



LAKE OSWEGO SCHOOL DISTRICT
Board of Directors Meeting
Administration Building
October 27, 2011

Estimated
Scheduled Time

Purpose

8:00 a.m. 1.0 SCHOOL BOARD MEETING CALL TO ORDER

2.0 WELCOME TO VISITORS

3.0 COMMENTS FROM VISITORS

GOVERNANCE

4.0 BOARD BUSINESS, POLICY AND PROGRAM AGENDA

8:05 a.m. 4.1 Mediation Settlement

8:15 a.m. 4.2 Other Business

Action
Info

5.0 ADJOURNMENT

October 27, 2011

Agenda Item #4.1

Mediation Settlement

Purpose of the Agenda Item: Action

This agenda item is scheduled for the School Board to receive the settlement agreement from the LOHS construction mediation.

Bill Korach

SETTLEMENT AGREEMENT

On or about December 16, 2002, the Lake Oswego School District No. 7J ("District") entered into a construction contract ("Construction Contract") with Robinson Construction Company ("RCC") under which RCC undertook to construct the Lake Oswego High School Project ("Project"). J.J. Henri Co., Inc. ("JJ Henri") provided construction management services to the Project.

RCC constructed the Project using the following subcontractors, among others: Finishers Corporation, Finishers Corporation of California, G.A. Bovero Marble & Tile, Inc., Skyline Sheet Metal, Inc., B. Gentle Concrete Construction Co., Casserly Landscape, Inc., Inland Glass, n/k/a Inland Auto Glass, J & S Masonry, Sawtooth Caulking, Inc., West Coast Finishers, Inc., Eagle Precast, Buckaroo-Thermoseal, Inc., Oregon Cascade Plumbing & Heating, Inc. and REFA Erection, Inc. (collectively, "Subcontractors").

RCC completed the Project in or about the end of 2005. However, water intrusion, leaks and other damage and conditions were subsequently discovered at the Project. As a result, the District brought suit against RCC for breach of contract and negligence contending RCC was liable for construction defects in the Multnomah County Circuit Court Case entitled: *Lake Oswego School District No. 7J v. Robinson Construction Company, et al.*, Multnomah County Circuit Court Case No. 0907-10496 ("Litigation"). RCC has alleged in its third party complaint that, if held liable, some or all of the Subcontractors must indemnify RCC. RCC also filed a separate action entitled: *Robinson Construction Co. v. LSW Architects, P.C., et al.*, Multnomah County Circuit Court Case No. 1105-05761 ("RCC Litigation") seeking indemnity and contribution from REFA Erection, Inc. and JJ Henri, among others.

The parties to the Litigation have engaged in extensive discovery and exchanges of expert information. As the result of mediation conducted by Mark Gardner, the parties have agreed to settle all actual and potential claims and disputes among them on the following basis:

1. District Board Approval Required. In order to be binding on the District, this Agreement must be approved by the District's School Board. However, counsel for the District represent that they will recommend its approval. The District agrees to present this Agreement for approval to its Board as soon as reasonably practicable. The District will immediately report to the parties the action of the District's Board.

2. Settlement Payment. The District shall be paid a total of \$6,715,667 ("Settlement Amount"). The Settlement Amount shall be paid as follows:

\$2,374,000 to be paid by or on behalf of Robinson Construction Company;

\$ 750,000 to be paid by or on behalf of Finishers Corporation;

\$ 750,000 to be paid by or on behalf of Finishers Corporation of California;

\$1,000,000 to be paid by or on behalf of G.A. Bovero Marble & Tile, Inc.;

\$ 325,000 to be paid by or on behalf of Skyline Sheet Metal, Inc.;

- \$ 40,000 to be paid by or on behalf of B. Gentle Concrete Construction Co.;
- \$ 40,000 to be paid by or on behalf of Casserly Landscape, Inc.
- \$ 180,000 to be paid by or on behalf of Inland Auto Glass;
- \$ 275,000 to be paid by or on behalf of J & S Masonry;
- \$ 30,000 to be paid by or on behalf of Sawtooth Caulking, Inc.;
- \$ 35,000 to be paid by or on behalf of West Coast Finishers, Inc.;
- \$ 15,000 to be paid by or on behalf of Eagle Precast;
- \$ 600,000 to be paid by or on behalf of Buckaroo-Thermoseal, Inc.;
- \$ 75,000 to be paid by or on behalf of Oregon Cascade Plumbing & Heating, Inc.
- \$ 60,000 to be paid by or on behalf of REFA Erection, Inc.; and
- \$ 166,667 to be paid by or on behalf of J.J. Henri Co., Inc.

The enumerated payments shall be paid no later than thirty (30) days after this Agreement is fully executed and is approved by the District's Board. Any delinquent payment shall accrue interest at the rate of nine percent (9%) per annum until paid. Payments shall be made by check made payable to Lake Oswego School District No. 7J, Tax I.D. Number 93-6008560. Checks shall be mailed or delivered to the District's counsel: Guy A. Randles, Stoel Rives LLP, 900 SW Fifth Avenue, Suite 2600, Portland, Oregon 97204.

3. Litigation Dismissal. The trial court in the Litigation shall be notified of this Agreement once it is fully executed and the condition that the District Board's approval is required. The Litigation and RCC Litigation (as to REFA and JJ Henri) shall be dismissed with prejudice and without award of costs or attorney fees to any party, conditioned upon all the payments enumerated in Section 2 having been received by the District. The District will notify the trial court immediately when/if its Board approves the Agreement and again once the full settlement amount has been received.

4. Releases.

(a) Subject to the terms of this Agreement including specifically the payment provisions of Section 2, the District, RCC, JJ Henri and all the Subcontractors fully compromise, release and discharge each other (and their respective officers, employees, directors, members, agents, affiliates, successors and assigns) from all claims, demands, suits or actions of any kind among or between them arising out of or related to the Project, including without limitation those for indemnity or contribution or based upon contract or in negligence. This release includes without limitation claims whether known or unknown and claims which were made or which could have been made in the Litigation or the RCC Litigation. It is agreed that the parties will have no further obligations to each other with respect to the Project.

(b) The release as provided herein is limited to the parties who execute this Agreement and is not intended to benefit any third parties.

5. No Admission. This settlement shall not be considered an admission of fault or liability by any party. It is agreed that the Settlement Amount is not in any respect payment for any design deficiencies, negligence, or breach of contract by the Project architects or their subconsultants.

6. Representation by Counsel. Each party to this Agreement is represented by counsel and has consulted with its counsel regarding the terms and legal meaning of this Agreement.

7. Waiver of Construction against Drafter. This Agreement was negotiated and approved by the parties. Any rule that would otherwise require an ambiguity in this Agreement to be construed against the drafting party is hereby expressly waived.

8. No Transfer of Claims. The parties represent and warrant that each has not previously assigned any substantive right (e.g., rights or claims) at issue under this Agreement.

9. Entire Agreement. This Agreement constitutes the entire agreement among the parties and all terms cited or referenced in this document are contractually binding, not mere recitals. This Agreement supersedes any prior oral or written agreements or communications on the subject matter addressed herein.

10. Counterparts. This Agreement may be executed in counterparts, including counterparts received by facsimile or electronic transmission, each counterpart constituting an original.

11. Dispute Resolution. In the event a dispute arises between the parties in connection with this Agreement, the dispute shall be submitted to Mark Gardner who shall act as sole arbitrator. In the event Mark Gardner is not available to arbitrate a dispute, then the parties involved in the dispute may stipulate to a different arbitrator.

12. Attorney Fees. Each party shall bear its own attorney fees and costs through the date of this Agreement. However, if any party commences a legal proceeding seeking to enforce or interpret the terms of this Agreement, then the prevailing party in that proceeding shall be entitled to recover its reasonable attorney fees, expert or consultant fees and other costs incurred in arbitration, at trial, on appeal, on review or in any bankruptcy proceeding.

13. Further Assurances. The parties agree to take such action and execute such further documents, including modifications to this Agreement, as may be reasonably necessary to effectuate the intent of this Agreement.

14. Authority to Settle. All individuals signing this Agreement on behalf of a party represent and warrant that they are authorized to do so.

LAKE OSWEGO SCHOOL DISTRICT NO. 7J

By: _____

Its: _____

Date: _____

APPROVED AS TO FORM AND CONTENT:

Guy A. Randles
Steel Rives LLP
Attorneys for Lake Oswego School District No. 7J

ROBINSON CONSTRUCTION COMPANY

By: _____

Its: _____

Date: _____

APPROVED AS TO FORM AND CONTENT:

Matthew H. Mues
Blunck & Walhood, LLC
Attorneys for Robinson Construction Co.

FINISHERS CORPORATION

By: _____

Its: _____

Date: _____

FINISHERS CORPORATION OF CALIFORNIA

By: _____

Its: _____

Date: _____

APPROVED AS TO FORM AND CONTENT:

Jack Levy
Smith Freed & Eberhard PC
Attorneys for Finishers Corporation and
Finishers Corporation of California

G.A. BOVERO MARBLE & TILE, INC.

By: _____

Its: _____

Date: _____

B. GENTLE CONCRETE CONSTRUCTION CO.

By: _____

Its: _____

Date: _____

APPROVED AS TO FORM AND CONTENT:

Matthew T. Piwonka
Law Office of Wendy M. Kent
Attorneys for G.A. Bovera Marble & Tile, Inc. and
B. Gentle Concrete Construction Co.

SKYLINE SHEET METAL, INC.

By: _____

Its: _____

Date: _____

WEST COAST FINISHERS, INC.

By: _____

Its: _____

Date: _____

APPROVED AS TO FORM AND CONTENT:

Rima I. Ghandour
Wiles Law Group, LLC
Attorneys for Skyline Sheet Metal, Inc. and
West Coast Finishers, Inc.

CASSERLY LANDSCAPE, INC.

By: _____

Its: _____

Date: _____

INLAND GLASS n/k/a INLAND AUTO GLASS

By: _____

Its: _____

Date: _____

APPROVED AS TO FORM AND CONTENT:

Elizabeth K. Rhode
Salmi & Gillaspy, PLLC
Attorneys for Casserly Landscape, Inc. and Inland Auto Glass, Inc.

J & S MASONRY

By: _____

Its: _____

Date: _____

OREGON CASCADE PLUMBING & HEATING, INC.

By: _____

Its: _____

Date: _____

APPROVED AS TO FORM AND CONTENT:

Wendy J. Paris
Law Offices of Kenneth R. Scearce
Attorneys for J & S Masonry and
Oregon Cascade Plumbing & Heating, Inc.

SAWTOOTH CAULKING, INC.

By: _____

Its: _____

Date: _____

APPROVED AS TO FORM AND CONTENT:

Abby R. Michels
Law Offices of Andersen & Nyburg
Attorneys for Sawtooth Caulking, Inc.

EAGLE PRECAST

By: _____

Its: _____

Date: _____

APPROVED AS TO FORM AND CONTENT:

Thomas A. Ped
Williams, Kastner & Gibbs PLLC
Attorneys for Eagle Precast

BUCKAROO THERMOSEAL, INC.

By: _____

Its: _____

Date: _____

APPROVED AS TO FORM AND CONTENT:

Claude F. Bosworth
Rizzo Mattingly Bosworth PC
Attorneys for Buckaroo Thermoseal, Inc.

REFA ERECTION, INC.

By: _____

Its: _____

Date: _____

APPROVED AS TO FORM AND CONTENT:

Bryan W. Cavaness
Abbott Law Group, PC
Attorneys for REFA Erection, Inc.

J.J. HENRI CO., INC.

By: _____

Its: _____

Date: _____

APPROVED AS TO FORM AND CONTENT:

Jon C. Larson
Marvin Chorzempa and Larson, PC
Attorneys for J.J. Henri Co., Inc.