

CONDITIONAL SETTLEMENT AGREEMENT AND RELEASE

This CONDITIONAL SETTLEMENT AGREEMENT AND RELEASE (“Agreement”) is entered into on this 14th day of August, 2017 (“Effective Date”) by and between the CITY OF CARPINTERIA, a general law city and municipal corporation (“City”), and JATZIBE SANDOVAL and FRANK GONZALEZ, residents of City (“Prospective Plaintiffs”). The above parties are referred to herein individually as “Party” and collectively as “Parties.”

RECITALS

- A. Since incorporation in 1965, the City Council has been elected through the at-large election system in which each voter may cast one vote for each Council seat that is up for election.
- B. On July 3, 2017, City received a Notice of Violation (“Notice”) of the California Voting Rights Act (“Act”) from Prospective Plaintiffs, alleging that the City’s at-large system of electing City Council members violates the Act and threatening suit unless the City transitions to a district-based electoral system, which is an election method in which the candidate must reside within an election district that is a divisible part of the city and is elected only by voters residing within that election district.
- C. On July 31, 2017, the City Council held a public meeting to receive public input on the Notice and the potential for transitioning to a district-based election system. The majority of those commenting spoke in favor of instituting a district-based election system.
- D. The City Council denies that the City’s at-large electoral system violates the Act. Nevertheless, in recognition of the public support voiced at the July 31 meeting for instituting district-based elections and in recognition that litigation involves significant costs and uncertainty, the City Council desires to enter into this Agreement.
- E. The Parties desire to delay the institution of district elections until 2022 so that the district boundaries may be drawn based on 2020 census data, which will not become available until 2021.
- F. The Parties now wish conditionally to resolve and settle the Notice and all attendant and potential litigation arising therefrom.

NOW, THEREFORE, in consideration of the mutual covenants and agreements described below, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Settling Parties hereby agree:

1. Obligations of Parties

- A. At its regular meeting on August 14, 2017, the City Council will consider approval of a resolution of intent to institute a district-based election system for City Council seats by the November 2022 regular election.¹ The Council retains the discretion to determine

¹ The November 2022 regular election will occur on November 8, 2022. (Elec. Code § 1000(d).)

whether to institute district-based elections for four City Council seats with the mayor elected at large or to institute district elections for all five Council seats with the mayor appointed by the Council.

- B. Provided that the City Council adopts the resolution described in subsection A, Prospective Plaintiffs shall not bring suit against the City prior to November 9, 2022 for any cause of action related to the City's electoral system, including, but not limited to, suit seeking the implementation of district-based elections or claims related to or arising from the Notice.
- C. Provided that the City Council adopts the resolution described in subsection A, within 30 days of such adoption, the City will remit a payment of \$30,000 to Prospective Plaintiffs as reimbursement of its costs incurred for the work product to support the Notice in fulfillment of the requirement to reimburse prospective plaintiffs' reasonable costs pursuant to Elections Code section 10010(f). The check will be made payable to Prospective Plaintiffs' attorney-of-record Robert Goodman to his trust account Robert Goodman Trust Account. Pursuant to Elections Code section 10010(f)(1), Prospective Plaintiffs have made a demand for reimbursement and staff has substantiated that the documentation provided by Prospective Plaintiffs represents the demography and legal costs incurred by Prospective Plaintiffs supporting their Notice.

2. Condition Precedent

Prospective Plaintiffs acknowledge, understand and agree that the City Council's passing of the resolution described in Section 1 is an express condition precedent to the consummation of this Agreement and the covenants, conditions and agreements contained herein. In the event that the resolution is not approved as set forth in Section 1, then this Agreement shall be null and void and shall be of no further force and effect. In such event, neither this Agreement, nor any of its terms or provisions, shall be admissible in any action or proceeding initiated by Prospective Plaintiffs for any purpose.

Further, the Prospective Plaintiffs recognize and acknowledge that the City Council is under no obligation to pass the resolution and that the Council reserves its discretion and the full measure of its powers to evaluate the resolution in accordance with applicable procedures, standards and requirements. It is understood and agreed that this Agreement shall not be construed in any fashion as an advance determination and does not provide the Prospective Plaintiffs with any expectation as to the outcome of the City Council's decision on the resolution. The City Council's lack of approval or inaction on the resolution will not constitute a default of this Agreement, but instead will constitute a terminating event of this Agreement.

3. Admissibility of Agreement

If the City does not institute district-based elections for City Council seats by the November 2022 regular election, this Agreement shall not be construed as an admission by the City that such failure to act is unreasonable or unlawful under the Elections Code. In addition, this

Agreement may not be introduced into or be admissible in any judicial proceeding other than a judicial proceeding to enforce the terms of this Agreement.

4. Release

- A. Subject to the performance of the Parties' obligations in this Agreement, the Parties hereby fully and finally waive, release, and permanently discharge each other (and their respective officers, employees, agents, representatives and attorneys) (the "Releasees"), from any and all past, present, or future matters, claims, demands, obligations, liens, actions or causes of action, suits in law or equity, or claims for damages or injuries, whether known or unknown, which they now own, hold or claim to have or at any time heretofore have owned, held or claimed to have held against each other by reason of any matter or thing alleged or referred to, or in any way connected with, arising out of or in any way relating to the Notice (collectively, the "Released Claims"). In connection with the release of the Released Claims, the Parties waive any and all rights that they may have under the provisions of section 1542 of the California Civil Code, which states as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

In the event that any waiver of the provisions of Section 1542 of the California Code provided for in this Agreement shall be judicially determined to be invalid, voidable or unenforceable, for any reason, such waiver to that extent shall be severable from the remaining provisions of this Agreement, and the invalidity, voidability or unenforceability of the waiver shall not affect the validity, effect, enforceability or interpretation of the remaining provisions of this Agreement.

- B. The Parties understand and acknowledge that the foregoing release extends to any claims or damages, without limitation, arising out of the Released Claims that may exist on the date of the execution of this Agreement, but which the Parties do not know to exist, which, if known, would have materially affected their decision to execute this Agreement, regardless of whether their lack of knowledge is a result of ignorance, oversight, error, negligence or any other cause.
- C. Each Party acknowledges and agrees that this Agreement is a compromise and settlement of their disputes and differences, and is not an admission of liability or wrongdoing by any Party.
- D. Except as provided in section 1.C. of this Agreement, each of the Parties waives any and all claims for the recovery of any costs, expenses, or fees, including attorney fees, associated with the matters and claims released in this Agreement.

5. Representations and Warranties

- A. Prospective Plaintiffs hereby represent and warrant to the City, as of the Effective Date, as follows:
- i. They have not heretofore assigned or transferred, or purported to assign or transfer, to any party not named herein any Released Claim, or any part or portion thereof.
 - ii. To the best of their knowledge, there are no legal actions, suits or similar proceedings pending and served, or threatened in writing against the Prospective Plaintiffs that would adversely affect their ability to consummate the transactions contemplated in this Agreement. To the best of their knowledge, Prospective Plaintiffs are not aware of any existing claims nor of any facts that might give rise to any claims of any type or nature against the City, whether asserted or not, that have not been fully released and discharged by the release set forth in this Agreement.
 - iii. Prospective Plaintiffs have freely entered into this Agreement and are not entering into this Agreement because of any duress, fear, or undue influence; this Agreement is being entered into in good faith.
 - iv. Prospective Plaintiffs have made such investigation of the facts pertaining to this Agreement as they deem necessary.
 - v. Prospective Plaintiffs have, prior to the execution of this Agreement, obtained the advice of independent legal counsel of their own selection regarding the substance of this Agreement and the claims released herein.
- B. In executing this Agreement, Prospective Plaintiffs acknowledge, represent, and warrant to the City that they have not relied upon any statement or representation of any City officer, agent, employee, representative, or attorney regarding any facts not expressly set forth within this Agreement. In entering into this Agreement, Prospective Plaintiffs assume the risk of any misrepresentations, concealment or mistake, whether or not they should subsequently discover or assert for any reason that any fact relied upon by them in entering into this Agreement was untrue, or that any fact was concealed from them, or that their understanding of the facts or of the law was incorrect or incomplete.
- C. The representations and warranties of each of the Parties set forth in this Section 4 and elsewhere in this Agreement will survive the execution and delivery of this Agreement and are a material part of the consideration to the City in entering into this Agreement.

6. Interpretation

- A. The Parties have cooperated in the drafting and preparation of this Agreement and, in any construction or interpretation to be made of this Agreement, the same shall not be construed against any Party. This Agreement is the product of bargained for and arm's

length negotiations between the Parties and their counsel. This Agreement is the joint product of the Parties.

- B. This Agreement is an integrated contract and sets forth the entire agreement between the Parties with respect to the subject matter contained herein. All agreements, covenants, representations and warranties, express or implied, oral or written, of the Parties with regard to such subject matter are contained in this Agreement. No other agreements, covenants, representations or warranties, express or implied, oral or written, have been made or relied on by either Party.
- C. This Agreement may not be changed, modified or amended except by written instrument specifying that it amends such agreement and signed by both Parties. No waiver of any provision of this Agreement shall be deemed or shall constitute a waiver of any other provision whether or not similar, nor shall any waiver be deemed a continuing waiver; and no waiver shall be implied from delay or be binding unless executed in writing by the party making the waiver.
- D. All of the covenants, releases and other provisions herein contained in favor of the persons and entities released are made for the express benefit of each and all of the said persons and entities, each of which has the right to enforce such provisions.
- E. This Agreement shall be binding upon and inure to the benefit of each of the Parties, and their respective representatives, officers, employees, agents, heirs, devisees, successors and assigns.

7. Further Cooperation

Each Party shall perform any further acts and execute and deliver any further documents that may be reasonably necessary or appropriate to carry out the provisions and intent of this Agreement. Except as expressly stated otherwise in this Agreement, actions required of the Parties or any of them will not be unreasonably withheld or delayed, and approval or disapproval will be given within the time set forth in this Agreement, or, if no time is given, within a reasonable time. Time will be of the essence of actions required of any of the Parties.

8. No Third Party Beneficiaries

Nothing in this Agreement is intended to benefit any third party or create a third party beneficiary. This Agreement will not be enforceable by any person not a Party to this Agreement.

9. Enforced Delay (Force Majeure)

- A. Performance by either Party shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, acts of terrorism, epidemic, quarantine, casualties, acts of God, litigation, governmental

restrictions imposed or mandated by governmental entities, enactment of conflicting state or federal laws or regulations, or other similar circumstances beyond the reasonable control of the Parties and which substantially interferes with the ability of a Party to perform its obligations under this Agreement.

- B. An extension of time for any such cause (a “Force Majeure Delay”) shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the Party claiming such extension is sent to the other Party within thirty (30) days of knowledge of the commencement of the cause. Notwithstanding the foregoing, none of the foregoing events shall constitute a Force Majeure Delay unless and until the Party claiming such delay and interference delivers to the other Party written notice describing the event, its cause, when and how such Party obtained knowledge, the date the event commenced, and the estimated delay resulting therefrom. Either Party claiming a Force Majeure Delay shall deliver such written notice within thirty (30) days after it obtains actual knowledge of the event. The time for performance will be extended for such period of time as the cause of such delay exists but in any event not longer than for such period of time.

10. Governing Law; Venue

This Agreement shall be governed by, and construed in accordance with, the laws of the State of California, without regard to any otherwise applicable principles of conflicts of laws. Any action arising out of this Agreement must be commenced in the state courts of the State of California, County of Santa Barbara, and each party hereby consents to the jurisdiction of the above courts in any such action and to venue in the State of California, County of Santa Barbara, and agrees that such courts have personal jurisdiction over each of them.

11. Counterparts

This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed on the date set forth above.

**CITY OF CARPINTERIA,
a Municipal Corporation**

PROSPECTIVE PLAINTIFFS



Fred Shaw, Mayor



Jatzibe Sandoval

ATTEST:



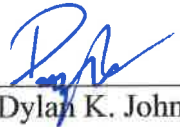
Fidela Garcia, City Clerk




Frank Gonzalez

APPROVED AS TO FORM:

APPROVED AS TO FORM:



Dylan K. Johnson, Esq.,
on behalf of Brownstein Hyatt
Farber Schreck, LLP, acting as
City Attorney for the City of
Carpinteria



Robert Goodman, Esq.