

RESOLUTION NO.1976

RESOLUTION APPROVING THE SETTLEMENT AGREEMENT TO RESOLVE THE JOHNSTON ARBITRATION

THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:


1. It is in the City of Troutdale's best interests to resolve the pending arbitration involving the City and on Johnston in accordance with the settlement terms that are substantially similar to those that are set forth in Attachment 1.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TROUTDALE

Section 1. The City administrator and the City's Counsel are authorized to execute and implement a settlement agreement and mutual release that is signed by both parties with terms that are substantially similar to those set forth in Attachment 1.

Section 2. This resolution shall take effect immediately upon adoption.

YEAS: 7
NAYS: 0
ABSTAINED: 0



Paul Thalhofer, Mayor
December 10, 2008

Date



Debbie Stickney, City Recorder

Adopted: December 9, 2008

SETTLEMENT AGREEMENT, MUTUAL RELEASE OF ALL CLAIMS AND COVENANT NOT TO FURTHER SUE

1. PARTIES

1.1 The parties to this Agreement are the City of Troutdale ("the City") and Ronald H. Johnston ("Johnston").

2. RECITALS

2.1 Johnston filed an arbitration proceeding against the City arising out of Paragraph 3.2 of the Settlement Agreement, Mutual Release of All Claims and Covenant Not to Further Sue signed by and between Mark and Jill Dorrrough, Multnomah County, Johnston and the City effective September 22, 2005 ("the First Agreement"), in which Johnston and the City each reserved claims against each other to recover the sum of \$75,000, representing the amounts Johnston and the City paid, respectively, to the Dorrroughs arising out of the First Agreement.

2.2 The City and Johnston now wish to settle all remaining matters between them pursuant to Paragraph 3.2 of the First Agreement and any other claims the parties may have against one another arising from or in any way relating to the First Agreement or to the claims alleged in the Lawsuit underlying the First Agreement captioned as follows:

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR MULTNOMAH COUNTY

MULTNOMAH COUNTY,)
)
Plaintiff,) No. 0308-08530
)
v.)
)
MARK AND JILL DORROUGH,)
)
Defendants/Third-)
Party Plaintiffs,)
)
v.)
)
CITY OF TROUTDALE and)
RONALD H. JOHNSTON,)
)
Third-Party)
Defendants.)

("the Lawsuit") by entering into this Settlement Agreement, Mutual Release of All Claims and Covenant Not to Further Sue (hereinafter, "the Agreement")

3. AGREEMENT

3.1. Mutual Release of All Claims. For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Johnston each release, acquit, forever discharge and covenant not to further sue each other and their respective officers, directors, employees, managing members, agents, successors, assigns, insurers, attorneys, council members and all related or affiliated entities from any and all past, present and future claims, demands, rights, damages and compensation of any nature whatsoever arising out of, related to or in any way caused by the facts and circumstances related to the allegations in the First Agreement and any particular arising out of the Lawsuit or Paragraph 3.2 of the First Agreement. The parties intend this Agreement to be a full, final and complete settlement, release and compromise of any and all claims based upon the allegations contained in the earlier Lawsuit, the First Agreement, and any claims, cross-claims and counterclaims that were or could have been asserted in the Lawsuit or the First Agreement.

4. GENERAL PROVISIONS

4.1 By their respective signatures to this Agreement, the City of Troutdale hereby represents that the Troutdale City Council has approved this Agreement in accordance with applicable law.

4.2 This Agreement is a compromise of doubtful and disputed claims. It is not to be construed as an admission of liability on the parties to this Agreement, and each party expressly denies liability.

4.3 This Agreement contains the entire agreement between the parties and is a contract. It is understood and agreed that this Agreement shall bind and benefit the officers, directors, shareholders, heirs, successors, employees, agents' representatives, personal representatives, council members and assigns with respect to the parties to this Agreement.

4.4 This Agreement may be executed in one or more original counterparts.

* * * *

We, the undersigned, have read the foregoing Settlement Agreement, Mutual Release and Covenant Not to Sue carefully, we fully understand its contents, and we fully understand that no other consideration or payment of any kind other than the aforesaid amounts will be made, and that there is no other agreement, promise or inducement of any kind for this Agreement other than what is herein expressed. The undersigned further agree that this Settlement Agreement,

Mutual Release and Covenant Not to Sue is intended by them to be a complete and final agreement to settle all claims relating to the aforementioned claim.

We, the undersigned, hereby further execute the Settlement Agreement, Mutual Release and Covenant Not to Sue as our free and voluntary act and deed.

CITY OF TROUTDALE

By: _____

Dated: _____

RONALD H. JOHNSTON

Dated: _____

APPROVED AS TO FORM:

HOFFMAN, HART & WAGNER, LLP

Martha J. Hodgkinson
Of Attorneys for City of Troutdale

YAZBECK CLORAN & HANSON LLC

Joseph A. Yazbeck, Jr.
Of Attorneys for Ronald H. Johnston

**SETTLEMENT AGREEMENT, MUTUAL RELEASE OF
ALL CLAIMS AND COVENANT NOT TO FURTHER SUE**

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FOR MULTNOMAH COUNTY

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Plaintiff,)	No. 0308-08530
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v.)	
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MARK AND JILL DORROUGH,)	
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Defendants/Third-)	
Party Plaintiffs,)	
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v.)	
)	
CITY OF TROUTDALE and)	
RONALD H. JOHNSTON,)	
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Third-Party)	
Defendants.)	

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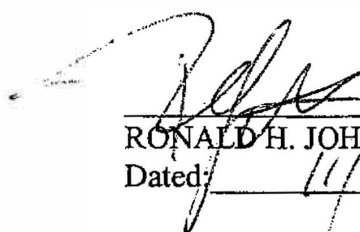
We, the undersigned, hereby further execute the Settlement Agreement, Mutual Release and Covenant Not to Sue as our free and voluntary act and deed.



CITY OF TROUTDALE

By: David Nelson City Administrator

Dated: 4/24/09



RONALD H. JOHNSTON

Dated: 11/24/08

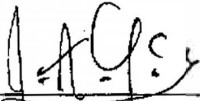
APPROVED AS TO FORM:

HOFFMAN, HART & WAGNER, LLP



Martha J. Hodgkinson
Of Attorneys for City of Troutdale

YAZBECK CLORAN & HANSON LLC



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