



OFFICE OF COUNTY COUNSEL

PUBLIC SERVICES BUILDING
2051 KAEN ROAD | OREGON CITY, OR 97045

Stephen L. Madkour
County Counsel

June 29, 2023

Board of County Commissioners
Clackamas County

Members of the Board:

Kathleen Rastetter
Scott C. Ciecko
Amanda Keller
Shawn Lillegren
Jeffrey D. Munns
Andrew R. Naylor
Andrew Narus
Sarah Foreman
Assistants

Approval of Settlement Agreement with Blackhawk LLC to Resolve Litigation Related to the Lease of Office Space by the Office of Tourism & Cultural Affairs. Agreement value is \$425,000. Funding is through the Tourism Development Commission. No County General Funds are involved.

Previous Board Action/Review	The Board has been briefed on this case during previous executive sessions.		
Performance Clackamas	Build public trust through good government.		
Counsel Review	Yes	Procurement Review	No
Contact Person	Shawn Lillegren	Contact Phone	503-742-5393

EXECUTIVE SUMMARY: The Office of County Counsel requests the approval of a settlement agreement with Blackhawk LLC, which concerns litigation arising from a lease of office space by the Office of Tourism & Cultural Affairs. Due to staff reductions related to the Covid-19 pandemic, the office space was no longer needed. This settlement resolves all liabilities for past and future lease payments due under this 10-year lease.

RECOMMENDATION: Staff recommends BCC approve and authorize Chair Tootie Smith to sign the attached Settlement Agreement.

Respectfully submitted,

Shawn Lillegren
Senior Assistant County Counsel

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This Settlement Agreement and Release of Claims ("Agreement") is entered into between Blackhawk, LLC ("Blackhawk") and Clackamas County ("County"), collectively the "Parties."

WHEREAS, Blackhawk filed a lawsuit in the Circuit Court of the State of Oregon, for the County of Clackamas, Case No. 22CV19463, regarding an alleged breach of lease concerning property at 1830 Blankenship Road, West Linn, Oregon, seeking money damages, specific performance, attorney fees, costs and disbursements;

WHEREAS, the County does not agree with Blackhawk's allegations in its lawsuit, and denied Blackhawk's claims in its answer to the complaint and demanded a jury trial;

Nevertheless, the Parties wish to resolve this situation as follows:

1. Meaning of Terms.

- (a) As used in this Agreement, "Blackhawk" shall mean Blackhawk' LLC, its agents, and all other persons, members, firms associations or corporations in interest with them, including insurers, attorneys, assigns, and anyone claiming through Blackhawk.
- (b) As used in this Agreement, "County" shall mean Clackamas County, Clackamas County Tourism, the Tourism Development Council, current and former commissioners, current and former advisory board members, current and former advisory council members, current and former managers, current and former County Counsel, current and former County Administrators, current and former employees (in their individual and representative capacities), attorneys, insurers, and current and former agents.

2. Consideration.

The Parties also agree and acknowledge that this Agreement is entered into in consideration of the mutual promises and covenants contained herein.

3. Settlement and Release.

The County shall pay a total sum of \$425,000 as full and final payment to Blackhawk. Payment shall occur within 21 calendar days of the date in which this Agreement is fully executed by the Parties. Blackhawk shall file a general judgment of dismissal, with prejudice, no later than three calendar days after receipt of the settlement proceeds.

The Parties hereby waive any legal rights, releases and each Party forever discharges the other Party from any and all liability demands claims, suits, actions, charges, damages, judgments, levies or executions, whether known or unknown, arising out of or in any way related to or in connection with the lease of office space at 1830 Blankenship Road, in the Circuit Court of the State of Oregon, for the County of Clackamas, Case No. 22CV19463, which specifically includes, but is not limited to any amount of past due rent, fees, interest, and costs relating to the subject lease of office space.

4. No Admission of Liability.

Nothing in the Agreement shall be construed to be or used as an admission of liability, fault, or wrongful, tortious, or unlawful activity by any party. No part of this agreement shall be admissible in any court or alternative dispute resolution proceeding for the purpose of proving liability, causation, or fault.

5. Integration.

The Parties agree that this Agreement states the entire agreement of the Parties and supersedes all prior and contemporaneous negotiations and agreements, oral or written. Each party expressly acknowledges that the other party did not, directly or indirectly, make any promises, representations, or warranties whatsoever, express or implied, other than those contained in this Agreement. The Parties further agree that this Agreement may be amended only by a subsequent writing signed by the Parties.

6. Severability and Governing Law.

The Parties agree that any provision of this Agreement that is held to be illegal, invalid, or unenforceable under present or future laws shall be fully severable. The Parties further agree that this Agreement shall be construed and enforced as if the illegal, invalid, or unenforceable provision had never been a part of this Agreement and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement. Furthermore, a provision as similar to the illegal, invalid, or unenforceable provision as is possible and legal, valid, and enforceable shall be automatically added to this Agreement in lieu of the illegal, invalid, or unenforceable provision. The Parties also agree that Oregon law shall govern the validity and enforceability of this Agreement.

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7. Attorney Fees and Costs.

Each party to this Agreement shall bear its own attorney fees and costs incurred before and through the date of this Agreement.

8. Execution of this Agreement.

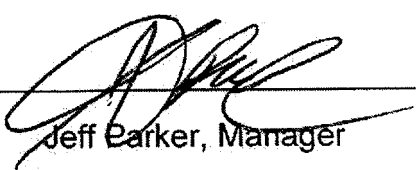
This Agreement may be executed in one or more identical counterparts, including facsimile and scanned and electronically transmitted counterparts, each of which shall be deemed an original. All counterparts shall constitute one Agreement, binding on all the Parties, notwithstanding that all of the parties have not signed the same counterpart.

9. Review by Counsel.

The Parties have been given the opportunity to have this Agreement reviewed by counsel. BY SIGNING THIS AGREEMENT, THE PARTIES ACKNOWLEDGE that they have carefully read and fully understands all provisions and effects of this Agreement and that the County advised them in writing, by this paragraph, to consult with their own personal attorney before signing this Agreement; that they have had sufficient opportunity to consult with attorney(s) before signing this Agreement; that they are voluntarily entering into this Agreement free of coercion and duress; and that neither the County nor any of their agents or attorneys, has made any representations or promises concerning the terms or effects of this Agreement other than those expressly set forth herein.

IN WITNESS WHEREOF, the Parties hereto have executed this Settlement Agreement and General Release of Claims on the respective dates set forth below.

BLACKHAWK, LLC

By  _____
Jeff Parker, Manager

Date: 6/16/2023

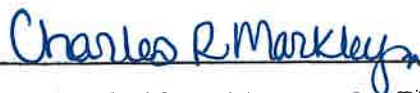
CLACKAMAS COUNTY

By _____
Tootie Smith, Chair

Date: _____

Clackamas County Board of County Commissioners

APPROVED AS TO FORM:



Charles Markley, Attorney for Blackhawk, LLC



Shawn Lillegren, Attorney for Clackamas County