

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA**

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<b>LIBERTY RESOURCES, INC.;</b>	:	
<b>DISABLED IN ACTION OF</b>	:	
<b>PENNSYLVANIA, INC.;</b>	:	<b>Case Number</b>
<b>PHILADELPHIA ADAPT; TONY</b>	:	<b>19-cv-3846</b>
<b>BROOKS; LIAM DOUGHERTY; FRAN</b>	:	
<b>FULTON; and LOUIS OLIVO</b>	:	<b>SETTLEMENT AGREEMENT</b>
	:	
<b>Plaintiffs,</b>	:	

V.

**CITY OF PHILADELPHIA,**

**Defendant.**

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**I. PRELIMINARY MATTERS**

A. Plaintiffs in this matter are Tony Brooks, Liam Dougherty, Fran Fulton, Louis Olivo, Liberty Resources, Inc., Disabled in Action of Pennsylvania, Inc., and Philadelphia ADAPT. Defendant in this matter is the City of Philadelphia (“the City”), a public entity. The City and the Plaintiffs shall be referred to in this Settlement Agreement (“Agreement”) individually as a “Party” and collectively as the “Parties.”

B. Tony Brooks, Liam Dougherty, Fran Fulton, and Louis Olivo are individuals with an impairment or impairments that affect their mobility and who use or will use pedestrian rights of way in the City of Philadelphia (“Individual Plaintiffs”). Each of the Individual Plaintiffs is an individual with a disability within the meaning of Section 3(2) of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101, 12102 (“ADA”) and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §§ 705(20), 794(a) (“Section 504”). Plaintiffs Liberty Resources, Inc., Disabled in Action of Pennsylvania, Inc., and Philadelphia ADAPT are

organizations within the City of Philadelphia who provide services to and/or advocate on behalf of people with disabilities (“Organizational Plaintiffs”).

C. On July 7, 2020, this Court certified this case as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(2). The certified class is defined as a class of all persons with disabilities or impairments that affect their mobility—including, for example, people who use wheelchairs or other mobility devices, as well as those who are blind or have low vision—and who use or will use pedestrian rights of way in the City of Philadelphia. The Court appointed Plaintiffs Liberty Resources, Inc., Disabled in Action of Pennsylvania, Inc., Philadelphia ADAPT, Tony Brooks, Liam Dougherty, Fran Fulton, and Louis Olivo as class representatives. David Ferleger and Disability Rights Advocates were appointed as class counsel (“Class Counsel”).

D. During the pendency of this Action, the Parties undertook extensive fact and expert discovery and engaged in extensive discussions regarding a potential resolution and settlement of the alleged claims, including in mediation before Magistrate Judge Elizabeth Hey. As a result of such discussions, the Parties now wish to effect a complete resolution and settlement of the claims, disputes, and controversies relating to the allegations of Plaintiffs and the Settlement Class, and to resolve their differences and disputes by settling such claims, disputes, and controversies under the terms set forth in this Agreement.

E. In entering into this Agreement, the Parties intend to resolve any and all claims that either were or could have been asserted in this Action on behalf of individuals with Mobility Disabilities with respect to the City’s Pedestrian Facilities, subject to the Release of Claims set forth in Section 12 below.

F. In entering into this Agreement, the City does not admit that it has violated or failed to comply with, or has any liability to Plaintiffs or the Settlement Class under, any provisions of the ADA, Section 504, or any applicable laws of the State of Pennsylvania relating to accessibility for persons with Mobility Disabilities to the City's Pedestrian Facilities, any regulations or guidelines promulgated pursuant to those statutes, or any other applicable laws, regulations, or legal requirements. The City expressly denies and disputes, and continues to deny and dispute, the claims and contentions by Plaintiffs, and does not admit any liability to Plaintiffs or the Settlement Class. Neither this Agreement nor any of its terms or provisions, nor any of the negotiations connected with it, shall be construed as an admission or concession by the City of any such violation or failure to comply with any applicable law. This Agreement and its terms and provisions shall not be offered or received as evidence for any purpose whatsoever against the City in any action or proceeding, other than a proceeding to enforce the terms of this Agreement. By entering into this Agreement, the Plaintiffs do not concede any lack of merit in their allegations as stated in their Complaint as to the Defendant's alleged non-compliance with Title II of the Americans with Disabilities Act, 42 U.S.C. § 12181, *et seq.*, *as amended*, and the Rehabilitation of 1973, 29 U.S.C. § 794, as amended, *et seq.*, and their implementing regulations.

G. Section titles and other headings contained in this Agreement are included only for ease of reference and shall have no substantive effect.

## II. AGREEMENT

### 1. Definitions

1.1. "Access" or "Accessible" or "Accessibility", unless otherwise indicated, means conditions that comply with the requirements of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101, *et seq.*; the ADA's implementing regulations, codified at 28 C.F.R. Ch. 1, Pt. 35, *et seq.*; and the standards set forth in the 2010 ADA Standards for Accessible Design,

including but not limited to equivalent facilitation and construction tolerances, codified at 28 C.F.R. § 35.151 and 36 C.F.R. part 1191, and Appendices B and D (hereafter “2010 ADA Standards”).

1.2. “Accessibility Score” means the score developed by the City based on census and survey information to assign weight to intersections based on their importance for the pedestrian circulation of persons with disabilities. The City shall consider the incorporation of additional criteria into the Accessibility Score based on relevant feedback from Plaintiffs after the Request System begins operating.

1.3. “Americans with Disabilities Act” or “ADA” means the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq., and the 2010 ADA Standards.

1.4. “Best Efforts” means each Party will, to the extent of its own capabilities, take all reasonable actions to perform an obligation in good faith.

1.5. “Compliant Curb Ramp” means any curb ramp which complies with the 2010 ADA Standards.

1.6. “Effective Date” means the date of the District Court’s final approval of the Agreement.

1.7. “Federal Aid Municipality” or “FAM Network” or “FAM” means the network of streets within the City’s geographic boundaries, which the City partially funds in conjunction with the federal government as identified in the City’s geographic information system, currently reflected in the list attached to this Agreement as Exhibit A.

1.8. “Installation” or “Install” means the construction of a Compliant Curb Ramp at a location where no curb ramp previously existed.

1.9. “Local Streets Network” means the network of streets within the City’s geographic boundaries for which the City is solely responsible for resurfacing and funding as identified in the City’s geographic information system, currently reflected in the list attached to this Agreement as Exhibit B.

1.10. “Maintenance” or “Maintain” means any work undertaken to ensure existing curb ramps are operable. Such work shall include, but not be limited to, the clearing of debris or objects from the path of travel on a curb ramp, asphalt adjustments, repairing damaged detectable warning surfaces, and patching concrete defects.

1.11. “Mobility Disability” or “Mobility Disabilities” means any impairment or medical condition that limits a person’s ability to walk, ambulate, maneuver around objects, or to ascend or descend steps or slopes. A person with a Mobility Disability may or may not use a wheelchair, scooter, electric personal assisted mobility device, crutches, walker, cane, brace, orthopedic device, or similar equipment or device to assist their navigation along a pedestrian walkway, or may be semi-ambulatory. Mobility Disability includes vision impairments that limit mobility.

1.12. “Pedestrian Facility” or “Pedestrian Facilities” means any curb ramps, crosswalks, sidewalks, pathways, or other structures or walks used by pedestrians that are, in whole or in part, owned, controlled, or maintained by or otherwise within the Right of Way, responsibility, or geographic boundaries of the City of Philadelphia.

1.13. “PennDOT” means the Pennsylvania Department of Transportation.

1.14. “Post Construction Inspection Form” means a PennDOT CS-4401 Post Construction Inspection Form, substantially in the form attached to this Agreement as Exhibit C, or any other form adopted by PennDOT or the City for the purpose of post-construction

inspection of curb ramps to document conformity with City, PennDOT, and 2010 ADA Standards, as applicable. The City shall notify Plaintiffs if any substantive changes are made to the Post Construction Inspection Form during the Settlement Period.

1.15. “Related Entities” means any and all departments, divisions, agencies, bureaus, commissions, offices, corporations, commissioners, officers, employees, agents, representatives, board members, officials, assigns, assignors, attorneys, affiliates, predecessors, successors, employee welfare benefit plans, pensions, or deferred compensation plans (and their trustees, administrators, and other fiduciaries) of the City and any other person or entity acting or purporting to act by, through, under, in concert with or on behalf of the City, or any of them, with respect to the matters described in this Agreement.

1.16. “Remediation” or “Remediate” means any work undertaken with regard to a location with an existing curb ramp that results in a Compliant Curb Ramp.

1.17. “Right of Way” means the surface of and space above and below any real property within the geographic boundaries of the City in which the City has a regulatory interest, or interest as a trustee for the public, as such interests now or hereafter exist, including, but not limited to, all streets, highways, avenues, roads, alleys, sidewalks, pedestrian and vehicle tunnels and passageways, concourses, viaducts, bridges, and skyways under the control of the City.

1.18. “Section 504” means Section 504 of the Rehabilitation Act of 1973, codified at 29 U.S.C. § 794, *et seq.*

1.19. “Technical Infeasibility Form” means a PennDOT Technical Infeasibility Form, substantially in the form attached to this Agreement as Exhibit D, or any other form adopted by PennDOT or the City for the purpose of documenting technical infeasibility of curb ramps. The

City shall notify Plaintiffs if any substantive changes are made to the Technical Infeasibility Form during the Settlement Period.

1.20. “Year” means a Fiscal Year of the City of Philadelphia, which runs from the first day in July to the last day in June, unless otherwise specified. For example, Fiscal Year 2023 begins on July 1, 2022, and ends on June 30, 2023.

**2. Settlement Period**

This Agreement shall become effective on the Effective Date and shall remain in effect for 15 years. If Class Counsel dispute that the Installation or Remediation of Compliant Curb Ramps has been completed, this Agreement shall remain in effect pending the conclusion of any dispute resolution proceedings or action to enforce the Agreement. The foregoing time period is referenced herein as the “Settlement Period.”

**3. New Construction, Alterations, and Maintenance**

3.1. For the duration of the Settlement Period, whenever the City (or a third-party acting on the City’s behalf) newly constructs a road or street with a pedestrian walkway, it will Install accessible curb ramps, as required by 28 C.F.R. § 35.151(a), except where the City can demonstrate that Installation of accessible curb ramps is technically infeasible or where the City has banned pedestrian crossing for all pedestrians due to safety concerns.

3.2. For the duration of the Settlement Period, whenever the City (or a third-party acting on the City’s behalf) alters a road or street with a pedestrian walkway, it will Remediate existing but non-compliant curb ramps, and/or Install new accessible curb camps, as required by 28 C.F.R. § 35.151(b), except where the City can demonstrate that Remediation or Installation of accessible curb ramps is technically infeasible or where the City has banned pedestrian crossing for all pedestrians due to safety concerns.

3.3. Any treatment installed to indicate that the City has banned pedestrian crossing for all pedestrians at a particular location shall be consistent with PennDOT standards and in the sole discretion of the City.

3.4. For the duration of the Settlement Period, the City shall maintain curb ramps over which it has responsibility in operable working condition as required by 28 C.F.R. § 35.133.

**4. Curb Ramp Obligation**

4.1. Beginning on the Effective Date, the City shall ensure the Installation or Remediation of at least 10,000 curb ramps by the end of the Settlement Period (the “Curb Ramp Obligation”).

4.2. For the purposes of this Agreement, the Curb Ramp Obligation includes the Installation and Remediation of curb ramps anywhere within the City, whether as part of street resurfacing on the Local or FAM Streets Networks, through the Request System set forth under Section 5, or as a result of any other third-party activity within the City for which the City requires a Compliant Curb Ramp, including, for example, work done by utilities, Related Entities, and in conjunction with development projects.

4.3. The City shall fulfill the Curb Ramp Obligation in Section 4.1 in accordance with the following schedule of tri-annual milestones for curb ramp Installation or Remediation:

4.3.1. 2,000 curb ramps by the end of Year three (3);

4.3.2. 4,000 curb ramps by the end of Year six (6);

4.3.3. 6,000 curb ramps by the end of Year nine (9);

4.3.4. 8,000 curb ramps by the end of Year twelve (12); and

4.3.5. 10,000 curb ramps by the end of Year fifteen (15).



4.4. The tri-annual milestones set forth in Section 4.3 are cumulative such that, if in any given milestone period the City exceeds the milestone for the Installation or Remediation of curb ramps, excess curb ramps shall count towards the satisfaction of any following milestone. For example, if the City has ensured the Remediation of 2,125 curb ramps by the conclusion of Year 3, ensuring the Installation or Remediation of an additional 1,875 curb ramps during Years 4, 5, and 6 would satisfy the milestone of 4,000 curb ramps by the conclusion of Year 6.

4.5. There will be instances when it will be technically infeasible for a curb ramp Installed or Remediated to be constructed in full and strict compliance with the requirements of the 2010 ADA Standards because of physical or site constraints. In such circumstances, the City must Install or Remediate curb ramps that 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 as documented by a Post Construction Inspection Form and Technical Infeasibility Form.

## **5. Curb Ramp Request System**

5.1. By the conclusion of Year 3 following the Effective Date and through the end of the Settlement Period, the City shall enable City residents to submit requests for the Installation, Remediation, or Maintenance of a curb ramp at any crossing on the Local Streets Network or FAM streets (the “Request System”).

5.2. The City shall not be obligated to Install or Remediate more than fifty (50) curb ramps under the Request System in any given Year.

5.3. The City shall not be obligated to Maintain more than fifty (50) curb ramps under the Request System in any given Year.

5.4. Requests may be submitted by City residents using the City's existing 311 service request system via website, dedicated mobile phone application, telephone, or in person.

Plaintiffs and Settlement Class members shall not be restricted from using the Request System.

5.5. Requests submitted shall be investigated as follows:

5.5.1. The City will use Best Efforts to investigate each request within thirty (30) days of the date the request was received.

5.5.2. Investigations shall include a determination of whether any existing curb ramp requires Maintenance or Remediation, or for requests regarding any location without an existing curb ramp, whether a curb ramp should be Installed.

5.5.3. Existing curb ramps with damaged detectable warning surfaces, in need of asphalt adjustments to address excessive lips or drainage at the base of the curb ramp, or other repairs that can be fixed with concrete patches, or where the path of travel is blocked by debris or objects, shall be scheduled for Maintenance. No work described in this Section shall constitute an Alteration under 28 C.F.R. § 35.151.

5.5.4. Existing curb ramps that have serious cracking or damage, or other major structural defects, will be scheduled for Remediation.

5.5.5. Locations without an existing curb ramp that serve a pedestrian crossing shall be scheduled for Installation unless the pedestrian crossing has been banned due to safety concerns. A crossing ban shall only be implemented, however, after an investigation and approval by a professional engineer. Investigation determinations shall be in the sole discretion of the City; however, such discretion shall not alter the City's obligations under Section 5. The investigation determination, or need for additional information, shall be communicated to the requestor after the investigation is complete.

5.6. Where the City has identified Installation, Remediation, or Maintenance is required in response to a request regarding a curb ramp at any crossing on the Local Streets Network the City shall perform such work as soon as practicable but no later than the following timelines:

5.6.1. The City shall use Best Efforts to complete Maintenance within nine (9) months of the conclusion of an investigation.

5.6.2. The City shall use Best Efforts to complete Installation or Remediation within twelve (12) months of the conclusion of an investigation unless (a) site-specific conditions, such as a limited right of way or existing utilities, buildings, walls, or vaults, require the curb ramp to be designed prior to construction; or (b) the curb ramp location is on a street scheduled to be resurfaced within the next twelve (12) months. For such curb ramp locations, the City shall use Best Efforts to complete Installation or Remediation within twenty-four (24) months of the conclusion of an investigation. In the event that site-specific conditions prevent the City from Installing or Remediating a curb ramp within twenty-four (24) months, despite Best Efforts, the City shall notify the person who made the request and complete such work within a reasonable period of time given the nature of the conditions.

5.7. Work performed in response to requests regarding a curb ramp at any crossing on the Local Streets Network shall be prioritized in accordance with the following:

5.7.1. Generally, the City shall prioritize work performed in response to requests based on the order in which the requests were received.

5.7.2. Should the City receive requests that warrant Installation, Remediation, or Maintenance in excess of the limits described in Sections 5.2 and 5.3, such work shall be prioritized based on (a) the Accessibility Score, or an equivalent accessibility need metric, for

that curb ramp location; and (b) whether the curb ramp location in question serves a crossing on a street scheduled for resurfacing within twelve (12) months of the conclusion of the investigation. The City shall make the methodology used to develop the Accessibility Score or equivalent accessibility need metric public on the City's official website.

5.8. Sections 5.6 and 5.7 shall only apply to curb ramps crossing the Local Streets Network and shall not apply to any other streets network within the City.

5.9. Where the City has identified Installation, Remediation, or Maintenance is required in response to a request regarding a curb ramp at any crossing on the FAM Network, the City shall perform such work subject to funding and contract requirements applicable to FAM projects.

## **6. Reporting**

6.1. The City shall make publicly available the number and location of curb ramps for which the City has noticed work to proceed for Installation or Remediation within a reasonable time period after the finalization of any such notice to proceed for the duration of the Settlement Period.

6.2. The City shall make publicly available on an annual basis a single Status Report containing:

6.2.1. The number and location of curb ramps the City has ensured have been Installed or Remediated, over the prior year, whether as part of street resurfacing on the Local or FAM Streets Networks, through the Request System set forth under Section 5, or as a result of any other third-party activity within the City for which the City requires a Compliant Curb Ramp, including, for example, work done by utilities, Related Entities, and in conjunction with development projects for the duration of the Settlement Period.

6.2.2. The number and location of curb ramps for which the City has noticed work to proceed for Installation or Remediation within the prior year as part of street resurfacing on the Local or FAM Streets Networks or through the Request System set forth under Section 5.

6.2.3. The number, location, and basis of any banned pedestrian crossings.

6.3. Each Status Report will be made available to the public on the City's website in a format that complies with the Web Content Accessibility Guidelines published by the Web Accessibility Initiative (WAI) of the World Wide Web Consortium. Each Status Report will also be made available to Class Counsel, together with a declaration that the information therein accurately reflects the City's business records.

6.4. The City will provide to Class Counsel the Post Construction Inspection Forms and Technical Infeasibility Forms, if applicable, upon reasonable request.

6.5. Within forty-five (45) days of the Effective Date of the Agreement, the City will provide Class Counsel with copies of the current version of the Post Construction Inspection and Technical Infeasibility Forms, and any standard curb ramp design plans used by the City.

## **7. Training**

The City shall ensure that City personnel involved with any curb ramp Installation, Remediation, or Maintenance performed by the City shall be trained regarding such work and any relevant requirements as set forth under this Agreement, including ADA accessibility laws regarding curb ramps.

## **8. Force Majeure**

Any obligation on the City set forth in this Agreement may be postponed or altered if the postponement or alteration is caused or attributable to a force majeure (that is, due to acts of God, war, government regulations (other than regulations promulgated by the City), terrorism,

disaster (including power outages), strikes, civil disorder, recession, government declared fiscal emergency, pandemic or other emergency beyond the City's control that makes it illegal or impossible for the City to perform any such obligation. Any postponement or alteration of an obligation or obligations set forth in this Agreement as a result of an event outlined in this section shall only impact the relevant obligation or obligations and shall not impact any other unaffected obligation the City has agreed to undertake in this Agreement. If any event in this paragraph impacts the City's ability to meet its tri-annual milestones, such milestones shall be extended by the duration of any such event.

Notwithstanding this Section, Plaintiffs may challenge a postponement or alteration of any obligation under this Agreement using the dispute resolution process outlined at Section 13.

**9. Enforcement**

The Parties agree to and request that the U.S. District Court for the Eastern District of Pennsylvania retain jurisdiction over this matter for the purposes of enforcement of the terms and conditions of this Settlement Agreement, or any extension thereof. Notwithstanding the foregoing, this provision shall not prevent the Parties from seeking legal recourse under federal or state law for a breach of the terms herein.

**10. Inspection**

Throughout the Settlement Period, the Plaintiffs, Class Counsel, and/or any third party hired by Plaintiffs or Class Counsel may inspect work done in the City's pedestrian rights of way to install Compliant Curb Ramps, or to Remediate and repair non-compliant curb ramps in order to monitor compliance with the Agreement. Any review by Plaintiffs, Class Counsel, and/or a third party shall be undertaken in a manner to assure it will not unreasonably interfere with the City's operations.

**11. Attorneys' Fees and Costs**

11.1. The Parties agree that as a complete and total resolution of any and all attorneys' fees and costs to be sought in connection with this Action, except as provided in Sections 11.3 and 11.4, the City shall pay to Class Counsel the sum of \$1,100,000 for all attorneys' fees, costs, and expenses.

11.2. Conditioned upon the District Court granting Final Approval of this Agreement, the City shall deliver payment in the amount agreed in Section 11.1 within forty-five (45) business days of the Effective Date.

11.3. The City shall pay Class Counsel their reasonable attorneys' fees, expenses, and costs incurred for performing all work reasonably necessary to monitor, implement, and administer the Agreement subject to a tri-annual cap of \$60,000. Class Counsel's costs may include reasonable payment to a third party retained to provide technical expertise in monitoring the Agreement.

11.4. In the event that Plaintiffs seek to enforce the Agreement as set forth in Section 13.3, reasonable fees and costs shall be awarded for relief granted by the Court. The City shall be entitled to an award of reasonable fees and costs only if Plaintiffs' enforcement action is frivolous, unreasonable, or without foundation.

**12. Release of Claims**

12.1. Effective upon entry of judgment of Final Approval of the Agreement by the District Court, and in consideration for the City's commitments set forth in the Agreement, each of the Individual and Organizational Plaintiffs, on behalf of themselves and their respective heirs, assigns, successors, executors, administrators, agents, and representatives, ("Plaintiff Releasing Parties") will, upon the Effective Date, fully and finally release, acquit and discharge

the City from any and all claims, allegations, demands, damages, charges, complaints, actions, lawsuits, rights, liabilities, losses, injuries, obligations, disputes and causes of action of any kind, and whether known or unknown, suspected or unsuspected, asserted or unasserted, or actual or contingent, for monetary, injunctive, declaratory, or other relief, however described, that were brought, could have been brought, or could be brought now or in the future by the Plaintiff Releasing Parties that in any way relate to or arise from any of the City's or Related Entities' alleged actions, omissions, incidents, or conduct under the ADA, Section 504, or similar statutes related to the Accessibility, Installation, Remediation, or Maintenance of the City's Pedestrian Facilities at any time prior to the end of the Settlement Period (the "Plaintiff Released Claims"). Such Plaintiff Released Claims, however, shall not include any claims to enforce the terms of Agreement.

12.2. Effective upon entry of judgment of Final Approval of the Agreement by the District Court, and in consideration for the City's commitments set forth in the Agreement, the members of the Settlement Class, on behalf of themselves and their respective heirs, assigns, successors, executors, administrators, agents, and representatives, ("Class Member Releasing Parties") will, upon the Effective Date, fully and finally release, acquit and discharge the City from any claim for injunctive or declaratory relief that arises from any of the City's or Related Entities' alleged actions, omissions, incidents, or conduct under the ADA, Section 504, or similar statutes related to the Accessibility, Installation, Remediation, or Maintenance of the City's Pedestrian Facilities, at any time prior to the end of the Settlement Period (the "Class Member Released Claims").

12.3. The Release provided in this Section is expressly intended to assure that no further lawsuits for Plaintiff Released Claims or Class Member Released Claims are maintained



or instituted at any time during the Settlement Period and that the City will not be subject to conflicting judgments regarding the ADA-compliance or Accessibility of the City's Pedestrian Facilities. The Parties agree that during the Settlement Period, the Plaintiff Releasing Parties and the Class Member Releasing Parties will therefore refrain and forbear from commencing, instituting, or prosecuting any lawsuit, action, or other proceeding, in law, equity or otherwise, against the City and its Related Entities arising out of or relating to any of the Plaintiff Released Claims or Class Member Released Claims, including, without limitation, an action claiming that this Agreement was fraudulently induced. The Parties agree that monetary damages alone are inadequate to compensate for injury caused or threatened by a breach of this covenant not to sue, and that preliminary and permanent injunctive relief restraining and prohibiting the prosecution of any action or proceeding brought or instituted in violation hereof is a necessary and appropriate remedy in the event of such a breach or threatened breach. Such covenant not to sue, however, shall not include any claims to enforce the terms of this Agreement.

12.4. With respect to any claim to enforce the terms of this Agreement, the Parties agree that no claim, action, or proceeding alleging any violation of or failure to perform any provision of this Agreement shall be filed, commenced, or maintained unless and until the Parties have complied with all of the Dispute Resolution procedures set forth in Section 13 below.

### **13. Dispute Resolution**

13.1. Meet and Confer Obligation: If any Party believes that a dispute exists relating to any violation of or failure to perform any of the provisions of the Agreement ("Dispute"), it shall notify the other Party in writing and describe the alleged violation or failure to perform with particularity. For any Dispute relating to the compliance of a curb ramp Installed or Remediated under this Agreement, such notice must occur within two (2) years of the date the curb ramp was

Installed or Remediated. For all other Disputes relating to obligations under this Agreement, such notice must occur within one (1) year of the date when the party knew or should have known about the alleged violation. The Party alleged to have committed the violation or failure to perform shall provide a written response within fifteen (15) business days of receipt of such notice and shall have a period of forty-five (45) days from receipt of notice from the other Party that they have violated or failed to perform to cure the alleged violation or failure to perform. If the Party alleging a violation or failure to perform maintains that the violation or failure to perform has not been cured, the Parties shall meet and confer and attempt to resolve the Dispute on an informal basis for a period of no more than sixty (60) days following the expiration of the time to cure the alleged violation, unless the parties mutually agree to an extension. Each party shall bear its own costs during this process.

13.2. Mediation Obligation: If the Parties are unable to resolve a Dispute through the meet and confer process described above, the Parties shall mediate in an effort to resolve the matter. The Parties shall have thirty (30) days to jointly select a mediator. The mediation shall be conducted in the manner determined by the mediator, and the Parties shall engage in good faith efforts to resolve the Dispute through such mediation. The Parties shall bear their own costs during the mediation and any costs associated with the mediator shall be equally divided between the Parties. If the Parties are unable to resolve a Dispute through mediation within 120 days of initiating mediation, either Party may enforce the agreement as provided in Section 13.3.

13.3. Agreement Enforcement Following Mediation: If the Parties are unable to resolve a Dispute through the mediation process described above, either Party may provide the other with written notice of its intent to enforce the Agreement. Thereafter, either Party may file a motion with the District Court to enforce the Agreement.

13.4. Governing Law: The terms of this Agreement shall be construed pursuant to the laws of the State of Pennsylvania with respect to principles of common law contract interpretation, and in accordance with the substantive law of the ADA and Section 504, as applicable.

**14. Settlement Approval Process**

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

14.2. Preliminary Approval by the District Court: Within fifteen (15) days of circulating the fully executed Agreement, the Plaintiffs and the City will jointly submit a request to the District Court for Preliminary Approval of this Agreement, along with a request for an order from the District Court (substantially in the form attached to this Agreement as Exhibit E) (the "Preliminary Approval Order"): (i) preliminarily approving this Agreement; (ii) conditionally certifying the Settlement Class; (iii) appointing the Plaintiffs as class representatives for the Settlement Class; (iv) appointing Class Counsel to represent the Settlement Class; (v) directing notice to the Settlement Class as provided in this Agreement; (vi) setting forth procedures and deadlines for objections as provided in this Agreement; (vii) scheduling a Fairness Hearing; and (viii) enjoining Settlement Class members from asserting or maintaining any claims to be released by this Agreement pending the Fairness Hearing.

14.3. Conditional Certification of Settlement Class: The Parties acknowledge and agree that the Court has certified a class in this case and agree that the Settlement Class is identical to the class previously certified by the Court: all persons with disabilities or impairments that affect their mobility—including, for example, people who use wheelchairs or other mobility devices, as well as those who are blind or have low vision—and who use or will use pedestrian rights of way in the City of Philadelphia. The Parties further agree that the Settlement Class will be conditionally certified, in accordance with the terms of this Agreement, for the purposes of effectuating the settlement embodied in this Agreement.

14.4. No Opt-Out: The Parties agree that the Settlement Class will be certified in accordance with the standards applicable under Rule 23(b)(2) of the Federal Rules of Civil Procedure and that, accordingly, no Settlement Class member may opt out of any of the provisions of this Agreement.

14.5. Notice to Settlement Class: The Parties will jointly request approval by the District Court of notice to the Settlement Class as set forth in this Section 14.5.

14.5.1. Following the District Court's issuance of the Preliminary Approval Order, the Parties will provide notice of the proposed Agreement, advising the members of the Settlement Class of the terms of the proposed Agreement and their right to object to the proposed Agreement. Such notice will include the terms required by the District Court, which are anticipated to be as follows: (i) a brief statement of this Action, the settlement embodied in this Agreement, and the claims released by the Settlement Class; (ii) the date and time of the Fairness Hearing and/or Final Approval Hearing of the proposed Agreement; (iii) the deadline for submitting objections to the proposed Agreement; and (iv) the web page, address, and telephone

numbers that may be used to obtain a copy of the Settlement Agreement (substantially in the form attached to this Agreement as Exhibit F).

14.5.2. The Notice of Settlement will be published as follows:

14.5.2.1. Within twenty (20) days after the District Court has issued the Preliminary Approval Order, the City will cause a copy of the Notice of Settlement in English and Spanish and a copy of the Settlement Agreement to be posted and remain posted on the City's official website ([www.phila.gov](http://www.phila.gov)) through the deadline for any member of the Settlement Class to submit an objection.

14.5.2.2. Within twenty (20) days after the District Court has issued the Preliminary Approval Order, each firm making up Class Counsel will post on its website a copy of the Notice of Settlement in English and Spanish (as provided by the City) and a copy of the Settlement Agreement. Additionally, Class Counsel will distribute the Notice of Settlement to local disability rights organizations.

14.5.2.3. Within thirty (30) days after the District Court has issued the Preliminary Approval Order, the City will cause the Notice of the Settlement to be published in a main local media outlet in English and Spanish, and/or as the District Court may otherwise order.

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

14.6.1. Any Settlement Class member may object to this Agreement by mailing written objections to the District Court at least thirty (30) days before the Fairness Hearing, with a copy of such objections mailed concurrently to Class Counsel and Counsel for the City.

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

14.6.3. Responses by Class Counsel and/or the City to any timely-filed objections will be filed with the District Court in conjunction with the Parties' motion for final approval, or as otherwise ordered by the Court.

14.7. Additional Steps: The Parties will take all procedural steps regarding the Fairness Hearing that may be requested by the District Court and will otherwise use their respective best efforts to consummate the settlement embodied in this Agreement, and to obtain approval of this Agreement, and entry of the Judgment.

14.8. Fairness Hearing: The Parties will jointly request that the District Court schedule and conduct a Fairness Hearing to decide whether Final Approval of the Agreement will be granted. At the Fairness Hearing, the Parties will jointly move for entry of the Judgment (substantially in the form as attached to this Agreement as Exhibit G), providing for: (i) Final Approval of this Agreement as fair, adequate, and reasonable; (ii) final certification of the Settlement Class for settlement purposes only; (iii) final approval of the form and method of notice of the Judgment to the Settlement Class; (iv) final approval of the appointment of Class Counsel for the Settlement Class; (v) final approval of the appointment of Plaintiffs as class representatives of the Settlement Class; (vi) final approval of the release of the City from the

Plaintiff Released Claims and Class Member Released Claims; (vii) final approval of the Parties and all members of the Settlement Class to be bound by the Judgment; (viii) final approval of attorneys' fees and costs, and (ix) the District Court's retention of jurisdiction over the Parties to enforce the terms of the Judgment throughout the Settlement Period.

14.9. Media Communications Regarding Settlement: The Parties agree that after the full execution of this Agreement, they and their respective counsel may issue a press release and discuss the settlement set forth in this Agreement with the media but will use their best efforts to refrain from disparaging the other Parties or their counsel in connection with the settlement and the matters set forth in this Agreement.

14.10. Waiver: The failure of any party to assert any of its rights hereunder shall not constitute a waiver of such rights.

14.11. Final Approval.

14.11.1. The Parties agree that, upon Final Approval the District Court will enter the Judgment under Rule 54(b) of the Federal Rules of Civil Procedure (substantially in the form attached to this Agreement as Exhibit G) dismissing this Action with prejudice.

14.11.2. Should the District Court deny the Parties' request to enter the Judgment, should this Agreement not receive Final Approval by the District Court for any reason, or should this Agreement not become Final for any reason in accordance with its terms: (i) this Agreement will be null and void and of no force and effect; (ii) nothing in this Agreement will be deemed to prejudice the position of any of the Parties with respect to any matter; and (iii) neither the existence of this Agreement, nor its contents, will be admissible in evidence, referred to for any purpose in any litigation or proceeding, or be deemed an admission by the City of any fault, wrongdoing, or liability.

14.11.3. This Agreement, upon Final Approval, will be binding upon the City, Plaintiffs, and all Settlement Class members and, to the extent specifically set forth in this Agreement, upon Class Counsel; will extinguish all Plaintiff Released Claims and Class Member Released Claims and will constitute the final and complete resolution of all issues addressed herein. This Agreement is the complete and final disposition and settlement of any and all Plaintiff Released Claims and Class Member Released Claims, as detailed in Section 12.

**15. Notices**

All notices, demands, or other communications to be provided pursuant to this Agreement shall be in writing and delivered by registered or overnight mail to the following persons and addresses (or such other persons and addresses as any Party may designate in writing from time to time):

<p><u>For the City:</u></p> <p>Diana P. Cortes                  City Solicitor                  Benjamin Field                  Chief Deputy City Solicitor                  Sean McGrath                  Deputy City Solicitor                  City of Philadelphia Law Department                  1515 Arch Street, 15th Floor                  Philadelphia, PA 19102                  (215) 683-5038  <a href="mailto:Sean.McGrath@phila.gov">Sean.McGrath@phila.gov</a></p> <p>KyMBERly K. Evanson                  Paul Lawrence                  Pacifica Law Group LLP                  1191 Second Avenue, Suite 2000                  Seattle, WA 98101                  (206) 245-1700  <a href="mailto:KyMBERly.Evanson@pacificallawgroup.com">KyMBERly.Evanson@pacificallawgroup.com</a></p>	<p><u>For the Plaintiffs:</u></p> <p>Meredith J. Weaver, Senior Staff Attorney                  Disability Rights Advocates                  2001 Center Street, Fourth Floor                  Berkeley, CA 97404  <a href="mailto:mweaver@dralegal.org">mweaver@dralegal.org</a>                  (510) 665-8644</p> <p>David Ferleger                  620 W. Mt. Airy Ave.                  Philadelphia, PA 19119                  (215) 498-1777  <a href="http://www.ferleger.com">http://www.ferleger.com</a></p>
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**16. Authority**

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

**17. Entire Agreement**

This Agreement, and the documents attached to or expressly referred to in this Agreement, constitute the final and complete written expression and exclusive statement of all the agreements, conditions, promises, representations, and covenants between the Parties with respect to the matters referenced in this Agreement, and supersede all prior or contemporaneous negotiations, promises, covenants, agreements or representations of any nature whatsoever with respect to such matters, all of which are superseded by this Agreement. Each of the Parties understands and agrees that in the event of any subsequent litigation, controversy, or dispute concerning any of the terms, conditions or provisions of this Agreement, no Party shall be permitted to offer or introduce any oral evidence concerning any oral promises or oral agreements between the Parties relating to the subject matters of this Agreement not included or referred to in this Agreement and not reflected in a writing. This Agreement cannot be amended, modified, or supplemented except by a written document signed by all of the Parties and approved by the District Court.

**18. Authorization and Execution in Counterparts**

The Parties have read and understood this Agreement, have had the opportunity to discuss same with legal counsel, and have voluntarily agreed to sign the Agreement and agree to be bound thereby. Each person executing this Agreement on each party's behalf has been duly authorized to sign on behalf of the respective party and to bind each to the terms of the Agreement. The Parties agree that this Agreement may be executed in counterparts, each of

which shall be deemed an original but all of which together shall constitute but one and the same instrument. The Parties agree that this Agreement may be executed by electronic means. The Parties agree and acknowledge that a photocopy, facsimile copy, or scanned copy of an executed signature may be used in place of an original executed signature for any purpose.

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

EXECUTED by the Parties as follows:

DATED: October 12, 2022, 2022 THE CITY OF PHILADELPHIA  
 DIANA P. CORTES  
 City Solicitor  
 DocuSigned by:  
 By: Diana P. Cortes  
 9284CA980A474B6...

DATED: \_\_\_\_\_, 2022 LIBERTY RESOURCES, INC., individually and as  
 a Representative of the Class  
 By: \_\_\_\_\_  
 Thomas Earle, CEO

DATED: \_\_\_\_\_, 2022 DISABLED IN ACTION OF PENNSYLVANIA,  
 INC., individually and as a Representative of the  
 Class  
 By: \_\_\_\_\_  
 Latoya Maddox, President

DATED: \_\_\_\_\_, 2022 PHILADELPHIA ADAPT, individually and as a  
 Representative of the Class  
 By: \_\_\_\_\_  
 Germán Parodi, Organizer

DATED: \_\_\_\_\_, 2022 By: \_\_\_\_\_  
 TONY BROOKS, individually and as a  
 Representative of the Class

which shall be deemed an original but all of which together shall constitute but one and the same instrument. The Parties agree that this Agreement may be executed by electronic means. The Parties agree and acknowledge that a photocopy, facsimile copy, or scanned copy of an executed signature may be used in place of an original executed signature for any purpose.

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

EXECUTED by the Parties as follows:

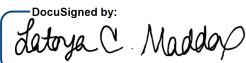
DATED: \_\_\_\_\_, 2022 THE CITY OF PHILADELPHIA  
DIANA P. CORTES  
City Solicitor

By: \_\_\_\_\_

DATED: October 13, 2022, 2022 LIBERTY RESOURCES, INC., individually and as  
a Representative of the Class

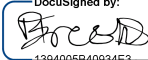
By:   
7A6939E690647E...  
Thomas Earle, CEO

DATED: October 13, 2022, 2022 DISABLED IN ACTION OF PENNSYLVANIA,  
INC., individually and as a Representative of the Class


By:   
237A7B3256A148D  
Latoya Maddox, President

DATED: October 12, 2022, 2022 PHILADELPHIA ADAPT, individually and as a  
Representative of the Class

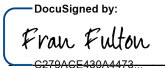
By:   
DD3C6A2A4A5E446  
Germán Parodi, Organizer

DATED: October 13, 2022, 2022 By:   
1364006B40934E3  
TONY BROOKS, individually and as a  
Representative of the Class

DATED: October 12, 2022, 2022

By:   
LIAM DOUGHERTY, individually and as a Representative of the Class

DATED: October 13, 2022, 2022

By:   
FRAN FULTON, individually and as a Representative of the Class

DATED: \_\_\_\_\_, 2022

By: \_\_\_\_\_  
LOUIS OLIVO, individually and as a Representative of the Class

APPROVED AS TO FORM:

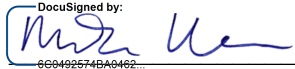
DATED: \_\_\_\_\_, 2022

PACIFICA LAW GROUP LLP

By: \_\_\_\_\_  
Kymberly Evanson  
Attorneys for City of Philadelphia

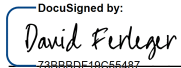
DATED: October 12, 2022, 2022

DISABILITY RIGHTS ADVOCATES

By:   
Meredith J. Weaver  
Attorneys for Plaintiffs/Class


DATED: October 12, 2022, 2022

DAVID FERLEGER LAW OFFICE

By:   
David Ferleger  
Attorney for Plaintiffs/Class

DATED: \_\_\_\_\_, 2022 By: \_\_\_\_\_  
LIAM DOUGHERTY, individually and as a  
Representative of the Class

DATED: \_\_\_\_\_, 2022 By: \_\_\_\_\_  
FRAN FULTON, individually and as a  
Representative of the Class

DATED: October 13, 2022 By:   
LOUIS OLIVO, individually and as a  
Representative of the Class

APPROVED AS TO FORM:

DATED: \_\_\_\_\_, 2022 PACIFICA LAW GROUP LLP  
By: \_\_\_\_\_  
Kymberly Evanson  
Attorneys for City of Philadelphia

DATED: \_\_\_\_\_, 2022 DISABILITY RIGHTS ADVOCATES  
By: \_\_\_\_\_  
Meredith J. Weaver  
Attorneys for Plaintiffs/Class

DATED: \_\_\_\_\_, 2022 DAVID FERLEGER LAW OFFICE  
By: \_\_\_\_\_  
David Ferleger  
Attorney for Plaintiffs/Class

DATED: \_\_\_\_\_, 2022 By: \_\_\_\_\_  
LIAM DOUGHERTY, individually and as a  
Representative of the Class

DATED: \_\_\_\_\_, 2022 By: \_\_\_\_\_  
FRAN FULTON, individually and as a  
Representative of the Class

DATED: \_\_\_\_\_, 2022 By: \_\_\_\_\_  
LOUIS OLIVO, individually and as a  
Representative of the Class

APPROVED AS TO FORM:

DATED: October 12, 2022, 2022 PACIFICA LAW GROUP LLP  
By: *Kimberly K. Evanson*  
Kymberly Evanson  
Attorneys for City of Philadelphia

DATED: \_\_\_\_\_, 2022 DISABILITY RIGHTS ADVOCATES  
By: \_\_\_\_\_  
Meredith J. Weaver  
Attorneys for Plaintiffs/Class

DATED: \_\_\_\_\_, 2022 DAVID FERLEGER LAW OFFICE  
By: \_\_\_\_\_  
David Ferleger  
Attorney for Plaintiffs/Class