

## SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into and is effective as of JUN 27, 2007 (the "Effective Date"), by and between Coastal Law Enforcement Action Network, a project of the International Humanities Center, a California Charitable Trust ("CLEAN"), and the City of San Diego ("City"). CLEAN and the City are collectively referred to herein as the "Parties" and sometimes separately referred to herein as the "Party." The Parties intend by this Agreement to conclude the matters between them in the Complaint in the matter entitled *Coastal Law Enforcement Action Network v. City of San Diego et al.*, San Diego County Superior Court Case No. GIC 861914 ("CLEAN litigation").

## RECITALS

1. City owns the property located at 2800 Torrey Pines Scenic Drive, City of San Diego, California, commonly known as the "Torrey Pines Gliderport" (the "Property") (City of San Diego Assessor's Parcel No. 342-010-36) in the Torrey Pines City Park.
2. City leased the Property to Air California Adventure, LLC effective September 17, 1998 for gliderport concession, the use of non-powered aircraft, and by the general public. David Jebb was the president of Air California Adventure, LLC, and Maya Jebb was the secretary/treasurer of Air California Adventure, LLC. Air California Adventure, LLC assigned its interest in the lease to Air California Adventure, Inc. on March 20, 2000. David Jebb and Maya Jebb are the sole officers of Air California Adventure, Inc. Air California Adventure, LLC, Air California Adventure, Inc., David Jebb, and Maya Jebb are hereafter collectively referred to as "Lessees".
3. On June 7, 2004, the City issued a Notice of Violation to its Lessees, citing the violation of various laws and regulations.
4. On February 15, 2006, in response to the Notice of Violation, Lessees filed an after-the-fact permit application with the City's Development Services Department [DSD].
5. On February 27, 2006, CLEAN filed a "Complaint For Civil Penalties, Restitution, and Injunctive Relief," alleging, among other things, violations of the California Coastal Act, California Public Resources Code §§ 30000 *et seq.* ("Coastal Act") with respect to the use of the Property.
6. On May 5, 2006, DSD had completed review of the application and requested additional information from Lessees which it needed in order to continue processing the after-the fact permit application.
7. To date, Lessees have not provided the necessary information to the City.
8. On August 30, 2006, the City Attorney's Office sent a letter, attached to this Agreement as Exhibit A and incorporated herein by reference, to Lessees requiring compliance with the lease terms ("letter").

9. On January 31, 2007, the City filed a Cross-Complaint against Lessees for breaching the lease agreement and for indemnity.

10. The Parties, conditioned upon compliance with the terms and conditions set forth herein, intend by this Agreement to fully and completely resolve, waive, and perpetually extinguish all claims within the scope of the litigation as they relate to each other.

### AGREEMENT

THEREFORE, in consideration of the mutual promises and covenants made in this Agreement and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Actions by the City. The City shall:
  - a. Enforce all of the requirements set forth in the August 30, 2006 letter from the City to Lessees, including any restoration of native vegetation required by the California Coastal Commission. In the event Lessees fail to comply with the terms and conditions of the August 30, 2006 letter, City agrees to terminate the lease with Lessees, turn off all irrigation on the Property, cap all run-off pipes on the Property, and obtain and comply with permits for all unpermitted structures or their removal from the Property, consistent with the requirements of the Coastal Act;
  - b. Prepare a General Development Plan, a comprehensive City plan for the development and management of the Torrey Pines City Park in collaboration with appropriate City departments, federal, state, and regional agencies, and representatives from the public, within three years of the effective date of this Agreement, absent good cause for delay, and in no event longer than within five years, and taking into consideration the historic value of the property;
  - c. Establish a Torrey Pines City Park Advisory Board whose members shall be appointed within 120 days of the effective date of this Agreement, absent good cause for delay, and in no event longer than within six months, and who shall include representatives of the following Gliderport user groups: (1) paragliders, (2) hanggliders, (3) sailplane gliders, and (4) radio-controlled model sailplane gliders as well as at least two representatives from non-profit environmental groups.
2. Payment to CLEAN. Within thirty (30) days of the mutual execution of this Settlement Agreement by the Parties, City shall pay CLEAN twenty thousand dollars (\$20,000).

3. Confidentiality and Publicity. Following the mutual execution of this Agreement by the Parties, CLEAN will, in a press release or announcement concerning this Agreement, promote the benefits of the actions taken by the Parties under this Agreement.

4. Releases. The parties acknowledge that there is a risk that, subsequent to the execution of this Agreement, the parties may incur injury, loss, damage, costs, attorneys' fees, or expenses, which are in some way caused by or connected with the persons, entities, matters, and/or issues referred to herein, or which are unknown and unanticipated at the time this Agreement is executed, or which are not presently capable of being ascertained. The parties further acknowledge that there is a risk that such damages as are presently known may hereafter become more serious than the parties now anticipate. Nevertheless, the parties acknowledge that this Agreement has been negotiated and agreed upon in light of that realization. Both parties have had the benefit and advice of counsel. To the extent the above releases are effective, the parties each waive their rights under California Civil Code section 1542. Section 1542 provides as follows:

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

5. Dismissal of Litigation. CLEAN agrees to dismiss the lawsuit with prejudice within 10 days of the execution of this Agreement.

6. Continuing Jurisdiction of the Court. The parties agree that the Court retains jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement.

7. Costs and Expenses. With the exception of payment to CLEAN as detailed in paragraph 2, the Parties shall bear their own costs, expenses and attorneys' fees in connection with the current CLEAN litigation, and the negotiations, drafting, and consummation of this Agreement. In the event any action or proceeding is brought to enforce this Agreement, the prevailing party shall be entitled to the reasonable fees, out-of-pocket expenses, and costs of attorneys and experts against the non-prevailing parties, in addition to all other relief to which that party or those parties may be entitled.

8. Agreement to be Bound by Mediation. The parties agree to submit any dispute regarding the interpretation or enforcement of this Agreement to a mutually acceptable mediator. The parties agree to be bound by the decision of the mediator.

9. Entire Agreement and Amendments. This Agreement constitutes the entire agreement between the Parties concerning the subject matter hereof, and shall not be modified except by a writing executed by the Party to be bound thereby. This Agreement supersedes any written or oral agreement(s) or representations(s) that preceded or may have preceded execution of this Agreement. The Parties have not relied upon any oral representation(s) in deciding whether to enter into this Agreement.

10. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their heirs, executors, administrators, trustors, trustees, beneficiaries, predecessors, successors, assigns, partners, partnerships, parent companies, subsidiaries, affiliated and related entities, officers, directors, principals, agents, servants, employees, representatives, and all persons, firms, plaintiffs, and/or persons or entities connected with each of them, including, without limitation, their insurers, sureties, attorneys, consultants and experts. This Agreement is not intended to bind or benefit any person other than the parties hereto and their successors and assigns.

11. Interpretation and Representation by Counsel. The terms of this Agreement are the product of arms-length negotiations between the Parties and their counsel, and no provision shall be construed against the drafter thereof. All Parties mutually warrant and represent that they have been represented by counsel of their own choosing in the negotiation and drafting of this Agreement, and that they understand fully and voluntarily consent to all of the provisions herein.

12. Choice of Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California. The venue for any disputes concerning this Agreement shall be in San Diego County, California.

13. Counterparts and Facsimile Signatures. This Agreement may be executed in counterparts which, taken together, shall constitute one and the same agreement. This Agreement may also be delivered by facsimile transmission and in such event all facsimile signatures shall be deemed complete for all purposes hereof.

14. Captions. Any captions to the paragraphs or subparagraphs of this Agreement are solely for the convenience of the Parties, are not are part of this Agreement, and shall not be used for the interpretation of or determination of the validity of this Agreement or any provision hereof.

15. Authorization. Each person signing this Agreement represents and warrants to the Parties and to each other that he or she is fully authorized to sign the Agreement on behalf of the Party for whom/which he or she is signing, and thereby to bind such Party to each and all of the terms of this Agreement.

16. Cooperation. The parties agree to cooperate with each other to execute such documents as reasonably necessary and to take all steps as may be reasonably necessary to accomplish the purpose of this Agreement.

17. Compromise of Disputed Claims. This Agreement is a compromise of disputed claims and shall never at any time or for any purpose be considered an admission of any liability or responsibility on the part of any person or entity, nor shall the furnishing of any consideration for the execution of this Agreement constitute or be construed as an admission of any liability whatsoever by any of the parties hereto or any other person.

18. Integration. The undersigned, and each of them, acknowledge and represent that no promise or inducement not expressed in this Agreement has been made in connection with this Agreement. This Agreement contains the entire agreement and understanding between the parties as to the subject matter of this Agreement and is intended to be and is a final integration thereof. There are no representations, warranties, agreements, arrangements, undertakings, oral or written, between or among the parties hereto relating to the terms and conditions of this Agreement that are not fully expressed herein.

19. Waiver and Amendment. No provision of this Agreement, or breach of any provision, can be waived except in writing. Any waiver by the City must be formally approved by the City Council. Waiver of any provision or breach shall not be deemed to be a waiver of any other provision, or of any subsequent breach of the same or other provision. This Agreement may be amended, modified or rescinded only in writing signed by all parties to this Agreement.

20. Time of Essence. Time is expressly declared to be of the essence in this Agreement, and of every provision in which time is an element.

21. Additional Documents. The parties each agree to sign any additional documents which are reasonably necessary to carry out this Agreement or to accomplish its intent.

22. No Assignment. Each party represents and warrants that it has not assigned or transferred any claims released herein, and that it is the sole owner of that claim.

23. No Reliance On Other Party. The undersigned and each of them acknowledge and represent that they are effecting this compromise and settlement and are executing this Agreement (i) after they and their respective legal counsel had the opportunity to and did conduct an independent investigation of the relevant facts; and (ii) without relying on representation made by the other party or the other party's attorney.

24. Severability. Even if a court holds one or more parts of this Agreement ineffective, invalid, or void, all remaining provisions shall remain valid in effect unless a party's consideration materially fails as a result of the invalidity.

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IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as of the date first written above.

The Parties:

Coastal Law Enforcement Action Network  
A project of the International Humanities  
Center, a California Charitable Trust

By: Marcia Hanscom  
Name: Marcia Hanscom  
Its: Managing Director

City of San Diego

By: Jay M. Goldstone  
Name: Jay M. Goldstone  
Its: \_\_\_\_\_

APPROVED AS TO FORM AND LEGALITY:

Law Offices of David J. Weinsoff

\_\_\_\_\_  
David J. Weinsoff  
Attorney for Plaintiff  
Coastal Law Enforcement Action Network

Michael J. Aguirre, City Attorney

By: Malinda R. Dickenson  
Malinda R. Dickenson  
Attorneys for Defendant  
City of San Diego

R- 302749

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as of the date first written above.

The Parties:

Coastal Law Enforcement Action Network  
A project of the International Humanities  
Center, a California Charitable Trust

City of San Diego

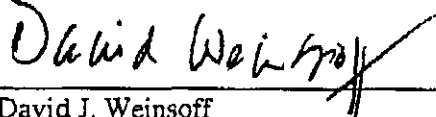
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

APPROVED AS TO FORM AND LEGALITY:

Law Offices of David J. Weinsoff

Michael J. Aguirre, City Attorney

  
\_\_\_\_\_  
David J. Weinsoff  
Attorney for Plaintiff  
Coastal Law Enforcement Action Network

By: \_\_\_\_\_  
Malinda R. Dickenson  
Attorneys for Defendant  
City of San Diego

RESOLUTION NUMBER R- 302749DATE OF FINAL PASSAGE JUN 27 2007

WHEREAS, the City of San Diego entered into a settlement agreement with the Plaintiffs in San Diego County Superior Court Case Number GIC861914, entitled *Coastal Law Enforcement Action Network v. City of San Diego, et al.*; and

WHEREAS, the settlement agreement requires the City to

- (1) Pay the Plaintiffs \$20,000; and
- (2) Enforce the lease agreement for the Torrey Pines Gliderport, including any restoration of native vegetation required by the California Coastal Commission; and in the event City's lessee fails to comply, terminate the lease and turn off all irrigation on the property, cap all run-off pipes on the property, and obtain and comply with permits for all unpermitted structures or their removal, consistent with the requirements of the Coastal Act; and
- (3) Prepare a General Development Plan for the Torrey Pines City Park, taking into consideration the historic value of the property; and
- (4) Establish a Torrey Pines City Park Advisory Board whose members shall be appointed within 120 days of the date of the agreement and who shall include representatives of the following Gliderport user groups: (1) paragliders, (2) hanggliders, (3) sailplane gliders, and (4) radio-controlled model sailplane




gliders as well as at least two representatives from non-profit environmental groups.

NOW THEREFORE, BE IT RESOLVED, by the Council of the City of San Diego, that the Mayor, or his designee, is authorized and empowered to execute, for and on behalf of the City of San Diego, as referenced in the Settlement Agreement adopted by the City Council on JUN 19, 2007.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By

  
Malinda D. Dickenson  
Deputy City Attorney

MRD:ms  
Aud. Cert. AC2700764  
05/15/07  
Or.Dept: READ  
R-2007-1099

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of JUN 19 2007.

ELIZABETH S. MALAND  
City Clerk

By

  
Deputy City Clerk

Approved:

6.27.07  
(date)

  
JERRY SANDERS, Mayor

Vetoed:

(date)

JERRY SANDERS, Mayor

Passed by the Council of The City of San Diego on June 19, 2007, by the following vote:

YEAS: PETERS, FAULCONER, ATKINS, YOUNG, MAIENSCHIN,  
FRYE, & HUESO.

NAYS: NONE.

NOT PRESENT: MADAFFER.

RECUSED: NONE.

AUTHENTICATED BY:

**JERRY SANDERS**

Mayor of The City of San Diego, California

**ELIZABETH S. MALAND**

City Clerk of The City of San Diego, California

(Seal)


By: GIL SANCHEZ, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of  
RESOLUTION NO. R-302749, approved by the Mayor of The City of San Diego,  
California on June 27, 2007.

**ELIZABETH S. MALAND**

City Clerk of The City of San Diego, California

(SEAL)

By: , Deputy