

SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Settlement Agreement and General Release ("Agreement") is entered into by and between Mario DiLonardo ("DiLonardo") and the City of Coronado ("City"). Hereinafter, the City and DiLonardo are referred to collectively as the "Parties," and individually as a "Party."

RECITALS

This AGREEMENT is made with reference to the following facts:

- A. **WHEREAS**, DiLonardo filed a Lawsuit against the City that is currently pending in San Diego Superior Court and that is designated as *Mario DiLonardo v. Impact Activities, LLC, et al.*, and DOES 1 through 100, inclusive, Case No. 37-2021-00022774-CU-FR-CTL (the "Lawsuit");
- B. **WHEREAS**, DiLonardo filed a Claim for Damages against the City prior to initiating litigation (the "Tort Claim");
- C. **WHEREAS**, the City denies the validity of DiLonardo's claims in the Lawsuit and the Tort Claim and denies that it or any of its agents or officers is subject to any liability to DiLonardo whatsoever;
- D. **WHEREAS**, the City also disputes and denies that DiLonardo was ever an employee of the City, and instead contends that DiLonardo was at all relevant times an independent contractor for the City;
- E. **WHEREAS**, the Parties wish to settle their differences without resort to further litigation; and
- F. **WHEREAS**, the City is willing to provide DiLonardo with certain considerations described below, provided that (i) DiLonardo releases the City from any and all claims that DiLonardo has made, could have made, or might make, that arise out of or relate to his former independent-contractor relationship with the City, and (ii) DiLonardo agrees to comply with the other promises and conditions set forth in this Agreement.

NOW THEREFORE, in consideration for the mutual covenants and promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties hereby agree to be legally bound by the following terms and conditions, which shall constitute full settlement of any and all disputes between them:

1. **Recitals:** The Parties acknowledge that the "WHEREAS" clauses preceding this paragraph 1 are true and correct, and are incorporated herein as material parts to this Agreement.

2. **Definitions:** Throughout this Agreement, the term "City" shall include the following:

- (A) the City of Coronado; and
- (B) Any officer, director, councilmember, trustee, agent, employee, independent contractor, or insurer of the City of Coronado.

3. **Settlement Sum:** As consideration for signing this Agreement and compliance with the promises made herein, the City agrees to pay to DiLonardo the sum of TEN THOUSAND DOLLARS AND 00/100 CENTS (\$10,000) (the "Settlement Payment").

The City shall provide the Settlement Payment after the Agreement has been duly signed and approved by the City and after the City receives all of the following items: (1) an original of this Agreement appropriately signed and dated by DiLonardo; and (2) a Request for Dismissal, executed by DiLonardo or an attorney of record for DiLonardo in the Lawsuit, requesting dismissal of the Lawsuit with prejudice.

Therefore, this Agreement shall not become effective, and the Settlement Payment shall not be due or payable, until after the Effective Date of this Agreement (the "Effective Date" being defined as the first day after the City has received from DiLonardo all of the items described in this paragraph and the revocation period set forth in paragraph 18(C) of this Agreement has passed).

The Settlement Payment shall be made via check made out to the "Law Offices of Daniel Callaway," which shall be delivered to counsel for DiLonardo (Daniel Callaway, 603 Seagaze Dr., #1103, Oceanside, California 92054), within ten (10) business days after the Effective Date.

4. **Consideration:** DiLonardo understands and agrees that he would not receive the Settlement Payment but for his execution of this Agreement and the fulfillment of the promises contained herein.

5. **General Release of Claims:** In exchange for, and in consideration of, the payments, benefits, and other commitments described above, including the Settlement Payment, DiLonardo, for himself and for each of his heirs, executors, administrators, and assigns, hereby fully releases, acquits, and forever discharges the City, and each of its predecessors, successors, and assigns, and the officers, directors, councilmembers, employees, attorneys, and agents, past and present, of each of the aforesaid entities (the "Released Parties"), of and from any and all claims, liabilities, causes of action, damages, costs, attorneys' fees, expenses, and compensation whatsoever, of whatever kind or nature, in law, equity, or otherwise, whether known or unknown, vested or contingent, suspected or unsuspected, that DiLonardo may now have, has ever had, or hereafter may claim to have relating directly or indirectly to the allegations in the

Tort Claim and/or the Lawsuit, including, but not limited to, claims for damages, wages, back pay, front pay, reinstatement, or benefits. DiLonardo also releases any and all claims he may have that arose prior to the date of this Agreement, and hereby specifically waives and releases all claims, including but not limited to those arising under California Labor Code Section 1102.5, Title VII of the Civil Rights Act of 1964, as amended, the Civil Rights Act of 1991; the Equal Pay Act; the Americans With Disabilities Act of 1990; the Rehabilitation Act of 1973, as amended; the Age Discrimination in Employment Act, as amended (ADEA); Sections 1981 through 1988 of Title 42 of the United States Code, as amended; and the California Fair Employment and Housing Act (FEHA). DiLonardo also releases and disavows any claim or contention that he was an employee of the City at any time. DiLonardo acknowledges that he was never an employee of the City, and that he was instead an independent contractor of the City at all relevant times. Except as otherwise provided in this Agreement, each party to the Lawsuit shall bear his or its own attorneys' fees and costs relating thereto.

6. **Tax Liability:** DiLonardo understands and agrees that any and all tax liability that may be due or become due because of the Settlement Payment is the responsibility of DiLonardo, and that he will pay any such taxes that may be due or become due. The City has no monetary liability or obligation regarding payment whatsoever (other than delivering a valid check for the Settlement Payment as provided in paragraph 3 of this Agreement). DiLonardo agrees to bear all tax consequences, if any, attendant upon the payment to him of the Settlement Payment. DiLonardo further agrees to hold the City harmless from and against any tax or tax withholdings claims, amounts, interest, penalties, fines, or assessments brought or sought by any taxing authority or governmental agency with regard to the Settlement Payment. In the event the City receives written notice that any claim or assessments for taxes, withholding obligations, penalties, and/or interest arising out of this settlement are being or will be made against the City, the City shall promptly, after receipt of such notice, notify DiLonardo by letter sent to counsel for DiLonardo.
7. **No Assignment:** The Parties represent and warrant that no person other than the signatories hereto had or has any interest in the matters referred to in this Agreement, that the Parties have the sole right and exclusive authority to execute this Agreement, and that the Parties have not sold, assigned, transferred, conveyed, or otherwise disposed of any claim, demand, or legal right that is the subject of this Agreement.
8. **Governing Law and Jurisdiction:** This Agreement shall be governed and conformed in accordance with the laws of the state of California, without regard to its conflict-of-laws rules. In the event DiLonardo or the City breaches any provision of this Agreement, DiLonardo and the City affirm that either may institute an action to specifically enforce any term or terms of this Agreement in state court in the State of California.

9. **Enforcement Costs:** Should any legal action be required to enforce the terms of this Agreement, the prevailing Party shall be entitled to reasonable attorneys' fees and costs in addition to any other relief to which that Party may be entitled.
10. **No Admission of Liability:** The Parties agree that neither this Agreement nor the furnishing of the consideration for this Agreement shall be deemed or construed at any time or for any purpose as an admission by the City of any liability or unlawful conduct of any kind.
11. **Headings:** The headings of the provisions herein are intended for convenient reference only, and the same shall not be, nor be deemed to be, interpretative of the contents of such provision.
12. **Modification of Agreement:** This Agreement may not be amended, revoked, changed, or modified in any way, except in writing executed by all Parties. DiLonardo agrees not to make any claim at any time or place that this Agreement has been verbally modified in any respect whatsoever. No waiver of any provision of this Agreement will be valid unless it is in writing and signed by the party against whom such waiver is charged. The parties acknowledge that only an authorized representative of the City has the authority to modify this Agreement on behalf of the City.
13. **Interpretation:** The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the Parties. This Agreement has been negotiated by and between attorneys for the Parties and shall not be construed against the "drafter" of the Agreement.
14. **Severability:** The parties explicitly acknowledge and agree that the provisions of this Agreement are both reasonable and enforceable. However, if any portion or provision of this Agreement (including, without implication of limitation, any portion or provision of any section of this Agreement) is determined to be illegal, invalid, or unenforceable by any court of competent jurisdiction and cannot be modified to be legal, valid, or enforceable, the remainder of this Agreement shall not be affected by such determination and shall be valid and enforceable to the fullest extent permitted by law, and said illegal, invalid, or unenforceable portion or provision shall be deemed not to be a part of this Agreement. Notwithstanding the foregoing, to the extent any provision herein that relates to the dismissal of DiLonardo's Lawsuit or the general release of claims described in paragraph 5 above is deemed to be illegal, invalid, or unenforceable, the City is not obligated to honor any of the terms set forth herein and DiLonardo shall return any amounts paid by the City.
15. **Binding Nature of Agreement:** This Agreement shall be binding upon each of the Parties and upon their respective heirs, administrators, representatives, executors, successors, and assigns, and shall inure to the benefit of each Party

and to their respective heirs, administrators, representatives, executors, successors, and assigns.

16. **Entire Agreement:** This Agreement constitutes the entire agreement between the Parties and supersedes any and all other agreements, understandings, negotiations, or discussions, either oral or in writing, express or implied, between the Parties to this Agreement relating to the subject matter hereof. The Parties to this Agreement each acknowledge that no representations, inducements, promises, agreements, or warranties, oral or otherwise, have been made by them, or anyone acting on their behalf, which are not embodied in this Agreement, that they have not executed this Agreement in reliance on any such representation, inducement, promise, agreement, or warranty, and that no representation, inducement, promise, agreement, or warranty not contained in this Agreement, including, but not limited to, any purported supplements, modifications, waivers, or terminations of this Agreement, shall be valid or binding, unless executed in writing by all of the Parties to this Agreement. Any alteration, change, or modification of or to this Agreement shall be made by written instrument executed by each Party hereto in order to become effective.
17. **Selective Enforcement:** The Parties agree that the failure of any party to enforce or exercise any right, condition, term, or provision of this Agreement shall not be construed as or deemed a relinquishment or waiver thereof, and the same shall continue in full force and effect.
18. **Compliance with Older Workers Benefit Protection Act:** DiLonardo, being 40 years of age or older, is advised of and acknowledges the following:
 - (A) **Twenty-One Day Consideration Period.** DiLonardo shall have up to twenty-one (21) days to consider and accept the terms of this Agreement by fully executing it below, and returning it to the City's counsel (Mark J. Austin, Burke, Williams & Sorensen, LLP, maustin@bwslaw.com, 18300 Von Karman Ave., Irvine, California 92612). During this twenty-one (21) day period, and before signing this Agreement, DiLonardo is encouraged to consult with an attorney regarding the terms and provisions of this Agreement, at his own expense. The terms and provisions of this Agreement are null and void if not accepted by DiLonardo within the twenty-one (21) day period. DiLonardo may sign the Agreement prior to the conclusion of the twenty-one (21) day period.
 - (B) **Release of Age Discrimination in Employment Act Claims.** By signing this Agreement, DiLonardo waives any claims he has or might have against the City under the Age Discrimination in Employment Act ("ADEA") that accrued prior to the date of DiLonardo's execution of the Agreement.
 - (C) **Revocation Period.** DiLonardo shall have seven (7) calendar days from the date he signs this Agreement to revoke the Agreement by notifying the City in writing prior to the expiration of the seven (7) calendar-day period. The written revocation must be delivered to counsel for the City (Mark J.

Austin, maustin@bwslaw.com, Burke, Williams & Sorensen, LLP, 18300 Von Karman Ave., Irvine, California 92612) and must be postmarked and sent within seven (7) calendar days of DiLonardo's execution of this Agreement. This Agreement shall not become effective or enforceable until this seven-day revocation period has expired. If the last day of the revocation period is a Saturday, Sunday, or legal holiday, then the revocation period shall not expire until the next following day that is not a Saturday, Sunday, or legal holiday.

- 19. **Compliance with California Civil Code:** DiLonardo agrees that this Agreement will cover all claims of every nature and kind whatsoever, known or unknown, suspected or unsuspected, past or present, which DiLonardo may have against the City, despite the fact that California Civil Code Section 1542 ("Section 1542") may provide otherwise. DiLonardo expressly waives any right or benefit available to him in any capacity under the provisions of Section 1542, which provides:

[General release; extent] 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.

DILONARDO IS HEREBY ADVISED THAT HE HAS UP TO TWENTY-ONE (21) CALENDAR DAYS TO REVIEW AND CONSIDER THIS AGREEMENT AND IS HEREBY ADVISED IN WRITING TO CONSULT WITH AN ATTORNEY PRIOR TO EXECUTION OF THIS AGREEMENT.

DILONARDO AGREES THAT ANY MODIFICATIONS, MATERIAL OR OTHERWISE, MADE TO THIS AGREEMENT DO NOT RESTART OR AFFECT IN ANY MANNER THE ORIGINAL TWENTY-ONE (21) CALENDAR-DAY CONSIDERATION PERIOD.

HAVING ELECTED TO EXECUTE THIS AGREEMENT, TO FULFILL THE PROMISES AND TO RECEIVE THE SUMS AND BENEFITS IN PARAGRAPH 3 ABOVE, DILONARDO FREELY AND KNOWINGLY, AND AFTER DUE CONSIDERATION, ENTERS INTO THIS AGREEMENT INTENDING TO WAIVE, SETTLE, AND RELEASE ALL CLAIMS HE HAS OR MIGHT HAVE AGAINST THE City.

Dated: September 20, 2023

MARIO DILONARDO

By: 
Mario DiLonardo

[Additional Signatures on Next Page]

Dated: September 21, 2023


CITY OF CORONADO

By: 
Tina Friend
City Manager

APPROVED AS TO FORM:


Dated: September 20, 2023

BURKE, WILLIAMS & SORENSEN, LLP

By: 
Mark J. Austin
Attorneys for City of Coronado

Dated: September 15, 2023

LAW OFFICES OF DANIEL CALLAWAY

By: 
Daniel Callaway
Attorneys for Mario DiLonardo

Request for Taxpayer Identification Number and Certification

Give Form to the
requester. Do not
send to the IRS.

Print or type See Specific instructions on page 2.	1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank. Daniel Callaway		
	2 Business name/disregarded entity name, if different from above Law Office of Daniel Callaway		
	3 Check appropriate box for federal tax classification; check only one of the following seven boxes: <input checked="" type="checkbox"/> Individual/sole proprietor or single-member LLC <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ _____ Note. For a single-member LLC that is disregarded, do not check LLC; check the appropriate box in the line above for the tax classification of the single-member owner. <input type="checkbox"/> Other (see instructions) ▶ _____		4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3): Exempt payee code (if any) _____ Exemption from FATCA reporting code (if any) _____ <small>(Applies to accounts maintained outside the U.S.)</small>
	5 Address (number, street, and apt. or suite no.) 603 Seagaze Dr. #1102		Requester's name and address (optional)
	6 City, state, and ZIP code Oceanside, CA 92054		
	7 List account number(s) here (optional)		

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the instructions for line 1 and the chart on page 4 for guidelines on whose number to enter.

Social security number	
OR	
Employer identification number	
-	

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. citizen or other U.S. person (defined below); and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 3.

Sign Here	Signature of U.S. person ▶	Date ▶ 3/25/2023
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General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. Information about developments affecting Form W-9 (such as legislation enacted after we release it) is at www.irs.gov/fw9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following:

- Form 1099-INT (interest earned or paid)
- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)

- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See *What is backup withholding?* on page 2.

By signing the filled-out form, you:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued).
- Certify that you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income, and
- Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct. See *What is FATCA reporting?* on page 2 for further information.