

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF AUTHORIZING)	RESOLUTION NO. 84-455
PARTIAL SETTLEMENT IN PENDING)	
CLACKAMAS TRANSFER & RECYCLING)	Introduced by the
CENTER LITIGATION AND AUTHORIZING)	Executive Officer
ADDITIONAL LITIGATION)	

WHEREAS, Litigation is pending between Metro, Parker Northwest Construction Company, Coast Marine Construction Company, Federal Insurance Company, and Black & Veatch, Inc. regarding construction of the CTRC; and

WHEREAS, A negotiated settlement has been reached between Metro, Parker Northwest, Federal Insurance and Coast Marine, the terms of which are specified in the attached Settlement Agreement; and

WHEREAS, Metro has been damaged by errors or omissions of Black & Veatch in performance of its engineering and supervision contracts on the CTRC; now, therefore,


BE IT RESOLVED,

1. That the proposed Settlement Agreement between Metro, Parker Northwest, Coast Marine and Federal Insurance, attached hereto as Exhibit "A", is approved and payments provided for therein are authorized.

2. That the Executive Officer is authorized to commence or continue litigation against Black & Veatch for amounts determined by the Executive Officer to be owed by Black & Veatch to Metro in

connection with those contracts between Metro and Black & Veatch regarding the CTRC and to retain legal counsel therefor.

ADOPTED by the Council of the Metropolitan Service District this 23rd day of February, 1984.



Presiding Officer

AJ/gl
0790C/373
02/23/84

SETTLEMENT AGREEMENT

THIS AGREEMENT made as of this 23rd day of February, 1984, by and between the METROPOLITAN SERVICE DISTRICT, hereinafter "Metro," PARKER-NORTHWEST CONSTRUCTION CO., hereinafter "Parker," FEDERAL INSURANCE COMPANY, hereinafter "Federal" and COAST MARINE CONSTRUCTION, INC., hereinafter "Coast."

Metro and Parker entered into a contract, hereinafter "Agreement," on or about June 8, 1982, for the construction of the Clackamas Transfer & Recycling Center, hereinafter "Project."

On or about the same date, Parker and Federal posted a performance and payment bond in connection with the Project.

Coast and Parker entered into a Subcontract Agreement in connection with the Project.

Certain disputes have arisen between the parties and Coast has instituted litigation (Case No. A8303-01675) against Metro, Parker and Federal, among others, in the Circuit Court of the State of Oregon for the County of Multnomah, hereinafter "Litigation."

Metro, Parker, Federal and Coast have reached agreement and desire to resolve all matters in connection with the Project as between themselves.

Metro, Parker, Federal and Coast believe, however, that a substantial amount of the costs, expenses and damages incurred in connection with the Project are attributable to the acts and omissions of Black & Veatch, its partners and its representatives, and the parties hereto desire to reserve any and all claims they have against such parties.

NOW, THEREFORE, IT IS AGREED:

1. Metro agrees to pay to Parker and Coast, upon the execution of this Agreement, the sum of \$456,000.
2. Metro, Parker, Federal and Coast each agree to release the other parties to this Agreement and their officers, agents, employees and sureties, if any, from any and all claims of any kind, whether known or unknown, which have accrued or which may hereafter accrue, arising out of or relating to the Project; provided, however, that Parker and Federal reserve claim against Metro for any costs which they may incur due to a performance bond for landscape work posted to the City of Oregon City dated March 29, 1983.

3. It is specifically understood that Metro, Parker, Federal and Coast reserve any and all claims they have against Black & Veatch, its partners and its representatives arising out of or relating to the Project.

4. Parker assigns to Metro its interest in certain subcontract and material supply agreements in connection with the Project provided, however, such assignment does not apply to Parker's agreement with Coast.

5. Each of the parties will forward, to the extent applicable, notice as required by ORS 18.455(2).

6. The parties hereto declare and represent that they have not been influenced to any extent in making this Settlement Agreement by any representation or statements regarding this matter or any other matters, made by the persons, firms or corporations who are hereby released, or by any person or persons representing them.

7. This Agreement supersedes any and all prior or contemporaneous oral or written agreements of any kind in connection with the Project and shall not be superseded except upon written instrument signed by all parties.

8. This Agreement shall be binding upon the successors and assigns of each of the parties.

DATED this 24th day of February, 1984.

METROPOLITAN SERVICE DISTRICT

By _____

PARKER-NORTHWEST CONSTRUCTION CO.

By _____

FEDERAL INSURANCE COMPANY

By _____

COAST MARINE CONSTRUCTION, INC.

By _____

TO : METROPOLITAN SERVICE DISTRICT COUNCIL
FROM : E. ANDREW JORDAN and ARTHUR L. TARLOW
SUBJ : CTRC SETTLEMENT AGREEMENT
DATE : February 21, 1984

Upon completion of the Clackamas Transfer and Recycling Center (CTRC), a dispute arose between Parker Northwest, the General Contractor, Coast Marine, the Pile Subcontractor, Black & Veatch, the Project Engineer and Metro pertaining to the existence of a changed condition in the subsurface soils and the degree to which each party properly or improperly responded to that changed condition. Coast Marine, alleging that it had incurred substantial increased costs resulting from the changed condition and from the engineer's failure to properly respond, filed suit against the General Contractor, Metro and the engineer for recovery of its increased cost. The General Contractor thereupon claimed that the changed condition did exist and that Metro and the engineer were responsible for not making the Contractors aware of the changed condition and not supervising the project accordingly. Metro's position has been that a changed condition did exist, that it should have been discovered by the engineer prior to construction, that the engineer should have properly supervised the Contractors when the changed condition was identified and that the Contractors were entitled to some additional compensation resulting from the changed condition. The engineer's position has been that it has no responsibility whatsoever.

While the case was being prepared by the four parties for litigation or arbitration, Metro initiated settlement negotiations based upon the belief that the Contractors were entitled to at least some additional compensation. The total amount of the contractor's claims was approximately \$900,000.00 and settlement negotiations have resulted in a tentative agreement between Metro and the two Contractors for the payment by Metro of \$456,000.00, \$188,000.00 of which is money withheld by Metro at the completion of the project. This agreement was proposed by Metro's attorneys with the concurrence of the Executive Officer and Norm Wietting and has been accepted by the Contractors. The terms of the settlement are included in the attached settlement agreement which we now recommend to the Council for approval. Upon such approval, Metro will pay to Parker Northwest, the General Contractor, the amount of

\$456,000.00 and the claims by Coast Marine against Metro will be paid by Parker from that amount.

Black & Veatch, the engineer, has participated in the case, but is not a party to the settlement agreement. In effect, the engineer has refused to accept any responsibility for the increased costs on the project. Though Metro and the two Contractors have tentatively settled the disputes between them, all three parties maintain that additional compensation is due to each from the engineer. The claims are that the engineer was negligent and in breach of its contract in (1) not discovering the subsurface condition prior to construction and (2) not properly supervising the Contractors after the subsurface condition was discovered resulting in substantial delay. It is, therefore, the position of Metro and the two Contractors that all three parties have remaining claims against the engineer which should be pursued.

Based on the above, it is our recommendation that the Council approve the attached settlement agreement between Metro, Parker Northwest and Coast Marine allowing payment of \$456,000.00 by Metro to Parker in exchange for releases of all claims against Metro, and that Metro proceed either separately or in cooperation with Parker and Coast against Black & Veatch for an amount representing their financial responsibility in this dispute. Since a suit is already pending before the Multnomah County Circuit Court involving all the parties, that suit may be the mechanism in which the claim is made. A trial date has already been scheduled for June, 1984.

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

A RESOLUTION FOR THE PURPOSE)
OF AUTHORIZING PARTIAL SETTLE-)
MENT IN PENDING CTCR LITIGATION) RESOLUTION NO. _____
AND AUTHORIZING ADDITIONAL)
LITIGATION)

WHEREAS, litigation is pending between Metro, Parker Northwest Construction Company, Coast Marine Construction Company, Federal Insurance Company and Black & Veatch, Inc. regarding construction of the Clackamas Transfer and Recycling Center, and

WHEREAS, a negotiated settlement has been reached between Metro, Parker Northwest, Federal Insurance and Coast Marine, the terms of which are specified in the attached Settlement Agreement, and

WHEREAS, Metro has been damaged by errors or omissions of Black & Veatch in performance of its engineering and supervision contracts on the CTCR, now therefore

BE IT RESOLVED

1. That the proposed Settlement Agreement between Metro, Parker Northwest, Coast Marine and Federal Insurance, attached hereto as Exhibit "A", is approved and payments provided for therein are authorized.

2. That the Executive Officer is authorized to commence or continue litigation against Black & Veatch for amounts determined by the Executive Officer to be owed by Black & Veatch to Metro in connection with those contracts between

Metro and Black & Veatch regarding the CTRC and to retain legal
counsel therefor.

ADOPTED this _____ day of _____, 1984.

Presiding Officer

ATTEST:
