## SETTLEMENT AGREEMENT

BETWEEN:

Ross R. Smith

("Smith")

AND:

City of Lincoln City, Chester R. Noreikis, Stephen W. Ryan,

Roger A. Sprague, Susan K. Wahlke, Kippen G. Ward,

Donald B. Williams

("Defendants")

# **RECITALS**

- A. Smith filed two lawsuits against Defendants, the first entitled "Ross R. Smith v. City of Lincoln City, et al.," Lincoln County Circuit Court Case No. 15CV22131, and the second entitled "Ross R. Smith v. City of Lincoln City, et al.," Lincoln County Circuit Court Case No. 16CV21270 ("Lawsuits").
- B. The parties to the Lawsuits wish to settle them, and therefore enter into this settlement agreement ("Agreement").

### **AGREEMENT**

NOW, THEREFORE, in consideration of the covenants and promises set forth below and the recitals set forth above, which are hereby incorporated by reference, the parties to this Agreement agree as follows:

- 1. City of Lincoln City Councilor Dick Anderson will read the statement attached to this Agreement as Exhibit 1 at the regular meeting of the City of Lincoln City City Council on February 26, 2018. Additionally, City Attorney Richard Appicello will make a statement that includes an apology to Smith, Mayor Williams and to city staff and citizens.
- 2. The meeting will be aired live on channel 4, made available for viewing on the city's website as provided for other meetings, 1 and replayed on channel 4, at least 3 times a day between 6:00 am and 11:59pm, for at least three weeks. The text of the apology will appear on the City's home page, 2 directly under "Current News," for at least four weeks, before being found under the "read more..." link.
  - 3. The City of Lincoln City will make the following payments by March 15, 2018:
  - a. \$3,000 to Lincoln City Warming Shelter, Incorporated, with "Donation on behalf of Ross Smith" in the memo field.
  - b. \$3,000 to Smith with "For scholarship fund donation to Lincoln County Bar Association" in the memo field.

<sup>1</sup> http://lincolncityor.iqm2.com/Citizens/

<sup>2</sup> http://www.lincolncity.org/

Page 1 – Settlement Agreement

- 4a. Smith hereby releases, acquits and forever discharges Defendants and their successors and assignees, and the City of Lincoln City's employees, officers, agents, representatives, successors and assignees, from any and all known and unknown actions, causes of actions, causes of suits, claims, demands and damages (collectively, "Claims") that may exist as of the date of the execution of this Agreement, including, but not limited to, the claims made in the Lawsuits; provided, however, that this paragraph does not apply to any Claims Smith might have against City Attorney Richard Appicello in Mr. Appicello's personal capacity; and further provided that nothing in this paragraph shall be construed as releasing any defenses Smith might have against any claim by the City of Lincoln City relating to compliance with Lincoln City Municipal Code provisions regarding land use, licensing, fees or taxes
- 4b. Defendants and their successors and assignees hereby release, acquit and forever discharge Smith, and his successors and assignees, from any and all known and unknown actions, causes of actions, causes of suits, claims, demands and damages that may exist as of the date of the execution of this Agreement, including, but not limited to, the claims, and/or counter-claims, made in the Lawsuits; provided, however, that this paragraph does not release Smith, his successors or assigns from any obligations to comply with Lincoln City Municipal Code provisions regarding land use, licensing, fees or taxes.
- 5. The parties to the Lawsuits will file a Stipulated General Judgment of Dismissal in each case in the forms set forth in Exhibits 2 and 3 to this Agreement.
- 6. This Agreement is executed solely for the purpose of resolving disputed claims. This Agreement, including the incorporated statement to be read at a Council meeting, does not constitute an admission of liability by any of the parties hereto, nor does it constitute an admission of disputed facts.
  - 7. This Agreement is governed by the laws of the State of Oregon.
- 8. This Agreement contains the entire agreement between the parties hereto, and the terms of this Agreement are contractual and not a mere recital.
- 9. This Agreement may be executed in counterparts, each of which shall be deemed an original and together shall constitute one and the same Agreement.

	Dated:CITY OF LINCOLN CITY	_, 2018.		Dated: 2/12	, 2018.
Ву:	Ron Chandler, City Manager Don Williams mayor		Ву:	Ross R. Smith, Pro Se Plaintiff	mutt
	Dated: 2/20/18	_, 2018	Ву:	Dated:	, 2018.

Page 2 – Settlement Agreement

Ву:	Chester R. Noreikis, Defendant		Stephen W. Ryan
	Dated: 292, 2018.		Dated:, 2018.
Ву:	Roger A. Sprague	Ву:	Susan K. Wahlke
	Dated: <u>3-/2</u> 2018.		Dated: 2-12-, 2018.
Ву:	Kippen G. Ward	Ву:	Donald B. Williams
	Dated:, 2018.		2/12/18
Ву:	Richard Applicello, solely for purposes of Paragraph 1 of this Agreement		

Ross Smith has filed two lawsuits against the City of Lincoln City, and our City Council in which he alleges we violated the Oregon Public Meetings Law, Oregon Public Records Law, the Lincoln City Charter and our Municipal Code at various times.

With Mr. Smith's decision to drop the two lawsuits, it will allow us to return to the duties we were elected to do. We, the Council, wish to apologize to Mayor Don Williams, Mr. Smith, the City staff, and the citizens of Lincoln City.

Although we do not admit we violated any laws we acknowledge the lawsuits have served to remind us to carefully ensure that our public meetings, and executive sessions, are held in strict compliance with all applicable laws.

We regret the impact of disputes between the Council, Mr. Smith and the Mayor. The Mayor and Council pledge to work together to minimize disputes that distract from the important work the Mayor, Council and City staff perform for the citizens of Lincoln City.

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4	IN THE CIRCUIT COURT	OF THE STATE OF OREGON
5	FOR THE COU	NTY OF LINCOLN
6	ROSS R. SMITH,	Case No. 15CV22131
7	Plaintiff,	STIPULATED GENERAL JUDGMENT OF DISMISSAL
8	vs.	JUDGMENT OF DISMISSAL
9	CITY OF LINCOLN CITY, an Oregon municipal corporation, et al.,	
10	Defendants.	
11		
12	Based on the stipulation of the parti	es that this case has been settled,
13	IT IS HEREBY ADJUDGED that t	his case is dismissed with prejudice and
14	without attorney fees or costs awarded to a	ny of the parties.
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19	IT IS SO STIPULATED:	
20	Dated: 2/12 2018	Dated:, 2018
21   22	,	HARRANG LONG GARY RUDNICK, P.C.
23	Mr R bout	Ву:
24	Ross R. Smith, Pro Se Plaintiff	C. Robert Steringer, OSB #983514 Of Attorneys for Defendants
25		of Attorneys for Defendants

HARRANG LONG GARY RUDNICK F.C. 360 East 10th Avenue Suite 300 Eugene, OR 97401-3273 Phone 541-485-0220 Fax 541-686-6564 Page 1 -

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STIPULATED GENERAL JUDGMENT OF DISMISSAL

HARRANG LONG GARY RUDNICK P.C. 360 East 10th Avenue Suite 300 Eugene, OR 97401-3273 Phone 541-485-0220 Fex 541-686-6564

Page 2 - STIPULATED GENERAL JUDGMENT OF DISMISSAL

# CERTIFICATE OF COMPLIANCE AND READINESS

This proposed STIPULATED GENERAL JUDGMENT OF DISMISSAL is

ready for judicial signature because:

Each opposing party affected by this order or judgment has stipulated to the order or judgment, as shown by each opposing party's signature on the document being submitted.

DATED this \_\_\_\_ day of February, 2018.

HARRANG LONG GARY RUDNICK P.C.

By: C. Robert Steringer, OSB #983514

bob.steringer@harrang.com Telephone: 541-485-0220 Facsimile: 541-686-6564

Of Attorneys for Defendants

**PURSUANT TO UTCR 5.100** 

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STIPULATED GENERAL JUDGMENT OF DISMISSAL Page 3 –

# IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF LINCOLN

4 5 6 ROSS R. SMITH, Case No. 16CV21270 7 Plaintiff, STIPULATED GENERAL JUDGMENT OF DISMISSAL 8 VS. 9 CITY OF LINCOLN CITY, et al., 10 Defendants. 11 12 Based on the stipulation of the parties that this case has been settled, 13 IT IS HEREBY ADJUDGED that this case is dismissed with prejudice and 14 without attorney fees or costs awarded to any of the parties. 15 16 17 18 19 20 IT IS SO STIPULATED: 21 2018 Dated: 22 HARRANG LONG GARY RUDNICK, P.C. 23 24 Ross R. Smith, Pro Se Plaintiff C. Robert Steringer, OSB #983514 25 Of Attorneys for Defendants

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Page 1 - STIPULATED GENERAL JUDGMENT OF DISMISSAL

Exhibit 3 Page 1 of 3

HARRANG LONG GARY RUDNICK P.C. 360 East 10th Avenue Suite 300 Eugene, OR 97401-3273 Phone 541-485-0220 Fax 541-686-6564

HARRANG LONG GARY RUDNICK P.C. 360 East 10th Avenue Suite 300 Eugene, OR 97401-3273 Phone 541-485-0220 Fax 541-686-6564

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STIPULATED GENERAL JUDGMENT OF DISMISSAL Page 2 –

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HARRANG LONG GARY RUDNICK P.C.

By: C. Robert Steringer, OSB #983514 bob.steringer@harrang.com

Telephone: 541-485-0220 Facsimile: 541-686-6564 Of Attorneys for Defendants

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HARRANG LONG GARY RUDNICK P.C. 360 East 10th Avenue Suite 300 Eugene, OR 97401-3273 Phone 541-485-0220 Fax 541-686-6564

STIPULATED GENERAL JUDGMENT OF DISMISSAL

Exhibit 3 Page 3 of 3

# RATIFICATION OF SETTLEMENT AGREEMENT

BETWEEN:

Ross R. Smith

("Smith")

AND:

City of Lincoln City, Chester R. Noreikis, Stephen W. Ryan,

Roger A. Sprague, Susan K. Wahlke, Kippen G. Ward,

Donald B. Williams

("Defendants")

# **RECITAL**

City Councilor Kippen G. Ward passed away after Ross R. Smith and the City Council of Lincoln City approved the Settlement Agreement attached as Exhibit 1 ("Settlement Agreement") and before Councilor Ward had an opportunity to sign the Settlement Agreement.

# **RATIFICATION**

By his signature below, Ross R. Smith ratifies his execution of the Settlement Agreement and agrees to be bound to its terms notwithstanding the fact that Kippen G. Ward will not execute the Settlement Agreement.

Dated:

/ [

2018

D.

Poss R Smith Pro Se Plaintiff

P0753637.v1

## SETTLEMENT AGREEMENT

BETWEEN:

Ross R. Smith

("Smith")

AND:

City of Lincoln City, Chester R. Noreikis, Stephen W. Ryan,

Roger A. Sprague, Susan K. Wahlke, Kippen G. Ward,

Donald B. Williams

("Defendants")

# **RECITALS**

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- 2. The meeting will be aired live on channel 4, made available for viewing on the city's website as provided for other meetings, 1 and replayed on channel 4, at least 3 times a day between 6:00 am and 11:59pm, for at least three weeks. The text of the apology will appear on the City's home page, 2 directly under "Current News," for at least four weeks, before being found under the "read more..." link.
  - 3. The City of Lincoln City will make the following payments by March 15, 2018:
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  - This Agreement is governed by the laws of the State of Oregon.
- 8. This Agreement contains the entire agreement between the parties hereto, and the terms of this Agreement are contractual and not a mere recital.
- 9. This Agreement may be executed in counterparts, each of which shall be deemed an original and together shall constitute one and the same Agreement.

	Dated:	018.	Dated: 2/12	_, 2018.
	CITY OF LINCOLN CITY			
Ву:	Ron Chandler, City Manager	By:	Am K.M	Tun
	Don Williams mayor	2018 By:	Ross R. Smith, <i>Pro Se</i> Plaintiff  Dated:	_, 2018.
Page	2 – Settlement Agreement			_ ====.

Ву:	Chester R. Noreikis, Defendant		Stephen W. Ryan
	Dated: 272 2018.		Dated:, 2018.
Ву:	Roger A. Aprague	Ву:	Susan K. Wahlke
1	Dated:		Dated: 2-12-, 2018.
Ву:	Kippen G. Ward	Ву:	Donald B. Williams
	Dated:, 2018.		2/12/18
Ву:	Richard Appicello, solely for purposes of Paragraph 1 of this Agreement		

Ross Smith has filed two lawsuits against the City of Lincoln City, and our City Council in which he alleges we violated the Oregon Public Meetings Law, Oregon Public Records Law, the Lincoln City Charter and our Municipal Code at various times.

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We regret the impact of disputes between the Council, Mr. Smith and the Mayor. The Mayor and Council pledge to work together to minimize disputes that distract from the important work the Mayor, Council and City staff perform for the citizens of Lincoln City.

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1 2 3 IN THE CIRCUIT COURT OF THE STATE OF OREGON 4 5 FOR THE COUNTY OF LINCOLN 6 ROSS R. SMITH, Case No. 15CV22131 7 Plaintiff, STIPULATED GENERAL JUDGMENT OF DISMISSAL 8 VS. 9 CITY OF LINCOLN CITY, an Oregon municipal corporation, et al., 10 Defendants. 11 12 Based on the stipulation of the parties that this case has been settled, 13 IT IS HEREBY ADJUDGED that this case is dismissed with prejudice and 14 without attorney fees or costs awarded to any of the parties. 15 16 17 18 19 IT IS SO STIPULATED: 20 2018 Dated: 21 HARRANG LONG GARY RUDNICK, P.C. 22 23 By: Ross R. Smith, Pro Se Plaintiff C. Robert Steringer, OSB #983514 24 Of Attorneys for Defendants 25 26

HARRANG LONG GARY RUDNICK F.C. 360 East 10th Avenue Suite 300 Eugene, OR 97401-3273 Phone 541-485-0220 Fax 541-686-6564

Page 1 — STIPULATED GENERAL JUDGMENT OF DISMISSAL

1	CERTIFICATE OF SERVICE
2	I certify that on February, 2018, I served or caused to be served a true and
3	complete copy of the foregoing STIPULATED GENERAL JUDGMENT OF
4	DISMISSAL on the party or parties listed below as follows:
5	□ Via Email
6	☐ Via First Class Mail, Postage Prepaid
7	☐ Via Personal Delivery
8	Page D. Simith
9	Ross R. Smith PO Box 627
10	Lincoln City, OR 97367-0627 Plaintiff Pro se
11	832 Euclid St 107 Santa Monica CA
12	90403 HARRANG LONG GARY RUDNICK P.C.
13	
14	By: C. Robert Steringer, OSB #983514
15	bob.steringer@harrang.com Of Attorneys for Defendants
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HARRANG LONG GARY RUDNICK P.C., 360 East 10th Avenue Suite 300 Eugene, OR 97401-3273 Phone 541-485-0220 Fax 541-686-6564

CERTIFICATE OF COMPLIANCE AND READINESS 1 2 **PURSUANT TO UTCR 5.100** This proposed STIPULATED GENERAL JUDGMENT OF DISMISSAL is 3 ready for judicial signature because: 4 5 Each opposing party affected by this order or judgment has stipulated to the order or judgment, as shown by each opposing party's signature 6 on the document being submitted. 7 DATED this \_\_\_\_ day of February, 2018. 8 9 HARRANG LONG GARY RUDNICK P.C. 10 11 By: C. Robert Steringer, OSB #983514 12 bob.steringer@harrang.com Telephone: 541-485-0220 13 Facsimile: 541-686-6564 14 Of Attorneys for Defendants 00827378.v2 15 16 17 18 19 20 21 22 23 24 25

HARRANG LONG GARY RUDNICK P.C. 360 East 10th Avenue Suite 300 Eugene, OR 97401-3273 Phone 541-485-0220 Fax 541-686-6564

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Page 3 - STIPULATED GENERAL JUDGMENT OF DISMISSAL

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4	IN THE CIRCUIT COURT	Γ OF THE STATE OF OREGON	
5		JNTY OF LINCOLN	
6	ROSS R. SMITH,	Case No. 16CV21270	
7	Plaintiff,	STIPULATED GENERAL JUDGMENT	
8	vs.	OF DISMISSAL	
9	CITY OF LINCOLN CITY, et al.,		
10	Defendants.		
11			
12			
13	Based on the stipulation of the part	ies that this case has been settled,	
14	IT IS HEREBY ADJUDGED that this case is dismissed with prejudice and		
15	without attorney fees or costs awarded to a	inv of the narties	
		ary of the parties.	
16		ary of the parties.	
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		any or the parties.	
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17 18	IT IS SO STIPULATED:	any or the parties.	
17 18 19	IT IS SO STIPULATED: Dated: 2/12 2018		
17 18 19 20	- 2/12	Dated:, 2018	
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17 18 19 20 21 22	Dated: 2/12 2018	Dated:, 2018 HARRANG LONG GARY RUDNICK, P.C. By:	
17 18 19 20 21 22 23	- 2/12	Dated:, 2018 HARRANG LONG GARY RUDNICK, P.C.	

HARRANG LONG GARY RUDNICK P.C. 360 East 10th Avenue Suite 300 Eugene, OR 97401-3273 Phone 541-485-0220 Fax 541-686-6564

Page 1 - STIPULATED GENERAL JUDGMENT OF DISMISSAL

Exhibit 3 Page 1 of 3

1	CERTIFICATE OF SERVICE			
2	I certify that on February, 2018, I served or caused to be served a true and			
3	complete copy of the foregoing STIPULATED GENERAL JUDGMENT OF			
4	DISMISSAL on the party or parties listed below as follows:			
5	☐ Via the Court's Efiling System			
6	☐ Via First Class Mail, Postage Prepaid			
7	☑ Via Email			
8	☐ Via Personal Delivery			
9	Ross R. Smith P.O. Box 627 Lincoln City, OR 97367-0627			
11	Pro Se Plaintiff			
12	832 Euclid St #107 Santa Monica, Ch HARRANG LONG GARY RUDNICK P.C.			
13	90403			
14	By:			
15	C. Robert Steringer, OSB #983514 bob.steringer@harrang.com			
16	Facsimile: 541-686-6564			
17	Of Attorneys for Defendants			
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HARRANG LONG GARY RUDNICK P.C. 360 East 10th Ayenue Suite 300 Eugene, OR 97401-3273 Phone 541-485-0220 Fax 541-686-6564

Page 2 - STIPULATED GENERAL JUDGMENT OF DISMISSAL

1			
1	CERTIFICATE OF COMPLIANCE AND READINESS		
2	PURSUANT TO UTCR 5.100		
3	This proposed STIPULATED GENERAL JUDGMENT OF DISMISSAL is		
4	ready for judicial signature because:		
5	Each opposing party affected by this order or judgment has stipulated		
6	to the order or judgment, as shown by each opposing party's signature on the document being submitted.		
7			
8	DATED this day of February, 2018.		
9	HARRANG LONG GARY RUDNICK P.C.		
10	TIAIGANG LONG GARY RUDNICK P.C.		
11	By:		
12	C. Robert Steringer, OSB #983514		
13	bob.steringer@harrang.com Telephone: 541-485-0220		
14	Facsimile: 541-686-6564 Of Attorneys for Defendants		
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Page 3 - STIPULATED GENERAL JUDGMENT OF DISMISSAL

Exhibit 3 Page 3 of 3