

Resolution No. 90-71

A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF RIDGECREST ADOPTING A
SETTLEMENT AGREEMENT AND MUTUAL
RELEASE BETWEEN THE CITY OF
RIDGECREST AND THREE PALMS.

WHEREAS, the City of Ridgecrest and Three Palms have been in litigation over the failure of Three Palms to operate under the terms of their franchise; and

WHEREAS, after negotiations with Three Palms they have agreed to purchase a new character generator for Channel Six in consideration for ceasing the litigation proceedings; and

WHEREAS, upon advice of legal counsel and after negotiations with Three Palms it is recommended that the lawsuit be settled;

NOW, THEREFORE, BE IT RESOLVED as follows:

1. A Settlement Agreement and Mutual Release, attached hereto as Exhibit "A", between the City of Ridgecrest and Three Palms is hereby adopted.
2. The City Administrator is hereby authorized to sign the Settlement Agreement on behalf of the City.

APPROVED AND ADOPTED THIS 18th day of July, 1990, by the following vote:

Ayes: Mayor Condos, Council Members Auld, and Corlett.

Noes: None.

Abstain: Council Members Lilly and Mower.

Absent: None.



Florence S. Condos, Mayor

ATTEST:



Joyce M. Taft, City Clerk

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release is made by and between the City of Ridgecrest, a municipal corporation ("CITY"), Three Palms Satellite Cable, Inc., a California corporation, and Three Palms Ltd., a California limited partnership (referred to jointly herein as "THREE PALMS").

Recitals

1. In January 1989, CITY brought suit in the Superior Court of Kern County against THREE PALMS, among others, concerning various claims arising out of THREE PALMS' ownership, operation, and sale of a cable television system in the CITY. This case is known as City of Ridgecrest v. Boulder Ridge Cable T.V., et al., Kern County Superior Court Case No. 205567 (referred to herein as "Litigation").

2. In February 1989, Three Palms Satellite Cable, Inc., filed and served a Cross-complaint against CITY in said Litigation, claiming, *inter alia*, that CITY had violated THREE PALMS' constitutional rights. In April 1989, Three Palms Ltd. filed and served a similar Cross-complaint.

3. In August 1989, CITY amended its Complaint in the Litigation to add as a defendant Amwest Surety Insurance Company ("AMWEST"), a surety of THREE PALMS. AMWEST has not been formally served with a Summons and Complaint in the Litigation.

4. The parties have entered into discovery related to the claims made in said Litigation and, in the interest of

oiding the expense and potential liability of a trial, have agreed to a settlement of all claims between the parties and a dismissal of the Litigation.

5. THREE PALMS and CITY now desire to resolve their disputes and settle the Litigation, and consequently enter into this Settlement Agreement and Mutual Release to set forth the terms and conditions of their settlement and release of claims.

Agreements

6. Obligation of THREE PALMS. In consideration for the mutual release contained herein, THREE PALMS collectively shall provide to CITY a character generator of a type and model be determined by the CITY. Should the cost of the character generator selected by CITY exceed \$10,000.00, THREE PALMS may pay to CITY a lump sum of \$10,000.00 (Ten Thousand Dollars) instead of providing the character generator.

7. Obligation of CITY. CITY shall inform THREE PALMS of its choice of character generator within 15 (fifteen) days of the execution of this agreement. If CITY should not communicate its selection in writing to THREE PALMS within said period, THREE PALMS shall pay to CITY a lump sum of \$10,000.00 (Ten Thousand Dollars) as an alternative to providing character generator under ¶6.

8. Representations and Warranties. Each party to this Agreement represents and warrants that it has full legal authority to enter into this Agreement, and that the signature fixed hereto on its behalf is duly authorized by all

necessary action, whether corporate or otherwise, and that it will be bound by this Agreement.

9. Costs and Attorneys' Fees. The parties agree that they shall bear their own costs and attorneys' fees incurred in said case, and in entering into this Agreement.

10. Release. In consideration of the promises herein contained, THREE PALMS and CITY, on behalf of themselves, their successors, assigns, agents, attorneys, servants, employees, shareholders, officers, directors, partners, joint venturers, and representatives, hereby fully release and discharge each other and their respective successors, assigns, agents, attorneys, servants, employees, shareholders, officers, directors, partners, joint venturers, sureties, and representatives from all rights, claims, and actions which they and their above-named successors now have or may have against each other relating to any claims, matters, demands, or causes of action claimed, alleged, or asserted or which might have been claimed, alleged, or asserted, in or arising out of the construction, design, possession, regulation, operation and/or sale of THREE PALMS' cable television system in the City of Ridgecrest, and any disputes regarding the same. This release specifically includes the release of all claims against AMWEST arising from the above-described matters and/or disputes.

11. Waiver of Civil Code Section 1542. This Release, notwithstanding Section 1542 of the California Civil Code which provides that "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release which if known by

him must have materially affected his settlement with the debtor," shall be a full settlement among the parties regarding said case and the dispute referred to above. Such release shall act as a release of any and all present and/or future claims that the parties have or may have against each other or against AMWEST arising from the matters and disputes referred to above, whether such claims are currently known, unknown, foreseen, or unforeseen. The parties understand, and by executing this release acknowledge, the significance and consequence of such specific waiver of Section 1542, and hereby assume full responsibility for any injuries, damages, losses or liability that they may hereafter incur in connection with any such claims.

12. Assumption of Risk. The parties fully understand and declare that, if the facts with respect to which this Agreement is executed are found hereafter to be different from the facts they now believe to be true, they assume the risk of such possible difference in facts and hereby agree that this Agreement shall be, and will remain, effective notwithstanding any such difference in fact, except as expressly provided herein.

13. Dismissal of Litigation. The parties agree to dismiss the litigation in its entirety, with prejudice. CITY agrees to dismiss its complaint, as amended, and THREE PALMS agrees to dismiss the cross-complaint, as amended. Simultaneously with the execution of this Agreement, the parties will execute a dismissal with prejudice of all claims involved in said case, in form substantially similar to Exhibit

A hereto. Said dismissals will be filed by counsel for THREE PALMS upon its provision of the character generator or the alternate payment due hereunder, or upon expiration of the fifteen-day period described in paragraph 7, supra, if CITY should fail to communicate in writing as specified therein.

14. Miscellaneous. The parties further agree that this Agreement shall be binding upon them, as well as their legal representatives, successors, and assigns. This Agreement shall be governed by and interpreted in accordance with the laws of the State of California. If any dispute arises under this Agreement, the prevailing party shall be entitled to recover from the other party the prevailing party's costs, expenses, and reasonable attorneys' fees incurred in connection with the dispute. Each party understands and agrees that this Agreement may not be altered, amended, modified, or otherwise changed in any respect or particular whatsoever except in writing, duly executed by each of the parties to this Agreement or authorized representatives of the parties. This Agreement is executed pursuant to a compromise and settlement entered into by each party hereto without any admission of liability to one another, but solely for the purpose of avoiding further uncertainty, controversy, and legal expense. If any provision hereof is held invalid or unenforceable by a court of competent jurisdiction, the remainder hereof shall remain in full force and effect and binding as between the parties. Defendants

represents and warrants that it has the full corporate power and authority to enter into this Agreement.

THREE PALMS SATELLITE CABLE, INC.

DATED: _____

By: _____
Title: _____

THREE PALMS LTD.

DATED: _____

By: George Christianson,
President of Ridgecrest
CATV, Inc., General
Partner

CITY OF RIDGECREST

DATED: _____

By: _____
Title: _____

APPROVED AS TO FORM.

FARROW, SCHILDHAUSE & WILSON

Dated: 7/9/90

Anne M. Ronan
By: Anne M. Ronan
Attorneys for Three Palms
Satellite Cable, Inc. and
Three Palms Ltd.

LAW OFFICE OF WAYNE K. LEMIEUX

Dated: _____

By: Richard Hamlish
Attorneys for City of
Ridgecrest

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Name, Address and Telephone No. of Attorney(s)

Anne M. Ronan
Farrow, Schildhouse & Wilson
2125 Oak Grove Road, Suite 120
P.O. Box 9383
Walnut Creek, California 94598-9383
(415) 945-0200

Space Below for Use of Court Clerk Only

Attorney(s) for Defendants

SUPERIOR COURT OF CALIFORNIA, COUNTY OF KERN
(SUPERIOR, MUNICIPAL or JUSTICE)

(Name of Municipal or Justice Court District or of branch court, if any)

Plaintiff(s):
City of Ridgecrest

CASE NUMBER 205567

Defendant(s):
Boulder Ridge Cable T.V., Three
Palms Satellite Cable, Inc., Three
Palms Ltd., and Docs 1 through 50
(Abbreviated Title)

REQUEST FOR DISMISSAL
TYPE OF ACTION

- Personal Injury, Property Damage and Wrongful Death:
 - Motor Vehicle
 - Other
- Domestic Relations
- Eminent Domain
- Other: (Specify) Breach of Contract; 8/1983 et al.

TO THE CLERK: Please dismiss this action as follows: (Check applicable boxes.)

- 1. With prejudice Without prejudice
- 2. Entire action Complaint only Petition only Cross-complaint only
- Other: (Specify)

Dated:

*If dismissal requested is of specified parties only, of specified causes of action only or of specified cross-complaints only, so state and identify the parties, causes of action or cross-complaints to be dismissed.

Attorney(s) for Plaintiff

Richard Hamlish
(Type or print attorney(s) name(s))

TO THE CLERK: Consent to the above dismissal is hereby given.**

Dated:

**When a cross-complaint (or Response (Marriage) seeking affirmative relief) is on file, the attorney(s) for the cross-complainant (respondent) must sign this consent when required by CCP 581(f), (g) or (h).

Attorney(s) for Defendants/Cross-complainant(s) and Three Palms Ltd.

Anne M. Ronan
(Type or print attorney(s) name(s))

(To be completed by clerk)

- Dismissal entered as requested on
- Dismissal entered on as to only
- Dismissal not entered as requested for the following reason(s), and attorney(s) notified on

_____, Clerk

Dated:

By _____, Deputy