

COPY

SETTLEMENT AGREEMENT AND GENERAL RELEASE

AND NOW, the undersigned, in settlement of their dispute as described herein, hereby mutually covenant and agree as follows:

WHEREAS, Richard P. Kearns of Bethlehem, New Hampshire (hereinafter, "Plaintiff") alleges that Town of Littleton/Littleton Police Department, New Hampshire (hereinafter, "Defendant") violated Plaintiff's constitutional rights by arresting Plaintiff in February 2014 ("Claims"). See Attachment A (June 25, 2014 letter-4 pages); and

WHEREAS, Plaintiff has threatened to file civil litigation against Defendant in New Hampshire concerning the Claims ("Threatened Litigation"); and

WHEREAS, Defendant disputes the Claims and allegations and denies any liability. See Attachment B (Littleton Police Department Arrest Report, Narratives, Statement, and Arrest Warrant-13 pages); and

WHEREAS, Plaintiff disputes that he did anything unlawful; and

WHEREAS, Plaintiff and Defendant desire to settle the Claims and allegations in the Threatened Litigation to avoid the time and expense of future litigation and without any admission of liability, which is expressly denied by Defendant.

THEREFORE, the parties agree as follows:

1. Consideration: Defendant will provide the following consideration:
 - A. No later than forty-five (45) days after the execution of this Agreement, Defendant's Police Department will notify each of its officers that officers are not to arrest and prosecute for the use of profane or offensive words or gestures, whether those words or gestures are directed at law enforcement personnel or at a member of the public. See Attachment C (LPD Directive-2 pages).
 - B. On July 30, 2014, Defendant's Police Department provided additional

training to its officers on the First Amendment Rights of an individual to expression by profane language or gestures and that members of the public may not be cited solely on the basis of profane words or gestures, even when directed at law enforcement officers. See Attachment D (Grafton County Attorney Office Training Lecture Materials-50 pages).

C. The Defendant's Police Department shall provide such training to its officers at least every two (2) years for the next four (4) years.

D. Within forty-five (45) days after the receipt of a copy of this Agreement executed by Plaintiff, Property-Liability Trust, Inc. of Concord, New Hampshire, a duly authorized and existing pooled risk management program pursuant to NH RSA 5-B, shall pay the total sum of seventeen thousand five hundred Dollars and No Cents (\$17,500.00), inclusive of all attorney's fees and costs, on behalf of Defendant as follows:

- \$13,000.00 to "*Richard P. Kearns*"; and
- \$4,500.00 to "*NH Civil Liberties Union Foundation.*"

2. General Release of All Claims by Plaintiff: Plaintiff hereby fully remises, releases, and discharges Defendant, Property-Liability Trust, Inc., and all their agents, representatives, employers, employees, servants, volunteers, independent contractors, police officers, officials, directors, attorneys, insurers, indemnitors, successors, and assigns, in their individual, business, and official capacities, as well as any other person and/or entity to the extent that such other person and/or entity could be deemed liable, by, through or under them (collectively referred to as "Releasees"), from any and all Claims whatsoever, in law or in equity, which he ever had, now has, or which he can, shall, or may have against Releasees, from the beginning of time to the date of this Release for, or by reason of, any matter, cause, or thing whatsoever, arising out of, or in any way associated with (1) the incidents referenced in Attachments A and B; (2) the Threatened Litigation; and (3) the Claims. In further consideration of the payments

set forth herein, Plaintiff waives, releases, and forever discharges Releasees from any obligations for any claim, known or unknown, arising out of the failure of Releasees to provide for a primary payment or appropriate reimbursement pursuant to 42 U.S.C. 1395y(b)(3)(A).

3. Non-Admission: This Agreement is a compromise of disputed claims. Defendant expressly denies any and all liability, wrongdoing, and culpability regarding the Claims and Threatened Litigation. Plaintiff expressly denies that he did anything unlawful during the incident(s) arising out of the Claims.

4. Waiver/Purpose/Representations: Plaintiff acknowledges, agrees, and represents that (a) no party is a prevailing party in the Litigation; (b) Plaintiff is not entitled to request or be awarded attorneys' fees, interest or costs under any Federal, State, or administrative law or regulation; (c) Plaintiff waives any such claims of attorneys' fees, interest, and costs; (d) the purpose of this Agreement is to "buy peace" from further dispute and controversy between and among Plaintiff and Defendant; (e) the consideration herein may or may not fully compensate Plaintiff for alleged losses; (f) court approval is not required for any provision of this Agreement; (g) Plaintiff has executed this Agreement with full knowledge of its legal significance; (h) Plaintiff has done so to end all claims and the Litigation; (i) he will provide, if any, copies of all documents between Defendant and Medicare regarding the reduction in the amount owed Medicare/Medicaid for Conditional Payments, either for financial hardship, equity and good conscience, or due to procurement costs, or any other reason; and (j) should any person or entity not a party hereto challenge the validity of this Agreement, or any term thereof, pursue recover of monies from Defendant or bring a claim or claims against Defendant arising out of 42 U.S.C. § 1395y(b) related to payment for items or services related to the injuries claimed in this Litigation. Plaintiff shall provide to Defendant such cooperation and assistance as Defendant

may reasonably request in order to resist such a challenge or defend such a claim.

5. Responsibility and Indemnification with Respect to Related Liens, if any:

Plaintiff acknowledges and agrees to be responsible for any and all related outstanding bills, liens, statements, rights of subrogation, or reimbursement for services rendered or payments made by any third party to Plaintiff, if any, including but not limited to legal, insurance providers, hospitals, medical and health care providers, Medicaid, Medicare, unemployment compensation, worker's compensation, or any other services or payments made or received, as a result of the Claims. In the event that any such third party asserts any claim against any of the Releasees for outstanding bills, liens, statements, rights of subrogation, or reimbursement for services rendered or payments made to Plaintiff by such third party, as a result of the Claims, then Plaintiff agrees to indemnify, defend, and hold harmless the Releasees for any such claims.

6. Modification: This Agreement may not be amended or supplemented, and no waiver of, or consent to, or departures from provisions hereof shall be effective, unless set forth in a writing signed by all parties.

7. Complete Agreement: It is further agreed and expressly understood that there are no other understandings or agreements, verbal or otherwise, in relation to any matter pertaining to this Agreement which are not expressly set forth herein.

8. Consultation With Counsel: This Agreement has been freely, knowingly, and voluntarily executed by Plaintiff and Defendant after consultation with legal counsel.

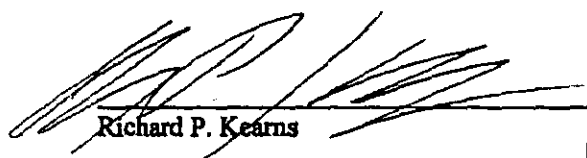
9. Authorizations: The parties have taken all actions and obtained all authorizations, consents and approvals as are conditions precedent to their authority to enter into this Agreement and thus warrant that they are fully authorized to act in accordance with this Agreement.

10. Governing Law: This Agreement shall be enforced in accordance with the laws of

the State of New Hampshire. In the event of litigation regarding this Agreement, Plaintiff and Defendant expressly submit to the jurisdiction of New Hampshire.

11. Severability: Plaintiff and Defendant agree that if any provision of this Agreement is deemed invalid or unenforceable, any such provision shall be divisible, and shall not affect in any way the remainder of this document, which shall remain in full force and effect.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the undersigned has set his hand and signature below.

Date: 12-23-14 
Richard P. Kearns



Date: 1/7/2015 
Fred Moody - Town Manager
Town of Littleton/Littleton Police Department
Duly Authorized