

RESOLUTION NO. 2019-007

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DEER PARK, WASHINGTON, APPROVING A SETTLEMENT AGREEMENT AND RELEASE WITH PACWEST AND KODIAK CONCERNING CERTAIN AIRPORT SNOW REMOVAL EQUIPMENT AND AUTHORIZING THE MAYOR TO EXECUTE THE SAME.**

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**WHEREAS**, the City of Deer Park, Washington ("City") solicited bid proposals and ultimately purchased a Volvo loader, Kodiak high speed rotary snowblower, and a loader mounted snow plow (collectively the "Snow Removal Equipment") on or about the 18<sup>th</sup> day of August, 2016 (AIP Procurement #3-53-0022-022); and

**WHEREAS**, since purchasing the Snow Removal Equipment, two of the components of the Snow Removal Equipment, the Volvo loader and the loader mounted snow plow attachment, have performed pursuant to specifications; and

**WHEREAS**, the third Snow Removal Equipment component, the Kodiak America (hereinafter "Kodiak") snowblower has never performed to the City's required specifications and the City has attempted on multiple occasions to work with the vendor, PacWest Machinery, LLC (hereinafter "PacWest") to fix the snowblower with no success; and

**WHEREAS**, Kodiak continues to maintain that it is without fault and that the Kodiak snowblower should perform as specified; and

**WHEREAS**, the City used Federal Aviation Administration ("FAA") funds to acquire the Snow Removal Equipment with a 10 percent City funds match; and

**WHEREAS**, the Kodiak snowblower cost represents \$96,634.00 of the total purchase price for the Snow Removal Equipment, plus sales tax; and

**WHEREAS**, the costs to litigate a resolution of the failure to perform issues with PacWest and/or Kodiak are estimated to exceed the difference between the proposed settlement amount (\$70,000.00) and the original purchase price of the Kodiak snowblower component; and

**WHEREAS**, the FAA has been alerted to the situation and is generally aware of the settlement terms set forth in the Settlement Agreement and Release that is the subject of this Resolution; and

**WHEREAS**, the Mayor, City legal counsel, City staff, and the City Airport Manager all agree that entry into the Settlement Agreement and Release to resolve this matter is in the best interest of the City; and

**WHEREAS**, City legal counsel is in receipt of the settlement funds, a Cashier's Check, made payable to the City in the amount of \$70,000.00; and

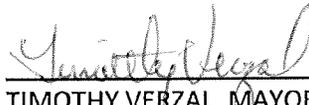
**WHEREAS**, the City Council concurs with the recommendation that entry into the Settlement Agreement and Release is in the best interest of the City; NOW, THEREFORE,

**THE CITY COUNCIL OF THE CITY OF DEER PARK, WASHINGTON HEREBY RESOLVE AS FOLLOWS:**

**Section 1.** The Settlement Agreement and Release attached hereto and marked as Exhibit "A" to this Resolution is hereby accepted by the City and the Mayor is authorized and directed to execute the same on behalf of the City to settle the dispute identified in this Resolution and in said document.

**Section 2.** This Resolution shall be effective immediately upon passage by the City Council.

APPROVED by the City Council at an  
Open Public Meeting the 21<sup>st</sup> day of  
August, 2019.

  
TIMOTHY VERZAL, MAYOR

ATTEST/AUTHENTICATED:

  
DEBY CRAGUN, CITY CLERK/TREASURER

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement and Release Agreement ("**Agreement**") is between the City of Deer Park, Washington ("**Deer Park**"); Kodiak America ("**Kodiak**") and PacWest Machinery ("**PWM**") (each a "**Party**" or "**Parties**" as the case may be), and is entered into on ~~July 21~~, 2019.

August

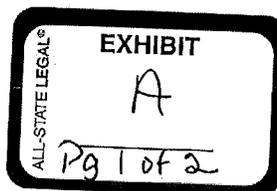
### RECITALS

- A. In June 2016, Deer Park issued Snow Removal Equipment Procurement Project No. 3-53-0022-022 for certain snow removal equipment for Deer Park Municipal Airport, Deer Park, Washington.
- B. PWM was awarded the bid under a proposal that included furnishing a Model 3036 snow blower sourced and manufactured by Kodiak America ("**Snow Blower**").
- C. Deer Park contends that the Kodiak Snow Blower does not meet the specifications of the Snow Removal Equipment Procurement Project due to excessive repair and downtime.
- D. Kodiak contends that the Snow Blower experienced a normal level of repair and that Deer Park did not maintain or operate the Snow Blower properly.
- E. The Parties desire to resolve their disputes

### TERMS

NOW, THEREFORE, in consideration of mutual promises and other good and valuable consideration as set forth below, it is agreed:

1. On or around August 1, 2019 Kodiak will have delivered to, Ogden Murphy Wallace PLLC, One Fifth St. Suite 200, Wenatchee, WA 98801, Attn: Chuck Zimmerman ("**Settlement Agent**"), a cashier's check payable to Deer Park in the amount of \$70,000 ("**Payment**"). On or around the same date Deer Park will deliver a receipt of title ("**Title**") in favor of Kodiak to the Settlement Agent. Following receipt of Payment and Title and finding each in good order, Settlement Agent will pass them on to their appropriate Party and announce the matter settled ("**Settlement**"). Kodiak's receipt of the Snow Blower is on an "as is" and "where is" basis. No later than 15 business days following Settlement, Kodiak will arrange for pick-up of the Snow Blower at its sole expense.
2. Upon Settlement as set forth above, each Party shall grant the other a release of all demands, claims, causes of action ("**Claims**"), whether known or unknown ("**Release**"). The Release will extend to each Party, its parent and affiliates, directors, officers, employees, contractors, agents and attorneys.
3. Nothing in this Agreement shall be construed as an admission by any Party of any liability of any kind.



4. This Agreement shall not be construed against the party preparing it, but shall be construed as if the Parties jointly prepared this Agreement and any uncertainty and ambiguity shall not be interpreted against any one Party.
5. This Agreement contains the entire understanding of the Parties and shall not be amended or modified except by a writing signed by the Parties.
6. This Agreement shall be binding upon the Parties and their parent, affiliates, successors and agents.
7. Each Party represents and warrants that it is the sole owner of each and every matter released, they are represented by legal counsel or have had the opportunity to consult with legal counsel, and that they have the authority to execute this Agreement.
8. This Agreement and its validity, construction and effect shall be governed by the laws of the State of Washington.
9. This Agreement may be executed in counterparts, each of which shall be deemed an original, and together shall constitute one instrument. Electronic signatures shall have the same effect as original signatures.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed.

**City of Deer Park**

Timothy Verzen  
signature

By Timothy Verzen

Its Mayor

**PacWest Machinery**

Andrew Wold  
signature

By Andrew Wold

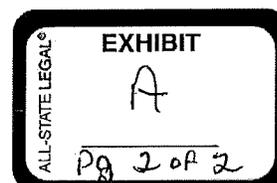
Its CEO

**Kodiak America**

Brick Pilling  
signature

By Brick Pilling

Its Manager



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**City of Deer Park**

*Yennifer Vogel*  
signature

By *Timothy Verza*

Its *Mayor*

**PacWest Machinery**

*Andrew Wold*  
signature

By *Andrew Wold*

Its *CEO*

**Kodiak America**

*[Signature]*  
signature

By *Brick Pillinger*

-  
Its *Manager*