

**SETTLEMENT AGREEMENT, COVERNANT NOT TO SUE OR ENFORCE  
JUDGMENT AND RELEASE**

This Settlement Agreement is entered into between Thomas/Wright, Inc. ("TWI") and the City of Portland, Bureau of Environmental Services ("BES"). Collectively, TWI and BES shall be referred to as "parties" and each may individually be referenced as "party."

The term "Contract" shall refer to Contract No . 30824 (the "Contract") between TWI and BES City for certain design work relating to the Fanno Pump Station and Sewer Line project (the "Project"). The reference to "Contract" includes, without limitation, any and all work that was performed, or should have been performed, by TWI pursuant to that agreement.

A. Litigation: The parties agree BES filed a lawsuit against TWI in Multnomah County Circuit Court, Case No. 0712-14686, asserting claims for breach of the Contract and for negligence as more fully described in BES's Third Amended Complaint, which by this reference is fully incorporated herein (the "Litigation").

B. Resolution of Claim: By executing this document both TWI and the City hereby resolve on the express terms herein all claims and disputes of whatever nature that have arisen, or which could have arisen out of the performance of TWI's work, including without limitation TWI's work under the Contract or TWI's work in connection with the Project. The Contract and the Project included without limitation work on both the Multnomah Segment and the Garden Home Segment of the Fanno Creek Basin project.

C. Consideration: The consideration for this agreement is, in part, the payment of the sum of \$85,000 by TWI to BES. This sum includes any and all claims for damages, costs, disbursement, attorney fees and all other demands for payment, including interest. In return, BES accepts the sum noted above, which is less than the amount that it originally sought. In addition, upon payment of the settlement amount, BES agrees to file a dismissal of TWI in the

Litigation with prejudice and without attorney fees, costs, disbursements or expenses of any kind.

D. Mutual Releases: TWI expressly preserves claims against BES if a third party should assert a claim against TWI relating to the Contract, TWI's performance of the Contract or the Project. Otherwise, TWI releases the City, BES, and its officers, employees, agents, assigns, and successors from any and all claims that it could have brought arising out of or relating in any way to the Litigation, the Contract, TWI's performance of the Contract, or the Project.

BES releases TWI, its officers, shareholders, members, partners, directors, employees, agents, insurers, attorneys, representatives, agents, assigns and successors (all whether present or former) and anyone for whose act or omission any of them may be liable, from any and all claims, past, present and future, arising out of or relating in any way to the Litigation, the Contract, TWI's performance of the Contract, or the Project, whether known or unknown, and whether arising in contract, tort (including without limitation negligence or professional negligence) or otherwise.

E. Covenant not to enforce judgment: If a court enters judgment in favor of BES and against TWI in the Litigation pursuant to ORS 31.610(2), or pursuant to any other statute, BES agrees it will not enforce that judgment against TWI. BES reserves the right, however, to execute against any judgment entered in favor of BES and against defendant Ken Leahy Construction, Inc. ("KLC").

F. Hold Harmless: BES agrees and warrants it will defend, indemnify and hold harmless TWI, its officers, agents, employees, shareholders, members, partners, directors, employees, agents, insurers, attorneys, representatives, agents, successors and assigns from any claim asserted against TWI arising out of or relating in any way to existing claims that have been

asserted in litigations by The City against others (including without limitation KLC and Kerr) in connection with the Project. In return TWI agrees to provide reasonable, non financial cooperation with BES should BES have to undertake that defense and will not bill the City for time spent by TWI personnel in any defense by BES of TWI.

G. No Admission of Fault or Liability: The parties agree that the payment made by or on behalf of TWI is not to be construed as an admission of fault or liability by TWI for any of the claims that have or could have been brought by BES. TWI expressly denies liability to BES, or any other person for injuries, costs or damages arising out of the Litigation, the Contract and the construction of all or any part of the Fanno Basin Pump Station and Sewer Line project.

H. Entire Agreement: The parties agree and acknowledge that this Settlement Agreement is a complete, integrated agreement that supersedes all prior negotiations and understandings of any kind that may previously have been made with regard to the claims noted herein. Further, the parties agree that this Settlement Agreement is the entire agreement between them, and that no other promises have been made by either party, either express or implied, in order to induce them to settle, that are not contained herein.

I. Governing Law: The parties agree that this Settlement Agreement shall be construed according the law of the State of Oregon.

J. Amendment: The parties agree that this Settlement Agreement shall not be amended, unless such amendment is in writing and signed by both parties and approved by the City Attorney's Office. TWI understands City employees have no actual or apparent authority to waive the approval of the City Attorney's Office.

K. Successors in Interest: The terms of the Agreement shall be binding upon the successors and assigns of each party hereto.

L. Construction of Agreement. The parties have jointly drafted this settlement agreement. Therefore, the parties agree that it shall not be construed for or against either party in order to resolve any ambiguity.

M. Approval Required. The parties understand that this settlement agreement requires approval of the Portland City Council.

N. Counterparts: This agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

THOMAS/WRIGHT, INC.

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Date

APPROVED AS TO FORM :

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CITY OF PORTLAND

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Date

APPROVED:

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**SETTLEMENT AGREEMENT, COVERNANT NOT TO SUE OR ENFORCE  
JUDGMENT AND RELEASE**

This Settlement Agreement is entered into between EBAA Iron, Inc. ("EBAA") and HD Supply Water Works Group, Inc., fka U.S. Filter Distribution Group, Inc. ("HD Supply") and the City of Portland, Bureau of Environmental Services ("BES"). Collectively, EBAA, HD Supply and BES shall be referred to as "parties" and each may individually be referenced as "party."

A. Litigation: The parties agree BES filed a lawsuit against Ken Leahy Construction, Inc. (KLC) in Multnomah County Circuit Court, Case No. 0712-14686, asserting claims for breach of the contract and for negligence as more fully described in BES's Third Amended Complaint, which by this reference is fully incorporated herein ("the Litigation"). In turn, KLC filed third party claims against EBAA and HD Supply.

B. Resolution of Claims: By executing this document EBAA, HD Supply and BES agree to resolve all claims and disputes of whatever nature that have arisen, or which could have arisen out of the sale and supply of PVC pipe and "Megalug" mechanical joints for PVC pipe on the Multnomah Segment of the Fanno Creek Basin project (the project), and to execute mutual releases herein.

C. Consideration: The consideration for this agreement is, in part, the payment of the sum of \$30,000 by EBAA to BES. This sum includes any and all claims for damages, costs, disbursement, attorney fees and all other demands for payment, including interest. In return, BES accepts the sum noted above, which is less than the amount that it originally sought.

D. Mutual Release: Both EBAA and HD Supply release BES, its officers, employees, agents, assigns, and successors from any and all claims that could have been brought arising out of the project. BES releases both EBAA and HD Supply, their officers, employees, agents, assigns and successors from any and all claims that could have been brought against it arising out of the project, including any and all claims in tort and contract.

E. Covenant not to sue or enforce judgment: BES agrees that in return for the settlement amount noted above it will not sue either EBAA or HD Supply as a result of their connection with the Multnomah Segment of the Fanno Creek Basin project. In addition, if a court enters judgment in favor of BES and against EBAA or HD Supply in the Litigation pursuant to ORS 31.610(2), or pursuant to any other statute, BES agrees it will not enforce that judgment against either EBAA or HD Supply. BES reserves the right, however, to execute against any judgment entered in favor of BES and against defendant Ken Leahy Construction, Inc. (KLC).

F. Hold Harmless: BES agrees and warrants it will hold EBAA and HD Supply, their officers, agents, employees, successors and assigns harmless from any judgment that may be obtained by KLC against either or both of them arising out of KLC's claims in the Litigation. BES also agrees to accept the defense of any claims asserted against EBAA and HD Supply in the Litigation. In return both EBAA and HD Supply agree to reasonably cooperate with BES in the defense of any claims that KLC may assert at trial in the Litigation.

E. No Admission of Liability: The parties agree that the payment made by or on behalf of EBAA and HD Supply is not to be construed as an admission of liability by either EBAA or HD Supply for any of the claims that have or could have been brought by KLC or BES. Both EBAA and HD Supply expressly deny any liability to KLC and/or BES, or any other person for injuries, costs or damages arising out of the contract and the construction of the Multnomah Segment of the Fanno Basin Pump Station and Sewer Line project.

F. Entire Agreement: The parties agree and acknowledge that this Settlement Agreement is a complete, integrated agreement that supersedes and cancels all prior negotiations and understandings of any kind that may previously have been made with regard to the claims noted herein. Further, the parties agree that this Settlement Agreement is the entire agreement

between them, and that no other promises have been made by either party, either express or implied, in order to induce them to settle, that are not contained herein.

G. Governing Law: The parties agree that this Settlement Agreement shall be construed according to the law of the State of Oregon.

H. Amendment: The parties agree that this Settlement Agreement shall not be amended, unless such amendment is in writing and signed by both parties and approved by the City Attorney's Office. EBAA and HD Supply understand City employees have no actual or apparent authority to waive the approval of the City Attorney's Office.

I. Successors in Interest: The terms of the Agreement shall be binding upon the successors and assigns of each party hereto.

J. Construction of Agreement. The parties have jointly drafted this settlement agreement. Therefore, the parties agree that it shall not be construed for or against either party in order to resolve any ambiguity.

K. Approval Required. The parties understand that this settlement agreement requires approval of the Portland City Council.

EBAA IRON, INC.

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Date

APPROVED:

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HD SUPPLY INC.

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Date:

APPROVED:

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CITY OF PORTLAND, BES

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Date

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APPROVED:

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