

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release ("Agreement") is made as of the date it has been signed by all of the parties hereto, including ALTERNATIVES, INC. (hereafter "Alternatives"), and the CITY OF BILLINGS (hereafter "City").

RECITALS

A. WHEREAS, Alternatives is a Montana nonprofit corporation with its principal office in Billings, Montana, and the City is a Montana municipality;

B. WHEREAS, on April 3, 2006 Alternatives submitted an application for special-review zoning approval to the City to relocate the Billings Assessment and Sanction Center (BASC) to the second floor of the old Howard Johnsons Express Inn at 1001 South 27th Street now known as Passages;

C. WHEREAS, on May 22, 2006 the Billings City Council approved Special Review #813 with four conditions, including the following:

1. "The applicant shall make an annual payment to the City of Billings in the amount of \$40,000 for as long as Alternatives, Inc. operates a facility at this location. This payment is in lieu of property taxes and is intended to fund improvements in the South Side Task Force area. The City Council shall decide each fiscal year how the \$40,000 shall be appropriated";

D. WHEREAS, a dispute arose between Alternatives and the City concerning the legality of the \$40,000 payment condition, and Alternatives initiated a civil action captioned Alternatives, Inc. v. The City of Billings, Cause No. DV 06-1202, in the Montana Thirteenth Judicial District Court, Yellowstone County (hereafter "Civil Action") seeking a determination that the condition is unlawful;

E. WHEREAS, the parties have now reached an agreement to resolve all issues of dispute between them involving the contested payment condition;

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES AND COVENANTS CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:

1. **Recitals and Authority.** The Recitals stated above are true and correct, and are hereby incorporated into this Agreement.

2. **Settlement and Mutual Releases.** By this Agreement and effective immediately the City agrees to vacate and forever remove Condition No. 1 (quoted above) requiring an annual payment to the City of \$40,000. In exchange, Alternatives shall dismiss the Civil Action with prejudice. The approval of the special review zoning application and the remaining three conditions shall remain in full effect and are not modified by this Agreement. Neither party shall be required to take any further action other than approval of this Agreement to effect the removal of Condition No. 1. Alternatives and the City hereby mutually release each other from any and all existing or potential claims, liabilities, damages, or liens of any kind whatsoever resulting from or related to Condition No. 1, and neither party shall have any further obligation to the other concerning the condition. The parties' covenants made herein are being made as consideration to compromise a disputed claim and shall not be considered as an admission of liability.

3. **Scope of Releases.** Any release granted pursuant to this Agreement shall, in addition to releasing the party specifically identified as the grantee, also release the grantee's employees, attorneys, and agents. Any release included herein shall be fully binding and enforceable without regard to whether the subject claim or alleged liability is existing, known, potential, unknown, civil, criminal, regulatory, or contingent, and regardless of whether the damages arising out of or related to the claim or liability are known or unknown to the granting party.

4. **Stipulation of Dismissal.** After this Agreement has been executed, counsel for the parties shall file with the Clerk of District Court a stipulation requesting an order of dismissal with prejudice of the claims asserted in the Civil Action. Said stipulation shall be substantially similar to Exhibit A.

5. **No Additional Claims.** The parties represent that no additional claims of any kind or type are contemplated against any other party potentially liable for the losses, damages, and injuries for which any release is given pursuant to the terms of this Agreement. This representation applies to any claim that might be brought, asserted, assigned, encouraged, or assisted by the party granting the release or any other person or entity affiliated with or known to that party.

6. **Entire Agreement; Amendments.** This Agreement contains the entire understanding of the parties with respect to the subject matter of this Agreement. There are no restrictions, agreements, promises, warranties, covenants, or undertakings other than those expressly set forth herein. This Agreement supersedes all prior agreements and understandings between the parties with respect to its subject matter. This Agreement may

be amended only by a written instrument duly executed by the affected parties or their successors or assigns.

7. **Specific Performance.** Each party acknowledges and agrees that the other party may be damaged irreparably if any of the provisions of this Agreement are not performed in accordance with their specific terms or are otherwise breached. Accordingly, each party agrees that in the event of a breach the other party shall be entitled to specifically enforce the terms of this Agreement, in addition to any other remedy to which it may be entitled at law or in equity.

8. **Attorneys' Fees.** The parties acknowledge that each party has incurred attorney fees and costs prior to the effective date of this Agreement and agree that each party shall pay their own attorney fees and costs. In the event that any party commences litigation to enforce the terms and conditions of this Agreement, or if any party is required to defend against any litigation or claim that has been improperly asserted in violation of the release or releases granted by this Agreement, each party shall bear its own attorneys fees, costs and related litigation expenses.

9. **Binding on Successors.** This Agreement shall be binding upon each party's successor, corporate affiliates, attorneys in fact, and assigns. The parties may not assign their rights or delegate their duties under this Agreement without the express written consent of the other party.

10. **Construction.** This Agreement has been jointly drafted by the parties following negotiations between them. It shall be construed according to the fair intent of the language as a whole, and not for or against any party based on authorship of any provision.

11. **Authority.** Any person who signs this Agreement on behalf of a party to the Agreement hereby certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement on behalf of the party.

12. **Counterparts/Facsimile Signature.** This Agreement may be signed using separate signature pages for each party without having original signatures on the same signature page, including separate signature pages received or delivered by facsimile.

PLEASE READ CAREFULLY. THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE INCLUDES A RELEASE OF KNOWN AND UNKNOWN CLAIMS.

ALTERNATIVES, INC.

Dated: 9/1/2010

By: David Q. Armstrong
Its: Administrator

THE CITY OF BILLINGS

Dated: _____

By: _____
Its: Mayor

Dated: _____

By: _____
Cari Martin
Its: City Clerk