

## SETTLEMENT AND RELEASE AGREEMENT

The parties to this Settlement and Release Agreement (the “Agreement”), are Fix the City, Inc., a California nonprofit corporation, having its principal place of business at 10940 Wilshire Boulevard, Suite 2000, Los Angeles, CA (“FTC”), and the City of Los Angeles, a municipal corporation and charter city, organized and existing under the laws of the State of California and the Los Angeles City Charter, which includes the Los Angeles City Council (“CITY”). The CITY, together with FTC, are referred to herein as the “Parties”, and each, a “Party”. This Agreement is effective as of the latest date written next to the signature of either Party to this Agreement (the “Effective Date”).

### 1. RECITALS

The purpose of this Agreement is to settle two actions filed by FTC against the CITY in the Los Angeles Superior Court in connection with the CITY’s adoption of Mobility Plan 2035, an update to the circulation element of the CITY’s General Plan, as well as certification of the Environmental Impact Report regarding Mobility Plan 2035. These actions are entitled *Fix the City, Inc. v. City of Los Angeles*, Los Angeles County Superior Court Case Number BS157831 (“Civil Action 1”), and *Fix the City, Inc. v. City of Los Angeles*, Los Angeles County Superior Court Case Number BS159574 (“Civil Action 2”) (together, the “Mobility Plan Litigation”).

The Parties desire to settle the Mobility Plan Litigation and to fully and finally settle any and all matters between them arising out of, or relating to, the Mobility Plan Litigation, or any claims or potential claims relating to the City’s adoption of Mobility Plan 2035 based on events or facts occurring prior to the date of this Agreement, without any further court proceedings, trial, appeal or adjudication of any issue of fact or law, and without any admission by any Party with respect to such matters, except as otherwise provided herein.

In consideration of the mutual execution of this Agreement and the releases and promises made herein by the Parties, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### 2. AGREEMENT

(a) As of the Effective Date, and continuing through the duration of, this Agreement, the CITY shall abide by the terms of the Mobility Plan Outreach Protocol, attached hereto as “**Exhibit A.**” The Mobility Plan Outreach Protocol will apply only to projects initiated on or after the Effective Date of this Agreement.

(b) The CITY will also pay to Plaintiff reasonable attorneys’ fees for work performed on Civil Action 1 and Civil Action 2 in the amount of One Hundred and

Seven Thousand Dollars (\$107,000). This payment (the “Settlement Funds”) will be paid to Strumwasser & Woocher LLP Client Trust Account within [10] days after the Effective Date of this Agreement. Strumwasser & Woocher’s Tax Identification Number is 954301444.

C. Within five (5) business days of receipt of the Settlement Funds, Plaintiff shall file Requests for Dismissal with Prejudice of Civil Action 1 and Civil Action 2 in their entirety.

### **3. MUTUAL RELEASE**

(a) In consideration of the covenants, agreements, and undertakings of the Parties under this Agreement, effective upon the CITY’s payment of the Settlement Funds and dismissal of Civil Action 1 and Civil Action 2 by FTC, in accordance with Sections 2(B) and 2(C) of this Agreement, each Party, on behalf of itself and its respective present and former parents, subsidiaries, affiliates, officers, directors, shareholders, managers, members, successors, and assignees (collectively, “Releasers”) hereby releases, waives, and forever discharges the other Party and its respective present and former, direct and indirect, parents, subsidiaries, affiliates, employees, officers, directors, shareholders, managers, members, agents, representatives, permitted successors, and permitted assignees (collectively, “Releasees”) of and from any and all actions, causes of action, suits, losses, liabilities, rights, debts, dues, sums of money, accounts, reckonings, obligations, costs, expenses, liens, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims, and demands, of every kind and nature whatsoever, whether now known or unknown, foreseen or unforeseen, matured or unmatured, suspected or unsuspected, in law, admiralty, or equity (collectively, “Claims”), which any of such Releasers ever had, now have, or hereafter can, shall, or may have against any of such Releasees for, upon, or by reason of any matter, cause, or thing whatsoever through the date of this Agreement, arising out of or relating to the Agreement and Claims relating to, created by, or otherwise arising out of the Mobility Plan Litigation or the CITY’s adoption of Mobility Plan 2035.

(b) Each Releaser understands that it may later discover Claims or facts that may be different from, or in addition to, those that it or any other Releaser now knows or believes to exist regarding the subject matter of the release contained in this Section 3, and which, if known at the time of signing this Agreement, may have materially affected this Agreement and such Party’s decision to enter into it and grant the release contained in this Section 3. Nevertheless, the Releasers intend to fully, finally, and forever settle and release all Claims that now exist, may exist, or previously existed, as set out in the release contained in this Section 3, whether known or unknown, foreseen or unforeseen, or suspected or unsuspected, and the

release given herein is and will remain in effect as a complete release, notwithstanding the discovery or existence of such additional or different facts. The Releasors hereby waive any right or Claim that might arise as a result of such different or additional Claims or facts. The Releasors have been made aware of, and understand, the provisions of California Civil Code Section 1542 ("Section 1542"), which provides:

**"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."**

The Releasors expressly, knowingly, and intentionally waive any and all rights, benefits, and protections of Section 1542 and of any other state or federal statute or common law principle limiting the scope of a general release.

#### **4. REPRESENTATIONS AND WARRANTIES.**

Each Party hereby represents and warrants to the other Party that:

(a) It has the full right, power, and authority to enter into this Agreement, to grant the release contained herein and to perform its obligations hereunder.

(b) The execution of this Agreement by the individual whose signature is set out at the end of this Agreement on behalf of such Party, and the delivery of this Agreement by such Party, have been duly authorized by all necessary corporate action on the part of such Party.

(c) This Agreement has been executed and delivered by such Party and (assuming due authorization, execution, and delivery by the other Party hereto) constitutes the legal, valid, and binding obligation of such Party, enforceable against such Party in accordance with its terms.

(d) It (i) knows of no Claims against the other Party relating to or arising out of the Agreement that are not covered by the release contained in Section 3 and (ii) has neither assigned nor transferred any of the Claims released herein to any person or entity and no person or entity has subrogated to or has any interest or rights in any Claims.

**EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS SECTION 4 OF THIS AGREEMENT, (A) NEITHER PARTY HERETO NOR ANY PERSON ON SUCH PARTY'S BEHALF HAS MADE OR MAKES ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY WHATSOEVER, EITHER ORAL OR WRITTEN, WHETHER ARISING BY LAW,**

COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED, AND (B) EACH PARTY HERETO ACKNOWLEDGES THAT, IN ENTERING INTO THIS AGREEMENT, IT HAS NOT RELIED UPON ANY REPRESENTATION OR WARRANTY MADE BY THE OTHER PARTY, OR ANY OTHER PERSON ON SUCH OTHER PARTY'S BEHALF, EXCEPT AS SPECIFICALLY PROVIDED IN THIS SECTION 4.

## **5. JOINT PUBLIC STATEMENT**

Within five [5] business days of execution of this Agreement, the CITY and FTC shall make a joint public statement that will include:

(a) An announcement that the City of Los Angeles and Fix the City have resolved the litigation between Fix the City and the City of Los Angeles on the City's Mobility Plan 2035.

(b) An acknowledgement by Fix the City that the City representatives, including the Department of City Planning and the Department of Transportation have engaged in productive talks on how best to implement the City's Mobility Plan 2035 in a transparent and effective way.

(c) An acknowledgement by the City of Los Angeles that shall thank Fix the City for their advocacy of greater transparency and advancing procedures and processes to inform the public on Mobility Plan 2035 outcomes regarding safety and performance of the transportation system.

(d) A disclosure that the settlement provides for outreach and performance evaluation requirements of MP 2035 projects.

## **6. NOTICE, ENFORCEMENT, AND ATTORNEYS' FEES**

(a) Any notices, requests, consents, claims, demands, waivers, summonses, or other legal process, or similar types of communications hereunder (each, a "Notice") must be in writing and addressed to the relevant Party as follows:

Fix the City, Inc.

ATTN: Beverly Grossman Palmer

Strumwasser & Woocher LLP

10940 Wilshire Boulevard, Suite 2000

Los Angeles, CA 90024

Office of the Los Angeles City Attorney

Land Use Division

ATTN: Deputy City Attorneys John Fox & Morgan Hector  
City Hall East  
200 N. Main Street  
Room 701, 7th Floor  
Los Angeles, CA 90012

All Notices must be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), or certified or registered mail (in each case, return receipt requested, postage prepaid). A Notice is effective only (i) on receipt by the receiving Party, and (ii) if the Party giving the Notice has complied with the requirements of this section.

(b) Prior to initiating any litigation to enforce this agreement, FTC shall provide the CITY with written notice and details of the alleged breach, and the CITY shall have thirty (30) days to cure, which will include notice to FTC of any steps taken to cure, or if the City disagrees that a breach has occurred.

(c) The prevailing party in any litigation brought by FTC regarding this Agreement shall be entitled to attorneys' fees.

(d) Nothing in this section or Agreement shall be construed as entitling any third party to the recovery of attorneys' fees for any litigation brought regarding this Agreement.

## **7. TERMINATION**

This Agreement shall terminate the earlier of ten (10) years or the effective date of a comprehensive update to the Mobility Plan 2035. A "comprehensive update" is one designed to substantially replace the current Mobility Plan, and shall not include any update or amendment associated with an individual project or development, or technical amendments to Mobility Plan 2035 to conform with updates to other portions of the City's general, community, or specific plans, or updates to the Los Angeles Municipal Code.

## **8. MISCELLANEOUS**

(a) This Agreement, and each of the terms and provisions hereof, may only be amended, modified, waived, or supplemented by an agreement in writing signed by each Party. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other provision whether or not similar, nor shall any waiver constitute a continuing waiver.

(b) This Agreement and all related documents, including all exhibits attached hereto, and all matters arising out of or relating to this Agreement, whether sounding in contract, tort, or statute, shall be governed by, and construed in

accordance with, the laws of the State of California, including its statutes of limitations and Cal. Civ. Code § 1646.5, without giving effect to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of California. Any legal suit, action or proceeding arising out of or based upon this Agreement must be instituted in the courts of the State of California, in each case located in the City and County of Los Angeles, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

(c) Nothing in this Agreement shall be construed to constrain a valid exercise of a municipality's police power, which cannot be contracted away per applicable law.

(d) Neither Party may assign, transfer, or delegate any or all of its rights or obligations under this Agreement without the prior written consent of the other party. No assignment will relieve the assigning party of any of its obligations hereunder. Any attempted assignment, transfer, or other conveyance in violation of the foregoing will be null and void. This Agreement will inure to the benefit of and be binding on each of the Parties and each of their respective permitted successors and permitted assignees.

(e) This Agreement may be executed in counterparts, each of which is deemed an original, but all of which constitute one and the same agreement.

(f) The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.

(g) If any term or provision of this Agreement is held to be invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

(h) This Agreement is the sole and entire agreement of the Parties regarding the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, regarding such subject matter.

(i) Each Party shall pay its own costs and expenses in connection with the drafting, negotiation, and execution of this Agreement (including the fees and expenses of its advisors, accountants, and legal counsel).

(j) This Agreement benefits solely the Parties hereto and their respective permitted successors and permitted assignees, and nothing in this Agreement, express or implied, confers on any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

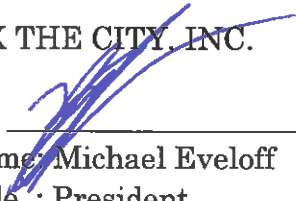
(k) This Agreement pertains to disputed Claims by FTC in the Mobility Plan Litigation, and is not intended to be, and shall not be construed as, an admission by any Party of any violation of any statute or law or constitutional provision, or any other improper or wrongful conduct. Nor does the CITY concede, by virtue of this Agreement or otherwise, that any action taken by it was caused by or resulted from the initiation of the Mobility Plan Litigation by FTC. The CITY asserts that it is entering into this Agreement to avoid the cost and expense of further litigation and not because of any violation or claimed violation as set forth in FTC's Mobility Plan Litigation.

(l) This Agreement shall be construed as though jointly prepared by the Parties and any uncertainty or ambiguity shall not be construed against any one Party.

(m) Neither FTC nor any of its directors, officers, or agents shall assist, direct, fund, or in any other way voluntarily participate in any third-party entity's or individual's litigation challenging the CITY's adoption of Mobility Plan 2035. This agreement does not prohibit FTC or its directors, officers or agents in raising objections or legal challenges to individual projects implemented or adopted pursuant to Mobility Plan 2035.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the last date first written below.

FIX THE CITY, INC.

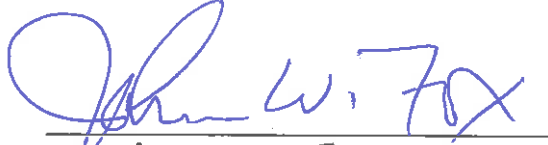
By:   
Name: Michael Eveloff  
Title : President  
Date : 6/11/19

**Michael  
Eveloff**

Digitally signed  
by Michael  
Eveloff  
Date: 2019.06.11  
11:12:16 -07'00'

CITY:

CITY OF LOS ANGELES, a municipal corporation



By: John W. Fox

Date: June 14, 2019

APPROVED AS TO FORM:

FIX THE CITY, INC.



By:

Attorneys for Petitioner FIX THE CITY, INC.

CITY OF LOS ANGELES, a municipal corporation



By: John W. Fox

Attorneys for Respondents CITY OF LOS ANGELES and LOS ANGELES CITY COUNCIL



## **Project Outreach and Evaluation Process for Mobility Plan 2035 Implementation**

### **(1) Outreach and Engagement**

#### **Low Volume Projects**

For any City of Los Angeles Mobility Plan 2035 (MP2035) street design project on a designated Boulevard or Avenue that includes the reduction of through travel lanes that currently experience **less than**: 1,000 vehicles/hour/lane (vphpl) segment volume for a Boulevard; and 900 vphpl segment volume for an Avenue, during a peak hour threshold:

The City's project team will conduct outreach to discuss individual project goals, potential benefits, safety improvements, mobility issues, and other considerations. Outreach shall include:

- (a) Notifying the affected City Council Office, Neighborhood Council, and/or other identified project stakeholders.
- (b) A web portal to provide for the submission of Project complaints, concerns, positive feedback and other public input.
- (c) Distributing project information fact sheet to a project notification list (which is comprised of individuals or organizations who have sent an email to a published designated City email address to request future projects notices).

#### **High Volume Projects**

For any City of Los Angeles MP2035 street design project on a designated Boulevard or Avenue that includes the reduction of through travel lanes that currently experience **more than or equal to**: 1,000 vehicles/hour/lane (vphpl) segment volume for a Boulevard; and 900 vphpl segment volume for an Avenue, during a peak hour threshold:

In consultation with the City Council office where the project is located, City's project team will develop a context sensitive engagement strategy that provides guidance for how to engage with the community to discuss individual project goals, potential benefits, safety improvements, mobility issues, and other considerations. Outreach shall include:

- (a) Developing a standardized MP2035 Project content worksheet for use in communicating with the public regarding proposed projects meeting the project evaluation threshold.
- (b) Notifying the affected City Council Office, Neighborhood Council, and/or other identified project stakeholders. Materials should be provided to the respective Neighborhood Council at least two weeks prior to the regularly scheduled NC

meeting. The timing to provide the materials may be waived at the discretion of the Neighborhood Council.

- (c) Distributing project information to a project notification list (to include anyone who has requested future projects notices by email to designated City email address).
- (d) Uploading project information to the City's Early Notification System.
- (e) Deployment of an Open Data portal or project website that will provide access to monitoring and evaluation data for projects that exceed the project evaluation threshold.
- (f) Implementation of a web portal to provide for the submission of Project complaints, concerns, positive feedback and other public input.
- (g) Conducting at least two public open houses about the project, with at least one open house outside of regular work hours.
- (h) Notification of any open house to businesses operating on streets that will lose street parking along their property frontage.
- (i) Distributing a project information fact sheet to properties along the affected block face.

The City shall consider in good faith any comments from Fix the City, Inc. regarding suggested improvements to any Open Data portal or project website created pursuant to this Agreement.

Additional outreach may include:

- (j) Developing a centralized project clearinghouse to inform the public of project elements

The City's project team will not install any street design projects prior to having completed the above activities. Upon the request of the Council Office, the project team shall apply an engagement strategy where a diverse representation of community members collaborate with the project team to help define desired project outcomes, identify solutions and develop alternatives.

## (2) Evaluation Metrics

The City of Los Angeles will invest in developing a project evaluation strategy for City-led street design projects informed by Mobility Plan 2035 for High Volume Projects. This project evaluation strategy will be centered on safety and access (including travel time performance), and will help inform any potential operational adjustments that may be warranted after project installation and sufficient observation. This strategy will include recommendations on project evaluation area, appropriate regular time periods for analysis based on data availability, and potential adjustment based on the evaluation feedback. The project should be monitored annually for three consecutive years after implementation but

no fewer than two consecutive years after implementation, except if negative performance indicators fail to materialize within the first year, project evaluation can be discontinued at the discretion of the City Council member of the district where the project is located. To the extent that the project is anticipated to result in neighborhood intrusion impacts, the project evaluation area will be expanded to include neighborhood streets and will be evaluated based on criteria established in LADOT's Transportation Impact Study Guidelines. As part of defining the project evaluation area, the strategy should recommend screening criteria to identify when to consider neighborhood intrusion impacts. The City will consider additional project evaluation metrics upon request by stakeholders, public agencies, or elected officials.

Evaluation metrics may include, but are not limited to, collecting the following objectively verified before and after data:

- (a) Collisions (specific to travel mode, including injury severity).
- (b) Vehicle, bicycle, and pedestrian volumes.
- (c) Vehicle travel time.
- (d) Vehicle speed.

Evaluation metrics must include:

- (e) LAFD response times, for the first, second, and third in stations, as reported by the Fire Department's FireStatLA Section ("Fire Response Data").

The project evaluation strategy shall include the development of a reporting protocol to assess and publicly disclose project-related outcomes relative to the project goals supported by objective analysis of the evaluation metrics. If the project fails to achieve intended outcomes or results in unintended impacts, the protocol will direct LADOT staff on post-project community engagement to share and receive feedback with interested stakeholders, and reporting mechanism to document and present findings to the City Council members where the project is located, in whole or in part. If the LAFD response times are shown to substantially degrade based on the station level data for the project area, LADOT shall work with LAFD to further evaluate project contribution to the delay. As part of the report to City Council, LADOT would recommend whether the roadway changes should remain as is, identify if any modifications are needed, or if any features should be removed, or restored to pre-project conditions. As part of this report, LADOT and LAFD would recommend corrective actions that would best address the change in emergency response times, which could include project modifications or other measures to improve emergency response times in the project area.

(3) Additional Items

- (a) In addition to the engagement process identified above, the City will initiate a citywide program where community members are invited to identify the streets and communities that are ready for project typologies as identified in Mobility Plan 2035. This will assist in prioritizing City-led street design projects based on existing community support.
  - (b) The City will invest in developing a city-wide project engagement strategy that provides guidance for how to engage on all City-led street design projects to discuss individual project goals, potential benefits, safety improvements, mobility issues, and other considerations.
  - (c) The items in this Section 3 shall include any activities implemented before adoption of this settlement agreement.
- (4) **Resource availability.** The Department responsible for a project covered by this Agreement shall ensure that prior to project implementation resources will be available to meet the City's obligations under this Agreement, which may include, but are not limited to, funding available in the project budget or in department budgets. LADOT shall notify the Council Office for the Council District in which the project is located prior to initiation of project development process if staff determine there are insufficient resources to execute the engagement and monitoring protocols established pursuant to this Agreement. The City Council may authorize a project to proceed without implementing the engagement and monitoring protocol in this Settlement Agreement provided all of the following requirements are met:
- (a) Minimum Outreach for the project is provided by:
    - (i) Notifying the affected City Council Office, Neighborhood Council, and/or other identified project stakeholders, including Fix the City, Inc.;
    - (ii) Implementation of a web portal is provided for the submission of Project complaints, concerns, positive feedback and other public input; and
    - (iii) Distributing project information fact sheets to any parties required to be noticed under this Paragraph 4.
  - (b) The Council approves the authorization after a public hearing at least fifteen (15) days after notice is provided to everyone on the project notification list, any identified stakeholders, the relevant neighborhood council(s), and for High Volume Projects, the property owners fronting the project. Notice shall be by U.S. Mail.
  - (c) Minimum Evaluation. If the Council approves the authorization as set forth in (b), LADOT shall be obligated only to report pre- and post-project Fire Response Data for two years following project completion. Any other evaluation for such project is at the discretion of LADOT.

No greater than 10% of projects covered by this Agreement shall be exempted from the requirements herein, as calculated on an annual basis. Where there are fewer than 10 such projects for a given year, only one project may be found to be exempt.

(5) **Definitions.** For purposes of Section 2:

***Negative Performance Indicators*** shall mean more than 20 complaints a month, on average over a 12 month period, related to vehicle delay, safety, access, or neighborhood intrusion.

***Vehicle speed*** is typically measured as the 85th percentile speed - the speed at or below which 85% of vehicles are observed to travel along a specific roadway segment or monitoring point.

***Travel time*** is the time it takes for a motorist to traverse a specific roadway segment - in other words, the time it takes a vehicle to travel between predefined end points.

***Vehicle, pedestrian and bike counts*** are collected at intersections or along roadway segments. Counts can be collected either manually or automatically. Manual counts are typically collected in-person in the field or through the use of video. Automatic counts employ pneumatic tubes across a roadway to register hourly and daily volumes.