

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ONEIDA

In the Matter of the Application to Acquire Certain
Parcels and All Improvements Located Thereon on
Lafayette Street, in the City of Utica, County of Oneida,
New York Commonly Referred to as Oneida County
Tax Map Parcel 318.34-1-29 et al.

SETTLEMENT
AGREEMENT

Index No. EFCA2022-000218

ONEIDA COUNTY BOARD OF LEGISLATORS
and ONEIDA COUNTY,

Petitioners-Condemnors,

-against-

BRETT B. TRUETT,

Condemnee-Claimant.

Assigned Judge:
Hon. Bernadette Clark, J.S.C.

This agreement is made this __ day of December, 2024, between and among the County of Oneida, New York (the “County”) and Brett B. Truett (“Truett”). The County and Truett may hereinafter be referred to individually as a “Party” or collectively as the “Parties.”

WHEREAS, Truett was the owner of certain real property commonly known as 442 Lafayette Street, Utica, New York, further identified as Tax Map Parcel 318.34-1-22 (the “Property”)

WHEREAS, the defined term “Property” shall include any and all interests therein and all fixtures and/or improvements thereon or therein;

WHEREAS, on or about February 13, 2019, the County adopted Resolution No. 53 which authorized the County Attorney to pursue acquisition of certain properties, including the Property, for the construction of a public parking facility in conjunction with the Mohawk Valley Hospital Systems (“MVHS”) Integrated Health Campus project (“IHC”) consisting of a 670,000 square foot hospital, central utility plant, parking facilities, medical office building, campus grounds, utility/pedestrian bridge, and helipad (the “Project”);

WHEREAS, pursuant to Article 2 of the Eminent Domain Procedure Law (“EDPL”), on or about April 14, 2021, the County Board passed Resolution 2021-081, which: (1) adopted Determinations and Findings under EDPL 203 for the use of its eminent domain powers (the “Article 2 Findings”); and (2) authorized the County Attorney to move forward with acquisition of, among other things, the Property by eminent domain;

WHEREAS, Truett, among others, commenced an original proceeding pursuant to EDPL §207 in the Appellate Division, Fourth Department entitled *Matter of Brett B. Truett et al v Oneida County*, Index No. OP-21-00853 challenging the Article 2 Findings (the “Article 2 Proceeding”);

WHEREAS, on or about December 23, 2021, the Fourth Department unanimously confirmed the Article 2 Findings, and dismissed the Article 2 Proceeding;

WHEREAS, the County then commenced a special proceeding pursuant to Article 4 of the EDPL for the acquisition of, among other things, the Property entitled *Matter of Oneida County Board of Legislators et al v Brett B. Truett et al*, Index No. EFCA2022-000218 (the “Article 4 Proceeding”);

WHEREAS, on or about April 12, 2022, Supreme Court, County of Oneida (Clark, J.) signed and entered an Order and Judgment authorizing the County to file the Acquisition Map for the Property, vesting the County with exclusive fee simple title to the Property, and providing that Truett would have one year from the County’s service of notice of acquisition to file any claim seeking just compensation;

WHEREAS, on or about April 10, 2023, Truett filed a claim for just compensation;

WHEREAS, on or about May 3, 2023, the County filed its answer to Truett’s claim; and

WHEREAS, the Parties now wish to resolve Truett’s claim for just compensation;

NOW THEREFORE, in consideration of the mutual promises and undertakings set forth herein, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Stipulation of Discontinuance: Contemporaneous with the execution of this Agreement, the Parties authorize their respective counsel to execute the stipulation of discontinuance attached hereto as Exhibit A. Upon Truett’s receipt of payment as described in Paragraph 2 below, he will file the Stipulation with Supreme Court, County of Oneida to discontinue his claims for just compensation, whether under EDPL Articles 5 or 7, or otherwise, with prejudice.

2. Payment: The County will pay to Truett the sum of One Hundred Forty-Five Thousand 00/100 Dollars (\$145,000.00) as payment in full of the just compensation for the acquisition of the Property and any and all other damages caused by the appropriation of the Property by eminent domain, including without limitation all amounts recoverable under EDPL Articles 5 and 7, on the terms and conditions set forth herein. Such payment will be made within ten (10) days of final approval of this Agreement by the County Board of Legislators.

3. Representation, Warranty, and Indemnification: Truett represents that prior to the County's acquisition, he was the sole fee owner of the Property, and that he did not convey, transfer, or encumber his interest in the Property, such that, no other person or entity held or holds any right, title, or interest in the Property. To the fullest extent permitted by law, Truett agrees to defend, indemnify, and hold the County harmless against any claims asserted by third parties claiming a right, title, or interest in the Property. This representation, warranty, and indemnification is a material inducement to the County entering into this Agreement.

4. Release: Truett releases and discharges the County, the County's Board of Legislators, and their agencies, attorneys, agents, representatives, heirs, executors and administrators, successors and assigns from all:

- (1) claims for just compensation and any other damages or amounts recoverable under EDPL Articles 5 and/or 7; and
- (2) any and all other claims arising out of or in any way related to the County's acquisition of the Property by eminent domain.

5. Further Assurances: Truett agrees, at no cost to the County, to execute and deliver or cause the execution and delivery, of such other and further documents as may be required by the County to authorize payment and to secure to the County a full release of all claims covered by this Agreement.

6. Successors and Assigns. This Agreement shall inure to the benefit of and be binding on the Parties' heirs, successors, and assigns.

7. Attorneys' Fees and Costs. Each Party shall bear its own attorneys' fees and costs incurred in connection with the execution of this Agreement and the consummation of the transactions contemplated herein.

8. Interpretation of Agreement. This Agreement shall be construed without regard to the Party or Parties responsible for its preparation and shall be deemed to have been prepared collectively by the Parties. Any ambiguity or uncertainty arising herein shall not be interpreted or construed against any Party hereto on the basis that a Party prepared or drafted a particular provision of this Agreement. The WHEREAS clauses set forth above are incorporated herein, as though fully set forth.

9. Amendment, Modification, and Waiver. This Agreement may be amended, modified, and supplemented only by a written instrument signed by the Parties, their counsel or designated agent on behalf of each of the Parties hereto. The waiver of a Party of a breach of a provision of this Agreement shall not be construed as a waiver of any subsequent breach of that provision or a waiver of any other provision of this Agreement.

10. Entire Agreement. This Agreement represents the entire agreement between the Parties regarding the subject matter hereof and supersedes all prior negotiations, representations, or agreements between the Parties, either written or oral, in respect of such subject matter. No Party is relying upon any statement, promise or representation of any party or other person in determining whether to sign this Agreement.

11. Voluntary and Knowing Participation. Each of the Parties has entered into this Agreement freely and voluntarily, with no duress or coercion (as those terms are defined by law) and having had an adequate opportunity to make whatever investigation or inquiry such Party deemed necessary or desirable in connection herewith. Further, each such Party appreciates and understands the terms of this Agreement, acknowledges that it is made in good faith and is fair and reasonable, and is fully satisfied with the settlement set forth herein.

12. Authority to Execute. The signatories of this Agreement represent and warrant that they have full and complete authority to enter into this Agreement, individually or on behalf of their respective Party, where appropriate.

13. Counterparts and Electronic Signatures. This Agreement may be executed in counterparts, each of which may serve as the original hereof. Signatures to this Agreement transmitted by facsimile or electronic mail shall be valid and effective to bind the Party so signing.

[Signature pages to follow]

BRETT B. TRUETT

Signature : _____
Name : Brett B. Truett
Date : _____

STATE OF NEW YORK)
) ss.:
COUNTY OF _____)

On the ____ day of December in the year 2024, before me, the undersigned, personally appeared, Brett B. Truett, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

ONEIDA COUNTY, By

Signature : _____
Name : Anthony J. Picente, Jr.
Title : County Executive
Date : _____

STATE OF NEW YORK)
) ss.:
COUNTY OF _____)

On the ____ day of December in the year 2024, before me, the undersigned, personally appeared Anthony J. Picente, Jr., personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed said instrument in his capacity as the County Executive of Oneida County, that he was authorized to execute this instrument on behalf of Oneida County, and that by his signature on this instrument Oneida County executed this instrument.

Notary Public

EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ONEIDA

In the Matter of the Application to Acquire Certain
Parcels and All Improvements Located Thereon on
Lafayette Street, in the City of Utica, County of Oneida,
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STIPULATION OF
DISCONTINUANCE

Index No. EFCA2022-000218

ONEIDA COUNTY BOARD OF LEGISLATORS
and ONEIDA COUNTY

Petitioners-Condemnors,

-against-

BRETT B. TRUETT,

Condemnees-Claimants.

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, the attorneys of record for the parties to the above entitled action, that whereas no party hereto is an infant or incompetent person for whom a committee has been appointed, and no person not a party has an interest in the subject matter of the action, the claim for just compensation made by Condemnee, Claimant Brett B. Truett in the above captioned action is hereby discontinued with prejudice, and without costs to either party as against the other. This stipulation may be filed without further notice with the Clerk of the Court.

Dated: December __, 2024

Dated: December __, 2024

WHITEMAN OSTERMAN & HANNA LLP

MCPHILLIPS FITZGERALD & CULLUM LLP

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