

(R-96-906)

RESOLUTION NUMBER R-286933

ADOPTED ON **FEB 13 1996**

BE IT RESOLVED, by the Council of The City of San Diego, that the City Manager be and he is hereby authorized to execute for and on behalf of the City a partial Settlement Agreement and Release in the case San Dieguito Partnership, L.P., et al. v. City of San Diego, et al., Superior Court Case No. 675245, under the terms and conditions set forth in the partial Settlement Agreement and Release on file in the office of the City Clerk as Document No. RR-286933.

BE IT FURTHER RESOLVED, that the City Manager be and he is hereby authorized to pay the sum of \$450,000 for partial settlement in the case of San Dieguito Partnership, L.P., et al. v. City of San Diego, et al., Superior Court Case No. 675245, from Public Liability Fund No. 81140, Object Account No. 4824, and Job Order No. 081141.

BE IT FURTHER RESOLVED, that the City Auditor and Comptroller be and he is hereby authorized to issue one check in the amount of \$450,000, made payable to SAN DIEGUITO PARTNERSHIP, L.P., c/o Roy Collins at R. B. Collins and Associates, 5963 La Place Court, Suite 109, Carlsbad, CA 92008, as partial settlement of the San Dieguito case described above.

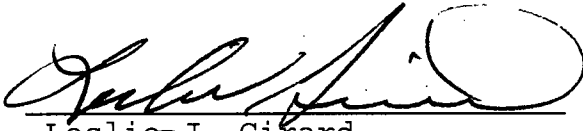
BE IT FURTHER RESOLVED, that the City Auditor and Comptroller be and he is hereby authorized and directed to establish an interest bearing trust account, entitled "San

Dieguito Valley Trust Fund," for the purpose of serving as a repository for funds to be used to comply with the terms of any further settlement of the San Dieguito Partnership case described above.

BE IT FURTHER RESOLVED, that the City Auditor and Comptroller be and he is hereby authorized and directed to transfer \$100,000 from Public Liability Fund No. 81140, Object Account No. 4824, and Job Order No. 081141, to the San Dieguito Valley Trust Fund for the above stated purpose.

APPROVED: JOHN W. WITT, City Attorney

By



Leslie J. Girard
Chief Deputy City Attorney

LJG:js
02/13/95
Or.Dept:Atty
Aud.Cert:9600859
R-96-906
Form=r-t

**The City of San Diego
CERTIFICATE OF CITY AUDITOR AND COMPTROLLER**

CERTIFICATE OF UNALLOTTED BALANCE AC 9600859

ORIGINATING DEPT. NO.: 045

I HEREBY CERTIFY that the money required for the allotment of funds for the purpose set forth in the foregoing resolution is available in the Treasury, or is anticipated to come into the Treasury, and is otherwise unallotted.

Amount \$ 100,000.00 Fund 81140

Purpose AUTHORIZING TRANSFER OF FUNDS FROM THE PUBLIC LIABILITY FUND TO THE SAN DIEGUITO VALLEY TRUST FUND TO COMPLY WITH TERMS OF ANY FURTHER SETTLEMENT.

Date FEBRUARY 8, 1996 By: *Jillie Dease*

AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA										
ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
1	0	81140	81140		4824	081141				\$100,000.00
TOTAL AMOUNT										\$100,000.00

FUND OVERRIDE

CERTIFICATION OF UNENCUMBERED BALANCE

I HEREBY CERTIFY that the indebtedness and obligation to be incurred by the contract or agreement authorized by the hereto attached resolution, can be incurred without the violation of any of the provisions of the Charter of the City of San Diego; and I do hereby further certify, in conformity with the requirements of the Charter of the City of San Diego, that sufficient moneys have been appropriated for the purpose of said contract, that sufficient moneys to meet the obligations of said contract are actually in the Treasury, or are anticipated to come into the Treasury, to the credit of the appropriation from which the same are to be drawn, and that the said money now actually in the Treasury, together with the moneys anticipated to come into the Treasury, to the credit of said appropriation, are otherwise unencumbered.

Not to Exceed \$ 450,000.00

Vendor SAN DIEGUITO PARTNERSHIP, L.P., C/O ROY COLLINS AT R.B. COLLINS & ASSOC.

Purpose AUTHORIZING EXPENDITURE OF FUNDS FOR PARTIAL SETTLEMENT OF OF THE SAN DIEGUITO PARTNERSHIP CASE.

Date FEBRUARY 8, 1996 By: *Jillie Dease*

AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA										
ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
01	0	81140	81140		4824	081141				\$450,000.00
TOTAL AMOUNT										\$450,000.00

FUND OVERRIDE

R. 286933

FEB 13 1996

PARTIAL SETTLEMENT AGREEMENT AND RELEASE

This partial release is entered into between San Dieguito Partnership, L.P. and San Dieguito Valley, Inc. (collectively, Plaintiffs) and the City of San Diego and the City Council of the City of San Diego (collectively, Defendants).

WHEREAS, on March 30, 1994, Plaintiffs filed a Petition for Writ of Mandate and Complaint against the Defendants (San Diego Superior Court Case No. 675245) (the Lawsuit); and

WHEREAS, on July 1, 1994, Plaintiffs filed a First Amended Petition and Complaint; and

WHEREAS, Plaintiffs own certain property within the City of San Diego, as described in the Lawsuit (the Property); and

WHEREAS, on or about May 23, 1993, the parties entered into a settlement agreement in connection with a previous lawsuit (San Diego Superior Court Case No. 642755) (the 1993 Settlement Agreement); and

WHEREAS, the Lawsuit seeks damages for breach of the 1993 Settlement Agreement, for specific performance of the 1993 Settlement Agreement, and for declaratory relief about the rights and obligations of the parties under the 1993 Settlement Agreement. In addition, the Lawsuit seeks damages for the Defendants' alleged inverse condemnation of Plaintiffs' Property and for the Defendants' alleged violations of Plaintiffs' civil rights. The Lawsuit also seeks writs of mandate challenging the March 7, 1994, amendment to the City's general plan, challenging the "future urbanizing" designation of Plaintiffs' property and

challenging the City's application of the "Framework Plan" to Plaintiffs' property; and

WHEREAS, the parties wish to resolve one element of Plaintiffs' claim for damages; and

WHEREAS, the parties have been negotiating in an attempt to reach an overall settlement of the Lawsuit but have not yet finalized any such overall settlement. The parties are contemplating the payment, in cash or kind, of approximately \$6 million and the performance of certain acts by Defendants in return for the performance of certain acts by Plaintiffs;

NOW, THEREFORE, the parties enter into this Partial Release:

1. Agreement to Pay

Upon the mutual execution of this Partial Release, Defendants shall pay to Plaintiffs the sum of Four Hundred Fifty Thousand Dollars and No Cents (\$450,000.00).

The check for \$450,000.00 shall be made payable to San Dieguito Partnership, L.P., and delivered in care of Roy Collins at R.B. Collins & Associates, 5963 La Place Court, Suite 109, Carlsbad, CA 92008.

2. Claim Released

The Lawsuit includes several causes of action, including, but not limited to, breach of the 1993 Settlement Agreement, inverse condemnation and violation of due process. The Lawsuit includes a claim for damages representing the planning costs for the Property incurred by Plaintiffs following the execution of the 1993 Settlement Agreement. Such planning costs were either

costs incurred, or payments made to or billings received from any person or entity, for or related to the preparation and processing of any permit or other approval from the City of San Diego, regarding the Property and following the execution of the 1993 Settlement Agreement, including, but not limited to, work performed or services rendered by planners, engineers or other consultants.

In consideration for the Defendants' payment of \$450,000.00, Plaintiffs will release the following claim for damages in the Lawsuit under any theory of recovery: the planning costs, as defined above, incurred by Plaintiffs between May 23, 1993, and July 1, 1994 (the Released Claim).

3. Claims Not Released

Except for the Released Claim, no other claims raised in the Lawsuit are released by this Partial Release. In addition, this Partial Release does not release any other claims Plaintiffs may have against Defendants, including without limitation those claims raised in San Diego Superior Court Case No. 695361.

4. Incorporation into Overall Settlement Agreement or Continuation of Partial Release

In the event the parties are able to reach agreement on the terms and conditions of an overall settlement of the Lawsuit, this Partial Release shall be incorporated therein.

Furthermore, in the event of an overall settlement, the payment of the \$450,000.00 called for in paragraph 1 shall be counted as a credit against the approximate \$6 million payment contemplated

by the parties, and referenced above, as part of an overall settlement.

In the event that the parties are unable to reach agreement on the terms and conditions of an overall settlement of the Lawsuit, this Partial Release shall remain valid and enforceable as a partial compromise and release in the Lawsuit.

5. No Prior Assignment

Plaintiffs covenant and agree that they have not assigned or in any way conveyed, transferred or encumbered all or any portion of any right to damages under the Released Claim.

6. No Admission of Liability

This Partial Release is not an admission of liability by any party to this Release and is a compromise of a disputed claim.

7. Successors and Assigns


This Partial Release shall inure to the benefit of and shall be binding upon the successors and assigns of the parties to this Release.

8. Authorization

Each person executing this Agreement warrants that he, she or it is fully authorized and empowered to do so.

IN WITNESS WHEREOF, the undersigned duly authorize and cause this Agreement to be executed.

CITY OF SAN DIEGO



JACK MCGRORY
City Manager

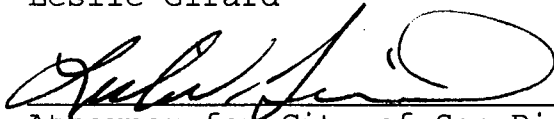
CITY COUNCIL OF
CITY OF SAN DIEGO



JACK MCGRORY
City Manager

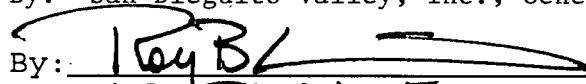
Approved as to form:

Leslie Girard



Attorney for City of San Diego and
City Council of City of San Diego

SAN DIEGUITO PARTNERSHIP, L.P.
By: San Dieguito Valley, Inc., General Partner

By: 

Title: PRESIDENT

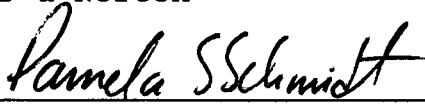
SAN DIEGUITO VALLEY, INC.

By: 

Title: PRESIDENT

Approved as to form:

Berger & Norton

By: 

Pamela S. Schmidt
Attorneys for San Dieguito Partnership, L.P. and
San Dieguito Valley, Inc.