

MOTION NO. 6690

A MOTION authorizing the County Executive to enter into an agreement settling a lawsuit between King County and Hensel Phelps Construction and others regarding the construction of the King County Jail.

WHEREAS, King County has been engaged in a lawsuit entitled Hensel Phelps Construction vs. King County, et al., King County Superior Court Cause No.

85-2-11402-7, regarding the construction of the King County Jail, and

WHEREAS, the King County executive and the King County prosecuting attorney have prepared and recommended an agreement that would settle the above-referenced lawsuit, a copy of which agreement is attached hereto, and

WHEREAS, the county council approves of the terms of this settlement agreement;

NOW, THEREFORE, BE IT MOVED by the Council of King County:

The county executive is hereby authorized to enter into an agreement to settle the above-referenced lawsuit in substantially the form of the agreement attached hereto.

PASSED this 22nd day of December, 1986.

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

Audrey Inger
Chair

ATTEST:

Gerald A. Peterson
Deputy, Clerk of the Council

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33

SETTLEMENT AGREEMENT AND RELEASE

The following parties to Hensel Phelps et al. v. King County et al., King County Cause Number 85-2-11402-7 [the lawsuit], hereby enter into this Agreement to fully settle and resolve all disputes between them which have arisen from the King County Jail project and ensuing litigation: Hensel Phelps Construction Co., Inc. [Hensel Phelps]; King County; Donald B. Murphy Construction [DBM]; Signal Communications, Inc. [Signal]; United Pacific Insurance Company [United Pacific]; Aetna Casualty and Surety Company [Aetna]; Safeco Insurance Company [Safeco]; Naramore Bain Brady and Johanson [NBBJ]; Valentine Fischer & Tomlinson [VFT]; Weedens Consulting Engineers [Weedens]; Century Electronics [Century]; Michael Clayton [Clayton].

1. In consideration of the payment of the sums called for in this Agreement and in further consideration of the promises herein contained, each party to this Agreement and each party's heirs, successors, assigns, insurers, officers, directors and employees hereby fully release all other parties to this Agreement and their heirs, successors, assigns, insurers, officers, directors and employees from all claims, demands, actions and causes of action, known or unknown, suspected or unsuspected, which, as of the date of this Agreement, have arisen in any manner whatsoever in connection with the King County Correctional Facility which is the subject of the lawsuit [the Project] except for claims arising under this Agreement and as stated below:

1.1. King County does not release Hensel Phelps or Phoenix Painting from any claim relating to defective painting work, and King County hereby assigns all such claims and its right to receive any recovery on such claims to Hensel Phelps.

1.2. King County does not release any party from the extended warranties on the chalk boards and the roof, but agrees that all one-year warranties have expired.

1.3. The obligation of NBBJ to continue performance on any presently existing requests for professional services from King County and the obligation of King County to pay for those professional services shall continue.

2. Hensel Phelps will indemnify, defend and hold King County and NBBJ harmless from any claim relating to the Project asserted by Phoenix Painting, its principals, or by any other subcontractor, sub-subcontractor or supplier other than those who are signatories to this Agreement, or by any parent, subsidiary or affiliate of Hensel Phelps, including Southern Steel and Phelps, Inc., or by Tora Industries. King County and NBBJ will cooperate in the defense of any claims which are the subject of this hold harmless clause.

3. King County will simultaneously with the execution of this Agreement finally accept the Project. The retainage currently being held will continue to be held and will be disbursed according to the requirements of law. To the extent claims exist against the retainage that have not been paid at the expiration of the statutory period for asserting such

claims, King County will nevertheless pay the balance of the retainage to Hensel Phelps, and Hensel Phelps will hold King County harmless (as defined in paragraph 2, above) against all outstanding, unpaid claims to retainage and against any claim by anyone that King County, in paying the balance to Hensel Phelps, has wrongfully disbursed the retainage. The acceptance of the Project shall be null and void if any payment called for under this Agreement by parties other than King County is not made.

4. Each party to this Agreement will dismiss with prejudice and without costs all claims asserted in the lawsuit against any other party to this Agreement. In addition, Hensel Phelps will dismiss with prejudice its actions in the lawsuit against any non-parties to this Agreement, except any actions it may have pending against any subcontractor with which Hensel Phelps has not settled at the time of execution of this Agreement.

5. The following parties will pay the following sums into the Settlement Fund by check or warrant made payable to the Trust Account of the law firm of Oles Morrison Rinker Stanislaw and Ashbaugh on January 15, 1987:

United Pacific:	\$1,720,000
NBBJ	250,000
DBM	60,000

In addition, Hensel Phelps shall retain all funds for its own account which were previously being withheld for payments to Signal. Hensel Phelps' share of the Settlement Fund is \$1,450,000. King County's share of the Settlement Fund is \$580,000. In consideration of King County's agreeing that the

entire Settlement Fund shall be paid to Hensel Phelps, the final payment under the contract between Hensel Phelps and King County for construction of the Project shall be reduced by \$580,000. The entire contract balance, including retainage, is \$4,289,848.55 before the \$580,000 reduction. King County will pay the reduced final payment, exclusive of the principal of the retention held in escrow which totals \$2,473,276, to Hensel Phelps on January 15, 1987. King County will not deduct any retainage from the final payment, and Hensel Phelps will hold King County harmless from any claim resulting from King County's failure to so withhold. Therefore, the following is the proper calculation of the sum which will be paid by King County on January 15, 1987:

\$4,289,848.55	Contract Balance Incl. Ret.
(2,473,276)	Current Retainage Principal
1,816,572.55	Final Payment
(580,000)	Settlement
1,236,572.55	Net Final Payment 1/15/87
	before sales tax

King County will authorize the release of the retainage held in escrow in the manner and at the time called for by law. Any interest earned on the retainage shall accrue and shall be paid to Hensel Phelps as provided by law. No interest shall be paid on the final payment to be made by King County, provided payment is made to Hensel Phelps on January 15, 1987.

6. Interest shall accrue at ten per cent per annum on any sum not paid on January 15, 1987, as called for in paragraph 5, including the reduced final payment amount. If any party fails

to pay the sum it is obligated to pay on January 15, 1987, the sums paid shall be placed in an interest-bearing escrow account, and the intended recipients of the funds shall receive any interest that accrues.

7. Five days after Hensel Phelps has received all sums due it under this Agreement, Hensel Phelps will pay \$20,000 to King County for warranty work on the sky bridge, and that payment shall constitute the extent of any warranty obligation of Hensel Phelps in connection with the sky bridge.

8. No party or attorney for a party will make any statement to the press or any other public statement expressing or implying that anyone has "won" this case; that Hensel Phelps has paid liquidated damages; that Hensel Phelps' or NBBJ's work on the Project or King County's administration of it was deficient; provided, however, that King County cannot control statements by individuals who may be involved in a public debate regarding whether the County Council will approve this settlement. It is recognized by all parties that this Agreement is a compromise of conflicting claims intended to save all parties the expense of continued litigation.

9. Except as otherwise expressly provided, this Agreement, including all releases and hold harmless provisions contained in it, is binding upon and will inure to the benefit of the heirs, successors, assigns, parents, subsidiaries, officers, directors, employees and agents of each party to the Agreement.

Executed this 14th day of January, 1987.

Tim Hill
King County by
The Honorable Tim Hill,
County Executive

Hensel Phelps Construction
Company, Inc.
By James L. McGovern
Its President

Approved as to Form and Legality

Richard H. Holmquist
Richard H. Holmquist
Chief Civil Deputy
Prosecuting Attorney

Donald B. Murphy Construction
By [Signature]
Its CEO

Arthur W. Harrigan, Jr.
Arthur W. Harrigan, Jr. of
DANIELSON HARRIGAN SMITH
& TOLLEFSON
Special Deputy Prosecuting
Attorney

United Pacific Insurance Co.
By [Signature]
Its [Signature]

Signal Communications, Inc.
By [Signature]
Its President

Safeco Insurance Company
By [Signature]
Its [Signature]

Aetna Casualty & Surety Co.
By Ronald B. Martin
Its Attorney-in-Fact

Valentine Fischer & Tomlinson
By [Signature]
Its PRESIDENT

Naramore Bain Brady and
Johanson (NBBJ)
By [Signature]
Its Managing Partner

Century Electronics
By [Signature]
Its OWNER



POWER OF ATTORNEY AND CERTIFICATE OF AUTHORITY OF ATTORNEY(S)-IN-FACT

KNOW ALL MEN BY THESE PRESENTS, THAT THE AETNA CASUALTY AND SURETY COMPANY, a corporation duly organized under the laws of the State of Connecticut, and having its principal office in the City of Hartford, County of Hartford, State of Connecticut, hath made, constituted and appointed, and does by these presents make, constitute and appoint William C. Bensler, Chris S. Richmond, Scott Thomas, Margaret A. Meis, Darlene Krings, Michael O'Shea, Kathryn J. O'Shea, Veran K. Hansberry, Connie K. Boston or Donald B. Martin - -

of Greeley-Ft. Collins, Colorado . As true and lawful Attorneys-in-Fact, with full power and authority hereby conferred to sign, execute and acknowledge, at any place within the United States, or, if the following line be filled in, within the area there designated, the following instrument(s):

by his sole signature and act, any and all bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any and all consents incident thereto in connection with bids or proposals and construction contracts - -

and to bind THE AETNA CASUALTY AND SURETY COMPANY, thereby as fully and to the same extent as if the same were signed by the duly authorized officers of THE AETNA CASUALTY AND SURETY COMPANY, and all the acts of said Attorneys-in-Fact, pursuant to the authority herein given, are hereby ratified and confirmed.

This appointment is made under and by authority of the following Standing Resolutions of said Company which Resolutions are now in full force and effect:

VOTED: That each of the following officers: Chairman, Vice Chairman, President, Any Executive Vice President, Any Senior Vice President, Any Vice President, Any Assistant Vice President, Any Secretary, Any Assistant Secretary, may from time to time appoint Resident Vice Presidents, Resident Assistant Secretaries, Attorneys-in-Fact, and Agents to act for and on behalf of the Company and may give any such appointee such authority as his certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors may at any time remove any such appointee and revoke the power and authority given him.

VOTED: That any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the Chairman, the Vice Chairman, the President, an Executive Vice President, a Senior Vice President, a Vice President, an Assistant Vice President or by a Resident Vice President, pursuant to the power prescribed in the certificate of authority of such Resident Vice President, and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary or by a Resident Assistant Secretary, pursuant to the power prescribed in the certificate of authority of such Resident Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact pursuant to the power prescribed in his or their certificate or certificates of authority.

This Power of Attorney and Certificate of Authority is signed and sealed by facsimile under and by authority of the following Standing Resolution voted by the Board of Directors of THE AETNA CASUALTY AND SURETY COMPANY which Resolution is now in full force and effect:

VOTED: That the signature of each of the following officers: Chairman, Vice Chairman, President, Any Executive Vice President, Any Senior Vice President, Any Vice President, Any Assistant Vice President, Any Secretary, Any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any power of attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such power of attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding upon the Company in the future with respect to any bond or undertaking to which it is attached.

IN WITNESS WHEREOF, THE AETNA CASUALTY AND SURETY COMPANY has caused this instrument to be signed by its Assistant Vice President and its corporate seal to be hereto affixed this 20th day of October 19 86



THE AETNA CASUALTY AND SURETY COMPANY

By Joseph P. Kiernan
Joseph P. Kiernan
Assistant Vice President

State of Connecticut }
County of Hartford } ss. Hartford

On this 20th day of October, 19 86, before me personally came JOSEPH P. KIERNAN, Assistant Vice President of THE AETNA CASUALTY AND SURETY COMPANY, this corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; and that he executed the said instrument on behalf of the corporation by authority of his office under the Standing Resolutions thereof.



George A. Perry, Jr.
My commission expires March 31, 19 91, Notary Public
George A. Perry, Jr.

CERTIFICATE

I, the undersigned, Secretary of THE AETNA CASUALTY AND SURETY COMPANY, a stock corporation of the State of Connecticut, DO HEREBY CERTIFY that the foregoing and attached Power of Attorney and Certificate of Authority remains in full force and has not been revoked; and furthermore, that the Standing Resolutions of the Board of Directors, as set forth in the Certificate of Authority, are now in force.

Signed and Sealed at the Home Office of the Company, in the City of Hartford, State of Connecticut. Dated this 29th day of December 19 86



By John W. Welch
John W. Welch, Secretary