

SETTLEMENT AGREEMENT AND RELEASE

A. PARTIES:

This Settlement Agreement and Release (Agreement) is made and entered into by and between the following parties:

A. The City of Portland, a public body in the State of Oregon, including its assigns, agencies, agents, employees, officials, constituents, members, affiliates, insurers, representatives (specifically including, but not limited to, insurance agents, brokers, adjusters, lawyers and investigators), predecessors and successors (hereinafter referred to as "City");

B. Kerr Contractors, Inc., an Oregon corporation, its affiliated and subsidiary companies, its assigns, agents, employees, principals, officers, partners, members, shareholders, affiliates, representatives (specifically including, but not limited to, insurance agents, brokers, adjusters, lawyers and investigators), predecessors and successors ("Kerr") as well as Kerr's insurers, including, but not limited to the following (the "Insurance Companies"): Bituminous Casualty Corporation, Everest National Insurance Company, Zurich American Insurance Company as successor of Valiant Insurance Company, Northern Insurance Company of New York, Transcontinental Insurance Co., Transportation Insurance Company, and National Fire Insurance Co. of Hartford and their affiliated and subsidiary companies, their assigns, agents, employees, principals, officers, partners, members, shareholders, affiliates, representatives (specifically including, but not limited to, insurance agents, brokers, adjusters, lawyers and investigators), predecessors and successors.

B. FACTUAL BACKGROUND

City and Kerr entered into a contract in 1998 which provided for Kerr to build and/or have the responsibility of building a certain section of pipe and associated connections in the Fanno Basin Pressure Line Sewer Project. The City alleges that Kerr breached the contract and/or was negligent in causing it damage from the work Kerr was responsible for and/or performed. City also contended that Kerr performed improper repairs to the pipe. The City filed a lawsuit against Kerr in the Circuit Court for the State of Oregon, County of Multnomah, Case Number 0810-14326 and the allegations and defenses contained therein are incorporated into this agreement by this reference.

C. COMPROMISE SETTLEMENT (FULL AND FINAL)

It is agreed that in consideration of the discharge and Full and Final Release of City's past, present and future claims, demands and claims for relief made by or on behalf of City against Kerr, including all attorney fees, expenses, costs and interest from the trial and appeal of the suit which are recoverable against Kerr for money and for damages of every kind and of whatsoever nature or basis, known as well as unknown and unanticipated, in any way caused by or arising out of the matters described in Section B hereof, Kerr agrees to make payment of Three Million Seven Hundred Fifty Thousand and NO/100 DOLLARS (\$3,750,000.00) to City within 30 days of the later of the final execution of this Agreement or the Dismissal of the Lawsuit, discussed in Section D. If Kerr Contractors, Inc. and the Insurance Companies execute the insurance settlement

agreement attached as Exhibit A, prior to or at the same time as, the full and final execution of this Agreement, then the Insurance Companies collectively shall fund \$3,700,000 of Kerr's payment subject to the terms and conditions of that insurance settlement agreement. The insurance settlement agreement provides that the Insurance Companies shall fund the settlement as follows: Bituminous Casualty Corporation: \$1,050,000; Everest National Insurance Company: \$50,000, Zurich American Insurance Company: \$1,300,000; National Fire Insurance Company of Hartford: \$1,000,000; Transportation Insurance Company: \$300,000; and Kerr \$50,000.

This payment is accepted voluntarily and irrevocably by City in final compromise, settlement, satisfaction and discharge of Kerr from all past, present and future claims, fines, damages, losses, injuries, demands, suits and expenses which arise out of or have resulted from Kerr's contract with City and/or the work performed by Kerr for the Fanno Basin Pressure Line Sewer Project.

D. DISMISSAL OF LAWSUIT

City directs its attorney to deliver to attorneys for Kerr, a properly executed stipulated general judgment of dismissal with prejudice of the lawsuit described in Section A above (Multnomah County Circuit Court Case No. 0810-14326.). It is agreed that when the lawsuit described in Section A above is dismissed, it will forever terminate that lawsuit and each and every cause of action or claim for relief against Kerr that was or could have been asserted in that lawsuit.

E. INDEMNITY, DEFENSE AND HOLD HARMLESS AGREEMENT

City shall release, defend, indemnify, and hold harmless Kerr from, for and against any and all claims, demands, suits, and actions brought by or on behalf of City or anyone asserting a claim by, through, or on behalf of City arising from the Lawsuit which could have been alleged therein.

City recognizes and agrees that this Agreement is not a construction agreement as that term is used in ORS 30.140, that the limitations of the statute do not apply to any indemnity, defense and hold harmless provided by any party pursuant to this Agreement, and that the indemnity, defense and hold harmless provided by any party shall be consistent with the terms of the indemnity provided.

F. WAIVER OF RULE OF CONSTRUCTION AGAINST DRAFTER

This Agreement was jointly drafted and/or approved by all parties to this Agreement. Any rule that would otherwise require any ambiguities in this Agreement to be interpreted against the drafter(s) is hereby expressly waived. The parties have agreed that Martha Hodgkinson is the sole arbitrator of any dispute related to this Release.

G. ADDITIONAL TERMS AND CONDITIONS

A. It is understood and agreed that this is a settlement by compromise of disputed claims. Kerr expressly denies any liability and is making the settlement payment to City solely in compromise and settlement of disputed claims and such payment is not to be regarded as an admission of liability or fault by Kerr. It is understood and agreed that nothing contained in this

Agreement shall be construed as an admission of liability.

B. City hereby warrants and represents that it has relied upon its own independent, judgment, belief and knowledge in entering into this Agreement, that it has obtained advice and consultation it deems necessary and that it has not been influenced in any extent whatsoever in entering into this Agreement by any representations or statements made by Kerr or by any person representing Kerr.

C. The terms of this Agreement shall be binding upon the insurers, representatives, successors and assigns of City.

D. City has read this Agreement, fully understands that no other consideration or payment of any kind will be made and that there is no agreement, promise or inducement of any kind for this Agreement other than provided in this Agreement.

E. The terms of this Agreement are contractual and not mere recitals.

F. City represents and warrants that it has not previously assigned to any third party any of the matters or claims at issue under or relating to this Agreement.

G. This Agreement constitutes the entire agreement among the parties and supersedes any prior oral or written agreements or communications on the subject matters.

H. This Agreement, its terms, and negotiations of the Parties relating to this Agreement shall be inadmissible in any action, litigation, or proceeding other than an action, litigation, or proceeding to enforce the terms of this Agreement. The Parties agree that this Agreement and its terms shall not be deemed precedential.

I. This Agreement may not be amended or modified, and no implied or express waiver of any portion of the Agreement shall arise other than by written agreement between the Parties.

J. This Agreement shall be construed under, and in accordance with, the laws of the State of Oregon. Neither this provision, nor any provision in this Agreement, shall have any effect on any choice-of-law issue that may rise in any future litigation involving the Parties to this Agreement.

K. If any provision of this Agreement is invalid or unenforceable in any respect for any reason, the validity and enforceability of such provision in any other respect and of the remaining provisions of this Agreement will not be in any way impaired.

L. This Agreement shall become effective upon complete execution by City.

This Full and Final Release of all claims truthfully sets forth the entire understanding and the complete agreement between the parties and it is specifically agreed that each term hereof is material, contractual and not mere recital.

M. 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.

The parties warrant that they have read the foregoing document, know the contents thereof, and by placing their signatures thereon, express and intend to be legally bound thereby.

DATED this _____ day of _____, 2010.

BY:
THE CITY OF PORTLAND, PLAINTIFF

BY:
KERR CONTRACTORS, INC.

CONFIDENTIAL

SETTLEMENT AGREEMENT AND RELEASE

This settlement agreement and release ("Agreement") is made and entered into between:

- A. Kerr;
- B. Bituminous;
- C. Everest;
- D. Valiant;
- E. Northern;
- F. Transportation; and
- G. National Fire.

1. Definitions

- 1.1 "Kerr" means Kerr Contractors, Inc., and any past, present, or future predecessor, successor, assignee, parent, subsidiary, affiliate, and division of the foregoing, as well as any shareholder, stockholder, owner, member, director, officer, employee, attorney, or agent of any of the foregoing.
- 1.2 "Bituminous" means Bituminous Casualty Corporation, and any past, present, or future predecessor, successor, assignee, parent, subsidiary, affiliate, and division of the foregoing, as well as any shareholder, stockholder, owner, member, director, officer, employee, attorney, or agent of any of the foregoing.
- 1.3 "Everest" means Everest National Insurance Company, and any past, present, or future predecessor, successor, assignee, parent, subsidiary, affiliate, and division of the foregoing, as well as any shareholder, stockholder, owner, member, director, officer, employee, attorney, or agent of any of the foregoing.
- 1.4 "Valiant" means Zurich American Insurance Company as successor of Valiant Insurance Company, and any past, present, or future predecessor, successor, assignee, parent, subsidiary, affiliate, and division of the foregoing, as well as any shareholder, stockholder, owner, member, director, officer, employee, attorney, or agent of any of the foregoing.
- 1.5 "Northern" means Northern Insurance Company of New York, and any past, present, or future predecessor, successor, assignee, parent, subsidiary, affiliate,

and division of the foregoing, as well as any shareholder, stockholder, owner, member, director, officer, employee, attorney, or agent of any of the foregoing.

- 1.6 "Transportation" means Transportation Insurance Company, and any past, present, or future predecessor, successor, assignee, parent, subsidiary, affiliate, and division of the foregoing, as well as any shareholder, stockholder, owner, member, director, officer, employee, attorney, or agent of any of the foregoing.
- 1.7 "National Fire" means National Fire Insurance Co. of Hartford as successor to Transcontinental Insurance Co., and any past, present, or future predecessor, successor, assignee, parent, subsidiary, affiliate, and division of the foregoing, as well as any shareholder, stockholder, owner, member, director, officer, employee, attorney, or agent of any of the foregoing.
- 1.8 "City" means the City of Portland, Oregon.
- 1.9 "Insurers" means Bituminous, Everest, Valiant, Northern, Transportation, and National Fire collectively. "Insurer" means Bituminous, Everest, Valiant, Northern, Transportation, and National Fire individually.
- 1.10 "Parties" means the Insurers and Kerr.
- 1.11 "Claim" and "Claims" mean present, past, and future claims at law or equity, including, but not limited to, cross-claims, counterclaims, third-party claims, lawsuits, administrative proceedings, arbitrations, and causes of action, including for indemnity, contribution, and allocation, whether known or unknown, accrued or unaccrued, which have been, or may be, asserted by, or on behalf of, any person, and include damages, expenses, costs, attorneys' fees, defense costs, indemnity costs, insurance coverage fees, and expert fees arising therefrom.
- 1.12 "Coverage Action" means the following civil action: *Kerr Contractors, Inc. v. Transportation Ins. Co., et al.*, Case No. 0910-14020 (Multnomah County Circuit Court, Oregon), and all appeals therefrom.
- 1.13 "Effective Date" means the date as of which all Parties have signed this Agreement.
- 1.14 "Policies" and "Policy" mean: (1) the insurance policies listed in **Exhibit A** to this Agreement; and (2) all policies and binders of liability insurance issued by any Insurer, known and unknown, including any certificates, endorsements, and other documents evidencing the existence of liability insurance under those policies and binders, whether primary, excess, or umbrella, known and unknown.
- 1.15 "Project" means the Fanno Basin Pressure Line – Garden Home Section, and includes the work described in Contract No. 32026, dated November 12, 1998, between Kerr Contractors, Inc. and the City of Portland.

- 1.16 "Underlying Action" means the following civil action: *City of Portland v. Kerr Contractors, Inc.*, Case Number 0810-14326 (Multnomah County Circuit Court, Oregon).

2. **Recitals**

- 2.1 WHEREAS, the City filed the Underlying Action against Kerr seeking damages arising out of alleged defects in work at the Project performed by Kerr;
- 2.2 WHEREAS, Kerr filed the Coverage Action against Transportation and National Fire, alleging that Transportation and National Fire had a duty to defend Kerr in relation to the Underlying Action;
- 2.3 WHEREAS, Bituminous, National Fire, and Valiant agreed to defend Kerr under a reservation of rights in relation to the Underlying Action;
- 2.4 WHEREAS, Kerr asserts and/or has asserted that the policies listed in Exhibit A provide defense and indemnity coverage in relation to the claims in the Underlying Action, and the Insurers assert that none of the Policies provide defense or indemnity coverage in relation to the claims in the Underlying Action; and
- 2.5 WHEREAS, the Parties intend to resolve any and all disputes and controversies between them relating to the claims in the Coverage Action and the Underlying Action, and whether defense or indemnity coverage is available, now or in the future, under the Policies in connection with the Project and the Underlying Action.

3. **Payments and Releases**

3.1 **Payments**

- 3.1.1 The following payments will be made to the City:

A. By National Fire:	\$1,000,000
B. By Transportation:	\$300,000
C. By Valiant:	\$1,300,000
D. By Bituminous:	\$1,050,000
E. By Everest:	\$50,000
F. By Kerr:	\$50,000

- 3.1.2 Each Insurer listed in paragraph 3.1.1 may allocate the payment each makes to any Policy issued by that Insurer, and the full amount of the payment shall erode the applicable liability limits of that Policy.

3.1.3 The payments in paragraph 3.1.1 shall be made in the form of a check payable to "City of Portland Bureau of Environmental Services," tax identification number 93-6002236, within 30 days of the later of: (1) the date the City dismisses the Underlying Action with prejudice; and (2) the full execution of the settlement agreement in the Underlying Action, the most current draft of which is attached hereto as **Exhibit B** to this Agreement.

3.2 Releases

3.2.1 Subject to the exceptions listed in paragraph 3.2.2, the Parties release each other from all past, present, and future Claims: (1) related to the facts giving rise to the Underlying Action and the Coverage Action, or that could have been asserted therein; (2) arising in any way from the Project, including Claims for damage or injury caused by contamination at, or migrating from, the location of the Project, and (3) and all other Claims for coverage, contribution, or allocation arising out of the Underlying Action or this Agreement, other than those Claims excepted by paragraph 3.2.2. The mutual releases in this paragraph 3.2.1 release all Claims described in the preceding sentence arising out of all Policies issued by the Insurers, and which provide, or are alleged to provide, coverage to Kerr as a named or additional insured, whether such Claims are based on theories of negligence, breach of contract, breach of warranty, indemnity, contribution, subrogation, breach of the duty of good faith, or bad faith or other Claims at law or in equity.

3.2.2 The following Claims are excepted from the release in paragraph 3.2.1: Claims by one or more of the Insurers against one or more of the Insurers regarding the duty of an Insurer to defend Kerr and/or pay defense costs on behalf of Kerr in relation to the Underlying Action, including Claims for contribution, indemnity, or reallocation of some or all defense costs previously paid by an Insurer at any time, including after May 2010. For the avoidance of any doubt, this exception relates to defense costs only, and this exception does not apply to the payments being made pursuant to paragraph 3.1.1., above.

4. Dismissal of the Coverage Action

4.1 Within 14 days after the Effective Date: (1) Kerr will move to dismiss the Coverage Action with prejudice, and without costs or attorneys' fees awarded to any party to the Coverage Action; and (2) National Fire and Transportation will move to dismiss any appeals in the Coverage Action.

5. Reservation of Rights

5.1 Except as expressly released herein, all of the terms, provisions, conditions, exclusions, endorsements, and other limitations of the Policies are preserved.

- 5.2 Nothing in this Agreement shall be construed as a promise by any Insurer to defend or indemnify any Party.
- 5.3 This Agreement shall not be construed as an admission by any Party of insurance coverage or lack of coverage.
- 5.4 This Agreement shall not be construed as an admission of liability by any Party.
- 5.5 This Agreement shall not be construed as an interpretation of any Policy.

6. **Warranties**

- 6.1 Kerr warrants that it has not assigned or conveyed to any other person or entity any of its rights under the Policies, or rights or Claims arising from the Project, the Coverage Action, or the Underlying Litigation.
- 6.2 The Parties warrant that the individual executing this Agreement on each of their behalf has the authority to enter into a settlement and release containing all of the terms and conditions set forth in this Agreement and to bind the respective Party.
- 6.3 The Parties warrant that they have taken all necessary corporate and internal actions to duly approve the making and performance of this Agreement, and no further corporate or other internal approval is necessary.
- 6.4 The Parties warrant that they have read the entire Agreement, fully understand the complete terms of this Agreement and the consequences of signing this Agreement, and have obtained the advice of competent legal counsel.

7. **Miscellaneous**

- 7.1 This Agreement, its terms, and negotiations of the Parties relating to this Agreement shall be inadmissible in any action, litigation, or proceeding other than an action, litigation, or proceeding to enforce the terms of this Agreement. The Parties agree that this Agreement and its terms shall not be deemed precedential.
- 7.2 No Party shall be deemed to be the drafter of any part of this Agreement. There shall not be a presumption or construction against any Party that arises from this Agreement.
- 7.3 The Parties have entered into this Agreement as a means of finally compromising, settling, and resolving all disputes, controversies, questions and issues among them relating to the Claims in the Coverage and Underlying Actions and the existence of coverage under the Policies in relation to the Underlying Action, the Coverage Action, and the Project. The Parties deny any liability for the claims asserted in the Underlying Action, and this Agreement shall not be regarded as admissions of liability or fault by any of the Parties.

- 7.4 This Agreement constitutes the entire agreement and understanding between the Parties, and this Agreement replaces, cancels, and supersedes any and all other agreements, understandings, and undertakings of the Parties.
- 7.5 This Agreement may not be amended or modified, and no implied or express waiver of any portion of the Agreement shall arise, other than by written agreement between the Parties.
- 7.6 This Agreement shall be construed under, and in accordance with, the laws of the State of Oregon. Neither this provision, nor any provision in this Agreement, shall have any effect on any choice-of-law issue that may rise in any future litigation involving the Parties to this Agreement.
- 7.7 The Parties hereto expressly acknowledge and agree that this Agreement has been entered into in good faith in order to resolve the disputes and controversies among them regarding the Claims in the Coverage Action and the Underlying Action and the existence of coverage under the Policies in relation to the Underlying Action, the Coverage Action, and the Project.
- 7.8 The Parties hereto expressly acknowledge that this Agreement is reasonable, and that all terms of this Agreement are supported by good, valid, and legally sufficient consideration so as to make this Agreement binding and valid.
- 7.9 The headings in this Agreement are designed to facilitate reference to subject matter and shall not be deemed relevant in any dispute concerning the meaning or interpretation of this Agreement.
- 7.10 The Parties agree not to assign any of their rights or delegate any of their duties under this Agreement without first obtaining the written consent of the other Parties; provided, however, that this paragraph 7.10 shall not prohibit any assignment by any Party because of merger, consolidation, operation of law, or to a person who succeeds to all or substantially all of such Party's assets. Subject to the foregoing, this Agreement shall extend to, and be binding upon, the successors and assigns of the Parties.
- 7.11 If any provision of this Agreement is invalid or unenforceable in any respect for any reason, the validity and enforceability of such provision in any other respect and of the remaining provisions of this Agreement will not be in any way impaired.
- 7.12 The Parties agree that each of them will bear their own attorneys' fees (corporate and outside counsel), costs, and expenses arising out of or connected with the negotiation, drafting, and execution of this Agreement, except as otherwise expressly provided in this Agreement.

- 7.13 This Agreement may be executed in duplicate counterparts, each of which shall constitute an original, and all of which together shall be deemed a single document. The Parties agree to accept scanned, copied, or facsimile signatures.
- 7.14 This Agreement shall become effective upon complete execution by all Parties.
- 7.15 Any notice required pursuant to this Agreement must be in writing and shall be sent by U.S. Postal Service, or overnight delivery service, or as the Parties may subsequently direct in writing.

If to National Fire or Transportation:	Michael J. Musa Claims Consultant / MCU CNA Insurance 555 Mission Street, Suite 200 San Francisco, California 94105
If to Bituminous:	Margaret Van Valkenburg Bullivant Houser Bailey PC 888 SW 5 th Ave. Suite 300 Portland OR 97204
If to Everest	Judie Price Everest National Insurance 725 Town and Country Road, Suite 400 Orange, CA 92868
If to Valiant or Northern:	Todd Schweitzer, CPCU Assistant Vice President Zurich North America Construction & Defect Claim Services 401 West A St, Suite 700 San Diego, CA 92101

8. Confidentiality

- 8.1 This Agreement and the terms of this Agreement shall be kept confidential and shall not be disclosed to any entity other than the Parties, provided however, that this Agreement and its terms may be disclosed: (1) as required by law or court order; (2) to any reinsurer of the Insurers; (3) to counsel, accountants, and auditors of any of the Parties; (4) in any action or proceeding between the Parties in which the existence or terms of the Agreement are at issue; (5) by written agreement of the Parties; and (6) by Kerr in the form of an attachment to the settlement agreement which resolves the Underlying Action. If this Agreement or

its terms are required by law or a court order to be disclosed, then the Party intending to make such disclosure shall give fourteen days prior written notice of the disclosure to each of the other Parties to allow time for the notified Parties to object to the disclosure, or where such notice is not possible, notice shall be given as soon as practicable.

IN WITNESS WHEREOF, the Parties, by their duly authorized representatives, agree to the terms contained herein.

Dated: _____, 2010 By: _____
Name: _____
For: Kerr

Dated: _____, 2010 By: _____
Name: _____
For: National Fire and Transportation

Dated: _____, 2010 By: _____
Name: _____
For: Valiant and Northern

Dated: _____, 2010 By: _____
Name: _____
For: Bituminous

Dated: _____, 2010 By: _____
Name: _____
For: Everest

EXHIBIT A

Insurer	Policy Period	Policy Number
Transportation	3/31/96 to 3/31/97	CO 103 651 5059
Transportation	3/31/97 to 3/31/98	CO 103 651 5059
National Fire	12/15/02 to 12/15/03	C 2066 738 355
National Fire	12/15/03 to 2/15/04	C 2066 738 355
National Fire	2/15/04 to 2/15/05	C 2066 738 355
National Fire	2/15/05 to 2/15/06	U 2066 738 355
National Fire	2/15/06 to 2/15/07	U 2066 738 355
Transportation	12/15/02 to 12/15/03	C 2066 738 372
Transportation	12/15/03 to 2/15/04	C 2066 738 372
Transportation	2/15/04 to 2/15/05	C 2066 738 372
Transportation	2/15/05 to 2/15/06	U 2066 738 372
Transportation	2/15/06 to 2/15/07	U 2066 738 372
Valiant	3/31/98 to 3/31/99	EPA 3277 8178
Valiant	3/31/99 to 3/31/00	EPA 3277 8178
Valiant	3/31/00 to 12/15/00	CON 3292 0176
Valiant	12/15/00 to 12/15/01	CON 3741 3607
Valiant	12/15/01 to 12/15/02	CON 37413607
Northern	3/1/98 to 3/1/99	CON 95584141
Northern	3/1/99 to 3/1/00	CON 95584141
Northern	3/1/00 to 3/1/01	CON 95584141
Bituminous	2/15/07 to 2/15/08	CLP 323 8637
Bituminous	2/15/08 to 2/15/09	CLP 325 3143
Bituminous	2/15/09 to 2/15/10	CLP 326 1470
Everest	2/15/07 to 2/15/08	71C7 0000 64-071
Everest	2/15/08 to 2/15/09	71C3 0000 37-081

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B. Kerr Contractors, Inc., an Oregon corporation, its affiliated and subsidiary companies, its assigns, agents, employees, principals, officers, partners, members, shareholders, affiliates, representatives (specifically including, but not limited to, insurance agents, brokers, adjusters, lawyers and investigators), predecessors and successors ("Kerr") as well as Kerr's insurers, including, but not limited to the following (the "Insurance Companies"): Bituminous Casualty Corporation, Everest National Insurance Company, Zurich American Insurance Company as successor of Valiant Insurance Company, Northern Insurance Company of New York, Transcontinental Insurance Co. Transportation Insurance Company, and National Fire Insurance Co. of Hartford and their affiliated and subsidiary companies, their assigns, agents, employees, principals, officers, partners, members, shareholders, affiliates, representatives (specifically including, but not limited to, insurance agents, brokers, adjusters, lawyers and investigators), predecessors and successors.

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This payment is accepted voluntarily and irrevocably by City in final compromise, settlement, satisfaction and discharge of Kerr from all past, present and future claims, fines, damages, losses, injuries, demands, suits and expenses which arise out of or have resulted from Kerr's contract with City and/or the work performed by Kerr for the Fanno Basin Pressure Line Sewer Project.

D. DISMISSAL OF LAWSUIT

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City recognizes and agrees that this Agreement is not a construction agreement as that term is used in ORS 30.140, that the limitations of the statute do not apply to any indemnity, defense and hold harmless provided by any party pursuant to this Agreement, and that the indemnity, defense and hold harmless provided by any party shall be consistent with the terms of the indemnity provided.

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B. City hereby warrants and represents that it has relied upon its own independent judgment, belief and knowledge in entering into this Agreement, that it has obtained advice and consultation it deems necessary and that it has not been influenced in any extent whatsoever in entering into this Agreement by any representations or statements made by Kerr or by any person representing Kerr.

C. The terms of this Agreement shall be binding upon the insurers, representatives, successors and assigns of City.

D. City has read this Agreement, fully understands that no other consideration or payment of any kind will be made and that there is no agreement, promise or inducement of any kind for this Agreement other than provided in this Agreement.

E. The terms of this Agreement are contractual and not mere recitals.

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E/NIET

PAGE 3 OF 4

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The parties warrant that they have read the foregoing document, knows the contents thereof, and by placing their signatures thereon, expresses and intends to be legally bound thereby.

DATED this _____ day of _____, 2010.

BY: _____
THE CITY OF PORTLAND, PLAINTIFF

BY: _____
KERR CONTRACTORS, INC.