

SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT (“Agreement”) dated this ___ day of September, 2020, is entered into by and between 4-Way Ranch Metropolitan District No. 1 and the individual Plaintiffs (collectively the “Plaintiffs”) listed in the pleadings for Case No. 2018CV30875 (“Case”) and the 4-Way Ranch Metropolitan District No. 2 and 4 Way Ranch Joint Venture, LLC (collectively the “Defendants”). Plaintiffs and Defendants are sometimes collectively referred to as the “Parties.”

A. The purpose of this Agreement is to memorialize the terms of agreement that the Parties have reached regarding all claims of the Case, it being understood and agreed that litigation has risks and the certainty of a negotiated agreement is a benefit to all Parties.

B. The Parties acknowledge that after a two-day trial the Court found for the Defendants and against the Third Party- Intervenor. The Third Party-Intervenor has appeal rights. In the event the Third-Party Intervenor successfully appeals the Case, the Parties may be unable to perform all of the settlement points identified herein until final resolution of any appeal.

C. Notwithstanding the limitation defined in B above, the Parties desire to execute this Agreement setting forth the settlement details and to highlight those provisions that can be performed regardless of the outcome of the Case.

NOW THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

1. **Dismiss with Prejudice.** The parties will mutually dismiss with prejudice all claims in the Case against each other. Nothing in this paragraph requires Defendants to dismiss any claims pending against Third Party-Intervenor.

1. **New Bonds.** District No. 2 agrees that it will, at its sole cost and expense, issue new bonds that will be subject to an ad valorem tax against property owners within the boundaries of District No. 2 only and will obtain a discharge of debt of the 2011-B bonds (“Junior Bonds”) from the current bond holders. To undertake and accomplish this task, the Parties agree to follow the proposed plan outlined by Dee Wisor as set forth in **Exhibit A** to this Agreement. The Parties must cooperate in providing documentation and materials as deemed necessary by Mr. Wisor to effectuate this task. District No. 2 agrees to use best efforts to accomplish the 2020 Junior Bonds and forgiveness of the 2011-B Bonds by the end of 2020. If that deadline proves impossible, District 2 nonetheless agrees to proceed without undue delay.

2. **Senior Debt.** Plaintiffs, property owners within District No.1 and the Joint Venture property (“Excluded Property”) will continue to be responsible for debt service on the senior bonds (2011A), (the “Senior Bonds”) in the remaining principal amount of approximately \$490,000 plus accrued interest since June 1, 2020. The current reserve balance of the debt service fund of District No. 1 (approximate balance \$50,000 as of January 1, 2020) will continue to be used for payment of the Senior Bonds. Of the total cost of every new water tap within District No. 1 or District No.2, \$4,000 will continue to be collected by District 2 and remitted to District 1 as pledged revenues

toward repayment of the Senior Bonds as provided in the bond documents until the Senior Bonds have been paid in full.

3. **Exclusion.** Residential property owners remaining in District No. 1 shall have the option to request exclusion from District No. 1 according to statutory procedures. All excluded property owners from District No. 1 shall be responsible for debt service of the Senior Bonds after exclusion. But, if they are excluded, those property owners would no longer be responsible for operations mill levies of District No. 1 pursuant to statute. All parties stipulate to their non-opposition to such exclusion. All residential property owners who request exclusion from District No. 1 and are presently served by District No. 2 for water service must, as a condition of exclusion, agree to the extraterritorial service agreement described in paragraph 5 below.

4. **Extra-Territorial Service.** District No. 2 (with an appropriate intergovernmental agreement with District 1 that would be recorded with the County Clerk and Recorder) agrees to provide water service to the remaining (if any) District No. 1 homeowners and any excluded residential homeowners. For those excluded residential property owners service, water service shall be via an extraterritorial service agreement (“Extraterritorial Agreement”). The Extraterritorial Agreement will establish a contractual right to receive continued water service to residential homeowners who execute the Extraterritorial Agreement from District No. 2 subject to the rules and regulations of District No. 2 that are attached hereto as **Exhibit B**, and as may be amended from time to time (“Rules and Regulations”). All parties stipulate their agreement and agree not to oppose approval by a Court or the El Paso County Board of County Commissioners (“BOCC”), if such approval is required.

5. **Rates and Charges** District No. 2 agrees that the rates and charges for providing water service to the Plaintiffs’ properties in District No. 1 or the excluded properties will be set based on the current rate of such service, with any changes based on reasonable and necessary changes in cost of providing the water service to the properties pursuant to Colorado law. To the extent not precluded by law, District No. 2 agrees not increase the rates and charges of providing residential water service to District No. 1 or the excluded properties based on the additional costs of extending service solely to the Waterbury property or any new properties in District No. 2, or commercial properties in District No. 1. Prior to any proposed rate change in District No. 2 it agrees to provide notice as required by CRS §32-1-1001 (2) (a), as amended. Under no circumstances would residential properties in District No. 1 be charged with any increases in rates or charges due to the cost of providing new or additional wastewater service since the residential properties in District No. 1 utilize individual septic systems.

6. **Transfer of Obligation.** The judgment obligation of District No. 1 to KO1515 in El Paso County District Court civil case No. 2015CV301486 will be transferred to District No. 2. Plaintiffs will be relieved from this obligation and District No. 2 hereby accepts this obligation.

7. **Stapleton Road.** The obligation of District No. 1 for performance of the Stapleton Road Intergovernmental Agreement, dated March 30, 2010, is hereby assigned to District No. 2 and it shall provide written direction to the County of this assignment.

8. **No Claim to District Funds.** District No. 2 will make no claim to the approximate amount of \$15,000.00 in the District No. 1 proprietary fund that was designated for water service. District No. 2 will not object to any transfer by District No. 1 of the \$15,000.00.

9. **Attorney's Fees.** 4-Way Ranch Joint Venture, LLC will pay Plaintiffs' counsel the sum of \$50,000.00 as payment toward its costs and attorney fees. With the exception of that payment, all parties will bear their own costs and attorney fees in connection with this matter. Payment will be made within thirty (30) days of final execution of this Agreement by all parties.

10. **Court Approval.** The Parties will cooperate as needed to obtain any necessary court approval of the terms of settlement as memorialized in this Agreement.

11. **Approval by Districts.** This Agreement is subject to approval at the next public meetings of District No. 1 and District 2, as required by law.

13. **Settlement Terms that Survive Appeal.** Items 1, 8, and 9 of the foregoing settlement terms are not dependent on the outcome of the Case. All other settlement terms are dependent on the outcome of the Case. Should the Intervenor-Plaintiff prevail in the Case, the remaining terms except for items 1, 8, and 9 above, will be severed from this Agreement. It is the parties' intent that this paragraph be self-executing.

~~14. **Confidentiality.** The Parties agree and specifically represent that the terms of the Agreement are confidential and will not be disclosed, discussed, or otherwise revealed, either directly or indirectly, to any third parties for any purpose by the Parties, or by their agents, servants, representatives, attorneys or employees; except to their legal representatives, accountants, insurer/reinsurers, or as may be mandated or required by law, statute or rule of procedure, a court order or a subpoena, or in an action to enforce the provisions of this Agreement.~~

15. **Entire Agreement.** This Agreement shall constitute the entire agreement between the Parties, and any prior understanding or representation of any kind preceding the date of the Agreement shall not be binding upon either Party except to the extent incorporated in this Agreement.

16. **Modification of Agreement.** Any modification of this Agreement or additional obligation assumed by either Party in connection with this Agreement shall be binding only if evidenced in writing and signed by each Party or an authorized representative of each Party, or agreed upon and confirmed through explicit, reciprocal reply emails or facsimiles. Scanned documents and facsimile copies shall be sufficient to satisfy the writing requirement.

17. **Rules of Construction.** The Parties hereto agree that this Agreement shall be deemed to have been jointly negotiated, prepared and drafted, and each Party has had the opportunity to have counsel review this Agreement. Therefore, each Party waives the application of any law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the Party drafting such agreement or document.

18. **Warranty of Non-Assignment.** Each Party expressly acknowledges that the Party has not assigned or transferred, or purported to assign or transfer any claim covered under this Agreement.

19. **Binding Effect.** This Agreement is binding upon and shall inure to the Parties and their respective heirs, successors, and assigns.

20. **Counterparts and Copies.** Duplicate originals of this Agreement may be executed by the Parties. A copy of this Agreement is admissible to the same extent as the original in any subsequent proceeding and has the same force and effect as the original.

21. **Choice of Law and Venue.** This Agreement shall be construed and enforced by the laws of the State of Colorado. If any action is brought to construe, interpret, or enforce any provision of this Agreement, the Parties irrevocably consent to personal jurisdiction and venue in a court of competent jurisdiction located in Denver County, Colorado.

22. **Attorney Fees and Costs.** Unless otherwise provided for in this Agreement, each Party shall bear its own costs and attorney fees arising out of, relating to, or in connection with the Lawsuit. However, in the event of any dispute regarding the interpretation or enforcement of this Agreement, the prevailing party shall be entitled to recover their reasonable attorney fees and costs.

23. **Informed Consent.** The Parties hereby agree that they have read this Agreement and that they fully understand the terms of this Agreement. Each Party affirmatively states that he or she has had the benefit of advice from counsel of his or her own choosing before executing this Agreement.

24. **Investigation of Facts.** Each Party represents and warrants that he or she has made such investigation of the facts pertaining to this Agreement and all matters pertaining thereto as he or she deems necessary.

25. **Knowledge and Review of Agreement.** The Parties warrant and represent that this Agreement is executed voluntarily with full knowledge and understanding of the consequences and implications of their obligations contained herein, and that they have carefully and thoroughly reviewed this Agreement in its entirety.

26. **Headings and Captions.** All headings and captions used in this Agreement are for convenience only, and shall not be construed to either limit or broaden the language of this Agreement or any particular section contained herein.

27. **Authorization.** The persons and Parties signing below represent and warrant that they have the authority to enter into this Agreement on behalf of themselves or the Party for whom they are acting, and that they have authority to bind themselves or that Party to this Agreement.

28. **Denial of Liability.** The Parties state that this Agreement is in no way an admission by any Party of any liability or wrongdoing in the Case or any other matter. The Parties deny, and will continue to deny, any and all liability for all claims herein released by either Party.

29. **Facsimile Signatures and Counterparts.** This Agreement may be executed with facsimile signatures and counterparts, each of which shall be deemed an original and which shall together constitute a single document.

[Signature Pages Follow]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date set forth above:

4-WAY RANCH METROPOLITAN DISTRICT NO. 1

By: _____
Name:
Title:

Date: _____

Amy Campbell

Date: _____

Kevin Campbell

Date: _____

4-WAY RANCH METROPOLITAN DISTRICT NO. 2

By: _____
Name:
Title:

Date: _____

Michael Andrews

Date: _____

Kristen Andrews

Date: _____

4-WAY RANCH JOINT VENTURE, LLC

By: _____
Name:
Title:

Date: _____

Troy Andrews

Date: _____

Andrew Westra

Date: _____

Paul Schafroth

Date: _____

Sandy Westra

Date: _____

Jennifer Schafroth

Date: _____

Paul Hartmann

Date: _____

Cindy Hartmann

Date: _____

Kenneth Stott

Date: _____

Angie Stott

Date: _____

Danell Pugh

Date: _____

Mike Pugh

Date: _____

Jeffrey Wilson

Date: _____

Michael Drake

Date: _____

Susan Drake

Date: _____

Matt Tannehill

Date: _____

Bobbie Tennehill

Date: _____

David Learn

Date: _____

Sallie Learn

Date: _____

Barry Bortner

Date: _____

Jackie Bortner

Date: _____

G. Marshall Brown

Date: _____

Brenda Brown

Date: _____

Michael Raczykowski

Date: _____

William Montgomery

Date: _____

Approved as to form by counsel for Plaintiffs.

Burg Simpson Colorado

By: _____

Name:

Title:

Date: _____

Approved as to form by counsel for District No. 2.

Seter & Vander Wall

By: _____

Name:

Title:

Date: _____

Approved as to form by counsel for the Joint Venture.

Fairfield and Woods, P.C.

By: _____
Jack E. Reutzel, Director

Date: _____

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