

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) is entered into by and between the Metropolitan Government of Nashville and Davidson County (“Metropolitan Government”) and Kimberly Jones-Mbuyi (collectively referred to as the “Settling Parties”) as of the Effective Date, defined below:

### I. RECITALS

WHEREAS, Kimberly Jones-Mbuyi has a lawsuit pending in the Second Circuit Court for the Twentieth Judicial District (Davidson County, Tennessee) against the Metropolitan Government in the case of *Kimberly Jones-Mbuyi v. The Metropolitan Government of Nashville and Davidson County, et al.*, Case Number 22C2323 (“the Lawsuit”), arising out of the shooting death of her daughter, Michaela Carter, at the hands of James Leggett;

WHEREAS, the Metropolitan Government, while denying any liability asserted in the Lawsuit, wishes to avoid the delay, expense, and uncertainty of litigation, and to reach an amicable resolution of any disputed matter, claim or controversy, known and unknown;

WHEREAS, Kimberly Jones-Mbuyi, with the assistance of counsel, has reviewed and considered the relevant issues, concerns, and potential claims, has considered the delay, expense, and uncertainty of litigation, and has determined that the resolution set forth in this Agreement is in her best interest;

WHEREAS, Kimberly Jones-Mbuyi, through counsel, has asserted that she has the lawful right to bring this lawsuit, with permission from Ms. Carter’s birth father; and

WHEREAS, the Settling Parties have reached a settlement of any and all claims, demands, and / or causes of action (“Claims”) that Kimberly Jones-Mbuyi asserted or could have asserted in the Lawsuit against the Metropolitan Government and all of its current and / or former insurers, directors, officers, fiduciaries, employees, agents, successors, assigns, and / or any and all other governmental or quasi-governmental entities currently and / or formerly affiliated with the Metropolitan Government<sup>1</sup> (collectively referred to as the “Metro Affiliates”).

NOW, THEREFORE, in consideration of the foregoing and the mutual promises, undertakings, obligations, and commitments hereinafter set forth, and intending to be legally bound, the Settling Parties do hereby covenant and agree as follows:

### II. TERMS AND CONDITIONS

1. Metropolitan Government’s Agreement. In exchange for the consideration provided by Kimberly Jones-Mbuyi under this Agreement, the Metropolitan Government agrees as follows:

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<sup>1</sup> Such governmental or quasi-governmental entities are those with which the Metropolitan Government is affiliated by virtue of its budget or the Metropolitan Charter, including but not limited to the Metropolitan Nashville Hospital Authority, Metropolitan Sports Authority, and Davidson County Election Commission.

Payment. Within fifteen (15) business days from the date that this Agreement is fully executed by the Settling Parties or the Metropolitan Council approves the resolution proposing settlement (the "Resolution") and the Resolution becomes effective under Article 5, Section 5.04 of the Metropolitan Charter, whichever is later, the Metropolitan Government will issue one check, made payable to Law Office of Daniel A. Horwitz IOLTA in the amount of two hundred and fifty thousand dollars (\$250,000.00) to cover any compensatory damages, attorneys' fees, and costs, for which a Form 1099 will issue.

2. Kimberly Jones-Mbuyi's Agreement. In exchange for the consideration provided by the Metropolitan Government under this Agreement, the adequacy and sufficiency of which Ms. Jones-Mbuyi hereby acknowledges, Mr. Jones-Mbuyi agrees as follows:

Release of Liability. In exchange for the consideration provided under this Agreement, Kimberly Jones-Mbuyi, for herself and her heirs, executors, administrators, representatives, predecessors, successors, and assigns, hereby **RELEASES AND FOREVER DISCHARGES**, to the maximum extent permitted by law and without reservation or exception, the Metropolitan Government and any Metro Affiliates from any and all claims, actions, causes or rights of action, suits, debts, sums of money, liabilities, losses, covenants, contracts, agreements, promises, assertions, allegations, contentions, controversies, and demands of any kind or nature whatsoever, whether at law or in equity, that Ms. Jones-Mbuyi, or anyone acting on her behalf or on behalf of Michaela Carter, has or may have relating to any act, omission or other matter, cause, or thing whatsoever in any way arising out of, in connection with, or relating to Ms. Jones-Mbuyi's claims against the Metropolitan Government as detailed in the Lawsuit and any claims that are, were, or could have been the subject of the Lawsuit. Ms. Jones-Mbuyi further agrees that no actions or attempt to revive any part of the claims in this Lawsuit will be undertaken, it being the Settling Parties' intent to conclude any and all claims in the Lawsuit. Nothing in this Agreement is intended to constitute a waiver of prospective claims that Ms. Jones-Mbuyi may have against the Metropolitan Government or Metro Affiliates, nor does it affect any other litigation that Ms. Jones-Mbuyi has against the Metropolitan Government as of the effective date of this Agreement.

Dismissal. Ms. Jones-Mbuyi authorizes and requests that her counsel of record enter a joint stipulation of dismissal, with prejudice, of all claims against the Metropolitan Government in the Lawsuit within three (3) business days of delivery of the funds outlined in Paragraph 1 of the Agreement to Ms. Jones-Mbuyi's counsel.

3. Condition Precedent to Settlement. Nothing in this Agreement shall become binding on any party unless and until the Metropolitan Council for the Metropolitan Government approves the Resolution that will be filed with the Metropolitan Council in conjunction with this Agreement and the Resolution becomes effective under Article 5, Section 5.04 of the Metropolitan Charter.

4. Tax Treatment. Ms. Jones-Mbuyi acknowledges that no oral or written representation of fact or opinion has been made to her by the Metropolitan Government, or its attorney regarding the tax treatment or consequences of any

payment made under this Agreement. It is expressly understood that to the extent any liability or responsibility exists for Ms. Jones-Mbuyi's federal, state, and local income or other taxes, such liability or responsibility rests solely with her.

5. Medical / Property Liens. Ms. Jones-Mbuyi represents that she has notified TennCare, Medicare, and any other person or entity holding a subrogation interest of her settlement of these claims. She acknowledges and agrees that any subrogation rights asserted by TennCare, Medicare, or any other person or entity holding a subrogation interest shall be solely her responsibility. Furthermore, Ms. Jones-Mbuyi agrees that she will indemnify and hold harmless the Metropolitan Government (including Metro Affiliates) from any liability in connection with any such liens or subrogation interests.

6. Release of Liens. Ms. Jones-Mbuyi acknowledges and represents that she will satisfy any attorneys' liens or other form of lien or claimed right to subrogation, that are not extinguished or satisfied by the execution of this Agreement, and that she will indemnify and hold harmless the Metropolitan Government (including Metro Affiliates) for any liability in connection with such liens or subrogation interests.

7. No Admission of Liability for Damages. The Settling Parties understand that payment of the consideration described above is not an express or implied admission of responsibility or liability on the part of the Metropolitan Government, and the Metropolitan Government specifically denies all such claims for damages against it. Such consideration is being paid solely to compromise disputed claims so that the parties may forever avoid the expense, uncertainty, and hazard of litigation.

8. Covenant Not to Sue. Each of the Settling Parties agrees never to file, institute, direct, or maintain against any of the other Settling Parties (or their respective Releasees as provided herein) any suit, charge, claim, proceeding or action in or before any court, administrative agency, arbitral panel, or other body or tribunal asserting, directly or indirectly, any claim that is released and compromised by this Agreement.

9. Assignment or Transfer. Each of the Settling Parties represents and warrants that it has not assigned or transferred, or purported to assign or transfer, to any other person or entity, in whole or in part, voluntarily, involuntarily, or by operation of law, any right, claim, interest, and property released or transferred pursuant to this Agreement, or any portion thereof, and that it has sole, complete and entirely unencumbered right, title and interest in and to the rights, claims, interests, and property released or transferred under this Agreement.

10. Consultation of Legal Counsel. Each of the Settling Parties acknowledges and represents that: (i) they have had an opportunity to receive independent legal and other advice in this matter from counsel and advisors of their own choosing and is entering into this Agreement freely and voluntarily, wholly upon their own judgment, belief and knowledge; and (ii) except as expressly set forth herein, they do not rely and have not relied upon any warranty, inducement, or promise by

any other party hereto, or any of such other party's agents, directors, officers, employees, representatives, or attorneys, with respect to the subject matter, basis, or effect of this Agreement.

11. Severability. If any provision of this Agreement is ever declared unenforceable, void, invalid, or voidable, then the Settling Parties intend that the validity, legality, and enforceability of the remaining provisions of this Agreement shall in no way be affected or impaired and that the remaining provisions of this Agreement shall remain valid and enforceable as written to the maximum extent permitted by law.

12. Effect of Settlement Agreement and Release. This Agreement shall be binding upon and inure to the benefit of the Settling Parties and their respective heirs, legal representatives, executors, administrators, predecessors, successors, transferees, and assigns.

13. Choice of Law. This Agreement shall be governed and construed under the laws of the State of Tennessee.

14. Prevailing Party. In the event of any litigation arising from a breach of the Settlement Agreement, the prevailing party shall be entitled to recover from the non-prevailing party all reasonable costs and attorneys' fees incurred in the breach of contract suit.

15. Execution in Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which taken together shall constitute one and the same document.

16. Entire Agreement. This Agreement constitutes the entire agreement and understanding among the Settling Parties with respect to the subject matter hereof and fully supersedes all prior or contemporaneous agreements, understandings, negotiations, and discussions, both written and oral, among the Settling Parties with respect to the subject matter covered hereunder.

17. Modification. Neither this Agreement, nor any term hereof, may be modified, canceled, amended, waived or otherwise altered in any way, in whole or in part, except by way of a written agreement signed by the authorized representatives of the Settling Parties and which specifically mentions this Agreement.

18. Waiver. No provision of, or breach or default under, this Agreement shall be deemed waived, in whole or in part, by the course of conduct of any Settling Party, and the failure of any Settling Party to insist upon strict adherence to any term of this Agreement shall not constitute a waiver of any right arising hereunder or deprive such party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement.

19. No Presumption. This Agreement has been drafted and reviewed jointly by the Settling Parties and their respective counsel and no presumption in

construction or interpretation shall be applied for the benefit of, or against, any of the Settling Parties.

20. Effectuating the Settlement Agreement and Release. The Settling Parties agree to execute all documents and to take all actions that may be necessary or appropriate to effectuate this Agreement.

21. Costs. Except as otherwise expressly set forth herein, the Settling Parties shall each bear their own costs and expenses, including attorney and other advisor fees, with respect to matters relating to the subject matter of this Agreement, including without limitation the preparation, execution, and implementation of this Agreement.

22. Effective Date. This Agreement shall become effective upon the execution of this agreement by all Settling Parties.

IN WITNESS WHEREOF, the Settling Parties have executed this Agreement as of the date indicated above.

[signature pages to follow]

PLAINTIFF KIMBERLY JONES-MBUYI

  
\_\_\_\_\_  
Kimberly Jones-Mbuyi (Jan 11, 2024 17:36 CST)

Dated: Jan 11, 2024

\_\_\_\_\_  
Kimberly Jones-Mbuyi

THE DEPARTMENT OF LAW OF THE  
METROPOLITAN GOVERNMENT OF  
NASHVILLE AND DAVIDSON COUNTY



John K. Whitaker

Dated: 1/25/24







# JONES-MBUYI SETTLEMENT AGREEMENT AND RELEASE (3)

Final Audit Report

2024-01-11

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-  Signer kimberly.jones-mbuyi@mnps.org entered name at signing as Kimberly Jones-Mbuyi  
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