

CITY COUNCIL
CITY OF PUNTA GORDA
11/2/2016

 Print

Consent Agenda City Manager

Title: Settlement Agreement and Release between the City of Punta Gorda and Gary Knowlton and the Estate of Mary Knowlton

Funds: \$2,000,000.00 Insurance

\$ 60,234.23 City (Damage Recovery Funds)

\$2,060,234.23 Total

Recommended Action: City Council approval of the settlement agreement and release.

Summary: Attached is the settlement agreement between the City and Gary Knowlton and the Estate of Mary Knowlton. The payment from the City will come from two sources - \$2,000,000 insurance and \$60,234.23 damage recovery fund. The settlement is a result of the fatal incident that occurred on August 9, 2016, during the course of an interactive police demonstration at the Public Safety Building. Participants in the settlement agreement on behalf of the City were Nicole Nate, Attorney - Bryant Miller Olive and Howard Kunik, City Manager.

Department/Division: City Manager

EXHIBITS:

1. Settlement Agreement & Release

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE (the "Agreement") is entered into this 26 day of October, 2016 by and between the **City of Punta Gorda, Florida**, a Florida municipal corporation with its principal place of business located at 326 West Marion Avenue, Punta Gorda, Florida 33950, (the "City") and **Gary Knowlton**, an individual with a principal address of 1625 Montra Ct. Punta Gorda, FL 33950 ("Knowlton"), and **the Estate of Mary Knowlton**, by and through Gary Knowlton as Personal Representative (the "Estate") (collectively referred to as the "Parties").

WHEREAS, on August 9, 2016, Mary Knowlton was fatally wounded in the course of an interactive police demonstration with the Charlotte County Chamber of Commerce (the "Incident"); and

WHEREAS, while the City denies any wrongdoing, the Parties agree to voluntarily enter into this Agreement to settle any and all claims and disputes between them, whether known or unknown, arising out of or related to the Incident.

NOW, THEREFORE, in consideration of the covenants contained herein, the payment of the sum of money described herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Recitals:** The foregoing recitals are true and correct and are hereby incorporated by reference.
2. **Terms of Settlement:** In consideration for the promises as contained in this Agreement, the City shall pay the Estate and Knowlton the sum of Two Million Sixty Thousand Two Hundred Thirty Four and 23/100 U.S. Dollars (\$2,060,234.23). A check in the amount of the settlement sum will be written payable to the order of "Farr, Farr, Emerich, Hackett, Carr & Holmes, P.A. f/b/o Gary Knowlton and the Estate of Mary Knowlton" and shall be transmitted to Farr, Farr, Emerich, Hackett, Carr & Holmes, P.A. within seven (7) days of the City Council's approval of this Agreement at a duly held meeting. The City Council's approval of this Agreement shall be the sole condition precedent to this Agreement.
3. **No Admission of Liability:** Nothing contained in this Agreement shall be construed to be an admission of liability or culpability by any party with respect to any claim being compromised herein. The City denies violating any laws or breaching any duties, including but not limited to constitutional, statutory, and common-law claims. The City and its officers maintain that they did not violate anyone's civil rights nor act wrongfully or negligently during the Incident. They deny any liability to the other parties to this agreement, and to any other person or entity, on any basis whatsoever. The Parties are entering into this Agreement in an effort to avoid the costs and vagaries of litigation.

This Agreement may not be introduced into evidence in any proceeding by any party except to enforce the terms and conditions contained in this Agreement.

4. **Release of Claims:** Knowlton and the Estate, individually and on behalf of their respective administrators, executors, successors and assigns, and anyone who can make a claim by or through them, hereby irrevocably and unconditionally release, acquit, remise, and forever discharge the City and its mayor, council members, officers, Police Chief and police officers in their individual and official capacities, officials, employees, former employees, agents, attorneys, successors, assigns, and insurers (collectively, "Releasees") from any and all rights, obligations, liens, claims, damages, demands, relief, liabilities, equities, actions and causes of action of whatever kind and character, in law or in equity, in contract, tort or other branch of common law, or for violations of any civil rights or federal or state constitutional or statutory rights or local ordinances, including but not limited to 42 U.S.C. section 1983, whether known or unknown, suspected or unsuspected, disclosed or undisclosed, actual and consequential, specific and general, however denominated, including but not limited to damages for personal injury, bodily injury, emotional injury, wrongful death, pain and suffering, medical expenses, compensatory damages, punitive damages, lost wages, loss of support, loss of consortium, money, remuneration, attorneys' fees, costs, interest, expenses, or anything of value whatsoever, against the Releasees arising from the beginning of time to the date of this Agreement, including but not limited to those claims related to the Incident, and any claims that could have been brought against the Releasees by Knowlton and/or the Estate in any state or federal lawsuit or any administrative proceeding arising out of the Incident. This release includes all claims for injuries, illnesses, and complications now known or that may later be discovered, including all effects and consequences thereof arising out of or in any way connected to the Incident. **The listing of, or the failure to list, specific types of claims as set forth above is not intended to limit in any way the general and comprehensive scope of this Release.**

5. **Release from Liens.** To the extent required by law, Knowlton and the Estate individually, and on behalf of their administrators, executors, successors and assigns, shall fully pay and satisfy any and all outstanding liens of any type on the proceeds of this settlement, including but not limited to any claims of any insurer, and to repay to the City, and/or its mayor, council members, officers, Police Chief, police officers, officials, employees, former employees, agents, attorneys, successors, assigns, and insurers any additional sum of money that any of them may hereafter be compelled to pay on account of the failure to fully pay and satisfy said liens including the attorneys' fees and costs which may result from any claim by any possible lien holder because of the failure of to fully satisfy said liens. Knowlton and the Estate further agree that, if required by law, all first party insurance carriers or worker's compensation carriers which have paid medical benefits for medical treatment and/or lost wages will be reimbursed from the proceeds of this recovery to the extent any first party carrier is entitled to reimbursement, and will indemnify the Releasees for any amount paid by the

Releasees to any first party insurance carriers due to failure to reimburse said first party insurance carrier from the proceeds of this recovery including attorneys' fees and costs which may result from any claim by any first party insurance carrier because of failure to reimburse the carrier.

6. Medicare and Medicaid Claims. Knowlton and the Estate acknowledge that each has conducted an investigation into and has considered Medicare's and/or Medicaid's interests in this settlement and it has been determined that an allocation for future Medicare and/or Medicaid covered expenses is not required pursuant to the policies and procedures established to protect Medicare's and/or Medicaid's interests as required under the Medicare and/or Medicaid secondary payer laws. There is no reasonable expectation of Medicare and/or Medicaid eligibility within the next thirty (30) months. Knowlton and the Estate agree to defend, hold harmless and indemnify the City from any Medicare and/or Medicaid liens, set aside requirements and/or fines, penalties, sanctions, and/or litigation instituted by Medicare and/or Medicaid or its agents due to any potential failure on the part of Knowlton and/or the Estate to report to Medicare and/or Medicaid and/or secure a Medicare and/or Medicaid set-aside, as well as defend and indemnify the City from any and all claims of Medicare and/or Medicaid related to the Incident.
7. Entire Agreement: This Agreement constitutes the entire agreement between the Parties, supersedes all prior and contemporaneous understandings and representations whether oral or written, and cannot be altered or modified unless the same occurs by way of a writing signed by the Parties. This Agreement may be signed in counterparts with the same force and effect as if all signatures were set forth in a single instrument. This Agreement shall be governed and construed under the laws of the State of Florida.
8. Consultation with Attorneys: The Parties agree that they have consulted with their respective attorneys concerning the contents of this Agreement, or have waived the opportunity to do so. By signing this Agreement, Knowlton and the Estate affirm that each has read it, understands it, knows that each is giving up important rights, agrees with everything in it, and has knowingly and voluntarily signed it. The Parties understand that this Agreement cannot be revoked, and once signed, is binding on the Parties. The Parties agree that they shall not seek to recover from each other the costs and attorneys' fees incurred in the preparation of this Agreement, in pursuit of this Agreement or the claims being released herein, or in the negotiation of this Agreement.
9. Authority: Knowlton and the Estate each represent that they are duly authorized to enter into this Agreement in the capacities stated below without the consent or joinder of any other party, have obtained any required court and/or other approvals of the settlement and this Agreement, and have not previously assigned or transferred, or purported to assign or transfer, to any person or entity, all or part of any claim against the Releasees. This Agreement shall be binding upon the Parties and their respective

heirs, administrators, executors, successors and assigns. The Parties further state that at the time of reviewing and signing this Agreement, each is of a sound mind and is not under the influence of any drugs, alcohol, or other substances which may affect his ability to fully and completely understand and voluntarily enter into this Agreement.

10. **Action for Breach of Agreement:** The Parties agree that, in any suit or action to enforce the terms of this Agreement, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees from the non-prevailing party.

11. **Headings:** The headings of the paragraphs of this Agreement are for convenience only, and shall not act to limit or otherwise affect the rights and obligations set forth herein.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement OF THEIR OWN FREE CHOICE AND WILL, AFTER CONSULTATION WITH COUNSEL OF THEIR CHOICE, on the date(s) set forth below.

[The remainder of this page intentionally left blank -
Signature Blocks on Following Page(s)]

Initialed B.K.
Knowlton/Estate

THE CITY OF PUNTA GORDA, FLORIDA

By: _____
Howard Kunik
City Manager
Date: _____

Nicole C. Nate, B.C.S.
Counsel for City of Punta Gorda

STATE OF FLORIDA
COUNTY OF CHARLOTTE

The foregoing Settlement Agreement and Release was acknowledged before me on this _____ day of _____, 2016, by Howard Kunik, as City Manager for the City of Punta Gorda, Florida, for and on behalf of the municipal corporation, who is personally known to me or has produced _____ as identification.

Notary Public, State of Florida

Print Name: _____
My Commission Expires: _____

GARY KNOWLTON

Gary B. Knowlton

Gary Knowlton
Date: October 26, 2016

Forrest J. Bass

Forrest J. Bass, B.C.S.
Counsel for Gary Knowlton

STATE OF FLORIDA
COUNTY OF Charlotte

The foregoing Settlement Agreement and Release was acknowledged before me on this 26th day of October, 2016, by Gary Knowlton, who is personally known to me or has produced FL Driv. L.C. as identification.



Forrest J. Bass

Notary Public, State of Florida

Print Name: _____
My Commission Expires: _____

Initialed G.K.
Knowlton/Estate

THE ESTATE OF MARY KNOWLTON

Gary B. Knowlton
By and through Gary Knowlton as Personal
Representative of the Estate of Mary Knowlton

Forrest J. Bass
Forrest J. Bass, B.C.S.
Counsel for the Estate of Mary Knowlton

Date: October 26, 2016

STATE OF FLORIDA
COUNTY OF Charlotte

The foregoing Settlement Agreement and Release was acknowledged before me on this 26th day of October, 2016, by Gary Knowlton, as Personal Representative of the Estate of Mary Knowlton, on behalf of the Estate of Mary Knowlton, who is personally known to me or has produced FL Driv. L.T. as identification.



Forrest J. Bass
Notary Public, State of Florida

Print Name: _____
My Commission Expires: _____

Initialed P.K.
Knowlton/Estate