

## SETTLEMENT AGREEMENT AND RELEASE

### Introduction

There is currently a lawsuit related to the death of Stacy W. Kenny (fka Patrick W. Kenny) pending in the U.S. District Court for the District of Oregon, Case No. 6:19-cv-01519-AA (hereinafter referred to as "the Lawsuit"). This SETTLEMENT AGREEMENT AND RELEASE (hereinafter referred to as "AGREEMENT") is intended to resolve all asserted and unasserted claims by or on behalf of all persons and entities who did or could have sought compensation or made a claim against any of the Released Parties in connection with any of the incidents described or allegations asserted in the Lawsuit. This AGREEMENT is intended to be interpreted broadly so as to provide the parties with the maximum legal protection possible from future claims, for anything and everything, by anyone and everyone, related in any way to the incidents and allegations contained in, or which could have been contained in, the Lawsuit, and also to provide legally enforceable terms for certain commitments made by the Released Parties as more fully described below.

### Affected Parties

"Claimants": The Estate of Stacy W. Kenny by and through its Personal Representative Barbara H. Kenny; all actual or potential statutory beneficiaries, creditors or lien-holders with an interest in the wrongful death claim; family members of Stacy W. Kenny, including but not limited to Barbara H. Kenny (both individually and in her capacity as Personal Representative) and Christopher Kenny.

"Released Parties": Kraig Akins, an Individual, Richard A. "R.A." Lewis, an Individual, Robert Rosales, an Individual, Robert Conrad, an Individual, Richard L. Lewis, an Individual, and City of Springfield, acting through the Springfield Police Department, their past and present employees, agents, officers, insurers, attorneys, assigns, and all those in interest with them.

### Terms

1.1 The Released Parties, through the City's insurance provider, City County Insurance (CIS), agree to pay Four Million Five Hundred Fifty Thousand Dollars and 00/100 (\$4,550,000).

In addition to the payments set forth above and as further consideration for this AGREEMENT, the Released Parties have agreed to undertake the following:

a. Claimants may commission a critical incident review and analysis of the incident resulting in the death of Kenny. City of Springfield command staff as of March 31, 2019, will cooperate with whatever policy and practice inquiries are necessary by the contracted organization (OIR or equivalent) for purposes of completing the report. City of Springfield management and staff will not in any way disparage Kenny. The City of Springfield may communicate disagreement with the report and reserves the right to correct facts by pointing to the existing public record.

b. City of Springfield will conduct a comprehensive risk management assessment of the Springfield Police Department on the schedule and as outlined in **Exhibit A**

attached hereto and incorporated herein. Such review will be conducted by CIS and will be reconducted on a bi-annual basis by CIS for four reporting periods (inclusive of the initial review). If CIS no longer provides insurance covering general liability claims against the City of Springfield's police department, the City of Springfield shall commission an equivalent report for the balance of the remaining cycles. CIS shall issue a report to the City of Springfield, describing the findings of the review and all recommendations and best practice assessments identified. The City of Springfield will provide a copy of the initial report and each bi-annual report to Plaintiff's counsel and publish the same with a conspicuous link on the official website of either the City of Springfield or Springfield Police Department.

c. The City of Springfield shall require the Chief of Police and City Risk Manager to submit an annual written report on the Springfield Police Department's use of force, including deadly force, to present such report in person to the City Council, in public session and to publish and maintain the annual reports on its website. The report must address the following subject matter for the reporting period: a) the total number of use of force events; b) the number of use of force events resulting in injury requiring medical treatment from a licensed medical provider to an officer, the type of force deployed and the nature of the officer injury(ies) in each such event; c) the number of use of force events resulting in injury requiring medical treatment from a licensed medical provider to any person, the type of force deployed and the nature of the injury(ies) in each such event; d) the average number of uses of force per patrol officer; e) the median number of uses of force per patrol officer; f) a description of the actions being taken by the Springfield Police Department to reduce the need or perceived need to use force in future incidents to include, but not be limited to, a description of all recommendations of the Force Review Committee (described in Section 1.1.h, below) for change in policy, supervision, training, equipment and personnel that have been made during the reporting period and the status of their implementation.

d. The Springfield Police Department shall amend its Use of Force Policy, GO 1.5.1, to adopt and incorporate the following policy: "It is the policy of the Springfield Police Department to value and preserve human life. Officers shall use only the force that is objectively reasonable to effectively bring an incident under control, while protecting the safety of the officer and others. Officers shall only use the level of force which a reasonably prudent officer would use under the same or similar circumstances. Officers shall strive to use the minimum force necessary to accomplish their lawful objectives."

e. The Springfield Police Department shall amend its Use of Force Policy, GO 1.5.1, to adopt and incorporate the following definition of "De-escalation": De-escalation: Taking action or communicating verbally or non-verbally during a potential force encounter in an attempt to stabilize the situation and reduce the immediacy of the threat so that more time, options and resources can be called upon to resolve the situation without use of force or with a reduction in the force necessary. De-escalation may include the use of such techniques as command presence, advisements, warnings, verbal persuasion and tactical repositioning.

f. The City shall amend its Use of Force Policy, GO 1.5.1, to adopt and incorporate the following guidelines:

i) The Use of Force Policy, GO 1.5.1, shall be revised to reflect the following principle: An officer shall use de-escalation techniques and other alternatives to higher levels of force consistent with his or her training whenever possible and appropriate before resorting to force and to reduce the need for force.

ii) “Whenever possible and when such delay will not compromise the safety of the officer or another and will not result in the destruction of evidence, escape of a suspect or commission of a crime, an officer shall allow an individual reasonable time and opportunity to submit to verbal commands before force is used.”

iii) All officers shall receive training, at least annually, designed to reinforce the department’s policy objective of minimizing the number of use of force incidents.

iv) All officers shall receive training, at least annually, designed to provide techniques for the use of and reinforce the importance of de-escalation.

g. The Springfield Police Department shall amend its Awards Policy, GO 26.4.1, to recognize officers who handled an incident without resorting to force through use of de-escalation or other techniques.

h. The Springfield Police Department shall replace the existing Use of Force Review Board with a Force Review Committee (FRC) consisting of Springfield Police Department employees, at least three of whom are long-term standing members. Longstanding members of the FRC shall be selected by the Chief of Police and at least one Longstanding member shall be recognized within the Springfield Police Department as having expertise in Crisis Intervention. Because the FRC is not charged with making a disciplinary recommendation, there shall be no officer-involved representative or designee on the FRC.<sup>1</sup> Each long-term standing FRC member shall be required to attend and pass an administrative investigation and review of deadly force events course for which they receive DPSST credit and is similar to the five day courses offered by ALEA, PATC and FLETC. The administrative investigation and review of deadly force events course for long-term standing members of the FRC shall not be in-house training provided by the Springfield Police Department or its insurer. Such training for long-term standing members of the FRC shall be completed within one year of the date of settlement or within a reasonable time given health and safety guidelines. The FRC shall be charged with reviewing all deadly force events and all intermediate and serious force events in which a suspect or an officer suffers a physical injury requiring medical treatment from a licensed medical provider. The City shall adopt a Force Review Committee Policy which identifies the primary goals of the FRC when reviewing a force event to be (1) foster agency improvement by thorough examination of a force event, identifying what was done well and areas in need of improvement; and (2) identify any reasonable alternatives to the actions taken

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<sup>1</sup> The City of Springfield will make a good faith effort to bargain with the union should the union object to a change in the current policy of having an officer designee on the Use of Force Board. If the issue cannot be resolved at bargaining, the City of Springfield may but is not obligated to proceed to arbitration to require that the FRC not have an involved-officer designee.

that could potentially eliminate or reduce the likelihood of a use of the intermediate or greater level of force in the future. The Policy shall further provide that each review conducted by the FRC shall be in writing and shall follow a fixed format consisting of the following: *Incident Summary*; *Timelines*; *Identification of Involved Personnel*; *Debriefs* of each involved officer; *Observations* concerning pre-use-of-force tactical decision making, policy, supervision, training, equipment and personnel; *Findings*, to include whether the involved officer(s)' pre-use-of-force tactical performance was consistent with training and policy; *Recommendations* and *Conclusion*. The examination of the pre-use-of-force tactical decision making shall include identification of the key decision points made by the involved officers, whether de-escalation was reasonably feasible and, if so, whether attempts at de-escalation were made, and whether the involved officers considered alternatives to or lower levels of force to resolve the situation. The report of the FRC shall be forwarded to the Chief of Police, who shall make the final decision whether the officer's use of force was within policy and who shall be responsible for implementation of the recommendations for change in policy, supervision, training, equipment and personnel, if any, in coordination with the relevant command staff and within not less than six months of the date of the report. The FRC shall not make any disciplinary recommendations.

In consideration of and to the extent of the above payments and obligations, the undersigned completely releases, forever discharges and holds harmless the Released Parties, their heirs, assigns and successors, from any and all claims, demands and suits, for damages, injuries, wrongful death, equitable relief or otherwise, relating in any way to the subject matter, broadly defined, of the lawsuit referenced above. This includes, but is not limited to, civil rights claims; constitutional claims; 42 U.S.C. § 1983 claims; claims or liens for loss of services, support, association, familial rights, parental obligations, wages, future earning impairment, expenses and/or compensation of any nature whatsoever, whether based on tort, contract or other legal theory, which any of the Claimants now have or which may hereafter accrue or otherwise be acquired. This includes not only the claims which were actually alleged or asserted in the Lawsuit, but also claims that could have been alleged or asserted by or on behalf of any of the Claimants related to the incidents described in the Lawsuit.

1.2 It is understood that this is a settlement of disputed claims and shall not be construed as an admission of liability or fault or wrongdoing by any person or entity and that, in fact, liability, fault and wrongdoing are expressly denied by all of the Released Parties. The Lawsuit will be voluntarily dismissed, with prejudice and without costs or attorney fees to any party.

1.3 The Claimants have obtained probate court approval by Order and Limited Judgment dated July 21, 2020 in *The Estate of Stacy W. Kenny (fka Patrick W. Kenny)*, Lane County Circuit Court Case No. 19PB02555 to enter into this AGREEMENT.

1.4 The Claimants shall pay, satisfy or judicially extinguish any and all liens or subrogation claims out of the settlement of \$4,550,000.00, including but not limited to all claims or liens asserted by governmental entities (such as Oregon DHS), and/or related to health care expenses or attorney fees. The Claimants agree to indemnify and hold the Released Parties harmless from any liens or claims asserted against any of the Released Parties or against the

proceeds of the settlement for claims asserted by or through the Claimants related to the subject matter of the Lawsuit. Claimants have no obligation to hold the Released Parties harmless for claims not asserted by or through Claimants including, for example and without limitation, claims for Worker's Compensation benefits, claims for damage to property not owned by the Claimants, and the like.

1.5 It is expressly understood and agreed that this AGREEMENT is intended to cover and does cover not only all known claims, injuries, losses, expenses, liens and damages, but also any further injuries, treatment, losses, liens, expenses, attorney fees and damages not now known or anticipated, but which may later develop or be discovered, including all the effects and the consequences thereof, even if new evidence is discovered or there is a change in applicable law.

1.6 The undersigned individually agrees to defend, indemnify and hold the Released Parties harmless from any and all future claims, demands, lawsuits or legal actions made or brought by or on behalf of that undersigned which attempt to assert or litigate any of the claims or allegations which were or could have been raised in the Lawsuit. However, Claimants shall not be prohibited by this agreement from asserting or litigating the claims or allegations which were or could have been raised in the Lawsuit in defense of any claims that may be brought against the Claimants. Such defenses to be asserted by Claimants may include, without limitation, claim preclusion, issue preclusion, comparative fault, offset and the right to obtain attorney fees, including but not limited to attorney fees for defending against frivolous claims.

1.7 The undersigned has the sole right and exclusive authority to execute this Settlement Agreement and has not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations, or causes of action referred to in this Settlement Agreement. The representative signing this AGREEMENT for the City of Springfield hereby acknowledges, represents and warrants that they are a duly authorized agent of the City of Springfield and are authorized and have full authority to enter into this AGREEMENT on behalf of the City of Springfield to bind it to execute, deliver and perform this AGREEMENT and the obligations contemplated herein, and that such actions do not conflict with or violate any provision of law, regulation, policy, charter, contract, deed of trust or other instrument to which it is a party or by which it is bound and that this AGREEMENT constitutes a valid and binding obligation of it enforceable in accordance with its terms.

1.8 This AGREEMENT may be executed in any number of counterparts, each of which upon execution and delivery shall be considered an original for all purposes, and all of which together shall, upon execution and delivery, constitute one and the same instrument. An electronic or facsimile version of this executed AGREEMENT shall be deemed to be an original enforceable by and against any party hereto.

1.9 If any provision of this AGREEMENT is deemed to be invalid or unenforceable in any respect for any reason, the validity and enforceability of such provision in any other respect and of the remaining provisions of this AGREEMENT will not be impaired in any way.

1.10 It is understood and agreed that this Settlement Agreement is the work product of attorneys for both parties. Accordingly, any alleged ambiguity in this document will not be

construed against the drafter. Rather, ambiguities will be interpreted so as to fulfill the intent of the parties.

I HAVE FULLY READ THIS DOCUMENT AND UNDERSTAND ITS EFFECTS. I FULLY UNDERSTAND AND VOLUNTARILY ACCEPT THE BENEFITS, RISKS AND OBLIGATIONS OF THIS CONTRACT. I WAIVE ANY FUTURE CLAIM THAT I HAVE NOT FULLY READ OR COMPLETELY UNDERSTOOD THIS DOCUMENT.

THIS IS A WAIVER AND RELEASE. I HAVE BEEN AFFIRMATIVELY ADVISED AND HAVE HAD THE OPPORTUNITY TO REVIEW THIS DOCUMENT WITH AN ATTORNEY PRIOR TO SIGNING IT.

This AGREEMENT shall become effective upon the signature of the last of all signatories below.

Barbara Kenny  
BARBARA KENNY, individually and as  
Personal Representative of the Estate of Stacy  
W. Kenny (fka Partrick W. Kenny)

9/16/20  
Date

Christopher Kenny  
CHRISTOPHER KENNY

16 Sept 2020  
Date

CITY OF SPRINGFIELD  
By: Nancy Newton  
Name/Title: NANCY NEWTON  
CITY MANAGER

9/18/2020  
Date



citycounty insurance services  
cisoregon.org

**SUMMARY:**

The following outline is an excerpt from a Risk Management Plan (RMP) the City of Springfield will be working on over the next year with its insurance carrier City County Insurance Services (CIS). The purpose of this document is to provide more information to respond to a settlement demand in connection with *Estate of Stacy W. Kenny et. al v. Akins et. al.*

**To be completed within the next three-months:**

1. Development of an Enterprise Risk Management (ERM) Team that will meet monthly to discuss the on-going progress of this Plan. Additionally, this ERM team will develop a risk assessment for each department within the city. A CIS representative will participate in these meetings along with the agent of record.
2. The ERM Team will review all current and past claims filed in the last five-years to determine the following:
  - What was the cause of these claims?
  - What the employee(s) could have done to prevent these claims?
  - What lessons were learned from these claims and reviews?
  - What actions were taken or should have been taken by direct supervisors?
  - What actions were taken or should have been taken by city administration?
  - What policy changes were made to address these claims to prevent future claims?
  - What training was implemented because of these claims?
  - Were equipment needs identified because of these claims?
3. Begin scheduling supervisory training to focus on:
  - Supervisory roles and responsibilities.
  - How/when to conduct a Professional Standards Administrative Investigation.
  - Correcting employee behavior and the impact when poor performance or behavior is not corrected.
  - Understanding the claims process.
4. Cooperate with CIS in conducting onsite best practice assessment for police department.
5. Cooperate with CIS in the review of the best practice assessment conducted on the Municipal Jail.
6. Provide CIS a copy of the following policies:
  - Police Department Policy and Procedures.
  - Municipal Jail Policy and Procedures.
  - City of Springfield Personnel Handbook
7. Report back to CIS the progress made on these action items at the end of three months.

CLAIMS OFFICE • PO Box 1469, Lake Oswego, OR 97035 • Phone 503-763-3875 or 800-922-2684 ext 3875 • Fax 503-763-3901

8. Inform CIS within eight-hours of any in-custody death or officer involved shooting.
9. Consider the Municipal Jail joining the Oregon State Sheriff's Association as an Affiliate Member to stay current with jail standards and practices.

To be completed within six months:

1. Review the Professional Standards Administrative Investigative process for the police department and review the following:
  - When are investigations conducted on employees?
  - Has there been policy violations by employees?
  - Has corrective action been taken to prevent repeated behavior?
  - Has there been changes in policy to prevent repeated behavior?
  - Has there been training targeting employee actions to prevent repeated behavior?
2. Begin supervisor training as outlined in action items zero to three months.
3. Continue with ERM meetings with CIS staff and agent of record.
4. Begin to implement recommendations outlined in the best practice assessments.
5. Report back progress to CIS at the six-month mark.

To be completed within 12 months:

1. Complete supervisor training as outlined in action items zero to three months.
2. Continue with ERM meetings with CIS staff and agent of record.
3. Report back to CIS the progress of the risk management plan.
4. Have all certified/sworn law enforcement and municipal jail staff attend Use of Force training.
5. Review and implement recommendations in the Law Enforcement Policy.
6. Review and implement recommendations in the Jail Policy and Procedure manual.
7. Attend the April 2021 CIS Board of Trustees Meeting to report total progress made of this Risk Management Plan, which will include a review and update of claims over the past year.

To continue for future years:

1. Continue with the ERM meetings with CIS staff and agent of record.
2. Continue to assess claims with the ERM team and take necessary and appropriate action to control claims frequency and severity.

Note: This page is part of the final Kenny settlement and is not "confidential." The "confidential" watermark is a remnant from original settlement negotiations. The entire settlement document, including this attachment, is now a matter of public record.