

**RESOLUTION NO. 2323**

**A RESOLUTION OF THE CITY OF WILSONVILLE AUTHORIZING THE CITY MANAGER TO EXECUTE A SETTLEMENT AGREEMENT IN THE MATTER OF CITY OF WILSONVILLE V. HDR ENGINEERING, INC., CLACKAMAS COUNTY COURT CASE NO. CV10070047**

WHEREAS, the City Council having heretofore authorized the City Attorney, Michael E. Kohlhoff, through retained outside counsel, Guy A. Randles, to bring claims against HDR Engineering ("HDR") for settlement issues and greater costs associated with the Boeckman Road and Bridge extension project; and

WHEREAS, a complaint captioned *City of Wilsonville v. HDR Engineering*, Clackamas County Circuit Court Case No. CV 10070047, was duly filed and to which HDR duly answered and counterclaimed in dispute of the City's complaint; and

WHEREAS, the parties have reached a settlement of the disputed claims and counterclaims, and the City Council has weighed and balanced the respective merits of settling this matter or continuing on with the litigation, and being fully advised by its legal counsels, finds it is in the public interest to settle the claims and counterclaims as set forth in the Settlement Agreement, marked as Exhibit 1 attached hereto and incorporated by referenced herein, on the terms and conditions set forth therein, including but not limited to the City's prompt receipt of \$980,000 and the stipulated dismissal of the aforementioned claims between the City and HDR; and

WHEREAS, HDR, in answering the City's complaint, also filed a third-party cross claim against HDR's subcontractor, Geotechnical Resources, Inc. ("GRI"), and nothing in the Settlement Agreement is meant or intended to preclude HDR from pursuing its claims against GRI;

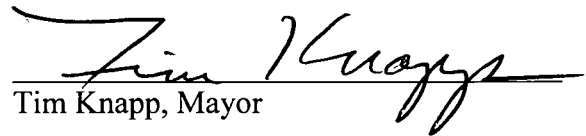
NOW, THEREFORE, THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

1. The above recitals are incorporated by referenced herein.
2. The City Manager is authorized to execute on behalf of the City of Wilsonville the form of the Settlement Agreement which is attached as Exhibit 1, and the City's attorneys are authorized to execute on behalf of the City of Wilsonville

Exhibit A to the Settlement Agreement, entitled Stipulated Limited Judgment of Dismissal as Between City of Wilsonville and HDR Engineering, Inc. Only.

3. This resolution becomes effective upon the date of adoption.

ADOPTED by the City Council of the City of Wilsonville at a special meeting thereof this 7th day of September, 2011, and filed with the Wilsonville City Recorder this date.

  
Tim Knapp, Mayor

ATTEST:

  
Sandra C. King, MMC, City Recorder

SUMMARY OF VOTES:

Mayor Knapp	Yes
Council President Núñez	Yes
Councilor Hurst	Yes
Councilor Goddard	Yes
Councilor Starr	Yes

Attachments:

Exhibit 1: Settlement Agreement  
Exhibit A: Stipulated Limited Judgment of Dismissal as Between City of Wilsonville and HDR Engineering, Inc. Only

## SETTLEMENT AGREEMENT

The City of Wilsonville ("City") contracted with HDR Engineering, Inc. ("HDR") to conduct an environmental analysis and ultimately to perform the design and contract administration for the construction of a crossing commonly known as the Boeckman Road Extension Project ("Project"). The Project contemplated the assessment and design of a bridge crossing over the Coffee Lake Creek Wetlands, including Seely Ditch, to extend Boeckman Road from 95th Avenue to 110th Avenue, and to provide a connection with SW Tooze Road on the west. The Project was officially opened to the public on or about June 21, 2008. In August 2008, the City notified HDR, among others, that the impact panels to the bridge, roadway and adjacent structures appeared to have settlement problems. Thereafter, the City and HDR met several times to investigate the problem and discuss possible solutions.

Thereafter, the City filed an action in Clackamas County Circuit Court entitled: *City of Wilsonville v. HDR Engineering, Inc.*, Case No. CV10070047 (the "Litigation"). In its Complaint, the City essentially made two categories of claims against HDR: (a) a claim for the bridge approach, roadway and adjacent structural settlement and mitigation of its effects, i.e., paragraph 16 of the Complaint ("Settlement Claim"); and (b) a claim comprised of alleged design errors separate and apart from the settlement issues, i.e., paragraph 17 of the Complaint ("Bucket List Claim").

Thereafter, HDR counterclaimed against the City for the balance due to HDR for professional services work on the Project ("A/R Claim"). HDR also brought third-party claims against its sub-consultant, Geotechnical Resources, Inc. ("GRI"). GRI is neither party to nor beneficiary of this Agreement.

The City and HDR have separately agreed to settle the claims by and between them on the following bases:

1. The City and HDR each agree to waive, relinquish and release their Bucket List and A/R Claims in their entirety. Neither the Bucket List nor A/R Claim is considered in the ultimate settlement consideration described in Paragraph 2, infra.
2. HDR will pay the City as the sole monetary consideration for settlement of the Settlement Claim the sum of Nine Hundred Eighty Thousand Dollars (\$980,000.00). Payment will be made within ten (10) days of both the (a) execution of the Stipulated Dismissal described in Paragraph 3; and (b) tender of the documents to HDR as described in Paragraph 9.
3. The Litigation will be dismissed as to all claims and counterclaims as between the City and HDR solely, with prejudice, and without award of costs or attorney fees. The parties will cooperate in effectuating the dismissals, including executing a Stipulated Dismissal for the Litigation in the form attached as Exhibit A.

SETTLEMENT AGREEMENT - CITY OF WILSONVILLE/HDR ENGINEERING, INC  
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4. The parties agree to pay their respective shares of any outstanding mediation costs owed to the Mediator, Martha Hodgkinson, for pre-settlement mediation services.

5. The City (for itself, its successors and assigns) hereby releases and discharges HDR (and its respective employees, agents, officers, shareholders, insurers, attorneys, managers and directors) from all claims, demands, suits or actions, past, present and future, whether known or unknown, suspected or unsuspected, liquidated or unliquidated, arising out of or related to the Project, and all professional services rendered by HDR, including but not limited to the claims and counterclaims that were or could have been brought in the Litigation. It is understood that this release will not compromise HDR's Third-Party Complaint against GRI.

6. HDR (for itself, its successors and assigns) hereby releases and discharges the City (and its employees, agents, officers, council members, attorneys, managers and directors) from all claims, demands, suits or actions, past, present and future, whether known or unknown, suspected or unsuspected, liquidated or unliquidated, arising out of or related to the Project and all professional services rendered by HDR or GRI, including but not limited to the claims and counterclaims that were or could have been brought in the Litigation.

7. The City hereby assigns to HDR any and all claims, demands, causes of actions, defenses and rights it has or may have as against GRI arising from the Project and/or the Litigation. By this assignment, the City also agrees that it will not seek any further contribution relating to the Project from GRI.

8. HDR agrees that it will defend, indemnify and hold the City (and its employees, agents, officers, council members, managers and directors) harmless of and from all claims that have been made or in the future are made against the City by GRI in the Litigation arising out of or related to the Project, including without limitation any claims by GRI for contribution or indemnity. It is expressly understood that HDR shall have the exclusive right to choose Stewart Sokol & Gray, LLC ("SS&G") as attorneys for defending any such claims and HDR will not be responsible for any attorney fees or costs incurred by Stoel Rives LLP or any other entity on behalf of the City as long as the City's defense is conducted in a reasonable manner.

9. The City also agrees to cooperate with HDR in HDR's prosecution of claims against GRI, such cooperation is to include but is not limited to the production of copies of all reports and analyses (expert or otherwise) performed by or for the City in connection with the settlement issues at the Project. If HDR seeks to use persons employed by the City as witnesses in the Litigation, the City will make those persons available through voluntary acceptance of subpoenas without service costs or witness fees. The City will also not oppose HDR's retention of the City's expert witnesses, subject to such expert(s)' agreement.

10. It is understood and agreed that this Agreement is a full compromise and settlement of disputed claims and is not to be construed in any sense as an admission of fault or liability of any party, by whom liability is expressly denied.

11. Nothing in this Agreement is intended to benefit any third parties to this Agreement, except as expressly provided herein.

12. This Agreement shall be deemed to be jointly drafted so that any alleged ambiguity will not be construed against either party based on drafting.

13. This Agreement may be signed in counterparts with a facsimile or electronic copies and signatures used in lieu of originals.

DATED this \_\_\_\_\_ day of August, 2011.

CITY OF WILSONVILLE

HDR ENGINEERING, INC.

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

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

CITY OF WILSONVILLE,  
Plaintiff,  
v.  
HDR ENGINEERING, INC., a foreign  
business corporation,  
Defendant.  

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HDR ENGINEERING, INC., a Nebraska  
corporation,  
Third-Party Plaintiff,  
v.  
GEOTECHNICAL RESOURCES, INC., an  
Oregon corporation,  
Third-Party Defendant.  

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Case No. CV10070047  
**STIPULATED LIMITED JUDGMENT  
OF DISMISSAL AS BETWEEN CITY  
OF WILSONVILLE AND HDR  
ENGINEERING, INC. ONLY**

Plaintiff, City of Wilsonville, by and through its counsel, Steel Rives, LLP,  
and Defendant HDR Engineering, Inc., by and through its counsel, Stewart Sokol &  
Gray LLC, stipulate to the dismissal with prejudice of all claims between them, without  
costs or attorney fees to any party. This dismissal is in fulfillment of a Settlement  
Agreement executed by the parties. This dismissal does not affect the claims as

**Page 1 - STIPULATED LIMITED JUDGMENT OF DISMISSAL AS  
BETWEEN CITY OF WILSONVILLE AND HDR ENGINEERING, INC. ONLY**

**STEWART SOKOL & GRAY LLC**  
ATTORNEYS AT LAW  
10000 PINE AVENUE SUITE 200  
CLATSOP COUNTY WASH 97147  
(509) 222-8888  
FAX (509) 222-9008

1 between Third-Party Plaintiff HDR Engineering, Inc. and Third-Party Defendant  
2 Geotechnical Resources, Inc., which claims remain in full force.

3 IT IS SO STIPULATED.

4 DATED this \_\_\_\_\_ day of August, 2011.

5 STOEL RIVES LLP

STEWART SOKOL & GRAY LLC

6

7 By: \_\_\_\_\_  
8 Guy A. Randles, OSB #773100  
9 garandles@stoel.com  
Attorneys for Plaintiff  
City of Wilsonville

By: \_\_\_\_\_  
John Spencer Stewart, OSB #711648  
jstewart@lawsq.com  
Of Attorneys for Defendant  
HDR Engineering, Inc.

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11 **LIMITED JUDGMENT**

12 Pursuant to the above stipulation,

13 IT IS HEREBY ORDERED AND ADJUDGED that the claims between the City of  
14 Wilsonville and HDR Engineering, Inc. are dismissed with prejudice and without costs  
15 or attorney fees to either party.

16 DATED this \_\_\_\_ day of \_\_\_\_\_, 2011.

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\_\_\_\_\_  
Circuit Court Judge

20 SUBMITTED BY:

21 STEWART SOKOL & GRAY LLC  
22 John Spencer Stewart, OSB #711648  
jstewart@lawsq.com  
23 Of Attorneys for Defendant  
HDR Engineering, Inc.

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BETWEEN CITY OF WILSONVILLE AND HDR ENGINEERING, INC. ONLY

Exhibit A  
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\_\_\_\_\_  
STEWART SOKOL & GRAY LLC

ATTORNEYS AT LAW  
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LAUREL, OREGON 97030-0007  
(503) 221-0899  
FAX (503) 223-0908