

RESOLUTION 2021-034

AUTHORIZING THE APPROVAL OF A RELEASE AND SETTLEMENT AGREEMENT IN THE ELONTE MCDOWELL LAWSUIT.

WHEREAS, the City of DeKalb (the “City”) is a home rule unit of local government which may exercise any power and perform any function pertaining to its government and affairs pursuant to Article VII, Section 6, of the Illinois Constitution of 1970; and

WHEREAS, the City and its current and former police officers were sued as defendants in the lawsuit entitled *Elonte McDowell v. City of DeKalb, et al.*, Case No. 20-cv-50316, which is currently pending in the United States District Court for the Northern District of Illinois (the “Lawsuit”); and

WHEREAS, the City’s insurer approved the terms of the Release and Settlement Agreement to resolve the Lawsuit in the form attached hereto and incorporated herein as Exhibit A (the “Settlement Agreement”); and

WHEREAS, the City’s corporate authorities find that approving the Settlement Agreement is in the City’s best interests and promotes the public health, safety and welfare.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF DEKALB, ILLINOIS:

SECTION 1: The City’s corporate authorities authorize, approve, and ratify the Settlement Agreement including, but not limited to, the expenditure of the settlement payment provided in paragraph 6 of the Settlement Agreement, the City Manager’s execution of the Settlement Agreement, and all other acts performed by the City’s attorneys and staff to effectuate the Settlement Agreement.

SECTION 2: This Resolution and each of its terms shall be the effective legislative act of a home rule municipality without regard to whether such resolution should (a) contain terms contrary to the provisions of current or subsequent non-preemptive state law, or (b) legislate in a manner or regarding a matter not delegated to municipalities by state law. It is the intent of the City’s corporate authorities that to the extent that the terms of this Resolution should be inconsistent with any non-preemptive state law, that this Resolution shall supersede state law in that regard within its jurisdiction.

SECTION 3: This resolution shall be in full force and effect from and after its passage and approval as provided by law.

PASSED BY THE CITY COUNCIL of the City of DeKalb, Illinois, at a Regular meeting thereof held on the ____ day of _____ 2021 and approved by me as Mayor on the same day.

ATTEST:

JERRY SMITH, Mayor

EXHIBIT A
(Elonte McDowell Settlement Agreement)

RELEASE AND SETTLEMENT AGREEMENT

This **SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS** (hereinafter "Release" or "Agreement") is made and entered into by Elonte McDowell ("Plaintiff") and the City of DeKalb, Jeffrey Weese, Geoff Guzinski, Danielle Sorenson, and Jordan Poulos (collectively, "Defendants").

Recitals

Whereas, Plaintiff and Defendants (hereinafter collectively the "Parties" and each a "Party" or "party" hereunder) desire to settle fully and finally any and all claims, or potential claims, against Defendants arising out of or relating in any way to the subject matter of the pending litigation known as *Elonte McDowell v. City of DeKalb*, et al., case number 20-cv-50316, in the United States District Court for the Northern District of Illinois (the "Lawsuit" or the "Action").

Whereas, the Parties, having had the advice of their respective counsel, have determined that it is in their individual and mutual best interests to settle and compromise Plaintiff's claims or claims that could have been brought, on the terms and conditions recited herein this Release, without any admission of fault, liability or wrongdoing on behalf of any of the Defendants or any of the parties in the Action.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the Parties expressly agree as follows:

Incorporation of Recitals

The recitals above are incorporated herein by reference and are binding upon the Parties to this Agreement.

Release

1. Dismissal of Individual Defendants. The parties agree that a motion to dismiss, with prejudice, Jeffrey Weese, Geoff Guzinski, Danielle Sorenson, and Jordan Poulos (collectively, the "Individual Defendants") shall be filed within seven (7) days following the Parties' execution of this Release and that said motion to dismiss will specify that each party is to bear its own respective costs and attorneys' fees. The parties agree that, as an exhibit to the motion, they will submit to the court a proposed court order providing a date when the dismissal, with prejudice, of the individual defendant will occur, and also, providing a date when the subsequent dismissal, with prejudice, of the City of DeKalb (the "City") will occur.

2. Dismissal of Lawsuit. Plaintiff agrees to dismiss the Lawsuit against the City, with prejudice, with each Party to bear its own costs and attorneys' fees, within seven (7) days after receiving the payment described in Paragraph 6 of this Agreement.

3. Release of Claims by Plaintiff. In exchange for the consideration set forth herein, Plaintiff, on behalf of his respective heirs, representatives and assigns, agrees to release, waive and forever discharge all current and former City Defendants of the Lawsuit ("Defendants"), including the City, Jeffrey Weese, Geoff Guzinski, Danielle Sorenson, and Jordan Poulos, Defendants' officers, agents, former and current employees, attorneys, third-party administrators, indemnitees, successors, beneficiaries, representatives, special representatives, heirs, executors, trustees, distributees, and any primary and excess insurers of the Defendants, Brit Insurance, Brit Global Specialty USA, and CCSMI (collectively "Releasees") from any all claims, liabilities, actions, causes, rights, costs, loss of services, expenses, compensation, debts, sums of money, covenants, contracts, agreements, promises, damages, controversies, judgments, lawsuits and demands whatsoever in law or in equity, known or unknown, which Plaintiff has, has had, or may have had against the Releasees which arose or arise out of or relate in any way to the events, allegations, or subject matter of the Lawsuit, including, but not limited to, an incident involving Defendants' alleged encounters with Plaintiff August 24, 2019; provided, however, the Parties agree that they are not releasing any claims for breaches of this Agreement or claims unrelated to the prosecution of this Lawsuit.

Plaintiff further acknowledges that this Release covers claims and causes of action for any form of damages, whether compensatory, punitive, statutory, or otherwise, and includes claims and causes of action for all forms of costs, fees (including attorneys' fees pursuant to 42 U.S.C. § 1988 or any other fee-shifting statute), or expenses, which have accrued prior to the date of the execution of this Release. Plaintiff also acknowledges that this Release covers and bars any and all potential state or federal claims, causes of action, or legal theories, whether brought pursuant to statute or common law, which have been brought or which could have been brought, regardless of whether Plaintiff discovers additional facts or legal theories after the execution of this Release.

It is further understood and agreed that Agreement and the settlement is the compromise of disputed claims, and that this Agreement, settlement, and the payment made pursuant thereto are not to be construed as an admission of liability on the part of Defendants, Releasees, or Party hereinabove referenced to be released, and that Defendants deny any and all liability with respect to the allegations in the Lawsuit and intend merely to avoid the cost of further litigation in this matter.

Plaintiff understands that any physical, economic, emotional, property or other injury or damage sustained by him as a result of the allegations or conduct in the Action are or may be permanent and/or progressive in nature and that recovery therefrom may be uncertain and that there may be unknown or undetermined injuries, losses, and other expenses or damages resulting from the allegations in the Action, and that in executing this Release it is understood and agreed that this Release is a final release and is intended to include all such undetermined or future injuries, losses, and other expenses or damages.

4. Release of Claims by Defendants. Jeffrey Weese, Geoff Guzinski, Danielle Sorenson, and Jordan Poulos, on behalf of their respective heirs, representatives and assigns, agree to release, waive and forever discharge Plaintiff from any malicious prosecution claims, liabilities, actions, causes, rights, costs, loss of services, expenses, compensation, debts, sums of money, covenants, contracts, agreements, promises, damages, controversies, judgments, lawsuits and demands, which arose or arise out of or relate in any way to Plaintiff's prosecution of the Lawsuit; provided, however, that the Parties agree that they are not releasing any claims for breaches of this Agreement or claims unrelated to the prosecution of this Lawsuit.

5. Representations and Warranties. In agreeing to enter into this Release, Plaintiff expressly represents and warrants that he has full authority to execute this Release. Plaintiff warrants he has made no assignment of any of these rights to anyone, including any family member of his or other persons who may make a claim against Defendants, Releasees, or their agents and employees for monies spent on their behalf for damages they allegedly suffered in connection with this incident.

6. Consideration and Payment. In consideration for the agreements and releases set forth herein, the City shall tender to Plaintiff a total sum of Two Hundred and Eighty-Five Thousand Dollars and No Cents (\$285,000.00). Such amount shall be made payable to "Elonte McDowell and Jeffrey Law Office, LLC". The City shall tender the payment to Plaintiff's attorneys, at which time payment will be deemed received by Plaintiff, upon Plaintiff's counsel's acknowledgement of receipt and said funds being successfully deposited into Plaintiff's counsel's client trust account, and the City's obligation to pay under this Agreement shall be considered satisfied; provided, however, that Plaintiff's counsel shall not disburse or release said funds until the entry of the dismissal orders and good faith order provided for pursuant to this Agreement.

The payment identified this paragraph is paid for and in consideration of: (a) the dismissal, with prejudice, of all counts and claims presented by Plaintiff in the Action against Defendants; and (b) all other terms of this Agreement.

Plaintiff further understands and agrees that the receipt of the Consideration and Payment is conditioned upon the Court in this Lawsuit entering an Order (the "Good Faith Order") finding that this Release and the settlement described herein is made in good faith pursuant to the Joint Tortfeasors Contribution Act, 740 ILCS 10/.01, *et seq.* The Payment will be made within a reasonable period of time of the entry of the Good Faith Order, but on or before April 28, 2021.

7. No Admission to Any Claim. It is further understood and agreed that this settlement is the compromise of a disputed claim, and that this settlement and the payment made pursuant thereto are not to be construed as an admission of liability on the part of the Defendants, Releasees or any of the parties to be released, and that Defendants deny each and every allegation of wrongdoing as stated in the in each and all of Plaintiff's complaints and further continue to deny any and all liability with respect to the allegations in Plaintiff's complaint and intend merely to avoid further litigation in this matter. Furthermore, none of the terms of this Agreement may be offered or received in evidence or in any way referred to in any civil, criminal or administrative action or proceeding other than proceedings that may be necessary to consummate or enforce this Agreement.

8. Entire Agreement. This Release constitutes the final written expression of all terms of this Agreement and is a complete and exclusive statement of those terms; and except as provided in this paragraph, all other representations and agreements are merged into this Release. No part of this Release may be modified without an agreement in writing signed by all Parties.

9. Severability. The provisions of this Agreement shall be deemed severable, and any invalidity or unenforceability of any one or more of its provisions shall not affect the validity or enforceability of the other provisions herein.

10. Indemnification. Plaintiff acknowledges that no representation has been made by the City or Defendants as to the appropriate tax treatment of any payments made to Plaintiff or their attorneys, pursuant to this Release. Further, Plaintiff agrees that he shall be solely responsible for, and promise and agree to pay, any income or other taxes, interest or penalties owed with respect to the payments referred to in this Release, and will indemnify and hold harmless Defendants or any Releasees from and against any interest, penalties or taxes as a result of Plaintiff's failure to report and pay any taxes due on any of the payments.

While Plaintiff represents no liens exist, Plaintiff agrees to indemnify and hold harmless Defendants, and their counsel, from any and all physician, health care provider or hospital liens, private or public insurer liens, including, but not limited to, Medicaid, Medicare, or other federal or state agency liens, private or public contractual or legislative subrogation rights, which might have been or will be incurred as a result

of any past or future medical care and treatment, bills or expenses or rights of reimbursements arising out of this incident as described herein this Release.

The parties have considered Medicare's interests in this settlement and have determined that an allocation for Medicare covered expenses, including an allocation for future Medicare covered expenses, is not required. While Plaintiff represents that no payments have been made to them or on their behalf by Centers for Medicare and Medicaid Services ("CMS"), Plaintiff agrees that no part of Consideration and Payment in paragraph 6 is subject any and right of reimbursement by CMS. Plaintiff also agrees to indemnify and hold harmless Defendants, as previously identified above, without limitation, in the event that any action to recover or recoup Medicare or Medicaid benefits, past, future, or conditional payments, is brought on behalf of the Centers for Medicare and Medicaid Services ("CMS"), including any action regarding set-asides. Plaintiff also agrees that the Plaintiff shall separately pay CMS whatever amounts may be due and owing to CMS.

11. Non-Publicity and Neutral Statement Regarding Litigation and Settlement.

The parties agree that should either of them speak publicly regarding the Agreement, they will provide the following information:

The Lawsuit that was filed in this matter (McDowell v. City of DeKalb et al.) involving the City and its police officers has been resolved by settlement. The parties reached a mutually agreeable resolution and agreed to not discuss the case publicly.

This paragraph does not preclude the Parties from posting information on social media or websites that was published or made public by media outlets concerning the Lawsuit and/or resolution of the Action.

The Parties acknowledge that information relating to this Lawsuit and settlement are and will be available to the public (*via* the Federal District Court's public records and pursuant to the Illinois Open Meetings Act and FOIA).

The Parties agree that, should any party contend that another party has breached or violated this paragraph, prior to seeking any judicial relief related to the alleged breach or violation, said party will make a reasonable effort to confer, concerning the matter in dispute, with the other party and amicably resolve said dispute.

12. Successors and Assigns. This Agreement and the terms, covenants, conditions, provisions, obligations, undertakings, rights and benefits hereto shall inure to the benefit of the Parties, and their respective agents, heirs, executors, administrators, representatives, employees, successors and assigns.

13. Attorneys' Fees and Costs. The payment herein made to Plaintiff pursuant to this Agreement is in full and final settlement and satisfaction of all claims against the Defendants, expressly including any and all of Plaintiff's attorneys' fees and costs associated with this Lawsuit. This payment fully satisfies any obligation or lien that Defendants have or may have to Antonio L. Jeffrey, Jeffrey Law Office, LLC or any attorney employed by or associated with said law firm or that may have previously represented, or currently represents, Plaintiff, or currently represents in connection with this Action, for attorneys' fees and costs. The Parties agree that each Party shall bear their respective and own costs in bringing or defending the Action, including any costs associated with experts and attorneys.

14. Choice of Law. The Parties agree that this Agreement shall be governed by and construed and interpreted according to the laws of the State of Illinois.

15. Execution. This Agreement may be executed in counterparts, all of which, when taken together, will constitute one agreement with the same force and effect as if all signatures have been entered on one document. The Parties agree that this Agreement may be executed with an electronic signature and an electronic signature shall have the same force and effect as written signature.

16. Forum. Should any dispute arise regarding any aspect or clause of this Release, the parties agree that the United States District Court for the Northern District of Illinois (the original Forum for the underlying lawsuit) shall be the Forum for litigating said dispute.

WHEREAS, the Parties, by execution of this Agreement, represents that they have read the entire document before affixing their signature thereto, that they had an opportunity to consult their attorneys prior to the execution thereof, that they fully understand the terms and conditions of this Release and is voluntarily and freely executing this Release in consideration of the mutual covenants and promises made therein, and that no additional promises, consideration, or payment has been promised for executing and signing this Release.

(This Space Is Intentionally Omitted)

EXECUTED:


Elonte McDowell (Apr 9, 2021 12:13 CDT)
Elonte McDowell, Plaintiff

Apr 9, 2021
Date

City of DeKalb

By: Bill Nicklas, City Manager

Date

/s/ Jeffrey Weese (Signed with Consent)
Jeffrey Weese

April 12, 2021
Date

/s/ Geoff Guzinski (Signed with Consent)
Geoff Guzinski

April 12, 2021
Date

/s/ Danielle Sorenson (Signed with Consent)
Danielle Sorenson

April 12, 2021
Date

/s/ Jordan Poulos (Signed with Consent)
Jordan Poulos

April 12, 2021
Date