

## SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made and entered into by and between Willow Historical and Wildlife Foundation and ("WHWF") the Matanuska-Susitna Borough ("Borough"). The Borough and WHWF are referred to herein individually as a "Party" or, collectively, as the "Parties."

1. The Parties. This Agreement shall be binding upon and inure to the benefit of the Parties. Any reference to WHWF or the Borough or to the "Party" or "Parties" includes all of the respective party's departments and divisions, their employees, members, assembly members, directors, officers, shareholders, insurers, affiliates, representatives, agents, attorneys, heirs, successors and assigns.

The Parties agree as follows:

2. Recitals. WHWF is organized as a nonprofit corporation under the laws of the State of Alaska for a charitable purpose. Willow Area Community Organization ("WACO") sold the property that is the subject of this agreement, commonly known as the Old Willow Community Building or "Log Cabin" located on Lot 2A, Alaska State Land Survey 85-88, with an address of 23625 West Willow Community Center Circle, to WHWF on August 18, 2006. Since its purchase of the property, WHWF has utilized the property for various operations, including a museum, storage, hosting community events, hosting community meetings, etc.

When WHWF purchased the Log Cabin, the Borough informed them of the requirement of obtaining a management agreement with the Borough or moving the Log Cabin off Borough property. WHWF never obtained a management agreement from the Borough to keep the Log Cabin on Lot 2A. Prior to this lawsuit (February 2016), the Borough informed WHWF of the necessity of moving the Log Cabin from Borough property. WHWF never moved the Log Cabin and this lawsuit ensued.

Disputes among the parties arose regarding:

1. Whether WHWF should be required to move the Log Cabin;
2. Whether WHWF owes damages for back rent for illegally keeping the cabin on Borough property; and
3. Whether WHWF owes fines and penalties for violation of Borough code;
4. Whether the Borough owes WHWF for damages related to "permanent improvements" made to the property.

The parties, through their respective counsel, have negotiated and agreed to resolve their disputes, under the terms and conditions outlined below.

3. Purpose. The purpose of this Agreement is to resolve Case No. 3PA-16-02183CI.

4. Settlement Consideration and Actions.

A. The Borough's Consideration

- (1) As consideration for this settlement agreement, the Borough agrees to release WHWF from all the penalties the Borough is entitled to pursue and collect pursuant to AS 09.45.630 for illegally possessing Borough property.
- (2) As consideration for this settlement agreement, the Borough agrees to consult with WHWF regarding the design and/or renovation of the Log Cabin pursuant to Assembly Resolution 16-046. Any such consultation does not obligate the Borough to pursue a course of action or to make any particular improvements, renovations, or designs of the building.
- (3) As consideration for this settlement agreement, the Borough agrees to offer a management agreement to WACO with respect to the log cabin *after* construction and renovations are complete. See No. 2 above and Assembly Resolution 16-046. The Borough would propose adding the log cabin to the current management agreement which is attached to this Settlement Agreement as Exhibit 1. The management agreement contains a Termination Clause which would allow the Borough to terminate the management agreement at any time by giving thirty (30) days advance written notice to WACO. If such agreement is terminated at a later date, it would not constitute a breach of this settlement agreement.
- (4) As consideration for this settlement agreement, the Borough agrees to a release of WHWF from all statutory penalties pursuant to AS 29.25.00(b) and MSB 1.45.060.
- (5) As consideration for this settlement agreement, the Borough agrees to release WHWF from all obligation to pay attorney fees owed to the Borough in relation to this lawsuit. This agreement also relates to past attorney fees already awarded by the court.

B. The Defendants' Consideration

- (1) As consideration of this settlement agreement WHWF agrees to the release of all claims against the Borough arising out of the Defendant's Counterclaim to include payment for any improvements made to either the Log Cabin or Lot 2A.
- (2) As consideration of this agreement, WHWF conveys the Log Cabin to the Borough through quitclaim deed, attached as Exhibit 2. The defendant agrees to the following:

At the same time the WHWF enters into this agreement, it will sign a quitclaim deed, attached as Exhibit 2, that will convey to the Borough any and all interest the defendant has in in relation to the Log Cabin on Lot 2A.

C. Conditions Precedent to the Borough's Release.

The Borough's full release of WHWF shall be effective upon the Borough's confirmation that WHWF has signed Exhibit 2, quitclaim deed.

D. Materiality.

The parties acknowledge that each provision in this Section titled "Defendant's Consideration" is a material term of this Settlement Agreement, and that failure to perform any of these sections is a material breach.

5. Mutual Release. Upon the conclusions of the conditions precedent outlined above, each Party does, to the maximum extent permitted by law, hereby forever waive, release, and discharge the other Party from any and all claims, known or unknown, from any causes of action (whether sounding in tort, contract [express or implied], warranty [express or implied], statutory liability, strict liability, or otherwise), claims, costs, damages (including, without limitation, economic, non-economic, general, special, incidental, punitive, or consequential), demands, expenses (including, but not limited to, attorney's fees and costs of defense), fines, judgments, liabilities, penalties, and remedies of any kind or nature whatsoever, whether now known, unknown, absolute, contingent, liquidated, un-liquidated, ripe, unripe, matured, un-matured, developed, undeveloped, or otherwise that in any way arise out of, result from, or are based upon the allegations in Case No. 3PA-16-02183 CI.

6. Entire Agreement. This Agreement is fully integrated, constitutes the entire agreement between the Parties with regard to its subject matter, and supersedes all prior communications, representations, and agreements, whether verbal or written, by and between the Parties with respect to its subject. This Agreement is a full and complete expression of all intentions of settlement by the Parties.

7. Waiver of Case Law Protections. Each Party warrants that it is familiar with the decisions of the Alaska Supreme Court in the cases of *Young v. State*, 455 P.2d 889 (Alaska 1969), *Alaska Airlines v. Sweat*, 568 P.2d 916 (Alaska 1977), and *Witt v. Watkins*, 579 P.2d 1065 (Alaska 1978). Despite the holdings of these cases, each Party expressly waives the holdings as they may apply to this dispute. Each Party warrants that it is its true intent and desire to fully release any and all other claims arising out of or that could arise out of the Project.

8. No Representations. In entering into this Agreement, no Party has relied upon statements or representations of the other Party or the other Party's lawyers except as set forth in this Agreement. See *Industrial Commercial Elec., Inc. v. McLees*, 101 P.3d 593 (Alaska 2004). Each Party warrants that it has had the opportunity to be advised by its own counsel in executing

this Agreement. Each Party has carefully reviewed the terms of this Agreement, and understands its content.

9. Voluntary Acceptance of Terms. The Parties acknowledge that this Agreement is voluntarily accepted and that they are not executing this Agreement as a result of duress, financial disadvantage, or other hardship.

10. No Admissions. It is understood that by entering into this Agreement, neither Party admits that it was in any way at fault for the events out of which this Agreement arises.

11. Choice of Law / Modification. The Agreement cannot be modified except by written agreement executed by the Parties. This Agreement shall be governed by the laws of the State of Alaska. Should any party be required to resort to legal action to enforce rights under this Agreement, it shall be entitled to an award of costs and attorney's fees consistent with the Civil Rules should it prevail.

12. Joint Agreement. The Parties acknowledge that this Agreement is a collective product and shall not be construed for or against any party on the grounds of sole authorship.

13. Further Documents. The Parties agree to perform such further acts and to execute and deliver any and all further documents that may be reasonably necessary to effectuate the purpose of this Agreement.

14. Facsimile / Scanned Signatures / Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. A facsimile or scanned copy of any signature shall be deemed fully enforceable as an original.

15. Titles. The Parties agree that the titles in this document are for convenience only and are not limitations or definitions on the content of the sections.

16. Severability. If any portion of this Agreement is voided by law or court of competent jurisdiction, the remainder of the Agreement should remain enforceable.

17. Authority. WHWF's agent for purposes of settlement, hereby represents to the other party to this Agreement that he has full authority and capacity to execute this Agreement and to give the release and/or make the promises contained herein.

18. Costs. The parties shall authorize and direct their respective attorneys to execute a Stipulation for Dismissal with Prejudice with each party to bear its own costs and attorney's fees, upon completion of all the requirements set forth in Section 4 above.

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