

STATE OF NORTH CAROLINA  
COUNTY OF BUNCOMBE

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") is executed and entered into as of this 2 day of ~~March~~<sup>April</sup>, 2018, by and between SIDNEY M. BACH and CHRIS PETERSON (collectively, "the Plaintiffs") and THE CITY OF ASHEVILLE (the "Defendant"). The Plaintiffs and the Defendant are sometimes collectively referred to herein as the "Parties."

WITNESSETH:

WHEREAS, the Plaintiffs are residents and taxpayers in the City of Asheville, North Carolina; and

WHEREAS, the Defendant is a municipality created by the legislature of the State of North Carolina; and

WHEREAS, in August 2016, the Asheville City Council approved a general obligation bond referendum that would generate \$74 million for public improvements financed by three separate bonds (the "Bond Referendums"); and

WHEREAS, the public improvements to be financed by the three bonds in the Bond Referendums were for (1) Housing, (2) Parks and Recreation, and (3) Transportation—each to be voted on separately by the electorate of the City of Asheville; and

WHEREAS, all three bonds in the Bond Referendums were approved by the electorate of the City of Asheville in a vote held on or about November 8, 2016; and

WHEREAS, the Plaintiffs disagreed with the Defendant over the validity of the Bond Referendums; and

WHEREAS, the Plaintiffs commenced an action against the Defendant in the Superior Court of Buncombe County, North Carolina, file number 16-CVS-5386, challenging the validity of the Bond Referendums (the "Lawsuit"); and

WHEREAS, Defendant's Motion for Summary Judgment for Plaintiffs' remaining claims in the Lawsuit was granted and Plaintiffs have appealed that decision to the North Carolina Court of Appeals; and

WHEREAS, the Parties have now agreed to amicably and finally resolve forever the Lawsuit, as more fully set forth herein.

NOW, THEREFORE, for and in consideration of the mutual promises, undertakings, and consideration as set forth herein, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties mutually agree as follows:

1. Plaintiffs agree to immediately, and in no event later than five (5) days following the execution of this Settlement Agreement, dismiss their appeal to the North Carolina Court of Appeals.

2. Plaintiffs and Defendant agree to execute and file the attached dismissal with prejudice within five (5) days of the execution of this Settlement Agreement.

3. The Parties agree that they will each bear their own costs and fees in this litigation and not seek recovery one from the other.

4. The Defendant stipulates that it is required to use the proceeds derived from the sale of the general obligation bonds issued pursuant to the City of Asheville's November 8, 2016 Referendum to pay capital costs (as determined under N.C. Gen. Stat. 159-48(h)) of projects consistent with the transportation, parks and recreation, and housing purposes set forth in the bond ballots and authorized by the voters, and as otherwise required by law. The City further stipulates that it will likewise comply with the applicable provisions of The Local Government Budget and Fiscal Control Act codified at N.C. Gen. Stat. 159-7, *et. seq.*

5. It is further understood that this is a compromise of disputed claims and that the performance of any actions hereunder is not to be construed as an admission of liability on the Parties, by whom liability is expressly denied.

6. Miscellaneous.

a. Entire Agreement. This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter contained herein. The terms of this Agreement are contractual and not mere recitals.

b. Governing Law. The validity, construction, interpretation, and administration of this Agreement shall be governed by the substantive laws of the State of North Carolina.

c. Amendment. It is expressly understood and agreed that the terms of this Agreement may not be amended orally. It is further expressly understood that the terms of this Agreement may not be amended, modified, or waived except by written agreement duly executed by the Parties.

d. Waivers. The failure of a Party to insist upon the performance of any of the terms and conditions of this Agreement, or the waiver by a Party of any breach of any of the terms and conditions of this Agreement, shall not be construed as thereafter waiving any terms and conditions, but the same shall continue and remain in full force and effect as if no

forbearance or waiver had occurred. No such waiver shall be enforceable unless in writing and signed by the Party to be charged therewith.

e. Interpretation. For purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires, (i) the terms defined in this Agreement have the meanings assigned to them in this Agreement, words denoting the singular number include the plural and vice versa, and words importing one gender include the other gender; (ii) the headings in this Agreement are for convenience only and are not to be considered in interpretation; and (iii) the words "herein," "hereof," "hereunder," and other words of similar import refer to this Agreement as a whole and not to any particular provision.

f. Binding Effect; Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties' respective successors and assigns. The Parties shall not assign or delegate this Agreement or any of their obligations or rights under this Agreement, except as may be expressly authorized in this Agreement.

g. Further Action. The Parties shall execute such further documents and take such further actions as reasonably may be required to effectuate the terms and intent of this Agreement.

h. Severability of Provisions. If, after the date hereof, any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws in effect during the term of this Agreement, such provision shall be fully severable.

i. Multiple Counterparts. This Agreement may be executed in multiple counterparts which, when taken together, shall form the entire Agreement. The delivery of an executed signature page by one party to the other via facsimile or e mail transmission shall bind the transmitting party to the same extent as service of the original signature page by hand delivery.

j. Knowledge and Execution. All Parties represent and state that they have fully and carefully read this Agreement, and the Parties acknowledge that they have had the advice of counsel and that no promise or representation of any kind, other than as contained herein, has been made by the Parties or the persons hereby released or anyone acting for them; that they have relied upon the advice of their attorneys concerning the legal consequences of this Agreement; that the terms of this Agreement and the compromised settlement that it reflects have been completely read and explained to them by their attorneys; that they know the contents thereof; and that they have signed the same of their own free and voluntary act.

IN WITNESS WHEREOF, the Parties hereto have put their hands and seals, as of the day and year first written above. Each party signing below affixes his or her seal adjacent to his or her signature. It is the intention of the Parties that this Agreement be executed as a sealed instrument.

*{Signature Page to Follow}*

THIS, the 2 day of ~~March~~ <sup>April</sup>, 2018.

PLAINTIFFS:

~~Sidney M. Bach~~ 3/29/18

Sidney M. Bach

~~Chris Peterson~~

Chris Peterson

~~Albert L. Sneed, Jr.~~

Albert L. Sneed, Jr.  
Attorney for Plaintiffs

DEFENDANT:

The City of Asheville

By:

~~Robin T. Currin~~

Robin T. Currin  
City Attorney

~~Cathy Ball~~ Peggy Rowe  
Interim City Manager

↳ Acting