

SETTLEMENT AGREEMENT AND
GENERAL RELEASE OF CLAIMS

This Settlement Agreement and General Release of Claims (the "Agreement") is made and entered into this 20th day of August 2019, by and between the Township of Montclair and the Township of Montclair Police Department, its elected and appointed officials, council, committee, officers, partners, members, employees, agents, or counsel in their official and individual capacities (hereinafter "the Township"), and Tracy Frazzano, her estate, heirs, representatives, executors, administrators, assigns, successors-in-interest and predecessors-in-interest (hereinafter "Frazzano"). The signatories to this Agreement will hereinafter sometimes be referred to individually as a "Party" and collectively as "the Parties."

WHEREAS, Frazzano seeks to utilize remaining accrued leave time prior to retirement while serving as the duly appointed Chief of Police of a municipality in another State;

NOW THEREFORE, in consideration of the mutual promises contained in this Agreement and for additional good and valuable consideration, the receipt and sufficiency of which the Parties thereby acknowledge, and intending to be legally bound thereby, Frazzano and the Township mutually agree as follows:

1. **Retirement.** Frazzano will submit to the Township an irrevocable letter detailing her intention to separate from the Township as of the date of this Agreement and to retire in good standing effective August 1, 2020 (the "Retirement Date"), upon execution of this Agreement. Except as otherwise provided in this Agreement, salary, perquisites and benefits will cease as of the Retirement Date. Nothing in this Agreement alters Frazzano's right to receive, after the Retirement Date, benefits due to Frazzano under the terms of any vested employee benefit plan in which she participates that is subject to the Employee Retirement Income Security Act of 1974, as amended, or other applicable state law. Frazzano shall be issued a retired ID Card and the Township shall cooperate should Frazzano seek a retired firearms carry permit. Upon submission of the irrevocable letter of retention

to retire, Frazzano shall return all Township property including, but not limited to, Department issued service weapon(s), badge, identification card, mobile phone and vehicle, to the Chief of Police.

2. **Consideration.** In consideration of Frazzano's agreement to execute this Agreement without modifications or deletions, and subject to the seven (7) day Revocation Period referenced in paragraphs 9 and 18 below, the Parties agree that the Township shall permit Frazzano to utilize accrued time to reach an effective retirement date of August 1, 2020 as follows: (1) ___ hours of compensatory time; (2) 6 months of sick time; (3) ___ vacation days; and (4) ___ personal days. (See, Exhibit A). All other benefits time due and owing to Frazzano shall be paid by the Township to Frazzano within thirty (30) days of her effective retirement date of August 1, 2020. Frazzano represents and warrants that neither the Township nor its counsel provided any advice regarding the taxability regarding the settlement amounts paid to her. Frazzano acknowledges and agrees that she is responsible for any and all federal, state and/or local taxes which may be due to her and her counsel from the settlement (including but not limited to any FICA and FUTA payments Frazzano should have paid for herself), including any and all additional payments (including interest and penalties). Frazzano further acknowledges and agrees to indemnify and hold harmless the Releasees, as defined below, and its and their counsel in this matter against any and all associated audits, actions, suits, costs, damages, attorneys' fees, claims and expenses, including but not limited to payment of charges, assessments, interest, penalties or other liabilities (including without limitation those due to failure to make proper withholding), which may be brought against any of them in the future by governmental taxing authorities in an effort to recover any amounts which Frazzano is required to pay pursuant to any state, local or federal tax law(s), rule(s) or regulations as related to this Agreement. Frazzano represents and warrants that neither the Township nor its counsel provided any representations regarding pension entitlements under the New Jersey Police and Firemen's Retirement System (hereinafter "PFRS") or any other pension system, nor any representations regarding entitlements to health insurance benefits upon retirement.

- a. **Indemnification.** The Township shall indemnify and defend Frazzano in all pending and future legal actions relative to her employment with the Township as permitted by law. Notwithstanding the foregoing, the Township's obligation under this provision is contingent on Frazzano's cooperation with Township counsel in the defense of any legal action wherein Frazzano is a defendant. Frazzano agrees to cooperate with the Township without receiving any additional compensation for doing so. In addition, Frazzano agrees to cooperate with regards to any subpoenas and testimony deemed necessary by the Township in connection with any litigation or other action related to her duties with the Montclair Police Department.

Frazzano acknowledges and agrees that the Consideration set forth in this Paragraph 2 is something of value to which Frazzano would not be entitled if she does not sign this Agreement, and that she will receive no money or thing of value from the Township under this Agreement other than the Consideration described in this Paragraph 2 or as otherwise set forth herein.

3. **Personnel Records.** Effective upon the expiration of the seven (7) day Revocation Period as defined in paragraphs 9 and 18 and after the time that Genova Burns LLC receives the Agreement and additional supporting documentation detailed in paragraph 2, Frazzano's personnel records shall detail a voluntary retirement.

4. **Release of Claims.** (a) In exchange for the Consideration described above, Frazzano knowingly and voluntarily agrees to forever release, acquit and discharge the Township, its Police Department, council, elected and appointed officials, departments, divisions, offices, boards, commissions, committees, subsidiary and affiliated entities, their officers, partners, agents, attorneys, insurers, members, employees, past and present, and their predecessors, successors and assigns (hereinafter collectively referred to as "the Township Releasees"), from and against all claims, actions and causes of action, of every kind, nature and description, which exist as of the date Frazzano signs this Agreement, whether known or unknown, including but not limited to claims arising out of or

related to her employment, the termination thereof, and the actions and omissions of any of the Releasees. This general release includes, and is not limited to claims arising under all federal, state and local laws and all discrimination statutes, including but not limited to: Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Age Discrimination in Employment Act, the Older Workers Benefit Protection Act, the Americans with Disabilities Act of 1990, the Family and Medical Leave Act of 1993, the Employee Retirement Income Security Act, the Consolidated Omnibus Budget Reconciliation Act (hereinafter "COBRA"), the National Labor Relations Act, the New Jersey Law Against Discrimination, the New Jersey Constitution, the New Jersey Civil Rights Act, the New Jersey Family Leave Act, the New Jersey Conscientious Employee Protection Act, the New Jersey Family Leave Insurance Act, retaliation claims under the New Jersey Workers Compensation Act, the New Jersey Law on Equal Pay, the New Jersey Smokers' Rights Law, the New Jersey Wage and Hour Law, N.J.S.A. 34:11-56a et seq., the New Jersey Wage and Hour Regulations, N.J.A.C. 12:56 et seq.; any federal, state or local laws of any type or description regarding the employment or labor, including but not limited to all claims under state contract or tort law, and including any claims or benefits under any and all policies, including any and all vacation, and other benefits policies, programs and plans of the Releasees, any and all claims for tortious conduct, slander, defamation, libel, interference with business relationships, or other tortious or negligent conduct; any and all claims for wrongful termination, breach of employment contract or promise, detrimental reliance or promissory estoppel; and any and all claims for attorneys' fees, costs, expenses, disbursements and the like. Notwithstanding the foregoing, this release of claims shall not extend to any claim that Frazzano may have under state workers' compensation law. Frazzano does not waive or release her right to assert a claim to enforce this Agreement, or for any claims arising after the date that Frazzano signs this Agreement.

(b) Except as set forth herein, Frazzano further acknowledges, represents and warrants the Township owes her no other wages, commissions, bonuses, vacation pay, sick pay, severance, or

other compensation or payments of any nature, other than as specifically provided for in Paragraph 2 and Exhibit A of this Agreement.

(c) Frazzano further acknowledges, represents and warrants that she knows of no acts or omissions of Releasees arising out of or related to her employment with the Township that may give rise to a claim under the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 201, et seq., the New Jersey Wage and Hour Law, N.J.S.A. 34:11-56a et seq., the New Jersey Wage and Hour Regulations, N.J.A.C. 12:56 et seq., or the New Jersey Workers' Compensation Law. Frazzano thereby waives her right to participate in any class action or collective action lawsuit alleging a violation of any or all of the laws referred to in this Paragraph 4(c) brought against the Township or any of the Releasees, whether on his behalf or on behalf of any other person or persons, and she agrees to waive any monetary benefits or recovery against the Township and any of the Releasees in connection with any such class action or collective action lawsuit.

(d) Frazzano thereby warrants and represents that: (a) the Township and the other Township Releasees have satisfied in full all obligations they ever had to her, if any, regarding any matter whatsoever, including but not limited to, payments, wages, commissions, overtime, reimbursements and benefits; (b) the Township and the other Township Releasees do not have any obligation to provide her at any time in the future with any payments, wages, commissions, overtime, reimbursements, benefits or considerations other than those recited in Section 2; (c) with respect to the Fair Labor Standards Act (hereinafter "FLSA"), she has received all wages and other compensation due to her in connection with his employment with the Township and any other of the Township Releasees, and there are no facts that in any way give rise to, or in any way support, any claims under the FLSA against any of them; and (d) the Parties shall bear their respective costs and attorneys' fees incurred in connection with the Claim other than as set forth in paragraph 2(a) of this Agreement.

(e) Nothing herein shall prevent Frazzano from participating in an administrative action brought before or by the United States Equal Employment Opportunity Commission and/or a state or local fair employment practices agency. However, Frazzano agrees that she will not be entitled to recover, and she agrees to waive any monetary benefits or recovery, against the Township and any of the Releasees in connection with any such claim, charge or proceeding of any kind without regard to which entity or person has brought such claim, charge or proceeding.

5. **Non-disparagement.** Frazzano agrees not to, at any time, take any action through any medium or in any forum, to directly or indirectly disparage or otherwise bring into question or disrepute the Township, its Police Department, council, elected officials, departments, divisions, offices, boards, commissions, committees, subsidiary and affiliated entities, their officers, partners, agents, attorneys, insurers, members, employees, past and present, and their predecessors, successors and assigns and the services, products, business reputation, abilities, or capabilities of the Township. This provision prohibits without limitation, email, any electronic media, and any postings to the Internet. The Township agrees that it will not authorize any elected or appointed official of the Township, employee or member of the Township administration to make or cause to be made any defamatory or disparaging statements about or regarding Frazzano. Notwithstanding the foregoing, it shall not be a breach of this paragraph for the Parties to comply with the lawful orders or processes of any court, including the obligation to testify truthfully in any legal proceeding. Additionally, this paragraph does not apply to communications with government agencies. The Parties agree that this non-disparagement clause is a material term of this Agreement, without which they would not have entered into this Agreement.

6. **Covenant Not to Sue.** Frazzano agrees not to institute any lawsuit, and not to assert any claims, charges or other legal proceedings against the Township in any court, administrative agency or other forum, based upon any act, event or omission, whether known or unknown, occurring prior to the Effective Date of this Agreement.

7. **No Admission of Liability.** The Parties acknowledge that this Agreement is not an admission on any party's behalf of any wrong-doing or liability. Accordingly, this Agreement is not admissible in any forum as an admission by any party to this Agreement, but is admissible only in an action to enforce this Agreement.

8. **Non-precedential.** The terms of this Agreement are unique to the facts and circumstances and the specific negotiations of the Parties. This Agreement does not, and is not intended to create binding precedent, except as applied to Frazzano, the Township and the specific circumstances therein.

9. **Consultation with Attorney.** Frazzano thereby acknowledges and understands and the Township agree that: (a) Frazzano has 21 days after receipt of this Agreement to review and consider it, discuss it with an attorney of her choosing, and decide to execute or not to execute this Agreement; (b) Frazzano has seven (7) days after the execution of this Agreement to revoke it ("Revocation Period"); (c) in order to revoke this Agreement, Frazzano or Frazzano's counsel must give written notice to the attorney for the Township by delivering a letter to Genova Burns, LLC stating that she is revoking this Agreement, which notice must be given before the Revocation Period expires; (d) this Agreement will not become enforceable until the Revocation Period expires and Frazzano returns the signed Agreement to the attorneys for the Township without modification or deletions; and (e) if Frazzano revokes this Agreement pursuant to this provision, she agrees that she immediately will return to the Township any and all Consideration already paid by the Township.

10. **Entire Agreement.** This Agreement contains the sole and entire Agreement between Frazzano and the Township. In executing this Agreement, Frazzano represents and acknowledges that she has not relied upon any representation or statement not set forth herein or made by the Township, its counsel or representatives, with regard to the subject matter of this Agreement. No other promises or agreements shall be binding unless in writing, signed by each of the parties thereto, and explicitly stated to be an amendment or supplement to this Agreement.

11. **Severability.** Should any provision of this Agreement be found to be illegal, void or unenforceable, such provision shall be of no force and effect. However, the illegality or unenforceability of any such provision shall have no effect upon, and shall not impair the enforceability of, any other provision of this Agreement. The parties agree that questions or ambiguities regarding the interpretation of language in this Agreement shall not be interpreted against the drafter of this Agreement.

12. **Covenant Not to Re-Apply.** As described in Paragraph 1 herein and further to Frazzano's irrevocable letter detailing her intention to separate from the Township as of the date of this Agreement and to retire effective August 1, 2020 to be submitted upon execution of this Agreement, Frazzano will submit to the New Jersey Division of Pensions and Benefits all applications, documents and exhibits that the Division requires to effectuate her retirement on August 1, 2020. As described, this separation and retirement are irrevocable and are intended to be irrevocable as of the date of this Agreement. Frazzano agrees that she will not knowingly seek, apply or reapply for reinstatement, employment, reemployment, appointment, or service of any kind now or in the future as a sworn member of the Montclair Police Department. This shall not preclude Frazzano from applying for or accepting any civilian or independent contractor work with the Township or any Township agency, subdivision, volunteer unit, authority, municipal organization, board, bureau or committee.

13. **Choice of Law.** This Agreement shall be construed in accordance with and governed by the laws of the State of New Jersey. Should any provision of this Agreement be declared illegal or unenforceable by a court of competent jurisdiction and cannot be modified to be enforceable (even though the Parties agree a court can modify) excluding general release of claims language, such provision shall immediately become null and void, leaving the remainder of this Agreement in full force and effect. If the general release of claims language is found by a court of competent jurisdiction to be unenforceable, Frazzano agrees that the Township may rewrite this Agreement to cure the

defect, and Frazzano shall execute the rewritten agreement upon request of the Township without any additional monies, benefits and/or compensation in exchange therefor.

14. Complete Understanding. This Agreement represents the complete understanding between the parties, may not be changed orally and supersedes any and all prior agreements between the parties. Frazzano acknowledges that she has not relied on any representations, promises or agreements of any kind made to her in connection with his decision to sign this Agreement, except for those set forth in this Agreement. No other promises or agreements shall be binding or shall modify this Agreement unless signed by the parties thereto, or counsel for and on behalf of the parties.

15. Who is Bound. Frazzano and the Township are bound by this Agreement. Those who succeed to their rights and responsibilities, such as successors, assigns, heirs, executors, or personal or legal representatives, are also bound. This Agreement is made for the benefit of the Frazzano and the Township and all who succeed to their rights and responsibilities, such as any successors and/or assigns.

16. Signatures. This Agreement may be executed in several counterparts, each of which shall be deemed an original. By signing this Agreement, Frazzano and the Township state that they have carefully read this Settlement Agreement and General Release, fully understand it and are signing it voluntarily.

17. Effective Date. This Agreement shall not become effective until the eighth (8th) day after Frazzano and the Township execute this Agreement, which shall be the Effective Date of this Agreement. No payments due to Frazzano thereunder shall be made or begin before the Effective Date.

18. FRAZZANO THEREBY ACKNOWLEDGES AND UNDERSTANDS THAT BY SIGNING THIS AGREEMENT, SHE IS STATING THAT:

(A) SHE HAS READ IT;

(B) SHE UNDERSTANDS EVERYTHING IN IT AND FULLY UNDERSTANDS

THAT SHE IS GIVING UP IMPORTANT RIGHTS, INCLUDING, BUT NOT LIMITED TO, RIGHTS UNDER THE AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967, AS AMENDED, AND THE NEW JERSEY LAW AGAINST DISCRIMINATION;

(C) SHE UNDERSTANDS THAT SHE IS GIVING UP ANY AND ALL RIGHTS OR CLAIMS IN EXCHANGE FOR CONSIDERATION TO WHICH SHE IS NOT ALREADY ENTITLED;

(D) SHE UNDERSTANDS THAT SHE IS NOT WAIVING ANY RIGHTS OR CLAIMS UNDER THE AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967, AS AMENDED, THAT MAY ARISE AFTER THE DATE THIS AGREEMENT IS EXECUTED;

(E) THIS AGREEMENT HAS BEEN NEGOTIATED WITH HER KNOWLEDGE AND CONSENT;

(F) SHE HAS BEEN ADVISED IN THIS AGREEMENT TO CONSULT WITH AN ATTORNEY PRIOR TO EXECUTING IT;

(G) SHE UNDERSTANDS THAT UNDER THE AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967, AS AMENDED, SHE IS ENTITLED TO A PERIOD OF 21 DAYS WITHIN WHICH TO CONSIDER THIS AGREEMENT AND THAT SHE MAY REVOKE THIS AGREEMENT UP TO 7 DAYS AFTER SIGNING IT; AND

(H) SHE HAS SIGNED THIS AGREEMENT KNOWINGLY AND VOLUNTARILY.

SIGNATURES APPEAR ON THE FOLLOWING PAGE

PLEASE READ CAREFULLY. THIS AGREEMENT IS ELEVEN (11) PAGES IN LENGTH (INCLUDING THIS SIGNATORY PAGE) AND INCLUDES A RELEASE OF KNOWN AND UNKNOWN CLAIMS.

Witness

Brandon McCoy

Dated: _____

8/20/19

TRACY FRAZZANO

Tracy Frazzano

Dated: _____

8/20/19

TOWNSHIP OF MONTCLAIR

Witness

Brandon McCoy

Dated: _____

8/20/19

By: _____

Tulio Jr

Dated: _____

8/20/19

**TOWNSHIP OF MONTCLAIR POLICE
DEPARTMENT**

Witness

Brandon McCoy

Dated: _____

8/20/19

By: _____

JW Ch

Dated: _____

8/20/19

Exhibit A
Accrued Time Calculation

The following sets forth the working days per month (all Mondays through Fridays included):

July 2020	23 days
June 2020	22 days
May 2020	21 days
April 2020	22 days
March 2020	22 days
February 2020	20 days
January 2020	23 days
December 2019	22 days
November 2019	21 days
October 2019	23 days
September 2019	21 days
August 2019	8 days
TOTAL	248 days

Remaining Accrued Time:

Holidays	13 days
Sick	130 days
Vacation	45 days (16 days for 2019 and 29 days for 2020)
Personal	8 days (4 days for 2019 and 4 days for 2020)
Comp. Time	52 days
TOTAL	248 days

Payout for Accrued Time:

Comp. Time: \$144,490.28

Sick Time: \$18,750.00