

SETTLEMENT AGREEMENT

THIS AGREEMENT made this 19th day of December, 2013 by and between the **BOROUGH OF DEMAREST**, a municipal corporation of the State of New Jersey, (hereinafter "Borough") and **DEPUTY CHIEF DAVID HOAGLAND** (hereinafter "Plaintiff").

WHEREAS, the Borough hired Plaintiff in or about January 1, 1987; and

WHEREAS, Plaintiff was later promoted to the position of Deputy Chief of the Borough in or about August 2005; and

WHEREAS, the Plaintiff believes that he was wrongfully passed over for the promotion to the Chief of Police of the Borough; and

WHEREAS, the Plaintiff further believes and has asserted in a Title 59 Tort Claims Notice that he was not treated in accordance with the title of Deputy Chief and in accordance with past practices (a copy of that Tort Claims Notice is attached hereto as Exhibit A); and

WHEREAS, Plaintiff retained Patrick Toscano, Esq. for the stated purpose of filing a Complaint against Chief James Powderley and the Borough of Demarest (a copy of the "Complaint" is attached hereto as Exhibit B); and

WHEREAS, the Governing Body authorized the Borough Attorney to meet with Mr. Toscano and determine whether a settlement could be achieved without the Borough incurring the cost and expense of a protracted litigation; and

WHEREAS, the Borough Attorney and counsel for Plaintiff agreed to have a retired Superior Court Judge mediate the matter and avoid the filing of the Complaint; and

WHEREAS, the parties did mediate the matter before the Hon. Ross Anzaldi (Ret.) on November 12, 2013; and

WHEREAS, as a result of that mediation, a proposal was made to the Governing Body in executive session to resolve any and all potential claims by the Plaintiff as against Chief Powderley and the Borough; and

WHEREAS, the Governing Body, in an effort to avoid costly and protracted litigation at the taxpayers' expense, did authorize a settlement with the Plaintiff on the following terms and conditions:

1. **Filing of Complaint.** Plaintiff and his counsel have indicated that they are ready to file the Complaint attached hereto as Exhibit B. Plaintiff and Mr. Toscano however will not file the Complaint, waive their right to do so, and limit their rights to those provided in this Settlement Agreement.

2. **Separation from Employment.** Effective 11:59 December 31, 2013 ("Separation Date") Plaintiff shall be deemed to have discontinued his employment with the Borough. Prior to the Separation Date, he shall coordinate with Chief Powderley the return of all Demarest Police Department ("DPD") property, including by way of example but not limitation, the Plaintiff's service weapon, portable radio, DPD issued cell phone, etc.
3. **Damages.** Plaintiff alleges that he has suffered numerous damages as outlined in his Tort Claims Notice and the Complaint which exceed the Settlement Sum (set forth below) and also alleges that he would be entitled to Attorneys' fees under the relevant statutes. The Borough and the DPD deny that they have acted wrongfully in any way and deny that Plaintiff has suffered any damages or is entitled to attorneys fees. However, in order to avoid the cost and expense of a protracted litigation (which is reasonably anticipated by a review of the Complaint) the Borough believes it is in the best interest of the tax payers and the continued effective and efficient operation of the DPD to pay the Settlement Sum in consideration for the Plaintiff's separation from employment.
4. **Settlement Sum.** The Borough will pay Plaintiff the sum of \$160,000.00 US Dollars which sum includes any and all damages Plaintiff alleges he is entitled to under the applicable laws set forth in the Tort Claims Notice and Complaint including reasonable attorneys' fees and costs. The Settlement Sum shall be delivered to Plaintiff's Attorney and made payable as follows: "Patrick Toscano, Esq. Attorney Trust Account I/T/F David Hoagland." The Settlement sum shall be delivered on or before January 15, 2014. The Borough will not deduct or withhold any monies for taxes, disability, pension, etc. However, the Borough takes no position as to whether the settlement sum, or any portion thereof, shall be subject to such withholdings or other payments as a matter of law under this provision.
5. **Waiver of Claims, Release and Indemnification.** Plaintiff hereby waives and releases the Borough, Chief Powderley, DPD and any and all of the Borough's employees, agents, representatives and assigns ("Released Parties") from any and all claims Plaintiff has or may have against the Released Parties, including known or unknown claims, latent or patent, arising from or relating to his employment with the Borough of Demarest, from now until the end of time. Further, Plaintiff shall promptly hold the Released Parties harmless, and indemnify them from any claims from the payment of the Settlement Sum by any third parties, including by way of example but not limitation, federal and state taxing authorities and other government agencies, as well as State of New Jersey, Pension Division, including any and all reasonable attorney's fees and costs incurred by the Borough with respect to any such claims by third-parties against the Borough. Plaintiff shall also promptly pay the Borough for its reasonable attorneys' fees and costs it may incur in enforcing its rights pursuant to this provision.
6. **Future Communications with Prospective Employers of Plaintiff.** If asked for a recommendation or comment by a prospective employer of Deputy Chief Hoagland, the Borough will only say the following:
 - a. There was an amicable discontinuance of the employment relationship.
 - b. The Borough eliminated the position of Deputy Chief.

7. **Entire Agreement.**

This Settlement Agreement constitutes the entire Agreement between the parties with respect to any and all issues or claims arising from or relating to Plaintiff's employment with the Borough and supercedes all prior discussions, agreements, and other standings, both written and oral, between the Parties with respect thereto.

8. **No Modifications.**

No change or modification to this Settlement Agreement shall be valid unless it is contained in a writing and signed by the Parties.

9. **Non-Disparagement.** Subject to paragraph 6 above, neither party shall discuss the terms of this Settlement Agreement or the negotiations of the parties in arriving at the terms herein unless otherwise required by a State Agency or Court Order. Further, neither party shall disparage the other party.

10. **No Rights In Third Parties.** The Parties specifically disavow any intention to create rights in third parties under or in relation to this Agreement unless specifically stated herein. This Settlement Agreement is independent of and not contingent on the actions of any third party.

11. **Non-Prejudice and Construction of the Agreement.** This Settlement Agreement is not and shall not be construed as an admission of any wrongdoing of any kind by the Borough or its employees, agents, representatives and assigns and shall be construed neutrally, having been negotiated with the benefit of counsel.

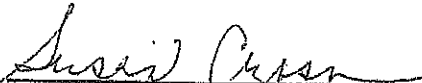
12. **Severability.** In the event that any provision of the Settlement Agreement is held to be void, voidable, unlawful, or otherwise unenforceable, the remaining terms of this Agreement shall remain in full force and effect.

13. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey.

14. **Execution.** This Agreement may be executed in counterparts, and signature pages may be exchanged by telecopy or email.

15. **No Other Consents.** Plaintiff represents and warrants that no consent or agreement of any person other than Plaintiff is required for Plaintiff to execute, deliver and perform under this Settlement Agreement.

ATTEST:


Susan Crosman, Borough Clerk

WITNESS:


Patrick Toscano
Attorney at Law of New Jersey

BOROUGH OF DEMAREST


Raymond J. Cywinski, Mayor
Council President Joseph Gray


DAVID HOAGLAND, Deputy Chief