

REQUEST FOR COUNCIL ACTION

SUBJECT: A RESOLUTION AUTHORIZING SETTLEMENT OF PENDING LITIGATION.

SUMMARY: Approve a settlement agreement to settle any and all claims plaintiffs have against the City and any of its employees. The attached settlement agreement completely resolves all claims of the current pending litigation, Case No. 120905469.

FISCALAND/OR

ASSET IMPACT: The proposed settlement will require the City to pay \$100,000.00 to Plaintiffs in exchange for settlement of all claims and a dismissal of the pending litigation.

STAFF RECOMMENDATION:

Staff recommends adoption of the Resolution.

MOTION RECOMMENDED:

"I move to adopt Resolution No. ~~16-197~~, approving and authorizing the Mayor to sign the attached Settlement Agreement in the amount of \$100,000.00 for settlement of pending litigation."

Roll Call vote required

Prepared by:


Paul D. Dodd
Civil Litigator

Approved by:


David Brickey
City Attorney

Recommended by:


Mark Palesh
City Manager

BACKGROUND DISCUSSION:

MARILYN SAVAS, individually and on behalf of the heirs of WILLIAM HADZI SAVAS, and the ESTATE OF WILLIAM HADZI SAVAS, deceased, Plaintiffs, vs. ZACHARY NEWELL KENDALL, UTAH DEPARTMENT OF TRANSPORTATION; SALT LAKE COUNTY; CITY OF WEST JORDAN, Defendants, Case No. 120905469 (THIRD DISTRICT COURT FOR SALT LAKE COUNTY, STATE OF UTAH) was filed on August 10, 2012. Plaintiffs and defendants reached an agreed upon settlement on the eve of trial.

THE CITY OF WEST JORDAN, UTAH
A Municipal Corporation

RESOLUTION NO. 16- 197

A RESOLUTION approving and adopting a litigation Settlement Agreement with the Plaintiffs in Savas v. West Jordan City resolving and disposing of pending litigation.

Whereas, the City Council has approval authority on significant agreements entered between the City and the Plaintiffs; and

Whereas, the City has reached a settlement of pending litigation with the Plaintiffs in this case;

Whereas, the City Council finds that the settlement is in the best interest of the City and its citizens;

Whereas, a written Settlement Agreement has been prepared; and

Whereas, the City Attorney endorses and recommends approval of the attached Settlement Agreement.

NOW THEREFORE, IT IS RESOLVED BY THE CITY COUNCIL OF WEST JORDAN, UTAH:

Section 1. The Settlement Agreement between Plaintiffs and the City, the form of which is attached hereto, is hereby approved.

Section 2. The Mayor is hereby authorized and directed to sign the Settlement Agreement on behalf of the City.

Section 3. This resolution shall take effect immediately.

Adopted by the City Council of West Jordan, Utah this 21th day of December, 2016.

CITY OF WEST JORDAN

ATTEST:

By: _____
Mayor Kim Rolfe

Melanie Briggs, City Recorder

Voting by the City Council

"AYE" "NAY"

Dirk Burton

Alan Anderson

Chris McConnehey

Chad Nichols

Zach Jacob

Jeff Haaga

Mayor Kim V. Rolfe

SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS

This Settlement Agreement and Release of All Claims (this "**Agreement**") is made as of this 24th day of December, 2016 (the "**Effective Date**"), by and between MARILYN SAVAS, individually and on behalf of the heirs of WILLIAM HADZI SAVAS, and the ESTATE OF WILLIAM HADZI SAVAS ("**Plaintiffs**"), on the one hand, and the CITY OF WEST JORDAN, a Utah municipal corporation (the "**City**"), on the other hand. Plaintiff and the City shall hereinafter be referred to as the "**Parties**" and each as a "**Party**."

RECITALS

A. WHEREAS, on or about August 10, 2012, Plaintiff filed a Complaint in the Third District Court in and for Salt Lake County, Utah against the City, commencing Civil Case No. 120905469 (the "**Lawsuit**").

B. WHEREAS, Plaintiff and the City wish to settle and compromise all claims and damages alleged by the parties to this Lawsuit, all pursuant to the terms and provisions of this Agreement.

AGREEMENT

Now therefore, for good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

1. Settlement Payment. Within 7 business days of this Agreement being executed by both parties, the City shall pay to Plaintiff the total sum of One Hundred Thousand and 00/100 Dollars (\$100,000.00) (the "**Settlement Amount**"). The foregoing Settlement Amount shall be paid to Plaintiff by means of a check payable to the **DEWSNUP KING OLSEN WOREL HAVAS MORTENSEN** Trust Account.
2. Release by Plaintiff. In consideration of said Settlement Funds, the sufficiency of which is hereby acknowledged, Plaintiff hereby releases and forever discharges Defendants and their respective agents, officials (whether elected or appointed), employees, contractors, and all other servants, insurers and assigns from any and all claims, demands, damages, actions, causes of action, or suits of whatever kind or nature which now exist or which may hereafter accrue, because of, arising out of, or in any way connected with accident occurring on or about August 12, 2010. The details of the claims and injuries arising out of said accident are more fully set forth in the Lawsuit.

Plaintiff understands and agrees that payment of the Settlement Funds to them resolves all claims and causes of action which now exist or which may hereafter arise against Defendant, that no other or additional sums are now or will ever be due or payable from Defendant relating to the claims and causes of action herein

released, which release of all claims against Defendant includes, but is not limited to, claims by Plaintiffs for, personal injury, pain and suffering, disability, bodily impairment, loss of other bodily function, hospital, surgical, medical, nursing, therapy and drug expenses (whether incurred now or in the future), mental or emotional distress or disorders of any kind, loss of wages and benefits, loss of earning capacity, loss of future income, attorney's fees and costs, claims based upon all theories of liability, and claims of every other kind and character whether now known or which may arise in the future.

It is understood and agreed that the foregoing enumeration of claims released is illustrative only and is not limited by the above recitation of specific claims, as it is intended that this document constitute a complete release by Plaintiff of all claims against Defendant.

3. Dismissal of Pending Litigation. Within five (5) business days following the payment set forth in Section 1 above, the Parties will cause, and hereby authorize and direct, their respective counsel to execute and file a Joint Motion and Stipulation to Dismiss with Prejudice (dismissing all claims in the Lawsuit) in a form reasonably acceptable to such counsel, and to use their reasonable efforts to request and facilitate execution by the Court of an Order of Dismissal with Prejudice, in a form reasonably acceptable to such counsel, each Party to bear its own costs and attorneys' fees.
4. No Admission of Liability. The Parties agree that this Agreement, nor its terms or provisions, nor any of the negotiations or proceedings connected with it, nor the acceptance of and performance of any obligations under this Agreement shall constitute or be construed as an admission of the truth of any allegations made by the opposing Party and/or of liability to the other Party.
5. Warranties. Each Party to this Agreement warrants and represents to the other that it has: (i) read this Agreement and understands its contents; (ii) executed this Agreement voluntarily, without coercion or duress of any kind, and upon the advice of counsel; (iii) not sold, assigned, granted, or transferred to any person, firm, or entity any interest in any claim, demand, chose in action, or cause of action covered by the terms of this Agreement, or any part hereof; (iv) had the opportunity to consult with independent legal counsel with respect to the advisability of making the settlement provided herein and with respect to the advisability of executing this Agreement; (v) made such investigation of the facts pertaining to this Agreement and of all the matters pertaining hereto as it deems necessary; (vi) not relied on any inducements, promises, or representations of the other Party, other than the terms and conditions specifically set forth in this Agreement; and (vii) authority and full capacity to execute this Agreement on behalf of the persons and entities being released by that Party, and in the case of the City, caused this Agreement to be approved pursuant to such public processes and legislative action as is required pursuant to the City's ordinances, rules and regulations.

6. Entire Agreement. This Agreement embodies the entire agreement and understanding between the Parties hereto with respect to the subject matter hereof and supersedes all prior oral, implied or written agreements and understandings relating to the subject matter hereof. No statement, representation, warranty, covenant or agreement of any kind not expressly set forth in this Agreement shall affect, or be used to interpret, change or restrict the express terms and provisions of this Agreement.
7. Modifications and Amendments. The terms and provisions of this Agreement may be modified or amended only by a written agreement executed by all Parties hereto.
8. Costs and Attorneys' Fees. The Parties shall each pay their own legal fees and costs.
9. Benefit. All statements, representations, warranties, covenants and agreements in this Agreement shall be binding on the Parties hereto and shall insure to the benefit of the respective successors and permitted assigns of each Party hereto. Nothing in this Agreement shall be construed to create any rights or obligations except among the Parties hereof.
10. Governing Law and Forum. This Agreement and the rights and obligations of the Parties hereunder shall be construed in accordance with and governed by the law of the State of Utah, without giving effect to the conflict of law principles thereof. Jurisdiction and venue shall be exclusively limited to the federal state and/or local courts located in Salt Lake County, Utah.
11. Counterparts. This Agreement may be executed in one or more counterparts, and by different Parties hereto on separate counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

The undersigned have read the foregoing Agreement, fully understand it, and agree to the terms set forth herein.

[Signatures appear on the next page.]

In witness whereof, the Parties, having full authority to do so, have signed this Agreement as of the Effective Date first written above.

Plaintiff:

By: Marilyn Savas
MARILYN SAVAS, individually and on behalf of the heirs
of WILLIAM HADZI SAVAS, and the ESTATE OF
WILLIAM HADZI SAVAS

SIGNED on the 07 day of December, 2016.

City:

City of West Jordan, a Utah
municipal corporation

By: _____
Mayor Kim. V. Rolfe

Attest: _____
Melanie S. Briggs, City Clerk

SIGNED on the 6th day of December, 2016.

APPROVED AS TO FORM:

By: David Brickey
David Brickey
City Attorney

APPROVED AS TO FORM:

DEWSNUP KING OLSEN WOREL
HAVAS MORTENSEN

By: Charles T. Conrad
Charles T. Conrad
Attorneys for Plaintiff