

## **SETTLEMENT AGREEMENT AND GENERAL RELEASE**

This Settlement Agreement and General Release ("Agreement") is made and entered into as of this 22nd day of June, 2021, between JOSEPH MCDEVITT (referred to herein as "MCDEVITT"), plaintiff in a certain civil action pending in the United States District Court, District of New Jersey, Camden Vicinage, and captioned Joseph McDevitt v. Borough of Clementon, et al., Civil No. 18-17092 (the "Civil Action"), on the one hand, and the BOROUGH OF CLEMENTON (referred to at times as "the BOROUGH") on the other hand.

By means of this Agreement, MCDEVITT intends to fully and unconditionally release any and all claims he, his heirs, administrators, executors, personal representatives, beneficiaries, and assigns may have against the BOROUGH and its affiliates, predecessors, successors, parents, subsidiaries, divisions, assigns, officers, directors, shareholders, representatives, employees, former employees, current and former elected officials, insurers, attorneys, consultants and agents, (collectively referred to as "Releasees"), the remaining terms of which Agreement are now fully set forth in Paragraphs I through XX below.

**WHEREAS** MCDEVITT is employed by the BOROUGH;

**WHEREAS** MCDEVITT has asserted certain allegations against the BOROUGH related to his employment with the BOROUGH (the "Allegations");

**WHEREAS** Releasees deny and continue to deny the Allegations asserted by MCDEVITT;

**WHEREAS** the parties mutually desire to settle the Allegations as well as any and all disputes between them, which settlement shall not be deemed or construed to be an admission of liability or wrongdoing as to any matters whatsoever, and to enter into this Settlement Agreement and General Release of Claims (the "Agreement");

**IT IS HEREBY AGREED** among the parties as follows:

### **I. Consideration**

In full consideration of MCDEVITT entering into this Agreement, the BOROUGH agrees to the following:

- (a) The BOROUGH AND ITS INSURER will make a "Settlement Payment" in the total amount of four hundred thousand dollars (\$400,000.00), payable to "Joseph M. McDevitt" (Form 1099 reporting). The Settlement Payment includes all claims MCDEVITT may have for attorneys' fees and disbursements and MCDEVITT will pay his counsel fees directly. The Settlement Payment will be made as follows during two (2) calendar years, payable in 2 separate installments during calendar years 2021 and 2022:

- i. Three hundred and fifty thousand dollars (\$350,000.00), paid within thirty (30) days of the complete execution of this Agreement, delivery

of the W-9 Forms and child support judgment search and the approval and ratification of the Agreement by the BOROUGH's governing body.

- ii. Fifty thousand dollars (\$50,000.00) will be paid by the BOROUGH on or before January 31, 2022.

Payments shall be delivered to: Karpf, Karpf & Cerutti, P.C., 3331 Street Road, Two Greenwood Square, Suite 128, Bensalem, PA 19020.

- (b) MCDEVITT will be reimbursed forty (40) hours of vacation time upon the execution, approval and ratification of this Agreement.
- (c) The BOROUGH will engage in efforts to adequately staff its police department while taking into consideration numerous factors, including but not limited budgeting constraints and civil service requirements.
- (d) A memo will be placed in MCDEVITT's personnel file indicating that MCDEVITT's personnel file will only be released in accordance with New Jersey Attorney General's Guidelines or other applicable law in effect as of the time of the release of the contents of the file and that anything that could be deemed disciplinary or which in fact was disciplinary from 2012 through 2018 is hereby internally rescinded and deemed internally expunged for the purpose of progressive discipline in any subsequent internal affairs proceeding. Unless required by law(s) or New Jersey Attorney General Guidelines, no information deemed internally expunged shall be shared with or disseminated to third parties. Should MCDEVITT seek other non-law enforcement employment, the BOROUGH will release only his dates of employment. If law enforcement employment is sought by MCDEVITT the BOROUGH will respond as directed by the Attorney General's Guidelines or other applicable law.
- (e) In accordance with BOROUGH Ordinance No. 2019-07 and the November 5, 2020 Labor Agreement between the BOROUGH and FOP N.J. Labor Council and the Clementon Police Association, the Chief of Police and the Public Safety Committee will oversee the issuance of discipline of Officers in the Department. If due process hearings related to discipline charges are timely requested, such hearings will proceed before the Public Safety Committee or the BOROUGH Mayor and Council as set forth in Ordinance 2019-07 and the November 5, 2020 Labor Agreement between the BOROUGH and the Clementon Police Association. MCDEVITT will complete a Form W-9 and direct his attorney to provide a completed Form W-9, and conduct a child support judgment search and provide the completed forms to Madden & Madden, P.A., 108 Kings Highway East, Suite 200, Haddonfield, New Jersey 08033, at the same time he returns an original signed copy of this Agreement.

This Settlement Payment describes valuable consideration to which MCDEVITT would not otherwise be entitled. MCDEVITT understands and agrees that the Settlement Payment includes and encompasses any and all claims with respect to attorneys' fees, costs, and expenses for or by any and all attorneys who have represented him or with whom he has consulted or who have done anything in connection with the Released Claims.



## **II. Agreement Respecting MCDEVITT 's Continued Employment**

Subject to the terms and provisions of the Agreement between the Borough of Clementon and the Clementon Police Association-Fraternal Order of Police Lodge 9, MCDEVITT shall continue his employment with the BOROUGH. This Agreement, however, is not intended to create a contract of employment between MCDEVITT and the BOROUGH and nothing within this Agreement shall supersede the provisions of any existing agreement, statutes or regulations pertaining to MCDEVITT's employment, including but not limited to any collective bargaining agreement, and/or the BOROUGH's employee handbook and policies. While nothing herein is intended to create a contract for employment, BOROUGH will comply with all applicable laws which prohibit any forms of retaliation against MCDEVITT including as to his work environment, compensation, benefits, retirement entitlements, and other terms and conditions of employment.

## **III. Covenant to Not Pursue Further Legal Action**

MCDEVITT hereby covenants and agrees that the Civil Action shall be dismissed with prejudice and without costs. MCDEVITT shall take no further action against the BOROUGH OF CLEMENTON or any other person or entity, including any Releasee, based upon the matters set forth within MCDEVITT's pleadings and/or based upon any other cause of action that MCDEVITT may have stemming or originating from MCDEVITT's employment with the BOROUGH OF CLEMENTON from the beginning of time until the date this document is executed.

## **IV. General Release**

Whereas MCDEVITT brought the Civil Action alleging damages for claims as set forth in his pleadings in the Civil Action, including, but not limited to, claims that he suffered harassment, hostile work environment, retaliation and discrimination, and in consideration for the terms and conditions set forth herein, MCDEVITT, and his heirs, successors and assigns, hereby voluntarily waive, generally release and discharge Releasees from any and all rights or claims that MCDEVITT may have against Releasees, the individual Releasees being released in their individual and official capacities, for any and all reasons, including, but not limited to, claims of employment discrimination, hostile work environment, retaliation or harassment with regards to any alleged protected category, status or class, including but not limited to political affiliation, political activity, age, sex, religion, race, disability, familial status or national origin, breach of contract, wrongful resignation, retaliation, hostile work environment, wrongful discharge, intentional and/or negligent infliction of emotional distress, defamation, libel, slander, personal injury, lost wages, and any other economic and/or non-economic damages whatsoever for anything that has happened from the beginning of time to the date that this document is executed. MCDEVITT specifically waives any claims which were or could have been set forth in the Civil Action, as well as any rights that MCDEVITT may have under:

- The United States Constitution;
- Title VII of the Civil Rights Act of 1964, as amended;
- The Civil Rights Act of 1991;
- Sections 1981-1988 of Title 42 of the United States Code, as amended;
- The Employment Retirement Income Security Act of 1974, as amended;
- The Immigration Reform and Control Act, as amended;

- The Americans with Disabilities Act of 1990, as amended;
- The Age Discrimination in Employment Act of 1967, as amended;
- The Workers' Adjustment and Retraining Notification Act, as amended;
- The Occupational Safety and Health Act, as amended;
- The Older Workers Benefits Protection Act;
- The Equal Pay Act;
- The Family Medical Leave Act;
- The Fair Labor Standards Act;
- The New Jersey Constitution;
- The New Jersey Law Against Discrimination;
- The New Jersey Family Leave Act;
- The New Jersey State Wage and Hour Law;
- The New Jersey and Federal Conscientious Employee Protection Acts;
- The New Jersey Equal Pay Law;
- Individuals with Disabilities Education Act;
- Any other federal, state or local civil or human rights law or any other local, state or federal law, regulation or ordinance;
- Any public policy, contract, tort or common law; and/or
- Any allegation for costs, fees or other expenses including attorney's fees incurred in the lawsuit or in any of these matters,

that he, his heirs, administrators, executors, personal representatives, beneficiaries, and assigns may have against Releasees for compensatory or punitive damages or other legal or equitable relief of any type or description. MCDEVITT releases all claims, including those for counsel fees and/or costs related to the Civil Action and/or other matters, and each party shall bear their own attorneys' fees and costs. This Release applies to claims resulting from anything which has happened up to now. These claims shall be referred to as the "Released Claims."

Notwithstanding any other provision of this Release, the following are **not** barred by the Release: (a) claims relating to the validity of this Agreement; (b) claims by either party to enforce this Agreement; and (c) claims that legally may not be waived.

#### **V. Release Includes Unknown Claims**

- A. MCDEVITT understands and agrees that the Released Claims are intended to and do include any and all claims of every nature and kind whatsoever (whether known, unknown, suspected, or unsuspected and whether pursuant to any law or cause of action presently in effect or which may be enacted or created in the future) which he has or may have against the Releasees, individually or collectively.
- B. MCDEVITT further acknowledges that he may hereafter discover facts different from or in addition to those which he now knows or believes to be true with respect to the Released Claims and agrees that, in such event, this Agreement shall nevertheless be and remain effective in all respects, notwithstanding such different or additional facts, or the discovery thereof.



- C. MCDEVITT represents and acknowledges (i) that he and his attorneys have conducted whatever investigation was deemed necessary by he and his attorneys to ascertain all facts and matters related to this Agreement; (ii) that he has consulted with and received advice from legal counsel concerning this Agreement; and (iii) that he is not relying in any way on any statement or representation by the BOROUGH OF CLEMENTON or their attorneys, except as expressly stated herein, in reaching his decision to enter into this Agreement.

**VI. No Assignment or Transfer of Released Claims**

MCDEVITT represents and warrants that as of the Effective Date, MCDEVITT has not assigned, transferred, or hypothecated, or purported to assign, transfer, or hypothecate, to any person, firm, corporation, association, or entity whatsoever any of the Released Claims. MCDEVITT hereby agrees to indemnify and hold harmless Releasees against, without limitation, any and all rights, claims warranties, demands, debts, obligations, liabilities, costs, expenses (including attorneys' fees), causes of action, and judgments based on, arising out of, or connected with any such transfer, assignment, or hypothecation, or purported transfer, assignment, or hypothecation.

**VII. No Admission of Liability**

MCDEVITT understands and agrees that this Agreement is a release of disputed claims and does not constitute an admission of liability on the part of the BOROUGH OF CLEMENTON as to any matters whatsoever, including but not limited to any violation of any federal, state or local statute, ordinance or regulation, constitutional right, public policy, common law duty or contractual obligation. RELEASEES specifically deny that they engaged in any wrongdoing and merely intend by this Agreement to avoid further litigation and buy their peace.

The parties mutually desire to settle the CIVIL ACTION as well as any and all disputes between them, which settlement shall not be deemed or construed to be an admission of liability or wrongdoing as to any matters whatsoever.

**VIII. Settlement not conditioned on Tax Consequences**

The Parties acknowledge that this settlement is not conditioned or contingent upon the tax consequences, or lack thereof, associated with MCDEVITT's receipt of the settlement proceeds discussed above. Further, MCDEVITT understands and agrees that the BOROUGH OF CLEMENTON has not withheld any amount from the agreed upon payment made pursuant hereto for federal, state, or local taxes or other withholdings. MCDEVITT agrees that he shall be liable for any damage, loss, liability, or expense, including penalties, interests, and attorneys' fees, arising out of any actions, suits, proceedings, demands, judgments, or other loss resulting from any action, of any nature whatsoever, to require any party to pay any such taxes or other withholdings which arise from the payment made hereunder.

MCDEVITT further agrees to indemnify the RELEASEES and hold them harmless from the assessment of any taxes owed by him (along with interest, penalties or other liabilities,

including attorneys' fees, related to these taxes) and for any taxes arising out of or with respect to the Settlement Payment as a result of any actions or omissions by MCDEVITT or his agents or representatives. The BOROUGH will be responsible for its own actions or omissions.

**IX. Modification**

No provision of this Agreement may be changed, altered, modified or waived except in writing signed by MCDEVITT and a duly authorized representative of the BOROUGH OF CLEMENTON, which writing shall specifically reference this Agreement and the provision which the parties intend to waive or modify.

**X. Confidentiality**

MCDEVITT represents that he has and will keep the terms of this Agreement and all matters concerning or relating to the settlement in strictest confidence, including the substance of the negotiations leading up to the settlement, and not disclose them to anyone, except as follows: (1) if he is required to reveal such information pursuant to legal process or by a regulatory body or agency, subject to Releasees' rights detailed below; and (2) MCDEVITT may disclose the financial terms of the Agreement to his attorney, financial advisor/auditor/accountant, and tax authorities if necessary after first obtaining that individual's agreement to keep the information confidential and not disclose it to others (except that such individual agreement shall not be necessary as to tax authorities). Although the parties may have agreed to keep the settlement and underlying facts confidential, such provision against the employer, if any, is unenforceable against the employer if the employee publicly reveals sufficient details of the claim so that the employer is reasonably identifiable.

MCDEVITT will say nothing about this Agreement, the Litigation or the Released Claims to any past, present or future employees of the Borough. If MCDEVITT is asked about the Litigation, the Released Claims or this Agreement, he may only respond, "The matter has been resolved." Should MCDEVITT be requested to disclose the terms and matters addressed in the Agreement in connection with any judicial, administrative or other proceeding, he agrees immediately to notify Releasees of the request by sending such notification in writing by First Class Mail to the attention of Michael V. Madden, Esquire at Madden & Madden, P.A., 108 Kings Highway East, Suite 200, Haddonfield, New Jersey 08033. MCDEVITT further agrees that Releasees have standing to object to the disclosure on MCDEVITT's behalf, as well as on their own behalf. Assuming Releasees object to the request, MCDEVITT agrees to await the final outcome of the objection before making any disclosures about this Agreement or its terms.

MCDEVITT further understands and acknowledges that during the course of his employment by the BOROUGH, and during this CIVIL ACTION, MCDEVITT has had access to and learned about confidential, documents, materials, and other information, in tangible and intangible form, of and relating to RELEASEES ("Confidential Information"). MCDEVITT further understands and acknowledges that improper use or disclosure of the Confidential Information by MCDEVITT might cause RELEASEES to incur financial costs, damage to reputation, loss of business advantage, liability under confidentiality agreements with third parties, civil damages, and criminal penalties.



For purposes of this Agreement, Confidential Information includes, but is not limited to, all information that is marked or otherwise identified or treated as confidential in this CIVIL ACTION, or that would otherwise appear to a reasonable person to be confidential or proprietary in the context and circumstances in which the information is known or used.

MCDEVITT understands and agrees that Confidential Information is subject to the terms and conditions of this Agreement and shall only be disclosed in conformance with the Consent Confidentiality Order entered in the CIVIL ACTION. Confidential Information shall not include information that is generally available to and known by the public at the time of disclosure to Employee, provided that the disclosure is through no direct or indirect fault of Employee or person(s) acting on Employee's behalf. MCDEVITT agrees and covenants to treat all Confidential Information as strictly confidential and not to directly or indirectly disclose, publish, communicate, or make available the Confidential Information, or allow it to be disclosed, published, communicated, or made available, in whole or part, to any entity or person whatsoever.

Nothing herein shall be construed to prevent disclosure of Confidential Information as may be required by applicable law or regulation, or pursuant to the valid order of a court of competent jurisdiction or an authorized government agency, provided that the disclosure does not exceed the extent of disclosure required by such law, regulation, or order. Should MCDEVITT be requested to disclose the any Confidential Information in connection with any judicial, administrative or other proceeding, he agrees immediately to notify Releasees of the request by sending such notification in writing by First Class Mail to the attention of Michael V. Madden, Esquire at Madden & Madden, P.A., 108 Kings Highway East, Suite 200, Haddonfield, New Jersey 08033.

#### **XI. Non-Disparagement**

The parties agree that, to the extent permitted by law, they will refrain from making, publishing or communicating any derogatory, false or disparaging statements about one another, or any of the parties named in the Civil Action, to any person or entity, and they specifically agree that each will refrain from making any derogatory or disparaging statements about MCDEVITT, Thomas Weaver, Charles Grover, Randall Freiling, Mark Armbruster, Jonathan Fisher, Jenai Johnson, or the BOROUGH or the business practices or operations of the BOROUGH, to any person or entity. Nothing in this section is intended to limit or prevent MCDEVITT from engaging in dialogue with Borough personnel or representatives, or in a union forum about work-related matters or concerns.

#### **XII. Dismissal**

Contemporaneously with the execution of this Agreement, MCDEVITT and the BOROUGH OF CLEMENTON, through their respective counsel, shall execute the Stipulations of Dismissal, copies of which are appended hereto as Exhibit "A". The Stipulations of Dismissal with Prejudice as to the BOROUGH and the individually named defendants shall be filed promptly in the Court in which the Civil Action is pending following disbursement of the first Settlement Payment set forth in Section I(a)(i).

**XIII. Severability**

In the event any provision of this Agreement should be held to be unenforceable, each and all of the other provisions of this Agreement shall remain in full force and effect.

**XIV. Attorneys' Fees, Costs and Expenses**

MCDEVITT understands and agrees that the aforesaid payments to him include and encompass therein any and all claims with respect to attorneys' fees, costs, and expenses for or by any and all attorneys who have represented him or with whom he has consulted or who have done anything in connection with the Civil Action and/or the Released Claims. MCDEVITT shall not seek anything further from the Borough other than what is specified in this Agreement.

**XV. Entire Agreement**

The parties hereto acknowledge that this Agreement constitutes a full, final, and complete settlement of their differences and supersedes and replaces any and all other written or oral exchanges, agreements, understandings, arrangements, or negotiations between or among them relating to the subject matter hereof, and affirmatively state that there are no other prior or contemporaneous agreements, exchanges, representations, arrangements, or understandings, written or oral, between or among them relating to the subject matter hereof other than that as set forth herein, and that this Agreement contains the sole and entire Agreement between them with respect to the subject matter hereof. The parties hereto further acknowledge and agree that language proposed for, deleted from, or otherwise changed in the various drafts of this Agreement but not included herein shall not be considered in any way in the interpretation and application of this Agreement and shall not in any way affect the rights and obligations of the parties hereto.

**XVI. Understanding**

MCDEVITT acknowledges and represents that he has read this Agreement in full and, with advice of counsel, understands and voluntarily consents and agrees to each and every provision contained herein.

**XVII. Applicable Law and Mutual Submission to Jurisdiction**

This Agreement shall be construed and enforced according to the laws of the State of New Jersey. MCDEVITT agrees to submit any and all disputes arising out of or based on this Agreement to the jurisdiction of the courts of the State of New Jersey.

**XVIII. Counterparts Acceptable**

This Agreement may be executed in any number of counterparts and each such counterpart shall have the same force and binding effect as if executed by all parties.

**XIX. Acknowledgement**

MCDEVITT acknowledges that:



- a. Neither Releasees, nor their agents, representatives or employees have made any representations to him concerning the terms or effects of this Agreement, other than those contained in the Agreement;
- b. He has the intention of releasing all claims recited herein in exchange for the payments and consideration described herein, which he acknowledges as adequate and satisfactory to him and in addition to anything to which he otherwise is entitled;
- c. He has no past-due obligations for child support payments under N.J.S.A. 2A:17-56.23b(a);
- d. No Medicare or Medicaid payments have been made to or on behalf of MCDEVITT relating to the Litigation, and no liens, claims, demands, subrogated interests, or causes of action of any nature or character exist or have been asserted arising from or related to his employment with ~~XXX~~ the BOROUGH;
- e. He has been given a reasonable period of time to consider the terms of this Agreement;
- f. He has been advised and given an adequate amount of time to review this Agreement and has reviewed this Agreement with his counsel; and
- g. He is competent to understand the contents and effect of this Agreement and that his decision to enter into this Agreement has not been influenced in any way by fraud, duress, coercion, mistake or misleading information.

**XX. Certification of Understanding and Competence**

MCDEVITT acknowledges (a) that he is competent to understand the content and effect of this Agreement; (b) that he understands that by entering into this Agreement, he is releasing forever Releasees from any claim or liability (including claims for attorney's fees and costs) arising from his employment relationship with the BOROUGH up to the date of this Agreement; (c) that he is entering into this Agreement of his own free will in exchange for the consideration to be given to him as listed above, which he agrees is adequate and satisfactory; and (d) that the BOROUGH and Releasees have not made any representations to him concerning the terms or effects of this Agreement, other than those contained in the Agreement.

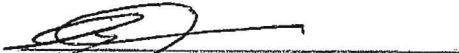
IN WITNESS WHEREOF, the undersigned have executed this Agreement on the date shown below.

JOSEPH M. MCDEVITT



Date: 5-31-21

Sworn to and subscribed to before me on  
this 31<sup>st</sup> day of May, 2021.

  
NOTARY PUBLIC

Commonwealth of Pennsylvania - Notary Seal  
Amy Karpf, Notary Public  
Bucks County  
My commission expires September 06, 2023  
Commission number 1235917

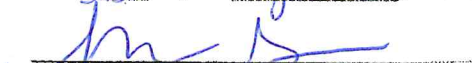
BOROUGH OF CLEMENTON

By: 

Date: 6-22-2021

Title: Mayor

Sworn to and subscribed to before me on  
this 22 day of June, 2021.

  
NOTARY PUBLIC

MARGARET M. GIORDANO

Notary Public of New Jersey  
My Commission Expires October 21, 2023