

SETTLEMENT, MUTUAL RELEASE AND COVENANT NOT TO SUE

This Settlement, Mutual Release and Covenant Not to Sue is made on this ____ day of September 2020 (the "Effective Date") by and between the City of Manitowoc ("City") and Newell Operating Company ("NOC"), each referred to herein as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, this matter pertains to the Newton Gravel Pit, 3130 Hecker Road, Manitowoc, Wisconsin, WI/WDNR BRRTS Activity # 02-36-000268, which is owned by the City (the "Facility"); and

WHEREAS, the City and Newell Brands Inc., NOC's parent, have been identified as responsible parties for the contamination at and emanating from the Facility (such contamination hereafter defined as the "Site") by the Wisconsin Department of Natural Resources ("WDNR"); and

WHEREAS, the City has incurred and continues to incur significant costs to investigate and remediate the Site; and

WHEREAS, the Parties dispute their respective liability for past and future costs incurred by the City in connection with the Site, and wish to resolve their dispute concerning their respective liability for costs incurred by the City arising from the Site through December 31, 2019; and

WHEREAS, by entering into this Settlement, Mutual Release and Covenant Not to Sue, the City and NOC intend to fully and finally resolve all past and present Claims, as defined herein, arising from costs incurred by the City through December 31, 2019, and arising out of the Site.

NOW, THEREFORE, for the good and valuable consideration recited below and such other good and valuable consideration as may have been received, the Parties agree as follows:

1. **Definition of Claims.** For purposes of this Settlement, Mutual Release and Covenant Not to Sue, "Claims" means any and all claims at law or in equity, actions or causes of action of any kind, suits, demands, judgments, assessments, awards, damages, injuries, losses, penalties, fines, sanctions, charges, costs, obligations, liabilities (including without limitation sums paid in settlement of Claims), or other expenses (including without limitation reasonable fees and costs for attorneys, consultants, appraisers, accountants, witnesses, investigators and any other agents of the Parties), court costs and litigation expenses, and disbursements, and shall include, without limitation, claims for personal injury or death, property damage, statutory or regulatory claims under environmental laws (including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601 *et seq.*), claims for contribution, investigation of property conditions, and any clean-up, remedial, removal, or restoration work. "Claims" shall include all special, incidental, consequential, exemplary, or punitive damages.

2. The City Releases and Covenants Not to Sue NOC for Past Costs. In consideration of the One Million Seven Hundred One Thousand Three Hundred Sixteen Dollars (\$1,701,316) to be paid by NOC to the City (the "Payment") as reflected in Paragraph 4 herein, and NOC's other covenants and obligations under this settlement, the City hereby releases, forever discharges and covenants not to sue NOC, its direct and indirect parents and subsidiaries, predecessors, successors and affiliates, and their respective officers, directors and employees, from past and present Claims arising out of the Site, whether asserted or not, known or unknown, developed or undeveloped, which the City has or may have against NOC, its direct or indirect parents, subsidiaries, predecessors, successors and affiliates, and their respective officers, directors and employees, in respect thereof, seeking recovery of costs incurred by the City on or prior to December 31, 2019. The City expressly reserves all Claims it may have against NOC for the City's costs arising out of the Site incurred by the City on or after January 1, 2020. For avoidance of doubt, costs "incurred" include those costs the City has paid or for which the City is liable as of December 31, 2019, but exclude those costs associated with work that is otherwise anticipated or which the City has committed or has been authorized to perform beginning January 1, 2020, or thereafter.
3. NOC's Release of and Covenant Not to Sue the City for Past Costs. In consideration of the City's assumption of liability for its past costs remediating and otherwise maintaining the Site and the City's other covenants and obligations under this settlement, NOC, on behalf of its parents, subsidiaries, and affiliates and their respective officers, directors and employees, hereby releases, forever discharges and covenants not to sue the City from past and present Claims arising out of, resulting from the Site, whether asserted or not, known or unknown, developed or undeveloped, which NOC has or may have against the City in respect thereof, seeking recovery of costs incurred by NOC on or prior to December 31, 2019.
4. Payment. Within thirty days of the Effective Date, NOC shall make payment in the amount of One Million Seven Hundred One Thousand Three Hundred Sixteen Dollars (\$1,701,316) to the City by check made payable to the City of Manitowoc.
5. Miscellaneous.
 - a. This Settlement, Mutual Release and Covenant Not to Sue constitutes a compromise and settlement and is not to be interpreted or construed as an admission by any of the Parties of any issue of fact, liability, causation, wrongdoing or omission of any kind, or of the merit or lack of merit of any of their positions. Each Party hereto expressly denies any liability to the other as well as any liability for the Site. Neither this Settlement, Mutual Release and Covenant Not to Sue nor the consideration described herein, shall be used as evidence of liability or wrongdoing at any time in any way, nor used or cited as a basis for any future allocation of costs in connection with the Site.
 - b. For the purpose of construction and interpretation, this Settlement, Mutual Release and Covenant Not to Sue shall be deemed to have been drafted jointly by the Parties and shall not be construed against either Party.

- c. Each Party represents that it has had the opportunity to consult with its attorneys, and has carefully read and understands the scope and effect of the provisions of this Settlement, Mutual Release and Covenant Not to Sue.
- d. This Settlement, Mutual Release and Covenant Not to Sue may be signed in counterparts, each of which shall be deemed original, but all of which together shall constitute one and the same instrument. A signature transmitted by facsimile or electronically shall be deemed an original. This Settlement, Mutual Release and Covenant Not to Sue shall be deemed to have been executed when all Parties have signed and delivered the same or separate copies thereof.
- e. NOC does hereby represent and warrant that the NOC signatory is duly authorized to execute and deliver this Settlement, Mutual Release and Covenant Not to Sue in such manner as to create legal, valid, and enforceable obligations of NOC.
- f. The City does hereby represent and warrant that the City signatory is duly authorized to execute and deliver this Settlement, Mutual Release and Covenant Not to Sue in such manner as to create legal, valid, and enforceable obligations that bind the Parties in accordance with the terms hereof.
- g. This Settlement, Mutual Release and Covenant Not to Sue shall be interpreted and enforced in accordance with the laws of Wisconsin. Any litigation arising hereunder shall be filed and maintained only in the Circuit Court for Manitowoc County.
- h. No modifications, amendment, or waiver of any provision of this Settlement, Mutual Release and Covenant Not to Sue shall be effective unless approved in writing by all Parties. Any Party's failure at any time to enforce any of the provisions of this Settlement, Mutual Release and Covenant Not to Sue shall in no way be construed as a waiver of such provisions and shall not affect such party's right thereafter to enforce each and every provision hereof in accordance with its terms.
- i. The undersigned hereby declare and represent that no promise, inducement, representation, or agreement not herein expressed or referenced has been made between the Parties. All agreements and understandings between the Parties related to the subject matter herein are embodied and expressed herein.

--REMAINDER OF PAGE LEFT BLANK--

SIGNATURES CONTAINED ON NEXT 2 PAGES

Signed, sealed and delivered this _____ day of September, 2020.


CITY OF MANITOWOC

By: _____
_____ (Name Printed)

By: _____
_____ (Name Printed)

Signed, sealed and delivered this _____ day of September, 2020.

NEWELL OPERATING COMPANY

By: 

Bradford R. Turner (Name Printed)
Chief Legal & Adm. Officer

22837261.1
CH2\23696726.1