

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

MICHAEL MUEHE, ELAINE HAMILTON,
CRYSTAL EVANS, and COLLEEN
FLANAGAN, on behalf of themselves and all
others similarly situated,

vs.

CITY OF BOSTON, a public entity.

Case No.: 1:21-cv-11080-RGS

CONSENT DECREE

CLASS ACTION

This Class Action Consent Decree (“Consent Decree”) is made and entered into by and between: (i) the City of Boston (the “City”), and (ii) Named Plaintiffs Michael Muehe, Elaine Hamilton, Crystal Evans, and Colleen Flanagan, on behalf of themselves and the proposed Settlement Class (“Plaintiffs”). The City and Plaintiffs shall be referred to in this Consent Decree individually as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, Named Plaintiff Michael Muehe lives and works in Boston, has a mobility disability that substantially limits his ability to walk, and uses a wheelchair for mobility due to his disability. Plaintiff Muehe is a “qualified person with a disability” and a person with a “disability” within the meaning of all applicable statutes and regulations, including 42 U.S.C. § 12131(2), 28 C.F.R. § 35.108, and 29 U.S.C. § 705(20)(B).

WHEREAS, Named Plaintiff Elaine Hamilton lives and works in Boston, has a mobility disability that substantially limits her ability to walk, and uses a wheelchair for mobility due to her disability. Plaintiff Hamilton is a “qualified person with a disability” and a person with a “disability” within the meaning of all applicable statutes and regulations, including 42 U.S.C. § 12131(2), 28 C.F.R. § 35.108, and 29 U.S.C. § 705(20)(B).

WHEREAS, Named Plaintiff Crystal Evans lives in Braintree, Massachusetts and is a frequent visitor to Boston. Plaintiff Evans has a mobility disability that substantially limits her ability to walk and uses a power wheelchair for mobility. Plaintiff Evans is a “qualified person with a disability” and a person with a “disability” within the meaning of all applicable statutes and regulations, including 42 U.S.C. § 12131(2), 28 C.F.R. § 35.108, and 29 U.S.C. § 705(20)(B).

WHEREAS, Named Plaintiff Colleen Flanagan lives and works in Boston. Plaintiff Flanagan has a mobility disability that substantially limits her ability to walk and uses a wheelchair for mobility. Plaintiff Flanagan is a “qualified person with a disability” and a person with a “disability” within the meaning of all applicable statutes and regulations, including 42 U.S.C. § 12131(2), 28 C.F.R. § 35.108, and 29 U.S.C. § 705(20)(B).

WHEREAS, on May 7, 2018, Plaintiffs sent the City a letter asserting that Plaintiffs and similarly situated people with mobility disabilities have been denied access to the City’s pedestrian right of way because of a lack of accessible curb ramps throughout the City (the “Dispute”). Plaintiff offered to engage in structured negotiations, in lieu of litigation, to resolve the Dispute. On June 22, 2018, the Parties executed a tolling agreement to protect the interests of all Parties during those negotiations and to avoid the burden, expense, and potential risks of litigation.

WHEREAS, the Parties have engaged in good faith negotiations and shared relevant information regarding the Dispute. The Parties have also conducted a thorough examination and investigation of the facts and law relating to the matters set forth in this Consent Decree, and have engaged in extensive arms-length negotiations.

WHEREAS, the City does not admit, and specifically denies, that it has violated or failed to comply with or has any liability to Plaintiffs or the proposed Settlement Class under any provisions of the ADA or Section 504 relating to accessibility for persons with mobility disabilities to the pedestrian right of way, any regulations or guidelines promulgated pursuant to those statutes, or any other applicable laws, regulations, or legal requirements. This Consent Decree and its terms and provisions shall not be offered or received as evidence for any purpose whatsoever against the City in any action or proceeding, other than a proceeding to enforce the Consent Decree's terms.

WHEREAS, this Consent Decree and the releases contained herein cover only curb ramps on street segments with Pedestrian Walkways, and do not apply to components of the City's sidewalk system other than curb ramps.

WHEREAS, based upon extensive analysis of the facts and the applicable law and taking into account the risks and uncertainties associated with litigation and the delays that may result from trial and appeals, as well as the fair, cost-effective and assured method of resolving the potential claims of the Settlement Class represented by this Consent Decree, Class Counsel has concluded that this Consent Decree provides substantial benefit to the Settlement Class and is fair, reasonable, and adequate and in the best interest of Plaintiffs and the Settlement Class.

WHEREAS, the City has similarly concluded that this Consent Decree is desirable to avoid the time, risk, and expense of defending protracted litigation, to fulfill its long-standing commitment to promoting and enhancing the rights of those with disabilities, to ensure compliance with laws protecting the rights of individuals with Mobility Disabilities, and to resolve potential claims of Plaintiffs and the Settlement Class.

WHEREAS, this Consent Decree will be submitted to the United States District Court for the District of Massachusetts for preliminary and final approval under Rule 23 of the Federal Rules of Civil Procedure, as described below.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the Parties agree as follows:

1. Definitions

For purposes of this Consent Decree, the following terms have the following definitions:

1.1. “2010 ADA Standards for Accessible Design” or “2010 ADA Standards” means the Department of Justice’s revised regulations for Titles II and III of the Americans with Disabilities Act of 1990 effective March 15, 2012.

1.2. “2013 DOJ/DOT Alteration Guidance” means the 2013 Department of Justice/Department of Transportation Joint Technical Assistance on the Title II of the Americans with Disabilities Act Requirements to Provide Curb Ramps when Streets, Roads, or Highways are Altered through Resurfacing, and the Briefing Memo, Questions & Answers Supplement, and Glossary of Terms related thereto, which are attached hereto as Exhibit A.

1.3. “Accessible,” with respect to the installation or modification of curb ramps required by this Consent Decree, means compliant with the applicable provisions of Title II of the Americans with Disabilities Act, 42 U.S.C. § 12101, et seq., codified at 28 C.F.R. § 35.151 and 36 C.F.R. part 1191, and Appendices B and D (hereafter “2010 ADA Standards”), or any subsequent ADA standards adopted by the U.S. Department of Justice and U.S. Department of Transportation for application in the pedestrian right of way.

1.4. “Alter,” “Altered,” or “Alteration,” when used in reference to work performed as part of street, roadway, or highway resurfacing, means those alterations identified in the 2013 DOJ/DOT Alteration Guidance (Exhibit A). Specified alterations include but are not limited to the addition of a new layer of asphalt, asphalt and concrete, cape seals, concrete pavement rehabilitation and reconstruction, micro-surfacing and thin lift overlays, mill & fill, mill & overlay, open-graded surface course, and in-place asphalt recycling. Alterations also include roadway resurfacing projects that affect pedestrian crosswalks, even if the projects do not span the full width of the road. *See* 28 C.F.R. § 35.151(i). Maintenance activities, such as re-striping crosswalks, filling potholes, or pavement patching do not constitute Alterations. When used in reference to work performed on a Pedestrian Walkway or Existing Curb Ramp, “Alter,” “Altered,” or “Alteration” has the same meaning as under 28 C.F.R. § 35.151(b).

1.5. “Americans with Disabilities Act” or “ADA” means the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

1.6. “Best Efforts” means the efforts that a reasonable entity in the City’s position would use to perform an obligation in good faith.

1.7. “Class Counsel” means collectively the Civil Rights Education and Enforcement Center (CREEC), Disability Law Center, Inc. of Massachusetts (DLC-MA), and the law firm Goldstein, Borgen, Dardarian & Ho.

1.8. “Compliant Curb Ramp” means, for a curb ramp designed, built or Altered between March 15, 2012 and the Effective Date, built in compliance with the 2010 ADA Standards. For a curb ramp built or Altered prior to March 15, 2012, “Compliant Curb Ramp” means a curb ramp that is compliant with either the 2010 ADA Standards or the 1991 Americans

with Disabilities Act Standards for Accessible Design (“ADAAG”), codified at 28 C.F.R., Part 36, including Appendix A.

1.9. “Curb Ramp” shall have the same meaning found in 36 C.F.R. part 1191, Appendix A, § 106.5, i.e., “a short ramp cutting through a curb or built up to it.”

1.10. “Effective Date” means the date upon which the Consent Decree becomes a final judgment of the District Court presiding over this Action. In the event that any objection to the Settlement is filed, the Consent Decree becomes effective when the time to appeal the final approval order expires without the filing of an appeal; or, if an appeal is filed, when the appeal is finally adjudicated or resolved in favor of affirming the approval of the Consent Decree.

1.11. “Existing Curb Ramp,” for purposes of this Consent Decree, means any Curb Ramp completed prior to the Effective Date.

1.12. “Initial Review” means a preliminary evaluation of a recently installed or remediated Curb Ramp for any readily apparent defects. The Initial Review is not a thorough evaluation of the Curb Ramp’s Accessibility. It is instead intended to identify obvious non-Compliant conditions or safety hazards.

1.13. “Mobility Disability” or “Mobility Disabilities” means any impairment or medical condition, as defined by 42 U.S.C. § 12102, that limits a person’s ability to walk, ambulate, maneuver around objects, or ascend or descend steps or slopes. A person with a Mobility Disability may or may not use a wheelchair, scooter, electric personal assisted mobility device, crutches, walker, cane, brace, orthopedic device, or similar equipment or device to assist their navigation along sidewalks, or may be semi-ambulatory.

1.14. “New Construction and Alterations” means all work required to be performed, pursuant to 28 C.F.R. § 35.151, in connection with newly-constructed or Altered intersections,

streets, roads, highways, and Pedestrian Walkways in the City during the Term of the Consent Decree.

1.15. “Pedestrian Facility” or “Pedestrian Facilities” means any portion of an intersection or street that is provided for pedestrian travel, and any Pedestrian Walkway, crosswalk, curb, Curb Ramp, walkway, pedestrian right of way, pedestrian undercrossing, pedestrian overcrossing, or other pedestrian pathway or walk of any kind, that is, in whole or in part, owned, controlled, maintained by, or otherwise within the responsibility of the City of Boston.

1.16. “Pedestrian Walkway” means a sidewalk or other prepared exterior surface provided for pedestrian travel in the public right of way that is, in whole or in part, owned, controlled, maintained by, or otherwise within the responsibility of the City of Boston.

1.17. “Remediate” or “Remediation” means the correction of an existing non-Compliant Curb Ramp or associated Curb Ramp landings to create an Accessible Curb Ramp.

1.18. “Settlement Class” means the class of individuals ultimately defined and certified by a Court in this matter, in particular: “all persons (including residents of and/or visitors to the City of Boston) with any Mobility Disability, who, at any time prior to court judgment granting final approval to this Consent Decree, have been denied full and equal access to the City’s pedestrian right of way due to the lack of a Curb Ramp or a Curb Ramp that was damaged, in need of repair, or otherwise in a condition not suitable or sufficient for use.”

1.19. “Section 504” means Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, et seq.

1.20. “Structural Impracticability” or “Structurally Impracticable” has the same definition as under 28 C.F.R. § 35.151, i.e., when the unique characteristics of terrain prevent incorporation of Accessible Curb Ramps into New Construction of Pedestrian Facilities.

1.21. “Technical Infeasibility” or “Technically Infeasible” means instances when an Accessible Curb Ramp cannot be constructed during Alterations to Existing Pedestrian Facilities because of physical or site constraints.

1.22. “WCAG” means version 2.1 AA of the “Web Content Accessibility Guidelines” published by the Web Accessibility Initiative (WAI) of the World Wide Web Consortium (W3C).

2. Term of the Consent Decree

The Consent Decree shall become effective on the Effective Date and shall remain in effect until the completion of the City’s construction and Remediation of Accessible Curb Ramps required under this Consent Decree. If Class Counsel dispute that the City has fulfilled all of its obligations under this Consent Decree, this Consent Decree shall remain in effect pending the conclusion of any dispute resolution proceedings or action to enforce the Consent Decree. The foregoing time period is referenced herein as the “Term of the Consent Decree.”

3. Curb Ramp Survey

The City shall, at its own expense, perform a survey of all corners at street segments with Pedestrian Walkways to identify the number and types of Curb Ramps at each corner as well as Curb Ramps and associated ramp landings that are missing or are not Compliant (the “Survey”). Requirements for the Survey are as follows.

3.1. The Survey shall be commenced by September 1, 2020, and shall be completed by August 1, 2021.

3.2. The City shall use a reliable methodology to collect, at a minimum, the following data for the Survey:

3.2.1. Locations that are missing Curb Ramps (including traffic islands and mid-block crossings);

3.2.2. Locations where Curb Ramps exist (including traffic islands and mid-block crossings).

3.2.3. For locations where Curb Ramps exist, the following data shall be collected:

3.2.3.1. Whether the ramp is a parallel ramp, a perpendicular ramp, a diagonal ramp, or a combination ramp;

3.2.3.2. The ramp position (*e.g.*, diagonal or unidirectional (and if the latter, which direction));

3.2.3.3. The maximum running slope and cross slope of each run within the ramp;

3.2.3.4. The width of each run within the ramp;

3.2.3.5. The maximum slope in any direction of the ramp's top landing;

3.2.3.6. Whether the length and width of the clear space within the four-foot square area at the ramp's top landing are compliant based on the 2010 ADA Standards for Accessible Design, as well as the surface condition of that four-foot square area; whether the ramp has side-flares, and if so, the slope of each;

3.2.3.7. The rating of the ramp's surface condition as either:
"Excellent" condition: no damage, "Fair" condition: hairline cracks/slight surface wear that have

no impact on accessibility, or “Poor” condition: any cracks/damage that would impact accessibility, or any gaps, cracks, uplift, or obstacles.

3.2.3.8. The existence and condition of any detectible warnings;

3.2.3.9. The gutter slope at the bottom transition of the ramp;

3.2.3.10. The counter-slope of the four-foot square area extending into the street from the bottom transition of the ramp;

3.2.3.11. The existence of any lip (i.e., abrupt change of elevation) at the bottom landing of the Curb Ramp;

3.2.3.12. The rating of the condition of the pavement in the four-foot square area extending into the street from the bottom transition of the ramp as “Excellent” condition: no damage, “Fair” condition: hairline cracks/slight surface wear but has no impact on accessibility, or “Poor” condition: any cracks/damage that would impact accessibility, including the presence of any gaps, cracks, uplift, grates or other obstacles;

3.2.3.13. Whether the four-foot lower landing of the ramp (i.e., the four-foot square extending into the street from the bottom transition of the ramp) is entirely within any striped crosswalk;

3.2.3.14. The existence of any objects or barriers within the path of travel at the top landing, within the ramp, or at the bottom landing, including utility or signal poles, hydrants, storm drains, trees, electrical boxes, benches, trash receptacles, etc.); and

3.2.3.15. Existence of raised traffic islands without a level cut-through or without ramps.

For purposes of the Survey, the City shall use a two-foot-long electronic (digital) level to measure slopes, and slopes shall be measured where they appear to be steepest.

3.2.4. Notwithstanding the above, for locations where Curb Ramps exist, if any measurement taken in accordance with Section 3.2.3 establishes that the subject ramp does not conform to the 2010 ADA Standards for Accessible Design and, in the opinion of the City, requires full design and reconstruction in order to Remediate, the City may choose not to collect all data set forth in Section 3.2.3 for that ramp and instead note that the ramp requires full reconstruction.

3.2.5. Within thirty days of the Survey's completion, the City shall provide electronic records of the information set forth above in Section 3.2.1-.3 to Class Counsel in machine-readable format. If, within sixty days of receiving the results from the Survey, Class Counsel request a meeting with the City, the City shall meet with Class Counsel to review and discuss the results of the Survey.

4. ADA Coordinator

4.1. Within 90 days of the Effective Date, the City will designate an ADA Coordinator for the City's Public Works Department ("PWD"), whose responsibilities shall include overseeing and facilitating implementation of the Consent Decree. The City may designate either an employee or a contractor as the ADA Coordinator, but the ADA Coordinator must have available a minimum of 20 hours per week to devote solely to responsibilities related to access for people with Mobility Disabilities to the City's Pedestrian Facilities. Throughout the Term of the Consent Decree, the ADA Coordinator position shall be filled with an individual who has the following minimum qualifications: (i) experience in evaluating or assisting public entities in evaluating the accessibility of facilities under Title II of the ADA and Section 504; (ii) knowledge of current federal and state disability access standards; and (iii) a minimum of five years' experience related to ADA-accessible facilities; and the following preferred qualifications:

(iv) a degree in civil engineering, urban planning, or architecture; and (v) experience specific to Accessible Pedestrian Facilities. The City shall have final authority in hiring an ADA Coordinator but shall confer with Class Counsel in creating a job description for and selecting the ADA Coordinator and use Best Efforts to incorporate Class Counsel's feedback. The ADA Coordinator shall assist in developing and implementing the work set forth below.

5. Annual Accessible Curb Ramp Commitment

5.1. Commencing on January 1, 2021, and continuing throughout the Term of the Consent Decree, the City shall install and/or Remediate, at a minimum, the number of Accessible Curb Ramps in the City's Pedestrian Walkways each calendar year, set forth below. This number shall be known as the "Annual Commitment." The Annual Commitment will continue until all corners of the City's Pedestrian Walkways have Accessible Curb Ramps.

5.1.1. The Annual Commitment is as follows:

Year	Accessible Curb Ramp Minimum
2021	1,200
2022	1,350
2023	1,500
2024	1,630
2025 through 2030	1,630, plus a sufficient number each calendar year to increase the average number of Accessible Curb Ramps installed and or remediated annually from 2020 through 2030 to 1,630 per year ("Additional Portion of Annual Commitment").
2031 and thereafter	1,630, until all corners of the City's Pedestrian Walkways have Accessible Curb Ramps.

5.1.2 The Additional Portion of Annual Commitment is designed to make up the difference between the Annual Commitment for calendar years 2020 through 2023 and an Accessible Curb Ramp installation and remediation rate of 1,630 per year.

5.1.3 Commencing in the Fourth Quarter of 2024, the Parties shall begin meeting and conferring to determine the City's Additional Portion of Annual Commitment for each calendar year from 2025 through 2030. The meet and confer process shall be completed by the end of the First Quarter of 2025. If the Parties have not reached agreement on the Additional Portion of Annual Commitment for years 2025 through 2030 by the end of the First Quarter of 2025, they shall submit the matter to dispute resolution pursuant to the Section 16 of this Consent Decree.

5.1.4 Unless the City will otherwise achieve an Accessible Curb Ramp at each corner of the City's Pedestrian Walkways by the end of calendar year 2030, or unless the City can demonstrate extreme impracticability, difficulty or expense, the Additional Portion of the City's Annual Commitment for the years 2025 to 2030 shall be an average of 340 Accessible Curb Ramps. The actual Additional Portion for any calendar year shall be determined by the Parties' meet and confer process. For purposes of this Consent Decree, the Annual Commitment includes all Accessible Curb Ramps installed or Remediated by the City, its contractors, and any other third parties acting within the City's authority, on its behalf, or pursuant to a permit issued by the City in connection with New Construction, Alterations, fulfillment of requests made through the Curb Ramp Request System set forth in Section 10, below, and Remediation of Existing non-Compliant Curb Ramps set forth in Section 8, below.

5.2. Throughout the Term of the Consent Decree, all Curb Ramps installed or Remediated by the City, its contractors, or any other third parties acting within the City's

authority, or on its behalf, or pursuant to a permit issued by the City, shall be Accessible Curb Ramps. The City shall ensure compliance as follows:

5.2.1. The City shall require that the design and construction of all Curb Ramps to be installed or Remediated during the Term of the Consent Decree be subject to the City's review and approval.

5.2.2. The City shall perform an Initial Review of each Curb Ramp installed or Remediated within thirty (30) days of the City's Department of Public Works' receiving notification of the ramp's completion. If, in the City's judgment, the Curb Ramp presents a safety hazard or other readily apparent defect or Non-Compliant Condition, the City shall notify the entity that constructed or Remediated the Curb Ramp and require its replacement within thirty (30) days of the Initial Review.

5.2.3. In addition, the City shall inspect each installed or Remediated Curb Ramp to verify whether it is an Accessible Curb Ramp ("Access Inspection") within one hundred twenty (120) days of the ramp's completion. For purposes of these Access Inspections, the City shall use a two-foot-long electronic (digital) level to measure slopes, and slopes shall be measured where they appear to be steepest. The City shall only give approval to verified Accessible Curb Ramps.

5.2.4. In the event that the City determines that any of the Curb Ramps evaluated as part of the Access Inspection and approval process are not Accessible Curb Ramps, it shall notify the entity that constructed or Remediated the Curb Ramp and require its replacement within thirty (30) days of the notification.

5.2.5. Any Curb Ramp installed or Remediated pursuant to this Consent Decree shall count toward fulfillment of the City's Annual Commitment only after it has passed the Access Inspection and approval process.

5.3. If in any annual period other than the final year of the Term of the Consent Decree, more Accessible Curb Ramps are installed within the City than the applicable Annual Commitment, the City may bank the additional Accessible Curb Ramps to be credited to any year in which fewer than the applicable Annual Commitment of Accessible Curb Ramps are installed to bring the total to the required number for that year. This excess shall be referred to as the "credit bank." The credit bank may be replenished and drawn down in the City's discretion. If in any such annual period, the City experiences unexpected delays in major capital improvement projects based on factors outside of the City's control, then the applicable Annual Commitment may be reduced in an amount not to exceed 250 Accessible Curb Ramps. This number shall be referred to as the "deficit bank." No ramps will be added to the credit bank until the deficit bank is reduced to zero. The deficit bank shall be reduced to zero within two years, during which time the deficit ramps shall be installed in addition to the applicable Annual Commitment. During any year in which there are ramps in the deficit bank, the City may not reduce its Annual Commitment based on ramps in the credit bank.

6. Prioritization of Annual Commitment

6.1. On an annual basis throughout the Term of the Consent Decree, the City shall provide Class Counsel with a "Curb Ramp List," or a list of the locations at which the Curb Ramps are planned to be installed or Remediated during the upcoming year. The Curb Ramp List shall be provided to Class Counsel no later than thirty (30) days prior to the commencement of each year of the Annual Commitment. The Curb Ramp List shall indicate whether each Curb

Ramp is an installation or Remediation and, if the latter, the type of Remediation to be performed (e.g., grinding of lip, repainting of crosswalk, ramp replacement, etc.). The Curb Ramp List shall also indicate the reasons for prioritizing Existing Curb Ramps for Remediation under the factors set forth in Section 8.2, below. Class Counsel shall have fifteen (15) days from receipt to provide feedback on the Curb Ramp List, which the City shall incorporate to the extent practicable.

6.2. In each year, the City will use Best Efforts to adhere to the Curb Ramp List, but it may make changes based on field conditions, requests submitted through Curb Ramp Request System, or other operational necessity. The City shall promptly notify Class Counsel of all changes to the Curb Ramp List and give Class Counsel a reasonable opportunity to provide feedback, to which the City will give good faith consideration.

7. New Construction and Alteration Requirements

7.1. Throughout the Term of the Consent Decree, whenever the City, the City's contractors, or any other party acting within the City's authority, on its behalf, or pursuant to a permit issued by the City performs an Alteration to or constructs a street, road, or highway within City right of way, the City will install or Remediate, or require the installation or Remediation of, Accessible Curb Ramps where a Pedestrian Walkway adjacent to the constructed or Altered street, road, or highway crosses a curb and no Accessible Curb Ramp currently exists.

7.2. Throughout the Term of the Consent Decree, whenever the City, the City's contractors, or any other party acting within the City's authority, on its behalf, or pursuant to a permit issued by the City Alters a Pedestrian Walkway or constructs a new Pedestrian Walkway, the City will install or Remediate, or require the installation or Remediation of, Accessible Curb

Ramps if and where the Altered or new portion of the Pedestrian Walkway crosses a curb or is adjacent to a corner where pedestrians are permitted to cross the street.

7.3. Throughout the Term of the Consent Decree, whenever the City, the City's contractors, or any other party acting within the City's authority, on its behalf, or pursuant to a permit issued by the City Alters an Existing Curb Ramp or installs a new Curb Ramp, the City will accept the installed or Remediated Curb Ramp only if it is Accessible.

7.4. Throughout the Term of the Consent Decree, whenever the City, the City's contractors, or any other party acting within the City's authority, on its behalf, or pursuant to a permit issued by the City newly constructs or Alters Pedestrian Facilities, or adjacent construction projects obstruct the pedestrian right of way, the City shall ensure that Accessible temporary routes are provided through and around such projects with appropriate signage directing persons with Mobility Disabilities to such Accessible temporary routes.

7.5. The obligation of the City, the City's contractors, any other party acting within the City's authority on its behalf, and third parties acting pursuant to a permit to install or Remediate an Accessible Curb Ramp as set forth in this Section shall be subject to the following:

7.5.1. Technical Infeasibility: Where the Consent Decree would otherwise require the installation or Remediation of a Curb Ramp in connection with an Alteration, but existing physical or site constraints prohibit such installation, then the Curb Ramp shall be made Accessible to the maximum extent feasible. *See* 2010 ADA Standards for Accessible Design, DOJ Technical Assistance Manual for Title II of the ADA, II-6.3100(4) (9-12-06). Such accessibility work shall be performed at the same time that the Alteration project is being performed or reasonably thereafter. The City will document findings of Technical Infeasibility and make this documentation available to Class Counsel.

7.5.2. Structural Impracticability: In the rare circumstances when the unique characteristics of terrain prevent the installation of an Accessible Curb Ramp during new construction, the Curb Ramp shall comply to the extent that it is not Structurally Impracticable, as further described in 28 C.F.R. § 35.151(a)(2)(i). The City will document findings of Structural Impracticability and make this documentation available to Class Counsel.

7.5.3. In circumstances of Structural Impracticability or Technical Infeasibility, the City shall consider the extent to which physical or site constraints can be addressed by alternative Curb Ramp designs or a raised crosswalk that meets applicable federal and state Access standards. Such consideration shall also be documented, and the City shall make this documentation available to Class Counsel.

8. Remediation of Existing Pedestrian Facilities

8.1. As part of the Annual Commitment, and to the extent not otherwise covered by planned New Construction and Alterations, or by the Curb Ramp Request System set forth in Section 10, below, the City shall Remediate all Non-Compliant Curb Ramps identified in the results of the Survey of Existing Pedestrian Facilities.

8.2. Locations for Accessible Curb Ramps to be installed or Remediated on Existing Pedestrian Facilities throughout the Term of the Consent Decree will be prioritized in accordance with the following:

8.2.1. The priorities set forth in 28 C.F.R. § 35.150 (which are also reflected in the City's High Priority Sidewalk Network and Snow Maps based on MAPC raw walk scores), which include proximity to:

8.2.1.1. Government offices, facilities, schools, and parks
(including the pedestrian rights of way adjacent to facilities owned or operated by the City, and

the paths of travel leading from such adjacent pedestrian rights of way to the primary entrances to such facilities);

8.2.1.2. Transportation corridors;

8.2.1.3. Hospitals, medical facilities, assisted living facilities, and other similar facilities;

8.2.1.4. Places of public accommodation, such as commercial and business zones;

8.2.1.5. Facilities containing employers; and

8.2.1.6. Residential neighborhoods; and

8.2.2. Ramps requested by or on behalf of a person with a mobility disability through the Curb Ramp Request System as set forth in Section 10, below.

8.2.3. Ramps found to be non-Compliant in response to a 311 maintenance request as set forth in Section 11.4, below.

9. Consent Decree Implementation Plan

9.1. As soon as possible, but no later than two years after the Effective Date, the City shall create a Consent Decree Implementation Plan to expressly address the Curb Ramp priorities, obligations and milestones set forth in this Consent Decree (“Implementation Plan”).

9.2. The Implementation Plan shall include a schedule for Accessible Curb Ramp installation and Remediation that is consistent with this Consent Decree. To the extent known, the Implementation Plan shall take into account locations of planned New Construction or Alterations that trigger the obligation to install new Accessible Curb Ramps. To the extent feasible, the Implementation Plan shall also memorialize the prioritization of Existing Pedestrian Facilities to be Remediated pursuant to Section 8.2.

9.3. The City shall provide a draft of the Implementation Plan to Class Counsel for their review and comment at least thirty (30) days prior to finalizing the Implementation Plan for adoption. The City will meet and confer with Class Counsel about any comments Class Counsel have on the Implementation Plan, and will give good faith consideration to such comments. The City shall solicit public comment on the Implementation Plan from community members who have Mobility Disabilities.

10. Curb Ramp Request System

10.1. Throughout the Term of the Consent Decree, the City shall continue to maintain a program through which people with Mobility Disabilities may submit requests for the construction and maintenance of Accessible Curb Ramps and the Remediation of non-Compliant Curb Ramps (“Curb Ramp Request System”). Curb Ramp Requests may be submitted through an easily locatable form on the City’s website, a telephone number, or other electronic format. The request form may require the following information: (i) the requestor’s name, address and other contact information; (ii) a statement that the requestor is a person with a Mobility Disability or is making the request on behalf of a person with a Mobility Disability; (iii) the location of the requested Curb Ramp; and (iv) the method preferred by the requestor to receive the City’s response to the Curb Ramp Request (e.g., by telephone, text message, electronic mail, or standard mail). The request form shall allow a requestor to indicate that they are a person with a Mobility Disability or are making the request on behalf of a person with a Mobility Disability.

10.2. The City shall document receipt of each Curb Ramp Request, assign each request a specific identification number (or other identifying information), and log the request into a software program or other electronic database that records the requestor’s name and contact

information, the date of the request, and the location of the requested Curb Ramp construction, Remediation, or maintenance. The City's program shall continue to immediately, or at least within ten (10) days of receipt, indicate to the requestor that their request has been received, and provide the requestor with the identification number or other identifying information assigned to the request.

10.3. The City will investigate each request within thirty (30) days of its submission, and provide the requestor with information about when the City estimates that the Accessible Curb Ramp will be constructed, Remediated or maintained. Given that the City is only able to perform construction in the pedestrian right of way during six months of the year due to weather conditions, the City shall use Best Efforts to construct each requested Accessible Curb Ramp or Remediate each identified non-Compliant Curb Ramp within one year of the submission of the request. If the City determines that it is unable to fulfill a Curb Ramp Request within one year of submission because of the prioritization of other locations for Curb Ramp installation and Remediation for that year's Annual Commitment, the City shall use Best Efforts to fulfill the Curb Ramp Request as soon as practicable in the next calendar year.

10.4. In any such circumstance where the construction of an Accessible Curb Ramp requested pursuant to the City's Curb Ramp Request System would be Technically Infeasible or Structurally Impracticable, the subject Curb Ramp shall be Accessible to the maximum extent feasible, and physical or site constraints shall be addressed by alternative Curb Ramp designs or a raised crosswalk that meets applicable federal and state Access standards. If the City determines that construction of a requested Curb Ramp is Technically Infeasible or Structurally Impracticable, the City shall notify the requestor that the subject ramp shall be made Accessible to the maximum extent feasible. As set forth in Section 7.5., above, the City will document

findings of Technical Infeasibility and Structural Impracticability and make this documentation available to Class Counsel.

10.5. Through the Term of Consent Decree, the City shall maintain a website, or an equivalent manner of electronic communication to the general public, which describes the methods for making Curb Ramp Requests and the process and timeline for fulfilling those Requests. The webpage(s) describing the Curb Ramp Request System shall, at a minimum, be available from an easily findable location on the City of Boston's website homepage.

11. Maintenance

11.1. Throughout the Term of the Consent Decree, the City shall maintain all Accessible Curb Ramps over which it has responsibility, ownership, or control so that those facilities are readily accessible to and usable by persons with Mobility Disabilities, except for isolated or temporary interruptions in access due to maintenance or repairs.

11.2. In circumstances where Accessible Curb Ramps are not available due to construction, maintenance, or repairs, the City shall provide an Accessible alternative route.

11.3. Throughout the Term of the Consent Decree, the City shall continue its annual public initiative to educate the public regarding the necessity for timely removal of snow and other debris from Curb Ramps, and from sidewalks that provide access to bus stops. The City will also use Best Efforts to ensure timely removal of such snow and debris, including through rigorous enforcement of City of Boston Ordinance 16-12.16, and in accordance with M.G.L c. 85 § 5.

11.4. Throughout the Term of the Consent Decree, City will promptly respond to and investigate complaints made through the City's 311 system that concern puddles of water forming on Curb Ramp landings. Within thirty days of receiving the complaint, the City will

confirm whether the Curb Ramp is non-Compliant. Any such complaint regarding a Curb Ramp that the City determines is non-Compliant will be treated as a Curb Ramp Request subject to the terms of Section 10 above and prioritized in accordance therewith.

12. Annual Reporting

12.1. On an annual basis and by the end of each calendar year of the Consent Decree, the City will provide a written Annual Report to Class Counsel regarding the status of the City's compliance with the terms of the Consent Decree. The Annual Report shall include summary information detailing the number of Accessible Curb Ramps constructed and/or Remediated and their locations, and the number and locations of Accessible Curb Ramps constructed and/or Remediated via the Curb Ramp Request System. Each of the reports shall include the following information, if applicable to the reporting period:

12.1.1. Detailed information demonstrating the number and locations of Curb Ramps installed or Remediated by the City, its contractors, or third parties in the preceding calendar year, including links to view the design data, photographs, and sign-offs for each completed ramp;

12.1.2. Documentation demonstrating locations where ramps have been installed and Remediated to the maximum extent feasible, or were not installed, due to Technical Infeasibility or Structural Impracticability;

12.1.3. Documentation showing the number ramps requested via the Curb Ramp Request System and respective response times from notification of receipt of request through time of Accessible Curb Ramp installation or Remediation; and

12.1.4. Documentation, including photographs, showing the measurements set forth in Section 3.2.3., above of a random sampling of Curb Ramps installed or Remediated in the previous year.

12.1.5. Documentation of all inspections performed pursuant to Section 5.2.3, including whether any Curb Ramps were deemed not to be Accessible, and if so, whether such Curb Ramps were promptly corrected.

12.2. Additionally, throughout the Term of the Consent Decree, the City shall provide Class Counsel with requested information from PWD's pavement, sidewalk and Curb Ramp asset management database(s), or equivalent databases, upon Plaintiffs' reasonable request. The information shall be provided in Microsoft Excel format, or in such other searchable/sortable electronic format as the Parties mutually agree upon.

12.3. Within forty-five (45) calendar days of City's issuance of the Annual Report to Class Counsel, if so needed, Class Counsel may request to meet with the City via telephone or videoconference, or if reasonable, in person, to discuss the City's efforts to implement the Consent Decree and attempt to resolve any disputes.

13. Monitoring

Throughout the Term of the Consent Decree, the City shall notify Class Counsel of any changes to the City's drawings and/or designs regarding Accessible Curb Ramps, and shall provide Plaintiffs and Class Counsel with any updated drawings and/or designs regarding Accessible Curb Ramps. Plaintiffs and Class Counsel may also inspect work being done in the City's pedestrian rights of way to construct Accessible Curb Ramps and Remediate non-Compliant Curb Ramps in order to monitor compliance with the Consent Decree. Additionally, as set forth in Section 12.2, above, the City will provide requested information from its relevant

asset management database to Plaintiffs and Class Counsel for their review upon reasonable request. The information shall be provided in Microsoft Excel format, or in such other searchable/sortable electronic format as the Parties mutually agree upon.

14. Settlement Approval Process

14.1. This Consent Decree will be subject to approval by the District Court. However, nothing in this Consent Decree will be deemed to authorize the District Court to change or modify any of its terms. Any change, modification or rejection of any of the provisions of this Consent Decree by the District Court or any other court will constitute a material modification of this Consent Decree, will prevent the Judgment from becoming final, and will give any Party the right to terminate this Consent Decree in its entirety.

14.2. By no later than ten (10) days after circulating the fully executed Consent Decree, Plaintiffs will file their Complaint in the United States District Court for the District of Massachusetts (the “Muehe Action”). The Parties will then jointly move the court for preliminary approval of this Consent Decree, certification of the Settlement Class as defined in Section 1.18 of this Consent Decree, appointment of Class Counsel and Plaintiffs to represent the Settlement Class, and approval of the form and content of notice (substantially in the form attached to this Consent Decree as Exhibit B) and a plan for distribution of notice to the Settlement Class. Along with their joint motion for preliminary approval, the Parties will submit the proposed Preliminary Approval Order attached to this Consent Decree as Exhibit C (the “Preliminary Approval Order.”). Alternatively, Plaintiffs may file the motion for preliminary approval, which the City agrees not to oppose.

14.3. The Parties agree that the Settlement Class will be certified in accordance with the standards applicable under Rule 23(b)(2) of the Federal Rules of Civil Procedure and that,

accordingly, no Settlement Class member may opt out of any of the provisions of this Consent Decree.

14.4. Following the District Court's issuance of the Preliminary Approval Order, the Parties will circulate the Notice of Settlement, advising the members of the Settlement Class of the terms of the proposed Consent Decree and their right to object to the proposed Consent Decree. This Notice will be published as follows:

14.4.1. Within thirty (30) days after the District Court has issued the Preliminary Approval Order, the City will cause Notice of the Settlement to be published once each week for four (4) consecutive weeks in The Boston Globe and the Boston Herald. The City will also cause Notice of the Settlement to be published in additional publications as the District Court may order.

14.4.2. The Notice will include the terms required by the District Court, which are anticipated to be as follows: (i) a brief statement of the Muehe Action, the settlement embodied in this Consent Decree, and the claims released by the Settlement Class; (ii) the date and time of the fairness hearing and/or final approval hearing of the proposed Consent Decree; (iii) the deadline for submitting objections to the proposed Consent Decree; and (iv) the web page, address, and telephone and fax numbers that may be used to obtain a copy of the Notice of Settlement. The City will pay the costs for the publication of the Notice.

14.4.3. Within twenty (20) days after the District Court has issued the Preliminary Approval Order, the City will cause a copy of the Notice of Settlement to be posted and remain posted on the City's official website (www.boston.gov) for four (4) consecutive weeks. The website will also make a copy of the Notice of Settlement available in English, Spanish, Haitian Creole, Traditional Chinese, Vietnamese, Cabo Verdean Creole, Brazilian Portuguese, Russian,

Arabic, French, Somali, or any other language required by the City of Boston's Language and Communications Access Policy, and in an accessible electronic format that can be recognized and read by software commonly used by individuals with visual impairments to read web pages. All pages or content on these websites that are part of the process for accessing the information in the Notice of Settlement will comply with WCAG. The City will pay the costs for the publication of the Notice.

14.4.4. Within ten (10) days after the District Court has issued the Preliminary Approval Order, Class Counsel will cause a copy of the Notice of Settlement to be provided (via email or U.S. Mail) to the organizations listed on Exhibit D to this Consent Decree.

14.4.5. Within twenty (20) days after the District Court has issued the Preliminary Approval Order, each firm making up Class Counsel will post on its website a copy of the Notice of Settlement in English, Spanish, Haitian Creole, Traditional Chinese, Vietnamese, Cabo Verdean Creole, Brazilian Portuguese, Russian, Arabic, French, Somali, or any other language required by the City of Boston's Language and Communications Access Policy, and in an accessible electronic format that can be recognized and read by software commonly used by individuals with visual impairments to read web pages. In addition, the websites will provide information about how Settlement Class Members may obtain a copy of the Consent Decree. All pages or content on the websites that are part of the process for accessing the information in the notice will comply with WCAG.

14.5. Prior to the fairness hearing, and as directed by the District Court, Plaintiffs will file a motion for an award of attorneys' fees, costs, and expenses, and service award to Plaintiffs consistent with the terms of this Consent Decree. Plaintiffs' motion will seek service awards to Plaintiffs of no more than \$5,000.00 each (as set forth in Section 17, below). The Parties will

also file a joint motion requesting that the District Court schedule and conduct a fairness hearing to decide whether the Court will grant final approval of the Consent Decree, as set forth below.

14.6. Prior to the fairness hearing, the Parties will jointly move for entry of the Judgment (substantially in the form as attached to this Consent Decree as Exhibit E) providing for: (i) final approval of this Consent Decree as fair, adequate, and reasonable; (ii) final certification of the Settlement Class for settlement purposes only; (iii) final approval of the form and method of notice of the Judgment to the Settlement Class; (iv) final approval of the appointment of Class Counsel for the Settlement Class; (v) final approval of the appointment of Plaintiffs as representatives of the Settlement Class; (vi) final approval of the release of the City from the Released Claims, defined in Section 18, below; (vii) final approval of an order that the Settlement Class members will be enjoined and barred from asserting any of the Released Claims against the City following entry of Judgment and up to and including the completion of the Term; (viii) the Parties and all members of the Settlement Class to be bound by the Judgment; and (ix) the District Court's retention of jurisdiction over the Parties to enforce the terms of the Judgment throughout the Term of this Consent Decree.

14.7. Members of the Settlement Class will have an opportunity to object to the proposed Consent Decree but may not opt-out. The Parties will request that the District Court order the following procedures for assertion of objections, if any, to the Consent Decree:

14.7.1. Any Settlement Class member may object to this Consent Decree by filing, within sixty (60) calendar days of the commencement of the issuance of the Notice to the Settlement Class, written objections with the District Court, with a copy of such objections served concurrently on Class Counsel by messenger delivery, FedEx or other overnight carrier

delivery, or First Class U.S. Mail delivery; and/or by appearing at the Court's fairness hearing and speaking to the Court.

14.7.2. With respect to any and all objections to this Consent Decree received by Class Counsel, Class Counsel will provide a copy of each objection to counsel of record for the City, by messenger delivery or electronic-mail delivery, within two (2) court days after receipt of such objection.

14.7.3. Responses by Class Counsel and/or the City to any timely-filed objections may be filed with the District Court no less than five (5) days before the fairness hearing, or as otherwise ordered by the Court.

14.8. The Parties will take all procedural steps regarding the fairness hearing that may be requested by the District Court and will otherwise use their respective Best Efforts to consummate the settlement embodied in this Consent Decree, and to obtain approval of this Consent Decree and entry of the Judgment.

14.9. The Parties agree that, upon final approval, the District Court will enter the Judgment under Rule 54(b) of the Federal Rules of Civil Procedure (substantially in the form attached to this Consent Decree as Exhibit E) dismissing the Muehe Action with prejudice, subject to the District Court's continuing jurisdiction to resolve any Dispute regarding compliance with this Consent Decree that cannot be resolved through the Dispute Resolution Process set forth below, and to rule on Plaintiffs' motion for reasonable attorneys' fees, costs, and expenses.

14.10. The City will not assert, after the Judgment has become final, that the District Court lacks jurisdiction to enforce the terms of this Consent Decree, or raise any jurisdictional defense to any enforcement proceedings permitted under the terms of this Consent Decree.

14.11. Should the District Court deny the Parties' request to enter the Judgment, should this Consent Decree not receive final approval by the District Court for any reason, or should this Consent Decree not become final for any reason in accordance with its terms: (i) this Consent Decree will be null and void and of no force and effect; (ii) nothing in this Consent Decree will be deemed to prejudice the position of any of the Parties with respect to any matter; and (iii) neither the existence of this Consent Decree, nor its contents, will be admissible in evidence, referred to for any purpose in any litigation or proceeding, or be deemed an admission by the City of any fault, wrongdoing, or liability.

14.12. This Consent Decree, upon final approval, will be binding upon the City, Plaintiffs, and all Settlement Class members and, to the extent specifically set forth in this Consent Decree, upon Class Counsel; will extinguish all Released Claims; and will constitute the final and complete resolution of all issues addressed herein. This Consent Decree is the complete and final disposition and settlement of any and all Released Claims.

15. Media Communications Regarding Settlement

The Parties shall negotiate a joint press release to announce the Consent Decree at the time that it is submitted for preliminary approval to the federal court.

16. Dispute Resolution

16.1. If any Party believes that a dispute exists relating to any violation of or failure to perform any of the provisions of this Consent Decree, it shall notify the other Party in writing and describe the alleged violation or failure to perform with particularity. The Party alleged to have committed the violation or failure to perform shall provide a written response within ten (10) business days of receipt of such notice, and shall have a period of thirty (30) days to cure the alleged violation or failure to perform. In the event the alleged violation cannot reasonably be

cured within thirty (30) days, the Parties shall meet and confer to attempt to agree on an appropriate period of time required to cure the alleged violation or failure to perform. If the Party alleging a violation or failure to perform maintains that the violation or failure to perform has not been cured, the Parties shall meet and confer, in person or by telephone, and attempt to resolve the dispute on an informal basis for a period of at least thirty (30) days.

16.2. If the Parties are unable to resolve a dispute regarding either Party's performance under the Consent Decree through the process described in the Section 16.1., above, either Party may provide the other with written notice of its intent to enforce the Consent Decree. Thereafter, either Party may file a motion with the District Court to enforce the Settlement Consent Decree.

16.3. The terms of this Consent Decree shall be construed pursuant to the laws of the State of Massachusetts with respect to principles of common law contract interpretation, and in accordance with the substantive law of ADA and Section 504, as applicable.

17. Named Plaintiff Payments

In exchange for the Release of Claims set forth in Section 18, below, and for all services rendered to the Settlement Class, and conditioned upon the District Court granting final approval of the Consent Decree as well as Plaintiffs' application for service awards to Plaintiffs Muehe, Hamilton, Evans and Flanagan in the amounts set forth in this Section, within thirty (30) days of the Effective Date, the City will pay each of the Named Plaintiffs \$5,000.00. This payment shall be in full and final settlement of Plaintiffs' claims that are being released in Section 18.

18. Release of Claims

18.1. Effective upon entry of judgment on final approval of the Consent Decree by the District Court and in consideration for the City's commitments set forth in the Consent Decree, Plaintiffs and Settlement Class Members, on behalf of themselves and their respective heirs,

assigns, successors, executors, administrators, agents, and representatives (“Releasing Parties”) will, upon the Effective Date, fully and finally release, acquit, and discharge the City from any and all claims, allegations, demands, charges, complaints, actions, lawsuits, rights, liabilities, losses, injuries, obligations, disputes and causes of action of any kind, and whether known or unknown, suspected or unsuspected, asserted or unasserted, or actual or contingent, for injunctive, declaratory, or other non-monetary relief, however described, that were brought, could have been brought, or could be brought now or in the future by the Releasing Parties relating to or arising from any of the City’s alleged actions, omissions, incidents, or conduct related to the construction, Remediation, repair, or maintenance of Curb Ramps in the City’s pedestrian right of way at any time prior to the Effective Date and through the end of the Term of the Consent Decree (the “Released Claims”). Such Released Claims, however, shall not include any claims to enforce the terms of the Consent Decree, any claims for relief arising from the City’s violation of any term of the Consent Decree, or any claims related to monetary damages, personal injuries, or property damage. Such Released Claims also exclude any claims based on or arising from missing or non-Compliant Curb Ramps that remain in existence after the expiration of the Term of Consent Decree. In addition, as explained in the Recitals above, the Releases contained herein only cover Curb Ramps on the City’s street segments with Pedestrian Walkways and do not apply to components of the City’s sidewalk system other than Curb Ramps.

18.2. In addition to the Released Claims, the Named Plaintiffs also release the City from any and all claims arising at any time prior to the Effective Date for monetary relief relating to or arising from any of the City’s alleged actions, omissions, incidents, or conduct related to

the installation, remediation, repair or maintenance of curb ramps in the City's pedestrian right of way.

19. Attorneys' Fees, Costs, and Expenses Up to the Effective Date

The City agrees that for the purpose of awarding attorneys' fees, costs, and expenses, Plaintiffs are to be considered the prevailing parties in this matter and Class Counsel are entitled to an award of reasonable attorneys' fees, costs, and expenses incurred for work performed through the Effective Date, the amount of which will be determined by the District Court. Within thirty (30) days of the Effective Date, and conditioned upon the District Court's granting final approval of the Consent Decree and issuance of an order on Plaintiffs' application for an award of attorney's fees, costs, and expenses, the City shall deliver payment to Class Counsel for the full amount of their reasonable attorneys' fees, costs, and expenses awarded by the District Court in connection with this matter incurred up to the Effective Date. No additional amounts shall be owed to Plaintiffs or their Counsel in attorney's fees, expenses, or costs for time or expenses incurred up to the Effective Date.

20. Attorneys' Fees, Costs, and Expenses for Implementing the Consent Decree

Subject to the following terms, the City shall pay Class Counsel their reasonable attorneys' fees, costs, and expenses incurred between the Effective Date and the expiration of the Term of Consent Decree for performing all work reasonably necessary to monitor, implement, and administer the Consent Decree.

20.1. No later than thirty (30) days after the first anniversary of the Effective Date, and annually thereafter during the Term of the Consent Decree, Class Counsel shall submit to the City a statement of reasonable attorneys' fees, costs, and expenses incurred during the prior 12-month period for performing all work reasonably necessary to monitor, implement, and

administer the Consent Decree and confirm that the City has met its obligations under this Consent Decree, subject to a maximum amount of \$70,000 per year for the first through fifth years, and a maximum amount of \$60,000 per year for each of the remaining years through the expiration of the Term of the Consent Decree (“Annual Monitoring Fees Cap”). Class Counsel shall not seek more than \$15,000 per year in attorneys’ fees for the limited tasks of reviewing the Annual Report and having one or more telephonic conferences totaling fewer than four hours that confirms that the City is in compliance with the Consent Decree. The Annual Monitoring Fees Cap is stated in 2021 dollars, and shall be adjusted annually based on the Consumer Price Index for the Boston Area as calculated by the United States Bureau of Labor Statistics. Where Plaintiffs’ reasonable attorneys’ fees, costs, and expenses are less than the Annual Monitoring Fees Cap for a given year, the remainder shall be set aside for use in subsequent years of this Consent Decree (“Banked Remainder”) during which Plaintiffs’ attorneys’ fees, costs, and expenses exceed the Annual Monitoring Fees Cap. (There shall be a cap of \$90,000 on the amount of “Banked Remainder,” and the Banked Remainder will replenish up to this cap, depending on the amount of the remainder that may accrue at any time). The Annual Fees Cap and the Banked Remainder available for use in any given year shall be no more than \$100,000 combined. Each statement submitted to the City pursuant to this Consent Decree shall be supported by a description of services by date and by biller. In submitting their statement of attorneys’ fees, Class Counsel will use the hourly rates that the Court approves as reasonable when it rules on Plaintiffs’ motion for attorneys’ fees, costs, and expenses related to time spent through the Effective Date of the Consent Decree, adjusted annually based on the Consumer Price Index for the Boston Area as calculated by the United States Bureau of Labor Statistics.

20.2. The City shall review each statement submitted, and within sixty (60) days of receiving such statement, shall pay those amounts it determines in good faith were reasonably incurred by Class Counsel. Any objections or disputes regarding the statement shall be handled pursuant to the Dispute Resolution procedure set forth in Section 16 of the Consent Decree.

20.3. The City shall pay Class Counsel their reasonable attorneys' fees, costs, and expenses incurred between the Effective Date and the expiration of the Term of the Consent Decree for performing all work reasonably necessary to resolve Disputes under Section 16 of the Consent Decree subject to a maximum amount of \$75,000 per Dispute. The \$75,000 maximum amount is stated in 2021 dollars and shall be adjusted annually based on the Consumer Price Index for the Boston Area as calculated by the United States Bureau of Labor Statistics. As part of resolving disputes as set forth in Section 16, the Parties may agree upon the reasonable attorneys' fees, costs, and expenses to be paid to Class Counsel. In the absence of such agreement Class Counsel shall provide the City with a statement of reasonable attorneys' fees, costs, and expenses incurred for each dispute, supported by a description of services by date and by biller; the City shall review each statement and pay the amounts in compliance with the Section 20.2. This provision shall not apply where either Party seeks resolution of a dispute before the District Court, which shall be subject to Section 20.4.

20.4. In the event either Party finds that it is necessary to seek resolution of a dispute through a motion for enforcement before the District Court, the prevailing party shall be entitled to reasonable attorneys' fees, costs, and expenses in accordance with the standards of the ADA and Christiansburg Garment Co. v. EEOC, 434 U.S. 412, 421-22 (1978) for all time, costs, and expenses reasonably incurred pursuing their position in the dispute under Section 16.

21. Drafting of this Consent Decree

The Parties acknowledge and agree that this Consent Decree shall for all purposes be deemed jointly-drafted and fully-negotiated, and as a result, shall not in any manner be interpreted in favor of, or against, any particular Party by reason of being the drafting Party. Any rule of law that would require interpretation of any ambiguities or uncertainties in this Consent Decree against one of the Parties, shall have no application and is hereby expressly waived.

22. Voluntary Agreement

Each of the Parties represents, warrants, and agrees that they have read this Consent Decree carefully and know and understand its contents, that this Consent Decree has been voluntarily entered into, that they have received independent legal advice from their attorneys with respect to the advisability of executing this Consent Decree, and that any and all investigation and analysis of the facts deemed necessary or desirable have been conducted prior to the execution of this Consent Decree.

23. Binding Effect

All of the terms and provisions of this Consent Decree shall be binding upon and shall inure to the benefit of the Parties, their heirs, successors, and assigns.

24. Authority

Each of the Parties represents, warrants, and agrees that they have the full right and authority to enter into this Consent Decree, and that the person executing this Consent Decree has the full right and authority to commit and bind such Party.

25. Force Majeure

The obligations of the City with respect to constructing or Remediating Accessible Curb Ramps at a particular location may also be postponed if the postponement is caused by or

attributable to a force majeure—that is, due to acts of God, pandemic, war, government regulations (other than regulations by the City), terrorism, disaster (including power outages), strikes, civil disorder, government declared fiscal emergency, or an emergency beyond the City’s control, that make it illegal or impossible for the City to perform construction, Alteration, or repair work. Under this provision, the City’s obligations may be tolled for the period of the force majeure’s effect.

26. Paragraph Headings

The headings, or lack thereof, preceding each of the paragraphs in this Consent Decree are for convenience only, and shall not be considered in the Consent Decree’s construction or interpretation.

27. Counterparts

This Consent Decree may be executed by the Parties in separate counterparts, and all such counterparts taken together shall be deemed to constitute one and the same Consent Decree.

28. Notices

For Plaintiffs:

Linda M. Dardarian
Raymond A. Wendell
GOLDSTEIN, BORGES, DARDARIAN & HO
155 Grand Avenue, Suite 900
Oakland, CA 94612
510-763-9800

Timothy Fox
CIVIL RIGHTS EDUCATION AND
ENFORCEMENT CENTER
104 Broadway, Suite 400
Denver, CO 80203
303-757-7901

Tom Murphy
DISABILITY LAW CENTER, INC. – MASSACHUSETTS
11 Beacon Street, Suite 925
Boston, MA 02108
617-723-9125

For the City of Boston:

Henry C. Luthin, Corporation Counsel
City of Boston
1 City Hall Square, Room 615
Boston, MA 02201
617-635-4034

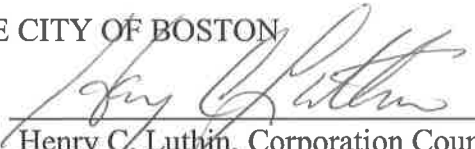
IN WITNESS WHEREOF, the Parties hereto have approved and executed this Consent

Decree on the dates set forth opposite their respective signatures.

EXECUTED by the Parties as follows:

Dated: June 29, 2021

THE CITY OF BOSTON

By:  *CML*

Henry C. Luthin, Corporation Counsel

Dated: _____, 2021

By: _____

Michael Muehe

Dated: _____, 2021

By: _____

Elaine Hamilton

Dated: _____, 2021

By: _____

Crystal Evans

Dated: _____, 2021

By: _____

Colleen Flanagan

Tom Murphy
 DISABILITY LAW CENTER, INC. – MASSACHUSETTS
 32 Industrial Drive East
 Northampton, MA 01060
 413-584-6524

For the City of Boston:

Henry C. Luthin, Corporation Counsel
 City of Boston
 1 City Hall Square, Room 615
 Boston, MA 02201
 617-635-4034

IN WITNESS WHEREOF, the Parties hereto have approved and executed this Consent

Decree on the dates set forth opposite their respective signatures.

EXECUTED by the Parties as follows:

Dated: _____, 2021

THE CITY OF BOSTON

By: _____
 Henry C. Luthin, Corporation Counsel

Dated: June 20, 2021

DocuSigned by:
 By: Michael Muehe
 Michael Muehe

Dated: July 2, 2021

DocuSigned by:
 By: ELAINE HAMILTON
 Elaine Hamilton

Dated: June 17, 2021

DocuSigned by:
 By: Crystal Evans
 Crystal Evans

Dated: 6-25, 2021

DocuSigned by:
 By: Colleen Flanagan
 Colleen Flanagan

APPROVED AS TO FORM:

Dated: June 24, 2021

GOLDSTEIN BORGEN DARDARIAN & HO

By: 
Linda M. Dardarian
Raymond Wendell
Attorneys for Plaintiffs

Dated: _____, 2021

CIVIL RIGHTS EDUCATION AND
ENFORCEMENT CENTER

By: _____
Timothy Fox
Attorneys for Plaintiffs

Dated: _____, 2021

DISABILITY LEGAL CENTER –
MASSACHUSETTS

By: _____
Tom Murphy
Attorneys for Plaintiffs

Dated: _____, 2021

THE CITY OF BOSTON

By: _____
Adam Cederbaum
Attorneys for City of Boston

APPROVED AS TO FORM:

Dated: _____, 2021

GOLDSTEIN BORGEN DARDARIAN & HO

By: _____
Linda M. Dardarian
Raymond Wendell
Attorneys for Plaintiffs

Dated: June 28, 2021

CIVIL RIGHTS EDUCATION AND
ENFORCEMENT CENTER

By:  _____
Timothy Fox
Attorneys for Plaintiffs

Dated: _____, 2021

DISABILITY LEGAL CENTER –
MASSACHUSETTS

By: _____
Tom Murphy
Attorneys for Plaintiffs

Dated: _____, 2021

THE CITY OF BOSTON

By: _____
Adam Cederbaum
Attorneys for City of Boston

APPROVED AS TO FORM:

Dated: _____, 2021

GOLDSTEIN BORGEN DARDARIAN & HO

By: _____
Linda M. Dardarian
Raymond Wendell
Attorneys for Plaintiffs

Dated: _____, 2021

CIVIL RIGHTS EDUCATION AND
ENFORCEMENT CENTER

By: _____
Timothy Fox
Attorneys for Plaintiffs

Dated: June 25, 2021

DISABILITY LEGAL CENTER –
MASSACHUSETTS

By: 
Tom Murphy
Attorneys for Plaintiffs

Dated: _____, 2021

THE CITY OF BOSTON

By: _____
Adam Cederbaum
Attorneys for City of Boston

APPROVED AS TO FORM:

Dated: _____, 2021

GOLDSTEIN BORGEN DARDARIAN & HO

By: _____
Linda M. Dardarian
Raymond Wendell
Attorneys for Plaintiffs

Dated: _____, 2021

CIVIL RIGHTS EDUCATION AND
ENFORCEMENT CENTER

By: _____
Timothy Fox
Attorneys for Plaintiffs

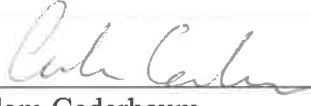
Dated: _____, 2021

DISABILITY LEGAL CENTER –
MASSACHUSETTS

By: _____
Tom Murphy
Attorneys for Plaintiffs

Dated: June 29, 2021

THE CITY OF BOSTON

By:  _____
Adam Cederbaum
Attorneys for City of Boston