



COUNTY ATTORNEY'S OFFICE
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APPROVED BY ORANGE
COUNTY BOARD OF COUNTY
COMMISSIONERS

BCC Mtg. Date: October 4, 2016

Deputy County Attorney

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*Senior Assistant County
Attorneys*

Elaine Asad

Lila McHenry

*Assistant County
Attorneys*

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William Turner

*Legal Administrative
Supervisor*

Anna M. Caban

Senior Paralegal
Kimberly Cundiff

Paralegals
Melessia Lofgren
Maria Vargas, ACP

MEMORANDUM

TO: Mayor Teresa Jacobs
and
County Commissioners

FROM: Jeffrey J. Newton, County Attorney *JJN*
William C. Turner, Jr., Assistant County Attorney *WCT*
Contact Phone: 407-836-7368

DATE: September 19, 2016

RE: **Consent Agenda Item for Board Meeting on October 4, 2016-**
Dorothy J. Copeland Howard v. Orange County, Florida
CASE NO.: 2014-CA-8704-O

This Consent Agenda item requests settlement authorization and execution by the Board of County Commissioners ("BCC") for the *Dorothy Copeland Howard v. Orange County, Florida* case brought on behalf of Orange County's Risk Management Division.

Under separate cover, a Confidential Memorandum with the proposed Settlement Agreement and Release dated September 19, 2016, from Jeffrey J. Newton, County Attorney and William C. Turner, Jr., Assistant County Attorney, has been provided to the Board of County Commissioners.

ACTION REQUESTED: Approval and execution of the proposed Settlement Agreement and Release in the case of *Dorothy J. Copeland Howard v. Orange County*, Case No.: 2014-CA-8704-O.

WCT/jac

c: Ajit Lalchandani, County Administrator
Todd Swingle, P.E., Deputy Director, Utilities
John Petrelli, Manager, Risk Management Division

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SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS (the "Agreement" or "Release") is made by Dorothy J. Copeland Howard ("Howard") and Orange County, a political subdivision of the State of Florida (the "Orange County"), as follows:

RECITALS

WHEREAS, Howard is a resident of Orange County who resides at 1 East Lake Mary Drive, Orlando, Florida 32839 (hereinafter the "property"); and

WHEREAS, there are two structures on the Property consisting of a primary residence of approximately 819 sq. ft. of living area (the "primary residence") and a guesthouse consisting of approximately 640 sq. ft. of living area (the "guesthouse"); and

WHEREAS, on August 14, 2014 Howard caused an action to be filed against Orange County in and for the Circuit Court of the Ninth Judicial Circuit, in and for Orange County, Florida styled *Dorothy J. Copeland Howard v. Orange County, Florida, Case No. 2014-CA-8704-O* (the "Action"); and

WHEREAS, in the Action, Howard alleges that her property, primary residence and guesthouse have sustained damages as a result the backup of sewage and wastewater from the sewer system operated and maintained by Orange County; and

WHEREAS, in the Action, Howard also alleges that the guesthouse has sustained certain structural damage as a result of the proximity of a drainage canal located on the east side of Howard's property which was installed and maintained in an easement acquired by Orange County; and

WHEREAS, in the Action, Howard asserted various claims and causes of action against Orange County including claims for inverse condemnation, negligence, nuisance and trespass; and

WHEREAS, Orange County has denied and continues to deny any and all wrongful acts or omissions and further denies any responsibility for any injury or harm alleged in the Action; and

WHEREAS, Howard and Orange County desire to compromise and settle any and all claims or disputes between them and fully and finally resolve any and all claims which have, or could have been, asserted in the Action; and

WHEREAS, Howard understands and agrees that this Agreement and settlement is subject to the review and approval by the Board of Commissioners for Orange County, Florida, and that if this Agreement is not approved by the Board of Commissioners this Agreement is void and of no force and effect; and

WHEREAS, Howard has agreed to accept, subject to the conditions and stipulations set forth herein, the payment of the sum specified in Paragraph 3 of this Agreement (the "Settlement Amount") in full and complete compromise and settlement of any and all claims asserted, or which could have been asserted, in the Action, including claims now known or unknown, which in any way arise out of, or which in any way relate to damage, injury, destruction or diminution in value of Howard's property, primary residence or guesthouse as a result of the discharge of sewage or wastewater onto plaintiff's property or structural damage caused by the proximity of the drainage ditch located on the east side of Howard's property, and has further agreed to execute this Release in consideration of said payment.

NOW, THEREFORE, it is agreed that all the above recitals are hereby incorporated into this agreement by references as though fully set forth verbatim, and that Howard and Orange County hereby agree as follows:

1. RELEASE

Howard, for and in consideration of the payment of the Settlement Amount specified in Paragraph 2 of this Agreement, the adequacy of which is hereby acknowledged, does hereby remise, release and forever discharge Orange County, State of Florida, and its commissioners, directors, servants, agents, employees, managers, commercial partners, joint ventures, representatives, attorneys, successors and assigns (collectively the "Released Parties"), of and from any and all manner of actions, claims, causes of actions, including any and all claims or causes of action for inverse condemnation, eminent domain, trespasses, agreements, contracts, controversies, nuisances, damages, attorney's fees, costs, expenses and demands, whatsoever, whether arising in law or in equity, common-law, or statutory, which Howard or Howard's heirs, successors, or assigns, hereinafter can, shall, or may have, against the Released Parties, whether known or unknown, which arise out of, or which are in any way related to, the discharge of sewage or wastewater on, or into, the property, primary residence and/or guesthouse of Howard, or which arise out of, or which are in any way related to, structural damage to Howard's primary residence or guesthouse in any way related to the proximity of the drainage ditch on the east side of Howard's property, including, but not limited to, any and all claims or causes of action asserted, or which could have been asserted, in the Action.

2. BID PROCUREMENT AND BID AMOUNT

2.1 Within forty-five (45) days of the date this Agreement is executed and delivered by Howard, Orange County shall procure, and submit to Howard's attorney, one or more bids from contractors licensed in the State of Florida to demolish and reconstruct, in conformity with the current provisions of the Orange County Development code, Howard's primary residence and guesthouse. Within ten (10) days after submission of the bid(s), Howard may approve or disapprove of the bid(s) submitted. If a submitted bid is approved by Howard, Howard may agree to enter into a binding agreement and contract with the contractor who submitted the approved bid. If, however, Howard does not approve one or more of the bids submitted by Orange County, this Agreement shall be void and of have no force and effect.

2.2 For the purposes of this Agreement, the "bid amount" shall mean and refer to the amount of the written bid submitted by the County and approved by Howard. Under no circumstances shall the "bid amount" exceed the amount of the written bid submitted by Orange County and accepted by Howard.

3. SETTLEMENT AMOUNT

The total settlement amount shall consist of the "bid amount" as referenced in Paragraph 2 of this Agreement plus \$105,000.00 payable as follows:

3.1 The total Settlement Amount shall be made payable, within forty-five (45) days of the approval of this Agreement by the Orange County Commission, to a mutually agreeable escrow agent to be held in escrow and to be disbursed pursuant to the provisions of subsections 3.2 and 3.3 below.

3.2. Following deposit of the Settlement Amount with the escrow agent, \$100,000.00 of the Settlement Amount, shall be disbursed, as soon as practicable, to the J. Christy Wilson, P.A. Trust Account to be used, in part, to fund the demolition of the primary residence and guesthouse located on Howard's property.

3.3 The balance of the Settlement Amount held in escrow, shall be payable to the J. Christy Wilson, P.A. Trust Account following a certification by representatives of Orange County that Howard's primary residence and guesthouse have been demolished.

4. DEMOLITION AND RECONSTRUCTION OF NEW PRIMARY RESIDENCE AND/OR GUESTHOUSE

It is expressly understood and agreed that as a condition for the payment of the Settlement Amount, the existing structures on Howard's property, including the primary residence and the guesthouse, will be demolished. It is further understood and agreed that any re-construction or construction of any new or additional buildings or structures on the property, including, but not limited to, the re-construction of Howard's primary residence and/or guesthouse, shall be in full accordance with the terms and conditions of the Orange County Development Code and that any re-constructed primary residence or guesthouse will be constructed with a minimum finish floor elevation of 97.80 NAVD 88. In addition, it is understood and agreed that no structure will be re-constructed or constructed that is less than 10 feet from the west of the top of the embankment to the drainage ditch located on the east side of the property.

5. NO REPRESENTATION OR WARRANTY BY ORANGE COUNTY

It is expressly understood and agreed that Orange County provides no representation or warranty concerning the quality of construction, workmanship, suitability of materials or supplies, or provides any warranty, either express or implied, concerning the quality or fitness of the work of the contractor who performs any deconstruction and reconstruction of Howard's

primary residence and guesthouse on Howard's property. Howard's sole and exclusive recourse in the event of any defects in the quality and performance of the demolition or reconstruction work shall be solely against the contractor performing said services.

7. APPROVAL BY THE ORANGE COUNTY COMMISSION

This Agreement and the Settlement Amount is contingent on, and subject to, the review and approval of the Orange County Commission. In the event the Orange County Commission does not approve this Agreement, this Agreement shall be deemed null, void and of no force and effect.

8. RELATED DOCUMENTS

Concurrent with the execution of this Agreement, and as a condition precedent to Orange County's obligation to pay the settlement amount, Howard shall execute and/or deliver all documents and do all acts necessary, convenient, or desirable, in the reasonable opinion of Orange County, to effect the provisions as to this Agreement and to carry out the intention of the parties, including without limitation, the documents reasonably necessary to dismiss the action against Orange County with prejudice.

9. INDEPENDENT LEGAL ADVISE

Howard warrants, represents, and agrees that by executing this Agreement she has done so with full knowledge of her rights, with respect to the subject matter of this Agreement and that she has received and/or has had the opportunity to receive independent legal advice with regard to those rights.

10. ATTORNEY'S FEES

Each party shall bear their own attorney's fees and costs arising from the actions of their counsel in connection with the Action and this Agreement and the matters and documents referred to herein, including the filing of a dismissal of this Action, with prejudice, and all related matters.

11. APPLICABLE LAW AND FORUM

This Agreement will be interpreted under, and enforced in accordance with the law of the State of Florida without regard to conflict of laws. If litigation is commenced to enforce any terms of this Agreement, or in which this Agreement is raised as a defense, the parties hereby agree that venue and jurisdiction of any litigation will be vested solely in a court of competent jurisdiction sitting in Orange County, Florida, and agree to accept service of process outside of the state. The parties expressly agree to waive trial by jury in any such legal proceeding.

12. WARRANTY AS TO CAPACITY TO EXECUTE AGREEMENT

Howard represents and warrants that no other person or entity has, or has had, any interest in the claims, demands, obligations, cause of action referenced herein. Howard represents that she has the sole right and exclusive authority to execute this Agreement and receive the sum specified in it and that she has not sold, signed, transferred, conveyed or otherwise disposed of any claims, demands, obligations, or cause of action referenced to in this Agreement.

13. ENTIRE AGREEMENT

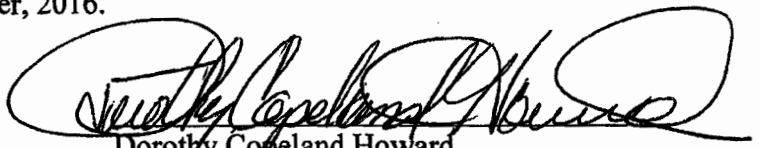
This Agreement sets forth the entire, final and complete agreement and the understanding of the parties with respect to the Action. All prior discussions, negotiations, commitments and understandings related to the action are merged herein. Howard declares and represents that no promise, inducement or agreement not expressed herein has been made to her. No waiver of any provision of this Agreement shall constitute a waiver of any other provision, nor shall such waiver constitute a continuing waiver hereunder. If, for any reason, any portion of this agreement shall be deemed or unenforceable, then the remaining portions of this Agreement shall be binding upon the parties hereto with the same effect as though the void and unenforceable parts were deleted.

14. CONSTRUCTION

This Agreement shall be construed without regard to the party or the parties responsible for the preparation of the same and shall be deemed to have been prepared by Howard and Orange County. Any ambiguity or uncertainty existing herein shall not be interpreted against Howard or Orange County.

The undersigned certifies that she has read this entire Agreement consisting of 6 Pages, that she can read and speak English, and that she fully understands the terms, conditions, and consequence of this Agreement.

Signed this 7 day of September, 2016.


Dorothy Copeland Howard

STATE OF Fla
COUNTY OF Orange

BEFORE ME, the undersigned authority, personally appeared **DOROTHY COPELAND HOWARD**, who executed this Agreement in my presence and who is (☒) personally known to me or (☐) provided a valid State of Florida Driver's License or State of Florida Identification Card.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the county and state last aforesaid, this 7 day of September, 2016.

B. Leone Smith
NOTARY PUBLIC, STATE OF FLORIDA
AT LARGE



PRINTED NAME OF NOTARY
B. LEONE SMITH
MY COMMISSION # EE 834182
EXPIRES: November 14, 2016
Bonded Thru Notary Public Underwriters
My Commission Expires: _____

Ajit Lalchandani
Orange County, Florida, Authorized
Representative

Ajit Lalchandani
Printed Name:
County Administrator
Title

STATE OF Florida
COUNTY OF Orange

BEFORE ME, the undersigned authority, personally appeared Ajit Lalchandani, on behalf of Orange County, who executed this Agreement in my presence and who is (X) personally known to me or () provided a valid State of Florida Driver's License or State of Florida Identification Card.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the county and state last aforesaid, this 20 day of ~~September~~ October, 2016.



CRAIG A. STOPYRA
MY COMMISSION # FF 199641
EXPIRES: February 15, 2019
Bonded Thru Budget Notary Services

(SEAL)

Craig A. Stopyra
NOTARY PUBLIC, STATE OF FLORIDA
AT LARGE

Craig A. Stopyra
PRINTED NAME OF NOTARY

My Commission Expires: February 15, 2019