

**RESOLUTION NO. 4296**

**A RESOLUTION OF THE CITY COUNCIL OF THE  
CITY OF AUBURN, WASHINGTON, APPROVING  
THE SETTLEMENT OF DISPUTED CLAIMS WITH  
FLAGG CONSTRUCTION COMPANY FOR  
CONSTRUCTIN ACTIVITIES AT THE VETERANS  
MEMORIAL BUILDING**

WHEREAS, the City of Auburn contracted for construction work in connection with the City of Auburn Veterans Memorial Building, awarding the bid for the work to Flagg Construction Company; and

WHEREAS, during the course of this project, certain change orders were made by the City and others were required by errors in construction caused by Flagg Construction Company; and

WHEREAS, as a result of those changes, the City sought to impose liquidated damages for the delays caused by Flagg Construction Company errors, and Flagg Construction Company sought increased compensation for the additional work involved in this project (the City sought \$16,200 in liquidated damages and Flagg Construction Company claimed damages of between \$75,000 and \$2.1 million); and

WHEREAS, pursuant to the agreement between the parties, such disputes are required to go to mediation prior to any litigation, and pursuant to the litigation involved in these disputes, a resolution of the disputed claims was reached, and

WHEREAS, even though the City feels its position with respect to these claims is very defensible, in a cost benefit analysis, it would cost the city more to litigate the dispute than pay the amount that was ultimately agreed upon; and

WHEREAS, the terms of the resolution (settlement) are subject to approval by the City Council.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN, HEREBY RESOLVES as follows:

Section 1. That the Mayor is hereby authorized to execute on the City's behalf an agreement that settles the above-referenced disputes in accordance with the attachments hereto, marked as Exhibits A and B, respectively.

Section 2. That the Mayor is authorized to implement such administrative procedures as may be necessary to carry out the directives of this legislation.

Section 3. That this Resolution shall take effect and be in full force upon passage and signatures hereon.

Dated and Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

CITY OF AUBURN

\_\_\_\_\_  
PETER B. LEWIS  
MAYOR

ATTEST:

\_\_\_\_\_  
Danielle E. Daskam, City Clerk

APPROVED AS TO FORM:

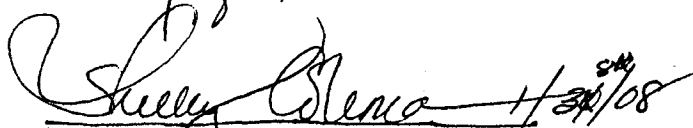
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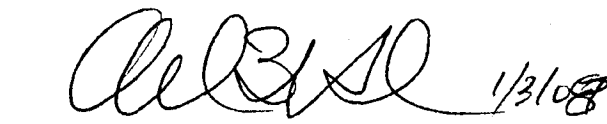
Daniel B. Heid, City Attorney

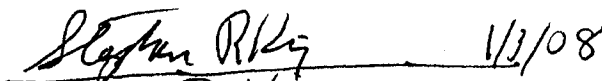
Exhibit A  
Settlement Agreement  
January 3, 2008

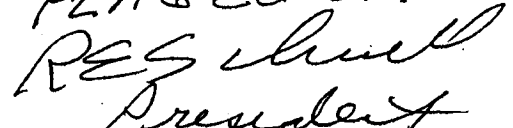
Subject to City Council approval, which will be recommended by Mayor and the participants in this mediation, the undersigned hereby agree to the settlement of claims between Flag Construction Co., Inc., and the City of Auburn on the following terms and conditions. Although further consistent documents may follow, the parties intend this Agreement to be binding, subject to Council approval, consistent with CR 2A.

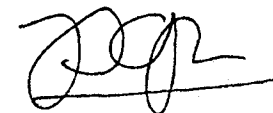
1. The parties will execute a full and final mutual release of all claims between them, actual and potential, related to the construction of a new community building at the City's Veterans Memorial Park (the "Veterans Memorial Building").
2. The City will waive all claims for liquidated damages, including but not limited to its claim in the amount of \$16,200.
3. The City will not assert any claims against the retainage.
4. The City will pay Flag \$10,000 (in addition to the contract balance and retainage, when payable). Such \$10,000 is in settlement of disputed claims and is not a contract payment.
5. The City does not admit liability as to any claim asserted by Flag.

City of Auburn  
  
Shelley Coleman  
Finance Director

  
Daniel B. Heid  
Auburn City Attorney

  
Stephen R. King  
Attorney

FLAG CONST.  
  
President

  
THOMAS LARKIN, ATTY  
FOR FLAG

*Exhibit B*

**RECEIPT, WAIVER AND RELEASE OF CLAIMS**

The City of Auburn ("City") and Flag Construction Company, Inc. ("Flag") hereby fully and finally release each other from any and all claims, whether existing or potential, stemming from, directly or indirectly, or arising out of the construction by Flag of the Veterans Memorial Building (City of Auburn Contract No. 06-15).

Dated: \_\_\_\_\_

**CITY OF AUBURN**

**FLAG CONSTRUCTION COMPANY, INC.**

\_\_\_\_\_  
Peter B. Lewis , Mayor

\_\_\_\_\_  
Richard E. Schnell, President

Attest:

By: \_\_\_\_\_  
Danielle E. Daskam. City Clerk

