

**SETTLEMENT AGREEMENT
AND RELEASE OF ALL CLAIMS**

This Settlement Agreement and Release of All Claims (the "Agreement") between Jason Kosnoski and the City of Ann Arbor ("City") (each person or entity being referred to individually as a "Party," and/or collectively as the "Parties") is made and voluntarily entered into as of the date of the last signature below (the "Effective Date").

RECITALS

- A. Jason Kosnoski has asserted claims ("Claims") against the City alleging personal injuries and damages resulting from an incident on or about October 15, 2022 wherein he suffered an injury to his ankle from stepping in a hole while running on Brooks Street near Sunset in the City of Ann Arbor. ("Incident");
- B. The City disputes the Claims and that it is responsible, in any way, for the Incident;
- C. The intent and purpose of this Agreement is to settle with finality, compromise, dispose of, and release any and all Claims and demands for monetary relief or other relief against the City and its elected and appointed officials, employees, and agents, which have been asserted or which could be or might have been asserted arising out of the allegations and factual circumstances involved in the Incident;
- D. To forever extinguish all Claims, demands, and causes of action alleged and asserted, or that could have been alleged or asserted, related to or arising from the Incident, by Jason Kosnoski, the Parties have reached a settlement and desire by this Agreement to document and make binding its terms.

TERMS

NOW, THEREFORE, for and in consideration of the foregoing and the mutual agreements, promises, covenants, and general release set forth below, and other good and valuable consideration, the terms and sufficiency of which are acknowledged, it is agreed by and between the Parties that:

1. **SETTLEMENT PAYMENT.** In consideration of the release, upon complete execution of this Agreement by the Parties, the City agrees to pay Jason Kosnoski in certified funds or their equivalent, the total sum of Fifteen Thousand and No/100 Dollars (\$15,000.00) (the "Settlement Payment"). The Settlement Payment shall be in the form of a check made payable to the joint order of Jason Kosnoski and Charles M. Groh, P.C. The City is not responsible for payment of any amount greater than the Settlement Payment which includes all interest, costs, and fees that are or might be applicable. Jason Kosnoski agrees that to the extent any part of the Settlement Payment is deemed taxable, he is fully solely responsible for the payment of any taxes, withholdings, interest, penalties, or other amounts due, and he agrees to indemnify the City and hold it harmless against any such taxes or other amounts

due. Jason Kosnoski is also responsible for any division, allocation, apportionment of, or claims by others against the Settlement Payment.

2. **RELEASE OF ALL CLAIMS.** For and in consideration of the Settlement Payment, and the Parties' other obligations, representations, and warranties in this Agreement, Jason Kosnoski for himself and on behalf of his insurers, and his heirs, successors, agents, and anyone else he may bind or who may claim through him (the "Releasing Parties"), releases and forever discharges the City, its elected and appointed officials, employees, fiduciaries, servants, contractors, agents, and any of their insurers from and of all Claims, demands, actions, suits, causes of action, obligations, penalties, damages; attorney fees, judgments, liabilities, debts, sums of money, and losses of any kind whatsoever, known or unknown, related to or arising from the Incident, which have, or could have, been brought, claimed, alleged, asserted or sued upon from the beginning of time until the Effective Date (the "Release").

3. **INDEMNIFICATION.** Jason Kosnoski shall indemnify, defend and hold the City harmless from any and all claims, losses, liabilities, damages, costs, or expenses arising from or related to the Claim, made by any Releasing Party, subrogee, or person standing in Jason Kosnoski's shoes. If any Releasing Party asserts a claim against the City contrary to the Release in Paragraph 2, or if Jason Kosnoski fails to indemnify, defend, and hold City harmless as required in this Paragraph, Jason Kosnoski shall immediately repay the Settlement Payment to the City.

4. **FULL AND FINAL SETTLEMENT.** Each Party acknowledges that this Agreement is being entered into as a full and final settlement of the Incident and all other claims arising from the Incident which were or could have been asserted.

5. **EXECUTION OF NECESSARY DOCUMENTS.** Upon execution of this Agreement and before tender of the Settlement Payment, Jason Kosnoski agrees to provide the City with a completed Form W-9. The Parties also agree to cooperate in good faith to execute any necessary documents or take any necessary actions to effectuate the intent and purpose of this Agreement.

6. **COSTS.** The Parties shall pay their own costs, expenses, and attorney fees incurred without seeking reimbursement.

7. **GENERAL WARRANTIES.**

- a. **Due Authority.** Each Party has all requisite power and authority to execute, deliver, and perform its obligations under this Agreement, and no other proceedings are necessary for the execution and delivery of this Agreement or the performance of its obligations.

- b. **Professional Advice.** Each Party has obtained competent independent professional business, legal, and financial advice in connection with the negotiation, execution, delivery and performance of this Agreement.
- c. **Due Execution.** This Agreement constitutes the legal, valid, and binding obligation of each Party, enforceable under its terms.
- d. **No Assignments or Transfers.** Jason Kosnoski represents and warrants he has not assigned or transferred any rights subject to or affected by the Release or related to or arising from the Incident or Claims.

8. **NO ADMISSION OF LIABILITY.** Nothing in this Agreement, including any documents executed and delivered under this Agreement, or any actions taken to further this Agreement by the City shall constitute, or be deemed or construed as an admission of liability or wrongdoing in connection with the Incident or Claims.

9. **ACKNOWLEDGEMENTS.** The Parties declare and acknowledge they have read and understand this Agreement, they have been represented by attorneys regarding the execution of this Agreement, and they have executed this Agreement voluntarily after consultation with counsel and without being pressured or influenced by any settlement or representation made by any person acting on behalf of Jason Kosnoski and/or the City.

10. **BINDING EFFECT.** This Agreement shall bind and inure to the benefit of Jason Kosnoski and the City and their respective successors and heirs.

11. **NO ASSIGNMENT.** This Agreement may not be assigned, in whole or in part.

12. **ENTIRE AGREEMENT.** This Agreement constitutes and represents the entire agreement and supersedes all prior and contemporaneous agreements, negotiations, representations, warranties, and understandings of the Parties regarding the topic set forth herein.

13. **SUPPLEMENTS, MODIFICATIONS, AMENDMENTS, AND WAIVER.** No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by all Parties to this Agreement. No waiver of any provisions of this Agreement shall be deemed to 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.

14. **SEVERABILITY.** If any provision is held to be invalid or unenforceable on any occasion or in any circumstances, such holding shall not be deemed to render this Agreement invalid or unenforceable.

15. **INTERPRETATION AND CONSTRUCTION.** Should any provision require interpretation or construction, this Agreement shall be interpreted and construed with no presumption that this Agreement is to be construed against the Party which itself or through its agents or attorneys prepared this Agreement. The Parties and their respective attorneys have fully and equally participated in the preparation, negotiation, review, and approval of this Agreement.

16. **ACTION TO ENFORCE; PREVAILING PARTY.** Nothing in this Agreement shall preclude a Party from pursuing legal proceedings to enforce this Agreement. In any proceedings to enforce this Agreement, the prevailing party shall be entitled to recover the actual attorney fees and costs incurred in connection with such action.

17. **CHOICE OF LAW.** This Agreement shall be governed by and construed and enforced under the laws of the State of Michigan.

18. **JURISDICTION.** Washtenaw County Circuit Court shall be the exclusive venue for any disputes arising from or actions to enforce this Agreement.

19. **EXECUTION IN COUNTERPARTS.** This Agreement may be executed in one or more counterparts, all of which together shall be one instrument and all of which shall be considered duplicate originals. Each Party may sign this Agreement using an electronic or handwritten signature, which are of equal effect.

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement and Release of All Claims on the date(s) shown below:



Jason Kosnoski

Dated: February 10, 2023

THE CITY OF ANN ARBOR

By: _____
Christopher Taylor, Mayor

By: _____
Jacqueline Beaudry, City Clerk

Dated: February _____, 2023

Approved as to substance

By: _____
Milton Dohoney Jr., City Administrator

Approved as to form and content

By: _____
Atleen Kaur, City Attorney