

RESOLUTION NO. 2020- 291

A RESOLUTION AUTHORIZING THE EXECUTION OF A SETTLEMENT AGREEMENT AND GENERAL RELEASE BY AND BETWEEN THE GARDEN STATE ISLAMIC CENTER AND THE CITY OF VINELAND REGARDING CLAIMS IN THE MATTER OF THE GARDEN STATE ISLAMIC CENTER V. CITY OF VINELAND, ET AL. CIVIL ACTION NO.: 1:17-CV-01209

WHEREAS, the Garden State Islamic Center located at 700 Bird Street, Vineland New Jersey has filed suit in the District Court of New Jersey, Civil Action No.: 1:17-cv-01209 (Litigation) against the City of Vineland alleging damages as specified therein under and in accordance with the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) among other claims; and

WHEREAS, the City of Vineland has denied each and every allegation of the complaint; and

WHEREAS, as a result of mediation process and discussions with the City's insurance carrier and counsel appointed to represent the City, including in such discussions the economies in defending the litigation as well as the potential for the fee shifting requirements contained in RLUIPA, the City's insurance carrier has determined that a settlement is more economically acceptable than a trial of all of the issues; and

WHEREAS, a proposed settlement has been presented which resolves all of the claims outlined in the litigation and which specifies that the City denies all of the allegations contained in the Litigation and settlement is based solely on the cost analysis of continued litigation; and

WHEREAS, City Council finds it to be in the best interest of the City to execute the Settlement Agreement and General Release to end the litigation and not incur any further costs and expenses.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Vineland that the Mayor and Clerk are authorized to execute the Settlement Agreement and General Release in substantially the same form attached hereto and made a part hereof subject to such non-material changes as approved by the City Solicitor.

Adopted:

President of Council

ATTEST:

City Clerk

SETTLEMENT AGREEMENT AND GENERAL RELEASE

GARDEN STATE ISLAMIC CENTER, (“GSIC”), located at 700 Bird Street, Vineland, New Jersey, 08360, on its own behalf and on behalf of its heirs, executors, administrators, members, officers, and assigns, personally, individually and in their collective capacity (hereinafter collectively referred to as “Plaintiff”), and the CITY OF VINELAND, DALE JONES, GARY LUGIANO, and CARMEN DI GIORGIO, with an address of 640 East Wood Street, Vineland, New Jersey 08362 on their own behalf and on behalf of their heirs, executors, administrators, assigns, affiliates, departments, subdivisions, subsidiary land use boards and agencies, Council members, administrators, officials, employees, agents, representatives, benefit plans and insurance carriers (hereinafter collectively referred to as “Defendants”), have reached the within agreement in final settlement of any and all claims, disputes or rights, including attorneys’ fees and costs, asserted or that were, or which could have been asserted by Plaintiff against Defendants from the beginning of time until the date of the Settlement Agreement and General Release (the “Agreement”).

The Agreement is in full settlement of any and all claims which Plaintiff now has or may have against Defendants, individually or collectively, arising out of or in connection with all claims of any kind and nature that were asserted, or which could have been asserted, in the federal action entitled, Garden State Islamic Center v. City of Vineland, et als., United States District Court, District of New Jersey, Civil Action No. 1:17-cv-01209, (hereinafter the “Lawsuit”).

In consideration of the mutual promises contained herein it is agreed as follows:

1. Plaintiff and Defendants agree that they, through their attorneys, will execute (at the time of executing the Agreement) for filing in the United States District Court, a Stipulation of Dismissal with Prejudice of the pending Lawsuit, Garden State Islamic Center v. City of

Vineland, et als., Civil Action No. 1:17-cv-01209, in the form annexed hereto as Exhibit A. The Stipulation shall be held in trust by Defendants' counsel and may be filed with the Court after the payment to Plaintiff's counsel of the funds set forth in paragraph 2 below.

2. In full settlement of the Litigation, including those claims referred to above and including attorneys' fees and costs, and any other professional fees or costs, within thirty (30) days after mutual execution of this Agreement, together with Plaintiff's signature on, and receipt of: (a) the executed Agreement; (b) the executed Stipulation of Dismissal referred to above; and (c) an IRS Form W-9 from Plaintiff's counsel, the City and its insurance carrier, shall remit the settlement proceeds by check payable to Plaintiff, in the care of its counsel, THE ABOUSHI LAW FIRM, PLLC, 1441 Broadway, 5th Floor. New York, New York 10018, a check in the sum of \$550,000.00 (Five-Hundred-Fifty Thousand Dollars). Said payment is made in total and complete settlement of the matter and all claims encompassed by this Agreement. No other monetary payment or compensation whatsoever shall be due to Plaintiff.

3. An IRS Form 1099 will be issued to Plaintiff's counsel with respect to the payment made. It is expressly understood and agreed that Plaintiff and its counsel shall assume responsibility for any appropriate tax treatment and tax reporting of the payments made to it. It is further understood and agreed that in the event the Internal Revenue Service, or any other taxing entity, including, but not limited to, the State of New Jersey or any court or other tribunal of competent jurisdiction, ultimately determines that the foregoing amount constitutes income for which any taxes remain due and owing, Plaintiff shall be responsible for the payment of such taxes and shall make no claim against Defendants for payment of any such taxes, or for the payment of any applicable interest or penalties. In the event it is ultimately determined that any

taxes are due and owing with respect to the foregoing sum, the validity of the Agreement shall not be affected in any way.

4. Plaintiff acknowledges that the payment referred to above in paragraph 2 constitutes consideration not otherwise owed but for the Agreement. Further, Plaintiff agrees that said payment is the only monetary payment to which it is entitled under the Agreement and agrees that it will not seek any further monetary payment from the City in any subsequent proceeding arising from, or related in any way to, the Litigation.

5. In consideration for the dismissal of the Lawsuit and for the payment provided for in the Agreement, and for the mutual promises contained in the Agreement, Plaintiff expressly waives, releases and gives up any and all claims which have been asserted, or could have been asserted, in the Lawsuit referred to above, and any and all claims and rights, without limitation, that they may presently have against Defendants, whether known or unknown. Plaintiff specifically releases all claims against the City and its subsidiary or affiliated agencies, land use boards, including the City's Health Department, the Zoning Board of Adjustment and the City's Planning Board, and all of their current, future and past officials, administrators, members, employees, representatives, consultants, professionals, successors and assigns, in their official and personal capacities, as well as their insurance carriers (including Summit Risk Services, and all of the named insureds), whether arising under the Constitution of the United States, the New Jersey Constitution, or of any other state, and any other provision of any other law, common or statutory, of the United States, New Jersey or any other state, including under RLIUPA, 42 U.S.C. §2000cc, 42 U.S.C. §1983, the NJCRA, N.J.S.A. 10:6-2 et seq., or the NJLAD, N.J.S.A. 10:5-1 et seq., whether known or unknown, from the beginning of time up until the date of execution of the Agreement.

The Release is intended by the parties to be construed to release any and all claims and rights arising on or before the date of the execution of the Agreement to the fullest extent permitted by law. This paragraph bars the parties from initiating legal action to the fullest extent permitted by law.

Plaintiff and Defendants represent to each other that, other than the Lawsuit specifically referenced herein, there are no pending lawsuits, charges, or other claims of any nature whatsoever by or on behalf of Plaintiffs against Defendant, or by or on behalf of Defendants against Plaintiffs in any state or federal court or any agency or other administrative body.

Further, Plaintiff agrees, to the fullest extent permitted by law, not to institute any lawsuit, administrative claims or charges, or other claims of any nature whatsoever against Defendants in any forum, or to seek discovery from Defendants based upon any events, whether known or unknown, occurring prior to the date of the execution of the Agreement. Additionally, Defendants agree, to the fullest extent permitted by law, not to institute any lawsuit, charges, or other claims of any nature whatsoever against Plaintiff in any forum, or to seek discovery from Plaintiff based upon any events, whether known or unknown, occurring prior to the date of the execution of the Agreement. With respect to any report or claim or participation in any investigation or proceeding from which Plaintiff may not lawfully be precluded, Plaintiff understands and agrees that it hereby voluntarily waives any right to monetary damages against any Defendants in such action. Furthermore, nothing in this Release shall be construed to bar Plaintiff from reporting anything where the prohibition would be precluded by law.

6. In addition to the monetary consideration specified in this Agreement, Defendants, having considered and in reliance upon the reports and flow calculations submitted by Plaintiff's professional engineers as part of its application materials for the uses and occupancy

contemplated in such application, agrees to issue a municipal septic permit and to convert the extant temporary Certificate of Occupancy for Plaintiff's facility located at 700 Bird Street in the City of Vineland, to a final Certificate of Occupancy consistent with the foregoing. To this extent, Defendants note that the Certificate of Occupancy application on file pertained only to the occupancy of the first floor of Plaintiff's facility.

7. Defendants agree to issue the final Certificate of Occupancy and septic permit within 48-hours of approval of the Settlement Agreement and mutual execution of the same by all parties, together with Plaintiff's execution of the Stipulation of Dismissal with prejudice.

8. The effectiveness of this Agreement is subject to approval of by the City of Vineland's Mayor and Council by way of passage of a resolution in a duly convened public meeting. Defendants agree that settlement of the Litigation consistent with the terms of this Agreement will be placed on the agenda at the earliest available public meeting of the Mayor and Council. Defendants presently anticipate that the next public meeting at which the settlement can be presented for approval is the second Tuesday in July.

9. Defendants agree to pay the mediator's fee in its entirety.

10. Within 7-days of receipt of the settlement proceeds from Defendants, Plaintiff agrees to remit its tax bill payment to the City for tax year 2015, in the amount of \$49,859.30. Upon payment of the 2015 taxes, the City shall refrain from seeking any other remedy that it is entitled to under law, including tax sale, penalty or interest assessments.

11. In the event any future disputes shall arise between the parties with respect to the interpretation and enforcement of this Agreement, the parties agree that such disputes shall be submitted to the mediator, Honorable John J. Hughes, U.S.M.J. (Ret.) for resolution. The parties

agree to accept such decision as binding upon them without resort to further litigation. In such case, the parties agree to share equally in the costs for Judge Hughes' services.

12. By making this Agreement, Plaintiff acknowledges that none of the Defendants admit that it or they have done anything wrong, and the Defendants specifically state that they have not violated or abridged any federal, state, or local law or ordinance, or any contract or any right or obligation that it or they may owe or may have owed to Plaintiff. This Agreement shall not constitute an admission of liability or wrongdoing for any purpose. Plaintiff further acknowledges that the allegations contained in the Lawsuit remain disputed and denied by Defendants and that the City and its insurance carrier, assert that they underwent a cost benefit analysis, made a business decision, and have agreed to settle this lawsuit in order to avoid the inherent uncertainties with any legal proceeding and the additional legal fees and expenses associated with continuing this dispute, but that this Release represents a compromise of a disputed claim, and any liability, wrongdoing, malfeasance, misfeasance or negligence on the part of any Defendant is expressly denied. Plaintiff further agrees that in any future legal dispute amongst the parties, or involving any other party, the existence of this settlement shall be inadmissible and shall not be considered or used as evidence of any pattern or practice of discrimination on the part of the City or its officials.

13. This Agreement contains the sole and entire agreement between Plaintiff and Defendants and fully supersedes any and all prior agreements and understandings pertaining to the subject matter hereof. The parties represent and acknowledge, in executing the Agreement, that they have not relied upon any representation or statement not set forth herein made by any other party to the Agreement or their counsel or representatives with regard to the subject matter

of the Agreement. No other promises or agreements shall be binding unless in writing and signed by the parties hereto.

14. The parties agree that if any provision of the Agreement is determined by a court of competent jurisdiction to be illegal, invalid or unenforceable, that provision shall not be a part of the Agreement. The legality, validity and enforceability of the remaining provisions of the Agreement shall not be affected by a determination that a provision herein is illegal, invalid or unenforceable.

15. The Agreement shall be a matter of public record.

16. Plaintiff agrees that it will not disparage, defame or slander the Defendants. Defendants agrees that it will not disparage, defame or slander the Plaintiff.

17. New Jersey law shall govern the interpretation and enforcement of this Agreement.

18. This Agreement may be executed and delivered in any number of counterparts, each of which, when so executed and delivered, shall constitute an original, fully enforceable counterpart for all purposes and such counterparts together shall constitute but one and the same instrument.

19. Each party warrants that it has full right, power, and authority to execute this Agreement and to be bound in accordance with the terms hereof. Each party further warrants that each of them has read this Agreement carefully, and has been represented by counsel prior to the execution hereof.

IN WITNESS WHEREOF, the Parties have executed and delivered the Settlement Agreement and General Release intending to be bound hereby effective as of July ____, 2020.

GARDEN STATE ISLAMIC CENTER

By: _____
Dr. Wasique Narvel, President

SWORN TO AND SUBSCRIBED IN MY PRESENCE
this ____ day of ____, 2020

Notary Public

CITY OF VINELAND
DALE JONES
GARY LUGIANO
CARMEN DI GIORGIO

By: _____
Mayor Anthony R. Fanucci

SWORN TO AND SUBSCRIBED IN MY PRESENCE
this ____ day of ____, 2020

Notary Public