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MEMORANDUM

TO: Mayor Jerry L. Demings
and
County Commissioners

FROM: Jeffrey J. Newton, County Attorney *JJN*
Linda S. Brehmer Lanosa, Assistant County Attorney *Linda SB*
Contact: (407) 836-7320

DATE: December 29, 2022

SUBJECT: Consent Agenda Item for January 10, 2023
Randall J. Wilke and Michael B. Smith v. Orange County, Florida
Case No. 2013-CA-14153-O
Project: Michigan Street Road Widening
Current Owner: Randall J. Wilke
Approval of Settlement Agreement and Release

This Consent Agenda item requests approval by the Board of County Commissioners for the settlement of the inverse condemnation case styled, *Randall J. Wilke and Michael B. Smith v. Orange County, Florida*, Case No. 2013-CA-14153-O.

Under separate cover, the Board has been provided a confidential memorandum, dated December 29, 2022, and a proposed Agreement and Release. These documents will become public records at the conclusion of the litigation pursuant to Section 119.071(1)(d), Florida Statutes. These documents will become public records at the conclusion of the litigation pursuant to Section 119.071(1)(d), Florida Statutes.

ACTION REQUESTED: Approval of the proposed Agreement and Release in the case of *Randall J. Wilke and Michael B. Smith v. Orange County, Florida*, Case No. 2013-CA-14153-O.

Copy: Byron W. Brooks, AICP, County Administrator
Mindy T. Cummings, Manager, Real Estate Management Division
Michael Drozeck, Manager, Stormwater Management Division
Jeff Charles, Project Manager, Stormwater Management Division
Damian E. Czapka, P.E., Chief Engineer, Public Works Engineering Division
Anne Kulikowski, Director, Administrative Services Department

APPROVED
BY ORANGE COUNTY BOARD
OF COUNTY COMMISSIONERS

JAN 10 2023

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, FLORIDA

RANDALL JOSEPH WILKE, and
MICHAEL B. SMITH,

CASE NO.: 2013-CA-014153-O

DIVISION: 39

Plaintiffs,

v.

ORANGE COUNTY, FLORIDA,

Defendant.

_____ /

AGREEMENT AND RELEASE

This Agreement and Release ("Agreement") is entered into on the last date of execution below, by and between Plaintiffs, Randall Joseph Wilke and Michael B. Smith, collectively referred to as "the Plaintiffs," and representatives of Defendant, Orange County, Florida.

WITNESSETH:

WHEREAS, Plaintiff, Randall J. Wilke ("Plaintiff Wilke"), owns, and Plaintiff, Michael B. Smith ("Plaintiff Smith"), formerly owned until September 1, 2016, property located at 3325 Lee Street, Orlando, Orange County, Florida (the "Property");

WHEREAS, the Plaintiffs filed the above-styled lawsuit against Orange County raising an inverse condemnation claim related to an underground pipe on the Property;

WHEREAS, Plaintiff Smith disclaimed his interest in this lawsuit on or about June 15, 2022, which Disclaimer was filed in the above-referenced lawsuit on July 7, 2022;

WHEREAS, this Agreement is contingent upon approval by the Orange County Board of County Commissioners and the undersigned representatives of Orange County agree to recommend the approval of this Agreement to the Orange County Board of County Commissioners; and

WHEREAS, although Orange County, by entering into this Agreement admits no liability, the parties have agreed to end this ongoing dispute.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. Plaintiff Wilke warrants that he currently owns the above-described Property in fee simple, that from February 2008 through September 1, 2016, Plaintiff Wilke and Plaintiff Smith owned the property as joint tenants with rights of survivorship, and that Plaintiffs for themselves, individually, and as joint owners of this Property and for their attorneys, heirs, executors and administrators, assigns and successors in interest, do hereby indemnify, waive, release, hold harmless and forever discharge Orange County, Florida, and its agents, representatives, and attorneys of and from all claims, demands, actions, suits, damages, losses and expenses, of any and every nature whatsoever including those based on underground pipe, headwall, and ditch on the Property, arising out of or in any way related to the construction of Michigan Street project in Orange County, Florida, and the impact of such construction on the Plaintiffs, including, but not limited to, those claims asserted or other claims that may be asserted in any federal, state or local agency or court, by or on behalf of the Plaintiffs.

2. Orange County agrees to pay to Plaintiffs within thirty (30) days of approval by the Orange County Board of County Commissioners, the sum of FOUR HUNDRED SIXTY-SEVEN THOUSAND FIVE HUNDRED DOLLARS EXACTLY (\$467,500) in full satisfaction of any potential claim or claims raised or that could have been raised, and in exchange for the indemnity, waiver, release and discharge.

3. The parties to this Agreement further agree and covenant that this Agreement is binding on the parties, their heirs-at-law, and their assigns and successors in interest as evidenced by their signatures and lawful executions below.

4. The Plaintiffs agree that this Agreement and Release resolves all claims raised, or could have been raised, in the Complaint, as amended, in the above-styled case.

5. Within seven (7) days after approval by the Board of County Commissioners, ^{and after} this Agreement has been fully executed, Plaintiffs, by and through their attorney, will file the attached Joint Stipulation for Dismissal with Prejudice resolving all claims raised, or could have been raised, in the Complaint as amended in the above-styled case.

6. Plaintiffs have read and reviewed this Agreement, had the opportunity to consult with counsel concerning the terms, conditions, and legal effects of the settlement of this action and this Agreement, had the opportunity to edit and revise this Agreement, and are entering into and signing this Agreement voluntarily, knowingly, without coercion, and with their consent.

7. All terms and conditions of this settlement are fully set forth in this document and no other material terms of settlement exist outside this document.

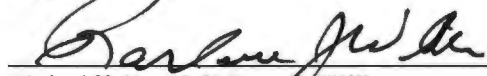
8. This Agreement may be signed in counterparts with the same effect as if the parties all had signed the same document. All counterparts shall be construed together and shall constitute one instrument. The Parties agree that signatures transmitted by email or facsimile shall be effective and enforceable to the same extent as original signatures.

9. If any non-material part of this Agreement shall be deemed to be illegal, invalid, or unenforceable, that part shall be severed from the Agreement and the remaining parts shall be valid and enforceable.

10. Each Party to this Agreement shall bear its own costs and attorney's fees.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed, the date first above written.

Approved by:


Plaintiff, Randall Joseph Wilke

Dated: 12.28.22


Thomas P. Callan, Esquire

Dated: 12.28.22

APPROVED BY:

(Official Seal)



ATTEST: Phil Diamond, CPA
County Comptroller
as Clerk to the Board of
County Commissioners

ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: *Bryan J. Brooks*
Jerry L. Demings
Orange County Mayor

By: *Gloria Hernandez*
Deputy Clerk

Printed Name: Gloria Hernandez

Date: 12 January 2023

Recommended by:



Linda Brehmer Lanosa, Assistant County Attorney

Date: 12/28/22



Michael Drozeck, Manager, Stormwater Management

Date: 12/28/22



Mindy Cummings, Manager, Real Estate Management

Date: 12/28/22

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, FLORIDA

RANDALL JOSEPH WILKE, and
MICHAEL B. SMITH,

CASE NO.: 2013-CA-014153-O

DIVISION: 39

Plaintiffs,

v.

ORANGE COUNTY, FLORIDA,

Defendant.

JOINT STIPULATION FOR DISMISSAL WITH PREJUDICE

Plaintiffs, Randall Joseph Wilke and Michael B. Smith, and Defendant, Orange County, Florida, by and through their respective attorneys and pursuant to Rule 1.420(a)(1) of the Florida Rules of Civil Procedure, hereby stipulate to the dismissal of the Complaint as amended and all of Plaintiff's claims against Orange County with prejudice. Each party agrees to bear its own attorney's fees and costs.

Dated this 24 January 2023
30 day of ~~December~~ 2022.

/s/



THOMAS P. CALLAN, ESQ.

Florida Bar No. 729050

Callan Law Firm, P.A.

921 Bradshaw Terrace

Orlando, Florida 32806-1209

Telephone: (407) 426-9141

tcallan@callanlaw.com; adm@callanlaw.com; efilings.clfpa@gmail.com.

Counsel for Plaintiffs



LINDA S. BREHMER LANOSA

Assistant County Attorney

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