

City of Seward, NE
Tuesday, October 6, 2015
Regular Session

Item G8

**CONSIDERATION OF SETTLEMENT AGREEMENT WITH
CHARLES AND LAVONNE EVANS REGARDING PURCHASE
OF CEMETERY LOTS AT SEWARD GREENWOOD
CEMETERY - City Attorney Hoffschneider**

Administrative Report: Charles and Lavonne Evans purchased two cemetery lots at Seward Greenwood Cemetery. The City erroneously sold the same lots to another party and buried a family member prior to the City recognizing the error. Charles and Lavonne Evans were contacted about the error and they have since selected two different lots. Staff is suggesting providing a no cost opening and closing of the two new lots the Evans' purchased, in recognition of the error. The attached Settlement Agreement would document the no cost service.

Steps have been taken to lessen the likelihood of similar future errors.

After review and discussion, a motion to approve the settlement agreement would be in order.

Staff Contact:

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (hereinafter referred to as "Agreement") is made and entered into this ____ day of October, 2015, by and between Charles C. and Lavonne M. Evans ("Evans") and the City of Seward, Nebraska, a Nebraska municipal corporation ("City").

WHEREAS, the parties wish to avoid any potential dispute arising out of Evan's purchase of cemetery spaces at the Seward Greenwood Cemetery ("the Purchase") and as result, have reached an agreement under the terms and conditions outline herein; and

WHEREAS, Evans and the City desire to avoid any controversy between them and to reach a mutual agreement and release under the terms and conditions herein outlined:

NOW, THEREFORE, for good and valuable consideration and consideration of the agreements, covenants, and conditions herein contained, the sufficiency of which is hereby acknowledged, Evans and the City agree as follows:

1. CONSIDERATION. The parties stipulate and agree that the City shall not be liable to Evans for payment of any monetary consideration for the City's actions concerning cemetery spaces that had been previously purchased by Evans. The City shall provide as consideration for this Agreement, the opening and closing services for two newly deeded cemetery lots at no cost to Evans. The City and Evans agree to execute any and all documents necessary to effectuate the conveyance of these two lots to Evans.

2. VOLUNTARY ACT. Each party acknowledges that the execution of this Agreement is the voluntary act and deed of each party, and such execution is in no way procured by duress, coercion, or over-reaching.

3. **AUTHORITY.** Each party represents and warrants that they have full power and authority to enter into this Agreement, and that they have not heretofore signed or transferred to any person or entity any claim or claims against the other.

4. **NO ADMISSION.** This Agreement is intended to resolve all issues and claims either party may claim against the other, and in consideration given hereunder by the parties hereto, and is not to be considered an admission of liability by the parties, liability on the premises begin expressly denied. This Agreement, its execution, and its implementation shall not in any respect be construed as an admission of liability, and shall not be admissible in any proceeding under any Federal, State or local statute, regulations, order, or common law principle.

5. **EVANS'S RELEASE.** Evans, for and in consideration of the terms and conditions of this Agreement, does hereby fully release and forever discharge the City from any and all claims, demands, liens, agreements, contracts, covenants, actions, suits, and causes on account of any and all injuries, damages, losses, and expenses, including financial loss of any kind, liquidated damages, punitive damages, and litigation costs, arising out of the Purchase. Evans also covenants that they have not in any way assigned this claim and will not initiate any proceeding against the City in any Federal, State or local agency or court seeking a recovery based on any claim covered by this release, with the exception of any future claim for breach of this Agreement.

6. **ENTIRE AGREEMENT.** This Agreement represents the entire agreement and supercedes any other written or oral understandings between the parties. This Agreement shall be final and binding as to all claims which have been or could have been advanced on behalf of Evans against the City. No other promises or agreements shall be binding unless reduced to writing and signed by both parties.

7. **SEVERABILITY.** Should any portion of this Agreement be held invalid or legally unenforceable by a court of competent jurisdiction, the parties agree that the remaining portions of this Agreement shall not be affected thereby, and shall be given full force and effect.

8. **TERMS CONTRACTUAL.** The parties understand that the terms of this Settlement Agreement and Release are contractual and not merely a recital.

9. **GOVERNING LAW.** This Settlement Agreement and Release and the effect of the same shall be construed, determined and governed by the laws of the State of Nebraska.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date written above.

CHARLES C. EVANS

LAVONNE M. EVANS

CITY OF SEWARD, NEBRASKA,
BY: JOSHUA EICKMEIER, MAYOR