

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This Settlement Agreement and Release of Claims (“Agreement”) is made and voluntarily entered into by Kevin Abourezk, Erin Poor, Renee Sans Souci and Kathleen Danker (“Plaintiffs”) and City of Lincoln Nebraska (“City”) (collectively, including Plaintiffs, referred to as “the Parties”) in order to conclude, terminate, and settle any and all disputes between them.

RECITALS

WHEREAS, Plaintiffs have a pending lawsuit asserting the Claims against the City of Lincoln and requesting relief captioned as follows: *Kevin Abourezk et al. v. City of Lincoln*, Lancaster County District Court in Nebraska, Case No. CI 23-936 (referred to as the “Claims” or “Lawsuit”); Plaintiffs claims are set forth in their Petition for Declaratory Judgment and Injunctive Relief filed on April 18, 2023 (the “Petition”); and

WHEREAS, the Parties to this Agreement desire to settle and compromise all claims and causes of action the Parties have, had, or may have as of execution of the Agreement, in any way relating to, arising out of, resulting from or associated with the Claims, as set forth in the Petition, up and through the date of the execution of this Agreement; and

NOW, THEREFORE, in consideration of their recitals, mutual covenants and releases, and other agreements contained herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound, hereby stipulate, confirm and agree as follows:

AGREEMENT

1. RELEASE. Plaintiffs and all of their agents, servants, representatives, attorneys, employees, predecessors, successors, heirs, insurers, subrogees and assigns, do hereby release City, City’s board members, officers, directors, affiliates, partners, subsidiaries, agents, servants, representatives, attorneys, employees in their official and individual capacity, predecessors, successors, insurers, subrogees and assigns, and insurance carriers from all liability, rights, claims, demands, damages, costs, expenses, attorney’s fees, causes of action, suits of liability and controversies of every kind and description whatsoever that exist, have existed (whether known or unknown), or may exist on account of and in any manner related to the Claims and any other claims arising out of or connected to the facts giving rise to the Claims that accrued prior to the date of execution of this Agreement.

2. UNKNOWN FACTS. It is expressly understood and agreed by the Parties that this Agreement is intended to and does cover any and all losses, injuries, damages, and claims of every kind and nature whatsoever that exist, including personal or otherwise, have existed, or may exist, whether direct or indirect, known or unknown, suspected or unsuspected by the Parties against any of the other parties released herein related to the Claims that accrued prior to the date of the execution of this Agreement.

3. CITY COMMITMENTS. In consideration of the execution of the Agreement by the Parties and in complete satisfaction of the Claims and any other releases provided for herein, City shall:

- a. Conduct two (2) training sessions on how to foster better relationships and understanding between Indigenous people in Lincoln and the City in each of the calendar years of 2024 and 2025. The training sessions shall be attended by City Directors and appropriate City staff, as identified by City. The training shall be conducted by Indian Center, Inc. or an individual or entity mutually agreeable to the parties, shall be paid for by the City and take place at a location identified by City.
- b. Support Plaintiffs in their efforts to conserve greenspace within the Wilderness Crossing Planned Unit Development (the "PUD") in the event Plaintiffs, or their agents or partners, acquire title to real property within the PUD. This commitment to support Plaintiffs is contingent on Plaintiffs' and City's interests aligning, in City's judgment. This commitment does not include any obligation to approve any specific land use applications submitted to the Planning Director, Planning Commission, or the City Council nor does it include any obligation to approve any specific building permit.
- c. Appoint Erin Poor to the Committee responsible for selection of the firm to conduct an environmental impact analysis of development on the upper watershed of Salt Creek within the planning horizon of the 2050 Comprehensive Plan, as identified in the 2023 City of Lincoln, Transportation and Utilities, Watershed Management, Capital Improvement Program. The RFP shall be issued on or before August 1, 2024. The City agrees to give consideration to the recommendations of the environmental impact analysis on projects surrounding the upper watershed of Salt Creek. And should the City, in its sole discretion, choose to implement such recommendations, it will do so in conformance with the Plan Forward Lincoln-Lancaster County 2050 Comprehensive Plan.
- d. Provide comments and suggested revisions no later than March 1, 2024 to Plaintiffs' draft legislation related to rules for ceremonial fires and ceremonial-related noise ordinances within the City of Lincoln. City will work in good faith with Plaintiffs to provide departmental feedback, prepare ordinances in proper legal form to City Council for consideration, and if City departments' feedback is incorporated into the legislation presented to Council, said department shall not oppose such legislation before the City Council.
- e. Adopt a proclamation substantially conforming to Exhibit A, Attached hereto.

4. DISMISSAL. After execution of this Agreement and within five (5) business days, the parties shall file a joint stipulation for dismissal with prejudice for a final dismissal of the Lawsuit and all Claims.

5. ATTORNEY FEES; COSTS. All Parties to this Agreement shall bear their own attorney fees and costs for the Lawsuit, including court costs, except for the attorney fees provided in the Settlement Amount acknowledged above. No claim shall be made against any other party to this Agreement for attorney fees and costs, including court costs, including any statutory fees, expenses, and/or costs which may have been entitled.

6. NO ADMISSION OF LIABILITY. Nothing contained in this Agreement, the documents being executed and delivered pursuant to this Agreement, or any actions taken in furtherance of this Agreement, shall constitute or be deemed, or construed as an admission of liability or wrongdoing in connection with any matters related to the Claims. Any such alleged liability or wrongdoing is expressly denied by all the Parties. This Agreement shall not be used as an admission or evidence of discrimination or as background information in any other case or dispute involving the City, City's board members, officers, directors, affiliates, partners, subsidiaries, agents, servants, representatives, attorneys, or employees in their official and individual capacity.

7. WARRANTY OF CAPACITY. The Parties represent and warrant that they have the right and authority to execute this Agreement and to receive or provide the considerations specified in it; that no other person or entity has any interest in the claims, demands, obligations and causes of action referred to in this Agreement; that the Parties have not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations and causes of action or controversy referred to in this Agreement; and that there are no other persons or entities who now have or may hereafter acquire the rights of the Parties to proceed on any action, claim, demand, cause of action arising out of or relating in any manner whatsoever to the Claims and demands and obligations referred to in this Agreement.

8. ACKNOWLEDGEMENTS. The Parties declare and acknowledge that the terms of this Agreement have been read and understood; that the Parties have been or have had the opportunity to be represented by their attorneys with regard to the execution of this Agreement; and that the Parties execute this Agreement voluntarily after consultation with attorneys and without being pressured or influenced by any settlement or representation made by any person acting on behalf of any other party.

9. BINDING EFFECT. This Agreement shall be binding on and inure to the benefit of the Parties, their respective successors, purchasers, assigns, heirs and survivors.

10. COMPLETE AGREEMENT. This Agreement constitutes and represents the entire agreement between the Parties and supersedes all prior and contemporaneous agreements, negotiations, representations, warranties, and understandings of the Parties.

11. AMENDMENTS; WAIVER. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by the Parties. No waiver of any provisions of this Agreement shall be deemed or constitute a waiver of any other provision, whether similar or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless set forth in writing signed by the party making the waiver.

12. SEVERABILITY. If any provision of this Agreement is held to be invalid or unenforceable on any occasion or in any circumstance, such holding shall not be deemed to render this Agreement invalid, or unenforceable, and to that extent the provisions of this Agreement are severable; provided, however, that this provision shall not preclude a court of competent jurisdiction from refusing to sever any provision if severance would be inequitable to the Parties.

13. INTERPRETATION; CONSTRUCTION. Should any provision of this Agreement require interpretation or construction, this Agreement shall be interpreted and construed without any presumption that the provision of this Agreement should be constituted against the party which itself or through its agents or attorneys prepared this Agreement.

14. ENFORCEMENT OF AGREEMENT. The Parties intend for this Agreement to be performed and enforced fully according to its terms. Upon any breach of this Agreement, the nonbreaching party shall be entitled to seek to enforce this Agreement pursuant to applicable law or equity. In any action to enforce, interpret or seek damages, injunctive relief, or specific performance for violation of this Agreement, the prevailing party shall recover from the breaching party, in addition to any other relief granted in such action, all reasonable attorney fees and other litigation expenses incurred by the nonbreaching party.

15. CHOICE OF LAW. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Nebraska.

16. EFFECTIVENESS. This Agreement shall become effective immediately following execution by each of the Parties.

IN WITNESS WHEREOF, this Agreement has been duly executed by the Parties.

[SIGNATURE PAGES TO FOLLOW]

PLAINTIFFS:

By: *Kevin Abourezk* 12/29/23
Kevin Abourezk Date

By: *Erin Poor* 12/29/23
Erin Poor Date

By: *Renee Sans Souci* 12/28/23
Renee Sans Souci Date

By: *Kathleen Danker*
Kathleen Danker Date Dec. 22, 2023

Approved by Attorneys for PLAINTIFFS:

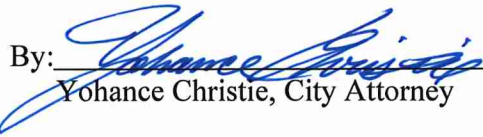


Rose Godinez



Kenneth C. Winston

CITY OF LINCOLN, NEBRASKA:

By: 
Yohance Christie, City Attorney

1-3-24
Date

EXHIBIT A

Whereas, the City of Lincoln acknowledges that it was built on the ancestral homelands of Indigenous Peoples and prior to the westward expansion of settlers, the land surrounding Lincoln was covered with tall grass prairie, and Indigenous Peoples hunted along Salt Creek and its tributaries, harvesting salt from those waterways' deposits; and

Whereas, by signing treaties with tribes, the U.S. government on paper affirmed and recognized their inalienable, inherent statuses as separate sovereign nations; and

Whereas, the city of Lincoln was founded in 1856 as the village of Lancaster and became the county seat of the newly created Lancaster County in 1859. The township of Lancaster was renamed Lincoln following incorporation of the City of Lincoln on April 1, 1869; and

Whereas, the City of Lincoln, in the spirit of education and awareness, can integrate land acknowledgements and inclusion of the Indigenous Peoples and its citizens into its practices and initiatives; and

Whereas, the City of Lincoln reaffirms its dedication and commitment to the Rights of Indigenous Peoples achieving equitable participation in all aspects of civic life and its continuing commitment to engage with the Native American Community in Lincoln.

Whereas, the City of Lincoln, by its actions is following the United States Constitution, Nebraska Constitution, and the United Nations Declaration on the Rights of Indigenous Peoples; and

Now, therefore, I, Leirion Gaylor Baird, Mayor of the City of Lincoln, Nebraska, do hereby proclaim the City of Lincoln's commitment to honor the land and people as an act of good faith in the reconciliation process with our Native American Community.