

REQUEST FOR COUNCIL ACTION
CITY OF SAN DIEGO

000503

1. CERTIFICATE NUMBER (FOR AUDITOR'S USE) 6119
AC2700764

TO: City Attorney

2. FROM (ORIGINATING DEPARTMENT): City Attorney

3. DATE: May 29, 2007

4. SUBJECT: COASTAL LAW ENFORCEMENT ACTION NETWORK V. CITY OF SAN DIEGO, 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	81140		
DEPT.	81140		
ORGANIZATION	3423		
OBJECT ACCOUNT	4824		
JOB ORDER	081141		
C.I.P. NUMBER			
AMOUNT	\$20,000		

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 Dickenson</i>	6/4/07	8	DEPUTY CHIEF	<i>Richard Kelly</i>	5/31/07
2	RISK MANAGEMENT	<i>[Signature]</i>	5/29/07	9	COO	<i>[Signature]</i>	5/31/07
3	PARK & REC	<i>[Signature]</i>	5/29/07	10	CITY ATTORNEY	<i>[Signature]</i>	
4	READ	<i>[Signature]</i>	5/29/07	11			
5	C&LS				DOCKET COORD:	<i>[Signature]</i>	COUNCIL LIAISON: <i>[Signature]</i>
6	FM	<i>Malinda Dickenson</i>	5/31/07		COUNCIL PRESIDENT	<input type="checkbox"/> SPOB <input checked="" type="checkbox"/> CONSENT <input type="checkbox"/> ADOPTION	
7	AUDITORS	<i>[Signature]</i>	5/31/07		COUNCIL DATE:	6/19/07	

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. Subsequent to the vote and in response to concerns raised by staff the Plaintiff agreed to amend the time-frames in the Agreement. The Agreement requires the City to (1) pay the Plaintiff \$20,000; and (2) enforce the lease agreement for the Torrey Pines Gliderport, and in the event City's lessee fails to comply, City will 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; and (4) establish a Torrey Pines City Park Advisory Board.

11A. STAFF RECOMMENDATIONS: Adopt the Resolution.

12. SPECIAL CONDITIONS:

COUNCIL DISTRICT(S): 1

COMMUNITY AREA(S): TORREY PINES CITY PARK

ENVIRONMENTAL IMPACT: THIS SETTLEMENT AGREEMENT REQUIRES LONG RANGE PLANNING FOR THE TORREY PINES CITY PARK AND THAT PERMITS BE OBTAINED FOR EXISTING CONDITIONS. BOTH PROCESSES WILL INCLUDE THE REQUISITE ENVIRONMENTAL ANALYSIS.

HOUSING IMPACT:

OTHER ISSUES:

000505

**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.*
COUNCIL DISTRICT(S): 1
CONTACT/PHONE NUMBER: (619) 533-5884

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 to (1) pay the Plaintiff \$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, within 18 months, 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 90 days of the date of the agreement and who shall include representatives of the following Gliderport user groups: (a) paragliders, (b) hanggliders, (c) sailplane gliders, and (d) radio-controlled model sailplane gliders as well as at least two representatives from non-profit environmental groups. Subsequent to closed session, in response to concerns raised by City staff, the Plaintiffs agreed to amend the time-frames for preparing the General Development Plan and establishing the Advisory Board to three years and 120 days, respectively.

FISCAL CONSIDERATIONS: The settlement agreement requires the payment of \$20,000. It also requires enforcement of the lease, preparation of a General Development Plan, and the creation of the Torrey Pines City Park Advisory Board which will all also have associated costs. A funding source for the General Development Plan is needed.

PREVIOUS COUNCIL and/or COMMITTEE ACTION: The City Council unanimously voted to authorize the approval of a settlement agreement in Closed session on May 1, 2007. Motion by Council President Peters, second by Councilmember Madaffer.

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

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

000507

CERTIFICATE OF UNALLOTTED BALANCE

AC 2700764

ORIGINATING

DEPT. NO.: 45

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: _____ Fund: _____

Purpose: _____

Date: _____ By: _____

AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA										
ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
TOTAL AMOUNT										

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: \$20,000.00

Vendor: Coastal Law Enforcement Action Network

Purpose: Per City Council vote, to enter into a settlement agreement with Coastal Law Enforcement Network . Agreement requires the City to pay \$20,000 and to enforce the lease agreement for the Torrey Pines Gliderport. See additional information on the form 1472 related to this agreement.

Date: May 22, 2007

By: *Pat Halbert* 5/22/07
AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA										
ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
001	0	81140	81140	3423	4824	81141				\$20,000.00
TOTAL AMOUNT										\$20,000.00

FUND OVERRIDE

000509

RESOLUTION NUMBER R-_____

DATE OF FINAL PASSAGE _____

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

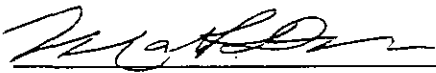
000510

(R-2007-1099)

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 _____, 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 _____.

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"), 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").

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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.

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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.

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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

City of San Diego

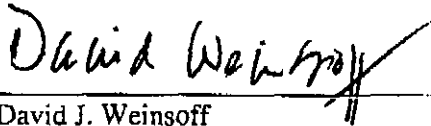
By: _____
Name: _____
Its: _____

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