

CITY COUNCIL**The City of Orange Township, New Jersey**DATE September 5, 2023NUMBER 351-2023

TITLE: A RESOLUTION OF THE MUNICIPAL COUNCIL OF THE CITY OF ORANGE TOWNSHIP, ESSEX COUNTY, NEW JERSEY, APPROVING AND AUTHORIZING EXECUTION OF A SETTLEMENT AGREEMENT BETWEEN THE CITY OF ORANGE TOWNSHIP AND MAZZANTI INC. REGARDING VARIOUS CLAIMS ALLEGED BETWEEN THE PARTIES.

WHEREAS, on or about January 23, 2023, Mazzanti filed a Demand for Arbitration under Commercial Arbitration Rules of the American Arbitration Association under Case No. 02-23-0000-2943 ("Arbitration"), seeking approximately \$425,000.00 from the City for information technology consulting services allegedly provided by Mazzanti ("Dispute"); and,

WHEREAS, the City denied all liability to Mazzanti for all claims alleged in the Arbitration and/or in connection with the Dispute; and,

WHEREAS, under all of the circumstances, as a matter of business judgment, the Parties now wish to resolve all open issues between them ("Open Matters"), including without limitation the Arbitration and the Dispute; and,

WHEREAS, after extensive arms-length negotiation and consultation with their respective legal counsel, the Parties reached an agreement to amicably resolve the Open Matters in good faith, without admitting or further alleging any wrongdoing or liability; and,

WHEREAS, the Parties have further documented their mutual promises and covenants regarding the Open Matters in a comprehensive Settlement Agreement and Purchase and Sale Agreement, copies of which are appended hereto.


NOW, WHEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE CITY OF ORANGE TOWNSHIP, ESSEX COUNTY, NEW JERSEY, that the Settlement Agreement appended hereto and incorporated herein by reference, shall be and hereby are approved; and,

BE IT FURTHER RESOLVED that the Mayor and all other appropriate City officials are hereby authorized to execute the Agreement and take all such other actions as necessary to carry out the terms thereof.

Adopted: September 5, 2023

Joyce L. Lanier
City Clerk

Tency A. Eason
Council President


A. MAZZANTI

CITY ATTORNEY

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") is made as of this 5th day of September 2023, by and between:

**City of Orange Township,
a New Jersey Municipal Corporation,**
with offices at 29 North Day Street, Orange, New Jersey, 07050,
("City"); and,

**Mazzanti Inc. d/b/a eMazzanti Technologies,
a Delaware Corporation,**
with offices at 701 Grand Street, Hoboken, New Jersey, 07030,
("Mazzanti", together with the City, "Parties").

RECITALS

WHEREAS, on or about January 23, 2023, Mazzanti filed a Demand for Arbitration under Commercial Arbitration Rules of the American Arbitration Association ("AAA") under Case No. 02-23-0000-2943 ("Arbitration"), seeking approximately \$425,000.00 from the City for information technology consulting services allegedly provided by Mazzanti ("Dispute"); and,

WHEREAS, the City denies all liability to Mazzanti for all claims alleged in the Arbitration and/or in connection with the Dispute; and,

WHEREAS, under all of the circumstances, as a matter of business judgment, the Parties now wish to resolve all open issues between them ("Open Matters"), including without limitation the Arbitration and the Dispute; and,

WHEREAS, after extensive arms-length negotiation and consultation with their respective legal counsel, the Parties reached an agreement to amicably resolve the Open Matters in good faith, without admitting or further alleging any wrongdoing or liability; and,

WHEREAS, the Parties agreed to further memorialize their mutual promises and covenants regarding the Open Matters in a comprehensive formal document and, therefore, enter into this Agreement so as to fully and finally resolve same; and,

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, the Parties agree to the terms and conditions as set forth in further detail herein.

TERMS

- 1. Recitals.** All Recitals set forth above are hereby incorporated herein by reference.
- 2. Municipal Council Approval.** In accordance with the Optional Municipal Charter Law, *N.J.S.A. 40:69A-1 et seq.*, this Agreement was considered and approved by the Municipal Council through Resolution No. ____-2023, adopted on September 5, 2023. Mazzanti understands and acknowledges that any oral or written representation by any City official or employee that is not formally approved by the Municipal Council shall not be binding on the City.

3. Representations; Warranties. The Parties represent and warrant that they own all respective potential claims and causes of action arising from the Dispute or the Lawsuit contemplated to be released and compromised herein. The Parties further represent and warrant that they have the respective legal capacity and authority to enter into this Agreement and to perform all acts required hereunder on behalf of themselves and/or others they are acting on behalf of, and no party hereto believes that this Agreement is subject to any potential avoidance action based on any state or federal laws.

4. Financial Terms. In full and final settlement of all claims that were and/or could be alleged against it by Mazzanti, the City shall pay or cause to be paid to Mazzanti the total sum of \$60,000.00 ("Settlement Amount"), within 14 calendar days following execution of this Agreement by all of the Parties.

5. Dismissal of the Arbitration. Within 5 calendar days following payment of the Settlement Amount, Mazzanti shall dismiss all claims alleged against the City in the Arbitration, with prejudice.

6. Mutual Releases. Upon Mazzanti's receipt of the full Settlement Amount as set forth in Paragraph 4 above, the Parties and their respective assigns, assignees, predecessors, successors, agents and attorneys, shall thereby hold one another harmless, release, acquit and forever discharge one another from any potential and all past, present and existing claims or causes of action of any kind whatsoever that arise or might arise or be asserted under common law or by statute (including, but not limited to, regulation, rule or otherwise), that either of the Parties has or might have, known or unknown, pending or threatened, in any way directly or indirectly, arising out of, attributable to, or connected to the Open Matters, including without limitation all claims for damages of any kind (e.g., direct, indirect, consequential, special, additional, statutory, or punitive, etc., known or unknown), lost profits, attorneys' fees, expenses, interest, costs, and/or declaratory relief.

7. Beneficiaries of Agreement. This Agreement shall be binding on and inure to the benefit of the Parties, their respective present or former parents, subsidiaries, affiliates, departments, officers, directors, members, shareholders, agents, administrators, insurers, attorneys, representatives, past and present employees and all of their respective heirs, representatives, successors and assigns.

8. Choice of Law. This agreement shall be governed by the laws of the State of New Jersey without regard to principles of conflict of laws. All contract claims under this Agreement shall be subject to and governed by the provisions of the New Jersey Contractual Liability Act, *N.J.S.A. 59:13-1 et seq.*

9. Informed Agreement. The Parties acknowledge that they each read this Agreement in its entirety prior to executing same. The Parties further acknowledge that they are each fully-informed of their respective legal rights and obligations. The Parties further acknowledge that they each enter into this Agreement voluntarily and without force, constraint, compulsion, coercion, intimidation, duress or hardship.

10. Headings. The headings of the several paragraphs of this Agreement are solely for the convenience of reference and shall have no further meaning, force or effect.

11. Construction; Entire Agreement; Modification.

a. The language contained in this Agreement was negotiated and is deemed to have been drafted collaboratively by the Parties.

b. This Agreement shall, in all cases, be construed as a whole according to its objective and fair meaning, and shall not be interpreted in favor of or against any of the Parties. Without limitation

by the foregoing, interpretation of any provision (in part or in whole) of this Agreement shall not be interpreted against the drafter in any manner.

c. This Agreement supersedes all previous understandings, agreements, statements and representations, whether oral or written, between the parties, and constitutes the complete and final expression of all understandings and agreements between the parties with respect to the subject matter hereof.

d. This Agreement shall only be amended, modified and/or amplified in a writing executed by the Parties and approved by the Municipal Council. Oral statements by any person shall not serve to amend, modify and/or amplify the terms and provisions of this Agreement in any manner.

12. Severability; Waiver.

a. If any provision of this Agreement shall for any reason be held invalid or unenforceable by any court, governmental agency or arbitrator of competent jurisdiction, such invalidity or unenforceability shall not affect any other provision of this Agreement, the application of any such provision under circumstances different from those adjudicated by such court, agency or arbitrator, or the validity or enforceability of this Agreement as a whole.

b. The Parties' respective rights and remedies under this Agreement are cumulative and not alternative. No exercise or waiver, in whole or in part, of any right or remedy provided for in this Agreement shall operate as a waiver of any other right or remedy, except as otherwise provided in this Agreement. No delay, forbearance, or neglect on the part of any party in the exercise of any right or remedy shall operate as a waiver thereof. No waiver of any of the conditions of this Agreement by a party shall be effective unless expressly and affirmatively made and given by the party against whom enforcement of the waiver is sought.

13. Signatures; Counterparts; Electronic Signatures.

a. The undersigned certify that they execute this Agreement as authorized representatives of the respective parties for which they are signing, and that they have full authority to enter into and bind the respective parties to the terms of this Agreement.

b. This Agreement may be executed in 1 or more counterparts, all of which together shall be considered a single document and the same, and shall become effective when 1 or more counterparts have been signed by each of the Parties. It is understood that the Parties need not sign the same counterpart.

c. This Agreement may be signed electronically by any of the Parties using a digital signature that meets the requirements of the federal Electronic Signatures in Global and National Commerce (ESIGN) Act, 15 U.S.C. §§ 7001 *et seq.*, as amended, and the New Jersey Uniform Electronic Transactions Act, *N.J.S.A. 12A:12-1 et seq.*, as amended. Any digital signature affixed to this Agreement shall constitute the signing-party's intent and agreement to be bound by the terms of this Agreement and shall have the same legal effect as a "wet-ink" signature.

**[REMAINDER OF PAGE INTENTIONALLY BLANK]
[SIGNATURES FOLLOW ON NEXT PAGE]**

IN WITNESS WHEREOF, the Parties hereby execute this Agreement as of the date first written above.

For **CITY OF ORANGE TOWNSHIP**

Witness:

By: _____
Honorable Dwayne D. Warren, Esq.
Mayor

Joyce Lanier
City Clerk

Approved as to form and legality:

By: _____
Aaron Mizrahi, Esq.
Deputy City Attorney

For **MAZZANTI INC. d/b/a
EMAZZANTI TECHNOLOGIES**

Witness:

By: _____
Carl Mazzanti
President
