

1 Mike Arias, Esq. (CSB #115385)
Mikael H. Stahle, Esq. (CSB #182599)
2 Alfredo Torrijos, Esq. (CSB #222458)
Rolando J. Gutierrez, Esq. (CSB # 276230)
3 ARIAS OZZELLO & GIGNAC LLP
6701 Center Drive West, Suite 1400
4 Los Angeles, California 90045-1558
Tel: (310) 670-1600
5 Fax: (310) 670-1231

6 Attorneys for Plaintiff
7 the Settlement Class

8
9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF LOS ANGELES**

12 SAUNDRA CARTER, et al.,
13
14 Plaintiffs.

15 vs.

16 CITY OF LOS ANGELES,
17 Defendants.

18
19
20 NICOLE FAHMIE,
21 Plaintiff.

22 vs.

23 CITY OF LOS ANGELES, et al.,
24 Defendants.

LEAD CASE NO. BC363305

[Consolidated Case No. BC381773]

HON. JOHN S. WILEY, JR.

**DECLARATION OF MIKE ARIAS IN
SUPPORT OF PLAINTIFF FAHMIE'S
MOTION FOR AWARD OF
ATTORNEYS' FEES;
REIMBURSEMENT OF EXPENSES;
AND AWARD OF PLAINTIFF
INCENTIVE AWARD**

[Filed concurrently with Plaintiff Fahmie's
Motion for Award of Attorneys' Fees;
Reimbursement of Expenses; and Award of
Plaintiff Incentive Award; and Plaintiff
Fahmie's Memorandum of Points and
Authorities in Support of Motion for
Award of Attorneys' Fees; Reimbursement
of Expenses; and Award of Plaintiff
Incentive Award.]

Hearing

Date: February 28, 2012

Time: 8:30 a.m.

Dept.: 311

1 I, Mike Arias, declare as follows:

2 1. I am admitted and licensed to practice before all courts of the State of
3 California, the States of New York, New Jersey and the District of Columbia. I am a
4 partner in the firm of Arias Ozzello & Gignac LLP (“AOG”), counsel of record for
5 Nicole Fahmie and Class Counsel for the Settlement Class.

6 2. I actively participated in the prosecution of the litigation of this action, I
7 have personal knowledge of the matters described below and I am competent to
8 testify thereto.

9 **I. BENEFIT TO THE CLASS**

10 3. Attached hereto as Exhibit 1 is a true and correct copy of the Settlement
11 Agreement dated April 25, 2011, which was filed with the Court by on May 11, 2011.
12 The Court preliminarily approved the Settlement on May 20, 2011. Final approval of
13 the Settlement was granted on January 11, 2012.

14 4. The Settlement is the product of an extensive investigation, aggressive
15 litigation and arm’s-length settlement negotiations and takes into account the
16 significant risks specific to this case. The negotiations were conducted through
17 numerous in-person meetings, telephone calls and other communications by and
18 between the parties’ respective counsel of record. On August 27, 2008 (and in
19 subsequent telephone conferences), the parties conducted a formal mediation with the
20 assistance of an experienced mediator, Richard Chernick of JAMS. From October
21 2009 to April 2011, the parties participated in multiple Mandatory Settlement
22 Conference sessions before the Honorable William Highberger of the Los Angeles
23 Superior Court. The Settlement was negotiated by experienced counsel with a firm
24 understanding of the strengths and weaknesses of their clients’ respective claims and
25 defenses, a familiarity with the legal issues central to this litigation, and an
26 understanding of the likelihood of success for the Class at trial. AOG, who have
27 extensive experience prosecuting class actions, spearheaded and lead these
28 negotiations on behalf of the Class.

5. As set forth in detail in the Settlement Agreement, Defendant City of Los Angeles (the City) has agreed to spend up to \$83,500,000.00 over the next twenty years in order to address the claims asserted in this litigation. Specifically, the City has agreed to: (1) spend up to \$3.5 million to remediate up to 1,000 curbs on a “super priority” basis over the next year, based on a Claims Administrator’s determination of the most worthy claimants and curb locations; and (2) spend \$80 million during the subsequent 20 years on curb ramp construction that focuses both on ramping curbs in the most heavily-traveled sections of the City and in less-traveled areas where residents identify a particular need for curb ramp construction.

6. Applying a discount rate of 10%, the present value of the benefits provided under the Settlement Agreement is over \$37.5 million, calculated as follows:

Year	Benefit Amount	Discount Factor	Present Value
0	\$3,500,000.00	1	\$3,500,000.00
1	\$4,000,000.00	1.1	\$3,636,363.64
2	\$4,000,000.00	1.21	\$3,305,785.12
3	\$4,000,000.00	1.331	\$3,005,259.20
4	\$4,000,000.00	1.4641	\$2,732,053.82
5	\$4,000,000.00	1.61051	\$2,483,685.29
6	\$4,000,000.00	1.771561	\$2,257,895.72
7	\$4,000,000.00	1.9487171	\$2,052,632.47
8	\$4,000,000.00	2.1435888	\$1,866,029.52
9	\$4,000,000.00	2.3579477	\$1,696,390.47
10	\$4,000,000.00	2.5937425	\$1,542,173.16
11	\$4,000,000.00	2.8531167	\$1,401,975.60
12	\$4,000,000.00	3.1384284	\$1,274,523.27
13	\$4,000,000.00	3.4522712	\$1,158,657.52
14	\$4,000,000.00	3.7974983	\$1,053,325.02
15	\$4,000,000.00	4.1772482	\$957,568.20
16	\$4,000,000.00	4.594973	\$870,516.54
17	\$4,000,000.00	5.0544703	\$791,378.68
18	\$4,000,000.00	5.5599173	\$719,435.16
19	\$4,000,000.00	6.115909	\$654,031.96
20	\$4,000,000.00	6.7274999	\$594,574.51

Total: \$37,554,254.88

1 7. By initiating this case, AOG undertook a considerable risk that it would not
2 receive any payment from the prosecution of this action. These risks included: (1)
3 whether the claims asserted by Plaintiff were legally viable; (2) whether the case
4 could be certified as a class action; and (3) whether the City would prevail with any
5 of its asserted defenses.

6 8. In short, prevailing and ultimately collecting any recovery from
7 defendants was never anywhere near certain, since this required satisfying a number
8 of difficult thresholds (from pleading and proof issues, to certification and
9 establishing the extent of defendants' liability at trial). Accordingly, AOG's
10 contingency risk supports the requested fees.

11 9. Furthermore, by pursuing this litigation AOG necessarily had to forego
12 developing and working on other cases available to it.

13 **II. ARIAS OZZELLO & GIGNAC LLP**

14 10. I am the founding and managing partner of Arias Ozzello & Gignac
15 LLP. My firm has significant experience in managing and litigating class action
16 matters wherein I and/or my firm has served as lead counsel, co-lead counsel or a
17 member of an executive committee tasked with the role of organizing and
18 coordinating with a large number of plaintiffs' counsel. This experience, combined
19 with my firm's history of outstanding results, has earned it the respect of both
20 plaintiffs' and defendants' counsel. My firm's ability, professionalism, and
21 reliability have been repeatedly recognized by their co-counsel, defendants' counsel,
22 and the courts.

23 11. The partners of Arias Ozzello & Gignac LLP have been engaged in the
24 representation of plaintiffs and defendants in telecommunications and, internet;
25 insurance; employment; banking; securities; statutory, civil and disability rights;
26 construction defect; consumer; antitrust; death care; unfair business practices;
27 automobile and product defect; and mass and toxic tort class action lawsuits since
28 1990. During that time, my partners and I collectively have been involved in the

1 representation of plaintiffs in more than 150 different class action cases and have
 2 been certified to act as Class Counsel in the Superior Court of the State of California,
 3 the United States District Court for the Central District of California, and federal
 4 district and state courts in various other jurisdictions throughout the country.

5 12. My firm and I have successfully prosecuted and obtained significant
 6 recoveries as class counsel in numerous class lawsuits in state and federal courts
 7 throughout the nation. Those recoveries include:

- 8 • \$49 million recovery in *Rolnik, et al. v. AT&T Wireless*
 9 *Services, Inc., et al.*, Case No. L-180-04 (N.J. Super. Ct.)
 10 on behalf of a class of customers overcharged for
 11 telecommunications services;
- 12 • \$42 million recovery in *Lozano v. AT&T Wireless Services,*
 13 *Inc.* Case No. CV 02-0090-CAS (AJWx) (C.D. Cal.)
 14 on behalf of a class of customers for inadequately disclosed
 15 out-of-cycle billing policies;
- 16 • \$38 million recovery in *Sterns v. AT&T Mobility Corp.*
 17 Case No. 2:05-CV-08842-CAS (Ctx) (C.D. Cal.) on behalf
 18 of a class of customers for inadequately disclosed service
 19 fees on billing statements;
- 20 • \$20 million recovery in *Roark, et al. v. GTE California*
 21 *Inc., et al.*, Case No. 01035862 (Santa Barbara Super. Ct.)
 22 on behalf of a class of customers overcharged for
 23 telecommunications services;
- 24 • \$16 million recovery in *In re: Woodlawn Memorial Park*
 25 *Litigation*, Case No. BC227267 (Los Angeles Super. Ct.)
 26 on behalf of a class of victims of fraud and negligent
 27 cemetery operations;
- 28 • \$15 million recovery in *Costa v. Vitas Healthcare*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- Corporation of California*, Case No. BC313552 (Los Angeles Super. Ct.) for unpaid overtime and meal break premiums on behalf of a class of home healthcare workers;

 - \$14 million judgment entered against Cal-ISO in *Hardie v. California Independent System Operator*, Case No. BC220839 (Los Angeles Super. Ct.) on behalf of a class of grid control room operators who were denied overtime wages due to misclassification;
 - \$10 million recovery in *Gottlieb, et al. v. SBC Communications, et al.*, 2:00-cv-04139-AHM-MAN (C.D. Cal.) on behalf of a class of employees whose 401(k) plans were liquidated in violation of ERISA;
 - \$9 million recovery for victims of racial profiling harassment at an amusement park in *Armendarez v. Six Flags Magic Mountain* (Los Angeles Superior Court);
 - \$8.3 million recovery *In re: Paradise Memorial Park Litigation*, Lead Case No. BC 130375 (Los Angeles Super. Ct.) on behalf of a class of family members of decedents whose grave sites were desecrated.

13. Additionally, my firm is currently prosecuting over 50 class actions in both state and federal courts. These suits include:

- Court-appointed Interim Liaison Counsel representing a putative class of consumers overcharged for “pay-per-click” website advertising *In re Facebook PPC Advertising Litigation*, Master File No. C 09-03043 JF (N.D. Cal.);
- Representing a putative class of cellular telephone customers charged excessive rates for calls under their applicable calling plans in *Demmick, et al. v. Cellco*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- Partnership, Case No. 2:06-CV-2163 (D.N.J.);
- Court-appointed Interim Lead Counsel representing a putative class of cellular telephone customers assessed with unauthorized charges for data service in *Moore v. Cellco Partnership*, Case No. 3:09-CV-04592-FLW-TJB (D.N.J.);
- Representing a putative class of consumers who purchased Toyota Prius vehicles equipped with defective HID headlight systems in *Collado v. Toyota Motor Sales, USA, Inc.*, Case No. 2:10-CV-03113 (C.D. Cal.);
- Representing a putative class of consumers seeking recovery for the improper handling of decedents’ remains in *Leathermon v. Grandview Memorial Gardens*, Case No. 4:07-CV-00137-SEB-WGH (S.D. Ind.);
- Representing a putative class of consumers who purchased Toyota Highlander Hybrid vehicles equipped with defective Inverter systems in *Gaal v. Toyota Motor Sales, USA, Inc.*, Case No. CV-11-02119 (C.D. Cal.);
- Class action suit seeking recovery of unpaid wages, break premiums and other relief in suit alleging the misclassification of Store Managers in *Mosse v. CVS Caremark Corp.*, Case No. BC387082 (Los Angeles Super. Ct.).

14. My law firm’s website, found at <http://www.aogllp.com>, provides further information about class action lawsuits that my firm and I have favorably resolved for plaintiffs, as well as the many other class action and “mass” action lawsuits that we are currently prosecuting.

1 15. Further, my firm has successfully prosecuted appeals in class actions
2 and obtained numerous published decisions, including the following:

- 3 • *Douglas v. Talk America, Inc.* (9th CIR. 2007) 495 F.3d 1062;
- 4 • *Lozano v. AT&T Wireless Services, Inc.* (9th CIR. 2007) 504 F.3d
5 718;
- 6 • *Laliberte v. Pacific Mercantile Bank* (2007) 147 CAL.APP.4th 1;
- 7 • *Ghazarian v. Diva Limousine, Ltd.* (2008) 160 CAL.APP.4th
8 1524;
- 9 • *Olvera v. El Pollo Loco, Inc.* (2009) 173 CAL.APP.4th 447;
- 10 • *Gomez v. Lincare, Inc.* (2009) 173 CAL.APP.4th 508.

11 16. I have given numerous lectures and presentations on class action issues,
12 including Class Action Settlement Strategies (Strafford CLE Webinar and
13 Teleconference, 2010), Certifying a Class Action (Consumer Attorneys Association
14 of Los Angeles (“CAALA”) Annual Conference, 2009), and Class Actions
15 (Consumer Attorneys of California (“CAOC”)/CAALA Annual Class Action
16 Seminar, 2009). I co-chaired the 2010 and 2011 two-day 9th Annual Class Action
17 Litigation Management Conference presented by Bridgeport Programs.

18 17. I have written and co-authored numerous articles on class action issues,
19 including “Class Actions: Getting Your Class Certified,” Advocate (Feb. 2010) and
20 “A Class Action Primer,” Advocate (Mar. 2010).

21 **III. PETITION FOR FEES AND EXPENSES**

22 18. AOG requests an award of attorneys’ fees in the amount of
23 \$1,230,954.00. The requested fees correspond to a multiplier of 4.0 based on a
24 lodestar of \$307,738.50 incurred to date by AOG.

25 19. To date, AOG has devoted a total of 561.87 hours (comprised of 545.12
26 hours of attorney time and 16.75 hours of staff time) to the prosecution of this action.
27 At their reasonable and regular hourly rates this represents a lodestar of \$307,738.50,
28 calculated as follows:

Name	Rate	Hours	Total
Mike Arias	\$675.00	296.92	\$ 200,421.00
Mark A. Ozzello	\$675.00	7.00	\$ 4,725.00
J. Paul Gignac	\$675.00	1.70	\$ 1,147.50
Arnold Wang	\$575.00	0.90	\$ 517.50
Mikael Stahle	\$500.00	128.60	\$ 64,300.00
Denis M. Delja	\$425.00	0.20	\$ 85.00
Alfredo Torrijos	\$450.00	26.70	\$ 12,015.00
Mark J. Bloom	\$300.00	5.80	\$ 1,740.00
Stephanie C. Lai	\$275.00	40.20	\$ 11,055.00
Rolando Gutierrez	\$250.00	37.10	\$ 9,275.00
Law Clerks & Paralegals	\$175.00	5.60	\$ 980.00
Legal Administrators	\$150.00	9.20	\$ 1,380.00
Document Clerks	\$ 50.00	1.95	\$ 97.50
Total:		561.87	\$ 307,738.50

20. The above schedule was prepared from contemporaneous, daily time records that are inputted daily by the attorneys and professional staff members of my firm into a computerized billing system maintained by the firm. A true and correct copy of AOG's time records are available for in-camera inspection upon request of the Court.

21. The above rates are comparable to the rates requested by – and awarded to – these attorneys in other class actions successfully prosecuted by AOG. In fact, with respect to attorneys' fees submissions that I have made before both State and Federal Courts in connection with class action fees, no court has ever reduced the amount of attorneys' fees requested by AOG based upon the hourly billing rate.

22. The practice of Arias, Ozzello & Gignac, LLP is not limited to contingent fee cases. Rather, while a substantial portion of its practice does involve the representation of plaintiffs on a contingency basis, my firm's practice also entails the representation of plaintiffs and defendants in business, financial, and commercial litigation matters which are handled either on a contingency basis (with the client responsible for all costs) or an hourly billable basis (with the client responsible for all attorneys' fees and costs). The rates which my firm charges for the time of its

1 attorneys and professional staff are not dependent upon whether the case is billable or
2 contingent. As a result, the above rates are necessarily market sensitive and market
3 competitive for the level of services provided by Arias Ozzello & Gignac, LLP.

4 23. The above hourly rates are the reasonable and regular rates that are
5 commensurate with the experience and expertise of each attorney. Below is a brief
6 description of the experience and qualification of the two attorneys from AOG who
7 contributed to the vast bulk of the lodestar incurred in this action:

8 (a) I am the senior and managing partner of the firm, handling
9 matters throughout the United States. I have litigated and tried matters
10 from New York to Texas to California, in both state and federal court
11 and I have successfully resolved hundreds of matters, either by trial,
12 arbitration, mediation or negotiated settlement, resulting in millions of
13 dollars in recovery for the firm's clients. My most recent trial victory
14 resulted in a judgment and subsequent settlement in excess of \$19
15 million. My most recent settlements total well in excess of \$150 million.
16 I am admitted to practice law in California, New York, New Jersey and
17 the District of Columbia as well as numerous federal courts. I serve on
18 the Board of Governors of the Consumer Attorneys Association of Los
19 Angeles ("CAALA") and the Board of Directors of the Consumer
20 Attorneys of California ("CAOC"). I am a member of the American Bar
21 Association, American Association for Justice, Trial Lawyers for Public
22 Justice, California Employment Lawyers Association ("CELA"), Los
23 County Bar Association and the Sports Lawyers Association.

24 (b) Mikael Stahle, a Senior Associate, was admitted to practice
25 law California in 1996. Mr. Stahle prosecutes individual and class
26 actions in state and federal court, primarily in the areas of consumer
27 rights, government benefits, discrimination, and employment. He also
28 handles insurance coverage and appellate matters. Before joining Arias,

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Ozzello & Gignac, Mr. Stahle spent several years practicing civil defense litigation with Daniels, Fine, Israel & Schonbuch in Century City. Before that, he practiced with the Brentwood law firm of Blalock & Gray, where he specialized in immigration related litigation in the federal courts. Mr. Stahle graduated from Loyola Law School, where he was a member of the Loyola of Los Angeles Law Review. He received a Bachelor of Arts degree in Economics from the University of California at Santa Barbara. Mr. Stahle is admitted to practice law in both state and federal courts in California and is a member of the American Bar Association, Los Angeles County Bar Association, American Trial Lawyers Association, Consumer Attorneys of California, and Consumer Attorneys Association of Los Angeles.

24. In addition to professional time expended in the case, AOG incurred \$6,746.29 in unreimbursed litigation expenses incurred during the prosecution of this lawsuit. The litigation expenses incurred by AOG are summarized below:

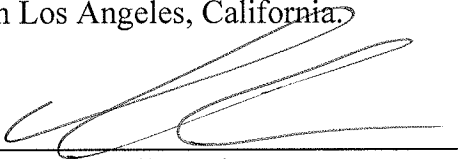
Item	Incurred Costs
Court Costs & Court Call	\$1,015.00
Courier & Delivery	\$ 499.50
Copies	\$1,048.25
Interest Charges	\$1,159.17
Legal Research & Transcripts	\$ 401.46
Meals	\$ 103.58
Mediation Fees	\$2,025.00
Mileage & Parking	\$ 245.98
Postage	\$ 60.22
Phone Calls & Faxes	\$ 188.13
Total:	<u>\$6,746.29</u>

25. The expenses incurred by my firm in connection with this litigation are reflected on an expense by expense basis in the financial records of my firm maintained by my firm’s accounting department. These records are prepared from

1 expense reports, check requests, and cash receipts, and are maintained in the ordinary
2 course of business by Arias Ozzello & Gignac LLP. The expenses reflected above
3 were reasonably and necessarily incurred in connection with this litigation and were
4 specifically reviewed and authorized by me.

5 26. The rates charged for all internal expenses incurred by my firm (e.g.,
6 photocopying) are the same irrespective of whether the case is billable or contingent.
7 As a result, the rates charged are necessarily market sensitive and market competitive
8 since they are subject to and controlled by what the market will bear.

9
10 I declare under penalty of perjury of the laws of the California that the foregoing is
11 true and correct, executed on February 2, 2012 in Los Angeles, California.

12
13 
14 _____
15 Mike Arias

16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 1

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This Settlement Agreement and Release of Claims (the "Agreement") is made and entered into, as of this 25th day of April, 2011, by and between the City of Los Angeles (the "City"), on the one hand, and Nicole Fahmie, Sang Kong, Jerry Butler, Michael Ashby, Dereck Parks, Shawn Monroe, Mary Rosolowski, Travon Terry, and David Gunther (collectively, the "Named Plaintiffs"), individually and on behalf of themselves and a class of persons similarly situated (the "Settlement Class," as defined below), on the other hand. The City and the Named Plaintiffs shall be referred to in this Agreement individually as a "Party" and collectively as the "Parties."

I.

RECITALS

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

A. Each of the Named Plaintiffs is an individual with a Disability (as defined below) who uses a wheelchair or scooter for mobility. Each of the Named Plaintiffs has regularly used or attempted to use, and intends to continue to use or attempt to use, various sidewalks, curbs and pedestrian rights of way within the City.

B. In 1999, pursuant to federal regulations promulgated under the Rehabilitation Act of 1973 (29 U.S.C. §§ 794 *et seq.*) and the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 *et seq.*), the City created a transition plan describing, among other things, certain construction and remediation work to address the accessibility of curbs located in the City. In September 2000, the City prepared an amended transition plan (the "Transition Plan," as defined below).

C. On or about December 12, 2006, Sandra Carter, Sang Kong, Jerry Butler, Michael Ashby, Beverly Overton, Dereck Parks, Shawn Monroe, Mary Rosolowski, Travon Terry, and David Gunther, on behalf of themselves and all others similarly situated, commenced an action in the Superior Court of the State of California for the County of Los Angeles (the "Court"), entitled *Sandra Carter, et al. v. City of Los Angeles*, Case No. BC 363305 (the "Carter Action"), in which they alleged that the City violated disability access laws by failing to install curb cuts or ramps that provide access to and from sidewalks located in the City. On or about May 10, 2007, plaintiffs in the Carter Action filed the First Amended Complaint for Damages and Injunctive Relief. On May 18, 2010, plaintiffs in the Carter Action and the City entered into the Stipulation Limiting Scope of Relief Sought By Plaintiffs, clarifying the relief sought in the Carter Action.

D. On or about December 5, 2007, Nicole Fahmie, on behalf of herself and all others similarly situated, commenced an action in the Superior Court of the State of California for the County of Los Angeles, entitled *Nicole Fahmie v. City of Los Angeles, et al.*, Case No. BC 381773 (the "Fahmie Action"), in which she alleged that the City

violated state and federal disability access laws by failing to install curb cuts or ramps that provide access to and from sidewalks located in the City. On June 29, 2010, Nicole Fahmie filed the First Amended Complaint. On January 27, 2011, the Court consolidated the Carter Action and the Fahmie Action under Case No. BC 363305 (the "Consolidated Actions").

E. The City has denied and disputed, and continues to deny and dispute, the claims and contentions by the Named Plaintiffs and does not admit any liability or wrongdoing whatsoever. The City maintains that with respect to the matters alleged in the Consolidated Actions, it has fully complied with all Accessibility Laws (as defined below) at all relevant times.

F. During the pendency of the Consolidated Actions, the Parties engaged in extensive discussions regarding a potential resolution and settlement of the alleged claims, including in settlement conferences before a judge of the Superior Court of the State of California and in mediation before a private mediator. 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 the Named Plaintiffs and the Settlement Class and to resolve their differences and disputes by settling the Consolidated Actions under the terms set forth in this Agreement.

G. The City has agreed to enter into this Agreement solely to avoid the further expense, inconvenience, and distraction of burdensome and protracted litigation and to be free of the claims and contentions alleged in the Consolidated Actions. Nothing in this Agreement shall operate as an admission by the City in any context that it has committed any wrongdoing or violated any Accessibility Laws or that any particular law, regulation or standard is applicable under any Accessibility Laws to any sidewalk, intersection, crosswalk, street, curb or other pedestrian pathway located in the City.

H. The Named Plaintiffs and Class Counsel (as defined below) believe that the claims asserted in the litigation have merit. However, the Named Plaintiffs and Class Counsel recognize and acknowledge the expense and length of continued proceedings necessary to prosecute the litigation against the City through trial and the appeals process. The Named Plaintiffs and Class Counsel have also taken into account the uncertainties, difficulties, and delays inherent in litigation. Class Counsel has fully investigated the facts and law relevant to the merits of the claims and defenses and has concluded that the settlement is fair, reasonable, and adequate to the Settlement Class. The Named Plaintiffs and Class Counsel believe that the settlement set forth in this Agreement confers substantial benefits upon the Settlement Class and, based on their evaluation, have determined that such settlement is in the best interests of the Settlement Class.

I. The Parties intend this Agreement to bind and apply to the City, its Related Entities (as defined below), the Named Plaintiffs (individually and in their capacity as representatives of the Settlement Class), and all members of the Settlement Class.

II.

DEFINITIONS

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

A. The term "Accessibility Laws" means all State and federal disability access laws and regulations (including, without limitation, the following: the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 *et seq.* (the "ADA"), and its Title III implementing regulations, 28 C.F.R., Part 36, including Appendix A; the Rehabilitation Act of 1973, 29 U.S.C. §§ 790 *et seq.* (the "Rehabilitation Act"), including, without limitation, Sections 504 and 508 of the Rehabilitation Act; California Civil Code §§ 51 *et seq.*; California Civil Code §§ 54 *et seq.*; California Financial Code § 13082; California Health & Safety Code § 19955; California Government Code § 11135; and Title 24 of the California Code of Regulations).

B. The term "Advisory Committee" means the committee described in Section 16(b) below, consisting of six (6) members, three (3) of which will be selected by the Named Plaintiffs and three (3) of which will be selected by the City.

C. The term "Agreement" means this Settlement Agreement and Release of Claims and all of its attachments.

D. The term "Bureau of Street Services" means the Bureau of Street Services in the Department of Public Works of the City of Los Angeles.

E. The term "Carter Action" means the action entitled *Saundra Carter, et al. v. City of Los Angeles*, Case No. BC 363305, commenced by Saundra Carter, Sang Kong, Jerry Butler, Michael Ashby, Beverly Overton, Dereck Parks, Shawn Monroe, Mary Rosolowski, Travon Terry, and David Gunther in the Superior Court of the State of California for the County of Los Angeles on or about December 12, 2006.

F. The term the "City" means the City of Los Angeles.

G. The term "Claims Administrator" means the provider of the Claims Administrator services described in Sections 7, 12, 13 and 14 below, which shall be selected by the Parties and Class Counsel and retained by the City as provided under the terms of this Agreement.

H. The term "Class Counsel" means the law firm of Arias Ozzello & Gignac LLP, and the Law Offices of Morse Mehrban.

I. The term "Consolidated Actions" means the consolidated Carter Action and Fahmie Action.

J. The term "Construction Commencement Date" means the date occurring sixty (60) days after the completion by the Claims Administrator of the identification of the list of Curb Locations (as defined below) in accordance with Section 13(g)(i) or Section 13(h) below.

K. The term "Court" means the Superior Court of the State of California for the County of Los Angeles.

L. The term "Curb Location" means a place at which a single curb ramp or curb cut may be installed or repaired as provided under the terms of this Agreement.

M. The term "Disability" means having a "disability" as that term is defined under Section 51(e)(1) of the California Civil Code.

N. The term "Fahmie Action" means the action entitled *Nicole Fahmie v. City of Los Angeles, et al.*, Case No. BC 381773, commenced by Nicole Fahmie in the Superior Court of the State of California for the County of Los Angeles on or about December 5, 2007.

O. The term "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 the Agreement is affirmed, 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 Agreement are raised prior to or at the Final Approval Hearing, that any objections that have been raised have been withdrawn, or that no viable objections otherwise exist at the time of the Final Approval Hearing, the Judgment shall become "Final" as of the 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 shall not become or be "Final."

P. The term "Final Approval Hearing" means the hearing described in Section 5(b) below.

Q. The term "FY" means fiscal year.

R. The term "Gas Tax Funds" means the revenue received by the City from the fund commonly known as the "Special Gas Tax Street Improvement Fund," which receives monies from the State of California's Excise Tax on the sale of gasoline and from federal reimbursements through the Surface Transportation Program – Local (STP).

S. The term "Judgment" means a judgment entered by the Court in the Consolidated Actions, substantially in the form attached to this Agreement as Exhibit "E," that, among other things, fully approves the terms of this Agreement.

T. The term "Measure R Funds" means the revenue commonly known as the "Measure R Traffic Relief and Rail Expansion Funds" and received by the City from the one-half cent sales tax adopted by the Los Angeles County Metropolitan Transportation Commission pursuant to California Public Utilities Code Section 130350 and approved by Los Angeles County voters in 2008.

U. The term "Named Plaintiffs" means Nicole Fahmie, Sang Kong, Jerry Butler, Michael Ashby, Dereck Parks, Shawn Monroe, Mary Rosolowski, Travon Terry, and David Gunther.

V. The term "Notice Completion Date" means the date, as designated by the Court, on which notice of this Agreement to the Settlement Class, as described in Section 5(a) below, shall be deemed completed.

W. The term "Notice of Finality of Judgment" means the notice to be provided to the Settlement Class as set forth in Section 12 below.

X. The term "Notice of Settlement" means the notice substantially in the form attached to this Agreement as Exhibit "D" to be provided to the Settlement Class as set forth in Section 7 below.

Y. The term "Parties" or "Party" refers to the City and the Named Plaintiffs.

Z. The term "Preliminary Approval" means the preliminary approval of this Agreement by the Court as described in Section 5(a) below.

AA. The term "Preliminary Approval Order" means the order of the Court substantially in the form attached to this Agreement as Exhibit "C," preliminarily approving the terms of this Agreement as described in Section 5(a) below.

BB. The term "Primary Route" means the route designated in Super-Priority Claim Forms (as defined below) and Priority Claim Forms (as defined below) that the particular claimant has indicated is the route of highest priority to that claimant.

CC. The term "Priority Claim Form" means the form to be prepared by the Claims Administrator (with consultation with and input from the City and Class Counsel) and to be completed and submitted by persons seeking Priority Claims Remediation (as defined below) in accordance with Section 14 below.

DD. The term "Priority Claims" means the claims submitted by persons seeking Priority Claims Remediation (as defined below) in accordance with Section 14 below.

EE. The term "Priority Claims Period" means the twenty (20) year period, commencing on the Super-Priority Completion Date (as defined below), during which the City is obligated to address Priority Claims in accordance with Section 14 below.

FF. The term "Priority Claims Remediation" means the installation and/or repair of curb ramps and/or curb cuts by the City in accordance with the terms of Section 14 below.

GG. The term "Qualified Priority Claims" or "QPCs" means the Priority Claims that the Claims Administrator has determined consist of complete, accurate and valid information, in accordance with Section 14(e) below.

HH. The term "Qualified Super-Priority Claims" or "QSPCs" means the Super-Priority Claims (as defined below) that the Claims Administrator has determined consist of timely, complete, accurate and valid information, in accordance with Section 13(e) below.

II. The term "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, pension 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 Agreement.

JJ. The term "Released Claims" means any and all claims, rights, demands, charges, complaints, actions, lawsuits, liabilities, losses, injuries, obligations, allegations, disputes and causes of action of any kind, whether asserted as individual claims or as claims on a class basis or on behalf of the general public, and whether known or unknown, suspected or unsuspected, asserted or unasserted, actual or contingent, or liquidated or unliquidated, for (i) injunctive, declaratory or other non-monetary relief, however described, or (ii) Statutory Damages (as defined below), that are based on conduct or conditions preceding entry of Judgment, that were brought, could have been brought or could be brought now or in the future under any Accessibility Laws, and that relate in any way to the inaccessibility or alleged inaccessibility of any sidewalk, intersection, crosswalk, street or other pedestrian pathway located in the City due to (i) the lack of a curb ramp or curb cut, or (ii) a curb ramp or curb cut that is or was damaged, deficient, in need of repair, or otherwise in a condition not suitable or sufficient for use.

KK. The term "Releasing Parties" means the Named Plaintiffs, all Settlement Class Members and each of their respective heirs, assigns, successors, executors, administrators, agents and representatives.

LL. The term "Settlement Class" means the class of all persons (including, without limitation, residents of the City and visitors of the City) with any Disability who, at any time prior to the date of this Agreement through the Term of this Agreement (as defined below),

- (i) accessed or attempted to access a sidewalk, intersection, crosswalk, street or other pedestrian pathway located in the City but were impaired or unable to do so due to (a) the lack of a curb ramp or curb cut, or (b) a curb ramp or curb cut that was damaged, deficient, in need of repair, or otherwise in a condition not suitable or sufficient for use, or
- (ii) allege that they would have accessed or attempted to access a sidewalk, intersection, crosswalk, street or other pedestrian pathway located in the City but for allegedly being denied such access due to (a) the lack of a curb ramp or curb cut, or (b) a curb ramp or curb cut that was damaged, deficient, in need of repair, or otherwise in a condition not suitable or sufficient for use.

MM. The term "Statutory Damages" means any and all minimum damages available in a specified amount and other damages and amounts expressly available by operation of or pursuant to any Accessibility Laws (including, without limitation, the amounts referenced in Section 54.3 of the California Civil Code as follows: "up to a maximum of three times the amount of actual damages but in no case less than one thousand dollars (\$1,000), and attorney's fees as may be determined by the court in addition thereto").

NN. The term "Super-Priority Claim Form" means the form to be prepared by the Claims Administrator (with consultation with and input from the City and Class Counsel) and to be completed and submitted by persons seeking the installation and/or repair of curb ramps and/or curb cuts by the City in accordance with the terms of Section 13 below.

OO. The term "Super-Priority Claims" means the claims submitted by persons seeking the installation and/or repair of curb ramps and/or curb cuts by the City in accordance with the terms of Section 13 below.

PP. The term "Super-Priority Claims Period" means the ninety (90) day period, commencing on the first day after the City commences providing notice that the Judgment has become Final in accordance with Section 12 below, during which Super-Priority Claims may be submitted in accordance with Section 13 below.

QQ. The term "Super-Priority Completion Date" means the date that the City completes the remediation work on the one thousand (1,000) Curb Locations described in Section 13(i) below, which shall be no later than three hundred sixty (360) days after the Construction Commencement Date (subject to the City's obligation, as set forth in Section 13(i) below, to use its best efforts to complete such remediation work within two hundred forty (240) days after the Construction Commencement Date).

RR. The term "Survey" means the survey described in Section 16(a) below.

SS. The term "Term" means the term of this Agreement as set forth in Section 4 below.

TT. The term "Transition Area" means the areas generally referenced in the Transition Plan (pp. 3-17 through 3-24) and described with more particularity in Exhibit "A" to this Agreement.

UU. The term "Transition Area Completion Date" means the date occurring twenty five (25) years after the Construction Commencement Date.

VV. The term "Transition Area Remediation" means the installation and/or repair of curb ramps and/or curb cuts by the City in accordance with the terms of Section 15 below.

WW. The term "Transition Plan" means the document entitled "Americans with Disabilities (ADA) Revised Transition Plan," prepared by the City in September 2000 in accordance with federal regulations promulgated under the Rehabilitation Act and the ADA, a copy of which is attached to this Agreement as Exhibit "B."

XX. The term "600 List" means the list of six hundred (600) Curb Locations prepared by the Claims Administrator in accordance with Section 14(f) below.

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 Agreement.

2. **No Admission of Liability**

By agreeing to and voluntarily entering into this Agreement, there is no admission or concession by the City, direct or indirect, express or implied, that any sidewalk, intersection, crosswalk, street, curb or other pedestrian pathway located in the City is in any way inaccessible to individuals with a Disability or that the City has violated any Accessibility Laws or committed any wrongdoing whatsoever. Nothing in this Agreement shall operate as an admission by the City in any context that any particular law, regulation or standard is applicable under any Accessibility Laws to any sidewalk, intersection, crosswalk, street, curb or other pedestrian pathway located in the City.

3. **Conditions Precedent**

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

- a. The Agreement has been fully executed by the Parties.
- b. In accordance with Section 5 below, Class Counsel and the City have jointly moved for an order granting Preliminary Approval of the Agreement and other relief set forth in Section 5, and such motion has been fully granted by the Court.
- c. In accordance with Section 8 below, Class Counsel and the City have jointly moved for final approval of the Agreement and entry of the Judgment.
- d. In accordance with Section 8 below, a Final Approval Hearing has been conducted by the Court, and the Judgment has been entered by the Court.
- e. The Judgment has become Final.

Prior to the occurrence of each of the foregoing events described in this Section 3, the Parties' only obligations pursuant to this Agreement shall be those set forth in Sections 5, 7 and 8 below.

4. **Term of Agreement**

This Agreement shall have a term that expires twenty five (25) years after the Construction Commencement Date.

5. **Preliminary Approval**

a. Within three (3) days after full execution of this Agreement by the Parties, Class Counsel and the City shall jointly request that the Court grant Preliminary Approval of this Agreement pursuant to Rule 3.769 of the California Rules of Court. By such motion, Class Counsel and the City shall seek an order, substantially in the form attached to this Agreement as Exhibit "C," (i) granting Preliminary Approval of this Agreement, (ii) provisionally certifying the Settlement Class for settlement purposes only, (iii) appointing the Named Plaintiffs as class representatives, (iv) appointing Class Counsel to represent the Settlement Class, (v) enjoining Settlement Class members from asserting or maintaining any claims to be released by the Agreement pending the Final Approval Hearing, (vi) approving issuance of notice of this Agreement and of the Final Approval Hearing in accordance with the procedures set forth in Section 7 below, and (vii) setting the Notice Completion Date.

b. Class Counsel and the City shall request that the Court schedule the Final Approval Hearing, pursuant to Rule 3.769 of the California Rules of Court, for forty (40) Court days after the Notice Completion Date set by the Court, or such other later date as may be requested by Class Counsel and/or the City and as may be ordered by the Court.

c. Class Counsel and the City shall request that the Court order the following procedures for assertion of objections, if any, to the Agreement:

(i) Any Settlement Class member may object to this Agreement by filing, within ten (10) Court days after the Notice Completion Date set by the Court, written objections with the Clerk of the 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. Only such objecting Settlement Class members duly filing and serving their objections shall have the right, and only if they expressly seek it in their objection, to present objections orally at the Final Approval Hearing.

(ii) With respect to any and all objections to this Agreement received by Class Counsel, Class Counsel shall provide a copy of each objection to counsel of record for the City (David H. Raizman, Esq., Drinker Biddle & Reath LLP, 1800 Century Park East, Suite 1400, Los Angeles, California 90067), by messenger delivery or electronic-mail delivery, within two (2) Court days after receipt of such objection.

(iii) Responses by Class Counsel and the City to any timely-filed objections shall be filed with the Court no less than ten (10) Court days before the Final Approval Hearing.

6. **Provisional Certification of the Settlement Class**

a. The Parties agree that the Settlement Class shall be certified, in accordance with the terms of this Agreement, solely for purposes of effectuating the settlement set forth in this Agreement. The City does not consent, and Class Counsel and the Named Plaintiffs agree that the City shall not be deemed to have consented, to the certification of a class for any purpose other than to effectuate the settlement set forth in this Agreement. In the event the Agreement is terminated pursuant to its terms, or for any reason the settlement described in this Agreement is not effectuated or the Judgment does not become Final, the certification of the Settlement Class shall be vacated and the Consolidated Actions shall proceed as though the Settlement Class had never been certified, with all parties reserving all of their claims and defenses, including as to any issues relating to class certification.

b. The Parties agree that the Settlement Class shall be certified in accordance with the standards applicable under Rule 23(b)(1) and/or 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 Agreement. The Parties further agree that any order, ruling or determination by or of the Court or any other court having jurisdiction over this matter that permits or allows any Settlement Class member to opt out of any of the provisions of this Agreement shall constitute a material modification of this Agreement, shall prevent the Judgment from becoming Final and shall give the City the absolute right, exercisable in its sole and absolute discretion, to terminate this Agreement in its entirety.

7. **Notice of Settlement**

a. The Parties agree to, and will request approval by the Court of, the following forms and methods of notice of this Agreement to the Settlement Class:

(i) within seven (7) days after the Court has issued the Preliminary Approval Order, the City shall direct the Claims Administrator to cause a copy of the Notice of Settlement, substantially in the form attached to this Agreement as Exhibit "D", to be provided to no less than ten (10) organizations, each of which, in the Claims Administrator's judgment, (a) serves the interests of disabled persons residing in the City who rely upon wheelchairs, scooters or other devices for mobility, (b) possesses address, electronic-mail or other contact information for such persons, and (c) will provide the Notice of Settlement to such persons on a prompt and effective basis;

(ii) within twenty-one (21) days after the Court has issued the Preliminary Approval Order, the City shall cause a copy of the Notice of Settlement to be published for four (4) consecutive weeks in an advertisement in written publications to be selected by the City and Class Counsel, with consultation with and input from the Claims Administrator;

(iii) within twenty-one (21) days after the Court has issued the Preliminary Approval Order, the City shall cause a copy of the Notice of Settlement to be posted on the City's official website (www.lacity.org) and on the Bureau of Street Services' official website (www.ci.la.ca.us/boss) for four (4) consecutive weeks; and

(iv) within twenty-one (21) days after the Court has issued the Preliminary Approval Order, the City shall cause a copy of the Notice of Settlement to be provided by U.S. Mail or electronic mail to any Settlement Class members who, within the last five (5) years prior to the date of this Agreement, requested the City to perform any curb ramp or curb cut installation or repair work, provided that the City is in possession of such individual's mailing address or electronic mail address and has reason to believe that such individual is a member of the Settlement Class.

b. The Notice of Settlement (Exhibit "D") shall inform Settlement Class members of, among other things, a general description of the terms of this Agreement, the claim-filing procedures for Super-Priority Claims and Priority Claims, the Settlement Class members' right to object to the Agreement, the procedure for asserting objections to the Agreement, and the date, time and location of the Final Approval Hearing.

c. The City shall be responsible for providing the notice and paying the costs of the Claims Administrator's services provided under the terms of this Section 7. However, under no circumstances will the City be required to expend more than the amount to which the City and the Claims Administrator agree in advance shall be charged by the Claims Administrator for the notice and the services of the Claims Administrator as described in this Section 7.

8. Final Approval Hearing

a. At the Final Approval Hearing, Class Counsel and the City shall jointly request that the Court enter the Judgment substantially in the form attached to this Agreement as Exhibit "E," providing for, among other things, the following: (i) final approval of this 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 to the Settlement Class; (iv) final approval of the appointment of Class Counsel; (v) final approval of the appointment of the Named Plaintiffs as class representatives; (vi) final approval of a 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 Priority Claims Period; (viii) that all members of the Settlement Class will be bound by the Judgment; and (ix) that, as set forth in Rule 3.769(h) of the California Rules of Court, the Court will retain jurisdiction over the Parties to enforce the terms of the Judgment.

b. Should the Court deny the Parties' request to enter the Judgment, should this Agreement not receive final approval by the Court for any reason, or should this Agreement be terminated for any reason in accordance with its terms, this Agreement

shall be null and void and of no force and effect, nothing in this Agreement shall be deemed to prejudice the position of any of the Parties with respect to the Consolidated Actions or otherwise, and neither the existence of this Agreement nor its contents shall be admissible in evidence, referred to for any purpose in the Consolidated Actions or in any other litigation or proceeding, or be deemed a presumption, concession or admission by the City of any fault, liability or wrongdoing.

9. **Release of Claims**

a. Effective on the date of entry of Judgment by the Court, the Releasing Parties, in consideration of the relief set forth in this Agreement, the sufficiency of which is expressly acknowledged, unconditionally and forever do fully and finally release, acquit and discharge the City and its Related Entities from the Released Claims.

b. The Released Claims do not include any claims for any actual damages incurred due to personal physical injury or property damage.

10. **Known or Unknown Claims**

With respect to the release of claims as provided in Section 9 above, the Named Plaintiffs, for themselves and as representatives of the Settlement Class, waive and relinquish any and all rights and benefits afforded by Section 1542 of the California Civil Code (or any other similar statute or rule of any state or jurisdiction) and understand that the facts with respect to the Consolidated Actions and this Agreement may, after the date of execution of this Agreement, be discovered to be other than or different from the facts now known and believed to be true. The Named Plaintiffs, for themselves and as representatives of the Settlement Class, knowingly accept and assume the risk of the facts being different, agree that this Agreement shall 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 expressly assume full responsibility for any losses that may be incurred by making such waiver. The Named Plaintiffs expressly understand that Section 1542 of the California Civil Code reads as follows:

“A GENERAL RELEASE DOES NOT EXTEND TO 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.”

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

Named Plaintiffs represent and warrant that each of them has been advised by legal counsel as to the meaning and consequences of the foregoing release and waiver and acknowledge their understanding of the terms and consequences of such release and waiver.

11. Covenant Not to Sue

a. The Named Plaintiffs, for themselves and as representatives of the Settlement Class, agree that they and the other Releasing Parties will forever 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 in any way arising out of or relating to any of the Released Claims, including, without limitation, an action claiming that this Agreement, or any portion of this 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. Nothing contained in this section, however, shall be interpreted or construed to prohibit or in any way limit the right of the nonbreaching Party to obtain, in addition to injunctive relief, an award of monetary damages against any person or entity breaching this covenant not to sue. Any action or proceeding brought to enforce (but not to rescind or reform) the terms of this Agreement is excepted from this covenant not to sue.

b. With respect to any of the Parties' obligations set forth in this Agreement, the City and the Named Plaintiffs (for themselves and as representatives of the Settlement Class) agree that no claim, action or proceeding alleging any violation of or failure to perform any provision of this Agreement shall be filed, commenced or maintained unless and until the Parties have complied with all of the procedures set forth in Section 18 below.

c. Notwithstanding any other terms in this Agreement, the Named Plaintiffs, for themselves and as representatives of the Settlement Class, covenant not to sue, file a complaint, provide notice of an alleged failure to perform or violation, initiate a legal proceeding or otherwise seek to enforce any rights based upon or as a result of any alleged failure to perform or violation by the City (i) with respect to any of the City's obligations set forth in Section 13 below, for a period of sixty (60) days following the Construction Commencement Date, and (ii) with respect to any of the City's obligations set forth in Sections 14 and 15 below, for a period of one hundred twenty (120) days following the commencement of the Priority Claims Period.

12. Notice of Finality of Judgment

a. Within twenty-one (21) days after the Judgment becomes Final, the City shall provide notice to the Settlement Class that the Judgment has become Final by causing a Notice of Finality of Judgment to be published or provided to the Settlement

Class by the same methods described in Sections 7(i), 7(ii) and 7(iii) above. In addition, throughout the Term of this Agreement, the City shall have a copy of the Notice of Finality of Judgment (or a link to a copy of the Notice of Finality of Judgment) posted on its official website (www.lacity.org) and on the Bureau of Street Services' official website (www.ci.la.ca.us/boss).

b. The Notice of Finality of Judgment shall inform Settlement Class members of (i) the terms of the Judgment entered by the Court, and (ii) the claim-filing procedures for Super-Priority Claims and Priority Claims.

c. The City shall be responsible for paying the costs of providing notice and the costs of the Claims Administrator's services provided under the terms of this Section 12. However, under no circumstances will the City be required to expend more than the amount to which the City and the Claims Administrator agree in advance shall be charged by the Claims Administrator for the notice and the services of the Claims Administrator as described in this Section 12.

13. Remediation Measures: Super-Priority Claims

a. For a period of ninety (90) days beginning the day after the City commences providing notice that the Judgment has become Final in accordance with Section 12 above (the "Super-Priority Claims Period"), members of the Settlement Class may submit claims to have curb ramps or curb cuts installed or repaired by the City in accordance with the terms of this Section 13 (the "Super-Priority Claims"). Subject to and in accordance with the terms of this Section 13, the City shall be obligated to install or repair up to, but not more than, one thousand (1,000) curb ramps or curb cuts in response to Super-Priority Claims duly submitted by Settlement Class members.

b. The City shall retain the Claims Administrator to conduct and supervise the preparation of the forms for submission of Super-Priority Claims and the receipt, review and processing of claims received in accordance with the terms of this Section 13. The Claims Administrator shall perform such services with consultation with and input from the City and Class Counsel. The City shall be responsible for paying the costs of the Claims Administrator's services provided under the terms of this Section 13. However, under no circumstances will the City be required to expend more than the amount to which the City and the Claims Administrator agree in advance shall be charged by the Claims Administrator for the services of the Claims Administrator as described in this Section 13.

c. Super-Priority Claims shall be submitted to the Claims Administrator by Settlement Class members using the Super-Priority Claim Form. The Super-Priority Claim Form shall include a warning to claimants that: (i) the claim-filing procedure has been authorized by Court order and is being overseen by the Court; (ii) individuals submitting the Super-Priority Claim Form are providing the requested information under penalty of perjury; (iii) only members of the Settlement Class are eligible to have their requests treated on a Super-Priority basis; and (iv) any person intentionally submitting

false information in the Super-Priority Claim Form may be subject to penalty by the Court or other legal authority. The Super-Priority Claim Form shall require each person wishing to submit a Super-Priority Claim to provide, among other things, the following information under penalty of perjury:

- Name
- Home address
- Work address (if applicable)
- Telephone contact information (home and cell)
- E-mail contact information (if applicable)
- Affirmation of claimant that he or she has a Disability affecting the ability to access sidewalks, intersections, crosswalks and other pedestrian pathways
- Location of the curb(s) requiring ramping or repair
- If multiple curb locations are identified, identification of the Primary Route that claimant wishes to indicate is the route of highest priority to that claimant (with identification of the location of curbs requiring ramping or repair along that route)
- Whether the Primary Route is needed for access to a place of employment where the claimant is employed or regularly works
- Whether the Primary Route is needed for access to a medical services provider where the claimant receives medically necessary medical services
- Whether the Primary Route is needed for access to an educational institution where the claimant is pursuing a course of education leading to a high school diploma or equivalency, or any college or graduate degree
- Whether the Primary Route is needed for access to public transportation that takes the claimant to or from a qualified place of employment, medical services provider or educational institution
- Whether alternative forms or routes of access are available
- Whether claimant has previously made a request to the City for ramping or repair of the identified curb(s), and, if so, when the claimant made the prior request to the City for ramping or repair work
- Acknowledgment of understanding that the information is provided under penalty of perjury and that intentional submission of false information may result in penalty by the Court or other legal authority and/or disqualification of the submitted claim
- Such other information that the Parties may determine is relevant after consultation with the Claims Administrator.

d. Super-Priority Claim Forms shall be made available to Settlement Class members by the following means: (i) on the Internet at a website to be created and hosted by the Claims Administrator or by individuals or entities to be retained and supervised by the Claims Administrator; (ii) by print-out from the respective websites of

the City and the City's Bureau of Street Services; (iii) by mail upon request to the City or the Claims Administrator; and (iv) at the office of the City's Department on Disability (or other office to be designated by the City). In addition, the Claims Administrator shall be responsible for offering and providing to Settlement Class members any requested reasonable accommodations necessary to complete and submit a Super-Priority Claim Form. Settlement Class members shall be entitled to submit Super-Priority Claim Forms to the Claims Administrator through the Internet, by mail, by electronic mail or by facsimile.

e. The Claims Administrator shall review each of the Super-Priority Claim Forms it receives for timeliness, validity, completeness and accuracy, and such review shall be completed for all Super-Priority Claim Forms received within ten (10) days after the end of the Super-Priority Claims Period. The Claims Administrator shall have direct telephone and e-mail access to Class Counsel, the City's counsel and a knowledgeable member of the City's Bureau of Street Services for consultation in its considerations. Class Counsel and the City shall have access to all of the Super-Priority Claims Forms received by the Claims Administrator and may provide information or recommendations to the Claims Administrator regarding whether any of the Claim Forms are untimely, incomplete, inaccurate and/or invalid. All Super-Priority Claim Forms deemed by the Claims Administrator to consist of timely, complete, accurate and valid information shall be considered Qualified Super-Priority Claims or QSPCs.

f. In the case of a Super-Priority Claim Form submitted by mail, the postmarked date on the form shall apply in determining timeliness. In the case of a Super-Priority Claim Form submitted through the Internet, by electronic mail or by facsimile, the date of receipt by the Claims Administrator shall apply in determining timeliness. Any claims to have curb ramps or curb cuts installed or repaired submitted after the Super-Priority Claims Period shall not be treated as Super-Priority Claims and instead shall be treated as Priority Claims in accordance with the terms of Section 14 below.

g. In conducting the review of Super-Priority Claim Forms as set forth in Section 13(e) above, the Claims Administrator shall determine the number of Curb Locations for which remediation has been requested in the QSPCs and proceed as follows:

(i) In the event the Claims Administrator determines that it has received QSPCs requesting remediation at one thousand (1,000) or fewer Curb Locations, it shall promptly provide a list of all such Curb Locations to Class Counsel and to the City, which shall then commence remediation work for the listed Curb Locations subject to the terms of Section 13(i) below.

(ii) In the event the Claims Administrator determines that it has received QSPCs requesting remediation at more than one thousand (1,000) but fewer than two thousand (2,000) Curb Locations, it shall proceed to subject such Curb Locations to the selection process set forth in Section 13(h) below.

(iii) In the event the Claims Administrator determines that it has received QSPCs requesting remediation at two thousand (2,000) or more Curb Locations, it shall only consider, for each claimant submitting a QSPC, the set of Curb Locations included in the Primary Route designated by such claimant in his or her Super-Priority Claim Form. If the number of Curb Locations identified by the Claims Administrator using this Primary Route methodology is equal to or less than two thousand (2,000), the Claims Administrator shall proceed to subject such Curb Locations to the selection process set forth in Section 13(h) below. If the number of Curb Locations identified by the Claims Administrator using this Primary Route methodology is greater than two thousand (2,000), the Claims Administrator shall (a) determine the first two thousand (2,000) Curb Locations for which remediation was requested based upon the chronological order in which the applicable QSPCs were received by the Claims Administrator, and (b) proceed to subject such two thousand (2,000) Curb Locations to the selection process set forth in Section 13(h) below.

h. From the set of two thousand (2,000) or fewer Curb Locations identified by the Claims Administrator in accordance with Section 13(g)(ii) or (iii) above, the Claims Administrator shall select a set of one thousand (1,000) Curb Locations most deserving of remediation on a Super-Priority basis and two hundred (200) alternate Curb Locations. The Claims Administrator shall complete this selection process within ten (10) days after the completion of the review of Super-Priority Claim Forms described in Section 13(e) above. In order to conduct this selection process, the Claims Administrator, with consultation with and recommendations from Class Counsel and the City, shall develop a methodology for determining which Curb Locations' remediation on a Super-Priority basis would best serve the interests of the Settlement Class, with such methodology to be based on the following factors:

- Necessity/importance of activity barred or impaired by lack of access at Curb Location in question
- Urgency of situation
- Availability and convenience of alternative forms of access
- Geographical spread of Curb Locations
- Likelihood that other class members may desire/need access to Curb Location
- Possibility that Curb Location may merit attention under Section 15 below (Transition Area provisions)
- Length of time that Curb Location has remained a barrier to Settlement Class member
- Pending request with City for Curb Location repair and the length of pendency of that request
- Utility of accessibility of Curb Location given other nearby barriers to access (e.g., lack of sidewalk, steep slopes)
- Efficiency considerations of remediating Curb Locations in conjunction with other planned or expected City projects

- Existence of logistical or legal barriers to remediation (*e.g.*, third party control over completion of remediation)
- Whether the claimant was a resident of the City or Disabled at the time the Notice of Settlement was provided to members of the Settlement Class in accordance with this Agreement
- Such other factors that the Parties may determine are relevant after consultation with the Claims Administrator.

After selecting such one thousand (1,000) Curb Locations and two hundred (200) alternate Curb Locations described above, the Claims Administrator shall promptly provide a list of all such Curb Locations to Class Counsel and to the City, which shall then commence remediation work for the identified Curb Locations in accordance with Section 13(i) below. Not more than three (3) business days after such list has been provided by the Claims Administrator to the City and Class Counsel, Class Counsel may submit recommendations to the City and the Claims Administrator that Curb Locations included on the list should be replaced with other Curb Locations that Class Counsel believes are more deserving of remediation on a Super-Priority basis based on claims of extreme need submitted to Class Counsel by members of the Settlement Class. The City and the Claims Administrator, if requested by Class Counsel, shall discuss such recommendations with Class Counsel; however, the City and the Claims Administrator shall not be obligated to accept Class Counsel's recommendations, and such recommendations shall not be implemented unless expressly approved by the City and the Claims Administrator. If the Parties are unable to reach agreement on such recommendations, Class Counsel shall be entitled to raise the matter with the Court.

i. Within sixty (60) days of the Claims Administrator's identification of the list of Curb Locations to be remediated on a Super-Priority basis in accordance with Sections 13(g)(i) or (h) above (*i.e.*, the "Construction Commencement Date"), and subject to the exceptions provided below, the City shall commence construction of ADA-compliant curb ramps or curb cuts to be installed and/or repaired at the Curb Locations identified by the Claims Administrator. The City will use its best efforts to complete the remediation work for at least five hundred (500) Super-Priority Curb Locations within one hundred twenty (120) days after the Construction Commencement Date, but shall complete such work in no event later than one hundred eighty (180) days after the Construction Commencement Date. The City will use its best efforts to complete the remediation for the remaining up to five hundred (500) Curb Locations within two hundred forty (240) days after the Construction Commencement Date, but shall complete such work in no event later than three hundred sixty (360) days after the Construction Commencement Date (*i.e.*, the Super-Priority Completion Date). With respect to any Super-Priority Curb Locations identified by the Claims Administrator, the City will be exempted from an obligation to remediate a particular Curb Location if:

- (1) it would be an excessive financial burden for the City to remediate the Curb Location (defined as costing the City in excess of \$5,000 per Curb Location);

- (2) there exist barriers to remediation controlled by third parties (such as the U.S. Post Office, the State of California, or the Gas Company);
- (3) the Curb Location involves a curb ramp that was required to be installed or repaired by a third party pursuant to a lawfully-issued permit, a conditional use permit or other agreement with such third party (in which case, the City will issue a demand to such third party for the prompt completion of the Curb Location's remediation);
- (4) the Curb Location is not within City boundaries or is owned by a third party governmental entity (*e.g.*, the State, the County, or a neighboring municipality); or
- (5) there exists a technical infeasibility to remediating the Curb Location because of topography or some other factor.

To the extent that the City is exempted from remediation work as set forth in this Section 13(i) for Curb Locations identified on the list of one thousand (1,000) Curb Locations described above, the City will select Curb Locations from the alternate list of two hundred (200) Curb Locations provided by the Claims Administrator (subject to the same exemptions identified in this Section 13(i)), provided that the total number of Curb Locations to be subjected to remediation work in accordance with this Section 13 shall not exceed one thousand (1,000). The City shall have sole discretion to determine the order in which the Super-Priority Curb Locations are remediated and the manner in which the construction work is performed, except that (i) all work shall be performed consistent with the obligations contained in the then-applicable ADA Accessibility Guidelines and Title 24 of the California Building Code, and (ii) Class Counsel shall have the right to request consultation with and provide input to the City with respect to the order in which the Super-Priority Curb Locations are remediated and the manner in which the construction work is performed, provided that such consultation and input are requested with reasonable notice and at reasonable times and do not delay, interfere with or impair the City's ability to comply with its remediation obligations in this Section 13 .

j. Any and all QSPCs received by the Claims Administrator in accordance with this Section 13, but whose identified Curb Locations are not among those remediated by the City in accordance with Section 13(i) above, shall be treated as Priority Claims in accordance with the terms of Section 14 below.

k. Following the Construction Commencement Date, the City and Class Counsel shall conduct conference calls on a monthly basis to discuss the general status of the construction work being performed for the Super-Priority Claims, unless the Parties determine that any such call or calls are unnecessary for the particular month in question.

l. If either the City or the Claims Administrator determines that it will be unable to meet any of the completion deadlines applicable to it as set forth above in this Section 13, it shall promptly give notice to Class Counsel (or in the case of the Claims Administrator, to Class Counsel and the City) of the reason for the delay in completion and provide a new projected completion date. Within two (2) weeks after such notice is provided, Class Counsel and the City shall meet and confer in good faith in an attempt to agree upon a mutually agreeable revised completion date for the applicable remediation work. If the Parties are unable to agree on a revised completion date within two (2) weeks after commencing such meet and confer efforts, either Party may seek the assistance of the Court, which the Parties agree shall retain jurisdiction under Rule 3.769(h) of the California Rules of Court to enforce the terms of the Judgment.

m. The obligations of the City with respect to remediation at a particular Curb Location may be postponed, among other things, if the postponement is caused by or attributable to a *force majeure*. Under this *force majeure* provision, the City's obligations may be tolled for the period of the *force majeure's* effect, if any inability to perform is due to acts of God, war, government regulations (other than regulations by the City), terrorism, disaster (including power outages), strikes, civil disorder, an emergency beyond the City's control, or construction conditions (including, but not limited to, mailboxes, sewers, grating, streetlamps or other obstructions to installation of ramps), that make it illegal or impossible for the City to perform.

n. Notwithstanding anything stated in any other provision of this Agreement, the City shall not be required under any circumstances to expend more than \$3.5 million to perform the Super-Priority remediation work referenced in this Section 13.

14. Remediation Measures: Priority Claims

a. At any time following the completion of the Super-Priority Claims Period and up to six (6) months prior to the completion of the Priority Claims Period, members of the Settlement Class may submit claims to have curb ramps or curb cuts installed or repaired by the City in accordance with the terms of this Section 14. The following claims shall be treated as Priority Claims in accordance with this Section 14: (i) any QSPCs received by the Claims Administrator in accordance with Section 13 above but whose identified Curb Locations were not among those remediated by the City on a Super-Priority basis in accordance with Section 13 above, (ii) any claims that are properly submitted in accordance with the terms of this Section 14, and (iii) any request received by the City from a person identifying themselves as someone with a mobility impairment for remediation of a Curb Location, provided that the requesting individual thereafter completes a Priority Claim Form and delivers it to the Claims Administrator in the manner required under this Section 14. The Priority Claims Period shall be the period during which the City is obligated to comply with the terms of this Section 14 and shall be a period of twenty (20) years commencing with the Super-Priority Completion Date.

b. The City shall retain the Claims Administrator to conduct and supervise the preparation of the forms for submission of Priority Claims and the receipt, review and

processing of such forms in accordance with the terms of this Section 14. The Claims Administrator shall perform such services with consultation with and input from the City and Class Counsel. The City shall be responsible for paying the costs of the Claims Administrator's services provided under the terms of this Section 14. However, under no circumstances will the City be required to expend more than the amount to which the City and the Claims Administrator agree in advance shall be charged by the Claims Administrator for the services of the Claims Administrator as described in this Section 14.

c. Priority Claims shall be submitted by Settlement Class members completing and timely submitting a Priority Claim Form. The Priority Claim Form shall include a warning to claimants that: (i) the claim-filing procedure has been authorized by Court order and is being overseen by the Court; (ii) individuals submitting the Priority Claim Form are providing the requested information under penalty of perjury; (iii) only members of the Settlement Class are eligible to have their requests treated on a Priority basis; and (iv) any person intentionally submitting false information in the Priority Claim Form may be subject to penalty by the Court or other legal authority. The Priority Claim Form shall require each person wishing to submit a Priority Claim to provide, under penalty of perjury, the same categories of information required in the Super-Priority Claim Form described in Section 13(c) above.

d. Priority Claim Forms shall be made available to Settlement Class members by the same means and manner as provided for Super-Priority Claim Forms as described in Section 13(d) above. In addition, the Claims Administrator shall be responsible for offering and providing to Settlement Class members any requested reasonable accommodations necessary to complete and submit the Priority Claim Form. Settlement Class members shall be entitled to submit Priority Claim Forms to the Claims Administrator through the Internet, by mail, by electronic mail or by facsimile.

e. In accordance with the terms of this Section 14, the Claims Administrator shall review each of the Priority Claim Forms it receives for validity, completeness and accuracy. Any claim disqualified as a result of invalidity, incompleteness or inaccuracy shall be excluded from treatment as a Priority Claim. The Claims Administrator shall have direct telephone and e-mail access to Class Counsel, the City's counsel and a knowledgeable member of the City's Bureau of Street Services for consultation in its considerations. Class Counsel and the City shall have access to all of the Priority Claim Forms received by the Claims Administrator and may provide information or recommendations to the Claims Administrator regarding whether any of the forms are incomplete, inaccurate and/or invalid. All Priority Claim Forms deemed by the Claims Administrator to consist of complete, accurate and valid information shall be considered Qualified Priority Claims or QPCs.

f. No later than thirty (30) days after the completion of the Super-Priority Claims Period, the Claims Administrator will commence reviewing any then-pending Priority Claim Forms (and any Super-Priority Claims Forms that are subject to treatment as Priority Claims in accordance with this Section 14) to determine whether such claims

shall be treated as QPCs. Within sixty (60) days after commencing such review, the Claims Administrator shall commence prioritizing the QPCs received up to that point in the order in which the Claims Administrator believes that the subject Curb Locations should be remediated and, within thirty (30) days thereafter, provide the 600 List of the top six hundred (600) Curb Locations to Class Counsel, the City's counsel and a designee of the City's Bureau of Street Services. In order to prioritize the QPCs, the Claims Administrator, with consultation with and recommendations from Class Counsel and the City, shall develop a methodology for determining which Curb Locations' remediation would best serve the interests of the Settlement Class, with such methodology to be based on the same factors used to evaluate QSPCs as set forth in Section 13(h) above. Not more than three (3) business days after the 600 List has been provided by the Claims Administrator to the City and Class Counsel, Class Counsel may submit recommendations to the City and the Claims Administrator that Curb Locations included on the 600 List should be replaced with other Curb Locations that Class Counsel believes are more deserving of remediation based on claims of extreme need submitted to Class Counsel by members of the Settlement Class. The City and the Claims Administrator, if requested by Class Counsel, shall discuss such recommendations with Class Counsel; however, the City and the Claims Administrator shall not be obligated to accept Class Counsel's recommendations, and such recommendations shall not be implemented unless expressly approved by the City and the Claims Administrator. If the Parties are unable to reach agreement on such recommendations, Class Counsel shall be entitled to raise the matter with the Court.

g. In all subsequent City fiscal years in the Priority Claims Period after the year following the FY in which the Construction Commencement Date occurs, the Claims Administrator shall prioritize the QPCs received at any time before December 31 of that FY (or within the first six months of the City's FY, should the FY start on a date other than July 1), and provide to a designee of the City's Bureau of Street Services by January 30 of each FY a 600 List applicable to that year (to be created in the same manner as the first 600 List described in Section 14(f) above).

h. Within thirty (30) days of the Claims Administrator's submission of a 600 List to a designee of the City's Bureau of Street Services, the Claims Administrator shall (by a method to be determined by the Claims Administrator, after consultation with the City and Class Counsel, to be the most reasonable and cost-efficient) advise each person submitting a Priority Claim Form of the following: (a) whether the Priority Claim Form was deemed a QPC by the Claims Administrator; (b) whether any of the Curb Locations identified in the QPC have been provided to the City's Bureau of Street Services as one of the six hundred (600) recommended Curb Locations, and if so, which ones; (c) if any such Curb Locations have been so identified, that the Priority Claim Form claimant can expect to hear from the City by no later than May 15 of that FY (or by the date 10.5 months after the start of the FY, if the FY does not start on July 1) as to when the City intends to construct, remediate or repair such Curb Location; (d) as to any Curb Locations that have not been identified by the Claims Administrator on the 600 List, that any such Curb Locations will be considered again in the following FY and will be entitled to some priority over any subsequently-submitted QPCs.

i. Within one hundred twenty (120) days of the Claims Administrator's submission of a 600 List to a designee of the City's Bureau of Street Services, the City shall respond in writing (by letter or email) to each applicable Priority Claim claimant whose request is included in the 600 List and advise such person of the following: (a) whether any further information is needed by the City to provide an estimate of the date that the Curb Location will be remediated; (b) the then-expected month and year for remediation of the Curb Location; (c) any complications associated with the remediation of the Curb Location in question (such as undue financial burden); (d) any absolute barriers or infeasibility associated with the remediation of the Curb Location in question and the claimant's ability to appeal that determination through a process established by the Claims Administrator; and (e) a promise that the City will provide an annual revised estimate every FY by May 15 as to the most current updated remediation completion date estimate.

j. During the Priority Claims Period, the City shall be obligated to calculate and report to Class Counsel, within thirty (30) days of the end of each City FY, (i) the number of Priority Claims Forms that the Claims Administrator has advised were submitted in the prior FY; (ii) the number of QPCs identified by the Claims Administrator in the prior FY; (iii) the number of Curb Locations remediated and the overall cost of the remediation work performed under the terms of this Section 14 in the prior FY; and (iv) the amount of Measure R Funds and Gas Tax Funds received by the City in the prior FY (with supporting documentation) if the amount spent by the City to conduct Priority Claims Remediation and Transition Area Remediation in accordance with this Section 14 is less than Four Million Dollars (\$4,000,000.00) in the prior FY.

k. Each City FY during the Priority Claims Period, the City shall be obligated, subject to and in accordance with the terms of this Section 14, to undertake Priority Claims Remediation. The Parties agree that in any particular FY during the Priority Claims Period, the City's obligation to perform any Priority Claims Remediation (as well as any Transition Area Remediation) shall, among other things, be conditioned upon and limited by the availability to the City of the specific funding described in this Section 14(k) from Measure R Funds and/or Gas Tax Funds for that FY. Specifically, the Parties agree that during the City's FY 2013-14 through FY 2022-23, the City shall conduct Priority Claims Remediation and Transition Area Remediation by spending up to Four Million Dollars (\$4,000,000.00) each FY, but no more than the sum of (i) 6.5% of the Measure R Funds received by the City that FY and (ii) 2.0% of the Gas Tax Funds received by the City that FY.¹ Commencing in FY 2023-24 and each FY thereafter

¹ For purposes of illustration only, it is estimated that in FY 2010-11, the City will receive approximately \$49,528,500 of Measure R Funds and \$107,909,312 of Gas Tax Funds. Applying the formula set forth above, the sum of the applicable Measure R Funds ($\$49,528,500 \times .065 = \$3,219,352.50$) and Gas Tax Funds ($\$107,909,312 \times .02 = \$2,158,186.24$) would be \$5,377,538.74, but the City would only be obligated to spend a total of \$4,000,000 of those funds on Priority Claims Remediation and Transition Area Remediation for that FY.

during the Priority Claims Period, the City shall conduct Priority Claims Remediation and Transition Area Remediation by spending up to Four Million Dollars (\$4,000,000.00) each FY, but no more than 6.5% of the Measure R Funds provided to the City that FY. The Parties further agree that in each FY during the Priority Claims Period, the first Three Million Dollars (\$3,000,000.00) of the up to Four Million Dollars (\$4,000,000.00) described above shall be spent on Transition Area Remediation and any remaining funds of up to One Million Dollars (\$1,000,000.00) shall be spent on Priority Claims Remediation. In the event that any of the funds available to the City as described in this Section 14(k) remain unused for any reason at the end of a particular FY, such amounts will be used by the City, with input from Class Counsel, to fund Priority Claims Remediation or Transition Area Remediation in subsequent FYs in accordance with and if required by this Section 14.

l. With respect to any and all Priority Claims Remediation work performed, the City shall endeavor to perform such work with the goal of maximizing the accessibility of sidewalks, intersections, crosswalks, streets, curbs and other pedestrian pathways located in the City. The City, however, shall have the sole and unfettered discretion to determine the order in which the Curb Locations on the Claims Administrator's annual 600 List are addressed and the manner in which the construction work is performed. Class Counsel shall have the right to request consultation with and provide input to the City with respect to the order in which the Curb Locations are remediated and the manner in which the construction work is performed, provided that such consultation and input are requested with reasonable notice and at reasonable times and do not delay, interfere with or impair the City's ability to comply with its remediation obligations in this Section 14. If the Parties are unable to reach agreement with respect to the matters discussed, Class Counsel shall be entitled to raise the matter with the Court. In addition, the City shall maintain as a defense to or grounds for exemption from any Curb Location remediation and as an explanation for a lower prioritization for any such request any of the defenses and grounds identified in Section 13(i) above, any defenses asserted by the City in the Consolidated Actions, and the defenses identified in 28 C.F.R. Part 35.

m. The Parties acknowledge and agree that the timing of the City's annual budgeting process, and thus the process by which funds are allocated for the performance and implementation of this Agreement, are not readily modified. The Parties further acknowledge that the timing by which the Judgment becomes Final is uncertain and, to the extent that there are any objections or appeals filed or taken, entirely beyond the control of the Parties. Therefore, the Parties agree that, should the Construction Commencement Date fall on any date later than four (4) months after the start of the City's FY then in progress, the Priority Claims Remediation required by the provisions of this Section 14 shall not be required to commence until the first day of the FY following the next FY, without regard to the Super-Priority Completion Date.

n. If either the City or the Claims Administrator determines that it will be unable to meet any of the applicable completion deadlines set forth above in this Section 14, it shall promptly give notice to Class Counsel (or in the case of the Claims

Administrator, to Class Counsel and the City) of the reason for the delay in completion and provide a new projected completion date. Within two (2) weeks after such notice is provided, Class Counsel and the City shall meet and confer in good faith in an attempt to agree upon a mutually agreeable revised completion date for the applicable remediation work. If the Parties are unable to agree on a revised completion date within two (2) weeks after commencing such meet and confer efforts, either Party may seek the assistance of the Court, which the Parties agree shall retain jurisdiction under Rule 3.769(h) of the California Rules of Court to enforce the terms of the Judgment.

o. The obligations of the City with respect to remediation at a particular Curb Location may be postponed, among other things, if the postponement is caused by or attributable to a *force majeure*. Under this *force majeure* provision, the City's obligations may be tolled for the period of the *force majeure*'s effect, if any inability to perform is due to acts of God, war, government regulations (other than regulations by the City), terrorism, disaster (including power outages), strikes, civil disorder, an emergency beyond the City's control, or construction conditions (including, but not limited to, mailboxes, sewers, grating, streetlamps or other obstructions to installation of ramps), that make it illegal or impossible for the City to perform.

15. **Remediation Measures: Transition Area**

a. During the Term of this Agreement, the City shall be obligated, subject to and in accordance with the terms of this Section 15, to undertake the Transition Area Remediation, which shall consist of the following:

(i) the installation or remediation of curb ramps or curb cuts as necessary to make accessible all Curb Locations along the streets (but not the freeways) identified as "Bus Routes" within the City boundaries on Exhibit "A" to this Agreement;

(ii) with respect to each and every area identified as a "Transition Area" within the City boundaries on Exhibit "A" to this Agreement (*i.e.*, areas covered by yellow shading), the installation or remediation of curb ramps or curb cuts at all Curb Locations as necessary to create an accessible pathway from the applicable public building (including buildings identified as "City Hall," "College," Court House," "Hospital," "Library," "Police," "Post Office," "Recreation Center," "Senior Citizen Ctr.," or "Shopping Center" on Exhibit "A" to this Agreement, but not including any buildings identified as "Fire Station" on such Exhibit "A") to a street identified as a "Bus Route" located within such area; and

(iii) with respect to each and every area identified as a "Transition Area" within the City boundaries on Exhibit "A" to this Agreement (*i.e.*, areas covered by yellow shading), the installation or remediation of curb ramps or curb cuts at all Curb Locations as necessary to create an accessible pathway from the applicable public building (including buildings identified as "City Hall," "College," Court House," "Hospital," "Library," "Police," "Post Office," "Recreation Center," "Senior Citizen Ctr.," or "Shopping Center" on Exhibit "A" to this Agreement, but not including any

buildings identified as “Fire Station” on such Exhibit “A”) to any City parking lot located within such area.

b. The Parties agree that during the Priority Claims Period, the City’s obligation to perform Transition Area Remediation shall be subject to and governed by the terms of Section 14(k) above.

c. The City agrees to complete all of the Transition Area Remediation as required under the terms of the Transition Plan and this Agreement by the Transition Area Completion Date, which shall be 25 years after the Construction Commencement Date.

d. With respect to any and all Transition Area Remediation work performed, the City shall have the sole and unfettered discretion to determine the order in which the Curb Locations are addressed and the manner in which the construction work is performed. Class Counsel shall have the right to request consultation with and provide input to the City with respect to the order in which the Curb Locations are remediated and the manner in which the construction work is performed, provided that such consultation and input are requested with reasonable notice and at reasonable times and do not delay, interfere with or impair the City’s ability to comply with its remediation obligations in this Section 15. If the Parties are unable to reach agreement on the matters discussed, Class Counsel shall be entitled to raise the matter with the Court. In addition, the City shall maintain as a defense to or grounds for exemption from any Curb Location remediation and as an explanation for a lower prioritization for any remediation work any of the defenses and grounds identified in Section 13(i) above, any defenses asserted by the City in the Consolidated Actions, and the defenses identified in 28 C.F.R. Part 35.

e. If the City determines that it will be unable to meet any of the completion deadlines set forth above in this Section 15, it shall promptly give notice to Class Counsel of the reason for the delay in completion and provide a new projected completion date. Within two (2) weeks after the City provides such notice, the Parties shall meet and confer in good faith in an attempt to agree upon a mutually agreeable revised completion date for the applicable remediation work. If the Parties are unable to agree on a revised completion date within two (2) weeks after commencing such meet and confer efforts, either Party may seek the assistance of the Court, which the Parties agree shall retain jurisdiction under Rule 3.769(h) of the California Rules of Court to enforce the terms of the Judgment.

f. The obligations of the City with respect to remediation at a particular Curb Location may be postponed, among other things, if the postponement is caused by or attributable to a *force majeure*. Under this *force majeure* provision, the City’s obligations may be tolled for the period of the *force majeure*’s effect, if any inability to perform is due to acts of God, war, government regulations (other than regulations by the City), terrorism, disaster (including power outages), strikes, civil disorder, an emergency beyond the City’s control, or construction conditions (including, but not limited to,

mailboxes, sewers, grating, streetlamps or other obstructions to installation of ramps), that make it illegal or impossible for the City to perform.

16. **Remediation Measures: Survey, Study and Advisory Commission**

a. Within four (4) years after the Construction Commencement Date, the City will complete and provide to Class Counsel the results of the Survey which shall be reasonably calculated to assess the total number of Curb Locations in the City (that are not owned or controlled by third party governmental entities) that require remediation to make the Curb Locations accessible to members of the Settlement Class. The Survey shall address the Transition Area and areas in the City outside of the Transition Area. The Parties expressly agree that the Survey may be based on sampling rather than a physical inspection of every Curb Location in the City. The City shall be responsible for paying all costs associated with the Survey.

b. Within five (5) years after the Construction Commencement Date, the City shall establish the Advisory Committee, which shall consist of six (6) members, three (3) of which shall be selected by the Named Plaintiffs and three (3) of which shall be selected by the City. The Advisory Committee shall examine the results of the Survey, the implementation of the terms of this Agreement up to that time and such other information as the Committee deems relevant to examine the status of the completed and uncompleted Curb Location remediation within the City boundaries (and within the City's control) and to report to the City and Class Counsel its findings and recommendations as to how the City should use future appropriations of money for curb ramp installation and other related construction work. The City shall be responsible for paying all costs of the Committee, provided that it is understood that members will not be paid for their service on the Committee.

c. The City agrees that its Bureau of Street Services shall study the Committee's report and submit the Committee's report, along with its own recommendations, to the City Council and Office of the Mayor.

d. The obligations of the City with respect to the matters set forth in this Section 16 may be postponed, among other things, if the postponement is caused by or attributable to a *force majeure*. Under this *force majeure* provision, the City's obligations may be tolled for the period of the *force majeure's* effect, if any inability to perform is due to acts of God, war, government regulations (other than regulations by the City), terrorism, disaster (including power outages), strikes, civil disorder, an emergency beyond the City's control, or construction conditions (including, but not limited to, mailboxes, sewers, grating, streetlamps or other obstructions to installation of ramps), that make it illegal or impossible for the City to perform.

17. **Periodic Meetings**

a. Following the full execution of this Agreement, Class Counsel and the City's designee shall meet once every ninety (90) days until the first anniversary of the

date of entry of the Judgment by the Court, and once every one hundred twenty (120) days thereafter, to discuss and review the implementation of this Agreement. Such meetings may be either in person or by telephone, as the Parties may agree.

b. Each year on the anniversary of the date of entry of the Judgment by the Court, the Parties shall submit a report to the Court, stating the status of the implementation of this Agreement and identifying any outstanding issues on which the Parties are then in disagreement.

18. **Dispute Resolution**

Subject and in addition to the terms of Section 11 above (Covenant Not to Sue), the Parties agree that any disputes relating to the provisions of this Agreement shall be addressed as follows.

(a) If either Party believes that a dispute exists relating to any violation of or failure to perform any of the provisions in this Agreement, it shall notify the other Party in writing and describe the alleged violation or failure to perform with particularity. The Party alleged to have committed the violation or failure to perform (i) shall provide a written response within ten (10) business days of receipt of such notice, and (ii) shall have a period of thirty (30) days, commencing with receipt of such notice, to cure the alleged violation of failure to perform.

(b) If the Party alleging a violation or failure to perform maintains that the violation or failure to perform has not been cured by the other Party, Class Counsel and the City shall commence, within five (5) business days after the completion of the cure period, to meet and confer, in person or by telephone, and attempt to resolve the dispute on an informal basis for a period of thirty (30) days.

(c) If the meet and confer process described above does not result in a resolution of the dispute, any Party may make a motion for resolution of the dispute by the Court. The Court may award reasonable attorneys' fees and costs incurred in pursuing the dispute resolution process described in this Section 18 in accordance with the prevailing party standards under the ADA.

19. **Attorneys' Fees and Payments to Named Plaintiffs**

a. Prior to and at the time of the creation of this Agreement, the Parties have engaged in settlement discussions regarding a potential payment by the City to Class Counsel as payment for attorneys' fees, costs and expenses (including expert witness fees) incurred in this matter by the Named Plaintiffs or Class Counsel, in full satisfaction of any and all claims by the Named Plaintiffs or Class Counsel for any attorneys' fees, costs and expenses (including expert witness fees) pursuant to or under any Accessibility Laws. However, as of the date of this Agreement, the Parties have not reached agreement on any such potential payment by the City. The Parties agree that for a period of thirty (30) days following the date that this Agreement is fully executed, they will continue to

engage in such discussions in an attempt to reach agreement. The Parties further agree that if they do not reach agreement within thirty (30) days after this Agreement is fully executed, the Named Plaintiffs and Class Counsel shall file a motion seeking an award of attorneys' fees, costs and expenses (including expert witness fees) incurred in this matter, which shall be heard at or after the Final Approval Hearing. The City expressly reserves any and all rights to oppose such motion in its entirety, including on appeal.

b. The City agrees to pay each of the Named Plaintiffs the sum of Five Thousand Dollars (\$5,000.00). Such amounts shall be paid by a check made payable to "Arias Ozzello & Gignac LLP" and delivered by messenger to Arias Ozzello & Gignac LLP (6701 Center Drive West, 14th Floor, Los Angeles, California 90045) within ten (10) days after the Judgment becomes Final.

c. Except as expressly set forth in this Section 19 (or as may be ordered by the Court based on the motion described in Section 19(a) above), the Parties agree that each of them shall bear all of his, her or its own attorneys' fees, costs and expenses (including expert witness fees) in connection with the Carter and Fahmie Actions, the creation of this Agreement and the resolution of the Parties' disputes as described in this Agreement. The Parties further understand and agree that the payments described in this Section 19 (or as may be ordered by the Court based on the motion described in Section 19(a) above) are the only monetary payments and consideration that the Named Plaintiffs and Class Counsel shall receive under the terms of this Agreement.

20. Enforcement

Nothing in this Agreement, express or implied, is intended to or shall confer upon any person or entity not a Party to this Agreement any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement. Only the Named Plaintiffs through Class Counsel may seek to enforce the terms of this Agreement through the Dispute Resolution process provided for herein or before the Court. To the extent individual members of the Settlement Class have complaints regarding the City's implementation of the terms of this Agreement, they must bring them to the attention of the Named Plaintiffs and/or Class Counsel, who shall have the discretion to seek to enforce any right, benefit or remedy under or by reason of this Agreement.

21. Entire Agreement

This Agreement, and the documents attached to or expressly referred to in this 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 Agreement and supersede all prior or contemporaneous negotiations, promises, covenants, agreements or representations of any nature whatsoever with respect to such matters, all of which are superseded by this Agreement. 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 Agreement, no Party shall 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 Agreement not included or referred to in this Agreement and not reflected in a writing. This Agreement cannot be amended, modified or supplemented except by a written document signed by all of the Parties.

22. No Other Representations

Each of the Parties represents, warrants and agrees that in executing this Agreement, he, she or it has relied solely on the statements expressly set forth in this Agreement and has placed no reliance whatsoever on any statement, representation, or promise of the other Party, or any other person or entity, not expressly set forth in this 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 Agreement, and (ii) to preclude the introduction of parol evidence to vary, interpret, supplement or contradict the terms of this Agreement.

23. No Assignment of Claims

Each of the Named Plaintiffs, for themselves and as representatives of the Settlement Class, represent and warrant that they have not transferred or otherwise assigned, either by contract or by operation of law, any of the claims released under this Agreement. To the extent that they have assigned or transferred any such claims, the Named Plaintiffs agree to defend, indemnify and hold the City harmless from and against any and all claims, actions, demands, liabilities, damages, losses and expenses (including attorneys' fees) that might be asserted or incurred by reason of any such assignment or transfer. It is the intention of the Parties that this indemnity does not require payment as a condition precedent to recovery.

24. Notice

Any notice provided in accordance with the terms of this Agreement shall be given by hand delivery to the following addresses:

To Plaintiffs:

Mike Arias, Esq.
Arias Ozzello & Gignac LLP
6701 Center Drive West, 14th Floor
Los Angeles, CA 90045

Morse Mehrban, Esq.
Law Offices of Morse Mehrban
12100 Wilshire Boulevard, 8th Floor
Los Angeles, CA 90025

To the City:

City Attorney
200 North Main Street, Room 900
Los Angeles, CA 90012

with a copy to:

David Raizman, Esq.
Christopher Wong, Esq.
Drinker Biddle & Reath LLP
1800 Century Park East, Suite 1400
Los Angeles, CA 90067

25. Drafting of this Agreement

The Parties hereby acknowledge and agree that this Agreement shall for all purposes be deemed jointly drafted and fully negotiated, and as a result, shall not in any manner be interpreted in favor of, or 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 Agreement against one of the Parties, shall have no application and is hereby expressly waived.

26. Voluntary Agreement

Each of the Parties represents, warrants and agrees that he, she or it has read this Agreement carefully and knows and understands its contents, that this 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 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 Agreement.

27 **Duty to Support and Defend Agreement**

Named Plaintiffs, Class Counsel and the City each agree to abide by all of the terms of this Agreement in good faith and to support it fully, and shall use their best efforts to defend this Agreement from any legal challenge, whether by appeal or collateral attack. The Parties agree to execute such instruments and documents and to do all other things as may be reasonably required in order to consummate this Agreement, obtain court approval of this Agreement, and give full effect to the Parties' intent contemplated in this Agreement.

28. **Binding Effect**

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

29. **Authority**

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

30. **Governing Law**

This Agreement shall be governed by and construed in accordance with the internal laws of the State of California without reference to conflict of laws rules.

31. **Paragraph Headings**

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

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

This Agreement may be executed by the Parties hereto by facsimile or electronic mail and in separate counterparts, and all such counterparts taken together shall be deemed to constitute one and the same agreement.

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

EXECUTED by the Parties as follows:

DATED: 4-27, 2011 THE CITY OF LOS ANGELES

By: Jessie R. Herberg
Its: Assistant City Attorney

DATED: _____, 2011 By: _____
Nicole Fahmie, individually and as
representative of the Settlement Class

DATED: _____, 2011 By: _____
Sang Kong, individually and as
representative of the Settlement Class

DATED: _____, 2011 By: _____
Jerry Butler, individually and as
representative of the Settlement Class

DATED: _____, 2011 By: _____
Michael Ashby, individually and as
representative of the Settlement Class

DATED: _____, 2011 By: _____
Dereck Parks, individually and as
representative of the Settlement Class

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

EXECUTED by the Parties as follows:

DATED: _____, 2011 THE CITY OF LOS ANGELES

By: _____

Its: _____

DATED: April 24, 2011 By: Nicole Fahmie
Nicole Fahmie, individually and as
representative of the Settlement Class

DATED: _____, 2011 By: _____
Sang Kong, individually and as
representative of the Settlement Class

DATED: _____, 2011 By: _____
Jerry Butler, individually and as
representative of the Settlement Class

DATED: _____, 2011 By: _____
Michael Ashby, individually and as
representative of the Settlement Class

DATED: _____, 2011 By: _____
Dereck Parks, individually and as
representative of the Settlement Class

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

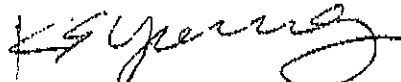
EXECUTED by the Parties as follows:

DATED: _____, 2011 THE CITY OF LOS ANGELES


By: _____

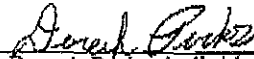
Its: _____

DATED: _____, 2011 By: _____
Nicole Fahmie, individually and as
representative of the Settlement Class

DATED: 4/25, 2011 By: 
Sang Kong, individually and as
representative of the Settlement Class

DATED: _____, 2011 By: _____
Jerry Butler, individually and as
representative of the Settlement Class

DATED: 4-25-11, 2011 By: 
Michael Ashby, individually and as
representative of the Settlement Class

DATED: 4-25-11, 2011 By: 
Dereck Parks, individually and as
representative of the Settlement Class

DATED: 4/26, 2011 By: Shawn Monroe
Shawn Monroe, individually and as representative of the Settlement Class

DATED: 4-25 -, 2011 By: Mary Rosolowski
Mary Rosolowski, individually and as representative of the Settlement Class

DATED: _____, 2011 By: _____
Travon Terry, individually and as representative of the Settlement Class

DATED: _____, 2011 By: _____
David Gunther, individually and as representative of the Settlement Class

DATED: _____, 2011 By: _____
Shawn Monroe, individually and as
representative of the Settlement Class

DATED: 4-25, 2011 By: Mary Rosolowski
Mary Rosolowski, individually and as
representative of the Settlement Class

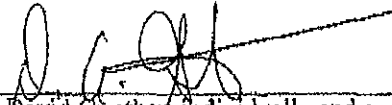
DATED: 4-25, 2011 By: Travon Terry
Travon Terry, individually and as
representative of the Settlement Class

DATED: _____, 2011 By: _____
David Gunther, individually and as
representative of the Settlement Class

DATED: _____, 2011 By: _____
Shawn Monroe, individually and as
representative of the Settlement Class

DATED: _____, 2011 By: _____
Mary Rosolowski, individually and as
representative of the Settlement Class

DATED: _____, 2011 By: _____
Travon Terry, individually and as
representative of the Settlement Class

DATED: 4/25/11, 2011 By: 
David Gunther, individually and as
representative of the Settlement Class

APPROVED AS TO FORM:

DATED: 5.9., 2011 DRINKER BIDDLE & REATH LLP

By: 

DAVID RAIZMAN

Attorneys for Defendant City of Los Angeles

DATED: _____, 2011 ARIAS OZZELLO & GIGNAC LLP

By: _____
MIKE ARIAS

Attorneys for Plaintiff Nicole Fahmie

DATED: _____, 2011 LAW OFFICES OF MORSE MEHRBAN

By: _____
MORSE MEHRBAN

Attorneys for Plaintiffs Sang Kong, Jerry Butler,
Michael Ashby, Dereck Parks, Shawn Monroe,
Mary Rosolowski, Travon Terry, and David
Gunther

APPROVED AS TO FORM:

DATED: _____, 2011 DRINKER BIDDLE & REATH LLP

By: _____
DAVID RAIZMAN

Attorneys for Defendant City of Los Angeles

DATED: 2/20/11, 2011 ARIAS OZZELLO & GIGNAC LLP

By: _____
MIKE ARIAS

Attorneys for Plaintiff Nicole Fahmie

DATED: _____, 2011 LAW OFFICES OF MORSE MEHRBAN

By: _____
MORSE MEHRBAN

Attorneys for Plaintiffs Sang Kong, Jerry Butler,
Michael Ashby, Dereck Parks, Shawn Monroe,
Mary Rosolowski, Travon Terry, and David
Gunther

APPROVED AS TO FORM:

DATED: _____, 2011 DRINKER BIDDLE & REATH LLP

By: _____
DAVID RAIZMAN

Attorneys for Defendant City of Los Angeles

DATED: _____, 2011 ARIAS OZZELLO & GIGNAC LLP

By: _____
MIKE ARIAS

Attorneys for Plaintiff Nicole Fahmie

DATED: 5-6, 2011 LAW OFFICES OF MORSE MEHRBAN

By: 

MORSE MEHRBAN

Attorneys for Plaintiffs Sang Kong, Jerry Butler,
Michael Ashby, Dereck Parks, Shawn Monroe,
Mary Rosolowski, Travon Terry, and David
Gunther