

Settlement Agreement

This Settlement Agreement is made by and between the Fond du Lac Band of Lake Superior Chippewa, a federally recognized Indian tribe (hereinafter "Band") and the City of Duluth, a municipal corporation in St Louis County, Minnesota, (hereinafter "City").

Whereas, disputes have arisen between the City of Duluth and the Fond du Lac Band regarding a series of Agreements between the City and the Band dated April 1, 1986 and a second series of Agreements between the City and the Band dated June 20, 1994 concerning the operation of the Fond du Lac Band's casino (the Fond du Luth Casino) on a parcel of land located in downtown Duluth, acquired by the Fond du Lac Band and held in trust by the United States for the benefit of the Fond du Lac Band and which the United States proclaimed to be part of the Fond du Lac Reservation; and

Whereas, these disputes have been adjudicated by a series of federal administrative and judicial decisions, including: *City of Duluth v. Fond du Lac Band of Lake Superior Chippewa*, 708 F.Supp.2d 890 (D. Minn. 2010) (*Duluth I*); *City of Duluth v. Fond du Lac Band of Lake Superior Chippewa*, 830 F.Supp.2d 712 (D. Minn. 2011) (*Duluth II*), *aff'd in part, rev'd in part and remanded*, 702 F.3d 1147 (8th Cir. 2013) (*Duluth III*), *on remand*, 977 F.Supp.2d 944 (D. Minn. 2013) (*Duluth IV*), *rev'd and remanded*, 785 F.3d 1207 (8th Cir. 2015) (*Duluth V*), *on remand*, 2015 WL 4545302 (D. Minn. 2015) (*Duluth VI*). *See also City of Duluth v. Fond du Lac Band of Lake Superior Chippewa*, No. 14-912-SRN, Memorandum Opinion and Order (D. Minn. Dec. 22, 2014); and *City of Duluth v. National Indian Gaming Commission*, 89 F. Supp.3d 56 (D.D.C. 2015), *appeal pending City of Duluth v. National Indian Gaming Commission et al.*, No. 15-5162 (D.C. Cir.).

Whereas, there remain three pending proceedings, namely: 1) an appeal in *City of Duluth v. National Indian Gaming Commission et al.*, No. 15-5162 (D.C. Cir.), 2) a district court case captioned *City of Duluth v. Jewell*, No. 12-cv-1116-CKK (D.D.C.), and 3) the City's objections to the findings of the Bureau of Indian Affairs regarding the Band's application to have the land known as the "Carter Hotel" property placed into trust; and

Whereas, the City and the Band desire to resolve and settle all current and pending legal proceedings; and

Whereas, the City and the Band share an interest in building a new relationship between our governments and communities so that the City and the Band can work collaboratively in addressing their common needs and move forward on a government-to-government basis with mutual respect that can be both practical and healing.

Now therefore the parties enter into the following Agreement:

1. Termination of all pending litigation. The City will:
 - A. dismiss with prejudice the City's appeal which is now pending before the United States Court of Appeals for the District of Columbia Circuit captioned *City of Duluth v. National Indian Gaming Commission et al.*, No. 15-5162 (D.C. Cir.);
 - B. dismiss with prejudice the City's lawsuit which is now pending before the United States District Court for the District of Columbia, captioned *City of Duluth v. Jewell*, No. 12-cv-1116-CKK (D.D.C.); and
 - C. dismiss with prejudice the City's pending administrative appeal from the Bureau of Indian Affairs decision to the Band application to have the Carter Hotel property taken into trust and to advise the Bureau of Indian Affairs that it withdraws its prior objections to the Band's trust application for the Carter Hotel property.

2. Fee for Services.
 - A. The Band will pay an annual fee for services to the City, in the amount of \$150,000 per year for ten years to help defray the City's costs for municipal services provided to the Band's Casino site, and the adjacent Carter Hotel property once placed into trust, within the City of Duluth.
 - B. The Agreement to pay a fee for services shall become effective and the first payment due pursuant to Section 2(A) shall be made within 30 days after all of the following have been accomplished: the courts have granted dismissal with prejudice of the pending lawsuits set forth in Section 1(A) and 1(B), and the City has given notice to the BIA of its withdrawal of objections to the Carter Hotel trust application and has dismissed its administrative appeal set forth in Section 1(C). Subsequent annual payments of the fee for services shall thereafter be made on March 30 of each year.
 - C. The Band's agreement to pay an annual fee to help defray City services to the Band shall be renewed for a second term of 10 years. The fee for City services provided to the Band's property held in Trust at the Fond du Luth casino site, including the Carter Hotel property and any other property adjacent to the site that is placed into Trust will be negotiated in good faith between the parties prior to the expiration of the initial term.
 - D. In the event that the Band ceases to use the Fond du Luth property for gaming purposes prior to the expiration of the ten year term of this agreement or anytime during the ten year renewal term, the Band's agreement to pay the annual fee for services set forth in section 2(A) shall end. In such circumstances, the parties agree to renegotiate a new agreement to help defray the City's costs for municipal services provided to the Band's Casino and Carter Hotel properties within the City of Duluth.

3. Hotel/Motel. If the Band constructs a hotel or other lodging facility on or adjacent to the Casino property or Carter Hotel property, the Band and the City agree to negotiate in good faith a contribution to the City that is comparable to those made by other hotels or lodging facilities in Duluth.

4. Trust Land.

- A. The City does not object to the Band's application to the Bureau of Indian Affairs to have the Carter Hotel property taken into Trust and will withdraw its appeal and not otherwise or further challenge the Bureau of Indian Affairs' decision to take the Carter Hotel property into trust.
- B. Both parties agree the City has an interest in the issue of whether property within the boundaries of the City of Duluth is taken into trust and the potential impacts, effects and opportunities that trust acquisition may have on surrounding businesses and properties, the larger downtown, and City as a whole.
- C. The Band and the City agree to meet and confer on any Trust Land applications within the City of Duluth prior to the Band making formal application to the Bureau of Indian Affairs or other responsible agencies. The Band and the City both understand that this requirement to meet and confer does not convey to the City any rights or authority to approve or deny such application by the Band.

5. Planning and Zoning. The Band agrees to adopt and enforce as Band law the generally applicable substantive provisions of the City's planning and zoning codes for any Trust land within the City during the period that the Band is paying the City an annual fee for services under Paragraphs 2(A) and 2(C). The City agrees that it shall not adopt any planning or zoning code provision that would materially interfere with the Band's right to conduct gaming on its trust land.

6. Prior Agreements. The City and the Band expressly recognize, agree, and reaffirm the federal judicial and administrative rulings that the Agreements dated April 1, 1986 and those dated June 20, 1994 are void and of no force or effect and the City and the Band hereby agree and declare that all provisions of those Agreements are void and of no force or effect.

7. Limited Waiver of Sovereign Immunity and Consent to Jurisdiction. The Band waives its sovereign immunity for the sole and limited purpose of any claim by the City brought in the United States District Court for the District of Minnesota seeking enforcement of the terms and conditions and the Band's obligations under this Agreement. The Band and the City both consent to the jurisdiction of the United States District Court for the District of Minnesota for the purpose of hearing such a claim.

The signatories to this Agreement on behalf of the Fond du Lac Band of Lake Superior Chippewa represent and warrant that they are fully authorized to enter into this agreement on behalf of the Fond du Lac Band of Lake Superior Chippewa. The signatories to this Agreement

on behalf of the City of Duluth represent and warrant that they are fully authorized to enter into this Agreement on behalf of the City of Duluth.

In Witness Whereof, the parties have caused this Agreement to be executed.

**Fond du Lac Band of Lake Superior
Chippewa**

City of Duluth, Minnesota

By: _____
Chairman

By: _____
Mayor

By: _____
Secretary/Treasurer

Dated: _____, 2016

Dated: _____, 2016

Attest _____
City Clerk

Countersigned:

City Auditor

Approved as to form:

City Attorney