

EM SUBMISSION NO.: EME5842014

PRESENTED: 10-27-14

ADOPTED: 10-30-14

**BY THE EMERGENCY MANAGER:**

**RESOLUTION APPROVING THE LITIGATION SETTLEMENT IN THE MATTER OF  
WAYNE NEWMAN V CITY OF FLINT, ET AL, CASE NO. 14-101985-CZ**

Wayne Newman filed a civil rights suit against the City of Flint and others relative to alleged racial and religious discrimination at the hands of all Defendants in this matter; and

Pursuant to the Full and Final Release of All Claims, attached hereto and made a part hereof, the City of Flint shall employ Mr. Newman for one eight hour day at an hourly rate of Eleven Dollars and Twenty-Five Cents (\$11.25), for purposes of taking the MCOLES examination; and

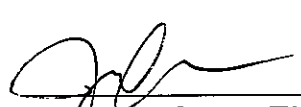
Although the City of Flint admits no liability, the Department of Law recommends settlement of this matter pursuant to the Full and Final Release of All Claims.

**IT IS RESOLVED** that the Emergency Manager hereby authorizes settlement in the litigation matter of *Wayne Newman v City of Flint*, et al, Case No. 14-101985-CZ. Mr. Newman shall be employed by the City of Flint for one eight hour day at an hourly rate of Eleven Dollars and Twenty-Five Cents (\$11.25), for purposes of taking the MCOLES examination. The Human Resources Department is authorized to move forward with this settlement as soon as practicable, pursuant to the Full and Final Release of All Claims attached hereto and made a part hereof. Full payment of this settlement in the amount of Ninety Dollars (\$90.00) shall be drawn from line item 677-266.200-956.300.

**APPROVED AS TO FORM:**

  
Peter M. Bade, City Attorney

**APPROVED AS TO FINANCE:**

  
Gerald Ambrose, Finance Director

**EM DISPOSITION:**

ENACT ✓ FAIL \_\_\_\_\_

DATED 10-30-14

  
Darnell Earley, Emergency Manager

### **FULL AND FINAL RELEASE OF ALL CLAIMS**

Wayne Newman, (hereinafter "Plaintiff") for the sole consideration of the being named a temporary employee of the City of Flint, at the rate of pay of eleven dollars and twenty five cents (\$11.25), for one (1), eight (8) hour, day and solely for purposes of taking the MCOLES examination, paid by the City of Flint, a Michigan municipal corporation, hereby releases and forever discharges the City of Flint, a Michigan municipal corporation, its elected officials, officers, agents, employees, divisions, departments, volunteers, boards, board members, commissions, commission members, multiple member bodies, and multiple member body members; collectively referred to as "the City", (hereinafter "Defendants") from any and all actions, causes of action, claims and demands of whatsoever kind or nature on account of any and all known and unknown injuries, losses and damages, sustained or received by Plaintiff, and for any and all claims that Plaintiff had, now has, or shall have in the future, by reason of, or in the subject matter of, Genesee County Circuit Court Case No. 14-101985-CZ, *Wayne Newman v Mott Community College, Mott Community College Law Enforcement Regional Training Academy, William Brown, and City of Flint*, or any other potential claim Plaintiff may have against Defendants that Plaintiff is now aware of or may become aware of at a future date. Plaintiff expressly acknowledges that he is not entitled to any further employment with the City of Flint, including its Police Department, pursuant to this Release.

Plaintiff hereby authorizes and directs her attorney, Tom R. Pabst, to stipulate to or otherwise consent to the settlement of the above referenced claim and agrees to dismiss the case in its entirety with prejudice.

Plaintiff further agrees and understands, that this agreement, (hereinafter "Release") is a full and final release for any and all claims Plaintiff has or may have against the Defendants involving the above referenced lawsuit(s), and that Plaintiff may never again commence any action or cause of action against the Defendants, either individually or jointly and severally, relating to the events that are the subject of the above-referenced lawsuit.

Plaintiff further agrees that the payment above set forth is in compromise of a disputed claim and demand and neither said payment nor the Release is to be construed to be any admission of liability on account of same.

Plaintiff further agrees this Release is given voluntarily and is not based on any representations or statements of any kind made by the Defendants, as to the merits, legal liability, or value of any claims or any other matter relating thereto.

As stated, this Release is intended to cover all actions, causes of actions, claims and demands for, upon or by reason of any damage, loss or injury which Plaintiff has already sustained, may be sustaining now, or shall sustain in the future relating to the aforesaid incidents giving rise to the referenced case, it being fully understood that there may be other losses, damages, or injuries as a result of the incident giving rise to the case afore stated that are not apparent and that those damages, losses or injuries could become apparent in the future, however, knowing all of that, Plaintiff still enters into this Release with the complete knowledge


and understanding that by doing so Plaintiff hereby releases and forever discharges Defendants and their insurers, from any further liability for the afore-described incident giving rise to the above-referenced cases and for any consequences resulting therefrom, by way of contribution, indemnity or otherwise.

In consideration of the payment set forth herein, Plaintiff agrees that Plaintiff will not levy or execute upon any judgment hereinafter obtained by Plaintiff such that said enforcement, execution or levy would subject Defendants or their insurers, to any further liability for the afore described incident giving rise to the referenced cases or for any consequences resulting therefrom, by way of contribution, indemnity or otherwise.

It is also agreed that this Release will operate to document and satisfy the pro rata share of the Defendants of any joint judgment or judgment for contribution rendered against them and that the document may be filed with any Court wherein such judgment is rendered, which judgment is a result of any claim for injuries, losses or damages suffered by Plaintiff as set forth herein.

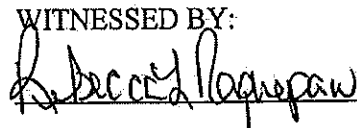
Plaintiff further states that the foregoing Release consisting of 2 pages has been read in its entirety and Plaintiff has had the opportunity to review same with Plaintiff's attorney, and fully understands and comprehends the contents hereof.

SIGNED:

  
Wayne Newman

10-22-14  
Date

WITNESSED BY:

  
Rebecca Logan

10/22/14  
Date

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**TEMPORARY EMPLOYMENT AGREEMENT**  
**BETWEEN THE CITY OF FLINT AND WAYNE NEWMAN**

Wayne Newman (hereinafter "Contractor") agrees to perform the duties described in this agreement (hereinafter "Agreement"), and the City of Flint (hereinafter "City") accepts such services upon the terms and conditions set forth below:

**I. DUTIES**

Contractor shall be a temporary employee of the City solely for the purpose of taking the MCOLES test on December 18, 2014.

**II. COMPENSATION**

Contractor shall be paid \$11.25 per hour for eight (8) hours, from which the City shall deduct standard payroll taxes. Contractor agrees to hold City harmless for any and all income tax obligations and any other consequences of payment under this Agreement.

**III. BENEFITS**

Contractor shall **not** be entitled to fringe benefits of any kind, including but not limited to leave time, workers' compensation, medical, or retirement benefits. Compensation set forth in Section II shall be the sole consideration paid to Contractor by the City.

**IV. TERM**

This Agreement is for work to be performed on December 18, 2014, and its effective date begins and terminates on that date.

**V. DISPUTE RESOLUTION**

All disputes, controversies, or claims arising out of, in connection with, or relating to this Agreement or any breach or alleged breach of the Agreement shall be submitted to and settled by arbitration in the State of Michigan under the rules then in effect of the American Arbitration Association. The parties specifically agree to arbitration with the other party in a joint proceeding for all common issues and disputes. This Agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law.

Notice of the demand for arbitration shall be filed, in writing, with the other party to this agreement. The demand for arbitration shall be made within a reasonable time after the claim, dispute, or other matter in question arose when the party asserting the claim should reasonably have been aware of it, but in no event later than ten (10) days after the claim arose.

The parties may elect to be represented by an attorney or other representative of their choice. Each party shall have the right to prehearing discovery in the time and manner provided by the then-applicable Michigan Court Rules. Each party also shall have the right to subpoena witnesses and documents for the arbitration hearing.

The arbitrator shall have no power to add to, subtract from, or alter the terms of this Agreement, and shall render a written decision setting forth findings and conclusions only about the claims or disputes at issue. The expenses of any arbitration shall be born by the respective parties and each party shall pay for and bear the costs of its own experts, evidence, and counsel fees. However, if any party prevails on a statutory claim, the arbitrator may award reasonable costs and fees, including the portion of the arbitrator's fees paid by the party, and attorney fees to the prevailing party in accordance with such statute.

Any award by the arbitrator shall be final and conclusive upon the parties and a judgment may be entered in the highest court for the forum, state or federal, having jurisdiction.

#### **VI. ASSIGNMENT PROHIBITED**

This Agreement is personal to each of the parties and neither party may assign or delegate any of its rights or obligations under this Agreement without first obtaining the other's written consent.

#### **VII. MISCELLANEOUS**

- A. This Agreement contains all of the terms and conditions of the contractual relationship between the parties, and no amendments or additions to this Agreement shall be binding unless they are in writing and signed by both parties.
- B. This Agreement shall be binding upon the parties, their legal representatives, successors, and assigns.
- C. This Agreement abrogates and takes the place of all prior agreements or understandings that may have been made by the parties.
- D. The Contractor shall comply with all reporting and recording requirements regarding compensation expenditures and benefits provided by the City under the U.S. Internal Revenue Code, as amended, and any of its rules and regulations.

#### **VIII. GOVERNING LAW**

This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Michigan.

#### IX. SEVERABILITY

The invalidity of all or any part of any sections, subsections, or paragraphs of this Agreement shall not invalidate the remainder of this Agreement or the remainder of any paragraph or section not invalidated unless the elimination of such subsections, sections, or paragraphs shall substantially defeat the intents and purposes of the parties.

CONTRACTOR



Wayne Newman

Date: 10-22-14

CITY OF FLINT



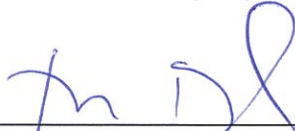
Darnell Earley, ICMA-CM, MPA

Emergency Manager \_\_\_\_\_

Date: \_\_\_\_\_

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APPROVED AS TO FORM:



Peter M. Bade, City Attorney

### **SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS**

This agreement is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2014 by and between Plaintiff, WAYNE NEWMAN, hereinafter referred to as "Plaintiff," and Defendants, CHARLES S. MOTT COMMUNITY COLLEGE, and/or MOTT COMMUNITY COLLEGE, MOTT COMMUNITY COLLEGE LAW ENFORCEMENT REGIONAL TRAINING ACADEMY, WILLIAM BROWNE, and THE CITY OF FLINT, hereinafter referred to as "Defendants."

#### **RECITALS**

1. Plaintiff filed an action with the Circuit Court for the County of Genesee, entitled "Wayne Newman v. Charles S. Mott Community College and/or Mott Community College, and Mott Community College Law Enforcement Regional Training Academy, and William Brown and/or William Browne, individually, and The City of Flint, a governmental agency", bearing File No. 14-101985-CZ, hereinafter ("The Action").

2. The parties desire and wish to mutually compromise, resolve and settle their disputes and claims raised by or related to the Action and to bring about a dismissal with prejudice of the Complaint filed by Plaintiff, without making any admissions of liability on the part of the Defendants, wherein liability is expressly denied by the Defendants.

#### **AGREEMENT**

In consideration of the following terms, covenants and conditions, the parties agree as follows:

1. Plaintiff has agreed to settle his claims against Defendants in exchange for the Defendants arranging for the Plaintiff to sit for the MCOLES examination on December 18, 2014. The expense associated with the examination will be remitted by the Defendant, MOTT COMMUNITY COLLEGE.

2. Plaintiff agrees that the Defendants bear no obligation as part of this Release other than making the arrangements for the aforementioned MCOLES examination. Plaintiff agrees that in the event that he does not attain a score that satisfies the MCOLES requirements to pass the examination, he will have no further rights to any additional examinations arranged by the Defendants and no further right to attend any of the law enforcement training programs offered by the Defendants.

3. **Dismissal of action.** Upon receipt by counsel of this Agreement signed by the Plaintiff, the parties shall cause to be entered a dismissal with prejudice of the Complaint in this Action without costs or attorney fees to any party relating to File No. 14-101985-CZ.

4. **The Plaintiff and Defendants release claims.** In consideration of the payment for the MCOLES examination called for herein, the Plaintiff hereby on behalf of himself, his heirs, assigns, family members and representatives, completely releases and forever discharges the Defendants, their Insurer and said parties' past, present and future administrators, officers, directors, board members, trustees, operating board members, volunteers, stockholders, attorneys, agents, servants, representatives, employees, predecessors and successors in interest and assigns, of and from any and all past, present or future claims, demands, obligations, actions, causes of action (criminal, civil and administrative), wrongful termination of contractual relationships, rights, demands, costs, losses of services, expenses and compensation of any nature whatsoever, whether based on a tort, contract or other theory of recovery and for compensation, which Plaintiff now has or which may, hereafter, accrue or otherwise be acquired, on account of, or in any way growing out of Plaintiff's previous admission and attendance at Defendants' MOTT



COMMUNITY COLLEGE LAW ENFORCEMENT REGIONAL TRAINING ACADEMY. The Plaintiff expressly releases all claims, known or unknown, including claims for economic and non-economic loss, bodily and personal injuries to Plaintiff or any future wrongful termination and / or breach of contract claims by Plaintiff or his representatives, which have resulted or may result from the alleged acts or omissions of the Defendants up to the date of this Release. Plaintiff is prohibited from, bears no right to recall, reapplication, readmission, reentry into any educational programs at MOTT COMMUNITY COLLEGE, including, but not limited to its police academy, and all of its subsidiaries, including its physical campuses, online campus or its accompanying services. Plaintiff agrees he will not attempt to utilize and has no right to utilize any service offered by MOTT COMMUNITY COLLEGE to its students (current, former or otherwise), which includes their catalog, access to prospective employers and student services regarding its law enforcement program. Plaintiff still bears the right to utilize other MOTT COMMUNITY COLLEGE systems as allowable by law and not in contravention of this agreement.

This Release on the part of Plaintiff and Defendants shall be a fully binding and complete settlement between Plaintiff and Defendants and their Insurer, their assigns and successors, save only the executory provisions of this Settlement Agreement. Plaintiff agrees to defend, indemnify and hold Defendants and their Insurer harmless from and against any and all claims for indemnification or contribution, made by any persons, partnerships, corporations, or other legal and non-legal entities, arising out of the aforementioned incident and resulting in a claim or litigation commenced by Plaintiff or his heirs, representatives or assigns.

5. **Integration Clause.** This Agreement represents and contains the entire Agreement and understanding between the parties hereto with respect to the subject matter of this Agreement. This Agreement may not be amended or modified except by an agreement in writing signed by the parties.

6. **Construction.** In entering into this Agreement, the parties represent that they have relied upon the legal advice of their attorneys, who are attorneys of their own choice. The parties further represent that the terms of this Agreement have been completely read and explained to them by their attorneys and that these terms are fully understood and voluntarily accepted by them.

7. **Confidentiality.** Plaintiff agrees not to divulge the terms of this Agreement to anyone except his spouse, attorney or accountant, except as required by law. To the extent that he does divulge the terms of this Agreement to his spouse, accountant or attorney, he will advise them that they must not divulge the terms of this Agreement. Defendants will, likewise, not divulge the terms of this Agreement except as required by law.

8. **Non-Disparagement Clause.** Plaintiff further represents and agrees that he will make no false or disparaging statements regarding Defendants, their services, employment practices or former or current personnel.

Defendants agree that they will make no false or disparaging statements regarding the Plaintiff.

9. **Effective Agreement.** This Agreement may be pled as a full and complete defense to, and may be used as the basis for an injunction against any action,

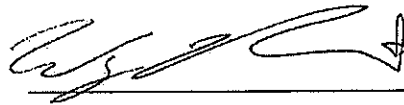
suit or other proceedings that may be instituted, prosecuted or attempted in breach of this Agreement except for an action based on the breach of this Agreement.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the day and year first written above.

MOTT COMMUNITY COLLEGE:

WAYNE NEWMAN:

\_\_\_\_\_  
THERESA A. STEPHENS-LOCK

  
\_\_\_\_\_

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

Date: 10-22-14

Date: \_\_\_\_\_