

BEFORE THE METRO COUNCIL

APPROVING A SETTLEMENT AGREEMENT) RESOLUTION NO. 07-3801
WITH JUVENTINO AVILA ESTRADA DBA)
AVILA DRYWALL REGARDING METRO) Introduced by Metro Chief Operating Officer
NOTICE OF VIOLATION NO. NOV-161-06) Michael Jordan, with the concurrence of
) Metro Council President David Bragdon

WHEREAS, during the period from January 1, 2006 through August 31, 2006, Juventino Avila Estrada dba Avila Drywall delivered solid waste generated within the Metro boundary to the Riverbend Landfill without benefit of a non-system license and without paying the required regional system fees and excise taxes thereby violating Metro Code Sections 5.05.025 and 7.01.080; and

WHEREAS, on September 29, 2006, the Metro Chief Operating Officer ("COO"), issued Notice of Violation No. NOV-161-06 to Mr. Estrada for these violations; and

WHEREAS, Mr. Estrada submitted to Metro a timely request for a contested case hearing regarding NOV-161-06 in a letter dated October 8, 2006; and

WHEREAS, attorney Grant R. Burton informed Metro in a letter dated December 4, 2006 that he had been retained to represent Mr. Estrada in this matter; and

WHEREAS, Mr. Burton, on behalf of Mr. Estrada, provided documentation that some of the solid waste on which NOV-161-06 was based was generated from outside the Metro boundary and agreed to the terms of a settlement under which Mr. Estrada would pay civil penalties equivalent to the regional system fees and excise taxes owed on the waste generated from inside the Metro boundary; and

WHEREAS, Metro Code Section 2.03.090 requires the Council to approve any settlement of unpaid civil penalties assessed by the Director or the COO; and

WHEREAS, the COO recommends that Metro fully settle NOV-161-06 with respect to the civil penalties imposed in NOV-161-06; now therefore

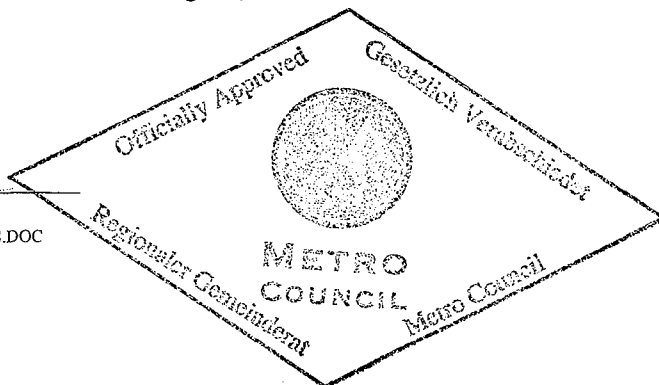
BE IT RESOLVED that the Metro Council approves settlement with Mr. Estrada regarding NOV-161-06 and authorizes the Chief Operating Officer to enter into a settlement agreement substantially similar to the document attached as Exhibit A.

ADOPTED by the Metro Council this 12th day of April, 2007


David Bragdon, Council President

Approved as to Form:


Daniel B. Cooper, Metro Attorney
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SETTLEMENT AGREEMENT

Metro, a metropolitan service district and municipal government organized under the Oregon Constitution, Oregon Revised Statutes Chapter 268, and the Metro Charter, and located at 600 N.E. Grand Ave., Portland, OR 97232 (“Metro”) and Juventino Avila Estrada, dba Avila Drywall, residing at 239 N.W. Adams Ave., Hillsboro, OR 97124 (“Mr. Estrada”) enter this Settlement Agreement (“Agreement”) effective the date that this Agreement is fully executed (the “Effective Date”). Metro and Mr. Estrada shall collectively be referred to herein as the “Parties” and each individually as a “Party.”

RECITALS

- A. On September 29, 2006, Michael Jordan, Metro Chief Operating Officer, issued Notice of Violation No. 161-06 (“NOV-1612-06”) to Mr. Estrada (attached as Exhibit A). Based on an investigation conducted by Metro, Mr. Jordan found that Mr. Estrada had violated the provisions of Metro Code Sections 5.05.025 and 7.01.020 by delivering 1,830 tons of solid waste to the Riverbend Landfill, in 383 separate loads, without having obtained a Metro non-system license and without having paid Metro excise taxes on such waste. Mr. Jordan made a tax deficiency determination against Mr. Estrada in the total amount of \$20,767.94, and imposed a civil penalty of \$37,385.00 against Mr. Estrada for such violations.
- B. Mr. Estrada disputed Mr. Jordan’s conclusion that all of the solid waste in question had originated within the Metro boundary, and provided documentary evidence to support his position.
- C. The Parties enter into this Settlement Agreement to fully settle and compromise this dispute.

NOW, THEREFORE, in reliance on the above recitals and in consideration of the mutual promises described below, the adequacy of which the Parties hereby acknowledge, the Parties agree as follows:

1. Confession of Judgment. Mr. Estrada shall execute the Confession of Judgment attached as Exhibit B to this Agreement and shall provide Metro with such executed document not later than five (5) days after the Effective Date of this Agreement.
2. Metro’s Release of Further Enforcement Action. Metro hereby releases, acquits, and forever discharges its authority to pursue further enforcement action against Mr. Estrada for the violations alleged in NOV-161-06. The Parties do not intend that the release, acquittal, and discharge provided for in this paragraph shall release, acquit, or discharge any other claim, right, or cause of action or any claim, right, or cause of action for violation of the terms of this Agreement.

3. Modification and Waiver. This Agreement shall not be modified unless such modification is in writing and signed by all of the Parties. No provision of this Agreement shall be considered waived by any Party unless such a waiver is made in writing signed by the Party making the waiver. Waiver of any provision(s) of this Agreement shall not affect the enforceability of any other provision(s) of this Agreement.
4. Agreement Not Assignable or Transferable. This Agreement may not be transferred or assigned without the prior written approval of the Parties.
5. Choice of Law. This Agreement shall be construed, applied, and enforced in accordance with the laws of the State of Oregon.
6. Severability. If any non-material provision of this Agreement is held to be invalid, illegal, or unenforceable in any respect, the validity of the remaining provisions contained in this Agreement shall not be affected.
7. Entire Agreement. This Agreement is the entire agreement between the Parties.
8. Voluntary Agreement. Each Party hereby declares and represents that it fully understands the terms of this Agreement, that it has had ample opportunity to review this Agreement and solicit and receive the advice of its own counsel, and that it voluntarily enters into this Agreement.
9. Authority to Enter Into This Agreement and Signatory Authority. Each Party hereby declares and represents that it has the legal power, right, and authority to enter into this Agreement. The individuals signing below warrant that they have full authority to execute this Agreement on behalf of the Party for which they sign.
10. Execution in Counterparts. This Agreement may be executed in counterparts, each of which constitutes an original and all of which together are deemed a single document.

**Juventino Avila Estrada,
dba Avila Drywall**

METRO

Michael Jordan, Chief Operating Officer

Date: _____

Date: _____

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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF WASHINGTON

)	
)	Case No.
METRO, a metropolitan service district and municipal government)	CONFESSION OF JUDGMENT
Plaintiff,)	
)	
v.)	
)	
Juventino Avila Estrada, dba, Avila Drywall,)	
Defendant.)	

Juventino Avila Estrada, dba Avila Drywall, confesses judgment in favor of METRO, a metropolitan service district and municipal government, for the sum of \$22,831.53, and authorizes the entry of judgment against him in this amount. METRO issued a notice of violation to Mr. Estrada on September 29, 2006, in which Metro made a tax deficiency determination against Mr. Estrada and imposed civil penalties against him for violations of Metro Code Sections 5.05.025 and 7.01.020. Mr. Estrada admits that he owes METRO the sum stated above as a result of such violations, specifically, his failure to obtain a Metro non-system license and pay Metro excise taxes for his delivery of 915 tons of solid waste originating within the Metro boundary, in approximately 191 loads, to the Riverbend Landfill in Yamhill County, Oregon, between January 1, 2006 and August 31, 2006.

In consideration for not executing on this judgment, Mr. Estrada promises to pay METRO the sum of \$22,831.53. Such sum is to be paid in monthly installments of not less than \$951.31 in any one payment, the first payment being due on April 30, 2007, and a like payment due on the last day of each month thereafter until the whole sum has been paid.

METRO
Office of Metro Attorney
600 NE Grand Avenue
Portland, Oregon 97232-2736

Exhibit B to Settlement Agreement (Exhibit A to Resolution No. 07-3801)

1 In the event that Mr. Estrada is overdue on the payment of two (2) of these installment payments
2 at any time, METRO shall provide Mr. Estrada with a written notice, mailed via regular U.S. mail
3 deposited in Portland, Oregon, and addressed to Mr. Estrada at 239 N.W. Adams Ave., Hillsboro, OR
4 97124. Such notice shall provide Mr. Estrada with not less than ten (10) days to cure such overdue
5 payments, and shall inform Mr. Estrada that he shall be in default of this Confession of Judgment if he
6 fails to cure such overdue payments or if he is overdue on three (3) such installments, as described
7 below.

8 In the event that Mr. Estrada either fails to cure overdue payments within the time period
9 provided by Metro’s cure letter, as described above, or is overdue on the payment of three (3)
10 installments, then Mr. Estrada shall be in default. In the event of such default, METRO may:

- 11 (a) Take a judgment order based on this confession against Mr. Estrada for:
 - 12 (i) the entire confessed sum, \$22,831.53, less any installments paid (“sum due”),
 - 13 (ii) one-half of one percent monthly simple interest on the unpaid balance of the
 - 14 entire confessed sum calculated from the date that this Confession of Judgment
 - 15 was executed by Mr. Estrada (“interest”), and
 - 16 (iii) reasonable attorney fees in trial court, appellate court, or both (“attorney fees”);
 - 17 and
- 18 (b) Execute to collect such total sum due, including the sum due, interest, and attorney fees.

21 _____
22 Juventino Avila Estrada, dba, Avila Drywall
23 Defendant

24 Date: _____

25 STATE OF OREGON)
26 County of _____) ss.

METRO
Office of Metro Attorney
600 NE Grand Avenue
Portland, Oregon 97232-2736

Exhibit B to Settlement Agreement (Exhibit A to Resolution No. 07-3801)

1 On _____, 20____, personally appeared before me the above-named

2 _____ and acknowledged the foregoing instrument to be [his/her] voluntary act and deed.

3
4 _____
5 Notary Public for Oregon
6 My commission expires: _____
7

8 Assent to entry of judgment on the foregoing confession is hereby given.
9

10
11 _____
12 Paul A. Garrahan
13 OSB No. 98055
14 Attorney for Plaintiff

15 SUBSCRIBED AND SWORN TO before me on _____, 20__.

16 _____
17 Notary Public for Oregon
18 My commission expires: _____
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METRO
Office of Metro Attorney
600 NE Grand Avenue
Portland, Oregon 97232-2736

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 07-3801 APPROVING A SETTLEMENT AGREEMENT WITH JUVENTINO AVILA ESTRADA DBA AVILA DRYWALL REGARDING METRO NOTICE OF VIOLATION NO. NOV-161-06

April 12, 2007

Prepared by: Steve Kraten

BACKGROUND

Description of the Resolution

Avila Drywall is a business that cleans up drywall scrap from various construction sites and delivers it to disposal sites. It is operated by Juventino Avila Estrada. On September 29, 2006, Metro issued Notice of Violation No. 161-06 ("NOV-161-06") to Mr. Estrada for violating the provisions of Metro Code Sections 5.05.025 and 7.01.020 by delivering 1,830 tons of drywall waste to the Riverbend Landfill, in 383 separate loads, without having obtained a Metro non-system license and without having paid Metro excise taxes on such waste. Metro made a tax deficiency determination against Mr. Estrada in the total amount of \$20,767.94, and imposed a civil penalty of \$37,385.00 against Mr. Estrada for these violations.

Mr. Estrada requested a contested case hearing in the matter and subsequently provided credible documentary evidence to support his claim that approximately half of the waste in question had originated from outside the Metro boundary. This is evidence that was requested from Mr. Estrada during the course of the investigation but which he failed to provide prior to the issuance of the Notice of Violation.

Adoption of Resolution 07-3801 will approve a settlement agreement with Mr. Estrada under which Mr. Estrada acknowledges his delivery of 915 tons of solid waste originating within the Metro boundary, in approximately 191 loads, to the Riverbend Landfill between January 1, 2006 and August 31, 2006 and promises to pay METRO the sum of \$22,831.53 in monthly installments of not less than \$951.31 over a two year period. This amount is equivalent to the regional system fee and excise tax owed plus a 25 percent penalty on the excise tax portion.

ANALYSIS/INFORMATION

1. Known Opposition

There is no known opposition to the proposed settlement.

2. Legal Antecedents

Metro Code Section 2.03.090 provides that, after the Chief Operating Officer (or his designee) issues a NOV assessing a civil penalty, any settlement that compromises or settles the assessed civil penalty must be approved by the Metro Council.

3. Anticipated Effects

The effects of Resolution No. 07-3801 will be to approve a settlement that requires Mr. Estrada to pay METRO the sum of \$22,831.53 in monthly installments of not less than \$951.31.

4. Budget Impacts

No budget impact is anticipated.

RECOMMENDED ACTION

The Chief Operating Officer recommends approval of Resolution No. 07-3801, approving a Settlement Agreement with Juventino Avila Estrada substantially similar to the Settlement Agreement attached to the resolution as Exhibit A.

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