



OFFICE OF COUNTY COUNSEL

PUBLIC SERVICES BUILDING

2051 KAEN ROAD | OREGON CITY, OR 97045

Jane E. Vetto
County Counsel

June 5, 2025

BCC Agenda Date/Item: _____

Board of County Commissioners

Clackamas County

Scott C. Ciecko
Amanda Keller
Shawn Lillegren
Jeffrey D. Munns
Sarah Foreman
Caleb Huegel
Angela Hajihashemi
Joseph Lucas
Assistants

**Approval of a Pre-Litigation Settlement Agreement with Moonlight BPO.
Value of Settlement is \$200,000. Funding is through Moonlight BPO. No
County General Funds are involved.**

Previous Board Action/Review	Executive Session: March 6, 2025		
Performance Clackamas	Building public trust through good government		
Counsel Review	Initials: SF	Procurement Review	N/A
Contact Person	Sarah Foreman	Contact Phone	503-655-8363

EXECUTIVE SUMMARY: The County contracted with Moonlight BPO, LLC ("Moonlight") to print and provide ballots for the 2022 elections. During the scanning process, tens of thousands of ballots were unable to be scanned. The County has alleged Moonlight was responsible for the issues related to the defective ballots. Moonlight denies the allegations but agrees to pay the County a settlement amount of \$200,000.00.

The terms of the proposed settlement are set forth in the attached Settlement Agreement and General Release of Claims.

RECOMMENDATION: Staff recommends approval of the Settlement Agreement and Release of All Claims.

Respectfully submitted,

Sarah Foreman
Senior Assistant Legal Counsel

For Filing Use Only

SETTLEMENT AGREEMENT, MUTUAL RELEASE, AND ORS 31.815 COVENANT NOT TO SUE

PARTIES

This Settlement Agreement and Mutual Release, and ORS 31.815 Covenant Not to Sue (the “**Agreement**”), effective upon execution by all parties, is entered into by and between the following parties (collectively referred to as the "Settling Parties" or "Parties"):

A. Clackamas County (hereinafter "the County"), their assigns, agents, predecessors, successors, affiliated entities, agencies, (including without limitation the County election department/office, Clackamas County Elections, and any related departments), insurers, re-insurers, owners, partners, divisions, subsidiaries (wholly owned or otherwise), employees, elected officials, attorneys, trustees, executors, and heirs; and

B. Moonlight BPO, LLC ("Moonlight"), its members, managers, directors, assigns, agents, officers, shareholders, employees, predecessors, successors, insurers, re-insurers, affiliated entities, subsequent purchasers, owners, partners, divisions, subsidiaries (wholly owned or otherwise), employees, attorneys, trustees, executors, and heirs.

RECITALS

- A. WHEREAS, the County contracted or otherwise had a working agreement with Moonlight to print and provide paper ballots for the 2022 elections. Moonlight printed and provided certain ballots to the County for said election cycle. Moonlight subcontracted with Pacific Office Automation Inc. (POA) to provide certain servicing and maintenance work on the printers utilized to print said ballots;
- B. During the ballot scanning process, tens of thousands of ballots were unable to be read by the scanners causing the County to deploy additional resources and manpower to duplicate and count the ballots;
- C. The County has alleged Moonlight was responsible for the above-referenced issues related to the ballots the County was unable to scan, as outlined in part in the County's demand ("Demand") issued to Moonlight on or about May 23, 2022 ("Allegations"). Moonlight strongly disputes the Allegations;
- D. The Allegations further alleged that the County incurred various costs and damages associated with the Allegations (hereinafter the "Loss");
- E. Disagreement has arisen among the Settling Parties with respect to the responsibility among the Settling Parties for the Allegations/Loss (hereinafter "Dispute" or "Disputes");
- F. The Parties desire to avoid the expense and uncertainty of litigation over responsibility for the Disputes and have agreed to fully and finally resolve the Disputes and any other potential claims in connection with the Disputes based on the terms and conditions of this Agreement;

- G. The Settling Parties acknowledge that full, valid, and binding consideration exists for the execution of this Agreement; and
- H. The statements and representations contained herein are contractual in nature and not mere recitations of fact.

AGREEMENT

As consideration for the promises contained in this Agreement the parties agree as follows:

1. Payment. Moonlight or their insurers shall pay Clackamas County two hundred thousand and 00/100 dollars (\$200,000.00) by check payable to Clackamas County and sent c/o Clackamas County Counsel's Office at 2051 Kaen Road, Oregon City, Oregon 97045, within thirty (30) days after the mutual execution of this Agreement.

2. Scope of Release.

A. Release: In consideration of the payments and promises set forth in this Agreement, the County hereby agrees to provide Moonlight a full, final and global release of any and all past, present, and future claims, demands, rights, obligations, warranties, assigned claims, and causes of action – whether known or unknown, anticipated or unanticipated, asserted or assertable- arising from or relating in any way to the facts and circumstances underlying the Dispute (collectively "Claims") which were alleged or could have been alleged against Moonlight, their employees, assigns, agents, attorneys, insurers, heirs, and successors. This release includes without limitation, all claims for damages of any kind, including personal injury or death, property damage, economic loss, attorneys' fees, expenses and costs, based on any legal or equitable theory of recovery, and extends to Moonlights' employees, agents, attorneys, insurers, assigns, heirs, successors, and affiliates. This release is intended to be as broad as permitted by law under the County's authority to assert or maintain any claim. In exchange for the settlement terms and mutual commitments set forth herein, Moonlight likewise provides the County a full, final, comprehensive release of any and all past, present and future claims, demands, rights, obligations, warranties, assigned claims, and causes of action – whether known or unknown, anticipated or unanticipated, asserted or assertable – arising from or relating in any way to the Dispute. This release includes all claims for damages of any kind, including personal injury, death, property damage, economic loss, attorneys' fees, expenses, and costs, based on any legal or equitable theory of recover, and extends to the County's employees, agents, attorneys, insurers, assigns, heirs, successors, and affiliates. This release is likewise intended to be as broad as permitted by law under Moonlight's authority to assert or maintain any claim.

B. Full and Final Agreement: The Settling Parties intend this Agreement to be a full, final and complete settlement, adjustment and compromise of any and all claims against any Party to this Agreement to include the allegations made by County related to the Dispute, or which were, or could have been brought against the Parties or otherwise related to the Dispute, including all claims for breach of contract, breach of warranty, negligence, or attorney fees, defenses, cross-claims and counterclaims, claims for indemnity or contribution, assigned claims, as well as all claims outlined in the Demand. It is expressly understood that this Agreement is intended to cover, and does cover, not only all known losses and damages, claims

for personal injury or death, but also future losses and damages not now known or anticipated, but which may later develop or be discovered, including all of the effects and consequences thereof, as of the date this Agreement is executed. The Settling Parties intend and agree that this Agreement and its terms are binding upon themselves and their heirs and assigns.

3. Warranty and Liens. County represents and warrants it has filed no lawsuits, arbitrations, or other formal claims in any jurisdiction related to the Disputes, and that it knows of no liens related to this Dispute, or liens on County's monetary recovery in relation to this Dispute/this Agreement. To the extent liens do exist in relation to this Dispute or the County's monetary recovery under this Agreement, County agrees that Moonlight has no obligation to satisfy such liens. The County represents and warrants that it has not brought or assigned any claims, demands, or lawsuits against any party, entity, individual, company, agency or insurer in relation to this matter.

4. ORS 31.815 Covenant Not to Sue. Pursuant to ORS 31.815, the Parties hereby covenants and agree, in mutual consideration of the promises set forth in this Agreement, not to sue each other or any of their representatives, successors, or assigns, in any court or administrative proceeding for any claim, demand, or cause of action, whether known or unknown, arising out of or relating to the Dispute, including any attempt by either Party to name the other as a third party in any such proceeding.

5. Assignment of Claims to Moonlight. The County hereby assigns to Moonlight any and all rights to assert lawful claims or initiate legal proceedings, including lawsuits against Pacific Office Automation ("POA"). Moonlight expressly reserves any and all rights to pursue POA through such claims or lawsuits for the monetary recovery of damages it has incurred in connection to the Disputes.

6. Ownership of Claims. The Settling Parties represent that they have not transferred or assigned to any person or entity any claim, or any portion or interest therein, in relation to the Disputes.

7. No Admission of Liability. Nothing in this Agreement shall be construed to be or used as an admission of liability or fault 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.

8. Non-Disparagement Clause. The Parties agree that they will not directly or indirectly, make any statements, written or oral, that disparage or defame the other party, its officials, officers, employees, agents or representatives, or the policies, practices or actions of the other party, whether publicly or privately, including in any media (print, online, or otherwise). The non-disparagement clause does not prohibit either party from making truthful statements as required by law or governmental regulation, or from cooperating in any investigation or legal proceeding involving the other party or its actions. This non-disparagement clause will remain in effect for five years from the date of the execution of this Agreement.

9. No Attorneys' Fees. Each Party shall be responsible for paying its own attorney fees, costs, and expenses related to prosecution or defense of the Dispute among the Parties.

10. Further Assurances. The Parties agree to take such action and execute such further documents, including modifications to this Agreement, as may be reasonably necessary to effectuate the intent of this Agreement.

11. Governing Law. This Agreement, and any disputes arising out of the language contained herein, shall be governed by the law of the State of Oregon .

12. Amendments. This Agreement may be amended or modified only by written agreement of the Settling Parties executed in the same manner as this Agreement.

13. Severability. If a court of competent jurisdiction holds any provision of this Agreement, or any portion thereof, to be invalid under any applicable statute or rule of law, such invalidity will not affect the validity of the other provisions of this Agreement. The Parties will substitute the invalid provision with a valid provision that most closely approximates the intent of the invalid provision.

14. Signatures of Counterparts. The Parties may execute this Agreement in multiple counterparts, each of which will comprise an original Agreement. Signatures on faxed or electronically scanned copies will be deemed the same as original signatures.

15. Authority to Execute. Each person who signs this Agreement represents and warrants that he or she has the right and authority to execute this Agreement on behalf of the Party for whom he or she signs. The Parties each represent and warrant that no consent of any person or entity who is not a party to this Agreement is necessary in order for this Agreement to be fully and completely binding on the Parties and their successors and assigns.

16. Knowing Release. The parties fully understand the terms and provisions of this Agreement and voluntarily accept the above terms and conditions for the purpose of making a full compromise and settlement of any and all claims arising from, and related to, the Claims.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, effective the date executed by all parties.

MOONLIGHT BPO, LLC

CLACKAMAS COUNTY

Signature:_____

Signature:_____

Print:_____

Print: Craig Roberts

Title:_____

Title: Chair of Board of Clackamas County
Commissioners

Date:_____

Date:_____