

DATE April 6, 2021NUMBER 182-2021

AMENDED

TITLE:

A RESOLUTION APPROVING THE SETTLEMENT IN THE MATTER OF PAULA MCDOUGALD V. CITY OF ORANGE TOWNSHIP ET AL., DOCKET NO. ESX- F-007135-20.

WHEREAS, Paula McDougald ("McDougald") asserted claims against the City of Orange Township, et al., (the "City") as the result of an incident alleged to have occurred in May 2013, as more fully set forth in a third party lawsuit against the City entitled Paula McDougald vs. the City of Orange Township, et al; in the Superior Court of New Jersey, Essex Vicinage, under Docket No. **F-007135-20** ("the McDougald Litigation"); and

WHEREAS, among other things McDougald alleges property damage, loss of business income, breach of contract, and adverse health effects to her and members of her household, which she alleges were caused as a result of a City initiated sewage backup into her property located at 210 Oakwood Place, Orange, New Jersey 07050; and

WHEREAS, Paula McDougald in the case at bar was demanding in excess of two hundred and fifty thousand dollars (\$250,000.00) in damages from the City of Orange Township together with attorneys' fees and compensatory damages; and

WHEREAS, after engaging in substantial discovery, internal investigations, and due diligence regarding the details of the incident and the liability of City employees; the City Attorney, after considering the cost-benefit of resolving the McDougald Litigation at this time versus the potential further exposure, believes that the settlement of the McDougald Litigation is in the best interest of the City of Orange Township; and

WHEREAS, the City of Orange Township and Paula McDougald agreed that this matter be negotiated downward from the \$250,000.00 demand and settle the matter in the amount of \$125,000.00 and release the City, its agents and employees of all liability, of which the settlement amount will be initially used to pay the City all outstanding property taxes and redeem all property tax lien certificates secured to the property; and

WHEREAS, the Chief Financial Officer of the City of Orange Township has prepared the necessary Certificate of Availability of Funds, certifying that funds are available for this purpose in the Law Department Settlement Account No. 1-01-20-155-000-366.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF ORANGE TOWNSHIP as follows:

Section 1. The Mayor be and is hereby authorized and directed to resolve the McDougald Litigation in accordance with any terms and conditions as set forth thereto.

Section 2. The settlement as set forth by the foregoing, including the above recitals, be and hereby is approved.

Section 3. The City of Orange Township's Business Administrator be and is hereby

or prior to the City Council meeting on March 16, 2021, to the Municipal Council upon receipt from opposing counsel, and without limitation, the payment totaling \$125,000.00 with applicable offsets due to the City to be made pursuant thereto to Paula McDougald and/or and her attorneys.

Section 4. This Resolution shall take effect immediately.

Adopted: April 6, 2021

Joyce L. Lanier
City Clerk

Kerry J. Coley
Council President

CITY OF ORANGE TOWNSHIP
FINANCE DEPARTMENT

CERTIFICATION OF FUNDS
NEXT BUDGET

I, Nile Clements, Chief Financial Officer for the City of Orange Township, do hereby confirm that based on the Quote or RFP, RFQ, bid results or "extraordinary unspecifiable services" without competitive bids for 2021 service contract, and the resolution to be presented to the Council for approval, and contingent upon Council approval and inclusion of said item in the Temporary Budget and adopted 2021 Budget, there will be sufficient funds to contract with:

Vendor Name: Fernando Marin

Address: 111 Northfield Ave.
Suite 302
City: West Orange
State: New Jersey
Zip Code: 07052

Purpose: Settlement regarding legal matters w/ Paula McDougald

Vendor ID: MARIN025

Fund: Current Fund
Line Description LAW - Settlements
Account Numbers(s): CY'21 1-01-20-155-000-366 \$ 125,000.00

Blanket PO#: 21-00786

Amount not to exceed: \$ 125,000.00

Division Head

Date

Nile Clements

3/31/2021

Chief Financial Officer

Date

SETTLEMENT AGREEMENT AND RELEASE

The SETTLEMENT AGREEMENT AND RELEASE (“Agreement”) is made by and between the following Parties: Plaintiff, PAULA MCDOUGALD, and Defendant, The City of Orange Township, and shall be deemed entered into as of the date on which the last signature is affixed hereon.

WITNESSETH:

WHEREAS, on January 13, 2021, PAULA MCDOUGALD (hereinafter referred to as “MCDOUGALD”) filed a 3rd Party complaint in the Superior Court of New Jersey alleging property damage, negligence, unjust enrichment, breach of contract, and loss of business income as a result of acts committed by the City of Orange Township, (hereinafter referred to as the “City”) (collectively the “Parties”) bearing Docket No. SWC-F-007135-20 (hereinafter, the “Civil Action”); and

WHEREAS, the City denied, and continues to deny, the material allegations as asserted in the Complaint; and

WHEREAS, during settlement meetings held in February and March 2021, the Parties agreed to settle all claims which were or could have been asserted in the Civil Action, without incurring further costs of litigation and without admission of liability as to any of the allegations that were or could have been alleged in the Complaint;

WHEREAS, MCDOUGALD, on her own behalf, all the members of her household, and on behalf of her heirs, executors, administrators, successors and assigns, and the City, on its own behalf and on behalf of its representatives, officials, officers, council, council members, employees, agents, insurance carriers, successors and assigns, have agreed to execute the within

Agreement in final settlement of any and all disputes between and among them from the beginning of time until the present.

NOW THEREFORE, in consideration of the mutual covenants and undertakings set forth herein, the parties hereby agree as follows:

1. MCDUGALD agrees to dismiss with prejudice any and all claims which were raised in the Civil Action.

2. Without limiting the scope of the foregoing provision in any way, MCDUGALD releases all claims relating or arising under the State and/or Federal Constitutions, the Civil Rights Act of 1966, 42 U.S.C. § 1981, et seq.; the Civil Rights Statutes contained in 42 U.S.C. §§ 1983, 1985, and 1986 and any related laws; the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101, et seq.; the New Jersey Law Against Discrimination ("NJLAD"), N.J.S.A. 10:5-1, et seq.; the New Jersey Civil Rights Act, N.J.S.A. 10:6-1, et seq.; and any other Federal, State, County or Municipal laws, regulations or ordinances; contract, quasi-contract, negligence, interference with contract/business advantage; frivolous claims; fraud; intentional infliction of emotional distress; and any other duty or obligation of any kind or description. Her release shall apply to all known, unknown, unsuspected, and unanticipated claims, liens, injuries, and damages, up to and including the date of this Agreement. In addition thereto the City hereby releases MCDUGALD from any and all claims that they could have asserted in the Civil Action.

3. In consideration of their agreement and as a condition of settlement, the City agrees to pay MCDUGALD \$125,000.00 (hereinafter the "Settlement Payment"). The Settlement Payment is representative of MCDUGALD's total damages, attorneys' fees and costs.

4. The Settlement Payment shall be tendered to MCDUGALD in the following matter:

a. The Settlement Payment shall be first applied to any outstanding tax liens, delinquent property taxes and past due water/sewer billing owed to the City and/or a 3rd Party holding a Tax Lien Certificate; and

b. Following the application of the Settlement Payment set forth in paragraph a of this section the City shall pay the remainder of the Settlement Payment to the trust account of MCDGUGALD's Attorney.

c. Both payments set forth in Paragraph a and b of this section shall be made on or before April 16, 2021.

d. Each of the Settlement Payment(s) referenced herein shall be made payable to "Fernando Marin Attorney Trust Account" and be mailed to 111 Northfield Avenue, Suite 302, West Orange, New Jersey 07052 by the date set forth above. Pursuant to Paragraph 5, below, time is of the essence.

d. No party is making any representation concerning the tax consequences of their settlement and each party is responsible for its own tax obligations.

5. This Agreement is specifically conditioned on the City making all of the Settlement Payments set forth in Paragraph 4 of this Agreement in a timely manner. Time is of the essence. If the City fails to make any payment by the date set forth herein, Plaintiff shall give notice to Gracia Robert Montilus, Esq., counsel for the City, either by facsimile or electronic mail. If payment is not received within seven (7) days of the initial due date of the payment, the City will be deemed to be in default of the Agreement and the Agreement shall be deemed breached. In the event of a breach, Plaintiff is permitted to reopen the Civil Action and

in connection with any such application to reopen, Plaintiff shall be entitled to recover from the City all of her attorney's fees and costs incurred since the March 30, 2021 settlement meeting.

6. The Parties understand that the City Council must authorize settlement and approve this Agreement through a formal resolution at a public session. The Parties agree that this Agreement will be presented to the City Council for ratification at its regular meeting on April 6, 2021. The form of resolution to be used is annexed hereto as Exhibit A.

7. This Agreement constitutes the complete understanding of the Parties hereto. No other promises or agreements will be binding unless they are in writing and signed by the party to be bound. This Agreement will be deemed to have been jointly authored and will be effective upon the last signing party's execution and delivery hereof. This Agreement may be signed in counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument. This Agreement may be executed by facsimile or other electronic copy and each signature thereto shall be and constitute an original signature, again as if all parties had executed a single original document

8. Each party to this Agreement represents that such party has fully investigated the facts pertaining to it to the extent that each party deems necessary. In entering into this Agreement, each party assumes the risk of mistake with respect to such facts. This Agreement is intended to be final and binding upon all parties hereto regardless of any claim of mistake.

9. The Parties agree that, insofar as is permitted by law, they and their representatives will not discuss nor make a comment or statement to the press or any other form of media regarding the terms of this Agreement. This prohibition shall include but shall not be limited to writing a letter to the editor of any publication, posting of any comments or communication upon any website, weblog, or "blog" on-line Internet forum or in any chatroom.

The Parties further agree that if contacted by any member of the press or media, the only statement which will be made is "the matter has been amicably resolved to the satisfaction of all parties." The Parties understand that the only exception to this confidentiality requirement will be with respect to the right of the public to obtain a copy of this Agreement from the City pursuant to a valid OPRA request and/or a lawfully executed subpoena.

10. This Agreement will be governed by and interpreted in accordance with the laws of the State of New Jersey. The parties hereto waive any common law or statutory rules of construction providing that ambiguity in this Agreement's terms should be construed against the drafter of this Agreement and agree that the language in all parts of this Agreement will in all cases be construed as a whole, according to its fair meaning. The Paragraphs of this Agreement have been ordered and numbered merely for the parties' convenience, and should not be construed to limit, expand, or modify in any way the actual language in any Paragraph. This Agreement constitutes a single, integrated written contract expressing the entire agreement of the parties. There is no other agreement, oral, written, expressed or implied, with respect to the subject matter hereof, except this Agreement. This Agreement may be modified only in a writing signed by the authorized representative of each of the parties hereto. If any portion of this Agreement is deemed legally unenforceable for any reason, all remaining provisions will remain in full force and effect.

11. All parties to this Agreement acknowledge that they have read this Agreement in its entirety, have had had the assistance of counsel in reviewing its terms, and fully understand the Agreement in all respects.

IN WITNESS WHEREOF, the Plaintiff, intending to be legally bound, has executed this Agreement this ____ day of April 2021.

WITNESS:

PAULA MCDOUGALD

By: PAULA MCDOUGALD

IN WITNESS WHEREOF, the Defendant, intending to be legally bound, has executed this Agreement this ____ day of April 2021.

WITNESS:

CITY OF ORANGE TOWNSHIP

By: Mayor Dwayne D. Warren