

**Memorandum
Public Works Department**



To: City Manager
Subject: 11th Street Sidewalk Settlement Agreement
Date: June 12, 2012
Number: 2012-138

Attached is a settlement agreement with the Office of the Attorney General in regards to accessibility improvements along 11th Street. The Public Works Department has been working with the Attorney General about non-compliant curb ramps and sidewalks along the west side of 11th Street, between 25th and 42nd Avenues. The City has been directed to improve pedestrian accessibility along this section of 11th Street. The improvements will be done in a two phase project with the first phase to be completed this year.

Recommendation

The Public Works Department recommends that the City Council approve the agreement and that the City Attorney be authorized to sign the agreement on behalf of the City of Rock Island.

Submitted by: Robert T. Hawes, P.E., Assistant City Manager/Public Works Director
Michael J. Kane, P.E., City Engineer

Approved by: Thomas Thomas, City Manager

SETTLEMENT AGREEMENT

This settlement agreement is entered into by and among the Office of Illinois Attorney General (“OAG”) and the City of Rock Island (“Rock Island”) (collectively the “Parties”), according to the following terms and conditions.

RECITALS

WHEREAS, The Disability Rights Bureau of the OAG has received complaints regarding the curb ramps installed by the City of Rock Island;

WHEREAS, The OAG asserts that under the Illinois Environmental Barriers Act, 410 ILCS 25/1 et seq. (“EBA”), its implementing code, known as the Illinois Accessibility Code, 71 Ill. Admin. Code § 400.110 et. seq. (“IAC”), Title II of the Americans with Disabilities Act, 42 U.S.C. §§ 12131-12165, (“ADA” or “Title II”), its implementing regulation set forth at 28 CFR § 35 and the Illinois Highway Code, 605 ILCS 5/1-101, et seq, sidewalks are public facilities and services and must be accessible to people with disabilities;

WHEREAS, The OAG inspected the curb ramps and sidewalks at intersections in Rock Island and found certain curb ramps and sidewalks to be out of compliance with the EBA, ADA and applicable codes and regulations;

WHEREAS, Rock Island builds and maintains the curb ramps and sidewalks on City streets within the City of Rock Island;

WHEREAS, the Parties have negotiated at arm’s length and in good faith regarding the curb ramps and sidewalks at issue in the investigation;

NOW, THEREFORE, in consideration of the mutual promises and releases in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, The OAG and Rock Island agree as follows:

1. Curb Ramp and Sidewalk Remediation.

- 1.1 Rock Island agrees to bring the following curb ramps and sidewalks into compliance with state and federal law by December 31, 2012:

The sidewalk on the west side of 11th Street from 25th Ave. to 35th Ave.

Curb ramps:

25th Avenue (SW, SE & NW quad)

26th Avenue (SW, SE, NE & NW quad)

27th Avenue (SW & NW quad)

- 28th Avenue (SW & NW quad)
- 29th Avenue (SW & NW quad)
- 30th Avenue (SW & NW quad)
- 31st Avenue (SW, SE, NE & NW quad)
- 32nd Avenue (SW & NW quad)
- 33rd Avenue (SW & NW quad)
- 34th Avenue (SW & NW quad)
- 35th Avenue (SW & NW quad)

- 1.2 Rock Island agrees to bring the following curb ramps and sidewalks into compliance with state and federal law by December 31, 2013:

The sidewalk on the west side of 11th Street from 36th Ave. to 42nd Ave.

Curb ramps:

- 36th Avenue (SW & NW quad)
- 37th Avenue (SW & NW quad)
- 38th Avenue (SW & NW quad)
- 39th Avenue (SW & NW quad)
- 40th Avenue (SW & NW quad)
- 41st Avenue (SW & NW quad)
- 42nd Avenue (SW, SE, NE & NW quad)

- 1.3 By November 30, 2012, Rock Island will provide a written progress report on the remediation work required under Section 1.1 of this agreement and the OAG will schedule a final inspection.

- 1.4 By November 30, 2013, Rock Island will provide a written progress report on the remediation work required under Section 1.3 of this agreement and the OAG will schedule a final inspection.

- 2. **Transition Plan.** Rock Island agrees to draft a transition plan for Rock Island. In preparation for the drafting, Rock Island will do a self-evaluation of its programs, policies, services and facilities (including curb ramps and sidewalks). Based on this self-evaluation, the transition plan will set forth any areas in need of

modification, the proposed remedy and a timeline for completion of the modification. The OAG will provide technical assistance, as needed, to Rock Island to complete both the self-evaluation and the transition plan. The transition plan will be placed out for public comment by Rock Island by posting it on the City of Rock Island's website and in any and all other avenues Rock Island uses to provide notice to the public. Rock Island will seek comments from the public on prioritizing any modifications needed to bring its programs, policies, services and facilities into compliance with state and federal law. Rock Island will seek public comment for a period of time not less than 60 days. Based on the feedback from the public comment period, Rock Island will prepare a final draft of the transition plan that will be posted on its website and disseminated through all other avenues it uses to provide notice to the public. Rock Island will adhere to terms of its transition plan. Rock Island agrees to review its transition plan on an annual basis to determine if there are any new modifications needed.

3. **ADA Coordinator/Grievance Procedure.** Rock Island agrees that the ADA Coordinator will coordinate Rock Island's effort to comply with and carry out its responsibilities under the ADA and state accessibility and disability law, including any investigation of complaints communicated to it alleging its noncompliance with title II of the ADA or alleging any actions that would be prohibited under title II. Rock Island will make available to all interested individuals the name, office address, and telephone number of the ADA Coordinator, including by posting this information on its website. Within six (6) months of the effective date of this Agreement, Rock Island will adopt an ADA Grievance Procedure, distribute it to all agency heads, post copies of it in conspicuous locations in each of its public buildings and post it on its website. It will refresh the posted copies, and update the contact information contained on it, as necessary, for the life of the Agreement. Copies will also be provided to any person upon request.
4. **Closure of Investigation.** In consideration of the actions to be taken by the Respondent, the OAG will, upon completion of the actions specified in Paragraphs 1, 2 and 3, close the investigation of this matter and refrain from any further enforcement actions except as prescribed herein.
5. **Compliance Review.** The OAG may review compliance with this Agreement at any time. Rock Island agrees to allow the OAG to inspect the facilities subject to this Agreement at any time, upon reasonable notice. If the OAG believes that this Agreement or any requirement thereof has been violated, it shall promptly advise the Respondent of the nature of that violation, and, if possible, afford the Respondent the opportunity to correct the violation. In the event the Parties are not able to resolve this issue or the Respondent fails to correct the violation within 30 days, the OAG may seek enforcement of the Agreement or any provision thereof in accordance with Paragraph 7 of this Agreement.

6. **Enforcement.** In the event that the OAG seeks enforcement of this Agreement or any provision of it, the Parties agree and hereby stipulate that the OAG may file a complaint in any court of competent jurisdiction, including but not limited to the Circuit Court of Rock Island County and the United States District Court for the Central District of Illinois. Failure by the OAG to enforce this entire Agreement or any provision thereof with regard to any deadline or any other provision contained herein shall not be construed as a waiver of the OAG's right to do so with regard to that or any other provision of the Agreement.
7. **Scope of Agreement.** This Agreement does not purport to resolve any other potential violations of the Environmental Barriers Act, the Americans with Disabilities Act, any other State or Federal law other than those referenced herein. This Agreement does not affect the continuing responsibility of the Respondent to comply with all aspects of the Environmental Barriers Act, the Americans with Disabilities Act, and any other applicable State and Federal laws. It also does not affect in any way the OAG's ability to enforce any provision of the Environmental Barriers Act, the Americans with Disabilities Act, or any other civil rights law with regard to the Respondent at any time except as specifically stated herein. No other contract or agreement that conflicts with the terms stated herein shall in any way limit this Agreement or any of its provisions.
8. **Public Agreement.** This document is a public agreement. A copy of this document or any information contained in it may be made available to any person. The Parties shall provide a copy of this Agreement to any person upon request.
9. **No Admission of Liability.** The parties to this Memorandum understand and agree that nothing in this Memorandum shall be construed as an admission of liability, and that all allegations of liability are expressly denied.
10. **Governing Law.** This Agreement shall be governed in all respects by the law of the State of Illinois.
11. **Amendments or Modifications.** This Agreement may only be modified by means of a written agreement, signed by all Parties.
12. **Entire Agreement.** This Agreement contains the entire understandings and agreement between the Parties regarding matters set forth in it.
13. **No Representations.** In executing and giving this Agreement, each Party acknowledges that it or she has not relied on, or made to another Party or anyone purporting to act on its or her behalf, any promise or representation that is not in this Agreement.
14. **Advice of Counsel.** The Parties represent that they have read this Agreement in its entirety and are satisfied that they understand and agree to all its provisions, and represent that they have freely signed this Agreement without coercion.

15. **Counterparts.** This Agreement may be executed in identical counterparts, each of which shall be deemed to be an original and all of which taken together shall constitute one and the same Agreement.
16. **Power and Authority to Execute.** The Parties represent that they have the power and authority to execute and deliver this Agreement and to perform the obligations hereunder, and that each person executing this Agreement on each party's behalf has been authorized to sign on behalf of the respective party and to bind each other to the terms of this Agreement.
17. **Ambiguous Terms.** The Parties cooperated in the drafting of this Agreement, and if it is finally determined that any provision in this Agreement is ambiguous, that provision shall not be presumptively construed against any Party.

IN WITNESS WHEREOF, the Parties have executed this Agreement.

The City of Rock Island

STATE OF ILLINOIS

**Lisa Madigan
Attorney General**

By: _____
Ted Kutsunis
City Attorney

By: _____
Nicki Bazer
Bureau Chief
Disability Rights Bureau

Date: _____

Date: _____