

**COMPROMISE AND SETTLEMENT AGREEMENT BY AND BETWEEN JOANN
CONNER, THE CITY OF SOUTH LAKE TAHOE AND NANCY KERRY**

This Compromise and Settlement Agreement ("AGREEMENT") is entered into by and between: (1) JOANN CONNER ("CONNER"); and (2) THE CITY OF SOUTH LAKE TAHOE, a California municipal corporation ("CITY") and NANCY KERRY, City Manager of the City of South Lake Tahoe ("KERRY"). CONNER, CITY and KERRY are sometimes referred to collectively herein as the "PARTIES" or singularly as a "PARTY."

WHEREAS, CONNER is, and since 2012 has been, a member of the City of South Lake Tahoe City Council.

WHEREAS, CONNER filed the cases of *Conner v. City of South Lake Tahoe, et al.*, El Dorado County Superior Court Case No. 20150210 and *Conner v. City of South Lake Tahoe, et al.*, El Dorado County Superior Court Case No. 20150211, on or about December 9, 2015 ("LITIGATION").

WHEREAS, through the allegations of her operative pleadings in the LITIGATION CONNER challenges the City Council's adoption of a resolution of censure on or about October 20, 2015, the City's Council's ratification of the City Manger's restrictions on CONNER's communication with City staff, and alleges violations of the California Public Records Act, the Ralph M. Brown Act and the City Council's Protocols.

WHEREAS, the PARTIES deny all allegations of liability, or that they have acted in any way illegally or improperly, and have agreed to resolve the LITIGATION solely for the purpose of compromising and settling matters in dispute. Such compromise and settlement does not constitute an admission by any of the PARTIES of the truth or validity of matters in controversy or of the truth or validity of any fact alleged in the LITIGATION, nor shall it be construed as such.

WHEREAS, CONNER, the CITY and KERRY voluntarily agreed to participate in, and did participate in, a mediation session before the Honorable Fred Morrison, of JAMS, on June 14, 2016.

WHEREAS, CONNER, the CITY and KERRY now wish to resolve any and all controversies and disputes that have arisen between them based upon, related to or arising from the LITIGATION.

NOW, THEREFORE, in consideration of the obligations as set forth below, CONNER, the CITY and KERRY mutually agree as follows:

1. Incorporation of Recitals

The recitals stated above are true and correct and are incorporated herein.

///

2. Terms of Settlement.

(a) At City Council meetings, the Mayor will preside over the meeting, and Councilmembers may ask questions of staff after being recognized by the Mayor;

(b) Pre-Agenda Meetings are offered by the City Manager to each City Councilmember, including CONNER, prior to City Council meetings to review items on the upcoming City Council agenda and CONNER may attend such meetings which will also be attended by the City Clerk, the City Manager and potentially the City Attorney, Deputy or Assistant City Manager and one other Councilmember;

(c) Appointments to all CITY committees, subcommittees and Joint Power Authority boards ("JPA") will be pursuant to California law, including the Ralph M. Brown Act, Government Code section 54950, *et seq.*;

(d) The City Manager shall de-activate card key access to the CITY's administrative offices for all Councilmembers within three (3) calendar days of the EFFECTIVE DATE defined in paragraph 21;

(e) Upon request by any City Councilmember, the City Clerk will place the Councilmember's Agenda Notebook on the front counter of the CITY's administrative offices, and the City Clerk will email all City Councilmembers, including CONNER, when they are available for her to review and retrieval;

(f) CONNER's personal email(s) shall no longer be auto-forwarded to the City Manager and City Attorney as of the EFFECTIVE DATE, and she will have the ability to email City staff for matters related to Golden Bear Events ("GBE"). However, CONNER must "cc", or carbon copy, the City Manager and City Attorney on any emails to City staff related to GBE business, or any other personal business. CONNER's contact with City staff for matters related to GBE business, or any other personal business, will be limited to email except that CONNER can have in person and telephonic contact with City staff for day of event concerns, emergencies, matters requiring immediate attention or other such situations as dictated by common sense. CONNER can respond in person or telephonically to personal or telephonic communications directed to her from City staff for matters related to or regarding her personal business, and if such response is by email, CONNER will "cc" the City Manager and the City Attorney;

(g) CONNER's city email(s) (i.e. emails originating from or sent to her City email account) will no longer be auto-forwarded to the City Manager and City Attorney as of the EFFECTIVE DATE, and Conner can email the City Manager and City Attorney regarding City business with, if desired by CONNER, a "cc" to individual members of the City staff relating to the items of business regarding which CONNER is writing. The City Council practice is to email the City Manager, and this is the same for all Councilmembers. CONNER can have in person and

telephonic contact with City staff regarding city business matters for emergencies, day of event concerns, matters requiring immediate attention or other such situations as dictated by common sense. CONNER can respond in person or telephonically to personal or telephonic communications directed to her from City staff for matters related to or regarding city business, and if such response is by email, CONNER will "cc" the City Manager and the City Attorney;

(h) The PARTIES will issue a joint press release referencing their settlement and the dismissal of the LITIGATION based upon this AGREEMENT. In response to any inquiry, City Councilmembers, including CONNER, and the City Manager will respond only by telling the inquiring party to review the joint press release and this AGREEMENT, and the PARTIES will not comment on the resolution of this matter other than by stating that the PARTIES have entered into a settlement agreement and that any interested person can review the joint press release and this AGREEMENT which will be a public document. Except as stated, no party will otherwise comment on public social media or via blog, other than to reference the press release and agreement providing for the resolution of this matter;

(i) CONNER will dismiss both the cases of *Conner v. City of South Lake Tahoe, et al.*, El Dorado Superior Court Case No. 20150210 and *Conner v. City of South Lake Tahoe, et al.*, El Dorado Superior Court Case No. 20150211 in their entirety and with prejudice;

(j) The provisions of this AGREEMENT set forth in Sections 2(b), 2(d), 2(e), 2(f) and 2(g) will remain in effect until a new City Council is seated in or about December of 2016; and

(k) The PARTIES will act in good faith in implementing this AGREEMENT.

3. Compromise of Disputed Claims Without Admission of Liability.

This AGREEMENT is the result of a compromise and settlement of claims which are potentially contested, and shall never, at any time, for any purpose, either in whole or in part, be construed as an admission or acknowledgment of liability, or an admission or acknowledgment of responsibility, or an admission or acknowledgment of fact or evidence of such fact on the part of any PARTY except as set forth herein. This AGREEMENT, and all negotiations associated with it, is intended to affect a compromise that is subject to the protections of Section 1152 of the Evidence Code of the State of California regarding its admissibility in any future proceedings.

4. Dismissals.

CONNER shall file the dismissals with prejudice, as set forth in Section 2 of this AGREEMENT, within ten (10) business days of the EFFECTIVE DATE of this AGREEMENT, but the Court shall retain jurisdiction to enforce of the terms of this AGREEMENT pursuant to Code of Civil Procedure section 664.6.

///

5. Attorney Fees and Costs.

CONNER and the CITY (including the CITY on behalf of KERRY who was named in the LITIGATION in her official capacity) shall each bear their own attorney's fees, costs, pre- and post-settlement interest, and expert or any other litigation expenses incurred in connection with the preparation of this AGREEMENT and the LITIGATION.

6. Notices.

Any notice that either PARTY may or is required to give the other shall be in writing, and shall be either personally delivered or sent by regular U.S. Mail, return receipt requested, to the following address:

CONNER:

Jacqueline Mittelstadt
Tahoe Law Center
1034 Emerald Bay Road, No. 413
South Lake Tahoe, CA 96150

CITY and KERRY:

William Chisum
Kronick, Moskowitz, Tiedemann & Girard
400 Capitol Mall, 27th Floor
Sacramento, CA 95814

Service shall be deemed complete on the date of personal service or the date of actual delivery as shown on the addressee's return receipt whichever is earlier. The addresses to which notices and demands shall be delivered may be changed from time to time by written notice to the other PARTY.

7. Binding on Successors and Enforceable.

This AGREEMENT shall be binding on, and shall inure to the benefit of CONNER, the CITY and KERRY, and their respective successors, assigns, administrators, executors, heirs and their past, present and future officers, directors, partners, employees and agents; provided that this AGREEMENT may only be assigned with the written consent of all PARTIES, and any attempt to assign this AGREEMENT without such consent shall be void. This Agreement is not intended to, and shall not create, any third party beneficiaries.

///

8. Entire Agreement.

The PARTIES have set forth herein the whole of their agreement as to the disposition and resolution of the issues based upon, related to or arising from the LITIGATION. All prior oral discussions, representations, and/or agreements with regard to the resolution and disposition of such issues, if any, are specifically superseded by this AGREEMENT, which is intended by the PARTIES to contain all of the terms and conditions agreed to by them with regard to the resolution and disposition of such issues.

9. Amendment.

This AGREEMENT may be modified, changed, or rescinded only by an instrument in writing executed by all of the PARTIES hereto.

10. Understanding of Settlement Agreement.

CONNER, the CITY and KERRY, respectively, each understand and agree to this AGREEMENT and the terms and conditions contained herein. CONNER, the CITY and KERRY have relied upon their judgment, belief, knowledge, understanding and expertise after having the opportunity to consult with counsel of their choice concerning the legal effect of the AGREEMENT and its terms, and have investigated the facts pertaining to the AGREEMENT and all other matters pertaining thereto as deemed necessary. Except for the terms of this AGREEMENT, CONNER, the CITY and KERRY, respectively, have not relied upon any statement or representation, written or oral, made by any PARTY, or any of those PARTIES' respective agents, attorneys or any other person, regarding any matter encompassed by this AGREEMENT including, but not limited to, the federal or state income tax consequences of this AGREEMENT. The PARTIES expressly acknowledge and agree that they have relied solely upon the advice of their own attorneys and/or accountants as to the consequences of this AGREEMENT. The PARTIES, therefore, enter into this AGREEMENT knowingly and voluntarily.

11. Time of Essence.

The PARTIES shall act promptly and in good faith to do all such acts, including, but not limited to, execution of any necessary documents, required to effectuate the terms of this AGREEMENT.

12. Waivers.

No waiver of any breach of any covenant or provision in this AGREEMENT shall be deemed a waiver of any other covenant or provision in this AGREEMENT, and no waiver shall be valid unless in writing and executed by the waiving PARTY.

13. Severability.

If any term or provision of this AGREEMENT shall, to any extent, be held invalid or unenforceable, the remainder of this AGREEMENT shall remain valid and enforceable so long as the economic or legal substance of the transactions contemplated hereby are not affected in any manner adverse to any PARTY. Upon such determination that any term or provision is illegal or incapable of being enforced, the PARTIES hereto shall negotiate in good faith to modify this AGREEMENT so as to effect the original intent of the PARTIES, as closely as possible, in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the greatest extent possible.

14. Construction.

Section headings, titles and captions used in this AGREEMENT are solely for the convenience of the PARTIES and are not a part of and shall not be used to interpret this AGREEMENT. The singular form shall include the plural and vice versa. This AGREEMENT shall not be construed as if it had been prepared solely by any one PARTY, but rather as if all PARTIES have prepared it jointly. Unless otherwise indicated, all references to "Section" are to this AGREEMENT.

15. Governing Law.

This AGREEMENT shall be construed in accordance with and governed by the laws of the State of California, without regard to its choice of law provisions, and any action to enforce its terms shall be brought in the Superior Court of El Dorado County, California.

16. Authority.

Each individual executing this AGREEMENT on behalf of an entity represents and warrants that he or she has been authorized to do so by the entity on whose behalf he or she executes this AGREEMENT and that said entity will thereby be obligated to perform the terms of this AGREEMENT.

17. Execution and Counterparts.

This AGREEMENT may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The PARTIES authorize each other to detach and combine original signature pages and consolidate them into a single identical original. In addition, a photocopy of this AGREEMENT (including the executed signature pages) shall be the equivalent of the original executed document and may serve in the place and stead of the original for all purposes.

///

18. Courts Continuing Jurisdiction Pursuant To Code of Civil Procedure Section 664.6.

The PARTIES jointly request and agree that the court retain jurisdiction over the PARTIES to enforce performance in full of the terms of this AGREEMENT. This includes tolling of any applicable statute, rule or court order affecting timely prosecution of the Action.

19. Parties' Enforcement.

In the event of a PARTY's material breach of this AGREEMENT, the non-breaching party may also initiate an action seeking any and all appropriate sanctions, damages, and remedies, including, but not limited to, injunctive or other equitable relief and damages. Prior to bringing any such action, the PARTIES shall engage in a good faith meet and confer effort to resolve any disputes, and to the extent the dispute involves a contested interpretation of this AGREEMENT, the PARTIES shall engage in a good faith effort to confer with Justice Morrison to the extent he is reasonably available and willing to assist the PARTIES.

20. Knowing and Voluntary Agreement.

By signing this AGREEMENT, the PARTIES acknowledge that each has been advised in writing to seek the advice of an attorney regarding this AGREEMENT, that each has been given adequate time to review this AGREEMENT, that each has read this entire AGREEMENT, that each fully understands its purpose, and that each is voluntarily entering into this AGREEMENT with the intent to be legally bound by its terms.

21. Effective Date.

This AGREEMENT shall be effective as of the date last written below ("EFFECTIVE DATE").

IN WITNESS WHEREOF, the PARTIES have executed this AGREEMENT on the dates set forth below.

CONNER:

Date: August 18, 2016

By: JoAnn Conner
JoAnn Conner

Approved as to Form:

Date: 8/16/16

By: Jacqueline Mittelstadt
Jacqueline Mittelstadt
Tahoe Law Center
Attorney for JoAnn Conner

1464823 10 12143-016

CITY:

Date: August 16, 2016

By: Wendy David
Wendy David, Mayor

Attest:

Date: 8/16/16

By: Susan Alessi
Susan Alessi, City Clerk



KERRY:

Date:

8/16/16

By:



Nancy Kerry

Approved as to Form:

Date:

8/16/16

By:



William T. Chisum

Kronick, Moskovitz, Tiedemann & Girard
Attorney for City of South Lake Tahoe
and Nancy Kerry