

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") is made and entered into this 14th day of August, 2020, by and between Philip Myers ("Sgt. Myers"), Daniel Duffy ("Officer Duffy") (collectively, "Plaintiffs") and Defendants City of Wilkes-Barre ("the City"), Anthony George ("former Mayor George"), Marcella Lendacky ("former Chief Lendacky") and Ronald Foy ("Detective Foy") (collectively, "Defendants") (collectively, the "Parties") on the following terms and conditions:

RECITALS

WHEREAS, on or about January 5, 2018, Plaintiffs filed a complaint against Defendants in the United States District Court for the Middle District of Pennsylvania, captioned Philip Myers and Daniel Duffy v. Mayor Tony George, Police Chief Marcella Lendacky and Commander Ronald Foy, No. 3:18-CV-00042 (the "Civil Action");

WHEREAS, Plaintiffs agree and acknowledge that they are authorized to and do hereby accept payment of the sum specified in this Agreement as a full and complete compromise of all matters touching or concerning the Civil Action. It is further acknowledged that payment of the sum by Defendants and the negotiations for this settlement (including all statements, admissions, or communications) by Defendants or their attorneys or representatives are made solely for purposes of avoiding the

excessive cost of litigating this matter only and that Defendants do not in any way admit any liability to Plaintiffs by entering into this Agreement to settle the Civil Action, or admit to liability to the United States District Court for the Middle District of Pennsylvania, or any Court within the United States of America;

WHEREAS, solely to avoid the expense, inconvenience and distraction of continued litigation, Defendants desire to resolve the Civil Action without any admission of liability or concession of fault whatsoever; and

NOW THEREFORE, in consideration of the promises and covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, agree to the following terms:

AGREEMENT

1. In exchange for the below referenced payment, Plaintiffs shall take any and all steps necessary to withdraw and/or move to dismiss, with prejudice, the Civil Action and Plaintiffs' pending claims against Defendants.

2. The Parties agree to settle Plaintiffs' claims in the Civil Action for a total lump sum payment of Two Hundred Fifty Thousand Dollars (\$250,000.00) ("the settlement proceeds"). The settlement proceeds shall be paid to Plaintiffs and their

attorney, Mark Frost, Esquire ("Attorney Frost"), within thirty (30) days of the execution of this Agreement and approval of this settlement by the Wilkes-Barre City Council. Plaintiffs and Attorney Frost will provide Defendants with Forms W-9 and 1099 upon execution of this agreement.

3. As additional consideration of this Agreement, the City shall purge any and all discipline from the personnel files of Sgt. Myers which are related to the Civil Action.

4. All Parties shall bear their own attorneys' fees and costs.

5. Plaintiffs release and forever discharge Defendants, Defendants' predecessors, successors, affiliates, departments, employers, current and former employees, mayors, council persons, officers, members, representatives, insurers, agents, attorneys, heirs, executors, administrators and assigns from any and all claims, counterclaims, demands, debts, liabilities, accounts, damages, reckonings, obligations, costs, expenses, liens, actions, causes of action, or losses of any kind or nature whatsoever, whether known or suspected, unknown, or unsuspected, anticipated or unanticipated, direct or indirect, fixed or contingent, which exist, may exist or have existed from the beginning of employment until the date of this Agreement relating to any claims arising out of or related to the Civil Action which have been or could have been asserted in the Civil

Action or any other action. This Agreement also includes any and all claims arising or purportedly arising from the filing or the prosecution of the Civil Action including any claims for recovery of any and all attorneys' fees, interest and/or costs. This release covers claims arising up to and including the date of this Agreement, but does not cover claims relating to the validity or enforcement of this Agreement or claims that cannot be waived under applicable law.

The following provisions further explain this general release of claims:

(a) Definition of "Claims". "Claims" includes without limitation all actions or demands of any kind that Plaintiffs now have, or may have or claim to have in the future related to the Civil Action. More specifically, Claims include rights, causes of action, damages, penalties, losses, attorneys' fees, costs, expenses obligations, agreements, judgments and all other liabilities of any kind or description whatsoever, either in law or in equity, whether known or unknown, suspected or unsuspected.

(b) The nature of Claims covered by this release includes, without limitation, all actions or demands in any way based on or included in the Civil Action. More specifically, all of the following are among the types of Claims that will be barred by this release:

- Contract Claims (whether express or implied);
- Tort Claims, such as for defamation or emotional distress;
- Constitutional Claims brought through 42 U.S.C. § 1983;

- Claims of discrimination, harassment or retaliation, whether based on race, color, religion, gender, sex, age, sexual orientation, handicap and/or disability, national origin, whistle-blowing or any other legally protected class;
- Claims under the Age Discrimination in Employment Act, Title VII of the Civil Rights Act of 1964, as amended, the Americans with Disabilities Act and similar state and local laws;
- Claims under the Employee Retirement Income Security Act, the Occupational Safety and Health Act, the False Claims Act and similar state and local laws;
- Claims under the Americans With Disabilities Act ("the ADA") and similar state and local laws
- Claims for wrongful discharge; and
- Claims for attorney's fees, litigation expenses and/or costs.
- All claims related to pain and suffering and humiliation to the plaintiffs

Plaintiffs acknowledge that they have carefully read and understood the provisions of this Agreement, that they had twenty-one (21) days from the date they received a copy of this Agreement to consider entering into this Agreement, that if they sign and returns this Agreement before the end of the twenty-one (21) day consideration period that they will have voluntarily waived their rights to consider the Agreement for the full twenty-one (21) days period and that Plaintiffs have executed this Agreement voluntarily and with full knowledge of its significance, meaning and binding effect. Plaintiffs further acknowledge that they may revoke this Agreement within seven (7) days of his execution of this document by submitting a written notice of their revocation to John G. Dean, Attorney for Defendants. Plaintiffs also understand that this Agreement shall not become effective or enforceable until approved by the Wilkes-Barre City Council and the expiration of that seven (7) day period.

5. Confidentiality. The Parties agree they shall not disclose, discuss, or reveal the terms, conditions, or amounts of this Settlement Agreement to any person or entity, other than their attorneys, accountants, tax advisors or consultants. In addition, Defendants may disclose the terms of the Settlement Agreement upon the request of any regulatory body or state department of insurance inquiry in addition to parent or

affiliate companies and their officers, directors, or agents— including their attorneys.

Notwithstanding the foregoing Paragraph, the Parties are permitted to disclose, discuss, or reveal the terms, conditions, or amounts of this Settlement Agreement: (a) in a court proceeding in connection with the enforcement any Party's rights hereunder and (b) as required by court order and/or any law or regulation.

Should disclosure in a court proceeding pursuant to clauses (a) or (b) of the foregoing Paragraph become necessary, the party disclosing said information will notify the other party as soon as practicable and agree to use its reasonable efforts to effectuate this notification prior to disclosing the information. To the extent allowed by law, the Parties will notify each other in writing of the receipt of any legal process, subpoena, court order, administrative order, or other request from any governmental or regulatory authority requiring disclosure of any information that is subject to the confidentiality provisions of this Settlement Agreement. Such notification shall be made within five (5) calendar days of receipt as follows:

Notices to Plaintiffs:

Mark B. Frost, Esquire
Mark B. Frost & Associates
1515 Market Street, Suite 1300
Philadelphia, Pa. 19102

Notices to Defendants:

John G. Dean
ELLIOT, GREENLEAF & DEAN
15 Public Square, Suite 310
Wilkes-Barre, PA 18701
jgd@elliottgreenleaf.com

The Parties further agree not to make any false or misleading statements, either directly or indirectly, to the media or members of the general public or with the intent that the comments reach the media or the general public about any other party. The Parties expressly agree that such confidentiality is an essential term of this Settlement Agreement.

6. Plaintiffs warrant and represent that there are no liens or subrogation rights asserted against this recovery. Plaintiffs further warrant that if there are any liens, they have made any and all efforts necessary and appropriate to secure the authority of the insurers to enter into this release. It is further warranted that Plaintiffs are not subject to any medical liens in connection with any medical treatment arising from the subject matter of the Civil Action. To that end, Plaintiffs agree to indemnify, defend, and hold harmless Defendants and their officers, directors, agents, employees,

insurers, attorneys and any other party acting on behalf of or at the direction of Defendants from and against any and all demands, fines, claims, and damages, including reasonable attorney's fees, arising out of or caused by a breach of this warranty or any other provision of this agreement.

7. This settlement is made by Plaintiffs knowingly and voluntarily based on each Plaintiffs' perceived best interest, and Plaintiffs have had adequate time to review this Agreement with counsel of their choosing.

8. The fact that one of the Parties may have drafted or structured any provision of this settlement shall not be considered in construing the particular provision either in favor of or against such Party.

9. The validity, interpretation, construction or enforceability of this Agreement shall be governed by the laws of the Commonwealth of Pennsylvania.

10. This Agreement contains the entire, complete and integrated statement of each and every term and provision agreed to by and among the Parties. It contains the entire Agreement and understanding between the Parties relating to the subject matter contained herein, superseding any prior oral or written agreements pertaining to said subject matter. No other promises, representations or other inducements have been made to any Party in exchange for this Agreement.

11. No provision of this Agreement may be waived, altered, amended, or modified in any respect or particular whatsoever except by written agreement duly executed by each of the Parties to this Agreement.

12. The Parties agree that the "Whereas" provisions herein are not merely prefatory but are incorporated by reference and are material terms of this Agreement.

13. If any provision of this Agreement is held to be invalid, void or unenforceable, the balance of its provisions will, nevertheless, remain in full force and effect and will in no way be affected, impaired or invalidated.

14. Plaintiffs represent that they have full authority to enter into this Agreement.

15. Plaintiffs hereto represent that they have carefully reviewed and fully understand the terms, conditions, meaning and intent of this Agreement, and that each Party has had an opportunity to review the terms, conditions and provisions with legal counsel prior to the execution hereof. Plaintiffs specifically hereby acknowledge receipt of a copy of this Agreement before signing it and acknowledge that each and every provision of this Agreement is contractual, legally binding and not mere recitals.

16. Plaintiffs agree to sign this Agreement as a voluntary act and deed, and represent that such execution was not the result of any duress, coercion or undue influence upon any of them.

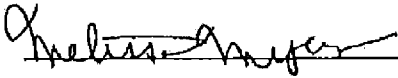
17. The Parties hereto agree that neither this Agreement nor any action taken by the Parties hereto, either previously or in connection with the compromise reflected in this Agreement, shall be deemed or construed to be an admission of the truth or falsity of any matter pertaining to any claim, demand, or cause of action referred to herein or relating to the subject matter of this Agreement, or evidence of any violation of any statute or law or of any liability or wrongdoing by any Party, or any acknowledgment by them of any fault or liability to any other Party hereto or to any other person or entity.

18. Plaintiffs warrant and represent that they are the holders of all claims sought to be released herein, and that none of the claims, counterclaims, demands or causes of action arising out of or relating to the subject matter of this Agreement have been sold, assigned, transferred or conveyed to others, or otherwise disposed of, either voluntarily or involuntarily.

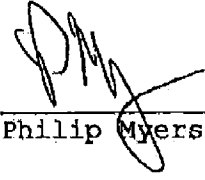
19. The provisions of this Agreement shall be binding and inure to the benefit of each of the Parties and their respective heirs, spouses, executors, administrators, agents, representatives, successors and assigns.

IN WITNESS WHEREOF, Plaintiffs hereto have entered into this Agreement and intend to be legally bound by this Agreement by signing on the space set forth below.

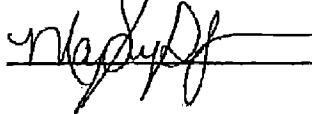
WITNESS:



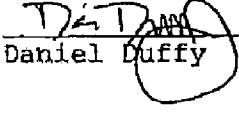
By:


_____ Philip Myers

WITNESS:



By:


_____ Daniel Duffy