



# Staff Report

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**Agenda Item:** Consideration and possible approval of Settlement Agreement between the Town of Clarkdale and Phelps Dodge Corporation, resolving re-imbursement to the Town of the pro-rata costs chargeable to Phelps Dodge for the construction of a Reclaimed Water Pipeline.

**Submitted By:** Town Manager Mabery

**Meeting Date:** November 13, 2007

**Background:** The Restated Development Agreement between Phelps Dodge Corporation and the Town of Clarkdale requires, in part:

Paragraph 6.1 **Acquisition of Property.** That Phelps Dodge will sell the Town of Clarkdale the land necessary for the construction of our new water reclamation facility (i.e. "The Fisher House and Property) for \$347,000.

Paragraph 6.5 **Reclaimed Water Pipeline.** In exchange for the Town ceasing to discharge effluent on the Phelps Dodge mine tailings site, that Phelps Dodge will provide 50% of the cost for design and construction of the Reclaimed Water Pipeline that was recently constructed from the existing wastewater treatment plant to our new effluent disposal area. (See the attached documentation for the full terms of these two paragraphs.)

The total amount due to the Town of Clarkdale for Phelps Dodge's share of the pipeline costs is \$1,066,337.00. In the Settlement Agreement, Clarkdale agrees to accept conveyance of the WWTP property (at the previously agreed upon value in the Development Agreement of \$347,600) and a cash balance of \$718,737.00.

The agreement also acknowledges the current requirement in Section 6.6 of the Restated Development Agreement which obligates the Town to establish a transferrable reclaimed water credit account in Phelps Dodge's name with an initial balance equal to Phelps Dodge's contribution to the cost of the Reclaimed Water Pipeline, or \$1,066,337.00.

Clarkdale also agrees to meet and discuss two unrelated issues at Phelps Dodge's request: The sale of the Clark Mansion and the potential sale of the Phelps Dodge property.

**Recommendation:** Staff recommends that Council approve the Settlement Agreement as presented by the Town Attorney.

**Staff Contact Person:** Town Attorney Robert S. Pecharich

## SETTLEMENT AGREEMENT

Phelps Dodge Corporation ("Phelps Dodge"), a New York corporation, with offices located at One North Central Avenue, Phoenix, Arizona, 85004, and the Town of Clarkdale ("Town"), an Arizona municipal corporation, P.O. Box 308, Clarkdale Arizona 86324, enter into this Settlement Agreement as of \_\_\_\_\_, 2007, to settle certain claims under the Restated Development Agreement between Phelps Dodge and the Town dated December 9, 2003.

1. **Reimbursement of Costs to Construct Pipeline.** The Town has asserted a claim against Phelps Dodge for reimbursement of costs to construct a pipeline to transport treated wastewater effluent generated by the Town ("Reclaimed Water Pipeline") under Section 6.5 of the Restated Development Agreement. The Town and Phelps Dodge agree that all claims of the Town for the reimbursement of the pipeline costs from Phelps Dodge under Section 6.5 are hereby settled in return for Phelps Dodge's payment of the total sum of \$1,066,337.00, payable by cash in the amount of \$718,737.00, with the balance of \$347,600.00 satisfied by Phelps Dodge's conveyance to the Town of the Fisher House property as provided under Section 6.1 of the Restated Development Agreement, and in accordance with the terms of this Settlement Agreement. Upon transfer of title to the Fisher House to the Town in accordance with this Settlement Agreement, all claims of the Town against Phelps Dodge under Section 6.5 of the Restated Development Agreement are hereby released and discharged without further action by either the Town or Phelps Dodge.
2. **Fisher House Escrow.** Phelps Dodge shall open an escrow account to address any title matters and to convey the Fisher House property to the Town by limited warranty deed, with all costs of the transaction to be borne by the Town.
3. **Section 6.5 Conditions Precedent.** Phelps Dodge's obligation to reimburse the Reclaimed Water Pipeline costs is subject to the conditions precedent in Section 6.5 of the Restated Development Agreement. In consideration for Phelps Dodge's reimbursement of the Reclaimed Water Pipeline costs in accordance Paragraph 1 of this Settlement Agreement, the Town hereby agrees as follows:, which shall be enforceable through this Settlement Agreement and the Restated Development Agreement:
  - a. In satisfaction of the condition that the Town demonstrate that it has a lawful and permanent location or combination of locations for the disposal or reuse of the effluent, the Town hereby agrees that it has and will continue permanently to discontinued disposal or reuse of effluent on Phelps Dodge's property, except for any future use of effluent on the Phelps Dodge property in accordance with Section 6.6 of the Restated Development Agreement. The Town hereby releases Phelps Dodge from any further obligations to the Town under Section 6.5 of the Restated Development Agreement.
  - b. In satisfaction of the condition that the U.S. Environmental Protection Agency and/or the Arizona Department of Environmental Quality ("ADEQ") concur that the Reclaimed Water Pipeline will facilitate compliance with the

Order for Compliance No. IX-F490-33 and grant any necessary permits or approval for the Reclaimed Water Pipeline, the Town applied for and ADEQ has issued two permits to the Town: (1) a Type 2 Reclaimed Water General Permit for Class B Reclaimed Water, ADEQ file No. R105414, and (2) Aquifer Protection Permit No. P-105414; provided, however, Order for Compliance No. IX-F490-33 has not been terminated. The Town hereby agrees to cooperate with Phelps Dodge and to promptly provide all reasonable information and assistance as may be requested by Phelps Dodge to terminate the Order for Compliance in accordance with Section 9.5 of the Restated Development Agreement.

- c. In satisfaction of the condition that Phelps Dodge has received from the ADEQ a modification of Aquifer Protection Permit No. P-101076 for closure of the Town's effluent discharge on the Phelps Dodge property that reflects the change in the planned effluent discharge, Phelps Dodge and the Town have applied for a modification of Aquifer Protection Permit P-101076 for closure of the Town's former effluent discharge on Phelps Dodge's property; provided, however, ADEQ has not yet acted on that modification. The Town hereby agrees to cooperate with Phelps Dodge in obtaining the permit modification and satisfying any remaining obligations for closure of the former effluent discharge under Aquifer Protection Permit P-101076 in accordance with Section 9.5 of the Restated Development Agreement.

4. Phelps Dodge Reclaimed Water Credit Account. In accordance with Section 6.6 of the Restated Development Agreement, the Town hereby agrees to establish the Phelps Dodge reclaimed water credit account with an initial balance equal to Phelps Dodge's contribution to the cost of the Reclaimed Water Pipeline, or \$1,066,337.00. The Town agrees that, upon request by Phelps Dodge, the Town will consent to the transfer of some or all of the balance in its reclaimed water credit account to a third party who has entered into or wishes to enter into a contract with the Town to receive reclaimed water from the Town for use off of Phelps Dodge's property.
5. Clark Mansion Cooperation. The parties recognize that Phelps Dodge may desire to convey the Clark Mansion, which is a building and surrounding property located within the Verde Valley Ranch development property, to a third party at some point in the future. The parties further recognize that in order to make such conveyance, the Restated Development Agreement referenced herein would require an amendment to delete said property from the Restated Development Agreement. The parties further recognize that such deletion will require a zoning determination to determine the uses of the property, and that such zoning process is statutory and takes time to complete. The parties hereto agree to meet and discuss this issue at the earliest opportunity convenient to both parties.
6. Sale of Phelps Dodge Property. The Town hereby agrees that in the event that Phelps Dodge reaches agreement to convey the property subject to the Restated Development Agreement to one or more third parties who does not wish to develop the property under the Restated Development Agreement and who may wish to terminate that agreement, the

parties agree to meet and discuss this issue at the earliest opportunity convenient to both parties.

7. **Effective Date.** This Settlement Agreement shall be effective upon execution by all parties.
8. **Execution.** The Town of Clarkdale and Phelps Dodge Corporation represent that the signatories to this Settlement Agreement have the authority to enter into and execute the Settlement Agreement in the capacity indicated below.
9. **Enforceability.** If any provision of this Settlement Agreement, or the application thereof to any person or circumstance shall, in whole or in part, be invalid or unenforceable, the remainder of this Settlement Agreement, or the application of such term, condition, and representation to certain persons or circumstances other than those to which it is invalid or unenforceable, shall not be affected thereby, and each term, condition, representation, and agreement remaining shall be valid and shall be enforced to the extent permitted by law.
10. **Entire Agreement.** This Settlement Agreement contains the entire agreement between Phelps Dodge and the Town with respect to the matters addressed herein, and all understandings and agreements heretofore between Phelps Dodge and the Town concerning those matters hereto are merged into this Agreement, and this Agreement shall supersede all previous agreements between Phelps Dodge and the Town, whether implied or expressed with respect to the matters addressed herein.
11. **No Third Parties.** Nothing contained in this Settlement Agreement shall create any right on the part of third parties or any status as third party beneficiaries hereunder.
12. **Amendments.** This Settlement Agreement may only be modified in writing, signed by both parties hereto or their duly authorized agents.

**TOWN OF CLARKDALE**

By \_\_\_\_\_

Its \_\_\_\_\_

**PHELPS DODGE CORPORATION**

By \_\_\_\_\_

Its \_\_\_\_\_

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