

RESOLUTION NO. 6038

A RESOLUTION AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE A RELEASE AND SETTLEMENT AGREEMENT WITH ADJ PROPERTIES AND AJ CRUSHING, INC.

WHEREAS, the Cities of Albany and Millersburg entered into a Purchase and Sale Agreement with ADJ Properties and AJ Crushing, Inc., on or about December 7, 2009, concerning property necessary for the completion of the Talking Waters Garden Wetland Project; and

WHEREAS, Section 4 of the above-referenced Purchase and Sale Agreement contained terms under which the cities might be obligated to reimburse the sellers of the land for some of the demolition costs discussed in the Purchase and Sale Agreement; and

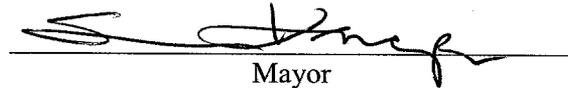
WHEREAS, a dispute has arisen between the sellers and the cities concerning the cities' obligation to reimburse sellers for a portion of the demolition costs discussed in the agreement; and

WHEREAS, an agreement has been reached to resolve the pending dispute.

NOW, THEREFORE, BE IT RESOLVED that the City Manager of the City of Albany of his designee is authorized to execute the Release and Settlement Agreement, a copy of which is attached as Exhibit "A" and make the cities' share of the settlement payment set forth therein.

DATED AND EFFECTIVE THIS 14TH DAY OF SEPTEMBER 2011.

ATTEST:


Mayor


City Clerk

Release and Settlement Agreement

This Agreement is made and entered into this ____ day of _____ 2011 by and between ADJ Properties, an Oregon General Partnership, and A.J. Crushing, Inc., an Oregon Corporation, hereinafter referred to collectively as "Sellers" and the City of Albany, Oregon, and the City of Millersburg, Oregon, hereinafter referred to collectively as "Buyers."

WHEREAS, Sellers and Buyers entered into a Purchase and Sale Agreement on or about December 7, 2009, whereby Buyers purchased certain real property from Sellers; and

WHEREAS, Sellers claim that Buyers are indebted and obligated to Sellers for reimbursement of a portion of demolition costs pursuant to Section 4 of the aforesaid Agreement; and

WHEREAS, Buyers dispute Sellers claim; and

WHEREAS, the parties, by this Agreement, desire to compromise and settle the aforesaid dispute.

NOW, THEREFORE, in consideration of the mutual promises contained herein, it is agreed as follows:

PAYMENT BY BUYERS TO SELLERS

Contemporaneously with the execution of this Agreement, Buyers have paid to Sellers the sum of \$100,000 in settlement and discharge of all of Sellers' claims. Sellers acknowledge receipt of said sum.

BUYERS AGREEMENT TO FOREBEAR PREPAYMENT

As a further consideration for this Release and Settlement Agreement, Buyers agree to forbear prepayment of any portion of the unpaid purchase price pursuant to the above-referenced Purchase and Sale Agreement until December 2, 2011, at which time this forbearance obligation shall end and Buyers shall remain free to prepay all or part of the sums due from Buyers to Sellers pursuant to the above-referenced Purchase and Sale Agreement.

RELEASE

This Release and Settlement Agreement discharges and satisfies all of Buyers' obligations pursuant to Section 4 of the Purchase and Sale Agreement dated December 7, 2009.

SELLERS AUTHORITY

Sellers have not assigned or otherwise conveyed any of their rights pursuant to the above-referenced Purchase and Sale Agreement and have full authority to compromise and discharge Buyers from any remaining obligations pursuant to Section 4 of the aforesaid Purchase and Sale Agreement. Sellers shall indemnify and hold Buyers harmless from the claims of third parties whose rights are conferred by any transfer or assignment from Sellers.

SELLERS:

ADJ Properties

By: _____

Printed Name: _____

Its: _____

Date Executed: _____

A.J. Crushing, Inc.

By: _____

Printed Name: _____

Its: _____

Date Executed: _____

BUYERS:

City of Albany

By: _____

Printed Name: _____

Its: _____

Date Executed: _____

City of Millersburg

By: _____

Printed Name: _____

Its: _____

Date Executed: _____