

ORDINANCE NO. 4079

AN ORDINANCE OF THE CITY OF CLINTON APPROVING A GENERAL RELEASE AND SETTLEMENT AGREEMENT WITH HARRIS SYSTEMS USA, INC. AND COLOSSUS, INC.

WHEREAS, the City of Clinton has made claims against Harris Systems USA, Inc. (d/b/a Caliber Public Safety), Colossus, Inc. (d/b/a Interact Public Safety Systems), Chubb Insurance Company including but not limited to Federal Insurance Company and Chubb Insurance Company of Canada and Constellation Software Inc., 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

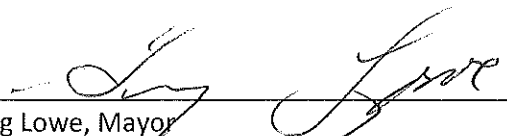
Nays 0

Absent 1: Rick Pereles



Wendee Seaton, City Clerk





Greg Lowe, Mayor

SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Settlement Agreement and General Release ("Agreement") is made between the following parties:

RELEASOR (Plaintiff)

City of Clinton, Missouri

RELEASEES

- Harris Systems USA, Inc. d/b/a Caliber Public Safety
- Colossus, Incorporated d/b/a Interact Public Safety Systems
- Chubb Insurance Company including but not limited to Federal Insurance Company and Chubb Insurance Co. of Canada
- Constellation Software Inc.

All the foregoing parties to this Agreement may hereinafter collectively be referred to as the "PARTIES."

RECITALS

A. City of Clinton, Missouri filed an action entitled *City of Clinton, Missouri, v Henry County 911 Emergency Communications, et.al.* on or about March 3, 2020, ("Complaint") in the Circuit Court of Cass County, Missouri and assigned Case Number 20CA-CC00050, in which Plaintiff alleged legal claims against Harris Systems and Colossus.

B. The Parties desire to enter into a settlement in order to provide for certain payments in full settlement and discharge of all claims which are, or might have been, the subject matter of the Complaint upon the terms and conditions set forth below.

AGREEMENT

The Parties agree as follows:

1.0 Release and Discharge

1.1 In consideration of the payments set forth in Section 2, herein, RELEASOR CITY OF CLINTON, MISSOURI hereby completely releases and forever discharge RELEASEES, namely HARRIS SYSTEMS USA, INC. D/B/A CALIBER PUBLIC SAFETY and COLOSSUS, INCORPORATED D/B/A INTERACT PUBLIC SAFETY SYSTEMS, their Insurers including CHUBB INSURANCE COMPANY INCLUDING BUT NOT LIMITED TO FEDERAL INSURANCE COMPANY AND CHUBB INSURANCE CO. OF CANADA and

CONSTELLATION SOFTWARE INC., their Third Party Administrator and their respective officers, directors, stockholders, current employees, former employees, future employees, servants, representatives, contractors, agents, subsidiaries, affiliates, parent companies, partners, assigns, predecessors, and successors in interest from any and all past, present or future claims, demands, obligations, actions, causes of action, wrongful death claims, rights, damages, costs, losses of services, expenses and compensation of any nature whatsoever, whether based on a tort, contract or other theory of recovery, which RELEASOR now have, or which may hereafter accrue or otherwise be acquired, on account of, or may in any way grow out of, or which are the subject of the Complaint or Amended Complaint (and all related pleadings) including, without limitation, any and all known or unknown claims for the injuries to and wrongful death of Ryan Morton which have resulted from the alleged acts or omissions of the RELEASEES and/or other parties to the action and others being released.

1.2 This release, on the part of RELEASOR shall be a fully binding and complete settlement among RELEASOR and its heirs, assigns, and successors, the RELEASEES, and their Insurers. 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.

1.3 RELEASOR acknowledge and agree that the release and discharge set forth above is a general release. RELEASOR expressly waive and assume the risk of any and all claims for damages which exist as of the date of this release, but of which RELEASOR do not know or suspect to exist, whether through ignorance, oversight, error, negligence, or otherwise, and which, if known, would materially affect RELEASORS' decision to enter into this Agreement. RELEASOR further agree that they have accepted payment of the sums specified herein as a complete compromise of matters involving disputed issues of law and fact. RELEASOR assume the risk that the facts or law may be other than their belief and understanding. RELEASOR affirm that they are represented by competent legal counsel and have consulted such counsel regarding the terms, conditions, limitations, finality, and acceptability of this Agreement. In executing this Agreement, RELEASOR have not relied on any representations on the part of any of the parties, persons or entities being released, or their attorneys. It is understood and agreed to by the parties that this settlement is a compromise of doubtful and disputed claims, and the payment is not to be construed as an admission of liability on the part of RELEASEES, each of whom expressly denies liability.

2.0 Payments

In consideration of the release set forth above, through the Insurers the entities named below and their Insurers agree to pay to the RELEASOR, CITY OF CLINTON, MISSOURI, and their attorneys a settlement in the total value of \$30,000.00 dollars (UNITED STATES DOLLARS), as outlined in this Section 2 below:

2.1 Payment of the settlement by check made out to CITY OF CLINTON, MISSOURI, and their attorneys, Schmitt Law Firm, LLC, within 30 days of Plaintiff's tender of the properly executed Settlement Agreement and General Release and any other required documents.

3.0 Delivery of Dismissal with Prejudice

Concurrent with the execution of this Agreement, counsel for RELEASOR shall deliver to counsel for RELEASEES or counsel for the Insurer an executed Dismissal with Prejudice of the Complaint as against RELEASEES. RELEASOR hereby authorize counsel for RELEASEES and/or counsel for the Insurer to file said Dismissal with the Court and enter it as a matter of record.

4.0 Releasors' Warranties

RELEASOR and their attorneys represent and warrant that all bills, costs, or liens resulting from or arising out of RELEASORS' alleged injuries, claims, medical care, loss of earnings, loss of earning capacity or any other losses alleged in the lawsuit are RELEASORS' responsibility to pay. RELEASOR agree to assume responsibility for satisfaction of any and all rights to payment, claims or liens of any kind and from any source that arise from or are related to payments made or services provided to RELEASOR or on RELEASORS' behalf. RELEASORS agree to assume responsibility for all expenses, costs or fees incurred by RELEASOR related to any alleged injuries, claims or lawsuit, including benefits or payments, subrogation claims, any liens, and any other rights to payment relating to medical treatment or lost wages that have been or may be asserted by any health care provider, insurer, governmental entity, employer or other person or entity.

5.0 Liens, Claims and Indemnity

RELEASORS and their attorneys represent and warrant that there are no existing or pending liens from Medicare, Medicaid, or any other governmental entity related to this claim.

RELEASORS and their attorneys will indemnify, defend and hold RELEASEES, their attorneys and Insurers, and any other released parties, persons, employees and entities, harmless from any and all damages, claims and rights to payment, including any attorneys' fees, brought by any person, entity, or governmental agency to recover any claim of right to payment, including but not limited to any claim brought by the United States for recovery of payments, conditional payments, or anticipated future medical payments made by or on behalf of Medicare, or any past, present and future medical or other liens. Each Party to the release agrees that it will promptly notify the other Parties in writing of any claim, suit or demand which comes within the scope of this section.

The Parties acknowledge and understand that any present or future action by the Center for Medicare and Medicaid Services or Medicare regarding this settlement or regarding RELEASORS' eligibility or entitlement to Medicare or Medicare payments, will not render this release void or ineffective, or in any way affect the finality of this liability settlement.

RELEASORS' eligibility or entitlement to Medicare or Medicare payments, will not render this release void or ineffective, or in any way affect the finality of this liability settlement.

6.0 Representation of Comprehension of Document

In entering into this Agreement, RELEASORS represents that they have relied upon the advice of their attorneys, who are the attorneys of his own choice, concerning the legal and income tax consequences of this Agreement; that the terms of this Agreement have been completely read and explained to him by his attorneys; and that the terms of this Agreement are fully understood and voluntarily accepted by RELEASORS.

7.0 Warranty of Capacity to Execute Agreement

RELEASORS represent and warrant 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 Agreement, except as otherwise set forth herein; that RELEASORS have the sole right and exclusive authority to execute this Agreement and receive the sums specified in it; and that RELEASORS have not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations or causes of action referred to in this Agreement.

8.0 Governing Law

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

9.0 Entire Agreement and Successors in Interest

This Agreement contains the entire and full and final agreement between the Parties with regard to the matters set forth in it and supersedes all prior agreements, whether oral or written, and it shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, heirs, successors and assigns of each Party.

10.0 Non-Disparagement

RELEASORS and their attorneys agree that they will not disparage the RELEASEES or any related company or individual or take any action which could reasonable be expected to adversely affect RELEASEES reputation.

11.0 Attorney's Fees and Costs

Each Party shall bear his, her, or its own attorneys' fees, costs of suit and other expenses relating to the disputed incident and the Complaint referred to herein, to the negotiation, preparation, execution and delivery of this Agreement, to the filing of the Dismissal of the Complaint with Prejudice, and to all related matters.

12.0 Effective Date

This Agreement shall become effective immediately following execution by all Parties, the effective date being the date upon which the last signatory signs this Agreement.

13.0 Execution in Counterparts

The parties agree that execution may be in counterparts and that facsimile signatures are acceptable as original signatures.

**BY SIGNING BELOW, I ACKNOWLEDGE I HAVE READ THE FOREGOING
RELEASE AND FULLY UNDERSTAND AND ACCEPT IT.**

CITY OF CLINTON, MO

Dated: 12/22/2021

By: Christina A. Maggi, City Administrator
Print Name and Title

Christina A. Maggi
Signature

Dated: 12-24-2021

By: Ben Schwitt
Print Name

[Signature]
COUNSEL FOR PLAINTIFF