

000217

REQUEST FOR COUNCIL ACTION
 CITY OF SAN DIEGO
1. CERTIFICATE NUMBER
(FOR AUDITOR'S USE C)104
1/29
 TO: City Attorney
 2. FROM (ORIGINATING DEPARTMENT): City Attorney
 3. DATE: December 27, 2007

 4. SUBJECT:
 SETTLEMENT AGREEMENT IN *COASTAL LAW ENFORCEMENT ACTION NETWORK V. CITY OF SAN DIEGO, ET AL.; CITY OF SAN DIEGO V. AIR CALIFORNIA ADVENTURE, LLC., ET AL.*

 5. PRIMARY CONTACT (NAME, PHONE & MAIL STA.) Malinda R. Dickenson (619) 235-5884 MS 59
 6. SECONDARY CONTACT (NAME, PHONE & MAIL STA.)
 7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED
8. COMPLETE FOR ACCOUNTING PURPOSES

FUND	DEPT.	ORGANIZATION	OBJECT ACCOUNT	JOB ORDER	C.I.P. NUMBER	AMOUNT	9. ADDITIONAL INFORMATION / ESTIMATED COST:

10. ROUTING AND APPROVALS

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	ORIGINATING DEPARTMENT	<i>Malinda R. Dickenson</i>	12/27/07	8	DEPUTY CHIEF		
2	RISK MANAGEMENT	<i>[Signature]</i>	1-7-08	9	COO	<i>[Signature]</i>	1.15.08
3	PARK & REC	<i>[Signature]</i>	1-8-08	10	CITY ATTORNEY	<i>[Signature]</i>	1.16.08
4	READ	<i>[Signature]</i>	1/8/08	11			
5	C&S				DOCKET COORD: _____ COUNCIL LIAISON: _____		
6	FM	<i>[Signature]</i>	1/15/08		COUNCIL PRESIDENT <input type="checkbox"/> SPOB <input type="checkbox"/> <input checked="" type="checkbox"/> CONSENT <input type="checkbox"/> ADOPTION		
7	AUDITORS	<i>[Signature]</i>	1/15/08		<input type="checkbox"/> REFER TO: _____ COUNCIL DATE: 1/29/08		

 11. PREPARATION OF: RESOLUTIONS ORDINANCE(S) AGREEMENT(S) DEED(S)

The City Council voted in closed session to enter into a Settlement Agreement with the Plaintiff. The settlement agreement requires the City's lessee of the Torrey Pines Gliderport to (1) reimburse the City for its \$20,000 payment to the Plaintiff which was required by a prior settlement agreement between the City and the Plaintiff in this matter, (2) pay CLEAN \$5,000, and (3) obtain permits for all unpermitted development or for their removal. It requires the City to comply with the terms of its prior settlement agreement with the Plaintiff and to appoint a Park and Recreation Department liaison for the Torrey Pines City Park to work with the community and serve as a liaison to the Torrey Pines City Park Advisory Board. It requires the Plaintiff to comply with the terms of its prior settlement agreement with City and to dismiss the litigation with prejudice.

11A. STAFF RECOMMENDATIONS: Adopt the Resolution.

12. SPECIAL CONDITIONS:

COUNCIL DISTRICT(S): 1

COMMUNITY AREA(S): UNIVERSITY COMMUNITY PLANNING AREA.

ENVIRONMENTAL IMPACT: THIS SETTLEMENT AGREEMENT REQUIRES LESSEE TO OBTAIN PERMITS WHICH WILL INCLUDE THE REQUISITE ENVIRONMENTAL ANALYSIS.

HOUSING IMPACT:

OTHER ISSUES:

**EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO**

DATE ISSUED: _____ REPORT NO: _____
 ATTENTION: Council President and City Council
 ORIGINATING DEPARTMENT: City Attorney
 SUBJECT: *Coastal Law Enforcement Action Network v. City of
 San Diego, et al.; City of San Diego v. Air California Aventure,
 LLC., et al.*
 COUNCIL DISTRICT(S): 1
 CONTACT/PHONE NUMBER: (619) 235-5884

REQUESTED ACTION: Adopt the resolution.

STAFF RECOMMENDATION: Adopt the resolution.

EXECUTIVE SUMMARY: The City Council voted in closed session to enter into a settlement agreement with the Plaintiffs in the above-referenced litigation. The settlement agreement requires the City's lessee of the Torrey Pines Gliderport to (1) reimburse the City for its \$20,000 payment to the Plaintiff which was required by a prior settlement agreement between the City and the Plaintiff in this matter, (2) pay CLEAN \$5,000, and (3) obtain permits for all unpermitted development or for their removal. It requires the City to comply with the terms of its prior settlement agreement with the Plaintiff and to appoint a Park and Recreation Department liason for the Torrey Pines City Park to work with the community and serve as a liaison to the Torrey Pines City Park Advisory Board. It requires the Plaintiff to comply with the terms of its prior settlement agreement with City and to dismiss the litigation with prejudice.

FISCAL CONSIDERATIONS: The settlement agreement requires the payment of \$20,000 to the City.

PREVIOUS COUNCIL and/or COMMITTEE ACTION: The City Council unanimously voted to authorize the approval of a settlement agreement between the Plaintiff and the City only in Closed session on May 1, 2007 and in Open session on June 19, 2007. Motion by Council President Peters, second by Councilmember Madaffer. The City Council unaminously voted to authorize the approval of the instant settlement agreement between all parties in Closed session on December 4, 2007.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: Community participation will commence in the implementation process.

KEY STAKEHOLDERS AND PROJECTED IMPACTS: When implementation is complete, the Torrey Pines City Park will be brought into conformance with the law and the public will have the benefit of a long term plan for the park as well as an opportunity to contribute to that plan.



 Originating Department



 Deputy Chief/Chief Operating Officer

RESOLUTION NUMBER R- _____

DATE OF FINAL PASSAGE

WHEREAS, on June 27, 2008, the City of San Diego only entered into a settlement agreement with the Plaintiffs only in San Diego County Superior Court Case Number GIC861914, entitled *Coastal Law Enforcement Action Network v. City of San Diego, et al.*; *City of San Diego v. Air California Adventure, LLC., et al.* [litigation]; 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.

WHEREAS, on _____, all parties to the action entered into a settlement agreement to resolve the litigation;

WHEREAS, the settlement agreement requires the City's lessee of the Torrey Pines Gliderport to (1) reimburse the City for its \$20,000 payment to the Plaintiff which was required by the June 27, 2007, agreement between the City and the Plaintiff, (2) pay CLEAN \$5,000, and (3) obtain permits for all unpermitted development or for their removal.

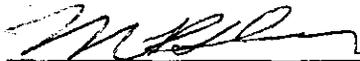
WHEREAS, the settlement agreement requires the City to (1) comply with the terms of the June 27, 2007, agreement with the Plaintiff and (2) appoint a Park and Recreation Department liaison for the Torrey Pines City Park to work with the community and serve as a liaison to the Torrey Pines City Park Advisory Board.

WHEREAS, the settlement agreement requires the Plaintiff to (1) comply with the terms of the June 27, 2007, and to (2) dismiss the litigation with prejudice.

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 December 4, 2007.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By



Malinda D. Dickenson
Deputy City Attorney

MRD:ms

Aud. Cert.

12/27/07

Or.Dept: READ

R-2008-551

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

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into and is effective as of _____, 2007 (the "Effective Date"), by and between Coastal Law Enforcement Action Network, a project of the International Humanities Center, a California Charitable Trust ("CLEAN"); the City of San Diego ("City"); and David Jebb, Maya Jebb, Air California Adventure, Inc., and Air California Adventure, LLC (David Jebb, Maya Jebb, Air California Adventure, Inc. and Air California Adventure, LLC are collectively referred to herein as "Lessee"). CLEAN, City, and Lessee are collectively referred to herein as the "Parties" and sometimes separately referred to herein as a "Party." The Parties intend by this Agreement to conclude the matters between them in the litigation entitled *Coastal Law Enforcement Action Network v. City of San Diego et al.*, San Diego County Superior Court Case No. GIC 861914, including the related Cross-Complaint brought by City against Lessee (collectively "Litigation").

RECITALS

A. 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.

B. 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. With City's consent, 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.

C. On June 7, 2004, the City issued a Notice of Violation to Lessee, citing the violation of various laws and regulations.

D. On February 15, 2006, in response to the Notice of Violation, Lessee filed an after-the-fact permit application with the City's Development Services Department [DSD].

E. 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. The violations alleged in the Complaint include the unpermitted siting of a trailer, kitchen facilities, a concession stand, rest rooms, and an observatory deck; the movement of dirt and gravel both from and onto the Property; physical changes to the topographical contours of the Property; and, the planting of non-native vegetation.

F. On May 5, 2006, DSD had completed review of the application and requested additional information from Lessee which it needed in order to continue processing the after-the fact permit application. To date, Lessee has not provided the necessary information to the City.

G. On August 30, 2006, the City Attorney's Office sent a letter, attached to this Agreement as Exhibit A to Exhibit 1 and incorporated herein by reference, to Lessee that details violations alleged by the City and CLEAN and requiring compliance with the lease terms ("letter").

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

I. On February 23, 2007, CLEAN filed a First Amended Complaint.

J. On May 1, 2007, City and CLEAN only entered into a Settlement Agreement to resolve the issues between City and CLEAN in the Litigation ("CLEAN/City Agreement"). CLEAN/City Agreement is attached hereto and incorporated herein by reference as Exhibit 1. The CLEAN/City Agreement requires the City to pay CLEAN \$20,000, enforce the lease agreement, prepare a General Development Plan for the Torrey Pines City Park, and establish a Torrey Pines City Park Advisory Board.

K. City, CLEAN, and Lessee now wish to resolve all issues in the Litigation by and between all Parties. Accordingly, 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.

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.
 - a. The City shall comply with all terms of the CLEAN/City Agreement.
 - b. The City shall appoint a Park and Recreation Department liaison for the Torrey Pines City Park to work with the community and serve as a liaison to the Torrey Pines City Park Advisory Board.
2. Actions by Lessee:
 - a. Payment to City. Upon execution of this agreement, Lessee agrees to pay City twenty thousand dollars (\$20,000) to reimburse City for its payment to CLEAN pursuant to the CLEAN/City Agreement which became due on July 12, 2007. If Lessee shall determine not to pay this amount in full by January 1, 2008, Lessee shall pay this amount in accordance with the Promissory Note and Settlement Payment Schedule attached hereto as Exhibit 2. Lessee shall provide notice to the City ten days prior to January 1, 2008 regarding whether they intend to pay the settlement amount in full

or on the basis of the Promissory Note and Settlement Payment Schedule. In the event Lessee elects to pay according to the Promissory Note and Settlement Payment Schedule, Lessee shall be entitled at any time to pay in full the balance due. Such payment shall include principal plus any interest accrued to payment date. The parties agree that this interest is a penalty assessment. Unless Lessee is notified otherwise in writing, each payment to City shall be payable to *Treasurer, City of San Diego*, and delivered to City at the following address: **City of San Diego Treasurer/Collections Division, PO Box 129039, San Diego, CA 92112-9030**. In the event Lessee fails to make any installment payment when due, then all sums still owned shall be deemed immediately due and payable and Lessee shall be deemed in default or breach of the terms of this agreement. Upon default or breach of the terms of this agreement by Lessee, City shall be entitled to file a declaration or any other necessary pleading with the above-referenced court seeking judgment in favor of City and against Lessee in the principal sum including interest still owed, plus an additional penalty assessment of 10% interest and reasonable attorneys' fees and cost.

- b. Payment to CLEAN. Lessee agrees to pay CLEAN five thousand dollars (\$5,000) within fifteen (15) days of the mutual execution of this Agreement by the Parties.
- c. Compliance with Coastal Commission and City Permitting and Site Inspection Requirements. Lessee shall comply with all Coastal Commission and City permitting and site inspection requirements, including the following:
 - (i.) Lessee shall, immediately upon execution of this agreement, turn off all irrigation on the Property; cease all lawn watering; cap all run-off pipes on the Property; insure that all overnight vehicles & other unpermitted materials (including, but not limited to, motorhomes, travel trailers, camping gear) are removed.
 - (ii.) Lessee shall immediately cease all extermination and poisoning activities of ground squirrels, gophers and other native fauna on the Property and shall post signs, approved by the City, stating that all flora and fauna on the Property is protected and to be respected.
 - (iii.) Lessee shall submit to City no later than February 1, 2008 all materials necessary to obtain a Conditional Use Permit and Site Development Permit for Environmentally Sensitive Lands for all existing unpermitted development or for its removal, including but not limited to gravel, palm trees and other unpermitted vegetation. Unpermitted development means development as defined by California Public Resources Code section 30106 and includes, but is not limited to, all violations referenced in the City's June 7, 2004 Notice of Violation. If City requests any additional information,

Lessee agrees to submit all requested information within 20 days of receipt of City's request.

- (iv.) Lessee agrees to submit a Coastal Development Permit application to the Coastal Commission's San Diego office within 20 days of obtaining the requisite City approvals. The applications shall address all existing unpermitted development as defined by California Public Resources Code § 30106 and as detailed in the complaints and letter referenced in Paragraphs E, G, and I of the above Recitals. If Lessee believes that one or more items detailed in the complaints and/or letter referenced in Paragraphs E, G, and I of the above Recitals do not exist on the Property, Lessee shall submit evidence supporting such claim(s) to the appropriate Coastal Commission and/or City permit staff. If Coastal Commission and/or City staff determine that the claim by Lessee is correct, the applicable permit application shall so reflect. Lessee shall notify CLEAN and City Attorney's Office of any and all such correspondence and send copies of all such documentation related to permit applications (including permit applications) to the City Attorney's office, the State Historic Preservation Office and to CLEAN at 322 Culver Blvd., Suite 317, Playa del Rey, California 90293.
- (v.) Lessee shall not withdraw any Coastal Development Permit or City application submitted under Paragraphs (i) or (ii) above and shall process the application(s) according to applicable laws. If the Coastal Commission or City determines that additional information is required to complete a Coastal Development Permit or City permit application, and makes a written request for the information to Lessee detailing the additional materials required and a reasonable deadline for submittal, Lessee shall submit the required materials by the deadline specified in the request letter.
- (vi.) Lessee shall fully participate and cooperate in the Coastal Commission and City permitting processes, provide timely responses, and work to move the process along as quickly as possible, including responding to requests for information.
- (vii.) Lessee shall provide Coastal Commission and City staff as well as staff of any agency having jurisdiction over the work being performed under this Agreement with access to the Property at all reasonable times. CLEAN and/or its representatives have the same general right to access to the Property as members of the general public and Lessee will not treat any member of CLEAN any differently than any member of the general public and will not discriminate or otherwise treat any CLEAN member different from

any member of the general public. Nothing in this Agreement is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Coastal Commission, the City, and other relevant agency staff may enter and move freely about the following areas: (1) the portions of the subject property on which the alleged violations are located, (2) any areas where work is to be performed pursuant to this Agreement or pursuant to any plans adopted pursuant to this Agreement, (3) adjacent areas of the property, and (4) any other area where evidence of compliance with this Agreement may lie, as necessary or convenient to view the areas where work is being performed pursuant to the requirements of this Agreement or evidence of such work is held, for purposes including but not limited to inspecting records, operating logs, and contracts relating to the subject property and overseeing, inspecting, documenting, and reviewing the progress of carrying out the terms of this Agreement.

3. Actions by CLEAN:

- a. Compliance with all terms of the CLEAN/City Agreement. CLEAN shall comply with all terms of the CLEAN/City Agreement.
- b. Dismissal of Action. CLEAN shall, within 10 days of the execution of this Agreement, dismiss the Litigation with prejudice.

4. Continuing Jurisdiction of the Court. The parties agree to execute a written stipulation prior to dismissal of the Litigation requesting the court retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement pursuant to California Code of Civil Procedure section 664.6.

5. 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. All 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.”

6. Costs and Expenses. With the exception of payment to the City as detailed in paragraph 2.a., and the payment to CLEAN as detailed in paragraph 2.b., 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.

7. Breach of Agreement. Strict compliance with the requirements of this Agreement by all Parties subject thereto is required. Failure by Lessee to comply with any of the requirements of this Agreement shall result in stipulated penalties in the amount of \$500 per day per violation in addition to any other amount due hereunder. Should Lessee breach this Agreement, Lessee shall pay to CLEAN stipulated penalties within fifteen (15) days after receiving a written demand letter from CLEAN, regardless of whether Lessee subsequently complied with the terms and conditions of this Agreement. The Parties agree that money damages alone would be an inadequate remedy for a breach (or threatened breach) of any provisions of this Agreement, and agree that the provisions of this Agreement may also be enforced by a preliminary or permanent mandatory or prohibitory injunction or other equitable order or decree of a court of competent jurisdiction. The agreed remedies set forth above shall not be construed to limit or derogate from any other legal or equitable remedy authorized by any applicable law.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. Captions. Any captions to the paragraphs or subparagraphs of this Agreement are solely for the convenience of the Parties, are not 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

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: _____

Air California Adventure, Inc.

Air California Adventure, LLC

By: _____
Name: DAVID JEBB
Its: DJ

By: _____
Name: Maya Jebb
Its: MJ

David Jebb, an individual,

Maya Jebb, an individual

David Jebb

Maya Jebb

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
Malinda R. Dickenson
Attorneys for Defendant
City of San Diego

Law Offices of Joseph G. Maiorano

Lisa M. Iulianelli

Joseph G. Maiorano 11/27/07
Joseph G. Maiorano
Attorney for Defendants
Air California Adventure, Inc.;
Air California Adventure, LLC;
David Jebb; Maya Jebb

Lisa M. Iulianelli
Attorney for Defendants
Air California Adventure, Inc.;
Air California Adventure, LLC;
David Jebb; Maya Jebb

000234

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: _____

Air California Adventure, Inc.

Air California Adventure, LLC

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

David Jebb, an individual

Maya Jebb, an individual

APPROVED AS TO FORM AND LEGALITY:

Law Offices of David J. Weinsoff

Michael J. Aguirre, City Attorney

David Weinsoff

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

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

Law Offices of Joseph G. Maiorano

Lisa M. Iulianelli

Joseph G. Maiorano
Attorney for Defendants
Air California Adventure, Inc.;
Air California Adventure, LLC;
David Jebb; Maya Jebb

Lisa M. Iulianelli
Attorney for Defendants
Air California Adventure, Inc.;
Air California Adventure, LLC;
David Jebb; Maya Jebb

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: Marcia Hanscom
Name: Marcia Hanscom
Its: Managing Director

By: _____
Name: _____
Its: _____

Air California Adventure, Inc.

Air California Adventure, LLC

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

David Jebb, an individual

Maya Jebb, an individual

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

Law Offices of Joseph G. Maiorano

Lisa M. Iulianelli

Joseph G. Maiorano
Attorney for Defendants
Air California Adventure, Inc.;
Air California Adventure, LLC;
David Jebb; Maya Jebb

Lisa M. Iulianelli
Attorney for Defendants
Air California Adventure, Inc.;
Air California Adventure, LLC;
David Jebb; Maya Jebb

PROMISSORY NOTE AND PAYMENT SCHEDULE

We, David Jebb, Maya Jebb, Air California Adventure, Inc., and Air California Adventure, LLC do hereby acknowledge our joint and several indebtedness to the City of San Diego in the principal amount of:

Twenty Thousand Dollars (\$20,000.00)

In full by January 1, 2008 or plus penalty assessment of 12% interest until paid.

If we do not pay in full by January 1, 2008, we agree to pay monthly payments of \$5,000 plus 12% interest penalty assessment, according to the following Payment Schedule:

Payment Period	Principal	Interest	Total
1. Upon execution	\$5,000	\$0	\$5,000
2. 1/1/08	\$3,200	\$1,800	\$5,000
3. 2/1/08	\$3,584	\$1,416	\$5,000
4. 3/1/08	\$4,014	\$ 986	\$5,000
5. 4/1/08	\$4,202	\$ 504	\$4,706

We shall be entitled at any time to pay in full the balance due. Such payment shall include principal plus any penalty assessment interest accrued to payment date.

Unless and until there is a default under this agreement, City shall refrain from pursuing civil litigation to collect the unpaid balance due. Should default be made in payment of any installment when due, the whole sum shall, at the option of the City, become then immediately due and payable.

It is further understood and agreed that this contract is executed only as security for the payment of the sum stated to be owed and shall not be deemed to be in lieu of payment itself.

IMPORTANT – Accounts that are on active payment plans will still be reported to the State Franchise Tax Board for offset against your State income tax return.

THIS AGREEMENT WILL ACCRUE INTEREST AT THE RATE OF 12% PER ANNUM ON THE UNPAID BALANCE. SHOULD IT BE NECESSARY FOR THE CITY OF SAN DIEGO TO INCUR LEGAL FEES IN ORDER TO ENFORCE THE TERMS OF THIS AGREEMENT, WE AGREE TO BE RESPONSIBLE FOR ALL COURT COSTS, REASONABLE ATTORNEY’S FEES, AND 10% INTEREST INCURRED OR EXPENDED BY THE CITY.

City of San Diego

By: _____
Name: _____
Its: _____

Air California Adventure, Inc.

By: _____
Name: DAVID JEBB
Its: DJ

David Jebb, an individual

David Jebb

Air California Adventure, LLC

By: _____
Name: Maya Jebb
Its: MJ

Maya Jebb, an individual

Maya Jebb

APPROVED AS TO FORM AND LEGALITY:

Michael J. Aguirre, City Attorney

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

Law Offices of Joseph G. Maiorano

Joseph G. Maiorano 11/27/07
Joseph G. Maiorano
Attorney for Defendants
Air California Adventure, Inc.;
Air California Adventure, LLC;
David Jebb; Maya Jebb

Lisa M. Iulianelli

Lisa M. Iulianelli
Attorney for Defendants
Air California Adventure, Inc.;
Air California Adventure, LLC;
David Jebb; Maya Jebb

EXHIBIT 1

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. Pavment 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.

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: Marcia Hanscom
Name: Marcia Hanscom
Its: Managing Director

By: Jay M. Goldstone
Name: Jay M. Goldstone
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
Malinda R. Dickenson
Attorneys for Defendant
City of San Diego

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

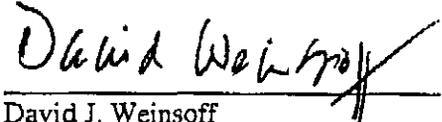
By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

APPROVED AS TO FORM AND LEGALITY:

Law Offices of David J. Weinsoff

Michael J. Aguirre, City Attorney



By: _____

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

Malinda R. Dickenson
Attorneys for Defendant
City of San Diego

RESOLUTION NUMBER R- 302749

DATE 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

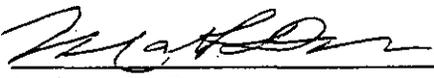
WHEREAS, the settlement agreement requires the City to

- (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.

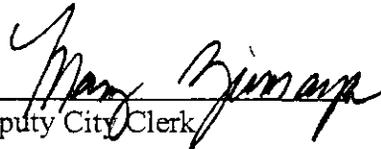
APPROVED: MICHAEL J. AGUIRRE, City Attorney

By 
Malinda D. Dickenson
Deputy City Attorney

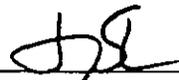
MRD:ms
Aud. Cert. AC2700764
05/15/07
Or.Dept: READ
R-2007-1099

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

000249

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