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653-2023

Emergency Ordinance

*Pay settlement of Jordan Ward and Caitlin Hemphill property damage lawsuit for \$60,000 involving the Bureau of Environmental Services and the Portland Bureau of Transportation

Referred

The City of Portland ordains:

Section 1. The Council finds:

1. Jordan Ward and Caitlin Hemphill (Blue Bucket), through attorneys Holly Pettit and Peter J. Viteznik for Ward and Brian Chenoweth and Lauren Butz for Hemphill (Blue Bucket), have filed a lawsuit against the City for damages related to a sewer repair involving the Portland Bureau of Environmental Services and the Portland Bureau of Transportation on June 14, 2021.
2. The lawsuit has been investigated by Risk Management Services. The investigation indicates there is risk the City may be found liable. Therefore, in order to avoid the risk of an adverse jury award, we feel it is prudent to compromise the lawsuit at this time.
3. Risk Management Services recommends the lawsuit be compromised for the total sum of \$60,000, subject to the claimant providing the City with a release in a form to be approved by the City Attorney.

NOW, THEREFORE, the Council directs:

- A. That the Settlement Agreement and Release of All Claims in substantially the form attached hereto as Exhibit A is hereby approved and the City Attorney is authorized to execute the Settlement Agreement on behalf of the City.
- B. The Mayor and the City Auditor are hereby authorized to draw and deliver a check in the amount of \$60,000 made payable to Sussman Shank LLP Client Trust Account.
- C. Risk Management Services will execute a payment authorization in the

Introduced by

[Mayor Ted Wheeler](#)

Bureau

[Management and Finance](#);
[Revenue and Financial Services](#); [Risk Management](#)

Contact

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Requested Agenda Type

Regular

Date and Time Information

Requested Council Date

August 2, 2023


Time Requested

15 minutes

amount set forth in sub-paragraph (a) above.

Section 2. The Council declares that an emergency exists in order to avoid undue and costly delay in settling this property damage lawsuit; therefore, this Ordinance shall be in full force and effect from and after its passage by the Council.

Documents and Exhibits

 [Exhibit A \(https://www.portland.gov/sites/default/files/council-documents/2023/740614.docx\)](https://www.portland.gov/sites/default/files/council-documents/2023/740614.docx) 31.05 KB

Impact Statement

Purpose of Proposed Legislation and Background Information

This Ordinance settles a property damage lawsuit brought by Jordan Ward and Caitlin Hemphill, resulting from a sewer back up after a sewer repair in north Portland.

Financial and Budgetary Impacts

This legislation will have no impact on City revenue.

Total cost to the City to settle the lawsuit is \$60,000. The source of funding is the City's Insurance and Claims Fund. All cost of the settlement is in the current fiscal year. This Ordinance does not amend the budget.

Community Impacts and Community Involvement

This Ordinance settles a lawsuit resulting from damage from a sewer backup involving the Portland Bureau of Environmental Services and the Portland Bureau of Transportation. No public involvement or input was sought regarding this Ordinance. The City Attorney's Office and Risk Management have concluded that it is not appropriate to have public involvement in settlement negotiations regarding tort claims or lawsuits against the City.

No future public involvement is anticipated or necessary. Approval by City Council of this Ordinance will fully settle a tort claim against the City of Portland.

100% Renewable Goal

This legislation will have no impact on City energy use.

Budget Office Financial Impact Analysis

Total cost to the City to settle the lawsuit is \$60,000. The source of funding is the City's Insurance and Claims Fund. All costs of the settlement are in the current fiscal year.

Agenda Items

653 Regular Agenda in [August 2, 2023 Council Agenda](https://www.portland.gov/council/agenda/2023/8/2)
(<https://www.portland.gov/council/agenda/2023/8/2>)

Referred to Commissioner of Finance and Administration

SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS

A. PARTIES.

This Settlement Agreement and Release of All Claims (“Agreement”) is made and entered into between the following parties:

1. Surface Brokers LLC, dba The Surface Store, and Oregon limited liability company, its owner, parent companies, subsidiaries, agents, employees, insurers, officers, directors, shareholders, successors, assigns, attorneys, and all other representative persons and associated entities (hereinafter “Surface Store”);
2. Caitlin Hemphill dba Cyclemaster Coffee Co., its owner, parent companies, subsidiaries, agents, employees, insurers, officers, directors, shareholders, successors, assigns, attorneys, and all other representative persons and associated entities and Blue Bucket Beverage Company, LLC dba Cyclemaster Coffee Co., its owner, parent companies, subsidiaries, agents, employees, insurers, officers, directors, shareholders, successors, assigns, attorneys, and all other representative persons and associated entities (hereinafter “Blue Bucket”);
3. Chad V. Ward Real Estate Company, LLC, an Oregon limited liability company, its owner, parent companies, subsidiaries, agents, employees, insurers, officers, directors, shareholders, successors, assigns, attorneys, and all other representative persons and associated entities and Idaho First Bank, an Idaho business corporation, its owner, parent companies, subsidiaries, agents, employees, insurers, officers, directors, shareholders, successors, assigns, attorneys, and all other representative persons and associated entities (hereinafter “Ward”);
4. Aaken Corporation, its owner, parent companies, subsidiaries, agents, employees, insurers, officers, directors, shareholders, successors, assigns, attorneys, and all other representative persons and associated entities (hereinafter “Aaken”);
5. R&R Earthboring, Inc., its owner, parent companies, subsidiaries, agents, employees, insurers, officers, directors, shareholders, successors, assigns, attorneys, and all other representative persons and associated entities (hereinafter “R&R”);
6. Oregon Department of Transportation, a subdivision of the State of Oregon, (hereinafter “ODOT”);
7. City of Portland, Portland Bureau of Transportation, and Portland Bureau of Environmental Services, (hereinafter “City”);
8. Corpac Construction Company, an Oregon corporation, its owner, parent companies, subsidiaries, agents, employees, insurers, including but not limited to BITCO General Insurance Corporation, officers, directors, shareholders, successors, assigns, attorneys, and all other representative persons and associated entities (hereinafter “Corpac”); and
9. Global Electric, Inc. an Oregon Corporation, its owner, parent companies, subsidiaries, agents, employees, insurers, officers, directors, shareholders,

successors, assigns, attorneys, and all other representative persons and associated entities (hereinafter “Global Electric”).

Aaken, R&R, ODOT, City, Corpac, Global Electric, the Surface Store, Blue Bucket (as to claims asserted by the Surface Store), and Ward (as to claims asserted by the Surface Store) are referenced collectively herein as the “Released Parties.”

Surface Store, Blue Bucket, and Ward are referenced collectively herein as the “Beneficiary Parties.”

Surface Store, Blue Bucket, Ward, Aaken, R&R, ODOT, City, Corpac, and Global Electric Flooring are referenced collectively herein as the “Settling Parties.”

B. FACTUAL RECITALS.

This Agreement forever settles and resolves all disputes, claims, and controversies, known or unknown, among and between the Settling Parties relating to damage caused on or about June 1-June 15, 2021, when construction related activities damaged a sewer lateral causing a release of sewage into the property located at 2747 N. Lombard St, Portland, Oregon (the “Incident”), as more fully described the Complaints filed in Multnomah County Circuit Case No. 22CV30415 (the “Lawsuit”). The property at 2747 N. Lombard St., Portland, OR is owned by Ward and leased to Blue Bucket. Blue Bucket hired Surface Store to perform remediation work related to damage from the Incident. The Released Parties have generally denied the allegations asserted against them in the Lawsuit, which allegations are more fully detailed and described in the pleadings therein.

It is the intent of the Settling Parties that this Agreement be a complete and total release of all claims related to the Incident and any work done in relation to the Incident, with the following exception: Blue Bucket and Ward expressly reserve their claims against each other, which will be arbitrated.

In consideration of the mutual promises set forth below, the Settling Parties hereby agree to the following settlement terms:

C. COMPROMISE AND SETTLEMENT.

1. Except as expressly described in Section C.2, and in consideration of and specifically upon execution of this Agreement and satisfaction of all the payment obligations in Section D below, the Settling Parties on their own behalf and on behalf of their respective heirs, predecessors, successors, past, present, and future members, managers, officers, directors, shareholders, employees, representatives, agents, consultants, insurer(s) and attorneys (referred to collectively below as “Representatives”) release and forever discharge each Settling Party and each Settling Party’s Representatives from any and all claims, liens, demands, damages, actions, causes of action, or suits of any kind or nature whatsoever related to or arising out of the Incident, whether known or unknown, including all expenses, costs, attorneys’ fees, and for damages of every kind, nature, or basis arising out of or relating to the Incident. This release includes insurance

coverage (including, but not limited to, additional insured (“AI”) requests) and claims for contribution or indemnity.

2. Blue Bucket and Ward expressly reserve their claims against each other.

3. This Section C is not intended to and does not release claims for breach of this Agreement.

4. The Settling Parties acknowledge and assume the risk that the alleged damages may be other than what the Settling Parties now believe, that new or unforeseen damages may occur, or that the alleged damages may not be as severe as alleged. The Settling Parties acknowledge that their information regarding the facts alleged is sufficient to enter into this Agreement. Each Settling Party therefore accepts and assumes all risk and agrees that this Agreement shall be and remain in all respects effective and not subject to termination or rescission by virtue of any mistake, change, or difference in facts.

5. The Settling Parties represent and warrant that the rights, responsibilities, and liabilities that are the subject of this Agreement have not been assigned or otherwise conveyed by them or by anyone on their behalf, in whole or in part, contingent or present, to any person, entity, or organization. The Settling Parties further represent and warrant that they will not assign rights, responsibilities, and/or liabilities that are the subject of this Agreement, in whole or in part, contingent or present, to any person, entity, or organization subsequent to signing this Agreement.

6. The Beneficiary Parties agree and warrant that all expenses incurred to date or which will be incurred in the future, which are related in any way to claims being released herein, have either been paid or will be paid from the proceeds of this settlement, other than expenses that might be recovered by Blue Bucket and Ward as a result their remaining claims against each other. The Beneficiary Parties further agree and warrant that they will hold each Released Party and each Released Party’s Representatives harmless from any claim for any such expense whenever incurred and, if any suit is filed against a Released Party to collect such claim, will accept the tender of defense of any such claim, defend it at their expense and pay any judgment entered therein and agree to compensate the Released Party for any expense or liability incurred as a result of the filing of such suit.

D. PAYMENT.

In consideration for the above Releases and the other promises set forth herein, the combined total amount of \$180,00.00 will be made payable to Sussman Shank Trust Account, in the following amounts:

- City \$60,000.00
- R&R \$60,000.00
- Corpac \$15,000.00
- Aaken \$15,000.00

- Global Electric \$15,000.00
- ODOT \$15,000.00

The above-referenced payments shall be made not later than thirty (30) days after the full execution of this Agreement by the Settling Parties.

The collective settlement proceeds will be made payable to the receiving parties as follows:

- Blue Bucket \$80,000.00
- Ward \$30,000.00
- Surface Store \$70,000.00

Additionally, the Surface Store will remove the lien that it had placed on the property located at 2747 N. Lombard St., Portland OR within fourteen (14) days after this Agreement has been signed by all Settling Parties.

E. ADDITIONAL TERMS.

The Settling Parties agree to the following additional terms:

1. No Admission of Liability. The Settling Parties hereby acknowledge that this Agreement represents the compromise of a disputed claim. All Released Parties have denied and continue to deny any and all liability for the damages alleged. The Settling Parties further recognize and state that payments on behalf of any of the Released Parties are made solely in compromise and settlement of these disputed claims, and such payments are not to be regarded as admissions of liability or fault by any Released Party.

2. Severability. Nothing contained herein shall be construed so as to require the commission of any act contrary to law, and wherever there is any conflict between any provisions contained herein and any present or future statute, law, ordinance, or regulation contrary to which the Settling Parties have no legal right to contract, the latter shall prevail; but the provision of this Agreement which is affected shall be curtailed and limited only to the extent necessary to bring it within the requirements of the law. To the extent the offending provision cannot be curtailed or limited, it shall be fully severable, and the remainder of this Agreement shall remain in full force.

3. Represented by Counsel. Each party to this Agreement is represented by counsel and has consulted with counsel regarding the terms and legal meaning of this Agreement.

4. Waiver of Construction against Drafter. This Agreement was approved by the Settling Parties. Any rule that would otherwise require an ambiguity in this Agreement to be construed against the drafting party is hereby expressly waived.

5. Entire Agreement. Except as otherwise provided herein, this Agreement constitutes the entire agreement among the Settling Parties and all terms cited or referenced in this document

are contractually binding, not mere recitals. This Agreement supersedes any prior oral or written agreements or communications on the subject matter addressed herein.

6. Counterparts. This Agreement may be executed in counterparts, including counterparts received by facsimile or email transmission, each counterpart constituting an original.

7. Dispute Resolution. Any disputes or disagreements shall be interpreted and enforced according to the laws of the State of Oregon.

8. Further Assurances. The Settling Parties agree to take such action and execute such further documents, including modifications to this Agreement, as may be reasonably necessary to effectuate the intent of this Agreement.

9. Authority to Settle. Each individual approving the form and content of this Agreement on behalf of a Settling Party represents and warrants that the Settling Party, as individually defined in Paragraph A above, agrees to be and is bound by all terms and conditions in this Agreement, including all payment and performance obligations.

10. Dismissal of Settling Parties. Following the full execution of this Agreement and payment of all amounts described above, any and all court actions and arbitrations related to the Incident by or between the Settling Parties will be fully and finally satisfied and dismissed with prejudice and without monetary award, attorneys' fees or costs for or against any Settling Party. Specifically excluded and excepted from this provision are the Blue Bucket and Ward claims against each other. As such, the Settling Parties shall timely file Judgments of Dismissal of the Lawsuit with prejudice and without attorneys' fees or costs being awarded to any Settling Party.

DATED: _____

Surface Brokers LLC, dba The Surface Store

DATED: _____

Caitlin Hemphill dba Cyclemaster Coffee Co. and Blue Bucket Beverage Company, LLC dba Cyclemaster Coffee Co.

DATED: _____

Chad V. Ward Real Estate Company, LLC and Idaho First Bank, an Idaho business corporation

DATED: _____

Aaken Corporation

DATED: _____

R&R Earthboring, Inc.

DATED: _____

State of Oregon, by and through the Oregon
Department of Transportation

DATED: _____

City of Portland

DATED: _____

Corpac Construction Company

DATED: _____

Global Electric, Inc.