

**MOTION**

I HEREBY MOVE that Council APPROVE settlement, subject to court approval, of the cases entitled Mark Willits, et al. v. City of Los Angeles, United States District Court Case No. CV10-05782 CBM (RZx), Pineda, et al. v. City of Los Angeles; Los Angeles Superior Court Case No. BC403327, Griffen, et al. v. City of Los Angeles; Los Angeles Superior Court Case No. BC457403, Saundra Carter, et al. v. City of Los Angeles; Los Angeles Superior Court Case No. BC363305 and Nicole Fahmie, et al. v. City of Los Angeles; Los Angeles Superior Court Case No. BC381773, as detailed in the attached term sheet entitled "Willits v. City of Los Angeles Term Sheet as of March 30, 2015" (Item No. 44, Council file No. 11-0573), SUBJECT TO THE APPROVAL OF THE MAYOR.

PRESENTED BY \_\_\_\_\_  
PAUL KREKORIAN  
Councilmember, 2nd District

SECONDED BY \_\_\_\_\_  
HERB WESSON  
Councilmember, 10th District

April 1, 2015

CF 11-0573

Willits v. City of Los Angeles  
Term Sheet as of March 30, 2015

**1. Program Access Fund**

The settlement shall include an annual commitment of \$31 million per year for 30 years (\$930 million), to be used for program access improvements and barrier removal, excluding new construction and alterations, commencing on the date the Judgement becomes final (the "Compliance Period").

The City will have the discretion to determine the revenue sources it will use to meet the terms of this agreement.

The City will maintain the present value of the \$31 million by adjusting the amount of the commitment by 15.3% every 5 years. The annual commitment will be as follows:

Years 1-5:	\$	31,000,000 per year
Years 6-10:	\$	35,743,000 per year
Years 11-15:	\$	41,211,679 per year
Years 16-20:	\$	47,517,066 per year
Years 21-25:	\$	54,787,177 per year
Years 26-30:	\$	63,169,615 per year
<b>Grand Total:</b>	<b>\$</b>	<b>1,367,142,684</b>

During the 2014-15 Fiscal Year the City will spend \$11 million to make Program Access Improvements (or for other expenditures to implement the Settlement Agreement). Therefore, the City may comply with its obligation for the first year by spending \$20 million.

The amounts set forth are the targeted commitment of funds. If the total commitment is not met each year, the uncommitted portion of that year's target will be utilized in subsequent years as soon as practical, but within no longer than the next three fiscal years. Excess commitments in any given year will be credited toward the target commitment in future years. In no fiscal year (other than the first year) shall the City spend less than \$25 million as its Annual Commitment.

**2. Prioritization of Access Improvements**

Pedestrian facilities shall be prioritized as follows:

1. City of Los Angeles government offices and facilities;
2. Transportation corridors;
3. Hospitals, medical facilities, assisted living facilities and other similar facilities;
4. Places of public accommodation such as commercial and business zones;
5. Facilities containing employers; and,
6. Other areas, such as residential neighborhoods and undeveloped areas.

Highest priority will go to the Program Access Improvements needed to address the most severe access barriers and the most significant safety hazards for class members, based on 2010 ADA Standards.

Access work with respect to City government offices shall be prioritized with the goal of completing such work within the first five years of the Compliance Period, if feasible.

**3. Access Request Program -**

- For the first year of the Compliance Period, 20% (equal to \$6.2 million) of the annual commitment will be allocated to the Access Request Program. Thereafter, the City and Class Counsel will meet and confer to discuss if the allocation should be changed to be more responsive to community need. Requests shall be reviewed and investigated in the order received.
- The City will use its best efforts to investigate requests within 30 days and, if appropriate, schedule repairs as resources allow within 120 days.
- Individual requests for program access fixes will be prioritized in residential neighborhoods or that are necessary to provide access to bus stops or other forms of public transit.

**4. Curb Ramps**

For the first year of the Compliance Period five million dollars will be allocated to curb ramp installation or remediation. Thereafter, the City and Class Counsel will meet and confer to discuss if the allocation should change to be more responsive to community need.

**5. Site Constraints, Technical Infeasibility, and Unusually Expensive Remediation**

At the discretion of the City, unusually expensive repairs may be addressed in connection with larger, street-related capital projects. Work on difficult sites may be postponed if there is an alternative accessible route within no more than 200 feet, to the maximum extent feasible. Locations at which site constraints make compliance with applicable design standards impracticable may be made compliant with the standards to the maximum extent feasible.

**6. Exemption for Program Access Improvements**

The City will be exempted from any obligation to perform a Program Access Improvement at a particular location if:

- There exist barriers to remediation that are controlled by third parties; and/or,
- The location requires an improvement that is required to be performed by a third party pursuant to a lawfully-issued permit.

**7. Support Costs**

The City will only charge incremental costs that the City will incur as a result of implementing the program, which would not otherwise be incurred if the program did not exist.

**8. New Construction and Alterations**

Otherwise, as previously agreed, new construction and alterations within the meaning of 28 C.F.R. § 35.151 will not count toward the \$31 million, including work such as resurfacing or repaving, street widening and similar new construction and alterations.

## 9. Sidewalks of Other Governmental Agencies

The settlement will not include work on the pedestrian rights-of-way immediately adjacent to the facilities of other governmental agencies, such as the United States, State of California, Los Angeles Unified School District, County of Los Angeles, MTA, CalTrans, etc.

Within two years, the City will identify the locations of the Pedestrian Facilities that the City believes are immediately adjacent to such governmental facilities.

## 10. Other Provisions

- **Trees** - The purpose of the program is to provide accessibility to sidewalks. However, trees that are the cause of sidewalk barriers will be preserved to the extent feasible. Tree removals may only be removed in accordance with the Los Angeles Municipal Code, and all other applicable City codes, rules, and policies relative to trees.
- **Methodology** - The City will retain the discretion to use whatever technology, methodology, tools, equipment and/or materials that are available to further advance the program.
- **Access Survey** - The settlement will not include a mandatory access survey.
- **Access and Construction Database** - The settlement shall include the implementation of sidewalk and curb ramp asset management system.
- **ADA Coordinator** - The settlement shall include the employment of an ADA Coordinator for the Pedestrian Rights-of-Way, who must be a licensed architect or engineer, with the requisite credentials, such as CASP certification, and no less than five years' experience, and employed by the City within the first 12 months after commencement of the Compliance Period.
- **Reporting** - The settlement shall include reporting requirements. For the first five years, the ADA Coordinator will be responsible for reporting in writing, two times each fiscal year on the status of the City's compliance with the terms of the Settlement Agreement. After that time, such reports shall be provided on an annual basis. A final report will be submitted within six months of the conclusion of the Compliance Period detailing the completion of all physical access barrier removal projects undertaken by the City.
- **Monitoring and Fees** – During the first five years of the Compliance Period, Plaintiffs may conduct semi-annual inspections of the City's drawings and/or designs regarding the pedestrian rights of way, as well as the City's pedestrian rights of way and facilities to monitor compliance. After such time, during the Compliance Period, expert inspections of drawings and/or designs and/or the condition of the pedestrian right of way may be conducted annually. Plaintiffs' monitoring fees, costs and expenses, exclusive of any disputes resolved by the District Court, shall be paid out of the Annual Commitment and be capped as follows:

Years 1-5:	\$	250,000 per year
Years 6-10:	\$	135,000 per year
Years 11-15:	\$	166,177 per year
Years 16-20:	\$	191,602 per year
Years 21-25:	\$	220,917 per year
Years 26-30:	\$	254,716 per year
Maximum Total:	\$	6,092,060

All requests for reasonable and necessary monitoring fees must be submitted to the City in writing and shall be subject to the same standard rules and procedures applicable to the City's payment of attorneys' fees and costs to outside counsel.

- **Dispute Resolution** - The parties shall meet and confer regarding any dispute, attempt mediation of the dispute, and if mediation is unsuccessful, the parties may submit the issue(s) to the District Court for resolution. The City's attorneys' fees and costs incurred in any such motion may be paid from the annual \$31 million commitment for program access except that the Court may deny the City such payment and may further award to Class Counsel their reasonable attorneys' fees and costs (which the City shall be responsible for paying without reimbursement from the annual \$31 million commitment for program access) in the event that the Court determines that Plaintiffs are the prevailing parties in accordance with the prevailing party standards under the ADA.
- **First Year Grace Period** – For a period of one year following commencement of the Compliance Period, the Plaintiffs agree not to sue, provide notice of violation, or initiate any legal proceeding, or otherwise seek to enforce any rights based upon or as a result of any alleged failure to perform any provision of the Settlement Agreement by the City.
- **Release** - The settlement shall release the class claims for declaratory and injunctive relief only for members of the Plaintiff class certified by Judge Marshall pursuant to Federal Rule of Civil Procedure 23(b)(2). The settlement herein resolves the litigation between the Plaintiffs and the Defendant in *Willits v. City of Los Angeles* in the District Court and any pending appeals in the *Willits* case.
- **Recitals** - The joint or stipulated proposed judgment shall contain recitals stating that:
  - a) The District Court made no liability findings in this case;
  - b) The District Court made no findings that the City has, in its handling of curbs, sidewalks, and pedestrian rights of way located in the City of Los Angeles: (i) acted intentionally to discriminate against persons with mobility disabilities; (ii) acted with reckless disregard of the rights of persons with mobility disabilities; or (iii) acted in any manner that would support a finding that the City is liable for damages under Title II of the Americans with Disabilities Act, or under Section 504 of the Rehabilitation Act of 1973; and,
  - c) The District Court made findings that its opinion regarding the availability of an undue burden defense under Section 504 of the Rehabilitation Act of 1973: (i) addressed a novel issue of law; (ii) the District Court certified the issue for interlocutory appeal; (iii) the issue was fully briefed at the time of settlement; (iv) the issue is an important one for recipients of federal financial assistance and persons with mobility disabilities to understand their respective rights and obligations under Section 504 of the Rehabilitation Act of 1973; (v) the District Court's opinion on this point is not binding on any other court.
- **Service Awards** - The City of Los Angeles shall pay service awards to each of the individual class representatives in *Willits* [REDACTED], pay a service award to organizational Plaintiff CALIF [REDACTED] for services rendered to the *Willits* class, and [REDACTED] [REDACTED] to each of the *Willits* Plaintiffs as compensation for alleged physical injuries and damages as alleged in the *Griffin* Action.

- **Class Notice** - The City shall, publish notice of the Settlement Agreement in the Los Angeles Times, the Los Angeles Daily News, and La Opinion, in addition to its website. With respect to all such costs of providing notice, the City shall receive reimbursement for such costs from the \$31 million annual commitment for program access. Class Counsel shall also provide notice of the Settlement Agreement to ten organizations that serve the interest of disabled persons residing in the City and establish a website where a copy of the Notice of Settlement will be available. Class Counsel's costs for noticing will be reimbursed from the Annual Commitment.
- **Attorney's Fees and Costs** – The City shall pay Class Counsel \$13.3 million as reasonable attorney's fees and \$1.7 million for costs and expenses, for a total of \$15 million. These fees must be paid within 30 days of District Court's final approval of the Settlement Agreement and the award of attorney's fees.
- **Press Release** - Counsel for the parties shall prepare a joint written press release regarding the Settlement Agreement for issuance immediately after the final Settlement Agreement is executed.