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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

1 **SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS**

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

9 **I. RECITALS**

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

12 A. On June 4, 2014, Plaintiffs commenced a class action against the City
13 and former Mayor Bob Foster in the United States District Court for the Central
14 District of California (the “District Court”), Case No. 2:14-cv-04307-DSF-FFM
15 (the “*Ochoa* Action”). In the Complaint, Plaintiffs alleged claims under Title II of
16 the Americans with Disabilities Act (42 U.S.C. § 12131, *et seq.*); Section 504 of the
17 Rehabilitation Act of 1973 (29 U.S.C. § 794, *et seq.*); and California Government
18 Code § 11135, *et seq.* Plaintiffs filed a First Amended Complaint on September 30,
19 2014.

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

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

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

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

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

20 II. DEFINITIONS

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

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

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

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

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

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

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

19 F. “City Council” means the Long Beach City Council.

20 G. “Class Counsel” means collectively the law firm of Goldstein Borgen
21 Dardarian & Ho, the Disability Rights Legal Center, and Disability Rights
22 Advocates.

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

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

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

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

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

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

1 Exhibit “D,” that, among other things, fully approves the terms of this Settlement
2 Agreement and retains the District Court’s jurisdiction to enforce the Settlement
3 Agreement throughout the Term.

4 N. “Mobility Disability” or “Mobility Disabilities” means any impairment
5 or medical condition that limits a person’s ability to walk, ambulate, maneuver
6 around objects, or to ascend or descend steps or slopes. A person with a Mobility
7 Disability may or may not use a wheelchair, scooter, electric personal assisted
8 mobility device, crutches, walker, cane, brace, orthopedic device, or similar
9 equipment or device to assist her or his navigation along sidewalks, or may be
10 semi-ambulatory.

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

14 P. “Pedestrian Facility” or “Pedestrian Facilities” means any sidewalk,
15 crosswalk, curb, curb ramp, walkway, pedestrian right of way, pedestrian
16 undercrossing, pedestrian overcrossing, or other pedestrian pathway or walk of any
17 kind that is, in whole or in part, owned, controlled or maintained by or otherwise
18 within the responsibility of the City.

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

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

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

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

7 U. “Standard Plan” or “Standard Plans” means the engineering standard
8 plans prepared by the City’s Public Works Department for the guidance of
9 engineers, contractors and developers who have an interest in the preparation of
10 plans and the construction of facilities and improvements under jurisdiction of the
11 City.

12 V. “Temporary Event” or “Temporary Events” means and includes, but is
13 not limited to, the Long Beach Grand Prix, Pride Parade, and the Long Beach
14 Marathon.

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

17 X. “Transition Plan” means the transition plan required under Title II of
18 the Americans with Disabilities Act.

19 Y. “Prior Transition Plan” means the Transition Plan the City completed
20 in 1994.

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

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

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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.

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

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

9 4. **Purpose of Settlement**

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

18 5. **Conditions Precedent**

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

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

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

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

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

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

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

10 **6. Settlement Approval Process**

11 **6.1. Court Approval**

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

20 **6.2. Preliminary Approval by the District Court**

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

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

7 **6.3. Conditional Certification of the Settlement Class**

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

23 **6.4. No Opt-Out**

24 The Parties agree that the Settlement Class will be certified in accordance
25 with the standards applicable under Rule 23(b)(2) of the Federal Rules of Civil
26 Procedure and that, accordingly, no Settlement Class member may opt out of any of
27 the provisions of this Settlement Agreement. The Parties further agree that any
28 order, ruling, or determination by or of the District Court or any other court that

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

5 **6.5. Notice to the Settlement Class**

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

12 6.5.1. Within thirty (30) days after the District Court has issued
13 the Preliminary Approval Order, the City will cause notice of the settlement to be
14 published for four (4) consecutive weeks in the following papers of general
15 circulation: the *Long Beach Press-Telegram*, the *Long Beach Post*, and the *Los*
16 *Angeles Times* in English, *La Opinion* (in Spanish), and the *Khmer Post* (in
17 Khmer). Such notice will include the terms required by the District Court, which
18 are anticipated to be as follows: (i) a brief statement of the *Ochoa* Action, the
19 settlement embodied in this Settlement Agreement, and the claims released by the
20 Settlement Class; (ii) the date and time of the Fairness Hearing and/or Final
21 Approval Hearing of the proposed Settlement Agreement; (iii) the deadline for
22 submitting objections to the proposed Settlement Agreement; and (iv) the web
23 page, address, and telephone and fax numbers that may be used to obtain a copy of
24 the Notice of Settlement (substantially in the form attached to this Settlement
25 Agreement as Exhibit "B") in English, Spanish, Khmer, or alternative accessible
26 formats for individuals with visual impairments. The City will pay the costs for the
27 publication of the notice described in this Section 6.5.1.

1 6.5.2. Within twenty (20) days after the District Court has
2 issued the Preliminary Approval Order, the City will cause a copy of the Notice of
3 Settlement to be posted and remain posted on the City’s official website
4 (www.longbeach.gov) for four (4) consecutive weeks. The website will also make
5 a copy of the Notice of Settlement available in English, Spanish, and Khmer, and in
6 an accessible electronic format that can be recognized and read by software
7 commonly used by individuals with visual impairments to read web pages. All
8 pages or content on these websites that are part of the process for accessing the
9 information in the Notice of Settlement will comply with WCAG. The City will
10 pay the costs for the publication of the notice described in this Section 6.5.2.

11 6.5.3. Within ten (10) days after the District Court has issued the
12 Preliminary Approval Order, the City will cause a copy of the Notice of Settlement
13 to be provided to the organizations listed on Exhibit “C” to this Settlement
14 Agreement. The City will pay the costs for the publication of the notice described
15 in this Section 6.5.3.

16 6.5.4. Within twenty (20) days after the District Court has
17 issued the Preliminary Approval Order, each firm making up Class Counsel will
18 post on its website a copy of the Notice of Settlement in English, Spanish, and
19 Khmer, and in an accessible electronic format that can be recognized and read by
20 software commonly used by individuals with visual impairments to read web pages.
21 In addition, the websites will provide information about how Settlement Class
22 Members may obtain a copy of the Settlement Agreement in Spanish or Khmer.
23 All pages or content on the websites that are part of the process for accessing the
24 information in the notice will comply with WCAG. Class Counsel will pay the
25 reasonable costs for the publication of the Notice of Settlement described in this
26 Section 6.5.4, but Class Counsel will be entitled to seek reimbursement for all such
27 reasonably incurred costs as part of their motion for reasonable attorney’s fees,
28 expenses and costs incurred in this action.

1 6.6. **Media Communications Regarding Settlement**

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

8 6.7. **Fairness Hearing**

9 The Parties will jointly request that the District Court schedule and conduct a
10 Fairness Hearing to decide whether Final Approval of the Settlement Agreement
11 will be granted. At the Fairness Hearing, the Parties will jointly move for entry of
12 the Judgment (substantially in the form as attached to this Settlement Agreement as
13 Exhibit “D”), providing for: (i) Final Approval of this Settlement Agreement as
14 fair, adequate, and reasonable; (ii) final certification of the Settlement Class for
15 settlement purposes only; (iii) final approval of the form and method of notice of
16 the Judgment to the Settlement Class; (iv) final approval of the appointment of
17 Class Counsel for the Settlement Class; (v) final approval of the appointment of
18 Plaintiffs as class representatives of the Settlement Class; (vi) final approval of the
19 release of the City and its Related Entities from the Released Claims; (vii) final
20 approval of an order that the Settlement Class members will be enjoined and barred
21 from asserting any of the Released Claims against the City and its Related Entities
22 following entry of Judgment and up to and including the completion of the Term;
23 (viii) the Parties and all members of the Settlement Class to be bound by the
24 Judgment; and (ix) the District Court’s retention of jurisdiction over the Parties to
25 enforce the terms of the Judgment throughout the Term of this Settlement
26 Agreement.

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1 6.8. **Objections to the Settlement Agreement**

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

6 6.8.1. Any Settlement Class member may object to this
7 Settlement Agreement by filing, within forty-five (45) days of the commencement
8 of the issuance of the notice to the Settlement Class required under Section 6.5,
9 written objections with the District Court, with a copy of such objections served
10 concurrently on Class Counsel by messenger delivery; FedEx or other overnight
11 carrier delivery or by First Class U.S. Mail delivery and/or appearing at the Court's
12 Fairness Hearing and speaking to the Court.

13 6.8.2. With respect to any and all objections to this Settlement
14 Agreement received by Class Counsel, Class Counsel will provide a copy of each
15 objection to counsel of record for the City, by messenger delivery or electronic-mail
16 delivery, within two (2) court days after receipt of such objection.

17 6.8.3. Responses by Class Counsel and/or the City to any
18 timely-filed objections will be filed with the District Court no less than five (5)
19 days before the Fairness Hearing, or as otherwise ordered by the Court.

20 6.9. **Additional Steps**

21 The Parties will take all procedural steps regarding the Fairness Hearing that
22 may be requested by the District Court and will otherwise use their respective best
23 efforts to consummate the settlement embodied in this Settlement Agreement, and
24 to obtain approval of this Settlement Agreement, and entry of the Judgment.

25 6.10. **Final Approval**

26 6.10.1. The Parties agree that, upon Final Approval the
27 District Court will enter the Judgment under Rule 54(b) of the Federal Rules of
28 Civil Procedure (substantially in the form attached to this Settlement Agreement as

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

6 6.10.2. The City will not assert, after the Judgment has
7 become Final, that the District Court lacks jurisdiction to enforce the terms of this
8 Settlement Agreement, or raise any jurisdictional defense to any enforcement
9 proceedings permitted under the terms of this Settlement Agreement.

10 6.10.3. Should the District Court deny the Parties’ request to
11 enter the Judgment, should this Settlement Agreement not receive Final Approval
12 by the District Court for any reason, or should this Settlement Agreement not
13 become Final for any reason in accordance with its terms: (i) this Settlement
14 Agreement will be null and void and of no force and effect; (ii) nothing in this
15 Settlement Agreement will be deemed to prejudice the position of any of the Parties
16 with respect to any matter; and (iii) neither the existence of this Settlement
17 Agreement, nor its contents, will be admissible in evidence, referred to for any
18 purpose in any litigation or proceeding, or be deemed an admission by the City of
19 any fault, wrongdoing or liability.

20 7. **Effect of Final Approval Order**

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

1 8. **Enforcement of Settlement Agreement**

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

5 9. **Release of Claims**

6 9.1. **Release of Claims through the Term**

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

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

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

25 9.2. **Known or Unknown Claims**

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

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

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

23 10. **Covenant Not to Sue**

24 10.1. The Parties agree that during the Term, the Releasing Parties
25 will refrain and forbear from commencing, instituting, or prosecuting any lawsuit,
26 action, or other proceeding, in law, equity or otherwise, against the City and its
27 Related Entities arising out of or relating to any of the Released Claims, including,
28 without limitation, an action claiming that this Settlement Agreement was

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

10 10.2. With respect to any of the Parties' obligations set forth in this
11 Settlement Agreement, the Parties agree that no claim, action or proceeding
12 alleging any violation of or failure to perform any provision of this Settlement
13 Agreement will be filed, commenced or maintained unless and until the Parties
14 have complied with all of the procedures set forth in Section 21 below.

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

16 11.1. **Accessibility Consultant**

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

23 11.2. **Applicable Accessibility Standards**

24 To the extent any of the regulations making up the Accessibility Standards
25 have conflicting technical specifications for the Pedestrian Facilities, the Self-
26 Evaluation will measure compliance with the technical specification that provides
27 the greatest degree of access to individuals with Mobility Disabilities.
28

1 11.3. **Scope of Self-Evaluation**

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

10 11.4. **Survey Tool**

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

14 11.5. **Curb Ramps**

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

28

1 11.6. **Sidewalks, Crosswalks, Pedestrian Walkways**

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

14 11.7. **Completion Date of Self-Evaluation**

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

21 12. **Updated Transition Plan**

22 12.1. **Accessibility Consultant**

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

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

4 **12.2. Prioritization for Installation, Repair or Replacement**

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

11 **12.3. New Construction and Alterations**

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

17 **12.4. Public Hearings and Public Input**

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

25 **12.5. Plaintiff and Class Counsel Input**

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

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

3 **12.6. Completion Date of Updated Transition Plan**

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

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

11 **13.1. Repair or Replacement During Evaluation Period**

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

18 **13.2. Installation of Curb Ramps During Evaluation Period**

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

1 13.3. **Remediation of Curb Ramps During First 20 Years of the**
2 **Term**

3 Within twenty (20) years of Final Approval, the City will complete the
4 installation, repair or replacement of curb ramps that were not in compliance with
5 existing Accessibility Standards as of the date they were installed, are not in
6 compliance with the 1991 Accessibility Standards if built prior to 1991, or are
7 required by the Accessibility Standards but missing. The City's obligation under
8 this Section 13.3 will be limited to the installation of 4,500 missing curb ramps,
9 which includes any curb ramps installed during the Evaluation Period under Section
10 13.2, and the repair or replacement of 16,000 curb ramps that were not in
11 compliance with the relevant Accessibility Standards at the time they were
12 installed.

13 13.3.1. **Years 1-5**

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

21 13.3.2. **Years 6-20**

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

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

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

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

8 **13.6. Tree Removal**

9 Any trees that cause a particular Pedestrian Facility to be out of compliance
10 with existing Accessibility Standards as of the date they were installed or with the
11 1991 Accessibility Standards if built prior to 1991, will be preserved to the extent
12 feasible, and protected trees may only be removed in accordance with all applicable
13 City and/or State codes, rules, and policies regarding trees and tree removal.

14 **13.7. Inflation Factor**

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

1 14. **Maintenance of Pedestrian Facilities**

2 14.1. The City will continue to make reasonably diligent efforts to
3 maintain the accessible features of its Pedestrian Facilities so that persons with
4 Mobility Disabilities will be able to use such routes safely and independently.

5 14.2. Any monies spent on improving accessibility of the City's
6 Pedestrian Facilities for persons with Mobility Disabilities as a part of the City's
7 maintenance obligations in this Section 14 will count towards the funding caps set
8 forth in Section 13.

9 15. **ADA Coordinator**

10 15.1. Throughout the Term, the City will employ an ADA
11 Coordinator who will oversee tasks relating to the development and implementation
12 of the updated Self-Evaluation and Updated Transition Plan, the City's policies and
13 procedures regarding the accessibility of the City's Pedestrian Facilities, and the
14 City's efforts to maintain the accessible features of its Pedestrian Facilities.

15 15.2. The ADA Coordinator will coordinate between relevant City
16 departments regarding installation, repairs, and replacements to Pedestrian
17 Facilities to ensure the enforcement of consistent standards and policies for such
18 improvements throughout the City.

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

24 15.4. The ADA Coordinator will also initiate, coordinate and direct
25 the implementation of the policies and procedures described in Section 16.

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

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

1 16.1. **Installation of Curb Ramps**

2 16.1.1. The City will prepare and implement written policies
3 and procedures to ensure that the City, and any entities acting on the City’s behalf,
4 install curb ramps which meet the Accessibility Standards in effect at the time the
5 work is performed whenever it newly constructs or alters City Pedestrian Facilities.

6 16.1.2. The City will prepare and implement written policies
7 and procedures to ensure that compliant curb ramps are provided at all corners of
8 intersections whenever the City performs new construction or Alterations to City
9 streets or roads, or alleys with pathways intended for pedestrian use, on one or more
10 of the blocks that make up the intersection. The City will provide copies of the
11 applicable Accessibility Standards to all entities, including private developers,
12 performing new construction or Alterations involving Pedestrian Facilities.

13 16.2. **Third Parties**

14 16.2.1. The City will ensure that its permitting process
15 requires that all third parties who perform construction, Alterations, and
16 development projects that include new construction or Alteration of Pedestrian
17 Facilities ensure that they meet the Accessibility Standards in effect at the time the
18 work is performed.

19 16.2.2. The City will draft and implement written policies and
20 procedures which enforce the City’s current code requirements ensuring access to
21 Pedestrian Facilities that are used by third parties, including but not limited to
22 barriers caused by signage, tables and chairs, and other items installed or erected by
23 third-parties.

24 16.2.3. The City will accept reports made by individual
25 members of the public relating to accessibility barriers to the Pedestrian Facilities
26 that are caused by public utilities or other non-City public entities. The City will
27 communicate with the public utility or non-City public entity on the individual’s
28 behalf to request removal of the barrier. The Parties agree that the City has no

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

4 **16.3. City's Standard Plans**

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

11 **16.4. Access During Construction and Temporary Events**

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

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

3 17. **Training of City Personnel**

4 17.1. The City's ADA Coordinator will develop and provide training
5 for existing staff in the City's Public Works Department, new hires, and other City
6 employees involved in ensuring the accessibility of the City's Pedestrian Facilities
7 to people with Mobility Disabilities. The training will discuss applicable federal
8 and state requirements regarding the accessibility of pedestrian routes. The City
9 will include this training in its new hire orientation for employees involved in
10 ensuring the accessibility of the City's Pedestrian Facilities.

11 17.2. The City will provide staff in the City's Public Works
12 Department with accessibility training, utilizing the materials developed or made
13 available pursuant to this Section 17, on at least an annual basis. This training will
14 be open to additional departments, including but not limited to: Human Resources;
15 Water Department; Long Beach Gas and Oil Department; Parks, Recreation and
16 Marine Department; and Harbor Department.

17 17.3. The City will provide the administrative officers in charge of
18 each of the City's Departments with periodic training on accessibility of Pedestrian
19 Facilities to individuals with Mobility Disabilities.

20 17.4. The City will provide training to applicable Departments when
21 there is a change in the law related to accessibility of Pedestrian Facilities to
22 individuals with Mobility Disabilities, as determined by the ADA Coordinator.

23 17.5. The City may, at its option, utilize third-party vendors to
24 provide the training described in this Section 17 on its behalf.

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

26 18.1. Upon its completion, the City will post the Updated Transition
27 Plan on the City's website, currently located at www.longbeach.gov.

1 18.2. The ADA Coordinator, in coordination with the City’s Public
2 Works Department, will maintain a record of all work performed and completed
3 under the Updated Transition Plan.

4 18.3. On a quarterly basis throughout the Term (based upon the City’s
5 fiscal year (October 1 through September 30)), the City will post on its website a
6 report related to the Access Request Program and a report of progress under the
7 Updated Transition Plan. On an annual basis throughout the Term (on or before
8 September 30), the City will post on its website an end-of-year report. The
9 information to be contained in these three reports is contained in Exhibit “E.”

10 19. **Access Request Program**

11 19.1. **Scope and Procedure**

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

18 19.2. **Submission of Requests**

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

23 19.3. **Timing of Response to Access Request**

24 19.3.1. The City will acknowledge receipt of the request and
25 provide an estimated completion date for the request within thirty (30) days from
26 the receipt of the request by the City.

27 19.3.2. The City will complete all requests for installation,
28 repair or replacement of Pedestrian Facilities that cost less than \$10,000 within 180

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

7 **19.4. New Construction and Alterations**

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

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

12 **20.1. Access to Information**

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

19 **20.2. Inspections**

20 **20.2.1. Quarterly Inspections in Year 1**

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

24 **20.2.2. Semi-Annual Inspections in Years 2-5**

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

1 20.2.3. **Annual Inspections in Years 6-30**

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

5 20.3. **Notice of Non-Compliance**

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

16 20.4. **Monitoring Fees and Expenses**

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

22 20.5. **Accounting of Monitoring Fees and Expenses**

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

27
28

1 21. **Dispute Resolution Procedure**

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

5 21.1. **Notification in Writing**

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

9 21.2. **Meet and Confer**

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

14 21.3. **Optional Mediation**

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

25 21.4. **Submission to Court**

26 Failing resolution of a Dispute through the procedures identified in sections
27 21.1 through 21.3, any Party may submit the issue to the District Court for decision.

28

1 21.5. **Attorneys' Fees and Costs for Dispute Resolution**

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

12 21.6. **Attorneys' Fees and Costs for Dispute Resolution by Court**

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

20 21.7. **Accounting of Attorneys' Fees and Costs**

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

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

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

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

3 **22.1. Plaintiffs Are Prevailing Parties**

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

8 **22.2. Motion for Attorneys' Fees, Expenses, and Costs**

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

14 **22.3. Payment of Attorneys' Fees, Expenses, and Costs**

15 22.3.1. The City will pay the amounts awarded by the District
16 Court after: (i) the District Court has issued a written order granting Final
17 Approval of this Settlement Agreement; (ii) the Judgment has become Final; and
18 (iii) the District Court has approved an award of attorneys' fees, expenses, and costs
19 in response to Plaintiffs' motion or application for reasonable attorneys' fees,
20 expenses, and costs. Both Parties reserve the right to appeal the District Court's
21 order on attorneys' fees, expenses, and costs.

22 22.3.2. The City's payment of the amounts awarded by the
23 District Court for reasonable attorneys' fees, expenses, and costs is in full and
24 complete satisfaction of any and all claims for attorneys' fees, expenses, and costs
25 incurred by Plaintiffs and Class Counsel in the *Ochoa* Action, and Plaintiffs (on
26 behalf of themselves and the Settlement Class) and Class Counsel expressly waive
27 any right to recover any additional attorneys' fees, expenses, and costs of any kind
28 in connection with the *Ochoa* Action or this Settlement Agreement, except for

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

3 **23. Enforcement**

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

16 **24. Entire Agreement**

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

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

4 **25. No Other Representations**

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

16 **26. Notice**

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

20 **To Plaintiffs:**

21 Linda M. Dardarian, Esq.
22 Goldstein, Borgen, Dardarian & Ho
23 300 Lakeside Drive, Suite 1000
Oakland, CA 94612

24 Meredith J. Weaver, Esq.
25 Disability Rights Advocates
26 2001 Center Street, 4th Floor
Berkeley, CA 94704

1 Legal Director
2 Disability Rights Legal Center
3 350 South Grand Avenue, Suite 1520
4 Los Angeles, CA 90071

5 **To the City:**

6 City Attorney
7 City of Long Beach
8 333 W. Ocean Blvd.
9 Long Beach, CA 90802

10 ADA Coordinator
11 City of Long Beach
12 333 W. Ocean Blvd.
13 Long Beach, CA 90802

14 **with a copy to:**

15 Cheryl Johnson-Hartwell
16 Burke, Williams & Sorenson LLP
17 444 South Flower Street, Suite 2400
18 Los Angeles, CA 90071-2953

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

22 27. **Drafting of this Agreement**

23 The Parties acknowledge and agree that this Settlement Agreement will for
24 all purposes be deemed jointly drafted and fully negotiated, and as a result, will not
25 in any manner be interpreted in favor of, or as against, any particular Party by
26 reason of being the drafting Party. Any rule of law, including, without limitation,
27 Section 1654 of the California Civil Code, or any other statute, legal decision or
28 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.

1 28. **Voluntary Agreement**

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

9 29. **Binding Effect**

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

12 30. **Authority**

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

17 31. **Governing Law**

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

21 32. **Paragraph Headings**

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

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

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

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

4
5 EXECUTED by the Parties as follows:

6
7 Dated: March 9, 2017

THE CITY OF LONG BEACH

8
9 By: P West
10 Title: City Manager

11
12 Dated: _____, 2017

13 By: _____
14 Hector Ochoa, individually and as
15 representative of the Settlement Class

16 Dated: _____, 2017

17 By: _____
18 Cynde Soto, individually and as
19 representative of the Settlement Class

20 Dated: _____, 2017

21 By: _____
22 Cathy Shimozone, individually and as
23 representative of the Settlement Class

24 Dated: _____, 2017

25 By: _____
26 Ben Rockwell, individually and as
27 representative of the Settlement Class


28 Dated: _____, 2017

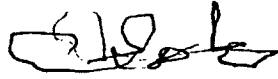
By: _____
Sharon Parker, individually and as
representative of the Settlement Class

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


4
5 EXECUTED by the Parties as follows:

6
7 Dated: _____, 2017 THE CITY OF LONG BEACH
8 By: _____
9 Title: _____

10
11 Dated: MARCH 07, 2017 By: 
12 Hector Ochoa, individually and as
13 representative of the Settlement Class

14
15 Dated: MARCH 07, 2017 By: 
16 Cynde Soto, individually and as
17 representative of the Settlement Class

18 Dated: _____, 2017 By: _____
19 Cathy Shimozone, individually and as
20 representative of the Settlement Class

21 Dated: MARCH 07, 2017 By: 
22 Ben Rockwell, individually and as
23 representative of the Settlement Class

24
25 Dated: _____, 2017 By: _____
26 Sharon Parker, individually and as
27 representative of the Settlement Class

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

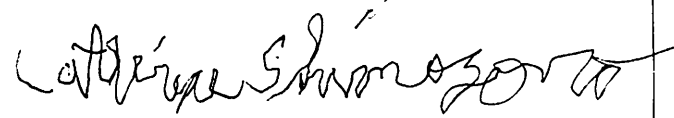
4
5 EXECUTED by the Parties as follows:

6
7 Dated: _____, 2017 THE CITY OF LONG BEACH

8
9 By: _____
10 Title: _____

11
12 Dated: _____, 2017 By: _____
13 Hector Ochoa, individually and as
14 representative of the Settlement Class

15
16 Dated: _____, 2017 By: _____
17 Cynde Soto, individually and as
18 representative of the Settlement Class

19 Dated: 3/8, 2017 By: 
20 Cathy Shimosono, individually and as
21 representative of the Settlement Class

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

25
26 Dated: _____, 2017 By: _____
27 Sharon Parker, individually and as
28 representative of the Settlement Class

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

4
5 EXECUTED by the Parties as follows:

6
7 Dated: _____, 2017 THE CITY OF LONG BEACH
8
9 By: _____
10 Title: _____

11
12 Dated: _____, 2017 By: _____
13 Hector Ochoa, individually and as
14 representative of the Settlement Class

15
16 Dated: _____, 2017 By: _____
17 Cynde Soto, individually and as
18 representative of the Settlement Class

19
20 Dated: _____, 2017 By: _____
21 Cathy Shimozone, individually and as
22 representative of the Settlement Class

23
24 Dated: _____, 2017 By: _____
25 Ben Rockwell, individually and as
26 representative of the Settlement Class

27
28 Dated: March 10, 2017 By: Smparker
Sharon Parker, individually and as
representative of the Settlement Class

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APPROVED AS TO FORM:

Dated: 3/10, 2017

OFFICE OF THE CITY ATTORNEY

By: Monte M. Machit
Monte Machit, Assistant City Attorney
City of Long Beach

Dated: March 10, 2017

BURKE WILLIAMS & SORENSON LLP

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

Dated: March 10, 2017

GOLDSTEIN BORGEN DARDARIAN &
HO

By: Linda M. Dardarian
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

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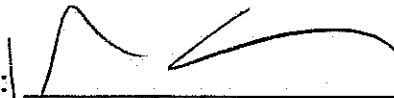
Dated: _____, 2017 BURKE WILLIAMS & SORENSON LLP

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

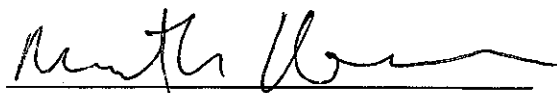
Dated: _____, 2017 GOLDSTEIN BORGEN DARDARIAN & HO

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