

DRAFT

SETTLEMENT AGREEMENT

This Settlement Agreement is entered as of this ____ day of _____ 2009 between Plaintiff CITY OF VALPARAISO, FLORIDA ("Plaintiff" or "City") and Defendants UNITED STATES AIR FORCE; MICHAEL B. DONLEY, Secretary, United States Air Force; UNITED STATES DEPARTMENT OF DEFENSE; ROBERT M. GATES, Secretary, Department of Defense (collectively "Defendants"). The parties to this Settlement Agreement may be referred to singularly as "Party" or collectively as the "Parties".

WHEREAS, the Defense Base Closure and Realignment Commission ("the Commission") recommended that the Initial Joint Training Site ("IJTS") for the F-35 Joint Strike Fighter ("JSF") be established at Eglin Air Force Base ("Eglin AFB"); and

WHEREAS, pursuant to the Defense Base Closure and Realignment Act of 1990, Pub. L. No. 101-510, §§ 2903(e) and 2904(b), 104 Stat. 1808 (as amended at 10 U.S.C. § 2687) the Commission's recommendation has the force of law; and

WHEREAS, on February 5, 2009 the USAF executed the *Record of Decision Implementation of Base Realignment and Closure (BRAC) 2005 Decisions for the Joint Strike Fighter (JSF) Initial Joint Training Site (IJTS) Eglin AFB, Florida* ("ROD"). The ROD authorized the delivery of 59 JSF F-35 Aircraft to Eglin AFB and the construction of associated facilities constituting the JSF IJTS and, until completion of a Supplemental Environmental Impact Statement ("SEIS"), limited F-35 operations; and

WHEREAS, the ROD memorializes the Air Force's decision to prepare a SEIS to analyze the beddown location, operational alternatives and mitigations for the 59 JSF aircraft authorized for delivery by the ROD, and to evaluate whether and, if so, how up to an additional 48 JSF aircraft may beddown and operate at Eglin AFB; and

WHEREAS, the ROD memorializes the Air Force's decision to evaluate alternatives for operating the JSF, including the use of Duke Airfield and construction of new runway(s) at Eglin Main, which, if selected, could avoid potentially adverse JSF-related noise impacts on the Plaintiff and its residents. For the purposes of this Settlement Agreement, "Eglin Main" refers to that portion of Eglin Air Force Base roughly bordered on the south by Choctawhatchee Bay, to the north by Northwest Florida Regional Airport and the North Gate, and to the east and west by the East and West Gates. The area thus described contains the headquarters buildings for the Air Armament Center, the 46th Test Wing, the 96th Air Base Wing and the 53rd Wing as well as two operational runways or flight lines known by their directional headings as runways "12/30" and "01/19"; and

WHEREAS, the ROD memorializes the Air Force's decision to use Runway 12/30 as the primary runway for JSF operations and to preclude the use of Runway 01/19 for JSF flight operations that overfly Valparaiso unless required by an emergency, unplanned contingency, or weather affecting aircraft performance limitations and requirements. JSF operations are not expected to exceed the number of annual take-offs on Runway 19 modeled for the JSF in

Appendix K of the FEIS for Alternative 1/Scenario 5, unless required by an emergency, unplanned contingency, or weather affecting aircraft performance limitations and requirements;


WHEREAS, on March 30, 2009, Plaintiff filed a civil suit ("the Complaint") challenging the ROD in the U.S. District Court for the Northern District of Florida, Pensacola Division ("the Court"), captioned *City of Valparaiso v. United States Air Force, et al.*, Case No. 3:09-cv-00135-MCR-MD ("the Action"); and

WHEREAS, the Air Force anticipates executing a Record of Decision ("Supplemental ROD") by September of 2010; and

WHEREAS, Plaintiff and the Defendants now desire to compromise and settle the claims asserted in the Action;

NOW THEREFORE, Plaintiff and Defendants hereby agree as follows:

1. Personnel from Eglin Air Force Base, as directed by the Air Force, shall form and no less than quarterly convene a Noise Committee meeting in which local government representatives of the counties and municipalities of Walton, Okaloosa and Santa Rosa Counties may inform the Base of issues relating to noise and be informed of the Base's responses to those issues. A maximum of two local government representatives from each county or municipality may serve on the Noise Committee. Minutes will be taken of Noise Committee meetings and those minutes will be provided to the local government representatives within 30 business days of each meeting. Issues raised and reflected in the minutes at a Noise Committee meeting will be put on the agenda for discussion at the next Noise Committee meeting. The Noise Committee may be convened as part of an existing committee. These meetings shall continue for a period of two years from the date of the signing of this agreement, by both parties and, thereafter, may be continued at the Air Force's discretion.
2. The Defendants shall pay the City attorneys' fees associated with this action in the amount of \$ 60,000. Such payment shall be a full and complete settlement of any claim by the City to attorneys' fees associated with this action. Each Party shall bear their own costs.
3. Nothing in this Settlement Agreement may be construed to require the Air Force to select any particular alternative or to forego selecting any particular alternative.
4. Nothing in this Settlement Agreement may be construed as the City waiving its right to file a challenge to the Supplemental ROD. Nothing in this Settlement Agreement may be construed as the Federal Defendants' waiving any defenses to such a challenge.
5. Nothing in this Settlement Agreement may be construed to require the Defendants



to obligate or pay funds or in any way take action in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable appropriations law.

6. This Settlement Agreement is entered into for the sole purpose of settling and compromising the claims in the Action without the need for further litigation. This Settlement Agreement shall not be construed as an admission of liability or wrongdoing and shall not be evidence of, or constitute a waiver by, either Party as to the merits or lack of merit of any claim or defense asserted therein. This Settlement Agreement will not prejudice or otherwise affect the rights of the Parties with respect to any other litigation or factual situation except as expressly provided herein.

7. This Settlement Agreement shall be binding on the Parties, their officers, agents, successors and assigns and those acting in privity therewith.

8. No modification, amendment or waiver of any of the provisions of this Settlement Agreement shall be effective, unless done in writing specifically referring to this Agreement and signed by all parties.

9. This Settlement Agreement may be executed in counterparts each of which shall be deemed to be an original. All counterparts taken together shall constitute the agreement.


10. This Settlement Agreement contains all agreements, promises and understandings between the Parties and no verbal or oral agreements, promises and understandings shall be binding upon either Party.

11. This Settlement Agreement is a product of negotiations between the Parties. Both parties have participated fully in the preparation of this Settlement Agreement and have received the advice of counsel. In the case of a dispute concerning the interpretation of any provision of this Agreement, both Parties shall be deemed to have drafted the entire Settlement Agreement and any disputed language shall not be construed against a Party on the basis that the Party drafted, suggested, chose or otherwise selected the language.

12. Any notice or other document required or allowed to be given pursuant to this Settlement Agreement shall be delivered personally, by recognized overnight courier or sent by certified mail, postage prepaid, return receipt requested to the following addresses:

If to the City:

City of Valparaiso


Attn: Mayor
465 Valparaiso Parkway
Valparaiso, FL 32580

and

City of Valparaiso
Attn: City Clerk
465 Valparaiso Parkway
Valparaiso, FL 32580

with a copy to:

Douglas M. Wyckoff, Esq.
City of Valparaiso Attorney
116 Live Oak Ave. East
DeFuniak Springs, FL 32435

and


Rose, Sundstrom & Bentley, LLP
Attn: Chris H. Bentley
File No. 43059.02
2548 Blairstone Pines Drive
Tallahassee, FL 32301

If to the Air Force:

Colonel David Dales
AAC/JA
501 W. Van Matre
Eglin AFB, FL 32542

with a copy to:

Douglas D. Sanders, YC-03, USAF
Chief, Environmental Litigation Center
AFLOA/JACE-LC
112 Luke Avenue, Suite 343


Bolling AFB, DC 20032

and

Les Reed
Chief Counsel, Rosslyn/Pentagon Division,
Office of the Deputy General Counsel (Environment & Installations),
Department of the Air Force (SAF/GCN),
1740 Air Force Pentagon, Room 4C759
Washington, DC 20330-1740

13. The undersigned representatives of the Parties certify that they are fully authorized by the Party or Parties they represent to agree to the terms of this Settlement Agreement.

14. Promptly after complete execution of this Settlement Agreement, the parties shall jointly file their stipulation providing that the above-captioned case be dismissed with prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1).

IN WITNESS THEREOF, the Plaintiff and the Defendants have executed this Settlement Agreement as of the date first above written.

UNITED STATES AIR FORCE

CITY OF VALPARAISO FLORIDA

KATHLEEN I. FERGUSON, P.E.
Deputy Assistant Secretary of the Air Force
(Installations)

JOHN B. ARNOLD, JR.
Mayor

IGNACIA S. MORENO
Assistant Attorney General

ROSE, SUNDSTROM & BENTLEY, LLP

David W. Gehlert
Trial Attorney
U.S. Department of Justice
Environment & Natural Resources Division
1961 Stout Street, 8th Floor
Denver, CO 80294

Frederick L. Aschauer, Jr.
Chris H. Bentley
2548 Blairstone Pines Drive
Tallahassee, FL 32301

Attorneys for Plaintiff

Attorneys for Defendants