

VANCOUVER LIBRARY CAPITAL FACILITIES AREA
STAFF REPORT



Date: June 2, 2014
To: Clark County Board of Commissioners
From: Christine M. Cook, Deputy Prosecuting Attorney
Request: Settlement of Claim

Background

As originally proposed by the Fort Vancouver Library District Board of Trustees and in accordance with 27.15.030, RCW, the Clark County Board of Commissioners serves as the governing body of the Vancouver Library Capital Facility Area (VLCFA). VLCFA is a quasi-municipal corporation and independent taxing authority within the meaning of Article VII, section 1 of the Washington State Constitution, and a taxing district within the meaning of Article VII, section 2 of the State Constitution. It was established by a vote of the residents of the City of Vancouver at the November 8, 2005 general election and its boundaries are coterminous with the boundaries of the City of Vancouver. The district was formed to issue general indebtedness and imposing excess levies to retire the indebtedness as a mechanism to fund capital construction of the Main library, Cascade Park library and technology improvements at the Vancouver Mall library, as identified in the bond measure approved by Vancouver voters on September 19, 2006.

On October 9, 2008, plaintiff Myrtie Sullivan fell while exiting the Firstenburg Center in Vancouver, sustaining personal injuries. She sued the City of Vancouver, Union Corner Construction, Fort Vancouver Regional Library District and Vancouver Library Capital Facilities Area, as defendants in Case No. 11-2-03973-4. Parties entered settlement negotiations, which successfully concluded in 2013. The settlement imposes no responsibility for the accident and no obligation to pay damages on the Vancouver Library Capital Facilities Area, which is Clark County's connection to the lawsuit. Union Corner Construction will pay plaintiff \$30,000, and the combined parties of Fort Vancouver Regional Library District and City of Vancouver will pay in the amount of \$15,000, for a total settlement amount of \$45,000. Per the indemnification agreement, the Library District is responsible for the full \$15,000 portion. The settlement otherwise stipulates dismissal with prejudice of the lawsuit. A copy of the settlement agreement is attached and will become binding once all named parties have signed it.

Action Requested

Staff recommends that the Board of Commissioners, acting on behalf of the Vancouver Capital Library District, authorize its Chair to sign the attached settlement agreement with Myrtie Sullivan and thereby approve the settlement as to form and content.

Approved by:



Tom Mielke, Chair

Approved = June 10, 2014
SR 113-14

OK


CITY OF VANCOUVER,)
)
Third-Party Plaintiff,)
)
vs.)
)
FORT VANCOUVER REGIONAL LI-)
BRARY DISTRICT, VANCOUVER LI-)
BRARY CAPITAL FACILITY AREA, and)
JOHN OR JANE DOES (1-10),)
)
Third-Party Defendants.)

d. The Parties have reached a settlement and wish to memorialize this in written form in this Agreement.

3. Agreement

The Parties agree as follows:

a. Payment. Total payment to Myrtie Sullivan is \$45,000, paid by the following:

Union Corner Construction, Inc.	\$30,000.00
Fort Vancouver Regional Library District/ City of Vancouver	\$15,000.00

b. Settlement of All Claims. The Parties understand, acknowledge and agree that this settlement resolves all issues, including but not limited to all claims, counterclaims and potential claims arising out of or relating to the events in the above-referenced Recitals and the Lawsuit. The Parties acknowledge and agree that this settlement is the compromise of a disputed claim, and it shall not be construed as an admission of liability or fault on the part of any of the Released Parties. The Parties hereby release and discharge each other, their attorneys, insurers, and agents, from any and all such known and unknown, past and present claims and disputes between them related to the events in the above-referenced Recitals as of the date of this Agreement.

c. Liens. Myrtie Sullivan and her attorney further acknowledge, warrant, and agree to satisfy all liens, reimbursement rights, subrogation interests and claims from these settlement funds, including any automatic liens or obligations created by federal and/or state law, of medical assistance, Medicare, Medicaid, child support, income tax, and any doctor, hospital, insurance carrier, non-profit hospital and medical service organization, state or governmental agency, or any other person, firm or corporation, which have been made or may be made in the future against the payments described in this Settlement

Agreement and Mutual Release of All Claim; To the extent that Medicare has made conditional payments related to the accident, injury, or illness giving rise to this settlement, Myrtie Sullivan shall reimburse Medicare for such conditional payments within sixty (60) days of receipt of a final demand letter from Medicare; Any and all claims, rights of recovery, or liens concerning Medicare's prior conditional payments will be resolved prior to Myrtie Sullivan receiving her portion of the settlement amount from her attorney's client trust account, escrow account or other like account; and Myrtie Sullivan further agrees to hold the Released Parties harmless and to defend and indemnify the Released Parties against any suits, claims, cross-claims, judgments, costs or expenses of any kind, including attorney's fees, arising from assertion of any such liens, reimbursement right, subrogation interest or claim.

- d. Dismissal. The Parties acknowledge and agree to a stipulated dismissal with prejudice of the Lawsuit without attorney fees or costs to any party.
- e. Entire Agreement. This Agreement contains the entire agreement between the Parties related to the subject matter covered herein. The Parties acknowledge that they have jointly contributed to the drafting of this Agreement. In the event of ambiguity, this Agreement is to be construed neither for nor against any party.
- f. Counterparts. The Parties hereby agree that this Agreement may be executed in counterparts and a facsimile signature shall be binding as if it were an original signature. This Agreement shall be considered fully executed when the signatures of all Parties have been obtained either in one document or in a compilation of multiple counterparts from each Party hereto.
- g. Assistance of Counsel. The Parties acknowledge that they have reviewed this Agreement, prior to signing, with legal counsel, have been advised to do so, or are hereby advised to do so. They also represent that they have carefully read it, that they fully understand its final and binding effect, and that each party has voluntarily executed this Agreement with the full intent of performing their respective duties as set forth herein.
- h. Authority. Each person signing this Agreement on behalf of a party warrants that he or she is duly authorized to execute this Agreement.

This Agreement shall become binding only after it has been signed by all parties hereto.

AS EVIDENCED BY THEIR SIGNATURES BELOW, the Parties have reviewed and read this entire Agreement, have the proper authority to sign the same, and approve it as to form and content.

We have read this Release, understand it, and are signing it voluntarily.

Myrtie C. Sullivan	Date

Union Corner Construction, Inc. By: _____ (printed name)	Date

Fort Vancouver Regional Library District; By: _____ (printed name)	Date

Vancouver Library Capital Facility Area By: <u>Tom Mielke</u> (printed name)	Date <u>6/10/2014</u>

City of Vancouver By: _____ (printed name)	Date

APPROVED AS TO FORM

By: _____
Steve Kinman
Of Attorney for Myrtie Sullivan

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FILED
2013 AUG 19 PM 4:05
SCOTT G. WEBER, CLERK
CLARK COUNTY

SUPERIOR COURT OF WASHINGTON FOR CLARK COUNTY

MYRTIE SULLIVAN,
Plaintiffs,
vs.
CITY OF VANCOUVER, WA and UNION
CORNER CONSTRUCTION and JOHN
DOE (1-10)
Defendants,
and
CITY OF VANCOUVER, WA,
Third-Party Plaintiff,
vs.
FORT VANCOUVER REGIONAL
LIBRARY DISTRICT, VANCOUVER
LIBRARY CAPITAL FACILITY AREA, and
JOHN OR JANE DOES (1-10),
Third-Party Defendants.

No. 11-2-03973-4
STIPLUATION AND ORDER RE: (1)
ACCEPTANCE OF DUTY TO DEFEND
AND INDEMNIFY BY THIRD-PARTY
DEFENDANT FORT VANCOUVER
REGIONAL LIBRARY DISTRICT (2)
SUBSTITUTION OF COUNSEL FOR
DEFENDANT CITY OF VANCOUVER,
AND (3) DISMISSAL OF THIRD-
PARTY COMPLAINT

[Clerk's Action Required]

STIPULATION

Third-Party Plaintiff City of Vancouver ("City") and Third-Party Defendant Fort Vancouver Regional Library District ("FVRLD"), by and through undersigned counsel of record, hereby stipulate and agree as follows:

1. FVRLD owes a duty of defense and indemnification to the City as it relates to the above-captioned complaint filed by Plaintiff Myrtie Sullivan against City. In the event

ORIGINAL

1 Sullivan obtains any monetary recovery against City, whether by way of judgment or
2 settlement, as it relates to the allegations made by Sullivan in her complaint filed October 5,
3 2011 (Sub. 2) under cause no. 11-2-03973-4, FVRLD shall indemnify the City in full.

4 2. FVRLD shall defend the City in this action at its own expense. Pursuant to CR
5 71, attorney Kathryn R. Morton (WSBA #20656) shall substitute as counsel of record for
6 Defendant City of Vancouver. Attorneys Alison J. Chinn (WSBA #12602) and Jonathan J.
7 Young (WSBA #35648) withdraw. This notice of withdrawal and substitution of counsel is
8 deemed effective upon entry of this stipulation as an order of the court.

9 3. In exchange for FVRLD accepting the City's tender of defense and
10 indemnification, the City's third-amended complaint against FVRLD and any other third-party
11 defendant should be dismissed with prejudice and without costs.

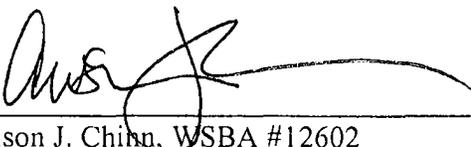
12 4. Nothing in this stipulation shall be construed in any way to suggest that Plaintiff
13 Sullivan's claims against the City or any other defendant have factual or legal merit, and this
14 stipulation shall not be admissible to prove liability.

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16 DATED on November 14, 2013.

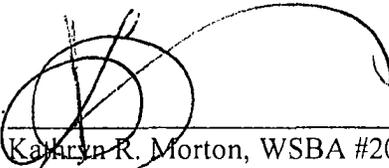
DATED on 7/31, 2013.

17
18 TED H. GATHE, CITY ATTORNEY
VANCOUVER, WASHINGTON

LAW OFFICES OF KATHRYN
REYNOLDS MORTON

19
20 By: 

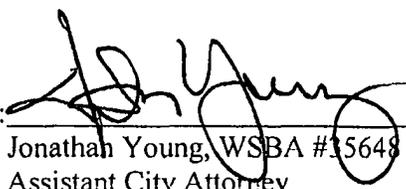
21 Alison J. Chinn, WSBA #12602
22 Assistant City Attorney
23 Attorney for Third-Party Plaintiff City of
24 Vancouver
25 Withdrawing Attorney for Defendant City
of Vancouver

By: 

Kathryn R. Morton, WSBA #20656
Attorney Third-Party Defendant Fort
Vancouver Regional Library District /
Substituting Attorney for Defendant City of
Vancouver

1
2 DATED on August 14, 2013.
3

4 TED H. GATHE, CITY ATTORNEY
VANCOUVER, WASHINGTON

5
6 By: 
7 Jonathan Young, WSBA #35648
8 Assistant City Attorney
9 Attorney for Third-Party Plaintiff City of
10 Vancouver
Withdrawing Attorney for Defendant City
of Vancouver

11 **ORDER**

12
13 BASED on the stipulation of Third-Party Plaintiff City of Vancouver and Third-Party
14 Defendant Fort Vancouver Regional Library District, the Court orders as follows:

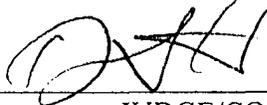
15 1. FVRLD owes a duty of defense and indemnification to the City as it relates to
16 the above-captioned complaint filed by Plaintiff Myrtie Sullivan against City. In the event
17 Sullivan obtains any monetary recovery against City, whether by way of judgment or
18 settlement, as it relates to the allegations made by Sullivan in her complaint filed October 5,
19 2011 (Sub. 2) under cause no. 11-2-03973-4, FVRLD shall indemnify the City in full.

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23 Young (WSBA #35648) withdraw. This notice of withdrawal and substitution of counsel is
24 deemed effective upon entry of this stipulation as an order of the court.
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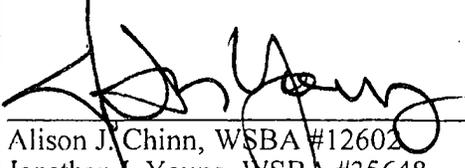
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2 3. In exchange for FVRLD accepting the City's tender of defense and
3 indemnification, the City's third-amended complaint against FVRLD and any other third-party
4 defendant is dismissed with prejudice and without costs.

5 4. Nothing in this stipulation shall be construed in any way to suggest that Plaintiff
6 Sullivan's claims against the City or any other defendant have factual or legal merit, and this
7 stipulation shall not be admissible to prove liability.

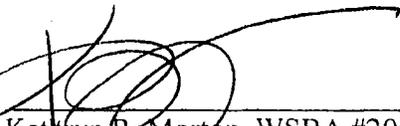
8 DATED this 16 day of August, 2013.

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11 JUDGE/COMMISSIONER
12 CLARK COUNTY SUPERIOR COURT

13 Presented by:

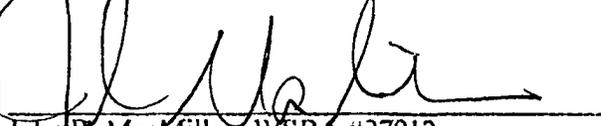
14 
15 Alison J. Chinn, WSBA #12602
16 Jonathan J. Young, WSBA #35648
17 Assistant City Attorneys
18 Attorney for Third-Party Plaintiff City of Vancouver /
19 Withdrawing Attorneys for Defendant City of Vancouver

20 Approved as to form, notice of presentation waived:

21 
22 Kathryn R. Morton, WSBA #20656
23 Attorney for Third-Party Defendant Fort Vancouver Regional Library District
24 Substituting Attorney for Defendant City of Vancouver
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Approved as to form, notice of presentation waived:



John R. MacMillan, WSBA #27912
Jennifer L. Maks, WSBA #43746
Attorneys for Defendant Union Corner Construction

Approved as to form, notice of presentation waived:

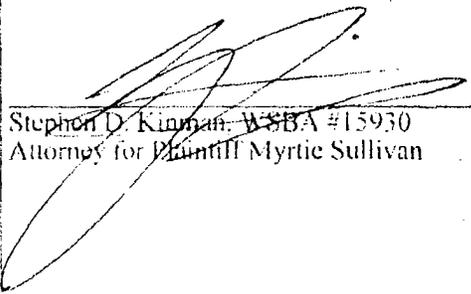
Stephen D. Kinman, WSBA #15930
Attorney for Plaintiff Myrtie Sullivan

1 Approved as to form, notice of presentation waived:

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John R. MacMillan, WSBA #27912
Jennifer L. Maks, WSBA #43746
Attorneys for Defendant Union Corner Construction

Approved as to form, notice of presentation waived:



Stephen D. Kinnan, WSBA #15930
Attorney for Plaintiff Myrtie Sullivan

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SUPERIOR COURT OF WASHINGTON FOR CLARK COUNTY

MYRTIE SULLIVAN,

Plaintiffs,

vs.

CITY OF VANCOUVER, WA and UNION
CORNER CONSTRUCTION and JOHN
DOE (1-10)

Defendants,

No. 11-2-03973-4

GR 17 DECLARATION OF COUNSEL

CITY OF VANCOUVER, WA,

Third-Party Plaintiff,

vs.

FORT VANCOUVER REGIONAL
LIBRARY DISTRICT, VANCOUVER
LIBRARY CAPITAL FACILITY AREA, and
JOHN OR JANE DOES (1-10),

Third-Party Defendants.

I am over the age of 18 years and am competent to testify. I am an Assistant City Attorney for the City of Vancouver. On August 6, 2013, I received via email a scanned signature page from Plaintiff's counsel, Stephen D. Kinman, which appears as the last page of the document to which this GR 17 declaration is attached. I have examined the document sent

1 by Mr. Kinman, determined that it consists of one page of the original five page word
2 document that was sent to him for review, and that it is complete and legible.
3

4 I declare under penalty of perjury under the laws of the State of Washington that the
5 foregoing is true and correct.

6 EXECUTED on August ¹⁴/_{ajc} 13, 2013, in Vancouver, Washington.

7
8 
9 _____
Alison J. Chinn, WSBA No. 12602
Assistant City Attorney

LAW OFFICES OF
KATHRYN REYNOLDS MORTON

Employees of Liberty Mutual Group, Inc.

Meg M. Carman*
Nik T. Chourey
Sally Anne Currey
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Scott A. Jonsson*
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December 26, 2013

Mr. Mark McCauley
Clark County Administrator
Board of Clark County Commissioners
P.O. Box 5000
Vancouver, WA 98666-5000

RECEIVED

DEC 27 2013

RE: *Sullivan v. Fort Vancouver Regional Library District, et al.*
Clark County Superior Case No. 11-2-03973-4

Board of Commissioners

Dear Mr. McCauley:

Please be advised that this office represents the Fort Vancouver Regional Library District, the City of Vancouver and the Vancouver Library Capital Facility Area in regards to a trip-and-fall incident which occurred on October 9, 2008 at the Furstenberg Center in Vancouver. That case has now settled and all parties are required to sign the Settlement Agreement. It is my understanding that the Vancouver Library Capital Facility Area is managed by the Board of Clark County Commissioners. Therefore, I am forwarding the Settlement Agreement to you at this time for signature by the appropriate individual and return of the document to this office.

Please do not hesitate if you should have any questions regarding the case itself or the enclosed agreement. I appreciate your professional courtesies in helping us put this matter to rest.

Very truly yours,



Ronald Webster
Attorney at Law

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Enclosures