

U. S. Department of Justice

United States Attorney
Eastern District of Wisconsin

517 East Wisconsin Avenue
Milwaukee, Wisconsin 53202

414/297-1700
TDD-414/297-1088

April 11, 2006

VIA EMAIL ONLY

Patrick B. McDonnell
Deputy City Attorney
Office of City Attorney
800 City Hall
200 East Well Street
Milwaukee, WI 53202-3551

Re: Milwaukee Riverwalk
USAO File No. 2003V00280

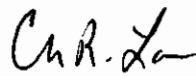
Dear Mr. McDonnell:

Enclosed please find the revised version of Settlement Agreement in final form, relative to the above-captioned matter, with the noncontroversial changes suggested by Mr. Grady. If this Agreement meets with your approval, I would appreciate your signing the enclosed and forwarding it to Bruce Block for his signature. I would then ask Bruce to forward it to Mark Grady for his signature, and ask that Mark please return the signed original to me. Please copy me on all correspondence when forwarding this document for signature.

Should you have any questions, please contact me at (414) 297-1581.

Sincerely,

STEVEN M. BISKUPIC
United States Attorney

By: 
CHRISTIAN R. LARSEN
Assistant United States Attorney
Email: chris.larsen@usdoj.gov

CRL/jas
Enclosure

cc: Bruce Block, Esq. (Via Email)
Mark A. Grady, Esq. (Via Email)

SETTLEMENT AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA,
MILWAUKEE BUSINESS IMPROVEMENT DISTRICT NO. 15,
MILWAUKEE COUNTY, WISCONSIN AND
THE CITY OF MILWAUKEE, WISCONSIN,
UNDER THE AMERICANS WITH DISABILITIES ACT

DOJ No. 204-85-109

SCOPE OF THE INVESTIGATION

1. This matter was initiated by a complaint filed under Title II of the Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. §§ 12131-12134, 42 U.S.C §§ 12181 *et. seq.* with the United States Department of Justice (“Department”) against the City of Milwaukee, Wisconsin (“City”), and the Milwaukee Business Improvement District No. 15 (“BID”), as the representative of the owners of property along segments of the Milwaukee Riverwalk (hereinafter collectively referred to as the “respondents”). The Milwaukee Riverwalk (“Riverwalk”), located on private property adjacent to the Milwaukee River, is a publicly accessible walkway along the Milwaukee River, and was developed by local property owners, the BID and the City of Milwaukee. The Riverwalk extends along both sides of the Milwaukee River and is bordered generally by Juneau Avenue to the north and Clybourn Street to the south. The complaint was received by the United States Department of Justice, through the United States Attorney’s Office for the Eastern District of Wisconsin, and the Civil Rights Division of the Department of Justice, under the authority of 28 C.F.R. Part 35, Subpart F and Part 36. The complainant alleged that some sections of Milwaukee’s Riverwalk are inaccessible to wheelchair users. In a government review conducted in the summer of 2003, 28 separate violations of the ADA were identified that limited access to the Riverwalk for wheelchair users. The government’s findings are outlined in a letter dated August 6, 2003, a copy of which is attached to this Agreement.

2. The ADA authorizes the Department of Justice to investigate alleged violations of Title II. Under the Department’s implementing regulation, 28 C.F.R. Part 42, Subpart G, the Department focused its investigation on the respondents’ compliance with the following Title II requirements:

- to operate the Riverwalk so that, when viewed in its entirety, it is readily accessible to and usable by individuals with disabilities, 28 C.F.R. § 35.150, by making physical changes to the Riverwalk in accordance with the Department's Title II regulation, 28 C.F.R. § 35.151, and the ADA Standards for Accessible Design ("Standards"), 28 C.F.R Pt. 36, App. A, or the Uniform Federal Accessibility Standards ("UFAS") 41 C.F.R. § 101-19.6, App. A.;
- to ensure that portions of the Riverwalk for which construction or alteration was begun after January 26, 1992, are readily accessible to, and usable by, people with disabilities, in accordance with 1) the Department's Title II regulation and 2) the Standards or UFAS, 28 C.F.R. § 35.151; and
- to provide signage at all inaccessible entrances to Riverwalk, directing users to an accessible entrance, 28 C.F.R. § 35.163(b).

JURISDICTION

3. The ADA applies to the City, the County, and the BID because they are public entities as defined by Title II. 42 U.S.C. § 12131(1), 28 C.F.R. § 35.104.
4. The Department is authorized under 28 C.F.R. Part 35, Subpart F, to investigate the complaint in this matter and to determine more broadly the respondents' compliance with Title II of the ADA and the Department's implementing Title II regulation, to issue findings, and, where appropriate, to negotiate and secure voluntary compliance agreements. Furthermore, the Attorney General is authorized, under 42 U.S.C. § 12133, to bring a civil action enforcing Title II of the ADA should the Department fail to secure voluntary compliance pursuant to Subpart F.
5. The parties to this Agreement are the United States of America, the City of Milwaukee, the County of Milwaukee, and Milwaukee Business Improvement District No. 15.
6. In order to avoid the burdens and expenses of an investigation and possible litigation, the parties enter into this Agreement.
7. In consideration of, and consistent with, the terms of this Agreement, the Attorney General agrees to refrain from filing a civil suit in this matter against the respondents, as well as the owners of property that comprise the Riverwalk, regarding all matters contained within this Agreement, except as provided in the section entitled "Implementation and Enforcement."

ACTIONS TAKEN BY THE CITY AND COUNTY

8. As of the effective date of this Agreement, the City and County have taken the following steps to improve access to the Riverwalk for people with disabilities.

- A. In response to Finding 1 of the Department of Justice letter dated August 6, 2003, the City constructed a new walkway that extends from Juneau Avenue south to the midpoint of Juneau Avenue and Highland Avenue. From the south end of this walk, at the midpoint, continued access is provided by a ramp adjacent to the existing stairs. (Finding 1).
- B. The City ground down curbs between sidewalks and the street to create curb ramps at the following locations: between Highland Avenue and State Street (Finding 2); between State Street and Kilbourn Avenue (Finding 4); between Kilbourn Avenue and Wells Street (Finding 17); and at the bottom of Michigan Street and Wisconsin Avenue. (Finding 24).
- C. The City ground down the curb ramps at Kilbourn Avenue and Wells Street to prevent unstable footing caused by cracking or spalling. (Finding 18).
- D. The City ground down the curb ramps at Kilbourn Avenue and Wells Street to correct instability, lack of firmness and lack of slip resistance. (Finding 25).
- E. The City has installed directional signage at several locations to provide direction to accessible components of the Riverwalk. There are 7 kiosks scattered along the riverwalk showing the current handicap accessible route. In addition, there are 18 signs at various entry points to the handicap accessible routes and three signs that show connection points to Riverwalk sections not directly handicap accessible.
- F. In response to Finding 6 of the Department of Justice letter dated August 6, 2003, the County has constructed a 1:20 sloped walkway in place of a portion of the previously existing stairs in order to provide access to the raised floor surface of the gazebo.

PHYSICAL CHANGES TO BE UNDERTAKEN

9. The Parties agree that the technical requirements and, where appropriate, the scoping requirements of the Standards are used for determining whether the Riverwalk is readily accessible to and usable by persons with disabilities, and for determining what changes are necessary to make the Riverwalk accessible. *See* 28 C.F.R. §§ 35.150(b)(1), 35.151.

10. In order to ensure that the City's Riverwalk is readily accessible to and usable by persons with mobility impairments, the respondents will take the following actions within three (3) years of the effective date of this Agreement (the County's responsibility is limited to the action specified in Sec.10.E.1.):

A. RAMPS AND WALKWAYS

- 1. Construct a ramp adjacent to the existing stair structure at the north end stair near Highland Avenue and construct a ramp along the State Street walkway on the west side of the river. The slope of each ramp to any landing shall not exceed 1:12 and the maximum allowable rise for any ramp is 30 inches. Standards 4.8.2. Install continuous handrails on both sides of each ramp run which will extend a minimum of 12 inches beyond the top and bottom of each ramp segment. The handrails shall be 1½ inches from the wall and shall be mounted between 34 and 38 inches above ramp surfaces. The diameter of the handrails shall be between 1¼ and 1½ inches. Standards 4.8.5 and 4.26.2. (Finding 3).

2. Construct a walkway with a maximum slope of 1:20 over the existing north end stairs at Kilbourn Avenue. Adjacent to the south end stairs at Wells Street construct a ramp with a maximum slope of 1:12 including handrails on both sides and level landings at the top and bottom. Install continuous handrails on both sides of each ramp run which will extend a minimum of 12 inches beyond the top and bottom of each ramp segment. The handrails shall be 1½ inches from the wall and shall be mounted between 34 and 38 inches above ramp surfaces. The diameter of the handrails shall be between 1¼ and 1½ inches. Standards 4.3.7, 4.26.2, 4.8.1 and 4.8.5. (Finding 7).
3. Construct a lift near the north end stairs at Kilbourn Avenue with a maximum total rise of 12 feet. Construct a second lift near the south end stairs at Wells Street. Standards 4.11.2. (Finding 7).
4. Modify the ramp between Wells Street and Wisconsin Avenue by removing and replacing the existing paving and constructing a ramp with a slope no greater than 1:12. Standard 4.8 (Finding 8). Install continuous handrails on both sides of the ramp which will extend a minimum of 12 inches beyond the top and bottom of the ramp. The handrails shall be 1½ inches from the wall and shall be mounted between 34 and 38 inches above ramp surfaces. The diameter of the handrails shall be between 1¼ and 1½ inches. Standards 4.8.5, 4.3.7 and 4.26.2. (Finding 9).
5. The existing ramp at the Wisconsin Avenue entrance has three (3) two foot sections with a slope greater than 1:12. However the overall average slope of the ramp, which is in excess of 100 feet long, is 1:13.8. As the existing construction of this ramp is within normal construction tolerance no further ramp modification shall be required. (Finding 12).
6. Construct a walkway from the walkway along Michigan Street to the lowered pavement along Michigan Street with a maximum slope of 1:20. Standards 4.3.7 Also construct a lift at the main stair with a maximum rise of 12 feet. Standard 4.11.2. (Finding 20).
7. Construct ADA compliant ramps and/or lifts at the north and south stairways between Wisconsin Avenue and Mason Street to ensure wheelchair accessibility to section 9 of the Riverwalk from the street level Standards 4.8.1 and 4.11.2. (Finding 26).
8. Accessibility of the Riverwalk between Mason and Wells Streets on the east side of the river is obstructed by stairs at the north end of the section. A lift shall be constructed adjacent to these stairs with a maximum total rise of 12 feet. Standards 4.11.2.
9. The south curb ramp at the Wells Street entrance is too steep. Grind down or replace existing curb surfaces to provide a ramp slope no greater than 1:12. Install detectable warning surface in ramp face. Standards 4.7.2.

B. HANDRAILS

1. Modify or replace the existing handrails on the existing ramp at the Wisconsin Avenue entrance with compliant handrails that are continuous and on both sides of the ramp. The handrails shall be 1½ inches from the wall and shall be mounted between 34 and 38 inches above ramp surfaces. The diameter of the handrails shall be between 1¼ and 1½ inches. Standards 4.8.5(1)(3)(5) and 4.26.2. (Findings 13, 14, 15).
2. For the existing ramp between Michigan Street and Clybourn Street, (known as the Iroquois ramp), install handrails on both sides that shall be 1½ inches from the wall and shall be mounted between 34 and 38 inches above ramp surfaces. The diameter of the handrails shall be between 1¼ and 1½ inches. Standards 4.8.5 and 4.26.2. (Findings 21, 22).

C. CURB SLOPE

1. Modify the built up curb ramp slope at Wisconsin Avenue and Michigan Street by grinding the surface to avoid projecting into the roadway. Standards 4.7.6. (Finding 16).
2. Modify the built up curb ramps located at Michigan Street and Wisconsin Avenue by grinding the surface. Standards 4.7.6. (Finding 23).

D. ACCESSIBLE WALKWAYS

1. Between Wells Street and Wisconsin Avenue, the route to the ramp is inaccessible in various respects. An accessible walkway shall be constructed along the east side of the parking lot from Wells Street to an already existing accessible ramp at the center section between Wells Street and Wisconsin Avenue. The parking lot shall be re-striped and wheel stops shall be installed at each parking space to prevent a parked car from overhanging and thereby reducing the clear width of the accessible route. Standards 4.6.3. (Finding 10).
2. The cross slope of newly constructed walkways and sidewalks adjacent to the River between Wells Street and Wisconsin Avenue shall not exceed 2%. Standards 4.3.7. (Finding 10).

E. FLOATING DOCKS

1. The cantilevered semi-circular pier between State Street and Kilbourn Avenue is set to allow floating docks to be installed for use by private boat owners. The pier has an elevation change of approximately 36 inches from its highest to lowest level with an approximate 96 inch ramp. A hinged ramp provides access to the lowest level. Remove the existing ramp and install a new gangway from the walkway level to the dock level. (Finding 5).

2. The cantilevered semi-circular pier between Wells Street and Wisconsin Avenue is set to allow floating docks to be installed for use by private boat owners. The pier has an elevation change of approximately 36 inches from its highest to lowest level. A hinged ramp provides access to the lowest level. Remove the existing ramp and install a new gangway from the walkway level to the dock level. (Finding 11).
3. The cantilevered semi-circular pier at the Mason Street entrance is set to allow floating docks to be installed for use by private boat owners. The pier has an elevation change of approximately 36 inches from its highest to lowest level. A hinged ramp provides access to the lowest level. Remove the existing ramp and install a new gangway from the walkway level to the dock level. (Finding 27).

IMPLEMENTATION AND ENFORCEMENT

11. For three years after the effective date of this Agreement, or until fully completed, the City will submit a written annual report to the Department summarizing the actions the respondents have taken during the past year to comply with this Agreement. Reports will include photographs that clearly show conformance to the requirements outlined in this Agreement.
12. If at any time the respondents desire to modify any portion of this Agreement because changed conditions make performance impossible or impractical or for any other reason, it will promptly notify the Department in writing, setting forth the facts and circumstances thought to justify modification and the substance of the proposed modification. Until there is written Agreement by the Department to the proposed modification, the proposed modification will not take effect. These actions must receive the prior written approval of the Department, which approval shall not be unreasonably withheld or delayed.
13. The Department may review compliance with this Agreement at any time. If the Department believes that this Agreement or any portion of it has been violated, it will so notify the respondents in writing and it will attempt to resolve the issue or issues in good faith. If the Department is unable to reach a satisfactory resolution of the issue or issues raised within 30 days of the date it provides notice to the respondents, it may institute a civil action in federal district court directly to enforce Title II or to enforce the terms of this Agreement.
14. Failure by the Department to enforce this entire Agreement or any provision thereof with regard to any deadline or any other provision herein shall not be construed as a waiver of the Department's right to enforce other deadlines and provisions of this Agreement.
15. A copy of this document or any information contained in it may be made available to any person by the respondents or the Department on request.
16. The effective date of this Agreement is the date of the last signature below.
17. This Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or agents of either party, that is not contained in this written Agreement, shall be enforceable.

18. This Agreement will remain in effect for three years from the effective date of this Agreement, or until the parties agree that full compliance with this Agreement has been achieved.

19. The Agreement resolves the alleged violations of Title II of the ADA and the Department of Justice's implementing regulation, 28 C.F.R. Part 36 for the buildings and structures addressed in this Agreement and does not purport to remedy any other violations of the Americans with Disabilities Act or any other Federal Law. This Agreement does not affect the respondents continuing responsibilities to comply with all aspects of Title II of the ADA.

20. The respondents do not admit by the signing of this Agreement that the Riverwalk is in violation in any respect of the ADA or its implementing regulations.

21. The persons signing for the City of Milwaukee, the County of Milwaukee, and the Milwaukee BID No. 15 represent that they are authorized to bind their respective parties to this Agreement, except that the parties understand that funding for the City's obligations under this Agreement are subject to annual approval by the Milwaukee Common Council.

22. The parties, by mutual consent, may make minor nonsubstantive changes to this Agreement prior to its execution.

For the City:

For the United States:

STEVEN M. BISKUPIC.
United States Attorney

By: _____

By: _____

Patrick B. McDonnell
Deputy City Attorney
Office of City Attorney
800 City Hall
200 East Wells Street
Milwaukee, WI 53202

Christian R. Larsen
Assistant United States Attorney
530 Federal Courthouse
517 East Wisconsin Avenue
Milwaukee, Wisconsin 53202

Date: _____

Date: _____

For the Milwaukee BID No. 15:

For the County:

By: _____

By: _____

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Milwaukee, WI 53201

Mark A. Grady
Milwaukee County Corporation Counsel
901 North Ninth Street #303
Milwaukee, WI 53233

Date: _____

Date: _____