

SETTLEMENT AGREEMENT

The parties to this settlement agreement are Heather Keithly ("Owner") and the City of Portland ("City"), a municipal corporation of the State of Oregon (together, "the Parties").

Recitals

WHEREAS, City has begun construction of the SW 86th Avenue Pump Station and appurtenances ("the Project"), the site of which is located near Owner's residence at 8535 SW Bohmann Parkway, Portland, Oregon ("the Property").

WHEREAS, the Washington County Hearings Officer, in Condition of Approval I.B.9 in land use case 12-174-SU/D/FP ("the Land Use Decision"), required City to "determine what additional measures are feasible to implement in order to reduce . . . impacts" to "any household [with] particular sensitivities to construction . . .";

WHEREAS, Owner asserts that she or a member of her household suffers from particular sensitivities to construction such as that required by the Project;

WHEREAS, City has determined that it would be feasible and reasonable to pay a portion of the costs to retrofit Owner's residence at the Property ("the Compensation") in order to mitigate the impacts of the Project on Owner or a member of her household;

WHEREAS, the Parties have agreed upon a method for determining the amount for the Compensation;

WHEREAS, the Parties intend for the Compensation to represent the full extent of City's financial assistance to Owner with regard to the Project; and

WHEREAS, these recitals are contractual and are to be construed to be a part of and to effectuate this settlement agreement.

NOW, THEREFORE, Owner and City agree as follows:

1. Owner will arrange for retrofitting Owner's residence at the Property ("the Work") in order to mitigate the impact of the Project on Owner or a member of her household.
2. Owner will present invoices for the Work to City's Bureau of Environmental Services Public Involvement staff for labor performed, materials ordered, and materials installed.
3. City will review the invoices to ensure that they reflect labor and materials that are within the scope of the Work. City may reject invoices that are not reasonably within the scope of the Work.

4. Within thirty days of City's receipt of each of Owner's invoices for the Work and City's acceptance thereof under section 3 above, City will pay Owner the amount indicated on the invoice, provided such payment will not cause the City to exceed the Compensation. The Compensation will consist solely of the lesser of the following and may consist of one or more payments:

- a. The full amount Owner is responsible to pay Owner's contractors for the Work, as indicated on Owner's invoices and as accepted by City under section 3 above; or
- b. \$42,000.00.

5. Owner will not solicit further financial assistance with regard to the Project from any elected officials, officers, employees, or agents of the City of Portland.

6. Owner forever waives all claims against the City or its elected officials, officers, employees, or agents related to or arising from any actual or potential noise impacts from the Project to her and her family's physical or mental health. Nothing in this settlement agreement prevents the Owner from seeking enforcement of Conditions of Approval I.B.1 through I.B.7 of the Land Use Decision, nor does this settlement agreement preclude the Owner from being compensated for any damage to the Owner's home caused by construction, as set forth in Condition of Approval I.B.10 of the Land Use Decision.

7. This settlement agreement represents the full and complete agreement between the Parties and supersedes any prior written or oral agreements. The terms of this settlement agreement are contractual and not a mere recital.

8. The Parties, through their respective signatories, represent and warrant that they have carefully read the terms of this settlement agreement and that they are authorized to execute this settlement agreement on behalf of their respective entities.

9. This settlement agreement shall be governed by and construed in accordance with the laws of the State of Oregon with the exception of Oregon's choice-of-law rules if such rules would require application of the law of a different state.

DATED this _____ day of May, 2013.

CITY OF PORTLAND

OWNER

Bureau of Environmental Services
Director or designee

Heather Keithly

City Attorney

APPROVED AS TO FORM

James H. Van Dyke

CITY ATTORNEY