

**SETTLEMENT AND RELEASE AGREEMENT**

*Scope of Agreement*

1. The City of Duluth (“City”) and Cave Enterprises Operations LLC, aka (“Defendant”). City and Defendant (collectively the “parties”), hereby agree to enter into this Settlement Agreement (“Agreement”) under the below terms and conditions.
2. The City commenced legal action against Defendant in the Saint Louis County District Court of the State of Minnesota in City of Duluth v. Cave Enterprises Operations LLC, St. Louis County District Court File No. 69DU-CV-25-822 (the “Action”), wherein City alleges that Defendant violated Ordinance No. 10571 which established minimum standards for earned sick and safe time (“ESST”) during the time period in which Ordinance No. 10571 (the “ESST Ordinance”) was in effect, allegedly causing damages to individual employees, the City, and the public.
3. This Agreement is made and entered into as of the last day set forth on the signature page (“Effective Date”) and applies to and is binding only upon the Parties.
4. The City and Defendant have entered into this Agreement to avoid the risks, expense, and burdens of litigation and to voluntarily resolve the Action. The Parties agree that it is in the parties’ best interests, and the City believes that it is in the public’s best interest, to resolve the Action on mutually agreeable terms.
5. The City and Defendant acknowledge that this Agreement does not constitute an admission of liability by Defendant.
6. It is the Parties’ express intention not to make any third party a beneficiary of this Agreement.
7. This Agreement constitutes full settlement and resolution of the Action.

*Obligations of the Parties*

8. The City and Defendant agree that each obligation set forth in this section is material and reasonable.
9. **Release of claims.** In exchange for the Defendant agreeing to the obligations and payments hereunder, City agrees to release Defendant from all claims asserted in the Action and all claims that could have been brought against Defendant under the ESST Ordinance, subject to the following limitations:
  - a. Nothing in this Agreement shall release Defendant from any claim brought by the City for breach of this Agreement, and the foregoing release in favor of Defendant shall not place any limitation on Defendant’s obligations under this Agreement. Should Defendant be found to be in breach of this Agreement, Defendant agrees that

the City may reserve its Complaint and that any such pleading shall relate back to the date the Complaint was originally served.

- b. Defendant represented to the City that the individuals listed in Schedule 1 are the only employees of Defendant who are entitled to ESST under the ESST Ordinance and that it provided accurate hours worked and hourly pay rate data for these employees. The corresponding payment amounts were calculated by dividing the number of hours worked by 50 and multiplying that result by the hourly rate. The City has relied upon these representations in the course of these proceedings and in entering into this Agreement. If the City discovers that Defendant engaged in fraud, misrepresentation, negligence, recklessness, or other intentional failure to provide documents or information to the City resulting in miscalculated payments to any individual's detriment or the exclusion of any individual from Schedule 1, then the City may pursue claim a claim for fraud, misrepresentation, negligence, recklessness or intentional failure to provide documents or information to the City against Defendant. The City may seek liability for damages, lost wages, and reasonable attorneys' fees. Nothing in this Agreement shall release Defendant from any such claim(s) contemplated in this subparagraph.
10. **Settlement payments.** In exchange for the foregoing release of claims, Defendant agrees to issue payments under the terms below.
  11. Defendant shall make payments to individuals as compensation for lost wages pursuant to the attached **Schedule 1**.
    - a. For payment to an individual who is a current employee, Defendant shall pay the amount owed through Defendant's normal payroll processes, accompanied by communication explaining what the payment is for.
    - b. For payment to an individual who is not a current employee, Defendant shall send payment via US mail to the last known confirmed address of the individual, accompanied by communication explaining what the payment is for. Defendant may utilize another method to issue payment if agreed to in writing by the individual.
    - c. For any individual who cannot be located, Defendant shall remit payment into an escrow account with the Court or hold the funds in Defendant's attorney's IOLTA account, while Defendant continues efforts to locate the individual.
    - d. If, on or after **January 1, 2029**, an individual has not been located or has not cashed payment issued to them by Defendant, then such payment is presumed abandoned and Defendant may proceed under the provisions of the Minnesota Uniform Disposition of Unclaimed Property Act, including obtaining relief from liability by payment under Minn. Stat. §345.44.
    - e. Defendant shall provide a report to the City thirty (30) days after this Agreement has been executed, then quarterly thereafter - meaning on or before the last business day of the months of March, June, September, and December - regarding the progress Defendant has made on payments to individuals. This reporting obligation ceases

either when all payments have been received by all individuals or when Defendant has obtained relief from its liability for payment under Minn. Stat. §345.44, whichever is earlier. For this paragraph, report means written correspondence describing the status of payment for all individuals in Schedule 1 and sent via U.S. mail to the City Attorney's Office, c/o Paige Orcutt at 411 W. 1<sup>st</sup> Street, Room 440, Duluth, MN 55802.

- f. Defendant may utilize a settlement administrator to meet its obligations under this Section. Defendant will bear all costs associated with the use of the settlement administrator.
- 12. Defendant shall pay a civil penalty to the City of Duluth in the amount of **\$20,000.00** by no later than **fourteen (14) calendar days** after this Agreement has been executed.
- 13. Defendant shall pay City's costs and reasonable attorneys' fees incurred up to the date of submission of a Stipulation for Dismissal to the Court. Defendant shall issue payment for such attorneys' fees no later than **fourteen (14) calendar days** after the submission of the Stipulation for Dismissal.
- 14. **Dismissal of Action.** Following execution of the Agreement and receipt of payment by the City of Defendant's civil penalty, the City agrees to dismiss the Action with prejudice. The parties shall execute and submit to the Court a Stipulation for Dismissal with prejudice.

#### *Additional Terms of Agreement*

- 15. Defendant acknowledges and agrees that it retains its responsibility for and shall comply with any and all laws governing employers regarding tax treatment, withholding, and reporting of the issued payments for lost wages to individuals. Defendant is not responsible for how the individuals ultimately report or treat these payments with respect to their individual tax returns. The City undertakes no obligations and makes no representations or warranties of what the appropriate tax treatment may be.
- 16. The City and Defendant acknowledge that the release of information concerning this matter may be governed by the Minnesota Government Data Practices Act.
- 17. The provisions of this Agreement will be severable, and should any provisions be declared by a court of competent jurisdiction to be unenforceable, the remaining provisions of the Agreement will remain in full force and effect.
- 18. This Agreement shall be binding on the City and Defendant's respective successors, heirs, and assigns.
- 19. No party has relied upon any statements, promises, or representations that are not stated in this document. There are no inducements or representations leading to the execution of this Agreement except as herein explicitly contained.
- 20. No modification to this Agreement is valid unless such modification is in writing, identified as an amendment to this Agreement, and signed by the Parties.

21. This Agreement may be executed in multiple counterparts, which will be construed together as if one instrument. Any party will be entitled to rely on an electronic copy of a signature as if it were an original.
22. This Agreement constitutes the entire agreement between the City and Defendant relating to the Action. This Agreement supersedes all prior and contemporaneous discussions, negotiations, understandings, agreements, or promises by any means between them.
23. The Parties were each represented by legal counsel in the negotiation and drafting of this Agreement. This Agreement shall be deemed to have been drafted jointly by the Parties, with no presumption in favor of one party over another in the event of any ambiguity.
24. The Parties each represent that they have read and understand this Agreement, that they have had reasonable time and opportunity to review and discuss this Agreement with their respective legal counsel, and that they intend to be bound by the Agreement. The Parties each represent that they enter into and execute this Agreement voluntarily and without duress or undue influence exerted by, at the direction of, or on behalf of the other party.

IN WITNESS WHEREOF, each Party executes this Agreement on the date set forth opposite the listed name and signature.

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THE UNDERSIGNED HEREBY CERTIFIES THAT THEY HAVE READ AND FULLY UNDERSTAND THE TERMS, PROVISIONS, AND CONDITIONS OF THIS AGREEMENT AND EXECUTE THIS AGREEMENT VOLUNTARILY, WITH AUTHORITY TO BIND THE PARTY REPRESENTED.

FOR THE PLAINTIFF,

CITY OF DULUTH:

By: \_\_\_\_\_

Mayor

ATTEST: \_\_\_\_\_

City Clerk

Dated: \_\_\_\_\_

COUNTERSIGNED:

\_\_\_\_\_

City Auditor

APPROVED AS TO FORM:

\_\_\_\_\_

City Attorney

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THE UNDERSIGNED HEREBY CERTIFIES THAT THEY HAVE READ AND FULLY UNDERSTAND THE TERMS, PROVISIONS, AND CONDITIONS OF THIS AGREEMENT AND EXECUTE THIS AGREEMENT VOLUNTARILY, WITH AUTHORITY TO BIND THE PARTY REPRESENTED.

FOR THE DEFENDANT,

CAVE ENTERPRISES OPERATIONS LLC:

By: \_\_\_\_\_

Date: \_\_\_\_\_

SIGNATURE BLOCK FOR DEFENDANT

Approved as to form:

Dated:

s/\_\_\_\_\_

SIGNATURE BLOCK FOR LEGAL  
COUNSEL

*(end of document)*

4933-6952-3076, v. 3