

SETTLEMENT AGREEMENT AND MUTUAL RELEASES

This Agreement is made by and between SAVE THE PLASTIC BAG COALITION ("STPB"), an unincorporated association, and the CITY OF PALO ALTO ("the City").

RECITAL

The purpose of this Agreement is to settle and resolve the pending litigation between STPB and the City. *Save The Plastic Bag Coalition v. City of Palo Alto et al.*, Santa Clara Superior Court, Case No. 1-09-CV-140463 ("the lawsuit").

AGREEMENT

In consideration of the mutual terms, covenants and conditions contained in this Agreement and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Promptly after execution of this Agreement, STPB agrees to dismiss the lawsuit with prejudice. Each party to the litigation shall bear its own attorney's fees and costs and each party waives any claim to recover its attorney's fees and costs. In consideration of such dismissal, the City agrees to the remaining provisions of this Agreement.
2. Except as provided in paragraph 4, the City shall not enact or adopt any ordinance, law, or regulation, or amend any existing ordinance, law or regulation, that prohibits, limits, imposes a fee on, or regulates the provision or distribution of plastic bags of any kind unless and until the City has completed and certified a final Environmental Impact Report ("EIR") regarding such ordinance, law, regulation or amendment that complies with the California Environmental Quality Act ("CEQA") and all further CEQA requirements regarding such EIR have been satisfied and fulfilled. For the purpose of this Agreement, the City accepts and agrees that an EIR is required under CEQA before taking any such actions.
3. STPB reserves and retains the right to assert all potential objections and challenges to any such EIR or the City's future acts or omissions regarding any such EIR on the ground that they do not comply with CEQA, including by means of litigation.
4. This Agreement shall not prohibit the enforcement of any ordinance, law or regulation regarding plastic bags that was enacted or adopted by the City Council



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on or prior to March 30, 2009, provided that any future amendment thereto shall be subject to paragraph 2.

- 5. Nothing in this Agreement shall prevent the City from taking any action to restrict or prohibit paper bags or non-plastic reusable bags.
- 6. Nothing in this Agreement constitutes a waiver of STPB's right to object to or challenge any fee imposed in violation of Public Resources Code §42254(a)(2). Such right is reserved and retained.
- 7. The parties hereby waive and release all actual or potential claims or causes of action against each other for any past acts or omissions.
- 8. In entering into this Agreement and waiving and releasing their claims or potential claims or causes of action as set forth above, the parties intend to waive all rights or benefits which they may have under California Civil Code §1542. Each party hereto acknowledges that its own legal counsel has advised it and that it is familiar with the provisions of section 1542 of the California Civil Code, which provides: "*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.*" The parties hereby expressly waive the provisions of California Civil Code §1542 and any right they may have to invoke said provisions or any similar or common law rule now or in the future.
- 9. Nothing contained herein shall be construed as an admission by any party hereto of any liability of any kind to any other party or to any other entity.
- 10. In case any provision of this Agreement shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
- 11. This Agreement constitutes the entire agreement and understanding between the parties concerning the subject matter hereof, and supersedes and replaces all prior negotiations, proposed agreements, and agreements, written and oral, relating thereto, except as expressly included herein. Each of the parties acknowledges that no other party nor any agent or attorney of any other party has made any

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promise, representation, or warranty whatever, expressed or implied, not contained herein concerning the subject matter hereof to induce it to execute this Agreement.

- 12. No modification or waiver of this Agreement, or any portion hereof, shall be valid unless made in writing and signed by the parties hereto.
- 13. This Agreement shall be binding upon and inure to the benefit of inure to the benefit of the successors-in-interest and assigns of all parties, and their heirs, executors, administrators, or other legal representatives. The agreement of the City hereto shall bind the City Council.
- 14. This Agreement shall be governed by and construed in accordance with the laws of the State of California.
- 15. All references to CEQA herein include the CEQA Guidelines.
- 16. This Agreement may be signed in counterparts. Each counterpart shall be deemed an original and taken together shall constitute one and the same agreement, which shall be binding and effective as to all parties.
- 17. A faxed signature on this Agreement shall be deemed admissible as an original.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

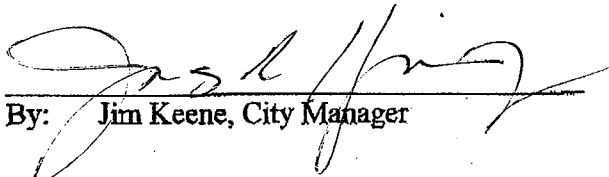
SAVE THE PLASTIC BAG COALITION

7-24-09
Date


By: Stephen L. Joseph, counsel and member

CITY AND CITY COUNCIL OF PALO ALTO

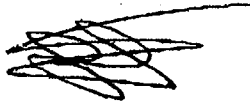
7-27-09
Date


By: Jim Keene, City Manager

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APPROVALS AS TO FORM:

STEPHEN L. JOSEPH



Attorney for Petitioner
SAVE THE PLASTIC BAG COALITION

DONALD LARKIN, ASSISTANT CITY ATTORNEY



Attorney for Respondents
CITY OF PALO ALTO AND
CITY COUNCIL OF PALO ALTO