

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release is hereby entered into by and among Lowertown Acquisitions Company, LLC (“Lowertown”); the City of St. Paul, Minnesota (“City of St. Paul”); West Bend Mutual Insurance Company (“West Bend”); the Board of Water Commissioners of the City of St. Paul, and St. Paul Regional Water Services (the last two entities named are collectively referred to as the “Board”).

WHEREAS the parties identified above are parties to a lawsuit arising out of a June 13, 2016 water main break and discharge of water into a commercial building owned by Lowertown, entitled *Lowertown Acquisitions Company, LLC v. the City of Saint Paul, St. Paul Regional Water Services, and West Bend Mutual Insurance Company*, Ramsey County District Court File No. 62-CV-17-1595 (the “Action”); and

WHEREAS, Lowertown asserted separate claims against the City of St. Paul, the Board and West Bend in the Action; and

WHEREAS, West Bend asserted cross-claims against the City of St. Paul and the Board in the Action; and

WHEREAS, the parties seek to resolve the claims in the Action and any and all claims between and among the parties that could have been brought in the Action;

NOW, THEREFORE, for good and valuable consideration, the sufficiency of which is acknowledged, the parties agree as follows:

1. Municipal Approval of Settlement Per Prior Mediated Settlement Agreement

The parties acknowledge that this Agreement and the settlement terms set forth herein are subject to, and contingent upon, approval of the settlement terms by the Board.

The parties previously signed a Mediated Settlement Agreement and Release on January 11, 2018, which is hereby incorporated by reference in its entirety. The terms of this Settlement Agreement and Release shall control over the prior agreement in the event of any conflict. In the January 11, 2018 agreement, legal representatives for Saint Paul Regional Water Services (“SPRWS”) agreed to present the settlement terms for approval by the Board at the next available meeting, and to recommend and advocate for approval of the settlement terms. SPRWS did not make any guarantee of approval by the Board.

In the event approval is obtained, the Board shall promptly notify the other parties’ counsel of record in writing. In the event the Board does not approve the settlement terms, SPRWS shall promptly notify the other parties’ counsel of record in writing, and upon such notification of non-approval, this Settlement Agreement shall become void and unenforceable as to all parties.

2. Settlement Payments

Within fourteen (14) calendar days after the parties’ counsel of record receive written notice of a formal approval of the settlement terms by the Board:

- A. SPRWS agrees to pay Lowertown the amount of Forty Thousand and 00/100 Dollars (\$40,000.00), by check made payable to “Lowertown Acquisitions Company, LLC”; and
- B. West Bend agrees to pay Lowertown the amount of Forty Thousand and 00/100 Dollars (\$40,000), by check made payable to “Lowertown Acquisitions Company, LLC”.

The Board and West Bend have made no representations to Lowertown or its attorneys or representatives regarding any tax treatment or consequences of the payments made under this Agreement, and Lowertown agrees that it shall be solely responsible for any tax consequences.

3. Release of Claims.

In consideration for the promises and agreements set forth herein, each of the parties for itself, and its past and present shareholders, directors, insurers, sureties, successors, parents, affiliates, assigns, agents, and employees, hereby releases and forever discharges the others, including their shareholders, directors, insurers, sureties, successors, parents, affiliates, assigns, agents, and employees, from any and all claims, demands, grievances, actions, liability, damages, attorneys’ fees, or rights of any kind that have been asserted or might have been asserted in the Action (the “Released Claims”). The parties understand and expressly agree that the releases set forth in this Agreement include all unknown damages and consequences on account of or because of any claims asserted or that could have been asserted in the Action, regardless of whether such damages or consequences occur in the future. The Released Claims shall not include and shall not affect the parties’ rights to enforce the terms of this Agreement, or seek remedy for the breach thereof.

The parties recognize and agree that this Settlement Agreement and Release is a compromise of disputed claims, and that nothing in this Settlement Agreement and Release is intended to be, nor shall be construed as, an admission of liability by or on behalf of any of the parties, by whom such liability is expressly denied, nor is it an acknowledgment of the existence or scope of any insurance coverage under any policy issued by West Bend to Lowertown. The parties further agree that each party shall bear its own costs and fees for the Action and negotiation of this Settlement Agreement and Release.

4. Dismissal of Suit.

In consideration of the promises made in this Agreement, and upon notification by the Board that formal approval has been obtained for the settlement terms set forth in this Agreement, the parties hereby authorize and direct their attorneys of record to promptly stipulate to dismiss the Action with prejudice and without award of costs or fees to any party. The parties acknowledge that the City of St. Paul is being dismissed separately and that the settlement is by and among Lowertown, West Bend, the Board and SPRWS.

5. Mediated Settlement Agreement.

The parties acknowledge that this Agreement was the result of a mediation session conducted on January 11, 2018 by Mark Heley (the “Mediator”) and that they each received in writing the statutory mediation disclosures including the following:

- The Mediator has no duty to protect their interests or provide the parties with information about their legal rights;
- Signing a mediated settlement agreement may adversely affect the parties’ legal rights; and
- Parties should consult an attorney before signing a mediated settlement agreement if they are uncertain about their rights.

6. Other Terms.

Each signatory to this Agreement on behalf of a party represents and warrants that they have the full and sufficient power, authorization, and right to bind the party to the terms of this Agreement.

Each party to this agreement has been represented by counsel in the negotiation and signing of this Agreement and the parties acknowledge that this Agreement has been equally drafted by counsel for all parties, and no rule of construction shall apply to cause the interpretation of any provision against the drafter.

The terms of this Settlement and Release shall be binding upon and be enforceable against and shall inure to the benefit of the parties hereto jointly and severally and the agents, employees, successors, assigns, and members of each.

This Agreement shall be construed and enforced in accordance with the laws of the State of Minnesota. If any provision of this Agreement shall be construed to be violation of law, the parties intend that such provision shall have no effect on the remaining provisions, which shall remain in full force and effect.

This Agreement may be executed in counterparts so that the collection of all counterparts shall constitute a fully executed Agreement. A facsimile or scanned electronic copy of a signed counterpart shall have the same force and effect as an original.

[SIGNATURES ON FOLLOWING PAGES]

Dated: _____

LOWERTOWN ACQUISITIONS COMPANY LLC.

By: _____

Its _____

Dated: _____

WEST BEND MUTUAL INSURANCE COMPANY.

By: _____

Its _____

**CITY OF ST. PAUL; BOARD OF WATER
COMMISSIONERS OF THE CITY OF ST.
PAUL; AND ST. PAUL REGIONAL WATER
SERVICES**

Dated: _____

Approved:

By: _____
Stephen P. Schneider, General Manager
St. Paul Regional Water Services

By: _____
_____, President

By: _____
_____, Secretary

Approved as to form:

By: _____
Assistant City Attorney

By: _____
Todd Hurley, Director
Office of Financial Services