

GENERAL RELEASE AND SETTLEMENT AGREEMENT

This general release and settlement agreement ("Agreement") is entered into by Plaintiff THE HUMANE SOCIETY OF POMONA VALLEY, INC. dba INLAND VALLEY HUMANE SOCIETY AND SPCA ("PLAINTIFF" or "IVHS") and Defendant CITY OF POMONA ("DEFENDANT" or "CITY").

PLAINTIFF and DEFENDANT are collectively referred to as "the PARTIES."

RECITALS

IVHS has been providing animal shelter and animal control services to the CITY for nearly sixty five (65) years, and currently has a written contract with the City to perform said services. IVHS also performs animal care and animal control services to the cities of Chino, Chino Hills, Claremont, Diamond Bar, Glendora, La Verne, Montclair, Ontario and San Dimas and for unincorporated areas of San Bernardino County. In addition, IVHS performs shelter services for the city of La Habra. IVHS has been physically located at 500 Humane Way in Pomona, California since around 1950. IVHS has hundreds of animals come through its doors every month. IVHS has approximately 70 employees and there are numerous volunteers.

The CITY is a municipality located in the County of Los Angeles. The CITY was incorporated in 1888. The CITY has a police department that now employs approximately 160 officers. The CITY owns a shooting range that sits on a hill above the IVHS facility. The shooting range is accessed by an easement for ingress and egress over IVHS's property. The shooting range is situated on a hillside overlooking the IVHS facility. The hillside was carved to make a level pad, and exposes a vertical rock backstop exceeding 65' in height in 1956. The range consists of 25, 50 and 100-yard ranges. The 25 and 50-yard ranges are improved with concrete and grass ground cover. There are limited improvements on the 100-yard range.

There is a dispute between the PARTIES regarding the shooting range, including the noise emanating from the shooting range, use of the easement to access the shooting range, and use of the IVHS parking lot by the City and its visitors to the shooting range, collectively referred to as the "Dispute".

On September 5, 2014, IVHS filed a complaint for injunctive relief against the CITY in the Superior Court of California, County of Los Angeles, East District – Pomona Courthouse South, captioned *The Humane Society of Pomona Valley, Inc. dba Inland Valley Humane Society and SPCA, Plaintiff v. City of Pomona and DOES 1-25, inclusive, Defendants*. The complaint states eight causes of action and seeks an injunction limiting the CITY's use of the shooting range, limiting use of the easement to the shooting range, enjoining the CITY from trespassing, and for contractual attorney's fees and costs. The CITY has denied liability and asserted numerous affirmative defenses. The subject litigation is referred to as the "Action."

It is the intention of the PARTIES to settle and dispose of, fully and completely, any and all claims, demands and causes of action arising out of the Dispute and the Action. In consideration for the covenants contained herein and intending to be legally bound thereby, the PARTIES agree as follows:

AGREEMENT

The PARTIES to this Agreement hereby agree, settle, and acknowledge as follows:

1. CITY hereby agrees to build noise abatement measures at the shooting range, which contemplates partial enclosure of the 25, 50 and 100-yard ranges and other sound mitigation measures that will reduce the noise level emanating from the shooting range.
 - a. The parties have agreed that noise mitigation measures for the suppression of gunfire are to reduce the noise levels from the shooting range to a maximum exterior noise level of 80 dBA as measured through the use of the same protocol of demonstrated gunfire test under the joint noise study by Acoustics Group, Inc., with the measurement for such maximum noise level being taken by a receiver sound level meter placed at any location within the IVHS gated employee/executive parking lot, with a reference sound pressure of 20 micropascals as measured with a sound level meter using the A-weighted network (scale) at peak response.
 - b. In order to institute the noise mitigation measures, and as a condition precedent to this Agreement, the CITY shall enter into a contract for the construction of the noise mitigation measures within 15 days of the execution of this agreement.
 - c. The contract entered into between the City and the contractor to complete such work is attached hereto as Exhibit A to this Agreement.
 - d. City shall be allowed onto IVHS property for the pre-testing and re-testing of the noise mitigation measures until such time the maximum exterior noise level of 80dBA is achieved as described in Section 1.a above.
2. IVHS agrees to pay up to \$375,000.00 towards the sound mitigation measure construction at the range. The money contributed by IVHS shall be placed into an escrow account within ten (10) days of 1) execution of the settlement agreement, and 2) the City executing the noise mitigation contract. The money shall be disbursed from the escrow account at the conclusion of the construction, pending successful completion of the work, including that the maximum noise level emanating from the shooting range shall not exceed 80dBA as measured as described in Section 1.a. above. IVHS through their legal counsel shall make arrangements for the establishment of the escrow account. The parties shall cooperate on preparation of escrow instructions commensurate with the terms of this agreement.

3. CITY agrees to limit use the shooting range by outside agencies other than the Pomona Police Department to the Claremont Police Department, Glendora Police Department, Cal Poly Pomona Police Department, and Union Pacific Railroad Police Department. The CITY hosts two (2) competition events a year, the Allstate Steel Challenge and the Asian Peace Officers Association Competition shoots. CITY agrees to limit use of the shooting range to its own law enforcement purposes, the law enforcement training purposes of the four (4) identified agencies, and the two (2) identified competition events only, as conditioned below, and will not allow any other outside agency, person or entity to use the shooting range and/or the easement to the shooting range without prior permission of the IVHS. The two competition events shall proceed only after the following has transpired:

- a. By January 5th of each year, IVHS shall notify CITY of all known events for the following 12 month period;
- b. By February 1st of each year, CITY shall notify IVHS of the date and time of its competition dates, to occur on any weekday or Saturday not identified by IVHS in the calendar provided to CITY by IVHS in January;
- c. By February 15th of each year, IVHS shall inform CITY of any objection to the dates selected, and CITY shall have until March 1st to select another date for any completion date;
- d. Two weeks prior to the event, City and/or an event representative shall meet with a representative of IVHS to discuss the event and protocol, including that no part of the event shall be on IVHS property or in IVHS parking lot and that IVHS parking lot shall not be used as part of event, all traffic laws shall be obeyed. A true and correct copy of a draft Agreement and Protocol is attached hereto as Exhibit B to the Agreement.
- e. City agrees that it will include as part of its' event agreement with outside vendors or event rules if hosted by City, that participants will not use the IVHS parking lot, will not violate any traffic laws, and will proceed with caution, and not to exceed 5 miles per hour, between Humane way and the access gate up to the shooting range. City shall make it part of its agreement with each of the four (4) outside agencies that use of IVHS parking lot is prohibited.

4. The City presently has a reserved easement for ingress to and egress from the shooting range ("Existing Easement"), which crosses through the IVHS parking lot from Humane Way, and includes a portion of the current road leading to the range. The Parties agree that an alternative route for ingress to and egress from the shooting range would benefit both parties. It is therefore agreed and understood between the Parties that IVHS will endeavor to develop an alternative route to the shooting range on the western edge of the IVHS property, more

thoroughly described in Exhibit C, with access from Mission Boulevard ("Alternative Route"). The parties agree that in the event that the Alternative Route can be developed within the next five (5) years, under the conditions set forth below, the Alternative Route shall become the easement for ingress and egress to the shooting range ("New Easement") and the Existing Easement shall cease to exist. If the New Easement cannot be developed within the next five (5) years, the Existing Easement shall remain in full force and effect. The conditions for the New Easement are as follows:

- a. IVHS shall be solely responsible for the design, planning, engineering, site improvement, and construction costs of the New Easement, and installation of a signal at the entrance at Mission Boulevard. IVHS shall be solely responsible for the payment and construction of such New Easement improvements. City agrees to cooperate with IVHS in obtaining all necessary permits and inspections related to the development of the New Easement.
- b. The City Engineer shall have the right to and shall review the engineering plans to determine and confirm that all of the City vehicles can utilize the New Easement, including, but not limited to, SWAT and service vehicles.
- c. After the City Engineer has determined and confirmed that the New Easement can accommodate the City's vehicles, as set forth in subsection b, above, and after completion of the construction of the road that shall become the New Easement, the New Easement shall be recorded and the Existing Easement shall cease to exist.
- d. The Parties agree and understand that if the New Easement cannot be constructed to accommodate the City's vehicles as set forth in subsection b, above, that the Existing Easement shall remain in effect unless and until the Parties agree, in writing, to an alternative.
- e. The Parties further agree and understand that nothing in this agreement shall be intended to limit the City's current rights to access the shooting range or expand IVHS's current obligation to provide ingress and egress to the shooting range.

5. CITY will not use the IVHS parking lot for any purpose other than business directly associated with IVHS. Police Chief for the City has issued a directive prohibiting use of the IVHS parking lot by any police department personnel other than business directly associated with IVHS. The Chief's directive shall not be repealed or rescinded at any time without the request by IVHS to do so.

6. CITY agrees that it will exercise utmost safety in the use of the easement, will obey all traffic laws, including that its employees and agents will not drive unsafely when traveling on the easement. City agrees to add an electronic arm that stops traffic at the gate leading to the

shooting range; the purpose of such control arm is to ensure safe speeds are maintained. City further agrees to hold harmless and indemnify IVHS for any loss, damage and/or injury caused by City's employees, agents or invitees while using the easement, including reasonable attorney's fees and costs. This shall include any damage or injury as the result of improper use of the parking lot.

7. CITY agrees to provide regular, advance notice of training sessions and events at the shooting range, not less than one month prior to such use or events that are not on City's annual calendar, as set forth in Section 3, above. Such events shall be planned around any events existing on IVHS's annual calendar. To the extent that IVHS adds new events to its calendar, it shall notify City for planning purposes. IVHS agrees and acknowledges that emergency, exigent or spontaneous use of the shooting range by 2 persons or less shall not be considered training or an event. As it is impractical and/or impossible for the CITY to provide advanced notice of such use, CITY is not obligated to provide advanced notice of such use.

8. IVHS will not pursue any further legal action against the CITY for any claim or controversy arising out of the Dispute or the Action. Any disputes that arise out of the Contract for Services between the PARTIES that are unrelated to the noise issues in this Dispute and Action are specifically excepted and excluded from this Agreement.

9. All of these actions and acts of forbearance in consideration for the settlement are material terms of the Agreement. The failure of either of the PARTIES to provide the consideration identified in the Agreement shall provide the other Party to the Agreement the right to rescind the Agreement in its entirety, or, at its sole discretion, it may enforce the remainder of the Agreement and seek damages for a partial or full breach of the Agreement. In the event of any dispute or controversy arising from the Agreement, the PARTIES agree they will first attempt to resolve said dispute or controversy via mediation; the mediation fees being split equally between the Parties.

10. **DISMISSAL:** IVHS shall file a Notice of Settlement within two (2) court days of execution of this Agreement. The PARTIES agree that the Superior Court of California, Los Angeles County and Judge Robert A. Dukes shall retain jurisdiction over this Action and this Agreement, pursuant to Code of Civil Procedure section 664.6. . Upon proof of completion of the mitigation work to the level agreed as measured by the criteria described in Section 1.a. above, IVHS shall dismiss its Complaint in the Action with prejudice.

11. **GENERAL RELEASES:** In consideration of the mutual general releases contained herein, and for other good and valuable consideration, the receipt of which is acknowledged by each of the PARTIES, the PARTIES promise, agree, and generally release one another as follows:

- a. Except as to such contractual rights as may be created by this Agreement, the PARTIES hereby generally release, dismiss and forever discharge the other PARTY,

including and on behalf of any owners, officers, directors, joint ventures, partners, co-venturers, corporations, companies, business entities, agents, attorneys, assignors, assignees, licensees, licensors, predecessors, successors, and all affiliates, of each of the foregoing (collectively, the "Released Parties"), from any and all civil claims, arbitrations, administrative claims or proceedings, demands, cause or causes of action, and/or judgments, arising out of this "Dispute" or that could have been asserted in the "Action," except as to those matters that have been excepted and excluded.

- b. As to the Action, and except as to those matters which are excepted and excluded, each of the PARTIES specifically waives the benefit of the provisions of Section 1542 of the Civil Code of the State of California, which 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."

12. REPRESENTATIONS AND WARRANTIES: Each of the PARTIES to the Agreement represent and agree as follows:

- a. Each of the PARTIES is represented by independent legal counsel with respect to the advisability of making the settlement provided for herein and has sought such advice or knowingly declined to seek such counsel on its own accord. Neither PARTY's attorney(s) have rendered any legal advice to the other Party regarding the execution of the Agreement.
- b. Each PARTY has made such investigation of the facts pertaining to this settlement and to the Agreement, and of all the matters pertaining thereto, as it deems necessary.
- c. Each PARTY or responsible officer, agent or partner thereof has read the Agreement and fully understands the contents hereof.
- d. Neither PARTY has assigned, transferred, or granted, or purported to assign, transfer, or grant, any of the claims, demands, or cause or causes of action disposed of by the Agreement.
- e. Each term of the Agreement is contractual and not merely a recital.
- f. Each PARTY is aware that it may hereafter discover claims or facts in addition to or different from those it now knows or believes to be true with respect to the matters related herein. Nevertheless, it is the intention of the PARTIES to fully, finally and forever settle and generally release all such matters, and all claims relative thereto, which do now exist, may exist, or did exist between them relating to the Dispute and/or the Action, except for those matters that are expressly excepted and excluded in this Agreement. In furtherance of such intention, the general releases given herein shall be and remain in effect as full and complete mutual general releases of all such matters, notwithstanding the discovery or existence of any additional or different

claims or facts relative to the issues or allegations previously in dispute between the Parties.

- g. Each PARTY agrees to cooperate fully and execute any and all supplementary documents that may reasonably be required to complete this settlement agreement.

13. SETTLEMENT: The Agreement effects the settlement of claims that are heretofore denied and contested between the Parties. Nothing contained herein shall be construed as an admission by the CITY of any wrongdoing or any liability of any kind. The CITY intends to mitigate the gunfire noise and avoid the costs associated with litigation.

MISCELLANEOUS

14. The rights and obligations of the PARTIES shall be construed and enforced in accordance with, and governed by, the laws of the State of California.

15. The Agreement is the entire Agreement between the PARTIES with respect to the Dispute and the Action, and supersedes all prior and contemporaneous oral agreements and discussions. The Agreement shall be amended only in writing, signed by the PARTIES.

16. Each of the PARTIES has cooperated in the drafting and preparation of the Agreement. Therefore, the Agreement shall be construed equally to each of the PARTIES and shall not be construed against either of the PARTIES.

17. In the event of mediation, litigation or arbitration relating to the Agreement, the prevailing PARTY shall be entitled to recover reasonable attorney's fees, expert witness fees and litigation costs.

18. The Agreement may be executed in counterparts, and when each PARTY has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Agreement, which shall be binding upon and effective as to all PARTIES.

19. Each PARTY shall pay its own legal fees, costs and other expenses relating to the Action.

20. A signed copy of the Agreement transmitted by facsimile or electronic means shall have the same force and effects as an original signature.

21. The Agreement consists of eight (8) pages and is made and entered into on the date indicated below.

22. The responsible officer(s) and governing body of each PARTY has read this Agreement and understands the contents thereof, and represents and warrants that each of the officers or agents executing this Agreement on behalf of their respective entities or organizations is empowered to do so and hereby binds the respective entity or organization.

APPROVED AS TO FORM AND CONTENT:


CITY OF POMONA

DATED: April 5, 2016

By: ARNOLD M. ALVAREZ-GLASMAN City
Attorney for Defendant, CITY OF POMONA

KLINEDINST PC

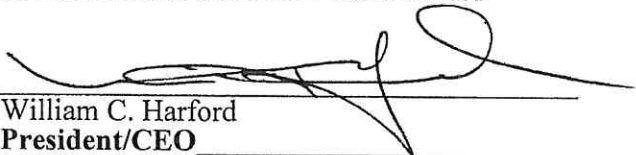
DATED: April 5, 2016

By: 
TIFFANY P. SCARBOROUGH
Attorneys for Plaintiff, THE HUMANE
SOCIETY OF POMONA VALLEY, INC.
dba INLAND VALLEY HUMANE
SOCIETY AND SPCA

PARTY SIGNATURES:

PLAINTIFF: THE HUMANE SOCIETY OF
POMONA VALLEY, INC. dba INLAND
VALLEY HUMANE SOCIETY AND SPCA

DATED: April 5, 2016

By: 
Its: William C. Harford
President/CEO

PLAINTIFF: THE HUMANE SOCIETY OF
POMONA VALLEY, INC. dba INLAND
VALLEY HUMANE SOCIETY AND SPCA

DATED: April 5, 2016

By: 
Its: Walt Schaefer
Chairman of the Board

DEFENDANT: CITY OF POMONA

DATED: April 5, 2016

By: _____
Its: Linda Lowry
City Manager

APPROVED AS TO FORM AND CONTENT:

DATED: April 5, 2016

CITY OF POMONA

By:

ARNOLD M. ALVAREZ-GLASMAN City
Attorney for Defendant, CITY OF POMONA

KLINEDINST PC

DATED: April 5, 2016

By:

TIFFANY P. SCARBOROUGH
Attorneys for Plaintiff, THE HUMANE
SOCIETY OF POMONA VALLEY, INC.
dba INLAND VALLEY HUMANE
SOCIETY AND SPCA

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VALLEY HUMANE SOCIETY AND SPCA

DATED: April 5, 2016

By:

Its: William C. Harford
President/CEO

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POMONA VALLEY, INC. dba INLAND
VALLEY HUMANE SOCIETY AND SPCA

DATED: April 5, 2016

By:

Its: Walt Schaefer
Chairman of the Board

DEFENDANT: CITY OF POMONA

DATED: April 5, 2016

By:

Its: Linda Lowry
City Manager