

ORDINANCE NO. 4078

AN ORDINANCE OF THE CITY OF CLINTON APPROVING A GENERAL RELEASE AND SETTLEMENT AGREEMENT WITH HENRY COUNTY 911 EMERGENCY COMMUNICATIONS, ET AL.

WHEREAS, the City of Clinton has made claims against Henry County 911 Emergency Communications, et. al., for damages related to an incident that occurred on March 6, 2017; and

WHEREAS, the City has agreed to a nominal settlement amount, which is significantly less than the actual damages related to the March 6, 2017 incident, in order that the claims of other individuals and families might take priority;

NOW THEREFORE BE IT HEREBY ORDAINED BY THE CITY COUNCIL OF CLINTON, MISSOURI AS FOLLOWS:

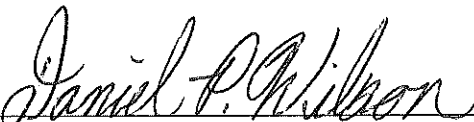
Section 1. The General Release and Settlement Agreement (Attachment A) is hereby approved.

Section . The City Administrator, City Clerk and the City's special legal counsel are authorized to execute all documents to approve and conclude the settlement in the form attached.

This ordinance shall become effective immediately upon its passage and approval as provided by law.

Read the first time this 21st day of December, 2021.

Read a second time and passed this 21st day of December, 2021.



Daniel Wilson, President Pro-Tem

ATTEST:

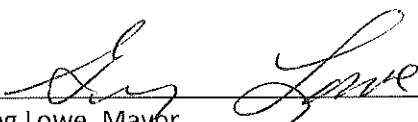
Ayes 7: Gene Henry, Roger House, Cameron Jackson, Carla Moberly, Becky Raysik, Debbie Smith and Daniel Wilson

Nays 0

Absent 1: Rick Pereles



Wendee Seaton, City Clerk



Greg Lowe, Mayor



GENERAL RELEASE AND SETTLEMENT AGREEMENT

WHEREAS the City of Clinton (hereinafter "Claimant") is making claims against Henry County 911 Emergency Communications, Ken Scott, Kristin Jones, Spencer Townsend, and Dana Hale (hereinafter "Defendants") for damages arising out of an incident that occurred on March 6, 2016 as set forth more fully in a lawsuit brought in the Circuit Court of Cass County, Missouri, Case no. 20CA-CC00050 and pursuant to Missouri state law (hereinafter "Petition," or the "Lawsuit") and under circumstances which Claimant claims Defendants liable to him, and

WHEREAS, Defendants deny that they are in any way liable to Claimant for any sum whatsoever so that a dispute exists between Claimant and Defendants (hereinafter collectively "the Parties"), which dispute the Parties have not agreed to settle, adjust and compromise upon the terms in this General Release and Settlement Agreement (hereinafter "Settlement Agreement") as set forth.

WHEREAS, Claimant has alleged damages far in excess of the amounts agreed upon herein but has agreed to a nominal settlement amount in recognition of the claims of other individuals and families at issue in the Lawsuit.

NOW THEREFORE, for and in consideration of the compromise of the matters recited above, and for the sum of **TWO THOUSAND ONE HUNDRED AND NO/100 DOLLARS (\$2,100.00)** (hereinafter "Settlement Funds") on behalf of Claimant, receipt of which sums and/or drafts in compromise of said dispute is hereby acknowledged, and other consideration as set forth in Section 2 on behalf of Claimant, Claimant does hereby agree as follows:

AGREEMENT

1.0 Release and Discharge

- 1.1 This Release and Discharge shall apply to Henry County 911 Emergency Communications, including its elected and appointed officers, employees, including but not limited to the named individual defendants Ken Scott, Kristin Jones, Spencer Townsend, and Dana Hale, and each of their agents, servants, successors, assigns, insurers, including Missouri Public Entity Risk Management Fund ("MOPERM"), and attorneys and all other persons, firms, or corporations with whom and of the former have been, are now, or may hereafter be affiliated (hereinafter "Released Parties") of and from any and all claims which Claimant ever had, now has, or which may hereafter accrue or otherwise be acquired relating to the incidents alleged in the Petition.
- 1.2 Claimant stipulates and agrees that this Release shall be a fully binding and complete settlement between Claimant and Defendants and their insurers, heirs, assigns, and successors.
- 1.3 Claimant acknowledges and agrees that the Release and Discharge set forth above is a General Release. Claimant expressly waives and assumes the risk of any and all claims for damages that exist as of this date, and of which Claimant does not know or suspect to exist, whether through ignorance, oversight, error, negligence, or otherwise, and which, if known, would materially affect his decision to enter into this Settlement Agreement.

Claimant further agrees that he has accepted payment of the Settlement Funds as a complete compromise of matters involving disputed issues of law and fact.

1.4 This Settlement Agreement is the result of a compromise of disputed claims between Claimant and the Released Parties as set forth in the Petition, and is the product of arms-length negotiation. Nothing contained in this Settlement Agreement shall be construed to be an admission or concession of liability, non-liability, responsibility or wrongdoing of any kind by any party. Defendants expressly deny any liability to Claimant.

2.0 Payments

2.1 In consideration of the release set forth above, the Released Parties agree to pay to the individual(s) named below the sums outlined in Section 2.1(a) below within thirty (30) days from the date the Settlement Agreement is executed by Claimant:

Payments are due as follows:

(a) **TWO THOUSAND ONE HUNDREND AND NO/100 DOLLARS (\$2,100.00)**
payable to the City of Clinton and the Schmitt Law Firm.

3.0 Liens

3.1 This settlement is based upon a good faith determination made by the Parties to resolve disputed claims. Claimant agrees to assume responsibility for satisfaction of any and all rights to payment, claims, subrogation or liens of any kind, that arise from or are related to payments made or services provided to Claimant. Claimant agrees to assume responsibility for all expenses, costs or fees incurred by Claimant related to his injuries, damages, claims or lawsuit including without limitation, all liens or other rights to payment, including but not limited to those relating to property damage, personal injury or to other persons or entities, or mechanics' and/or workers compensation liens. Further, Claimant will indemnify, defend, and hold harmless Released Parties from any and all claims, demands, causes of actions or judgments that may result from, or be derivative of, Claimant's claims released hereby including, but not limited to, consortium claims by family members of Claimant, or a claim resulting from services provided to, or benefits conferred upon Claimant, which claim may be premised upon a lien, or upon a right of subrogation, reimbursement or indemnity created by contract, or by state or federal law, including payments made or services provided to Claimant by an Employee Welfare Benefit Plan as defined and governed under ERISA, 29 U.S.C § 1001 et seq., of which Claimant may be a member. It is represented by Claimant that he, or his counsel, has disclosed to the parties being released, or their counsel, the existence and identify of all persons or governmental agencies having such a claim of which he has knowledge or information, if any.

4.0 Attorneys' Fees and Costs

4.1 Claimant agrees that he shall bear all attorneys' fees and costs arising from the actions of his own counsel, and specifically waives any right to claim legal expenses or costs from the Released Parties in connection with the Petition and all related litigation, this Settlement Agreement, and the matters and documents referred to herein, the filing of a

Dismissal of the Petition, and all related matters. The Released Parties agree that Claimant shall no bear any of their attorneys' fees and costs arising from the actions of their own counsel and they specifically waive any right to claim legal expenses or costs from Claimant in connection with the Petition and all related litigation, this Settlement Agreement, and the matters and documents referred to herein, the filing of a Dismissal of the Petition, and all related matters. This provision shall apply to both attorneys' fees and costs in connection with the Petition and/or any and all related litigation, this Settlement Agreement, and the matters and documents referred to herein.

5.0 Dismissal with Prejudice and Promise to Not Sue

5.1 Concurrently with the execution of this Settlement Agreement, Claimant hereby authorizes his counsel to file a Dismissal with Prejudice to the Court within ten (10) days of receipt by his attorneys of the sum set forth in Section 2, with costs and attorneys' fees paid by the party incurring them.

6.0 Representation of Comprehension of Document

6.1 In entering into this Settlement Agreement, Claimant represents that he has relied upon the advice of his attorneys, who are the attorneys of his choice, concerning the legal consequences of this Settlement Agreement, if any; Claimant represents that neither his attorneys nor Released Parties have made any representations regarding, and shall have no responsibility whatsoever to any federal, state, or local taxing authority for, the liability or consequences, if any, arising from the payment of the Settlement Funds and that all responsibility is exclusively that of claimant; that the terms of this Settlement Agreement have been completely read and explained to him by his attorneys; and that the terms of this Settlement Agreement are fully understood and voluntarily accepted by Claimant who are represented by counsel in the Lawsuit and in connection with negotiation this settlement agreement.

7.0 Warranty of Capacity to Execute Agreement

7.1 Claimant represents and warrants that no other person or entity has, or has had, any interest in the claims, demands, obligations or causes of action referred to in this Settlement Agreement except as otherwise set forth herein; that Claimant has the sole right and exclusive authority to execute this Settlement Agreement and to receive and/or designate sums specified in it; and that claimant has not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations or causes of action referred to in this Settlement Agreement.

8.0 Entire Agreement and Successors in Interest

8.1 This Settlement Agreement contains the entire agreement between the Parties, with regard to the matters set forth in it and shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, heirs, successors and assigns of Claimant and the Released Parties.

9.0 Additional Documents

9.1 Claimant agrees to cooperate fully and execute any and all supplementary documents and take all additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Settlement Agreement.

10.0 Drafting and Interpretation

10.1 Claimant stipulates and agrees that the Parties have participated jointly in the negotiation and drafting of this Settlement Agreement and, in the event that an ambiguity or question of intent or interpretation arises, this Settlement Agreement shall be construed consistent with the joint drafting of this Settlement Agreement by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of authorship of any of the provisions of this Settlement Agreement.

11.0 Governing Law

11.1 This Settlement Agreement shall be construed and interpreted in accordance with the laws of the State of Missouri.

12.0 Counterparts and Facsimile Signatures

12.1 The Parties stipulate that this Settlement Agreement may be executed by facsimile and in one or more counterparts, each of which shall be an original, but which together shall constitute one document. For all future purposes as between the Parties, they agree that a facsimile copy shall be deemed to be an original.

13.0 Effectiveness

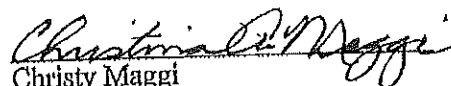
13.1 This Settlement Agreement shall become effective immediately upon the execution of the Agreement by Claimant.

14.0 Promise Not to Publicize

14.1 Claimant agrees he will take no actions calculated to bring public attention to the settlement of this disputed claim and agrees to keep the terms of this agreement confidential to the extent permitted by law.

THE UNDERSIGNED HAS READ THE FOREGOING RELEASE AND FULLY UNDERSTANDS IT.

Signed this 22nd day of December, 2021.


Christy Maggi
City Administrator
City of Clinton

Attorney's Representation

I, the undersigned Ben Schmitt, hereby states he has been made aware of no claims against the settlement proceeds by way of liens or rights of subrogation, and that the payment stated in the first paragraph above includes and is in satisfaction of any claims he may have against Released Parties for costs, expenses and attorney's fees.



Ben Schmitt
The Schmitt Law Firm