

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE (“Agreement”) is fully effective as of _____, 2018, and is entered into by the following persons and entities (individually a “Party” and collectively the “Parties”):

1. Liberty Mutual Fire Insurance Company (“Liberty Mutual”);
2. RRC Carlson Brothers, Inc. d/b/a Carlson Bros., Inc. (“Carlson”);
3. Superior Construction Company, Inc. of Duluth, Minnesota (“Superior”);
and
4. City of Duluth, Minnesota (“City”).

The Parties identified in Paragraphs 2 through 4 above are sometimes hereinafter collectively referred to as the “Defendants.”

RECITALS

A. Liberty Mutual was the was the property coverage insurer for the TB Duluth, LLC d/b/a Radisson Hotel Duluth-Harborview and THI Hotel Services, LLC located at 505 W. Superior Street, Duluth, Minnesota (the “Premises”).

B. Carlson, as the general contractor, and Superior, as Carlson’s subcontractor, performed work on the water service for the Premises. This work included removing a large supply pipe that ran from the City’s water service valve to the Radisson. During the course of this work, and in particular after the removal of the Radisson’s service pipe, the City valve dislodged and water poured into the Radisson and damaged a portion of the Radisson’s real and personal property.

C. Liberty Mutual commenced an action against Carlson and Superior in Carlson County, Court File No. 69DU-CV-15-1147 (“the Radisson Action”) claiming reimbursement of damages as a result of a water loss sustained on March 13, 2013 (the “Incident”) to real and personal property at the Premises as well as business loss damages.

D. Carlson and Superior commenced a third-party action for contribution and/or indemnity against the City for all damages claimed by Liberty Mutual in the Radisson Action.

E. The City filed claims against Superior for damages from incidental steam released from City steam pipes it claims were damaged as a result of the Incident, *City of Duluth v. Superior Construction Company, Inc.*, Court File No. 69DU-CV-15-1134 (“the Steam Action”).

F. The Defendants denied all liability for the claims alleged by Liberty Mutual and each other in the Action.

G. The Parties now desire to settle the Released Claims as that term in hereinafter defined.

FOR GOOD AND VALUABLE CONSIDERATION, the Parties agree as follows:

1. **BINDING EFFECT.**

The terms of this Settlement Agreement 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 heirs, successors, personal representatives, insurers, and assigns of each. The parties hereto acknowledge that this Agreement was the result of a mediation session on April 11, 2018 and additional follow-up continuing settlement negotiations conducted by John M. Harens (the “Mediator”) after the conclusion of the April 11, 2018 mediation 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 them with information about their legal rights;
- signing a mediated settlement agreement may adversely affect their legal rights; and
- they should consult an attorney before signing a mediated settlement agreement if they are uncertain about their rights.

In entering this Agreement, each party represents that they have relied upon the advice of their attorney, who is the attorney of their own choice, concerning the legal consequences of the Agreement; that the terms of the Agreement have been completely read and explained to each party by their attorney; and that the terms of this Agreement are fully understood and voluntarily accepted.

2. RELEASE OF CLAIMS.

A. In consideration of the sums described in the exhibit identified in Paragraph 3 below, the sufficiency of which is hereby acknowledged, Carlson, Superior, Liberty Mutual and the City agree to a mutual release of each other and their respective officers, directors, employees, representatives, agents, successors and assigns regarding all claims, past, present and future, known or unknown, arising out of the Incident, including but not limited to (1) all damages at the Radisson Hotel, including but not limited to personal and real property damages and business loss damages; (2) all damages to City property, including but not limited to the steam pipes and property in the tunnel; and (3) all claims that were or could have been made in the Radisson Action and the Steam Action (“the Released Claims”). The Released Claims shall include all damages, whether known or unknown, foreseen or unforeseen, arising out of Released Claims. The Parties acknowledge that the city’s ratification of this mutual release is subject to council and district court approval.

B. The Parties agreed that none of them have agreed, directly or indirectly, to indemnify any other party hereto for any damages sustained by persons who are not parties to this Agreement, including the lost wages and union benefit claims of parties represented by Sean Quinn, including but not limited the claims found in *Adams, et al v. Superior Construction Company, Inc and RRC Carlson*, Court File No. 69DU-CV-15-1430 (“the Union Action”). Any claims, cross-claims, and defenses asserted in the Union Action are not subject to this Agreement.

C. Liberty Mutual and Defendants acknowledge that no promise or inducement has been made or offered except as set forth herein, that the parties execute this Agreement without reliance upon representations or statements by anyone as to the nature and extent of the losses, injuries or damages or the possible consequences thereof.

3. CONSIDERATION.

Liberty Mutual agrees to accept and Carlson and Superior agree to pay the sum identified on confidential Exhibit A on or before _____, 2018. Liberty Mutual will provide W-9 and proper payee identification.

4. NO ADMISSION OF LIABILITY.

The Parties recognize and agree that this settlement is the compromise of disputed claims and that the consideration accepted and paid hereunder is not intended nor shall it be construed by anyone to be an admission of liability by or on behalf of any of the Parties, by whom all such liability is expressly denied, said Parties intending by this settlement merely to avoid litigation and buy their peace.

5. DISMISSAL OF SUIT.

Liberty Mutual, the City, Superior and Carlson hereby authorize and direct their attorneys of record to dismiss with prejudice all claims, counterclaims or cross claims among and between each other in the Action and without costs or disbursements upon receipt by Liberty Mutual of the consideration described in Paragraph 3 herein.

6. ENTIRE AGREEMENT.

The Parties further understand and agree that this document contains the entire Agreement between the Parties with respect to the Project, and that the terms of this Agreement are contractual and not a mere recital. By their signatures below the Parties each represent that they have carefully read this document, know and understand the terms and effect hereof, have fully discussed the terms and effect of this document with their attorneys, and have signed this Agreement as their free and considered act.

7. REVIEW OF AGREEMENT.

Each Party represents and certifies that they (1) have received a copy of this Agreement for review and study before being asked to sign it; (2) have read this Agreement carefully; (3) have been given a fair opportunity to discuss and negotiate the terms of this Agreement; (4) understand its provisions; (5) have been advised and has consulted with their attorney; (6) have determined that it is in its best interest to enter into this Agreement; (7) have not been influenced to sign this Agreement by any statement or representation not contained in this Agreement or that it is subject to as a condition precedent; and (8) enter into this Agreement knowingly and voluntarily.

8. EXECUTION OF AGREEMENT.

This Agreement may be executed by the Parties in any number of counterparts so that the collection of all counterparts or partial executions shall constitute a fully executed and enforceable agreement. A facsimile copy of any execution of a counterpart shall have the same force and effect as if the same were an original. Each signatory hereto represents and warrants that they have the full, sufficient and continuing power, authorization and right to bind the Party to the terms of this Agreement on whose behalf their signature is affixed.

BALANCE OF PAGE NOT USED

Date: _____

Liberty Mutual Fire Insurance Company

By _____

Its _____

Date: _____

RRC Carlson Brothers, Inc. d/b/a Carlson Bros., Inc.

By _____

Its _____

Date: _____

Superior Construction Company, Inc. of
Duluth, Minnesota

By _____

Its _____

Date: _____

City of Duluth, Minnesota

By: _____
Mayor

Attest: _____
City Clerk

Countersigned:

City Auditor

Approved as to form:

City Attorney