

AV 47748

EXHIBIT "A"

150055

\$ 260,000⁰⁰

8-19-80

SETTLEMENT AGREEMENT

THIS AGREEMENT dated this _____ day of July, 1980, by and between TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON, hereinafter "Tri-Met," the City of Portland, hereinafter "City," JOHN O. MERRILL, JR. and DAVID A. PUGH dba SKIDMORE, OWINGS & MERRILL, hereinafter "SOM," and HENSEL PHELPS CONSTRUCTION CO., hereinafter "Hensel Phelps."

WHEREAS, Tri-Met and the City determined to arrange for the construction of a Transit Mall, hereinafter "Mall," in Portland, Oregon; and

WHEREAS, Tri-Met received a grant from the United States Department of Transportation, Urban Mass Transit Administration, hereinafter "UMTA," to assist in financing such construction; and

WHEREAS, Tri-Met and the City entered into certain agreements incidental to the Mall, and all such agreements are hereinafter collectively referred to as "City writings;" and

WHEREAS, Tri-Met and SOM entered into certain agreements incidental to the Mall, and such agreements are hereinafter collectively referred to as the SOM agreements; and

WHEREAS, on or about February, 1976, Tri-Met and Hensel Phelps entered into a contract for the construction of the Mall; and

WHEREAS, Aetna Casualty & Surety Company posted a labor and material payment and performance bond in behalf of Hensel Phelps; and

WHEREAS, disputes arose between the parties resulting in litigation in the Circuit Court of the State of Oregon for Multnomah County, No. A7806-09443; and

WHEREAS, the parties desire to fully and finally resolve all claims and disputes arising out of the Mall.

NOW, THEREFORE, IT IS HEREBY AGREED:

1. The above recitals are true.

2. The City will arrange for and perform all work necessary to complete and repair the Mall to its satisfaction. Tri-Met has or will pay to City up to \$250,000.00 to be used

to complete and repair the Mall in accordance with Paragraph 3 of the agreement dated July 12, 1979 between City and Tri-Met, plus an additional \$30,000.00.

3. City will enter into a contract with the Henson Company of Oregon, Inc., by which Henson will perform all required granite installation (replacement of broken and loose pieces) according to those plans and specifications and Information to Bidders dated May 15, 1980 for a total of \$15,900.00. Henson will warrant only that the work will be performed in accordance with the City's contract documents.

4. Tri-Met will pay to Hensel Phelps, on behalf of Hensel Phelps and its subcontractors, the balance due under the contract, with change orders, of \$459,749.00.

5. Hensel Phelps, on behalf of itself and its subcontractors, will be paid an additional amount of \$780,000.00. Such sum shall be paid by Tri-Met, the City and SOM each paying \$260,000.00.

6. In the event Tri-Met receives any funds or monies from UMTA, in excess of any amounts to which Tri-Met is entitled to fund the contract balance referred to in Paragraph 4, such sums will be shared equally by Tri-Met, the City and SOM. It is understood that Tri-Met need not request any such funds or monies from UMTA.

7. Hensel Phelps warrants that it will resolve any and all claims of subcontractors and/or suppliers arising out of the Mall and agrees to defend and indemnify Tri-Met, the City and SOM and their officers, agents, partners, representatives, successors, and assigns from and against any such claims.

8. Except as provided herein, and in the Granite Maintenance Agreement and bond, which, by agreement, expires January 31, 1982, each party hereby releases each and every other party, their officers, agents, employees, representatives, partners, successors and assigns from any claim or demand, known or unknown, of whatsoever nature arising out of or related to the Mall or incidental thereto; or asserted or which could be asserted in the litigation including, but not limited to, those based on or arising out of the City writings, the SOM agreements, the contract documents and the agreement dated July 12, 1979.

9. It is understood that there are no present claims against the Granite Maintenance Agreement.

10. Tri-Met will release to Hensel Phelps any and all retainage held in escrow.

11. It is specifically understood and acknowledged by the parties that this settlement is a compromise of various disputed claims, is based solely upon a recognition of the substantial expense of protracted litigation, and is not an admission of liability by any party.

TRI-COUNTY METROPOLITAN TRANSPORTATION
DISTRICT OF OREGON

By _____

CITY OF PORTLAND

By _____

JOHN O. MERRILL, JR. and DAVID A. PUGH
dba SKIDMORE, OWINGS & MERRILL

By _____
John O. Merrill, Jr.

By _____
David A. Pugh

HENSEL PHELPS CONSTRUCTION CO.

By _____

ORDINANCE No. 150055

An Ordinance authorizing the execution of a Settlement Agreement in the Transit Mall litigation, subject to approval of the Multnomah County Circuit Court; and appropriating \$260,000 within the General Fund from General Operating Contingencies to Special Appropriation, Indemnifications.

The City of Portland ordains:

Section 1. The Council finds:

- (1) The City is one of several defendants in the case of Tri-County Metropolitan Transportation District of Oregon v. Hensel Phelps Construction Co., et al., No. A7806-09443, in the Multnomah County Circuit Court.
- (2) The City Attorney and the Public Works Administrator recommend that the City participate in a settlement in accordance with an agreement substantially similar in form to that attached hereto as Exhibit "A."
- (3) Pursuant to ORS 30.290, the settlement of this claim may be subject to the approval of the Multnomah County Circuit Court.

NOW, THEREFORE, the Council directs:

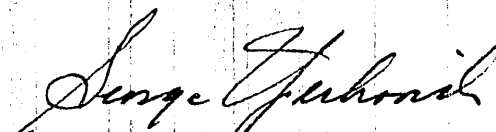
- a. Subject to the approval of the Multnomah County Circuit Court pursuant to ORS 30.290, the Commissioner of Public Works and the Auditor are authorized to execute a Settlement Agreement substantially similar in form to that attached hereto as Exhibit "A."
- b. The Mayor and Auditor are hereby authorized to draw and deliver a warrant for \$260,000.00 to Hensel Phelps Construction Co. and Richard M. Stanislaw, its attorney, upon receipt of a fully executed Settlement Agreement and instructions from the City Attorney that payment may be made. The warrant shall be charged to Special Appropriation, Indemnities, BUC 43613472.

Section 2. Two Hundred and Sixty Thousand Dollars (\$260,000.00) is transferred within the General Fund from General Operating Contingencies to Special Appropriation, Indemnities, BUC 43613472.

Passed by the Council, **JUL 23 1980**

Commissioner Lindberg
CPTThomas:mc
July 10, 1980
BUC 43613472

Attest:


Auditor of the City of Portland

Calendar No. ~~2573~~ ²⁶⁷⁰

ORDINANCE No. 150055

Title

An Ordinance authorizing the execution of a Settlement Agreement in the Transit Mall litigation, subject to approval of the Multnomah County Circuit Court; and appropriating \$260,000 within the General Fund from General Operating Contingencies to Special Appropriation, Indemnification.

JUL 16 1980

PASSED TO SECOND READING JUL 23 1980

Filed JUL 11 1980

GEORGE YERKOVICH
Auditor of the CITY OF PORTLAND

By *George Yerovich* Deputy

THE COMMISSIONERS VOTED AS FOLLOWS:		
	Yeas	Nays
Ivancie	1	
Jordan	1	
Lindberg	1	
Schwab		1
McCready	1	

4 1

FOUR-FIFTHS CALENDAR	
Ivancie	
Jordan	
Lindberg	
Schwab	
McCready	

INTRODUCED BY
Commissioner Lindberg

NOTED BY THE COMMISSIONER

Affairs

Finance and Administration

Safety

Utilities

Works *ML*

BUREAU APPROVAL

Bureau:

Prepared By: *CPT* Date: Christopher P. Thomas 7/10/80

Budget Impact Review:
 Completed Not required

Bureau Head:

CALENDAR

Consent Regular

NOTED BY

City Attorney *CPT*

City Auditor

City Engineer