UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

HECTOR OCHOA, CYNDE SOTO, CATHY SHIMOZONO, BEN ROCKWELL, and SHARON PARKER, on behalf of themselves and all others similarly situated, Plaintiffs, v. CITY OF LONG BEACH, a public entity; and BOB FOSTER, in his official capacity as Mayor, Defendants.	Case No. 2:14-cv-04307-DSF-FFM SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This Settlement Agreement and Release of Claims (the "Settlement Agreement") is made and entered into by and between: (i) the City of Long Beach (the "City"); and (ii) Hector Ochoa, Cynde Soto, Cathy Shimozono, Ben Rockwell and Sharon Parker (collectively, "Plaintiffs"), individually and on behalf of themselves and a class of persons similarly situated (the "Settlement Class," as defined below). Plaintiffs and the City will be referred to in this Settlement Agreement individually as a "Party" and collectively as the "Parties."

I. RECITALS

This Settlement Agreement is made and entered into with reference to the following facts:

A. On June 4, 2014, Plaintiffs commenced a class action against the City and former Mayor Bob Foster in the United States District Court for the Central District of California (the "District Court"), Case No. 2:14-cv-04307-DSF-FFM (the "*Ochoa* Action"). In the Complaint, Plaintiffs alleged claims under Title II of the Americans with Disabilities Act (42 U.S.C. § 12131, *et seq.*); Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794, *et seq.*); and California Government Code § 11135, *et seq*. Plaintiffs filed a First Amended Complaint on September 30, 2014.

B. On September 15, 2015, the District Court granted Plaintiffs' motion for class certification pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure. The District Court certified the following class of persons for declaratory and injunctive relief only: "All persons with mobility disabilities who use or will use the pedestrian rights of way in the City of Long Beach."

C. During the pendency of the *Ochoa* Action, the City, Plaintiffs and Class Counsel (as defined below) undertook extensive discovery and engaged in extensive discussions regarding a potential resolution and settlement of the alleged claims, including in mediation before private mediators. As a result of such

discussions, the Parties now wish to effect a complete resolution and settlement of the claims, disputes, and controversies relating to the allegations of Plaintiffs and the Settlement Class, and to resolve their differences and disputes by settling such claims, disputes and controversies under the terms set forth in this Settlement Agreement.

D. In entering into this Settlement Agreement, the Parties intend to resolve any and all claims for declaratory and injunctive relief that either were or could have been asserted in the *Ochoa* Action on behalf of individuals with Mobility Disabilities (as defined below) with respect to the accessibility of the City's Pedestrian Facilities (as defined below). Said settlement is expressly intended to assure that no further lawsuits for these claims for declaratory and injunctive relief may be maintained at any time during the Term (as defined below) of this Settlement Agreement.

E. The Parties intend this Settlement Agreement to bind and apply to the City, its Related Entities (as defined below), Plaintiffs (individually and in their capacity as representatives of the Settlement Class) and all members of the Settlement Class. This Settlement Agreement will extinguish all Released Claims (as defined below) and constitutes the final and complete resolution of all issues addressed herein.

II. DEFINITIONS

For purposes of this Settlement Agreement, the following terms have the following definitions:

A. "Access Request Program" means the procedure for residents of the City to request installation, repair, or replacement of Pedestrian Facilities, pursuant to Section 19.

B. "Accessibility Laws" means all state and federal laws and regulations requiring, promoting, and/or encouraging equal or improved access to persons with disabilities (including, without limitation, the following: the Americans with

Disabilities Act of 1990, 42 U.S.C. §§ 12101, *et seq*. and all of its implementing regulations and design standards; the Rehabilitation Act of 1973, 29 U.S.C. §§ 790, *et seq*. and all of its implementing regulations and design standards; California Government Code §§ 4450, *et seq*.; California Government Code §§ 11135, *et seq*.; California Health & Safety Code §§ 19955, *et seq*.; and the regulations codified in Title 24 of the California Code of Regulations).

C. "Accessibility Standards" means federal and state accessibility laws, including the Americans with Disabilities Act Accessibility Guidelines ("ADAAG"), and Title 24 of the California Building Code ("Title 24").

D. "ADA Coordinator" means the individual or individuals retained or designated by the City pursuant to and in accordance with the terms of Section 15.

E. "Alteration" or "Alterations" means a modification to a Pedestrian Facility that triggers the requirements in Sections 16.1.1 and 16.2.1 and specifically includes any resurfacing (excluding slurry seals), repaving (excluding rock and oil patches), reconstruction, or widening of streets or other roadways or alleys. *See* the U.S. Department of Justice/U.S. Department of Transportation Joint Technical Assistance on Resurfacing Requirements at http://www.ada.gov/doj-fhwa-ta.htm and http://www.ada.gov/doj-fhwa-ta-glossary.htm).

F. "City Council" means the Long Beach City Council.

G. "Class Counsel" means collectively the law firm of Goldstein Borgen Dardarian & Ho, the Disability Rights Legal Center, and Disability Rights Advocates.

H. "Dispute" or "Disputes" means any dispute relating to any violation of or failure to perform any of the provisions of this Settlement Agreement and/or disputes between the Parties concerning the interpretation, implementation, monitoring, compliance, and modification of the Settlement Agreement. All Disputes will be resolved using the Dispute Resolution Procedure outlined in Section 21.

I. "Evaluation Period" means the two-year period between the Final Approval and the completion of both the updated Self-Evaluation (as defined below), pursuant to the terms of Section 11 and the Updated Transition Plan (as defined below), pursuant to the terms of Section 12.

J. "Fairness Hearing" means the hearing to be held by the District Court, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, to determine whether the settlement set forth in this Settlement Agreement should be approved.

K. "Final," as applied to the term "Judgment" (as defined below), means that (i) the time for appeal or writ has expired and no appeal or petition for review has been taken, or (ii) if an appeal or petition for review is taken and the settlement set forth in this Settlement Agreement has been affirmed in full, the time period during which any further appeal or review can be sought (including through any appeal, petition for review, writ of certiorari or otherwise) has expired and no such further appeal or review has been sought. In the event that no objections to this Settlement Agreement are raised prior to or at the Fairness Hearing, that any objections that have been raised have been fully and formally withdrawn, or that no viable objections otherwise exist at the time of the Fairness Hearing, the Judgment will become "Final" as of the District Court's issuance of the Judgment. If the Judgment is set aside, materially modified, disapproved or overturned by any court, and is not fully reinstated on further appeal or review, the Judgment will not become or be "Final."

L. "Final Approval" means the order by the District Court, after notice and the holding of the Fairness Hearing, granting approval of this Settlement Agreement under Rule 23(a) of the Federal Rules of Civil Procedure. The hearing at which such Final Approval is considered or granted, should a hearing be held, will be called the "Final Approval Hearing."

M. "Judgment" means a judgment entered by the District Court in the *Ochoa* Action, substantially in the form attached to this Settlement Agreement as

Exhibit "D," that, among other things, fully approves the terms of this Settlement Agreement and retains the District Court's jurisdiction to enforce the Settlement Agreement throughout the Term.

N. "Mobility Disability" or "Mobility Disabilities" means any impairment or medical condition that limits a person's ability to walk, ambulate, maneuver around objects, or to 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 her or his navigation along sidewalks, or may be semi-ambulatory.

O. "Notice of Settlement" means the notice substantially in the form attached to this Settlement Agreement as Exhibit "B", to be provided to the Settlement Class as set forth in Section 6.5.

P. "Pedestrian Facility" or "Pedestrian Facilities" means any sidewalk, 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 or maintained by or otherwise within the responsibility of the City.

Q. "Preliminary Approval" means the preliminary approval of this Settlement Agreement by the District Court as described in Section 6.2.

R. "Related Entities" means any and all departments, divisions, agencies, bureaus, commissions, offices, corporations, commissioners, officers, employees, agents, representatives, board members, officials, assigns, assignors, attorneys, affiliates, predecessors, successors, employee welfare benefit plans, pensions, or deferred compensation plans (and their trustees, administrators, and other fiduciaries) of the City and any other person or entity acting or purporting to act by, through, under, in concert with or on behalf of the City, or any of them, with respect to the matters described in this Settlement Agreement.

S. "Self-Evaluation" means the self-assessment required of public entities under Title II of the Americans with Disabilities Act.

T. "Settlement Class" means the class of all persons (including, without limitation, residents of and visitors to the City) with any Mobility Disability, who, at any time from July 14, 2014 through the Term have used or will use the Pedestrian Facilities in the City of Long Beach.

U. "Standard Plan" or "Standard Plans" means the engineering standard plans prepared by the City's Public Works Department for the guidance of engineers, contractors and developers who have an interest in the preparation of plans and the construction of facilities and improvements under jurisdiction of the City.

V. "Temporary Event" or "Temporary Events" means and includes, but is not limited to, the Long Beach Grand Prix, Pride Parade, and the Long Beach Marathon.

W. "Term" means the term of this Settlement Agreement which begins with the date of Final Approval and will expire thirty (30) years thereafter.

X. "Transition Plan" means the transition plan required under Title II of the Americans with Disabilities Act.

Y. "Prior Transition Plan" means the Transition Plan the City completed in 1994.

Z. "Updated Transition Plan" means the Transition Plan the City will complete by the end of the Evaluation Period, pursuant to the terms of Section 12.

AA. "WCAG" means version 2.0 Levels A and AA of the "Web Content Accessibility Guidelines" published by the Web Accessibility Initiative (WAI) of the World Wide Web Consortium (W3C), or any subsequent version(s) that are published during the Term.

III. AGREEMENT

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

1. **Recitals**

The recitals set forth above are incorporated by reference in this Section and made a part of this Settlement Agreement.

2. **No Admission**

The City has denied and disputed, and continues to deny and dispute, the claims and contentions by Plaintiffs, and does not admit any liability to Plaintiffs or otherwise. By agreeing to and voluntarily entering into this Settlement Agreement, there is no admission or concession by the City, direct or indirect, express or implied, that any Pedestrian Facility located in the City is in any way inaccessible to individuals with a Mobility Disability, that the City owns or has responsibility to build, fix, or remove barriers to access on any such Pedestrian Facility, or that the City has violated any Accessibility Laws, committed any wrongdoing, or has any liability for any alleged matters. The City does not admit any entitlement by Plaintiffs to any relief, or that Plaintiffs have met or can meet the legal standards for a preliminary or permanent injunction, or a declaratory judgment to issue. Moreover, inclusion of obligations or requirements in this Settlement Agreement will not be construed as a concession or admission that, absent this Settlement Agreement, the City would otherwise have such obligations or requirements or that the City has failed to abide by any applicable policies or procedures in the past. To the contrary, the City maintains that with respect to all matters alleged by Plaintiffs, it has fully complied with all Accessibility Laws and all other applicable laws at all relevant times. Notwithstanding any other provisions in this paragraph, the City agrees that Plaintiffs are the prevailing parties for purposes of reasonable attorneys' fees and costs.

3. **No Findings of Liability or Wrongdoing**

The Parties understand and agree that the District Court made no findings of any liability or wrongdoing by the City in the *Ochoa* Action. In addition, the District Court made no findings that the City, with respect to any Pedestrian Facilities located in the City: (i) acted intentionally to discriminate against persons with disabilities; (ii) acted with reckless disregard of the rights of persons with disabilities; or (iii) acted in any manner that would support a finding that the City is liable for damages under the Accessibility Laws.

4. **Purpose of Settlement**

To avoid the cost, expense, and uncertainty of protracted litigation and preclude any similar lawsuits or challenges during the Term, the City and Plaintiffs agree to enter into this Settlement Agreement; and agree that it will be binding upon the City, Plaintiffs, and all members of the Settlement Class, will extinguish all Released Claims and will constitute the final and complete resolution of all issues addressed herein. None of the Parties will take the position that the doctrines of res judicata and collateral estoppel do not apply to the Parties or the Settlement Class with respect to the Released Claims.

5. **Conditions Precedent**

The Parties agree that this Settlement Agreement will be conditioned upon, and will be effective only upon, the occurrence of each and every one of the following events:

(a) The Settlement Agreement has been approved by the City Council.

(b) The Settlement Agreement has been fully executed by the Parties.

(c) In accordance with Section 6.2, Plaintiffs and the City have jointly moved for an order granting Preliminary Approval of the Settlement Agreement, and such motion has been fully granted by the District Court.

(d) In accordance with Section 6.7, Plaintiffs and the City have jointly moved for Final Approval of the Settlement Agreement and entry of the Judgment.

(e) In accordance with Section 6.10, a Final Approval Hearing has been conducted by the District Court, and the Judgment has been entered by the District Court and has become Final.

Prior to the occurrence of each of the foregoing events described in this Section 5, the Parties' only obligations under this Settlement Agreement will be those set forth in Section 6.

6. **Settlement Approval Process**

6.1. **Court Approval**

This Settlement Agreement will be subject to approval by the District Court. However, nothing in this Settlement Agreement will be deemed to authorize the District Court to change or modify any of its terms. The Parties agree that any change, modification or rejection of any of the provisions of this Settlement Agreement by the District Court or any other court will constitute a material modification of this Settlement Agreement, will prevent the Judgment from becoming Final, and will give any Party the right to terminate this Settlement Agreement in its entirety.

6.2. **Preliminary Approval by the District Court**

Within fifteen (15) days of circulating the fully executed Settlement Agreement, the Plaintiffs and the City will jointly submit a request to the District Court for Preliminary Approval of this Settlement Agreement in the *Ochoa* Action, along with a request for an order from the District Court (substantially in the form attached to this Settlement Agreement as Exhibit "A") (the "Preliminary Approval Order"): (i) preliminarily approving this Settlement Agreement; (ii) conditionally certifying the Settlement Class; (iii) appointing the Plaintiffs as class representatives for the Settlement Class; (iv) appointing Class Counsel to represent

the Settlement Class; (v) directing notice to the Settlement Class as provided in this Settlement Agreement; (vi) setting forth procedures and deadlines for comments and objections as provided in this Settlement Agreement; (vii) scheduling a Fairness Hearing; and (viii) enjoining Settlement Class members from asserting or maintaining any claims to be released by this Settlement Agreement pending the Fairness Hearing.

6.3. **Conditional Certification of the Settlement Class**

The Parties acknowledge and agree that the Honorable Judge Dale Fischer has certified a class in this case, and agree that the Settlement Class is materially identical to the class previously certified by the Court. The Parties further agree that the Settlement Class will be conditionally certified, in accordance with the terms of this Settlement Agreement, solely for purposes of effectuating the settlement embodied in this Settlement Agreement. The City does not consent, and Class Counsel and Plaintiffs agree that the City will not be deemed to have consented, to the certification of the Settlement Class for any purpose other than to effectuate the settlement embodied in this Settlement Agreement. In the event the Settlement Agreement is terminated pursuant to its terms, or if for any reason the settlement embodied in this Settlement Agreement is not effectuated or the Judgment does not become Final, the certification of the Settlement Class will be vacated, the Court's September 15, 2015 Order granting Plaintiffs' Motion for Class Certification will remain in effect, and the *Ochoa* Action will proceed with the class previously certified by the Court.

6.4. **No Opt-Out**

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 Settlement Agreement. The Parties further agree that any order, ruling, or determination by or of the District Court or any other court that

permits or allows any Settlement Class member to opt out of any of the provisions of this Settlement Agreement will constitute a material modification of this Settlement Agreement, will prevent the Judgment from becoming Final and will give any Party the right to terminate this Settlement Agreement in its entirety.

6.5. **Notice to the Settlement Class**

The Parties will jointly request approval by the District Court of notice to the Settlement Class as set forth in this Section 6.5. Following the District Court's issuance of the Preliminary Approval Order, the Parties will provide notice of the proposed Settlement Agreement, advising the members of the Settlement Class of the terms of the proposed Settlement Agreement and their right to object to the proposed Settlement Agreement. This notice will be published as follows:

6.5.1. 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 for four (4) consecutive weeks in the following papers of general circulation: the *Long Beach Press-Telegram*, the *Long Beach Post*, and the *Los Angeles Times* in English, *La Opinion* (in Spanish), and the *Khmer Post* (in Khmer). Such notice will include the terms required by the District Court, which are anticipated to be as follows: (i) a brief statement of the *Ochoa* Action, the settlement embodied in this Settlement Agreement, 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 Settlement Agreement; (iii) the deadline for submitting objections to the proposed Settlement Agreement; and (iv) the web page, address, and telephone and fax numbers that may be used to obtain a copy of the Notice of Settlement (substantially in the form attached to this Settlement Agreement as Exhibit "B") in English, Spanish, Khmer, or alternative accessible formats for individuals with visual impairments. The City will pay the costs for the publication of the notice described in this Section 6.5.1.

6.5.2. 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.longbeach.gov) for four (4) consecutive weeks. The website will also make a copy of the Notice of Settlement available in English, Spanish, and Khmer, 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 described in this Section 6.5.2.

6.5.3. Within ten (10) days after the District Court has issued the Preliminary Approval Order, the City will cause a copy of the Notice of Settlement to be provided to the organizations listed on Exhibit "C" to this Settlement Agreement. The City will pay the costs for the publication of the notice described in this Section 6.5.3.

6.5.4. 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, and Khmer, 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 Settlement Agreement in Spanish or Khmer. All pages or content on the websites that are part of the process for accessing the information in the notice will comply with WCAG. Class Counsel will pay the reasonable costs for the publication of the Notice of Settlement described in this Section 6.5.4, but Class Counsel will be entitled to seek reimbursement for all such reasonably incurred costs as part of their motion for reasonable attorney's fees, expenses and costs incurred in this action.

6.6. **Media Communications Regarding Settlement**

The Parties agree that after the full execution of this Settlement Agreement, they and their respective counsel may issue a press release and discuss the settlement set forth in this Settlement Agreement with the media but will use their best efforts to refrain from disparaging the other Parties or their counsel in connection with the settlement and the matters set forth in this Settlement Agreement.

6.7. **Fairness Hearing**

The Parties will jointly request that the District Court schedule and conduct a Fairness Hearing to decide whether Final Approval of the Settlement Agreement will be granted. At the Fairness Hearing, the Parties will jointly move for entry of the Judgment (substantially in the form as attached to this Settlement Agreement as Exhibit "D"), providing for: (i) Final Approval of this Settlement Agreement 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 class representatives of the Settlement Class; (vi) final approval of the release of the City and its Related Entities from the Released Claims; (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 and its Related Entities 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 Settlement Agreement.

6.8. **Objections to the Settlement Agreement**

Members of the Settlement Class will have an opportunity to object to the proposed Settlement Agreement 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 Settlement Agreement:

6.8.1. Any Settlement Class member may object to this Settlement Agreement by filing, within forty-five (45) days of the commencement of the issuance of the notice to the Settlement Class required under Section 6.5, 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 by First Class U.S. Mail delivery and/or appearing at the Court's Fairness Hearing and speaking to the Court.

6.8.2. With respect to any and all objections to this Settlement Agreement 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.

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

6.9. **Additional Steps**

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 Settlement Agreement, and to obtain approval of this Settlement Agreement, and entry of the Judgment.

6.10. **Final Approval**

6.10.1. 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 Settlement Agreement as

Exhibit "D") dismissing the *Ochoa* Action with prejudice, subject to the District Court retaining jurisdiction to resolve any Dispute regarding compliance with this Settlement Agreement that cannot be resolved through the process described in Section 21, and to rule on Plaintiffs' motion for reasonable attorneys' fees and costs, as described in Sections 21 and 22.

6.10.2. The City will not assert, after the Judgment has become Final, that the District Court lacks jurisdiction to enforce the terms of this Settlement Agreement, or raise any jurisdictional defense to any enforcement proceedings permitted under the terms of this Settlement Agreement.

6.10.3. Should the District Court deny the Parties' request to enter the Judgment, should this Settlement Agreement not receive Final Approval by the District Court for any reason, or should this Settlement Agreement not become Final for any reason in accordance with its terms: (i) this Settlement Agreement will be null and void and of no force and effect; (ii) nothing in this Settlement Agreement will be deemed to prejudice the position of any of the Parties with respect to any matter; and (iii) neither the existence of this Settlement Agreement, 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.

7. **Effect of Final Approval Order**

This Settlement Agreement, upon Final Approval, will be binding upon the City, Plaintiffs, and all Settlement Class members and, to the extent specifically set forth in this Settlement Agreement, upon Class Counsel; will extinguish all Released Claims and will constitute the final and complete resolution of all issues addressed herein. This Settlement Agreement is the complete and final disposition and settlement of any and all Released Claims, as detailed in Section 9.

8. **Enforcement of Settlement Agreement**

The District Court will have continuing jurisdiction over this Settlement Agreement throughout the Term. Nothing in this Section will bar either Party from moving for an extension of the Term to enforce any obligations herein.

9. **Release of Claims**

9.1. **Release of Claims through the Term**

Effective upon the entry of Judgment by the District Court, Plaintiffs and the Settlement Class members (and their respective heirs, assigns, successors, executors, administrators, agents and representatives) ("Releasing Parties"), in consideration of the relief set forth herein, the sufficiency of which is expressly acknowledged, do fully and finally release, acquit and discharge the City and its Related Entities from any and all claims, rights, demands, charges, complaints, actions, suits, and causes of action, whether known or unknown, suspected or unsuspected, accrued or unaccrued, for injunctive or declaratory relief, relating to allegations that persons with Mobility Disabilities are being denied access to, excluded from participation in, or denied the benefits of the City's Pedestrian Facilities, during the period starting on June 4, 2014 through the Term (the "Released Claims"). This release of claims will not apply to claims based on accessibility barriers in the City's Pedestrian Facilities that remain in existence after the expiration of the Term.

The Released Claims will not include any claims to enforce the terms of this Settlement Agreement.

The release of claims will apply and be binding upon the members of the Settlement Class throughout the Term.

9.2. **Known or Unknown Claims**

With respect to the release of claims as provided in Section 9.1, Releasing Parties agree that the Settlement Agreement will cover all claims for injunctive or declaratory relief of every nature and kind whatsoever, known, or unknown,

suspected or unsuspected, past or present, which they may have against the City relating to the accessibility of the City's Pedestrian Facilities for persons with Mobility Disabilities, despite the fact that California Civil Code Section 1542 ("Section 1542") may provide otherwise. Releasing Parties expressly waive any right or benefit available to them in any capacity regarding claims for injunctive or declaratory relief concerning the accessibility of the Pedestrian Facilities, except for those that remain in existence after the expiration of the Term, under the provisions of Section 1542, which provides: "A general release does not extend to the claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor." Releasing Parties knowingly accept and assume the risk of the facts being different, agree that this Settlement Agreement will be and remain in all aspects effective and not subject to termination or rescission by virtue of any such difference in facts, understand and acknowledge the significance and consequences of such specific waiver of Section 1542 of the California Civil Code (and any other similar statute or rule of any state or jurisdiction), and expressly assume full responsibility for any losses or consequences that may be incurred by making such waiver.

The foregoing release is freely and voluntarily given by Releasing Parties, who, in agreeing to the foregoing release, did not rely on any inducements, promises or representations by the City or its representatives, other than as expressly set forth in this Settlement Agreement.

10. **Covenant Not to Sue**

10.1. The Parties agree that during the Term, the Releasing Parties will refrain and forbear from commencing, instituting, or prosecuting any lawsuit, action, or other proceeding, in law, equity or otherwise, against the City and its Related Entities arising out of or relating to any of the Released Claims, including, without limitation, an action claiming that this Settlement Agreement was

fraudulently induced. The Parties agree that monetary damages alone are inadequate to compensate for injury caused or threatened by a breach of this covenant not to sue, and that preliminary and permanent injunctive relief restraining and prohibiting the prosecution of any action or proceeding brought or instituted in violation hereof is a necessary and appropriate remedy in the event of such a breach or threatened breach. An action or proceeding brought to enforce (but not to rescind or reform) the terms of this Settlement Agreement is excepted from this covenant not to sue. An action seeking damages for violation of the Accessibility Laws is also excepted from this covenant not to sue.

10.2. With respect to any of the Parties' obligations set forth in this Settlement Agreement, the Parties agree that no claim, action or proceeding alleging any violation of or failure to perform any provision of this Settlement Agreement will be filed, commenced or maintained unless and until the Parties have complied with all of the procedures set forth in Section 21 below.

11. **Self-Evaluation of the City's Pedestrian Facilities**

11.1. **Accessibility Consultant**

The City will contract with a third-party accessibility consultant to prepare an updated Self-Evaluation of its Pedestrian Facilities in order to identify Pedestrian Facilities that do not comply with the Accessibility Standards in effect at the time the Pedestrian Facility was installed, with the exception of those Pedestrian Facilities installed prior to 1991, which will be assessed using the 1991 Accessibility Standards.

11.2. **Applicable Accessibility Standards**

To the extent any of the regulations making up the Accessibility Standards have conflicting technical specifications for the Pedestrian Facilities, the Self-Evaluation will measure compliance with the technical specification that provides the greatest degree of access to individuals with Mobility Disabilities.

11.3. **Scope of Self-Evaluation**

The Self-Evaluation will be limited to those locations over which the City has control and will not include locations within the jurisdiction of Los Angeles County or within the jurisdiction of the California State Department of Transportation. The Self-Evaluation will include identification of barriers to accessibility in Pedestrian Facilities where the barriers are caused by another public entity, including, but not limited, to utility poles and electric company boxes, however, the Parties agree that the City has no obligation under this Settlement Agreement to repair or correct such access barriers caused by another public entity.

11.4. **Survey Tool**

The survey tool to be used by the third-party accessibility consultant will be developed jointly by the Parties. Any Dispute regarding the content of the survey tool will be resolved by a mutually agreed upon access expert/specialist.

11.5. **Curb Ramps**

As part of the updated Self-Evaluation, the City will identify all existing curb ramps within the City's control and within the City's public right of way that are not in compliance with the Accessibility Standards in effect on the date the curb ramp was installed. To the extent the City identifies curb ramps built prior to 1991, those curb ramps will be assessed using the 1991 Accessibility Standards. The City will also identify those locations within the City's control and within the City's public right of way where a curb ramp is required under the current Accessibility Standards, but where one does not currently exist. Those curb ramps that were not in compliance with existing Accessibility Standards as of the date they were installed, are not in compliance with the 1991 Accessibility Standards if built prior to 1991, or are required by the Accessibility Standards but missing, will be scheduled for installation, repair or replacement as a part of the Updated Transition Plan (as described in Section 12).

11.6. **Sidewalks, Crosswalks, Pedestrian Walkways**

The City will identify the sidewalks, crosswalks, and other pedestrian walkways within the City's control and within the City's public right of way that are not in compliance with the Accessibility Standards that were in effect on the date the sidewalk, crosswalk, or other pedestrian walkways was installed. To the extent the City identifies sidewalks, crosswalks, and other pedestrian walkways built prior to 1991, those sidewalks, crosswalks, and other pedestrian walkways will be assessed using the 1991 Accessibility Standards. Those sidewalks, crosswalks, and other pedestrian walkways that were not in compliance with existing Accessibility Standards as of the date they were installed, or are not in compliance with the 1991 Accessibility Standards if built prior to 1991, will be scheduled for repair or replacement as part of the Updated Transition Plan (as described in Section 12).

11.7. **Completion Date of Self-Evaluation**

The City will complete the updated Self-Evaluation within two years of Final Approval. If the dispute resolution process with respect to the development of the survey tool discussed in Section 11.4 significantly delays the commencement of the updated Self-Evaluation, the two year completion deadline for the updated Self-Evaluation and Updated Transition Plan (as described in Section 12) will be extended a reasonable period, consistent with the length of the delay.

12. **Updated Transition Plan**

12.1. **Accessibility Consultant**

The City will contract with a third-party accessibility consultant to prepare an Updated Transition Plan to address installation, repair or replacement of Pedestrian Facilities that were identified in the updated Self-Evaluation as not in compliance with the existing Accessibility Standards as of the date they were installed or not in compliance with the 1991 Accessibility Standards if built prior to 1991. The Updated Transition Plan will identify a schedule and annual targets for the

installation, repair or replacement of such Pedestrian Facilities to bring them into compliance with the Accessibility Standards in effect at the time the work is performed.

12.2. **Prioritization for Installation, Repair or Replacement**

The Updated Transition Plan will include publicly available prioritization guidelines for installation, repair or replacement of the Pedestrian Facilities in accordance with the priorities outlined in 28 C.F.R. § 35.150(d)(2). The schedule set forth in the Updated Transition Plan will also include priorities for the installation, repair or replacement of such Pedestrian Facilities based upon input from Plaintiffs, Class Counsel and the Settlement Class.

12.3. **New Construction and Alterations**

The Updated Transition Plan will identify areas of planned new construction and Alterations, that are known at the time the Updated Transition Plan is being prepared, and which will trigger installation, repair and replacement of Pedestrian Facilities in the one-year period following the preparation of the Updated Transition Plan.

12.4. **Public Hearings and Public Input**

The City will hold at least two (2) public hearings within one (1) year of the completion of the updated Self-Evaluation and before preparation of the Updated Transition Plan to seek input from community members and the City of Long Beach Citizen's Advisory Commission on Disabilities ("CACOD") regarding barrier removal priorities for the Updated Transition Plan. The City will also receive input from Class Counsel regarding barrier removal priorities prior to the preparation of the Updated Transition Plan.

12.5. **Plaintiff and Class Counsel Input**

Before the Updated Transition Plan is finalized, Class Counsel and Plaintiffs will review the Updated Transition Plan and provide the City with their input within thirty (30) days of receipt. The City will give good faith consideration to all

comments provided by Class Counsel and Plaintiffs before finalizing the Updated Transition Plan.

12.6. **Completion Date of Updated Transition Plan**

The City will complete the Updated Transition Plan within two years of Final Approval. In the event the preparation of the Updated Transition Plan is delayed due to the process of obtaining input from community members, CACOD, Plaintiffs, the Settlement Class, or Class Counsel, the City will have a reasonable extension of the deadline to complete the Updated Transition Plan, consistent with the length of the delay.

13. **Installation, Repair or Replacement of Pedestrian Facilities**

13.1. **Repair or Replacement During Evaluation Period**

During the Evaluation Period, the City will continue to repair or replace Pedestrian Facilities that were not in compliance with existing Accessibility Standards as of the date they were installed, or are not in compliance with the 1991 Accessibility Standards if built prior to 1991, including those Pedestrian Facilities identified in the Prior Transition Plan or that were identified through the City's Access Request Program.

13.2. **Installation of Curb Ramps During Evaluation Period**

Commencing on the date of Final Approval and continuing through the Evaluation Period, the City will install not less than 1000 curb ramps that are required by the Accessibility Standards but are missing. The curb ramps to be installed during the Evaluation Period will be identified by Plaintiffs. In the event Plaintiffs identify fewer than 1000 curb ramps for installation, the City will install missing curb ramps that were identified in the Previous Transition Plan or through the City's Access Request Program.

13.3. **Remediation of Curb Ramps During First 20 Years of the Term**

Within twenty (20) years of Final Approval, the City will complete the installation, repair or replacement of curb ramps that were not in compliance with existing Accessibility Standards as of the date they were installed, are not in compliance with the 1991 Accessibility Standards if built prior to 1991, or are required by the Accessibility Standards but missing. The City's obligation under this Section 13.3 will be limited to the installation of 4,500 missing curb ramps, which includes any curb ramps installed during the Evaluation Period under Section 13.2, and the repair or replacement of 16,000 curb ramps that were not in compliance with the relevant Accessibility Standards at the time they were installed.

13.3.1. **Years 1-5**

In years 1 through 5 of the Term, the City will install all curb ramps that are required by the Accessibility Standards but are missing, subject to the limits stated in Section 13.3. Plaintiffs may provide the City with a list for prioritizing the order in which the missing curb ramps are installed. In addition, the City will begin repair or replacement of existing curb ramps that were not in compliance with existing Accessibility Standards as of the date they were installed or are not in compliance with the 1991 Accessibility Standards if built prior to 1991.

13.3.2. **Years 6-20**

In years 6 through 20 of the Term, the City will repair or replace all curb ramps that were not in compliance with existing Accessibility Standards as of the date they were installed or are not in compliance with the 1991 Accessibility Standards if built prior to 1991, subject to the limits stated in Section 13.3 and subject to a funding cap of $50,000,000 in costs to the City, and pursuant to the priorities, schedule and annual targets set in the Updated Transition Plan.

13.3.3. **New Construction and Alterations**

The City can meet its obligations under Section 13.3 by installing, repairing or replacing a curb ramp in connection with new construction and Alteration of streets, road, and sidewalks pursuant to the provisions of Sections 16.1.1 and 16.2.1. Such construction will not be paid from the $50,000,000 funding cap described in Section 13.3.2.

13.4. **Remediation of Other Pedestrian Facilities During the Term**

Before the expiration of the Term, and pursuant to the priorities, schedule and annual targets set in the Updated Transition Plan, the City will install, repair or replace Pedestrian Facilities, not including curb ramps, that were not in compliance with existing Accessibility Standards as of the date they were installed or are not in compliance with the 1991 Accessibility Standards if built prior to 1991, subject to a funding cap of $125,000,000 in costs to the City. Any amounts that the City may expend on installation of a new sidewalk will not count towards the funding cap set forth in this Section 13.4. Any sidewalk installation, repair or replacement performed by third-party contractors as a part of private construction will not count towards the funding cap set forth in this Section 13.4. However, if the City repairs or replaces an existing sidewalk to bring it into compliance with the current Accessibility Standards, the amounts expended for that repair or replacement will count toward the funding cap set forth in this Section 13.4.

13.5. **Funding of Access Request Program During the Term**

Installation, repairs and replacement of Pedestrian Facilities made in response to reports made through the City's Access Request Program will be funded as follows:

(a) In years 1-5 of the Term, the City will allocate $500,000 per year to respond to requests made through its Access Request Program;

(b) In years 6-10 of the Term, the City will allocate $550,000 per year to respond to requests made through its Access Request Program;

(c) Any unused monies from one year can be rolled over into the next year to meet that year's monetary allocation;

(d) The City has sole and exclusive authority and discretion to determine how much money it will allocate to respond to requests made through its Access Request Program for the remainder of the Term.

13.6. **Tree Removal**

Any trees that cause a particular Pedestrian Facility to be out of compliance with existing Accessibility Standards as of the date they were installed or with the 1991 Accessibility Standards if built prior to 1991, will be preserved to the extent feasible, and protected trees may only be removed in accordance with all applicable City and/or State codes, rules, and policies regarding trees and tree removal.

13.7. **Inflation Factor**

The City will apply an inflation factor to the funding caps in Section 13.3 and Section 13.4. The index to be used is the "Bureau of Labor Statistics, Consumer Price Index (the "CPI") – All Urban Consumers for the Los Angeles-Riverside-Orange County, CA area." This factor will be applied at the beginning of the City's fiscal year (October 1), using the published year-over-year change for September of that year (*e.g.*, the CPI factor comparing the difference between September of one year to September of the following year). The inflation factor applied will not exceed five percent in a given year, and it will never adjust the limits downward. The inflation factor will be first applied to the maximum allocations in year two of the Term and annually as described, through the remaining Term (*e.g.*, annual CPI index applied year 2 – year 30).

14. **Maintenance of Pedestrian Facilities**

14.1. The City will continue to make reasonably diligent efforts to maintain the accessible features of its Pedestrian Facilities so that persons with Mobility Disabilities will be able to use such routes safely and independently.

14.2. Any monies spent on improving accessibility of the City's Pedestrian Facilities for persons with Mobility Disabilities as a part of the City's maintenance obligations in this Section 14 will count towards the funding caps set forth in Section 13.

15. **ADA Coordinator**

15.1. Throughout the Term, the City will employ an ADA Coordinator who will oversee tasks relating to the development and implementation of the updated Self-Evaluation and Updated Transition Plan, the City's policies and procedures regarding the accessibility of the City's Pedestrian Facilities, and the City's efforts to maintain the accessible features of its Pedestrian Facilities.

15.2. The ADA Coordinator will coordinate between relevant City departments regarding installation, repairs, and replacements to Pedestrian Facilities to ensure the enforcement of consistent standards and policies for such improvements throughout the City.

15.3. The ADA Coordinator will maintain the City's Access Request Program for access-related repairs and improvements to the City's Pedestrian Facilities as described in Section 19, and the ADA Coordinator will track and maintain a record of all work performed and completed under the Updated Transition Plan.

15.4. The ADA Coordinator will also initiate, coordinate and direct the implementation of the policies and procedures described in Section 16.

16. **City Policies and Procedures for Pedestrian Facilities**

The City will ensure that all new construction, alterations, and repairs to Pedestrian Facilities comply with the Accessibility Standards.

16.1. **Installation of Curb Ramps**

16.1.1. The City will prepare and implement written policies and procedures to ensure that the City, and any entities acting on the City's behalf, install curb ramps which meet the Accessibility Standards in effect at the time the work is performed whenever it newly constructs or alters City Pedestrian Facilities.

16.1.2. The City will prepare and implement written policies and procedures to ensure that compliant curb ramps are provided at all corners of intersections whenever the City performs new construction or Alterations to City streets or roads, or alleys with pathways intended for pedestrian use, on one or more of the blocks that make up the intersection. The City will provide copies of the applicable Accessibility Standards to all entities, including private developers, performing new construction or Alterations involving Pedestrian Facilities.

16.2. **Third Parties**

16.2.1. The City will ensure that its permitting process requires that all third parties who perform construction, Alterations, and development projects that include new construction or Alteration of Pedestrian Facilities ensure that they meet the Accessibility Standards in effect at the time the work is performed.

16.2.2. The City will draft and implement written policies and procedures which enforce the City's current code requirements ensuring access to Pedestrian Facilities that are used by third parties, including but not limited to barriers caused by signage, tables and chairs, and other items installed or erected by third-parties.

16.2.3. The City will accept reports made by individual members of the public relating to accessibility barriers to the Pedestrian Facilities that are caused by public utilities or other non-City public entities. The City will communicate with the public utility or non-City public entity on the individual's behalf to request removal of the barrier. The Parties agree that the City has no

obligation to guarantee removal of the barrier and is not responsible for enforcing compliance by the public utility or non-City public entity with the Accessibility Laws or Accessibility Standards.

16.3. **City's Standard Plans**

The City will ensure that the Standard Plans for accessible curb ramp design and accessible sidewalk design comply with the Accessibility Standards in effect at the time the work is performed. The City will continue to make available a copy of the Standard Plans on the City's website and provide copies to all entities, including private developers, performing new construction or Alterations involving Pedestrian Facilities.

16.4. **Access During Construction and Temporary Events**

The City will prepare and implement written policies and procedures to provide alternate, accessible Pedestrian Facilities through and around areas where construction or other temporary conditions, including Temporary Events, prohibit full access to City Pedestrian Facilities. The City will work with the third-party contractor or producer for the Temporary Event to identify temporary accessible alternative routes for the pendency of the construction or Temporary Event and will post descriptions of such routes on the City's website (currently located at www.longbeach.gov), prior to the start of the Temporary Event. The City will also provide signage in compliance with the Accessibility Standards in effect at the time of the construction or Temporary Event directing persons with Mobility Disabilities to such accessible temporary routes. The City will prepare and implement procedures for enforcing its temporary construction policies, including monetary and/or other penalties for violation of such policies. The City will also provide all entities that perform construction work or conduct Temporary Events with guidelines and instructions for providing alternate accessible routes and related signage.

16.5. The City will update its existing policies or draft and implement new policies as set forth in this Section 16 by no later than September 1, 2017.

17. **Training of City Personnel**

17.1. The City's ADA Coordinator will develop and provide training for existing staff in the City's Public Works Department, new hires, and other City employees involved in ensuring the accessibility of the City's Pedestrian Facilities to people with Mobility Disabilities. The training will discuss applicable federal and state requirements regarding the accessibility of pedestrian routes. The City will include this training in its new hire orientation for employees involved in ensuring the accessibility of the City's Pedestrian Facilities.

17.2. The City will provide staff in the City's Public Works Department with accessibility training, utilizing the materials developed or made available pursuant to this Section 17, on at least an annual basis. This training will be open to additional departments, including but not limited to: Human Resources; Water Department; Long Beach Gas and Oil Department; Parks, Recreation and Marine Department; and Harbor Department.

17.3. The City will provide the administrative officers in charge of each of the City's Departments with periodic training on accessibility of Pedestrian Facilities to individuals with Mobility Disabilities.

17.4. The City will provide training to applicable Departments when there is a change in the law related to accessibility of Pedestrian Facilities to individuals with Mobility Disabilities, as determined by the ADA Coordinator.

17.5. The City may, at its option, utilize third-party vendors to provide the training described in this Section 17 on its behalf.

18. **Reporting of Progress Under Updated Transition Plan**

18.1. Upon its completion, the City will post the Updated Transition Plan on the City's website, currently located at www.longbeach.gov.

18.2. The ADA Coordinator, in coordination with the City's Public Works Department, will maintain a record of all work performed and completed under the Updated Transition Plan.

18.3. On a quarterly basis throughout the Term (based upon the City's fiscal year (October 1 through September 30)), the City will post on its website a report related to the Access Request Program and a report of progress under the Updated Transition Plan. On an annual basis throughout the Term (on or before September 30), the City will post on its website an end-of-year report. The information to be contained in these three reports is contained in Exhibit "E."

19. **Access Request Program**

19.1. **Scope and Procedure**

The City will maintain a procedure for residents to request installation, repairs, and replacements to Pedestrian Facilities. All requests will be recorded and tracked by the ADA Coordinator. Any requests received by City personnel other than the ADA Coordinator will be forwarded to the ADA Coordinator. All requests will be addressed on a first-come, first-served basis, however requests related to the correction or removal of dangerous conditions will be addressed first.

19.2. **Submission of Requests**

Residents may submit requests to the Access Request Program in-person or via phone, email, letter, and/or online. The City will provide request forms in electronic formats that are accessible to people with disabilities in accordance with WCAG.

19.3. **Timing of Response to Access Request**

19.3.1. The City will acknowledge receipt of the request and provide an estimated completion date for the request within thirty (30) days from the receipt of the request by the City.

19.3.2. The City will complete all requests for installation, repair or replacement of Pedestrian Facilities that cost less than $10,000 within 180

days of the request, provided that the completion of such projects will not exceed the funding caps identified in Section 13.5. Any requests that exceed the funding caps identified in Section 13.5 and which are not completed within 180 days of the request, will be completed as soon as practicable within the City's next fiscal year. In no event will the City's funding caps identified in Section 13.5 be exceeded in any fiscal year.

19.4. **New Construction and Alterations**

The ADA Coordinator will coordinate personnel to ensure that planned new construction and Alterations address existing requests reported through the Access Request Program.

20. **Monitoring of Progress Under the Updated Transition Plan**

20.1. **Access to Information**

Plaintiffs and Class Counsel will have regular and consistent access to information about the City's progress toward completion and compliance with the Updated Transition Plan as set forth in Section 18. Upon reasonable notice, the City will provide Plaintiffs and Class Counsel with drawings and designs prepared for or by the City related to installation, repair or replacement of Pedestrian Facilities.

20.2. **Inspections**

20.2.1. **Quarterly Inspections in Year 1**

In the first year of the Term, Class Counsel may conduct quarterly inspections of the City's compliance with the Settlement Agreement regarding installation, repair and replacements to Pedestrian Facilities.

20.2.2. **Semi-Annual Inspections in Years 2-5**

In years 2-5 of the Term, Class Counsel may conduct semi-annual inspections of the City's compliance with the Settlement Agreement regarding installation, repair and replacements to Pedestrian Facilities.

20.2.3. **Annual Inspections in Years 6-30**

In years 6-30 of the Term, Class Counsel may conduct annual inspections of the City's compliance with the Settlement Agreement regarding installation, repair and replacements to Pedestrian Facilities.

20.3. **Notice of Non-Compliance**

To the extent Plaintiffs and/or Class Counsel believes that the City is not in compliance with the Updated Transition Plan, they will advise the City and identify how they believe the City's compliance is deficient. The City and Class Counsel will attempt to reach a resolution of any Dispute regarding the City's compliance with the Updated Transition Plan. In the event a resolution cannot be reached, the City will retain the services of an outside consultant to review and assess the City's compliance with the Updated Transition Plan. To the extent a dispute arises as to the outside consultant's assessment of the City's compliance with the Updated Transition Plan, the Parties shall utilize the Dispute Resolution Procedure described in Section 21 below.

20.4. **Monitoring Fees and Expenses**

Any reasonable and necessary monitoring fees and expenses incurred by Class Counsel shall be paid by the City. Any such payments shall count against the funding caps in Section 13. Such monitoring fees and costs shall be capped at a maximum of $100,000 per year for years 1-5 of the Term and $100,000 every two-year period for years 6-30 of the Term.

20.5. **Accounting of Monitoring Fees and Expenses**

Upon reasonable notice, Class Counsel will provide to the City an accounting of all monitoring fees and expenses incurred under this Section 20. Any Dispute as to the reasonableness or necessity of such fees and expenses, will be resolved using the Dispute Resolution Procedure outlined in Section 21 below.

21. **Dispute Resolution Procedure**

All disputes concerning the interpretation, implementation, monitoring, compliance and modification of the settlement agreement shall be resolved as follows:

21.1. **Notification in Writing**

Disputes shall be brought in writing to the attention of the other Party as soon as practicable. Plaintiffs will notify the ADA coordinator of any Disputes with a copy to the City Attorney.

21.2. **Meet and Confer**

Unless otherwise agreed to by the Parties, with respect to any particular Dispute concerning this Settlement Agreement, the Parties agree to meet and confer in good faith, within thirty (30) City business days after a Dispute is raised in writing by one of the Parties to discuss and try to resolve such Dispute.

21.3. **Optional Mediation**

Failing a resolution by the Parties or upon a failure to timely meet and confer, any Party may request to submit the Dispute to an agreed-upon mediator or magistrate judge for resolution. The Parties may then submit the Dispute to the selected mediator within thirty (30) days of meeting and conferring, who shall have the authority to assist the Parties in resolving the Dispute but who shall not have the authority to direct any Party to take or refrain from taking any action or to render decisions. The mediation shall be held and completed within forty-five (45) calendar days of submission unless the assigned mediator's calendar will not allow for such scheduling. In such an instance, the mediation shall be scheduled as soon as practicable.

21.4. **Submission to Court**

Failing resolution of a Dispute through the procedures identified in sections 21.1 through 21.3, any Party may submit the issue to the District Court for decision.

21.5. **Attorneys' Fees and Costs for Dispute Resolution**

The City will pay all reasonable and necessary attorneys' fees and costs incurred by Class Counsel as a result of informal negotiations under Section 21.2 and/or optional mediation under Section 21.3. The amount of any fees and costs paid by the City will be part of the negotiation and resolution of the applicable Dispute. Any amounts agreed upon by the Parties under Sections 21.2 and/or 21.3 will be limited to a maximum of $100,000 per year for years 1-5 following the completion of the Transition Plan and $120,000 per two-year period for years 6-30. Any reasonable and necessary attorneys' fees and costs incurred by Class Counsel and paid by the City as a result of the Dispute Resolution Procedure set forth under this Section 21 will count against the funding caps set forth in Section 13.

21.6. **Attorneys' Fees and Costs for Dispute Resolution by Court**

If the Parties are unable to resolve a Dispute through the mediation process described in Section 21.3, any Party may make a motion to the District Court to enforce the Settlement Agreement in order to resolve the Dispute. In the event that a Dispute is submitted to the District Court for decision pursuant to Section 21.4, and the Plaintiffs prevail, the District Court may, in its discretion, award all reasonable and necessary attorneys' fees and costs incurred by Class Counsel in accordance with applicable law.

21.7. **Accounting of Attorneys' Fees and Costs**

Upon reasonable notice, Class Counsel will provide to the City an accounting of all attorneys' fees and costs incurred under this Section 21. Any Dispute as to the reasonableness or necessity of such fees and costs, will be resolved using the Dispute Resolution Procedure in this Section 21.

22. **Attorneys' Fees and Costs through Final Approval**

With respect to attorneys' fees and costs that Plaintiffs incurred from the inception of this matter to Final Approval (excluding those fees and costs arising as a result of Monitoring and Inspections under Section 20 or the Dispute Resolution

Procedure in Section 21), and the payment thereof by the City, the Parties agree to the following as a complete resolution of the issue.

22.1. **Plaintiffs Are Prevailing Parties**

The City agrees that, conditioned upon the District Court granting Final Approval of this Settlement Agreement, and the Judgment becoming Final, Plaintiffs are prevailing parties for purposes of awarding reasonable attorneys' fees, expenses, and costs.

22.2. **Motion for Attorneys' Fees, Expenses, and Costs**

Plaintiffs will move or apply for approval by the District Court of the reasonable attorneys' fees, expenses, and costs incurred by Class Counsel, pursuant to Rule 23(h) of the Federal Rules of Civil Procedure. The City reserves the right to oppose the amount of reasonable attorneys' fees, expenses, and costs to be awarded to Plaintiffs for work performed up to Final Approval.

22.3. **Payment of Attorneys' Fees, Expenses, and Costs**

22.3.1. The City will pay the amounts awarded by the District Court after: (i) the District Court has issued a written order granting Final Approval of this Settlement Agreement; (ii) the Judgment has become Final; and (iii) the District Court has approved an award of attorneys' fees, expenses, and costs in response to Plaintiffs' motion or application for reasonable attorneys' fees, expenses, and costs. Both Parties reserve the right to appeal the District Court's order on attorneys' fees, expenses, and costs.

22.3.2. The City's payment of the amounts awarded by the District Court for reasonable attorneys' fees, expenses, and costs is in full and complete satisfaction of any and all claims for attorneys' fees, expenses, and costs incurred by Plaintiffs and Class Counsel in the *Ochoa* Action, and Plaintiffs (on behalf of themselves and the Settlement Class) and Class Counsel expressly waive any right to recover any additional attorneys' fees, expenses, and costs of any kind in connection with the *Ochoa* Action or this Settlement Agreement, except for

attorneys' fees, expenses, and costs recoverable by Plaintiffs and Class Counsel as expressly provided in this Agreement.

23. **Enforcement**

Nothing in this Settlement Agreement, express or implied, is intended to or will confer upon any person or entity not a Party to this Settlement Agreement any right, benefit or remedy of any nature whatsoever under or by reason of this Settlement Agreement. Only the Class Representatives and Class Counsel may seek to enforce the terms of this Settlement Agreement through the Dispute Resolution Procedure provided for in Section 21, up to and including a motion before the District Court. To the extent individual members of the Settlement Class have complaints regarding the City's compliance with the terms of this Settlement Agreement, they must either bring them to the attention of Class Counsel directly, or to the City, which will timely forward any such complaints to Class Counsel. Class Counsel will have the sole and complete discretion to seek to enforce any right, benefit or remedy under or by reason of this Settlement Agreement.

24. **Entire Agreement**

This Settlement Agreement, and the documents attached to or expressly referred to in this Settlement Agreement, constitute the final and complete written expression and exclusive statement of all the agreements, conditions, promises, representations, and covenants between the Parties with respect to the matters referenced in this Settlement Agreement, and supersede all prior or contemporaneous negotiations, promises, covenants, agreements or representations of any nature whatsoever with respect to such matters. Each of the Parties understands and agrees that in the event of any subsequent litigation, controversy, or dispute concerning any of the terms, conditions or provisions of this Settlement Agreement, no Party will be permitted to offer or introduce any oral evidence concerning any oral promises or oral agreements between the Parties relating to the subject matters of this Settlement Agreement not included or referred to in this

Settlement Agreement and not reflected in a writing. This Settlement Agreement cannot be amended, modified or supplemented except by a written document signed by all of the Parties and approved by the District Court.

25. **No Other Representations**

Each of the Parties represents, warrants and agrees that, in executing this Settlement Agreement, he, she or it has relied solely on the statements expressly set forth in this Settlement Agreement, and has placed no reliance whatsoever on any statement, representation, or promise of any other Party, or any other person or entity, not expressly set forth in this Settlement Agreement, or upon the failure of the other Party, or any other person or entity, to make any statement, representation or disclosure of anything whatsoever. The Parties have included this provision: (i) to preclude any claim that any Party was in any way fraudulently induced to execute this Settlement Agreement; and (ii) to preclude the introduction of parol evidence to vary, interpret, supplement, or contradict the terms of this Settlement Agreement.

26. **Notice**

Any notice to be provided between or among the Parties in accordance with the terms of this Settlement Agreement will be given by electronic mail or First Class U.S. mail to the following addresses:

To Plaintiffs:

Linda M. Dardarian, Esq.
Goldstein, Borgen, Dardarian & Ho
300 Lakeside Drive, Suite 1000
Oakland, CA 94612

Meredith J. Weaver, Esq.
Disability Rights Advocates
2001 Center Street, 4th Floor
Berkeley, CA 94704

Legal Director
Disability Rights Legal Center
350 South Grand Avenue, Suite 1520
Los Angeles, CA 90071

To the City:
City Attorney
City of Long Beach
333 W. Ocean Blvd.
Long Beach, CA 90802

ADA Coordinator
City of Long Beach
333 W. Ocean Blvd.
Long Beach, CA 90802

with a copy to:
Cheryl Johnson-Hartwell
Burke, Williams & Sorenson LLP
444 South Flower Street, Suite 2400
Los Angeles, CA 90071-2953

Any Party may subsequently designate other individuals or entities for receipt of notice, provided that 10 days' written notice of such designation is provided to all other Parties in accordance with the terms of this Section 26.

27. **Drafting of this Agreement**

The Parties acknowledge and agree that this Settlement Agreement will for all purposes be deemed jointly drafted and fully negotiated, and as a result, will not in any manner be interpreted in favor of, or as against, any particular Party by reason of being the drafting Party. Any rule of law, including, without limitation, Section 1654 of the California Civil Code, or any other statute, legal decision or principle of common law that would require interpretation of any ambiguities or uncertainties in this Settlement Agreement against one of the Parties, will have no application and is hereby expressly waived.

28. **Voluntary Agreement**

Each of the Parties represents, warrants and agrees that he, she or it has read this Settlement Agreement carefully, and knows and understands its contents, that this Settlement Agreement has been voluntarily entered into, that he, she or it has received independent legal advice from his, her or its attorneys with respect to the advisability of executing this Settlement Agreement, and that any and all investigation and analysis of the facts deemed necessary or desirable have been conducted prior to the execution of this Settlement Agreement.

29. **Binding Effect**

All of the terms and provisions of this Settlement Agreement will be binding upon and will inure to the benefit of the Parties, their heirs, successors and assigns.

30. **Authority**

Each of the Parties represents, warrants and agrees that he, she or it has the full right and authority to enter into this Settlement Agreement, and that the person executing this Settlement Agreement has the full right and authority to commit and bind such Party.

31. **Governing Law**

This Agreement will be governed by and construed in accordance with the laws of the State of California with respect to principles of common law contract interpretation.

32. **Paragraph Headings**

The headings, or lack thereof, preceding each of the paragraphs in this Settlement Agreement are for convenience only, and will not be considered in the construction or interpretation of this Settlement Agreement.

33. **Execution by Facsimile and in Counterparts**

This Settlement Agreement may be executed by the Parties in separate counterparts, and all such counterparts taken together will be deemed to constitute one and the same agreement.

IN WITNESS WHEREOF, the Parties hereto have approved and executed this Settlement Agreement on the dates set forth opposite their respective signatures.

EXECUTED by the Parties as follows:

Dated: March 9, 2017

THE CITY OF LONG BEACH

By: P West

Title: City Manager

Dated: _____, 2017

By: _____

Hector Ochoa, individually and as representative of the Settlement Class

Dated: _____, 2017

By: _____

Cynde Soto, individually and as representative of the Settlement Class

Dated: _____, 2017

By: _____

Cathy Shimozono, individually and as representative of the Settlement Class

Dated: _____, 2017

By: _____

Ben Rockwell, individually and as representative of the Settlement Class

Dated: _____, 2017

By: _____

Sharon Parker, individually and as representative of the Settlement Class

IN WITNESS WHEREOF, the Parties hereto have approved and executed this Settlement Agreement on the dates set forth opposite their respective signatures.

EXECUTED by the Parties as follows:

Dated: _____, 2017 THE CITY OF LONG BEACH

By: _____
Title: _____

Dated: MARCH 07, 2017 By: _____
Hector Ochoa, individually and as representative of the Settlement Class

Dated: March 07, 2017 By: _____
Cynde Soto, individually and as representative of the Settlement Class

Dated: _____, 2017 By: _____
Cathy Shimozono, individually and as representative of the Settlement Class

Dated: March 07, 2017 By: _____
Ben Rockwell, individually and as representative of the Settlement Class

Dated: _____, 2017 By: _____
Sharon Parker, individually and as representative of the Settlement Class

IN WITNESS WHEREOF, the Parties hereto have approved and executed this Settlement Agreement on the dates set forth opposite their respective signatures.

EXECUTED by the Parties as follows:

Dated: _____, 2017 THE CITY OF LONG BEACH

By: _____
Title: _____

Dated: _____, 2017 By: _____
Hector Ochoa, individually and as representative of the Settlement Class

Dated: _____, 2017 By: _____
Cynde Soto, individually and as representative of the Settlement Class

Dated: 3/8, 2017 By: Cathy Shimozono
Cathy Shimozono, individually and as representative of the Settlement Class

Dated: _____, 2017 By: _____
Ben Rockwell, individually and as representative of the Settlement Class

Dated: _____, 2017 By: _____
Sharon Parker, individually and as representative of the Settlement Class

IN WITNESS WHEREOF, the Parties hereto have approved and executed this Settlement Agreement on the dates set forth opposite their respective signatures.

EXECUTED by the Parties as follows:

Dated: _____, 2017 THE CITY OF LONG BEACH

By: _____
Title: _____

Dated: _____, 2017 By: _____
Hector Ochoa, individually and as representative of the Settlement Class

Dated: _____, 2017 By: _____
Cynde Soto, individually and as representative of the Settlement Class

Dated: _____, 2017 By: _____
Cathy Shimozono, individually and as representative of the Settlement Class

Dated: _____, 2017 By: _____
Ben Rockwell, individually and as representative of the Settlement Class

Dated: March 10, 2017 By: Sparker
Sharon Parker, individually and as representative of the Settlement Class

APPROVED AS TO FORM:

Dated: 3/10, 2017

OFFICE OF THE CITY ATTORNEY

By: _____
Monte Machit, Assistant City Attorney
City of Long Beach

Dated: March 10, 2017

BURKE WILLIAMS & SORENSON LLP

By: _____
Cheryl Johnson-Hartwell
Attorneys for Defendant
City of Long Beach

Dated: March 10, 2017

GOLDSTEIN BORGEN DARDARIAN & HO

By: _____
Linda M. Dardarian
Attorneys for Plaintiffs

Dated: _____, 2017

DISABILITY RIGHTS LEGAL CENTER

By: _____
Maronel Barajas
Attorneys for Plaintiffs

Dated: _____, 2017

DISABILITY RIGHTS ADVOCATES

By: _____
Meredith J. Weaver
Attorneys for Plaintiffs

APPROVED AS TO FORM:

Dated: _____, 2017

BURKE WILLIAMS & SORENSON LLP

By: _____
Cheryl Johnson-Hartwell
Attorneys for Defendant
City of Long Beach

Dated: _____, 2017

GOLDSTEIN BORGEN DARDARIAN & HO

By: _____
Linda M. Dardarian
Attorneys for Plaintiffs

Dated: 3-10-17, 2017

DISABILITY RIGHTS LEGAL CENTER

By: _____
Maronel Barajas
Attorneys for Plaintiffs

Dated: March 10, 2017

DISABILITY RIGHTS ADVOCATES

By: _____
Meredith J. Weaver
Attorneys for Plaintiffs