

SETTLEMENT AND RELEASE AGREEMENT

1. **PARTIES:** This Settlement and Release Agreement (Agreement) is entered into as of the last date of execution of the Agreement (Effective Date) by and between Petitioners Climate Action Campaign and Coastal Environmental Rights Foundation (Petitioners), and respondent City of San Diego (City or Respondent). Petitioners and the City are hereinafter referred to collectively as “the Parties.”

2. **RECITALS:** This Agreement is made on following facts:

2.1 Certain disputes and controversies have arisen between Petitioners and Respondent concerning the City’s 2022 Climate Action Plan Update. These disputes have resulted in two lawsuits: (1) *Climate Action Campaign, et al. v. City of San Diego*, San Diego Superior Court Case No. 37-2022-00036430 (CAP Case) and (2) *Coastal Environmental Rights Foundation v. City of San Diego*, San Diego Superior Court Case No. 37-2023-00006754 (Related Case). The CAP Case and Related Case are collectively referred to as “the Pending Actions.” The Parties’ disputes are also anticipated to result in additional litigation with respect to future development projects resulting in significant delay in development unless a global settlement is reached. The Parties enter into this Agreement to avoid the delay and risks of costly litigation without conceding any liability or wrongdoing.

2.2 It is the intention of the Parties to fully and completely settle and resolve all the claims, demands, prayers, and causes of action at issue in the CAP Case and Related Case. These expressly include all claims, current and future, that the City’s 2022 CAP Update Package (CAP Update) consisting of the (1) 2022 Climate Action Plan; (2) Addendum to the Final Program Environmental Impact Report (EIR) for the CAP and Mitigation Monitoring and Reporting Program (MMRP); (3) Urban Tree Canopy Fee and amendment to the Land Development Manual, Appendix A, CEQA Thresholds of Significance; and (4) an amendment to the San Diego Municipal Code (Ordinance O-2023-4) relating to the CAP Consistency Regulations violates or otherwise does not fully comply with the California Environmental Quality Act (CEQA), as well as all of Petitioners’ causes of actions in the Pending Actions and any claims for costs and attorneys’ fees and all claims, demands, prayers, or causes of action arising out of the CAP Update.

NOW THEREFORE, for good cause and valuable consideration, the Parties agree to the recitals above and to the following terms:

3. **ACTIONS BY THE CITY:** Upon the Effective Date, the City shall take the steps outlined in **Exhibit A**, which is incorporated herein and made a part of this Agreement. The City will also promptly, within fourteen (14) days of the Effective Date, pay Petitioners a total and final sum of One Hundred and Twenty Thousand Dollars (\$120,000.00) (Payment) in exchange for all fees and costs incurred in the Pending Actions. Payment shall be made to “Coast Law Group Client Trust Account” and sent to Coast Law Group LLP, 1140 South Coast Highway 101, Encinitas, CA 92024, attention Livia B. Beaudin.

4. ACTIONS BY PETITIONERS: Petitioners agree to the following:

4.1 Dismissal of Pending Actions. Petitioners shall dismiss the CAP Case and Related Case with prejudice within two (2) business days of receipt of Payment.

4.2 Release of Liability. Upon the Effective Date, Petitioners shall immediately release, remise, and forever discharge the City from all claims and liability for any damages, losses, costs or attorneys' fees pertaining to the Pending Actions or which form the basis for the Pending Actions. Petitioners' release of Respondent includes Respondent's agents, employees, representatives, officers, directors, divisions, subsidiaries, affiliates, assigns, successors in interest, shareholders, attorneys, insurers, and adjusters. Petitioners' release of liability includes Petitioners' claims under CEQA, and all claims, demands, or causes of action arising out of the Pending Actions including any and all of Petitioners' costs or attorneys' fees.

5. RELEASE AND WAIVER OF CIVIL CODE SECTION 1542: The Parties acknowledge and agree it is their intention that this Agreement will be effective as a full and final settlement of, and as a bar to, every claim, demand, and cause of action in any way relating to the CAP Update. Petitioners expressly agree to release and waive all claims, current and future, that the CAP Update violates or otherwise does not fully comply with the CEQA as well as all causes of action arising out of the CAP Update. Petitioners expressly agree to waive all and not bring any future claims against any projects including but not limited to any future discretionary actions that rely on or tier off the CAP or any component of the CAP Update as a qualified greenhouse gas (GHG) reduction plan to mitigate GHG impacts on grounds that the CAP or any component of the CAP Update does not comply with CEQA. Petitioners agree not to actively encourage or support any other persons or entities to bring claims against any projects including but not limited to any future discretionary actions that rely on or tier off the CAP or any component of the CAP Update as a qualified greenhouse gas (GHG) reduction plan to mitigate GHG impacts on grounds that the CAP or any component of the CAP Update does not comply with CEQA. The Parties further acknowledge that they are aware that they may, after signing this Agreement, discover facts different from or in addition to the facts that they now know or believe to be true with respect to the Pending Actions or CAP Update. Despite this risk, the Parties acknowledge that it is their intention to fully, finally, absolutely and forever settle all claims, disputes and differences between the Parties with respect to the Pending Actions.

Furthering this intention, Petitioners expressly, knowingly and voluntarily *wave* all rights and benefits conferred upon Petitioners by the provisions of California Civil Code section 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
THAT THE CREDITOR OR RELEASING PARTY DOES NOT
KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT

THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Nothing herein shall restrict Petitioners' ability to challenge, including in court, (1) individual projects under CEQA (except on grounds that the CAP or CAP Update does not comply with CEQA); or (2) any further City Council approved CAP updates or amendments that trigger CEQA review.

6. NO ADMISSION OF LIABILITY: This Agreement affects the settlement of claims that are denied and contested, and nothing contained in this Agreement should be construed as an admission by any Party to this Agreement of any liability of any kind to any other Party. The City specifically denies any liability connected with the claims alleged in the Pending Actions.

7. REPRESENTATIONS AND WARRANTIES: Each of the Parties to this Agreement represents, warrants to, and agrees with, each other Party to this Agreement as follows:

7.1 Except as expressly stated in this Agreement, no Party (nor any officer, agent, employee, representative, insurer, or attorney of or for any Party) has made any statement or representation to any other Party regarding any fact relied upon in entering into this Agreement. The Parties do not rely upon any statement, representation, or promise of any other Party (or of any officer, agent, partner, employee, representative, insurer, or attorney for any other Party) in executing this Agreement, or in making the settlement provided for in this Agreement.

7.2 Each Party has made all investigation of the facts and all the matters pertaining to this settlement and this Agreement as each Party believes is necessary.

7.3 Each signatory to this Agreement has the authority to bind the Party for which he/she is signing to the terms of this Agreement.

7.4 Each Party has had the opportunity to seek independent legal advice from his/her/its attorney(s) about the advisability of making this settlement, the advisability of executing this Agreement, and the meaning of California Civil Code section 1542.

8. MISCELLANEOUS:

8.1 This Agreement will be deemed to have been signed and delivered within the State of California, and the rights and obligations of the Parties to this Agreement should be construed and enforced in accordance with, and governed by, the laws of the State of California, without regard to choice of law rules. In the event of any later claims or litigation relating to the Pending Actions or CAP Update, or the interpretation or enforcement of this Agreement, jurisdiction will be exclusively within the State of California and shall be deemed

“related” to the Pending Actions and assigned (if possible) to the same judge/department currently assigned to the Pending Actions.

8.2 This Agreement is the entire Agreement between the Parties about the subject Pending Actions or CAP Update. This Agreement supersedes all prior and contemporaneous oral and written agreements and discussions. This Agreement may be amended or modified only by a written agreement signed by all Parties to the Agreement.

8.3 If there is litigation to enforce this Agreement, the prevailing Party will be entitled to recover reasonable attorneys' fees and costs incurred.

8.4 If any portion of this Agreement is determined to be unlawful, void or unenforceable by a Court of competent jurisdiction, such portion will be severable from the remainder of this Agreement.

8.5 Each Party has cooperated in drafting and preparing this Agreement. In any construction of this Agreement, no term should be construed against any Party.

8.6 The Parties expressly agree nothing in this Agreement binds the City’s or City Council’s future discretion including with respect to any decision to adopt or reject any ordinance, resolution, policy, regulation, plan, determination, or environmental analysis.

8.7 This Agreement may be signed in counterparts. When each Party has signed and delivered a counterpart, each counterpart will be an original. When taken together with other signed counterparts, the counterparts constitute one Agreement, which will be binding upon and effective as to all Parties.

8.8 A signed copy of this Agreement will have the same force and effect as a signed original.

BY SIGNING BELOW, THE PARTIES ACKNOWLEDGE THEY HAVE READ, UNDERSTAND, AND AGREE TO ALL THE RECITALS AND TERMS ABOVE.

CLIMATE ACTION CAMPAIGN

Dated: _____, 2024

Name/Title:
Climate Action Campaign, Petitioner

COASTAL ENVIRONMENTAL RIGHTS
FOUNDATION

Dated: _____, 2024

Name/Title:
Coastal Environmental Rights Foundation,
Petitioner

CITY OF SAN DIEGO

Dated: _____, 2024

Name/Title:
City of San Diego, Respondent

APPROVED AS TO FORM:

Dated: _____, 2024

Coast Law Group LLP

By: _____
Liva B. Beaudin
Attorneys for Petitioners Climate Action Campaign
and Coastal Environmental Rights Foundation

Dated: _____, 2024

MARA W. ELLIOTT, City Attorney

By: _____
Jana Mickova Will, Senior Deputy City Attorney
Attorneys for Respondent City of San Diego

EXHIBIT A

Background information and definitions:

- The CAP calls for GHG emissions to reduce 6,309,000 MT CO₂e from 2019 level (60% below 2019 baseline) by 2030 (2030 Target) and net zero/carbon neutrality by 2035 (2035 Target).
- If these emissions were to be measured on an annual basis (Annual Emissions Target), with the projected GHG reductions from the State, San Diego regional, and local actions included in the CAP, below are the projected emissions levels, starting in 2026 at the next available emissions inventory:
 - 2026 emissions level: 7,360,000 MT CO₂e (30% below 2019 baseline)
 - 2027 emissions level: 6,669,000 MT CO₂e (37% below 2019 baseline)
- A new CAP update is anticipated to be considered by the City Council by 2027 on the following general schedule:
 - January through December 2026
 - Community and internal City outreach
 - April through July 2026
 - Using GHG emissions inventory, identify underperforming Strategies/Measures relative to action completion
 - August through December 2026
 - Update/remove/add actions
 - Obtain scores for new/revised actions (feasibility, equity, co-benefits)
 - Recalculate council prioritization scores
 - January through December 2027
 - Draft preparation
 - Public draft review and comment
 - Fall 2027 commence committee and council presentations

City of San Diego Obligations:

1. The City will develop internal guidance (available as a public record) to provide the following:
 - Outline of an administrative process for CAP Reporting, Budgeting, and Implementation (both annually and biennially).
 - Develop for reference and tracking purposes a model linear trajectory of annual reductions to achieve the CAP's 2030 and 2035 goals.
 - On an annual basis, compare projected emissions reductions from CAP actions

undertaken against the linear projection and publish those results via annual reporting.

- On at least a biennial basis, or as data is available, compare modeled emissions data against the linear projection and publish those results.
- In 2025, utilize best available industry standard data, including any available emissions data, and projections to gauge progress toward the 2030 CAP goal and adjust the CAP Implementation Plan accordingly.
 - The CAP Implementation Plan guides the City's efforts to complete the CAP and identifies lead departments, sequencing, and prioritization between actions, estimated timelines, and associated resource needs.
 - Adjustments to the CAP Implementation Plan may include changes to sequencing, timing, funding sources, or implementation pathways of various actions to help the City stay on course for the 2030 CAP goal.
 - By the end of calendar year 2025, the City will host one stakeholder workshop to discuss progress on CAP implementation and proposed changes to the CAP Implementation Plan.
 - By the end of calendar year 2025, staff will request a hearing at City Council for discussion of the updated CAP Implementation Plan.
- Beginning in 2026 and every even year thereafter, if the Annual Emissions Target is not met within a 12.5 percent margin of error (Trigger Date), then the following will occur:
 - An amendment to the Climate Action Plan will be prepared and presented to the City Council for consideration on the following schedule:
 - Within 45 days of the Trigger Date, staff will request a hearing at City Council's Environment Committee to update the Committee and the public on the gap between the linear projection and quantified emissions and seek input on potential amendments to the plan or related actions to ensure emissions reductions will meet the 2030 and 2035 Targets.
 - Within 6 months of the Trigger Date, the City will hold at least two (2) public workshops to hear feedback on how the City can ensure that it meets the 2030 and 2035 Targets;
 - The City will provide at least 60 calendar days of public review for any proposed amendments to the CAP;
 - The City will comply with CEQA with respect to the proposed amendments to the CAP and follow all state and San Diego Municipal Code requirements for the proposed amendments;
 - Within 12 months of the Trigger Date, staff will request a hearing at City Council to present the proposed draft amendments to the CAP for the City Council's consideration. The City will use reasonable efforts to ensure the City Council considers the draft amendments within 12 months of the Trigger Date.
 - If the 2027 CAP Update draft is ready for public review before the proposed CAP amendments are brought to the City Council

(i.e. within 12 months of the Trigger Date), the City may incorporate the proposed amendments into the 2027 CAP Update in lieu of a standalone amendment.

- If the draft amendments are incorporated in the 2027 CAP Update, staff will request a hearing on the 2027 CAP approval before City Council by end of calendar year 2027. The City will use reasonable efforts to ensure the City Council considers the 2027 CAP Update before the end of calendar year 2027.
- Annual Report/GHG Inventory
 - The City will abide by the following report release schedule:
 - 2023 Annual Report (including GHG inventory-underway) will be released April/May 2024
 - 2024 Annual Report (including GHG inventory utilizing best available industry standard data through 2024) will be released Spring 2025
 - 2025 Annual Report (including GHG inventory) will be released Spring 2026
 - 2026 Annual Report will be released Spring 2027
 - (FINAL) 2027 Annual Report (including GHG inventory) will be released Spring 2028
- 2. During the annual reporting timeframe identified above, the City will share information with the public (through a webpage) on Annual Department Work Plans, the Climate Action Implementation Plan and Dashboard Updates, and upcoming grants and policy initiatives to improve understanding of status of CAP Actions.
- 3. During the annual reporting timeframe identified above, at least annually, the City will update a publicly accessible website with status and funding information for each CAP action.