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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

CITY OF CORONADO,
Plaintiff and Petitioner,
v.
SAN DIEGO COUNTY LOCAL
AGENCY FORMATION COMMISSION,
CITY OF IMPERIAL BEACH
Defendants.
CITY OF IMPERIAL BEACH
Cross Plaintiff and Petitioner,
v.
SAN DIEGO COUNTY LOCAL
AGENCY FORMATION COMMISSION,
CITY OF CORONADO, UNITED STATES
AMERICA; UNITED
STATES NAVY, and DOES 1 through
XX, Inclusive,
Cross Defendants and Respondents.

Case No.: 16-cv-3020-CAB-WVG

SETTLEMENT AND RELEASE

1 IT IS HEREBY AGREED by and between the respective parties, The City of Coronado
2 (“CORONADO”), the San Diego County Local Agency Formation Commission (“LAFCO”),
3 the City of Imperial Beach (“IMPERIAL BEACH”), the United States of America, and the
4 United States Navy (“NAVY”), (collectively “the Parties”) that all of the Parties’ claims,
5 counterclaims, and crossclaims, as set forth in and arising from the Petition for Writ of
6 Mandate and Complaint by CORONADO filed in San Diego County Superior Court and
7 subsequently removed to the United States District Court for the Southern District of
8 California, Case No. 16-cv-3020-CAB (WVG) (“Complaint”), be compromised, settled and
9 ultimately dismissed.

10
11 1. The Parties’ disputes concern the provision of wastewater services to
12 NAVY’s Silver Strand Training Complex South (“SSTC-S”). The Parties
13 do hereby agree to settle and compromise each and every claim of any kind,
14 whether known or unknown, arising directly or indirectly from the
15 provision of wastewater services to the SSTC-S, under the terms and
16 conditions set forth in this Settlement Agreement and Release (“Settlement
17 Agreement”). The Parties’ contentions are, in brief:

18 a. NAVY asserts that its wastewater services agreement with IMPERIAL
19 BEACH for provision of wastewater services to the SSTC-S is valid
20 and binding, that LAFCO does not have jurisdiction over that
21 agreement, and that CORONADO is barred by the doctrine of laches
22 from asserting that IMPERIAL BEACH may not provide wastewater
23 services to the SSTC-S;

24 b. CORONADO asserts that NAVY and IMPERIAL BEACH’s existing
25 wastewater services agreement for the SSTC-S is invalid and only
26 CORONADO can legally provide wastewater services to the SSTC-S,
27 and that as a result of NAVY’s actions, CORONADO was required to
28 initiate both administrative and judicial proceedings to protect its

1 jurisdictional boundaries and assert its right to provide wastewater
2 services to the SSTC-S;

3 c. IMPERIAL BEACH asserts that its wastewater services agreement
4 with NAVY for provision of wastewater services to the SSTC-S is
5 valid and binding, that LAFCO does not have jurisdiction over that
6 agreement, and that CORONADO is barred by the doctrine of laches
7 from asserting that IMPERIAL BEACH may not provide wastewater
8 services to the SSTC-S;

9 d. LAFCO asserts that it correctly determined that it does not have
10 jurisdiction over the wastewater services agreement between NAVY
11 and IMPERIAL BEACH and the provision of those services to the
12 NAVY by IMPERIAL BEACH.

13 2. In consideration for the dismissal with prejudice of all claims, crossclaims,
14 and counterclaims in this action, the Parties agree to the following
15 conditions ("Settlement Conditions"):

16 a. CORONADO shall be the wastewater service provider for the
17 SSTC-S, pursuant to the terms set forth below.

18 b. The Parties will not prevent (or encourage any third-party to
19 prevent) in any manner, contractually or through any
20 proceeding in state or federal court or other forum (including
21 proceedings before state or local government agencies),
22 NAVY from executing the physical plans for wastewater
23 service to the SSTC-S consistent with the Coastal Campus
24 Record of Decision ("Coastal Campus ROD") nor from
25 physically discharging the wastewater generated at the SSTC-
26 S through the IMPERIAL BEACH wastewater system
27 consistent with the Coastal Campus ROD.
28

- 1 c. Within 90 days of execution of this Settlement Agreement,
2 the Parties will develop a working timeline for the completion
3 of the actions required by the Settlement Conditions.
- 4 d. CORONADO and IMPERIAL BEACH shall negotiate in
5 good faith an agreement wherein CORONADO shall be
6 allowed to transport wastewater from the SSTC-S through the
7 IMPERIAL BEACH wastewater system at a capacity of the
8 sewer main infrastructure installed consistent with the Coastal
9 Campus ROD (the "Wheeling Agreement"). As IMPERIAL
10 BEACH and CORONADO's agreements with the City of San
11 Diego prohibit them from discharging wastewater originating
12 outside their boundaries, CORONADO shall be responsible,
13 with the cooperation of NAVY and IMPERIAL BEACH, for
14 either obtaining the City of San Diego's consent or agreement
15 to the discharge of wastewater from the SSTC-S through the
16 IMPERIAL BEACH wastewater system. The City of San
17 Diego's consent or agreement is a condition precedent to the
18 other terms of this Settlement Agreement. IMPERIAL
19 BEACH agrees to charge CORONADO a legal, fair, and
20 reasonable rate for this service. CORONADO and
21 IMPERIAL BEACH further agree to maintain the Wheeling
22 Agreement, subject to CORONADO's rights under
23 Settlement Condition 2(g) below, with mutually agreeable
24 contract modifications as required by changing circumstances,
25 so long as NAVY has a need for this service. CORONADO
26 and IMPERIAL BEACH further agree that NAVY will be
27 explicitly named as a third party beneficiary in the Wheeling
28 Agreement, and that NAVY will be given an opportunity to

1 review and provide comments on the terms of the proposed
2 Wheeling Agreement prior to execution.

3 e. NAVY and CORONADO agree to negotiate in good faith a
4 contract for the provision of wastewater services for the
5 SSTC-S, including the Coastal Campus (the “Coronado
6 Services Agreement”). CORONADO agrees to charge
7 NAVY a legal, fair, and reasonable rate no more than the rate
8 charged by IMPERIAL BEACH to CORONADO under the
9 Wheeling Agreement. CORONADO further agrees to
10 maintain the Coronado Services Agreement, subject to
11 CORONADO’s rights under Settlement Condition 2(g)
12 below, with mutually agreeable contract modifications as
13 required by changing circumstances, so long as NAVY has a
14 need for this service.

15 f. Once the Wheeling Agreement and the Coronado Services
16 Agreement are executed and NAVY has fully funded the
17 improvements to the IMPERIAL BEACH wastewater
18 infrastructure necessary to support Coastal Campus
19 wastewater flows consistent with the Coastal Campus ROD
20 (“the Imperial Beach Improvements”), NAVY and
21 IMPERIAL BEACH agree to terminate any agreement
22 between the NAVY and IMPERIAL BEACH concerning
23 wastewater service (including the letter agreement accepted
24 by IMPERIAL BEACH on October 3, 1967 and any
25 modifications thereto (the “Existing Agreement”). Until the
26 Existing Agreement is terminated, NAVY and IMPERIAL
27 BEACH shall continue to perform their obligations under the
28 Existing Agreement.

- 1 g. The Parties agree CORONADO shall have a right to any
2 value derived from the wastewater discharged from the
3 SSTC-S into the IMPERIAL BEACH wastewater system
4 pursuant to the Wheeling Agreement. In addition,
5 CORONADO may, at its own cost, choose to divert the
6 SSTC-S wastewater flow from the IMPERIAL BEACH
7 wastewater system to the CORONADO wastewater
8 system. In the event that CORONADO seeks to do so, the
9 Parties will enter into good faith negotiations regarding the
10 terms of the diversion.
- 11 h. If NAVY determines that it has a permanent need to exceed
12 the maximum capacity of sewer main infrastructure installed
13 consistent with the Coastal Campus ROD for wastewater
14 discharge from the SSTC-S to the Imperial Beach wastewater
15 system, NAVY and CORONADO will promptly meet in good
16 faith to discuss how to address this increase in wastewater
17 discharge.
- 18 i. The Parties agree that the arrangements and commitments set
19 forth in this Settlement Agreement satisfy the requirements
20 of the Cortese-Knox-Hertzberg Local Government
21 Reorganization Act of 2000 and otherwise comply with
22 California law. In particular, the Parties agree that Wheeling
23 Agreement does not require LAFCO approval under
24 California Government Code section 56133 either because it
25 does not involve a new service or because it involves
26 IMPERIAL BEACH or CORONADO providing an
27 alternative or substitute service consistent with the level of
28 service already being provided by CORONADO.

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- j. Nothing in this Settlement Agreement shall be interpreted to require an obligation or payment of funds by NAVY in violation of applicable law, including but not limited to, the federal Anti-Deficiency Act, 31 U.S.C. 1341 et seq.
- k. The Parties agree to share the contents of this Settlement Agreement with YMCA Camp Surf so that YMCA Camp Surf may consider a similar arrangement for wastewater services to YMCA Camp Surf.
- l. NAVY agrees its rights under this Settlement Agreement do not run with the land if the United States divests itself of some or all of the property known as the SSTC-S.

3. Prior to execution by counsel for each Party, the following individuals or entities must approve the contents of this Settlement Agreement:

- a. For CORONADO and IMPERIAL BEACH: their respective city councils, by majority vote;
- b. For LAFCO: San Diego County LAFCO’s Commission, by majority vote;
- c. For the United States and NAVY: the undersigned Assistant U.S. Attorney, after obtaining concurrence from the Department of the Navy via the assigned Navy litigation counsel.

4. The Parties agree that they shall bear their own costs, attorney’s fees, and expenses related to and arising out of this federal litigation, the underlying state court litigation (Case No. 37-2016-00000183-CU-WM-CTL), and the underlying LAFCO administrative proceedings; provided, however, that nothing in this Agreement shall entitle any applicant to a refund of fees paid or due to LAFCO under its schedule of fees for proceedings which have occurred to date or may occur in the future or to alter LAFCO’s authority to impose and enforce fees for its services.

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5. This instrument constitutes a compromise settlement and will result in the dismissal of disputed claims, crossclaims, and counterclaims. It does not constitute an admission of liability or fault on the part of any Party, or any agency, agent, servant, or employee, in reference to the events alleged in the Complaint or otherwise. It is entered into for the purpose of compromising disputed claims and avoiding the expenses, distractions, and uncertainties of litigation.
6. The Parties agree to accept the Settlement Conditions set forth above in full and final satisfaction of any and all claims and demands which they may now have or may hereafter acquire as a result of the provision of wastewater services to the SSTC-S and the damages alleged to have occurred by act or operation of law, including any claims for unforeseen injuries or damages against the United States and any federal agency, agent, servant, or employee.
7. It is agreed by and between the Parties that, in consideration for settlement of this matter the above-captioned action, Case No. 16-cv-3020-CAB (WVG), and the California case from which it arose, Case No. 37-2016-00000183-CU-WM-CTL, shall be dismissed with prejudice. Within one week of the signing of this agreement by counsel for all Parties, counsel for the United States shall distribute a Joint Motion for Dismissal with Prejudice to all counsel, which all counsel shall sign and return for filing within one week of receipt. Counsel for the United States will promptly file the Joint Motion for Dismissal.
8. Execution of this Settlement Agreement shall effect a complete release from and bar to any and all causes of action, claims, rights, liens, or subrogated interests, know or unknown to any Party, and in whomsoever

1 vested, that any Party has had, now has or hereafter may have by reason of
2 or arising from the provision of wastewater services to the SSTC-S.

3 9. As to the claims, demands, causes of action, and liabilities released herein,
4 the Parties expressly waive to the fullest extent permissible under law any
5 and all rights under Section 1542 of the Civil Code of the State of
6 California, which provides as follows:

7 "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
8 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO
9 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING
10 THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST
11 HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT
12 WITH THE DEBTOR."

13 The provisions of all comparable, equivalent, or similar statutes and
14 principles of common law of California, of the other states of the United
15 States, and of the United States are also hereby expressly waived to the
16 same extent by the Parties.

17 10. In connection with such waiver and relinquishment, the Parties
18 acknowledge that they are aware that they may hereafter discover claims
19 presently unknown or unsuspected facts in addition to or different from
20 those that they now know or believe to be true, with respect to the matters
21 released herein. Nevertheless, it is the intention of the Parties through this
22 release to fully, finally, and forever settle and release all such matters, and
23 all claims relative thereto, which heretofore have existed, now exist, or
24 hereafter may exist between the parties. In furtherance of such intention,
25 this release shall be and remain in effect as a full and complete release of
26 such matters, notwithstanding the discovery or existence of any such
27 additional or different claims or facts relating thereto.
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11. The Parties agree to execute any other documents or take such other actions as may be required to effect the terms of this Settlement Agreement.
12. The Parties do not intend to file this Settlement Agreement with the Court, except as may be ordered by the Court or necessary to enforce its terms. This Settlement Agreement shall be effective without order of the Court.
13. The Parties agree that this Settlement Agreement, and any additional agreements relating thereto, may be made public in their entirety, and the Parties expressly consent to such release and disclosure pursuant to 5 U.S.C. § 552a(b) and the California Public Records Act, California Government Code section 6250 et seq.
14. This Settlement Agreement may be executed in several counterparts, with a separate signature page for each Party. All such counterparts and signature pages, together, shall be deemed to be one document. The Parties further agree that this Agreement may be transmitted by facsimile or other electronic means and that the reproduction of signatures by facsimile or other electronic means will be binding as if originals.
15. The Parties acknowledge that they have read this Settlement Agreement, that they fully understand their rights, privileges, and duties under this Settlement Agreement, and that they enter into this Settlement Agreement freely and voluntarily. Further, the Parties acknowledge that they have had adequate time to consult with counsel of their choice to discuss the terms and consequences of this Settlement Agreement.
16. This Settlement Agreement and the provisions contained herein shall not be construed or interpreted for or against any Party hereto because that Party drafted or caused that Party's legal representative to draft any of its provisions.

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17. Should it be determined by a court that any term of this Agreement is unenforceable, that term shall be deemed to be deleted. However, the validity of and the Parties' ability to enforce the remaining terms shall not be affected by the deletion of the unenforceable term.

The undersigned each acknowledge and represent that no promise or representation not contained in this Settlement Agreement has been made to them and further acknowledge and represent that this Settlement Agreement contains the entire agreement between the Parties.

Dated: ALANA W. ROBINSON
Acting United States Attorney

KATHERINE L. PARKER
Assistant U.S. Attorney
Attorneys for United States and U.S. Navy

Dated: June 16, 2017



DAVID J. RUDERMAN
Colantuono, Highsmith & Whatley, PC
Attorneys for LAFCO

Dated: _____
Printed Name:
Attorneys for City of Coronado

Dated: _____
Printed Name:
Attorneys for City of Imperial Beach

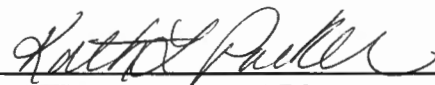
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The undersigned each acknowledge and represent that no promise or representation not contained in this Settlement Agreement has been made to them and further acknowledge and represent that this Settlement Agreement contains the entire agreement between the Parties.

Dated: *June 19, 2017*

ALANA W. ROBINSON
Acting United States Attorney



KATHERINE L. PARKER
Assistant U.S. Attorney
Attorneys for United States and U.S. Navy

Dated:

DAVID J. RUDERMAN
Colantuono, Highsmith & Whatley, PC
Attorneys for LAFCO

Dated:

Printed Name:
Attorneys for City of Coronado

Dated:

Printed Name:
Attorneys for City of Imperial Beach