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## **CONFIDENTIAL SETTLEMENT AGREEMENT AND GENERAL RELEASE**

This Confidential Settlement Agreement and General Release ("AGREEMENT") is entered into by and between Richard Daly ("DALY") and the Lansing Board of Water and Light, ("BWL") (collectively "Parties").

### **RECITALS**

This AGREEMENT is made with reference to the following facts:

- A. **WHEREAS**, DALY has made allegations of wrongful discharge and other legal violations concerning his employment with BWL and termination therefrom, and has threatened to file a lawsuit against BWL; and
- B. **WHEREAS**, BWL denies the validity of DALY's claims and denies that it is subject to any liability; and
- C. **WHEREAS**, all wages concededly due to DALY have been unconditionally paid; and
- D. **WHEREAS**, all Parties wish to settle their differences without resort to litigation; and
- E. **WHEREAS**, BWL is willing to provide DALY with certain consideration described below, which it is not ordinarily required to, provided DALY releases BWL from any claims DALY has made or might make arising out of his employment with BWL and agrees to comply with the other promises and conditions set forth in this AGREEMENT.

**NOW THEREFORE**, in consideration of the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties agree to be legally bound by the following terms and conditions, which constitute full settlement of any and all disputes between them:

- 1. **Recitals:** The Parties acknowledge that the "WHEREAS" clauses preceding paragraph 1 are true and correct, and are incorporated herein as material parts to this AGREEMENT.
- 2. **Definitions:** Throughout this AGREEMENT, the term "BWL" shall include the Association and any member, board member, officer, director, trustee, agent, employee, or insurer of BWL or its successors.
- 3. **Settlement Sum and Letter of Reference:** As consideration for signing this AGREEMENT and compliance with the promises made herein, BWL agrees to:
  - (A) Pay to DALY the equivalent of two months salary, Fourteen Thousand Eight Hundred Seventy-five DOLLARS AND 0/100 CENTS (\$14,875). less lawful

deductions. This amount will be included in the 2007 W-2 issued to him by the BWL, and

(B) Provide DALY with the letter of recommendation attached to this agreement.

This AGREEMENT shall not become effective, therefore, and none of the benefits set forth in this paragraph will become due or payable, until after the Effective Date of this AGREEMENT (the "Effective Date" defined as the first day after seven (7) days have passed from the date of DALY's execution of this Agreement).

4. **Consideration:** DALY understands and agrees that he would not receive the monies and/or benefits specified in paragraph 3, above, but for his execution of this AGREEMENT and the fulfillment of the promises contained herein.
5. **General Release of Claims:** In exchange for, and in consideration of, the payments, benefits, and other commitments described above, which is being executed contemporaneously with this AGREEMENT, DALY, for himself and for each of his heirs, executors, administrators, and assigns, hereby fully releases, acquits, and forever discharges BWL and each of its predecessors, successors and assigns, parent corporations, subsidiary corporations, affiliated corporations, and the officers, directors, shareholders, partners, employees, attorneys and agents, past and present, of each of the aforesaid entities ("Related Persons") of and from any and all claims, liabilities, causes of action, damages, costs, attorneys' fees, expenses, and compensation whatsoever, of whatever kind or nature, in law, equity or otherwise, whether known or unknown, vested or contingent, suspected or unsuspected, that DALY may now have, has ever had, or hereafter may have relating directly or indirectly to the allegations raised by DALY, including, but not limited to, claims for wages, which, as set forth in "WHEREAS" clause "C" preceding paragraph 1 of this AGREEMENT, as well as paragraph 7 of this AGREEMENT, have been fully paid to DALY prior to the execution of this AGREEMENT, or are fully paid by way of paragraph 3 of this AGREEMENT; back pay; front pay; reinstatement; damages; or benefits. DALY also releases any and all claims he may have that arose prior to the date of this AGREEMENT, and hereby specifically waives and releases all claims, including, but not limited to, those arising under Title VII of the Civil Rights Act of 1964, as amended, the Civil Rights Act of 1991; the Equal Pay Act; the Americans With Disabilities Act of 1990; the Rehabilitation Act of 1973, as amended; the Age Discrimination in Employment Act, as amended; Sections 1981 through 1988 of Title 42 of the United States Code, as amended; the Immigration Reform and Control Act, as amended; the Workers Adjustment and Retraining Notification Act, as amended; the Occupational Safety and Health Act, as amended; the Sarbanes-Oxley Act of 2002; the Consolidated Omnibus Budget Reconciliation Act (COBRA); the Employee Retirement Income Security Act of 1974, as amended; the National Labor Relations Act; and any and all state or local statutes, ordinances, or regulations, as well as all claims arising under federal, state, or local law involving any tort, employment contract (express or implied), public policy, wrongful discharge, or any other claim. DALY also releases any and all claims he may have that arose prior to the date of this AGREEMENT under the Family and Medical Leave Act and the Fair Labor Standards Act.

6. **Affirmations:** DALY represents and affirms that he has been paid and/or received all leave (paid or unpaid), compensation, wages, bonuses, commissions, and/or benefits to which he may be entitled and that no other leave (paid or unpaid), compensation, wages, bonuses, commissions, and/or benefits are due him, except as provided for in this AGREEMENT.
7. **No Further Employment:** DALY acknowledges that he resigned from his employment with BWL effective July 20, 2007. DALY permanently, unequivocally, and unconditionally waives any and all rights DALY may now have, may have had in the past, or may have in the future to obtain or resume employment with BWL. DALY agrees never to apply for employment with BWL, its parent, successors, affiliates, and subsidiaries. In the event that DALY is ever mistakenly employed by BWL, its parent, successors, affiliates, and/or subsidiaries, DALY agrees to have his employment terminated with no resulting claim or cause of action against BWL, its parent, successors, affiliates, and/or subsidiaries.
8. **No Assignment:** The Parties represent and warrant that no person other than the signatories hereto had or has any interest in the matters referred to in this AGREEMENT, that the Parties have the sole right and exclusive authority to execute this AGREEMENT, and that the Parties have not sold, assigned, transferred, conveyed, or otherwise disposed of any claim, demand or legal right that is the subject of this AGREEMENT.
9. **Confidentiality:** The BWL agrees that this AGREEMENT is confidential and will hold it in strict confidence except to the extent the AGREEMENT or its terms are subject, if at all, to disclosure by the Freedom of Information Act. Additionally, in consideration of the obligations under this AGREEMENT, DALY agrees that this AGREEMENT and the terms and conditions hereof, are strictly, and shall forever remain, confidential, and that neither DALY nor his heirs, agents, executors, administrators, attorneys, legal representatives or assigns shall disclose or disseminate, directly or indirectly, any information concerning any such terms to any third person(s), including, but not limited to, representatives of the media or other present or former associates of BWL, under any circumstances, except DALY may disclose the terms of this AGREEMENT to his attorney, accountant, tax advisor, the Internal Revenue Service, or as otherwise required by law ("Third Parties"), provided, however, that the Third Parties to whom such disclosure is made shall agree in advance to be bound by the terms of this paragraph 10 and all of its subparts.
  - (A) If DALY is required to disclose this AGREEMENT, its terms or underlying facts pursuant to court order and/or subpoena, DALY shall notify BWL, in writing via facsimile or overnight mail, within 24 hours of his receipt of such court order or subpoena, and simultaneously provide BWL with a copy of such court order or subpoena. The notice shall comply with the notice requirements set forth below in paragraph 21. DALY agrees to waive any objection to BWL's request that the document production or testimony be done in camera and under seal.

- (B) DALY acknowledges that a violation of paragraph 9 or any of its subparts would cause immeasurable and irreparable damage to BWL in an amount incapable of precise determination. Accordingly, DALY agrees that BWL shall be entitled to injunctive relief in any court of competent jurisdiction for any actual or threatened violation of paragraph 10 and all of its subparts, in addition to any other available remedies.
- (C) The Parties agree that the terms of paragraph 9 and all of its subparts are a material inducement for the execution of this AGREEMENT. Any disclosure or dissemination, other than as described above in paragraph 9 and 10(A) will be regarded as a breach of this AGREEMENT and a cause of action shall immediately accrue for damages and injunctive relief. The Parties agree that damages sustained by such breach would be impractical or extremely difficult to determine and, therefore, agree that in the event that DALY, or any of the individuals identified in paragraph 10(A), violates this paragraph 9 or any of its subparts, DALY shall pay BWL liquidated damages in the sum of ONE THOUSAND DOLLARS AND 0/100 CENTS (\$1,000.00) for each violation. The Parties further agree that such damages are not intended to be, and shall not be construed as, a penalty.
10. **Non-Disparagement:** DALY and the BWL mutually agree that they will not provide information, issue statements, or take any action, directly or indirectly, that would cause the other party embarrassment or humiliation or otherwise cause or contribute to either party being held in disrepute.
11. **Governing Law and Jurisdiction:** This AGREEMENT shall be governed and conformed in accordance with the laws of the State of Michigan. In the event DALY or BWL breaches any provision of this AGREEMENT, DALY and BWL affirm that either may institute an action to specifically enforce any term or terms of this AGREEMENT.
12. **No Admission of Liability:** The parties agree that neither this AGREEMENT nor the furnishing of the consideration for this AGREEMENT shall be deemed or construed at anytime for any purpose as an admission by BWL of any liability or unlawful conduct of any kind.
13. **Headings:** The headings of the provisions herein are intended for convenient reference only, and the same shall not be, nor be deemed to be, interpretative of the contents of such provision.
14. **Modification of Agreement:** This AGREEMENT may not be amended, revoked, changed, or modified in any way, except in writing executed by all Parties. DALY agrees not to make any claim at any time or place that this AGREEMENT has been verbally modified in any respect whatsoever. No waiver of any provision of this AGREEMENT will be valid unless it is in writing and signed by the party against whom such waiver is charged. The parties acknowledge that only the General Counsel of BWL has the authority to modify this AGREEMENT on behalf of BWL.

15. **Interpretation:** The language of all parts of this AGREEMENT shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the Parties. This AGREEMENT has been negotiated by and between attorneys for the Parties and shall not be construed against the "drafter" of the AGREEMENT.
16. **Severability:** The parties explicitly acknowledge and agree that the provisions of this AGREEMENT are both reasonable and enforceable. However, if any portion or provision of this AGREEMENT (including, without implication of limitation, any portion or provision of any section of this AGREEMENT) is determined to be illegal, invalid, or unenforceable by any court of competent jurisdiction and cannot be modified to be legal, valid, or enforceable, the remainder of this AGREEMENT shall not be affected by such determination and shall be valid and enforceable to the fullest extent permitted by law, and said illegal, invalid, or unenforceable portion or provision shall be deemed not to be a part of this AGREEMENT. To the extent any provision herein that relates to the general release of claims described in paragraph 5 above is deemed to be illegal, invalid, or unenforceable, BWL is not obligated to honor any of the terms set forth herein and DALY shall return any amounts paid by BWL.
17. **Binding Nature of Agreement:** This AGREEMENT shall be binding upon each of the Parties and upon their respective heirs, administrators, representatives, executors, successors, and assigns, and shall inure to the benefit of each party and to their respective heirs, administrators, representatives, executors, successors, and assigns.
18. **Entire Agreement:** This AGREEMENT sets forth the entire AGREEMENT between the parties hereto, and fully supersedes any prior obligation of BWL to DALY. DALY acknowledges that he has not relied on any representations, promises, or agreements of any kind made to him in connection with her decision to accept this AGREEMENT, except for those set forth in this AGREEMENT.
19. **Notice Requirements:** Each notice ("Notice") provided for under this AGREEMENT, must comply with the requirements as set forth in this paragraph. Each Notice shall be in writing and sent by facsimile or depositing it with a nationally recognized overnight courier service that obtains receipts (such as Federal Express or UPS Next Day Air), addressed to the appropriate party (and marked to a particular individual's attention, if so indicated) as hereinafter provided. Each Notice shall be effective upon being so telecopied or deposited, but the time period in which a response to any notice must be given or any action taken with respect thereto shall commence to run from the date of receipt of the Notice by the addressee thereof, as evidenced by the return receipt. Rejection or other refusal by the addressee to accept or the inability to deliver because of a changed address of which no Notice was given shall be deemed to be the receipt of the Notice sent. Any party shall have the right from time to time to change the address or individual's attention to which notices to it shall be sent by giving to the other party at least ten (10) days prior Notice thereof. The Parties' addresses for providing Notices hereunder shall be as follows:

BWL  
c/o Kiffi Y. Ford  
201 Townsend, Suite 900  
Lansing, Michigan 48933

Dan Hankins  
Hankins & Flanigan, PC  
8520 Coats Grove Road  
P.O. Box 18  
Woodland, Michigan 48897

20. **Selective Enforcement:** The Parties agree that the failure of any party to enforce or exercise any right, condition, term, or provision of this AGREEMENT shall not be construed as or deemed a relinquishment or waiver thereof, and the same shall continue in full force and effect.
21. **Compliance with Older Workers Benefit Protection Act:** DALY, being 40 years of age or older, is advised of and acknowledges the following:
- (A) **Twenty-One Day Consideration Period.** DALY shall have up to twenty-one (21) days to consider and accept the terms of this AGREEMENT by fully executing and notarizing it below, and returning it to BWL's counsel, as identified in paragraph 20. During this twenty-one (21) day period and before signing this AGREEMENT, DALY is encouraged to consult with an attorney regarding the terms and provisions of this AGREEMENT, at his own expense. The terms and provisions of this AGREEMENT are null and void if not accepted by DALY within the twenty-one (21) day period. DALY may sign the AGREEMENT prior to the conclusion of the twenty-one (21) day period.
- (B) **Release of Age Discrimination in Employment Act Claims.** By signing this AGREEMENT, DALY waives any claims he has or might have against BWL under the Age Discrimination in Employment Act ("ADEA") that accrued prior to the date of DALY's execution of the AGREEMENT.
- (C) **Revocation Period.** DALY shall have seven (7) calendar days from the date he signs this AGREEMENT to revoke the AGREEMENT by notifying BWL in writing prior to the expiration of the seven (7) calendar day period. Any revocation within this period must state "I hereby revoke my acceptance of our Agreement and General Release." The written revocation must be personally delivered to BWL in the manner proscribed by paragraph 20 above, and must be postmarked within seven (7) calendar days of DALY's execution of this AGREEMENT. This AGREEMENT shall not become effective or enforceable until the revocation period has expired. If the last day of the revocation period is a Saturday, Sunday, or legal holiday, then the revocation period shall not expire until the next following day that is not a Saturday, Sunday, or legal holiday.

DALY IS HEREBY ADVISED THAT HE HAS UP TO TWENTY-ONE (21) CALENDAR DAYS TO REVIEW AND CONSIDER THIS AGREEMENT AND IS HEREBY ADVISED IN WRITING TO CONSULT WITH HIS ATTORNEY PRIOR TO EXECUTION OF THIS AGREEMENT.

DALY AGREES THAT ANY MODIFICATIONS, MATERIAL OR OTHERWISE, MADE TO THIS AGREEMENT DO NOT RESTART OR AFFECT IN ANY MANNER THE ORIGINAL TWENTY-ONE (21) CALENDAR DAY CONSIDERATION PERIOD.

HAVING ELECTED TO EXECUTE THIS AGREEMENT, TO FULFILL THE PROMISES AND TO RECEIVE THE SUMS AND BENEFITS IN PARAGRAPH 3 ABOVE, DALY FREELY AND KNOWINGLY, AND AFTER DUE CONSIDERATION, ENTERS INTO THIS AGREEMENT INTENDING TO WAIVE, SETTLE, AND RELEASE ALL CLAIMS HE HAS OR MIGHT HAVE AGAINST BWL.

ACCEPTED AND AGREED:

By:

Richard Daly  
Richard Daly

11/29/07  
Date

For Lansing Board of Water and Light

X By:

[Signature]  
Its: General Manager

12-4-07  
Date

Rhonda Jones  
Rhonda Jones, Corporate Secretary

12-5-07  
Date

[Signature]  
BOARD OF WATER & LIGHT  
LEGAL COUNSEL  
12/4/07