

## SETTLEMENT AGREEMENT AND RELEASE

This **Settlement Agreement and Release** (“**Settlement Agreement**”) is effective as of date of last signature below (“**Effective Date**”) by and between The City of Everett, Washington (“**City**”) and Safety National Casualty Corporation, formerly named Safety Mutual Casualty Corporation (“**Safety**”), hereinafter collectively referred to as the “**Parties.**”

### I. DEFINITIONS

1.1 The “**Safety Policies**” includes all known and unknown insurance policies issued by or on behalf of **Safety** that provide coverage to the **City**, including, but not limited to, the policies listed on Exhibit A hereto.

1.2 The “**Safety Companies**” shall mean Safety National Casualty Corporation, formerly named Safety Mutual Casualty Corporation, and all its affiliated or related insurance companies.

1.3 The “**Safety Insurers**” shall mean Safety Companies and any other entity that was in the past or is now affiliated with, related to or associated with the **Safety Companies**, and shall also include, without limitation, their current and former parents, subsidiaries, divisions, affiliates, successors, assigns, directors, officers, agents, employees, and claims administrators.

1.4 “**Claim(s)**” shall mean any and all claims, obligations, liabilities, assertions of right, complaints, cross-complaints, cross-claims, third-party claims, counterclaims, affirmative defenses, writs, demands, disputes, letters, notices, inquiries, requests, petitions, directives, obligations, lawsuits, actions, causes of action, administrative proceedings, governmental or quasi-governmental claims or actions, orders, judgments, settlements, arbitrations, mediations, liens, and any other assertion of liability of any kind or subject matter whatsoever, and as to all of the foregoing whether past, present or future, known or unknown, asserted or unasserted, foreseen or unforeseen, fixed or contingent, direct or indirect, matured or unmatured, liquidated or unliquidated, direct or consequential, and whether based on contract, tort, statute, regulation, equity, admiralty, or otherwise, including but not limited to those seeking damages or other relief because of “property damage” arising out of or relating to the **Site**. “**Claim(s)**” further includes, among other things, without limitation, claims based on contribution, equitable contribution, reimbursement, indemnity, equitable indemnity, subrogation, equitable subrogation, “other insurance rights,” claims predicated on tort, bad faith or extra-contractual liability, or pursuant to any other theory of law or in equity from any source.

1.5 “**Environmental Claim(s)**” shall mean any and all **Claims** asserted by or against **City**, whether based upon **City**’s alleged acts or omissions or status as a generator, user, disposer,

owner/operator or transporter, arising out of actual, alleged, threatened or potential pollution, contamination or any other injurious environmental condition or the actual, alleged or threatened release, discharge, dispersal, escape of, or exposure to, any injurious, toxic or noxious substance, including without limitation any hazardous substance as defined in 42 U.S.C. § 9601, smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, petroleum substances and derivatives, liquids or gases, waste materials or other irritants, contaminants, or pollutants of whatsoever nature, and shall include, without limitation, any such claims involving actual, alleged, threatened or potential bodily injury, property damage or personal injury (including alleged damage or injury to natural resources) as those terms are used or defined in the **Safety Policies** and claims for cleanup or remediation costs, including costs incurred and sums expended for investigation, removal, distribution, treatment or containment. This definition includes claims for damages to natural resources or animal or plant habitat damage of any kind and any claim for related penalties under a statutory scheme. This definition includes claims arising out of any materials sold or delivered by **City** to a third party. This definition is limited to those **Claims** involving and/or arising out of the **Site**, including without limitation any **Claims** involving the offsite migration, transportation, or disposal of materials described in this Section 1.5 that originated at or from the **Site**.

1.6 The “**Site**” means the real property and buildings located at 4000 Railway Ave., Everett, WA 98021, Washington State Department of Ecology VCP No. NW1731, Facility Site No. 33866455.

1.7 “**City**” shall mean the City of Everett, Washington, including without limitation, its current and former divisions, affiliates, successors, assigns, council members, directors, officers, agents, employees and any other entity that was in the past or is now affiliated with, related to or associated with **City**, including any and all entities named as insureds or otherwise entitled to insurance under the **Safety Policies**.

## II. RECITALS

2.1 **WHEREAS**, the City of Everett is the owner of property located at 4000 Railway Ave., Everett, WA 98021, consisting of the tax parcel identified as Parcel 29052100300800, that is also defined above and referred to herein as the “**Site**,” among other parcels located in the general vicinity of the Snohomish River-vicinity “**Riverside**” property or properties the City acquired in approximately December 2005 from Kimberly-Clark Corporation and/or Kimberly-Clark Worldwide, Inc. The **Site** has allegedly been contaminated with various hazardous substances that are recognized to come within the substantive requirements of the Model Toxics Control Act, RCW 70.105D.080 *et seq.*

2.2 **WHEREAS**, as a result of alleged **Environmental Claims** at and around the **Site**, the City of Everett allegedly has incurred and allegedly may continue to incur environmental

investigation and remediation costs and other costs;

2.3 **WHEREAS**, in or around September 2007, the City of Everett submitted an application for inclusion of the Site in the Voluntary Cleanup Program of the Washington Department of Ecology (“Ecology”) with respect to alleged contaminants and/or pollution at the Site; and by letter dated October 29, 2007 and/or by letter dated August 1, 2008, Ecology issued a letter to the City of Everett acknowledging its VCP Claim submissions, referencing “VCP No.: NW1731” and containing Ecology’s “advisory opinion” regarding the City’s completion of a proposed cleanup action under authority of the Model Toxics Control Act (collectively referenced below as the “VCP Claim”);

2.4 **WHEREAS**, **Safety** issued or is alleged to have issued certain insurance policies to the City of Everett;

2.5 **WHEREAS**, on or about October 2022, the City of Everett tendered the VCP Claim and the alleged site contamination at the **Site** to **Safety Companies** for defense and indemnity, including pre-tender costs, under one or more of the **Safety Policies**;

2.6 **WHEREAS**, a dispute exists between the **City** and **Safety** concerning whether **Safety** is obligated, in whole or in part, to defend or indemnify the **City** in connection with the **Site** and/or the VCP Claim, to pay any costs relating to, arising out of and/or in connection with Environmental Contamination at, around, or emanating from the **Site** or otherwise, and whether **Safety** has any obligation to the **City** under the certain alleged insurance policies;

2.7 **WHEREAS**, the **Parties** believe it is in their best interests to fully and finally resolve all disputes and any and all past, present and future disputes, without further litigation or **Claim** proceedings, relating to, arising out of and/or in connection with the **Site**, the VCP Claim, and any and all alleged obligations of the Policies with respect to **Claims** concerning the Site and the VCP Claim;

2.8 **WHEREAS**, the **Parties** acknowledge their belief that confidentiality of the terms of this Settlement Agreement is not feasible for a public entity such as the City of Everett and accordingly, the Parties have determined not to include confidentiality provisions in this Settlement Agreement but leave to each **Party** their respective positions; and

2.9 **WHEREAS**, the **Parties** acknowledge that this **Settlement Agreement**’s effectiveness is explicitly made contingent on approval by the Everett City Council, such that the Everett City Council’s failure to approve this **Settlement Agreement** will render this **Settlement Agreement** (i) null and void, and (ii) improper for either **Party** to subsequently reference in any proceeding between the Parties.

2.10 **NOW THEREFORE**, intending to be legally bound, and in consideration of the mutual promises and other good and valuable consideration set forth herein, the receipt and sufficiency of which is hereby acknowledged, the **Parties** hereby agree as follows:

### III. AGREEMENT

3.1 Payment. For and in consideration of the covenants and releases stated in this **Settlement Agreement**, **Safety** agrees to pay to **City** the sum of \$270,000.00 (the **Settlement Amount**) within thirty (30) days after the mutual execution of this **Settlement Agreement** by the **Parties**, and approval by the Everett City Council, all of which are requirements for the 30-day period to begin.

3.2 Allocation. **City** and **Safety** agree that **Safety** has the right to allocate the **Settlement Amount** amongst its own **Safety Policies** in its discretion. **City** and **Safety** further agree that the **Settlement Amount** shall erode the limits of liability of the **Safety Policies**.

3.3 Release. For and in consideration of the payment of the **Settlement Amount** and the mutual covenants stated in this **Settlement Agreement**, **City** unqualifiedly releases and forever discharges the **Safety Insurers** from and against any past, present or future claims, obligations or liability, known or unknown, existing or hereafter arising, for insurance coverage under the **Safety Policies**, including defense or indemnity, arising out of, relating to or in any way connected to the **Environmental Claims**. The **Parties** agree that this release constitutes a complete and unqualified release by **City** of insurance coverage under the **Safety Policies** for past, present or future insurance coverage claims, known or unknown, of whatsoever kind or nature, in connection with or arising out of the **Environmental Claims** and that the **Safety Insurers** shall have no further liability or obligation whatsoever to **City** in connection with the **Environmental Claims** at the **Site** except for the duties and obligations imposed by this **Settlement Agreement**.

3.4 General Release and Release of Potential Future Claims. **City** understands and agrees that the releases set forth in paragraph 3.3 in this **Settlement Agreement** are general releases of the matters described in that paragraph. **City** further understands and agrees that, in regard to the matters released as set forth in this **Settlement Agreement**, it may have sustained injuries or damages that have not yet manifested and that are presently unknown but, nevertheless, it deliberately intends to and hereby does release these possible future claims against **Safety Insurers** to the extent they arise out of or are based on acts or omissions occurring prior to the date of this **Settlement Agreement** that relate to the **Environmental Claims**.

3.5 Satisfaction of the **Safety Insurers'** Obligations. For and in consideration of the payment of the **Settlement Amount** and the mutual covenants stated in this **Settlement Agreement**, **City** and **Safety** agree that, upon execution of this **Settlement Agreement**, except with respect to the payments specified herein, the **Safety Insurers** shall have no further duties or obligations to **City** based upon, arising out of or related in any way to the **Environmental Claims**. The **Parties** stipulate and agree that payment of the **Settlement Amount** constitutes a full and

complete satisfaction of the **Safety Insurers'** purported obligations, past, present and future, to or on behalf of **City** under the **Safety Policies** with respect to the **Environmental Claims**.

3.6 Release of Extra-contractual Claims. For and in consideration of the payment of the **Settlement Amount** and the mutual covenants stated in this **Settlement Agreement**, **City** further releases and forever discharges the **Safety Insurers** from and against any and all claims or causes of action, including claims for interest, attorneys' fees and litigation costs and for punitive damages, coverage by estoppel and extra-contractual claims based upon alleged acts or omissions of the **Safety Insurers**, if any, known or unknown, arising out of any alleged breach of a duty of good faith and fair dealing, or allegedly constituting unfair defense or settlement practices, insurance or other statutory code violations, bad faith or breach of fiduciary duty in connection with any coverage claims asserted by **City** arising out of or relating to the **Environmental Claims**.

3.7 Contribution Claim Bar Order. The **Parties** shall cooperate in the filing, in a court of competent jurisdiction and at **Safety's** sole discretion, of any action for a good faith settlement determination and contribution claims bar order. Any such filing by **Safety** of an action for a good faith settlement determination and contribution claims bar order regarding the Site shall be brought in Snohomish County Superior Court. The **City** agrees to provide reasonable support for the court's entry of a claims or contribution bar order or ruling that, as a result of this **Settlement Agreement**, **Safety Insurers** are entitled to a bar with respect to any claims or potential claims by other insurance companies regarding any **Environmental Claims** at or relating to the Site, including by the **City's** submission of a Declaration containing sufficient detail for the court to conclude that this **Settlement Agreement** has been negotiated in good faith and is the product of arms' length negotiations and informed negotiations between the Parties and involves compromises of previously-stated legal positions. Pursuant to RCW 4.22.060(3), in the event of a determination that the amount paid for a release, covenant not to sue, covenant not to enforce judgment, or similar agreement was unreasonable, shall not affect the validity of the agreement between the released (in this respect the **Safety Insurers**) and releasing (in this respect **City**) persons, nor shall any adjustment be made in the amount paid between the **Parties** to this **Settlement Agreement**.

3.8 Judgment Reduction/Credit Offset: The **City** warrants that as of the **Effective Date** it does not have a judgment against any other person, including without limitation its insurers, in connection with any of the **Claims** released under this **Settlement Agreement**. If the **City** makes a **Claim** or obtains a judgment against any person or settles any **Claim** with any person with respect to any **Claims** released by this **Settlement Agreement** and in the further event that such other person asserts any **Claim** against any of the **Safety Insurers** for contribution, subrogation or indemnification relating to such **Claims**, the **City** will offer to voluntarily reduce its settlement, judgment or **Claim** against such other person, or will return or reimburse any collected judgment or other monies paid by such other person to the same extent that **Safety** would otherwise have to

pay such other person with respect to **Claims** released by this **Settlement Agreement**, or the **City** will otherwise engage in any conduct that is authorized by Everett City Counsel and reasonably geared to ensure that the **Safety Insurers** will not be obligated to pay any contribution, subrogation or indemnification to such other person with respect to with respect to **Claims** released by this **Settlement Agreement**. Nothing in this Section 3.8 precludes any **Party** from asserting a **Claim** to enforce this **Settlement Agreement**.

3.9 No Waiver of Reinsurance Rights. The releases and waivers set forth in this **Settlement Agreement** shall not apply to or have any effect on the **Safety Companies'** right to any claim for reinsurance.

3.10 Construction. The wording of this **Settlement Agreement** was drafted, reviewed and accepted by legal counsel for **Safety** and **City** prior to its execution by the **Parties**, and neither **Party** shall be entitled to have any wording of this **Settlement Agreement** construed against any other **Party** in the event of any dispute arising in connection with the **Settlement Agreement**.

3.11 Inadmissibility of Agreement. Any evidence of the existence, terms or negotiation of this **Settlement Agreement** shall be inadmissible in any litigation, action or other proceeding between **City** and the **Safety Insurers** (or any of them); however, such evidence may be offered in an action seeking solely to enforce the terms of this **Settlement Agreement**, or in connection with any litigation, action or other proceeding between the **Safety Companies** and their reinsurers, if any. This **Settlement Agreement** has been executed in reliance upon the provisions of Rule 408 of the Federal Rules of Evidence, Rule 408 of the Washington Rules of Evidence, and other similar state law provisions which preclude the introduction of evidence regarding settlement negotiations or agreements.

3.12 No Admission. This **Settlement Agreement** constitutes a compromise of disputed coverage claims and shall not be construed as an admission by **Safety** or **City** that any coverage or defense exists or does not exist under the **Safety Policies**. This **Settlement Agreement** is not intended to be, nor shall it be construed as an admission with respect to policy interpretation or as an admission by any **Party** regarding any duties, rights or obligations under the **Safety Policies**.

3.13 No Assignment. **City** represents that it has not assigned, transferred, conveyed or sold and will not in any manner assign, transfer, convey or sell any claim or cause of action, or part thereof, arising out of or connected with the matters released herein. **City** represents that no subrogation of its claims or causes of action, or any part thereof, has taken place. **City** agrees that it will not affirmatively assist any other person or entity in the establishment or prosecution of any claim or cause of action against the **Safety Insurers** in any way relating to the investigation, handling, defense, indemnity or settlement of claims within the scope of this **Settlement Agreement**, except as required by contract or to comply with its obligations to participate in good faith discovery with other parties and comply with Court rules. **City** further agrees that it will not

take or accept an assignment of coverage or policy rights under any policy of insurance issued by the **Safety Companies** from any other potentially liable or responsible third party with respect to any claim subject to the releases encompassed within this **Settlement Agreement**. Nothing herein prevents **City** from assigning its right to collect the payment referenced in paragraph 3.1.

3.14 Parties Bound. This **Settlement Agreement** is binding upon and for the benefit of **City** and **Safety** and, except as provided herein (including with respect to **Safety Companies** and **Safety Insurers**), is not intended to confer any rights or benefit upon any other person or entity and no person or entity other than the foregoing shall have any legally enforceable rights under this **Settlement Agreement**.

3.15 Reinsurance Cooperation. **City** understands that the **Safety Companies** may present claims to reinsurers for portions of the payment hereunder that may be covered by certain reinsurance contracts. **City** agrees to reasonably cooperate with **Safety Companies** in connection with any such reinsurance claims including, without limitation, the provision of information and access to non-privileged documents that are not available in the **Safety Companies'** files at the **Safety Companies'** reasonable expense.

3.16 Complete Agreement. Except as may be otherwise provided herein, this **Settlement Agreement** contains all the terms and conditions agreed upon by the **Parties** relating to its subject matter and supersedes any and all prior or contemporaneous agreements, negotiations, correspondence, understandings and communications of the **Parties**, whether oral or written, respecting the **Parties'** settlement of the **Environmental Claims**. This **Settlement Agreement** may not be amended or modified by any written or oral statement, communication or agreement, or by a course of conduct or any other manner whatsoever, excepting only by a subsequent written agreement signed by the **Parties**.

3.17 Paragraph Headings. Paragraph headings in this **Settlement Agreement** are provided for the convenience of the **Parties** and form no part of this **Settlement Agreement**. They shall not be used as an aid in the interpretation of the contracting intent of the **Parties**.

3.18 Notice. All notices or other communications which any **Party** desires or is required to give under this **Settlement Agreement** shall be delivered, in writing, as stated below, or to such other individual(s) or addresses as a **Party** may subsequently direct in writing:

To: CITY OF EVERETT

City of Everett  
City Attorney  
2930 Wetmore Ave, Suite 10-C,  
Everett, WA 98201

*With a copy to:*

Matthew Cockrell  
Matthew Cockrell & Associates  
300 Meadowbrook  
Northfield, Illinois 60093  
(847) 386-6803 (office)  
(847) 341-5250 (cell)  
Email: [Mcockrell@CockrellLegal.com](mailto:Mcockrell@CockrellLegal.com)

To: SAFETY INSURERS

Jeremy Kinman  
Account Manager  
Resolute Management Inc.  
141 West Jackson Blvd., Chicago Board  
of Trade Annex, Suite 1800A  
Chicago, IL 60604  
(312) 345-2505  
Email: [jkinman@resolutemgmt.com](mailto:jkinman@resolutemgmt.com)

Vice President, Direct Claims  
Resolute Management Inc.  
141 West Jackson Blvd., Chicago Board  
of Trade Annex, Suite 1800A  
Chicago, IL 60604  
[claimreporting@resolutemgmt.com](mailto:claimreporting@resolutemgmt.com)

J. Richard West  
AVP - Associate General Counsel  
Resolute Management Inc.  
141 West Jackson Blvd., Chicago Board  
of Trade Annex, Suite 1800A  
Chicago, IL 60604  
(312) 345-2539  
Email: [rwest@resolutemgmt.com](mailto:rwest@resolutemgmt.com)



*With copy in the above manner and/or by email to:*

Carl E. Forsberg  
Michael D. Handler  
Forsberg & Umlauf, P.S.  
901 Fifth Ave., Suite 1400  
Seattle, WA 98164  
Email: cforsberg@foum.law;  
mhandler@foum.law  
Phone: (206) 689-8500

3.18 Corporate Authority. The **Parties** represent and warrant that they are corporations or entities duly organized and validly existing in good standing under the laws of one of the states of the United States and that they have taken all necessary corporate and legal actions to approve the making of this **Settlement Agreement** and that the making and performance of this **Settlement Agreement** will not violate any provisions of law or their respective articles of incorporation or bylaws.

3.19 Counterparts. This **Settlement Agreement** shall be executed in duplicate originals, with **City** and **Safety** each retaining one fully executed duplicate original of the **Settlement Agreement**.

3.20 Authorization of Signatures. Each person signing this **Settlement Agreement** on behalf of the **Parties** represents and warrants that he or she is duly authorized to execute this **Settlement Agreement** on behalf of **City** and **Safety**, respectively, and to bind said **Parties** to the terms, conditions, provisions, duties and obligations set forth in this **Settlement Agreement**. Electronic signatures are authorized as valid signatures.

3.21 Severability. If any provision of this **Settlement Agreement** shall be found unenforceable for any reason, that finding shall not affect the enforceability and effect of any other provision herein.

3.22 Binding Effect Upon Successors in Interest. This **Settlement Agreement** is binding upon the successors and assigns of each **Party** and shall inure to the benefit of the successors and assigns of each **Party**.

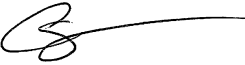
3.23 Additional Documents. The **Parties** agree to cooperate fully and execute any and all supplementary documents, and to take all additional actions that may be necessary or

appropriate to give full force and effect to the basic terms and intent of this **Settlement Agreement**.

3.24 Tax Implications. The **Parties** acknowledge that there have been no warranties or representations regarding the tax implications, if any, of this settlement. Each **Party** has consulted or has had the opportunity to consult with accountants and financial advisors regarding the settlement.

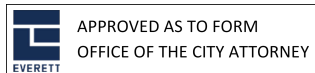
So agreed:

**CITY OF EVERETT**

By:   
Name: Cassie Franklin  
Its: Mayor  
Dated: 07/09/2024

**SAFETY NATIONAL CASUALTY CORPORATION**

By: Tom Ryan  
Name: Thomas Ryan  
Its: Authorized Representative  
Dated: 07/09/2024



Attest:



City Clerk

## **Exhibit A**

### to Settlement Agreement and Release between City of Everett and Safety National Casualty Corporation

<u>Policy No.</u>	<u>Policy Period</u>
XGL 1287 WA	1/1/1984 – 1/1/1985 [Cancelled effective 12/15/1984]
XGL 1414 WA	12/15/1984 – 12/15/1985 [Cancelled effective 6/23/1985]
XGL 1415 WA[alleged/missing policy]	12/15/1984 – 12/15/1985











# Settlement Agreement (City of Everett Safety)\_SD


Final Audit Report

2024-07-09


Created:	2024-06-26
By:	Marista Jorve (mjorve@everettwa.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAA1CgijKx-774YTdama7Zxsoaz4sBqaxMW

## "Settlement Agreement (City of Everett Safety)\_SD" History


-  Document created by Marista Jorve (mjorve@everettwa.gov)  
2024-06-26 - 4:32:02 PM GMT
-  Document emailed to Tim Benedict (TBenedict@everettwa.gov) for approval  
2024-06-26 - 4:33:46 PM GMT
-  Email viewed by Tim Benedict (TBenedict@everettwa.gov)  
2024-06-26 - 5:24:04 PM GMT
-  Document approved by Tim Benedict (TBenedict@everettwa.gov)  
Approval Date: 2024-06-26 - 5:24:22 PM GMT - Time Source: server
-  Document emailed to Tom Ryan (tryan@resolutemgmt.com) for signature  
2024-06-26 - 5:24:26 PM GMT
-  Email viewed by Tom Ryan (tryan@resolutemgmt.com)  
2024-07-09 - 12:38:16 PM GMT
-  Document e-signed by Tom Ryan (tryan@resolutemgmt.com)  
Signature Date: 2024-07-09 - 12:39:22 PM GMT - Time Source: server
-  Document emailed to Cassie Franklin (cfranklin@everettwa.gov) for signature  
2024-07-09 - 12:39:24 PM GMT
-  Email viewed by Cassie Franklin (cfranklin@everettwa.gov)  
2024-07-09 - 2:20:42 PM GMT
-  Document e-signed by Cassie Franklin (cfranklin@everettwa.gov)  
Signature Date: 2024-07-09 - 2:20:56 PM GMT - Time Source: server

 Document emailed to Marista Jorve (mjorve@everettwa.gov) for signature

2024-07-09 - 2:20:58 PM GMT

 Email viewed by Marista Jorve (mjorve@everettwa.gov)

2024-07-09 - 3:31:52 PM GMT

 Document e-signed by Marista Jorve (mjorve@everettwa.gov)

Signature Date: 2024-07-09 - 3:32:05 PM GMT - Time Source: server

 Agreement completed.

2024-07-09 - 3:32:05 PM GMT