

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made between the City of Portland (the “City”) and 3 Kings Environmental, Inc. (“3 Kings”) effective **[Council Approval Date] (the "Effective Date")**. Where appropriate, City and 3 Kings are referred to below individually as “Party” or together as “Parties.”

RECITALS

WHEREAS, the City entered into Contract No. 30006623 with 3 Kings for the St. John’s Truck Strategy Phase II Project (the “Contract” or the “Project”); and

WHEREAS, 3 Kings asserted claims for additional payment under the Contract; and

WHEREAS, the City asserted that no additional payments under the Contract were due and owing; and

WHEREAS the City and 3 Kings desire to resolve any and all of 3 Kings’ claims for additional payment under the Contract;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties enter into this Agreement.

AGREEMENT

1. Incorporation of Recitals

The foregoing recitals are incorporated herein by reference as agreements of the Parties.

2. Consideration

For and in consideration of the releases and other obligations set forth below, the Parties agree to the following:

- The City agrees to pay 3 Kings seventy-five thousand dollars (\$75,000.00) to resolve all outstanding Claims under the Contract in exchange for the Release in ¶ 3, below.

3. Release

For the consideration provided for in this Agreement, 3 Kings agrees to release the City from any and all past, present or future claims, demands, obligations, actions, causes of action, rights, damages, costs, economic loss, loss of services, loss of business, business interruption, expenses and compensation of any nature whatsoever, whether based on tort, contract, or other theory of recovery, and whether for compensatory or punitive damages, which 3 Kings now has, or which may hereafter accrue or otherwise be acquired on account of, or in any way growing out of, or which are the subject of the Contract. This Agreement shall be fully binding and a complete settlement between the Parties.

4. No Admission of Liability

- a. This Agreement has been made in good faith, and its terms and conditions are reasonable and fair under the circumstances.
- b. It is understood and agreed by the Parties to this Agreement that this settlement is a compromise of a doubtful and disputed claim, and the agreements are not to be construed as an admission of liability on the part of the Parties.
- c. Neither the terms and conditions of this Agreement, nor any negotiations or proceedings in connection with it, may be offered or received into evidence or used in any proceeding for any purpose whatsoever, except to enforce the Agreement.

5. Warranty of Capacity to Execute Agreement

The Parties represent and warrant that no other person or entity has or has had any interest in the claims, demands, obligations or causes of action referred to in this Agreement, and 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 of the claims, demands, obligations, or causes of action referred to in this Agreement.

6. Entire Agreement and Successors in Interest

This Agreement contains the entire agreement between the Parties with regard to the matters set forth herein and shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, heirs, successors, and assigns of each. The Parties further declare and represent that no promise, inducement, or agreement not herein expressed has been made to the other Party, and that this Agreement contains the entire agreement between the Parties.

7. Representation of Comprehension of Document

If represented by counsel in entering into this Agreement, the Parties acknowledge that they have relied upon the legal advice of their attorneys, who are the attorneys of their own choice, and that the terms of this Agreement have been completely read and explained to the Parties by their attorneys, and that those terms are fully understood and voluntarily accepted by the Parties.

8. Attorneys' Fees

Each Party to this Agreement shall bear its own attorneys' fees, expenses, expert fees, and costs incurred in connection with the preparation of this Agreement.

9. Governing Law

This Agreement shall be construed and interpreted in accordance with the laws of the State of Oregon. Any action arising out of this Agreement shall be brought in Multnomah County, Oregon.

10. Income Tax Consequences

None of the Parties have made any representations concerning, nor shall they be

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responsible in any manner for, the income tax consequences to the other Party resulting from the execution of this Agreement, or from any payment made pursuant to this Agreement.

11. Effectiveness

This Agreement shall become effective following its execution by the Parties and counsel, if any. The Parties may execute this Agreement in counterparts, and each counterpart will be effective and enforceable as though it were the original Agreement.

12. Severability

The Parties understand and agree that should any provision of this Agreement be declared or determined by any court of competent jurisdiction to be wholly or partially illegal, invalid, or unenforceable, the legality, validity, and enforceability of the remaining parts, terms, or provisions shall not be affected thereby, and said illegal, unenforceable, or invalid part, term, or provision shall be deemed not to be a part of this agreement.

In witness whereof, the City and 3 Kings, having read and reviewed the foregoing paragraphs, have executed this Settlement and Release to be effective on the Effective Date.

City of Portland, an Oregon municipal corporation

Date: _____

By: _____

Printed Name: _____

Title: _____

Date: _____

By: _____

Printed Name: _____

Title: _____

3 Kings Environmental, Inc., a Washington Corporation

Date: _____

By: _____

Printed Name: _____

Title: _____