

CITY OF WILLIAMSPORT, PA RESOLUTION

RESOLUTION # 8995

DATE 3-5-20

TITLE

**Resolution Authorizing Structured Settlement Negotiation Agreement between the City of
Williamsport & David Ferleger, & Thomas Earle, Attorneys**

WHEREAS, the Center for Independent Living has alleged that the City of Williamsport is in violation of the Americans with Disabilities Act of 1990, specifically by failing to provide access to individuals with disabilities into and throughout City Hall, 245 West Fourth St, Williamsport, Pa. and also any claims over complaisance City wide.

WHEREAS, the Center for Independent Living has engaged David Ferleger & Thomas Earle, attorneys to represent them as legal counsel.

BE IT THEREFORE RESOLVED, that the City of Williamsport agrees to enter into a Structured Settlement Negotiation Agreement between the City of Williamsport & David Ferleger & Thomas Earle, Attorneys.

NOW, THEREFORE, BE IT HEREBY RESOLVED, that the proper City officials are hereby authorized to execute this resolution.

Approved

Jance M. Frank
City Clerk

Paul J. Williams
President

STRUCTURED SETTLEMENT NEGOTIATIONS AGREEMENT

This Structured Settlement Negotiations Agreement (“Agreement”), deemed in effect as of the date of the last signature on the Agreement (“Effective Date”), concerns a dispute regarding compliance by the City of Williamsport (“the City”) under the Americans with Disabilities Act (ADA) and other applicable laws with regard to the City Hall, and the City’s pedestrian rights of way related thereto, and is entered into between the City and the North Central PA ADAPT, the Center for Independent Living of North Central Pa, and individuals with disabilities who seek safe access to the Williamsport City Hall building, sidewalks and streets (collectively, “Plaintiffs”). Defendant and Plaintiffs are collectively referred to as “the Parties” throughout this Agreement.

I. BACKGROUND AND PURPOSES

On November 7, 2019, Plaintiffs communicated to the City by letter a demand that the City comply with the Americans with Disabilities Act, and with Section 504 of the Rehabilitation Act, alleging that the City of Williamsport is violating the rights of individuals with disabilities that affect mobility by failing to provide access to its’ citywide pedestrian rights of way program in violation of Title II of the Americans with Disabilities Act of 1990, as amended (“ADA”), 42 U.S.C. §§ 12131 *et seq.*, and its implementing regulations; and Section 504 of the Rehabilitation Act of 1973 (“Section 504”), 29 U.S.C. §§ 794. Plaintiffs seek an agreement which will resolve these issues, and provide for their attorneys’ fees and costs. Defendant does not admit or concede liability to plaintiffs, and would proffer a defense in the event litigation were necessary. This agreement is intended to render protracted and expensive litigation unnecessary.

The purposes of this Agreement are:

- a. To protect the interests of all Parties during the pendency of settlement negotiations; and
- b. To provide an alternative to litigation in the form of good faith negotiations;

In order to facilitate a focus on negotiations, Plaintiffs agree not to initiate litigation while this agreement is in effect.

II. STRUCTURE OF THESE NEGOTIATIONS AND SUBJECTS TO BE DISCUSSED

The Parties agree that in order to avoid litigation, the Parties will attempt to negotiate a resolution. To accomplish this, the Parties agree to the following terms and conditions related to the negotiations:

A. Regular Conferences

Counsel for the Parties agree to meet in person, or by video, and confer no less than twice every 30 days to attempt to reach a settlement.

B. Informal Exchange of Information

At the beginning of this process, Defendant agrees to make available to Plaintiffs such relevant and discoverable information requested by plaintiffs, consistent with the Federal Rules of Civil Procedure. Plaintiffs will make available to Defendant all correspondence and communications with Defendant. The information from the City will include, but not be limited to, the following, relative to accessibility to and around City Hall:

- a. Any final self-evaluations or transition plans relating to the City's pedestrian rights of way;
- b. Any policies and procedures related to Plaintiffs' claims; and
- c. All issued requests for proposals, requests for quotes, or requests for sealed bids, and any responses and or bids in response to such requests, and any estimates or other evaluations describing work which may be necessary and estimated costs.

C. Substance of the Negotiations

Plaintiffs assert that people with disabilities, including those with mobility impairments who use wheelchairs, do not have accessible and integrated access into and throughout City Hall, and to the City's pedestrian rights of way. Plaintiffs assert that the barriers at issue include, non-compliant directional access signage, non-compliant and unsafe accessible parking, a non-compliant and segregated rear ramp entrance through the police department, inaccessible elevator service, issues regarding alarms, door controls, and inaccessible bathrooms and other matters under applicable law. Plaintiffs further assert that residents and visitors to the Williamsport City Hall who have disabilities that limit mobility encounter such barriers on a regular basis.

The parties understand that Plaintiffs' claims cover ADA compliance city-wide. However, Plaintiffs have agreed to forgo (while the City works with the United States Department of Justice), an all-City lawsuit and, at this time, to utilize this structured negotiations agreement to address and resolve all the City Hall issues.

The Parties agree that the scope of these structured negotiations will be limited to the above claims asserted by Plaintiffs and that they will consider, but not be limited to, the following topics during negotiations:

- a. Relative to in and around City Hall, a comprehensive evaluation of all existing pedestrian walkways to determine the current status of compliance with accessibility standards;
- b. Development of detailed plan of action to accomplish remediation of identified barriers with clear timelines/dates of completion;
- c. Public input and reporting, including participation by the disability community;
- d. Adoption and enforcement of relevant effective policies and procedures;

- e. Maintenance of compliance features;
- f. A public grievance system;
- g. Provision of sufficient professional and support staff for implementation and related tasks, including but not limited to a City ADA coordinator with appropriate certification and training;
- h. Enforceable monitoring;
- i. Relocation of City Hall, or of services currently provided at City Hall; and
- j. Application of standards, and the remedial plan to any future relocation of City Hall, or future relocation of services formerly provided through City Hall.

The inclusion or exclusion of a discussion topic here is not intended to limit or expand a Party's position on the inclusion or exclusion of a listed topic in or from the remedial plan. A remedial plan may be reached between the parties without including terms relative to each topic listed above, and may include topics not listed above.

If, and only if, the Parties reach an agreement on the substantive aspects of a resolution to Plaintiffs' claims, they will then negotiate regarding Plaintiffs' attorneys' fees and costs, as discussed in Section III, *infra*.

III. SETTLEMENT AGREEMENT

A. If the Parties reach an agreement on the substantive aspects of a resolution to Plaintiffs' claims, they agree to enter into an enforceable agreement.

B. Defendant agrees that Plaintiffs are entitled to reasonable attorneys' fees, litigation expenses, and costs for work performed under and subsequent to the execution of this Agreement if an agreement on the substantive aspects of a resolution to Plaintiffs' claims is reached. Defendant and plaintiff do not currently agree on the attorneys' fees hourly rates that would be applicable to as settlement, in the event a settlement is reached. The amount of fees and costs that are reasonable to recover may be resolved through the process below, if necessary. This paragraph does not apply to fees, expenses or costs incurred by Plaintiffs in any litigation or settlement with regard to the pending investigation by the United States Department of Justice regarding ADA-related compliance by the City on non-City Hall issues.

C. If the Parties cannot reach an agreement on the amount of attorneys' fees, litigation expenses and costs, the Parties agree to submit any such dispute in accordance with the procedures in the following paragraph:

D. If the matters raised in demand for fees and expenses are not resolved within twenty (20) days of submission of a fee and expenses demand to Defendant by Plaintiffs, either Party may submit the unresolved matters to nonbinding mediation before a mutually agreed upon mediator. If mediation fails to resolve the matter within twenty (20) days, the Parties then will settle the matter finally by means of arbitration conducted by JAMS pursuant to its Streamlined

Arbitration Rules and Procedures, within Williamsport, Pennsylvania. The award of the arbitrator will be enforceable in a court of competent jurisdiction. The cost of the arbitrator shall be shared equally the Parties.

E. This provision shall survive the termination of this Agreement notwithstanding Section 5 below.

IV. DURATION OF THE STRUCTURED AGREEMENT

Any Party may give written notice by mail or email to the other Party that the Agreement is no longer effective. The Agreement may be extended by a written document executed by all Parties.

V. NO WAIVER

The Parties expressly recognize and agree that entering into this Agreement does not constitute (a) an admission of liability of any wrongdoing by any party or that the allegations of lack merit, or (b) a waiver of any claims or defenses to those claims in this Action.

VI. CONFIDENTIALITY

The Parties agree that all discussions and negotiations pursuant to this Agreement will constitute conduct made in an effort to compromise claims within the meaning of Federal Rules of Evidence, Rule 408 and applicable state law.

VII. RULE OF CONSTRUCTION

Each Party, through its legal counsel, has reviewed and participated in the drafting of this Agreement; and any rule of construction to the effect that ambiguities are construed against the drafting Party shall not apply in the interpretation or construction of this Agreement.

VIII. AMENDMENTS

Any amendments to this Agreement must be in writing and signed by all Parties, or their counsel, to be effective.

Date: _____, 2020

By: _____
Thomas H. Earle

By: _____
David Ferleger
Attorneys for Plaintiffs

Date: 3-5, 2020

By: *Rick Hlaughton*
THE CITY OF WILLIAMSPORT

Attest: *James M. Frank*
Controller