

CITY OF PHOENIX

RESOLUTION NO. 969

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF CLAIMS BETWEEN THE CITIES OF PHOENIX AND TALENT.

WHEREAS, the City of Phoenix and the City of Talent are wholesale customers of the Medford Water Commission; and

WHEREAS, water that is consumed by the City of Talent for its municipal operations and for sale to its retail customers is transmitted through the City of Phoenix in the "TAP line"; and

WHEREAS, both parties acknowledge that a substantial volume of water flowed unmetered from the City of Phoenix to the City of Talent; and

WHEREAS, the City of Phoenix paid the Medford Water Commission for this water but was never compensated by the City of Talent and therefore incurred a financial loss.

NOW, THEREFORE, BE IT RESOLVED that the City of Phoenix hereby authorizes the Mayor to execute a settlement agreement and mutual release of claims between the cities of Phoenix and Talent as presented in Exhibit "A".

APPROVED by the City of Phoenix this 20th day of June, 2016.



Mayor

Attest:



City Recorder

EXHIBIT "A"

SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF CLAIMS

This SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF CLAIMS (this "Agreement") is made and entered into between the City of Talent, an Oregon municipal corporation (Talent), and the City of Phoenix (Phoenix), an Oregon municipal corporation.

RECITALS

- A. The cities of Talent and Phoenix purchase water in bulk from Medford Water Commission. The water is transported to the cities via a large water line known as the Talent Ashland Phoenix Intertie (TAP).
- B. The TAP line runs from Medford to the City of Phoenix where a meter is installed and serves the City of Phoenix. The City of Phoenix pulls its allocated water from the TAP line and the remainder of the water flows down the line and the meter that serves the City of Talent. Ultimately, water continues to flow down the TAP line to a third and final meter that serves the City of Ashland.
- C. The parties believe that for some years, the water meter that measures water used by the City of Phoenix was making inaccurate readings. As a result, the parties believe that Phoenix was overcharged for water and Talent was undercharged for water.
- D. The parties wish to settle all claims arising on or before the date of this Agreement and related to charges for use of water from the TAP line.

AGREEMENT

In consideration of the terms and conditions of this Agreement, the parties agree as follows:

- 1. **SETTLEMENT PAYMENT.** On or before July 7, 2016, Talent will make a settlement payment to Phoenix of Forty Thousand and no/100 Dollars (\$40,000.00). This payment constitutes as a lump sum settlement of all Phoenix's outstanding claims against Talent related charges for use of water from the TAP line.
- 2. **RELEASE.** In consideration of the Settlement Payment described in Paragraph 1 of this Agreement, receipt of which is hereby acknowledged, Phoenix releases and discharges Talent, its officers, employees, and agents from any and all past, present, and future claims, demands, obligations, causes of action, or damages of any kind, known or unknown, arising on or before the date of this Agreement and related to

EXHIBIT "A"

charges for use of water from the TAP line. In addition, Phoenix expressly waives and assumes the risk of any and all past, present, and future claims, demands, obligations, causes of action, or damages of any kind made by or through Phoenix, whether known or unknown, arising on or before the date of this Agreement and related to charges for use of water from the TAP line.

3. EXPRESS ACKNOWLEDGMENTS, REPRESENTATIONS, AND WARRANTIES

- 3.1. Phoenix agrees to accept payment of the amount specified in Paragraph 1 of this Agreement as a complete compromise of matters involving disputed issues of law and fact. Phoenix assumes the risk that the facts or law may be other than as Phoenix believes.
- 3.2. Each party expressly represents and warrants that it has relied on its own knowledge of the facts and the advice of its own counsel concerning the consequences of this agreement; and that the individuals signing this Agreement are legally competent to execute this Agreement and have full authority to sign this Agreement. The parties further warrant that no promise or inducement has been offered to enter into this Agreement, except as set forth in this Agreement, and that this Agreement is executed without reliance on any statement or representation by any other party concerning the nature and extent of damages or legal liability.
- 3.3. The parties represent and warrant that no other person or entity has any interest in the claims, demands, obligations, or causes of action referred to in this Agreement and that each party has the sole right and exclusive authority to execute this Agreement and to receive the sums specified in this Agreement and that no party has sold, assigned, transferred, conveyed, or otherwise disposed of any of the claims, demands, obligations, or causes of action referred to in this agreement.
- 3.4. The parties expressly acknowledge and agree that the purpose and effect of this Agreement is to fully and forever resolve all issues and claims arising on or before the date of this Agreement and related to charges for use of water from the TAP line, and that neither party will pursue the other for anything relating in any way to the claims released through this agreement.
- 3.5. The parties expressly acknowledge and agree that the terms of this Agreement are contractual in nature and not merely a recital.

4. NO ADMISSION OF LIABILITY

Talent and Phoenix agree that entering into this Agreement and performance pursuant to this Agreement do not constitute an admission of liability and that such liability is expressly denied.

EXHIBIT "A"

5. ATTORNEY FEES

Each party to this Agreement will bear all of that party's attorney fees and costs incurred to the date of this Agreement.

6. GOVERNING LAW

This Agreement shall be construed and interpreted in accordance with the laws of the state of Oregon. Because the parties and their respective lawyers have reviewed, revised, and negotiated, or had the opportunity to review, revise, or negotiate the terms, conditions, and language of this agreement, the rule of construction that ambiguities are to be resolved against the drafting party does not apply.

7. WAIVER

The waiver by either party of a breach of any provision of this Agreement will not operate or be construed as a waiver of any other provision of this Agreement or of any subsequent breach of the same provision of this Agreement.

8. MODIFICATION

No modification of this Agreement will be valid unless it is in writing and signed by both parties.

9. NO THIRD PARTY BENEFICIARIES

This Agreement is entered into for the sole benefit of the Talent and Phoenix, and nothing contained herein is intended for the benefit of any other person or entity.

10. ENTIRE AGREEMENT

This Agreement embodies the entire agreement of the parties regarding the settlement and release of claims arising on or before the date of this Agreement and related to charges for use of water from the TAP line. There are no promises, terms, conditions or obligations other than those contained herein. This Agreement supersedes all prior communications, representations or agreements, either oral or written, between the parties on the subject of this Agreement and is conclusive and binding on and inures to the benefit of the successors and assigns of the parties.

11. PARAGRAPH HEADINGS

Paragraph headings are used solely for convenience and are not to be used in construing or interpreting this Agreement.

EXHIBIT "A"

12. SAVING CLAUSE

If any provision of this Agreement, or the application of a provision to any person or circumstance, is held invalid, the remainder of this agreement, or the application of that provision to other persons or circumstances, will not be affected thereby.

13. FURTHER ASSURANCES

The parties agree to execute and deliver any further documents, instruments, and other agreements as are necessary or convenient to carry out the terms and purposes of this Agreement.

COUNTERPARTS

This Agreement may be executed in one or more counterparts, including facsimile counterparts, and all so executed shall constitute one agreement, binding on all the parties to this agreement, even though all parties are not signatories to the original or the same counterpart. Any counterpart of this agreement, which has attached to it separate signature pages, which altogether contain the signatures of all parties, is for all purposes deemed a fully executed original instrument.

14. VOLUNTARY AGREEMENT

The parties acknowledge and agree that they have carefully read and fully understand the provisions of this Agreement, and that they voluntarily enter into this Agreement by signing below. The individuals signing below are authorized to, and by signing do, bind the parties to the terms of this agreement.

CITY OF TALENT

CITY OF PHOENIX

By: _____
Darby Stricker, Mayor of Talent

By: _____
Jeff Bellah, Mayor of Phoenix

Date: _____

Date: _____