

EXECUTION COPY

SETTLEMENT AND RELEASE AGREEMENT

February (Cal)

This Settlement and Release Agreement (“Agreement”) is hereby entered into on January 1, 2018, by and between Plaintiffs, Beacon Hill Civic Association, Inc. (the “BHCA”), Ania Camargo, Linda Cox, Paul Greenfield, Jane Kelley, Henry Lee, Sharon Malt, James McNeely, Susan McWhinney-Morse, Jane Stahl, and Benjamin Starr (“Plaintiffs”), and Defendants, City of Boston, Department of Public Works of the City of Boston, and William Christopher, as Commissioner of the Inspectional Services Department of the City of Boston (“City”) (each a “Party,” collectively, the “Parties”) as follows:

WHEREAS, the Parties are involved in the lawsuit Beacon Hill Civic Association, Inc., et al. v. City of Boston, et al., SUCV2014-02568, final judgment for which entered in the Superior Court on May 17, 2017 and for which a Notice of Appeal was filed by the Plaintiffs on June 14, 2017 (“the Appeal”); and,

WHEREAS, the Parties desire to resolve their differences and the issues raised in the lawsuit without further litigation or adjudication, and to work cooperatively to promote accessibility on and around Beacon Hill; and

WHEREAS, the Parties recognize that nothing in this Agreement or the fact that the Plaintiffs and the City executed it shall be considered or construed as an admission of any violation by the City of any federal, state, or local statute or regulation or common law obligation; and

WHEREAS, the Parties have agreed that it is in their mutual interests to resolve this matter upon the terms and conditions more fully set forth herein; and

WHEREAS, in the next three to five years, the City intends to undertake capital improvements in Beacon Hill including repaving roads and constructing curb ramps in order to

EXECUTION COPY

comply with the Americans with Disabilities Act and Massachusetts Architectural Access Board regulations, and in doing so, has determined that it will use three basic ramp designs: “full design” refers to a concrete ramp with a tactile pad, concrete flares, and a concrete level landing; “medium design” refers to a concrete ramp with a tactile pad and concrete flares; and “small design” refers to a tactile pad with a concrete border set in brick;

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, and for no additional consideration, the Parties covenant and agree as follows:

I. Execution and Release of Claims: In exchange for the City of Boston’s agreement as detailed in Section III below, the Plaintiffs hereby remise, release and discharge the City from any and all claims, demands, rights, actions or causes of action and any and all claims, demands, and liabilities of any kind whatsoever, whether known or unknown, in law and/or equity, which Plaintiffs now have, ever had or hereafter may claim to have had, from the beginning of time to the date of this Agreement, arising out of or in any way related to the claims set forth in the lawsuit or the Appeal, except as they relate to enforcement of this Agreement.

II. Dismissal of the Lawsuit: Upon the signing of this Agreement and pursuant to Mass. R. A. P. 29(a), the Parties shall file a Joint Stipulation of Dismissal in the form attached hereto as Exhibit A, which dismisses the Appeal in its entirety with prejudice and with no costs to any Party.

III. Settlement: In consideration for the dismissal of the Appeal, Parties agree that:

1. The City of Boston Public Works Department (“PWD”) will present its ramp plan for the Historic Beacon Hill District (the “District”) to the BHCA at least annually and, at the BHCA’s request, will investigate specific locations with the BHCA. In addition, PWD will investigate each location included in the ramp plan, and where possible from an engineering

EXECUTION COPY

perspective, will regrade the adjacent street in order to shift the design of the adjacent ramp from a “full” or “medium” design to the “small” design. PWD will consult with the BHCA with respect to such street regrading, which shall be deemed to have happened if any proposed regrading is presented as part of PWD’s annual ramp reconstruction plan. PWD may also investigate other innovative design solutions that might eliminate the need for ramps where possible.

2. PWD will use red-colored cast iron tactile pads instead of plastic tactile pads in the District if the BHCA contributes the difference between the cost of installing the cast iron pads and the cost of installing plastic tactile pads to a dedicated fund. This will require the City Council to approve an order to accept and expend funds for this purpose, which the Mayor’s Office and PWD will recommend.

3. PWD will work with the BHCA to fashion and implement non-standard design solutions for ramps at uniquely historical spots, including Acorn Street, Louisburg Square, and the cobblestone driveway on Mt. Vernon Street above Louisburg Square. PWD will also work with the BHCA to consider non-standard design solutions for ramps at various cobblestone driveways and alleys (not streets) in the District. In creating non-standard designs, the City is ultimately responsible for engineering and for ensuring a safe, accessible path of travel.

IV. Attorneys’ Fees and Costs: Each Party shall bear its own attorneys’ fees and costs arising from the Appeal or from any claims that were or could have been asserted in the Appeal.

V. Formal Matters: This Agreement is in settlement of disputed claims and is intended by the Parties as a final expression of their agreement and as a complete and exclusive statement of the terms thereof. If one or more provisions of this Agreement is held to be invalid,

EXECUTION COPY

illegal or unenforceable, the validity, legality, and enforceability of the remaining provisions will not be affected or impaired thereby. The Plaintiffs represent and warrant that they are the sole and lawful owners of all right, title and interest in and to their claims actually or potentially arising out of or in any way related to the disputes referred to in this Agreement, and that they have not previously assigned, transferred, or purported to assign or transfer any such claims. This Agreement shall supersede all prior understandings, oral and written, heretofore had between the Parties in connection with this Appeal.

VI. Binding Effect: This Agreement shall inure to the benefit of and shall be binding upon the successors and assigns of the Parties hereto to the fullest extent permitted by law.

VII. Governing Law: This Agreement shall be construed in accordance with, and be governed by, the laws of the Commonwealth of Massachusetts without giving effect to the conflict of laws provisions thereof or of any other jurisdiction.

VIII. Authority: The Parties' respective signatories to this Agreement represent and warrant that they have full and complete authority to bind each respective Party to all of the terms, provisions and contents of this Agreement.

[Signatures appear on the following page]

EXECUTION COPY

IN WITNESS WHEREOF, the signatories, being fully authorized and empowered to bind the Parties to this Agreement, have authorized and executed this Agreement on the date set forth below their respective signatures.

Plaintiffs:

Beacon Hill Civic Association, Inc., Ania Camargo, Linda Cox, Paul Greenfield, Jane Kelley, Henry Lee, Sharon Malt, ~~James McNeely~~, Susan McWhinney-Morse, Jane Stahl, and Benjamin Starr,

ARK

By their attorney:


Arthur P. Kreiger, BBO # 279870
ANDERSON & KREIGER LLP
50 Milk Street, 21st Floor
Boston, MA 02109
617.621.6540
AKreiger@andersonkreiger.com

Dated: January 30, 2018

Defendants:

City of Boston, Department of Public Works of the City of Boston, and William Christopher, as Commissioner of the Inspectional Services Department of the City of Boston,

By their attorneys,
Eugene L. O'Flaherty
Corporation Counsel


Catherine Lizotte, BBO # 666468
Senior Assistant Corporation Counsel
City of Boston Law Department
One City Hall Square, Rm. 615
Boston, MA 02201
617.635.3215
Catherine.lizotte@boston.gov

Dated: January 1, 2018

February

EXECUTION COPY

Exhibit A - Stipulation of Dismissal

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPT.
DOCKET NO: SUCV2014-02568

BEACON HILL CIVIC
ASSOCIATION, INC., ANIA
CAMARGO, LINDA COX,
PAUL GREENFIELD, JANE
KELLEY, HENRY LEE,
SHARON MALT, JAMES
MCNEELY, SUSAN
MCWHINNEY-MORSE, JANE
STAHL, AND BENJAMIN
STARR,

Plaintiffs,

v.

CITY OF BOSTON,
DEPARTMENT OF PUBLIC
WORKS OF THE CITY OF
BOSTON, and WILLIAM
CHRISTOPHER as
COMMISSIONER OF THE
INSEPCIONAL SERVICES
DEPARTMENT OF THE CITY
OF BOSTON,

Defendants.

VOLUNTARY STIPULATION OF DISMISSAL

Now come the Beacon Hill Civic Association, Inc. (the "BHCA"), Ania Camargo, Linda Cox, Paul Greenfield, Jane Kelley, Henry Lee, Sharon Malt, James McNeely, Susan McWhinney-Morse, Jane Stahl, and Benjamin Starr, Plaintiffs in the above-captioned matter ("Plaintiffs"), and City of Boston, Department of Public Works of the City of Boston, and

EXECUTION COPY

William Christopher, as Commissioner of the Inspectional Services Department of the City of Boston, Defendants in the above-captioned matter (“Defendants”), and hereby stipulate, pursuant to Mass. R. A. P. 29(a), to dismiss the Plaintiffs’ appeal (for which a Notice of Appeal was filed in this Court on June 14, 2017), with prejudice and without costs, based on the grounds that the parties have agreed to dismiss the appeal.

Respectfully submitted,

PLAINTIFFS,

BEACON HILL CIVIC ASSOCIATION, INC., ANIA CAMARGO, LINDA COX, PAUL GREENFIELD, JANE KELLEY, HENRY LEE, SHARON MALT, JAMES MCNEELY, SUSAN MCWHINNEY-MORSE, JANE STAHL, AND BENJAMIN STARR

By their attorney:



Arthur P. Kreiger, BBO # 279870
ANDERSON & KREIGER LLP
50 Milk Street, 21st Floor
Boston, MA 02109
617.621.6540
AKreiger@andersonkreiger.com

Dated: January 30, 2018

Respectfully submitted,

DEFENDANTS,

CITY OF BOSTON, DEPARTMENT OF PUBLIC WORKS OF THE CITY OF BOSTON, AND WILLIAM CHRISTOPHER AS COMMISSIONER OF THE INSEPCIONAL SERVICES DEPARTMENT OF THE CITY OF BOSTON

By their attorney:



Catherine Lizotte, BBO # 666468
Senior Assistant Corporation Counsel
City of Boston Law Department
One City Hall Square, Rm. 615
Boston, MA 02201
617.635.3215
Catherine.lizotte@boston.gov

Dated: January 1, 2018

February