

1 **Settlement Agreement**

2 **I. RECITALS**

3 1. This Agreement settles and resolves all claims brought in the action *California*
4 *Foundation for Independent Living Centers, et al. v. City of Oakland*, Case No. C07-04608 EDL.

5 2. Plaintiffs in the above action are California Foundation for Independent Living
6 Centers; Californians for Disability Rights, Inc.; and Marian Gray (collectively, "Plaintiffs").

7 3. Defendants in the above action are the City of Oakland (the "City"); Office of
8 Emergency Services of the Oakland Fire Department; Department of Human Services of the City
9 of Oakland; Office of Parks and Recreation of the City of Oakland; Renee A. Domingo, in her
10 official capacity as Director of the Office of Emergency Services; Andrea Youngdahl, in her
11 official capacity as Director of the Department of Human Services; Audree Jones-Taylor, in her
12 official capacity as Director of the Office of Parks and Recreation; and Dan Lindheim, in his
13 official capacity as City Administrator of the City of Oakland (collectively "Defendants").

14 4. Plaintiffs filed a complaint in August 2007 alleging that Defendant City of
15 Oakland is not prepared to meet the unique needs of people with disabilities during an
16 emergency.

17 5. Oakland maintains a disaster preparedness plan administered through its Office of
18 Emergency Services (OES). OES plans for mass evacuation, temporary shelter needs, recovery
19 animal care and special needs populations. Plaintiff alleges that Oakland's emergency planning
20 fails to adequately provide for people with disabilities.

21 6. Defendants deny these contentions.

22 7. Plaintiffs filed a taxpayer's action in Superior Court of the State of California for
23 Alameda County in August 2007.

24 8. Title II of the Americans with Disabilities Act ("ADA") prohibits a public entity
25 from excluding a person with a disability from participating in, or denying the benefits of, the
26 goods, services, programs and activities of the entity or otherwise discriminating against a person
27 on the basis of disability. 42 U.S.C. § 12132. Plaintiffs argue that by failing to plan to meet the
28 mass care and shelter needs of people with disabilities, Defendants have excluded them from

1 participation in, denied them the benefits of, and discriminated against them in their emergency
2 programs and services in violation of this statute.

3 9. Plaintiffs also argue that Defendants have violated (a) Section 504 of the
4 Rehabilitation Act of 1973, 29 U.S.C. § 794, which prohibits discrimination against people with
5 disabilities by recipients of federal funding; (b) California Civil Code § 54, *et seq.*, by denying
6 Plaintiffs full and equal access to and use and enjoyment of emergency shelter facilities and
7 services due to the acts and omissions alleged herein; and (c) California Government Code §
8 11135 and the regulations promulgated thereunder, which prohibit discrimination against people
9 with disabilities by any program or activity funded by the State.

10 10. Defendants deny these allegations. Defendants contend that Plaintiffs lack
11 standing and that their claims are not ripe. They petitioned for removal to federal court in
12 September 2007.

13 11. Plaintiffs stipulated with Oakland to an amended federal complaint that added an
14 ADA claim and dropped the taxpayer action. Both parties consented to a Magistrate Judge.

15 12. The Parties now desire to resolve their differences and disputes by settling the
16 suit. The parties have engaged in structured negotiations to resolve claims concerning disability
17 access at the City's emergency shelter facilities, including potential claims regarding injunctive
18 relief, reasonable attorneys' fees, litigation expenses, and costs.

19 13. These structured negotiations have entailed discussions about developing and
20 implementing an annex to the City's mass care and shelter plan that addresses the emergency
21 needs of people with disabilities. This Functional Needs Annex was developed by the City in
22 collaboration with disability policy consultant June Isaacson Kailes. It includes, *inter alia*,
23 proposals for removing architectural barriers and addressing the essential functional needs of
24 people with disabilities during emergencies in five categories as follows: communication,
25 medical needs, independence maintenance, supervision, and transportation.

26 14. This Settlement Agreement is intended to memorialize the parties' agreement
27 concerning the process for creating and finalizing an emergency preparedness plan that addresses
28 the needs of people with disabilities. The specifics of this plan are set forth in the attached

1 Appendix A, which contains the most recent version (Draft Version 1.3, dated November
2 17, 2009) of the Functional Needs Annex to Defendants' Mass Care and Shelter Plan,
3 developed in consultation with expert consultant June Isaacson Kailes.

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5 **II. DEFINITIONS**

6 As used in this Agreement, the following terms shall have the meaning ascribed to them
7 in this Section, which are consistent with the provisions of existing federal and state law,
8 including the regulations promulgated thereunder. Except to the extent expressly stated to the
9 contrary, any term not expressly defined in this Section or elsewhere in this Agreement that has
10 an expressly defined meaning in either the ADA or the regulations promulgated thereunder
11 ("Regulations") shall have the meaning ascribed to it by the ADA or the Regulations, in that
12 order of preference. All other terms shall be interpreted according to their plain and ordinary
13 meaning.

14 **A. ADA/ADAAG**

15 "ADA" means and refers to the Americans with Disabilities Act as contained at 42
16 U.S.C. § 12101 et seq. "ADAAG" means and refers to the Americans with Disabilities Act
17 Access Guidelines, codified at Appendix A to 28 Code of Federal Regulations part 36 and at
18 Appendix A to 49 Code of Federal Regulations part 37. "ADAAG Standards" means and refers
19 to physical conditions that meet the new construction and/or alterations standards set forth in
20 ADAAG.

21 **B. Agreement**

22 "Agreement" means and refers to this document.

23 **C. City**

24 "City" means the City of Oakland, California.

25 **D. Compliance Period**

26 "Compliance Period" means and refers to the period of time for which this Agreement
27 will be in effect, including both the Implementation Period and the Maintenance and Updating
28 Period. The period from the Effective Date of this Agreement until the date which is one year

1 from the Effective Date shall be known as the Implementation Period. Upon the conclusion of
2 the Implementation Period, the Maintenance and Updating period begins immediately and will
3 continue for three and one-half (3-1/2) years from the date of the conclusion of the
4 Implementation Period.

5 **E. Defendants**

6 "Defendants" means and refers to, collectively, the City of Oakland (the "City"); Office
7 of Emergency Services of the Oakland Fire Department; Department of Human Services of the
8 City of Oakland; Office of Parks and Recreation of the City of Oakland; Renee A. Domingo, in
9 her official capacity as Director of the Office of Emergency Services; Andrea Youngdahl, in her
10 official capacity as Director of the Department of Human Services; Audree Jones-Taylor, in her
11 official capacity as Director of the Office of Parks and Recreation; and Dan Lindheim, in his
12 official capacity as City Administrator of the City of Oakland.

13 **F. Effective Date**

14 "Effective Date" means and refers to the date when the City Council of the City of
15 Oakland gives its approval of this Settlement Agreement.

16 **G. Functional Needs Annex**

17 "Functional Needs Annex" means and refers to an emergency preparedness plan attached
18 to this document as Appendix A.

19 **H. Implementation Period**

20 "Implementation Period" means and refers to the period following the Effective Date of
21 this Agreement and ending at either (a) the date twelve (12) months thereafter or (b) such time as
22 Magistrate Judge Laporte determines that the Implementation Period has concluded, whichever
23 is longer.

24 **I. Maintenance and Updating Period**

25 "Maintenance and Updating Period" means and refers to the period of time commencing
26 immediately upon the conclusion of the Implementation Period and ending three and one-half (3-
27 1/2) years later.

28 **J. Parties**

1 “Parties” means and refers to the Plaintiffs and the Defendants.

2 **K. Plaintiffs**

3 “Plaintiffs” means and refers to, collectively, California Foundation for Independent
4 Living Centers; Californians for Disability Rights, Inc.; and Marian Gray.

5 **L. Plaintiffs’ Counsel**

6 “Plaintiffs’ Counsel” means and refers to the law firm of Disability Rights Advocates,
7 including Sid Wolinsky, Esq., and all other members, partners, employees and associates thereof.

8 **M. Settlement Agreement**

9 “Settlement Agreement” or “Agreement” means and refers to this document.

10

11 **III. INJUNCTIVE RELIEF**

12 The Parties hereby agree that Defendants shall do the following:

13 **A. Project Description**

14 The City shall create a Functional Needs Annex to its Mass Care and Shelter Plan, which
15 will specifically address the needs of persons with disabilities regarding emergencies. For the
16 specific obligations of Defendants under this Functional Needs Annex, see attached and
17 incorporated **Appendix A**.

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19 **IV. REPORTS AND MONITORING**

20 **A. Implementation Period**

21 Defendants shall accomplish all of the specific tasks set forth in **Appendix A**, according
22 to the timeline established therein. Every one-hundred and twenty (120) days until the end of the
23 Implementation Period, the City shall provide a report setting forth a prospective plan of projects
24 the City shall undertake to make Mass Care and Shelter accessible in the upcoming months,
25 totaling three such reports in all. In addition, these reports shall describe the actual work done to
26 implement this Agreement during the previous 120-day period. In addition to summaries of
27 work done by the City, the periodic reports will also include:

28

- a. A list of updates to the City's primary and secondary emergency shelter lists including summaries of work done to ensure access or remove access barriers at existing shelter sites.
- b. Summary of the progress made to implement/put into effect each component of the Functional Needs Annex.
- c. Identification of any actual or anticipated problems or delays in implementation.

B. Copies of All Reports Generated In Compliance With This Agreement Shall Be Promptly Provided to Plaintiffs' Counsel

The reports described above shall be provided to Plaintiffs' Counsel.

C. Inspections By An Agreed-Upon Monitor

1. Selection of a Monitor

During the Implementation Period, Christine Calabrese of the City's ADA Programs Division will be responsible for monitoring the City's compliance with this Agreement. If Ms. Calabrese should become unavailable during this period to complete her work as monitor, Plaintiffs' Counsel shall have the right to propose an external consultant to be retained by the City to fulfill the monitoring function. If at any time the Parties do not agree on a consultant to serve as the monitor, each party shall propose a qualified candidate to Magistrate Judge Laporte, and the Court will decide who will serve as the monitor.

2. Monitoring Process

If an external consultant is retained by the City to fulfill the monitoring function during the Implementation Period, then the consultant will review the three reports required above, as well as any architectural barrier removal work that was conducted during the previous 120-day period to ensure accessibility at primary and secondary emergency shelter sites. At the end of a 30-day review period, the consultant will produce a report containing his or her findings to the city and to Plaintiff's Counsel; the City will have 30 days thereafter to remedy or make provision for removal of any identified remaining barriers or else to determine that there is a dispute regarding such barriers at any specific location.

1 **D. Costs of Monitoring Paid By City of Oakland**

2 The costs of monitoring, including attorneys' fees incurred by Plaintiffs' counsel to
3 review all reports, shall be paid by the City of Oakland.

4 **E. Maintenance and Updating Period**

5 After the Implementation Period ends, either twelve (12) months after the Effective Date
6 of this Agreement or otherwise as determined by the Court, the Maintenance and Updating
7 Period shall begin and continue for three and one-half (3-1/2) years. During this period, the City
8 shall ensure that comparable review and reporting concerning the effectiveness and accuracy of
9 accessibility work at emergency shelters takes place through continued internal monitoring, and
10 that the Functional Needs Annex continues to be implemented and maintained. Internal
11 monitoring used by the City shall generate reports at least semi-annually for this three and one-
12 half-year period, and Plaintiffs' Counsel shall be provided a copy of these reports within 45 days
13 after the end of the period covered by such documents. There shall be no Monitor during the
14 Maintenance and Updating Period.

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16 **V. DISPUTE RESOLUTION**

17 **A. Jurisdiction**

18 The Court will retain jurisdiction to enforce the terms of this Settlement Agreement for
19 the duration of the Settlement Agreement. The Parties agree to request that this authority be
20 delegated to Magistrate Judge Laporte in accordance with 28 U.S.C. § 636(c). Should
21 Magistrate Judge Laporte become unavailable at any time during the Compliance Period, the
22 Parties request that another Magistrate Judge be assigned authority over this matter.

23 **B. Dispute Resolution**

24 Except as otherwise set forth herein, all disputes concerning compliance with this
25 Agreement shall be resolved as follows:

26 1. The Parties will first meet and confer in order to attempt to resolve the
27 dispute directly.

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BERKELEY, CALIFORNIA 94704-1204
(510) 665-8644

1 2. If the Parties cannot resolve a dispute directly, they jointly will request a
2 meeting with Magistrate Judge Larson, or his designee, who will attempt to mediate the dispute.

3 3. Should mediation with Magistrate Judge Larson prove unsuccessful, either
4 Party can bring a motion to enforce the Settlement Agreement before Magistrate Judge Laporte
5 for a binding final determination.

6 **C. Fees and Costs for Dispute Resolution**

7 1. Fees and costs incurred in the resolution of any disputes will be awarded
8 in accordance with the standards set forth in *Christianberg Garment Co. v. EEOC*, 434 U.S. 412
9 (1978).

10 2. If the Parties are able to settle the dispute through the meet and confer
11 process, the fees and costs will be paid by the City.

12 3. If the dispute progresses to mediation or an enforcement motion, any fees
13 and costs awarded will be paid from separate funds, not the funding allocated to the obligations
14 in Appendix A.

15
16 **VI. MISCELLANEOUS**

17 **A. Project Coordinator**

18 The City shall designate a project coordinator to serve as an administrative liaison to
19 Plaintiffs' Counsel regarding Defendants' compliance with this Agreement. The project
20 coordinator shall be responsible for coordinating and providing all reports required by this
21 Agreement. The project coordinator will also have authority to collect information concerning
22 Defendants' obligations and actions regarding compliance with this Agreement and to respond to
23 requests for information or other documents as provided in this Settlement Agreement.

24 **B. Dismissal**

25 Within 30 days of the Effective Date of this Agreement, Plaintiffs' Counsel shall file a
26 signed form of Request for Dismissal, except that the Court will retain jurisdiction to enforce the
27 settlement and to determine attorneys' fees.

28 **C. Entire Agreement**

1 This Settlement Agreement contains the entire agreement between the Parties regarding
2 access to Mass Care and Shelter in the City of Oakland. No modifications or limits will be
3 binding on the Parties unless expressly provided for in this Agreement or made by writing signed
4 by all Parties. This Agreement expresses the complete and final understanding with respect to
5 the subject matter of this Agreement. The Parties hereto understand and agree that the terms of
6 this Agreement supersede any prior discussions, understandings, or agreements between them
7 related to the subject matter hereof.

8 **D. Counterparts**

9 This Agreement may be executed in counterparts, each of which will be considered an
10 original, but all of which, when taken together, will constitute one and the same instrument.

11 **E. Interpretation**

12 The language of this Agreement will be construed as a whole according to its fair
13 meaning, and not strictly for or against any of the Parties. The headings in this Agreement are
14 solely for convenience and will not be considered in its interpretation. Where required by
15 context, the plural includes the singular and the singular includes the plural. This Agreement is
16 the product of negotiation and joint drafting so that any ambiguity will not be construed against
17 any Party.

18 **F. Severability**

19 In the event any portion of this Agreement is deemed to be unenforceable, or is in
20 conflict with applicable law, the remainder of this Agreement will be enforced and will remain in
21 full force and effect.

22 **G. Additional Documents**

23 To the extent any documents are required to be executed by any of the Parties to
24 effectuate this Agreement, each party hereto agrees to execute and deliver such and further
25 documents as may be required to carry out the terms of this Agreement.

26 **H. City Council Approval**

27 This Agreement is expressly subject to and contingent upon the approval of the City
28 Council for the City of Oakland. No later than 30 days after execution of this Agreement by all

1 Parties, counsel for the City of Oakland will present this matter to the City Council in closed
2 session for its approval.

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1 IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates indicated
2 below,

3
4 _____ Date
5 California Foundation for Independent Living Centers
6 By Teresa Favuzzi

7
8 _____ Date
9 Californians for Disability Rights, Inc.
10 By Laura Williams

11 _____ Date
12 City Of Oakland
13 By _____

14 _____ Date
15 Department of Human Services of the City of Oakland
16 By _____

17
18 _____ Date
19 Renee Domingo
20 In her official capacity as Director of the Office of
21 Emergency Services

22 _____ Date
23 Dan Lindheim
24 In his official capacity as City Administrator of the
25 City of Oakland

26 _____ Date
27 Marian Gray

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Audree Jones-Taylor
In her official capacity as Director of the Office of
Parks and Recreation

Date

Office of Emergency Services of the Oakland Fire
Department
By _____

Date

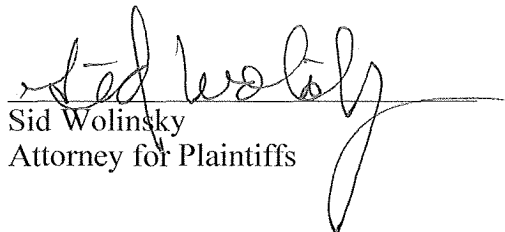
Office of Parks and Recreation of the City of Oakland
By _____

Date

Andrea Youngdahl
In her official capacity as Director of the Department
of Human Services

Date

Approved as to form:



Sid Wolinsky
Attorney for Plaintiffs



Date

Approved as to form:

Steve Rowell
Attorney for Defendants

Date