

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement is entered into between the City of Portland, Bureau of Environmental Services (BES), Ken Leahy Construction Company, Inc. (KLC), HD Supply Inc. (HD Supply) and EBAA Iron, Inc. ("EBAA Iron") Collectively, BES, KLC, HD Supply and EBAA Iron shall be referred to as "parties" and each may individually be referenced as "party."

The term "construction contract" refers to Contract No. 32064 between BES and KLC, effective on approximately December 15, 1998, and includes any and all subsequent change orders and amendments thereto and includes any work that was performed, or should have been performed, pursuant to that agreement.

The term "project" refers to the construction of the Fanno Creek Basin pressure line known as the Multnomah Segment.

A. Litigation

The term "litigation" refers to the lawsuit filed by BES against KLC, Multnomah County Circuit Court Case (MCCC) No. 0712-14686, and any and claims asserted against TWI And KLC all counterclaims pleaded therein.

The term "third-party litigation" refers to the third party complaint filed by KLC against HD Supply and EBAA Iron in MCCC No. 0712-14686, any and all claims asserted against HD and EBAA by KLC and includes any and all counterclaims pleaded therein.

B. Resolution of Litigation

By executing this document, the parties agree to resolve all claims and disputes of whatever nature that have arisen, or could arise, out of the project, the design contract, the construction contract, the litigation, the third-party litigation and any contracts executed between HD Supply and KLC regarding the sale of products used on the project.

C. Consideration

The consideration for this Agreement is, in part, the payment of the sum of \$575,000.00 by KLC to BES. This sum includes any and all claims for damages and all other demands for payment. In return, BES accepts the sum noted above, which is less than the amount that it originally sought, releases KLC from any additional claims it might have as set forth in Paragraph D below.

In addition, BES agrees to dismiss the litigation with prejudice and without costs, disbursements or attorney fees, and KLC agrees to dismiss the third-party litigation with prejudice and without costs, disbursements or attorney fees.

D. Mutual Release

KLC releases BES, HD Supply and EBAA Iron, their officers, employees, agents, assigns, and successors from any and all claims arising in any way out of the project, the design contract, the construction contract, the litigation and the third-party litigation.

BES, HD Supply, and EBAA Iron release KLC, its officers, employees, agents, assigns and successors from any and all claims arising in any way out of the project, the design contract, the construction contract, the litigation and the third-party litigation.

E. No Admission of Liability

KLC and EBAA agree that any payment made to BES is not to be construed as an admission of liability by them, either individually or collectively, for any of the claims that have or could have been brought by BES in the litigation or the third-party litigation.

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 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 the parties and approved by the City Attorney's Office. The parties also understand that 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.

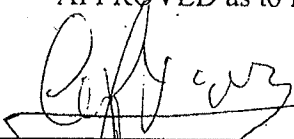
J. Construction of Agreement

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 by ordinance. BES and the City Attorney's office agree to recommend this settlement to the City Council.


APPROVED as to Form:

 1/22/10

 CLIFF WILSON Date
 Of Attorneys for Plaintiff/Third-Party
 Defendant Ken Leahy Construction

 1/22/10

 KEN LEAHY CONSTRUCTION Date
 Will SB — 1/22/10

 1/22/10

 JAMES H. VANDYKE Date
 Of Attorneys for City of Portland, HD
 Supply and EBAA Iron.

 DAN SALTZMAN Date
 City of Portland,