

**COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO**

RON PLUSH, et al.

Plaintiffs,

vs.

CITY OF CINCINNATI, et al.

Defendants.

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CASE NO. A1903752

JUDGE ROBERT P. RUEHLMAN

**SETTLEMENT AGREEMENT AND
RELEASE**

WHEREAS, on April 10, 2018 sixteen-year-old Kyle Plush was trapped by the bench seat of his family’s van, and he used the voice activation feature of his iPhone to reach the Cincinnati Emergency Communications Center (ECC) on two separate occasions;

WHEREAS, call takers were able to ascertain his approximate location and that he was trapped in a van, but first responders did not locate him, and he tragically died;

WHEREAS, prior to Kyle’s death, ECC struggled with personnel shortages, low employee morale, periodic issues with phone connectivity and other technology challenges;

WHEREAS, the City has taken substantial remedial action to address the problems that contributed to first responders failing to locate and rescue Kyle Plush, but acknowledges the need for continuous improvement with public transparency and accountability;

WHEREAS, since Kyle’s death and in honor of their son, Ron and Jill Plush have worked tirelessly to improve the 911 call centers in Cincinnati and nationally by advocating for enhanced technology, protocols, staffing, morale and training, and inspiring all call takers, dispatchers and first responders to be their “best selves each and every day”;

WHEREAS, all the parties share in the goals of providing persons using 911 services through the Cincinnati public safety answering point (PSAP) with immediate, accurate, and excellent service from the moment the call is received through the service provided by first responders;

WHEREAS, the purpose of this agreement is to shift this lawsuit away from an adversarial search for blame and toward a cooperative, enforceable, sustainable plan to continuously improve services for the safety of the people in Cincinnati by supporting ECC staff and responders with the tools and training to accomplish their critically important difficult jobs and to restore public confidence in the effectiveness of Cincinnati's emergency responses.

A. PARTIES. The parties to this agreement are Jill Plush, individually, and Ron Plush, individually and as Administrator of the Estate of Kyle Plush ("Plaintiffs"), and the City of Cincinnati, and Harry Black, Amber Smith, Stephanie Magee, Edsel Osborn, and Brian Brazile individually and as employees and former employees of the City of Cincinnati (collectively, "Defendants").

B. INDEPENDENT EXPERT REVIEW.

1. ESTABLISHMENT AND APPOINTMENT OF EXPERT TEAM.

The City, after appropriate due diligence, agrees to contract with the following emergency response professionals selected by Plaintiffs (the "Team"): Tracy Eldridge, Tony Harrison, and Michael Boucher. The contract terms shall be consistent with the City's standard contract for professional services and with applicable state and local law. The parties understand that at the request of the City, the Team estimated its budget for the first year not to exceed \$185,000.00. The City will certify a total of \$250,000.00 to the contract at this time, subject to an appropriation by City Council. The term of the contract shall not

exceed five years. The Team specifically acknowledges that this contract is funded using taxpayer resources and will make best efforts to avoid unnecessary or duplicative work. Understanding that the Agreement has a five year term, if the Team requires funds in excess of the \$250,000.00 for work necessary to achieve the goals of this Agreement and in Exhibit A, the City shall facilitate requesting the additional funds from Council in a timely manner and provide Plaintiffs and the Team the opportunity to publicly express their opinions on the need for the additional appropriation. If one or more members of the Team is unable to fulfill his or her duties, resigns, becomes unavailable, or if City due diligence raises legitimate ethical or professional concerns about the member, the Parties will cooperate in the identification and proposal of other qualified persons to serve on the Team. All Parties must agree upon the substitute appointment of a member of the team.

2. DUTIES OF EXPERT TEAM.

a. AGREE TO PERFORMANCE GOALS.

The role of the Team shall be to support the function of the ECC in achieving the mutually-agreed upon goals outlined in this Agreement and Exhibit A to this Agreement. The Parties agree that at least one member of the Team will meet with the Director of the ECC to discuss the current goals of the ECC Director and to identify other areas for continuous improvement and to agree to these goals within 30 days of the execution of this Agreement. The goals should be created by the ECC Director and Team, but Counsel for the Parties will attend that meeting to facilitate the drafting of Exhibit A. The Parties agree that the goals should focus on implementing industry best practices or standards; quality assurance for calls and dispatching; steps to achieve accreditation through CALEA and/or IAED; training; staff retention and employee

morale; and appropriate responses to silent or TTY calls and calls coded “unknown trouble” or with similar codes. One goal will be to assess the actions or inactions ECC call takers and first responders that contributed to the death of Kyle Plush and the adequacy of the subsequent measures taken by the City to address those issues. The goals should reflect the City’s commitment to problem solving as the primary public safety strategy including an openness to interdepartmental efforts. As it conducts its assessment and to the extent it is consistent with the goals in this Agreement and in Exhibit A, the Team shall serve as technical advisors and coaches making recommendations for improvement in real time to encourage continuous improvement at the ECC and police department.

b. ACCESS TO MUNICIPAL FACILITIES, RECORDS AND EMPLOYEES.

The City shall provide the Team access to facilities, vehicles, documents, records, reports, correspondence, databases, hardware or software technology, audio and/or video recordings and employees and related information that are relevant to the Team’s duties in a manner that does not unduly disrupt regular municipal operations. To the extent the Team requires information directly from employees, the Team shall make a request describing the subject matter so that the City may designate the employee(s) with the appropriate knowledge base. Notwithstanding anything to the contrary, the City shall have no obligation to provide any legally privileged communication, document, or record.

The Team shall have access to and study the reports and recommendations related to the Cincinnati PSAP and the Kyle Plush tragedy prepared by Mission Critical Partners (November, 2018), 21CP Solutions (November, 2018), CPD Internal Investigations

Section Case # 18046 (April 27, 2018), Emergency Communications Center Budget Presentation (February 16, 2021), depositions, written discovery and exhibits assembled in connection with the above lawsuit, and any other documents, databases, logs, emails and information they deem relevant.

The City shall coordinate access for the Team to databases that permit review of all incidents including those classified as Unknown Trouble since 1/1/18. For a representative sampling of runs as identified by the Team, the City shall provide any relevant incident details, video, radio transmissions, and police records reflecting the action taken by call takers, dispatchers and by first responders. The City shall also coordinate access to all calls during which TTY was engaged since 1/1/18 and records related to same.

Plaintiffs agree that they are ceasing the discovery process as part of this Agreement and will take no further depositions. The Team, however, may interview Jenny King, Mark Yontz, Stephanie Magee, Amber Smith, Brian Brazile and Edsel Osborne. Counsel for the parties may participate and make inquiries consistent with the goals and objectives of this Agreement and Exhibit A.

The Team shall establish a means for the public to directly address comments or concerns to the Team.

c. AGREEMENT ON CURRENT STAFFING AND TECHNOLOGY.

The Parties agree that the current number of funded ECC positions as set out in the chart below is adequate for ECC operations, but if the City determines a need to increase staffing levels, the Plaintiffs and, if consistent with their professional judgment, the Team will support a request to City Council for that increase.

Position	Positions Filled	Number of Funded Positions as of 3/31/21
E911 Operator	37	59
Operator Dispatcher and Asst Operator Dispatcher	47	50
Emergency Services Dispatch Supervisor	9	14
Admin Specialist	0	3
Supervising Management Analyst	1	2
Management Analyst	1	1
Clerk Typist	6	7
HR Analyst	0	1
QA specialists	0	4
Emergency Communications Instructors	0	3 (part-time)
Director	1	1
Deputy Director	1	1
Emergency Communications Asst. Manager	1	2

The parties agree that the major technology systems in place at the ECC, including the Tri Tech CAD and the West Phone systems are adequate, as long as updates and maintenance is provided pursuant to manufacturer requirements. If the City determines a need to purchase new technology and seeks support from the Team and Plaintiffs in any approach to City Council, that support shall be provided consistent with the Team's professional judgment.

d. WRITTEN REPORTS AND RECOMMENDATIONS FROM EXPERT TEAM.

Within 6 months of agreement of goals in Exhibit A, the Team shall make a public written report of the Team's assessment under Section 2(a) and recommendations consistent with accepted industry standards and national best practices including (i) the response of ECC call takers and police to calls classified as unknown trouble or calls involving missing or trapped person(s) and (ii) appropriate training that should be

provided to police regarding ECC technology, policies, practices and any other matter involving the coordination of response from call takers to police officers. The recommendations shall include any and all obstacles to adoption or implementation including, but not limited to, anticipated costs, legal constraints, funding, or other considerations.

The Team shall ensure that Parties, the Magistrate described below and the QSF Administrator described in Part D receive copies of all its written reports and recommendations. The Team shall provide any supporting material upon request by the Parties, QSF Administrator or Magistrate.

e. **SCOPE OF EXPERT TEAM REVIEW LIMITED.**

The Team's review and recommendations shall be limited to advice for achievement of the goals set out in this agreement and in Exhibit A to this Agreement. The Team shall not study Fire and EMS call taking, dispatching, and responding unless the City requests consultations in that regard which shall be the subject of a separate contract. The Team will limit its review of police incident codes to calls classified as "unknown trouble" or similar call incident codes as the Team deems appropriate and as is consistent with the goals in Exhibit A and in this agreement.

3. IMPLEMENTATION OF RECOMMENDATIONS.

- a. The City shall implement the recommendations of the Team's Report where legal, practical, in the best interest of the people of Cincinnati, and consistent with the goals in Exhibit A.
- b. Notwithstanding anything to the contrary in this Agreement, the City shall have no obligation to engage in the creation of additional staff positions or implement

technological improvements beyond routine upgrades. In the event that such a recommendation is made regarding staffing or technology, the City shall facilitate requesting the additional funds from Council in a timely manner and provide Plaintiffs and the Team the opportunity to publicly express their opinions on the recommendation and/or appropriation. The Parties further acknowledge that the adoption of some recommendations may have an associated cost which requires an appropriation by City Council. In the event that the recommendation is consistent with the goals in Exhibit A and this agreement and an appropriation is required, the City shall facilitate requesting the additional funds with Council in a timely manner and provide Plaintiffs and the Team the opportunity to publicly express their opinions on the recommendation and/or appropriation. In the event that Council declines to appropriate the funds, the City shall have no obligation to adopt the recommendation.

No legal obligation of the City, including collective bargaining agreements, shall be violated by the implementation of any of the Team recommendations. This Agreement is intended to be implemented consistent with any relevant bargaining agreement provisions.

- c. Any objection to a recommendation must be set out in writing with an explanation. Any disagreement between the parties shall be resolved as set out in Part E.
- d. The Team shall assist with implementation of its recommendations to the extent that assistance is not duplicative of the efforts of City staff.
- e. The Parties expect that the Team shall be very engaged initially as it frames its recommendations to achieve the goals in Exhibit A and this agreement. As the Parties proceed to implementation of the goals, the Team shall step back as soon as practicable

and support the ECC and Police staff by only offering evaluation and technical assistance. It is expected that the recommendations will be sufficiently in place and that little action will be needed by the Team in the final year of the agreement.

4. REPORTS AND CONTINUOUS IMPROVEMENT.

Every six-months, the City shall make a public written report to the QSF Administrator regarding the status of implementing the Team's recommendations. Prior to making such report, the City shall consult with the Team and Plaintiffs to obtain input. At the request of any Party or the Team, the City Administration shall facilitate holding a public hearing regarding the report. The Parties shall all appear and participate as appropriate in any such public hearing. As it conducts its assessment and thereafter, the Team shall serve as technical advisors making recommendations for improvement to encourage continuous improvement at the ECC and police department.

C. SUBSTITUTION OF PARTIES. After payment of the monetary sum as described below, the Plaintiffs shall dismiss the individual defendants. The City of Cincinnati will remain a party for the purposes of ensuring compliance and enforcing the terms of this agreement.

D. QUALIFIED SETTLEMENT FUND.

1. ESTABLISHMENT. The Parties will join in petitioning the United States District Court for the establishment of a qualified settlement fund (QSF) to hold and disburse funds from the settlement, and to hold and disburse funds for Team fees and expenses. The QSF shall also assume jurisdiction over the ongoing duties of the parties under this settlement agreement and compliance shall be monitored within the QSF.

2. APPOINTMENT. The parties agree to recommend Karen Meyers as QSF administrator.

The parties agree to stipulate to the jurisdiction of the United States Magistrate for final determination of all issues that arise under this settlement agreement.

3. TERMS. The QSF shall be named The Kyle Plush Qualified Settlement Fund. The QSF Administrator shall receive all reports provided to the Magistrate and the public. Upon the entry of the order establishing the QSF and funding of the QSF, Plaintiffs shall dismiss the case of *Ron Plush et al v. City of Cincinnati, et al*, Ham Co. C.P. Ct., CASE NO. A1903752, with prejudice. The documents establishing a QSF or the terms of any structured settlement annuity or similar instrument approved by the Probate Court shall be set forth in a separate “Addendum to Settlement Agreement.” Parties agree to cooperate fully, to execute any and all supplementary documents (including a qualified assignment), and to take additional actions that may be necessary or appropriate to establish said QSF, structured settlement annuity which are not inconsistent with the terms of this Agreement.

E. DISPUTE RESOLUTION. In the event that the City does not agree with any recommendation provided by the Team, the Parties shall confer in good faith and seek to resolve the matter within thirty days. If that is not successful, the issue shall be submitted to a qualified, independent mediator for mediation. If mediation is unsuccessful, the matter will be submitted to the Magistrate for determination. To the extent that implementing recommendations requires a Cincinnati City Council appropriation in excess of funds already budgeted, the City shall facilitate requesting the additional funds with Council in a timely manner and provide Plaintiffs and the Team the opportunity to publicly express their opinions on the recommendation and/or appropriation. In evaluating the practicality of any recommendation by the Team, the Magistrate shall order the implementation of the

recommendation only if the Magistrate determines first that the recommendation is consistent with this Agreement and the goals in Exhibit A to this Agreement and also considering whether the recommendation is (i) efficacious, (ii) consistent with national industry standards, (iii) economical when weighing the benefit against the cost; and (iv) in the best interest of the citizens of Cincinnati.

F. TERM OF REVIEW. The term of this agreement shall be five years. The Team and Magistrate shall remain in place performing their functions for five years unless the Parties mutually agree otherwise.

G. MONETARY TERMS. The City of Cincinnati, on behalf of the Defendants, shall pay six million dollars to the Plaintiffs as valuable consideration in full and final settlement of all claims and causes of action, as set forth below, including all claims for attorney fees and costs payable under any provision of law. Such payment is expressly conditioned on an appropriation of the \$6 million, as well as the \$250,000.00 for the Team, by Cincinnati City Council. The City shall pay the filing fee for the QSF petition. The Plaintiffs will pay all other costs associated with the QSF administrator.

Within 30 days of the passage of such Ordinance, payment shall be made to the Kyle Plush Qualified Settlement Fund established in the United States District Court as ordered by said Court. The Fund shall be paid in a manner that protects the Fund's ability to fund the qualified settlement fund (QSF), special needs trusts, Medicaid payback pooled trust accounts, and/or fund structured settlement annuity contracts, or similar instruments. All payments are made on account of personal physical injury under Internal Revenue Code Section 104(a)(2). The source and origin of the claim and monetary payment is the physical injury to and death of Kyle Plush. No payments are made on account of punitive damages of any kind. Defendants

make no representations as to the tax consequences of the settlement or of this Agreement. This Agreement is not contingent upon acceptance by the Internal Revenue Service of the characterization of the nature of payments as set forth in this Paragraph. This Agreement is contingent on the approval of the Probate Court of Hamilton County.

H. RELEASE. Upon payment to the QSF, THE PLAINTIFFS, individually and on behalf of themselves, the estate of Kyle Plush, and all other children, heirs, administrators, guardians, executors, and beneficiaries further agree to RELEASE and DISCHARGE THE CITY OF CINCINNATI, its directors, employees, agents, partners, and affiliates and the individual DEFENDANTS, their agents, spouses, heirs, partners, children, beneficiaries, and affiliates, from any and all personal injury, wrongful death, civil rights, medical negligence, loss of consortium or survival claims of any kind or character which they ever had, now have or might in the future have against DEFENDANTS, on account of any and all claimed damages, losses, or injuries, physical, mental or emotional, known and unknown, either developed or undeveloped, resulting to or to result from events described in the above lawsuit. The source of all damages is the personal physical injury to Kyle Plush.

I. INDEMNIFICATION. THE PLAINTIFFS further agree to indemnify and hold harmless THE DEFENDANTS from any and all claims, demands, suits, actions, causes of actions, or any other proceeding brought by any person or entity, including subrogated insurance carrier, Medicare, Medicaid, or any other insurance provider from the beginning of time to the signing of this Release that are related to the events of April 10, 2018 described in the above lawsuit. This indemnification shall include all court costs and attorney fees incurred by THE DEFENDANTS in defending themselves against any claims brought by any such person or entity.

J. OHIO LAW. This Agreement and release is contractual and shall be interpreted in accordance with Ohio law.

Agreed to and signed:

<p>_____ Ron Plush</p> <p>_____ Date</p>	<p>_____ City Manager, City of Cincinnati</p> <p>_____ Date</p>
<p>_____ Jill Plush</p> <p>_____ Date</p>	<p>_____ Emily Smart Woerner (0089349) Deputy City Solicitor Mark R. Manning (0088331) Virginia Tallent (0084946) Sr. Assistant City Solicitors 801 Plum Street, Room 214 Cincinnati, Ohio 45202 Phone: (513) 352-3307 Fax: (513) 352-1515 emily.woerner@cincinnati-oh.gov mark.manning@cincinnati-oh.gov virginia.tallent@cincinnati-oh.gov</p> <p><i>Attorneys for Defendants City of Cincinnati, Harry Black, Amber Smith, Stephanie Magee, Edsel Osborn, and Brian Brazile</i></p> <p>_____ Date</p>
<p>_____ Alphonse A. Gerhardstein (0032053) M. Caroline Hyatt (0093323) FRIEDMAN GILBERT + GERHARDSTEIN 441 Vine Street Suite 3400 Cincinnati, Ohio 45202 (513) 621-9100 Fax (513) 345-5543 al@FGGfirm.com caroline@FGGfirm.com</p> <p><i>Attorneys for Plaintiffs</i></p> <p>_____ Date</p>	<p>_____ Kimberly Rutowski (0076653) Lazarus & Lewis 915 Cincinnati Club Building 30 Garfield Place Cincinnati, Ohio 45202 KRutowski@hlmlaw.com</p> <p><i>Attorney for Defendants Osborn and Brazile in their individual capacities</i></p> <p>_____ Date</p>