

RESOLUTION NO. 42-09  
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER Paul Sheehan ON THE 16<sup>th</sup> DAY  
OF November, 2009.

A RESOLUTION RATIFYING THE ACTION OF THE CITY MANAGER TO  
EXECUTE AN EMPLOYMENT SEPARATION AND RELEASE  
AGREEMENT AND MEDIATION SETTLEMENT AGREEMENT WITH  
MICHAEL J. ENGLER.

WHEREAS, Michael J. Engler was a City Horticulturist employed by the City of  
Centerville; and

WHEREAS, claims and disputes arose between Engler and the City related to Engler's  
employment with the City; and

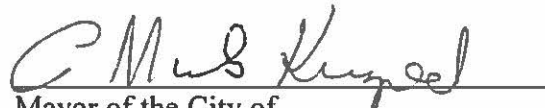
WHEREAS, Engler's employment as a City Horticulturist terminated on June 9, 2009;

WHEREAS, this Council is of the opinion that the proposed settlement is in the best  
interests of the citizens of this City.


NOW, THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY  
RESOLVES:

Section 1. That the action taken by the City Manager be and is hereby ratified in  
the executing an employment separation and release agreement and mediation  
settlement agreement with Michael J. Engler on behalf of the City upon the  
terms and conditions set forth in Exhibit "A" and Exhibit "B" attached and  
incorporated herein.

PASSED THIS 16<sup>th</sup> day of November, 2009.

  
\_\_\_\_\_  
Mayor of the City of  
Centerville, Ohio

ATTEST:

  
\_\_\_\_\_  
Clerk of Council  
City of Centerville, Ohio

CERTIFICATE

The undersigned, Clerk of Council of the City of Centerville, Ohio, hereby certifies the foregoing to be a true and correct copy of Resolution No. 42-09, passed by the Council of the City of Centerville, Ohio on the 16<sup>th</sup> day of November, 2009.

Debra A. James  
Clerk of the Council

Approved as to form, consistency with the  
Charter and Constitutional Provisions.

Department of Law  
Scott A. Liberman  
Municipal Attorney

## MEDIATION SETTLEMENT AGREEMENT

CHARGE NUMBER: 473-2009-01322

CHARGING PARTY: Michael J. Engler

RESPONDENT: City of Centerville

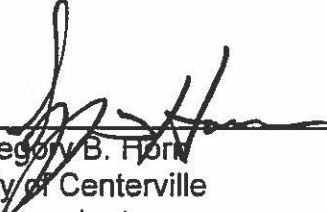
1. In exchange for the promises made by City of Centerville pursuant to Charge Numbers 473-2009-01322 Michael J. Engler agrees not to institute a law suit under the Americans with Disabilities Act of 1990, as amended, based on EEOC Charge Numbers 473-2009-01322.
2. Further we agree that submission of this agreement to EEOC will constitute a request for closure of EEOC Charge Number 473-2009-01322 .
3. It is understood that this agreement does not constitute an admission by Respondent of any violation of the Americans with Disabilities Act of 1990, as amended.
4. Respondent agrees that there shall be no discrimination or retaliation of any kind against Charging Party as a result of filing this charge or against any person because of opposition to any practice deemed illegal under the ADA, the ADEA or Title VII, as a result of filing this charge, or for giving testimony, assistance or participating in any manner in an investigation, proceeding or a hearing under the aforementioned Acts.
5. This document constitutes a final and complete statement of the agreement between the Charging Party, Respondent and EEOC. The parties acknowledge that the Charging Party and Respondent have entered into a supplemental agreement.
6. The parties agree that the EEOC is authorized to investigate compliance with this agreement and that this agreement may be specifically enforced in court by the EEOC or the parties and may be used as evidence in a subsequent proceeding in which a breach of this agreement is alleged.
7. As evidence of a good faith effort to resolve EEOC Charge Numbers 473-2009-01322, Respondent offers and Charging Party accepts the following proposal of settlement:
  - A. Pay Charging Party thirty-two thousand five hundred dollars (\$32,500.00) as follows: 2009 + \$12,500 of which \$6,250 will be severance, and \$6,250 will be compensatory; 2010 pay Charging Party \$20,000.00 of which \$10,000.00 will be severance and \$10,000.00 will be compensatory. Payment for 2010 will be no later than January 10, 2010. Charging Party

shall indemnify Respondent of tax liability.

- B. Respondent agrees to publish in the following media: In *Town Crier & Inside Addition* on the attached letter and agrees to send to *Times Newspaper* a press release with the same information:

"The City of Centerville would like to announce the departure of their long time city Horticulturist, Michael Engler. Thank you, Mike, for all the many years of your expertise and adding to Centerville's beauty. We would like to wish Mike the best of luck as he pursues the return to his company, Engler's Landscaping Management, which he founded thirty-five years ago."

- C. Respondent agrees to separate all disciplinary actions from Charging Party's personnel file and place in a separate file. Only information that meets FOIA requirements shall be released upon request.

  
\_\_\_\_\_  
Gregory B. Horn  
City of Centerville  
Respondent

10-29-09  
Date

\_\_\_\_\_  
Michael J. Engler  
Charging Party

\_\_\_\_\_  
Date

In reliance on the promises made in paragraphs one through seven above, EEOC agrees to terminate its investigation and to not use the above referenced charge as a jurisdictional basis for a civil action under Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination Act of 1967 as amended, or the Americans with Disabilities Act of 1990, as amended. EEOC does not waive or in any manner limit its right to investigate or seek relief in any other charge including, but not limited to, a charge filed by a member of the Commission against the Respondent.

On Behalf of the Commission:

\_\_\_\_\_  
Wilma L. Javey, Director

\_\_\_\_\_  
Date

## EMPLOYMENT SEPARATION AND RELEASE AGREEMENT

This Employment Separation and Release Agreement ("Agreement") is made this 20th day of October, 2009 by and between MICHAEL ENGLER ("Engler"), and THE CITY OF CENTERVILLE, OHIO ("Centerville"), defined to include officers, employees, agents, representatives and elected officials.

NOW, THEREFORE, in consideration of their mutual promises, the parties agree as follows:

- I. Centerville agrees to the following terms and conditions of Engler's separation from his employment with Centerville:
  - A. Engler will be paid a total sum in the amount of Thirty-two Thousand, Five Hundred and no/100 Dollars (\$32,500), to be paid as follows:
    - i. After ten (10) days from the date of completion of the Revocation period set forth in Paragraph 8 below, the sum of Twelve Thousand, Five Hundred and no/100 Dollars (\$12,500);
    - ii. On or before January 10, 2010, Centerville shall pay the remaining sum of \$20,000;
    - iii. For purposes of this Agreement, the payments are to be considered one half for compensation and one half for compensable damages;
    - iv. Centerville shall issue a 1099 to Engler reflecting said payments.
  - B. Centerville shall publish the following statement in the Town Crier and the City Manager's Inside Edition:

"The City of Centerville would like to announce the departure of their long time city Horticulturist, Michael Engler. Thank you Mike for all the many years of your expertise and adding to Centerville's beauty. We would like to wish Mike the best of luck as he pursues the return to his company, Engler's Landscaping Management, which he founded thirty-five years ago."
  - C. Centerville will prepare for Engler, at his request, a neutral letter of reference that outlines his position and dates of employment with Centerville. The same information will be provided to an oral request for reference.
  - D. Centerville will place all 2007 and 2008 disciplinary records in a file separate from Engler's personnel file. Any response or rebuttal previously submitted by Engler, including any notice of appeal filed or submitted by Engler will be

placed in the same file. All pending matters that are or could be filed will be deemed terminated with the signing of this Agreement.

- E. Centerville shall withdraw its appeal of Engler's unemployment claim and Engler shall not accept unemployment compensation after November 30, 2009. If Engler takes any additional unemployment payment after December 1, 2009, the full gross amount of that payment shall be offset against the 2010 payment.
2. Engler agrees to the following terms and conditions of Engler's separation from his employment with Centerville:
- A. Engler immediately acknowledges that by signing this Agreement, his employment with Centerville ended on June 9, 2009.
  - B. Engler agrees that no claims against Centerville, its employees, officers, representatives, agents, Council Members, or attorneys, (i.e. Released Parties), either collectively or individually in any capacity will be filed with respect to any federal, state or local administrative agency or in federal or state court whether filed against the municipal entity or against an individual in his or her capacity as an employee of Centerville. Moreover, Engler irrevocably and unconditionally releases, acquits, and forever discharges Centerville, its successors and assigns, and any of the Council Members, officers, or employees, representatives, agents or attorney from any and all claims, liabilities, obligations, promises, agreements, controversies, actions, causes of action, (including claims for attorney's fees and costs actually incurred) of any nature whatsoever, whether known or unknown, suspected or unsuspected, which he now has or claims to have, or which he may claim to have against each or any of the above described releasees, excepting only those claims arising under the express terms of this Agreement. This release relates to all actions taken in any manner without limitation, any and all claims under federal, state or local law based upon race, sex, national origin, religion, handicap, harassment, counter retaliation, and age discrimination and constitutional rights violations, as well as claims based upon common law of tort, breach of contract, or wrongful termination theories through and including final payment made under this agreement. Both parties agree to refrain from making any untruthful statements, statements of personal evaluation, or statements of opinion, that would tend to cast aspersion upon the character or reputation of Engler or Centerville, its successors and assigns, and any of the Council Members, officers or employees, representatives, agents or attorneys. Centerville shall answer any employment inquiries by stating the dates of Engler's employment, job title and responsibilities and other matters of undisputed facts and Centerville agrees to refrain from making any untruthful statements intended to cast aspersion upon the character or reputation of Engler. This does not prevent Centerville from responding to document requests.

3. This release specifically includes a release of all claims which could be asserted under Section 4113.52 or Chapter 4112 of the Ohio Revised Code, or any other law of the State of Ohio or any other state, Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 1981, the Age Discrimination in Employment Act of 1967, as amended, the Americans with Disabilities Act of 1990 ("ADA") and the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), Whistleblower Protection, (Ohio Revised Code §4113.51 et seq.); Federal Whistleblower Protection Statutes, the Ohio Unemployment Compensation Act, (except as provided in paragraph I[C]); and all wage and hour laws. This release includes, without limitation, any and all claims for any damages, whether compensatory, liquidated, punitive or in the form of attorney fees, expenses or costs. This Release and Waiver also includes, but is not limited to, any and all claims including claims for attorney fees, arising out of or any action for breach of contract, wrongful discharge (including discharge in violation of public policy), infliction of emotional distress, harassment, negligence, defamation, fraud or misrepresentation, invasion of privacy or other action which Engler or his heirs or assigns ever had, now have, or may have, against any of the Released Parties created by, arising under or otherwise based upon, Engler's employment relationship with Centerville or the termination of that relationship.
4. Included Claims. This Release and Waiver also includes, but is not limited to, all claims for past or future wages, severance pay, bonuses, vacation pay, medical insurance, life or disability insurance, and other benefits (except vested benefits and those benefits expressly set forth in this Agreement) and all claims for violation of any express or implied agreement, written or verbal, that occurred before the execution of this Agreement, or for any violation of any common law duty or statute, including all claims for attorney fees.
5. Excluded Claim. While not a statement against interest or an admission of the existence of a claim or claims by Centerville, Engler's Ohio Worker's Compensation Claim is not included in the release of claims provided for in this Employment Separation and Release Agreement.
6. Indemnification. Engler agrees to indemnify and hold Centerville and the other released parties harmless from all claims, charges, demands, actions, causes of action, judgments, executions, debts and from all liability for costs, costs of suit, (including attorney fees and all costs of preparation, defense and settlement of suits or claims) or damages of whatsoever kind, nature or description now existing or which may hereafter arise which is asserted by any family member or other person claiming by, through or under Engler against Centerville or any of the released parties in any way based upon, growing out of, resulting from or because of the employment of Engler at Centerville or the termination thereof. Engler assumes full responsibility for all taxes due under the terms of this Agreement. Engler agrees to further indemnify and hold Centerville harmless as to any claims for taxes due and owing as a result of the payments due under the terms of this Agreement.

7. Full Review and Knowing and Voluntary Agreement. Engler agrees that he has been given the opportunity to fully review this Agreement, has thoroughly reviewed it, fully understands its terms and knowingly and voluntarily agrees to all of its provisions including, but not limited to, the release and other provisions in paragraphs 2, 3, 4 and 5. Engler acknowledges that Centerville has provided him with up to 21 days to deliberate whether to sign this Agreement, and that Centerville advised him to consult with an attorney regarding this Agreement. Engler ~~acknowledged to Centerville he is represented by an attorney.~~ Engler further acknowledges that if this Agreement is executed prior to the expiration of the 21-day deliberation period, such execution was knowing and voluntary, in consultation with his attorney and/or such advisors as Engler deemed appropriate and without coercion by Centerville or any other person. QWJ E  
6/3/08
8. Revocation. Engler shall have the right to revoke this Agreement only as to Age claims arising out of, but not limited to the Age Discrimination in Employment Act of 1967 and as amended, for a period of seven (7) days following the date of execution by Engler. Notice of revocation shall be in a signed writing delivered to Centerville (Attention: City Manager) before expiration of the Revocation Period. All other provisions of this Agreement cannot be revoked by Engler. Centerville will have the right, within seven (7) days of Revocation, to declare this entire agreement void if Engler revokes this agreement for an Age claim.
9. Nondisparagement Provision. In consideration for the promises and payment under this Agreement, both Engler and Centerville agree not to make or publish in oral, written or any other form, any disparaging remarks or negative comments to any third party about Engler or Centerville or any of the released parties. Neither party shall knowingly encourage or assist any third party to make disparaging remarks or negative comments regarding, concerning or alluding to, in any manner, Engler or Centerville, its elected and appointed officials, agents and/or employees
10. Non-admission of Liability. The parties agree that in making this Agreement no party admits the violation of any law or any of the other's rights.
11. No Re-employment. Engler waives any right or claim of recall from layoff and/or other re-employment with Centerville and agrees to make no claim or application for such employment in the future. Similarly, Centerville is not obligated in any fashion to consider Engler for future employment.
12. Binding Effect. This Agreement shall be binding on and inure to the benefit of Engler, his spouse, heirs, administrators and assigns and Centerville, its successors and assigns. This Agreement and its releases apply not only to Centerville, but to all affiliated entities, and successors to Centerville, and to all Released Parties.
13. Separability. The invalidity of any paragraph or subparagraph of this Agreement shall not affect the validity of any other paragraph or subparagraph of this Agreement.



14. Applicable Law. This Agreement shall be construed under the laws of the State of Ohio.

along with the EEOC Mediation Settlement Agreement

MJE  
GSH

15. Entire Agreement. This Agreement contains the entire understanding of the parties and supersedes any and all previous verbal and written agreements. There are no other agreements, representations or warranties not referenced or set forth in this Agreement. The consideration contained herein is for both Agreements.

MJE  
GSH

16. Engler admits that he has had the opportunity to consult an attorney and voluntarily has decided to execute the Agreement. Engler states and admits that in executing this Agreement, he does not rely and has not relied, upon any other representation or statement made by Centerville, its agents, representatives, or attorneys, with regard to this Agreement.

~~17. Engler shall return upon execution all City property including but not limited to cell phone, uniforms, keys, etc.~~

MJE  
GSH

IN WITNESS WHEREOF, the parties have signed this Agreement on the day and year set forth above.

Signed in the presence of:

EMPLOYEE:

Scott A. [Signature]

Michael D. Engler 10-20-09

Michael Engler

Virginia [Signature]

CITY OF CENTERVILLE, OHIO

Scott A. [Signature]

By: [Signature]  
Gregory B. Horn, City Manager

Virginia [Signature]