

**RESOLUTION NO. 1500  
CITY OF PRINEVILLE, OREGON**

**A RESOLUTION APPROVING A SETTLEMENT AGREEMENT WITH PEOPLES  
IRRIGATION COMPANY**

**Whereas**, the City of Prineville (“City”) and Peoples Irrigation Company (“Peoples”) are parties to that certain Easement Agreement dated March 21, 1996 (“Easement”) in which City agreed to install canal piping within the Easement for the benefit of Peoples and further agreed to the piping’s maintenance and repair.

**Whereas**, prior to the 2021 farming season, the piping had been damaged by natural features causing a significant diminution in water delivery.

**Whereas**, City has attempted to mitigate the water delivery through by-passing the damaged piping; however, to continue to do so will be cost prohibitive.

**Whereas**, due to to the diminution of water, People’s patrons received less irrigation water than entitled.

**Whereas**, City is unable to fully repair and replace the piping until after the 2021 farming season.

**Whereas**, City staff and Peoples have negotiated a Settlement Agreement regarding the settlement of all claims for the 2021 farming season and

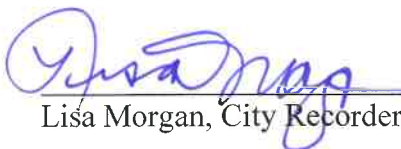
**Whereas**, City staff believes it is in the best interest of the City to approve and execute this agreement.

NOW, THEREFORE, the City of Prineville resolves that the Settlement Agreement between the City and Peoples attached hereto is approved and the Mayor and City Manager are authorized and directed to sign the agreement.

Approved by the City Council this 23<sup>rd</sup> day of July, 2021.

  
\_\_\_\_\_  
Rodney J. Beebe, Mayor

ATTEST:

  
\_\_\_\_\_  
Lisa Morgan, City Recorder

## SETTLEMENT AGREEMENT

### I. PARTIES

This Settlement Agreement (“Agreement”) is made and entered into between the following parties:

- A. The City of Prineville, a Oregon Municipal Corporation (“City”).
- B. Peoples Irrigation Company, an Oregon non-profit corporation, and its members, managers, directors, assigns, agents, officers, shareholders, insurers, subsidiaries, affiliates, predecessors, successors and employees (“Peoples”).

The foregoing parties listed in A- B shall collectively be referred to as the “Settling Parties.”

### II. FACTUAL RECITALS

- A. City and Peoples are parties to that certain Easement Agreement dated March 21, 1996, hereinafter “Easement.”
- B. Pursuant to the Easement, City agreed to install canal piping within the Easement for the benefit of Peoples and further agreed to the piping’s maintenance and repair.
- C. Prior to the 2021 farming season, the piping had been damaged by natural features causing a significant diminution in water delivery.
- D. City has attempted to mitigate the water delivery through by-passing the damaged piping; however, to continue to do so will be cost prohibitive.
- E. Due to the diminution of water, People’s patrons received less irrigation water than entitled.
- F. City is unable to fully repair and replace the piping until after the 2021 farming season.
- G. The Settling Parties now wish to settle any and all claims that they have or may have against each other, as well as all other claims between them relating to the 2021 farming season pursuant to the terms set forth below; and
- H. The Settling Parties acknowledge that full, valid and binding consideration exists for the execution of this Agreement, the receipt of which is hereby confirmed, and that the statements and representations contained herein are contractual in nature and not mere recitations of fact.

WHEREFORE, the Settling parties hereby agree as follows:

### III. COMPROMISE SETTLEMENT

- A. In consideration of and specifically upon execution of this Agreement and satisfaction of

the payment obligations in Section IV below, the Settling Parties agree to release each other from any and all past, present, and future claims, rights, obligations, warranties, and demands for relief, including all expenses, costs, and attorneys' fees, and from damages of every kind, nature, or basis, known as well as unknown, anticipated or unanticipated, now existing or hereinafter arising, including claims for injury, death, insurance coverage (whether indemnity, defense costs or fees, or contribution for past defense expenses, or indemnity), and property damages, based upon any theory of recovery (collectively, "Claims"), arising out of, related to, or in any way caused by the facts and circumstances of the 2021 farming season.

B. Peoples agree to defend, hold harmless, and indemnify City from all claims, damages, subrogation, obligations, actions, liens, and causes of action asserted or on behalf of any other person, firm, lienholder, subrogation carrier or entity, against City, for any loss, injury, or payment of any kind arising out of any event alleged by the diminution of water to Peoples for the 2021 farming season.

C. This Agreement and subsection are not intended to and do not release claims for breach of this Agreement.

D. This release is intended to be the broadest possible release pursuant to the Settling Parties' authority under applicable law to bring legal action against any individual or entity.

E. The Settling Parties each hereby accept the risk that their respective claims and/or alleged damages are worse, greater, different or otherwise deviate from what they know, suspect or believe to exist, but the Settling Parties nevertheless are willing to release such claims and alleged damages pursuant to this Agreement, and as set forth herein, in order to reach a complete resolution of this matter now as opposed to at some future point in time.

G. The Settling Parties intend this Agreement to be a full, final and complete settlement, adjustment and compromise as between them of any/all claims based upon the 2021 farming season.

#### **IV. PAYMENT**

A. City shall tender settlement funds by check made payable to "Jered Reid IOLTA" no later than thirty (30) days after the parties executes this Agreement in the amount of ONE-HUNDRED FORTY-TWO THOUSAND THREE-HUNDRED FIFTY DOLLARS (\$142,350.00), which shall be distributed to the following patrons:

1.	K-F Cattle Co., LLC	\$63,500.00
2.	Bear Creek Resources	\$8,000.00
3.	John Riley	\$38,500.00
4.	David Ream	\$8,750.00
5.	Quail Valley Ranch	\$23,600.00

B. Each patron may receive their distribution by and through the Law Office of Jered Reid, LLC, located at 545 NE 7<sup>th</sup> Street, Prineville, Oregon 97754.

C. Upon receipt of the distribution, each Patron shall sign and execute the Waiver attached as Exhibit A, and incorporated herein.

#### **V. ADDITIONAL TERMS**

The Settling Parties agree to the following additional terms:

A. **No Admission of Liability.** The Settling Parties deny any liability and further state that they are making the payments described in Section V above solely in compromise and settlement of disputed Claims, and such payments are not to be regarded as admissions of liability or fault by any Settling Party.

B. **Severability.** Nothing contained herein shall be construed so as to require the commission of any act contrary to law, and wherever there is any conflict between any provisions contained herein and any present or future statute, law, ordinance, or regulation contrary to which the parties have no legal right to contract, the latter shall prevail; but the provision of this Agreement which is affected shall be curtailed and limited only to the extent necessary to bring it within the requirements of the law. To the extent the offending provision cannot be curtailed or limited, it shall be fully severable, and the remainder of this Agreement shall remain in full force.

C. **Representation by Counsel.** Each party to this Agreement is represented by counsel or has had the opportunity to consult with Counsel and has consulted with its counsel regarding the terms and legal meaning of this Agreement or had the opportunity to do so and expressly declined to do so.

D. **Waiver of Construction against Drafter.** This Agreement was negotiated and approved by the Settling Parties. Any rule that would otherwise require an ambiguity in this Agreement to be construed against the drafting party is hereby expressly waived.

E. **No Transfer of Claims.** The Settling Parties represent and warrant that each has not previously assigned any substantive right (e.g., rights or claims) at issue under this Agreement.

F. **Entire Agreement.** This Agreement constitutes the entire agreement among the Settling Parties and all terms cited or referenced in this document are contractually binding, not mere recitals. This Agreement supersedes any prior oral or written agreements or communications on the subject matter addressed herein.

G. **Counterparts.** This Agreement may be executed in counterparts, including counterparts received by facsimile or electronic transmission, each counterpart constituting an original.

H. **Dispute Resolution.** In the event a dispute arises between Settling Parties in connection with the language of this Agreement, the Settling Parties agree to resolve the dispute through final and binding arbitration.

I. **Attorneys' Fees.** Each Settling Party above shall be responsible for paying all attorney fees related to this Agreement. In any future effort by one Settling Party against another Settling Party

to enforce the terms of this Agreement, the prevailing party therein shall be entitled to recover all attorneys' fees, costs, and expert costs reasonably incurred therein.

J. Further Assurances. The Settling 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.

K. 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.

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

M. Binding Agreement. Each individual approving the form and content of this Agreement on behalf of a Settling Party represents and warrants that the Settling Party, as individually defined in Section I above, agrees to be and is bound by all terms and conditions in this Agreement, including all payment and performance obligations. Furthermore, each individual executing this Agreement on behalf of each Settling Party represents and warrants that (1) they have full authority to enter into and execute this Agreement on behalf of the corporation or business entity(ies) for which they so signed; and (2) they are acting within the course and scope of such authority in executing this Agreement.

N. Effective Date. This Settlement Agreement shall become effective immediately following execution by all parties on the dates set out below.

**IN WITNESS WHEREOF** the parties have caused this Agreement to be Executed.

CITY OF PRINEVILLE



Jason Beebe, its Mayor

July 23, 2021

Date



Steve Forrester, its City Manager

July 23, 2021

Date

PEOPLES IRRIGATION COMPANY



John Wangler, its President

19 July 2021

Date



Bill Sigman, its Secretary

7-19-21

Date

**DISTRIBUTION RECEIPT AND RELEASE**

I, \_\_\_\_\_, acknowledge receipt of the distributive share from the Settlement Agreement by and between the City of Prineville and Peoples Irrigation Company and release and forever discharge the City of Prineville, its officers, employees, agents, and assigns, and all other persons, firms, or corporations who are connected therewith, from any and all claims, demands, damages, actions, causes of actions, or suits of any kind or nature whatsoever involving the 2021 farming season.

Dated: \_\_\_\_\_

\_\_\_\_\_  
[Signature]