

CITY OF MILWAUKEE,)
)
 Plaintiff,)
)
 v.)
)
 SIMPSON GUMPERTZ & HEGER INC.,)
 ENGBERG ANDERSON, INC.,)
 LEXINGTON INSURANCE COMPANY,)
 BLOOM COMPANIES, LLC,)
 ENDURANCE AMERICAN SPECIALTY)
 INSURANCE COMPANY,)
)
 Defendants.)

Case No.: 12-CV-004989

SETTLEMENT AGREEMENT AND RELEASE IN FULL OF ALL CLAIMS

This Settlement Agreement and Release of All Claims in full (the "Agreement") is made and entered into as of the final date as signed below (the "Effective Date"), by and between and among Plaintiff, City of Milwaukee (hereinafter referred to as the "Plaintiff") and Defendants, Simpson Gumpertz & Heger Inc. and its insurer, Lexington Insurance Company; Engberg Anderson, Inc. and its insurer, Lexington Insurance Company; and, Bloom Companies, LLC and its insurer, Endurance American Specialty Insurance Company, together with their named and unnamed representatives, insurers, reinsurers, successors, assigns, parent companies, subsidiaries, affiliated companies, employees, agents, officers, directors and all other persons, firms and corporations (hereinafter collectively referred to as the "Released Parties") (with the Plaintiff and the Released Parties collectively referred to as the "Parties").

WHEREAS, the Parties are involved in a dispute based upon allegations which are more fully set forth in Case No. 12-CV-4989 in the Circuit Court for Milwaukee County, State of Wisconsin (the "Litigation");

WHEREAS, the Parties desire to enter into this agreement in order to create certain obligations in full settlement of and to discharge all claims which are or might have been asserted by the Parties in the Litigation, upon the terms and conditions set forth herein;

WHEREAS, the Parties understand that this settlement is intended to include a full and complete release of all claims existing between the Parties, except for any continuing obligations created by this Agreement; and

NOW, THEREFORE, in consideration of the mutual covenants and conditions of this Agreement, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, it is agreed by the Parties as follows:

1.0 **Common Council Approval**

This Agreement is subject to approval by the Common Council of the City of Milwaukee. It shall be deemed null and void, and have no force or effect, nor shall it be admissible for any purpose, in the event it is not so approved.

2.0 **Payment and Release**

In consideration of the total payment amount of Seven Million Nine Hundred Ninety-Five Thousand and 00/100 Dollars (\$7,995,000) (“Settlement Funds”), payable as described herein, the Plaintiff does hereby release and forever discharge the “Released Parties” from any and all liability, actions, causes of action, claims and demands known or unknown, upon or by reason of any damage, loss or injury, including, but not limited to, damages, loss or injury which have been or which hereafter may be sustained by the Plaintiff as a result of the alleged occurrence described in the Litigation (hereinafter the “Release”).

It is understood that the money paid for this unqualified Release is received, not only as a full satisfaction for all known or unknown damages, but also is received for future damages. The extent of any future damages is unknown, but it is understood that it may result in a condition substantially different than it is today.

The Plaintiff agrees that in executing this Agreement and Release, it is relying on its own judgment, belief and knowledge as to all phases of its claim and is not relying on any additional statement, representation or position made by or taken by any of the parties or persons, firms or corporations hereby released or anyone representing the Released Parties or employed by them.

3.0 **Payment**

In consideration of the Release set forth above, the Released Parties agree to pay to the Plaintiff the amount of \$7,995,000 in the form of a check or checks payable to the City of Milwaukee within 60 days of Plaintiff’s execution of the Agreement.

4.0 **Mutual Release**

It is understood and agreed that this Agreement specifically includes and releases all claims that the Parties may have as against and between each other that arise from or are related to the Litigation, the defense of this Litigation, and claims that could have been asserted in the Litigation, including claims for contribution,

subrogation, indemnification and/or insurance coverage. Further, the Released Parties agree to release any and all claims, including without limitation claims for contribution, subrogation, indemnification and/or insurance coverage, the Released Parties may have against J. P. Cullen & Sons, Inc., Eugene Matthews, Inc., Pabco Clay Products LLC d/b/a Gladding McBean, and all other parties that were released pursuant to the August 2, 2013 settlement agreement between the City of Milwaukee and J.P. Cullen and Sons, Inc., et al, a copy of which is attached as Exhibit A.

5.0 **No Admission of Liability**

It is further agreed and understood by all parties that any payments by or on behalf of the Released Parties are not to be construed as an admission of any liability or fault. All claims, past, present, or future, are disputed and this full and final settlement thereof shall never be treated as evidence of liability, nor as an admission of liability or responsibility at any time or in any manner whatsoever.

This compromise and settlement of all claims of the Plaintiff against the Released Parties and all other persons, firms and corporations set forth above, is being entered into following negotiations between the Plaintiff, which was at all times represented by an attorney of its choice, and the Released Parties.

6.0 **Release of Subrogation, Derivation or Assignment**

It is agreed and understood that the Plaintiff warrants and represents that there are no known persons, firms, corporations, municipalities, insurance companies or other third parties, who have rights against the Released Parties, based upon any lien, subrogation, derivation or assignment originating from the claims of the Plaintiff arising out of the Litigation. In the event that any other person, firm, corporation, municipality, insurance company or other third party does indeed have rights based upon any lien, subrogation, derivation assignment or any other basis against the Released Parties originating from the claims of the Plaintiff arising out of the allegations more fully described in the Litigation, the Plaintiff agrees to satisfy all such claims directly on behalf of the Released Parties. Plaintiff further agrees to defend and hold harmless the Released Parties from any such claims, including the reasonable costs and attorneys' fees in defending any such claim.

7.0 **Full Understanding**

The Plaintiff hereby declares that it fully understands the terms of this settlement; that the amount stated herein is the sole consideration for this Release and that it voluntarily accepts said Settlement Funds for the purpose of making a full and final compromise, adjustment and settlement of all claims for losses and

damages resulting or to result from or related to the occurrence as more fully set forth in the Litigation.

8.0 **Extinguishing of All Claims**

Upon payment of the Settlement Funds specified above, this Agreement fully extinguishes all claims and causes of action, including, but not limited to those for compensatory damages, punitive damages, costs and fees, attorneys' fees and statutory damages, against the Released Parties.

9.0 **Indemnify and Hold Harmless**

The Plaintiff further agrees to indemnify and to hold harmless the Released Parties against all claims arising out of the work described in the Litigation that may be made by or on behalf of J.P. Cullen or its subcontractors or any other party involved in the work described in the Litigation. The Plaintiff agrees that its obligation includes actual attorneys' fees and costs. Further, this indemnity and agreement to hold harmless extends to any claim arising out of work described in the August 2, 2013 settlement agreement between The City of Milwaukee and J.P. Cullen and Sons, Inc., et al., a copy of which is attached as Exhibit A.

10.0 **Responsibility for Costs**

Each Party shall bear all of their own attorneys' fees, witness fees, expenses and costs arising from the actions of its own counsel in connection with this Litigation and Agreement.

11.0 **Governing Law**

This Agreement shall be construed and interpreted in accordance with the laws of the State of Wisconsin.

12.0 **Confidentiality**

12.1 Release of records

The Released Parties acknowledge that the Plaintiff is subject to the Wisconsin Public Records Law, Sections 19.31-19.37, Wis. Stats, and that this Settlement Agreement and Release is a public record thereunder. The Released Parties further acknowledge that Plaintiff will comply with the Wisconsin Public Records Laws, and that in doing so, it shall be solely in the City Attorney's discretion to determine, for purposes of this confidentiality agreement, whether or not a record must be disclosed.

Plaintiff agrees that it will not disclose records that it is not required to disclose under the Wisconsin Public Records law, and that its necessary public disclosures will contain only such information about the Litigation, and the terms of the Settlement, or this Agreement as is required by law. For purposes of this paragraph 12.1, the City Attorney shall solely determine whether or not the record, data, material or information is a necessary public disclosure.

This agreement shall not require any person to refuse to comply with a lawful subpoena. However, for a period of six years after the date of this Agreement, the City Attorney agrees to promptly notify the Released Parties or counsel of any effort to obtain or inspect, by subpoena, public records requests or otherwise, materials regarding this dispute and further agrees to fully cooperate in good faith with the Released Parties in opposing the disclosure if in the City Attorney's sole judgment, such opposition is warranted under the Public Records Law or under any other provision pertaining to release by subpoena or otherwise, of any materials regarding the Litigation.

This confidentiality agreement extends to the expert and/or consultant reports or investigations prepared in anticipation of litigation. This shall include, but not be limited to, the investigation, findings, reports or other information created by or held by Wiss, Janney, Elstner Associates, Inc., Simpson, Gumpertz & Heger Inc., and any other consultants, investigators or experts engaged by or between any of the Parties to the Litigation. However, in the event that Plaintiff is compelled to release its expert and/or consultant reports or investigations, Released Parties shall have the option of transmitting to those parties receiving the Plaintiff's expert and/or consultant reports or investigations either (1) Released Parties' expert and/or consultant reports or investigations, or (2) a statement indicating that Released Parties and their experts and/or consultants disagree with the conclusions contained in Plaintiff's expert and/or consultant reports or investigations. The Parties and their consultants agree not to publish articles or materials relative to the subject of the Litigation that makes any reference to the Released Parties or that identifies the Milwaukee City Hall Restoration Project by name or photograph. The Parties promise to undertake all necessary actions to ensure that information that is not required to be disclosed by the Public Records law remains confidential and out of the public domain. To the extent such information includes documents, records, or other information generated by, or in the possession of, J.P. Cullen & Sons, Inc., Eugene Matthews, Inc. and/or Pabco Clay Products LLC d/b/a Gladding McBean, the Plaintiff acknowledges that such information shall be subject to the same good faith obligation to keep such information confidential to the extent it is not required to be made public by the Public Records law. The Released Parties acknowledge and agree that all of the written reports issued to date by Wiss, Janney, Elstner Associates, Inc., in connection with its investigation of the conditions of the Milwaukee City Hall have already been, and will continue to be treated as public records in the public domain.

The Parties expressly agree that if there is a breach of the confidentiality provision, then the non-breaching party shall only be entitled to injunctive relief.

12.2 Public Statements

Except as set forth below, the Released Parties and their attorneys, including all attorneys of record in the above-referenced lawsuit, or any other persons employed by or affiliated with their respective law offices, and the City Attorney, further agree not to disclose voluntarily to any media representative, any media organization or publisher, or to make or cause to be published, including in any newspaper, magazine or on the radio, television, social network, or internet, any characterization of fault or liability by any party, or characterization concerning the amount of the settlement paid by or on behalf of any individual party. To the extent that any member, representative or employee of any news media inquires about the claims made in the Litigation or the status of the Litigation or settlement, the responses of “The claim has been concluded,” or “no comment” will not cause a breach of this agreement, and the City Attorney shall also have discretion to respond to media questions relative to why the settlement is in the best interests of the City of Milwaukee. The Released Parties acknowledge that the City Attorney will endeavor to be the spokesperson for the Plaintiff; however, individual officials of the City of Milwaukee will not be bound by this paragraph 12.2. To the extent that the City Attorney becomes aware of any public statement, comments or disclosures made or to be made by individual officials of the City of Milwaukee, the City Attorney agrees to endeavor to give the Released Parties notice of such public statements, comments, or disclosures.

Notwithstanding the foregoing, the Parties will work together to issue a single joint media statement relative to the resolution of the Litigation. The statement will be issued jointly and the Parties will have joint approval over any such media statement. In the event that the Parties cannot agree on such a joint media statement, the Parties will respond to media inquiries as set forth above.

For purposes of this paragraph 12.2, the term “City Attorney” includes the deputy city attorneys and any assistant city attorney who has been an attorney of record in the Litigation.

13.0 **Dismissal of Litigation**

The Parties agree that upon the signing of this Release and upon payment of the Settlement Funds, they will cause a Stipulation and Order of Dismissal in the Litigation to be filed stipulating that the all portions of Litigation be dismissed with prejudice and without an award of costs or attorneys’ fees to any party.

14.0 **Binding Effect**

This Agreement shall be binding upon, and insure to the benefit of and be enforceable by, the Parties and their respective heirs, agents, successors, legal representatives and assigns.

15.0 **Invalid Provisions**

If any term or part of this Agreement shall be determined to be invalid, illegal, or unenforceable in whole or in part, the validity of the remaining part of such term or the validity of any other term of this Agreement, shall not in any way be affected.

16.0 **Complete Agreement**

Except as otherwise expressly provided herein, this Agreement represents the entire agreement between the Parties regarding the subject matter hereof and supersedes all prior or contemporaneous written or oral agreements, promises, representations and/or understandings between the Parties regarding the subject matter of this Agreement.

17.0 **Authority**

The Released Parties represent that the attorney and/or authorized representative signing this Mutual Settlement Agreement and Full Release on their behalf has the necessary authorization to enter into this Settlement Agreement and Full Release and that this Agreement constitutes the valid, binding and legal obligations of all the Parties enforceable in accordance with its terms.

18.0 **Execution of Agreement**

This Agreement may be executed in any number of counterparts, all of which will constitute a single Agreement, and shall not be binding between the parties unless and until it is executed by each party hereto. The Agreement may be executed by facsimile or by email and shall become binding upon the Parties once executed copies have been exchanged.

19.0 **Miscellaneous**

This Agreement is acknowledged by the Parties to be the result of extensive good faith negotiations. The parties acknowledge and agree that this Agreement is the result of the efforts and the work product of each one of the Parties and that no party will be construed to have been the party responsible for drafting it.

CITY OF MILWAUKEE

Dated: _____

By: _____

Grant F. Langley
City Attorney
Attorney for Plaintiff

DEFENDANTS:

SIMPSON GUMPERTZ & HEGER INC.

Dated: _____

By: _____

Name: _____

Title: _____

ENGBERG ANDERSON, INC.

Dated: _____

By: _____

Name: _____

Title: _____

LEXINGTON INSURANCE COMPANY, A
MEMBER OF THE AMERICAN
INTERNATIONAL GROUP

Dated: _____

By: _____

Name: _____

Title: _____

BLOOM COMPANIES, LLC

Dated: _____

By: _____

Name: _____

Title: _____

ENDURANCE AMERICAN SPECIALTY
INSURANCE COMPANY

Dated: _____

By: _____

Name: _____

Title: _____