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**AUG 31 2006**

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U.S. DISTRICT COURT  
EASTERN MICHIGAN**

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN**

CENTER FOR COMMUNITY ACCESS, and )  
MICHIGAN PARALYZED VETERANS, )  
OF AMERICA, )  
Plaintiffs, )  
v. )  
CITY OF DETROIT, MICHIGAN, )  
Defendants. )

Case No: 2:050

HON. GERALD E. ROSEN

MAG. JUDGE KOMIVES

\*\*\*\*\*

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**FIRST SETTLEMENT ORDER AND PARTIAL SETTLEMENT**

WHEREAS Plaintiffs filed a class-action Complaint against the City of Detroit alleging violations of Title II of the Americans With Disabilities Act and also Section 504 of the Rehabilitation Act of 1973 and the City of Detroit denies any violations of federal law; and,

WHEREAS the parties entered into significant settlement negotiations and the City of Detroit has presented a corrective action plan to resolve plaintiffs' concern.

WHEREAS the City of Detroit maintains a comprehensive resurfacing program that includes installing and upgrading ADA ramps through which the City intends to bring all ramps in residential areas and on major streets under the

jurisdiction of the City of Detroit into compliance. The new compliant MDOT detail R-28-E and a special provision will be included in all future contracts

THEREFORE, the parties agree and the Court hereby enters the following First Settlement Order and Partial Settlement. Nothing in this document shall impact in any way upon the rights or duties of any parties concerning resurfacing or alteration of any sidewalks, curb ramps, or intersections in the public right of way in the City of Detroit in construction projects primarily under the sole jurisdiction and the sole control of the State of Michigan and its Department of Transportation or under the sole jurisdiction and sole control of Wayne County.

1. **Future Resurfacing and Alteration**. The City of Detroit shall ensure in year 2006<sup>1</sup> and thereafter that whenever it alters or resurfaces<sup>2</sup> any streets, intersections, sidewalks<sup>3</sup> or curb ramps, Detroit shall ensure that each portion of such projects, to the maximum extent feasible,<sup>4</sup> will be altered in such manner that the altered portion of the facility is readily accessible to and usable by individuals with disabilities during the course of resurfacing or before the project

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<sup>1</sup> As to the Woodward Ave and Bagley Ave projects referenced in the motion for preliminary injunction within 45 days the City of Detroit will file a written corrective action plan with the court and with plaintiffs' counsel. The parties shall meet and confer and if they are unable to agree they may approach the court.

<sup>2</sup> As used throughout this Settlement Order, the term "alter" shall have the meaning the ADAAG section 3.5 and the term "resurface" shall have the definition given by the United States Department of Justice Title II Technical Assistance Manual § II-6.6000 "Resurfacing beyond normal maintenance is an alteration. Merely filling potholes is considered to be normal maintenance."

<sup>3</sup> Replacement of a few flags of sidewalk not impacting the corner will not trigger the alteration requirements.

<sup>4</sup> As used throughout this Settlement Order, the term "to the maximum extent feasible" shall have the meaning set forth at 28 C.F.R. § 36.402(c).

is completed .<sup>5</sup> Each such project shall comply with all Americans with Disability Act requirements, including 28 C.F.R. §§ 35.151(b),(c),(e)(1) and (e)(2) and 28 C.F.R. Part 36, App. A, the ADAAG<sup>6</sup>, and the attached MDOT Sidewalk Ramp Detail R-28-E.

2. The City of Detroit shall ensure that curb ramps<sup>7</sup> under its jurisdiction complying with these above requirements shall be installed into all resurfaced intersections of "streets, roads, highways,<sup>8</sup> and replaced sidewalks and paths during year 2006 and thereafter. Also, these curb ramps shall be installed into intersections of each cross street that intersects with the alteration or resurfacing, so that these ramps are fully accessible to mobility-impaired persons with disabilities. The City of Detroit shall ensure that all plans and specifications under its jurisdiction for such work shall include the specific requirements of the Americans with Disability Act/MDOT R-28-E set out above.

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<sup>5</sup> As used throughout this Settlement Order, the term "readily accessible to and usable by persons with disabilities" shall have the meaning set forth at Section II-6.1000 of the United States Department of Justice ADA Title II Technical Assistance Manual, and set forth at 28 C.F.R. Appendix B § 36.401.

<sup>6</sup> The City of Detroit has chosen to follow the ADAAG standards rather than the UFAS standards. See United States Department of Justice ADA Title II Technical Assistance Manual, Section II-6.2100.

<sup>7</sup> As used throughout this Settlement Order, the term "curb ramp" includes curb cuts, wheelchair ramps, and any other sloped areas at the intersection of pedestrian walkways with streets, alleys, roads, highways and all other pathways.

<sup>8</sup> These are the relevant "facilities" as defined by the United States Department of Justice in its ADA Title II Technical Assistance Manual § II-6.6000.

Prior to the start of the construction season in 2007 and each year during the life of this Order, the City of Detroit shall submit a written report to the Plaintiffs' Counsel listing the streets and limits the City intends to resurface in that year. If new projects are added after that date the City will provide an amended list within 30 days.

**3. Annual Reports of Compliance.** On or before January 31, 2007 and each year thereafter for the life of this Settlement Order, the City of Detroit shall file a written report with the Court and with Plaintiffs' Counsel, listing each street and limits resurfaced during the previous year, and listing each curb ramp altered, constructed or resurfaced during the previous year, and stating where new curb ramps have been installed as a part of these projects. Each report will contain a sworn certification that the City of Detroit has inspected each such project under its jurisdiction and that each curb ramp and each corner in each project and this report shall contain all accurate measurements necessary to determine if those projects have met all standards set out in MDOT R-28-E.

**4. Potential Exceptions Pursuant to 28 C.F.R. Part 36, App. A § 4.1.6(j) and (k)(3).** The parties agree for purposes of this Settlement Order that ADAAG § 4.1.6(j) sets the standards for construction or alterations that can not meet in full the ADAAG standards. In compiling the listing described in paragraph 2 above, or during the course of year 2006 and thereafter, if the City of Detroit believes that any particular intersection prohibits construction or alteration in full compliance with each of the ADA-ADAAG/MDOT standards set out in paragraph 1 above, the City of Detroit shall within 30 days of discovering

the alleged site conditions inform Plaintiffs' counsel in writing. This writing shall list the name of the engineer(s) who have reviewed the intersection, the location of the intersection, as well as a statement detailing the standards that cannot be met and why the deviation is necessary.<sup>9</sup> The parties shall allow at least 15 days from the postmark of the written notification to attempt to resolve the matter.

**Unresolved Disputes**. The parties expressly agree that Magistrate Judge Komives shall have jurisdiction to resolve any disputes under the terms of this paragraph. If the dispute can not be resolved during the 15 day period, the parties may submit written briefs to Judge Komives. When one side submits such a brief, the other side shall be permitted 10 days to submit an opposing brief, if it wishes. Judge Komive's decision under this paragraph shall be treated as a decision by the Court. During the course of the next year the parties will discuss and consider alternatives to this procedure.

## **5. CORRECTIVE ACTION PLAN - SURVEY AREA**

In an effort to make the public areas fully accessible, the City of Detroit will survey the area bounded by East and West Grand Boulevard to the north, the J.C. Lodge Freeway to the West, the Chrysler Freeway to the East and the Detroit River to the South. Approximately 2800 commercial ramps exist in the 5 square mile survey area.

On or before one year from the date of this agreement, the City of Detroit will submit to the court and to plaintiffs' counsel the results of this survey and a

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<sup>9</sup> Special attention shall be given to the measurements of the direct slope, the cross-slope, the flared side, the juncture of the ramp and the street, and the level landing at the top of each ramp.

proposed plan to bring all ramps in the target area into compliance with the requirements of the ADA. As part of the report, any corners where strictly compliant ramps cannot be constructed will be identified, including the extent of any proposed deviation from the ADA specifications. The survey area report shall include a statement of whether the City believes that each of the curb ramps at those intersections meet the ADA-ADAAG standards set out in paragraph 1 above, and if they do not why the City believes that they do not. The report will also state the location of any missing ramps. As part of the report, any corners where strictly compliant ramps allegedly cannot be constructed will be identified, including the extent of any proposed deviation from the ADA specifications. Any such report will include a signed sworn certification that the City of Detroit has researched its records and that the listing is true and correct.

The survey and its corrective action plan will be submitted to court and Plaintiffs Counsel allowing at least 90 days for the parties to meet and confer to agree on the survey area corrective action plan. If the parties are unable to agree, the dispute will be referred to the court. Over the course of the next year, the parties will meet and confer about retrofitting defective curb ramps outside of the survey area. If the parties are unable to agree they may approach the court for guidance.

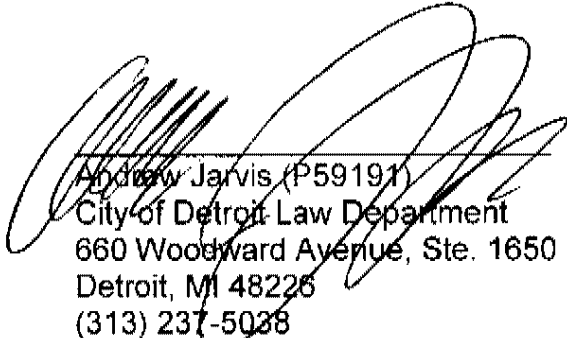
6. **Attorneys Fees and Costs to Date.** Plaintiffs' have submitted invoices to the City for all time and costs from the inception of this matter to August 1, 2006. The City attorney will recommend that City Council approve the payment of \$30,500.00 to Finnegan & Heberle, PLLC, and the payment of

\$10,000.00 to Megan Buffington, in full payment of fees and costs up to August 1, 2006. The request by the City attorney will be submitted to City Council immediately, with the intention of City council approving the payments at the next City council meeting. In the unlikely event that City Council rejects or otherwise fails to act on the City Attorney's recommendation, Plaintiffs shall approach the Court for payment of the entire claimed amount of fees and costs reflected in the invoices, as well as for the fees and costs generated in litigating those full fees and costs. By taking these actions, the City of Detroit in no way admits liability for any future payments, and Plaintiffs do not waive any claims for payments for future fees and costs that may be incurred.

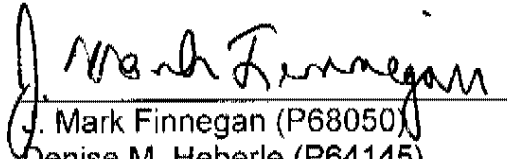
7. **Consideration for This Settlement Order.** The parties understand that this is not intended as a resolution of the entire lawsuit, but rather only as to a part of it. The parties and their Counsel, by entering into this Settlement Order, expressly agree that in exchange for the successful completion of each of the terms of the Settlement Order that Plaintiffs shall forbear from seeking preliminary injunctive relief for these issues.

8. **Retention of Jurisdiction.** The parties agree that the Court shall retain jurisdiction to enforce any and all terms of this Settlement Order.

Read on This Day of August and Approved for Form by:



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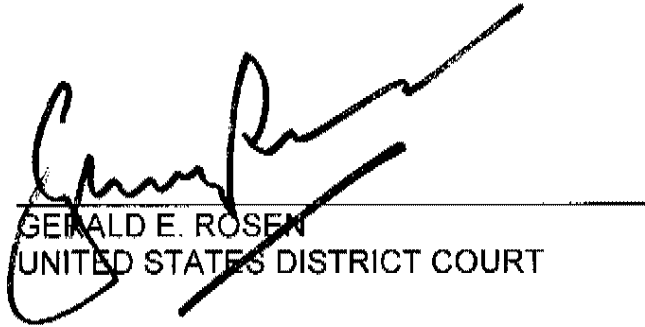


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Attorneys for all Defendants

Attorneys for All Plaintiffs

All parties having agreed, and the Court having reviewed it and found it equitable, **IT IS HEREBY ORDERED** that this First Settlement Order and Partial Settlement is **ENTERED** this 31<sup>st</sup> day of August, 2006.

  
GERALD E. ROSEN  
UNITED STATES DISTRICT COURT