

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE (the "Agreement") is made and entered into this 5th day of December 2021, by and among Donald Dziwulski ("Dziwulski"), and The Mayor and City Council of Baltimore ("the City"). Dziwulski together with the City are referred to herein as the "Settling Parties."

RECITALS

WHEREAS on May 13, 2013, Plaintiff was not selected for promotion to Battalion Chief of Emergency Medical Services ("BC EMS"). Plaintiff claimed that he was passed-over for promotion because of his race, Caucasian. The City denied Plaintiff's allegations and instead claimed that two (2) African-Americans who were selected for the BC EMS were next up for promotion.

WHEREAS following his non-selection, Dziwulski filed a Charge of Discrimination with the Equal Employment Opportunity Commission, followed by a lawsuit filed in the United States District Court for the District of Maryland, assigned Case Number 18-cv-277. Plaintiff alleged claims of race discrimination and retaliation under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e *et seq.* Those claims are hereinafter referred to as "the Litigation Claims".

WHEREAS, the Parties deny the other claims.

WHEREAS, the Parties desire to resolve the Litigation Claims without the potential for future litigation.

WHEREAS, The Parties anticipate that a Battalion Chief-EMS position will become vacant on or about January 29, 2022, when an incumbent in that position is slated to retire. Further, the City shall not abolish or reclassify that Battalion Chief-EMS position if it does become vacant.

WHEREAS, the Parties wish to clarify and agree on the terms and conditions of resolving the Litigation Claims and any continuing obligation of the parties to one another:

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises and agreements set forth herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties hereby covenant and agree as follows:

Recitals: The foregoing recitals are incorporated into and made part of this Agreement.

1. **Conditions Precedent:** This Agreement shall only become effective if the following two events occur: (1) the Board Of Estimates is presented with and approves of this Agreement no later than December 2021; and (2) Plaintiff is promoted to the next vacant Battalion Chief-EMS position no later than February 5, 2022.

2. **Settlement Consideration:** If the triggering events for settlement occur as set forth above in Section 1, the City shall provide Dziwulski with the following:

A. As of the promotion date to the Battalion Chief-EMS position, Dziwulski's seniority in that position shall, for all purposes, be stated as and recognized as starting from May 13, 2013. The City shall provide Dziwulski, no later than seven days from his promotion, with documentation showing that his seniority date into the promoted position is stated and recognized as May 13, 2013.

B. The City agrees to compensate Dziwulski as follows within 14 days of his promotion into the Battalion Chief-EMS position:

- i. One check will be made payable to Dziwulski in the gross amount of \$25,000.00 which is in settlement of Dziwulski's claim for non-economic damages, including claims for physical injuries and for the treatment thereof and related expenses. This payment in an IRS Form 1099 to be issued to Dziwulski who shall be solely responsible for the tax consequences, if any, from that payment. The City shall make this payment within thirty (30) calendar days of any approval by the Board of Estimates. The City shall forward this check to City Solicitor Gary Gilkey for delivery to Dziwulski's attorney.
- ii. One check will be made payable to Dziwulski in the gross amount of \$60,000.00, which is in settlement of Dziwulski's claim for backpay. This payment will be treated as wages for tax purposes and the City will deduct and withhold from this payment all applicable local, state, and federal taxes,

including income taxes and payroll taxes. The City shall report this payment in an IRS Form W-2 to be issued to Dziwulski. The City shall make this payment within thirty (30) calendar days of any approval by the Board of Estimates. The City shall forward this check to City Solicitor Gary Gilkey for delivery to Dziwulski's attorney.

C. The City agrees to pay the attorney for Dziwulski, Stephen Lebau of Lebau & Neuworth, LLC, \$175,000.00 in attorney fees and costs. The payment for attorney fees and costs will be made payable to Lebau & Neuworth, LLC, and shall be delivered to attorney within thirty (30) calendar days of Dziwulski's promotion into the Battalion Chief-EMS position.

3. **General Release and Covenant not to Sue:** In return for the above consideration, Dziwulski agrees that he, his heirs, assigns, agents, representatives, attorneys and successors in interest unconditionally release and forever discharge and covenant not to sue the City, their officials, agents, employees, employers, agencies, departments, directors, officers, members, representatives, assigns, attorneys, successors in interest, and all other persons, firms, governmental entities and corporations from any and all Claims arising out of or relating to Litigation Claims referenced herein. "Claims" includes, but are not limited to, any and all losses, costs, expenses, debts, actions (statutory, in law or in equity), causes of action, suits, damages, claims, demands and all other claims, liabilities and obligations of any nature whatsoever including but not limited to any and all claims for discrimination under Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Age Discrimination in Employment Act, the Equal Pay Act, the Older Worker Benefits Protection Act, the Family and Medical Leave Act, the Consolidated Omnibus Budget Reconciliation Act, the Americans With Disabilities Act, the Employee Retirement Income Security Act, and any comparative state law, whether presently known or unknown, including attorneys' and consultant's fees. The waiver of claims also includes any administrative remedies such as grievances and arbitrations of whatever nature.

4. **Valid Consideration:** The Settling Parties agree that the exchange of promises and actions set forth herein constitute valid and sufficient consideration on the part of each party.

5. **No Agreement if Conditions Precedents do not Occur:** This Agreement shall have no force or effect if the conditions precedent for settlement do not occur as set forth in Section 1 above. The Parties agree to jointly advise the Court within three days from whenever a condition precedent fails to occur or within three days after the conditions precedents occur.

6. **Warranty of Capacity to Enter Into Release:** Dziwulski represents and warrants that no other person or entity has any interest in the claims, demands, allegations or causes of action referred to in this Settlement Agreement except as otherwise set forth herein and that he has the sole right and exclusive authority to execute this Settlement Agreement, and that he has not sold, assigned, transferred, conveyed or otherwise disposed of any claim, demand, obligation or causes of action referred to in this Settlement Agreement. If any person should assert a claim on behalf of Dziwulski against the City that Dziwulski did not have the right or authority to enter into this Settlement Agreement, Dziwulski agrees to indemnify, defend and hold the City harmless from any and all claims or contentions, damages, costs, liability and attorneys' fees as a consequence or result of such claim or lawsuit.

6. **ADEA Disclosures:** Without detracting in any respect from any other provision of this Agreement:

a. Dziwulski, in consideration of the compensation described in Paragraph 2 of this Agreement, agrees and acknowledges that this Agreement constitutes a knowing and voluntary waiver of all rights or claims he has against the City as set forth herein, including, but not limited to, all rights or claims arising under the Age Discrimination

in Employment Act of 1967, as amended ("ADEA"), and including, but not limited to, all claims of age discrimination and retaliation in violation of the ADEA;

b. Dziwulski represents, agrees and acknowledges that the consideration provided under this Agreement is in addition to anything of value to which he is already entitled.

c. Dziwulski represents that he has consulted with an attorney prior to executing this Agreement.

d. Dziwulski also acknowledges that he was informed that he had twenty-one (21) days in which to review and consider this Agreement and that he was, in fact, provided with the twenty-one (21 days) to review and consider this Agreement. Dziwulski further acknowledges that if he signs this Agreement, he has seven (7) calendar days within which to revoke his acceptance, in which case this Agreement shall have no effect. Dziwulski may revoke his acceptance by providing written notice of his withdrawal to:

Gary Gilkey
Chief Solicitor, Labor & Employment Division
Baltimore City Law Department
Baltimore, Maryland 21202

e. This Agreement shall not become effective or enforceable until seven days after the City has received Dziwulski's signed copy of this Agreement. If Dziwulski timely exercises his right to revoke this Agreement, this Agreement shall not be admissible or be used for any purpose.

7. **Costs and Expenses.** Each party will be responsible for his, her or its own costs and expenses incurred in connection with this matter.

8. **No Admission of Liability:** It is understood and agreed by the Settling Parties that this Agreement and the releases contained herein shall not be construed as an admission of liability on the

part of the City, any such liability being expressly denied, and that rather, the purpose of this Agreement is to fully and finally resolve all differences amongst the Settling Parties and to allow the Settling Parties to avoid the time, expense and uncertainties of protracted litigation. As such, this Settlement shall not be admissible in any proceeding, except to enforce its terms.

9. **Entire Agreement of the Parties:** It is understood and agreed by the Parties that this Agreement constitutes the entire Agreement among the Settling Parties with respect to the subject matter hereof and supersedes all other prior and contemporaneous written or oral agreements and discussions. This Agreement may only be amended by a writing signed by all parties hereto.

10. **Drafting of the Agreement.** The Parties acknowledge and agree that this Agreement represents the product of negotiations and shall not be deemed to have been drafted exclusively by any one party. In the event of a dispute regarding the meaning of any language contained in this Agreement, the Settling Parties agree that the same shall be accorded a reasonable construction and shall not be construed more strongly against one party than the other.

11. **Severability:** In the event that any covenant, condition, or other provision contained in this Agreement is held to be invalid, void, or illegal by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect, impair or invalidate any other covenant, condition or other provision contained herein. If such condition, covenant or other provision shall be deemed invalid due to its scope of breadth, such covenant, condition or other provision shall be deemed valid to the extent of the scope of breadth permitted by law.

12. **WAIVER OF JURY TRIAL:** TO THE EXTENT AN ACTION IS FILED IN ANY COURT FOR A BREACH OF ANY COVENANT, TERM OR CONDITION OF THIS

AGREEMENT, THE SETTling PARTIES HEREBY VOLUNTARILY WAIVE ANY AND ALL RIGHTS TO A TRIAL BY JURY.

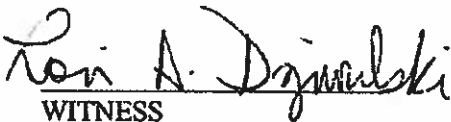
13. **Knowing and Voluntary Act:** Each of the Settling Parties represents that each has read this Agreement and that each party has voluntarily executed this Agreement knowingly and voluntarily.

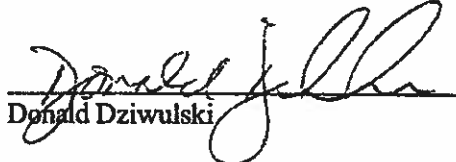
14. **Survival of Terms:** The Settling Parties agree that this Agreement shall upon approval inure to the benefit of the Settling Parties and their respective agents, assigns, partners, heirs, executors, administrators, and personal or legal representatives. The Settling Parties understand and agree that the terms, covenants, and conditions set forth in this Agreement shall survive the closing of the Agreement.

15. **Governing Law:** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Maryland, without giving effect to its conflicts of law provisions. Any dispute relating to this settlement agreement, or breach thereof, shall be subject to the exclusive jurisdiction of the U.S. District Court of the District of Maryland (Northern Division).


16. **Counterparts:** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same instrument. An emailed, facsimile or copy signature will be binding and legal in all respects as if it were an original signature to this Agreement.

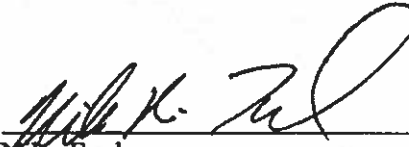
IN WITNESS WHEREOF, the Parties have executed this Agreement by the duly authorized representatives as of the date first written above:


WITNESS

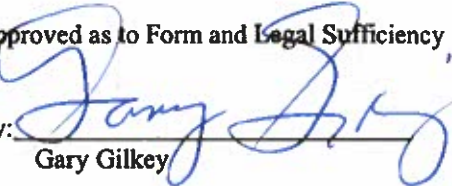
 (SEAL)
Donald Dziwulski

MAYOR AND CITY COUNCIL OF BALTIMORE


WITNESS

By:  (SEAL) 12/13/21
Miles Ford
Chief, Baltimore City Fire Department

Approved as to Form and Legal Sufficiency,

By: 
Gary Gilkey

APPROVED BY BOARD OF ESTIMATES

Clerk

Date

DATE: December 13, 2021.