

COUNCIL BILL NO. 2020-102

A RESOLUTION

AUTHORIZING SETTLEMENT
(Tavion J. Jones-Premo v. City of Champaign, *et al.*)
(Case No. 19-cv-1078)

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHAMPAIGN,
ILLINOIS, as follows:

Section 1. That the settlement of the claim by Tavion J. Jones-Premo, as set forth in Case No. 19-cv-1078 is authorized in the amount set forth in the release attached to this Council Bill which is hereby approved for settlement of all issues in conjunction with the aforementioned claim.

Section 2. That the City Manager and City Attorney are hereby authorized to execute such documents and take such actions as are necessary to implement the settlement of the claim.

COUNCIL BILL NO. 2020-102

PASSED:

APPROVED: _____
Mayor

ATTEST: _____
City Clerk

APPROVED AS TO FORM:

City Attorney

SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE (“Agreement”) is made and entered into by Tavion J. Jones-Premo (“Plaintiff” or “T.J.P.”) and the City of Champaign (“City”). The above-named persons are referred to collectively as the “Parties.” The effective date of this Agreement is the later of the dates when this Agreement has been signed by Plaintiff and by a City official authorized to execute this Agreement after the City Council approves it in open session, if that occurs.

WHEREAS, Plaintiff has been substituted as the real-party-in-interest in a lawsuit originally filed by his mother on his behalf that is now captioned *Tavion Jones-Premo v. The City of Champaign, Illinois et al.*, venued in the United States District Court for the Central District of Illinois, and filed under Case No. 19-cv-1078 (“the Lawsuit”);

WHEREAS, Plaintiff is asserting claims in the Lawsuit against the City as well as the City’s police officers Timothy Atteberry, Dane Kaldahl, Arthur Miller, and Brian Rogers. Claims were previously asserted and dismissed against City police officers Jordan Hagemann and James Hobson. Accordingly, the term “Defendant Officers” is used in this Agreement to refer collectively to all the police officers mentioned in this paragraph;

WHEREAS, the Parties to this Agreement seek to resolve the Lawsuit and all of Plaintiff’s claims, causes of action and threatened litigation against the City and the Defendant Officers without further delay or expense;

NOW THEREFORE, in consideration of the covenants set forth in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **No Admission of Liability.** This Agreement is made and entered into solely for the purpose of compromising disputed claims. The City and the Defendant Officers deny liability on the claims and intend merely to avoid litigation and buy their peace. The Settlement Payment, and any other consideration given for this Agreement, are not to be construed as an admission of liability or fault of any kind on the part of the City or the Defendant Officers.

2. **Dismissal of All Claims against the Defendant Officers.** Plaintiff must dismiss all claims in the Lawsuit that were asserted against the Defendant Officers. Plaintiff must file a stipulation, and submit a proposed order, for dismissal of those claims without fees, costs, disbursements, or payment of any kind, but with leave to reinstate solely in the event that the City Council rejects this settlement. The stipulation must be filed, and the order for dismissal must be issued, before the City will execute this Agreement and before the payment of the Settlement Payment discussed below. Upon approval of the settlement by the City Council, Plaintiff agrees that the dismissal of the Defendant Officers will be converted to a dismissal with prejudice *nunc pro tunc* to the date of the initial dismissal. The Parties intend these conditions to reflect that: (a) the Settlement Payment is not being paid to compromise any claim that the

Defendant Officers engaged in conduct that makes them directly liable to Plaintiff or that makes the City vicariously liable to him and (b) the Settlement Payment is being paid to compromise only Plaintiff's remaining potential claims that may seek to hold only the City directly liable.

3. **Approval of City Council.** In order for the City Council to consider this Agreement, it must be approved, initialed, and signed by Plaintiff in advance. If the City Council does not approve this Agreement in open session, then the City will not enter into this Agreement despite Plaintiff having already approved, initialed, and signed it.

4. **Release.** Plaintiff, being of lawful age and otherwise competent, for and in consideration of the Settlement Payment discussed below, and other good and valuable consideration, does hereby for himself, and for his heirs, executors, administrators, successors, assigns and anyone who could claim rights under or through him, fully and forever release, acquit and discharge the City, its past, present and future employees (including but not limited to the Defendant Officers), agents, servants, elected officials, insurers, attorneys, representatives, successors and assigns, and all other persons, corporations, firms, associations or partnerships ("Releasees") of and from any and all claims, actions, causes of action, demands, obligations, rights of action of any kind or nature at law or in equity, damages, controversies, costs, losses, expenses, attorneys' fees and rights to any compensation, which arose or could have arisen from or relate to the facts alleged or claims made in the Lawsuit, which he owns, has or may have against the Releasees, whether known or unknown, from the beginning of time until the effective date of this Agreement. Plaintiff understands that this Agreement includes a release of any and all claims against any City employee (including but not limited to the Defendant Officers), and, although no payment may be made directly from said persons, said persons are intended third party beneficiaries of Plaintiff's release.

5. **Reliance upon Own Judgment.** Plaintiff understands that the injuries, losses or expenses he has allegedly sustained are or may be permanent, progressive and/or indefinite, and that recovery therefrom is uncertain and indefinite. In making this Agreement, Plaintiff relies wholly upon his judgment, belief and knowledge of the nature, extent, effect and duration of said injuries and liability therefore, and this Agreement is made without reliance upon any statement or representation of the Releasees, their representatives, or their employees.

6. **Settlement Payment.** In exchange for the foregoing release of the Releasees, and other good and valuable consideration, the City shall cause payment to be made in the amount of Seventy-Four Thousand, Five Hundred Dollars (\$74,500.00) in a single lump sum made payable to Tavion J. Jones-Premo and Hale & Monico LLC jointly. This amount constitutes the "Settlement Payment." The Settlement Payment shall be made within 21 days of this Agreement's effective date.

7. **Liens.** Plaintiff declares and represents that, if there are outstanding liens or rights against the Settlement Payment or any other amounts paid in consideration for this Agreement, whether statutory or by means of subrogation from an insurer, surety or other person, he has not made any assignment or transfer of any right, claim, demand, cause of action

or other matter covered by the release set forth above. Plaintiff must satisfy any such liens or rights from the Settlement Payment. Plaintiff must save and hold harmless, defend, and indemnify the Releasees and their agents and insurers of and from any and all claims, causes of action, liability, loss, costs, damages, penalties, interest, and any other expenses, including attorneys' fees, arising out of or in any way related to any claim which may hereafter be presented by anyone for any reason, including any claim of lien, as a result of the subject matter released above or any alleged failure to include any particular person or entity as a payee on the Settlement Payment.

8. **Taxes.** Plaintiff does not rely upon any representation by the City but, rather, relies wholly upon his own judgment, belief and knowledge regarding any potential tax implications of the Settlement Payment. Plaintiff acknowledges and agrees that he is responsible for making any required reports about any reportable portion of the Settlement Payment to any appropriate taxing authorities, that he has not relied upon any representations by the Releasees as to the nature or tax treatment of the settlement proceeds, and that the Releasees have paid all sums due without any deduction or withholding of any nature. Plaintiff must save and hold harmless, defend, and indemnify the Releasees and their agents and insurers of and from any and all claims, causes of action, liability, loss, costs, damages, penalties, interest, and any other expenses, including attorneys' fees, arising out of or in any way related to the failure to pay or withhold applicable taxes, if any, should there be a determination or claim declaring that the settlement proceeds are taxable or constitute income subject to taxation, in whole or in part.

9. **Attorneys' Fees and Costs.** Each of the Parties shall bear its own attorneys' fees and costs arising out of or related to the Lawsuit and execution of this Settlement Agreement.

10. **No other Action.** Plaintiff declares and represents that neither he nor any person acting on his behalf has filed, with any court, agency, or other adjudicative, administrative or arbitral entity, any lawsuit, action, or claim of any type against any other person arising out of, relating to, on account of, or in any way growing out of the incidents described in the Lawsuit.

11. **Interpretation.** This Agreement was negotiated at arm's length and entered into freely by the Parties, with the opportunity to seek the advice of their respective counsel. In the event any ambiguity exists in any provision of this Agreement, such ambiguity is not to be construed against any of the Parties by reference to any doctrine or statute calling for ambiguities to be construed against the drafter of the document.

12. **Modification, Waiver, and Termination.** No part or provision of this Agreement may be changed, modified, waived, discharged or terminated except by instrument in writing signed by the person against whom enforcement of such change, modification, waiver, discharge or termination is sought. A person's failure to seek redress for a violation, or to insist upon strict performance, of any provision of this release shall not be a waiver of that provision by that person or estop that person from asserting fully any and all of its rights under this Agreement.

13. **Cooperation and Dismissal.** The Parties shall, upon request, make, execute and deliver such documents as shall be reasonably necessary, and take such action as may be reasonably requested, to fully implement and carry out the purposes of this Agreement. Without intending to narrow the scope of this obligation, Plaintiff must, for example, upon approval and execution of this Agreement, stipulate that any remaining claims in the Lawsuit are dismissed with prejudice and without the award of fees, costs, disbursements, or other compensation.

14. **Survival.** This Agreement's provisions, including but not limited to its representations, warranties and covenants, shall survive the execution of this Agreement and the performance by the Parties of their obligations under this Agreement.

15. **Severability.** In the event that any part, subpart, or portion of this Agreement shall be deemed to be invalid or illegal, then such invalid or illegal part, subpart, or portion shall be severed from, and shall not affect the validity or legality of, the remainder of this Agreement.

16. **Controlling Law and Venue.** The Parties intend for this Agreement to be governed by the laws of the State of Illinois without regard to its choice of law provisions. The state and federal courts located in the State of Illinois, County of Champaign shall have exclusive jurisdiction in any action, suit or proceeding based on or arising out of this Agreement. Accordingly, the Parties hereby: (a) submit to the personal jurisdiction of such courts upon proper service of process and (b) waive any other requirement (whether imposed by statute, rule of court or otherwise) with respect to personal jurisdiction or venue in said courts.

17. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties and supersedes all prior and contemporaneous agreements and understandings and any and all prior correspondence, conversations, or memoranda are merged into and replaced by this Agreement. The above-stated consideration is the sole and only consideration for this Agreement, no promise, inducement or agreement not herein expressed has been made to secure this Agreement, and the terms of this Agreement are contractual and not a mere recital.

18. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same agreement. A facsimile or digital copy of the signatures on counterparts of this Agreement shall be given the same legal effect as the original ink signatures.

[The remainder of this page is intentionally blank. Signatures are on the following pages.]

Signature page to:

SETTLEMENT AGREEMENT AND RELEASE
related to *Tavion Jones-Premo v. The City of Champaign, Illinois et al.*,
U.S. Dist. Court for the Central Dist. of Ill., Case No. 19-cv-1078

THE UNDERSIGNED HAS READ THE FOREGOING AGREEMENT, AND HAS HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL OF HIS CHOOSING, AND FULLY UNDERSTANDS IT AND AGREES WITH IT.

Initialed, signed, sealed, and delivered this 24 day of August, 2020.

CAUTION: READ BEFORE SIGNING

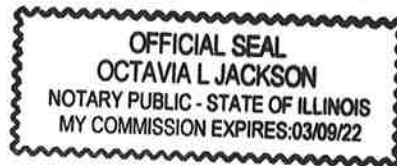
DocuSigned by:
Tavion J. Premo

Tavion J. Jones-Premo ("Plaintiff" or "T.J.P.")

STATE OF Illinois)
) SS.
COUNTY OF Cook)

On the 24th day of August, 2020, before me personally appeared the above-named person, to me known to be the person named herein and who executed the foregoing Agreement and acknowledged to me that he has read the foregoing Agreement and understands the contents thereof and that he voluntarily executed the same.

Octavia L Jackson
Notary Public



Signature page to: SETTLEMENT AGREEMENT AND RELEASE
related to *Tavion Jones-Premo v. The City of Champaign, Illinois et al.*,
U.S. Dist. Court for the Central Dist. of Ill., Case No. 19-cv-1078

THE UNDERSIGNED HAS READ THE FOREGOING AGREEMENT, AND HAS HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL OF ITS CHOOSING, FULLY UNDERSTANDS IT AND AGREES WITH IT, AND HAS THE AUTHORITY TO SIGN ON BEHALF OF THE ENTITY LISTED.

Signed and delivered this ____ day of _____, 2020.

CAUTION: READ BEFORE SIGNING

The City of Champaign ("City")

By: _____
Dorothy A. David, City Manager



REPORT TO CITY COUNCIL

FROM: Dorothy Ann David, City Manager

DATE: September 11, 2020

SUBJECT: EXPLANATION OF COUNCIL BILL NO. 2020 - 102

A. Introduction: The purpose of this Council Bill is to authorize settlement of the claim of Tavion J. Jones-Premo for \$74,500. This settlement would conclude all claims in lieu of further litigation.

B. Recommended Action: The Administration recommends approval of this Council Bill.

C. Background: This claim arises from an incident which occurred on December 28, 2018. The incident occurred during an investigation by Champaign Police of shots fired and the subsequent arrest of a person involved in the investigation. On March 15, 2019, Tavion J. Jones-Premo, a minor at the time of the incident, filed a lawsuit against the City and its officers alleging civil rights violations. If approved by the City Council, the \$74,500 settlement agreement would result in the dismissal of the claims in the lawsuit against any police officers and the City.

Typically, when a claim is filed, the City Attorney and Risk Manager and others review the claim for potential City exposure to liability. If it is clear that the City could face liability for the claim, the City Attorney and Risk Manager determine the extent of possible City exposure. Exposure is the key word in evaluating claims. Many claims could be litigated, and the City (or its employees) exonerated, however frequently the cost of litigating a claim would exceed the amount of possible settlement. Exposure also includes, as in all cases, some likelihood that the City or its employees could be found liable for damages alleged by the claimant.

After formal mediation was conducted with a Magistrate Judge, which included discussion and evaluation of the potential risks and exposure to liability if the case proceeded to trial, the City reached an agreed settlement amount in exchange for full and complete dismissal of the claims in this case.

D. Alternatives:

1. Approve the Council Bill.

2. Do not approve the Council Bill and provide other guidance to the administration.

E. Discussion of Alternatives:

Alternative 1 would authorize the City's representatives to finalize the settlement.

a. Advantages

- Concludes the claim immediately, saving claimants and City personnel from the rigors of more litigation.
- Removes the uncertainty of the outcome of a trial and appeal.
- Saves both sides the time and expenses of further litigation, including motion practice, hearings, trial, and possible appeal.
- Recognizes the interest of all parties in the settlement.

b. Disadvantages

- Expenditure of funds by the City.
- May be perceived by some persons as unwarranted and by others as too small a settlement.

Alternative 2 would not approve the Council Bill.

a. Advantages

- Could reduce the total expenditure by the City if the outcome resulted in less damages against the City than anticipated.

b. Disadvantages

- Additional expenses would reduce the value of a negotiated outcome.
- If a trial results in a higher verdict, total costs could also be increased by additional litigation expenses.

F. Community Input. No community input was requested on the settlement, though the public will have an opportunity to comment at the Council meeting when this Council Bill is considered.

G. Budget Impact: The settlement in the amount of \$74,500 is available from the Retained Risk Fund for payment of the settlement of this matter.

H. Staffing Impact: Outside legal counsel provided litigation defense services. An Assistant City Attorney, the City Attorney, and the Risk Manager spent 20 hours on lawsuit intake and

communicating with outside legal counsel regarding litigation status, strategy, and settlement negotiations. The staffing impact is within the allotted staffing resources.

Prepared by:

Frederick C. Stavins
City Attorney