

1 Linda M. Dardarian (SBN 131001)
ldardarian@gbdhlegal.com
2 Andrew P. Lee (SBN 245903)
alee@gbdhlegal.com
3 GOLDSTEIN, BORGEN, DARDARIAN & HO
300 Lakeside Drive, Suite 1000
4 Oakland, CA 94612
Tel: (510) 763-9800
5 Fax: (510) 835-1417

6 Timothy P. Fox (SBN 157750)
tfox@creeclaw.org
7 CIVIL RIGHTS EDUCATION AND ENFORCEMENT
CENTER
8 1245 E. Colfax Avenue, Suite 400
Denver, CO 80218
9 Tel: (303) 757-7901

10 *Attorneys for Plaintiff*

11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**
13 **SAN JOSE DIVISION**

14 ARTIE LASHBROOK, on behalf of himself and all
15 others similarly situated,

16 Plaintiff,

17 vs.

18 CITY OF SAN JOSE,

19 Defendant.

Case No.: 5:20-cv-01236-NC

CONSENT DECREE

CLASS ACTION

1 This Class Action Consent Decree (“Consent Decree”) is made and entered into by and
 2 between: (i) the City of San Jose (the “City”), and (ii) Plaintiff Artie Lashbrook (“Plaintiff”), on behalf
 3 of himself and the proposed Settlement Class. The City and Plaintiff shall be referred to in this
 4 Consent Decree individually as a “Party” and collectively as the “Parties.”

5 I. RECITALS

6 WHEREAS, Plaintiff Lashbrook is a resident of the City of San Jose and a person with a
 7 Mobility Disability who uses a wheelchair for mobility. He is an individual with a disability within the
 8 meaning of Section 3(2) of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101, 12102(2)
 9 (“ADA”), Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §§ 705(20), 794(a) (“Section
 10 504”), and California Government Code § 11135 and Cal. Code Regs. tit. 2, § 11187(a) (“Section
 11 11135”).

12 WHEREAS, on February 24, 2014, Plaintiff sent the City a letter asserting that Plaintiff and
 13 other City residents and visitors with mobility disabilities have been denied access to the City’s
 14 pedestrian right of way because of a lack of accessible curb ramps throughout the City (“the Dispute”).
 15 Plaintiff offered to engage in Structured Negotiations, in lieu of litigation, to resolve the Dispute. On
 16 March 28, 2014, the Parties executed a Tolling Agreement to protect the interests of all Parties during
 17 those negotiations and to avoid the burden, expense and potential risks of litigation.

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

22 WHEREAS, on February 1, 2017, the Parties entered into an Interim Settlement Agreement
 23 that set forth certain preliminary obligations that the Parties fulfilled while they continued to negotiate
 24 toward a full resolution of the Dispute. The Interim Settlement Agreement required the City to
 25 complete a survey of all curb ramps and corners of sidewalk segments at pedestrian crossings within
 26 the City’s pedestrian right of way for compliance with applicable federal and state accessibility
 27 standards. It also identified locations where curb ramps and traffic island cut-throughs are missing.
 28 The City completed its curb ramp survey in April 2018 and performed analytical and GIS-bound

1 reviews of the survey data, held multiple comment reconciliation meetings to ensure the quality of the
2 survey data, and received the final survey results in the last quarter of 2018.

3 WHEREAS, the Interim Agreement also required the City to construct approximately 2,700
4 curb ramps over a two-year period and resolve curb ramps requests within one-hundred twenty (120)
5 days of submission.

6 WHEREAS, the City does not admit, and specifically denies, that it has violated or failed to
7 comply with or has any liability to Plaintiff under any provisions of the ADA, Section 504, Section
8 11135, or any applicable laws of the State of California relating to the accessibility of the pedestrian
9 right of way for persons with mobility disabilities, any regulations or guidelines promulgated pursuant
10 to those statutes, or any other applicable laws, regulations, or legal requirements. Neither this Consent
11 Decree, nor any of its terms or provisions, nor any of the negotiations connected with it, shall be
12 construed as an admission or concession by the City of San Jose. This Consent Decree and its terms
13 and provisions shall not be offered or received as evidence for any purpose whatsoever against the City
14 in any action or proceeding, other than a proceeding to enforce the terms of this Consent Decree.

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

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

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

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

4 **II. AGREEMENT**

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

7 **1. Conditions Precedent**

8 The Consent Decree shall be effective (the “Effective Date”) following federal court approval
 9 of this Consent Decree after notice to the Settlement Class, and shall become effective only when final
 10 judgment is entered by the District Court after the absence of any class member objections; or if there
 11 are objections by class members, when the time to appeal the final approval order expires without the
 12 filing of an appeal; or, if an appeal is filed, when the appeal is finally adjudicated or resolved in favor
 13 of affirming the approval of the Consent Decree.

14 **2. Definitions**

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

16 2.1 “2013 DOJ/DOT Alteration Guidance” means the 2013 Department of
 17 Justice/Department of Transportation Joint Technical Assistance on the Title II of the Americans with
 18 Disabilities Act Requirements to Provide Curb Ramps when Streets, Roads, or Highways are Altered
 19 through Resurfacing, attached hereto as Exhibit A.

20 2.2 “Access” or “Accessible,” unless otherwise indicated, means conditions that comply
 21 with the standards set forth in the 2010 Americans with Disabilities Act Standards for Accessible
 22 Design, codified at 28 C.F.R. § 35.151 and 36 C.F.R. part 1191, and Appendices B and D (hereafter
 23 “2010 ADA Standards”) or Title 24 of the 2019 California Building Code (hereafter “the CBC”).
 24 Access work performed pursuant to this Consent Decree shall be performed in compliance with the
 25 2010 ADA Standards or the CBC, whichever provides greater protection or access to persons with
 26 mobility disabilities. If during the term of this Consent Decree any new federal or California disability
 27
 28

1 access design standards applicable to curb ramps in the pedestrian right of way become effective, those
2 standards shall then become the standard for accessibility under this Consent Decree.

3 2.3 “Accessible Curb Ramp” means any curb ramp constructed or remediated by the City
4 pursuant to this Consent Decree that complies with the 2010 ADA Standards and the CBC.

5 2.4 “Americans with Disabilities Act” or “ADA” means the Americans with Disabilities
6 Act of 1990, 42 U.S.C. § 12101, *et seq.*

7 2.5 “Altered” or “Alteration,” when used in reference to work performed as part of street,
8 roadway, or highway resurfacing, means those alterations identified in the 2013 DOJ/DOT Alteration
9 Guidance, and the Briefing Memo related thereto. Specified alterations include but are not limited to
10 the addition of a new layer of asphalt, asphalt and concrete, cape seals, concrete pavement
11 rehabilitation and reconstruction, micro-surfacing and thin lift overlays, mill & fill, mill & overlay,
12 open-graded surface course, and in-place asphalt recycling.

13 2.6 “Best Efforts” means the efforts a reasonable entity in the City’s position would use to
14 perform that obligation in good faith.

15 2.7 “Class Counsel” or “Plaintiff’s Counsel” means collectively the Civil Rights Education
16 and Enforcement Center (CREEC) and the law firm Goldstein, Borgen, Dardarian & Ho.

17 2.8 “Compliant Curb Ramp” means any curb ramp currently in compliance with the 2010
18 ADA Standards or, if built or altered prior to March 15, 2012, currently in compliance with the 1991
19 Americans with Disabilities Act Standards for Accessible Design (“ADAAG”), codified at 28 C.F.R.,
20 Part 36, including Appendix A, or the CBC, whichever provides greater protection or access to persons
21 with mobility disabilities.

22 2.9 “Effective Date” means the date upon which the Consent Decree becomes a final
23 judgment of the District Court presiding over this Action.

24 2.10 “Existing Pedestrian Facilities,” for purposes of this Consent Decree, means any
25 Pedestrian Facilities, or portions thereof, that were constructed prior to the Effective Date of this
26 Consent Decree.

27 2.11 “High Priority Curb Ramps Barriers” means the curb ramp conditions set forth in
28 Exhibit B, including the following: 1) missing curb ramps; 2) curb ramps with less than 32 inches clear

1 width; 3) curb ramps with running slopes exceeding 10%; 4) curb ramps with cross slopes exceeding
2 4%; 5) curb ramps with non-flush transitions; 6) curb ramps with counter slopes exceeding 10%; 7)
3 curb ramps with side flare slopes exceeding 12.5% where top landings are provided; 8) curb ramps
4 with side flare slopes exceeding 10% where top landings are not provided; 9) curb ramps with gaps or
5 vertical edges greater than 1 inch; 10) parallel curb ramps with bottom landings that have slopes
6 exceeding 4%; 11) parallel curb ramps with top landings that have slopes exceeding 4%; 12) parallel
7 curb ramps with top landings that have running slopes exceeding 10%; 13) curb ramps with a
8 combination of non-compliant running slopes, counter slopes, and non-flush transitions.

9 2.12 “Mobility Disability” or “Mobility Disabilities” means any impairment or medical
10 condition that limits a person’s ability to walk, ambulate, maneuver around objects, or to ascend or
11 descend steps or slopes. A person with a Mobility Disability may or may not use a wheelchair,
12 scooter, electric personal assisted mobility device, crutches, walker, cane, brace, orthopedic device, or
13 similar equipment or device to assist her or his navigation along sidewalks, or may be semi-
14 ambulatory.

15 2.13 “New Construction and Alterations” means all work required to be performed, pursuant
16 to 28 C.F.R. § 35.151, in connection with newly-constructed or Altered intersections, streets, roads,
17 highways, and Pedestrian Walkways in the City during the Term of the Consent Decree.

18 2.14 “Pedestrian Facility” or “Pedestrian Facilities” means any street crossing, sidewalk,
19 crosswalk, curb, curb ramp, walkway, pedestrian right of way, pedestrian undercrossing, pedestrian
20 overcrossing, or other Pedestrian Walkway of any kind that is, in whole or in part, owned, controlled
21 or maintained by or otherwise within the responsibility of the City of San Jose.

22 2.15 “Pedestrian Walkway” means a sidewalk or other prepared exterior surface provided for
23 pedestrian travel in the public right of way that is, in whole or in part, owned, controlled or maintained
24 by or otherwise within the responsibility of the City of San Jose.

25 2.16 “Program Access” means the obligation of the City of San Jose under Title II of the
26 ADA and its implementing regulations, 28 C.F.R. § 35.150, Section 504 of the Rehabilitation Act of
27 1973, 29 U.S.C. §§ 794, its implementing regulations, 45 C.F.R. § 84.22(a), 28 C.F.R. § 41.57,
28 California Government Code § 11135, and its implementing regulations, Cal. Code Regs. tit. 2,

1 § 11195, to operate each service, program, or activity that takes place in Existing Pedestrian Facilities
2 in such a manner that the service, program, or activity, when viewed in its entirety, is readily
3 accessible to and usable by individuals with disabilities.

4 2.17 “Program Access Improvements” means all work performed by or on behalf of the City
5 on Accessible Curb Ramps in order to bring any Existing Pedestrian Facilities in the City into
6 compliance with the Program Access requirements of the ADA, Section 504, and Section 11135.

7 2.18 “Remediate” or “Remediation” means the correction of an existing non-Compliant curb
8 ramp or associated curb ramp landings to create an Accessible Curb Ramp.

9 2.19 “Settlement Class” means the class of individuals ultimately defined and certified by a
10 Court in this matter, in particular: “all persons (including residents of and/or visitors to the City of San
11 Jose) with any Mobility Disability, who, at any time prior to court judgment granting final approval to
12 this Consent Decree have been denied full and equal access to the City’s pedestrian right of way due to
13 the lack of a curb ramp or a curb ramp that was damaged, in need of repair, or otherwise in a condition
14 not suitable or sufficient for use.”

15 2.20 “Section 504” means Section 504 of the Rehabilitation Act of 1973, codified at 29
16 U.S.C. § 794 et seq.

17 2.21 “Section 11135” means California Government Code § 11135.

18 2.22 “Structural Impracticability” means the rare circumstances when an Accessible Curb
19 Ramp cannot be constructed during construction of new Pedestrian Facilities because the unique
20 characteristics of terrain prevent incorporation of Accessible Curb Ramps.

21 2.23 “Technical Infeasibility” or “Technically Infeasible” means the rare instances when an
22 Accessible Curb Ramp cannot be constructed during alterations to Existing Pedestrian Facilities
23 because of physical or site constraints.

24 2.24 “Transition Plan” means a transition plan that complies with 28 C.F.R. § 35.150(d), 45
25 C.F.R. § 84.22(e), 28 C.F.R. § 41.57(c), and Cal. Code Regs. tit. 2, § 11195.

26 2.25 “WCAG” means version 2.1 AA of the “Web Content Accessibility Guidelines”
27 published by the Web Accessibility Initiative (WAI) of the World Wide Web Consortium (W3C).

1 **3. Term of Consent Decree**

2 The Consent Decree shall become effective on the Effective Date and shall remain in effect
3 until the earlier of: (1) the end of the 2038 fiscal year, or (2) the completion of the City's construction
4 and remediation of Accessible Curb Ramps required under this Consent Decree. If Plaintiff's Counsel
5 dispute that the construction or remediation of Accessible Curb Ramps required under this Consent
6 Decree has been completed, this Consent Decree shall remain in effect pending the conclusion of any
7 dispute resolution proceedings or action to enforce the Consent Decree. The foregoing time period is
8 referenced herein as the "Term of the Consent Decree."

9 **4. Curb Ramp Construction Deadlines**

10 The Parties agree to the following curb ramp construction deadlines:

11 4.1 Based on the City's curb ramp survey, there are 6,772 locations within the City where
12 Accessible Curb Ramps are required but are missing. The City shall construct Accessible Curb Ramps
13 at those 6,772 locations by the end of 2030.

14 4.2 Based on the City's curb ramp survey, there are 14,611 curb ramps within the City that
15 contain High Priority Curb Ramps Barriers. This number excludes missing curb ramps, which are also
16 defined as "High Priority Curb Ramps Barriers." The City shall reconstruct or remediate those 14,611
17 curb ramps by the end of 2030.

18 4.3 Based on the City's curb ramp survey, there are 6,238 curb ramps within the City that
19 do not comply with applicable federal and state accessibility standards, but are not defined as "High
20 Priority Curb Ramps Barriers." The City shall reconstruct or remediate those 6,238 non-compliant
21 curb ramps by the end of 2038.

22 4.4 During each year of the Term of the Consent Decree, the City will construct, reconstruct
23 or remediate a sufficient number of curb ramps to ensure that the City meets the deadlines set forth in
24 Sections 4.1 to 4.3.

25 **5. Annual Monetary Commitment**

26 5.1 Beginning on the Effective Date, the City shall appropriate thirteen million dollars
27 (\$13,000,000) each fiscal year ("Annual Monetary Commitment") toward the construction and
28 remediation of curb ramps within the City until 2030. After 2030, the City shall appropriate a

1 minimum of ten (10) percent of the City's pavement budget toward the construction and remediation
2 of Curb Ramps until the City fulfills its obligations under this Consent Decree. The Annual Monetary
3 Commitment is the minimum amount the City is obligated to appropriate on an annual basis for the
4 construction of curb ramps, including curb ramps constructed in connection with new construction and
5 alterations of streets, roadways, and highways, remediation of existing curb ramps, and curb ramp
6 requests, in order to meet the Curb Ramp Construction schedule set forth in Section 4. If the Effective
7 Date occurs mid-year, the Annual Monetary Commitment for the first year of the Term of Consent
8 Decree may be prorated based on the number of days remaining in that year.

9 5.2 If in any fiscal year, the City is unable to appropriate the Annual Monetary
10 Commitment due to a recession the City shall provide notice to Class Counsel. The City shall remain
11 compliant with this Consent Decree despite an appropriation below the Annual Monetary commitment
12 if the City either: (a) remains on track to meet the Curb Ramp Construction Schedule set forth in
13 Section 4 in the fiscal year even with the appropriation below the Annual Monetary Commitment, by
14 maintaining an average rate of curb ramp construction and remediation of at least (1) 1,944 high
15 priority curb ramps per year between the Effective Date and 2030, if the fiscal year at issue occurs
16 during that period, or (2) 807 low priority curb ramps per year between 2031 and 2038, if the fiscal
17 year at issue occurs during that period; (b) demonstrates that the sum of the appropriations for the two
18 fiscal years prior to the appropriation below the Annual Monetary Commitment plus the fiscal year
19 with the appropriation below the Annual Monetary Commitment is equal to three times the Annual
20 Monetary Commitment; or (c) agrees to an additional appropriation over the next two fiscal years that
21 is equivalent to the difference between the appropriation below the Annual Monetary Commitment and
22 the Annual Monetary Commitment.

23 **6. Use of Annual Monetary Commitment**

24 The Annual Monetary Commitment shall be used exclusively for any costs related to the
25 construction and remediation of curb ramps within the City. Specifically, the Annual Monetary
26 Commitment shall be used for all work related to design, construction and remediation of curb ramps
27 in connection with New Construction and Alterations, Program Access Improvements, and Curb Ramp
28

1 Requests. When the City constructs curb ramps in connection with the New Construction and
2 Alteration of streets, roadways, or highways, as discussed in Section 7 below, the City shall separately
3 calculate and itemize the cost of curb ramp construction so that it may be credited toward the Annual
4 Monetary Commitment. In meeting its obligations under this Consent Decree, the City shall retain
5 complete discretion to determine the allocation of the Annual Monetary Commitment among New
6 Construction and Alterations, Program Access Improvements, and Curb Ramp Requests.

7 **7. New Construction and Alterations**

8 7.1 Throughout the Term of the Consent Decree, the City shall ensure that all Pedestrian
9 Facilities, as well as highways, roadways, and streets that include Pedestrian Walkways, which are
10 newly constructed on or after the Effective Date, include the construction of Accessible Curb Ramps,
11 as required by 28 C.F.R. § 35.151(a) and the 2013 DOJ/DOT Alteration Guidance.

12 7.2 Throughout the Term of the Consent Decree, whenever the City Alters its Pedestrian
13 Facilities, roadways, highways, and crossings, it will remediate existing but non-Compliant Curb
14 Ramps to be Accessible along the sidewalks adjacent to the Alteration and/or construct new Accessible
15 Curb Ramps where they are lacking, as required by 28 C.F.R. § 35.151(b), except where the City can
16 demonstrate that the construction of Accessible Curb Ramps is Technically Infeasible or not possible
17 due to Structural Impracticability. In any such circumstance where the construction of an Accessible
18 Curb Ramp is Technically Infeasible or not possible due to Structural Impracticability, the subject curb
19 ramp shall be Accessible to the maximum extent feasible, physical and site constraints shall be
20 addressed with alternative curb ramp designs, and the location of the alternative ramp shall be recorded
21 in the City's curb ramp database, or an alternate database.

22 7.3 Throughout the Term of the Consent Decree, whenever the City newly constructs or
23 alters Pedestrian Facilities, or adjacent construction projects obstruct the pedestrian right of way, the
24 City shall ensure that accessible temporary routes are provided through and around such projects with
25 appropriate signage directing persons with Mobility Disabilities to such accessible temporary routes.

26 7.4 Throughout the Term of the Consent Decree, the City shall ensure that all third-party
27 construction, alteration, and development projects that include New Construction or Alterations of
28

1 Pedestrian Facilities that require City permits or approvals within the City are performed in compliance
2 with the terms of this Section.

3 7.5 Nothing in this Consent Decree shall require the City to create crosswalks or designated
4 street crossings where none currently exist.

5 **8. Prioritization of Program Access Improvements**

6 8.1 To the extent practicable, the City shall prioritize the remediation of curb ramps that
7 contain High Priority Curb Ramp Barriers, as set forth in Exhibit B, over those curb ramps that do not
8 contain High Priority Curb Ramp Barriers. Consistent with 28 C.F.R. § 35.150, all Program Access
9 Improvements, including remediation of curb ramps with and without High Priority Curb Ramp
10 Barriers, shall be prioritized in a manner that gives preference to curb ramps that serve the following
11 facilities in the order below:

- 12 a. City government offices and facilities (including the pedestrian rights of way
13 adjacent to facilities owned or operated by the City, and the paths of travel leading from such adjacent
14 pedestrian rights of way to the primary entrances to such facilities);
- 15 b. Transportation corridors;
- 16 c. Hospitals, medical facilities, assisted living facilities and other similar facilities;
- 17 d. Places of public accommodation such as commercial and business zones;
- 18 e. Facilities containing employers; and
- 19 f. Residential neighborhoods.

20 8.2 In instances where installation of any Accessible Curb Ramp that falls within the
21 prioritization criteria set forth in Section 8.1 above, would be Technically Infeasible or Structurally
22 Impracticable, the City shall conduct such installation or repair to be Accessible to the maximum
23 extent feasible, and shall consider the extent to which physical or site constraints can be addressed by
24 an alternative curb ramp design or a raised crosswalk that meets applicable federal and state
25 accessibility standards.

26

27

28

1 8.3 Subject to the foregoing provisions of this Section, the City shall retain complete
2 discretion to determine the means and methods of implementing the Program Access Improvements set
3 forth herein.

4 **9. City Compliance with Funding Source Requirements**

5 Nothing in this Consent Decree shall preclude the City from participating in and accepting
6 funding from governmental programs, such as the United States Department of Urban Development's
7 Community Development Block Grant Program, that require the construction of curb ramps at specific
8 locations within the City.

9 **10. Transition Plan**

10 10.1 As soon as possible, but no later than two years after the Effective Date, the San Jose
11 City Council will be presented with an amended ADA Title II Transition Plan for the City Council's
12 adoption, which will update sections 9 and 10 of the Transition Plan. During this two-year period, the
13 City shall continue to fund and perform curb ramp construction and remediation.

14 10.2 The Transition Plan amendment will include a schedule for Accessible Curb Ramp
15 construction and remediation that is consistent with this Consent Decree. The schedule shall be based
16 upon the prioritization criteria in Section 8 above. To the extent known, the Transition Plan shall take
17 into account locations of planned New Construction or Alterations that trigger the obligation to
18 construct new Accessible Curb Ramps.

19 10.3 The City shall provide a draft of the amendment to the Transition Plan to Plaintiff's
20 Counsel for their review and comment at least thirty (30) days prior to finalizing the Transition Plan
21 amendment for presentation to City Council for adoption. The City will meet and confer with
22 Plaintiff's Counsel about any comments Plaintiff's Counsel have on the Transition Plan amendment,
23 and will give good-faith consideration to such comments. The City shall solicit public comment on the
24 Transition Plan from community members who have Mobility Disabilities.

25 **11. Curb Ramp Request System**

26 11.1 Throughout the Term of the Consent Decree, the City shall maintain a program through
27 which people with Mobility Disabilities may submit requests for the construction and maintenance of
28 Accessible Curb Ramps and the remediation of non-Compliant Curb Ramps ("Curb Ramp Request

1 System”). Funds for the Curb Ramp Request System shall be appropriated every fiscal year. Plaintiff
2 is permitted to utilize this system on behalf of persons with Mobility Disabilities to submit requests for
3 the construction and maintenance of Accessible Curb Ramps and the remediation of non-Compliant
4 Curb Ramps. Curb Ramp Requests may be submitted through an easily locatable form on the City’s
5 website that complies with WCAG, a telephone number, electronic mail, standard mail, and other non-
6 onerous methods for making requests. The request form may require the following information: (i) the
7 requestor’s name, address and other contact information; (ii) a statement that the requestor is a person
8 with a Mobility Disability or is making the request on behalf of a person with a Mobility Disability;
9 (iii) the location of the requested curb ramp; and (iv) the method preferred by the requestor to receive
10 the City’s response to the Curb Ramp Request (e.g., by telephone, by electronic mail or by standard
11 mail).

12 11.2 The City shall document receipt of each Curb Ramp Request, assign each request a
13 specific identification number (or other identifying information), and log the request into a software
14 program or other electronic database that records the requestor’s name and contact information, the
15 date of the request, and the location of the requested curb ramp construction, remediation, or
16 maintenance. Within ten (10) days of receipt, the City shall notify the requestor that his or her request
17 has been received and provide the requestor with the identification number or other identifying
18 information assigned to the request.

19 11.3 The City will use Best Efforts to investigate each request within thirty (30) days of its
20 submission. Requests will be reviewed and investigated in the order received. Upon completion of the
21 investigation, the City shall provide the requestor with an estimated date by which the City expects the
22 Accessible Curb Ramp to be constructed, remediated, or maintained. If the City determines that it is
23 unable to fulfill the Curb Ramp Request by the estimated date, it shall notify the requestor as soon as
24 practicable after such determination, but no later than the estimated date initially provided. The City
25 shall also provide the requestor a revised estimated date by which the City expects the Accessible Curb
26 Ramp to be constructed, remediated, or maintained.

27 11.4 The City shall use Best Efforts to construct each requested Accessible Curb Ramp, or
28 remediate each identified non-Compliant Curb Ramp, within one-hundred twenty (120) days of the

1 submission of the request. If the City is unable to fulfill a Curb Ramp Request within 120 days of
2 submission due to the complete expenditure of the Annual Monetary Commitment for the year in
3 which the request was made, the City shall fulfill the Curb Ramp Request as soon as practicable in the
4 next Annual Monetary Commitment period. Any individual Curb Ramp Request for which the
5 improvements exceed \$100,000 in estimated costs shall be a project subject to public bidding, and
6 shall not be subject to the 120-day timeframe. Curb Ramp Requests shall be addressed in the order
7 received, unless otherwise previously scheduled as part of a planned New Construction or Alteration
8 project to take place within one calendar year of the Request.

9 11.5 In any such circumstance where the construction of an Accessible Curb Ramp requested
10 pursuant to the City's Curb Ramp Request System would be Technically Infeasible or Structurally
11 Impracticable, the subject curb ramp shall be Accessible to the maximum extent feasible, and physical
12 or site constraints shall be addressed by alternative curb ramp designs. If the City determines that
13 construction of a requested curb ramp is Technically Infeasible, the City shall notify the requestor that
14 the subject ramp shall be made Accessible to the maximum extent feasible.

15 11.6 Through the Term of Consent Decree, the City shall maintain a website
16 (<https://www.sanjoseca.gov/index.aspx?NID=2499> &
17 <https://www.sanjoseca.gov/index.aspx?NID=1888>), or an equivalent manner of electronic
18 communication to the general public, which describes the methods for making Curb Ramp Requests
19 and the process and timeline for fulfilling those Requests. The webpage(s) describing the Curb Ramp
20 Request System shall, at a minimum, be available from an easily findable location on the City's
21 Department of Transportation and Customer Service website homepages and shall comply with
22 WCAG.

23 **12. Maintenance**

24 Throughout the Term of Consent Decree, the City shall maintain all Accessible Pedestrian
25 Facilities over which it has responsibility, ownership or control so that those facilities are readily
26 accessible to and usable by persons with Mobility Disabilities, except for isolated or temporary
27 interruptions in access due to maintenance or repairs. In circumstances where Accessible Curb Ramps
28 are not available due to maintenance or repairs, the City shall provide an alternative accessible route,

1 which may be a marginally longer route, and shall identify that alternative route on signage at the
2 subject location.

3 **13. Reporting**

4 13.1 On an annual basis and by the end of the second quarter of each fiscal year of the
5 Consent Decree, the City will provide a written Annual Report to Class Counsel regarding the status of
6 the City's compliance with the terms of the Consent Decree. The Annual Report shall include
7 summary information detailing the number of Accessible Curb Ramps constructed and/or remediated
8 and their locations, and the number and locations of Accessible Curb Ramps constructed and/or
9 remediated via the Curb Ramp Request System. Each of the reports shall include the following
10 information, if applicable to the reporting period: (a) dollars appropriated for Accessible Curb Ramps
11 during the reporting period; (b) dollars expended for Accessible Curb ramps during the reporting
12 period; (c) the number of missing curb ramps constructed during the reporting period by City forces
13 and third parties to the extent known by the City; (d) the number of High Priority Curb Ramp Barriers
14 remediated during the reporting period by City forces and third parties to the extent known by the City;
15 (e) the number of Low Priority Curb Ramp Barriers remediated during the reporting period by City
16 forces and third parties to the extent known by the City; (f) a description of the status of all pending
17 Curb Ramp Requests received by the City during the reporting period, including applicable response
18 times; (g) the number of non-compliant curb ramps constructed to the maximum extent feasible, or not
19 constructed, due to Technical Infeasibility or Structural Impracticability.

20 13.2 Additionally, the City shall ensure that Plaintiff has access to the GIS Database, or
21 equivalent databases, upon Plaintiff's reasonable request throughout the Term of the Consent Decree.

22 13.3 Within thirty (30) calendar days of City's issuance of the Annual Report to Class
23 Counsel, if so needed, Class Counsel may request to meet with the City via telephone or
24 videoconference, or if reasonable, in person, to discuss the City's efforts to implement the Consent
25 Decree and attempt to resolve any disputes.
26
27
28

1 **14. Monitoring**

2 Throughout the Term of the Consent Decree, the City shall notify Plaintiff and Class Counsel
3 of any changes to the City's drawings and/or designs regarding Accessible Curb Ramps, and shall
4 provide Plaintiff and Class Counsel with any updated drawings and/or designs regarding Accessible
5 Curb Ramps. Plaintiff and Class Counsel may also inspect work being done in the City's pedestrian
6 rights of way to construct Accessible Curb Ramps and remediate non-Compliant Curb Ramps in order
7 to monitor compliance with the Consent Decree. The City will also make its survey database and curb
8 ramp construction database available to Plaintiff and Class Counsel for their review upon reasonable
9 request. Notwithstanding the foregoing, any review by Plaintiff and/or Class Counsel shall be
10 undertaken in a manner to assure it will not unreasonably interfere with the City's operations.

11 **15. Settlement Approval Process**

12 15.1 This Consent Decree will be subject to approval by the District Court. However,
13 nothing in this Consent Decree will be deemed to authorize the District Court to change or modify any
14 of its terms. Any change, modification or rejection of any of the provisions of this Consent Decree by
15 the District Court or any other court will constitute a material modification of this Consent Decree, will
16 prevent the Judgment from becoming final, and will give any Party the right to terminate this Consent
17 Decree in its entirety.

18 15.2 Within ten (10) days of circulating the fully executed Consent Decree, Plaintiff will file
19 his Complaint in the United States District Court for the Northern District of California ("*Lashbrook*
20 *Action*"). The Parties will then jointly move the court for preliminary approval of this Consent Decree,
21 certification of the Settlement Class as defined in Section 2.19 of this Consent Decree, appointment of
22 Class Counsel and Plaintiff Lashbrook to represent the Settlement Class, and approval of the form and
23 content of notice (substantially in the form attached to this Consent Decree as Exhibit C) and a plan for
24 distribution of notice to the Settlement Class. Along with their joint motion for preliminary approval,
25 the Parties will submit the proposed Preliminary Approval Order attached to this Consent Decree as
26 Exhibit D (the "Preliminary Approval Order").

1 15.3 The Parties agree that the Settlement Class will be certified in accordance with the
2 standards applicable under Rule 23(b)(2) of the Federal Rules of Civil Procedure and that, accordingly,
3 no Settlement Class member may opt out of any of the provisions of this Consent Decree.

4 15.4 Following the District Court's issuance of the Preliminary Approval Order, the Parties
5 will circulate the Notice of Settlement, advising the members of the Settlement Class of the terms of
6 the proposed Consent Decree and their right to object to the proposed Consent Decree. This Notice
7 will be published as follows:

8 a. Within thirty (30) days after the District Court has issued the Preliminary
9 Approval Order, the City will cause Notice of the Settlement to be published once each week for four
10 (4) consecutive weeks in The San Jose Mercury News. The City will also cause Notice of the
11 Settlement to be published in additional publications as the District Court may order.

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

19 c. Within twenty (20) days after the District Court has issued the Preliminary
20 Approval Order, the City will cause a copy of the Notice of Settlement to be posted and remain posted
21 on the City's official website (www.sanjoseca.gov) for four (4) consecutive weeks. The website will
22 also make a copy of the Notice of Settlement available in English, Spanish, and Vietnamese, and in an
23 accessible electronic format that can be recognized and read by software commonly used by
24 individuals with visual impairments to read web pages. All pages or content on these websites that are
25 part of the process for accessing the information in the Notice of Settlement will comply with WCAG.
26 The City will pay the costs for the publication of the Notice.

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

4 e. Within twenty (20) days after the District Court has issued the Preliminary
5 Approval Order, each firm making up Class Counsel will post on its website a copy of the Notice of
6 Settlement in English, Spanish, and Vietnamese, and in an accessible electronic format that can be
7 recognized and read by software commonly used by individuals with visual impairments to read web
8 pages. In addition, the websites will provide information about how Settlement Class Members may
9 obtain a copy of the Consent Decree. All pages or content on the websites that are part of the process
10 for accessing the information in the notice will comply with WCAG.

11 15.5 Prior to the fairness hearing, and as directed by the District Court, Plaintiff will file a
12 motion for an award of attorneys' fees, expenses and costs, and a motion for a service award of \$5,000
13 to Plaintiff Lashbrook. The City has agreed not to oppose Plaintiff's requested service award of
14 \$5,000, however, it reserves the right to oppose Plaintiff's motion for attorneys' fees, expenses, and
15 costs, as set forth in Section 20. Plaintiff will also file a motion requesting that the District Court
16 schedule and conduct a fairness hearing to decide whether the Court will grant final approval of the
17 Consent Decree, as set forth below.

18 15.6 At the fairness hearing, the Parties will jointly move for entry of the Judgment
19 (substantially in the form as attached to this Consent Decree as Exhibit F) providing for: (i) final
20 approval of this Consent Decree as fair, adequate, and reasonable; (ii) final certification of the
21 Settlement Class for settlement purposes only; (iii) final approval of the form and method of notice of
22 the Judgment to the Settlement Class; (iv) final approval of the appointment of Class Counsel for the
23 Settlement Class; (v) final approval of the appointment of Plaintiff Lashbrook as class representative of
24 the Settlement Class; (vi) final approval of the release of the City from the Released Claims, defined in
25 Section 18, below; (vii) final approval of an order that the Settlement Class members will be enjoined
26 and barred from asserting any of the Released Claims against the City following entry of Judgment and
27 up to and including the completion of the Term; (viii) the Parties and all members of the Settlement
28

1 Class to be bound by the Judgment; and (ix) the District Court's retention of jurisdiction over the
2 Parties to enforce the terms of the Judgment throughout the Term of this Consent Decree.

3 15.7 Members of the Settlement Class will have an opportunity to object to the proposed
4 Consent Decree but may not opt-out. The Parties will request that the District Court order the
5 following procedures for assertion of objections, if any, to the Consent Decree:

6 a. Any Settlement Class member may object to this Consent Decree by filing,
7 within forty-five (45) calendar days of the commencement of the issuance of the Notice to the
8 Settlement Class, written objections with the District Court.

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

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

16 15.8 The Parties will take all procedural steps regarding the fairness hearing that may be
17 requested by the District Court and will otherwise use their respective Best Efforts to consummate the
18 settlement embodied in this Consent Decree, and to obtain approval of this Consent Decree, and entry
19 of the Judgment.

20 15.9 The Parties agree that, upon final approval, the District Court will enter the Judgment
21 under Rule 54(b) of the Federal Rules of Civil Procedure (substantially in the form attached to this
22 Consent Decree as Exhibit F) dismissing the *Lashbrook* Action with prejudice, subject to the District
23 Court retaining jurisdiction to resolve any Dispute regarding compliance with this Consent Decree that
24 cannot be resolved through the Dispute Resolution Process set forth below, and to rule on Plaintiff's
25 motion for reasonable attorneys' fees and costs.

26 15.10 The City will not assert, after the Judgment has become final, that the District Court
27 lacks jurisdiction to enforce the terms of this Consent Decree, or raise any jurisdictional defense to any
28 enforcement proceedings permitted under the terms of this Consent Decree.

1 15.11 Should the District Court deny the Parties' request to enter the Judgment, should this
2 Consent Decree not receive final approval by the District Court for any reason, or should this Consent
3 Decree not become final for any reason in accordance with its terms: (i) this Consent Decree will be
4 null and void and of no force and effect; (ii) nothing in this Consent Decree will be deemed to
5 prejudice the position of any of the Parties with respect to any matter; and (iii) neither the existence of
6 this Consent Decree, nor its contents, will be admissible in evidence, referred to for any purpose in any
7 litigation or proceeding, or be deemed an admission by the City of any fault, wrongdoing or liability.

8 15.12 This Consent Decree, upon final approval, will be binding upon the City, Plaintiff, and
9 all Settlement Class members and, to the extent specifically set forth in this Consent Decree, upon
10 Class Counsel; will extinguish all Released Claims; and will constitute the final and complete
11 resolution of all issues addressed herein. This Consent Decree is the complete and final disposition
12 and settlement of any and all Released Claims.

13 **16. Dispute Resolution**

14 16.1 If any Party believes that a dispute exists relating to any violation of or failure to
15 perform any of the provisions of this Consent Decree, it shall notify the other Party in writing and
16 describe the alleged violation or failure to perform with particularity. The Party alleged to have
17 committed the violation or failure to perform shall provide a written response within ten (10) business
18 days of receipt of such notice, and shall have a period of thirty (30) days to cure the alleged violation
19 or failure to perform. In the event the alleged violation cannot reasonably be cured within thirty (30)
20 days, the Parties shall meet and confer to attempt to agree on an appropriate period of time required to
21 cure the alleged violation or failure to perform. If the Party alleging a violation or failure to perform
22 maintains that the violation or failure to perform has not been cured, the Parties shall meet and confer,
23 in person or by telephone, and attempt to resolve the dispute on an informal basis for a period of at
24 least thirty (30) days. The Parties shall exchange relevant documents and/or other information and
25 engage in informal discovery in an attempt to resolve the issues in dispute. As part of the meet and
26 confer process under Section 27, such informal discovery may also include, but is not limited to,
27 interviewing witnesses and experts and exchange of additional information or supporting
28

1 documentation. Any disagreement about information to be provided shall be handled pursuant to
2 Sections 16.2 to 16.4.

3 16.2 If the Parties are unable to resolve a dispute through the meet and confer process
4 described in Section 16.1 above, the Parties shall mediate the dispute. The Parties shall have thirty
5 (30) days to jointly select a mediator. The mediation shall be conducted in the manner determined by
6 the mediator, and the Parties shall engage in good faith efforts to resolve the dispute through such
7 mediation.

8 16.3 If the Parties are unable to resolve a dispute regarding either Party's performance under
9 the Consent Decree through the mediation process described in the Section 16.2 above, either Party
10 may provide the other with written notice of its intent to enforce the Consent Decree. Thereafter,
11 either Party may file a motion with the District Court to enforce the Settlement Consent Decree.

12 16.4 The terms of this Consent Decree shall be construed pursuant to the laws of the State of
13 California with respect to principles of common law contract interpretation, and in accordance with the
14 substantive law of ADA, Section 504, and Section 11135, as applicable.

15 **17. Named Plaintiff Payment**

16 In exchange for the Release of Claims set forth in Section 19, below, and for all services he
17 rendered to the Settlement Class, and conditioned upon the District Court granting final approval of the
18 Consent Decree as well as Plaintiff's application for a service award to Plaintiff Lashbrook in the
19 amounts set forth in this Section, within thirty (30) days of the Effective Date, the City will pay
20 Plaintiff Lashbrook \$50,000. This payment shall be in full and final settlement of Plaintiff
21 Lashbrook's claims that are being released in Sections 18 & 19, and represents payment for personal
22 injuries sustained by Plaintiff Lashbrook while travelling on the City's Pedestrian Walkways and curb
23 ramps.

24 **18. Release of Class Claims**

25 Effective upon entry of judgment on final approval of the Consent Decree by the District Court
26 and in consideration for the City's commitments set forth in the Consent Decree, Plaintiff and Class
27 Members, on behalf of themselves and their respective heirs, assigns, successors, executors,
28 administrators, agents, and representatives ("Releasing Parties") will, upon the Effective Date, fully

1 and finally release, acquit, and discharge the City from any and all claims, allegations, demands,
2 charges, complaints, actions, lawsuits, rights, liabilities, losses, injuries, obligations, disputes and
3 causes of action of any kind, and whether known or unknown, suspected or unsuspected, asserted or
4 unasserted, or actual or contingent, for injunctive, declaratory, or other non-monetary relief, however
5 described, that were brought, could have been brought, or could be brought now or in the future by the
6 Releasing Parties relating to or arising from any of the City's alleged actions, omissions, incidents, or
7 conduct related to the construction, remediation, repair, or maintenance of curb ramps in the City's
8 pedestrian right of way at any time prior to the Effective Date and through the end of the Term of
9 Consent Decree (the "Released Claims"). Such Released Claims, however, shall not include any
10 claims to enforce the terms of the Consent Decree, any claims for relief arising from the City's
11 violation of any term of the Consent Decree, or any claims related to monetary damages, personal
12 injuries, or property damage, except as set forth in Section 19, below. Such Released Claims exclude
13 any claims based on or arising from missing or non-Compliant curb ramps that remain in existence
14 after the expiration of the Term of Consent Decree. In addition, as explained in the Recitals above, the
15 Releases contained herein only cover curb ramps on the City's street segments with Pedestrian
16 Walkways and do not apply to components of the City's sidewalk system other than curb ramps.

17 **19. Release of Plaintiff Lashbrook's Damages Claims**

18 In addition to the Released Claims set forth in Section 18, Plaintiff Lashbrook also releases the
19 City from any and all claims arising at any time prior to the Effective Date for monetary relief relating
20 to or arising from any of the City's alleged actions, omissions, incidents, or conduct related to the
21 installation, remediation, repair, or maintenance of curb ramps in the City's pedestrian right of way.
22 Section 1542 of the Civil Code of the State of California provides as follows:

23 **"A general release does not extend to claims that the creditor or**
24 **releasing party does not know or suspect to exist in his or her favor at**
25 **the time of executing the release and that, if known by him or her,**
would have materially affected his or her settlement with the debtor
or released party."

26 Plaintiff represents that Civil Code Section 1542 has been read and reviewed with counsel and
27 understood, and that he hereby waives any and all present and future rights and benefits under Section
28 1542 to the extent it would permit claims relating to, arising out of, or any way connected to the claims

1 released by Plaintiff based on facts found to be different from the facts believed to be true at the time
2 this Consent Decree was executed.

3 **20. Attorneys' Fees, Costs & Expenses Up to the Effective Date**

4 Within thirty (30) days of the Effective Date, and conditioned upon the District Court granting
5 final approval of the Consent Decree as well as Plaintiff's application for an award of attorney's fees,
6 expenses, and costs in the amounts set forth in this Section, the City shall deliver payment in the
7 amount of \$734,627.50 (\$722,327.50 in fees and \$12,300 in costs) to Plaintiff's Counsel for the full
8 amount of their reasonable attorneys' fees, costs, and expenses in connection with this matter incurred
9 up to the Effective Date. No additional amounts shall be owed to Plaintiff or their Counsel in
10 attorney's fees, expenses, or costs for time or expenses incurred up to the Effective Date.

11 **21. Attorneys' Fees, Expenses and Costs for Implementing the Consent Decree.**

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

16 21.1 On June 30, 2021 and annually thereafter during the Term of the Consent Decree, Class
17 Counsel shall submit to the City a statement of reasonable attorneys' fees, expenses, and costs incurred
18 during the prior 12-month period for performing all work reasonably necessary to monitor, implement,
19 and administer the Consent Decree, including reviewing the Annual Report provided for in Section
20 13.1 for confirmation that the City has met its obligations under this Consent Decree subject to a
21 maximum amount of \$75,000 per year for years 2020 through 2022, and a maximum amount of
22 \$50,000 per year for years 2023 through the expiration of the Term of the Consent Decree ("Annual
23 Monitoring Fees Cap"). Class Counsel shall not seek more than \$10,000 per year in attorneys' fees for
24 the limited tasks of reviewing the Annual Report and any brief telephonic conferences necessary to
25 confirm compliance with the Consent Decree. Any required follow-up and/or meet and confer work
26 will be subject to the Annual Monitoring Fees Cap and not the \$10,000 limit. The Annual Monitoring
27 Fees Cap and the \$10,000 limit for review of the Annual Report are stated in 2019 dollars, and shall be
28 adjusted annually based on the Consumer Price Index for the San Francisco Area as calculated by the

1 United States Bureau of Labor Statistics. Where Plaintiff's reasonable attorneys' fees, costs, and
 2 expenses are less than the Annual Monitoring Fees Cap for 2020 through 2022, the remainder shall be
 3 set aside for use in years 2023 and 2024 of this Consent Decree ("Banked Remainder") during which
 4 Plaintiff's attorneys' fees, costs, and expenses exceed the Annual Monitoring Fees Cap. The Annual
 5 Fees Cap and the Banked Remainder available for use in years 2023 and 2024 shall be no more than
 6 \$75,000 for each of those two years. Each statement submitted to the City pursuant to this Consent
 7 Decree shall be supported by a description of services by date and by biller.

8 21.2 The City shall review each statement submitted, and shall pay those amounts it
 9 determines in good faith were reasonably incurred by Class Counsel within sixty (60) days of the date
 10 the City receives each such statement. Any objections or disputes regarding the statement shall be
 11 handled pursuant to the Dispute Resolution procedure set forth in Section 16 of this Consent Decree.

12 21.3 The City shall pay Class Counsel their reasonable attorneys' fees, expenses, and costs
 13 incurred between the Effective Date and the expiration of the Term of Consent Decree for performing
 14 all work reasonably necessary to resolve Disputes under Sections 16 and 27 of this Consent Decree.
 15 Class Counsel's attorneys' fees, expenses and costs for Disputes under Section 16 shall be subject to a
 16 maximum amount of \$100,000 per Dispute whereas those for Disputes under Section 27 shall subject
 17 to a maximum amount of \$250,000 per dispute. The \$250,000 and \$100,000 maximum amounts are
 18 stated in 2019 dollars, and shall be adjusted annually based on the Consumer Price Index for the San
 19 Francisco Area as calculated by the United States Bureau of Labor Statistics. Class Counsel shall
 20 provide the City with a statement of reasonable attorneys' fees, expenses, and costs incurred for each
 21 dispute, supported by a description of services by date and by biller. The City shall review each
 22 statement and pay the amounts in compliance with the Section 21.2.

23 21.4 In the event either Party finds that it is necessary to seek resolution of a dispute through
 24 a motion for enforcement before the District Court, the prevailing party shall be entitled to reasonable
 25 attorneys' fees, costs, and expenses in accordance with the standards of the ADA and *Christiansburg*
 26 *Garment Co. v. EEOC*, 434 U.S. 412, 421-22 (1978).

27 **22. Drafting of this Consent Decree**

28

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

6 **23. Voluntary Agreement**

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

13 **24. Binding Effect**

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

16 **25. Authority**

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

20 **26. City Council Approval**

21 The Parties understand and agree that this Consent Decree is subject to review and approval by
 22 the City Council for the City of San Jose, and that the City shall have no obligation hereunder unless
 23 and until such approval is obtained. In the event the City Council for the City of San Jose declines to
 24 approve this Consent Decree, this Consent Decree shall be null and void and all obligations hereunder
 25 shall cease. The Parties shall be returned to the status quo existing on the date this Consent Decree
 26 was signed. The City shall submit this Consent Decree to the City Council as soon as possible after the
 27 Parties' and Parties' Counsel's execution of same, but no later than thirty (30) days after execution.

28 **27. Elimination of Funding Sources**

1 The Parties shall adhere to the following procedures in the event that the following two funding
2 sources are eliminated by local or statewide ballot measure, act of the California State Legislature, or
3 court order: 1) Measure B – City of San Jose – Sales Tax; or 2) the Road Repair and Accountability
4 Act of 2017 (SB 1 – 2017-18 California legislative session).

5 27.1 As early as practicable, the City shall notify Class Counsel of the possibility that it may
6 be unable to appropriate the Annual Monetary Commitment due to the elimination of funding from
7 Measure B or the Road Repair and Accountability Act of 2017. The City shall also notify Class
8 Counsel of the date by which the funding will terminate.

9 27.2 The City shall use Best Efforts to locate alternate funding sources to fulfill the Annual
10 Monetary Commitment. Pursuant to Class Counsel's request, and as soon as practicable thereafter, the
11 City shall generate a written statement identifying potential resources that could be available for use in
12 funding the Annual Monetary Commitment. Consistent with the City's existing budgetary process,
13 any future identified funding sources used to satisfy the Annual Monetary Commitment are subject to
14 the approval of the City Council.

15 27.3 If the Parties are unable to reach agreement on the use of alternate funding sources, the
16 Parties shall attempt to resolve any disputes through the Dispute Resolution process set forth in Section
17 16. The City's obligation to appropriate and expend the Annual Monetary Commitment for future
18 years shall be suspended during the Dispute Resolution process.

19 27.4 If the Parties are unsuccessful in resolving their disputes through the Dispute Resolution
20 process, Plaintiff shall be entitled to conduct discovery pursuant to the Federal Rules of Civil
21 Procedure regarding the City's financial status and ability to appropriate the Annual Monetary
22 Commitment, and may file a motion with the District Court to enforce or modify the Consent Decree.
23 If Plaintiff's motion is denied, or denied in part, Plaintiff, in his sole discretion, may seek court
24 approval to terminate the Consent Decree and litigate Plaintiff's claims on behalf of himself and the
25 currently defined Settlement Class arising from the lack of Accessible curb ramps throughout the
26 City's pedestrian right of way. If litigation is commenced pursuant to this subsection, the City agrees
27 to the following: 1) the currently defined Settlement Class shall be certified pursuant to Federal Rule of
28

Civil Procedure 23(b)(2) for purposes of such future litigation; and 2) the City shall continually maintain and fund the Curb Ramp Request System, as set forth in Section II.11, through at least 2038.

28. Force Majeure

The obligations of the City with respect to constructing or remediating Accessible Curb Ramps at a particular location may also be postponed if the postponement is caused by or attributable to a force majeure (that is, due to acts of God, war, government regulations (other than regulations by the City), terrorism, disaster (including power outages), strikes, civil disorder, government declared fiscal emergency, an emergency beyond the City's control that make it illegal or impossible for the City to perform construction, alteration, or repair work). Under this provision, the City's obligations may be tolled for the period of the force majeure's effect.

29. Paragraph Headings

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

30. Counterparts

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

31. Notices

For Plaintiff:

Linda M. Dardarian
Andrew P. Lee
GOLDSTEIN, BORGES, DARDARIAN & HO
300 Lakeside Drive, Suite 1000
Oakland, CA 94612
510-763-9800

Timothy Fox
CIVIL RIGHTS EDUCATION AND
ENFORCEMENT CENTER
1245 E. Colfax Avenue, Suite 400
Denver, CO 80218
303-757-7901

1 For the City of San Jose:

2 Jon Calegari
3 Office of the City Attorney
4 City of San Jose
5 200 East Santa Clara Street
6 San Jose, CA 95113-1905
7 408-535-1900

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

10 EXECUTED by the Parties as follows:

11 DATED: _____, 2020

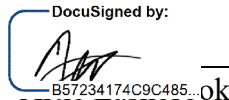
12 THE CITY OF SAN JOSE

13 By: _____

14 Its: _____

15 PLAINTIFF

16 DATED: April 2, 2020

17 By:  _____

18 **APPROVED AS TO FORM:**

19 DATED: _____, 2020

20 GOLDSTEIN BORGEN DARDARIAN & HO

21 By: _____

22 Linda M. Dardarian
23 Attorneys for Plaintiff

24 DATED: _____, 2020

25 CIVIL RIGHTS EDUCATION AND
26 ENFORCEMENT CENTER

27 By: _____

28 Tim Fox
Attorneys for Plaintiff

For the City of San Jose:

Jon Calegari
Office of the City Attorney
City of San Jose
200 East Santa Clara Street
San Jose, CA 95113-1905
408-535-1900

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

EXECUTED by the Parties as follows:

DATED: April 16, 2020

THE CITY OF SAN JOSE

By: /s/ Richard Doyle ^{electronically}
_{signed}

RICHARD DOYLE

Its: City Attorney

PLAINTIFF

DATED: _____, 2020

By: _____
Artie Lashbrook

APPROVED AS TO FORM:

DATED: April 3, 2020

GOLDSTEIN BORGEN DARDARIAN & HO

By: Linda M. Dardarian (APC)
Linda M. Dardarian
Attorneys for Plaintiff

DATED: April 3, 2020

CIVIL RIGHTS EDUCATION AND
ENFORCEMENT CENTER

By: Tim Fox
Tim Fox
Attorneys for Plaintiff

1 DATED: April 15, 2020

THE CITY OF SAN JOSE

2
3 By: /s/ Jon Calegari *electronically*
4 Jon Calegari *signed*
5 Attorneys for the City of San Jose
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28