

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release ("*Settlement Agreement*") is made and entered into effective as of June 12, 2018 ("**Effective Date**") by and between Uintah Highlands Improvement District ("*District*"); Weber County ("*County*"); Wardell Bros. Construction, Inc. ("*Wardell Bros.*"); and Jonathan Ford ("*Mr. Ford*"). The District, the County, Wardell Bros. and Mr. Ford are collectively referred to herein as the "Parties," and each is a "Party" to this Settlement Agreement.

RECITALS

WHEREAS, the County hired Wardell Bros. to perform construction services relative to a project identified as the Skyline Drive Extension Project in Weber County, State of Utah ("*Project*");

WHEREAS, Wardell Bros. and Mr. Ford entered into a certain document titled "Permission to Allow Dumping" ("*Dumping Agreement*"), whereby Mr. Ford permitted Wardell Bros. to dump dirt removed from the Project on property ("the *Ford Property*") owned by Mr. Ford;

WHEREAS, Wardell Bros. did dump material on the Ford Property pursuant to the Dumping Agreement;

WHEREAS, the dirt that Wardell Bros. dumped on the Ford Property was in the area of an easement on such Property held by the District ("*Existing Easement*"), and was alleged to have been dumped directly over one of the District's water transmission lines located within the Easement ("*Transmission Line*");

WHEREAS, the District alleges that by virtue of the dirt having been dumped over the Transmission Line, the District's access to the Transmission Line has been restricted ("*Dispute*");

WHEREAS, because of the Dispute, the District brought suit against the County, Wardell Bros. and Mr. Ford in Case No. 170906182 in the Second Judicial District Court, Weber County, State of Utah ("*Lawsuit*");

WHEREAS, the County cross-claimed against Wardell Bros in the Lawsuit, and Wardell Bros. and Mr. Ford also cross-claimed against each other in the Lawsuit ("*Cross-Claims*");

WHEREAS, the Parties deny liability to one another;

WHEREAS, the Parties desire and have agreed to settle and resolve the Dispute and any and all disputes, claims, actions, rights, causes of action, suits, damages, injuries, demands, accounts, contracts, covenants, controversies, and agreements, whatsoever that now exist, whether known or unknown, arising out of, with regard to, or that are in any way connected with the Dispute.

TERMS

NOW THEREFORE, for and in consideration of the mutual promises, covenants, warranties, and agreements as set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby settle all matters relating to the controversies referenced above as follows:

A. Relocation of the Transmission Line.

1. Relocation Work. Mr. Ford and the District shall agree on a new location (“*New Location*”) across the Ford Property for that portion of the Transmission Line that is located within the Existing Easement. Wardell Bros. shall relocate the Transmission Line from the Existing Easement to the New Location (“*Relocation Work*”). The New Location may be modified during construction as necessary to preserve constructability of the Transmission Line. The District shall provide Wardell Bros. with Design Specifications for the Relocation Work (“*Design Specifications*”), including the following provisions to which the parties agree: (i) the use of C900 pipe is acceptable, (ii) the pipeline turns will consist of two 45 degree angle sections rather than a single 90 degree angle section, (iii) an air release valve will be installed, (iv) mega lugs will be used on all joints, (v) a shutoff valve will be installed, which valve will be provided at the District’s expense; and (vi) the Design Specifications for the Relocation Work will be submitted for County review and approval prior to construction, and the Relocation Work shall conform to applicable County ordinances. Upon completion and delivery, the Design Specifications shall be incorporated into and become part of this Settlement Agreement. The Relocation Work shall be performed and completed in compliance with the Design Specifications, unless otherwise agreed to in writing by the Parties.

2. Time of Completion and Warranty. Wardell Bros. shall complete the Relocation Work within forty-five (45) days following review and approval of the Design Specifications by Weber County. Wardell Bros. shall warrant the Relocation Work for a period of one-year following completion of the Relocation Work.

3. Payment to Wardell Bros. Mr. Ford will pay Wardell Bros. Seventy Thousand One Hundred Ninety-Four and 60/100 U.S. Dollars (\$70,194.60) for the performance of the Relocation Work.

4. Abandonment of Existing Line in Place. The Parties acknowledge, understand, and agree that the Relocation Work shall be accomplished by constructing and installing new sections of the Transmission Line (“*Relocated Line*”), and that the existing sections of Transmission Line shall be abandoned by the District and remain buried in place, underground, in its existing location.

5. Reservation of Rights. Wardell Bros. and Mr. Ford reserve the right to make reasonable objections to any eventual design requirements promulgated by the District and/or its design professionals that will increase the above-stated cost of the work if there is a reasonable,

less expensive option for the contested requirement or the contested requirement does not conform to industry standards.

B. Payment of Design Costs. Upon execution of this Settlement Agreement, Mr. Ford will pay the District Four Thousand Eight Hundred Seventy-Five and 00/100 U.S. Dollars (\$4,875.00) for the design and engineering of the Design Specifications and related work contemplated by this Settlement Agreement, and the District shall cause such design and engineering work to be performed.

C. Payment of Attorney Fees. Once the design and engineering work contemplated by this Settlement Agreement is complete and agreed upon, Wardell Bros. and Mr. Ford will each pay Seven Thousand Five Hundred and 00/100 U.S. Dollars (\$7,500) to the District as compensation for attorney fees and other costs the District incurred in handling the Dispute and filing the Lawsuit and related matters.

D. Recording of New Easement and Relinquishment of Existing Easement. Upon completion of construction and installation of the Relocated Line, in accordance with the terms of this Settlement Agreement, and all attendant work with respect thereto is complete, the District shall:

1. Recording New Easement. Record an easement ("*New Easement*") for the length of the Transmission Line across the Ford Property, substantially in the form attached to this Settlement Agreement as Exhibit A. The District shall mark the exact location of the Relocated Line and prepare a recordable legal description for the New Easement. The New Easement shall have a total width of twenty (20) feet, extending ten (10) feet from the centerline of the Relocated Line on each side of the Relocated Line, adjacent and parallel to the Relocated Line. The New Easement shall be recorded by the District at its cost and expense.

2. Relinquishment of Existing Easement. Record a Relinquishment of the Existing Easement, substantially in the form attached to this Agreement as Exhibit B. The District may leave the existing sections of the Transmission Line in place, pursuant to Section A.4., above. The District will follow all applicable laws to make the relinquishment effective and will ensure that the Weber County Surveyor's Office is notified of it.

E. Dismissal of Lawsuit. Once the work and other obligations of the Parties contemplated by this Settlement Agreement are complete, the Parties shall cause the Lawsuit, including the Cross-Claims, to be dismissed with prejudice, with each Party to bear its own costs and fees, except as otherwise provided in this Settlement Agreement.

F. Global Release. In consideration of the promises and covenants contained in this Settlement Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby expressly acknowledged, the Parties hereby release and forever discharge one another, including the past and present officers, directors, partners, members, employees, agents, affiliated companies, of and from any and all claims and liabilities that may exist as of the effective date of this Settlement Agreement which relate in any way to the Project, Dumping Agreement,

Existing Easement, Transmission Line, Dispute, Lawsuit, and/or Cross-Claims, including all claims, actions, fines, damages, penalties, sanctions, costs, or attorney fees, of any nature whatsoever, whether in law or equity, contract or tort, or any other form, whether now known, unknown, asserted, unasserted, foreseen, unforeseen, contingent, actual, liquidated, or unliquidated; PROVIDED, HOWEVER, that nothing in this paragraph shall be construed to release or discharge the Parties from any of the liabilities or obligations owed to one another under this Settlement Agreement. Moreover, nothing in this paragraph shall impair or otherwise invalidate any contractual obligations, warranty or otherwise, that currently exist between Wardell Bros. and the County relative to work on the Project that does not involve or otherwise pertain to the issues contemplated by the Dispute.

G. Miscellaneous.

1. Entire Agreement. This Settlement Agreement, together with its exhibits and all expressly incorporated documents, contains or expressly incorporates by reference the entire agreement of the Parties with respect to the matters contemplated herein, and supersedes all prior negotiations, stipulations, and agreements.

2. Successors and Assigns. This Settlement Agreement shall inure to the benefit of each of the Parties, and shall be binding on the Parties and their respective successors and assigns.

3. Independent Legal Advice. Each Party to this Settlement Agreement represents, warrants and certifies that it has secured independent legal advice and consultation, and/or has been given the opportunity to secure independent legal advice and consultation, in connection with this Settlement Agreement and any rights it may be relinquishing, and that it has not relied upon any representation or statements by the other Party, or its, his, or their agents or attorneys in executing this Settlement Agreement other than those which are expressly made herein.

4. Interpretation of Settlement Agreement. Any ambiguities or uncertainties herein, shall be equally and fairly interpreted for the benefit of and against each Party hereto, and shall further be construed and/or interpreted without reference to the identity of any Party preparing this document, it being expressly understood and agreed that each Party participated equally in the negotiation and preparation of this Settlement Agreement and have had an equal opportunity to do so.

5. Severability. The provisions of this Settlement Agreement are severable, and if any provision of this Settlement Agreement is found for any reason to be invalid or unenforceable, in whole or in part, then such provision shall be deemed to be deleted only to the extent that it is found to be invalid or unenforceable. Such an invalid or unenforceable provision shall not affect the validity of the remainder of this Settlement Agreement, which shall continue in full force and effect, unless a party successfully asserts that the severed provision was material to this Settlement Agreement or that its absence removes or destroys consideration.

6. Waiver. Any waiver by any Party of any breach of any kind or character whatsoever by any other Party of the Settlement Agreement, whether such waiver be direct or implied, shall not be construed as a continuing waiver of, or consent to, any subsequent breach of this Settlement Agreement on the part of the other Party.

7. Modification. This Settlement Agreement may not be modified except by an instrument in writing and signed by all the Parties hereto.

8. Cooperation. Each Party agrees to execute and deliver such additional documents and instruments and to perform such additional acts as any Party may reasonably request or as may be reasonably necessary or appropriate to effectuate, consummate, or perform any of the terms, provisions, or conditions of this Settlement Agreement.

9. Attorneys' Fees and Costs. In any action of any kind relating to the enforcement or interpretation of this Settlement Agreement, the prevailing Party shall be entitled to collect all of its reasonable attorney fees and costs from the non-prevailing Party.

10. Applicable Law; Jurisdiction. This Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws (excluding the choice of laws rules) of the State of Utah, and any action arising out of or relating to this Settlement Agreement shall be brought and maintained in the Second Judicial District Court in and for Weber County, State of Utah, where the Lawsuit was filed.

11. Counterparts; Facsimile Signatures. This Settlement Agreement may be executed in one or more counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. Any Party's facsimile signature and any emailed copy of a Party's signature to this Settlement Agreement will be deemed a binding signature of this Settlement Agreement by such Party.

12. Titles and Headings. Titles and headings of the paragraphs and sections of this Settlement Agreement are for convenience of reference only and shall not affect the construction of any provision of this Settlement Agreement.

13. Authorization. Each individual executing this Settlement Agreement represents and warrants that such individual has been duly authorized to execute and deliver this Settlement Agreement in the capacity and for the entity set forth where such individual signs.

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**UINTAH HIGHLANDS IMPROVEMENT
DISTRICT**

By: _____

Its: _____

WEBER COUNTY

By: _____

Its: _____

**WARDELL BROS. CONSTRUCTION,
INC.**

By: _____

Its: _____

JONATHAN FORD
