

SEPARATION AGREEMENT AND GENERAL RELEASE

This Separation Agreement and General Release ("Agreement") is made and entered into between the **BOROUGH OF RED BANK** (the "Borough") and **PETER O'REILLY** ("O'Reilly"), and collectively referred to as the "Parties."

WHEREAS, O'Reilly was employed by the Borough in the position of Chief Financial Officer; and

WHEREAS, by letter dated August 28, 2021, O'Reilly voluntarily submitted a letter of resignation to the Borough which was effective September 30, 2021; and

WHEREAS, the Parties desire to resolve all potential issues relating to O'Reilly's separation from employment with the Borough; and

WHEREAS, the Parties deem it to be in their best interests to set forth in a formal written agreement their respective rights, duties and obligations regarding his resignation and related transition services; and

WHEREAS, the Parties have been afforded the opportunity to consider the terms of this Agreement with advice of counsel and/or a representative of their choice;

NOW, THEREFORE, in consideration of the promises and the mutual covenants herein contained, and for other good and valuable considerations, the Parties hereby agree as follows:

1. The recitals set forth above are incorporated herein by reference and made part of this Agreement as if set forth at length.
2. The "**Borough**", as used herein, shall at all times mean the Borough of Red Bank, its affiliates, predecessors, successors and assigns of any and all of them, their present and former directors, officials, elected officials, officers, representatives, associates, partners, servants, employees, agents, attorneys, and successors, whether in their individual or official capacities, and all other persons, firms, corporations, associations, partnerships or

any other entity connected therewith.

3. **“O’Reilly”**, as used herein, shall mean Peter O’Reilly, his heirs, representatives, privies, executors, administrators, assigns, successors-in-interest and predecessors-in-interest.
4. In consideration of the covenants set forth in this Agreement, the Parties agree as follows:
 - a. O’Reilly’s last day of employment with the Borough was September 30, 2021. O’Reilly’s letter of resignation shall be deemed accepted by the Borough upon execution of this Agreement. O’Reilly shall remain on the Borough payroll through September 30, 2021.
 - b. The Borough shall provide to O’Reilly an additional payment in the amount of \$456.82, minus usual and customary deductions, representing payment for all accumulated but unused paid time off (including pro-rated vacation, and personal time), subject to normal payroll deductions. This payment constitutes any and all payments due or owed to O’Reilly by the Borough under any law, statute, regulation, ordinance, resolution, or prior agreement.
 - c. The Borough shall provide to O’Reilly an additional payment in the amount of \$8,000.00, representing monies owed to O’Reilly for his service as the Borough’s Qualified Purchasing Agent during 2020, subject to normal payroll deductions.
 - d. O’Reilly shall immediately surrender to the Borough, all paper and electronic copies of all documents, records, files, and other material that is the property of the Borough. O’Reilly also shall immediately surrender to the Borough all other tangible property belonging to the Borough, including keys, fobs, computer/laptop and other equipment.
 - e. O’Reilly shall receive a COBRA Notice under separate cover as required by law; and
 - f. O’Reilly shall provide transition services at the discretion of the Borough to have an effective and efficient transition of the Borough’s budgetary, accounting and financial reporting obligations. O’Reilly shall cooperate with any consultant(s) retained by the Borough, the Borough’s auditor, an interim CFO (if any), and Borough staff relative to transition services he shall provide.
5. Should O’Reilly decide to file a claim for unemployment compensation benefits, the Borough shall not contest O’Reilly’s application for benefits. The Borough will confirm, upon request of appropriate governmental authorities, the separation of O’Reilly’s employment as of September 30, 2021. O’Reilly understands that eligibility for unemployment compensation benefits will be determined solely by the appropriate state

agency and that the Borough cannot make any promises or guarantees with respect to O'Reilly's receipt of unemployment compensation benefits.

6. The Parties covenant not to sue, initiate or continue any legal or administrative proceedings or appeals, with regard to any or all claims released herein, provided; however, that this shall not preclude any claims pertaining to a breach or enforcement of this Agreement from being taken.
7. In consideration of the mutual promises and exchanges made herein, the Parties agree and understand that this Agreement is a compromise of all claims asserted and unasserted in connection with O'Reilly's employment (and separation of employment) with the Borough. By entering into this Agreement, none of the Parties admits that it has violated New Jersey Statute, Titles 40, and/or 40A; New Jersey Administrative Code; state or federal law, Borough policy/regulation, or any contractual provisions that might exist. This Agreement is entered solely for the purpose of avoiding and/or resolving disputed claims and neither the execution, delivery, nor performance of this Agreement, shall constitute or be construed at any time or for any purpose to be an admission of fact or liability by any of the Parties.
8. The Parties acknowledge and agree that this Agreement is a full and complete settlement of any and all claims that have been asserted or can be asserted or may be asserted or could be asserted by either Party against the other for compensatory damages, pain, suffering, emotional distress, stress, humiliation, embarrassment, mental anguish, medical expenses, punitive damages, interests, attorney's fees, costs of suit, loss of sick time, loss of vacation time, loss of benefits, consequential damages, reputation damages, breach of express or implied contract, interference in any contract, economic opportunity or

prospective economic advantage which arose out of or could arise out of O'Reilly's employment with the Borough.

9. As an inducement for the Parties to enter into this Agreement, each Party does hereby remise, release and forever discharge all other Parties from any and all debts, obligations, suits, actions, causes of action, claims or demands, in law or in equity, which any one Party now has or hereafter may assert against the others arising out of the events, including, but not limited to, all claims, liabilities, costs and attorneys' fees under:

- (1) the Civil Rights Acts of 1964, as amended (42 U.S.C. 2000(e) et seq.);
- (2) the Age Discrimination in Employment Act of 1967, as amended (29 U.S.C. §621, et seq.);
- (3) the Older Workers Benefit Protection Act (29 U.S.C. §626, et seq.);
- (4) the Americans with Disabilities Act;
- (5) the New Jersey Law Against Discrimination (N.J.S.A. 10:5-1, et seq.);
- (6) Title 40, and/or 40A and their rules and regulations;
- (7) the Constitution of the United States;
- (8) the Constitution of New Jersey;
- (9) wage and hour laws, federal and state;
- (10) any other federal or state statute or common law;
- (11) any and all paid and/or unpaid medical and/or personal and/or family leave laws and regulations, federal and state including, but not limited to, FMLA and NJ FLA;
- (12) any and all federal and state tax laws and regulations, including, but not limited to, the Internal Revenue Code and New Jersey Tax provisions;
- (13) the New Jersey Tort Claims Act N.J.S.A. Title 59;
- (14) the Fourth and Fourteenth Amendments to the United States Constitution; and/or
- (15) other causes of action whether enumerated herein specifically or not.

10. Further, the Parties hereby waive any and all relief not explicitly provided for in this Agreement. Nothing in this provision shall be deemed to bar either Party from taking any and all necessary legal action to enforce the terms of this Agreement.
11. The Parties agree that in consideration of the promises set forth in this Agreement that none of the Parties shall file any judicial or administrative action of any type or nature in connection with O'Reilly's employment, terms and conditions of employment, separation from his employment and/or payments made under this Agreement.
12. O'Reilly and the Borough shall each bear its own costs, expenses, attorney's fees, and any other costs associated with this Agreement. As further consideration for this Agreement, O'Reilly and his attorney (if any) agree that the sums set forth in this Agreement (if any) represents all of the monies which the Borough has agreed and will ever agree to pay in connection with O'Reilly's employment with and separation from the Borough.
13. This Agreement shall be construed and interpreted in accordance with the laws of the State of New Jersey.
14. Any of the Parties' failure to contest a breach of any provision hereof shall not operate or be construed as a waiver of that breach by the other, or as a waiver of any subsequent breach by the other.
15. If any term, provision, or condition of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, such holding shall be without effect upon the validity or enforceability of any other provision, term or condition of this Agreement.
16. The Parties hereby acknowledge and agree that they further expressly waive and assume the risk of any and all claims or damages which exist regarding O'Reilly's employment

and/or his separation of employment as of this date for which the Parties do not know of or suspect to exists, whether through ignorance, oversight, error, negligence, or otherwise and which, if known, would materially affect their decision to enter into this Agreement.

17. The Parties acknowledge that this Agreement is subject to approval of the Borough. If such approval is not given, this Agreement and all stipulations and acknowledgements, whether contained herein or attached hereto, shall be rendered null and void and the Parties shall be returned to the status quo existing prior to this Agreement.
18. This Agreement may be executed in counterparts but shall be enforceable only if executed by O'Reilly and the Borough.
19. This Agreement contains the entire Agreement between O'Reilly and the Borough with regard to the matters set forth in it, and shall be binding upon and inure to the benefit of their officials, officers, directors, attorneys, representatives, employees, associates, partners, agents, servants, executors, administrators, personal representatives, heirs, successors and assigns of each, and all other persons, firms, corporations, associations or partnerships or any other entity or persons connected therewith, except as set forth herein or as may be agreed to in writing between the Parties.
20. In entering into this Agreement, O'Reilly has relied upon the legal advice of his attorney or representative, who is the attorney or representative of his own choice, as to the terms of this Agreement which have been completely read and explained by his attorney or representative and those terms are fully understood and voluntarily accepted as being reasonable.
21. The terms of this Agreement and the Agreement itself shall be held in strictest confidence by all Parties and shall not be publicized or disclosed in any manner whatsoever, except that:

- a) either Party may disclose this Agreement in confidence to its attorneys, accountants, auditors, tax preparers, and financial advisors;
 - b) the Borough may disclose this Agreement as necessary to fulfill its obligation under the Open Public Records Act, as well as all other standard or legally required reporting or disclosure requirements; and
 - c) the Parties may disclose this Agreement insofar as such disclosure may be necessary to enforce its terms or as otherwise required by law.
22. The Parties acknowledge and agree that they will not disclose, discuss, or post the terms of the Agreement via electronic communication, including, but not limited to, e-mail or text messages; or via the internet or social media websites, including, but not limited to, Facebook, Twitter, blogs, NJ.com, or similar websites or social media outlets.
23. The Parties agree not to disparage or make any negative remarks or statements about the other Parties. For purposes of this Section, "disparage" shall mean any negative statement, whether written, oral, or via the internet or social media websites.
24. The Parties agree that, if asked about the Agreement by anyone, including any member of the media, they will respond only: "That the matter concerns a personnel matter for which no comment can be made as it is confidential."
25. The Parties acknowledge and agree that if they violate any of the terms of this Agreement, including but not limited to breach of the provisions set forth in Paragraphs 21 through 24, all of the obligations set forth herein shall cease and the Parties will return to their original positions as if this Agreement never occurred.
26. In any action commenced against a Party to enforce the provisions of this Agreement, the moving party, if it is the prevailing party, shall be entitled to recover its reasonable attorneys' fees, costs and disbursements incurred in prosecuting the action.

27. The Parties agree to submit all documentation necessary to effectuate the terms of this Agreement.
28. O'Reilly understands that, pursuant to the Older Workers Benefit Protection Act of 1990 and the Age Discrimination in Employment Act of 1967, if applicable, he has been advised to consult with an attorney before signing this Agreement, had twenty-one (21) calendar days to consider the Agreement before signing it, and may revoke the Agreement within seven (7) calendar days after signing it. O'Reilly further understands that the Agreement will not become effective or enforceable until the seven (7) day revocation period has expired. Timely revocation of this Agreement can be made in writing, signed by O'Reilly, delivered to and received by Labor Counsel for the Borough of Red Bank, Mark A. Tabakin, Esq., Weiner Law Group, LLP, 629 Parsippany Road, Parsippany, New Jersey 07054 by no later than 5:00 P.M. on the seventh (7th) day after O'Reilly signs this Agreement. O'Reilly expressly understands and agrees that if he does not sign this Agreement, or if he revokes his assent to the Agreement within the Revocation Period, the Agreement shall not be effective or enforceable, and he will not be entitled to any of the payments and other benefits provided for in this Agreement until the Revocation Period expires. If the Agreement is revoked or not signed by O'Reilly, the Parties shall revert to the positions they were in as though the Agreement was never made.
29. For purposes of construction, this Agreement shall not be deemed to be drafted by any Party, and any ambiguity shall not be construed against any Party.

SIGNATURE PAGE TO FOLLOW

SIGNATURE PAGE

Attest:

BOROUGH OF RED BANK

J. Sloner

BY: [Signature]

Dated: 11/24, 2021

Dated: 11/24, 2021

Maria O'Reilly

Witness

PETER O'REILLY

BY: Peter O'Reilly

Peter O'Reilly

Dated: November 12, 2021

Dated: November 12, 2021

STATE OF NEW JERSEY,

COUNTY OF MONMOUTH

SS.:

I CERTIFY that on this ____ day of _____, 2021

Peter O'Reilly personally came before me and acknowledged under oath, to my satisfaction, that

he is the person

- a) named in and personally signed this document; and
- b) signed, sealed and delivered this document as his act and deed.