

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

RICHARD FRAME, WENDELL DECKER, :
SCOTT UPDIKE, J.N., a minor :
By his next friend and mother, :
GABRIELA CASTRO, MARK HAMMAN :
and JOEY SALAS, :
 :
 :
Plaintiffs :
 :
v. : CIVIL ACTION NO. 4:05-CV-470-Y
 :
 :
THE CITY OF ARLINGTON, :
a Municipal Corporation :
 :
 :
Defendants :

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into this ___ day of _____, 2012, by and between Plaintiffs Richard Frame, Wendell Decker, Scott Updike, Juan Nunez, a minor, by his next friend and mother, Gabriela Castro, and Joey Salas (“Plaintiffs”), Gabriela Castro, together with Plaintiffs’ heirs, executors, estates, administrators, and assigns (collectively sometimes referred to as the “Settling Parties”), and Defendant City of Arlington, Texas (the “City”), all parties to this lawsuit collectively referred to herein as the “Parties”).

I. BACKGROUND AND PARTIES

1. This lawsuit was initiated by Plaintiffs’ Original Complaint filed on July 22, 2005, under Title II of the Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. §§ 12181-12189, and its implementing regulations, 28 C.F.R. pt. 35, and Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. §794a (“Rehabilitation Act”). Reference to the ADA in this Agreement includes reference to the Rehabilitation Act and the regulations under both the ADA and the Rehabilitation Act unless otherwise specifically noted.
2. The original complaint was filed by Richard Frame and Wendell Decker, both at the time residents of Defendant City of Arlington. Plaintiff Scott Updike was added in the Second Amended Complaint. Plaintiffs Juan Nunez, a minor, by his next friend and mother, Gabriela Castro, Mark Hamman and Joey Salas were added in the Fourth Amended Complaint. The plaintiffs in this case depend on motorized wheelchairs for mobility, and allege that certain inaccessible sidewalks, curb ramps and parking lots make it dangerous, difficult, or

impossible for them to travel to a variety of public and private establishments throughout the City. In this lawsuit, Plaintiffs seek declaratory and injunctive relief, asking the Court to order the City to undertake various tasks to conform with the ADA, and to correct alleged accessibility deficiencies on numerous City streets, sidewalks, curb ramps and parking lots. Plaintiffs also allege that the City's policies and procedures concerning the design, construction and maintenance of City streets, sidewalks, curb ramps and parking lots do not ensure compliance with the ADA. In addition to injunctive relief, Plaintiffs seek to recover attorney's fees, expert fees, costs and expenses in this lawsuit.

3. The ADA applies to the City of Arlington because it is a public entity as defined in Title II of the ADA. 42 U.S.C. § 12131; 28 C.F.R. § 35.104.

4. Each of the named Plaintiffs is or was a qualified individual with a disability covered by Title II of the ADA. 42 U.S.C. § 12102(2); 28 C.F.R. § 35.104.

5. The Complaint presently before the Court, and which is resolved by this Agreement, is Plaintiffs' Fourth Amended Complaint, filed August 9, 2007, Docket Item No. 94. In this Agreement, that document is referred to as the "Complaint."

6. The City denies Plaintiffs' allegations, and denies that it intentionally violated Plaintiffs' rights under the ADA. The City filed a dismissal motion as its initial response to Plaintiffs' claims.

7. Granting the City's motion, the Complaint was dismissed by the District Court on March 31, 2008 (Docket Item No. 105) on the grounds that the statute of limitations barred Plaintiffs' claims. The District Court also dismissed Plaintiffs' claims alleging harm as to the City's compliance with transition plan requirements under the ADA. Plaintiffs appealed the District Court's dismissal based on the statute of limitations, but did not appeal the dismissal of their claim concerning the City's transition plan.

8. On September 15, 2011, the District Court's dismissal was reversed and the Complaint was reinstated by the United States Court of Appeals for the Fifth Circuit. *See Frame v. City of Arlington*, 657 F.3d 215 (5th Cir. 2011) (en banc), *cert. denied*, 132 S.Ct. 1561 (2012). The Fifth Circuit's decision governs this case and is accepted by the Parties as definitive on the matters that it addresses.

9. After the case was reinstated in the District Court, the City has further answered Plaintiffs' allegations in the Complaint, has denied them, and has asserted various affirmative defenses in response to Plaintiffs' claims. Additionally, on or about October 26, 2011, Plaintiffs filed a suggestion of death regarding Plaintiff Mark Hamman. *See* Docket Item No. 126. Plaintiff Hamman's estate has not been substituted into this case. It is understood and agreed by the Parties that this Agreement resolves the equitable claims asserted by Plaintiff Mark Hamman, or that could have been asserted by Plaintiff Hamman. It is further understood by the Parties that Plaintiff Juan Nunez is now 18 years of age or older and has legal capacity to enter into this Agreement.

10. The Parties desire to enter into this Agreement in order to provide for certain actions by the City and payments by the City to Plaintiffs' counsel in full settlement and discharge of all claims that are the subject of this lawsuit upon the terms and conditions set forth herein.

II. PURPOSES

11. The fundamental purpose of this Agreement is to ensure that Plaintiffs and persons with Mobility Disabilities are provided Mobility Access to the Pedestrian Rights-of-Way and Parking Facilities in accordance with the ADA. This purpose also serves the public interest, benefits the City by specifying an action plan for achieving ADA compliance, and benefits the Plaintiffs and persons with Mobility Disabilities whose Mobility Access within the City will be facilitated.

12. The Parties agree that they have entered into this Agreement as a complete compromise and in full satisfaction of all matters that are in dispute between the Parties, or that could have been in dispute, involving disputed issues of law and fact raised in this lawsuit. The Parties stipulate that this Agreement is entered into in good faith as a compromise of doubtful and disputed claims, and neither the obligations and payment provided for herein nor anything else contained in this Agreement may be construed as an admission of liability on the part of any of the Parties, since all such liability is expressly denied. This Agreement, therefore, is entered into in order to avoid the delays, uncertainties and costs of further litigation in this matter for all Parties.

13. This Agreement sets forth an agreed twenty-five (25) month time period for the City to achieve compliance with the remediation tasks in Section V, below, within that time period. When compliance is achieved, the City's remediation obligations under this Agreement expires, and the City will maintain its compliance with ADA requirements as set forth herein going forward into the future and in accordance with applicable law.

III. COMPLIANCE PERIOD

14. The City's remediation obligations under this Agreement will occur for twenty-five (25) months from the Effective Date of this Agreement, that is, until _____ or any extension thereof. To the extent that amendments to the Action Plan under Section V.C. are adopted, the City's remediation obligations will be extended until sixty (60) days after the completion of the last remaining remediation task in the Action Plan. This period of time is referred to in this Agreement as the "Compliance Period." The brochure requirement at paragraph 20 and the Policy and Process requirements at paragraphs 27 through 31 shall continue beyond the Compliance Period as stated at paragraph 31.

15. This Agreement is effective upon the Final Approval by the District Court. The date of that approval is referred to in this Agreement as the "Effective Date."

IV. ACTION PLAN

A. Pedestrian Rights-of-Way and Parking Facilities

16. *Curb Ramps and Sidewalks*: Beginning immediately upon the Effective Date of this Agreement, the City will provide curb ramps or other sloped areas complying with the Standards at any Newly Constructed or Altered Facility having curbs or other barriers to entry from a Pedestrian Facility.

17. *Curb Ramps and Sidewalks: Remediation*. Within twenty-five (25) months of the Effective Date of this Agreement, the City will provide accessible Pedestrian Rights-of-Way complying with the Standards at all designated B locations identified on the Survey Lists of the Action Plan ("the Plan") at Section V below.

18. *Parking Facilities*. Within twenty-five (25) months of the Effective Date of this Agreement, the City will provide accessible Parking Facilities complying with the Standards at all designated B locations identified on the Survey Lists of the Action Plan ("the Plan") at Section V below.

19. *Implementation of the ADA Pedestrian Facility Access Policy and Process ("Policy and Process")*. Within sixty (60) days of the Effective Date of this Agreement, the City will develop and implement the Policy and Process terms, set forth in Section VI below.

B. Public Information

20. Within sixty (60) days, the City shall make available to the public (online and available on paper by mail or phone request in accordance with the Texas Public Information Act) its schedule for work to be done with regard to designated B locations on the Survey Lists of the Action Plan in this Agreement. The City shall also post online and similarly make available on paper a brochure which sets forth the Policy and Process language from Section VI, below, and which brochure shall be set out for distribution in the City's Department of Public Works, and shall be made available to any person submitting a request or complaint under the Policy and Process. Plaintiffs' counsel shall be provided the opportunity to review and comment on the brochure before it is finalized.

V. ACTIONS ON PEDESTRIAN RIGHTS-OF-WAY AND PARKING FACILITIES

A. Source for Actions

21. The Parties agree that the source material for the activities described in this Section V is the list of specific locations set forth in the Complaint, and (where not repeated from the Complaint), the list of locations included in the survey conducted by Plaintiffs' consultant, ADAAG Consulting Services, LLC ("ACS"), of Dallas, Texas, titled, *City of Arlington Public Rights-of-Way Survey*, dated October 31, 2007, Report No. ECPRW-7209, which is referred to in this Agreement as the "ACS Survey." The locations set forth in the Complaint and the ACS Survey are incorporated herein by reference, but are not attached to this Agreement.

B. Required Actions

22. The City has reviewed all locations listed in the Complaint and the ACS Survey and, after consultation with, and agreement by, Plaintiffs has prepared four (4) Survey Lists in connection with this Agreement. For verification purposes, on Plaintiffs' requests from time to time, documentation of Registered Accessibility Specialist ("RAS") certifications for specific designated B locations on the Survey Lists will be provided to Plaintiffs' counsel within thirty (30) days of the request. The four (4) Survey Lists are entitled "Survey List 1," "Survey List 2," "Survey List 3," and "Survey List 4," and are attached to this Agreement. The following letter designations shown on the attached Survey Lists are agreed upon by the Parties, as follows:

- a. Designation A ("Completed") are those locations at which no further remediation action by the City under this Agreement is required because, for each location, City compliance with the ADA is evidenced by appropriate certification by a RAS, documented through the State Department of Licensing, independently of the City, which certification has been made available to Plaintiffs, or are locations otherwise agreed upon by the Parties to be accessible. The Parties agree that the locations designated as A are accessible Newly Constructed or Altered Facilities that comply with the Standards.
- b. Designation B ("Remediation") are those locations at which the Parties agree that the City will take action to remedy and achieve compliance with the Standards during the Compliance Period under this Agreement. Designated B locations also contain locations which are not necessarily listed in the Complaint or the ACS Survey but which the Parties have agreed that the City will remediate during the Compliance Period, without a determination by the Parties on whether the Standards require remediation, as further settlement of Plaintiffs' claims in this lawsuit. The City will perform its obligations as to B designated remediation locations within the Compliance Period and in accordance with the Schedule in the Action Plan. City compliance with the ADA will be evidenced by appropriate certification by a RAS, documented through the State Department of Licensing, independently of the City, which certification will be made available to Plaintiffs.
- c. Designation C ("Not Included") are those locations that are either not under City Jurisdiction or are Existing Facility locations, and are not otherwise designated as B locations.

C. Action Plan

23. The City will establish an Action Plan within thirty (30) days of the Effective Date of this Agreement. The Action Plan, developed in consultation with the

Parties' legal counsel, will include dates for achievement of the City's remediation and compliance work with each designated B location.

24. It is understood that, given the sometimes uncertain nature of construction activities (*e.g.*, weather delays), compliance dates in the Action Plan may be reasonably amended by the City. Notice of any such amendment for an item shall immediately be provided to Plaintiffs' Counsel. The Action Plan will be kept current and will include every original and amended compliance date for each item. The City will use its best efforts to complete the work shown for designated B locations within the Compliance Period. If the work is not completed within the Compliance Period, and the parties cannot agree on an extension of the Compliance Period within thirty (30) days after the end of the Compliance Period, the Parties shall resolve the dispute in accordance with the Dispute Resolution provisions under this Agreement.

25. The City's work on designated B locations will be performed within the Compliance Period, except as may be modified pursuant to this Section V. The City will provide proposed time-tables on projects and priorities, and the Parties understand that such time-tables are subject to reasonable changes as may be necessary as a result of City Council direction to address urgent City obligations and/or fiscal responsibilities. Such changes shall not affect the Compliance Period as the final deadline for compliance.

VI. ADA PEDESTRIAN FACILITY ACCESS POLICY AND PROCESS

26. The City adopts the following *ADA Pedestrian Facility Access Policy and Process* set forth in Paragraphs 27 through 32 of this Section VI of this Agreement. The intention of the Parties is that, for Plaintiffs and for the City, the Policy and Process set forth below benefits the public interest generally and, specifically, the interests of the Parties.

27. The City recognizes that it is in the interest of all its citizens and visitors, and of all its businesses and organizations, that people with mobility disabilities have access to the City's facilities, including its sidewalks, curb ramps and parking facilities, in accordance with applicable law. These are not only rights under applicable law but are opportunities which benefit the economic, social and civic life of the City. This policy is intended to facilitate the participation of people with mobility disabilities in the City, in business and education, and in family life.

28. The City is committed to abiding by all requirements of the ADA. The City welcomes and requests input from persons with disabilities regarding the accessibility of City sidewalks, including, for example, requests to add curb cuts at particular locations or removal of obstacles. Input may be provided to the City in person, by mail or telephone, online via the internet, and through public meetings. City contact information shall be available from the City's internet website. The written brochure embodying this policy will include the relevant City contact information.

29. Action by the City under this Agreement for remediation of the locations identified by citizens under this Section VI will be prioritized by the City in accordance with the following general principles:

- a. Locations applicable to a Plaintiff will have highest priority, notwithstanding the prioritization list in the next subsection;
- b. Locations established for remediation under the “request for action or complaints” provisions in paragraph 32, below.
- c. After locations under “a” and “b,” priority in the following sequence will be given by the City to remediation of Pedestrian Rights-of-Way and Facilities serving: (i) government offices and facilities, (ii) important transportation corridors, (iii) places of public accommodation such as commercial and business zones, and (iv) locations serving other areas such as residential neighborhoods and undeveloped areas of the City.
- d. Consideration by the City will also be given to the severity of existing barriers and overall efficiency of remediation project work. This means, for example, that work done for remediation under Section V of this Agreement may be expanded to address additional severe accessibility barriers nearby, even if such barriers are not located in a high priority area, if the City determines that this would be an efficient use of its resources. This also means that the City can determine what is the most appropriate use of funds to address severe barriers in lower priority areas rather than to remove all barriers in higher priority areas before advancing to the next priority level.

30. When the City receives input or suggestions from members of the public with regard to pedestrian facility locations under City Jurisdiction, the City will send an acknowledgement within ten (10) days including, where appropriate, either a substantive response or noting referral to the City’s ADA Coordinator who will address and provide further response to the input or suggestion.

31. The City is committed to providing a prompt response to all requests for action or complaints regarding accessibility, and on all submissions regarding ADA compliance. The City is committed to making serious efforts to resolve all requests and urges anyone who may be concerned to contact the City so that all issues may be resolved quickly and fairly. The City’s response will be consistent with the policies adopted herein. When the City receives a request for action or a complaint with regard to facility accessibility at a location under the City’s Jurisdiction:

- a. The City will send an acknowledgement within ten (10) days, and will include a copy of this Policy and Process in the acknowledgement.
- b. The City will carefully, and on a case-by-case basis, consider the request or complaint, based on this Policy and Process, and the priorities set forth above.

- c. When the request or complaint is for action which would remedy a violation of the Standards at a location under the City's Jurisdiction, and the City agrees that there is or may be a violation of the Standards, the City will inform the person who submitted the issue, and will make compliance a high priority, and will designate a prompt target date for achieving remediation and/or compliance. The City's ADA Coordinator will track the City's action with regard to the request or complaint. The City will provide a substantive response to the request or complaint within twenty-one (21) days of the original submission of the request or complaint. The remediation and/or compliance under this sub-paragraph shall be completed within 120 days of the original request or complaint, subject to available City funding and compliance with the City's obligations under art. 11, §§ 5 and 7 of the Texas Constitution, or subject to an existing schedule for remediation and/or compliance. If lack of City funding issues, or issues under art. 11, §§ 5 and 7 of the Texas Constitution, arise, then the complainant and the City shall agree on an extension to the 120-day time period.
- d. When the request or complaint is for action and the City does not find that there is or may be a violation of the Standards or the location is not under City Jurisdiction, the City will inform the person who submitted the issue of the City's determination. The City will provide its response to the request or complaint within twenty-one (21) days of the original submission of the request or complaint.
- e. If a person who submits a request or complaint is not satisfied with the City's response or planned action, or with the implementation of a planned action, or the timeliness of a response, then the person may bring the situation to the attention of the City by calling or writing to the City's ADA Coordinator, who will offer a face to face meeting with the complaining person, at an accessible location agreed upon between the ADA Coordinator and the complaining person, to discuss and seek to resolve any issues, and to make an agreed plan to implement any resolution reached, if possible.

The City recognizes that sidewalk access issues are very important to people with Mobility Disabilities and will endeavor to increase police sensitivity to these issues and the needs of wheelchair users. The Arlington Police Department will be informed of these policies and procedures so that they may alert citizens to the mechanisms by which requests for action may be made.

Nothing in these Policies and Procedures is to be construed as an agreement by the City to repair or remediate accessibility issues as to sidewalks, curb ramps, parking lots, or other facilities that are not under City Jurisdiction. Nothing in these Policies or Procedures is to be construed as a restriction or waiver of the right of any individual to seek relief for an alleged violation of the ADA or Rehabilitation Act.

These Policies and Procedures shall remain in effect and shall survive expiration of this Agreement as a continuing public service by the City, and are subject to amendment as may be necessary to further facilitate the intent of this Agreement.

VII. IMPLEMENTATION GENERALLY

32. During the Compliance Period, the City shall make available a copy of this Agreement to the public via the City's internet website, and shall make this Agreement available on paper by request submitted under the Texas Public Information Act.

33. The Plaintiffs, by Plaintiffs' Counsel, may review the City's compliance with this Agreement at any reasonable time. Upon reasonable request, the City will provide reasonable access to Plaintiffs' Counsel to information regarding the City's compliance with this Agreement.

34. Failure by the Parties to enforce this entire Agreement or any of its provisions or deadlines shall not be construed as a waiver of the Parties' right to enforce other deadlines and provisions of this Agreement.

35. This Agreement does not purport to remedy any other potential violations of the ADA that are not included on the attached Survey Lists. This Agreement does not affect or alter the City's continuing responsibility to comply with all aspects of the ADA, except as set forth in this Agreement.

36. The City shall designate a person to serve as an administrative liaison to Plaintiffs' Counsel regarding the City's compliance with this Agreement. The liaison shall be responsible for coordinating and providing all reports required by this Agreement.

VIII. REPORTS AND MONITORING

37. *Quarterly Reports.* Within sixty (60) days of the Effective Date of this Agreement, and each calendar quarter after that, the City will file with Plaintiffs' Counsel a report on the City's implementation of and compliance with this Agreement, and will make available on the City's website a spreadsheet of information regarding the progress of remediation of designated B locations from the Survey Lists.

38. *Contents of Quarterly Report.* The City's quarterly reports under this Section VIII of this Agreement shall reference the spreadsheet information on the City's website regarding the City's progress of work as to designated B locations, including the status of Certification by Registered Accessibility Specialist, and other evidence of actions taken by the City under the Policy and Process provisions of this Agreement. The City's quarterly reports will also include information from the City's ADA Coordinator regarding the City's compliance with ADA requirements, including, for example, a summary and listing of all written complaints or requests for removal of particular barriers received since the prior quarterly report, summaries of work done to ensure access and/or remove access barriers in conjunction with new construction and or alterations along Pedestrian Facilities, a description of any challenges to compliance and the

City's actions and plans to address those challenges. The City's obligation to provide quarterly reports to Plaintiffs' counsel concludes at the end of the Compliance Period.

IX. RELEASE

39. In order to achieve a full and complete release of the City of Arlington, Plaintiffs hereby fully, finally, and forever release, settle, compromise, and discharge any and all disputes and claims arising from or related to any and all claims for injunctive or declaratory relief under the Americans with Disabilities Act, and the Rehabilitation Act of 1973, and Section 504 of the Rehabilitation Act of 1973, as amended, involving the subject matter of this Agreement, which release includes in its effect all officers, directors, employees, partners, agents, representatives, attorneys, insurers and successors and assigns of the City of Arlington ("Released Parties"). The release of claims includes claims which a Plaintiff does not know or suspect to exist in his or her favor against the Released Parties as of the Effective Date of this Agreement. The Plaintiffs each waive all rights and benefits afforded by any statutory law as to known or unknown claims, and do so understanding the significance of said waiver.

40. The Settling Parties acknowledge and agree that the release and discharge set forth above is a general release. Each Plaintiff knowingly waives, and assumes the risk of, any and all claims of any nature whatsoever, which exist as of this date but which such Plaintiff does not know or suspect to exist, including, without limitation, claims which, if known, would have materially affected such Plaintiff's decision to enter into this Agreement. Each Plaintiff hereby confirms that he understands that facts relating to the allegations that are the subject of this lawsuit may turn out to be other than or different from the facts now known or believed by such Plaintiff to be true, and each Plaintiff knowingly assumes that risk and acknowledges and agrees that his Agreement shall remain in effect and shall not be subject to termination or revocation by reason of any such different facts.

X. DISPUTE RESOLUTION

The Parties shall negotiate in good faith to resolve any Dispute and agree to strict compliance with the following procedures for Dispute Resolution.

A. *Meet and Confer Obligation*

41. In the event that a Dispute arises between any Plaintiff and the City, the Party asserting the Dispute or the Party's designee, shall notify counsel for the other Party to the Dispute before seeking further enforcement or judicial resolution of the Dispute. Notification shall be in writing and shall be served by mail, facsimile or hand-delivery.

42. The Party asserting the Dispute shall provide the other Party with a detailed statement of the Dispute ("Statement") to allow the Parties to attempt to resolve the Dispute. That Statement will at a minimum include:

- a. A description of the term(s) of this Agreement in dispute and the

corresponding section number(s) of this Agreement;

- b. Where applicable to the claim, a description of all locations, features, policies, practices and/or conditions at issue in the Dispute, the dates on which any particular locations, features, policies, practices and/or conditions allegedly were in violation of the term(s) of this Agreement, and the dates that the Party encountered and/or learned of such locations, features, policies, practices and/or conditions, along with any photos, videos, and diagrams relevant to such locations, features, policies, practices and/or conditions available to or in the possession of the complaining Party; it is not required that the complaining party create such photos, videos or diagrams;
- c. Where applicable to the claim, a detailed statement of how each location, feature, policy, practice and/or condition is in violation of the term(s) of this Agreement; and
- d. Where applicable to the claim, the specific relief sought by the Party. For each location or feature, a statement of the change(s) that the Party demands, or if change to policy, practice or condition is sought the specific policy, practice or condition that the Party seeks to be modified or rectified.

43. Within thirty (30) days of receipt of a Dispute Statement, as outlined above, the Parties shall meet and confer in an attempt to resolve the Dispute. The parties may meet in person, by teleconference or videoconference. If the Parties agree that the disputed matter requires action to bring the responding party into compliance with the terms of this Agreement, the responding party shall be given a reasonable opportunity and sufficient time to cure the defect in its performance of the obligations under this Agreement.

B. Enforcement Proceedings – Mediation

44. If the Parties cannot resolve the Dispute under Subsection A of this Section, above, then the Parties agree to participate in mediation as a condition precedent to binding dispute resolution. A request for mediation shall be made in writing, delivered to the other Party to this Agreement, and the Parties shall have fifteen (15) days after receipt of a request for mediation to agree on a mediator. If the Parties are unable to agree on a mediator within fifteen (15) days, each Party shall have an additional five (5) days to designate a mediator. The two mediators so designated shall then designate a third unbiased mediator who shall be the mediator to conduct the mediation. The decision of the mediator(s) shall be nonbinding. The City agrees to pay the mediator's fees in an amount not to exceed \$3,000.00, provided that the mediator is a licensed attorney in Tarrant County, Texas. The mediation shall be held in an accessible location within the City, unless another location is mutually agreed upon by the Parties. Agreements reached in mediation shall be enforceable as settlement agreements in the federal court hearing matters related to parties in Tarrant County, Texas.

C. Enforcement Proceedings – Legal Action

45. If the Parties cannot resolve the Dispute under Subsections A or B of this Section, above, then the Party asserting the Dispute may bring appropriate legal action in the federal court hearing matters related to parties in Tarrant County, Texas, as the agreed upon method of binding dispute resolution.

XI. MODIFICATION

46. This Agreement may not be changed, altered, amended or modified, except in writing and signed by each of the Parties hereto.

XII. ATTORNEYS' FEES AND COSTS

47. Upon the Effective Date of this Agreement, the City will pay attorney's fees and costs to Plaintiffs' counsel in the following amounts: (1) to Plaintiffs' former counsel, de la O, Marko, Magolnick & Leyton: \$249,557.99; (2) to Plaintiffs' current counsel, David Ferleger, \$59,964.00; and (3) to Plaintiffs' local counsel, John Nevins, \$800.00. By the City's payment to all Plaintiffs' counsel as provided under this Section, Plaintiffs and all Plaintiffs' counsel do hereby completely release, acquit and forever discharge the City, and its past, present and future officers, attorneys, agents, representatives, employees, predecessors and successors in interest, assigns, and insurers, and all other persons or entities which are or might be claimed to be liable to the Plaintiffs and all Plaintiffs' counsel as a consequence of the Plaintiffs' claim for attorney's fees and costs that are the subject of this lawsuit, from any and all claims, demands, actions, causes of action for attorney's fees and costs, of any and every kind and description, whether known or unknown, now existing or hereafter arising, as a result of or by reason of the allegations that are the subject of this lawsuit.

XIII. DISMISSAL

48. Upon the Effective Date of this Agreement, the Parties shall file with the District Court a joint request for dismissal of this action with prejudice.

XIV. COURT APPROVAL

49. This Agreement shall be subject to approval by the District Court. Within ten (10) days of the execution of this Agreement by all Parties, the Parties will jointly move for approval of this Agreement in the District Court. This Agreement, when approved by the District Court, shall become effective and shall be binding upon the Parties; it shall extinguish all the Parties' claims; and it shall constitute the final and complete resolution of all issues in dispute between the Parties in this lawsuit.

XV. OTHER PROVISIONS

A. Counterparts

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

B. Interpretation

51. The language of this Agreement will be construed as a whole according to its fair meaning, and not strictly for or against any of the Parties. The headings in this Agreement are solely for convenience and will not be considered in its interpretation. Where required by context, the plural includes the singular and the singular includes the plural, and reference to one gender includes reference to the other gender.

C. Severability

52. If any term of this Agreement is determined by any court of competent jurisdiction to be unenforceable, the other terms of this Agreement shall nonetheless remain in full force and effect, provided, however, that if the severance of any such provision materially alters the rights or obligations of the Parties, the Parties shall engage in good faith negotiations in order to adopt amendments to this Agreement as may be necessary to restore the Parties as closely as possible to the initially agreed upon relative rights and obligations.

D. Additional Documents

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

E. City Council Approval

54. It is understood and agreed by the Parties that this Agreement is subject to the approval of the City Council of the City of Arlington, Texas. As soon as possible after execution of this Agreement by the Parties, counsel for the City will present this matter to the City Council for its approval. Counsel for the City will report to Plaintiffs' Counsel in writing as to the City Council's action by no later than the next business day after the City Council's action. Counsel's report of the City Council's action shall be considered dispositive evidence that this contingency has been satisfied.

F. Entire Agreement

55. This document and its attachments contain the entire agreement between the Parties relating to the settlement and transactions contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a Party or such Party's legal counsel, are merged herein. No rights hereunder may be waived except in writing. This Agreement shall be binding upon, shall inure to the benefit of, and shall be enforceable only by the Parties hereto and the respective successors, heirs, executors, administrators, estates, and permitted assigns of any of the Parties.

G. Warranty of Capacity to Execute Agreement

56. Each Plaintiff represents and warrants that: (i) except as otherwise

specifically set forth herein no other person or entity has or has had any interest in the claims, demands, actions, or causes of actions referred to in this Agreement; (ii) such Plaintiff has the sole right and exclusive authority to enter into this Agreement (including granting the releases provided for herein); and (iii) such Plaintiff has not sold, assigned, encumbered or otherwise transferred or conveyed to any other party any of the claims, demands, actions or causes of action referred to in this Agreement or any interest in any such claims, demands, actions or causes of action.

H. Legal and Tax Advice; Comprehension of Agreement

57. In entering into this Agreement, each Plaintiff represents that such Plaintiff has relied solely upon the legal and tax advice of such Plaintiff's own attorneys and other advisers, who are the attorneys and advisers of such Plaintiff's choice, that the terms of this Agreement have been completely read and explained to such Plaintiff by such attorneys and that such terms are fully understood and voluntarily accepted by such Plaintiff.

I. Governing Law

58. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Texas, and applicable federal law of the ADA, the ADA's implementing regulations, and the Rehabilitation Act, and exclusive venue for claims or causes of action related in any way to this Agreement shall be in the federal court hearing matters related to parties in Tarrant County, Texas.

XVI. DEFINITIONS

59. As used in this Agreement, the following terms shall have the meanings ascribed to them in this Section, which the Parties agree are consistent with the provisions of the ADA, including the regulations promulgated thereunder. Except to the extent expressly stated to the contrary, any term not expressly defined in this Section or elsewhere in this Agreement that has an expressly defined meaning in either the ADA or the regulations promulgated thereunder ("Regulations") shall have the meaning ascribed to it by the ADA or said Regulations, in that order of preference. All other terms in this Agreement shall be interpreted according to their plain and ordinary meaning.

60. "Accessible" means and refers to a Facility or a Pedestrian Rights-of-Way, or a portion thereof, that complies with the Standards.

61. "ADA" means and refers to the Americans with Disabilities Act, as codified at 42 U.S.C. § 12101, *et seq*, as amended.

62. "ADAAG" means and refers to the Americans with Disabilities Act Access Guidelines, currently codified at Appendix A to 28 Code of Federal Regulations part 36 and at Appendix A to 49 Code of Federal Regulations part 37, and any amendments/modifications thereto, and are referenced in the Department of Justice's Title II Regulations, Section 35.151(c) of Title 28 of the Code of Federal Regulations.

63. "Alterations" means and refers to changes to a building or facility made by, on behalf of, or for the use of the City that affects or could affect the usability of the building or facility or part thereof. Alterations include, but are not limited to, remodeling, renovation, rehabilitation, reconstruction, historic restoration, changes or rearrangement of the structural parts or elements, and changes or rearrangement in the plan configuration of walls and full-height partitions. Normal maintenance, reroofing, painting or wallpapering, or changes to mechanical and electrical systems are not Alterations unless they affect the usability of the building or facility.
64. "Altered Facility" means and refers to any Facility or Pedestrian Right-of-Way that will have or has had Alterations.
65. "Certification by Registered Accessibility Specialist" means and refers to written approval by a Registered Accessibility Specialist that a Facility or Pedestrian Right-of-Way is Accessible, with such certification provided by and through the Texas Department of Licensing and Regulation.
66. "City" means and refers to the City of Arlington, Texas, Defendant in this lawsuit.
67. "City Jurisdiction" means and refers to a Facility or Pedestrian right-of-way that is owned and controlled by the City, either in part or in full, or a Facility or Pedestrian right-of-way over which the City has jurisdiction through an agreement with the owner or other governmental entity even though not owned by the City. The term "controlled" is deemed to include the City's maintenance responsibilities.
68. "Complaint" means and refers to the Fourth Amended Complaint, filed in this lawsuit on August 9, 2007 (Docket Item No. 94) upon leave of court.
69. "Compliance Period" shall have the meaning as described in Section III of this Agreement.
70. "Curb Ramp" means and refers to a short ramp cutting through a curb or built up to it.
71. "Day" means calendar day.
72. "Defendant" means and refers to the City.
73. "Disability" means and refers, with respect to an individual, a physical or mental impairment as defined in the Americans with Disabilities Act, as amended.
74. "Dispute" means and refers to each and every dispute that arises out of this Agreement, any interpretation thereof, any asserted breach thereof, and/or the claims released in this Agreement.
75. "Effective Date" shall have the meaning described in Section III of this Agreement.
76. "Existing Facility" means and refers to a Facility and Pedestrian Right-of-Way constructed before, altered, or in existence on January 26, 1992.

77. "Facility" means and refers to all or any portion of buildings, structures, site improvements, complexes, equipment, roads, walks, passageways, parking lots, or other real property subject to the ADA.
78. "Final Approval" means and refers to the date when the Court issues an order granting final approval of this Agreement.
79. "Mobility Access" means and refers to a continuous unobstructed path connecting all accessible elements and spaces of a building or facility. Interior accessible routes may include corridors, floors, ramps, elevators, lifts, and clear floor space. Exterior accessible routes may include parking access aisles, curb ramps, crosswalks at vehicular ways, walks, ramps, and lifts.
80. "Mobility Disability" means and refers, with respect to an individual, to any physical impairment or condition that substantially limits an individual's ability to move his or her body or a portion of his or her body and includes, but is not limited to, orthopedic and neuro-motor disabilities and any other impairment or condition that limits an individual's ability to walk, maneuver around objects, ascend or descend steps or slopes, and operate controls. An individual with a Mobility Disability may use a walker, manual or power wheelchair or motorized scooter for mobility, or Segway or other device, or may be semi-ambulatory and use no device. For the purposes of this Agreement, Mobility Disability does not refer to or include disabilities such as a hearing impairment or visual impairment which may affect an individual's mobility.
81. "Newly Constructed or Altered Facility" means and refers to any Facility or Pedestrian Right-of-Way constructed or altered after January 26, 1992.
82. "Owner" means and refers to the person or persons, company, corporation, authority, commission, board, governmental entity, institution, or any other entity that holds title to the subject building, facility or property.
83. "Parking Facility" means and refers to any parking lots under City Jurisdiction that the City intends for use by members of the public.
84. "Parties" means and refers collectively to those bound by this Agreement, namely, the City of Arlington and Plaintiffs.
85. "Pedestrian Right-of-Way" means and refers to any paved walks under City Jurisdiction that the City intends for use by members of the public, including but not limited to outdoor pedestrian walkways, sidewalks, crosswalks, pedestrian undercrossings and/or pedestrian overcrossings.
86. "Plaintiffs" means and refers to Richard Frame, Wendell Decker, Scott Updike, Juan Nunez, Mark Hamman, and Joey Salas.
87. "Plaintiffs' Counsel" means and refers to David Ferleger, and such local counsel as designated and approved by the federal court hearing matters related to parties in Tarrant County, Texas; except that in Section XII, the term "Plaintiffs' counsel" refers to all attorneys who have represented or are currently

representing Plaintiffs in this lawsuit.

88. "Quarterly Report" shall have the meaning described in Section VIII of this Agreement.

89. "Registered Accessibility Specialist" means and refers to an individual who is certified by the Texas Department of Licensing and Regulation to perform the review functions, inspection functions, or both review and inspections functions, of the Texas Department of Licensing and Regulation to determine compliance with the Standards.

90. "Rehabilitation Act" means and refers to the Rehabilitation Act of 1973, and codified in 29 U.S.C. §§ 701, *et seq.*, as amended.

91. "Released Claims" means and refers to the claims released pursuant to this Agreement, as set forth herein.

92. "Settlement Agreement" means and refers to this Agreement.

93. "Sidewalk" means and refers to that portion of an exterior circulation path that is improved for use by pedestrians and usually paved.

94. "Standards" means and refers to the standards under the Americans with Disabilities Act and the ADAAG for accessibility to Pedestrian Rights-of-Way and Parking Facilities, as such standards (1) existed at the time of the City's construction of a Newly Constructed or Altered Facility, (2) existed at the time this lawsuit was filed, (3) exist now, or (4) may be revised or amended in the future; and it is agreed among the Parties that the Texas Accessibility Standards ("TAS") complied with or exceeded, and at this time, comply with or exceed the ADA standards. The TAS were adopted pursuant to the Texas Architectural Barriers Act, which was originally codified as Article 9102, Texas Civil Statutes, and is now codified at Chapter 469 of the Texas Government Code. The TAS were adopted by the Texas Commission of Licensing and Regulation on December 17, 1993, and became effective on April 1, 1994, and apply as the Standards, as amended, applicable to the City's remediation work agreed to under this Agreement, subject to the initial sentence of this definition regarding ADA standards. Should there later be any conflict between the ADA and TAS standards, the ADA standards will govern as the minimum requirements.

95. "Statement" means and refers to the Dispute Statement as set forth in Section X of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement in multiple counterparts.

Richard Frame

Date

STATE OF TEXAS §

§

COUNTY OF TARRANT §

BEFORE ME, the undersigned authority, on this day personally appeared Richard Frame, known to me to be the individual whose name is subscribed hereinabove, and after being duly sworn on his oath, states that he has read and fully understands the foregoing instrument, and that he has executed the same for the purposes and considerations herein expressed.

SUBSCRIBED AND SWORN TO this ____ day of _____, 2012.

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS

My commission expires:

Wendell Decker Date

STATE OF TEXAS §
 §
COUNTY OF TARRANT §

BEFORE ME, the undersigned authority, on this day personally appeared Wendell Decker, known to me to be the individual whose name is subscribed hereinabove, and after being duly sworn on his oath, states that he has read and fully understands the foregoing instrument, and that he has executed the same for the purposes and considerations herein expressed.

SUBSCRIBED AND SWORN TO this ____ day of _____, 2012.

NOTARY PUBLIC IN AND FOR THE
STATE OF TEXAS

My commission expires:

Scott Updike

Date

STATE OF TEXAS §
 §
COUNTY OF TARRANT §

BEFORE ME, the undersigned authority, on this day personally appeared Scott Updike, known to me to be the individual whose name is subscribed hereinabove, and after being duly sworn on his oath, states that he has read and fully understands the foregoing instrument, and that he has executed the same for the purposes and considerations herein expressed.

SUBSCRIBED AND SWORN TO this ____ day of _____, 2012.

NOTARY PUBLIC IN AND FOR THE
STATE OF TEXAS

My commission expires:

Date
Juan Nunez

STATE OF TEXAS §
 §
COUNTY OF TARRANT §

BEFORE ME, the undersigned authority, on this day personally appeared Juan Nunez, known to me to be the individual whose name is subscribed hereinabove, and after being duly sworn on his oath, states that he has read and fully understands the foregoing instrument, and that he has executed the same for the purposes and considerations herein expressed.

SUBSCRIBED AND SWORN TO this ____ day of _____, 2012.

NOTARY PUBLIC IN AND FOR THE
STATE OF TEXAS

My commission expires:

Joey Salas

Date

STATE OF TEXAS §
 §
COUNTY OF TARRANT §

BEFORE ME, the undersigned authority, on this day personally appeared Joey Salas, known to me to be the individual whose name is subscribed hereinabove, and after being duly sworn on his oath, states that he has read and fully understands the foregoing instrument, and that he has executed the same for the purposes and considerations herein expressed.

SUBSCRIBED AND SWORN TO this ____ day of _____, 2012.

NOTARY PUBLIC IN AND FOR THE
STATE OF TEXAS

My commission expires:

City of Arlington, Texas

Jay Doegey, City Attorney

Date

ATTEST:

Mary W. Supino, City Secretary

SEAL

Respectfully submitted,

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Attorneys for Plaintiffs

Respectfully submitted,

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Melinda.Barlow@arlingtontx.gov

*Attorneys for Defendant City of
Arlington, Texas*

DATE: _____, 2012

SURVEY LIST 1

SURVEY LIST 2

SURVEY LIST 3

SURVEY LIST 4