

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number _____

Meeting Type: Regular

Meeting Date: 2/13/2014

Action Requested By:
Legal

Agenda Item Type
Resolution

Subject Matter:

Settlement of James Mason lawsuit.

Exact Wording for the Agenda:

Resolution authorizing the Mayor to execute a settlement agreement in the lawsuit entitled James Mason and Joanne Pearson v. City of Huntsville, in the United States District Court for the Northern District of Alabama, Northeastern Division, Case No. CV-02794-CLS.

Note: If amendment, please state title and number of the original

Item to be considered for: Action

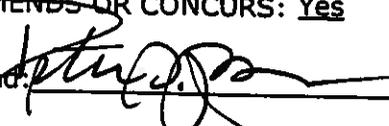
Unanimous Consent Required: No

Briefly state why the action is required; why it is recommended; what Council action will provide, allow and accomplish and; any other information that might be helpful.

Associated Cost:

Budgeted Item: Not applicable

MAYOR RECOMMENDS OR CONCURS: Yes

Department Head: 

Date: 2/10/2014

RESOLUTION NO. 14-_____

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor is hereby authorized, directed, and requested to execute a settlement agreement by and between the City of Huntsville, Alabama, and James Mason and Joanne Pearson, on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement is substantially in words and figures similar to that certain document attached hereto and identified as "Stipulation for Settlement Between the City of Huntsville and James Mason and Joanne Pearson, in that certain case styled James Mason and Joanne Pearson v. City of Huntsville," consisting of twenty-four (24) pages and date of February 13, 2014, appearing on the Margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

ADOPTED this the 13th day of February, 2014.

President of the City Council of
the City of Huntsville, Alabama

APPROVED this the 13th day of February, 2014.

Mayor of the City of
Huntsville, Alabama

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION

JAMES MASON and
JOANNE PEARSON,

Plaintiffs,

CASE NO: 5:10-CV-02794-CLS

vs.

CITY OF HUNTSVILLE,

Defendant.

STIPULATION FOR SETTLEMENT

IT IS HEREBY stipulated and agreed by and between Plaintiffs James Mason and Joanne Pearson (hereinafter sometimes referred to as "Plaintiffs") and Defendant, the City of Huntsville (hereinafter sometimes referred to as "Defendant") as follows:

WHEREAS, Plaintiffs filed this action against Defendant for its alleged violations of Title II of the Americans with Disabilities Act, 42 U.S.C. Section 12131, *et seq.* ("ADA"), pursuant to which Plaintiffs sought a permanent injunction and attorney's fees, expenses and costs;

WHEREAS, Defendant does not admit, and expressly denies, a violation of any federal, state, or local statute (including but not limited to the ADA), or any other wrongdoing or liability whatsoever;

WHEREAS, subject to the terms set forth herein, Plaintiffs and Defendant have agreed to finally resolve any and all claims and disputes by and between them; and

WHEREAS, the aforementioned parties desire to avoid further expense, time, effort and uncertainty in regard to this action;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and undertakings contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, the parties hereto, intending to be legally bound hereby, agree to the following terms and conditions as a full and complete settlement of this action:

The parties agree that the Defendant shall cause the following alterations and improvements to be made at the referenced facilities.

I. BRAHAN SPRING NATATORIUM.

A. Family Toilet Room:

- i. Defendant shall adjust the door closer to ensure that it requires no more than 5 pounds of force to open. Defendant shall also ensure that the closer has a “delayed action” feature and that the sweep period of the closer is adjusted such that the leading edge of the door takes no less than 5 seconds to move from an open position of 90 degrees to a position 12 degrees from the latch in compliance with §§404.2.8 and 404.2.9 of the Standards.
- ii. Defendant shall lower the coat hook to ensure that it is no higher than 48 inches above the finished floor in compliance with §308.2.1 of the Standards. In the alternative, in lieu of lowering the existing coat hook, Defendant may provide a second coat hook in the family toilet room mounted no higher than 48 inches above the finished floor.
- iii. Defendant shall relocate the toilet paper dispenser above the side grab bar at the accessible water closet to provide a minimum of 12 inches between the dispenser and the grab bar in compliance with §609.3(a) of the Standards. Defendant shall also ensure that the outlet of the dispenser is no higher than 48 inches above the finished floor with its centerline measuring between 7 and 9 inches from the front edge of the water closet in compliance with §604.7 and Figure 604.7 of the Standards.
- iv. Defendant shall lower the soap and paper towel dispensers to ensure that the highest operable part of each is no greater than 48 inches above the finished floor in compliance with §308.2.1 of the Standards.

II. LAKEWOOD COMMUNITY CENTER.

A. Accessible Parking and Route:

- i. Defendant shall provide at least the minimum number of accessible parking compliant with the Table 208.2 of the Standards. Defendant shall

further ensure that at least one in every six accessible parking spaces is a van accessible parking space.

- ii. Defendant shall eliminate the two accessible parking spaces located farthest from the ball field and closest to the community center across from the group of four accessible parking spaces.
- iii. Defendant shall resurface the parking area of the northernmost accessible parking spaces to ensure that the slope ratio does not exceed 2.083% and shall restripe the spaces for better visibility to individuals with disabilities.
- iv. Defendant shall provide two additional accessible parking spaces to the west of the newly resurface accessible parking area referenced in the preceding paragraph. Defendant shall also resurface this area to ensure that the slope ratio in this area does not exceed 2.083%.
- v. Defendant shall fill in the gaps in the sidewalk that leads from the accessible parking area to the entrance of the community center to ensure that there are no changes in level greater than ¼ - inch in compliance with §§303.2 and 403.3 and Figure 303.2 of the Standards.
- vi.

B. Women's Toilet Room:

- i. Defendant shall post signage containing the international symbol of accessibility, raised characters and Braille at the women's toilet room. Said signage shall be posted on the wall adjacent to the latch side of the toilet room entry door with baselines of the tactile characters measuring between 48 and 60 inches above the finished floor and shall fully comply with §703 of the Standards.
- ii. Defendant shall relocate the toilet paper dispenser at the accessible water closet a minimum of 12 inches above the side grab bar and no higher than 48 inches above the finished floor. Defendant shall further ensure that the centerline of the dispenser measures between 7 and 9 inches from the front of the water closet.
- iii. Defendant shall relocate the accessible water closet to ensure that its centerline measures between 16 and 18 inches from the side wall.

- iv. Defendant shall replace the accessible water closet with one that has a seat height that measures between 17 and 19 inches above the finished floor in compliance with §604.4 of the Standards. In doing so, Defendant shall also ensure that the flush valve is on the open side of the toilet area.
- v. Defendant shall lower the coat hook to ensure that it measures no higher than 48 inches above the finished floor. In the alternative, in lieu of lowering the coat hook, Defendant may provide an additional coat hook mounted no higher than 48 inches above the finished floor.
- vi. Defendant shall replace the locking mechanism on the accessible stall door with a locking mechanism that does not require tight grasping, pinching and twisting of the wrist to operate and can be operated with a closed fist.
- vii. Defendant shall reposition the lavatory to provide clear floor space measuring 30 inches wide and 48 inches deep in front of the lavatory compliant with Figure 305.5 of the Standards.
- viii. Defendant shall lower the soap dispenser to ensure that its highest operable part is no greater than 48 inches above the finished floor in compliance with §308.2.1 of the Standards.
- ix. Defendant shall lower the light switch to ensure that it measures no higher than 48 inches above the finished floor.

III. HUNTSVILLE DEPOT MUSEUM.

- A. Defendant shall provide a sign containing the international symbol of accessibility compliant with §703 of the Standards that states assistance is available to open both entry doors to the Huntsville Depot Museum in order to preserve the historic significance of the property. Defendant shall provide a bell outside the door at the bottom of the sidewalk to alert employees that assistance is needed at the entrance.
- B. Defendant shall ensure that all door closers in public toilet rooms or public spaces on the interior of the museum do not require more than 5 pounds of force to open.
- C. Men's Toilet Room: Defendant shall post signage compliant with §703 of the Standards, mounted on the wall adjacent to the latch side of the toilet room entry door with baselines of the tactile characters measuring between 48 and 60 inches

above the finished floor. Said signage shall designate the men's toilet room as a non-accessible men's toilet room.

D. Women's Toilet Room: Defendant shall post signage containing the international symbol of accessibility, raised characters and Braille at this toilet room designating it as a single user accessible toilet room. Said signage shall be posted on the wall adjacent to the latch side of the toilet room entry door with baselines of the tactile characters measuring between 48 and 60 inches above the finished floor and shall fully comply with §703 of the Standards. Defendant shall modify this toilet room as follows:

- i. Defendant shall provide a power automatic door opener at the toilet room entry door in compliance with §404.3 and Figure 404.2.4.1(a) of the Standards.
- ii. Defendant shall provide lever-type lavatory controls that do not require tight grasping, pinching and twisting of the wrist to operate and can be operated with a closed fist in compliance with §309.4 of the Standards.
- iii. Defendant shall insulate the exposed supply and drain pipes beneath the lavatory in compliance with §606.5 of the Standards.
- iv. Defendant shall remove one water closet and use the combined space of the two toilet compartments to create one wheelchair accessible toilet stall compliant with §604 of the Standards.

E. Men's Toilet Room in Antique Automobiles Building:

- i. Defendant shall post signage containing the international symbol of accessibility, raised characters and Braille at this toilet room designating it as the men's accessible toilet room. Said signage shall be posted on the wall adjacent to the latch side of the toilet room entry door with baselines of the tactile characters measuring between 48 and 60 inches above the finished floor and shall fully comply with §703 of the Standards.
- ii. Defendant shall provide a power automatic door opener at the toilet room entry door in compliance with §404.3 and Figure 404.2.4.1(a) of the Standards. In the alternative, Defendant may reverse the swing of the door

to swing into the hallway to provide at least 18 inches of clear floor space on the pull side of the door to exit the toilet room.

- iii. Defendant shall reverse the door to the accessible toilet stall to swing outward keeping the hinges on the same side in order to provide a minimum of 18 inches of clear floor space on the latch side of the door in compliance with Figure 404.2.4.1(a) of the Standards.
- iv. Defendant shall relocate the toilet paper dispenser in the accessible stall above the side grab bar to ensure that there is at least 12 inches between the dispenser and the side grab bar. Defendant shall further ensure that the outlet point of the dispenser measures no higher than 48 inches above the finished floor and that its centerline measures between 7 and 9 inches in front of the water closer in compliance with §604.7 and Figure 604.7 of the Standards.
- v. Defendant shall replace the floor-mounted water closet in the accessible stall with one that has the flush valve on the wide side of the toilet area in compliance with §604.6 of the Standards. If possible, Defendant may replace the tank and flush valve only.
- vi. Defendant shall switch the two grab bars at the accessible water closet so that the rear grab bar becomes the side grab bar and the side grab bar becomes the rear grab bar. When doing so, Defendant shall ensure that the grab bars are mounted between 33 and 36 inches above the finished floor.
- vii. Defendant shall lower the paper towel dispenser to ensure that its highest operable part is no higher than 48 inches above the finished floor in compliance with §308.2.1 of the Standards.

F. Women's Toilet Room in Antique Automobiles Building

- i. Defendant shall post signage containing the international symbol of accessibility, raised characters and Braille at this toilet room designating it as the women's accessible toilet room. Said signage shall be posted on the wall adjacent to the latch side of the toilet room entry door with baselines

of the tactile characters measuring between 48 and 60 inches above the finished floor and shall fully comply with §703 of the Standards.

- ii. Defendant shall provide a power automatic door opener at the toilet room entry door in compliance with §404.3 and Figure 404.2.4.1(a) of the Standards. In the alternative, Defendant may reverse the swing of the door to swing into the hallway to provide at least 18 inches of clear floor space on the pull side of the door to exit the toilet room.
- iii. Defendant shall switch the two grab bars at the accessible water closet so that the rear grab bar becomes the side grab bar and the side grab bar becomes the rear grab bar. When doing so, Defendant shall ensure that the grab bars are mounted between 33 and 36 inches above the finished floor.
- iv. Defendant shall relocate the toilet paper dispenser in the accessible stall above the side grab bar to ensure that there is at least 12 inches between the dispenser and the side grab bar. Defendant shall further ensure that the outlet point of the dispenser measures no higher than 48 inches above the finished floor and that its centerline measures between 7 and 9 inches in front of the water closer in compliance with §604.7 and Figure 604.7 of the Standards.
- v. Defendant shall lower the coat hook to ensure that it measures no higher than 48 inches above the finished floor in compliance with §308.2.1 of the Standards. In the alternative, in lieu of lowering the coat hook, Defendant may provide an additional coat hook in the toilet room mounted no higher than 48 inches above the finished floor.

G. Little Toot's Playroom:

- i. Defendant shall eliminate the existing ramp and shall extend the level area of concrete to at least 60 inches leading away from the entry door. Defendant shall further ensure that this area is at least 60 inches wide.
- ii. Defendant shall provide a new ramp providing access to the level area. The ramp shall have a slope that does not exceed 8.33% and a cross slope that does not exceed 2.083%.

- iii. Defendant shall provide handrails compliant with §505 of the Standards on both sides of the ramp that shall continue onto the level landings at the top and bottom of the ramp for a minimum of 12 inches. The handrails shall also measure between 34 and 38 inches to the top of the gripping surface. Defendant shall also ensure that the ramp contains edge protection on both sides that is a minimum of 4 inches high in compliance with §405.9 of the Standards.
- iv. Defendant shall provide lever type hardware and locking mechanism on the door that does not require tight grasping, pinching and twisting of the wrist to operate in compliance with §309.4 of the Standards. If an integral locking mechanism is provided, Defendant shall ensure that it is of the push-button type.

H. Toilet Rooms Near Little Toots Playroom: Defendant shall provide a ramp fully compliant with §405 of the Standards that has the least slope ratio possible but not exceeding 1:12 (8.33%). Defendant shall also provide edge protection at this ramp compliant with §405.9 of the Standards and handrails on both sides of the ramp compliant with §505 of the Standards.

i. Men's Toilet Room:

- a. Defendant shall relocate the water closet to ensure that its centerline measures 16-18 inches from the side wall in compliance with §604.2 and Figure 604.2(a) of the Standards.
- b. Defendant shall relocate the toilet paper dispenser in the accessible stall above the side grab bar to ensure that there is at least 12 inches between the dispenser and the side grab bar. Defendant shall further ensure that the outlet point of the dispenser measures no higher than 48 inches above the finished floor and that its centerline measures between 7 and 9 inches in front of the water closer in compliance with §604.7 and Figure 604.7 of the Standards.

ii. Women's Toilet Room:

- a. Defendant shall post signage containing the international symbol of accessibility, raised characters and Braille at this toilet room designating it as the women's accessible toilet room. Said signage shall be posted on the wall adjacent to the latch side of the toilet room entry door with baselines of the tactile characters measuring between 48 and 60 inches above the finished floor and shall fully comply with §703 of the Standards.
 - b. Defendant shall provide a power automatic door opener at the toilet room entry door in compliance with §404.3 and Figure 404.2.4.1(a) of the Standards.
 - c. Defendant shall relocate the water closet to ensure that its centerline measures 16-18 inches from the side wall in compliance with §604.2 and Figure 604.2(a) of the Standards.
 - d. Defendant shall relocate the toilet paper dispenser in the accessible stall above the side grab bar to ensure that there is at least 12 inches between the dispenser and the side grab bar. Defendant shall further ensure that the outlet point of the dispenser measures no higher than 48 inches above the finished floor and that its centerline measures between 7 and 9 inches in front of the water closer in compliance with §604.7 and Figure 604.7 of the Standards.
 - e. Defendant shall lower the paper towel dispenser to ensure that its highest operable part is no higher than 48 inches above the finished floor in compliance with §308.2.1 of the Standards.
- iii. Happy Birthday Caboose: Defendant shall provide an accessible route from the sidewalk to the bottom of the ramp providing access to the Happy Birthday Caboose. Defendant shall also provide handrails compliant with §505 of the Standards at the ramp providing access to the Happy Birthday Caboose.

IV. DR. RICHARD SHOWERS RECREATIONAL CENTER.

A. Parking:

- i. Defendant shall provide accessible signage compliance with §502.6 of the Standards at each van accessible parking space. Defendant shall ensure that said signage contains the words “van accessible” and is mounted such that the bottom edge of each sign measures at least 60 inches above the ground.
 - ii. Defendant shall ensure that the signage provided at all accessible parking spaces is mounted such that the bottom edge of each sign measures a minimum of 60 inches above the ground in compliance with §502.6 of the Standards.
 - B. Pool: Defendant shall provide a pool lift that fully complies with §1009.2 and Figures 1009.2.2, 1009.2.3, 1009.2.4 and 1009.2.8 of the Standards. The pool lift must be capable of unassisted operation from the deck and water levels that will permit a person to call the pool lift when the pool lift is in the opposite position desired and shall be equipped with foot rests that move with the seat.
 - C. Toilet Rooms: Defendant shall post directional signage at all non-accessible public toilet rooms directing individuals with disabilities to the accessible family toilet room.
 - D. Family Toilet Room:
 - i. Defendant shall lower the paper towel dispenser to ensure that its highest operable part measures no higher than 48 inches above the finished floor in compliance with §308.2.1 of the Standards.
 - ii. Defendant shall raise the baby changing station so that bottom of the station measures at least 27 inches above the finished floor and that the changing surface measures no greater than 34 inches above the finished floor.
 - iii. Defendant shall lower the light switch to ensure that it is no higher than 48 inches above the finished floor or shall install a motion sensor light switch.

V. **MASTIN LAKE PARK.**

- A. Defendant shall provide an accessible route compliant with §206.2.2 of the Standards that connects the various accessible buildings, facilities, elements and other spaces on this site to each other.
- B. North Field Parking and Routes:
- i. Defendant shall provide a sign compliant with §502.6 at both accessible parking spaces provided at the Northern Field. Defendant shall ensure that the signs contain the international symbol of accessibility compliant with §703.7.2.1 of the Standards and shall be mounted such that the bottom edge of each sign measures at least 60 inches above the ground. Defendant shall also ensure that signage at van accessible parking spaces contains the words “van accessible.”
 - ii. Defendant shall resurface the accessible parking spaces and shared access aisle at the Northern Field to ensure that the parking area is firm and slip-resistant.
 - iii. Defendant shall repaint each accessible parking space and access aisle in the Northern Field.
 - iv. Defendant shall resurface the sidewalk leading to the northern dugout at the North Field and shall ensure that the path of travel is smooth and continuous with no changes in level greater than ¼ inch. Defendant shall further ensure that any cross slopes are no greater than 2.083% at any point.
 - v. Defendant shall provide a concrete pad at the northern dugout in the Northern Field that makes a u-turn leading from the sidewalk that ends in front of the parking and leadings into the dugout. Defendant shall ensure that this pathway is a minimum of 36 inches wide leading from the sidewalk to the dugout.
 - vi. Defendant shall provide an accessible route to the western dugout of the North Field by cutting the fencing leading into the dugout and providing a gate and a concrete or asphalt pad leading from the end of the asphalt directly across to the dugout. Defendant shall provide a ramp compliance

with §405 of the Standards that provides access from the dugout onto the baseball field.

C. Women's North Field Toilet Room:

- i. Defendant shall post signage containing the international symbol of accessibility, raised characters and Braille at this toilet room designating it as the unisex accessible toilet room containing the male and female pictogram. Said signage shall be posted on the wall adjacent to the latch side of the toilet room entry door with baselines of the tactile characters measuring between 48 and 60 inches above the finished floor and shall fully comply with §703 of the Standards.
- ii. Defendant shall lower the paper towel dispenser to ensure that its highest operable part measures no higher than 48 inches above the finished floor in compliance with §308.2.1 of the Standards.
- iii. Defendant shall provide lever-type lavatory controls that do not require tight grasping, pinching and twisting of the wrist to operate and can be operated with a closed fist in compliance with §309.4 of the Standards.
- iv. Defendant shall insulate the exposed supply and drain pipes beneath the lavatory in compliance with §606.5 of the Standards.
- v. Defendant shall relocate the water closet to ensure that its centerline measures 16-18 inches from the side wall in compliance with §604.2 and Figure 604.2(a) of the Standards.
- vi. Defendant shall replace the floor-mounted water closet in the accessible stall with one that has the flush valve on the wide side of the toilet area in compliance with §604.6 of the Standards. If possible, Defendant may replace the tank and flush valve only.

D. Men's North Field Toilet Room: Defendant shall provide signage at this toilet room designating it as a unisex non-accessible toilet room.

E. North Field Concession Stand: Defendant shall lower a 36-inch wide section of the counter no higher than 36 inches above the finished floor in order to provide a parallel approach in compliance with §§227.3 and 904.4.1 of the Standards, or shall place a level shelf measuring 36-inches wide and 12-inches

deep below the existing counter at a height of no more than 36 inches above the finished floor

F. South Field Parking and Routes:

- i. Defendant shall provide an accessible path of travel behind the bleachers and the building near the southern dugout where the grass is currently located.
- ii. Defendant shall provide a concrete pad leading from the sidewalk to the southernmost dugout leading through the fence and into the dugout. Defendant shall ensure that the path is smooth and continuous and has no changes in level greater than ¼ inch and any cross slopes shall be no greater than 2.083%.

G. North End of Southern Ball Field:

- i. Defendant shall provide a concrete or asphalt pad at the 24 feet wide and 18 feet long that connects the sidewalk running in front of the concrete pad over to the existing sidewalk providing access to the Southern Field.
- ii. Defendant shall provide two accessible parking spaces in this newly paved area. Both parking spaces shall be 8 feet in width with a shared 8-foot wide access aisle. The accessible parking space on the left shall be signed and designated as “van accessible.”

H. Men’s South Field Toilet Rooms:

- i. Defendant shall post signage containing the international symbol of accessibility, raised characters and Braille at this toilet room designating it as the men’s accessible toilet room. Said signage shall be posted on the wall adjacent to the latch side of the toilet room entry door with baselines of the tactile characters measuring between 48 and 60 inches above the finished floor and shall fully comply with §703 of the Standards.
- ii. Defendant shall relocate the water closet to ensure that its centerline measures 16-18 inches from the side wall in compliance with §604.2 and Figure 604.2(a) of the Standards, or shall build out the side wall where the grab bar is located in order to achieve the specified distance from the centerline of the water closet.

- iii. Defendant shall relocate the toilet paper dispenser in the accessible stall above the side grab bar to ensure that there is at least 12 inches between the dispenser and the side grab bar. Defendant shall further ensure that the outlet point of the dispenser measures no higher than 48 inches above the finished floor and that its centerline measures between 7 and 9 inches in front of the water closer in compliance with §604.7 and Figure 604.7 of the Standards.
- iv. Defendant shall lower the coat hook to ensure that it measures no higher than 48 inches above the finished floor in compliance with §308.2.1 of the Standards. In the alternative, in lieu of lowering the coat hook, Defendant may provide an additional coat hook in the toilet room mounted no higher than 48 inches above the finished floor.
- v. Defendant shall lower the paper towel dispenser to ensure that its highest operable part is no higher than 48 inches above the finished floor in compliance with §308.2.1 of the Standards.

I. Women's South Field Toilet Room:

- i. Defendant shall post signage containing the international symbol of accessibility, raised characters and Braille at this toilet room designating it as the women's accessible toilet room. Said signage shall be posted on the wall adjacent to the latch side of the toilet room entry door with baselines of the tactile characters measuring between 48 and 60 inches above the finished floor and shall fully comply with §703 of the Standards.
- ii. Defendant shall lower the coat hook to ensure that it measures no higher than 48 inches above the finished floor in compliance with §308.2.1 of the Standards. In the alternative, in lieu of lowering the coat hook, Defendant may provide an additional coat hook in the toilet room mounted no higher than 48 inches above the finished floor.
- iii. Defendant shall relocate the toilet paper dispenser in the accessible stall above the side grab bar to ensure that there is at least 12 inches between the dispenser and the side grab bar. Defendant shall further ensure that the outlet point of the dispenser measures no higher than 48 inches above the

finished floor and that its centerline measures between 7 and 9 inches in front of the water closer in compliance with §604.7 and Figure 604.7 of the Standards.

- iv. Defendant shall insulate the exposed supply and drain pipes beneath the lavatory in compliance with §606.5 of the Standards.
- v. Defendant shall lower the paper towel dispenser to ensure that its highest operable part is no higher than 48 inches above the finished floor in compliance with §308.2.1 of the Standards.

VI. CITY SIDEWALKS AND CURB RAMPS.

- A. Defendant shall resurface the following sidewalks as necessary to ensure that the path of travel is smooth and continuous with no changes in level greater than ¼-inch and no cross slopes, if any, greater than 2.083% (1:48) at any point in compliance with §§303.2, 403.3 and Figure 303.2 of the Standards in the following areas:
 - i. 706 Madison Street: that portion that is dissected by a driveway;
 - ii. Madison Street (100 feet from Governors Drive): that rectangular depression in the sidewalk labeled “Fiber;”
 - iii. Eastern Side of Madison Street between Governors and Rands Avenue: change in level 60 feet from Rands Avenue;
 - iv. 815 Madison Street (Little Paul’s BBQ): the depression in the sidewalk where the concrete is cracked;
 - v. Across the Street from 724 Madison Street: that portion of the sidewalk with a steep cross slope of 10.5%.
- B. Defendant shall reconfigure the curb ramps in the following locations to ensure that the running slope of each does not exceed 8.33% and the slope of flared sides of each do not exceed 10% and are otherwise fully compliant with §406 of the Standards:
 - i. Curb ramp at 100 block of Rands Avenue with running slope currently between 14% and 17%;
 - ii. Southeast Corner of Rands Avenue and Madison Street;
 - iii. Northeast Corner of Rands Avenue and Madison Street;

- iv. Southeast Corner of Madison Street and St. Clair Avenue: In this area, Defendant shall further ensure that the gutter has a slope ratio no greater than 5%;
 - v. Northeastern Side of Madison Street North and St. Clair Avenue;
 - vi. Northeastern Corner of Winchester Road and Blue Spring Road.
- C. Defendant shall provide an accessible route on the north side of Redstone Road SW to connect the sidewalk along Redstone Road SW with the adjacent roadway by paving an area of the grass approximately six feet in width. The paved area shall be made as level as is reasonably practicable, but need not strictly comply with ADAAG specifications due to the unique characteristics of the terrain and surface level of adjacent roadway.
- D. Defendant shall provide a handrail/guard rail at least six feet in width and 36 inches high along the north side of Redstone Road SW sidewalk directly north of the area to be paved pursuant to the above paragraph in order to prevent individuals with disabilities and others from falling off the sidewalk into the adjacent ditch.
- E. Defendant shall provide a curb ramp fully compliant with §406 of the Standards with a slope not to exceed 8.33% and flared sides not to exceed 10% at the Southeast and Southwest sides of the intersection of Winchester Road and Blue Spring Road.

VIII. INTERPRETATION AND CONSTRUCTION

- A. The parties understand and agree that many or all modifications discussed herein must be approved by, among others, municipal, state, and/or county building, zoning, or fire authorities and also understand that some modifications may be discovered to be infeasible or unallowable during construction. Accordingly, the parties hereby agree that to the extent any modification or other requirement set forth herein shall not be in compliance with requirements or rulings of such authorities, or with applicable codes, rules, regulations, or laws, or shall be determined to be technically infeasible, Defendant shall notify Plaintiffs' representative of such fact, and the parties shall work to reach a mutually agreeable alternative solution. However, in no event shall Defendant be required

to take action that is technically infeasible or is contraindicated or prohibited by such authorities or by applicable codes, rules, regulations, or laws.

- B. The parties agree that nothing herein prohibits Defendant from providing a higher level of accessibility than contemplated herein, including providing completely revamped compliant toilet rooms in lieu of slightly modifying existing toilet rooms as set out in this Stipulation for Settlement; nor does it prohibit providing additional unisex toilet rooms or dressing rooms / shower areas, so long as the terms hereof are observed. The parties further agree that Defendant shall not be required to seek advance approval from Plaintiffs to provide such accommodations or accessibility.
 - C. The parties agree and understand that except where expressly noted herein, this Stipulation for Settlement does not create any sort of continuing obligation on the part of any party. Without in any way limiting the foregoing, the parties acknowledge that nothing herein limits the Defendant's use of the property or its rights to dedicate portions of property to a different use or purpose, even if such new or different use or purpose would require elimination of improvements required by this Stipulation for Settlement. Likewise, without limitation, nothing herein prevents the City from repurposing any facility, sidewalk or section of the City or portion of City property in the future, and no advance approval for such changes is required under this Stipulation for Settlement.
 - D. The parties agree and understand that this Stipulation for Settlement creates no enforceable rights on behalf of any person or entity who or which is not a party to the above-styled lawsuit and shall not be used against the Defendant in court or in an administrative or judicial proceeding by any person or entity, except in connection with an action to enforce the Stipulation for Settlement by the Plaintiffs.
 - E. The parties agree and understand that this Stipulation for Settlement is not an admission of liability by Defendant, nor is it to be construed as any sort of admission of any sort regarding the condition of the named municipal facilities.
- IX. RESPONSIBLE OFFICIAL; MUTUAL COOPERATION.** Defendant shall designate the official responsible for implementation of this Stipulation for Settlement

and shall notify Plaintiffs of the identity and contact information for such official within three (3) months from the date of this Stipulation for Settlement.

- A. If not already in effect, Defendant will implement a grievance process for soliciting and receiving input from persons with disabilities regarding the accessibility of its sidewalks and existing curb ramps as well as programs, services and activities provided by Defendant generally.
- B. Defendant's grievance process shall include a requirement that Defendant investigate to determine the nature and extent of any alleged barriers to access within 30 days of receiving such a complaint and report back to the complainant with its findings and planned course of action within this same period of time. Defendant's grievance process shall include a requirement that to the extent that barriers to access are identified by Defendant in connection with such a complaint, Defendant shall remove the barriers to access to the extent technically feasible as soon as practicable without undue burden.
- C. Plaintiffs covenant and promise that if they have concerns or problems regarding accessibility issues in the future, at any time, they shall proceed in good faith through this grievance process as a condition precedent to filing any sort of lawsuit, motion to enforce this Agreement, administrative complaint, or taking any other legal action, and that any such lawsuit, motion, administrative complaint or other legal action shall be barred if plaintiffs fail to engage in good faith in this grievance process.

X. JURISDICTION

- A. The parties hereto agree that this Stipulation for Settlement and its construction is governed by Alabama Law, and any suit arising as a result of this Stipulation for Settlement shall be filed in the United States District Court for the Northern District of Alabama, Northeastern Division.
- B. The Plaintiff and Defendant make no representations or guarantees regarding the quality of any alterations, improvements, modifications, or changes of any kind whatsoever, as to whether the aforementioned comply with the Alabama state building construction standards, applicable county zoning board regulations, or any other governing body whatsoever.

XI. ENFORCEMENT CONSIDERATIONS.

- A. NO UNDUE BURDEN.** The parties hereto acknowledge that the alterations and modifications agreed to by the Plaintiff, and as set forth in this Agreement, consist of what the parties believe to be required pursuant to and for the purposes of Title II of the ADA in that the said alterations and modifications do not require the fundamental alteration of any program or service and do not constitute an undue financial or administrative burden. Notwithstanding the foregoing, the parties also acknowledge that, as indicated above, there may be situations in which applicable laws, rules, regulations, codes, or building or fire officials or existing conditions or construction considerations prohibit actions contemplated by this Stipulation for Settlement, causing the parties hereto to negotiate in an attempt to find an alternative solution. In such event, Defendant does not waive or forego its right to assert that a proposed solution would require a fundamental alteration of any program or service or is technically infeasible, and also to assert that such proposed solution would impose an undue financial or administrative burden.
- B. TIME FRAME.** Except as otherwise provided hereinabove, Defendant agrees to complete all alterations and modifications to the above referenced facilities as soon as practicable, but no later than the following deadlines: All modifications listed in ¶¶ VII(A)(vi), VII(C) and VII(D), above, along Redstone Road SW and the route to the adjacent Wal-Mart, shall be completed within six (6) months from the date this Stipulation for Settlement has been executed by all parties; All other modifications listed in Section VII, above, with regard to curb ramps and sidewalks other than those on Redstone Road SW shall be completed within twelve (12) months from the date this Stipulation for Settlement has been executed by all parties; all remaining modifications required herein shall be completed within twenty-four (24) months from the date this Stipulation for Settlement has been executed by all parties. Defendant shall notify Plaintiffs upon completion of the agreed modifications. Plaintiffs' representatives shall be provided reasonable access to the subject properties to verify completion of the above-referenced work. .

C. **NON-COMPLIANCE.** In the event the alterations and modifications required hereby are not timely completed in all respects, the Plaintiffs shall be entitled to seek an award for injunctive relief from the Court. However, before any enforcement action is commenced with the Court, the parties agree to negotiate in good faith to point of impasse. The parties agree that if the Defendant has timely commenced the modifications required hereby, and has proceeded with the completion thereof in good faith and with due diligence, but has been delayed in the completion thereof due to acts of God, *force majeure*, or events beyond the control of Defendant (such as inability to obtain building or zoning permits, failure of the county inspectors to make inspections, contractor defaults, work stoppages, etc.), and should the Defendant notify the Plaintiffs of such prior to the expiration of the time periods agreed to herein, the time periods for completion established hereby shall be extended appropriately.

D. If any action or proceeding is commenced with regard to the subject matter of this Stipulation for Settlement, then the prevailing party in such action or proceeding shall be entitled to have its reasonable attorney's fees and costs incurred in said action or proceeding promptly reimbursed by the non-prevailing party.

XII. **ATTORNEY'S FEES AND COSTS.** The Defendants shall pay the Plaintiffs' counsel, Schwartz Roller & Zwilling the sum of \$97,500.00 within fourteen (14) days of the final execution of this Agreement, representing all reasonable attorney's fees, including costs of litigation and expert's fees incurred by the Plaintiffs (which includes any fee which may arise or be associated with any post-completion inspection).

XIII. **FAILURE TO ENFORCE.** Failure by any one of the parties to enforce this entire Stipulation for Settlement or any of its provisions with regard to any deadline or any other provision contained herein shall not be construed as a waiver by that party of any right to do so

XIV. **DISCLOSURE; DISMISSAL; PLAINTIFFS' GENERAL RELEASE.**

A. The parties agree that this Stipulation for Settlement shall not be filed with the Court. Executed originals shall remain in the possession of the parties. The Plaintiffs shall file the original with the Court only for enforcement purposes.

B. The parties agree that contemporaneously with the execution of this Stipulation for Settlement, Plaintiffs will file with the Court a notice of dismissal of the above-styled lawsuit, with prejudice, subject to the court retaining jurisdiction for enforcement purposes only.

C. Plaintiffs, with full knowledge of their actions and the significance of those actions, on behalf of themselves, their successors, heirs, and assigns, further agree, and hereby do, release, waive, forego, and give up any and all claims set forth in their complaint, or which could have been set forth in their complaint, known or unknown, accrued or unaccrued, based upon any theory or law, statutory or otherwise, including any claims under the Americans with Disabilities Act and/or Rehabilitation Act, and hereby finally and forever release Defendant and any related entities (including employees, insurers, attorneys, and agents) from any further liability for any such matters. Plaintiffs additionally covenant never to sue the City of Huntsville or any of its employees, insurers, attorneys or agents for violations of accessibility requirements in any area of the City or with regard to any program, service or activity provided or endorsed by the City and which they have visited or been involved with on or before the date of their signatures on this Stipulation for Settlement. This release and covenant not to sue is broad and it is intended to be broad; the parties desire that any court construing this release and covenant construe it in a manner that effectuates the parties' intentions to finally resolve any and all disputes between them regarding any matter or issue that has occurred or arisen on or prior to the date of this Stipulation, whether or not any claim or cause of action arising therefrom is known or unknown, accrued or unaccrued. Subject to the foregoing, Plaintiffs retain their rights to request the relief contemplated herein in the event of a breach of this Stipulation for Settlement.

XV. TIME IS OF THE ESSENCE. The parties further agree that time is of the essence in all respects regarding this Stipulation of Settlement.

XVI. AUTHORITY AND POWER OF DEFENDANT. The Defendant stipulates and represents that it has the power and authority to execute and deliver this Stipulation for Settlement and to perform its obligations hereunder.

- XVII. AUTHORITY TO EXECUTE.** Each party represents that each person executing this Stipulation for Settlement on its behalf has been authorized to sign on behalf of the respective party and to bind it to the terms of this Stipulation of Settlement.
- XVIII. REFERENCES.** As used herein, the term "Standards" refers to the 2010 ADA Standards. Unless otherwise defined in this Agreement, words and phrases used in this Agreement take the meaning provided in the Standards if defined therein.
- XIX. COUNTERPARTS.** The parties agree that this Stipulation for Settlement and any and all other documents in connection with the settlement of this matter may be executed in counterparts, each of which shall be deemed an original but all of which taken together shall constitute but one and the same instrument.
- XX. ENTIRE AGREEMENT.** This Stipulation for Settlement, including the codes and the drawings referenced herein, constitute the entire agreement among the parties on the matters raised herein.
- XXI. VOLUNTARY EXECUTION; MERGER.** The parties hereby represent and acknowledge that this Stipulation for Settlement is given and executed voluntarily, and is not based upon any representation by any of the parties to another party as to the merits, legal liability, or value of any claim of the parties or any matters related thereto. However, this Stipulation shall not have any binding effect until finally signed by all parties; and any discussion, representation, agreement or other negotiation reached or in effect prior to this Stipulation being signed shall be merged with and superseded by this Stipulation, which constitutes the sum and entirety of any agreement between the parties or their counsel.
- XXII. ACKNOWLEDGEMENT.** The parties acknowledge they have been afforded an opportunity to consider the terms and conditions of this Stipulation for Settlement, that they have read and understand the terms and conditions herein, and that they have retained counsel and have been provided with the opportunity to consult with their respective counsel prior to their execution of the Stipulation for Settlement.
- XXIII. WRITTEN NOTICE.** Each notice ("Notice") provided for under this Stipulation for Settlement must comply with the requirements of this Section. Each Notice shall be in writing and sent by depositing it with a nationally recognized overnight courier service, which obtains receipts (such as Federal Express or UPS Next Day Air), addressed to the

appropriate party (and marked to a particular individual's attention, if so indicated) as hereinafter provided. Each Notice shall be effective upon being so deposited, but the time period in which a response to any notice must be given or any action taken with respect thereto shall commence to run from the date of receipt of the Notice by the addressee thereof, as evidenced by the return receipt. Rejection or other refusal by the addressee to accept or the inability to deliver because of a changed address of which no Notice was given shall be deemed to be the receipt of the Notice sent. Any party shall have the right from time to time to change the address or individual's attention to which notices to it shall be sent by giving to the other party at least ten (10) days prior notice thereof. The parties' addresses for providing Notices hereunder shall be as follows.

Plaintiff:

Edward I. Zwilling, Esq.
Schwartz, Roller & Zwilling
600 Vestavia Parkway, Suite 251
Birmingham, Alabama, 35216
Telephone: (205) 822-2701
Facsimile: (205) 822-2702
Email: ezwillling@szalaw.com

Defendant:

David J. Canupp, Esq.
Lanier, Ford, Shaver & Payne, P.C.
PO Box 2087
Huntsville, Alabama 35804
Telephone: (256) 535-1100
Facsimile: (256) 533-9322
Email: djc@lanierford.com

IN WITNESS WHEREOF, the parties have hereunto signed their names on the day and year written below.

On Behalf of Plaintiffs:

By: James B. Mason
James Mason

Dated: 01/21/14

By: Joanne Pearson
Joanne Pearson

Dated: 1/22/14

On Behalf of Defendant:

By: _____
City of Huntsville, Alabama

Dated: _____