



CITY OF ATLANTA

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JEREMY BERRY
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IN THE MATTER OF:

Leigh Finlayson, Teresa Finlayson, Charles Haynes, Franca Haynes

v.

City of Atlanta, Atlanta Tree Conservation Commission

Fulton County Superior Court

Case No. 2017-CV-297212

SETTLEMENT AGREEMENT AND RELEASE

In consideration for the mutual undertakings set forth below, it is agreed between the Petitioners, Leigh Finlayson, Dr. Teresa Finlayson, Charles Haynes, Franca Haynes (collectively, "Petitioners"), and the City of Atlanta and Atlanta Tree Conservation Commission including their officials and employees ("Defendant/Respondent") (Petitioner and Defendant/Respondent, collectively "the Parties"), as follows:

1.

The Parties desire to settle fully and finally all differences between them concerning the issues set forth in the above-styled civil matter and the Atlanta Tree Conservation Commission Appeal numbers 2017-06533 and 2017-05387 (all three collectively, the "Tree Appeals"), pertaining to the plan to remove trees in Grant Park, at 800 Cherokee, SE, for Phases I and II of the construction of a parking deck.

2.

This Settlement Agreement and Release shall not be construed as an admission by the Defendant/Respondent of any violation of any federal, state or local law. Defendant/Respondent

specifically deny and disclaim any violation of federal, state or local law related to the allegations giving rise to the Tree Appeals.

3.

This Settlement Agreement and Release, and the promises made herein by the Parties, fully satisfy all claims that each of the Parties have asserted or could have asserted against the other, including as to all injunctive and declaratory relief, damages and other relief allegedly recoverable under federal, state and local law.

4.

It is understood and agreed by all Parties to this Settlement Agreement and Release that the settlement of the Tree Appeals shall be on a non-precedent basis and this settlement shall not be used or offered by the Parties as evidence in any other proceeding except for any possible action concerning the breach of this Settlement Agreement.

5.

In consideration for the promises made herein, and in full and final satisfaction of all of Petitioners' claims that were asserted or could have been asserted in the Tree Appeals, the City of Atlanta hereby agrees to do the following:

PEDESTRIAN WALKWAY:

- a) Re-design the pedestrian walkway, commonly referred to as the flyover, to be ADA-compliant. During the re-design process, the City of Atlanta will make good faith efforts to identify commercially reasonable options for accommodating additional multimodal use, with particular focus on bicycle travel, which may include a sidewalk or bicycle path.
- b) During the re-design process of the pedestrian walkway, schedule two (2) design meetings at a time mutually convenient for the City and Dr. Teresa Finlayson, to which Dr. Finlayson

and (1) design of Dr. Finlayson will be invited to attend and participate. All design decisions will be made by the City of Atlanta in its sole discretion.

DIRT STORAGE:

During the construction process, there will be no storage of dirt in the “bowl” area, which is identified in orange on the drawing attached hereto as Exhibit A.

ASPHALT AREA AND TREE NUMBER 2731:

Re-design the area identified in green (the “Green Area”) on Exhibit A hereto with the primary goal of saving the White Oak tree numbered 2731, while allowing the maximum amount of greenspace in the Green Area.

- a) The re-design process will begin after the Atlanta Fire Rescue Department performs a safety assessment and makes a preliminary determination of the locations in the Green Area that must be “drivable” (as defined by the Atlanta Fire Rescue Department) to accommodate emergency vehicles and other safety requirements. The Atlanta Fire Rescue Department will make a good faith attempt to determine a drivable area that does not affect the life of tree number 2731, but only if the design is commercially reasonable and does not jeopardize public safety.
- b) In the Green Area, for those locations which become greenspace, asphalt will not be visible though it may remain as a sublayer underneath the greenery.
- c) During the re-design process, the City will remain aware of Petitioners’ desire to save trees numbered 2733 and 2734. Because of the primary goals for the Green Area, as set forth above, the City cannot commit to saving trees 2733 and 2734.

SAVED TREES:

- a) Save five (5) trees in the bottom section of the bowl area (tree numbers 2838, 2827, 2828, 2816 and 2815) and save five (5) trees near the pond (tree numbers 435, 492,

494, 496 and 497).

- b) Use commercially reasonable efforts to preserve tree number 2745 near Boulevard and Confederate Avenue.

SHADE STRUCTURE:

Create a shade structure in lieu of the bandstand. During the shade structure design process, the City of Atlanta will schedule two (2) design meetings at a time mutually convenient for the City and Mr. Charles Haynes, to which Mr. Haynes and (1) designee of Mr. Haynes will be invited to attend and participate. All design decisions will be made by the City of Atlanta in its sole discretion.

SPECIAL EVENT:

Allow Petitioners to conduct one event inside of the currently-fenced area of Grant Park, for the purpose of creating artwork, such as paintings, that will be removed from the fenced area at the conclusion of the event. Petitioners or their designees may photograph or video the event. The event shall occur by no later than January 14, 2018, and must occur during daylight hours. The number of event attendees shall not exceed 25; because the location is not available to the public, a parks employee will be present during the event at no cost to Petitioners. The exact time, location and other details of the event will be determined by the Commissioner of the Department of Parks and Recreation or her designee, in coordination with Petitioners or their designee. For purposes of this Settlement Agreement and Release only, any deadlines, fees and sanitation bond that may have been required by the Atlanta Code of Ordinances Section 142-103 shall be waived.

6.

In consideration for the promises made above by the City of Atlanta, Petitioners hereby agree to dismiss with prejudice the above-styled case, currently pending in the Superior Court of

Fulton County, by no later than Thursday, December 21, 2017 by 6:00 pm.

7.

In further consideration for the promises made above, each of the Parties agrees to release and discharge the other, including releasing and discharging the Parties' successors, officers, directors, agents, assigns, attorneys, employees, and representatives, from all claims, suits, losses, or expenses arising from or in any manner connected with or related to the Tree Appeals, that each of the Parties asserted or could have asserted under federal, state or local law.

8.

As consideration for each other's releases as set forth in this Paragraph 8, Petitioners and Winter Johnson Group agree to release and discharge the other, including releasing and discharging their respective successors, officers, directors, agents, assigns, attorneys, employees, and representatives, from all claims, suits, losses, or expenses arising from or in any manner connected with or related to the Tree Appeals, that each asserted or could have asserted against each other under federal, state or local law. This paragraph 8 does not constitute a waiver of any of Winter Johnson Group's rights regarding the City of Atlanta pursuant to their contract, numbered FC-9254.

9.

The Parties acknowledge that the re-design work described in Paragraph 5 above may require removal or destruction of trees that are not included in the tree removal permit at issue in the Tree Appeals, though the City will make good faith efforts to prevent such occurrence. In the event that additional tree removal permits are required to perform the redesigned construction contemplated by Paragraph 5, Petitioners agree that they will not appeal the issuance of any such tree removal permit.

10.

This Settlement Agreement and Release may be executed in more than one counterpart, each of which will be deemed an original, and all of which taken together will constitute one and the same written agreement, which will be binding and effective as to all Parties.

IN WITNESS WHEREOF, the undersigned hereby agree to the terms and conditions of this Settlement Agreement and Release, as executed by their duly authorized representatives this 21st day of December, 2017.

Petitioners:



Leigh Finlayson



Dr. Teresa Finlayson



Charles Haynes



Franca Haynes

City of Atlanta

Amy Phuong, Commissioner
Department of Parks and Recreation

City of Atlanta and Atlanta Tree Conservation Commission:

Robin Joy Shahar
Chief Counsel, Atlanta Law Department

10.

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Petitioners:

Leigh Finlayson

Dr. Teresa Finlayson

Charles Haynes

Franca Haynes

City of Atlanta



Amy Phuong, Commissioner
Department of Parks and Recreation

City of Atlanta and Atlanta Tree Conservation Commission:



Robin Joy Shahar
Chief Counsel, Atlanta Law Department

Winter Johnson Group (as to Paragraph 8 only):

By: 
Brent Reid,
Title: Managing Member

By: 
Artis Johnson
Title: Managing Member

an

Exhibit A - Dec. 21, 2017

SMITH
DALLA
ARCHITECTS

WYDZICKO
LOONEY



Central Park Parking Garage

Central Park Parking Garage



1000 Park Ave



TP-1

