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18 UNITED STATES DISTRICT COURT
19 EASTERN DISTRICT OF CALIFORNIA

20 JOAN BARDEN, SUSAN BARNHILL,
21 JEFFREY EVANS, TONY MARTINEZ,
22 BRENDA PICKERN, JEFF THOM,
23 SUZANNE FITTS VALTERS, and MITCH
24 WATKINS, and all others similarly situated,

25 Plaintiffs,

26 v.

27 CITY OF SACRAMENTO and MIKE
28 KASHIWAGI, Director of the Department of
Public Works of the City of Sacramento, in
his Official Capacity,

Defendants.

Case No. CIV-S-99-497 MCE/JFM

CLASS ACTION

**CLASS ACTION SETTLEMENT
AGREEMENT**

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1 **RECITALS**

2 1. Joan Barden, Susan Barnhill, Jeffrey Evans, Tony Martinez, Brenda Pickern, Jeff Thom,
3 Suzanne Fitts Valters, and Mitch Watkins (hereafter “Named Plaintiffs”) are each persons with a
4 Mobility and/or Vision Disability who regularly use the Pedestrian Rights of Way in the City of
5 Sacramento.¹

6 2. Named Plaintiffs brought this action, known as *Barden et. al. v. City of Sacramento, et.*
7 *al.*, Case No. CIV-S-99-497 MCE/JMS (“The Action”) in the United States District Court for the
8 Eastern District of California on March 15, 1999 alleging that Defendant City of Sacramento and
9 Defendant Mike Kashiwagi acting in his official capacity as the director of the Department of
10 Public Works for the City of Sacramento (collectively “City”) violated Title II of the Americans
11 with Disabilities Act, 42 U.S.C. § 12132 *et seq.* (“ADA”), Section 504 of the Rehabilitation Act
12 of 1973, 29 U.S.C. §1254(1), (“Section 504”), and various California statutes requiring access
13 for persons with disabilities by failing to install curb cuts and otherwise provide access to streets
14 and sidewalks under the jurisdiction of the City.²

15 3. On **July 11, 2000**, the Court entered an Order certifying a class in this Action, pursuant to
16 a stipulation by the Parties. The class is defined as: “all persons with Mobility and/or Vison
17 Disabilities who seek full and equal access pertaining to curb cuts and sidewalks in the City of
18 Sacramento’s public rights of way.” The Named Plaintiffs have served as the class
19 representatives.

20 4. On **November 20, 2000**, the Court entered an Order for Partial Summary Judgment,
21 finding that the City failed to meet its ADA obligations to install Curb Ramps where it
22
23

24 ¹ Hollynn DeLil and Carol Wolfington were also Named Plaintiffs at the time the action
25 was first filed; however, they were dismissed without prejudice in an Order dated **December 19,**
2000.

26 ² The operative complaint at the time the Parties entered into this Agreement was the
27 Second Amended Complaint, filed on February 26, 2001, which added claims under California
28 Civil Code § 11135. The operative complaint addresses only access to Curb Ramps and
sidewalks. The Parties intend to request permission to file a Third Amended Complaint in
conjunction with the settlement approval process to include claims regarding access to all
Pedestrian Rights of Way in the City of Sacramento.

1 performed street overlays between January 26, 1992 and March 1, 1999.³ The Court stated in
2 this Order that Plaintiffs failed to prove that the City has an obligation to operate its permit
3 process to build driveways in such a way as to facilitate the access of disabled persons to public
4 sidewalks.

5 5. On January 9, 2001, the City of Sacramento adopted a Transition Plan for Curb Ramps
6 which set forth a plan to provide accessible Curb Ramps throughout the City. The Parties
7 continued to dispute certain issues regarding installation of Curb Ramps, as well as the extent of
8 the City's obligation to remove access barriers along the length of the sidewalk. The Parties
9 brought cross motions for summary judgment. Plaintiffs' motion sought a finding that the City's
10 existing sidewalks and other Pedestrian Rights of Way are a "program, service, or activity"
11 under Title II of the ADA and Section 504. Defendants' motion sought a determination by the
12 Court that existing sidewalks were not a "program, service, or activity" under Section 504 or the
13 ADA. Defendants' motion also sought court approval of the City's Transition Plan for Curb
14 Ramps.

15 6. Prior to the hearing on the cross-motions, the Parties reached agreement on the issue of
16 installation of Curb Ramps at intersections throughout the City. To resolve claims regarding
17 Curb Ramps, the Parties jointly requested that the Court enter a Stipulated Injunctive Relief
18 Order and the City withdrew the portion of its Motion for Summary Judgment regarding its
19 Transition Plan for Curb Ramps. On February 20, 2001, the Stipulated Injunctive Relief Order
20 was entered by the Court; it remains in effect. Under the terms of this Order, the City is
21 obligated to install 1,500 accessible Curb Ramps annually until all intersections are served. The
22 Parties intend for this Agreement to supercede and replace the Stipulated Injunctive Relief
23 Order.

24 7. On **February 16, 2001**, the Court heard argument on the remaining issues raised in the
25 Parties' Cross-Motions for Partial Summary Judgment. On March 7, 2001, the District Court
26 entered an order granting, in part, the Defendants' motion for partial summary judgment and
27

28 ³An "overlay" refers to placing an additional layer of asphalt on top of an existing street.

1 denying Plaintiffs' Motion for Summary Judgment. The Court certified the Order for
2 interlocutory review under 28 U.S.C. § 1292(b).

3 ///

4
5 8. Plaintiffs obtained permission to bring an interlocutory appeal, and brought the issue of
6 whether sidewalks are a "program, service or activity" of the City such that they are covered by
7 the ADA and Section 504 before the United States Court of Appeals for the Ninth Circuit. On
8 June 12, 2002, the Ninth Circuit Court of Appeals reversed the District Court's holding, finding
9 that the ADA and Section 504 cover "anything a public entity does" and any "normal function of
10 a governmental entity," including sidewalks. 292 F.3d 1073 (9th Cir. 2002).

11 9. Defendants filed a Petition for Rehearing en banc with the Ninth Circuit Court of
12 Appeals. The request for rehearing by the entire panel was denied by Order dated September 5,
13 2002.

14 10. On **November 25, 2002**, Defendants filed a Petition for Writ of Certiorari with the United
15 States Supreme Court. Plaintiffs opposed the Petition. On March 3, 2003, the U.S. Supreme
16 Court invited the opinion of the U.S. Solicitor General on the City's Petition. On May 27, 2003,
17 the U.S. Solicitor General submitted a brief expressing the United States' position that the Court
18 should not grant the Petition for Writ of Certiorari. On June 27, 2003, the Supreme Court denied
19 Defendants' Petition for Writ of Certiorari.

20 11. The Parties publically announced on June 23, 2003 that they had reached an Agreement
21 in Principle which now serves as the foundation for this Settlement Agreement. They expressed
22 their desire to resolve their differences and disputes by settling the suit in the manner set forth
23 below:

24 a. Provide Program Access to Pedestrian Rights of Way in Sacramento for qualified
25 individuals with disabilities, as required under existing federal and state law;

26 b. Provide access in compliance with state and federal access standards to all
27 portions of the Pedestrian Rights of Way that constitute new construction or alteration;

1 c. Assure that neither the Named Plaintiffs nor the Class nor any Class Member will
2 attempt to enforce, and Defendants will not thereby be subject to, conflicting standards regarding
3 compliance with Title II of the ADA, Section 504, and California access laws concerning access
4 to Pedestrian Rights of Way for persons with Mobility and/or Vision Disabilities;

5 //

6 d. Assure that neither the Named Plaintiffs nor the Class, nor any Class Member
7 shall hereafter assert or claim that Defendants are required to make additional and/or different
8 modifications to its Pedestrian Rights of Way or that they are required to follow different
9 standards beyond what is agreed to herein in order to comply with the existing provisions of
10 Title II of the ADA, Section 504, or California access laws concerning providing Program
11 Access to qualified individuals with disabilities along Pedestrian Rights of Way and providing
12 access in compliance with state and federal law in areas of new construction and/or alteration;

13 e. **Avoid the uncertainties and costs of further litigation in this matter for all Parties.**

14 I. **DEFINITIONS**

15 As used in this Agreement, the following terms shall have the meaning ascribed to them
16 in this Section, which are consistent with the provisions of existing federal and state law,
17 including the regulations promulgated thereunder. Except to the extent expressly stated to the
18 contrary, any term not expressly defined in this Section or elsewhere in this Agreement that has
19 an expressly defined meaning in either the ADA or the regulations promulgated thereunder
20 (“Regulations”) shall have the meaning ascribed to it by the ADA or the Regulations, in that
21 order of preference. All other terms shall be interpreted according to their plain and ordinary
22 meaning.

23 A. **ADA/ADAAG**

24 “ADA” means and refers to the Americans with Disabilities Act as contained at 42
25 U.S.C. § 12101 *et seq.* “ADAAG” means and refers to the Americans with Disabilities Act
26 Access Guidelines, codified at Appendix A to 28 Code of Federal Regulations part 36 and at
27 Appendix A to 49 Code of Federal Regulations part 37. “ADAAG Standards” means and refers
28

1 to physical conditions that meet the new construction and/or alterations standards set forth in
2 ADAAG.

3 **B. Annual Obligation**

4 “Annual Obligation” means and refers to Defendants’ obligation to commit funding
5 annually for the duration of the Compliance Period to provide Compliant Curb Ramps and to
6 remove access barriers in the Pedestrian Rights of Way. “Annual Obligation” is defined in
7 greater detail at § III.A, below.

8 **C. Class or Class Members**

9 “Class” or “Class Members” means and refers to the class as defined in the Stipulation
10 and Order Approving Certification of a Class, entered by the Court on July 11, 2000. The class
11 is defined as: all persons with mobility and/or vision disabilities who seek full and equal access
12 pertaining to curb cuts and sidewalks in the City of Sacramento’s public rights of way.⁴

13 **D. Class Counsel**

14 “Class Counsel” means and refers to the law firm of Disability Rights Advocates,
15 including Laurence W. Paradis, Esq., Melissa W. Kasnitz, Esq. and all other members, partners,
16 employees and associates thereof. Disability Rights Advocates was certified as Class Counsel in
17 the Stipulation and Order Approving Certification of a Class, entered by the Court on July 11,
18 2000.

19 **E. Compliance Period**

20 “Compliance Period” means and refers to the period of time for which this Agreement
21 will be in effect. The Parties agree that the Agreement shall become effective upon Final
22 Approval, and remain in effect for up to thirty (30) years. The City may petition the Court to
23 dissolve the Agreement at any time upon a showing that it provides Program Access to
24 Pedestrian Rights of Way, as set forth at § III.F, below. Alternatively, the Agreement will
25 remain in effect until it dissolves automatically thirty (30) years after Final Approval.

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⁴ If the Parties obtain permission to amend the complaint, the class will be redefined to include all persons with mobility and/or vision disabilities who seek full and equal access pertaining to Pedestrian Rights of Way in the City of Sacramento.

1 **F. Compliant Curb Ramp**

2 “Compliant Curb Ramp” means and refers to a curb ramp that is constructed to comply
3 with state and/or federal law (whichever provides the higher access standard) in place at the time
4 of construction. Specifically with regard to detectible warnings for people with Vision
5 Disabilities, current law requires the installation of truncated domes at all locations where
6 sidewalks intersect vehicular ways.

7 **G. Curb Ramp**

8 “Curb Ramp” is used interchangeably with “curb cut.”

9 **H. Defendants**

10 “Defendants” means and refers to the City of Sacramento and Mike Kashiwagi, or his
11 successor, acting in his or her official capacity as the director of the Department of Public Works
12 for the City of Sacramento.

13 **I. Detectable Warnings**

14 “Detectable Warnings” means and refers to truncated domes which provide a tactile
15 surface at the transition between the curb and the street, assisting pedestrians with Vision
16 Disabilities in determining when they enter the street.

17 **J. Fairness Hearing**

18 “Fairness Hearing” means and refers to the hearing described in § II(E), below.

19 **K. Final Approval**

20 "Final Approval" means and refers to the date when the Court issues an order granting
21 final approval of this Settlement Agreement in Case No. CIV-S-99-497 MCE.

22 **L. Fundamental Alteration**

23 “Fundamental Alteration ” means and refers to an action that, if taken by the City of
24 Sacramento, would result in fundamental alteration in the nature of the service, program or
25 activity of Pedestrian Rights of Way in the City of Sacramento. If the City claims that any action
26 otherwise required by this Agreement would constitute a Fundamental Alteration, the City shall
27 have to demonstrate that such alteration would be caused, and the decision that an action would
28 constitute a Fundamental Alteration must be made by the City Manager or his or her designee

1 after considering the Transportation Funds available for such work through the Annual
2 Obligation, and must be accompanied by a written statement of the reasons for reaching that
3 conclusion.

4
5 **M. Mobility Disability**

6 “Mobility Disability” means and refers, with respect to an individual, to any physical or
7 mental impairment or condition that substantially limits an individual’s ability to move his or her
8 body or a portion of his or her body and includes, but is not limited to, orthopedic and
9 neuro-motor disabilities and any other impairment or condition that limits an individual’s ability
10 to walk, maneuver around objects, ascend or descend steps or slopes, and operate controls. An
11 individual with a Mobility Disability may use a wheelchair or motorized scooter for mobility, or
12 may be Semi-Ambulatory.

13 **N. Named Plaintiffs**

14 “Named Plaintiffs” means and refers to Joan Barden, Susan Barnhill, Jeffrey Evans, Tony
15 Martinez, Brenda Pickern, Jeff Thom, Suzanne Fitts Valters and Mitch Watkins. These Named
16 Plaintiffs were certified as class representatives in the Stipulation and Order Approving
17 Certification of a Class, entered by the Court on July 11, 2000.

18 **O. Objection**

19 “Objection” means and refers to any written objection submitted by any Class Member as
20 described in § II(C), below.

21 **P. Parties**

22 “Parties” means and refers to the City of Sacramento, Mike Kashiwagi, or his successor,
23 acting in his or her official capacity as the director of the Department of Public Works for the
24 City of Sacramento, Joan Barden, Susan Barnhill, Jeffrey Evans, Tony Martinez, Brenda
25 Pickern, Jeff Thom, Suzanne Fitts Valters, and Mitch Watkins, and all Class Members.

26 **Q. Pedestrian Rights of Way**

1 "Pedestrian Rights of Way" means and refers to all sidewalks over which the City of
2 Sacramento has responsibility or authority as well as all Curb Ramps and crosswalks serving
3 such sidewalks and any other pathways used by pedestrians along public rights of way.

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7 **R. Preliminary Approval**

8 "Preliminary Approval" means and refers to the preliminary approval by the Court in
9 Case No. CIV-S-99-497 MCE of the terms of this Settlement Agreement which shall occur prior
10 to any notice being provided in accordance with § II, below.

11 **S. Released Claims/Released Parties**

12 "Released Claims" and "Released Parties" mean and refer to those claims and Parties
13 described in § VI, below.

14 **T. Settlement Agreement**

15 "Settlement Agreement" or "Agreement" means and refers to this document.

16 **U. Technically Infeasible**

17 "Technically Infeasible" means, with respect to an alteration of a building, facility, or
18 Pedestrian Right of Way, that it has little likelihood of being accomplished because existing
19 structural conditions would require removing or altering a load-bearing member which is an
20 essential part of the structural frame; or because other existing physical or site constraints
21 prohibit modification or addition of elements, spaces, or features which are in full and strict
22 compliance with the minimum requirements for new construction and which are necessary to
23 provide accessibility (see ADAAG § 4.1.6(1)(j)).

24 **V. Third Party Entity**

25 "Third-Party Entity" means an entity other than the City of Sacramento that controls
26 certain barriers or elements of barriers in a Pedestrian Rights of Way. Transit agencies and local
27 utilities are examples of Third Party Entities.

28 **W. Title 24**

1 “Title 24” means and refers to the regulations set forth at Title 24 of the California Code
2 of Regulations.

3 **X. Transportation Fund**

4
5 “Transportation Fund” means and refers to funding available to Defendants to calculate
6 and fulfill their Annual Obligation. Currently, the Transportation Fund consists of money
7 available to Defendants through the City of Sacramento’s share of the state Gasoline Tax and
8 Measure A. The Transportation Fund is subject to change during the duration of the Compliance
9 Period, as set forth in § III.A.1, below.

10
11 **Y. Undue Burden**

12 “Undue Burden” means and refers to an action that, if taken by the City of Sacramento,
13 would result in an undue financial and administrative burden. In order to demonstrate that
14 removal of a barrier would constitute an Undue Burden, the decision must be made by the City
15 Manager or his or her designee after considering the Transportation Funds available for such
16 work through the Annual Obligation, and must be accompanied by a written statement of the
17 reasons for reaching that conclusion.

18
19 **Z. Vision Disability**

20 “Vision Disability” means and refers with respect to an individual, to any impairment or
21 condition that substantially limits an individual’s ability to see. A person with a Vision
22 Disability may be blind, legally blind, or may have low vision.

23
24 **II. APPROVAL**

25 Plaintiffs and Defendants agree to request that the process for seeking approval of this
26 Settlement Agreement be assigned to the Honorable John F. Moulds, Magistrate Judge, U.S.
27 District Court for the Eastern District of California. Magistrate Judge Moulds has indicated his
28 willingness to oversee the approval process required by Rule 23(e) of the Federal Rules of Civil

1 Procedure, and he possesses knowledge of this case's history and an understanding of the
2 numerous technical and legal issues presented in this case.

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6 **A. Joint Approval Action**

7 Within 30 days following the Sacramento City Council's approval of this Agreement, the
8 Parties shall jointly move the Court for an Order granting Preliminary Approval to this
9 Agreement and setting a hearing for Final Approval, allowing for notice as set by the Court.

10
11 **B. Notice to the Class**

12 The City shall issue a Settlement Notice in the form attached hereto as Exhibit A,
13 advising the Class of the terms of the proposed Settlement Agreement and their right to object to
14 the proposed Settlement Agreement, within 30 days after Preliminary Approval. This notice
15 shall be (1) published in the legal notices section of the *Daily Recorder*, Sacramento's
16 newspaper of record and (2) mailed via U.S. mail and/or email to all known class members.

17
18 **C. Objections**

19 Any Class Member may object to the proposed Settlement Agreement by filing with the
20 Clerk of the Court a written objection ("Objection") filed or postmarked no later than a date set
21 by the Court in this case after Preliminary Approval of the Settlement Agreement. Only such
22 objecting Class Members shall have the right, if they seek it in their Objection, to present
23 objections orally at the Fairness Hearing.

24
25 **D. No Opt-Out Right for Class Members**

26 Because this settlement resolves only class claims for declaratory and injunctive relief, as
27 well as claims for damages by the individual named plaintiffs, and it does not provide for
28

1 damages for any individual Class Member, nor does it release any claims an individual Class
2 Member may have for damages, no Class Member may opt out of the terms of this Settlement
3 Agreement.

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7 **E. Fairness Hearing**

8 The Court shall hold a hearing to establish the fairness of the Settlement Agreement and
9 to decide whether there shall be Final Approval of the Settlement Agreement. This hearing will
10 take place at a date to be set by the Court, allowing for a period of notice to the Class as the
11 Court may direct.
12

13 **III. INJUNCTIVE RELIEF**

14 The Parties hereby agree that, conditioned upon entry of Final Approval, Defendants
15 shall do the following in order to provide access along Pedestrian Rights of Way, including
16 Program Access and compliance with new construction/alteration requirements, in the City of
17 Sacramento.
18

19 **A. Annual Obligation**

20 For the term of the Agreement, the City of Sacramento will dedicate funding in an
21 amount equal to twenty percent (20%) of its Transportation Fund annually to the installation of
22 Compliant Curb Ramps at intersections and to the removal of access barriers along Pedestrian
23 Rights of Way. The Annual Obligation may be used to pay for curb ramp installation, barrier
24 removal work, and other accessibility work performed at the expense of the City concerning
25 Pedestrian Rights of Way. Such work may be performed by outside contractors, City employees,
26 or by a combination of both. To the extent that additional funding for access improvements
27
28

1 within the Pedestrian Rights of Way is provided through other sources such as developers,
2 property owners, or affected Third Party Entities, such funding will supplement the City's
3 Annual Obligation.

4
5 **1. Funding for Annual Obligation**

6 The Transportation Fund is defined as, and currently consists of (1) money allocated to
7 the City via the California Gas Tax and (2) money allocated to the City from Measure A.

8 Measure A is a ballot initiative for the funding of transportation improvements and programs
9 through the levy of a one-half cent sales tax. It was approved in 1988 by Sacramento County
10 voters, for a twenty (20) year period and will expire in 2008. If Measure A is renewed at any
11 time or if an equivalent replacement funding source is identified to replace Measure A Sales Tax
12 funds during the Compliance Period, the eligible portion of this funding source, consisting of all
13 unrestricted funding available for transportation projects, will be incorporated into the
14 Transportation Fund for purposes of the Agreement

15
16 **2. Barriers to be Addressed**

17
18 The funding provided through the City's Annual Obligation will be used to address the
19 following types of access barriers:

- 20 a. Compliant Curb Ramps at intersections. Curb Ramps will be
21 constructed or reconstructed to comply with state and/or federal
22 law (whichever provides the higher access standard) in place at the
23 time of construction. Specifically with regard to Detectible
24 Warnings for people with Vision Disabilities, current law requires
25 the installation of truncated domes at all locations where sidewalks
26 intersect vehicular ways.
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b. Crosswalk access. Crosswalks will be made accessible through removal of abrupt changes in level affecting the path of travel across the street, as well as development or maintenance of a policy concerning installation of audible pedestrian signals and ensuring that pedestrian crossing controls meet ADAAG and Title 24 access standards, including reflector strips as required by Title 24 § 1117B.5.10. The Parties agree that the reflector strip requirement can be satisfied using reflectorized paint. Crosswalk access does not require any effort to remove slopes or cross slopes consistent with the slope of the street for vehicle traffic and/or drainage.

c. Obstacles in the Pedestrian Right of Way. Obstacles that narrow the pedestrian pathway to less than 32" will be removed or relocated.

d. Abrupt changes of level. Changes of level of greater than ½", whether caused by tree roots or any other deterioration or displacement of the surface of the Pedestrian Right of Way, will be remedied by providing a ramp with an appropriate slope or by creating a level path of travel.

e. Overhanging obstacles. Overhanging obstacles, defined by ADAAG § 4.4.2 and Title 24 § 2-3326(b) as objects hanging below 80", that are not detectible to a blind pedestrian using a

1 cane, will be removed or else detectible warnings will be provided
2 to alert blind pedestrians to their presence.

3 f. Excessive cross slopes. Excessive cross slopes perpendicular to
4 the primary direction of travel along the Pedestrian Right of Way,
5 whether caused by driveways crossing the Pedestrian Right of Way
6 or any other reason, will be removed. Cross slopes of greater than
7 3.3% that extend for a distance of greater than 15' or that exist at
8 locations where the running slope exceeds 5% have priority for
9 removal as severe barriers. At other locations, cross slopes of
10 greater than 4% have priority for removal as severe barriers.
11
12

13 **3. Duration of Annual Obligation**

14 The Annual Obligation will remain in effect for up to 30 years following Final Approval.
15 The City may petition under § III(F) of this Agreement to have its obligation declared complete,
16 and to have this Agreement dissolved, at any time based on a showing that it provides Program
17 Access to Pedestrian Rights of Way in the City of Sacramento. Alternatively, the Agreement
18 will dissolve automatically thirty (30) years after Final Approval, unless a dispute is pending at
19 that time under the Dispute Resolution Process. If a dispute is pending at the time this
20 Agreement would otherwise dissolve, the Agreement will remain in effect with respect to the
21 issues under dispute until the dispute is resolved and any obligations set forth as part of dispute
22 resolution are implemented.
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25 **4. Project Prioritization**

26 Projects to install Compliant Curb Ramps and to improve access along Pedestrian Rights
27 of Way will be prioritized by the City in accordance with the following general principles:
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- a. Requests for installation of a Compliant Curb Ramp or removal of a specific barrier or barriers from a Class Member will have highest priority;
- b. After requests, priority will be given to walkways serving: (i) State and local government offices and facilities, (ii) important transportation corridors, (iii) places of public accommodation such as commercial and business zones, (iv) facilities containing employers, and (v) walkways serving other areas such as residential neighborhoods and undeveloped areas of the City.
- c. In all planned projects, consideration will also be given to the severity of existing barriers and overall efficiency of project work. This means, for example, that work done to respond to a request may be expanded to address additional severe barriers nearby, even if such barriers are not located in a high priority zone, if the City determines that this would be an efficient use of funding from the Annual Obligation. This also means that the City can determine that it is the most appropriate use of funds from the Annual Obligation to address severe barriers in lower priority areas than to remove all barriers in higher priority areas before advancing.
- d. The City intends to set forth prioritization guidelines consistent with these general principles as part of a revised Transition Plan for Curb Ramps and Pedestrian Rights of Way.

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e. The City may develop its own procedures, including but not limited to the process set forth at § III(F), below, to set specific annual project plans consistent with these general guidelines.

5. Limitations on Annual Obligation

a. Under no circumstances will the City be obligated to initiate eminent domain proceedings against a residential property owner in order to remove barriers. However, if the City incurs costs to obtain property rights through actions other than eminent domain proceedings against a residential property owner, such costs shall be charged to the Annual Obligation.

b. Under no circumstances will the City be obligated to remove any barrier if removal of such barrier would create an Undue Burden or a Fundamental Alteration, or if removal of such barrier would be Technically Infeasible. To the extent that the City determines that it would be an Undue Burden or Fundamental Alteration to remove a particular barrier, or that removal of a particular barrier would be Technically Infeasible, it must include such a determination in its regular reports as described in § IV, below.

c. If an anticipated source of supplemental funding, such as contributions from adjacent property owners described in § III.C, below, becomes unavailable so that costs of barrier removal work must be paid by the City, the costs to the City will be counted toward satisfaction of the City’s Annual Obligation.

1 **B. Third Party Contributions**

2 Certain barriers in the Pedestrian Right of Way involve elements under the control of
3 entities other than the City of Sacramento. The Parties agree to work cooperatively to seek
4 funding or participation in barrier removal work from such Third Party Entities. The Parties
5 anticipate that the types of barriers most affected by elements under the control of Third Party
6 Entities will be obstacles in the Pedestrian Right of Way and obstacles that affect the ability of
7 the City to provide Compliant Curb Ramps. Any contributions of money for barrier removal
8 work by Third Party Entities, or any work done by such Third Party Entities to remove barriers,
9 will supplement the work done through the City’s Annual Obligation, and will not reduce the
10 scope of the Annual Obligation.
11

12 **C. Fixes by Property Owners**

13 Under the Sacramento Municipal Code property owners are currently required to
14 maintain their sidewalks in such a way that they do not impede public access, pose a safety
15 hazard, endanger persons or property, or interfere with public convenience. The City maintains
16 a Sidewalk Maintenance Program which provides private property owners a sidewalk and
17 driveway inspection in the front of their property, free of charge, by a City inspector. If repairs
18 are required, the property owner can either do the work, hire a licensed contractor or request that
19 the City do the repairs and then bill the private property owner. When private property owners
20 fail to fix problem sidewalks after being notified by the City, the City may make required repairs
21 and place a lien on the property owner’s lot or lots to recoup costs, if necessary. The Parties
22 anticipate that the City’s ongoing use of this program will result in the removal of certain abrupt
23 changes in level on sidewalks. Any access barriers removed through the Sidewalk Maintenance
24 Program for which the City receives reimbursement will supplement the work done through the
25 City’s Annual Obligation, and will not reduce the scope of the Annual Obligation.
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1 **D. New Construction and Alterations**

2 In addition to the making existing Pedestrian Rights of Way accessible, the City will
3 ensure that all newly constructed Pedestrian Rights of Way are accessible and served by
4 Compliant Curb Ramps. The City will also ensure that streets being resurfaced as part of its
5 annual maintenance efforts are served by Compliant Curb Ramps and have appropriate
6 crosswalk access. Any work performed or paid for by third parties to make Pedestrian Rights of
7 Way accessible as part of any new construction or alteration project will be in addition to the
8 City’s Annual Obligation. Any work described in this section that is performed or paid for by
9 the City shall be considered as part of the Annual Obligation. The Parties agree that work done
10 at specific locations to remove access barriers does not trigger the alteration requirement set
11 forth in federal and state access laws.

12 **E. Old Sacramento Excluded**

13 The Parties specifically exclude that portion of the City of Sacramento known as “Old
14 Sacramento” from all injunctive relief requirements of this Agreement, as well as all releases.
15 The Parties agree that this Agreement does not affect in any way the City’s obligation to comply
16 with the terms of the settlement agreement in *McIver v. City of Sacramento*, Case No. CIV-S-00-
17 2078 WBS (E.D. Cal.), which was entered into on February 19, 2002.

18 **F. Petition for Early Conclusion of Compliance Period**

19 If the City believes that it has installed compliant Curb Ramps and removed access
20 barriers such that it provides Program Access to Pedestrian Rights of Way in compliance with
21 the ADA and California law prior to the date upon which this Agreement is due to expire, the
22 City may bring a noticed motion to the Court at any time asking for this Agreement to be
23 terminated. A motion brought under this provision should contain: (1) Information supporting
24 the City’s contention that it provides Program Access to Pedestrian Rights of Way; (2)
25 Information showing that the City has plans or procedures in place to ensure that it will respond
26 to issues concerning access to the Pedestrian Rights of Way in an ongoing manner; and (3) Any
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1 other information the City believes appropriate to support its motion. Prior to filing such a
2 motion, the City may provide the same information to Class Counsel for review. Class Counsel,
3 at its discretion, may oppose a motion to terminate the Agreement or may support such a motion.
4

5 **IV. REPORTS AND MONITORING**

6 **A. Yearly Report From City's Public Works Department on Projects to**
7 **Implement This Agreement In Following Year**

8 Each year until the end of the Compliance Period, the City shall provide a report setting
9 forth a prospective plan of projects the City shall undertake to make Pedestrian Rights of Way
10 accessible in the upcoming year. The City may develop such a prospective plan as it deems to be
11 appropriate, subject to the general requirements regarding prioritization set forth in § III(A)(4),
12 above. The City intends to use the following process to develop its annual project plan: (1) The
13 City Public Works Department shall prepare a report detailing the projects for making Pedestrian
14 Rights of Way accessible in the upcoming year; (2) such report shall be submitted to the City's
15 ADA Advisory Commission which will make pedestrian access improvement recommendations
16 concerning the report; (3) the report and recommendations shall be provided to the City Council,
17 which will approve or disapprove of the projects proposed for the following year.
18

19 **B. Two Semi-Annual Reports On Work Completed By City**

20 Twice each year, the City will prepare a report describing the actual work done to
21 implement this Agreement during the previous six months. In addition to summaries of work
22 done by the City, the semi-annual reports will also include:

- 23 1. A summary or listing of all written complaints or requests for removal of
24 particular barriers received since the prior report
- 25 2. Summaries of work done to ensure access and/or remove access barriers in
26 conjunction with new construction and or alterations along Pedestrian
27 Rights of Way
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- 3. A list of all barriers, if any, for which the City asserts that it has a appropriate basis (Technical Infeasibility, Undue Burden, or Fundamental Alteration) for excusing installation of a Compliant Curb Ramp or removal of an access barrier. If the City asserts that it would be an Undue Burden or Fundamental Alteration to remove a barrier, or that removal of a barrier would be Technically Infeasible, the City will include in the report a written statement by the head of the Department of Public Works (or his or her designee) providing the reasons for reaching that conclusion, including his or her consideration of all resources available through the Annual Obligation.
- 4. The contributions of Third-Party Entities to remove access barriers along Pedestrian Rights of Way, whether such contributions took the form of funding for barrier removal work or work done separately by the Third Party Entity.
- 5. Information regarding removal of barriers along Pedestrian Rights of Way through the Sidewalk Maintenance Program of the City Public Works Department.

C. Copies of All Reports Generated In Compliance With This Agreement Shall Be Promptly Provided to Class Counsel and Outside Monitor

The reports described above in § IV.A-B, above, shall be provided to Class Counsel and to the Outside Monitor (while the Outside Monitor is retained, as set forth in § IV.D, below) within 45 days after the end of the period covered by such documents.

D. Inspections By An Agreed Upon Outside Monitor

1. Selection of an Outside Monitor

The City of Sacramento will retain the services of an outside consultant to monitor the City's compliance with this Agreement for a period of three years. The consultant will be

1 selected by the City with the approval of Class Counsel. This term of outside monitoring can be
2 extended by the Court for good cause shown. If at any time the Parties do not agree on a
3 consultant to serve as the outside monitor, each party shall propose a qualified candidate to the
4 Court and the Court will decide who will serve as the monitor.

5 **2. Monitoring Process**

6 During the period in which the Outside Monitor is retained, the Monitor will be provided
7 with the reports required by § IV.A-B, above. Within 90 days after the production of each Semi-
8 Annual Report, the Outside Monitor will inspect up to 10% of the Pedestrian Rights of Way at
9 which barriers have been removed to ensure that such barrier removal is completed properly.
10 Such inspections will determine whether there are remaining barriers at sites that were identified
11 as having all barriers removed, or whether barrier removal work was not completed properly. At
12 the end of the 90 day period, the Outside Monitor will produce a report containing his or her
13 findings to the City and to Class Counsel; the City will have 30 days thereafter to remedy or
14 make provision for removal of any identified remaining barriers or else to determine that there is
15 a dispute regarding such barriers at any specific location. Any such dispute will be resolved
16 through the Dispute Resolution Procedure set forth at § VIII, below.

17 **E. Costs of Monitoring Paid By City of Sacramento**

18 The costs of monitoring, including both payment to the Outside Monitor and attorneys'
19 fees incurred by Class Counsel to review all reports, shall be paid by the City of Sacramento.
20 During the period of time in which the Outside Monitor is retained, the City shall allocate up to
21 \$30,000 annually for monitoring costs from funds separate from the funding dedicated to the
22 Annual Obligation. Up to 10% of this monitoring fund, no more than \$3,000, may be paid to
23 Class Counsel for review and analysis of information provided by the Outside Monitor and by
24 the City. If payment for monitoring exceeds \$30,000 in any year, the remaining money shall be
25 taken from the Annual Obligation Fund.
26

27 **F. City's Obligation After Outside Monitor's Term Ends**

1 After the term of the Outside Monitor expires, the City shall ensure that comparable
2 review and reporting concerning the effectiveness and accuracy of barrier removal work takes
3 place through internal monitoring. Any internal monitoring function used by the City shall
4 generate reports at least semi-annually, and Class Counsel shall be provided a copy of these
5 reports within 45 days after the end of the period covered by such documents.

6 **V. DAMAGES FOR NAMED PLAINTIFFS**

7 **A. Payments to Named Plaintiffs**

8
9 No later than 30 calendar days after Dismissal of this Action, City shall pay the total sum
10 of \$80,000 in compensation for the individual claims for damages by the Named Plaintiffs under
11 applicable federal and state access laws including California Civil Code §§ 51 and 54. Each of
12 the Named Plaintiffs shall receive \$10,000 of said amount. City can satisfy this obligation of
13 monetary payment to the Named Plaintiffs by delivering a check or checks to Class Counsel
14 totaling \$80,000.

15 **B. No Class Damages**

16 No monetary payments shall be made to the Class Members and no claims for damages
17 by the Class or any Class Member except the Named Plaintiffs shall be released.

18 **VI. RELEASES**

19 **A. Named Plaintiffs' and Class Release of Injunctive Relief Claims**

20
21 Except as otherwise provided in this Settlement Agreement, and subject to the fulfillment
22 of the conditions set forth in this Settlement Agreement, all Named Plaintiffs and Class
23 Members, for themselves, their successors and their assigns, hereby release and forever
24 discharge Defendants and their successors, assigns, officers, directors, and past and present
25 agents, attorneys, employees, independent contractors, and owners ("Released Parties") from any
26 and all claims for declaratory or injunctive relief raised in the Action under the Americans with
27 Disabilities Act, the Rehabilitation Act of 1973, §§ 51 and 54 of the California Civil Code, and
28

1 §§ 4450 and 11135 of the California Government Code for the duration of the Compliance
2 Period.

3 **B. Named Plaintiffs' Release of Damages Claims**

4 Except as otherwise provided in this Settlement Agreement, and subject to the payment
5 of funds as described in § V(A), above, and in consideration of such payments, all Named
6 Plaintiffs hereby release and forever discharge the Released Parties from any and all claims,
7 demands, causes of action, obligations, damages and liabilities that have arisen at any time up
8 through the Compliance Period that were or could have been asserted in this Action concerning
9 access to Pedestrian Rights of Way in the City of Sacramento, whether based on statute,
10 regulation, contract, tort or other legal or equitable theory of recovery whatsoever, and whether
11 known or unknown, however, this release shall not preclude any tort claim associated with any
12 physical injury that might be suffered at any time following execution of this Agreement due to
13 existing access barriers in the Pedestrian Rights of Way. Named Plaintiffs also waive California
14 Civil Code § 1542, which provides in pertinent part:
15

16 A general release does not extend to claims which the creditor does not know or
17 suspect to exist in his favor at the time of executing the release, which if known
18 by him must have materially affected his settlement with the debtor.

19 **C. No Release of Named Plaintiffs' Future Tort Damages**

20 Nothing in this Settlement Agreement shall be interpreted as a release by Named
21 Plaintiffs of any tort claim associated with any physical injury that might be suffered in the
22 future due to existing access barriers in the Pedestrian Rights of Way.

23 **D. No Release of Class Damages**

24 Nothing in this Settlement Agreement shall be interpreted as a release of any claims for
25 damages by the Class and/or any Class Member except the Named Plaintiffs.

26 **VII. DISPUTE RESOLUTION**

27 **A. Jurisdiction**

1 The Court will retain jurisdiction to enforce the terms of this Settlement Agreement for
2 the duration of the Compliance Period. The Parties agree to request that this authority be
3 delegated to Magistrate Judge John F. Moulds in accordance with 28 U.S.C. § 636(c). Should
4 Magistrate Judge Moulds become unavailable at any time during the Compliance Period, the
5 Parties request that another Magistrate Judge be assigned authority over this matter.

6 **B. Dispute Resolution**

7 Except as otherwise set forth herein, all disputes concerning compliance with this
8 Agreement shall be resolved as follows:
9

- 10 1. The Parties will first meet and confer in order to attempt to resolve the
11 dispute directly.
- 12 2. If the Parties cannot resolve a dispute directly, they will request a meeting
13 with Magistrate Judge Moulds, who will attempt to mediate the dispute.
- 14 3. Should mediation with Magistrate Judge Moulds prove unsuccessful,
15 either Party can bring a motion to enforce the Settlement Agreement
16 before Magistrate Judge Moulds. In accordance with 28 U.S.C. § 636(c),
17 the Parties consent to allow a decision by Magistrate Judge Moulds, acting
18 to enforce the settlement, to be appealed directly to the United States
19 Ninth Circuit Court of Appeal.

20 **C. Fees and Costs for Dispute Resolution**

- 21 1. Fees and costs incurred in the resolution of any disputes will be awarded
22 in accordance with the standards set forth in *Christianberg Garment Co. v.*
23 *EEOC*, 434 U.S. 412 (1978).
- 24 2. In any request for fees based on dispute resolution, Class Counsel shall
25 seek compensation at a blended rate of \$220 per hour. The City will not
26 contest this hourly rate, but the City retains the right to contest the number
27 of hours for which compensation is requested.
28

- 1 3. If the Parties are able to settle the dispute through the meet and confer
2 process, the fees and costs will be paid from the funding dedicated to the
3 City's Annual Obligation.
- 4 4. If the dispute progresses to mediation or an enforcement motion, any fees
5 and costs awarded will be paid from separate funds, not the funding
6 dedicated to the Annual Obligation.

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8 **VIII. ATTORNEYS' FEES AND COSTS**

- 9 A. Upon entry of Final Approval by the Court of this Settlement Agreement, the City
10 will pay attorneys' fees and costs to Class Counsel in the amount of \$745,000,
11 plus additional fees and costs to be capped at \$50,000 for work performed
12 between June 18, 2003 and the date of Final Approval.
- 13 B. Fees for work performed through Final Approval will be paid at a rate of \$220 per
14 hour, and will be performed by no more than two attorneys.
- 15 C. Upon Final Approval, Class Counsel will provide the City with documents
16 showing the hours worked after June 18, 2003, and the Parties will negotiate for
17 up to 30 days to determine if they can agree on the total amount owed.
- 18 D. If the Parties reach agreement on the total amount owed within 30 days after Final
19 Approval, the City shall pay all fees in one payment, to be made within 30 days
20 after agreement is reached.
- 21 E. If the Parties cannot reach agreement on the total amount owned within 30 days
22 after Final Approval, the City shall pay Class Counsel \$745,000 within 30 days
23 after the Parties determine that they cannot reach agreement. The remaining
24 amount of attorneys' fees owed will be determined through the Dispute
25 Resolution process.
- 26

27 **IX. MISCELLANEOUS**

- 28 **A. Point Person**

1 The City shall designate a “point person” to serve as an administrative liaison to the
2 Outside Monitor and to Class Counsel regarding Defendants’ compliance with this Agreement.
3 The Point Person shall be responsible for coordinating and providing all reports required by this
4 Agreement. The Point Person will also have authority to collect information concerning
5 Defendants’ obligations and actions regarding compliance with this Agreement and to respond to
6 requests for information or other documents as provided in this Settlement Agreement.

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10 **B. Dismissal**

11 Within 30 days following Final Approval, Class Counsel shall file a signed form of
12 request for dismissal with prejudice, except that the Court will retain jurisdiction to enforce the
13 settlement as set forth in § VII(A)-(B), above.

14 **C. Entire Agreement**

15 This Settlement Agreement contains the entire agreement between the Parties regarding
16 access to Pedestrian Rights of Way in the City of Sacramento. No modifications or limits will be
17 binding on the Parties unless expressly provided for in this Agreement or made by writing signed
18 by all Parties. This Agreement expresses the complete and final understanding with respect to
19 the subject matter of this Agreement. The Parties hereto understand and agree that the terms of
20 this Agreement supersede any prior discussions, understandings, or agreements between them
21 related to the subject matter hereof. The Parties expressly agree that, upon Final Approval, this
22 Agreement will supercede and entirely replace the Stipulated Injunction regarding Curb Ramps
23 currently in effect.

24
25 **D. Counterparts**

26 This Agreement may be executed in counterparts, each of which will be considered an
27 original, but all of which, when taken together, will constitute one and the same instrument.

28 **E. Interpretation**

1 The language of this Agreement will be construed as a whole according to its fair
2 meaning, and not strictly for or against any of the Parties. The headings in this Agreement are
3 solely for convenience and will not be considered in its interpretation. Where required by
4 context, the plural includes the singular and the singular includes the plural. This Agreement is
5 the product of negotiation and joint drafting so that any ambiguity will not be construed against
6 any Party.

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11 **F. Severability**

12 In the event any portion of this Agreement is deemed to be unenforceable, or is in
13 conflict with applicable law, the remainder of this Agreement will be enforced and will remain in
14 full force and effect.

15 **G. Additional Documents**

16 To the extent any documents are required to be executed by any of the Parties to
17 effectuate this Agreement, each party hereto agrees to execute and deliver such and further
18 documents as may be required to carry out the terms of this Agreement.

19 **H. Effect of Release On Old Sacramento Settlement**

20 Nothing in this Agreement affects, in any way, the City's obligation to comply with the
21 terms of its settlement agreement in *McIver v. City of Sacramento*, Case No. S-00-20-78 WBS
22 GGH, concerning access in that portion of the City of Sacramento known as "Old Sacramento."
23

24 **I. City Council Approval**

25 This Agreement is expressly subject to and contingent upon the approval of the City
26 Council for the City of Sacramento. No later than 30 days after execution of this Agreement by
27

1 all Parties, counsel for the City of Sacramento will present this matter to the City Council in
2 closed session for its approval.

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1 For Plaintiffs:

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Plaintiff Joan Barden

Plaintiff Susan Barnhill

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Plaintiff Mitch Watkins

Plaintiff Jeffrey Evans

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Plaintiff Tony Martinez

Plaintiff Brenda Pickern

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Plaintiff Jeff Thom

Plaintiff Suzanne Fitts Valters

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15 Approved as to Form:

DISABILITY RIGHTS ADVOCATES

16 DATED:

17

18 By: _____

Laurence W. Paradis
Attorneys for Plaintiffs

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21 For Defendants:

22 By: _____

For Defendants

23

24 Approved as to Form:

OFFICE OF THE CITY ATTORNEY

25 DATED:

26

27 By: _____

Gerald C. Hicks
Attorneys for Defendants

28