

## REQUEST FOR COUNCIL ACTION

**SUBJECT:** A Settlement Agreement and Release of All Claims between the City and Thomas Glasser and Ruth Glasser, as heirs of Joseph Glasser, and Christopher Glasser as heir and personal representative of the state of Joseph Glasser; and Dylan Tice and Annie Tice (through their lawfully appointed Conservator, Phillip B. Tice, Jr.) as heirs of Kelly Frye-Glasser, a.k.a. Kelly Tice Glasser a.k.a. Kelly Tice-Glasser. (hereinafter “the CLAIMANTS”)

**SUMMARY:** The attached Settlement Agreement and Release of All Claims will settle all existing claims and judgments that resulted from acts and circumstances surrounding the death(s) of Joseph Glasser and Kelly Frye-Glasser that allegedly occurred on or about August 1, 2010 on the Jordan River.

**FISCAL** **\$60,000.00.**

At the direction of the council, an offer to settle all claims and judgements against the City was made in the amount of \$60,000.00. The City received the attached Settlement Agreement and Release of All Claims signed by the CLAIMANTS on March 31, 2015.

**STAFF RECOMMENDATION:**

Staff recommends adoption of the attached resolution authorizing the execution by the Mayor of the Settlement Agreement and Release of All Claims between the City and the CLAIMANTS.

**MOTION RECOMMENDED:**

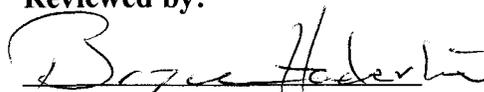
“I move to adopt Resolution No. 15-72, authorizing the mayor to sign the Settlement Agreement and Release of All Claims between the City and the CLAIMANTS.

**Prepared by:**



Stuart E. Williams  
Deputy City Attorney

**Reviewed by:**



Bryce Haderlie  
Interim City Manager

**DISCUSSION:**

This settlement will resolve the outstanding judgement currently in place against the City in the amount of \$123,369.65, plus accruing interest and costs that was the result of a jury trial verdict in July, 2014. This settlement will also conclude the pending appeal of the jury verdict and the cross appeal arguments filed by plaintiff, and all other related matters concerning the August 1, 2012 kayaking accident that occurred on the Jordan River.

**THE CITY OF WEST JORDAN, UTAH**

A Municipal Corporation

RESOLUTION NO. 15-72

A RESOLUTION AUTHORIZING THE EXECUTION BY THE MAYOR  
OF THE AGREEMENT BETWEEN  
THE CITY OF WEST JORDAN AND THE CLAIMANTS

Whereas, the City Council has reviewed and considered the attached Settlement Agreement and Release of All Claims between the City and the CLAIMANTS; and

Whereas, the City Council has determined the Settlement Agreement and Release of All Claims between the City and the CLAIMANTS to be in the best interest of the City; and

Whereas, the City Council of the City of West Jordan desires that a Settlement Agreement and Release of All Claims between the City and the CLAIMANTS be executed by the Mayor; and

Whereas, the Mayor is authorized to execute agreements.

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

Section 1. The Mayor is authorized and directed to sign the Settlement Agreement and Release of All Claims between the City and the CLAIMANTS, attached hereto.

Section 2. This resolution shall take effect immediately.

Adopted by the City Council of West Jordan, Utah, this 8th day of April, 2015.

CITY OF WEST JORDAN

By:

\_\_\_\_\_  
Mayor Kim V. Rolfe

ATTEST:

\_\_\_\_\_  
MELANIE BRIGGS, City Clerk

**Voting by the City Council**

**"AYE"**

**"NAY"**

**Jeff Haaga**

\_\_\_\_\_

\_\_\_\_\_

**Judy Hansen**

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**Chris McConnehey**

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**Chad Nichols**

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\_\_\_\_\_

**Ben Southworth**

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**Sophie Rice**

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\_\_\_\_\_

**Mayor Kim V. Rolfe**

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## SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS

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1. This Release is made by certain parties hereinafter identified, with regard to any and all existing or possible actions, causes of action, claims, demands, damages, costs, fees, and expenses of any kind, on account of or in any way arising from or related to violations of civil rights, personal physical injuries, mental injuries, death, disability, property damage or other injuries or damages of any kind, resulting from and however related to the OCCURANCE as set forth and defined herein.
2. The CLAIMANTS, as defined hereinafter, desire to make this Release, in order to provide for certain payments in full settlement and discharge of all claims which are or might have been the subject of the injuries and claims made by CLAIMANTS against the RELEASED PARTIES, as defined hereinafter, and upon the terms and conditions set forth herein. All parties hereto expressly state and agree that the resolution of this matter shall be in no way construed as an admission of liability. The RELEASED PARTIES expressly deny liability. Instead, CLAIMANTS expressly agree that the resolution of this matter as set forth in this Release represents an efficient resolution to the related claims and disputes.

### DEFINITIONS:

3. "CLAIMANTS" means: THOMAS GLASSER and RUTH GLASSER, as heirs of Joseph Glasser, and CHRISTOPHER GLASSER as heir and personal representative of the estate of Joseph Glasser; and DYLAN TICE and ANNIE TICE (through her lawfully appointed Conservator, PHILLIP B. TICE, JR.) as heirs of Kelly Frye-Glasser, a.k.a Kelly Tice-Glasser, and DYLAN TICE, as personal representative of the estate of Kelly Frye-Glasser a.k.a. Kelly Tice-Glasser, as well as any similarly named individuals, including: their heirs, administrators; personal representatives; past, present, and future officers; directors, and stockholders. Attorneys, agents, servants, representatives, employees, parents, subsidiaries, affiliates, partners, predecessors, successors-in-interest, assigns, insures, underwriters, joint ventures, and all other firms, persons, or corporations with whom the Claimants might have been, are now, or may hereafter be affiliated;
4. "RELEASED PARTIES" means: WEST JORDAN CITY, a political subdivision of the State of Utah and all other current and former departments, divisions, agencies, agents, attorneys, employees and contractors of West Jordan City.
5. "OCCURRENCE" means: the facts and circumstances surrounding the death(s) of Joseph Glasser and Kelly Frye-Glasser that allegedly occurred on or about August 1, 2010 on the Jordan River, said death(s) being alleged to have caused damage or injury to CLAIMANTS, and which event comprises the subject matter basis of, and is described by CLAIMANTS in, the Complaint (and all subsequently filed pleadings) filed in, and currently pending before, the State of Utah Third District Court-Salt Lake Division, and captioned "*THOMAS GLASSER and RUTH GLASSER, as heirs of Joseph Glasser, and CHRISTOPHER GLASSER as personal representative of the estate of Joseph Glasser;*

*and DYLAN TICE and ANNIE TICE, as heirs of Kelly Frye Glasser a.k.a. Kelly Tice-Glasser, and DYLAN TICE, as personal representative of the estate of Kelly Frye-Glasser, v. PACIFICORP d/b/a UTAH POWER & LIGHT COMPANY; CITY OF MURRAY, CITY OF WEST JORDAN, STATE OF UTAH, UTAH STATE PARKS AND RECREATION, UTAH DIVISION OF FIRE, FORESTRY, AND STATE LANDS, UTAH DEPARTMENT OF TRANSPORTATION, STATE ROAD COMMISSION, SALT LAKE COUNTY, SALT LAKE COUNTY ENGINEER, SALT LAKE COUNTY PUBLIC WORKS, BD JONES CONTRAUTION, LLC, HANSEN, ALLEN & LUCE, INC., ASSOCIATED BRIGHAM CONTRACTORS INCORPORATED, and JOHN DOES I-X, Case No. 110917226*

6. "ALL CLAIMS" means:

- a. Any and all existing and future injury and/or damage claims resulting from, or alleged to have resulted from, the OCCURANCE, including but not limited to, damages for wrongful death, bodily injury, pain and suffering, past, present and future medical damages, violations of civil rights, economic losses, actual damages, past and future lost wages, pecuniary losses, loss of care, loss of maintenance, loss of support, loss of services, loss of advice and counsel, reasonable contributions of pecuniary value, funeral expenses, mental anguish, loss of companionship and society, loss of inheritance, mental anguish suffered by any one of or all of the CLAMAINTS, medical expenses, pre- and post- judgment interest, loss of earning capacity, incidental costs, out-of-pocket expenses, interest, emotional trauma, physical injury, bodily harm, attorney's fees, costs of court and litigation, and any and all other damages, expenses, or claims, that were asserted or could have been asserted, including loss as a result of paying and/or satisfying any third party's claims, and causes of action for all existing and future damages, and remedies arising out of or related to the OCCURANCE that have been or could have been asserted by CLAIMANTS.
- b. All claims, demands, liens, debts, interventions, cross-actions, counter-claims, third-party actions, and any causes of action of any nature, including contractual, extra-contractual or equitable claims or claims created by any statute, regulation, or existing under common law; and all claims for violations of civil rights, negligence, gross negligence, breach of contract, breach of implied contract, fraud, fraudulent concealment, conspiracy, bad faith, or deceptive trade practices, arising out of or related to the OCCURANCE.
- c. All past, present, and future injury, losses and damages of any kind arising out of or related to the OCCURANCE including, but not limited to, all actual damages, incidental damages, consequential damages, exemplary and punitive damages, personal injury damages, property loss or damage, penalties of any kind, attorney's fees, costs, taxable costs, pre-judgment and post-judgment interest, and other expenses, including judgment liens, and any other form of intervention in connection with said injuries or other damages sustained by the CLAIMANTS.

- d. All elements of damages, remedies, claims, demands, and causes of action that are now recognized by law or that may be created or recognized in the future in any manner, including without limitation, by statute, regulation, or judicial decision, arising out of or related to the OCCURANCE, including, without limitation, claims premised upon violations of civil rights under either 42 U.S.C. §§ 1983, 1988 or Constitution(s) or statutes or administrative ruled of the United States or Utah, the Americans with Disability Act or the Family Medical Leave Act.
7. "CONSIDERATION" means: The payment and other goods and valuable consideration, by or on behalf of the RELEASED PARTIES to CLAIMANTS and/or those entities whom they may designate, to be applied to a full and final settlement, as to claims referenced herein, of the OCCURANCE and ALL CLAIMS related thereto, of the following: Payment from RELEASED PARTIES in the sum of Sixty-thousand dollars and no cents (\$60,000.00) made payable jointly to "EISENBERG, GILCREST & CUTT, THOMAS GLASSER and RUTH GLASSER, as heirs of Joseph Glasser, and CHRISTOPHER GLASSER as personal representative of the estate of Joseph Glasser; and DYLAN TICE and ANNIE TICE, as heirs of Kelly Fry-Glasser, and DYLAN TICE, as personal representative of the estate of Kelly Frye Glasser."

#### **GENERAL RULES OF CONSTRUCTION:**

8. It is intended by this Release to settle all claims between them and therefore that it be as general as possible and that it shall cover every conceivable contingency which might arise in the future, whether known or unknown at this time related to the OCCURANCE.
9. No party shall be considered the drafter of this Release for the purposes of construing the terms of this Release.
10. Headings used in this Release are for convenience and do not alter the meaning of the terms of the Release.
11. The payments referenced herein above constitute the total monetary payment to be made to and for CLAIMANTS by or on behalf of the RELEASED PARTIES for ALL CLAIMS, together with all the promises, agreements, and representations set forth below.
12. In this Release, the use of the singular includes the plural and vice versa; likewise, the disjunctive includes the conjunctive and vice versa and the use of masculine pronouns includes feminine pronouns and vice versa.

#### **TERMS AND CONSIDERATION:**

13. For the CONSIDERATION set forth herein, CLAIMANTS RELEASE, ACQUIT, and FOREVER DISCHARGE the RELEASED PARTIES from ALL CLAIMS.
14. CLAIMANTS acknowledge the receipt and sufficiency of the CONSIDERATION by signing this Release. The payment of the CONSIDERATION is not an admission of

liability or negligence by the RELEASED PARTIES and may not be so construed, nor shall it ever be used as evidence of liability of the RELEASED PARTIES in any suits, claims or causes of action whatsoever.

15. CLAIMANTS acknowledge that the CONSIDERATION described above and its subparagraphs herein constitute the total monetary payment to be made to and for CLAIMANTS by or on behalf of the RELEASED PARTIES for ALL CLAIMS.
16. The CONSIDERATION will be all the monies that the RELEASED PARTIES will ever be called upon to pay for ALL CLAIMS.
17. CLAIMANTS understand and agree that the OCCURANCE may have caused injuries and damages, the existence of which and the consequences of which are now unknown but which may become known in the future. CLAIMANTS nevertheless intend to and do release all claims for injuries and damages to CLAIMANTS, whether now known or unknown and whether now in existence or hereafter to arise. This Release shall receive the broadest possible interpretation as a general and complete release

**INDEMNIFICATION AND RELATED DUTIES:**

18. CLAIMANTS expressly agree to reimburse defense costs, including but not limited to attorney's fees, and to indemnify and hold the RELEASED PARTIES harmless, at CLAIMANTS' expense, from and against ALL CLAIMS asserted in the future by or on behalf of THOMAS GLASSER, RUTH GLASSER, CHRISOPHER GLASSER, DYLAN TICE, and KELLY TICE and all her heirs whether parties to this Release or not, claiming by, through, or under CLAIMANTS, regardless of whether the RELEASED PARTIES were responsible for, at fault for, negligent, whether solely or concurrently, strictly liable, or in breach of any contract, in whole or in part, for the OCCURANCE, or any damages arising therefrom. This paragraph does not apply to claims brought under paragraph 31, below.
19. CLAIMANTS agree and acknowledge that it is their sole and exclusive obligation to satisfy all liens, conditional payments, debts, rights of subrogation, and any other claims or actions asserted against them and the proceeds of this settlement, whether now known or unknown, including but not limited to any liens by any medical care provider, or any Medicaid or Medicare liens resulting from payment or expenses for hospital or other care and treatment of Joseph Glasser and/or Kelly Frye-Glasser. Any amounts claimed due to liens asserted by any person or entity after the date of the execution of this Release related to, or arising from, in any way to CLAIMANTS and/or the OCCURANCE are agreed, and assumed to be, the CLAIMANTS' sole responsibility.
20. CLAIMANTS further agree to release RELEASED PARTIES from any liens, debts, rights of subrogation, and any other claims or actions asserted against them or the proceeds of this settlement by anyone claiming by, through, or under CLAIMANTS, whether now known or unknown, including any Medical or Medicare liens resulting from

the payment of expenses for hospital or other care and treatment of Joseph Glasser and/or Kelly Frye-Glasser.

21. CLAIMANTS further agree to defend, indemnify and hold harmless RELEASED PARTIES from any damages, demands for payment or reimbursement, liens, debts, rights of subrogation, and/or any other claims or actions asserted against it and the proceeds of this settlement, by anyone claiming by, through, or under CLAIMANTS, whether now known or unknown, including any Medicaid or Medicare liens resulting from the payment or expenses for hospital or other care treatment of Joseph Glasser and/or Kelly Frye-Glasser.
22. CLAIMANTS specifically warrant that they are not aware of any Medicare or Medicaid benefits paid for the medical care and treatment rendered to Joseph Glasser and/or Kelly Fry-Glasser a.k.a. Kelly Tice-Glasser. CLAIMANTS further warrant that any Medicare or Medicaid liens, whether now known or unknown, resulting from the payment of expenses for hospital or other care and treatment of Joseph Glasser's and/or Kelly Fry-Glasser's a.k.a. Kelly Tice-Glasser's injuries and damages, will be fully satisfied by the CLAIMANTS from the settlement proceeds or otherwise. CLAIMANTS further warrant that they are solely responsible for drafting and obtaining approval of any needed Medicare set-aside agreement and that CLAIMANTS will indemnify and hold the RELEASED PARTIES harmless for any failure to have an approved Medicare set-aside agreement if one is needed.

#### **AUTHORITY AND MERGER:**

23. CLAIMANTS represent and warrant that no other person or entity has or has had any interest in the subject matter of this Release. CLAIMANTS further represent and warrant that they have the sole right and exclusive authority to execute this Release and that they have not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations, or causes of action referred to in this Release, other than the legal counsel, if any, representing CLAIMANTS on the day this Release is executed.
24. Any and all prior agreements between CLAIMANTS and the RELEASED PARTIES related to the OCCURANCE are merged into this instrument, such that this Release contains the entire agreement between CLAIMANTS and the RELEASED PARTIES with regard to the OCCURANCE. CLAIMANTS agree that there can be no modification, amendment or supplementation of and agree that there can be no modification, amendment or supplementation of any of the terms of this Release without the express written consent of the Parties affected thereby.
25. In entering into this Release, CLAIMANTS represent that CLAIMANTS understand this document and were represented by legal counsel of CLAIMANTS' choice who explained the terms hereof to CLAIMANTS, and that CLAIMANTS fully understand and voluntarily accept this Release.

**REMAINING TERMS:**

26. This Release shall be construed and interpreted in accordance with the laws of the State of Utah. Venue for enforcing or interpreting this Release shall be in the Third District Court in Salt Lake County, Utah. In any action to enforce or interpret this Release, the prevailing party shall be entitled to costs and reasonable attorney's fees.
27. CLAIMANTS agree to cooperate fully and execute any and all supplementary documents, including but not limited to a Joint Motion to Dismiss and Order in Case number 110917226 in the Third District Court for the State of Utah, and a Joint Motion to Dismiss Pending Appeal and Order of Dismissal in Appellate Case number 20141036 in the Utah Court of Appeals granting the same, and to take all additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Release.
28. These provisions, and each portion of each provision, of this Release are severable, and that all provisions are valid and enforceable. If however, for any reason, any portion of this Release is held to be void or invalid, any remaining provisions shall remain in full force and effect.
29. This Release shall become effective following execution by CLAIMANTS.
30. Copies of those documents, scanned, faxed, or otherwise, are as enforceable as the original as long as a signature is present. This document is enforceable in multiple copies if all copies yield, in total, at least one signature per party. Digital signatures are as valid as manual autographs where allowed by law or court rule.
31. RELEASED PARTIES agree that they will not object to or in any way obstruct the efforts of Salt Lake County, the State of Utah and Murray to install and complete said portage. To the extent RELEASED PARTIES have already objected to or obstructed these efforts, RELEASED PARTIES agree to withdraw any such objection or obstructing conduct. RELEASED PARTIES agree that if they fail to comply with this paragraph, CLAIMANTS will have the right and standing to sue RELEASED PARTIES for specific performance, including without limitation, a declaratory judgment that RELEASED PARTIES' objection is invalid and must be withdrawn and that RELEASED PARTIES' obstructing conduct must cease. RELEASED PARTIES agree that CLAIMANTS will be entitled to recover costs and attorneys' fees from RELEASED PARTIES if CLAIMANTS prevail in any such action for specific performance under this paragraph.
32. RELEASED PARTIES agree that the individual who signs below on behalf of RELEASED PARTIES has authority to enter this agreement on behalf of RELEASED PARTIES.

SIGNATURES OF RELEASED PARTIES

DATED and SIGNED this \_\_\_\_ day of March, 2015.

\_\_\_\_\_  
Kim V. Rolfe, Mayor  
On behalf of RELEASED PARTIES

ATTEST:

\_\_\_\_\_  
City Recorder

SIGNATURES OF THE CLAIMANTS

DATED and SIGNED this 27 day of March, 2015.

Thomas Glasser  
THOMAS GLASSER

STATE OF NEW YORK )  
COUNTY OF Schenectady ) ss:

Subscribed and sworn to before me this 27 day of <sup>March</sup>~~February~~, 2015 by Thomas Glasser.

Maureen Young  
Notary Public  
My Commission expires: 12-18-18

MAUREEN YOUNG  
Notary Public in the State of New York  
Qualified in Saratoga County No. 01YC5052447  
My Commission Expires Dec. 18, 2018

DATED and SIGNED this 27 day of March, 2015.

Ruth Glasser  
RUTH GLASSER

STATE OF NEW YORK )  
COUNTY OF Schenectady ) ss:

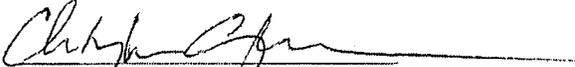
Subscribed and sworn to before me this 27 day of <sup>March</sup>~~February~~, 2015 by Ruth Glasser.

Maureen Young  
Notary Public  
My Commission expires: 12-18-18

MAUREEN YOUNG  
Notary Public in the State of New York  
Qualified in Saratoga County No. 01YC5052447  
My Commission Expires Dec. 18, 2018

SIGNATURES OF THE CLAIMANTS (Continued)

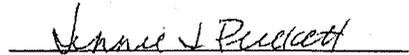
DATED and SIGNED this 31 day of March, 2015.

  
CHRISTOPHER GLASSER

STATE OF UTAH                    )  
  ) ss:  
COUNTY OF Salt Lake)

Subscribed and sworn to before me this 31 day of <sup>March</sup>~~February~~, 2015 by Christopher Glasser.



  
Notary Public  
My Commission expires: 2/10/2018

DATED and SIGNED this \_\_\_\_ day of March, 2015.

\_\_\_\_\_  
DYLAN TICE

STATE OF UTAH                    )  
  ) ss:  
COUNTY OF \_\_\_\_\_)

Subscribed and sworn to before me this \_\_\_\_ day of February, 2015 by Dylan Tice.

\_\_\_\_\_  
Notary Public  
My Commission expires: \_\_\_\_\_

SIGNATURES OF THE CLAIMANTS (Continued)

DATED and SIGNED this \_\_\_\_ day of March, 2015.

CHRISTOPHER GLASSER

STATE OF UTAH )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

Subscribed and sworn to before me this \_\_\_\_ day of February, 2015 by Christopher Glasser.

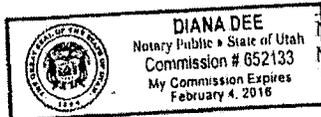
\_\_\_\_\_  
Notary Public  
My Commission expires: \_\_\_\_\_

DATED and SIGNED this 26 day of March, 2015.

*[Signature]*  
DYLAN TICE

STATE OF UTAH )  
 ) ss:  
COUNTY OF Salt Lake )

Subscribed and sworn to before me this 26 day of March, 2015 by Dylan Tice.



*[Signature]*  
Notary Public  
My Commission expires: 2/4/2016

**SIGNATURES OF THE CLAIMANTS**

Defendant and Plaintiff the 31<sup>st</sup> day of March, 2015

[Signature]  
ASSISTANT

STATE OF UTAH  
COUNTY OF South Lake

Subscribed and sworn to before me this 31<sup>st</sup> day of March, 2015 by James Lee

[Signature]  
County Clerk  
My Commission expires February 2, 2015

ATTESTED AS TO FACTS on 31<sup>st</sup> day of March, 2015

[Signature]  
JAMES LEE  
THE CLERK  
REPPENDORF, CHRIST & COFF  
ATTORNEYS FOR PLAINTIFF

