

SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE (this “**Agreement**”) is made as of the later date of full execution of this Agreement (the “**Effective Date**”) by duly authorized representatives of The Hopi Tribe, a federally recognized Indian Tribe (“the **Hopi Tribe**”) and the City of Flagstaff, Arizona, a municipal corporation (“the **City**”). The Hopi Tribe and the City are referred to individually herein as “**Party**” or collectively herein as the “**Parties.**”

RECITALS

1. Whereas the Hopi Tribe filed a Complaint against the City on August 19, 2011, seeking to recover under claims of illegal contract, water rights infringement, and public nuisance (the “**Litigation.**”)
2. Whereas, in December 2011, the City prevailed on its motion to dismiss the Litigation
3. Whereas, the public nuisance claim filed by the Hopi Tribe in this matter was reinstated on January 24, 2014, after its dismissal was reversed by the Arizona Court of Appeals;
4. Whereas, on October 10, 2014 the City answered the Hopi Tribe’s complaint and filed a Third-Party Complaint against the Arizona Snowbowl Resort Limited Partnership (“**Snowbowl**”);
5. Whereas, Snowbowl has not been required to respond to the Third-Party Complaint pending the finalization of this Settlement Agreement and is not a party to or intended beneficiary of this Agreement;
6. Whereas, in its Complaint the Hopi Tribe asserts that it has lived in Northern Arizona for centuries and the San Francisco Peaks have played a central and essential role in Hopi Tribe’s culture, traditions and way of life for centuries;
7. Whereas, the Hopi Tribe’s Complaint further asserts that the San Francisco Peaks, known as Nuvatukya’ovi, are the single most important sacred place the Hopi Tribe has;
8. Whereas, the Hopi Tribe continues to oppose snowmaking on the San Francisco Peaks;
9. Whereas, the City in its Answer asserts that the reclaimed water sold by the City to Snowbowl meets the highest wastewater treatment standards propounded by both the United States Environmental Protection Agency (“**USEPA**”) and the Arizona Department of Environmental Quality (“**ADEQ**”);
10. Whereas, the City’s Answer further asserts that the delivery and use of reclaimed water was already considered and approved by the ADEQ during the permitting and review process;
11. Whereas, the City further asserts that the City is not the actual entity making the artificial snow, merely the entity that treats the reclaimed water to the highest wastewater treatment standards propounded by the EPA and the ADEQ.

AGREEMENT

The Hopi Tribe and City agree that it is in the best interests of the Parties to resolve all claims in the Litigation. NOW THEREFORE, in consideration of the mutual covenants and

agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Earthen Filtration System Installation. The Parties agree that the City will construct, operate and maintain so long as the City provides reclaimed water to Snowbowl for snowmaking, at no cost to the Hopi Tribe, an additional treatment process more particularly described in **Attachment A** for the reclaimed water it delivers to Snowbowl (the "Project"). The Hopi Tribe has consulted with the City and approves the design of the additional treatment process and its operation and maintenance standards, practices and procedures, and schedule for implementation described in Attachment A. The Parties agree that the Project detailed in Attachment A filters the reclaimed water through the earthen and filter media which results in further treatment of the reclaimed water, however, the Parties agree and acknowledge that the City shall not be required to design or construct other improvements to the Project or the City's reclaimed water facilities, or to achieve specific water quality standards.
2. Reporting. The City will provide the Hopi Tribe, via e-mail or U.S. Mail at the notice address provided herein, with a copy of
 - a. Quarterly reports currently provided to ADEQ on water quality testing at the reclaimed water treatment facility that delivers reclaimed water to Snowbowl. The Hopi Tribe acknowledges that receipt of a copy of the report provided to ADEQ is intended only to aid the Hopi Tribe in confirming that the City is satisfying reclaimed water quality requirements promulgated by ADEQ, and does not create any duty or obligations of the City to undertake additional measuring, testing or reporting. This Agreement creates no additional standing or entitlement to remedies for the Hopi Tribe before ADEQ or any other governmental or administrative body to force the City to cure a reclaimed water quality issue or require the City to exceed applicable ADEQ standards. The Hopi Tribe agrees that failure to meet ADEQ standards is not a breach of this Agreement, but is a matter to be resolved as provided under applicable law.
 - b. Because the City will operate and maintain the additional treatment process, and because technologies and product availability change over time, the City must exercise its reasonable discretion in maintenance. The City agrees to provide the Hopi Tribe annual reports that demonstrate that the City has reasonably exercised its discretion in maintaining the additional treatment process as recommended in Attachment A. An example "annual report" in a form approved by both parties is attached hereto as **Attachment B**.
 - c. Failure to provide the reports described in this Section shall not be considered a breach of this Agreement, unless the City fails to cure by delivery of an annual report within 30 days of written notice by the Hopi Tribe stating that no annual report has been received.
 - d. In the event the City believes that technological or other improvements implemented after the effective date of this agreement by the City at its reclaimed water facility render the Project superfluous, the City may seek agreement from the Hopi Tribe to modify the obligations under this

agreement, and absent concurrence by the Hopi Tribe may seek appropriate relief from the Court.

3. Mutual Release. The Parties for themselves and on behalf of their respective members, officers, elected officials, partners, employees, managers, affiliates, attorneys, agents, administrators, predecessors, successors, assigns, representatives and any other person or entity claiming to act by, through or under the Parties (collectively, the “**Releasing Parties**”), hereby release and forever waive and discharge any claims, counterclaims, regulatory or administrative complaints, demands, defenses, setoffs, liabilities, judgments, executions, attachments, and debts or causes of action of any kind or nature (collectively, “**Claims**”), known or unknown, suspected or unsuspected, whatsoever that any of the Releasing Parties has or may have, directly or indirectly, against any other Releasing Party or its members, officers, elected officials, partners, employees, managers, affiliates, attorneys, agents, administrators, predecessors, successors, assigns, representatives related to the City’s delivery and use of reclaimed water or reclaimed water treatment practices prior to and as of the Effective Date of this Agreement.
4. Preclusive Effect of Agreement. The Parties acknowledge that the additional treatment process detailed in Sections 1 and 2 and Attachment A hereto resolves all claims raised by Hopi Tribe in the Litigation regarding the delivery and use of reclaimed water and reclaimed water treatment practices by the City, including reclaimed water quality delivered by the City to Snowbowl. The Parties acknowledge and agree that storage, application or use of reclaimed water by Snowbowl (after the reclaimed water passes the City’s point of delivery) treated in accordance with this Agreement and applicable water quality standards and regulations of USEPA and ADEQ, is not a breach of any agreement between the Parties, nor is it a breach of any duty that may be owed by the City to the Hopi Tribe and may not be used as the basis of bringing another lawsuit, administrative action, or other Claim against the City.
5. No Interference with Free Expression. The Parties acknowledge that this Agreement does not prevent the members of the Hopi Tribe from expressing opposition to any reuse of reclaimed water via informal means such as protest, media statements or other forms of free expression.
6. Notice of Requests for Assignment or Amendment. The City agrees to provide the Hopi Tribe with notice of written requests it receives for assignment or amendment of Snowbowl’s Reclaimed Water Agreement to any third party. Such requests will be sent via e-mail to the notice address provided by the Hopi within five (5) business days of receipt by the City. Failure to provide notice of such written requests for assignment or amendment shall not be considered a breach of this Agreement but shall be treated as an ongoing public records request and enforceable accordingly.
7. Attorneys’ Fees and Costs of Litigation. The Parties agree that each will bear their own attorneys’ fees and costs of the Litigation. The City agrees that it will not pursue the Hopi Tribe for recovery of the award of attorneys’ fees and costs.

8. Dismissal with Prejudice. Within five (5) business days of the Effective Date of this Agreement, the Hopi Tribe will dismiss the Litigation against the City with prejudice by filing the form Notice of Dismissal with Prejudice submitted herewith as **Attachment C**, which has been reviewed and approved by the Parties.
9. Jurisdiction. Solely for purposes of the implementation and enforcement of this Agreement, the Hopi Tribe expressly waives its sovereign immunity from suit and consents to the exclusive jurisdiction of the state courts of Arizona. To the extent the City has sovereign immunity from suit from the Hopi Tribe seeking to implement or enforce this Agreement, the City expressly waives its sovereign immunity from suit. Each Party further expressly agrees that any disputes or actions taken by the Parties related to or pursuant to this Agreement are subject to the exclusive jurisdiction of the state courts of Arizona. In particular, the Hopi Tribe agrees that, as a result of the exclusive jurisdiction of the state courts of Arizona, the Hopi Tribe may not and will not require the exhaustion of tribal administrative remedies, or apply to any other state court, federal court, regulatory authority, administrative agency, tribunal or other governing body, including but not limited to tribal courts, to seek any form of relief regarding the implementation or enforcement of this Agreement.
10. Miscellaneous.
- (a) Severability. Any provision of this Agreement which is prohibited or deemed unenforceable shall be unenforceable without invalidating the remaining provisions hereof.
 - (b) Construction. All references in this Agreement to the singular shall be deemed to include the plural if the context so requires and vice versa. References in the collective or conjunctive shall also include the disjunctive unless the context otherwise clearly requires a different interpretation. The Parties further acknowledge that they were each represented by legal counsel and participated in the drafting and negotiation of this Agreement such that no presumptions against a drafter will be entertained.
 - (c) Integration. This Agreement constitutes the entire agreement between the Parties hereto concerning the subject matter hereof and may not be altered or amended except by written agreement signed by the Parties.
 - (d) No Third Party Rights. The obligations of the Parties set forth in this Agreement shall not create any rights in or obligations to any persons or parties other than to the Parties and their respective permitted successors, transferees, and assigns. This Agreement is not intended to nor shall it be construed to benefit any third party.
 - (e) Authorization. Each party to this Agreement has taken such measures as are necessary to fully and unconditionally approve this Agreement, including Attachments A and B, and grant authority to a duly appointed representative to execute this Agreement for the purpose of binding each party hereto to the terms of this Agreement. A tribal resolution fulfilling the requirements detailed herein

and expressly confirming the contents of Section 9 and Section 10(g) herein, and passed by the appropriate governing body of the Hopi Tribe is attached hereto as **Attachment D**. A resolution or other required authorization fulfilling the requirements detailed herein, including appointing the City's Mayor to sign the Agreement, and passed by the appropriate governing body of the City is attached hereto as **Attachment E**.

- (f) Counterpart Execution. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same document. Signature pages may be detached from the counterparts and attached to a single copy of this Agreement to physically form one document.
- (g) Governing Law and Venue. The Hopi Tribe expressly consents that this Agreement shall be governed by and construed in accordance with the laws of the State of Arizona. The Hopi Tribe further expressly consents that absent written agreement signed by both Parties, any dispute regarding the terms of this Agreement or action to enforce this Agreement shall be maintained exclusively in Coconino County, Arizona.
- (h) Notices. All notices, requests and demands to be made hereunder to any party hereto shall be in writing and shall be delivered to the following notice e-mail addresses and, where applicable, physical addresses:

The Hopi Tribe
Lionel Puhuyesva, Director, Hopi Water Resources Program
LPuhuyesva@hopi.nsn.us
Catherine M. Wright
Office of General Counsel
Hopi Tribe
CWright@hopi.nsn.us
P.O. Box 123
Kykotsmovi, Arizona 86039

The City of Flagstaff
Michelle D'Andrea
City Attorney
mdandrea@flagstaffaz.gov
Josh Copley
City Manager
jcopley@flagstaffaz.gov
211 West Aspen Avenue
Flagstaff, Arizona 86001

Service of any notices issued pursuant to this provision shall be deemed delivered upon the date of sending an e-mail the date of hand-delivery to the notice addresses provided

herein or within three (3) business days of the date of mailing via U.S. mail, certified with return receipt requested, postage pre-paid, to the notice address herein. Any changes to the notice addresses detailed herein shall be conveyed in writing.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the later date of passage of a resolution by the Parties unconditionally approving execution of this Agreement by an authorized representative.

The Hopi Tribe:

By: _____

Name: Herman G. Horanie

Its: Chairman

Approved as to form: _____

Catherine M. Wright, Office of General Counsel,
Hopi Tribe

The City of Flagstaff:

By: _____

Name: Jerry Nabours

Its: Mayor

Attest:

Elizabeth Burke, City Clerk

Approved as to form: _____

Michelle D'Andrea, City Attorney

ATTACHMENT A

Description of the Earthen Filtration System Project With Operation, Maintenance and Replacement Guidelines

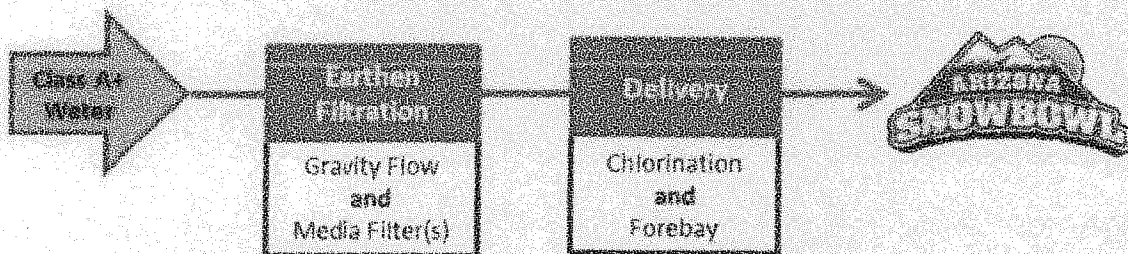
Attachment A

Attachment A is a description of (1) the Earthen Filtration System (EFS) to be constructed at Thorpe Park, (2) the Media Filter(s) to be included as part of the EFS, (3) the anticipated Operation, Maintenance & Replacement (OM&R) for the Media Filter(s), (4) reporting requirements, and (5) the anticipated construction schedule for the EFS.

1. Earthen Filtration System

Earthen filtration is the use of natural materials, such as local sands and gravel, to improve water quality. The hydraulics of moving water by gravity through an earthen system of porous media is used worldwide in residential, commercial, industrial and storm water settings. Adding a media vault at the entrance of an earthen filtration system (EFS) is a relatively unique application; although media systems are frequently used in storm water gravity flow applications.

In cooperation and consultation with the Hopi Tribe, the City hired HDR Engineering, Inc. to evaluate and test certain media filters that could be used in combination with a passive earthen filtration system to further polish the City's reclaimed water at Thorpe Park. The term polish, as used in this Agreement, refers to water treatment that may further reduce certain constituents above and beyond state and federal regulatory requirements. Although no target water quality levels are required by the Agreement or by use of the EFS, the parties identified media to be included in the EFS that might further reduce the nitrate concentrations, phosphate concentrations, and some Contaminants of Emerging Concern (CECs). CEC's are constituents in water that are not currently regulated by specific state or federal regulation. The EFS for the Thorpe Park site will be designed to incorporate the media filters selected by the parties as provided in this Attachment, however contingent on modifications as may be identified at the 30% design stage.



A conceptual process diagram for the EFS is provided as Figure 1.

Figure 1 – Earthen Filtration Configuration

Flow Schematic

To more closely resemble a natural system, a schematic diagram (Figure 2) was developed based on assumptions about available pressure at the Thorpe Park reclaimed water metering station. The schematic is based on a maximum flow rate of 2.25 MGD, assuming seasonal usage and diurnal (off/on) flow, requiring frequent start-up and shut-down capabilities and the ability to "mothball" the system annually.

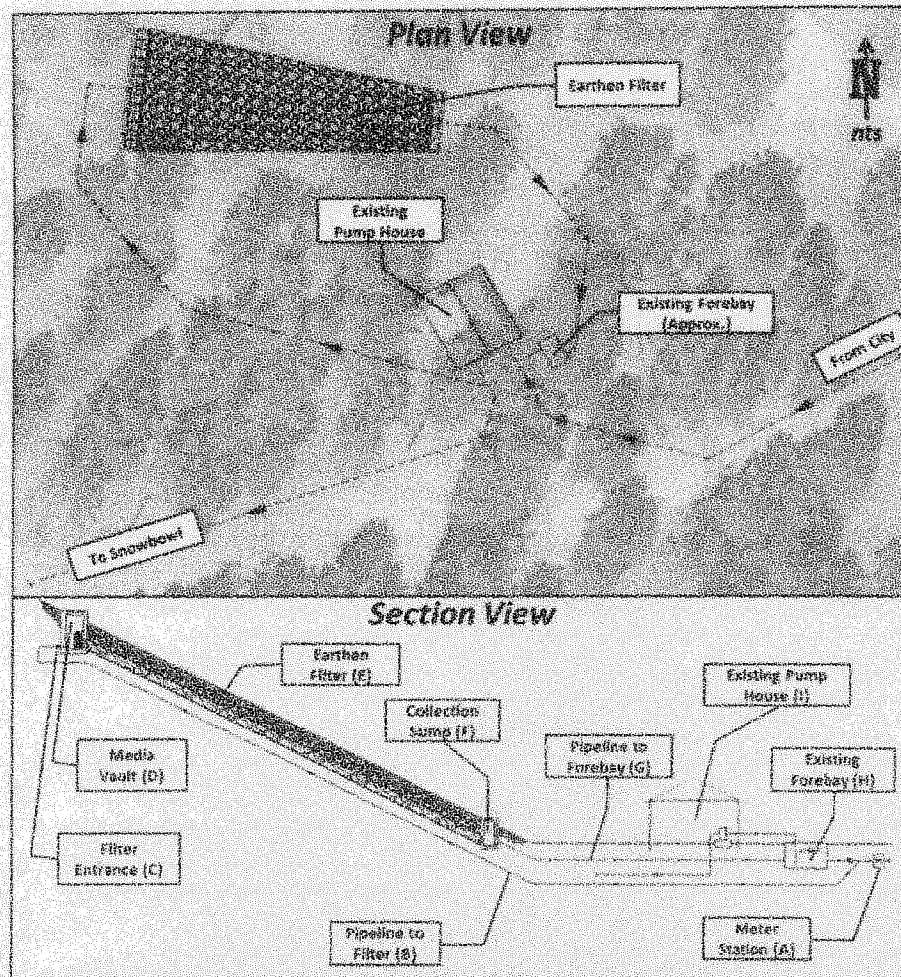


Figure 2 – Earthen Filtration Schematic with Gravity Delivery

The schematic flow includes:

- A. **Meter Station.** A diversion would be installed near the existing meter station at Thorpe Park. System pressure at this point is assumed to be approximately 60 psi based on discussion with City staff. This pressure is likely sufficient to allow the EFS to operate via gravity.
- B. **Pipeline to Filter.** A 12-inch pipeline (PVC or ductile iron) would be installed to convey reclaimed water from the meter station to the earthen filter.
- C. **Filter Entrance.** The entrance would be located up-hill from the meter station and existing pump house, at an elevation sufficient to create a gravity flow hydraulic grade-line through the earthen filter to the existing forebay.
- D. **Media Vault.** The first portion of the EFS would be a concrete media vault. The vault will be sized based on the loading rate characteristics of the selected media, currently assumed to have an 80 ft vertical cross section. Media testing was conducted in late 2015 to determine the selected media. Based on the results of Phase 1 and Phase 2 testing, the Dow Marathon Resin, an ion exchange media, was selected for the reduction of nitrogen and phosphorous constituents. Dow Marathon Resin is also effective at reducing many of the contaminants of emerging concern (CEC) found in reclaimed water. The media testing also indicated that granular activated carbon (GAC) may be a beneficial addition to the media vault for reduction of some CEC's. The optimal combination of Dow Marathon Resin, with or without the addition of a GAC media, will be determined during the design phase.

- E. **Earthen Filter.** The earthen filter will be a buried, trapezoidal cross-section conduit. The final materials of construction will be determined during the design phase and will include a combination of concrete and/or geo-membrane materials to assure watertightness and ease of access during maintenance activities. The earthen materials (gravel and rock material) can be locally sourced. Care will be taken to ensure that the materials are inert (will not leach unwanted materials into the water flow) and have sufficient grading and porosity to not constrict gravity flow. The size and length of the earthen filter portion will be determined during the design phase to optimize flow through the system from the outlet of the media vault to the pipeline conduit leading to the pump station.
- F. **Collection Sump.** A concrete vault will be installed at the downstream end of the earthen filter to collect the polished water for delivery to the forebay.
- G. **Pipeline to Forebay.** A 12-inch pipeline (PVC or ductile iron) would be installed to convey the polished water from the earthen filter to the forebay.
- H. **Forebay.** Two design options are under consideration. Option 1 is to re-configure the existing surge protection vault to serve as a forebay for the primary booster pumps. Option 2, if feasible, is to size the Pipeline to Forebay to serve as the source point for the booster pumps, which would operate under a lower source pressure than their current operation (running off of the current reclaimed water system line pressure).
- I. **Pump House.** The existing pump house will be re-purposed to pump from the converted forebay or as a modified in-line operation (similar to current operation). A chlorine addition system will be installed at the pump house to provide additional disinfection for the water to be delivered to Snowbowl.

The specific configuration, sizing, and operation of this system will need to be developed based on the City's unique site constraints. Construction of a by-pass pipeline will be necessary in the event of emergency or maintenance.

Operations and Maintenance

Operation of the system is intended to be passive, utilizing existing line pressure to drive flow to and through the media vault with gravity flow back to the pump station. Media performance will be managed through periodic off-site regeneration or replacement, depending on subsequent cost analysis during the design phase.

To facilitate regeneration activities, the media will be housed in self-contained steel vessels within the overall vault. For the Dow Marathon Resin, it is assumed that at least three vessels will be installed and operated as a lead-lag-spare configuration. Primary flow will be rotated to each vessel when it is serving as the lead vessel. Most contaminant reduction will occur in the lead vessel, with the lag vessel serving as a back-up process to assure treatment when the media in the lead vessel reaches break-through (the moment where a removed constituent begins to be re-released into the water after the treatment capacity of the media is exhausted).

The spare vessel(s) will be held in stand-by mode until break-through occurs in the lead vessel. At that point, the lead vessel will be taken offline for regeneration or replacement of the media, the lag vessel will become the lead vessel, and the spare vessel will become the lag vessel. This rotation will occur each month that the City is operating the EFS to deliver reclaimed water to Snowbowl. The design phase will target sizing of the steel vessels to attain an approximate one-month duration of lead operation per vessel. For a typical four-month operating season, there will be four, single-vessel regenerations or replacements per year.

If a GAC media is recommended for inclusion during the design phase, its configuration is anticipated to be slightly different, based on input from manufacturers. The current assumption is that a total of at least eight carbon vessels will be required; operating in parallel sets with a combination of lead vessels and spare vessels. Based on initial manufacturer input, three of the eight vessels would be regenerated or replaced each month that the City is operating the EFS to deliver reclaimed water to Snowbowl. For a typical four-month operating season, a total of twelve individual vessel regenerations or replacements would be conducted per year.

Monitoring of the system will be predominately through periodic site visits to check the system, verify operating conditions, and conduct flow monitoring. When the EFS is continuously operated at full capacity, maintenance is anticipated to be performed on a monthly basis coincident with the media change-outs.

Media change-out / regeneration is expected to be conducted by a contractor. Routine monitoring and maintenance as well as operation of the chlorine system is anticipated to be performed by City staff, equivalent to 0.25 FTE.

Reporting

Annual reporting as required under the Agreement shall include (1) the volume of reclaimed water polished by the EFS, (2) the number of media change-outs and dates thereof, (3) statement of operational issues encountered with the EFS, if any, and (4) statement of costs. No water quality testing for state or federal regulatory compliance purposes will be conducted at the EFS site.

Schedule

System construction is estimated to require approximately four months. A timeline is provided as follows. The durations below are presented in calendar months from issuance of NTP for the design phase.

- Media Testing – Completed December 2015
- 30% Design – 90 days after design NTP
- 100% Design – 180 days after design NTP
- Bidding and Procurement – 270 days after design NTP
- Construction Complete – 450 days after design NTP

The system will be in service for the winter 2017-2018 season.

ATTACHMENT B
FORM OF ANNUAL REPORT

ATTACHMENT B

FORM OF ANNUAL WINTER SEASON OM&R REPORT TO THE CITY COUNCIL (November to February)

- A. EFS Seasonal Start-Up/Actions Taken.
- B. Volume of reclaimed water delivered.
- C. Operation and Maintenance schedule (Media Change-Out and Media details).
- D. Maintenance tasks encountered and actions taken.
- E. Chlorine Residual Concentration.
- F. OM&R Costs.
- G. Revenue for reclaimed water sale
- H. EFS End of Season/Actions Taken.

ATTACHMENT C

FORM OF NOTICE OF DISMISSAL

Catherine M. Wright, AZ Bar No. 012007

THE HOPI TRIBE

Office of General Counsel

P.O. Box 123

Kykotsmovi, Arizona 86039

Telephone: (928) 734-3145

Electronic Mail: CWright@hopi.nsn.us

Michael D. Goodstein (*Pro Hac Vice*) / DC Bar No. 469156

HUNSUCKER GOODSTEIN & NELSON PC

5335 Wisconsin Avenue NW, Suite 360

Washington, DC 20015

Telephone: (202)895-5380

Electronic Mail: mgoodstein@hgnlaw.com

Attorneys for Plaintiff Hopi Tribe

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF COCONINO

THE HOPI TRIBE, a federally recognized
Indian Tribe,

Plaintiff,

vs.

THE CITY OF FLAGSTAFF, ARIZONA, a
municipal corporation,

Defendant.

NO. CV2011-00701

**NOTICE OF DISMISSAL
WITH PREJUDICE**

(Assigned to the Honorable
Mark R. Moran)

THE CITY OF FLAGSTAFF, ARIZONA, a
municipal corporation,

Third-Party Plaintiff,

vs.

ARIZONA SNOWBOWL RESORT
LIMITED PARTNERSHIP, an Arizona
limited partnership,

Third-Party Defendant.

Pursuant to Rule 41(a)(1)(A), Arizona Rules of Civil Procedure, Plaintiff The Hopi Tribe ("Plaintiff") hereby gives notice that it dismisses its claims against Defendant The City of Flagstaff, Arizona ("Defendant") in the above-captioned matter, with prejudice, with each party to bear its own attorneys' fees and costs.

This Notice pertains only to Plaintiff and Defendant. Claims between Third-Party Plaintiff and Third-Party Defendant are still pending.

RESPECTFULLY SUBMITTED this ____ day of _____, 2016.

THE HOPI TRIBE

By: _____
Catherine M. Wright
Office of the General Counsel
Hopi Tribe
P.O. Box 123
Kykotsmovi, Arizona 86039

Michael D. Goodstein (*Pro Hac Vice*)
HUNSUCKER GOODSTEIN & NELSON PC
5335 Wisconsin Avenue NW, Suite 360
Washington, DC 20015
Telephone: (202)895-5380
Electronic Mail: mgoodstein@hgnlaw.com

Attorneys for Plaintiff

COPIES of the foregoing mailed this
_____ day of _____, 2016:

Jack Klecan

RENAUD COOK DRURY MESAROS, PA

One North Central, Ste. 900

Phoenix, Arizona 85004-4117

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The City of Flagstaff, Arizona

Lee A. Storey

Sara V. Ransom

THE STOREY LAWYERS, PLC

6515 N. 12th Street, Suite C

Phoenix, Arizona 85014

Attorneys for Third Party Plaintiff

The City of Flagstaff, Arizona

Paul Johnson

JENNINGS STROUSS & SALMON PLC

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Phoenix, Arizona 85004

Attorneys for Third Party Defendant

Arizona Snowbowl Resort Limited Partnership

ATTACHMENT D

HOPÍ TRIBAL COUNCIL RESOLUTION

HOPI TRIBAL COUNCIL
RESOLUTION
H-027-2016

WHEREAS, the Constitution and By-Laws of the Hopi Tribe, ARTICLE VI-POWERS OF THE TRIBAL COUNCIL, SECTION 1(a), authorizes the Hopi Tribal Council "To represent and speak for the Hopi Tribe in all matters for the welfare of the Tribe, and to negotiate with the Federal, State and local governments, and with the councils or governments of other tribes;" and

WHEREAS, the Hopi Tribe has lived in Northern Arizona for centuries and the San Francisco Peaks have played a central and essential role in Hopi culture, traditions, and way of life for centuries; and

WHEREAS, a number of years ago the City of Flagstaff (the "City"), over the longstanding objection of the Hopi Tribe, entered into a contract to sell reclaimed water to the Arizona Snowbowl Resort Limited Partnership (the "Snowbowl") for use in making artificial snow on the Snowbowl ski area on the San Francisco Peaks; and

WHEREAS, over the longstanding objection of the Hopi Tribe, the U.S. Forest Service and the Arizona Department of Environmental Quality ("ADEQ") have approved the making of artificial snow from reclaimed water on the San Francisco Peaks; and

WHEREAS, on August 1, 2011 the Hopi Tribe filed suit against the City alleging a public nuisance and seeking to prevent the sale of reclaimed water by the City to the Snowbowl for snowmaking at the Snowbowl ski area; and

WHEREAS, the City asserts in the suit that the sale of reclaimed water by the City to Snowbowl was already fully considered and approved during the environmental review and permitting process, and

HOPI TRIBAL COUNCIL
RESOLUTION
H-027-2016

- WHEREAS, the Hopi Tribe continues to object to the snowmaking at Snowbowl and the sale of reclaimed water by the City to Snowbowl; and
- WHEREAS, in settlement of the Hopi Tribe's suit the City has agreed to construct and operate an additional treatment system in Thorpe Park for the reclaimed water being sold by the City to the Snowbowl; and
- WHEREAS, the Hopi Tribe Water Resources Program has evaluated the additional treatment system proposed by the City and determined that it will substantially improve the quality of the reclaimed water sold by the City to Snowbowl; and
- WHEREAS, the settlement agreement between the Hopi Tribe and the City provides that the City will construct and properly operate and maintain so long as the City provides reclaimed water to Snowbowl for snowmaking, at no cost to the Hopi Tribe, an additional Earthen Filtration System ("EFS") at Thorpe Park, with a media filter to be determined in consultation with the Hopi Tribe Water Resources Program; and
- WHEREAS, the settlement between the Hopi Tribe and the City will also require the City to provide the Hopi Tribe with periodic status reports on the quality of the City's reclaimed water and the operation of the EFS that demonstrate the City's compliance with the terms of the proposed settlement agreement and other applicable water quality standards; and
- WHEREAS, the Hopi Tribe will continue to oppose snowmaking on the San Francisco Peaks; and

HOPI TRIBAL COUNCIL
RESOLUTION
H-027-2016

WHEREAS, the Hopi Tribal Council has reviewed the attached SETTLEMENT AGREEMENT BETWEEN THE HOPI TRIBE AND THE CITY OF FLAGSTAFF (the "Settlement Agreement"); and

WHEREAS, the Hopi Tribal Council has determined that a settlement as outlined in the proposed Settlement Agreement will reserve the Hopi Tribe's rights to continue to oppose snowmaking on the San Francisco Peaks, except as expressly provided regarding settlement of the public nuisance claim and related claims brought against the City; and

WHEREAS, the Hopi Tribal Council has determined that entering a settlement with the City as outlined in the attached Settlement Agreement serves the best interests of the Hopi Tribe at this time.

NOW THEREFORE BE IT RESOLVED that the Hopi Tribal Council hereby approves the terms of the settlement with the City as outlined in the attached proposed Settlement Agreement, including the provisions 9 and 10(g) of the Settlement Agreement regarding jurisdiction, governing law and venue:

Jurisdiction. Solely for purposes of the implementation and enforcement of this Agreement, the Hopi Tribe expressly waives its sovereign immunity from suit and consents to the exclusive jurisdiction of the state courts of Arizona. To the extent the City has sovereign immunity from suit from the Hopi Tribe seeking to implement or enforce this Agreement, the City expressly waives its sovereign immunity from suit. Each Party further expressly agrees that any disputes or actions taken by the Parties related to or pursuant to this Agreement are subject to the exclusive jurisdiction of the state courts of Arizona. In particular, the Hopi Tribe agrees that, as a result of the exclusive jurisdiction of the state courts of Arizona, the Hopi Tribe may not and will not require the exhaustion of tribal administrative remedies, or apply to any other state court, federal court, regulatory authority, administrative agency, tribunal or other governing body, including but not limited to tribal courts, to seek any form of relief regarding the implementation or enforcement of this Agreement.

HOPI TRIBAL COUNCIL
RESOLUTION
H-027-2016

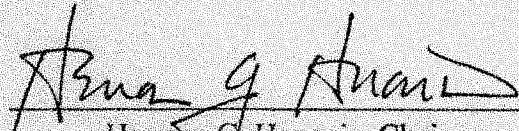
Governing Law and Venue. The Hopi Tribe expressly consents that this Agreement shall be governed by and construed in accordance with the laws of the State of Arizona. The Hopi Tribe further expressly consents that absent written agreement signed by both Parties, any dispute regarding the terms of this Agreement or action to enforce this Agreement shall be maintained exclusively in Coconino County, Arizona.

BE IT FINALLY RESOLVED that the Hopi Tribal Council hereby authorizes the Chairman of the Hopi Tribe, or his designee, to execute the Settlement Agreement with the City.


HOPI TRIBAL COUNCIL
RESOLUTION
H-027-2016

CERTIFICATION

The foregoing resolution was adopted by the Hopi Tribal Council on February 24, 2016 at a meeting at which quorum was present with a vote of 14 in favor, 0 opposed, 0 abstaining (Chairman presiding and not voting) pursuant to the authority vested in the Hopi Tribal Council by ARTICLE VI-POWERS OF THE TRIBAL COUNCIL SECTION 1(a) of the Hopi Tribal Constitution and By-Laws of the Hopi Tribe of Arizona, as ratified by the Tribe on October 24, 1936, and approved by the Secretary of Interior on December 19, 1936, pursuant to Section 16 of the Act of June 18, 1934. Said resolution is effective as of the date of adoption and does not require Secretarial approval.


Herman G. Honanie, Chairman
Hopi Tribal Council

ATTEST:


Maxine Wadsworth, Tribal Secretary
Hopi Tribal Council

ATTACHMENT E

CITY OF FLAGSTAFF COUNCIL ACTION