Ramp	SE
S. Cook Street	E. Wesley Avenue	No Ramp	NW
S. Cook Street	E. Wesley Avenue	No Ramp	SW
S. Dale Court	W. Center Avenue	No Ramp	NE
S. Dale Court	W. Center Avenue	No Ramp	NW
S. Dale Court	W. Center Avenue	No Ramp	SW
S. Dale Court	W. Exposition Avenue	No Ramp	NE
S. Dale Court	W. Exposition Avenue	No Ramp	SE
S. Dale Court	W. Exposition Avenue	No Ramp	NW
S. Dale Court	W. Exposition Avenue	No Ramp	SW
S. Dale Court	W. Virginia Avenue	No Ramp	NE
S. Dale Court	W. Virginia Avenue	No Ramp	SE
S. Decatur Street	W. Center Avenue	No Ramp	NE
S. Decatur Street	W. Center Avenue	No Ramp	SE
S. Decatur Street	W. Center Avenue	No Ramp	NW
S. Decatur Street	W. Center Avenue	No Ramp	SW
S. Decatur Street	W. Exposition Avenue	No Ramp	NE
S. Decatur Street	W. Exposition Avenue	No Ramp	SW
S. Decatur Street	W. Virginia Avenue	No Ramp	NE
S. Eliot Street	W. Exposition Avenue	No Ramp	NE
S. Eliot Street	W. Virginia Avenue	No Ramp	NE
S. Eliot Street	W. Virginia Avenue	No Ramp	SE
S. Emerson Street	E. Bayaud Avenue	No Ramp	NE
S. Emerson Street	E. Bayaud Avenue	No Ramp	SW
S. Emerson Street	E. Bayaud Avenue	No Ramp	NW
S. Emerson Street	E. Cedar Avenue	No Ramp	NE

Street 1 of intersection	Street 2 of intersection	Violation Type	Corner
S. Emerson Street	E. Cedar Avenue	No Ramp	SE
S. Emerson Street	E. Cedar Avenue	No Ramp	NW
S. Emerson Street	E. Cedar Avenue	No Ramp	SW
S. Emerson Street	E. Ellsworth Avenue	No Ramp	NE
S. Emerson Street	E. Ellsworth Avenue	No Ramp	NW
S. Emerson Street	E. Ellsworth Avenue	No Ramp	SW
S. Emerson Street	E. Ellsworth Avenue	No Ramp	SE
S. Fillmore Street	E. Wesley Avenue	No Ramp	NW
S. Franklin Street	E. Asbury Avenue	No Ramp	NE
S. Franklin Street	E. Asbury Avenue	No Ramp	SE
S. Franklin Street	E. Asbury Avenue	No Ramp	NW
S. Franklin Street	E. Asbury Avenue	No Ramp	SW
S. Franklin Street	E. Colorado Avenue	No Ramp	NE
S. Franklin Street	E. Colorado Avenue	No Ramp	NW
S. Franklin Street	E. Colorado Avenue	One Ramp	SE
S. Franklin Street	E. Jewell Avenue	No Ramp	NE
S. Franklin Street	E. Jewell Avenue	No Ramp	SE
S. Franklin Street	E. Jewell Avenue	No Ramp	NW
S. Franklin Street	E. Jewell Avenue	No Ramp	SW
S. Gilpin Street	E. Asbury Avenue	No Ramp	NE
S. Gilpin Street	E. Asbury Avenue	No Ramp	SE
S. Gilpin Street	E. Colorado Avenue	No Ramp	NE
S. Gilpin Street	E. Colorado Avenue	No Ramp	SE
S. Gilpin Street	E. Colorado Avenue	No Ramp	NW
S. Gilpin Street	E. Colorado Avenue	No Ramp	SW
S. Gilpin Street	E. Jewell Avenue	No Ramp	NW
S. Gilpin Street	E. Jewell Avenue	No Ramp	SE
S. Gilpin Street	E. Jewell Avenue	No Ramp	SW
S. Humboldt Street	E. Asbury Avenue	One Ramp	NE
S. Humboldt Street	E. Asbury Avenue	One Ramp	SE
S. Humboldt Street	E. Asbury Avenue	One Ramp	NW
S. Humboldt Street	E. Asbury Avenue	One Ramp	SW
S. Humboldt Street	E. Colorado Avenue	No Ramp	SE
S. Humboldt Street	E. Colorado Avenue	No Ramp	NW
S. Humboldt Street	E. Jewell Avenue	No Ramp	NE
S. Humboldt Street	E. Jewell Avenue	No Ramp	SE
S. Humboldt Street	E. Jewell Avenue	No Ramp	NW
S. Humboldt Street	E. Jewell Avenue	No Ramp	SW
S. Josephine Street	E. Iliff Avenue	No Ramp	NE
S. Josephine Street	E. Iliff Avenue	No Ramp	SW
S. Josephine Street	E. Vassar Avenue	No Ramp	SW
S. Josephine Street	E. Wesley Avenue	No Ramp	NW
S. Josephine Street	E. Wesley Avenue	No Ramp	SW
S. Josephine Street	E. Iliff Avenue	No Ramp	SE
S. Lafayette Street	E. Colorado Avenue	No Ramp	NE
S. Lafayette Street	E. Colorado Avenue	No Ramp	NW
S. Lafayette Street	E. Colorado Avenue	No Ramp	SW

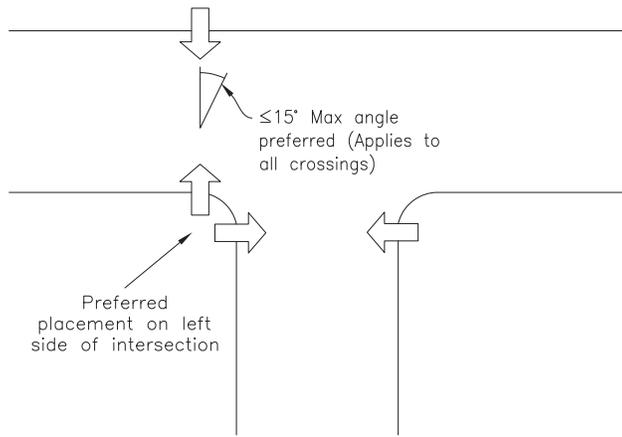
Street 1 of intersection	Street 2 of intersection	Violation Type	Corner
S. Lafayette Street	E. Jewell Avenue	No Ramp	NE
S. Lafayette Street	E. Jewell Avenue	No Ramp	SE
S. Lafayette Street	E. Jewell Avenue	No Ramp	NW
S. Lafayette Street	E. Jewell Avenue	No Ramp	SW
S. Lafayette Street	E. Mexico Avenue	No Ramp	NE
S. Lafayette Street	E. Mexico Avenue	No Ramp	SE
S. Lafayette Street	E. Mexico Avenue	No Ramp	NW
S. Lafayette Street	E. Mexico Avenue	No Ramp	SW
S. Madison Street	E. Iliff Avenue	One Ramp	NE
S. Madison Street	E. Iliff Avenue	One Ramp	NW
S. Madison Street	E. Iliff Avenue	No Ramp	SE
S. Madison Street	E. Iliff Avenue	No Ramp	SW
S. Madison Street	E. Vassar Avenue	No Ramp	NE
S. Madison Street	E. Vassar Avenue	No Ramp	SE
S. Madison Street	E. Vassar Avenue	No Ramp	NW
S. Madison Street	E. Vassar Avenue	No Ramp	SW
S. Madison Street	E. Wesley Avenue	No Ramp	NE
S. Madison Street	E. Wesley Avenue	No Ramp	SE
S. Madison Street	E. Wesley Avenue	No Ramp	NW
S. Madison Street	E. Wesley Avenue	No Ramp	SW
S. Marion Street	E. Colorado Avenue	No Ramp	SW
S. Marion Street	E. Colorado Avenue	One Ramp	SE
S. Marion Street	E. Colorado Avenue	One Ramp	NW
S. Marion Street	E. Colorado Avenue	One Ramp	NE
S. Marion Street	E. Mexico Avenue	No Ramp	NE
S. Marion Street	E. Mexico Avenue	No Ramp	SE
S. Marion Street	E. Mexico Avenue	No Ramp	NW
S. Marion Street	E. Mexico Avenue	No Ramp	SW
S. Milwaukee Street	E. Harvard Avenue	One Ramp	SE
S. Monroe Street	E. Harvard Avenue	No Ramp	NE
S. Monroe Street	E. Harvard Avenue	No Ramp	SE
S. Monroe Street	E. Harvard Avenue	No Ramp	SW
S. Monroe Street	E. Wesley Avenue	No Ramp	NE
S. Monroe Street	E. Wesley Avenue	No Ramp	SE
S. Monroe Street	E. Wesley Avenue	No Ramp	NW
S. Monroe Street	E. Wesley Avenue	No Ramp	SW
S. Pearl Street	E. Ellsworth Avenue	No Ramp	NE
S. Pearl Street	E. Ellsworth Avenue	No Ramp	NW
S. Pennsylvania Street	E. Bayaud Avenue	No Ramp	NE
S. Pennsylvania Street	E. Bayaud Avenue	No Ramp	NW
S. Pennsylvania Street	E. Bayaud Avenue	No Ramp	SE
S. Pennsylvania Street	E. Bayaud Avenue	No Ramp	SW
S. Pennsylvania Street	E. Cedar Avenue	No Ramp	NE
S. Pennsylvania Street	E. Cedar Avenue	No Ramp	NW
S. Pennsylvania Street	E. Cedar Avenue	No Ramp	SW
S. Pennsylvania Street	E. Ellsworth Avenue	No Ramp	NE
S. Pennsylvania Street	E. Ellsworth Avenue	No Ramp	NW

Street 1 of intersection	Street 2 of intersection	Violation Type	Corner
S. St. Paul Street	E. Vassar Avenue	No Ramp	NW
S. St. Paul Street	E. Vassar Avenue	No Ramp	SE
S. St. Paul Street	E. Vassar Avenue	No Ramp	SW
S. Washington Street	E. Cedar Avenue	No Ramp	NE
S. Washington Street	E. Cedar Avenue	No Ramp	NW
S. Washington Street	E. Cedar Avenue	No Ramp	SE
S. Washington Street	E. Cedar Avenue	No Ramp	SW
S. Washington Street	E. Ellsworth Avenue	No Ramp	NE
S. Washington Street	E. Ellsworth Avenue	No Ramp	NW
S. Washington Street	E. Ellsworth Avenue	One Ramp	SE
S. Washington Street	E. Ellsworth Avenue	One Ramp	SW
S. Williams Street	E. Asbury Avenue	No Ramp	NE
S. Williams Street	E. Asbury Avenue	No Ramp	NW
S. Williams Street	E. Asbury Avenue	No Ramp	SW
S. Williams Street	E. Colorado Avenue	One Ramp	SW
S. Williams Street	E. Colorado Avenue	One Ramp	NW
S. Williams Street	E. Jewell Avenue	No Ramp	NE
S. Williams Street	E. Jewell Avenue	No Ramp	NW
S. Williams Street	E. Jewell Avenue	No Ramp	SW
S. Williams Street	E. Jewell Avenue	No Ramp	SE
S. Zuni Street	W. Exposition Avenue	No Ramp	NE
S. Zuni Street	W. Exposition Avenue	No Ramp	SE
S. Zuni Street	W. Exposition Avenue	No Ramp	NW
S. Zuni Street	W. Exposition Avenue	No Ramp	SW
Uinta Street	E. 19th Avenue	No Ramp	NE
Ulster Street	E. 16th Avenue	No Ramp	NE
Ulster Street	E. 16th Avenue	No Ramp	NW
Ulster Street	E. 16th Avenue	No Ramp	SW
Ulster Street	E. 16th Avenue	One Ramp	SE
Ulster Street	E. 19th Avenue	No Ramp	SE
Ulster Street	E. 19th Avenue	No Ramp	SW
Valentia Street	E. 17th Avenue	No Ramp	NE
Valentia Street	E. 17th Avenue	No Ramp	SE
Valentia Street	E. 19th Avenue	No Ramp	NE
Valentia Street	E. 19th Avenue	No Ramp	NW
Valentia Street	E. 19th Avenue	No Ramp	SE
Valentia Street	E. 19th Avenue	No Ramp	SW
Verbena Street	E. 16th Avenue	No Ramp	NE
Verbena Street	E. 16th Avenue	No Ramp	NW
Verbena Street	E. 16th Avenue	No Ramp	SE
Verbena Street	E. 16th Avenue	No Ramp	SW
Verbena Street	E. 17th Avenue	No Ramp	NE
Verbena Street	E. 17th Avenue	No Ramp	NW
Verbena Street	E. 19th Avenue	No Ramp	NE
Wabash Street	E. 16th Avenue	No Ramp	NE
Wabash Street	E. 16th Avenue	No Ramp	NW
Wabash Street	E. 16th Avenue	No Ramp	SE

Street 1 of intersection	Street 2 of intersection	Violation Type	Corner
Wabash Street	E. 16th Avenue	No Ramp	SW
Wabash Street	E. 17th Avenue	No Ramp	NW
Wabash Street	E. 17th Avenue	No Ramp	NE
Wabash Street	E. 19th Avenue	No Ramp	NE
Wabash Street	E. 19th Avenue	No Ramp	NW
Willow Street	E. 17th Avenue	No Ramp	NE
Willow Street	E. 17th Avenue	No Ramp	NW
Willow Street	E. 19th Avenue	No Ramp	NE
Willow Street	E. 19th Avenue	No Ramp	NW
Xanthia Street	E. 17th Avenue	No Ramp	NE
Xanthia Street	E. 17th Avenue	No Ramp	NW
Xanthia Street	E. 17th Avenue	No Ramp	SE
Xanthia Street	E. 17th Avenue	No Ramp	SW
Xanthia Street	E. 19th Avenue	No Ramp	NE
Xanthia Street	E. 19th Avenue	No Ramp	NW
Xenia Street	E. 17th Avenue	No Ramp	NE
Xenia Street	E. 17th Avenue	No Ramp	SE
Xenia Street	E. 17th Avenue	No Ramp	SW
Xenia Street	E. 19th Avenue	No Ramp	NE
Xenia Street	E. 19th Avenue	No Ramp	NW
Xenia Street	E. 19th Avenue	No Ramp	SE
Xenia Street	E. 17th Avenue	No Ramp	NW

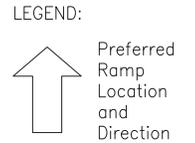
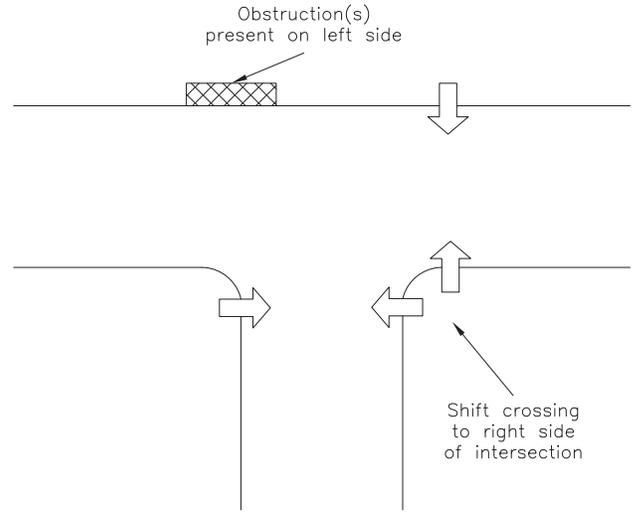
Exhibit 3

T-Intersection Preferred Crossing Location



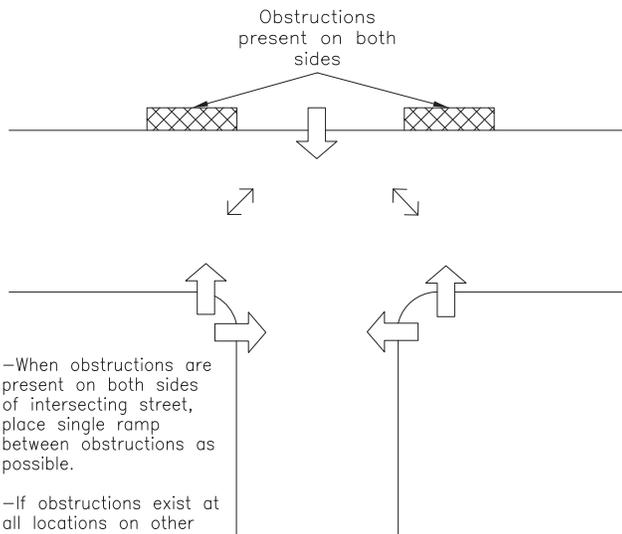
	City and County of Denver Department of Public Works	Date 01/15
	Curb Ramp Placement	T1

T-Intersection Crossing If Obstruction On Preferred Side



	City and County of Denver Department of Public Works	Date 01/15
	Curb Ramp Placement	T2

T-Intersection Crossing If Obstruction Exists In Both Preferred Locations

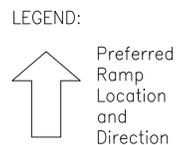
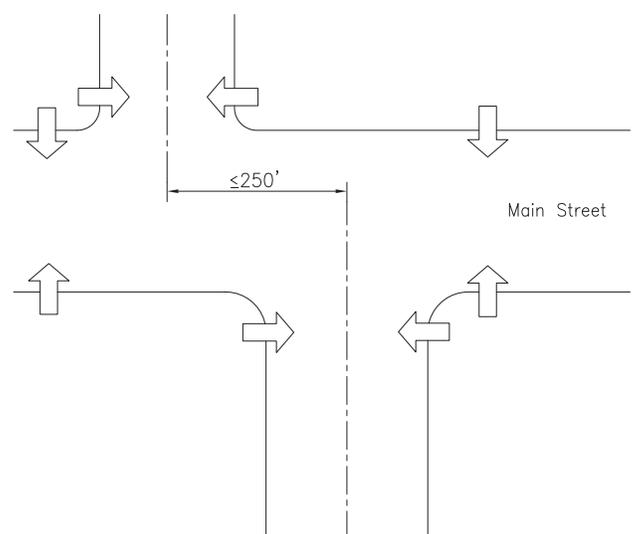


- When obstructions are present on both sides of intersecting street, place single ramp between obstructions as possible.
- If obstructions exist at all locations on other side of street, seek next opportunity to cross.
- When there is no sidewalk present on opposite side of street, a curb ramp crossing to same is not required.



	City and County of Denver Department of Public Works	Date 01/15
	Curb Ramp Placement	T3

Offset T-Intersection Preferred Crossing Locations



	City and County of Denver Department of Public Works	Date 01/15
	Curb Ramp Placement	T4

Exhibit 4

District Court, City and County of Denver, Colorado
1437 Bannock Street
Denver, CO 80202

Plaintiff: Margaret Denny, on behalf of herself and
a proposed class of similarly situated
people defined below

v.

Defendant: City & County of Denver

Attorneys for Plaintiff:

Timothy P. Fox (Atty. Reg. No. 25889)
Sarah M. Morris (Atty Reg. No. 44462)
Civil Rights Education and Enforcement Center
104 Broadway, Suite 400
Denver, CO 80203
(303) 757-7901
tfox@creeclaw.org
smorris@creeclaw.org

Kevin W. Williams (Atty. Reg. No. 28117)
Colorado Cross-Disability Coalition
Empire Park
1385 S. Colorado Blvd., Suite 610-A
Denver, CO 80222
(303) 839-1775
kwilliams@ccdconline.org

▲ COURT USE ONLY ▲

Case Number:

Div:

Ctrm:

CLASS ACTION COMPLAINT

Plaintiff Margaret Denny, on behalf of herself and a proposed class of similarly situated people defined below, by and through undersigned counsel, files her Class Action Complaint and respectfully alleges as follows:

I. INTRODUCTION

1. This lawsuit is brought against the City and County of Denver (“the City” or “Defendant”) to redress Defendant’s failure to provide legally required access to persons who use wheelchairs or scooters for mobility by denying them the benefits of its programs and services. Specifically, Defendant has failed to comply with Title II of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12131, *et seq.*) (“ADA”) and Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794, *et seq.*) (“Section 504”) with regard to the installation, maintenance, and design of curb ramps that permit people who use wheelchairs or scooters to access and use the City’s pedestrian right of way.

2. As a result, persons who use wheelchairs or scooters must choose between remaining segregated from significant amounts of daily activities – including visiting public facilities, places of public accommodation, or friends – and thereby remaining safe, or risking injury or death by traveling in roadways because they cannot access the pedestrian right of way. The lack of access to Defendant’s pedestrian right of way deprives such persons of their independence.

3. Plaintiff Margaret Denny, on behalf of a class of persons who use wheelchairs or scooters for mobility, brings suit seeking an injunction requiring Defendant to remedy its past discrimination by installing curb ramps where they should have been installed in the past, bringing curb ramps that are out of compliance with design requirements into compliance, and requiring Defendant to adopt policies and practices ensuring that it will comply with the ADA and Section 504 requirements governing curb ramps in the future.

4. This case is being filed simultaneously with a motion for certification of a class for settlement purposes only and preliminary approval of a settlement agreement. That is because, as described more fully in that motion, the parties to this case, after two years of extensive, arm’s-length negotiations have reached a comprehensive settlement that provides substantial injunctive relief to the class.

II. JURISDICTION AND VENUE

5. This is an action for declaratory and injunctive relief, brought pursuant to the ADA and Section 504 to redress systemic civil rights violations against people with mobility disabilities by the City.

6. The two claims alleged herein arise under the ADA and Section 504 such that the jurisdiction of this Court is invoked pursuant to Colo. Rev. Stat. §§ 13-1-124; 13-51-101, *et seq.*; and Colo. R. Civ. P. 57 and 65.

7. Venue over Plaintiff’s claims is proper in this Court because Defendant resides in this county within the meaning of Colo. R. Civ. P. 98(c).

III. PARTIES

8. Plaintiff Margaret Denny is a member of the Civil Rights Education and Enforcement Center (CREEC) and is and has been at all relevant times a resident of Denver, Colorado. Among other impairments, Plaintiff Denny has chronic pain, is substantially limited in the major life activity of walking, and uses a motorized wheelchair for mobility. She has a disability within the meaning of the ADA and Section 504. Because Plaintiff Denny requires accessible curb ramps to be able to utilize the City's pedestrian right of way, she has a personal interest in ensuring that the City complies with federal requirements governing accessibility of curb ramps. Plaintiff Denny is also a tester in this litigation.

9. The Plaintiff class consists of all persons with disabilities who use wheelchairs or scooters for mobility who, through the date of preliminary approval of the Settlement Agreement, use or will use the pedestrian right of way in the City and County of Denver. References herein to "Plaintiff" or "Plaintiffs" shall be deemed to include the Named Plaintiff and each member of the class, unless otherwise indicated.

10. Presently, and at all times relevant to this Complaint, Defendant City and County of Denver has been a public entity within the meaning of Title II of the ADA, and has received federal financial assistance within the meaning of Section 504. Defendant is a local government entity with the responsibility of providing all members of the proposed class with access to its public facilities, programs, services, and activities. Defendant is responsible for constructing, maintaining, repairing, and regulating the City's pedestrian right of way.

IV. FACTS APPLICABLE TO ALL CLAIMS

11. Federal disability access laws were enacted to provide persons with disabilities an equal opportunity to participate fully in civic life. *See* 29 U.S.C. § 794 (Section 504); 42 U.S.C. § 12101(a)(7) (ADA). Under the ADA and Section 504, a public entity's sidewalks, crosswalks, and paved paths -- collectively referred to as a public entity's "pedestrian right of way"¹ -- are a "program," "service," or "activity" that must be readily accessible to persons with mobility disabilities. *Barden v. City of Sacramento*, 292 F.3d 1073, 1076 (9th Cir. 2002).

12. The City's pedestrian right of way is in fact a fundamental public program, service, and/or activity that the City provides for the benefit of its residents and visitors. Accessible curb ramps are necessary to permit people with mobility disabilities who use mobility aids such as wheelchairs or scooters to access the City's pedestrian right of way. Because the City's pedestrian right of way constitutes a core mode of transportation, the absence of accessible curb ramps prevents people with mobility disabilities from independently, fully, and

¹ This lawsuit covers only curb ramps on City street segments with sidewalks, and does not apply to (1) components of the City's sidewalk system other than curb ramps, (2) street segments that do not contain sidewalks but do contain bus stops, and (3) curb ramps adjacent to roads that comprise the State Highway System as defined in Colo. Rev. Stat. § 43-2-101 and -102.

meaningfully participating in all aspects of society, including employment, housing, education, transportation, public accommodations, and recreation, among others. Accordingly, an accessible pedestrian right of way is essential to realizing the integration mandate of disability non-discrimination laws, including the ADA and Section 504.

13. Defendant has excluded individuals with mobility disabilities from participation in or denied them the benefits of Defendant's pedestrian right of way program, service, or activity, or subjected them to discrimination by: (a) failing to install and remediate curb ramps in newly-constructed or altered portions of the City's pedestrian right of way; and (b) failing to install, remediate and maintain curb ramps where necessary to provide people with mobility disabilities meaningful access to the City's pedestrian right of way, when viewed in its entirety.

14. Both the ADA (since January 27, 1992) and Section 504 (since June 3, 1977) have mandated that whenever a public entity itself newly constructs or alters streets, roads, or highways, it must install curb ramps at any intersection having curbs or other barriers to entry from a street level pedestrian walkway, to ensure that newly constructed or altered pedestrian right of way programs and facilities are readily accessible to and usable by individuals with disabilities. 28 C.F.R. § 35.151(a)(1), (b)(1), (b)(4), (i); 28 C.F.R. pt. 36, app. D § 4.7; 45 C.F.R. § 84.23(b); 36 C.F.R. pt. 1191, app. D § 405 (the "new construction and alterations requirement").

15. The ADA and Section 504 also mandate that a public entity operate each of its programs, services, or activities so that the program, service, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. 28 C.F.R. § 35.150(a), (b)(1); 45 C.F.R. § 84.22(a), (b) (the "program access requirement"). To the extent structural changes to facilities existing as of the effective date of the ADA or Section 504 are necessary to achieve this "program access" mandate, such changes were to have been made by no later than January 26, 1995 under the ADA, and by no later than June 3, 1980 under Section 504. 28 C.F.R. § 35.150(c); 45 C.F.R. § 84.22(d).

16. Both the ADA and Section 504 also require compliance with applicable standards for accessible design (*i.e.*, the Uniform Federal Accessibility Standards ("UFAS"), 1991 ADA Standards for Accessible Design ("ADAAG"), or the 2010 ADA Standards for Accessible Design ("2010 ADAAG"). These standards contain detailed design specifications addressing such issues as, for example, the slope of curb ramps and their location. The ADA also required public entities, by March 15, 2012, to remediate new construction or alterations that were not done in compliance with the standards in effect at the time of construction. 28 C.F.R. § 35.151(c)(5)(i).

17. Beginning in 2013, proposed Class Counsel CREEC commenced an investigation into whether Defendant had complied with the ADA and Section 504 curb ramp requirements.

18. For example and without limitation, CREEC submitted an open-records request to Defendant, which requested the identity of the sections of all streets in Denver that have

undergone alterations since January 26, 1992, the effective date of Title II of the ADA (and after the effective date of Section 504).

19. In response to this request, Defendant produced a spreadsheet identifying more than 15,000 sections of city streets that had been altered since that date. CREEC spent a substantial amount of time reviewing and analyzing this spreadsheet.

20. CREEC then commissioned a survey of a sampling of those thousands of city streets. That survey revealed the hundreds of violations shown in Appendices 1 and 2 to this Complaint.

21. In addition to this survey, two CREEC members, Named Plaintiff Margaret Denny and another individual who uses a wheelchair for mobility – who themselves have been denied access to the City’s pedestrian right of way by Defendant’s violations – acted as testers for CREEC. In that capacity, they encountered corners in Denver without curb ramps at intersections that had been altered after the effective date of the ADA and Section 504.

22. This investigation revealed that Defendant has systematically failed, and is failing, to comply with numerous federal requirements governing curb ramps. Even based only on a limited sampling, Plaintiff identified hundreds of intersections that underwent alterations after the effective date of the ADA but are missing curb ramps. The specific violations listed below were also uncovered during and as part of CREEC’s investigation.

23. For example and without limitation, Defendant has not complied with the new construction and alterations requirement because it has repeatedly engaged in new construction or alterations to streets and roads without installing curb ramps. For example, CREEC’s investigation into the City’s curb ramps found that Defendant conducted alterations or new construction to streets after the effective date of the ADA but failed to install curb ramps in the nearly 400 examples attached as Appendix 1 to this Complaint.

24. Additionally, Defendant has not complied with the accessible design standards requirement. For example, CREEC’s investigation into the City’s curb ramps found the more than 90 curb ramps with slopes greater than permitted by accessible design standards, as shown as Appendix 2 to this Complaint.

25. Further, Defendant has not complied with the program access requirement because thousands of streets exist in the City without any curb ramps whatsoever, or with curb ramps that do not comply with the accessible design standards, as shown in examples of ramps that remained in violation as of at least 2014 in Appendix 3 to this Complaint.

26. On information and belief, the violations and denials of meaningful, equal, and safe access complained of herein are the direct result of Defendant’s failure to implement policies, procedures, and practices that would ensure compliance with these requirements, including but not limited to the following:

- a. The failure to install accessible curb ramps at locations where no curb ramps exist, or where inaccessible curb ramps exist, within the time required by applicable federal disability access laws or on any other reasonable schedule;
- b. The failure to install accessible curb ramps, or remediate existing noncompliant curb ramps, at street corners that are newly constructed, resurfaced, or otherwise altered;
- c. The failure to install curb ramps at intersections in the City that are necessary to provide meaningful, equal and safe access to the pedestrian right of way;
- d. The failure to develop and implement a process for identifying intersections and corners throughout the City at which curb ramps are necessary to provide meaningful, equal, and safe access to the pedestrian right of way;
- e. The failure to adopt and utilize or require and enforce the utilization of a curb ramp design that complies with applicable design standards;
- f. The failure to adopt or implement reasonable administrative methods, policies, and procedures for inspecting, repairing, and maintaining the pedestrian right of way, including curb ramps, as required by the ADA and its implementing regulations including 28 C.F.R. § 35.133 (maintenance of accessible features);
- g. The failure to remediate curb ramps that are designed and/or constructed in a noncompliant manner such that people with mobility disabilities are denied meaningful access to the pedestrian right of way as a whole.

27. As a direct result of missing and noncompliant curb ramps at intersections throughout the City, as well as Defendant's administrative methods, policies, and practices, or lack thereof that result in those lacking ramps, individuals with mobility disabilities are denied meaningful access to the City's pedestrian right of way, public buildings, parks, transportation, and/or places of employment and public accommodation, either through complete denials of access or through delay of travel or unsafe conditions.

28. This lack of accessible curb ramps is not isolated or limited. Rather, these barriers to full and equal access are present throughout the City, including but not limited to the following areas: Capitol Hill, University of Denver, Highlands, Uptown, Santa Fe Arts District, and South Park Hill neighborhoods, as well as areas surrounding the Denver Country Club, East Colfax Avenue between Quebec and Yosemite Streets, West Colfax Avenue and South Federal Boulevard, and West Alameda Avenue and South Federal Boulevard. As a result, persons with mobility disabilities have been denied access to the accommodations and services available to the general public. Furthermore, these barriers deter persons with mobility disabilities from exploring or visiting areas of the City. These barriers also delay travel and cause persons with mobility disabilities to fear for their safety, as these conditions often create dangerous situations.

29. As a result of this discrimination and continuing systemic inaccessibility, persons who use wheelchairs or scooters, including but not limited to Plaintiff Denny, have been denied meaningful access to Defendant's pedestrian right of way, and have caused that pedestrian right of way to be systematically inaccessible to such persons when viewed in its entirety.

30. This discrimination and continuing systemic inaccessibility cause a real and immediate threat of current and continuing harm to persons who use wheelchairs or scooters for mobility within the City as represented by the harm caused to the Named Plaintiff Margaret Denny.

31. Named Plaintiff Margaret Denny is a long-time Colorado and Denver-area resident. She has lived in the Denver metro area since 1981, moved to Denver itself in 2004, and has been using a wheelchair for mobility since 2006. She has encountered numerous barriers to full and equal use of the pedestrian right of way in neighborhoods throughout the City, including in the area near the Mental Health Center of Denver and Rose Medical Center, and near the Yale light rail station by her home. Ms. Denny generally chooses routes where she knows there are fewer issues with curb ramps and is therefore deterred from freely using City's pedestrian right of way. Ms. Denny intends to continue to use the City's pedestrian right of way and will use it even more so once it becomes more accessible.

32. People who use wheelchairs or scooters for mobility, including but not limited to Named Plaintiff Denny, have in the past been denied, and in the absence of an injunction will in the future be denied, access to the City's pedestrian right of way by Defendant's violations complained of herein.

V. CLASS ACTION ALLEGATIONS

33. Plaintiff Denny brings this action on behalf of herself and, pursuant to Rule 23(b)(2) of the Colorado Rules of Civil Procedure, on behalf of a class defined as follows: all persons with disabilities who use wheelchairs or scooters for mobility who, through the date of preliminary approval of the Settlement Agreement, use or will use the pedestrian right of way in the City and County of Denver.

34. Each member of the class is a "qualified person with a disability" and/or a person with a "disability" pursuant to 42 U.S.C. § 12131(2) and Section 504. The persons in the class are so numerous that joinder of all such persons is impracticable because, without limitation, the class consists of numerous individuals -- census figures, for example, establish that there are approximately 33,000 individuals with ambulatory disabilities residing in the City and County of Denver -- and these individuals are very difficult to identify and unlikely to be able to bring individual suits.

35. There are numerous common questions of law and fact, including but not limited to:

- a. Whether Defendant has violated Title II and Section 504 by failing to comply with the programmatic access requirement.
- b. Whether Defendant has violated the new construction and alteration requirements of these statutes and their regulations.

- c. Whether Defendant has violated the design requirement provisions of these statutes and their regulations.
- d. What types of roadwork has Defendant performed since the effective dates of Title II and Section 504.
- e. Whether this roadwork constituted “alterations” for purposes of Title II and Section 504.
- f. Whether Defendant has performed “new construction” within the meaning of Title II and Section 504.
- g. Whether Defendant has failed to make reasonable modifications in policies, procedures, and practices that are necessary to provide persons with mobility disabilities with meaningful, equal, and safe access to the Defendant’s pedestrian right of way.
- h. Whether Defendant’s violations result from deficient policies and practices.

36. The claims of Ms. Denny are typical of the claims of the class because they arise from the same course of conduct engaged in by Defendant, are based on the same alleged violations of the same statutes and regulations, and seek the same relief.

37. Ms. Denny will fairly and adequately represent the interests of the class. She has no interests adverse to the interests of other members of the class. Further, proposed class counsel have been appointed as class counsel in, and have successfully litigated, numerous disability rights class actions across the country.

38. Finally, certification under Rule 23(b)(2) is proper here because Defendant has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive or declaratory relief with respect to the class as a whole.

VI. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

Title II of the Americans with Disabilities Act of 1990

42 U.S.C. § 12101 *et seq.*

39. Plaintiff incorporates by reference each and every allegation herein.

40. Title II of the ADA provides in pertinent part: “[N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132.

41. At all times relevant to this action, the City was and is a “public entity” within the meaning of Title II of the ADA and provides a pedestrian right of way program, service, or activity to the general public.

42. At all times relevant to this action, Plaintiff was and is a qualified individual with a disability within the meaning of Title II of the ADA and meets the essential eligibility requirements for the receipt of the services, programs, or activities of the City. 42 U.S.C. § 12131.

43. Defendant is mandated to operate each program, service, or activity “so that, when viewed in its entirety, it is readily accessible to and useable by individuals with disabilities.” 28 C.F.R. § 35.150; *see also* 28 C.F.R. §§ 35.149. This requirement applies to all programs, services, and activities that a public entity offers, whether or not they are carried out in facilities that have been constructed or altered since January 26, 1992. Pedestrian rights of way themselves constitute a vital public program, service, or activity under Title II of the ADA. 28 C.F.R. § 35.104; *Barden v. City of Sacramento*, 292 F.3d 1073 (9th Cir. 2002).

44. Furthermore, the regulations implementing Title II of the ADA specifically provide that a public entity must install curb ramps at intersections whenever it newly constructs or alters sidewalks, streets, roads, and/or highways at any time after January 26, 1992 and must comply with Uniform Federal Accessibility Standards (UFAS) or with the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG). 28 C.F.R. § 35.151. A street resurfacing project by a public entity is one example of an alteration under the meaning of the regulation. *Kinney v. Yerusalim*, 9 F.3d 1067, 1073-74 (3rd Cir. 1993); *Lonberg v. City of Riverside*, No. 97-CV-0237, 2007 WL 2005177, at * 6 (C.D. Cal. May 16, 2007).

45. The regulations implementing Title II of the ADA provide that a public entity must maintain the features of all facilities required to be accessible by the ADA. 28 C.F.R. § 35.133. Facilities required to be accessible include roads, walks, and passageways. 28 C.F.R. § 35.104.

46. Due to the lack of accessible curb ramps as alleged above, the City’s pedestrian right of way is not fully, equally, or meaningfully accessible to Plaintiff when viewed in its entirety. Defendant has therefore violated the program access requirement applicable to pedestrian right of way facilities that have not been newly constructed or altered since January 26, 1992.

47. Additionally, the sidewalks, crosswalks, and other walkways at issue constitute facilities within the meaning of ADAAG and UFAS. Plaintiff is informed, believes, and thereon alleges that since January 26, 1992, Defendant has constructed, altered, or repaired parts of these facilities within the meaning of the ADAAG and the UFAS, and that Defendant, through its administrative methods, policies, and practices, has failed to make such facilities readily accessible to and usable by persons with disabilities through the construction and retrofit of curb ramps as required under federal accessibility standards and guidelines.

48. Plaintiff is informed, believes, and thereon alleges that since March 15, 2012, Defendant has constructed, altered, or repaired parts of these facilities within the meaning of the ADAAG and the UFAS, and that Defendant, through its administrative methods, policies, and

practices, has failed to make such facilities compliant with the ADAAG and the UFAS as updated in 2010, as required under 28 C.F.R. 35.151(c)(5).

49. Plaintiff is informed, believes, and thereon alleges that Defendant and its agents and employees have violated and continue to violate Title II of the ADA by failing to maintain the features of the City's walkways and curb ramps that are required to be accessible.

50. As a direct and proximate result of the aforementioned acts, Plaintiff has suffered and continued to suffer difficulty, hardship, anxiety, and danger, due to Defendant's failure to remediate missing, defective, or otherwise inaccessible curb ramps throughout the City's pedestrian right of way. Defendant's acts and omissions have denied and continue to deny Plaintiff the full, equal, and meaningful access to the pedestrian right of way that the ADA requires.

51. Because Defendant's discriminatory conduct presents a real and immediate threat of current and continuing future violations, declaratory and injunctive relief are appropriate remedies.

52. Named Plaintiff Denny and members of the proposed class have been denied, and in the absence of an injunction will be denied, full and equal access to the programs and services offered by Defendant in violation of Title II of the ADA.

SECOND CLAIM FOR RELIEF
Section 504 of the Rehabilitation Act of 1973
29 U.S.C. § 794 *et seq.*

53. Plaintiff incorporates by reference each and every allegation herein.

54. Section 504 of the Rehabilitation Act of 1973 provides in pertinent part: "[N]o otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance . . ." 29 U.S.C. § 794.

55. Plaintiff is otherwise qualified to participate in the services, programs, or activities that are provided to individuals in the City. *See* 29 U.S.C. § 794(b).

56. Defendant is a direct recipient of federal financial assistance sufficient to invoke the coverage of Section 504, and has received such federal financial assistance at all times relevant to the claims asserted in this Complaint.

57. All programs, services, and activities described herein are provided at or by facilities owned and/or maintained by Defendant, or are operated and/or administered by Defendant or its agents.

58. Defendant and its agents and employees have violated and continue to violate Section 504 and the regulations promulgated thereunder by excluding Plaintiff from participation in, denying Plaintiff the benefits of, and subjecting Plaintiff based solely by reason of her disability to, discrimination in the benefits and services of the City's pedestrian right of way and for the reasons set forth above.

59. Additionally, under Section 504, a recipient of federal financial assistance must install ADAAG- or UFAS-compliant curb ramps at intersections whenever it newly constructs or alters sidewalks, streets, roads, and/or highways at any time after June 3, 1977. *Willits v. City of Los Angeles*, 925 F. Supp. 2d. 1089, 1094 (C.D. Cal. 2013). Defendant has violated Section 504 by failing to construct or install such compliant curb ramps at intersections throughout the City where it has newly constructed or altered streets, roads, and/or highways since June 3, 1977.

60. As a direct and proximate result of the aforementioned acts, Plaintiff has suffered and continued to suffer difficulty, hardship, anxiety, and danger, due to Defendant's failure to remediate missing, defective, or otherwise inaccessible curb ramps throughout the City's pedestrian right of way. Defendant's acts and omissions have denied and continue to deny Plaintiff the full, equal, and meaningful access to the pedestrian right of way that Section 504 requires.

61. Because Defendant's discriminatory conduct presents a real and immediate threat of current and continuing future violations, declaratory and injunctive relief are appropriate remedies.

62. Named Plaintiff Denny and members of the proposed class have been denied, and in the absence of an injunction will be denied, full and equal access to the programs and services offered by Defendant in violation of Section 504.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. A declaration that Defendant's conduct as alleged here has violated, and continues to violate, Title II of the Americans with Disabilities Act of 1990, Section 504, and the regulations promulgated under those statutes;

2. Issuance of a permanent injunction requiring Defendant to undertake measures to remediate Defendant's past and ongoing violations of Title II of the ADA and Section 504 of the Rehabilitation Act, and the regulations promulgated under those statutes, and to ensure that such violations do not occur in the future;

3. Actual and compensatory damages to Named Plaintiff Margaret Denny, including, but not limited to those for future pecuniary and non-pecuniary losses, emotional pain,

suffering, inconvenience, mental anguish, loss of enjoyment of life, and other non-pecuniary losses;

4. Award Plaintiff reasonable attorneys' fees and costs, as provided by law;
5. Such other relief as the Court finds just and proper.

Respectfully submitted this __ day of January, 2016.

/s/ Sarah M. Morris

Timothy P. Fox
Sarah M. Morris
Civil Rights Education and Enforcement
Center

Kevin W. Williams
Colorado Cross-Disability Coalition

*Attorneys for Plaintiff and the Proposed
Class*

Pursuant to C.R.C.P. 121, § 1-26(7), a printable copy of this document with electronic signatures is maintained in the offices of CREEC, 104 Broadway, Suite 400, Denver, CO 80203 and will be made available for inspection by other parties or the Court upon request.

Appendix 1

Chart 1

Street 1 of intersection	Street 2 of intersection	Violation Type	Corner
Ash Street	E. 25th Avenue	No Ramp	NE
Ash Street	E. 25th Avenue	No Ramp	NW
Ash Street	E. 25th Avenue	No Ramp	SE
Ash Street	E. 25th Avenue	No Ramp	SW
Ash Street	E. 26th Avenue	No Ramp	SW
Ash Street	E. 26th Avenue	No Ramp	SE
Bellaire Street	E. 25th Avenue	No Ramp	NE
Bellaire Street	E. 25th Avenue	No Ramp	NW
Bellaire Street	E. 26th Avenue	No Ramp	SE
Bellaire Street	E. 26th Avenue	No Ramp	SW
Belliare Street	E. 25th Avenue	No Ramp	SE
Birch Street	E. 26th Avenue	One Ramp	SW
Cherry Street	E. 28th Avenue	No Ramp	NE
Cherry Street	E. 28th Avenue	No Ramp	NW
Cherry Street	E. 28th Avenue	No Ramp	SE
Cherry Street	E. 28th Avenue	No Ramp	SW
Clarkson Street	E. 24th Avenue	One Ramp	NW
Clermont Street	E. 26th Avenue	No Ramp	NE
Clermont Street	E. 26th Avenue	No Ramp	NW
Clermont Street	E. 26th Avenue	No Ramp	SE
Clermont Street	E. 26th Avenue	No Ramp	SW
Clermont Street	E. 28th Avenue	No Ramp	NE
Clermont Street	E. 28th Avenue	No Ramp	NW
Clermont Street	E. 28th Avenue	No Ramp	SE
Clermont Street	E. 28th Avenue	No Ramp	SW
Clermont Street	E. 30th Avenue	No Ramp	NE
Clermont Street	E. 30th Avenue	No Ramp	NW
Clermont Street	E. 30th Avenue	No Ramp	SE
Clermont Street	E. 30th Avenue	No Ramp	SW
Dahlia Street	E. 26th Avenue	No Ramp	NE
Dahlia Street	E. 26th Avenue	No Ramp	NW
Dexter Street	E. 28th Avenue	No Ramp	NE
Dexter Street	E. 28th Avenue	No Ramp	NW
Dexter Street	E. 28th Avenue	No Ramp	SE
Dexter Street	E. 28th Avenue	No Ramp	SW
Elati Street	W. 7th Avenue	No Ramp	SE
Elati Street	W. 7th Avenue	No Ramp	NE
Elati Street	W. 7th Avenue	No Ramp	NW
Elati Street	W. 7th Avenue	One Ramp	SW
Emerson Street	E. 24th Avenue	One Ramp	SE
High Street	E. 24th Avenue	No Ramp	SE
High Street	E. 24th Avenue	One Ramp	SW
High Street	E. 25th Avenue	No Ramp	NE
High Street	E. 25th Avenue	No Ramp	NW
Humboldt Street	E. 10th Avenue	No Ramp	NE

Street 1 of intersection	Street 2 of intersection	Violation Type	Corner
Humboldt Street	E. 10th Avenue	No Ramp	NW
Humboldt Street	E. 10th Avenue	No Ramp	SE
Humboldt Street	E. 10th Avenue	No Ramp	SW
Inca Street	W. 6th Avenue	One Ramp	NE
Julian Street	W. 42nd Avenue	No Ramp	NW
Julian Street	W. 42nd Avenue	No Ramp	SE
King Street	W. 39th Avenue	No Ramp	NE
King Street	W. 39th Avenue	No Ramp	NW
King Street	W. 39th Avenue	No Ramp	SE
King Street	W. 39th Avenue	No Ramp	SW
King Street	W. 40th Avenue	No Ramp	NW
King Street	W. 40th Avenue	No Ramp	SW
King Street	W. 42nd Avenue	No Ramp	NE
King Street	W. 42nd Avenue	No Ramp	SE
King Street	W. 42nd Avenue	No Ramp	NW
King Street	W. 42nd Avenue	No Ramp	SW
Knox Court	W. 42nd Avenue	No Ramp	NE
Knox Court	W. 42nd Avenue	No Ramp	NW
Knox Court	W. 42nd Avenue	No Ramp	SE
Lafayette Street	E. 10th Avenue	One Ramp	NW
Lafayette Street	E. 10th Avenue	One Ramp	NE
Lafayette Street	E. 10th Avenue	One Ramp	SW
Lincoln Street	E. 43rd Avenue	No Ramp	NE
Lincoln Street	E. 43rd Avenue	No Ramp	SE
Marion Street	E. 10th Avenue	No Ramp	NW
Marion Street	E. 10th Avenue	No Ramp	NE
Ogden Street	E. Ellsworth Avenue	No Ramp	NE
Ogden Street	E. Ellsworth Avenue	No Ramp	SE
Pearl Street	E. 11th Avenue	No Ramp	NE
Pearl Street	E. 11th Avenue	No Ramp	SE
Pearl Street	E. 11th Avenue	No Ramp	NW
Pearl Street	E. 11th Avenue	No Ramp	SW
Pearl Street	E. 1st Avenue	No Ramp	NE
Pearl Street	E. 1st Avenue	No Ramp	SE
Pearl Street	E. 1st Avenue	No Ramp	SW
Pennsylvania Street	E. 1st Avenue	No Ramp	NW
Pennsylvania Street	E. 1st Avenue	No Ramp	NE
Pennsylvania Street	E. 1st Avenue	No Ramp	SE
Pennsylvania Street	E. 2nd Avenue	No Ramp	SW
Pennsylvania Street	E. 2nd Avenue	No Ramp	SE
Pennsylvania Street	E. 2nd Avenue	No Ramp	NW
Race Street	E. 24th Avenue	One Ramp	SE
S Humboldt Street	E. Colorado Avenue	No Ramp	NE
S. Adams Street	E. Harvard Avenue	No Ramp	NE
S. Adams Street	E. Harvard Avenue	No Ramp	SE
S. Adams Street	E. Harvard Avenue	No Ramp	NW
S. Adams Street	E. Harvard Avenue	No Ramp	SW

Street 1 of intersection	Street 2 of intersection	Violation Type	Corner
S. Adams Street	E. Vassar Avenue	No Ramp	NE
S. Adams Street	E. Vassar Avenue	No Ramp	SE
S. Adams Street	E. Vassar Avenue	No Ramp	NW
S. Adams Street	E. Vassar Avenue	No Ramp	SW
S. Alcott Street	W. Center Avenue	No Ramp	NE
S. Alcott Street	W. Center Avenue	No Ramp	SE
S. Alcott Street	W. Center Avenue	No Ramp	NW
S. Alcott Street	W. Center Avenue	No Ramp	SW
S. Alcott Street	W. Dakota Street	No Ramp	SE
S. Alcott Street	W. Dakota Street	No Ramp	NE
S. Alcott Street	W. Exposition Avenue	No Ramp	NE
S. Alcott Street	W. Exposition Avenue	No Ramp	SE
S. Alcott Street	W. Exposition Avenue	No Ramp	NW
S. Alcott Street	W. Exposition Avenue	No Ramp	SW
S. Alcott Street	W. Virginia Avenue	No Ramp	NE
S. Alcott Street	W. Virginia Avenue	No Ramp	SE
S. Alcott Street	W. Virginia Avenue	No Ramp	NW
S. Alcott Street	W. Virginia Avenue	No Ramp	SW
S. Bryant Street	W. Center Avenue	No Ramp	NE
S. Bryant Street	W. Center Avenue	No Ramp	SE
S. Bryant Street	W. Center Avenue	No Ramp	NW
S. Bryant Street	W. Center Avenue	No Ramp	SW
S. Bryant Street	W. Exposition Avenue	No Ramp	NE
S. Bryant Street	W. Exposition Avenue	No Ramp	SE
S. Bryant Street	W. Exposition Avenue	No Ramp	NW
S. Bryant Street	W. Exposition Avenue	No Ramp	SW
S. Canosa Court	W. Center Avenue	No Ramp	NE
S. Canosa Court	W. Center Avenue	No Ramp	SE
S. Canosa Court	W. Center Avenue	No Ramp	NW
S. Canosa Court	W. Center Avenue	No Ramp	SE
S. Canosa Court	W. Exposition Avenue	No Ramp	NE
S. Canosa Court	W. Exposition Avenue	No Ramp	SE
S. Canosa Court	W. Exposition Avenue	No Ramp	NW
S. Canosa Court	W. Exposition Avenue	No Ramp	SW
S. Canosa Court	W. Virginia Avenue	No Ramp	NE
S. Canosa Court	W. Virginia Avenue	No Ramp	SE
S. Canosa Court	W. Virginia Avenue	No Ramp	NW
S. Canosa Court	W. Virginia Avenue	No Ramp	SW
S. Clarkson Street	E. Ellsworth Avenue	No Ramp	NE
S. Clarkson Street	E. Ellsworth Avenue	No Ramp	NW
S. Clarkson Street	E. Ellsworth Avenue	No Ramp	SE
S. Clarkson Street	E. Ellsworth Avenue	No Ramp	SW
S. Clay Street	W. Center Avenue	No Ramp	NE
S. Clay Street	W. Center Avenue	No Ramp	SE
S. Clay Street	W. Center Avenue	No Ramp	SW
S. Clay Street	W. Center Avenue	No Ramp	NW
S. Clay Street	W. Exposition Avenue	No Ramp	NE

Street 1 of intersection	Street 2 of intersection	Violation Type	Corner
S. Clay Street	W. Exposition Avenue	No Ramp	NW
S. Clay Street	W. Virginia Avenue	No Ramp	NE
S. Clay Street	W. Virginia Avenue	No Ramp	SE
S. Clayton Street	E. Harvard Avenue	No Ramp	SE
S. Columbine Street	E. Asbury Avenue	One Ramp	NE
S. Columbine Street	E. Iliff Avenue	No Ramp	NE
S. Columbine Street	E. Iliff Avenue	No Ramp	SE
S. Columbine Street	E. Iliff Avenue	No Ramp	NW
S. Columbine Street	E. Iliff Avenue	No Ramp	SW
S. Columbine Street	E. Vassar Avenue	No Ramp	SW
S. Columbine Street	E. Wesley Avenue	No Ramp	NE
S. Columbine Street	E. Wesley Avenue	No Ramp	NW
S. Cook Street	E. Harvard Avenue	No Ramp	NE
S. Cook Street	E. Harvard Avenue	No Ramp	SE
S. Cook Street	E. Harvard Avenue	No Ramp	NW
S. Cook Street	E. Harvard Avenue	No Ramp	SW
S. Cook Street	E. Vassar Avenue	No Ramp	NW
S. Cook Street	E. Vassar Avenue	No Ramp	SW
S. Cook Street	E. Vassar Avenue	No Ramp	NW
S. Cook Street	E. Vassar Avenue	No Ramp	SW
S. Cook Street	E. Wesley Avenue	No Ramp	NE
S. Cook Street	E. Wesley Avenue	No Ramp	SE
S. Cook Street	E. Wesley Avenue	No Ramp	NW
S. Cook Street	E. Wesley Avenue	No Ramp	SW
S. Dale Court	W. Center Avenue	No Ramp	NE
S. Dale Court	W. Center Avenue	No Ramp	NW
S. Dale Court	W. Center Avenue	No Ramp	SW
S. Dale Court	W. Exposition Avenue	No Ramp	NE
S. Dale Court	W. Exposition Avenue	No Ramp	SE
S. Dale Court	W. Exposition Avenue	No Ramp	NW
S. Dale Court	W. Exposition Avenue	No Ramp	SW
S. Dale Court	W. Virginia Avenue	No Ramp	NE
S. Dale Court	W. Virginia Avenue	No Ramp	SE
S. Decatur Street	W. Center Avenue	No Ramp	NE
S. Decatur Street	W. Center Avenue	No Ramp	SE
S. Decatur Street	W. Center Avenue	No Ramp	NW
S. Decatur Street	W. Center Avenue	No Ramp	SW
S. Decatur Street	W. Exposition Avenue	No Ramp	NE
S. Decatur Street	W. Exposition Avenue	No Ramp	SW
S. Decatur Street	W. Virginia Avenue	No Ramp	NE
S. Eliot Street	W. Exposition Avenue	No Ramp	NE
S. Eliot Street	W. Virginia Avenue	No Ramp	NE
S. Eliot Street	W. Virginia Avenue	No Ramp	SE
S. Emerson Street	E. Bayaud Avenue	No Ramp	NE
S. Emerson Street	E. Bayaud Avenue	No Ramp	SW
S. Emerson Street	E. Bayaud Avenue	No Ramp	NW
S. Emerson Street	E. Cedar Avenue	No Ramp	NE

Street 1 of intersection	Street 2 of intersection	Violation Type	Corner
S. Emerson Street	E. Cedar Avenue	No Ramp	SE
S. Emerson Street	E. Cedar Avenue	No Ramp	NW
S. Emerson Street	E. Cedar Avenue	No Ramp	SW
S. Emerson Street	E. Ellsworth Avenue	No Ramp	NE
S. Emerson Street	E. Ellsworth Avenue	No Ramp	NW
S. Emerson Street	E. Ellsworth Avenue	No Ramp	SW
S. Emerson Street	E. Ellsworth Avenue	No Ramp	SE
S. Fillmore Street	E. Wesley Avenue	No Ramp	NW
S. Franklin Street	E. Asbury Avenue	No Ramp	NE
S. Franklin Street	E. Asbury Avenue	No Ramp	SE
S. Franklin Street	E. Asbury Avenue	No Ramp	NW
S. Franklin Street	E. Asbury Avenue	No Ramp	SW
S. Franklin Street	E. Colorado Avenue	No Ramp	NE
S. Franklin Street	E. Colorado Avenue	No Ramp	NW
S. Franklin Street	E. Colorado Avenue	One Ramp	SE
S. Franklin Street	E. Jewell Avenue	No Ramp	NE
S. Franklin Street	E. Jewell Avenue	No Ramp	SE
S. Franklin Street	E. Jewell Avenue	No Ramp	NW
S. Franklin Street	E. Jewell Avenue	No Ramp	SW
S. Gilpin Street	E. Asbury Avenue	No Ramp	NE
S. Gilpin Street	E. Asbury Avenue	No Ramp	SE
S. Gilpin Street	E. Colorado Avenue	No Ramp	NE
S. Gilpin Street	E. Colorado Avenue	No Ramp	SE
S. Gilpin Street	E. Colorado Avenue	No Ramp	NW
S. Gilpin Street	E. Colorado Avenue	No Ramp	SW
S. Gilpin Street	E. Jewell Avenue	No Ramp	NW
S. Gilpin Street	E. Jewell Avenue	No Ramp	SE
S. Gilpin Street	E. Jewell Avenue	No Ramp	SW
S. Humboldt Street	E. Asbury Avenue	One Ramp	NE
S. Humboldt Street	E. Asbury Avenue	One Ramp	SE
S. Humboldt Street	E. Asbury Avenue	One Ramp	NW
S. Humboldt Street	E. Asbury Avenue	One Ramp	SW
S. Humboldt Street	E. Colorado Avenue	No Ramp	SE
S. Humboldt Street	E. Colorado Avenue	No Ramp	NW
S. Humboldt Street	E. Jewell Avenue	No Ramp	NE
S. Humboldt Street	E. Jewell Avenue	No Ramp	SE
S. Humboldt Street	E. Jewell Avenue	No Ramp	NW
S. Humboldt Street	E. Jewell Avenue	No Ramp	SW
S. Josephine Street	E. Iliff Avenue	No Ramp	NE
S. Josephine Street	E. Iliff Avenue	No Ramp	SW
S. Josephine Street	E. Vassar Avenue	No Ramp	SW
S. Josephine Street	E. Wesley Avenue	No Ramp	NW
S. Josephine Street	E. Wesley Avenue	No Ramp	SW
S. Josephine Street	E. Iliff Avenue	No Ramp	SE
S. Lafayette Street	E. Colorado Avenue	No Ramp	NE
S. Lafayette Street	E. Colorado Avenue	No Ramp	NW
S. Lafayette Street	E. Colorado Avenue	No Ramp	SW

Street 1 of intersection	Street 2 of intersection	Violation Type	Corner
S. Lafayette Street	E. Jewell Avenue	No Ramp	NE
S. Lafayette Street	E. Jewell Avenue	No Ramp	SE
S. Lafayette Street	E. Jewell Avenue	No Ramp	NW
S. Lafayette Street	E. Jewell Avenue	No Ramp	SW
S. Lafayette Street	E. Mexico Avenue	No Ramp	NE
S. Lafayette Street	E. Mexico Avenue	No Ramp	SE
S. Lafayette Street	E. Mexico Avenue	No Ramp	NW
S. Lafayette Street	E. Mexico Avenue	No Ramp	SW
S. Madison Street	E. Iliff Avenue	One Ramp	NE
S. Madison Street	E. Iliff Avenue	One Ramp	NW
S. Madison Street	E. Iliff Avenue	No Ramp	SE
S. Madison Street	E. Iliff Avenue	No Ramp	SW
S. Madison Street	E. Vassar Avenue	No Ramp	NE
S. Madison Street	E. Vassar Avenue	No Ramp	SE
S. Madison Street	E. Vassar Avenue	No Ramp	NW
S. Madison Street	E. Vassar Avenue	No Ramp	SW
S. Madison Street	E. Wesley Avenue	No Ramp	NE
S. Madison Street	E. Wesley Avenue	No Ramp	SE
S. Madison Street	E. Wesley Avenue	No Ramp	NW
S. Madison Street	E. Wesley Avenue	No Ramp	SW
S. Marion Street	E. Colorado Avenue	No Ramp	SW
S. Marion Street	E. Colorado Avenue	One Ramp	SE
S. Marion Street	E. Colorado Avenue	One Ramp	NW
S. Marion Street	E. Colorado Avenue	One Ramp	NE
S. Marion Street	E. Mexico Avenue	No Ramp	NE
S. Marion Street	E. Mexico Avenue	No Ramp	SE
S. Marion Street	E. Mexico Avenue	No Ramp	NW
S. Marion Street	E. Mexico Avenue	No Ramp	SW
S. Milwaukee Street	E. Harvard Avenue	One Ramp	SE
S. Monroe Street	E. Harvard Avenue	No Ramp	NE
S. Monroe Street	E. Harvard Avenue	No Ramp	SE
S. Monroe Street	E. Harvard Avenue	No Ramp	SW
S. Monroe Street	E. Wesley Avenue	No Ramp	NE
S. Monroe Street	E. Wesley Avenue	No Ramp	SE
S. Monroe Street	E. Wesley Avenue	No Ramp	NW
S. Monroe Street	E. Wesley Avenue	No Ramp	SW
S. Pearl Street	E. Ellsworth Avenue	No Ramp	NE
S. Pearl Street	E. Ellsworth Avenue	No Ramp	NW
S. Pennsylvania Street	E. Bayaud Avenue	No Ramp	NE
S. Pennsylvania Street	E. Bayaud Avenue	No Ramp	NW
S. Pennsylvania Street	E. Bayaud Avenue	No Ramp	SE
S. Pennsylvania Street	E. Bayaud Avenue	No Ramp	SW
S. Pennsylvania Street	E. Cedar Avenue	No Ramp	NE
S. Pennsylvania Street	E. Cedar Avenue	No Ramp	NW
S. Pennsylvania Street	E. Cedar Avenue	No Ramp	SW
S. Pennsylvania Street	E. Ellsworth Avenue	No Ramp	NE
S. Pennsylvania Street	E. Ellsworth Avenue	No Ramp	NW

Street 1 of intersection	Street 2 of intersection	Violation Type	Corner
S. St. Paul Street	E. Vassar Avenue	No Ramp	NW
S. St. Paul Street	E. Vassar Avenue	No Ramp	SE
S. St. Paul Street	E. Vassar Avenue	No Ramp	SW
S. Washington Street	E. Cedar Avenue	No Ramp	NE
S. Washington Street	E. Cedar Avenue	No Ramp	NW
S. Washington Street	E. Cedar Avenue	No Ramp	SE
S. Washington Street	E. Cedar Avenue	No Ramp	SW
S. Washington Street	E. Ellsworth Avenue	No Ramp	NE
S. Washington Street	E. Ellsworth Avenue	No Ramp	NW
S. Washington Street	E. Ellsworth Avenue	One Ramp	SE
S. Washington Street	E. Ellsworth Avenue	One Ramp	SW
S. Williams Street	E. Asbury Avenue	No Ramp	NE
S. Williams Street	E. Asbury Avenue	No Ramp	NW
S. Williams Street	E. Asbury Avenue	No Ramp	SW
S. Williams Street	E. Colorado Avenue	One Ramp	SW
S. Williams Street	E. Colorado Avenue	One Ramp	NW
S. Williams Street	E. Jewell Avenue	No Ramp	NE
S. Williams Street	E. Jewell Avenue	No Ramp	NW
S. Williams Street	E. Jewell Avenue	No Ramp	SW
S. Williams Street	E. Jewell Avenue	No Ramp	SE
S. Zuni Street	W. Exposition Avenue	No Ramp	NE
S. Zuni Street	W. Exposition Avenue	No Ramp	SE
S. Zuni Street	W. Exposition Avenue	No Ramp	NW
S. Zuni Street	W. Exposition Avenue	No Ramp	SW
Uinta Street	E. 19th Avenue	No Ramp	NE
Ulster Street	E. 16th Avenue	No Ramp	NE
Ulster Street	E. 16th Avenue	No Ramp	NW
Ulster Street	E. 16th Avenue	No Ramp	SW
Ulster Street	E. 16th Avenue	One Ramp	SE
Ulster Street	E. 19th Avenue	No Ramp	SE
Ulster Street	E. 19th Avenue	No Ramp	SW
Valentia Street	E. 17th Avenue	No Ramp	NE
Valentia Street	E. 17th Avenue	No Ramp	SE
Valentia Street	E. 19th Avenue	No Ramp	NE
Valentia Street	E. 19th Avenue	No Ramp	NW
Valentia Street	E. 19th Avenue	No Ramp	SE
Valentia Street	E. 19th Avenue	No Ramp	SW
Verbena Street	E. 16th Avenue	No Ramp	NE
Verbena Street	E. 16th Avenue	No Ramp	NW
Verbena Street	E. 16th Avenue	No Ramp	SE
Verbena Street	E. 16th Avenue	No Ramp	SW
Verbena Street	E. 17th Avenue	No Ramp	NE
Verbena Street	E. 17th Avenue	No Ramp	NW
Verbena Street	E. 19th Avenue	No Ramp	NE
Wabash Street	E. 16th Avenue	No Ramp	NE
Wabash Street	E. 16th Avenue	No Ramp	NW
Wabash Street	E. 16th Avenue	No Ramp	SE

Street 1 of intersection	Street 2 of intersection	Violation Type	Corner
Wabash Street	E. 16th Avenue	No Ramp	SW
Wabash Street	E. 17th Avenue	No Ramp	NW
Wabash Street	E. 17th Avenue	No Ramp	NE
Wabash Street	E. 19th Avenue	No Ramp	NE
Wabash Street	E. 19th Avenue	No Ramp	NW
Willow Street	E. 17th Avenue	No Ramp	NE
Willow Street	E. 17th Avenue	No Ramp	NW
Willow Street	E. 19th Avenue	No Ramp	NE
Willow Street	E. 19th Avenue	No Ramp	NW
Xanthia Street	E. 17th Avenue	No Ramp	NE
Xanthia Street	E. 17th Avenue	No Ramp	NW
Xanthia Street	E. 17th Avenue	No Ramp	SE
Xanthia Street	E. 17th Avenue	No Ramp	SW
Xanthia Street	E. 19th Avenue	No Ramp	NE
Xanthia Street	E. 19th Avenue	No Ramp	NW
Xenia Street	E. 17th Avenue	No Ramp	NE
Xenia Street	E. 17th Avenue	No Ramp	SE
Xenia Street	E. 17th Avenue	No Ramp	SW
Xenia Street	E. 19th Avenue	No Ramp	NE
Xenia Street	E. 19th Avenue	No Ramp	NW
Xenia Street	E. 19th Avenue	No Ramp	SE
Xenia Street	E. 17th Avenue	No Ramp	NW

Appendix 2

Chart 2

Street 1 of intersection	Street 2 of intersection	Corner of Intersection	Running Slope	Cross Slope
Marion Street	E. 12th Avenue	SE		7.80%
Franklin Street	E. 16th Avenue	NW	10.10%	
Franklin Street	E. 16th Avenue	NW	10.10%	
York Street	E. 16th Avenue	NW	10.10%	
Oneida Street	E. 12th Avenue	SW	10.10%	
Glencoe Street	E. 12th Avenue	NE	10.10%	
Monroe Street	E. 12th Avenue	NE	10.10%	
Lafayette Street	E. 12th Avenue	SE	10.10%	
Humboldt Street	E. 12th Avenue	SE	10.10%	
Garfield Street	E. 12th Avenue	SE	10.20%	
Humboldt Street	E. 12th Avenue	SW	10.20%	
Humboldt Street	E. 12th Avenue	SW	10.20%	
Jospehine Street	E. 16th Avenue	SE	10.20%	
Albion Street	28th Avenue	NE	10.30%	
Ash Street	28th Avenue	SW	10.30%	
Clarkson Street	E. 24th Avenue	SW	10.30%	
Ash Street	28th Avenue	NE	10.30%	
High Street	E. 16th Avenue	SE	10.30%	
Monroe Street	E. 12th Avenue	NW	10.40%	
Monroe Street	E. 12th Avenue	SW	10.50%	
Jackson Street	E. 12th Avenue	SE	10.50%	
Emerson Street	E. 24th Avenue	NE	10.50%	
Franklin Street	E. 16th Avenue	NE	10.60%	
York Street	E. 16th Avenue	SE	10.60%	
Marion Street	E. 12th Avenue	NE	10.70%	
Lafayette Street	E. 4th Avenue	SE	10.70%	
Glencoe Street	E. 12th Avenue	NE	10.80%	
Humboldt Street	E. 12th Avenue	SE	10.80%	
Albion Street	28th Avenue	SW	10.80%	
Lafayette Street	E. 4th Avenue	NE	10.90%	
High Street	E. 16th Avenue	NW	10.90%	
Valentia Street	E. 17th Avenue	NW	11.00%	
Emerson Street	E. 25th Avenue	SW	11.00%	
Glencoe Street	E. 11th Avenue	NW	11.10%	
Emerson Street	E. 25th Avenue	SW	11.10%	
York Street	E. 16th Avenue	SE	11.20%	
High Street	E. 16th Avenue	SW	11.40%	
Vine Street	E. 16th Avenue	NW	11.40%	
Williams Street	E. 16th Avenue	SE	11.50%	
Glencoe Street	E. 11th Avenue	SW	11.50%	
Glencoe Street	E. 11th Avenue	NE	11.60%	
Valentia Street	E. 17th Avenue	SW	11.70%	
Garfield Street	E. 12th Avenue	SE	11.80%	

Street 1 of intersection	Street 2 of intersection	Corner of Intersection	Running Slope	Cross Slope
Ogden Street	E. 25th Avenue	NW	11.80%	
Vine Street	E. 16th Avenue	SE	11.80%	
York Street	E. 16th Avenue	SW	11.80%	
Ogden Street	E. 24th Avenue	SW	11.90%	
High Street	E. 16th Avenue	NE	12.00%	
Race Street	E. 16th Avenue	SE	12.00%	
Vine Street	E. 16th Avenue	SE	12.00%	
Glencoe Street	E. 11th Avenue	NE	12.00%	
Gilpin Street	E. 16th Avenue	SE	12.10%	
Vine Street	E. 16th Avenue	SW	12.10%	
Emerson Street	E. 25th Avenue	SE	12.10%	
Birch Street	28th Avenue	SE	12.20%	
Gaylord Street	E. 16th Avenue	SW	12.20%	
Gaylord Street	E. 16th Avenue	SW	12.20%	
Glencoe Street	E. 12th Avenue	SW	12.30%	
Franklin Street	E. 16th Avenue	SE	12.40%	
Emerson Street	E. 24th Avenue	NE	12.50%	
Lafayette Street	E. 4th Avenue	SE	12.60%	
Williams Street	E. 16th Avenue	SW	12.70%	
York Street	E. 16th Avenue	SW	12.80%	
Birch Street	E. 25th Avenue	NE	12.90%	
Race Street	E. 16th Avenue	SE	12.90%	3.10%
High Street	E. 16th Avenue	SW	13.00%	
Race Street	E. 16th Avenue	NE	13.10%	
Vine Street	E. 16th Avenue	SW	13.10%	
Clarkson Street	E. 24th Avenue	SE	13.10%	5.10%
Clarkson Street	E. 25th Avenue	SE	13.10%	6.10%
Emerson Street	E. 24th Avenue	NW	13.10%	
Emerson Street	E. 24th Avenue	SE	13.20%	
Ogden Street	E. 24th Avenue	SE	13.20%	
Glencoe Street	E. 12th Avenue	SE	13.50%	
Franklin Street	E. 16th Avenue	SW	13.70%	3.10%
Gaylord Street	E. 16th Avenue	SE	14.00%	
Emerson Street	E. 24th Avenue	SW	14.10%	
Oneida Street	E. 12th Avenue	NW	14.20%	
Clarkson Street	E. 25th Avenue	SW	14.20%	
Monroe Street	E. 12th Avenue	SE	14.30%	
Vine Street	E. 16th Avenue	NW	14.30%	
Birch Street	E. 25th Avenue	NE	14.40%	
Clarkson Street	E. 24th Avenue	NW	14.40%	
Ogden Street	E. 24th Avenue	SE	14.60%	
Ogden Street	E. 24th Avenue	SW	15.00%	
Emerson Street	E. 24th Avenue	SE	15.50%	
Emerson Street	E. 25th Avenue	SE	15.60%	
Ogden Street	E. 25th Avenue	NE	15.80%	

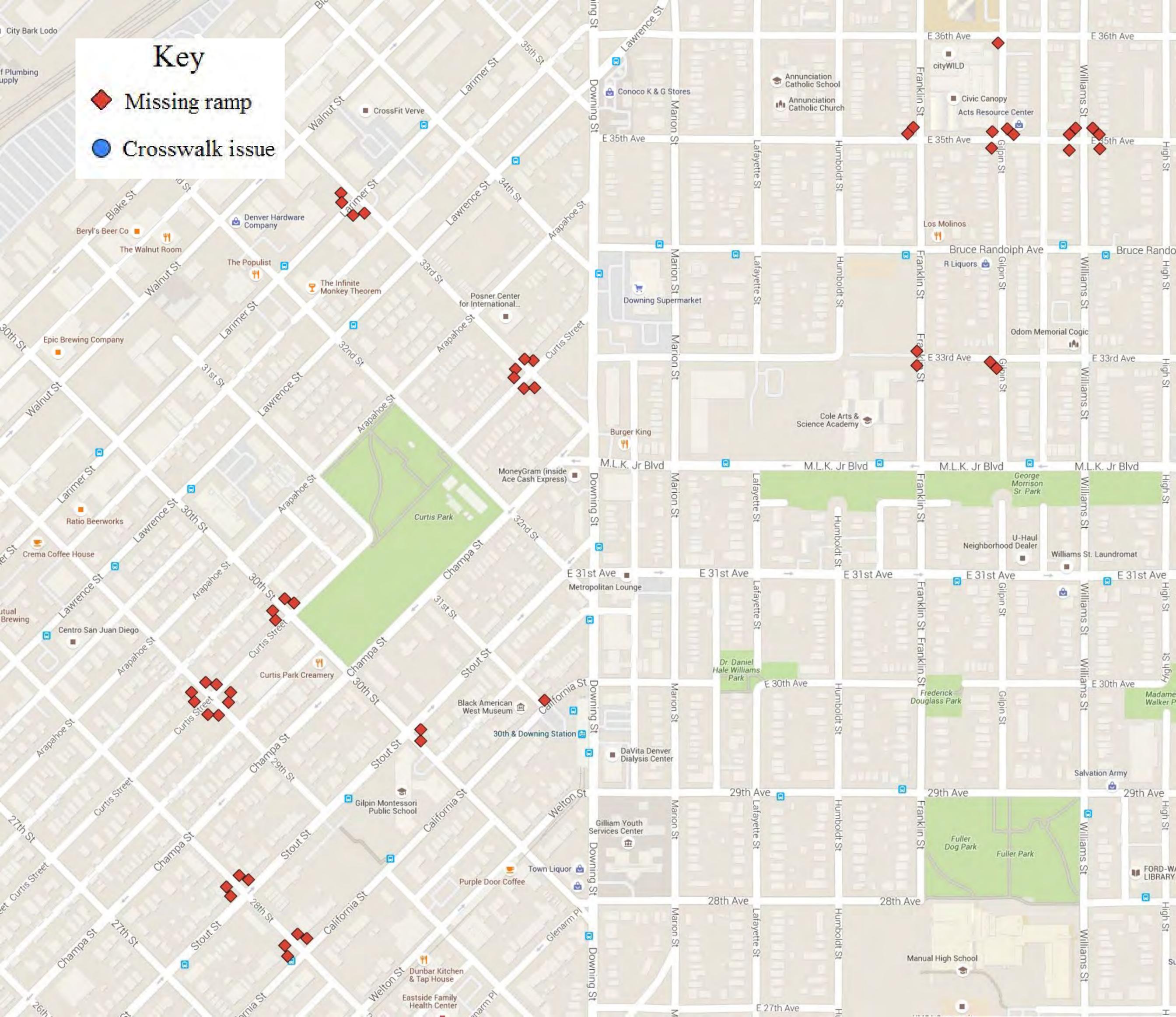
Street 1 of intersection	Street 2 of intersection	Corner of Intersection	Running Slope	Cross Slope
Ogden Street	E. 25th Avenue	NE	16.10%	
Clarkson Street	E. 24th Avenue	NE	17.30%	
Franklin Street	E. 16th Avenue	SW	18.30%	
Emerson Street	E. 24th Avenue	SW	18.50%	
Clarkson Street	E. 24th Avenue	NE	20.30%	

Appendix 3

Key

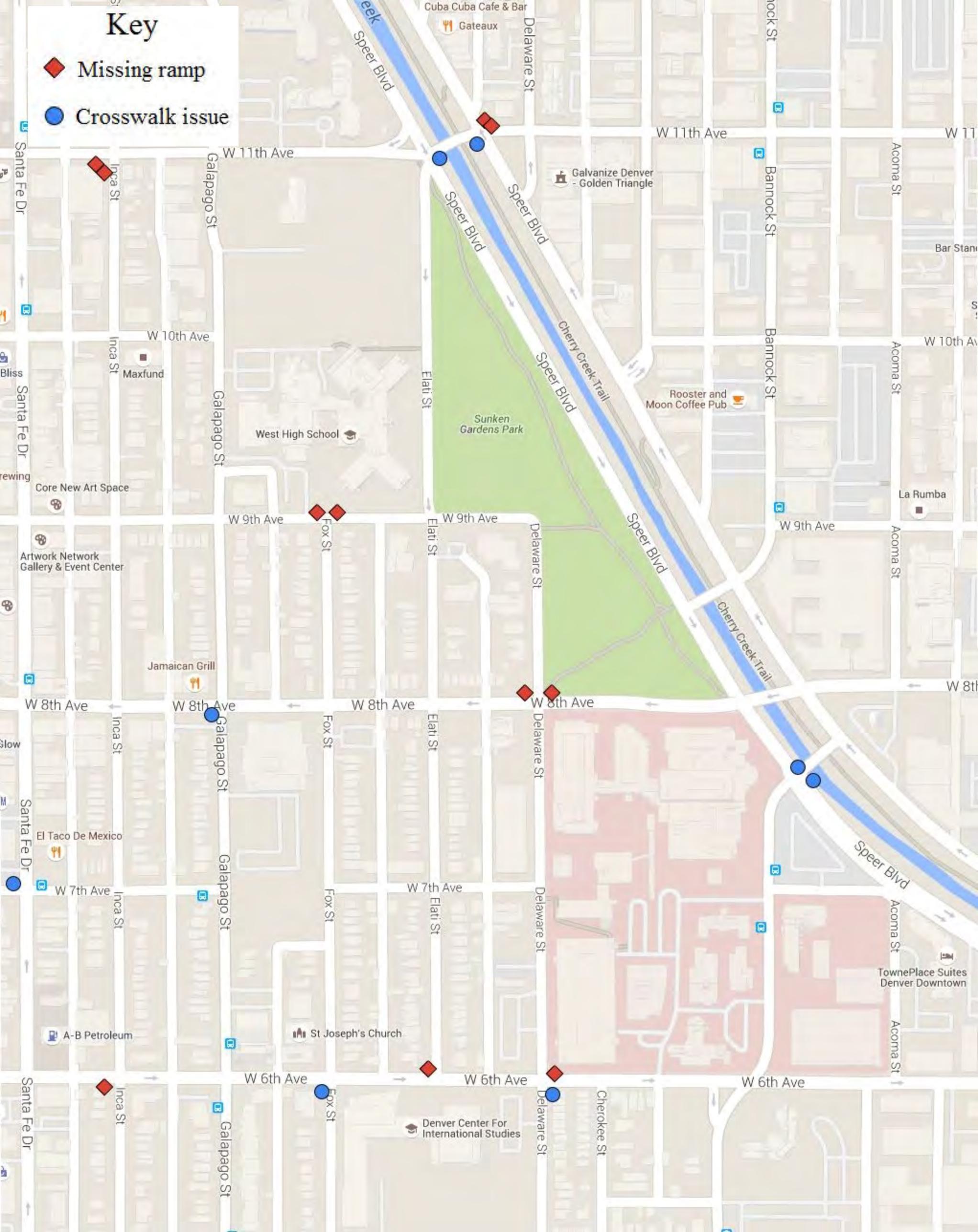
 Missing ramp

 Crosswalk issue



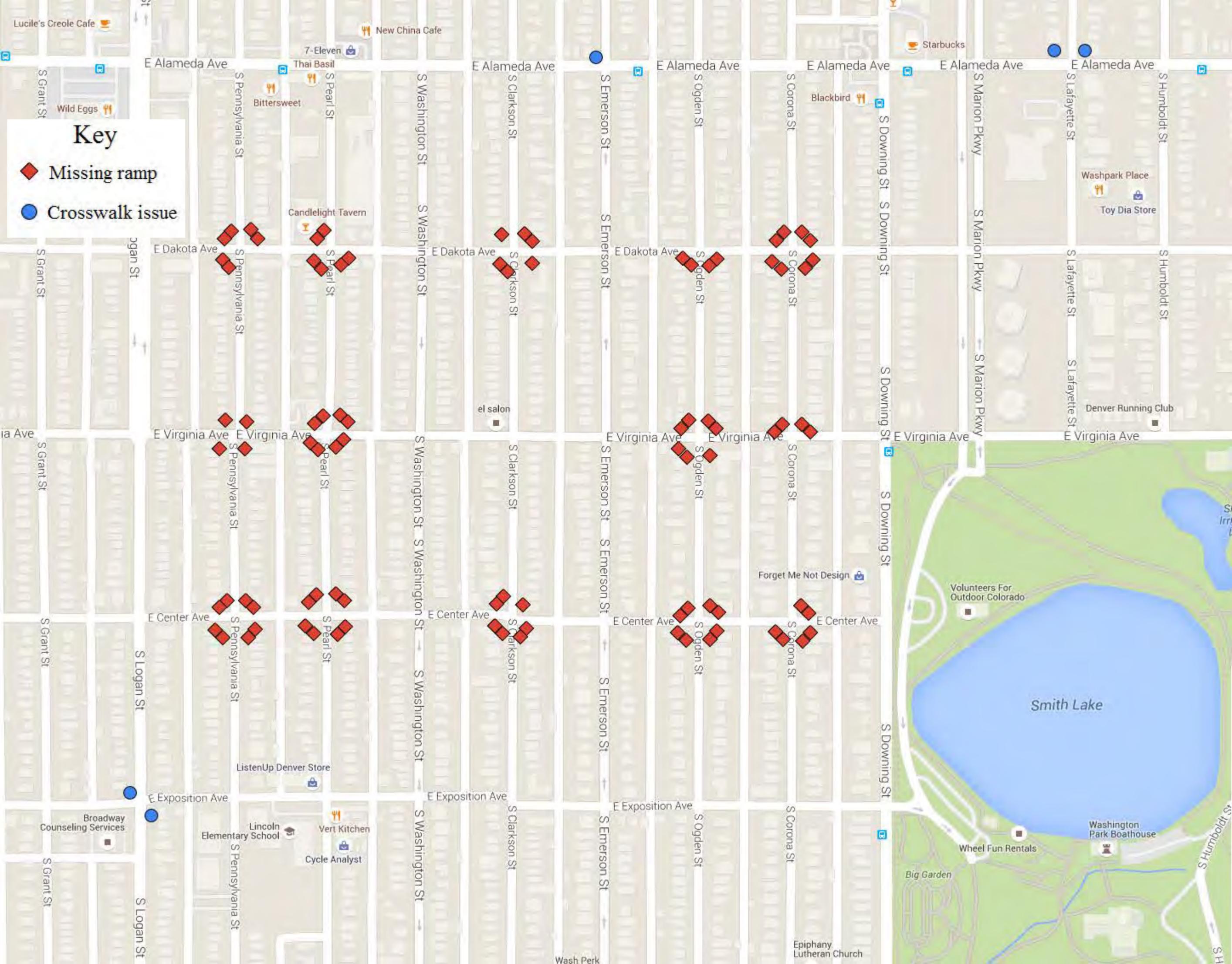
Key

- ◆ Missing ramp
- Crosswalk issue



Key

- ◆ Missing ramp
- Crosswalk issue



Key

◆ Missing ramp

● Crosswalk issue

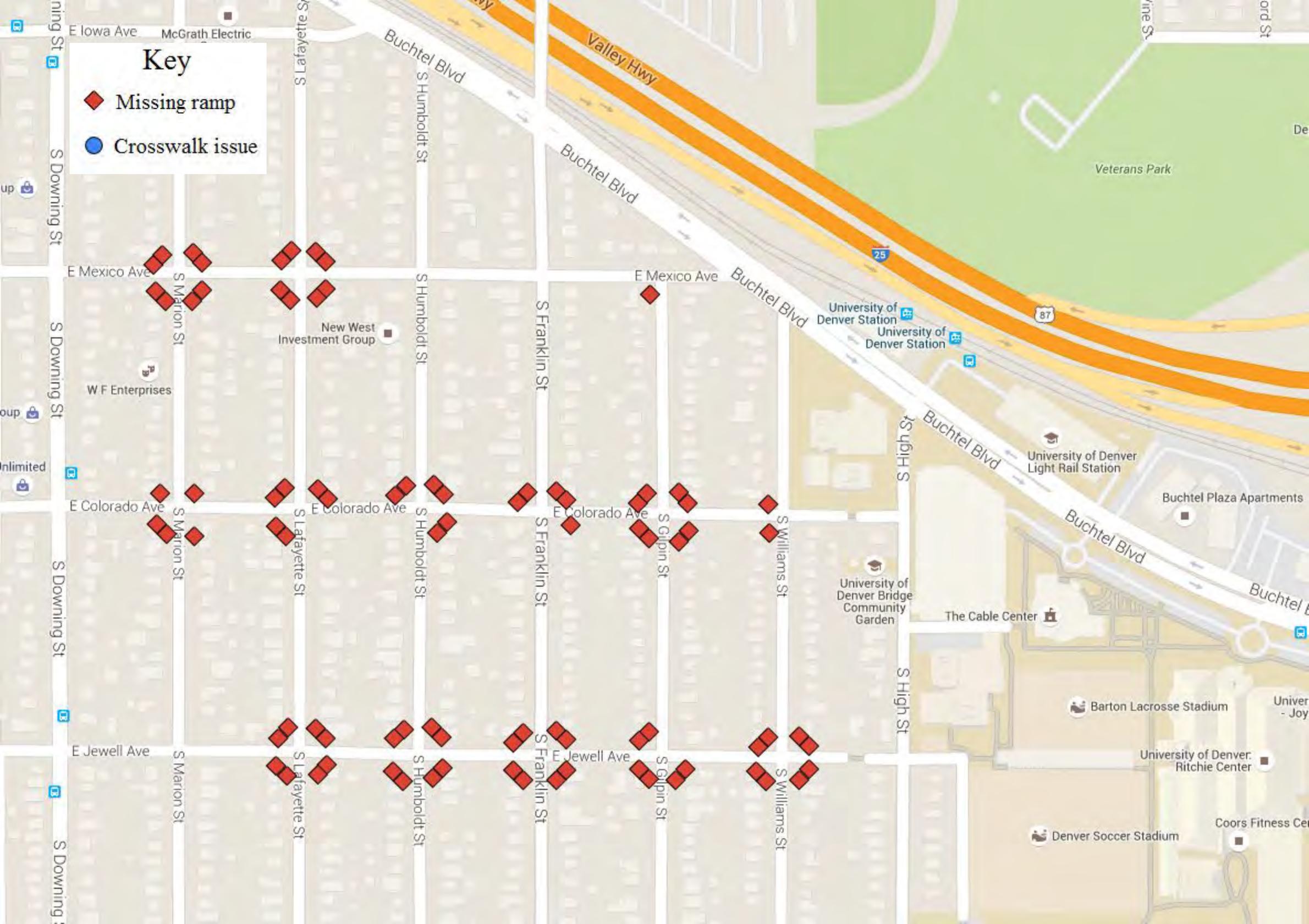


Exhibit 5

**IMPORTANT NOTICE TO ALL PEOPLE WITH
DISABILITIES WHO USE WHEELCHAIRS OR
SCOOTERS IN DENVER**

A Court has preliminarily approved a class action settlement involving curb ramps within the City and County of Denver. The Civil Rights Education and Enforcement Center and Colorado Cross-Disability Coalition have been appointed as Class Counsel. For more information regarding your rights, including the opportunity to object, please go to: www.creeclaw.org/; e-mail info@creeclaw.org; or call 1-888-461-9191.

Exhibit 6

IMPORTANT NOTICE TO ALL PEOPLE WITH DISABILITIES WHO USE WHEELCHAIRS OR SCOOTERS IN DENVER

Notice of Class Action: A class action lawsuit is currently pending involving a challenge to curb ramps within the City and County of Denver. The lawsuit is filed in state district court and is called *Denny v. City and County of Denver*, Case No. _____, District Court, City and County of Denver, 1437 Bannock Street, Denver, CO 80202. The lawsuit alleges that Denver has violated Title II of the Americans with Disabilities Act (“ADA”) and Section 504 of the Rehabilitation Act of 1973 (“Section 504”) with regard to the installation, maintenance, and design of curb ramps that permit people who use wheelchairs or scooters to access and use the City’s pedestrian right of way.

The following class was certified by the Court on _____, 2016:

All persons with disabilities who use wheelchairs or scooters for mobility who, through the date of preliminary approval of the Settlement Agreement, use or will use the pedestrian right of way in the City and County of Denver

The Court has appointed Margaret Denny as the representative of this class.

The parties to the lawsuit have negotiated a proposed settlement that resolves claims relating to inaccessible curb ramps for individuals who use wheelchairs or scooters. In those negotiations, Plaintiff and the Plaintiff Class are represented by Timothy P. Fox and Sarah M. Morris of CREEC and Kevin W. Williams of the Colorado Cross-Disability Coalition (“Class Counsel”). The Defendant is represented by Robert G. Wheeler, Assistant City Attorney for the City and County of Denver.

Coverage of the Settlement: the proposed settlement covers all curb ramps within the City and County of Denver. It covers City street segments with sidewalks, and does not apply to (1) components of the City’s sidewalk system other than curb ramps, (2) street segments that do not contain sidewalks but do contain bus stops, and (3) curb ramps adjacent to roads that comprise the State Highway System as defined in Colo. Rev. Stat. § 43-2-101 and -102.

Proposed Class Action Settlement: The Class Action Settlement Agreement (“Settlement Agreement”) provides that the City will come into compliance with the ADA and Section 504’s curb ramp requirements. Primarily, the Settlement Agreement provides that the City will install or cause the installation of 1,500 curb ramps per calendar year until compliant curb ramps are in place at all locations within the City and County of Denver where street level pedestrian walkways cross curbs adjacent to City owned right of way. Of this 1,500, a minimum of 400 of the 1,500 ramps installed each year will be installed at locations (1) requested through the City’s existing request procedure, which it agrees to maintain, and/or (2) where street level pedestrian walkways cross curbs and no curb ramp currently exists.

Your Rights as a Class Member: If you are a person with a disability who uses a wheelchair or scooter for mobility and who, through _____, 2016 has experienced any problems

Please read this Notice carefully. It affects your legal rights.

with the pedestrian right of way in the City and County of Denver as a result of your disability, you are a member of the proposed Settlement Class.

The Court has granted Preliminary Approval of the Class Action Settlement Agreement. A hearing will be held on _____, 2016 at ___ in the Courtroom of _____ in Denver, Colorado, to evaluate the fairness of the Settlement Agreement, and to decide whether to grant Final Approval. The date of this hearing may change without further notice to the class. If the Settlement Agreement is given Final Approval, all Class members will be bound by the provisions of the Settlement Agreement with respect to claims for injunctive relief and attorneys' fees and costs under the ADA and Section 504 relating to curb ramps.

Any and all such injunctive claims that curb ramps within the City and County of Denver are in violation of these statutes with respect to access for individuals who use wheelchairs or scooters up until _____ will be barred. The Settlement Agreement, if approved, will not release claims for damages other than by the Named Plaintiff Margaret Denny, and any damages claims CREEC and CCDC may have brought on behalf of themselves only and not their members or members of the Class. Thus, you do not have to object in order to be able to assert claims for damages in your own lawsuit, although you may not recover damages through this class action. No Class member can "opt out" of the Settlement Agreement, but members of the Class may object to the Settlement Agreement as described below.

Class Counsel plan to seek up to \$122,000 in attorneys' fees and costs for negotiating and obtaining approval for this Settlement Agreement. Class Counsel will also be entitled to fees, which are capped at no more than \$100,000 per year, for any work performed in the implementation, enforcement, dispute resolution, or other monitoring the settlement.

If you wish to object to the settlement or to speak at the hearing, you must send the Court a written objection to the settlement and/or notice of your intent to appear at the hearing on or before at the following address: Honorable _____, District Court, City and County of Denver, Courtroom ___, 1437 Bannock Street, Denver, CO 80202, and to the following: (1) Timothy P. Fox, Co-Executive Director, Civil Rights Education and Enforcement Center, 104 Broadway, Suite 400, Denver, CO 80203, and (2) Denver City Attorney's Office, Attn: Robert G. Wheeler, Assistant City Attorney, 201 W. Colfax Ave., Dept. 1207, Denver, CO 80202.

How to Get Further Information: The Settlement Agreement is also available on the website of the Civil Rights Education and Enforcement Center, www.creeclaw.org/ and of the Colorado Cross-Disability Coalition, www.ccdconline.org. If you have any questions, you may also contact CREEC at info@creeclaw.org or 1-888-461-9191.

Please read this Notice carefully. It affects your legal rights.

Exhibit 7

List of Organizations to Receive Notice

Center for People with Disabilities
1675 Range Street
Boulder, CO 80301

Center for People with Disabilities (CPWD
Satellite)
25 Garden Center, Suite 1
Broomfield, CO 80020

Center for Independence (Satellite)
520 Third Street, Suite 34
Carbondale, CO 81623

Colorado Springs Independence Center
729 South Tejon Street
Colorado Springs, CO 80903

Southwest Center for Independence
(Satellite)
2409 East Empire Street
Cortez, CO 81321

Atlantis Community, Inc.
201 South Cherokee Street
Denver, CO 80223

Mile High Independent Living Center
110 16th Street, Suite 504
Denver, CO 80202

Southwest Center for Independence
3473 Main Avenue #23
Durango, CO 81301

Disabled Resource Services
1017 Robertson Street, Unit B
Ft. Collins, CO 80524

Center for Independence
740 Gunnison Avenue
Grand Junction, CO 81501

Connections for Independent Living
1331 8th Avenue
Greeley, CO 80631

Center for People with Disabilities (CPWD
Satellite)
615 North Main
Longmont, CO 80501

Disabled Resource Services
118 E. 29th St., Suite C
Loveland, CO 80538-2724

Center for Independence (Satellite)
300 North Cascade, Suite C10
Montrose, CO 81401

Center for Independence (Satellite)
1430 Railroad Ave
Rifle, CO 81650

Center for Disabilities
1304 Berkley Avenue
Pueblo, CO 81004

NorthWest Colorado Center for
Independence
1306 Lincoln Avenue, Suite A
Steamboat Springs, CO 80487

Center for People with Disabilities (CPWD
Satellite)
10351 Grant Street
Thornton, CO 80229

Exhibit 8

District Court, City and County of Denver, Colorado
1437 Bannock Street
Denver, CO 80202

Plaintiff: Margaret Denny, on behalf of herself and a
proposed class of similarly situated
people defined below

v.

Defendant: City & County of Denver

Attorneys for Plaintiff:

Timothy P. Fox (Atty. Reg. No. 25889)
Sarah M. Morris (Atty. Reg. No. 44462)
Civil Rights Education and Enforcement Center
104 Broadway, Suite 400
Denver, CO 80203
(303) 757-7901
tfox@creeclaw.org
smorris@creeclaw.org

Kevin W. Williams (Atty. Reg. No. 28117)
Colorado Cross-Disability Coalition
Empire Park
1385 S. Colorado Blvd., Suite 610-A
Denver, CO 80222
(303) 839-1775
kwilliams@ccdconline.org

▲ COURT USE ONLY ▲

Case Number:

Div:

Ctrm:

**[PROPOSED] ORDER GRANTING CERTIFICATION OF A CLASS FOR
SETTLEMENT PURPOSES ONLY AND PRELIMINARY APPROVAL
OF SETTLEMENT AGREEMENT**

This matter is before this Court on Plaintiff's Unopposed Motion for Certification of a Class for Settlement Purposes Only and Preliminary Approval of Settlement Agreement. For the reasons set forth below, the Court GRANTS the motion.

INTRODUCTION

In this proposed class action, Plaintiff alleges that Defendant City and County of Denver has violated requirements set forth under the Americans with Disabilities Act and Section 504 of the Rehabilitation Act governing installation, maintenance, and design of curb ramps that permit people who use wheelchairs or scooters to access and use the City's pedestrian right of way.

Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131, *et seq.* ("ADA"), prohibits discrimination on the basis of disability by public entities. Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, *et seq.*, ("Section 504") prohibits discrimination on the basis of disability by recipients of federal financial assistance. The ADA, Section 504, and their respective implementing regulations contain broad anti-discrimination mandates as well as specific requirements as to the installation, maintenance, and design of curb ramps. This is because accessible curb ramps are necessary to permit people with mobility disabilities who use mobility aids such as wheelchairs or scooters to access a public entity's pedestrian right of way (its sidewalks, crosswalks, and paved paths).

Specifically, the ADA and Section 504 require a public entity to affirmatively conduct comprehensive accessibility planning and to develop and effectively implement policies to ensure its system of curb ramps, sidewalks, crosswalks, pedestrian crossings and other walkways ("pedestrian rights of way"), *when viewed its entirety*, is readily accessible to, and useable by, persons with mobility disabilities. 42 U.S.C. § 12132; 29 U.S.C. § 794; 28 C.F.R. § 35.150; 28 C.F.R. § 41.57; 45 C.F.R. § 84.22(a); *Barden v. City of Sacramento*, 292 F.3d 1073, 1076-77 (9th Cir. 2002) (sidewalks are a program, service, or activity under Section 504 and Title II of

the ADA); *Willits v. City of Los Angeles*, 925 F. Supp. 2d. 1089, 1094 (C.D. Cal. 2013). This is known as the “program access” obligation, and it requires programmatic access to the entire pedestrian right of way. *Barden*, 292 F.3d. at 1076-77.

Additionally, the ADA and Section 504 require public entities to ensure that certain road or sidewalk construction or alterations made after the laws’ effective dates are accessible to and usable by people with disabilities in accordance with set technical standards. Specifically, since its passage in 1990, the ADA has required that a public entity install and/or upgrade curb ramps to bring them into access compliance at intersections any time it conducts street construction or alteration such as resurfacing projects. 28 C.F.R. § 35.151(a)(1), (b)(1), (b)(4), (i); 45 C.F.R. § 84.23(b); *Kinney v. Yersalim*, 9 F.3d 1067, 1073-74 (3d Cir. 1993); *Willits*, 925 F. Supp. 2d. at 1094; *Lonberg v. City of Riverside*, No. 97-CV-0237, 2007 WL 2005177, at *6 (C.D. Cal. May 16, 2007). Similarly, under Section 504, recipients of federal financial assistance must install compliant curb ramps at intersections for any new construction or alteration of streets, roads, and/or highways. 45 C.F.R. § 84.23(a)-(b); *Willits*, 925 F. Supp. 2d. at 1094. This is known as the “new construction and alterations” requirement. Federal law and guidelines set specific technical standards for compliance, such as for cross slope or landing space of a curb ramp. *See, e.g.*, 28 C.F.R. pt. 36, app. D § 4.7; 36 C.F.R. pt. 1191, app. D § 405; Briefing Memo, 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 (July 8, 2013), <http://www.ada.gov/doj-fhwa-ta.htm> (“2013 DOJ/DOT Joint Technical Assistance Memo”).

BACKGROUND

I. The Parties and the Investigation.

On January __, 2016, Plaintiff filed her Class Action Complaint, which details her allegations and claims against the City and County of Denver. The City and County of Denver is a public entity covered by Title II of the ADA and a recipient of federal financial assistance covered by Section 504. Like many cities, it is served by a right of way system that includes pedestrian sidewalks.

Named Plaintiff in this case is Margaret Denny, a long-time Denver resident, who as a result of disability, uses a wheelchair for mobility. Denny Decl. ¶¶ 2-3. Ms. Denny requires accessible curb ramps to be able to utilize the City's pedestrian right of way, and thus she has a personal interest in ensuring that the City complies with federal requirements governing accessibility of curb ramps. *Id.* ¶ 5. Ms. Denny also served as a "tester" in this case, a role discussed in more detail below. *Id.* ¶¶ 8-10; Fox Decl. ¶ 10.

Prior to filing this lawsuit, the Civil Rights Education and Enforcement Center ("CREEC") and several people who have mobility disabilities and use wheelchairs investigated Denver's compliance with curb ramp requirements of the ADA and Section 504. Specifically, CREEC submitted an open-records request to the City, which requested the identity of the sections of all streets in Denver that have undergone alterations since January 26, 1992, the effective date of the ADA (and after the 1977 effective date of Section 504). Fox Decl. ¶ 6. In response, the City produced a spreadsheet identifying more than 15,000 sections of city streets that had been altered since that date. *Id.* ¶ 7. CREEC reviewed and analyzed this spreadsheet, and

then commissioned a survey of a sampling of the streets identified. *Id.* ¶¶ 8-9. CREEC alleges that its survey found hundreds of violations of the curb ramp requirements of the ADA and Section 504, including a lack of curb ramps at intersections and curb ramps with excessively steep slopes, among others. *Id.* ¶¶ 9, 11.

In addition to this survey, two CREEC members, Named Plaintiff Margaret Denny and another individual who uses a wheelchair for mobility, acted as testers for CREEC. *Id.* ¶ 10; Denny Decl. ¶¶ 8-10. Plaintiff and CREEC allege that, in that capacity, these individuals encountered corners in Denver without curb ramps at intersections that had been altered after the effective date of the ADA and Section 504. Fox Decl. ¶ 10; Denny Decl. ¶¶ 8-10.

In late December 2013, CREEC and co-counsel the Colorado Cross-Disability Coalition (“CCDC”) approached the City seeking to remedy the issue of inaccessible curb ramps within the City pedestrian right of way. Fox Decl. ¶ 12. Together, CREEC and CCDC presented to the City nearly 500 examples of curb ramps that they alleged did not comply with the ADA and/or Section 504 because, for example, the City had not installed any ramp at all on those corners in violation of those laws, the City had installed only one ramp where two were required, or ramps that were installed did not comply with specifications for features such as slope. *Id.* ¶ 13; Williams Decl. ¶ 8.

CREEC and CCDC proposed entering into a process of Structured Negotiations with the City to resolve this issue, and the City agreed. Fox Decl. ¶ 14. Over the next two years, the parties met face-to-face multiple times, held dozens of phone calls, and negotiated extensively over email, exchanging documents and more than thirty drafts of the settlement agreement, and consulting an independent expert and city architectural employees. *Id.* ¶¶ 15-19. The settlement

negotiations included discussions of curb ramp placement prototypes, the parameters and scope for a survey of curb ramps within the City, and the exclusion from the settlement (primarily because of jurisdictional issues) of (1) components of the City's sidewalk system other than curb ramps, (2) street segments that do not contain sidewalks but do contain bus stops, and (3) curb ramps adjacent to roads that comprise the State Highway System as defined in Colo. Rev. Stat. § 43-2-101 and -102. *Id.* ¶ 20.

The City disputes and contests Plaintiff's allegations and claims in the Class Action Complaint and, therefore, a real case or controversy exists between the parties, which they have elected to resolve by agreement. The Settlement Agreement is the culmination of the two years' worth of effort and represents an arm's-length, non-collusive agreement between the opposing parties. *Id.* ¶ 21.

II. Summary of Settlement Agreement Terms.

The Proposed Settlement Agreement was filed with the Court as Exhibit A to the Proposed Preliminary Approval Order and is attached to and hereby incorporated by reference in this Order. Ex. A. The following summarizes its principal terms, though the exact terms and language in the Settlement Agreement control:

Plaintiff and the City have negotiated a comprehensive scheme for injunctive relief, which requires the City to come into compliance with the law and regulations described above. The first step is for the City, at its own expense and using a methodology and collecting a data set that the parties have negotiated, to perform a comprehensive survey of curb ramps, which shall be completed by the end of 2017. Next, as the City started doing in 2014 after the parties' negotiations commenced, the City will install or cause the installation of 1,500 curb ramps per

calendar year until compliant curb ramps are in place, with a few limited exceptions, at all locations within the City and County of Denver where street level pedestrian walkways cross curbs adjacent to City owned right of way. This minimum number does not relieve the City of its obligation under the ADA and Section 504 to install curb ramps when it constructs or alters a curb or street, or causes a curb or street to be altered, even if doing so requires installation of more than 1,500 curb ramps in a given year. A minimum of 400 of the 1,500 ramps installed each year will be installed at locations (1) requested through the City's existing request procedure, which it agrees to maintain, and/or (2) where street level pedestrian walkways cross curbs and no curb ramp currently exists. *See generally* Settlement Agreement, § III. Throughout the term of the Agreement, the City shall maintain curb ramps in operable working condition, and provide yearly training to its employees on curb ramps. *Id.* § III(E)-(F).

The Settlement Agreement provides a monitoring process that involves both a third-party monitor and monitoring by Class Counsel. *Id.* § III(D). First, the City shall annually report to Class Counsel the curb ramps installed and streets altered in the preceding year. Each year, the City shall also retain an Independent Inspector to survey a random 10% sampling of such locations and provide a report of that sampling to both sides. The parties shall report yearly on their progress under the Agreement, to the Court and a Special Master appointed by the Court as called for in the Settlement Agreement. The Special Master will have the power to make decisions in all matters pertaining to administration and enforcement of the Agreement. *Id.* § VIII(B). The parties have also agreed to a multi-stage dispute resolution process in which disputes that the parties cannot resolve themselves will be brought to the Special Master. *Id.* § VIII.

The term of the Settlement Agreement extends until the Independent Inspector submits a final report confirming that the City has modified or installed all compliant ramps required by the Agreement and until any disputes relating to that final report have been resolved. *Id.* § III(G).

The Settlement Agreement also provides for a payment of \$5,000 to Named Plaintiff Margaret Denny as consideration for release of her damages claims. CREEC and CCDC also release any damages claims they may have brought on behalf of themselves but not their members. *Id.* § IX(B). Named Plaintiff has not sought, and is not receiving, an incentive award. *Id.* § VI(D). The Settlement Agreement recognizes that Class Counsel are entitled to their reasonable attorneys' fees and costs in negotiating the Settlement, obtaining final approval, and in any monitoring required. *Id.* § VI. Fees at all stages are capped. *Id.* Class Counsel will file a motion seeking an award of fees consistent with the provisions of the Settlement Agreement. *Id.* § IV(D).

The Settlement Agreement releases the injunctive claims of class members, but does not release the damages claims of class members. § IX(A).

DISCUSSION

I. THE PROPOSED CLASS IS CERTIFIED.

A. Definition of the Proposed Class.

Plaintiff seeks to certify the following class of individuals pursuant to Colorado Rule of Civil Procedure ("CRCP") 23(b)(2): "All persons with disabilities who use wheelchairs or scooters for mobility who, through the date of preliminary approval of the Settlement Agreement, use or will use the pedestrian right of way in the City and County of Denver." The

proposed class seeks injunctive and declaratory relief. The proposed class does not seek damages.¹

B. Legal Standard for Class Certification.

To certify the proposed class in this case, this Court must determine that the Named Plaintiff has standing to assert injunctive claims, and that the proposed class meets the requirements of CRCP 23. *See, e.g., Armstrong v. Davis*, 275 F.3d 849, 860, 868 (9th Cir. 2001).² As set forth below, both of these prerequisites are easily met here.

C. The Named Plaintiff Has Standing to Seek Injunctive Relief.

To have standing to seek injunctive relief, a plaintiff must “satisfy the two prongs of Colorado’s test for standing: the plaintiff suffered (1) an injury-in-fact, (2) to a legally protected interest.” *Ainscough v. Owens*, 90 P.3d 851, 855 (Colo. 2004) (en banc); *see also Bd. of Cnty. Comm’rs, La Plata Cnty. v. Bowen/Edwards Assocs., Inc.*, 830 P.2d 1045, 1052 (Colo. 1992) (citations omitted).³ The first prong requires “a concrete adverseness which sharpens the

¹ As stated above, Named Plaintiff Margaret Denny does seek individual damages only. *See supra*, Background § II. Damages *on behalf of the class* are neither sought in this case, nor are precluded by this settlement. *See id.*; Settlement Agreement § IX(A)-(B) (expressly stating that class damages claims are not released); *Jahn v. ORCR, Inc.*, 92 P.3d 984, 988 (Colo. 2004) (en banc) (“[C]lass actions for injunctive relief certified under C.R.C.P. 23(b)(2) do not preclude individual actions for damages.”).

² There is not a significant amount of binding authority interpreting CRCP 23. However, because CRCP 23 is “virtually identical” to its federal counterpart, Colorado courts “may look to case law regarding the federal rule for guidance.” *LaBrenz v. Am. Family Mut. Ins. Co.*, 181 P.3d 328, 333 (Colo. App. 2007) (citations omitted); *see also Air Commc’n & Satellite Inc. v. EchoStar Satellite Corp.*, 38 P.3d 1246, 1251 (Colo. 2002) (en banc) (citing cases); *Mountain States Tel. & Tel. Co. v. Dist. Court, City & Cnty. of Denver*, 778 P.2d 667, 671 (Colo. 1989) (citation omitted).

³ This Colorado standard is less stringent than the standard in federal court. *Rector v. City & Cnty. of Denver*, 122 P.3d 1010, 1018 (Colo. App. 2005) (citing *Ainscough*, 90 P.3d at 855). However, “similar considerations” underlie both, and federal cases are persuasive in Colorado

presentation of issues that parties argue to the courts.” *Ainscough*, 90 P.3d at 855 (citation omitted). The deprivation of civil liberties, or of a legally created right, “although themselves intangible, are nevertheless injuries-in-fact.” *Id.* (citation omitted). The second prong “requires that the plaintiff have a legal interest protecting against the alleged injury.” *Id.* (citation omitted). “This is a question of whether the plaintiff has a claim for relief under the constitution, the common law, a statute, or a rule or regulation.” *Id.* (citing *Bowen/Edwards Assocs., Inc.*, 830 P.2d at 1053). “Thus, legally protected rights encompass all rights arising from constitutions, statutes, and case law.” *Id.*

Named Plaintiff Margaret Denny has standing to pursue injunctive relief because she: (1) uses a motorized wheelchair for mobility and thus requires curb ramps to be able to utilize the City’s pedestrian right of way; (2) has experienced inaccessible curb ramps on numerous occasions throughout the City; and (3) has been and is also deterred from using the City’s pedestrian right of way because of inaccessible curb ramps. The denial of her civil right, guaranteed by the ADA and Section 504, to access the City’s pedestrian right of way is an injury-in-fact that meets the first prong of Colorado’s standing test. *See Ainscough*, 90 P.3d at 855. The second prong is met because the statutes that guarantee that civil right provide a claim for relief. 29 U.S.C. §§ 794, 794a; 42 U.S.C. § 12133 (incorporating by reference 29 U.S.C. § 794a); *see Ainscough*, 90 P.3d at 855.⁴

state court. *City of Greenwood Vill. v. Petitioners for Proposed City of Centennial*, 3 P.3d 427, 436 n.7 (Colo. 2000) (en banc).

⁴ For the same reasons, Named Plaintiff Denny has standing to assert her own individual claim for damages against the City.

Named Plaintiff Margaret Denny also served, in part, as a “tester” in this case, *i.e.*, a person whose purpose in attempting to utilize a defendant’s services is “to determine whether defendant engaged in unlawful practices.” *Tandy v. City of Wichita*, 380 F.3d 1277, 1285-89 (10th Cir. 2004) (holding that testers have standing under Section 504 and under Title II of the ADA).⁵ As such, Ms. Denny’s purpose in investigating curb ramps in the City was in part to determine whether those curb ramps comply with ADA and Section 504 requirements. Standing for “testers” also comports with Colorado’s “relatively broad definition of standing.” *Ainscough*, 90 P.3d at 855. Thus, her testing motive is also sufficient to establish Ms. Denny’s standing. *Tandy*, 380 F.3d at 1285-89.

D. The Proposed Class Meets the Requirements of Rule 23.

Although Denver does not oppose Plaintiff’s motion, this Court must still determine that the proposed class meets all of the requirements of CRCP 23(a) and at least one of the provisions of Rule 23(b)(2). CRCP 23(a) provides:

- (1) The class is so numerous that joinder of all members is impracticable;
- (2) there are questions of law or fact common to the class;
- (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and
- (4) the representative parties will fairly and adequately protect the interests of the class.

⁵ The Tenth Circuit’s opinion is persuasive authority here. *See City of Greenwood Vill*, 3 P.3d at 436 n.7. Additionally, the Tenth Circuit and other courts have reached the same conclusion as to tester standing under Title III of the ADA. *See Colorado Cross Disability Coal. v. Abercrombie & Fitch Co.*, 765 F.3d 1205, 1211-12 (10th Cir. 2014); *Houston v. Marod Supermarkets, Inc.*, 733 F.3d 1323 (11th Cir. 2013); *Klaus v. Jonestown Bank & Trust Co. of Jonestown, PA*, No. 1:12-CV-2488, 2013 WL 4079946, at *7 (M.D. Pa. Aug. 13, 2013); *Betancourt v. Federated Dept. Stores*, 732 F. Supp. 2d 693 (W.D. Tex. 2010); *Molski v. Arby’s Huntington Beach*, 359 F. Supp. 2d 938, 947-48 (C.D. Cal. 2005); *Molski v. Price*, 224 F.R.D. 479, 484 (C.D. Cal. 2004) (holding that plaintiff whose motive for visiting a service station was in part “to check on the station’s ADA compliance” had standing under title III).

Plaintiff seeks certification under CRCP 23(b)(2), alleging that Defendant “has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.” CRCP 23(b)(2).

These rules reflect the fact that “[c]lass actions serve an important function in our system of civil justice, and a trial court has considerable discretion to manage them.” *Air Comm’n*, 38 P.3d at 1251; *accord Jackson v. Unocal Corp.*, 262 P.3d 874, 880 (Colo. 2011) (en banc) (citing cases). Two principles guide that discretion. First, given the important purposes underlying Rule 23, “Colorado has a policy of favoring the maintenance of class actions,” which also means that Rule 23 is liberally constructed. *Jackson*, 262 P.3d at 880-81 (citations and internal quotations omitted). Second, Plaintiff bears the burden of proof on class certification, but “so long as the trial court rigorously analyzes the evidence, it retains discretion to find to its satisfaction whether the evidence supports each C.R.C.P. 23 requirement.” *Id.* at 884.

1. The Proposed Class Meets the Requirements of CRCP 23(a).

a. The Proposed Class is so Numerous that Joinder is Impracticable.

Rule 23(a)(1) requires “[a] party seeking class certification to establish by competent evidence that the class is sufficiently large to render joinder impracticable.” *LaBrenz*, 181 P.3d at 334 (citation omitted). Actual size is a significant factor, but ultimately, the numerosity requirement “imposes no absolute limitations.” *Id.* (citation omitted). Thus, “the numerosity requirement is satisfied where the exact size of the class is unknown but general knowledge and common sense indicate that it is large.” *Id.* at 334-35 (citations omitted). Courts have routinely found the numerosity requirement established where the proposed class contains 40 or more members. *See, e.g.*, *Newberg*

on Class Actions § 3:12 (5th ed.). Additionally, courts may consider census data in determining whether numerosity is met. *Californians for Disability Rights, Inc. v. California Dep't of Transp. [“Caltrans”]*, 249 F.R.D. 334, 347 (N.D. Cal. 2008).

Here, U.S. Census data indicates that there are currently approximately 33,000 individuals with ambulatory disabilities residing in the City and County of Denver. Thousands more individuals with mobility disabilities likely travel through Denver each year due to its thriving tourism industry, and certainly individuals with mobility disabilities are among the many people moving to Denver as part of its current population boom. Accordingly, the Proposed Class likely numbers in at least the thousands, making joinder highly impracticable and class treatment appropriate. *See Caltrans*, 249 F.R.D. at 347 (“extrapolating from the statistical data presented by plaintiffs” and using “common sense” to determine the class of individuals with mobility disabilities was sufficiently numerous); *see also LaBrenz*, 181 P.3d at 334-38.

b. There are Questions of Law and Fact Common to the Proposed Class.

Rule 23(a)(2) requires that there be “questions of law or fact common to the class.” CRCP 23(a)(2). “This does not mean, however, that every issue must be common to the class . . . as long as the claims of the plaintiffs and other class members are based on the same legal or remedial theory.” *LaBrenz*, 181 P.3d at 338 (citing *Joseph v. Gen. Motors Corp.*, 109 F.R.D. 635, 639 (D. Colo. 1986)). “In regard to civil rights suits, ‘commonality is satisfied where the lawsuit challenges a system-wide practice or policy that affects all of the putative class members.’” *Willits*, 2011 WL 7767305, at *3 (quoting *Armstrong*, 275 F.3d at 868).

There are numerous questions of law and fact common to the Class here, such as:

- Whether Defendant has violated Title II and Section 504 by failing to comply with the programmatic access requirement.
- Whether Defendant has violated the new construction and alteration requirements of these statutes and their regulations.
- Whether Defendant has violated the design requirement provisions of these statutes and their regulations.
- What types of roadwork has Defendant performed since the effective dates of Title II and Section 504.
- Whether this roadwork constituted “alterations” for purposes of Title II and Section 504.
- Whether Defendant has performed “new construction” within the meaning of Title II and Section 504.
- Whether Defendant has failed to make reasonable modifications in policies, procedures, and practices that are necessary to provide persons with mobility disabilities with meaningful, equal, and safe access to Defendant’s pedestrian right of way.
- Whether Defendant’s violations result from deficient policies and practices.

Plaintiff’s and the Proposed Class’s claims are based on the same legal theory, *i.e.*, that the City violated ADA and Section 504. This establishes the commonality requirement. *See LaBrenz*, 181 P.3d at 338 (citing *Joseph*, 109 F.R.D. at 639). The commonality requirement is further established because this “lawsuit challenges a system-wide practice or policy that affects all of the putative class members,” namely, the City’s denial to the class of an accessible

pedestrian right of way. *See Willits*, 2011 WL 7767305, at *3 (quoting *Armstrong*, 275 F.3d at 868). Thus the Proposed Class meets the requirements of CRCP 23(a)(2).

c. The Claims of the Named Plaintiff are Typical of the Claims of the Proposed Class.

Rule 23(a)(3) requires that the claims asserted by the representative plaintiff be typical of the claims of the class. “This requirement is usually met “[w]hen it is alleged that the same unlawful conduct was directed at or affected both the named plaintiff and the class sought to be represented . . . irrespective of varying fact patterns which underlie individual claims.”” *LaBerenz*, 181 P.3d at 338 (quoting *Ammons v. Am. Family Mut. Ins. Co.*, 897 P.2d 860, 863 (Colo. App. 1995)) (alterations in original). That is the allegation underlying the class action here—that Defendant’s unlawful conduct vis-à-vis curb ramps was directed at or affected the named plaintiff and class. The typicality requirement is therefore met here. *See LaBerenz*, 181 P.3d at 338. In addition, “[a] finding of commonality frequently supports a finding of typicality.” *Willits*, 2011 WL 7767305, at *3 (citing *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 157 n.13 (1982)). Because, as described above, commonality is met, so too is typicality. *Id.*

d. Named Plaintiff and Class Counsel Will Fairly and Adequately Protect the Interests of the Proposed Class.

Rule 23(a)(4) requires that “the representative parties will fairly and adequately protect the interests of the class.” CRCP 23(a)(4). This requirement inquires into the adequacy of the named plaintiff and of class counsel. *Kuhn v. State Dep’t of Revenue of State of Colo.*, 817 P.2d 101, 106 (Colo. 1991) (en banc) (citations omitted). Specifically, “[c]riteria for assessing adequacy of representation include whether the plaintiff has common interests with the class members and whether the representative will vigorously prosecute the interests of the class

through qualified counsel.” *Cook v. Rockwell Int’l Corp.*, 151 F.R.D. 378, 386 (D. Colo. 1993). Adequate representation is usually presumed in the absence of contrary evidence. *Id.* (quoting 2 Robert Newberg, *Newberg on Class Actions*, § 7.24 at 7–80 to –81 (3d ed. 1992)); *see also Caltrans*, 249 F.R.D. at 349 (citations omitted).

The Named Plaintiff in this case has common interests with the class members. Named Plaintiff Margaret Denny is a long-time Denver resident, a member of the proposed class, and seeks to remedy the deficient curb cuts throughout Denver that she and other class members have encountered.⁶ These interests are shared with the class and consistent with remedying the violations that this class action seeks to address.

Furthermore, the Named Plaintiff will vigorously prosecute the interests of the class through qualified counsel. Proposed class counsel Timothy Fox and Sarah Morris of CREEC and Kevin Williams of CCDC have all successfully represented numerous plaintiff classes of individuals with disabilities in prior class actions lawsuits, in Colorado state and federal court and across the country, having been found by the relevant courts to meet the adequate

⁶ The fact that Named Plaintiff Denny also seeks individual damages as part of this settlement does not create a conflict between her and the proposed class. First, as explained above, class damages are neither sought nor precluded by this settlement. *See supra* n.1. Class members will therefore suffer no prejudice with regard to damages as a result of this case. *See, e.g., Ochoa v. City of Long Beach*, No. CV 14-4307 DSF, at 5 (C.D. Cal. Sept. 15, 2015). Second, Ms. Denny served an integral part in the development of this case, in her role as a tester for CREEC. She does not seek an incentive award, just simply a modest, reasonable amount in exchange for release of her individual claim for damages against Defendant. This is proper. *See Rhodes v. Lauderdale Cnty., Tenn.*, No. 2:10-CV-02068-JPM, 2012 WL 4434722, at *1 (W.D. Tenn. Sept. 24, 2012) (adjudicating individual damages claims for named plaintiffs after certifying Rule 23(b)(2) class); *Satchell v. FedEx Exp.*, No. C03-2659 SI, 2006 WL 3507913, at *1 (N.D. Cal. Dec. 5, 2006) (“Defendant does not cite any authority for the proposition that a named plaintiff may not assert additional, non-class claims.”); *cf. Williams v. Nat. Sec. Ins. Co.*, 237 F.R.D. 685, 696 (M.D. Ala. 2006) (approving incentive award of \$5,000 each in Rule 23(b)(2) for two named plaintiffs).

representation requirements under Rule 23. *See generally* Fox Decl. ¶¶ 24, 30; Williams Decl. ¶ 9. Class counsel are thoroughly familiar with the ADA and with issues concerning, and the protection of the rights of, people with disabilities. They have thoroughly investigated this case, revealing the hundreds of curb ramps violation originally presented to the City, and have negotiated the settlement for which approval is sought for over two intensive years. Class counsel also have the resources to litigate this case, as demonstrated by the settlement achieved in this case, which provides a substantial and important injunctive relief to the class.

Thus, Plaintiff has met the adequacy requirement of Rule 23(a)(4).

2. The Proposed Class Meets the Requirements of CRCP 23(b)(2).

A class is proper under Rule 23(b)(2) if “[t]he party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.” CRCP 23(b)(2). “Civil rights cases against parties charged with unlawful, class-based discrimination are prime examples” of appropriate Rule 23(b)(2) class actions. *Amchem Prods. v. Windsor*, 521 U.S. 591, 614 (1997) (citations omitted). The requirements of Rule 23(b)(2) are “almost automatically satisfied in actions primarily seeking injunctive relief.” *Kanter v. Casey*, 43 F.3d 48, 58 (3d Cir. 1994). Accordingly, numerous courts have certified classes consisting of individuals with mobility disabilities who use or will use a defendant’s pedestrian right of way. *See, e.g., Ochoa*, No. CV 14-4307 DSF (C.D. Cal. Sept. 15, 2015); *Willits*, 2011 WL 7767305; *Caltrans*, 249 F.R.D. 334; *Barden*, 292 F.3d 1073.

The claims brought in this case are within the type of claims that Rule 23(b)(2) was intended to cover. Here, Plaintiff seeks broad declaratory and injunctive relief – system wide

improvements in Denver’s pedestrian rights of way program – on behalf of a large and amorphous class of all Denver residents and visitors who use wheelchairs or scooters who are being denied access to that program due to alleged deficiencies in the City’s policies and practices. Additionally, the Proposed Class seeks only class-wide declaratory and injunctive relief to address the alleged deficiencies and does not seek any class damages. Therefore, certification of the proposed class under Rule 23(b)(2) is proper.

II. THE SETTLEMENT AGREEMENT IS PRELIMINARILY APPROVED.

The terms of the Settlement Agreement are summarized in Background Section II above.

Under CRCP 23(e), “[a] class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs.” CRCP 23(e). “In evaluating a proposed settlement under C.R.C.P. 23(e), the trial court must determine whether the settlement is fundamentally fair, adequate, and reasonable.” *Bruce W. Higley, D.D.S., M.S., P.A. Defined Ben. Annuity Plan v. Kidder, Peabody & Co.*, 920 P.2d 884, 891 (Colo. App. 1996); *Thomas v. Rahmani-Azar*, 217 P.3d 945, 947 (Colo. App. 2009) (citing cases). At final approval, this involves an analysis of a number of different factors. *See Higley*, 920 P.2d at 891 (citing *Helen G. Bonfils Found. v. Denver Post Emps. Stock Trust*, 674 P.2d 997, 999 (Colo. App. 1983)).

Preliminary approval, however, is an initial assessment of the fairness of the proposed settlement made by a court on the basis of written submissions and presentations from the settling parties.

Preliminary approval of a settlement and notice to the proposed class is appropriate “where it appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, and does not improperly grant preferential treatment to class representatives.” *In re*

Crocs, Inc. Sec. Litig., No. 07-CV-02351-PAB-KLM, 2013 WL 4547404, at *3 (D. Colo. Aug. 28, 2013) (citation omitted); *see also* Newberg on Class Actions § 13:13 (5th ed.).

Here, the proposed Settlement Agreement satisfies the standard for preliminary approval. It was “was negotiated by competent counsel during arms-length negotiations,” and serious questions of law exist as to the City’s compliance with important civil rights laws. *Tuten v. United Airlines, Inc.*, No. 12-CV-1561-WJM-MEH, 2013 WL 8480458, at *3 (D. Colo. Oct. 31, 2013). “As with any class action, litigation in this case would likely be expensive and time-consuming.” *Id.* The monetary terms are fair and adequate, in that class members are not releasing their right to individual damages claims, and Ms. Denny, who is, is receiving \$5,000 for doing so. This small sum is not significant enough to be considered preferential treatment, and is fair and adequate consideration, as agreed to by the parties, for her release of her individual damages claims. Class Counsel’s fees are also fair and adequate—they total well below six figures for the two years of work leading up to this agreement, are capped at \$35,000 for work performed in connection with this settlement, and are further capped at no more than \$100,000 per year in monitoring. Finally, the parties “represent[] that they believe that the settlement is fair and adequate.” *Id.* Because these facts establish that the Settlement Agreement is fundamentally fair, adequate, and reasonable, preliminary approval is granted.

III. THE NOTICE, NOTICE DISSEMINATION PLAN, AND OBJECTION PROCEDURES ARE APPROVED.

As part of the settlement of a class action, the parties must give notice “to all members of the class in such manner as the court directs.” CRCP 23(e). This Court is also specifically authorized to

make appropriate orders . . . [*inter alia*] [r]equiring, for the protection of the members of the class or otherwise for the fair conduct of the action, the notice be given in such manner as the court may direct to some or all of the members of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate

CRCP 23(d)(2). Yet, in cases seeking certification under CRCP 23(b)(2), as here, notice may not be required. *See* CRCP 23(c)(2)-(3); *Jahn*, 92 P.3d at 988-91. This is because “Rule 23(b)(2), which authorizes class claims for injunctive relief and lacks notice and other procedural requirements, reflects that due process may only require adequate representation to bind class members to judgments for injunctive relief.” *Jahn*, 92 P.3d at 989.

This Court nevertheless holds that notice of this settlement is appropriate here, for, among other reasons, “the fair conduct of the action.” CRCP 23(d)(2). The notice, which was filed with the Court as Exhibits 5 and 6 to the Settlement Agreement attached to the Proposed Preliminary Approval Order, describes the Settlement Class, summarizes the proposed settlement, and explains to class members their right to object and be heard in open court. The parties propose dissemination of a short-form notice through publication in the Denver Post and a long-form through known disability groups throughout the state. Class counsel also proposes to post the notice and settlement agreement on the websites of CREEC and CCDC.

The Court holds that notice is appropriate here, and authorizes the notice dissemination plan. The notice and plan are the most reasonable manner to ensure class members receive word of the settlement. This is not a case like many other class actions when there is a list of shareholders of a company, employees, or purchasers of a product that can be obtained through reasonable efforts. Publication of a short-form notice in the newspaper and a long-form notice to disability groups around the state and posting the notice and settlement agreement on the

websites of CREEC and CCDC will establish the fair conduct of this action and also satisfies the requirements of due process and CRCP 23.

IV. CLASS MEMBERS ARE ENJOINED FROM ASSERTING RELEASED CLAIMS.

Pursuant to CRCP 23(d), “the court may make appropriate orders: (1) Determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument; . . . (3) Imposing conditions on the representative parties or on intervenors; . . . (5) Dealing with similar procedural matters” CRCP 23(d). Rule 23 in general “is a case management tool,” vesting the trial court with significant discretion to manage the class actions that it certifies. *See generally Jackson*, 262 P.3d at 880-84. Courts presiding over class actions frequently enjoin class members from bringing related litigation in other state or federal courts. *See, e.g., Liles v. Del Campo*, 350 F.3d 742, 746 (8th Cir. 2003); *see also* 7B Fed. Prac. & Proc. Civ. § 1798.1 (3d ed.).⁷ This can be done in connection with preliminary approval of a proposed class action settlement. *See, e.g., In re Mexico Money Transfer Litig.*, No. 98 C 2407, 98 C 2408, 1999 WL 1011788, at *3 (N.D. Ill. Oct. 19, 1999); *In re WorldCom Inc. Sec. Litig.*, No. 02 Civ. 3288 (DLC), 03 Civ. 9490 (DLC), 2005 WL 78807, at *3 (S.D.N.Y. Jan. 11, 2005).

In this case, pursuant to the Court’s case management powers under Rule 23, the Court grants Plaintiff’s request that this Court enjoin – pending an entry of a Final Order and Judgment – class members from initiating or prosecuting any claims against the City seeking declaratory or

⁷ Federal courts have done so under the federal All Writs Act, 28 U.S.C. § 1651(a), which provides that federal courts “may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.” Colorado’s broadly written, case-management-centric Rule 23 provides a similar power with regard to enjoining competing claims from class members here. *See generally Jackson*, 262 P.3d at 880-84.

injunctive relief arising from inaccessibility of curb ramps on City street segments with sidewalks brought under Title II of the ADA or Section 504. This injunction does not apply to elements excluded from the settlement: (1) components of the City's sidewalk system other than curb ramps, (2) street segments that do not contain sidewalks but do contain bus stops, (3) curb ramps adjacent to roads that comprise the State Highway System as defined in Colo. Rev. Stat. § 43-2-101 and -102, or (4) individual claims for damages.

CONCLUSION

Based on the above, the Court GRANTS Plaintiff's Unopposed Motion for Certification of a Class For Settlement Purposes Only and Preliminary Approval of Settlement Agreement and ORDERS:

1. The following class is certified for settlement purposes only: "All persons with disabilities who use wheelchairs or scooters for mobility who, through the date of preliminary approval of the Settlement Agreement, use or will use the pedestrian right of way in the City and County of Denver";
2. Margaret Denny is appointed as a representative of the class;
3. Timothy Fox and Sarah Morris of CREEC and Kevin Williams of CCDC are appointed as Class Counsel;
4. The proposed Settlement Agreement is preliminarily approved;
5. The form of the proposed Notice and the Notice Dissemination Plan, attached as Exhibits 5 and 6 to the Settlement Agreement, are approved;

6. Class members are enjoined from initiating or prosecuting any litigation related to the claims resolved by the Settlement Agreement against the City pending this Court's entry of Final Order and Judgment; and

7. The Court sets the following deadlines:

Notice Deadline: Notice to the class will issue within 10 business days after today's date.

Objection Deadline: Two months after the Notice Deadline.

Deadline for Class Counsel to File Fee Petition: Seven days prior to the Objection Deadline.

Deadline for Motion for Final Approval: Two weeks prior to the Final Approval Hearing.

Final Approval Hearing: Three months after the Notice Deadline, or as soon thereafter as the Court may set the hearing.

IT IS SO ORDERED.

DATED: _____

District Judge