

## **SETTLEMENT AGREEMENT**

### ***City of Laguna Beach v. FAA***

The United States of America, acting through the Federal Aviation Administration ("FAA"), and City of Laguna Beach ("City") (collectively, "the Parties") enter into this Settlement Agreement ("Agreement"), by and through their undersigned representatives, to resolve the disputes outlined below and pertaining to FAA's Southern California Metroplex ("SoCal Metroplex") project which replaces dozens of existing conventional air traffic control procedures with new satellite-based procedures at twenty-one airports in Southern California.

#### **Litigation**

On or about October 31, 2016, the City filed a petition for review challenging the FAA's Finding of No Significant Impact and Record of Decision ("FONSI/ROD") under 49 U.S.C. § 46110 in the United States Court of Appeals for the Ninth Circuit, which petition was subsequently transferred to the United States Court of Appeals for the District of Columbia Circuit as Case No. 17-1028 and consolidated with related petitions under Case No. 16-1366.

The Parties have reached an agreement to settle and stipulate to the dismissal of *City of Laguna Beach v. FAA*, No. 17-1028 (D.C. Cir.).

#### **Agreement**

NOW, THEREFORE, in consideration of the mutual covenants and other consideration described herein, the Parties agree it is in the interest of the public and civil aviation to AGREE as follows:

#### **I. Complete Settlement of all Claims**

The Parties agree that this Agreement upon execution shall resolve all claims by the City that have been brought, or could have been brought, in *City of Laguna Beach v. FAA*, No. 17-1028 (D.C. Cir.).

Within 30 days of this Agreement's execution, the City shall move to dismiss with prejudice its petition for review, No. 17-1028, in the United States Court of Appeals for the District of Columbia Circuit.

#### **II. Terms**

The Parties expressly agree to the following terms:

1. As part of the SoCal Metroplex Project, the FAA designed standard instrument flight procedures for aircraft arriving and departing John Wayne Airport ("SNA") that would meet the purpose and need for the proposed action as described in the Final Environmental Assessment for the Southern California Metroplex Project ("EA") prepared pursuant to the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4321. The standard instrument departure procedure ("SID") designed for aircraft departing SNA for destinations east of McCarran International Airport ("LAS") has been



designated as PIGGN. For purposes of this Agreement, the term PIGGN SID refers to and includes all successor procedures, including STAYY if approved and implemented by FAA. Attachment One to this Agreement depicts the PIGGN 2 and proposed STAYY procedures.

2. To the maximum extent practicable, the FAA agrees that the FAA shall keep aircraft departing from SNA using the PIGGN and STAYY (if approved and implemented) SIDs on the procedures as much as possible. The FAA agrees that, to the maximum extent practicable, it shall not vector aircraft off the PIGGN and STAYY (if approved and implemented) procedures until passing abeam of the DANAHA waypoint unless such vectoring is consistent with the factors and circumstances described in paragraph 3 below.
3. The parties agree and understand that due to safety and efficiency for air traffic control purposes, it is impossible to restrict or otherwise limit an air traffic controller's options for vectoring aircraft at all times. Adherence to procedures is dependent on a variety of factors at any given time and depends on individual circumstances. Factors and circumstances include air traffic volume and complexity, weather, winds, pilot abilities, aircraft and equipment capabilities, and other flight and air traffic dynamics. The parties understand that individual aircrew performance requirements are set forth in FAA Order 8260.58A, U.S. Standard for PBN Instrument Procedure Design, and FAA Advisory Circular 90-100A, Change 2, Terminal and En Route Area Navigation (RNAV) Operations. Therefore, FAA must be able to vector aircraft in controlled airspace for safety, separation, operational efficiency, sequencing, or other air traffic control purposes.
4. The parties agree and understand that in the event that the United States Court of Appeals for the District of Columbia Circuit issues an order vacating or otherwise invalidating the FAA's implementation of the Southern California Metroplex project resulting in termination of the PIGGN procedure, the provisions in paragraphs 2 and 3 regarding PIGGN will be null and void. All remaining portions shall nevertheless remain valid and enforceable to the extent they can be given effect without the invalid portion.
5. The FAA agrees to provide to SNA, for public dissemination, quarterly reports for one (1) year regarding the FAA's monitoring of the PIGGN SID to evaluate deviations from expected flight paths. The FAA further agrees to provide copies of such reports to the City.
6. The FAA agrees to meet with SNA on an as needed basis, either in person or by phone, to discuss results of the ongoing monitoring referenced in paragraph 5 above and to address any issues and concerns of the affected communities. The FAA agrees to meet with the City in coordination with SNA, either in person or by phone, upon written request by the City to discuss any concerns relating to such reported monitoring results.
7. The FAA agrees to meet with SNA and the City to discuss the City's proposed procedures, including proposed alternatives to ROOBY STAR. The City acknowledges

and agrees that any procedure must meet the FAA's mission to ensure that any airspace procedures are safe and efficient for the National Airspace System.

8. This Agreement shall remain in effect until such time the FAA proposes future modifications to the PIGGN SID or new RNAV procedures at SNA that would require an environmental review under NEPA. Nothing in this Agreement shall prohibit the City from submitting comments or presenting testimony upon any future environmental documentation that may be prepared by the FAA or from challenging any action by the FAA that may be inconsistent with the terms of this Agreement. Nothing in this Agreement shall be construed as expanding the FAA's obligations and duties under NEPA.

Standard Agreement provisions to follow, including:

9. **Notices.** All notices required under this Agreement shall be in writing, and may be given either personally or by registered or certified mail (return receipt requested) or facsimile. Any Party may at any time, by giving ten (10) days' written notice to the other Party, designate any other person or address in substitution of the address to which such notice shall be given. Such notice shall be given to the Parties at their addresses set forth below:

Philip Kohn, Rutan & Tucker LLP  
City Attorney, City of Laguna Beach  
611 Anton Boulevard, Suite 1400  
Costa Mesa, CA 92626-1931

John Pietig  
City Manager, City of Laguna Beach  
505 Forest Avenue  
Laguna Beach, CA ~~92660~~ 92651

Airport Director, John Wayne Airport  
County of Orange  
John Wayne Airport  
Eddie Martin Administration Building  
3160 Airway Avenue  
Costa Mesa, CA 92626

Regional Administrator, Western-Pacific Region  
Federal Aviation Administration  
15000 Aviation Blvd  
Lawndale, CA 90261

10. **Enforcement.** If one of the Parties alleges a breach of the terms or conditions of this Agreement, the Party alleging a breach must notify the other in writing prior to filing any legal action regarding this Agreement. For purposes of this paragraph, the City agrees to send written notice to the FAA Office of Regional Counsel, Western Pacific Region. For



purposes of this paragraph, the FAA agrees to send written notice to the Laguna Beach City Attorney. Upon receipt of such written notice, the Parties shall confer and, as soon as possible, try to resolve the alleged breach. The Parties agree to attempt to resolve any such issues in good faith. Should those attempts be unsuccessful, the Parties agree to engage voluntarily in mediation overseen by the FAA's Office of Dispute Resolution for Acquisitions ("ODRA"). *See* 14 C.F.R. §17.3(q) (defining ODRA and its authority to provide dispute resolution services). The Parties understand that mediation may be terminated by any party or the mediator at any time. If the Parties cannot settle the entirety of the dispute via mediation, all unsettled elements shall be resolved via the enforcement provision stated below.

The Parties reserve the right to judicially enforce any terms or provisions of this Agreement. An action to enforce this Agreement must be brought and pursued in Federal court and shall be governed by and construed in accordance with Federal law.

11. **Own Costs.** Each Party shall bear its own costs, including attorneys' fees, in connection with this Agreement and the litigation giving rise to this Agreement.
12. **Authority.** The representatives of each Party hereby certify that he or she is duly authorized to enter into and execute this Agreement. The City represents that it has the full authority to perform all of the acts and obligations it has agreed to perform under the terms of this Agreement.

The United States, acting through the Department of Justice and the FAA, represents that the FAA has the full authority to perform all of the acts and obligations it and the United States of America has agreed to perform under the terms of this Agreement. Nothing in this Agreement shall be construed to require any action in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341.

13. **Copies and Counterparts.** It is contemplated that this Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together constitute one and the same document. Facsimiles, hard copies, and scanned electronic copies of signatures, including scanned electronic copies sent by email shall constitute acceptable, binding signatures for purposes of this Agreement.
14. **Defense of this Agreement.** The Parties agree to vigorously and actively defend this Agreement and all terms embodied herein as fair and reasonable and to vigorously and actively defend the same against any challenge by any individual or entity. The Parties further agree not to undermine directly or indirectly this Agreement or any terms set forth therein for so long as this Agreement remains in effect.
15. **Modification.** This Agreement may be supplemented or modified only by the mutual agreement of the Parties. No supplement, amendment, or modification of this Agreement shall be binding unless it is in writing and signed by all duly authorized representatives of each Party.

16. **Successors or Assigns.** This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors, transferees, licensees, agents, heirs, and assigns.
17. **Precedent.** Nothing in this Agreement shall constitute an admission concerning any allegation, claim, or defense at issue in *City of Laguna Beach v. FAA*, No. 17-1028 (D.C. Cir.) or related cases. This Agreement has no precedential effect as to any other dispute between the Parties or between either the City or the FAA and any third party. This Agreement is made in light of the unique circumstances of this case and the uncertainty of the specific matters resolved hereby. Nothing herein shall be construed to be an admission of liability or as an interpretation of the validity or terms or provisions of any other instruments or contracts.
18. **Release.** Upon the entry of the Agreement, the Petitioner City of Laguna Beach and all its heirs, administrators, representatives, attorneys, successors, and assigns, hereby release, waive, acquit, and forever discharge the FAA and all its respective officers, employees, and agents from, and are hereby forever barred and precluded from prosecuting, any and all claims, causes of action, and/or requests for relief asserted in *City of Laguna Beach v. FAA*, No. 17-1028 (D.C. Cir.), as well as any and all claims, causes of action, and/or requests for relief, whether or not made, against any Party that could have been raised in those matters, with the exception of proceedings to enforce this Agreement.
19. **No Third Party Rights.** This Agreement is not intended to create, and does not create, any third-party beneficiary rights, confer upon any non-party a right to enforce or sue for an alleged breach of the Agreement, or generate any other kind of right or privilege for any person, group, or entity other than the Parties.



20. **Effective Date.** This Agreement shall become effective upon the date the last party executes this Agreement.

Date: \_\_\_\_\_, 2018

CITY ATTORNEY, CITY OF LAGUNA BEACH

By: \_\_\_\_\_  
Philip Kohn

Date: \_\_\_\_\_, 2018

CITY MANAGER, CITY OF LAGUNA BEACH

By: \_\_\_\_\_  
John Pietig

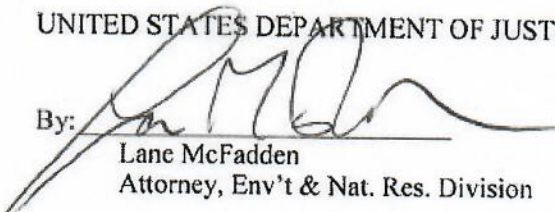
Date: \_\_\_\_\_, 2018

FEDERAL AVIATION ADMINISTRATION

By: \_\_\_\_\_  
Maurice Hoffman  
Acting Director, Airspace Services, AJV-1

Date: Jan. 19, 2018

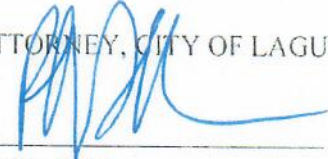
UNITED STATES DEPARTMENT OF JUSTICE

By:  \_\_\_\_\_  
Lane McFadden  
Attorney, Env't & Nat. Res. Division

20. **Effective Date.** This Agreement shall become effective upon the date the last party executes this Agreement.

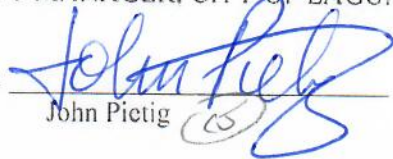
Date: JAN. 22, 2018

CITY ATTORNEY, CITY OF LAGUNA BEACH

By:   
Philip Kohn

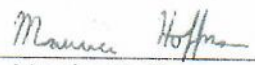
Date: \_\_\_\_\_, 2018

CITY MANAGER, CITY OF LAGUNA BEACH

By:   
John Pictig

Date: JAN 17, 2018

FEDERAL AVIATION ADMINISTRATION

By:   
Maurice Hoffman  
Acting Director, Airspace Services, AJV-1

Date: \_\_\_\_\_, 2018

UNITED STATES DEPARTMENT OF JUSTICE

By: \_\_\_\_\_  
Lane McFadden  
Attorney, Env't & Nat. Res. Division



