

ORDINANCE No.

*Pay claim of the Estate of James Chasse. (Ordinance)

The City of Portland ordains:

Section 1. The Council finds:

- 1. The Estate of James Chasse, through his attorney, Tom Steenson, has filed a wrongful death lawsuit against the City for damages suffered in an incident occurring on September 17, 2006. In the lawsuit, the Estate asserts a claim for fatal injuries caused by the Portland Police Bureau.
- 2. The claim has been investigated by the City Attorney and Risk Management Services. The investigation indicates there is risk and the City may be found liable. Therefore, in order to avoid the risk of an adverse jury award, we feel it is prudent to compromise the lawsuit at this time.
- 3. Risk Management Services recommends the lawsuit be compromised for the total sum of \$766,667, subject to the plaintiffs providing the City with a release in a form to be approved by the City Attorney.

NOW, THEREFORE, the Council directs:

- a. The Mayor and the Auditor are hereby authorized to draw and deliver a check in the amount of \$766,667 made payable to the Estate of James Chasse and his attorney Tom Steenson.
- b. Risk Management Services will execute a payment authorization in the amount set forth in sub-paragraph (a) above.

Section 2. The Council declares that an emergency exists in order to avoid undue and costly delay in settling this lawsuit; therefore, this Ordinance shall be in full force and effect from and after its passage by the Council.

Passed by the Council:

Mayor Sam Adams
Prepared by: Mark Stairiker
Date Prepared: May 25, 2010

LaVonne Griffin-Valade
Auditor of the City of Portland
By

Deputy

**SETTLEMENT AND RELEASE AGREEMENT
("AGREEMENT")**

PARTIES

Plaintiffs:

James P. Chasse
Linda Gerber
Mark Chasse, Individually and in His Capacity as Personal Representative
of the Estate of James P. Chasse, Jr., (collectively "Chasse")
c/o Tom Steenson, Esq.
Steenson Schumann, Tewksbury, Creighton and Rose, P.C.
500 Yamhill Plaza Building
815 SW Second Ave.
Portland, OR 97204

Defendants:

City of Portland
Christopher Humphreys
Kyle Nice
Roseanne Sizer
Tom Potter
Metropolitan Transportation District of Oregon (Collectively "the City")
c/o James G. Rice
Office of the Portland City Attorney
1221 SW 4th Avenue, Suite 430
Portland, OR 97204

Insurer:

The Insurance Company of the State of Pennsylvania (hereinafter "the Insurer")

RECITALS

- A. Chasse and the City are parties to a lawsuit now pending in the United States District Court for the District of Oregon: *Chasse, et al v. Humphreys, et al*, Case No. 07-0189-KI ("the Lawsuit").
- B. Against the City and other defendants not parties to this Agreement, Chasse alleges a number of violations of the United States Constitution, violations of federal and state statutes, and state law torts, including the wrongful death of James P. Chasse, Jr.
- C. The City has asserted a number of affirmative defenses, including qualified immunity, and denies any wrongdoing or liability of any nature whatsoever with respect to the claims, demands and charges asserted by Chasse in the Lawsuit. The City

further contends that its actions were at all times reasonable and lawful under both federal and state law.

D. The Insurance Company of the State of Pennsylvania is the Insurer of the Defendant, City of Portland, and as such, would be obligated to pay any judgment against the Defendant covered by its policies.

E. The parties to this Agreement now wish to resolve their dispute pursuant to the following terms and conditions:

AGREEMENT

It is therefore agreed:

1. Payment: The City, and the Insurer, shall pay Chasse the total amount of \$1,600,000.00 in accordance with the following provisions set forth in paragraphs 1(a) thru 1(e) below:

- a. The sum of \$1,043,000.00 cash shall be paid for the Plaintiffs, Plaintiffs' attorney fees, case expenses and liens. City of Portland will contribute \$766,666.81 no later than July 30, 2010, and the Insurer will contribute \$276,333.19 no later than August 9, 2010, to be sent to Attorney Tom Steenson, Esq. at the address provided above.

All sums set forth herein constitute damages on account of personal, physical injuries or sickness, within the meaning of Section 104(a)(2) of the Internal Revenue Code of 1986, as amended.

Payment of the two sums in this paragraph shall be by check made payable to Attorney Tom M. Steenson and the Estate of James P. Chasse, Jr.

- b. The remainder of the \$1,600,000.00 settlement, or \$557,000.00, will be paid as follows (the individuals listed in 1(c) – 1(f) collectively referred to as "Payees"):
- c. The Periodic Payments described below:

Payee Tom M. Steenson: \$2,833.50 to be paid monthly, beginning January 15, 2011, guaranteed eight (8) years. Final payment to be paid on December 15, 2018.

The above periodic payments have a cost of \$250,000.00.

- d. The Periodic Payments described below:

Payee Thomas Schneiger: \$2,552.19 to be paid monthly,

beginning January 15, 2011, guaranteed seven (7) years. Final payment to be paid on December 15, 2017.

The above periodic payments have a cost of \$202,000.00.

- e. The Periodic Payments described below:

Payee Michael Schumann: \$785.47 to be paid monthly, beginning September 15, 2010, guaranteed seven (7) years and three (3) months. Final payment to be paid on November 15, 2017.

The above periodic payments have a cost of \$65,000.00.

- f. The Periodic Payments described below:

Payee Zan Tewksbury: \$2,012.75 to be paid monthly, beginning January 1, 2011, guaranteed one (1) year and seven (7) months. Final payment to be paid on July 1, 2012.

The above periodic payments have a cost of \$40,000.00.

(The cost of the periodic payments are being disclosed as a condition of settlement.)

- g. The attorney and the law firm hereby waive and disclaim any and all ownership interest or liens that they may have in the settlement proceeds by reason of any applicable state statute, common law decision or ruling. By their signatures, Plaintiffs and the attorneys and the law firm, acknowledge that the attorney fee benefit payments are being made at the direction of the Plaintiffs and for the convenience of the Plaintiffs.

The Plaintiffs solely for their convenience directs the above payment streams to be paid to Attorney Tom M. Steenson, Attorney Thomas Schneider, Attorney Michael Schumann and Attorney Zan Tewksbury. Plaintiffs consent to the above-mentioned portion of the settlement obligation assigned to the assignment company, MetLife Tower Resources Group, Inc. The assignment company will purchase a MetLife annuity to fund this obligation in an assignment intended to meet Section 130 of the IRC.

2. **Right to Purchase an Annuity:** For its own convenience, the Insurer or its Assignee may fund its obligation as described more specifically in 1(c), 1(d), 1(e) and 1(f) above through the purchase of four annuity policies from METROPOLITAN LIFE INSURANCE COMPANY. METROPOLITAN LIFE INSURANCE COMPANY, at the direction of the Insurer or its Assignee, shall mail all monthly and deferred payments directly to the Payees. The Payees shall be responsible for maintaining a current mailing address to the Insurer or its Assignee, and for maintaining any changes in mailing address to the Insurer or its Assignee in a reasonable and prompt manner. Any delay in payment due to Attorneys' failure to so inform the Assignee will result in no penalty to the City or the

Insurer for any reason.

3. **Payee's Beneficiary:** Any payments to be made after the death of any Payee pursuant to the terms of the Settlement Agreement shall be made to such person or entity as shall be designated in writing by the Payees to the Insurer or the Insurer's Assignee. If no person or entity is so designated by the Payees, or if the person designated is not living at the time of the Payee's death, such payments shall be made to the Estate of the Payee. No such designation, nor any revocation thereof, shall be effective unless it is in writing and delivered to the Insurer or the Insurer's Assignee. The designation must be in a form acceptable to the Insurer or the Insurer's Assignee before such payments are made.
4. **Payee's Right to Payments:** Plaintiffs and Payees acknowledge that the Periodic Payments cannot be accelerated, deferred, increased or decreased by the Plaintiffs or any Payee; nor shall the Plaintiffs or any Payee have the power to sell, mortgage, encumber or anticipate the Periodic Payments, or any part thereof, by assignment or otherwise.
5. **Nonassignment by Plaintiff:** The periodic payments to be received by Payees are not subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge or encumbrance by Plaintiffs.
6. **Consent to Qualified Assignment:** Plaintiffs and Payees acknowledge and agree that the City and/or the Insurer may make a "qualified assignment" within the meaning of Section 130(c) of the Internal Revenue Code of 1986, as amended, of the City's and/or the Insurer's liability to make the Periodic Payments set forth in 1(c), 1(d), 1(e) and 1(f) above to METLIFE TOWER RESOURCES GROUP, INC. (the "Assignee"). The Assignee's obligation for payment of the Periodic Payments shall be no greater than that of the City and/or the Insurer (whether by judgment or agreement) immediately preceding the assignment of the Periodic Payments obligation. Any such assignment, if made, shall be accepted by the Plaintiffs and Payees without right of rejection and shall completely release and discharge the City and the Insurer from the Periodic Payments obligation assigned to the Assignee. The Plaintiffs and Attorneys recognize that, in the event of such an assignment, the Assignee shall be the sole obligor with respect to the Periodic Payments obligation, and that all other releases with respect to the Periodic Payments obligation that pertain to the liability of the City and the Insurer shall thereupon become final, irrevocable and absolute.
7. **Discharge of Obligation:** The obligation to make periodic payments shall be discharged upon the mailing on or before the due date of a valid check in the amount of such payment to the address designated by the party to whom the payment is required to be made under this Agreement.
8. **Agreement to Release Certain Documents Under Protective Order:** The City has agreed to modify to Amended Protective Order in the case ("the APO") to allow for the public release of certain documents that were covered by the APO. The City will file a stipulated order for the modification of the APO to allow for that public release of certain documents within two (2) business days of the City Commissioners' approval of the

settlement and will make the documents available for Chasse to release to the public within two (2) business days of the Court's order modifying the APO.

9. **Construction by State Law:** This Agreement is entered into in the State of Oregon and shall be construed and interpreted in accordance with its laws.
10. **Dismissal of Claims:** Upon execution of this Agreement and receipt of payment as outlined in Paragraph 1(a) above, Chasse and the City through their respective counsel of record will file with the appropriate court a stipulated dismissal of the claims against the City with prejudice and without costs or attorney fees to either party to this Agreement.
11. **Mutual Release of Claims:** Chasse agrees to release and forever discharge the City, its insurers, officers, employees, agents not presently a party to the Lawsuit, directors, and commissioners, from any and all claims, demands, damages, actions, or causes of action of any nature whatsoever that Chasse now has or claims, whether known or unknown, related to or arising from the Lawsuit or events described in the Lawsuit to the fullest extent permitted by law except, however, the terms and conditions contained in this Agreement.

The City agrees to release and forever discharge Chasse from any and all claims, demand, damages, actions, or causes of action of any nature whatsoever that the City now has or claims, whether known or unknown, related to or arising from the Lawsuit or events described in the Lawsuit, to the fullest extent permitted by law except, however, the terms and conditions contained in this Agreement.

12. **Denial of Liability:** The City denies any liability to Chasse, this being the settlement of disputed claims. This Agreement does not constitute evidence of, or any admission of, any liability, omission or wrongdoing of any kind, and it shall not be offered or received into evidence or otherwise filed or lodged in any proceeding against any party to this Agreement except as may be necessary to prove and enforce its terms.
13. **Integration:** This Agreement constitutes the entire agreement of the parties hereto and all prior representations and discussions are merged and incorporated herein. Any amendment to this Agreement must be in writing and approved and signed by all parties hereto.
14. **Approval:** This Agreement shall not be deemed valid until it is duly ratified and approved by the City Council of the City of Portland, Oregon as required under the City's Charter.
15. **Representations:** Each party hereby declares that he/she/it have completely read, fully understand, and voluntarily accept the terms and conditions contained herein for the purpose of making a full and final compromise, adjustment and settlement of any and all claims, disputed or otherwise, except for the terms and conditions contained herein.

IN WITNESS WHEREOF, the parties have signed and executed this document as indicated below:

Tom Steenson, OSB No. 743131
Of Attorneys for Plaintiffs
Date:

Mark Chasse, Plaintiff
Individually, as Personal Representative
of the Estate of James P. Chasse, Jr., and as
Conservator for Linda Gerber
Date:

Linda Gerber, Plaintiff
Date:

James P. Chasse, Plaintiff
Date:

Mayor Sam Adams
City of Portland, Defendant
Date:

Anne Bremner, WSB No. 13269
Of Attorneys for Defendants
Humphreys and Nice
Date:

Christopher Humphreys, Defendant
Date:

Kyle Nice, Defendant
Date:

Tom Potter, Defendant
Date:

Rosanne Sizer, Defendant
Date:

The Insurance Company of the State of
Pennsylvania

By: _____
Date:



CITY OF PORTLAND, OREGON

Office of Management and Finance Risk Management Services

Sam Adams, Mayor
Kate Wood, Risk Manager
1120 S.W. Fifth Avenue, Room 709 • Portland, OR 97204-1912
Phone: 503-823-5101 • Fax: 503-823-6120
www.portlandonline.com

DATE: July 8, 2010

TO: Mayor Sam Adams

FROM: Mark M. Stairiker
503-823-5263

FOR MAYOR'S OFFICE USE ONLY

Reviewed by Bureau Liaison _____

RE: *Pay Claim of James Chasse Estate (emergency)

1. **INTENDED THURSDAY FILING DATE:** July 21, 2010
2. **REQUESTED COUNCIL AGENDA DATE:** July 15, 2010
3. **CONTACT NAME & NUMBER:** Mark Stairiker, 503-823-5263
4. **PLACE ON:** ___ CONSENT REGULAR
5. **BUDGET IMPACT STATEMENT ATTACHED:** Y ___ N ___ N/A
6. **(3) ORIGINAL COPIES OF CONTRACTS APPROVED AS TO FORM BY CITY ATTORNEY ATTACHED:** ___ Yes ___ No N/A

7. BACKGROUND/ANALYSIS

On September 17, 2006, James P. Chasse Jr. died while in the custody of the Portland Police. Police officers in northwest Portland had chased Chasse down, believing he had urinated in the street. Officers knocked him to the ground and struggled to handcuff him. He was cleared by AMR paramedics at the scene, as his vital signs were all within the normal range. Staff at MCDC declined to accept him into the jail because jail nurses observed a brief seizure like activity and his generally poor physical condition. He died while Portland Police officers were then transporting him to the hospital.

A wrongful death lawsuit was brought by Mr. Chasse's estate against the City, the police officers involved, and other defendants. Attorney Tom Steenson represented the Chasse estate, and the City was defended by attorney James Rice of the City Attorney's Office. Through a mediation conducted by U.S. District Court Judge Ann Aiken in May 2010, the parties were eventually able to reach agreement on a settlement of the lawsuit. This ordinance is for City Council approval of the settlement.

8. FINANCIAL IMPACT

Approval of the settlement would result in a payment of \$766,667 from the liability fund and a second payment will be made by the insurance carrier in the amount of \$833,333.89.

9. RECOMMENDATION/ACTION REQUESTED

Submit the attached Ordinance for approval by City Council as an emergency ordinance.