

acknowledge that this Settlement Agreement is contingent upon the City Council of the City of Chicago giving its approval to the settlement, and that if the settlement is not so approved by the time of the Mailed Notice Date (as defined below), the settlement, the Settlement Agreement, and any preliminary approval of the settlement shall have no force or effect, and the Parties will be returned to the *status quo ante* with respect to this Action as if this Agreement had never been entered into, as further set forth in Paragraphs 44 and 45.

RECITALS

2. This is an alleged class action, in which Plaintiffs claim that Defendant violated the United States Constitution in connection with policies and procedures adopted by the Chicago Police Department (“CPD”) regarding the processing and handling of certain persons who are members of one or more alleged classes. Defendant has denied and continues to deny these claims, and further denies that it has engaged in any wrongdoing whatsoever. No dispositive rulings as to the merits of these claims have yet been made by the Court herein. The Court has, however, previously certified three litigation classes herein. The Parties recognize the risk and expense associated with a trial of Plaintiffs’ claims and any appeals that may follow, as well as the uncertainty inherent in complex litigation, and have concluded that the settlement as set forth in this Agreement is fair, reasonable, adequate, and in the best interests of all Parties. The Parties have reached this Agreement at arms’ length, after consultation with their independent advisors and attorneys, in order to resolve these disputes conclusively without the uncertainty, expense, and delay of further litigation, pursuant to the terms set forth herein.

SETTLEMENT TERMS

Preliminary Certification of Settlement Classes

3. This Settlement Agreement shall fully and finally settle all individual and class action claims against Defendant that were or could have been asserted in the Action, as further provided in Paragraphs 40 and 41 of this Agreement.

4. The parties to this Agreement are sometimes referred to as “the Parties” and include:

(a) The Named Plaintiffs, Thomas Dunn, Veronica Imperial, and Denny Robinson, individually, and on behalf of the Settlement Classes, as defined in Paragraph 10 (a) – (c); and

(b) The Defendant, the City of Chicago.

5. The “Releasees” consist of the aforementioned Defendant, the City of Chicago, and all of its future, current, and former officers, agents, and employees.

6. Counsel for the Named Plaintiffs and the Settlement Classes are Michael Kanovitz and the law firm of Loevy & Loevy. They are referred to as “Class Counsel.”

7. The “Claims Administrator” refers to Rust Consulting, Inc.

8. The “Settlement Fund” means the sum total of settlement administration and notice costs, attorneys’ fees and costs, Named Plaintiff Incentive Awards, and claims payments, which, sum total, in no event shall exceed \$16.5 million, as further set forth in Paragraph 30.

9. “Claimant” means a potential member of one or more of the Settlement Classes who submits a claim for settlement payment pursuant to the terms of this Agreement.

10. The Parties stipulate to certification, for settlement purposes only, of the three Settlement Classes (collectively “Settlement Classes,” and individually, “Settlement Class I,” “Settlement Class II,” or “Settlement Class III”) defined as follows:

(a) Settlement Class I is defined as:

All persons held in a Chicago Police Department (“CPD”) interrogation or “interview” room for more than 16 hours in a 24-hour period at any time from October 21, 2002 to the date of preliminary approval.

(b) Settlement Class II is defined as:

All persons detained in a CPD lock-up or detective facility from 10:00 p.m. (or earlier) on a given day and not released until 6:00 a.m. (or later) of the following day, at any time from October 21, 2002 to the date of preliminary approval.

(c) Settlement Class III is defined as:

All persons arrested on suspicion of a felony without an arrest warrant and who were detained by the CPD and were not released and did not receive a judicial probable cause hearing within 48 hours of arrest, at any time from March 15, 1999 to February 10, 2008.

(d) Named Plaintiff Veronica Imperial is the class representative for Settlement Class I. Named Plaintiff Thomas Dunn is the class representative for Settlement Class II. Named Plaintiffs Thomas Dunn and Denny Robinson are the class representatives for Settlement Class III.

(e) Excluded from these Settlement Classes are the following persons:

(i) Members of the Northern District of Illinois federal judiciary and their immediate families; and

(ii) All persons who have timely elected to opt out of or exclude themselves from the Settlement Classes in accordance with the Court's Orders.

11. Solely for purposes of implementing this Agreement and effectuating the settlement, Defendant stipulates that the Court may enter an Order preliminarily certifying the Settlement Classes, appointing Named Plaintiffs as representatives of the Settlement Classes (as set forth in Paragraph 10(d)), and appointing the following as Class Counsel for the Settlement Classes:

Michael Kanovitz
Loevy & Loevy
312 North May Street, Suite 100
Chicago, Illinois 60607
Telephone: (312) 243-5900
Facsimile: (312) 243-5902
Email: mike@loevy.com

12. Solely for the purpose of implementing this Agreement and effectuating the settlement, the Parties stipulate that the following shall be appointed as Claims Administrator:

Rust Consulting, Inc.

13. Solely for the purpose of implementing this Agreement and effectuating the settlement, Defendant stipulates that the Named Plaintiffs are adequate representatives of the Settlement Classes, as set forth in Paragraph 10(d).

14. After execution of this Agreement, the Parties shall promptly move the Court to enter an order (the “Preliminary Approval Order”) that is without material alteration from Exhibit A hereto, and that, among other things:

(a) preliminarily approves this Agreement;

(b) preliminarily certifies the Settlement Classes defined herein, with the Named Plaintiffs approved as class representatives of the Settlement Classes as set forth in Paragraph 10(d), and Loevy & Loevy appointed as Class Counsel for the Settlement Classes;

(c) schedules a fairness hearing on final approval of this Agreement (the “Final Approval Hearing”) to consider the fairness, reasonableness, and adequacy of the proposed settlement and whether it should be finally approved by the Court;

(d) finds the settlement to be sufficiently fair to warrant providing notice to the Settlement Classes;

(e) appoints Rust Consulting, Inc. as Claims Administrator;

(f) approves the mailed notice (the “Mailed Notice”), the content of which is without material alteration from Exhibit B hereto, and directs its mailing to potential members of the Settlement Classes by first class U.S. mail to the last-known address for each such person, in accordance with the procedures set forth in Paragraph 18, and, for Mailed Notices returned, directs the Claims Administrator to follow the procedures set forth in Paragraph 18;

(g) approves the published notice (the “Published Notice”), the content of which is without material alteration from Exhibit C hereto, and directs that it be published in accordance with the Notice Plan, as set forth in Paragraph 14(h);

(h) approves the notice plan (the “Notice Plan”), the content of which is without material alteration from Exhibit D hereto, including the Mailed Notice and the Published Notice, and finds that it satisfies the requirements of due process and federal law;

(i) approves the settlement website as described in Paragraph 21, which may be amended during the course of the settlement as appropriate and agreed to by the Parties, and which shall be maintained for at least 180 days after the expiration of the period for submission of Claim Forms, as set forth in Paragraph 28;

(j) directs the Claims Administrator to maintain a toll-free VRU telephone system containing recorded answers to frequently asked questions, along with an option permitting potential Settlement Class members to speak to live operators or to leave messages in a voicemail box;

(k) approves the claim form (the “Claim Form”), the content of which is without material alteration from Exhibit E hereto, for distribution to potential members of the Settlement Classes, and sets a date after which Claims Forms shall be deemed untimely (as further provided in Paragraph 28 below);

(l) determines that the Notice Plan, including the Mailed Notice and Published Notice, (i) is the best practicable notice; (ii) is reasonably calculated,

under the circumstances, to apprise potential members of the Settlement Classes of the pendency of the Action and of their right to object or to exclude themselves from the proposed settlement; (iii) is reasonable and constitutes due, adequate, and sufficient notice to all persons entitled to receive notice; and (iv) meets all applicable requirements of due process and federal law;

(m) requires the Claims Administrator, at or before the Final Approval Hearing, to file proof of mailing of the Mailed Notice, as well as a list of all persons who timely requested exclusion from the Settlement Classes (along with an affidavit attesting to the accuracy of that list (the “Opt-Out List”));

(n) requires each potential member of the Settlement Classes who wishes to exclude himself or herself from the Settlement Classes to submit an appropriate, timely request for exclusion, postmarked no later than ninety (90) days after the mailing is initially completed (the “Mailed Notice Date”), to the Claims Administrator at the address in the Mailed Notice, and further requires that any requests for exclusion be exercised individually by a Settlement Class member, not as or on behalf of a group, class, or subclass, except that such requests may be submitted on behalf of an individual Settlement Class Member by the executor or administrator of a deceased Settlement Class Member’s estate, or the legal guardian of a Settlement Class Member who has been declared incompetent;

(o) preliminarily enjoins all potential members of the Settlement Classes, unless and until they have properly and timely excluded themselves from

the Settlement Classes, (i) from filing, commencing, prosecuting, intervening in, or participating as plaintiff, claimant, or class member in any other lawsuit or administrative, regulatory, arbitration, or other proceeding in any jurisdiction based on, relating to, or arising out of the claims and causes of action, or the facts and circumstances relating thereto, in the Action and/or the Released Claims (as defined in Paragraphs 40 and 41); (ii) from filing, commencing, or prosecuting a lawsuit or administrative, regulatory, arbitration, or other proceeding as a class action on behalf of any members of the Settlement Classes who have not properly and timely excluded themselves (including by seeking to amend a pending complaint to include class allegations or seeking class certification in a pending action), based on, relating to, or arising out of the claims and causes of action, or the facts and circumstances relating thereto, in the Action and/or the Released Claims; and (iii) from attempting to effect an opt-out of a class of individuals in any lawsuit or administrative, regulatory, arbitration, or other proceeding based on, relating to, or arising out of the claims and causes of action, or the facts and circumstances relating thereto, in the Action and/or Released Claims;

(p) rules that any potential member of the Settlement Classes who does not submit a timely, written request for exclusion from the Settlement Classes will be bound by all proceedings, orders, and judgments in the Action, even if such person has previously initiated or subsequently initiates individual litigation or other proceedings encompassed by the Released Claims (as set forth in Paragraphs 40 and 41);

(q) requires each member of the Settlement Classes who has not submitted a timely request for exclusion from the Settlement Classes and who wishes to object to the fairness, reasonableness, or adequacy of this Agreement or the proposed settlement, or the Attorneys' Fee Award, or Incentive Awards (as provided in Paragraph 30), to mail to the Claims Administrator (who shall promptly forward it to Class Counsel and Counsel for Defendant), and to file with the Court no later than sixty (60) days after the Mailed Notice Date, a statement of the objection, as well as the specific legal and factual reasons, if any, for each objection, including any support the member of the Settlement Classes wishes to bring to the Court's attention and all evidence the member of the Settlement Classes wishes to introduce in support of his or her objection, or be forever barred from objection, as follows: the objection must contain (1) a heading that refers to the Action by case name (Dunn v. City of Chicago) and case number (04-CV-6804); (2) a statement whether the objector intends to appear at the Final Approval Hearing, either in person or through counsel and, if through counsel, a statement identifying that counsel by name, bar number, address, and telephone number; (3) a statement of the specific legal and factual basis for each objection; and (4) a description of any and all evidence the objector may offer at the Final Approval Hearing;

(r) provides that the right to object to the proposed settlement must be exercised individually by a Settlement Class member or his or her attorney, not as a member of a group, class, or subclass, and, except in the case of a deceased or

incapacitated Settlement Class member, not by the act of another person acting or purporting to act in any other representative capacity;

(s) requires any attorney hired by a member of the Settlement Classes at the Settlement Class member's expense for the purpose of objecting to this Agreement or to the proposed settlement, or to the Attorneys' Fee Award or Incentive Award, to mail to the Claims Administrator (who shall promptly forward it to Class Counsel and Counsel for Defendant) and to file with the Clerk of the Court a notice of appearance no later than sixty (60) days after the Mailed Notice Date, or as the Court may otherwise direct;

(t) directs the Claims Administrator to rent a post office box to be used for receiving requests for exclusion, objections, notices of intention to appear, and any other non-privileged communications, and providing that only the Claims Administrator, Class Counsel, Defendant, the Court, the Clerk of the Court, and their designated agents shall have access to this post office box, except as otherwise expressly provided in this Agreement; and finds that if any privileged communications are disclosed to the Class Administrator, the Court, Defendant, or Counsel for Defendant, the privilege has not been waived by such disclosure;

(u) directs the Claims Administrator and/or Class Counsel promptly to furnish Class Counsel, Counsel for Defendant, and any counsel of record for members of the Settlement Classes with copies of any and all objections, written

requests for exclusion, notices of intention to appear, or other communications that come into its possession (except as expressly provided in this Agreement);

(v) contains any additional provisions agreeable to the Parties that might be necessary to implement the terms of this Agreement and the proposed settlement; and

(w) finds that preliminary approval of the settlement is contingent upon City Council of the City of Chicago giving its approval to the settlement, and that if the Settlement Agreement is not so approved by the Mailed Notice Date, the settlement, the Settlement Agreement, and the Court's preliminary approval of the settlement shall have no further force or effect, and the Parties will be returned to the *status quo ante* with respect to this Action as if this Agreement had never been entered into, or the settlement preliminarily approved, as further set forth in Paragraphs 44 and 45.

15. The Parties and their respective attorneys acknowledge that settlement of this Action is not an admission of liability, or of unconstitutional or illegal conduct by or on the part of Defendant and/or the City of Chicago's future, current or former officers, agents and employees, and shall not serve as evidence of any wrongdoing by or on the part of Defendant and/or the City of Chicago's future, current or former officers, agents, and employees. The Parties and their respective attorneys further acknowledge that settlement is made to avoid the uncertainty of the outcome of litigation and the expense in time and money of further litigation and for the purpose of judicial economy.

16. The Parties and their respective attorneys acknowledge that settlement of this Action is not a concession by Defendant to the certification of any of the litigation classes previously certified by this Court during this litigation.

17. The Named Plaintiffs, Plaintiffs, and Class Counsel agree not to use the fact of this settlement or Defendant's stipulation to the certification of the Settlement Classes against Defendant in this or any other proceeding.

Class Notice and Opt-Out Procedures

18. Within twenty-nine (29) days of the entry of the Preliminary Approval Order, the Claims Administrator shall cause the Mailed Notice, along with the Claim Form, to be mailed by first class U.S. mail to the last-known address of each potential member of the Settlement Classes whose names and last-known addresses are reasonably ascertainable from CPD arrest records, as agreed to by the Parties. Prior to the mailing, the Claims Administrator shall use an address updating service such as Lexis SmartLinx and/or the National Change of Address Database to verify the accuracy of the addresses of all potential Settlement Classes members, the costs of which are included in the administration costs described in Paragraph 30(a). If, as a result of the mailing, a forwarding address is provided by the Postal Service, but the Mailed Notice is not forwarded by the Postal Service, the Claims Administrator will re-mail the Mailed Notice to the forwarding address. In the event that any Mailed Notice is returned as undeliverable a second time, no further mailing shall be required.

19. The Claims Administrator shall effectuate the Published Notice, as set forth in further detail in Exhibits C and D.

20. The Claims Administrator shall maintain a toll-free VRU telephone system containing recorded answers to frequently asked questions, along with an option permitting potential Settlement Class members to speak to live operators or to leave messages in a voicemail box.

21. The Claims Administrator shall maintain a website for this settlement for at least 180 days after the expiration of the period for the submission of Claim Forms, as set forth in Paragraph 28. The website shall include, at a minimum, copies of the Settlement Agreement (including exhibits), the Mailed Notice, the Claim Form, and the Preliminary Approval Order, and may be amended as appropriate during the course of the settlement as agreed to by the Parties. The Mailed Notice and Claim Form shall also be made available in Spanish upon the request of a Claimant, and posted on the website.

22. The Parties will notify each other of the receipt of any request for exclusion or objection to this Agreement received from a member of the Settlement Classes within two (2) business days of receipt.

23. All potential members of the Settlement Classes shall have ninety (90) days from the Mailed Notice Date to submit requests for exclusion from the Settlement Classes prepared and directed in the manner set forth in the Mailed Notice.

24. The Named Plaintiffs agree that they shall not elect or seek to opt out or exclude themselves from the Settlement Classes.

25. All potential members of the Settlement Classes who do not timely and properly exclude themselves from the Settlement Classes shall be bound by this Agreement,

and all their claims shall be dismissed with prejudice and released, even if they never received actual notice of the Action or this settlement.

26. If more than thirty-five (35) members of Settlement Class I or more than thirty-five (35) members of Settlement Class III exclude themselves, Defendant will have the option, which it may exercise in its sole discretion, to void this Agreement by providing written notice to Class Counsel no later than fifteen (15) days after the deadline for opting out has passed. In such circumstance, the Parties shall revert to the same position as they were prior to the execution of this Agreement, and no Party shall be bound by any settlement terms outlined in this Agreement, as set forth in further detail in Paragraphs 44 and 45. In the event that Defendant exercises its option to void this Agreement, the Class Administrator will provide notice that the settlement has been voided via U.S. mail solely to Claimants who have already submitted claims by this date, and Defendant will bear the cost of this notice.

Claim Forms and Certain Settlement Administration Procedures

27. The Claim Form shall be without material alteration from Exhibit E.

28. To be eligible for any monetary relief set forth in Paragraph 30(d), a Settlement Classes Member must (a) truthfully, accurately to the best of his or her ability, and completely fill out the Claim Form; (b) sign the Claim Form under penalty of perjury; (c) have the Claim Form notarized; and (d) mail the Claim Form, with first class postage prepaid, to the Claims Administrator postmarked on or before one hundred thirty five (135) days after the Mailed Notice Date. Claim Forms must be signed and notarized by the Settlement Class Member, except that Claim Forms may be submitted on behalf of a Settlement Class Member by (1) the executor or administrator of a deceased Settlement Class Member's estate, (2) the legal

guardian of a Settlement Class Member who has been declared incompetent, or (3) a person with a valid Power of Attorney from the Settlement Class Member.

29. Class Counsel may conduct confirmatory discovery of Defendant, which may assert all appropriate objections to any such discovery, which objections will be resolved by the Court. Any such discovery obtained by Class Counsel shall be subject to the Agreed Protective Orders previously entered by this Court during the litigation (Dkt. 36 and 136) and the Parties agree that the documents and information provided to Class Counsel are for use in this litigation only, and that information regarding potential Settlement Class members will be treated confidentially.

**Settlement Class Recovery, Costs of Notice,
Named Plaintiffs' Incentive Awards, and Attorneys' Fees and Expenses**

30. Defendant shall be responsible for the funding of a settlement fund (the "Settlement Fund") in the maximum potential amount of \$16,500,000. In no event shall the Defendant be required to fund, or be liable under this settlement for, any amount in excess of \$16,500,000. If the potential payments to Settlement Class members, as calculated in Paragraph 30(d) below, exceed the amount available in the Settlement Fund after payment of other amounts provided for herein, such recovery shall be reduced by pro rata distributions as provided below. Funding shall be made on the following terms:

- (a) **Notice and Settlement Costs.** All costs of sending the Mailed Notice and Claim Form and administering the Settlement Fund will be paid out of the Settlement Fund. The Claims Administrator will perform all work

necessary to send the Mailed Notice and Claim Form to the Settlement Classes and administer the settlement and the Settlement Fund. The Parties will provide to the Claims Administrator a list of potential members of the Settlement Classes based upon CPD arrest records, as set forth in Paragraph 30(d). All such information shall be treated confidentially and returned to Defendant at the conclusion of the settlement administration.

- (b) **Named Plaintiffs' Incentive Awards.** The Named Plaintiffs' incentive awards ("Incentive Awards") will be paid out of the Settlement Fund. Subject to Court approval, Thomas Dunn is eligible to receive an Incentive Award not to exceed \$25,000, Veronica Imperial is eligible to receive an Incentive Award not to exceed \$25,000, and Denny Robinson is eligible to receive an Incentive Award not to exceed \$25,000. If such amounts are awarded, the Named Plaintiffs will not be permitted to make any further claims on the Settlement Fund.
- (c) **Attorneys' Fee Award.** Class Counsel's attorneys' fees, costs, and expenses will be paid out of the Settlement Fund. Class Counsel agree not to seek from the Court an award of attorneys' fees in excess of \$5,000,000.00, and costs and expenses in excess of \$70,000.00 (the "Attorneys' Fee Award"). The final determination of the Attorneys' Fee Award will be decided by the Court, as further described in Paragraph 37.

The Attorneys' Fee Award will be disbursed to Class Counsel at such time as provided in Paragraph 36 below.

(d) **Payments to Eligible Settlement Class Members.** Payments to eligible Settlement Classes Members who submit timely and valid Claim Forms shall be calculated in the manner provided for below in Subparagraphs 30(d)(i) - (iii). In the event that the payment amounts required by this Subparagraph 30(d) exceed the funds remaining in the Settlement Fund (after payment of other amounts provided for herein), payments shall be made to eligible Settlement Class Members on a pro rata basis in order to ensure that under no circumstances will Defendant's total payment under this settlement exceed the \$16,500,000 funding obligation. Claimants who have had more than one detention during the class periods and meet the criteria for one or more of the Settlement Classes criteria are eligible to receive payments for each separate detention, as provided below in Subparagraphs 30(d)(i) - (iii).

(i) Members of Settlement Class I are eligible to receive a payment of up to \$2,000, conditioned on their ability to satisfy the following criteria:

(1) To be eligible to receive an award up to \$2,000, a Class I Claimant must satisfy the following criteria:

a) The Claimant must submit a notarized Claim Form signed by the Claimant, stating under penalty of perjury that the Claimant meets the criteria for membership in Class I;

AND

b) One of the following is satisfied:

i) The CPD Automated Arrest Database, Paper Database, or other CPD records demonstrate that the time between when the Claimant checked out of lockup and returned to lockup was greater than 16 hours, and these records do not demonstrate that the Claimant was held somewhere other than in an interview room during this period of time during the Settlement Class period;

or

ii) CPD and/or Cook County Clerk's Office ("CCC") records demonstrate that the Claimant was charged with homicide, sexual assault, aggravated battery with a firearm, or more than one robbery, and the time between arrest (using presumptions applicable to Settlement Classes II and III in the event of missing data) and the time received in lockup or the final approval of probable cause (whichever is greater) is greater than 16 hours during the Settlement Class period;

or

iii) CPD and/or CCC records demonstrate that the Claimant was charged with

homicide, sexual assault, aggravated battery with a firearm, or more than one robbery and the time between arrest (using presumptions applicable to Settlement Classes II and III in the event of missing data) and CPD records demonstrate that the Claimant was held for at least 16 hours in an interview room during the Settlement Class period.

(ii) Members of Settlement Class II are eligible to receive a payment of up to \$90, conditioned on their ability to satisfy the following criteria:

(1) To receive an award up to \$90, a Class II Claimant must satisfy the following criteria:

a) Submit a notarized Claim Form signed by the Claimant, stating under penalty of perjury that the Claimant meets the criteria for membership in Settlement Class II;

AND

b) The time of arrest and the time of release reflected in the CPD Automated Arrest or Paper Databases demonstrate that the Claimant was detained overnight during the Settlement Class period.

i) Where the time of release is missing from the Automated Arrest or Paper Databases, the initial court date or bond date (whichever is earlier) with a noon bond time assumption shall take the

place of the time of release. If the initial court date is missing as well as the time of release, then the Cook County Criminal Records Database shall be used to determine the earlier of the initial court date or bond date (if any) and a noon release shall be assumed on the earlier of those two days. If there is no initial court date, no bond date, and no record in the Cook County Criminal Records Database, it will be assumed that the Claimant was released without charging, and the time indicated that the Claimant was released without charging will take the place of the time of release.

- ii) Where the arrest time is missing from the Automated Arrest or Paper Databases, the earliest of the following proxies will substitute for the time of arrest: transport time, initial approval of probable cause, or time received in lockup. For these proxies, it will be assumed that the time of arrest preceded the proxy time by 10 minutes for transport time, 2 hours for initial approval of probable cause, and 2.5 hours for time received in lockup.
- iii) Where CPD records do not indicate that the Claimant was arrested during the class period (or where none of the

proxies in Paragraph 30(d)(ii)(1)(b)(ii) are available) but the Claimant appears in CCC records then the arrest date reflected in that database shall be used. If the arrest date is before the bond hearing date, assume the Claimant is in Settlement Class II.

(iii) Members of Settlement Class III are eligible to receive a payment of up to \$3,000, conditioned on their ability to satisfy the following criteria:

(1) To receive an award up to \$3,000, a Class III Claimant must satisfy the following criteria:

a) Submit a notarized Claim Form signed by the Claimant, stating under penalty of perjury that the Claimant meets the criteria for membership in Settlement Class III;

AND

b) The Automated Arrest Database or Paper Database demonstrate that the Claimant was arrested during the Settlement Class period;

AND

c) The Automated Arrest Database or Paper Database does not show that the Claimant was released or given a judicial hearing of probable cause within 48 hours;

AND

- d) The Automated Arrest or Paper Databases demonstrate that more than 48 hours passed between arrest and the earlier of time of release or time of probable cause hearing;
 - i) For Automated Arrest data: Where the data shows that the Claimant received a bond and does not reflect an earlier release from lock-up time, the bond time shall be used as the end time of the 48-hour calculation. Where the data does not reflect that the Claimant received a bond, or where bond is after release from lockup, assume detainee appeared for a probable cause hearing on the date of the release from lock-up at a time three hours after release from lock-up and that time shall be used as the end time of the 48-hour calculation. For Paper Arrest data: the initial court date or bond date (whichever is earlier) with a noon bond/hearing time assumption shall take the place of the time of release. If the initial court date or bond date (if any) is missing as well as the time of release, then the Cook County Criminal Records Database shall be used to determine the earlier of the initial court date or bond date, and a noon bond/court time shall be assumed in place of the time of release. If there is no initial court date, no bond date, and no record in the

Cook County Criminal Records Database, it will be assumed that the Claimant was released without charging and the time indicated that the Claimant was released without charging will take the place of the time of release;

- ii) Where the arrest time is missing from the Automated Arrest or Paper Databases, the earliest of the following proxies will substitute for the time of arrest: transport time, initial approval of probable cause, or time received in lockup. For these proxies, it will be assumed that the time of arrest preceded the proxy time by 10 minutes for transport time, 2 hours for initial approval of probable cause, and 2.5 hours for time received in lockup;
- iii) Where CPD records do not indicate that the Claimant was arrested during the class period (or where none of the proxies in Paragraph 30(d)(iii)(1)(b)(ii) are available), but the Claimant appears in Cook County criminal court records which show that Claimant's first appearance included a bond hearing then use the arrest date reflected in that database and presume a noon arrest time on that date of arrest and a noon hearing time on the date of the first appearance.

AND

- e) One of the following is satisfied:
 - i) The Automated Arrest Database or Paper Database shows that the Claimant was arrested for a felony offense, and do not indicate that the arrest was pursuant to a warrant;

or

 - ii) Other CPD or Cook County criminal court records demonstrate that the Claimant was arrested for a felony, do not indicate that the arrest was pursuant to a warrant, and was detained longer than 48 hours without being released or being given a judicial determination of probable cause to detain.

(iv) Settlement Class members who are members of another Settlement Class may receive payment for all Settlement Classes of which they are members and have provided proof of such membership, as described in Paragraph 30(d)(i)-(iii).

ADDITIONAL CLAIMS ADMINISTRATION PROCEDURES

31. Settlement claims shall be denied if the Claim Form does not demonstrate that the Claimant is a member of the Settlement Class or Classes or the Claimant does not otherwise satisfy the eligibility requirements stated in Paragraph 30(d)(i)-(iii). In

addition, a claim may be denied if information in the Claim Form does not conform to Defendant's records, or the information in Defendant's records does not match the identifying information supplied by the Claimant. For purposes of calculating the claim payments, the information in Defendant's records shall control and may not be challenged by Claimants except as otherwise specifically provided in this Agreement. Where a Claim Form is not completely filled out by the Claimant or is otherwise defective, the Claims Administrator will notify the Claimant of the defect and provide the Claimant with twenty-one (21) days to cure the defect.

32. The Claims Administrator shall provide copies of all Claim Forms (including any related documents and nonprivileged communications from claimants) to Class Counsel and Defendant's counsel on a weekly basis, and in any event by no later than seven (7) days after the deadline for submitting claims. Within fifty-two (52) days of the final date of submission of Claim Forms, as set forth in Paragraph 28, the Claims Administrator shall provide to Class Counsel and Defendant's counsel a list of the Settlement Class members who submitted Claim Forms, along with (1) the Claims Administrator's initial proposal for which Claim Forms are valid and timely, and (2) the proposed payments for each of the Claimants. Class Counsel and Defendants' counsel shall have twenty-one (21) days thereafter in which to confer regarding (1) which Claim Forms are valid and timely and (2) the appropriate payments (if any) for each claim. If Class Counsel and counsel for Defendant cannot agree on whether any particular claim is entitled to payment under the settlement, they shall submit the issue to the Court. The Court's decision shall be final, binding, and nonappealable.

33. By hundred and five (105) days from the Effective Date, the Claims Administrator shall mail to all Settlement Class Members who submitted Claim Forms (i) a

notice informing the Settlement Class Member of the determination as to whether, and how much money (if any), the Settlement Class Member is entitled to receive under the settlement, and (ii) enclosing a check for payment under the terms of the settlement. The letter shall also advise the Claimant that he or she may object to the amount of the payment, or to the denial of payment, by mailing to the Claims Administrator, within thirty (30) days after the date that the Claims Administrator mails the determination, a written and signed statement setting forth the basis for that objection. Any objection that is not postmarked within that thirty (30) day period shall be waived. The only valid basis for an objection is that the criteria set forth in Paragraph 30(d) were not properly applied to the claim. The Claims Administrator shall forward any objections to Class Counsel and counsel for Defendant within five (5) days of receipt. The Parties shall seasonably report to the Court any objections that have been submitted and seek the Court's resolution of these objections. The Parties shall also report to the Court regarding their joint or respective recommendation for resolution of each of the objections. The Court's decision regarding each objection shall be final, binding, and nonappealable.

34. Defendants will pay the claims administration and Settlement Class Members' validated claims portion of the Settlement Fund to the Claims Administrator within one hundred and five (102) days after the Effective Date, which amount the Claims Administrator shall hold in trust and distribute in accordance with the terms of this Agreement. If funds remain after payment of the amounts set forth in Paragraphs 30(a)-(d), the Claims Administrator shall disburse these funds to Defendant within thirty (30) days after the Claims Administrator mails the letters and checks to Settlement Class Members, as set forth in Paragraph 33.

35. The City will submit funds to be used for notice and publication costs to the Claims Administrator no later than sixteen (16) days after the City Council gives its approval to the settlement. The Claims Administrator shall distribute payments to Settlement Class Members, by first class mail, within one hundred and five (105) days of the Effective Date to each Settlement Class member who submitted a valid, timely Claim Form as provided in the Notice. All checks issued to the Settlement Class member claimants in accordance with this Paragraph shall indicate on their face that they are void after one hundred and eighty (180) days from the date issued.

36. Defendant agrees to fund half of the Attorneys' Fee Award and all Incentive Awards no later than seven (7) days of the Effective Date and the final half of the Attorneys' Fee Award concurrently with the final payment from the Settlement Fund to members of the Settlement Classes, as described in Paragraph 35.

ATTORNEYS' FEE AWARD

37. Class Counsel will petition the Court for an order awarding attorneys' fees in an amount no greater than \$5,000,000 and costs in an amount no greater than \$70,000. The terms of this Agreement are not conditioned upon any minimum or maximum Attorneys' Fees Award, or upon the payment of any Incentive Award or claims payment to any Named Plaintiff. Defendant, the Named Plaintiffs, and Class Counsel agreed to all substantive terms of the settlement with respect to members of the Settlement Classes prior to reaching an agreement concerning attorneys' fees and costs. The Named Plaintiffs and Class Counsel do not condition their willingness to enter into, or perform under, this Settlement Agreement on any agreement or accord regarding the attorneys' fees or costs of Class Counsel, or the Named

Plaintiffs' Incentive Awards. Class Counsel agrees that what the Court determines to be the Attorneys' Fee Award are the full fees and costs for this litigation and will not seek any further amount from Class Members. Class Counsel shall receive from the Settlement Fund the amount of attorneys' fees and costs approved by the Court, but in no event more than \$5,070,000, by the due dates provided herein. Such fees and costs are inclusive of all efforts heretofore and hereinafter expended by Class Counsel and any other attorneys acting on behalf of the Named Plaintiffs and Settlement Classes, up to and including the execution of this Settlement Agreement, and further include all services to be performed by Class Counsel in effectuating this Settlement Agreement.

Final Approval, Dismissal of Claims, and Releases

38. If after conducting the Final Approval Hearing, the Court grants final approval of this Agreement (including any modifications thereto made by the Parties as provided for herein), the Parties will request that the Court enter a final order (the "Final Order and Judgment") in the form attached as Exhibit F that, among other things:

- (a) certifies the Settlement Classes for settlement purposes only, and finds that the Court has personal jurisdiction over all members of the Settlement Classes and that the Court has subject matter jurisdiction to approve this Agreement and all exhibits thereto;
- (b) gives final approval to the settlement set forth in this Agreement as fair, reasonable, and adequate as to the Named Plaintiffs and the Settlement Classes, and in their best interests, and in compliance with all requirements of due process and federal law, and directs

the Parties and their counsel to implement and consummate this Agreement and direct the administration of the settlement in accordance with its terms and provisions;

- (c) declares this Agreement and the Final Order and Judgment to be binding on, and have *res judicata* and preclusive effect in, all pending and future lawsuits or other proceedings encompassed by the Release (as set forth in Paragraphs 40 and 41) maintained by or on behalf of the Named Plaintiffs and all other members of the Settlement Classes, as well as their heirs, executors and administrators, successors, and assigns;
- (d) finds that the Mailed Notice, Published Notice, and Notice Plan implemented pursuant to this Agreement (i) constituted the best practicable notice; (ii) constituted notice that is reasonably calculated, under the circumstances, to apprise members of the Settlement Classes of the pendency of the Action, their right to object or exclude themselves from the proposed settlement and to appear at the Final Approval Hearing, and their right to seek monetary and other relief; (iii) were reasonable and constituted due, adequate, and sufficient notice to all persons entitled to receive notice; and (iv) met all applicable requirements of due process and federal law;

- (e) finds that Class Counsel and the Named Plaintiffs adequately represented the Settlement Classes for the purpose of entering into and implementing the Agreement, and further finds that the Claims Administrator has met all the requirements of the Court as set forth in the Preliminary Approval Order and this Agreement;
- (f) dismisses the Action (including all individual and class claims presented thereby) on the merits as to Defendant and with prejudice and without fees or costs except as expressly provided herein; further provides that, by consent of the Parties, the Court shall retain jurisdiction solely for the purpose of enforcing the terms of the Settlement Agreement through October 3, 2011; and further provides that except as set forth expressly in this Subparagraph, the case is dismissed with prejudice upon entry of the Final Order and Judgment;
- (g) adjudges that the Named Plaintiffs and the Settlement Classes have conclusively compromised, settled, discharged, dismissed, and released any and all Released Claims against Defendant and the other Releasees;
- (h) approves the payment of the Attorneys' Fee Award to Class Counsel as set forth in Paragraph 30(c), and the payment of Incentive Awards to the Named Plaintiffs as set forth in Paragraph 30(b);

- (i) provides that, upon the Effective Date, the Named Plaintiffs and all members of the Settlement Classes who have not been excluded from the Settlement Class, whether or not they return a Claim Form within the time and in the manner provided for, shall be barred from asserting any Released Claims against Defendant and the other Releasees, and any such members of the Settlement Classes shall have released any and all Released Claims as against Defendant and the other Releasees;
- (j) determines that the Agreement and the settlement provided for herein, and any proceedings taken pursuant thereto, are not, and should not in any event be offered or received as evidence of, a presumption, concession, or an admission of liability or of any misrepresentation or omission in any statement or written document approved or made by Defendant; provided, however, that reference may be made to this Agreement and the settlement provided for herein in such proceedings as may be necessary to effectuate the provisions of this Agreement;
- (k) bars and enjoins all members of the Settlement Classes who have not been excluded from the Settlement Classes from (i) filing, commencing, prosecuting, intervening in, or participating (as class members or otherwise) in any other lawsuit or administrative, regulatory, arbitration, or other proceeding in any jurisdiction

based on, relating to, or arising out of the claims and causes of action, or the facts and circumstances relating thereto, in this Action and/or the Released Claims and (ii) organizing members of the Settlement Classes who have not been excluded from the Settlement Classes into a separate class for purposes of pursuing as a purported class action any lawsuit or administrative, regulatory, arbitration, or other proceeding (including by seeking to amend a pending complaint to include class allegations, or seeking class certification in a pending action) based on, relating to, or arising out of the claims and causes of action, or the facts and circumstances relating thereto, in the Action and/or the Released Claims;

- (l) approves the Opt-Out List and determines that the Opt-Out List is a complete list of all Settlement Classes members who have properly and timely requested exclusion from the Settlement Classes and, accordingly, shall neither share in nor be bound by the Final Order and Judgment; and
- (m) authorizes the Parties, without further approval from the Court, to agree to and adopt such amendments, modifications, and expansions of this Agreement and all exhibits hereto as (i) shall be consistent in all material respects with the Final Order and

Judgment and (ii) do not limit the rights of members of the Settlement Classes.

39. The claims released by the Named Plaintiffs and the Settlement Classes members as set forth in Paragraphs 40 and 41 are the “Released Claims.”

40. **Named Plaintiffs’ Release:** As consideration for this Agreement, and upon the Effective Date, the Named Plaintiffs, including each and every one of their respective agents, representatives, attorneys, heirs, assigns, or any other person acting on their behalf or for their benefit, hereby generally release and discharge Releasees from any and all claims, demands, rights, causes of action, compensatory and punitive damages, attorneys’ fees, costs, debts, or liabilities which they now have, or had at any time prior to and through the date of this release.

41. **Settlement Class Release:** As consideration for this Agreement, and upon the Effective Date, all members of the Settlement Classes who have not properly and timely excluded themselves from the Settlement Classes, including each and every one of their respective agents, representatives, attorneys, heirs, assigns, or any other person acting on their behalf or for their benefit, hereby releases and discharges Releasees from any and all claims, demands, rights, causes of action, compensatory and punitive damages, attorneys’ fees, costs, debts, or liabilities which all members of the Settlement Classes in the Action now have, or had at any time prior to and through the date of this release arising out of or in any way related to the allegations in the Second Amended Complaint.

42. Nothing in this Agreement shall preclude any action to enforce the terms of the Agreement, including participation in any of the processes detailed therein.

Withdrawal from Settlement

43. Within fifteen (15) days of the occurrence of any of the following events, and upon written notice to counsel for all Parties, any Party shall have the right to withdraw from the settlement:

- (a) if the Court fails to approve the Agreement or if on appeal the Court's approval is reversed or modified; or
- (b) if the Court materially alters any of the terms of the Agreement; or
- (c) if the Preliminary Approval Order, as described in Paragraph 14, or the Final Approval Order, as described in Paragraph 38, is not entered by the Court, or is reversed or modified on appeal, or otherwise fails for any reason; or
- (d) if more than 35 class members of Settlement Class I or more than 35 class members of Settlement Class III choose to exclude themselves and Defendant opts to void this Agreement, pursuant to the provisions in Paragraph 26 of this Agreement.

44. If this Agreement is not approved by the Court or the settlement is not given approval by the City Council of the City of Chicago, or otherwise fails to become effective, the orders, judgment, and dismissal to be entered pursuant to this Agreement shall be vacated; this Agreement shall have no further force and effect, and the Parties will be returned to the *status quo ante* with respect to the Action as if this Agreement had never been entered into.

45. If this Agreement fails to be approved or otherwise fails to be consummated in accordance with its terms:

- (a) The Named Plaintiffs shall be entitled to continue this Action on behalf of the classes in accordance with the rulings, circumstances and procedural posture that existed in this Action on the date of preliminary approval; and
- (b) Defendant shall retain all rights to continue its defense to this Action and to assert claims in accordance with the rulings, circumstances and procedural posture that existed in this Action on the date of preliminary approval.

Effective Date

46. The Effective Date of this Agreement shall be the date when each and all of the following conditions have occurred:

- (a) This Agreement has been fully executed by all the Parties and their counsel;
- (b) The City Council of the City of Chicago has given its approval to the settlement;
- (c) Orders have been entered by the Court granting preliminary approval of this Agreement, and approving a form of notice and Claim Form, all as provided in this Agreement;
- (d) The Court-approved notice has been duly promulgated as ordered by the Court;
- (e) The Court has entered a Final Order and Judgment finally approving this Agreement, as provided in this Agreement; and

(f) The judgment has become Final as defined in Paragraph 47.

47. “Final,” when referring to a judgment order means that (a) the judgment is a final, appealable judgment; and (b) either (i) no appeal has been taken from the judgment as of the date on which all times to appeal therefrom have expired, or (ii) an appeal or other review proceeding of the judgment having been commenced, such appeal or other review is finally concluded and no longer is subject to review by any court, whether by appeal, petitions for rehearing or reargument, petitions for rehearing *en banc*, petitions for writ of *certiorari*, or otherwise, and such appeal or other review has been finally resolved in such manner that affirms the Final Order and Judgment in all material respects.

Additional Provisions

48. The headings and captions contained in this Agreement are for reference purposes only and in no way define, extend, limit, describe, or affect the scope, intent, meaning, or interpretation of this Agreement.

49. The Exhibits to this Agreement are an integral part of the settlement and are hereby incorporated and made part of this Agreement.

50. The Parties hereto shall execute all documents and perform all acts necessary and proper to effectuate the terms of this Agreement. The executing of documents must take place prior to the date scheduled for the Final Approval Hearing

51. Neither this Agreement nor any negotiations shall be construed, offered, received as, or deemed to be, evidence of an admission on the part of the Named Plaintiffs or the Settlement Classes of lack of merit, or on the part of Defendant of any liability

or wrongdoing whatsoever, whether as alleged in the Second Amended Class Action Complaint or otherwise.

52. The Parties may destroy documents generated related to the notice and administration of the Agreement eighteen (18) months after the Effective Date.

53. Class Counsel agrees to return all documents and data provided by Defendant during the course of this Action within sixty (60) days after mailing of the letters/checks regarding payment to the Settlement Classes.

54. Nothing in this Agreement shall be construed to prevent Defendant from communicating orally, electronically, or in writing with Settlement Classes members in the ordinary course of business.

55. All documents, papers and notices required to be given by this Agreement to Plaintiffs, the Settlement Classes, or Class Counsel shall be given to:

Michael Kanovitz
LOEVY & LOEVY
312 N. May Street, Suite 100
Chicago, Illinois 60607

All documents, papers and notices required to be given under this Agreement to Defendant shall be given to:

Mara S. Georges
Corporation Counsel
c/o Matthew Hurd
30 N. LaSalle Street, Suite 1720
Chicago, Illinois 60602

With a copy to:

Matthew C. Crowl
Schiff Hardin LLP
233 South Wacker Drive

Suite 6600
Chicago, Illinois 60606

56. The Parties to this Agreement agree to cooperate in the submission of this Agreement to the Court and will recommend acceptance of the Agreement by all necessary parties. The Parties shall cooperate in taking any such other steps as may be requested by the Court to implement this Agreement and the settlement provided for herein.

57. In consideration of this Agreement, Class Counsel agrees that what the Court determines to be the Attorneys' Fee Award and costs are the full fees and costs for this litigation and will not seek any further amount from Class Members. Class Counsel further represent and certify that they will pay any amounts due for attorneys' fees pursuant to any agreement with them, and hold Defendant harmless from any such claim.

58. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Illinois.

59. The Parties to this Agreement warrant that they are executing this Agreement freely and voluntarily, after independently determining that its provisions are of a material benefit to them, and that the duties and obligations imposed by it are fair and reasonable.

60. The Parties to this Agreement have read and fully understand the stated terms and conditions, have had time to reflect on and consider the benefits and consequences of entering into this Settlement Agreement, and have had the opportunity to review the terms of this Agreement with their respective attorneys. The Parties also warrant that they have not entered into this Agreement in reliance upon any warranty or representation, express or

implied, of any nature or kind by any other Party, other than the warranties and representations expressly made in this Agreement.

61. Except as otherwise expressly provided in this Agreement, this Agreement constitutes the entire agreement between and among the Parties with respect to the settlement of the Action, and it supersedes all prior and contemporaneous written and/or oral agreements between the parties. All negotiations, discussions, prior understandings and agreements between the Parties with regard to the subject matter of this Agreement are merged into this Agreement, which fully, completely, and accurately states and expresses the Parties' entire understandings and agreements, and may not be modified or amended except upon a writing signed by the Parties and their respective counsel.

62. This Agreement shall not be construed more strictly against one Party than another merely because of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arms'-length negotiations resulting in the Agreement, all Parties hereto have contributed substantially and materially to the preparation of the Agreement.

63. In the event that there are any developments in the effectuation and administration of this Agreement that are not dealt with by the terms of this Agreement, then such matters shall be dealt with as agreed upon by the Parties, and, failing agreement, as shall be ordered by the Court.

64. Except as expressly provided herein, the Parties to this Settlement Agreement are responsible for payment and negotiation of their own attorneys' fees and costs.

65. In the event any date or deadline set forth in this Agreement falls on a weekend or legal holiday, such date or deadline shall be on the first business day thereafter. Unless otherwise noted, all references to “days” in this Agreement shall be to calendar days.

66. This Agreement may be executed in any number of counterparts, each of which together shall be deemed one and the same instrument. Facsimile and PDF signature copies are acceptable.

IN WITNESS HEREOF, the parties hereto, acting by and through their respective counsel of record have so agreed, on _____, 2010.

For Named Plaintiffs and the Settlement Class:

Thomas Dunn

Veronica Imperial

Denny Robinson

For Class Counsel with respect to release of attorneys' lien and approval as to form:

Michael Kanovitz
LOEVY & LOEVY
312 North May, Suite 100
Chicago, Illinois 60607
Tel: (312) 243-5900
Fax: (312) 243-5902

Attorney for Named Plaintiffs and Settlement Class

For Defendants:

CITY OF CHICAGO
A Municipal Corporation
MARA S. GEORGES
Corporation Counsel

By: _____
Matthew Hurd
Deputy Corporation Counsel
30 N. LaSalle Suite 1710
Chicago, Illinois 60603
(312) 742-0234

Attorneys for the City of Chicago

Approved as to form:

Matthew C. Crowl, Esq.
Schiff Hardin LLP
233 South Wacker Drive
Suite 6600
Chicago, IL 60606
FAX: (312) 258-5609