

CLASS ACTION SETTLEMENT AGREEMENT

I. Introduction and Recitals

1. This Class Action Settlement Agreement (the "Agreement," or the "Settlement Agreement") is entered into by and between Plaintiff Benjamin Smith ("Plaintiff"), for himself and on behalf of the Class (subject to Court certification of the Class), on the one hand; and Defendant City of Saint Paul ("Defendant," the "City," or "Saint Paul"), on the other hand; and in consideration of the promises, covenants, and agreements herein described and for other good and valuable consideration acknowledged by each of them to be satisfactory and adequate.

2. On September 7, 2016, the Saint Paul City Council passed the City's Earned Sick and Safe Time Ordinance, codified at Saint Paul Code of Ordinances Chapter 233, Sections 233.01 to 233.21 ("the Ordinance"). The Ordinance provides that most employers within the City are required to provide paid earned sick and safe time ("ESST") as an employee benefit. ESST may be used for various enumerated purposes, including attending to the medical needs of the employee or a member of the employee's immediate family, and to secure a safe housing situation in the event that the employee is a victim of domestic abuse. The Ordinance requires, among other things, that covered employers (of which the City itself is one) must provide all employees with at least one hour of ESST per 30 hours worked. The Ordinance states that if an employee is already provided at least this amount of paid leave through any combination of vacation and sick leave, the employer has satisfied its obligations with respect to providing ESST. In order to be eligible to accrue ESST, an employee is required to have worked at least 80 hours within a calendar year for the same employer. In order to be eligible to actually use ESST, the employee is required to have worked for the same employer for 90 calendar days following the commencement of their employment.

3. The Ordinance also requires that covered employers provide information to their employees regarding the employees' rights under the Ordinance, and, upon an employee's request, that covered employers provide the employee with current information regarding the employees' ESST balance. The Ordinance states that the City is the normal enforcement vehicle for securing employer compliance. The Ordinance also provides for a private cause of action, which permits an employee whose ESST rights under the Ordinance have been violated to bring a direct action in district court. The Ordinance provides that a successful plaintiff who brings such an action may recover their reasonable litigation costs and attorneys' fees.

4. The Ordinance became effective, for employers with 24 or more employees, on July 1, 2017. The City has more than 24 employees. Rather than waiting for the Ordinance to become effective, the City passed its own ESST policy, implementing the Ordinance for City employees, on January 1, 2017.

5. On or about April 1, 2017, and for approximately 2 years thereafter, the City had in place a Pilot Project for Personal Time Off (PTO) for certain Non-Represented Parks and Recreation Temporary Employees. The Pilot Project provided covered

employees with PTO in lieu of ESST. While the purpose of the PTO Pilot Project was to comply with the Ordinance, the benefits provided thereunder were more expansive, with covered employees being allowed to use PTO for vacation, their own health needs and the needs of family members. The Pilot Project terms changed to some degree in 2018. Among other provisions, the Pilot Project permitted employees to utilize PTO without having to be employed a set duration of time before accessing the benefits and also called for payouts of accrued but unused PTO balances under certain conditions.

6. Plaintiff commenced a putative class action against Defendant in Ramsey County District Court, Case No. 62-CV-19-6742, through a Complaint dated May 28, 2019 (the "Action"). Plaintiff later amended his Complaint to include additional allegations. Plaintiff, in his individual capacity, alleged that Defendant violated the Ordinance and Pilot Project by, among other things, failing to provide him reasonable access to ESST/PTO benefits to which he was entitled under the Ordinance, by failing to provide him with information regarding his right to ESST/PTO, and by retaliating against him when he exercised his rights under the Ordinance. Plaintiff further contended that the City had violated the Minnesota Whistle Blower Act, codified at Minn. Stat. § 181.932. Plaintiff sought monetary damages, equitable, injunctive and declaratory relief and attorneys' fees and costs for himself under the Ordinance and the Act. In addition, Plaintiff, in his representative capacity, asserted a putative class action on behalf of other City employees, whose rights under the Ordinance and Pilot Project had also purportedly been violated by the City. Plaintiff sought monetary damages, equitable, injunctive and declaratory relief and attorneys' fees and costs for the putative class members under the Ordinance.

7. Defendant denied the allegations of Plaintiff's complaint and any wrongdoing. Defendant asserted that it had not in any manner violated the rights of Plaintiff or any other City employee under the Ordinance or the Pilot Project.

8. The Parties have conducted extensive discovery in this action resulting in the following findings or agreements:

- The "similarly situated" employees and "Putative Class" referenced in the Complaint and Amended Complaint has been limited to Aquatics employees who, as Smith alleges, were either not provided adequate information about their ESST rights or were otherwise denied full use and enjoyment of their ESST benefits.
- The parties conducted substantial discovery, including discovery not limited in time to pre-suit information, nor limited to Aquatics.
- Following discovery, the Parties identified no substantive basis for including any other employees in the class.
- Discovery did not reveal substantive evidence of violations of the Ordinance outside of Aquatics.

- Based on the discovery conducted herein, the class consists solely of Aquatics employees who allegedly were either not provided adequate information about their ESST rights or were otherwise denied full use and enjoyment of their ESST benefits.

9. Following discovery, the Parties have agreed that the Class herein consists of part time or temporary employees within the Aquatics Division of the City's Department of Parks and Recreation who were employed and worked hours between January 1, 2017 and May 24, 2019 who did not, other than through the benefits made available under the City's ESST policy that was effective January 1, 2017, through the City's Pilot Project for Personal Time Off (PTO) for certain Non-Represented Parks and Recreation Temporary Employees and through the Ordinance, receive an amount of paid leave that might be used for the same purposes and under the same conditions as earned sick and safe time under the Ordinance, the City's ESST policy or the City's Pilot Project.

10. The Parties have engaged in multiple mediation sessions and direct settlement negotiations over the course of several months. After extensive arm's length negotiations, the Parties have agreed to settle the Action and all claims asserted therein, subject to Court certification of the Class and approval of the settlement. Taking into account the time delay of litigation, including the uncertainties and risks of protracted trials and appeals, the Plaintiff has concluded that this Agreement provides substantial benefits to the Class and is fair, reasonable, adequate and in the best interests of the Plaintiff and the Class.

11. The Parties enter into this Agreement acknowledging that nothing herein shall be construed as an admission of liability by Defendant, who denies any wrongdoing or liability whatsoever. It is the desire and intention of the Parties to compromise, resolve, dismiss and release all allegations and claims for damages, equitable relief and/or any other relief that the Plaintiff has asserted and requested or could have asserted or requested on behalf of himself and/or the Class which are the subject of this Action, as more specifically set forth below in this Class Action Settlement Agreement.

12. In entering into the Settlement Agreement, the Plaintiff, through Class Counsel, is relying on representations made by the City as to the specific number, identities, hours worked, ESST/PTO benefits accrued, ESST/PTO benefits paid out, rates of compensation and other data pertaining to employees within the Aquatics Division of the City's Department of Parks and Recreation who were employed and worked between January 1, 2017 and May 24, 2019. The City certifies and represents that the information and data provided to the Plaintiff, through Class Counsel, is true and accurate and acknowledges that the data has been relied on in settlement negotiations and compromises reached and will be relied on for purposes of class compensation computations for individual Class members and the Class as a whole. The total number of employees within the Aquatics Division of the City's Department of Parks and Recreation who were employed and worked hours between January 1, 2017 and May 24, 2019 is represented by the City to be 480.

13. For settlement purposes only, subject to the Court's preliminary and final approval of this Agreement as set forth herein, the Parties stipulate to certification of the Settlement Class under Minnesota Rule of Civil Procedure 23 and to the appointment of Plaintiff's Counsel as Class Counsel.

14. The Parties recognize that notice to the Settlement Class Members of the material terms of this Agreement, as well as Court approval of the Agreement, are required to effectuate the Agreement, and that the Agreement will not become operative until the Effective Date.

15. NOW THEREFORE, IT IS HEREBY AGREED, BY AND BETWEEN the Parties, that this Action shall be settled, compromised and dismissed, on the merits and with prejudice, and the Released Claims shall be finally and fully compromised, settled and dismissed as to the Released Parties, subject to the approval of the Court, and pursuant to the following terms and conditions:

II. Definitions

- A. "Action" means *Smith v. City of Saint Paul*, Ramsey County District Court, Civil Case No. 62-CV-19-6742.
- B. "Agreement" means this Class Action Settlement Agreement.
- C. "Award" means monetary relief provided to Members of the Class.
- D. "Claims Administrator" means Defendant or its designee, *Simpluris*, to perform functions of administering the Notice, Opt-Out, Objection and/or payment process.
- E. "Class" means part time or temporary employees within the Aquatics Division of the City's Department of Parks and Recreation who were employed and worked hours between January 1, 2017 and May 24, 2019 who did not, other than through the benefits made available under the City's ESST policy that was effective January 1, 2017, through the City's Pilot Project for Personal Time Off (PTO) for certain Non-Represented Parks and Recreation Temporary Employees and through the Ordinance, receive an amount of paid leave that might be used for the same purposes and under the same conditions as earned sick and safe time under the Ordinance, the City's ESST policy or the City's Pilot Project.
- F. "Class Counsel" means Wrobel & Smith, PLLP, Michael J. Vanselow Law Office, PLLC and Meyer Njus Tanick who represent the Class.
- G. "Class Notice" means the form of notice to be disseminated by Defendants to Class Members concerning class certification, settlement, objection, opt-out, requests for attorneys' fees, costs and Class Representative Service Award.
- H. "Class Representative" means Benjamin Smith.
- I. "Court" means Ramsey County District Court for the State of Minnesota.

- J. "Defendant" means the City of Saint Paul.
- K. "Effective Date" means either: (1) the date thirty (30) calendar days after the entry of a final order and judgment approving the Settlement, if no motions for reconsideration and/or no appeals or other efforts to obtain review have been filed; or (2) in the event that a motion for reconsideration, appeal or other effort to obtain review has been initiated, the date thirty (30) calendar days after such appeal or other review has been finally concluded and is no longer subject to any further review, whether by appeal, petitions for rehearing, or otherwise.
- L. "Final Approval Hearing" means the hearing to be conducted by the Court after the Opt-Out and Objection Deadline in connection with its determination of the fairness, adequacy and reasonableness of the Settlement.
- M. "Notice Date" means the date upon which Defendants provide Class Notice to Members of the Class.
- N. "Notice Program" means the plan set forth in Section 5.2 of this Agreement for providing notice to Class Members.
- O. "Opt-Out" means a decision by a Class Member to be excluded from the Class and decline to participate in the Settlement.
- P. "Opt-Out and Objection Deadline" means the date sixty (60) days after the Notice Date by which a Request for Exclusion must be submitted to the Claims Administrator, Simpluris with copies to Class Counsel, in order for a Member of the Class to be voluntarily excluded from the Class and from participating in the Settlement, and the date by which Members of the Class must file with the Court and serve upon Class Counsel and the Saint Paul City Attorney's Office any objections to the Settlement in accordance with Section 5.5 of this Agreement.
- Q. "Member" means a Member of the Class.
- R. "Parties" means Plaintiff and Defendant, collectively.
- S. "Plaintiff" means Benjamin Smith, both in his individual and representative capacity.
- T. "Request for Exclusion" means the written communication that must be provided to the Claims Administrator Simpluris with copies to Class Counsel, and postmarked on or before the Opt-Out and Objection Date by a Member of the Class who wishes to be excluded from the Class.
- U. "Settlement" and "Settlement Agreement" means this Class Action Settlement Agreement and any amendments thereto.

III. Conditions of Finality of the Settlement Agreement

- 3.1. Court Approval. Class Counsel and Defendant's counsel shall work together in good faith to expeditiously obtain entry of a preliminary approval order followed by entry of a final approval order. The Parties agree that obtaining final approval from the Court of this Settlement Agreement is a necessary condition to effectuate the Settlement Agreement.
- 3.2. Cooperation. The Parties acknowledge and agree that each of them intends to implement the terms and conditions of this Agreement and that they shall, in good faith, cooperate and assist with and undertake all reasonable actions in order to accomplish all required steps of the schedule set by the Court and that they shall use their best efforts to implement all terms and conditions of this Agreement in an expeditious manner. If for any reason this Agreement or any of requirements of obtaining approval are erroneous, defective or objectionable, the Parties shall cooperate to develop a stipulated or voluntary solution to promptly and efficiently cure any error, defect or objection to effectuate the intent of this Agreement.

IV. Settlement Consideration

- 4.1. Non-Monetary Relief. The City will maintain policies and procedures to ensure its compliance with the Ordinance and its own PTO policies now and going forward as long as the Ordinance and any similar City policies remain in effect. The City will ensure that every current employee has received all required ESST notices and notice about the City's own ESST policies and any PTO policies applicable to each individual employee. The City will ensure that all future employees will receive notices required by the Ordinance and information about the City's ESST and any applicable PTO policies at the time of employment commencement. The City will keep documentary proofs of all such notifications.
- 4.2. Class Administration Costs and Court Costs. The City will pay all administrative expenses (fees and costs) associated with administration of the Settlement, including retention of and payment of all fees and costs of a Class Settlement Administrator and all filing fees for all petitions and motions necessary through conclusion of the matter.
- 4.3. Drafting of Settlement Documents, Petitions to the Court and Other Necessary Documents. The City, through its counsel, will take the lead on drafting of all documents necessary to settle the case, petition the Court for approvals and all other documents necessary to bring the case and Settlement administration to a conclusion. All such documents will be presented to Class Counsel for review, comments and proposed revisions prior to filing or issuance. The City agrees that it is the party primarily responsible for drafting of all necessary documents.
- 4.4. Settlement Fund. In addition to any other consideration specified in this Agreement, Defendant will make available a total of Three Hundred Sixty Thousand Dollars (\$360,000.00) as a Settlement Fund. The Parties agree that the

creation and administration of this Settlement Fund will fully satisfy all claims made in the Action by the Plaintiff, both on his own behalf and on behalf of the Class, for any and all alleged violations by the City which were alleged, or could have been alleged, through the Action (including but not necessarily limited to violations of the Ordinance and/or the Act), prejudgment interest, Plaintiff's attorneys' fees, Plaintiff's costs of litigation and Class Representative Service Awards.

- 4.5. Allocation of Settlement Amount. The Settlement Fund shall be allocated between (1) the Net Settlement Fund as defined below; (2) Class Representative Service Award; and (3) Attorneys' Fees and Costs. The Court will be petitioned to approve a Class Representative Service Award of \$4,000.00 and total attorney fees and costs of \$200,000.00.
- 4.6. Payment of Attorneys' Fees, Costs and Class Representative Service Award. The Parties agree that Class Counsel may move the court for an award of attorneys' fees, costs of litigation and Class Representative Service Award concurrent with final approval of the Settlement, without objection by Defendant. Class Counsel may seek approval for reimbursement of its actual costs of litigation without objection by Defendant. Class Counsel may seek approval of Class Representative Service Awards in the amount of up to \$4,000 without objection by Defendants. The total of the Court approved amount of attorneys' fees, costs of litigation and Class Representative Service Award shall be paid from the Settlement Fund by check or electronic transfer to Class Counsel within 10 business days after the Effective Date.
- 4.7. Net Settlement Fund. After reduction for the total amount of approved attorneys' fees, costs of litigation and Service Awards, the amount remaining of the Settlement Fund shall be called the Net Settlement Fund. The Net Settlement Fund is expected to be \$156,000 and shall be allocated as follows:
 - a. Each Class member will receive payment equal to the value of their accrued ESST/PTO time documented by the City as of June 7, 2019, which is the pay period inclusive of the May 24, 2019 end date for eligibility. The valuation of those accrued ESST/PTO benefits varies among the 480 members, with some having a ZERO balance and some having a balance of several hundred dollars. The total amount to be paid to all members under this provision is calculated to be \$35,926.34 per representations of the City. The right to receive this payment and/or receipt of the payment will not impact or reduce the accrued ESST/PTO for any employees who are still employed by the City or have an accessible ESST/PTO balance.
 - b. The balance of the Net Settlement Fund, which will be \$120,073.66 (assuming no Opt-Outs) will be divided among the Class members based on a "calendar year worked credit" of 1 credit per calendar year during which the member worked any hours between the time period of January 1, 2017 to May 24, 2019. By way of example, an employee who worked only in 2017 will receive 1 credit whereas an employee who worked in 2017, 2018 and 2019 (prior to May 25,

2019) will receive 3 credits. The total amount of “calendar year worked credits” among all members is calculated to be 754 per representations of the City and subject to final confirmation by the City. Thus, assuming no Opt-Outs, the yearly credit amount will be at least \$159.24.

- c. In the event of any Opt-Outs, the amounts that would have been paid to each such Opt-Out employee will go into the Net Settlement Fund to be divided between all members under the “calendar year worked credit” provision explained above.

V. Notice and Claims Administration

- 5.1. **Administration Responsibility.** Defendant or its designee Claims Administrator Simpluris shall administer the Notice Program, Claims Process, Opt-Out/Objection process, and oversee the disbursement of credit and cash awards to Class Members in accordance with the terms of this Agreement and orders of the Court. Defendants shall be responsible for the cost associated with the Notice and Claims Process and Administration. Such cost shall not be taken out of the Settlement Fund. Any disputes concerning the administration of the Settlement that are not resolved by the Parties may be submitted to the Court for determination.
- 5.2. **Notice.** Within thirty (30) days after the Court’s entry of an order preliminarily approving the Settlement or on January 15, 2022, whichever date is later, Defendant shall provide notice to the Class Member by mailing to the last known address of each Member a post-card summarizing the information contained in the Class Notice and indicating how to obtain more detailed information. Defendant shall also email the Class Notice to the last known email address known to the Defendant, if any, of each Class Member. The Class Notice shall:
 - a. Identify the Parties, Class Counsel and the Class Representatives;
 - b. Contain a short plain statement of the background of the Action and the Settlement;
 - c. Describe the Settlement relief as set forth in this Agreement;
 - d. Provide Class Member specific information regarding the Class Member’s anticipated individual payout via a URL and distinctive ID number, which the Member can use to log into the Class Administrator’s website by providing another distinctive piece of identifying information. Once logged in, the Member will be able to view the Member’s anticipated payout.
 - e. Describe the Opt-Out process and inform Members of the Class that if they do not exclude themselves they may be eligible to receive relief;
 - f. Inform Members of the Class that they do not need to file a claim to receive a cash payment;

- g. Explain the scope of the Release to be provided by the Class Members through their Class Representatives;
- h. Inform the Class Members that Class Counsel will be seeking payment of attorneys' fees, costs of litigation and Service Awards from the Settlement Fund;
- i. Inform the Class Members of their right to object and of the deadline sixty (60) days after the Notice Date to Opt-Out or object to the Settlement or the Plaintiff's application for attorneys' fees, costs and Service Awards.

Defendant, through the designated Claims Administrator (Simpluris) shall post and maintain through the Effective Date substantially the same information on a website and include links to the Settlement Agreement, Class Notice, and any relevant Court orders. Defendant shall provide a process for electronic submission of Opt-Outs. Defendant shall provide an information contact to respond to inquiries from Class Members.

5.3. Claims Process. Claims will be processed as follows:

- a. Within thirty (30) days of the Effective Date, the City shall deliver to the Claims Administrator a sum equal to the Net Settlement Fund as provided for in Paragraph 4.4, *supra*. Within thirty (30) days of receipt from Defendants of a sum equal to the Net Settlement Fund, the Claims Administrator shall mail via first class mail to all such Eligible Claimants a check in the amount calculated consistent with the Eligible Claimants' respective amounts due pursuant to Paragraph 4.7, *supra*. Any Settlement Payment that is returned as non-deliverable with a forwarding address shall be re-mailed by the Claims Administrator to such forwarding address within seven (7) days. To the extent that any Settlement Payments are returned as non-deliverable without a forwarding address, the Claims Administrator shall, within the same period of time, conduct an automated skip trace to locate valid address information for the intended recipients of such Settlement Payments, and shall promptly re-mail the Settlement Payment, as applicable, to any Eligible Claimants for whom new address information is identified.
- b. Eligible Claimants who are sent a Settlement Payment shall have one hundred eighty (180) days from the date the Settlement Payment was mailed to cash or deposit their check. Settlement Class Members may request that new checks be issued by the Claims Administrator during this time period, if they lose or misplace their original check. However, the time period for cashing or depositing the check will be the same as the original time period set forth above. If a Settlement Payment check is not deposited or cashed within this one hundred eighty (180) day period, the check will be cancelled and void.

5.4. Opt-Out. A Class Member who wishes to Opt-out of the Settlement must do so on or before the Opt-Out and Objection Deadline. In order to Opt-Out, a Class

Member must complete and deliver to the Claims Administrator Simpluris and to Class Counsel a Request for Exclusion by the Opt-Out and Objection Deadline. The Request for Exclusion must be signed by the Class Member and must contain a statement clearly stating a desire and intention to be excluded from the Settlement Class. Class-wide opt-outs shall not be permitted. Excluding those Class Members who timely and properly file a Request for Exclusion, all Class Members shall be bound by this Agreement's terms upon the Effective Date, regardless of whether they file a Claim or receive a refund credit or cash Award. A Class Member who properly Opts-Out of the Settlement shall not be bound by any orders or judgment entered in the Action relating to the Settlement, shall not be entitled to relief under, or have their rights affected by the Agreement, shall not gain any rights by virtue of the Agreement; and shall not be entitled to object to any aspect of the Settlement.

5.5. **Objection.** Any Class Member who intends to object to the Settlement or Plaintiff's application for attorneys' fees, costs and Service Awards, must file with the Court and deliver a written objection to Class Counsel and to Defendant's counsel at the St. Paul City Attorney's Office on or before the Opt-Out and Objection Deadline. In order to object to the Settlement, the written objection must contain the following information:

- a. The name, address, e-mail and telephone number of the objector and if such objector is represented by counsel, the name, address, e-mail and telephone number of such counsel.
- b. Certification that such objector is a Member of the Class.
- c. A written statement specifically describing all of the objections to the Settlement and the reasons for such objections.
- d. A statement as to whether the objector intends to appear at the final approval hearing.

An objecting Class Member may only object on his/her own behalf. Class-wide objections shall not be permitted. Any Class Member who fails to submit a timely written objection shall not be permitted to object to the approval of the Settlement at the Final Approval Hearing, and shall be foreclosed from seeking any review of the Settlement or the terms of the Agreement, either by appeal or other means.

VI. Cy Pres Fund

6.1. **Purpose.** The Parties acknowledge that there may be Class Members for which no valid address can be located. The Parties are under no obligation to take any steps beyond that specified in this Agreement to locate and notify such Class members. To the extent that Class Members cannot be located, the Parties agree that the balance of the Settlement Fund remaining after payment of Claims shall be used to create a *cy pres* fund to be administered pursuant to the following section.

- 6.2. Administration. After payment of claims and reservation of any amounts to cover disputed claims from the Settlement Cash Fund, Defendants shall provide an accounting to Class Counsel and the Court of the original amount, distributions made and the amount remaining in the Settlement Fund. All remaining funds shall be distributed among the Class Members to whom payments were previously made. The Parties shall confer regarding disposition of the remaining balance and attempt to reach agreement on how it should be distributed among the Class Members to whom payment was previously made. The Court shall resolve any disagreement as to distribution of the *cy pres* funds taking into consideration the nature of the Action, the objectives of the underlying laws, and the interests of the silent Members. Defendant shall be responsible for disbursing the *cy pres* funds to the appropriate entities along with any *cy pres* order issued by the Court.

VII. Releases

- 7.1. Defendant's Release of Plaintiffs. Effective on the Effective Date, Defendant absolutely and unconditionally releases and forever discharges Plaintiff and the Members of the Class, together with their agents, servants, successors, heirs, executors, administrators and all other persons, from any and all claims relating to the institution or prosecution of the Action.
- 7.2. Plaintiff's and Representative's Release of Defendants. Effective on the Effective Date, Plaintiff, on behalf of himself and on behalf of the Members of the Class (subject to Court certification of the Class and approval), directly, indirectly, derivatively, or in any capacity ever had, now have or hereafter may have, absolutely and unconditionally release and forever discharge Defendant, together with their agents, employees, subsidiaries, successors, and assigns, from any and all claims, allegations, debts, liabilities, demands, obligations, costs, expenses attorney fees, damages, actions, or causes of action of any nature whatsoever, whether accrued or not, whether known or unknown, in law or equity, that were or could have been asserted in the Action by or on behalf of Plaintiff and Members of the Class arising from or in any way relating to matters alleged in the Action taking place prior to May 25, 2019 as to the Class and prior to the date of this Settlement Agreement as to the Plaintiff, Benjamin Smith, individually.
- 7.3. Scope of Releases. The releases set forth in paragraphs 7.1 and 7.2 are not intended to include the release of claims arising out of breach of any rights or duties in this Settlement Agreement.

VIII. No Admission

- 8.1. This Settlement Agreement does not, and is not intended to constitute, nor shall it be deemed to constitute, an admission by any party as to the merits, validity or accuracy of any of the allegations, claims or defenses of any party in this case. Named Plaintiff continues to assert the validity of his claims in both his individual and representative capacities. By entering into this Agreement, Defendant does not admit or concede, expressly or impliedly, but denies it has in any way violated

the Ordinance, the Act, or any other federal, state or local law, statute, ordinance, regulation or rule, or any obligation or duty at law or in equity.

- 8.2. Nothing in this Settlement Agreement, nor any action taken in implementation thereof, nor any statements, discussions or communications, nor any materials prepared, exchanged, issued or used during the course of the mediation or negotiations leading to this Settlement Agreement, is intended by the parties to, nor shall any of the foregoing constitute, be introduced, be used or be admissible in any way in this case or any other judicial, arbitral, administrative, investigative, or other proceeding of whatsoever kind or nature (including without limitation the results of the claims process established under this Settlement Agreement) as evidence of violation of Ordinance, the Act, or any other federal, state or local law, statute, ordinance, regulation or rule, or any obligation or duty at law or in equity. Notwithstanding the foregoing, this Settlement Agreement may be used in any proceeding in the Court to enforce or implement any provision of this Settlement Agreement or implement any orders or judgments of the Court entered into in connection herewith.

IX. Final Order and Judgment Approving Settlement

- 9.1. Fairness Hearing. The Final Approval Hearing shall be scheduled as soon as reasonably practicable and consistent with the time frames set forth in this Agreement. The Final Approval Hearing is to determine and obtain final approval of this Agreement, the notice provided and determination of Plaintiff's application for attorney's fees, costs and Service Award.
- 9.2. Final Approval. This Agreement is subject to and conditioned upon the issuance by the Court of an order and judgment that grants final approval of the Settlement. The final order and judgment approving settlement shall:
- a. Confirm the Notice Program complied with the requirements of Minn. R. Civ. P. 23 and due process by providing due, adequate and sufficient notice to the Class;
 - b. Determine that this Agreement was entered into in good faith, is reasonable, fair and adequate and is in the best interest of the Class;
 - c. Determine the amount of attorneys' fee, costs and Plaintiff's Service Awards to be paid from the Settlement Fund;
 - d. Make all appropriate and necessary findings of fact required to enter a final judgment pursuant to Minn.R.Civ.P. 54.02.
 - e. Dismiss the Action with prejudice;
 - f. Retain the Court's continuing and exclusive jurisdiction over the Parties and all Class Members, for the purpose of construing and enforcing the Agreement in accordance with its terms.

X. Representations and Warranties

- 10.1 Defendant represents and warrants that:
- a. It has the requisite corporate and governmental power and authority to execute, deliver and perform its obligations as set forth in this Agreement and to consummate the transactions contemplated by the Agreement;
 - b. The execution, delivery and performance of the Agreement and their consummation of the actions contemplated by the Agreement have been duly authorized by Defendant; and
 - c. The Agreement has been validly executed and delivered by Defendant and constitutes its legal, valid and binding obligation.
- 10.2 Defendant further represents and warrants that it is, as of the date of this Agreement, fully compliant with the requirements of the Ordinance.
- 10.3 Plaintiff represents and warrants that:
- a. He has the requisite authority and is entering into this Agreement on behalf of himself, individually and as representative of the Class (subject to Court certification of the Class and approval) of his own free will and without any consideration other than what is provided in this Agreement or disclosed to, and authorized by, the Court;
 - b. He has reviewed the terms of the Agreement, believe it to be fair and reasonable; and
 - c. He will not file a Request for Exclusion or object to the Settlement.
- 10.4 Defendant and Plaintiff agree that the Recitals provided for in the Introduction and Recitals section of this Agreement are contractual in nature and binding on the Parties hereto.
- 10.5 The Parties warrant that they have carefully read the contents of this Settlement Agreement, and that this Settlement Agreement is signed freely by each person executing this Settlement Agreement on behalf of each of the Parties. The Parties, and each of them, further represent and warrant to each other that he, she, or it has made such investigations of the facts pertaining to the Settlement, this Settlement Agreement, and all of the matters pertaining thereto, as he, she, or it deems necessary. No promise, inducement or consideration for the Settlement has been made, except as set forth in this Agreement. No consideration, amount or sum paid, accredited, offered or expended by Defendant in its performance of the Agreement and Settlement constitutes a fine, penalty, punitive damages or other form of assessment for any claim asserted against them.

XI. Miscellaneous Provisions

- 11.1. Entire Agreement. This Settlement Agreement contains the entire agreement between the Parties relating to the Settlement of the Action and the released claims and shall supersede any previous agreements, representations, communications or understandings among the Parties. This Agreement may not be changed, modified, altered, or amended except in a writing signed by all Parties and, if required, approved by the Court.
- 11.2. Governing Law. This Settlement Agreement shall be governed by the laws of the State of Minnesota without giving effect to the conflict of laws or choice of law provisions thereof.
- 11.3. Single and Plural. Definitions apply to the singular and plural forms of each term defined.
- 11.4. Construction. None of the Parties hereto shall be considered to be the drafter of this Agreement or any provision hereof for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof.
- 11.5. Execution. This Settlement Agreement may be executed by electronic exchange of executed signature pages, and any signature transmittal by electronic means for the purpose of executing this Settlement Agreement shall be deemed an original signature for purposes of this Settlement Agreement. This Settlement Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same instrument.
- 11.6. Binding Effect. This Settlement Agreement binds and inures to the benefit of the Parties and their assigns, heirs, administrators, executors and successors.
- 11.7. Notices. All notices to Parties or their counsel required by this Agreement shall be made in writing and shall be sent simultaneously by electronic mail and regular mail to the following:
 - a. For Plaintiffs and/or Class Counsel:

Mark A. Smith, Esq.
Wrobel & Smith, PLLP
1599 Selby Avenue
St. Paul, MN 55104
mark@wrobelsmithlaw.com

b. For Defendants:


Anthony G. Edwards, Esq.
Saint Paul City Attorney's Office
750 City Hall and Courthouse
15 West Kellogg Blvd.
St. Paul, MN 55102
anthony.edwards@ci.stpaul.mn.us

(Signatures on Continuing Pages Below)

IN WITNESS WHEREOF, each of the Parties hereto has caused this Agreement to be executed as of the date set forth below.

Dated: Nov. 19, 2021

Plaintiffs:



Benjamin Smith, Individually and as Class Representative (Subject to Court Certification of the Class)

Defendant:

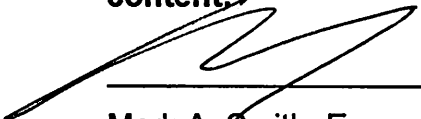
City of Saint Paul

By: _____

Name: _____

Title: _____

Approved as to form and content:



Mark A. Smith, Esq.
Plaintiff's Counsel and Class Counsel (Subject to Court Certification of the Class and Appointment of Class Counsel)

Approved as to form and content:

Anthony G. Edwards, Esq.
Defendant's Counsel