

COMPROMISE AND SETTLEMENT AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of _____, 2020, by and between the following “Parties”: Washoe County, a political subdivision of the State of Nevada hereinafter referred to as “County” and Oscar F. Dykes and Betty C. Dykes, husband and wife, hereinafter to as “the Dykes”,

WITNESSETH:

WHEREAS the Dykes are the present owners of property in the North Spanish Springs area Located on the Southwest Corner of Dykes Court and Calle De La Plata, totaling approximately 20.94 acres and identified as Washoe County APN 534-561-06 and APN 534-561-07, and collectively referred to herein as “the Property” upon which the County built certain stormwater drainage facilities known as the North Spanish Springs Flood Control Facility, hereinafter referred to as “the Facility”, which was completed in 2007; and,

WHEREAS, the Dykes first came into possession of the Property in 1984 and sold the Property to FF-One, LLC in 2005 by promissory note which the Dykes assert required pre-approval for any encumbrances on the Property; and,

WHEREAS, in 2006 County and FF-One entered into a “Donation Agreement” of which the Dykes claim they were unaware, and which required the performance of certain work in exchange for title to the Property; and,

WHEREAS, the County commenced and completed construction of the Facility on the Property and performed its duties under the Donation Agreement but for reasons unknown the County never obtained title to the Property; and,

WHEREAS, the Dykes regained ownership of the property when they foreclosed on the Property in 2010, and in 2011 asserted claimed rights to eject the County owned Facility from the Property and/or to take legal action and sue for trespass or taking or other causes of action; and,

WHEREAS, the County disputed the claims and assertions of the Dykes based, without limitation, on the Dykes actual and constructive knowledge of the County’s intent to construct the Facility dating to 2003 and actual and constructive knowledge of the actual construction and presence of the Facility on the Property after foreclosure; and,

WHEREAS, in 2019 the Dykes again asserted their claimed rights to ejectment and causes of action for trespass or taking; and,

WHEREAS, the Parties recognize the issues presented by the various actions over the years create uncertainties for both Parties that, if not resolved amicably, will require them to resort to time-consuming litigation, the outcome and costs of which are uncertain, and have therefore met and conferred and agreed to resolve all issues, causes of action and claims between the Parties as more fully described herein,

WHEREAS, it is the express intent of the Parties to effectuate the conveyance of clear title of the Property upon which the Facility is constructed to Washoe County in exchange for the payment by Washoe County of \$325,000, each side to bear their own costs and fees, and a mutual release of all claims and causes of action each Party does or may have against the other,

NOW, THEREFORE, in consideration of the foregoing premises and the following covenants, terms and conditions, the Dykes and County hereby agree to compromise and settle all issues in regard to the Facility and Property and all matters arising out of or connected thereto as more fully set-forth in this Agreement, as follows:

1. As a condition precedent to the payment described in Paragraph 2, the Dykes shall execute the documents necessary to effectuate the sale, exchange, or other mechanism chosen by the County in its sole discretion to convey clear title to the Property in fee, to the County. County shall pay any and all costs associated with the conveyance of the property including any closing costs if applicable, and excluding only any legal costs or fees incurred by the Dykes.

2. On the date of conveyance by the Dykes of the Property in fee to the County as required in Paragraph 1, Washoe County shall pay to the Dykes, by delivery of a check made out to the Doyle Law Office Trust Account, the sum total of \$325,000 as complete and full settlement, inclusive of all costs and fees of any kind or nature, including attorneys costs and fees, to which they assert they are now entitled, or may be entitled in the future, which are attributable or related to the County's use of the Property, the Facility constructed thereon, and the resolution of the dispute between the Parties pursuant to this Agreement.

3. The Parties both agree to exercise due diligence and good faith to expeditiously complete the duties described in Paragraphs 1 and 2, with an aspirational goal of completing those duties by September 15, 2020. Time is of the essence for transfer of the Property and required payment.

4. The Parties agree that upon completion of the duties described in Paragraphs 1 and 2 above, that they release and forever discharge each other and their officers, employees, agents and contractors from any and all claims, demands, costs, expenses, damages and rights to compensation whatsoever, known and unknown, claims, actions and suits for damages, demands, losses or liabilities at law or in equity, filed or otherwise, which arise out of the County's use of the Property and the Facility constructed thereon. Parties agree that they will dismiss with prejudice any claims, actions or lawsuits which have or may be brought arising from the disputes settled by this Agreement.

5. This Agreement shall not be effective or enforceable until executed by the Board of County Commissioners for Washoe County at a public meeting held pursuant to NRS Chapter 241 and the Dykes.

6. General Terms:

A. Costs and Fees. Except as otherwise provided herein, each Party hereto shall be responsible for their own costs and fees of whatever kind or nature, including attorney's fees and

costs, incurred in connection with the subject matter of this Agreement.

B. Independent Legal Consultation and Reliance. Each Party hereto represents and warrants that the contents of this Agreement and the meaning of its covenants, terms and conditions have been explained to them by legal counsel of independent selection and that they have entered into this Agreement voluntarily and with full knowledge of its legal significance.

C. No Admissions. Except as otherwise provided for herein, this settlement is the compromise of disputed claims and any agreements and representations by any Party hereto shall not be construed as an admission of liability on the part of any party to this Agreement, which liability is expressly denied by each Party hereto. The only admission made by the Parties which is binding after settlement is that the current value of the Property may be reflected by appraisal for the purposes of taxes.

D. No Third-Party Beneficiaries. Except as allowed by this Agreement, or as required to enforce the Agreement or its terms, the Parties agree due to the unique facts and circumstances of this case that, with the exception of any Dykes' successors in interest, there are no third party beneficiaries to this Agreement and that neither the Agreement nor the resolution embodied in this Agreement shall be used by any Party or third party as precedent in any future action or dispute of any kind between the Parties.

E. Entire Agreement, Amendment. This Agreement constitutes the Parties' entire understanding concerning the subject matter of this Agreement and these understandings supersede all prior oral or written understandings or discussions of any kind relating to this subject matter. No modification or amendment to this Agreement shall be binding upon the Parties unless the same is in writing and signed by the respective Parties hereto.

F. Severability. If any provision of this Agreement is determined to be illegal, invalid, or unenforceable, the provision shall be deleted and the Parties shall, if possible, agree on a legal, valid, and enforceable substitute provision that is as similar in effect to the deleted provision as possible. The remaining portion of the Agreement not determined to be illegal, invalid, or unenforceable shall, in any event, remain valid and effective for the term remaining unless the provision found illegal, invalid, or unenforceable goes to the essence of this Agreement.

G. Applicable Law and Remedies. This Agreement is governed, interpreted and construed in accordance with Nevada law, without regard to choice of law principles. Each party consents to personal jurisdiction and exclusive venue in the Second Judicial District Court in and for the County of Washoe located in Washoe County, Nevada. All rights and remedies specified herein are in addition to any other rights or remedies at law or in equity, unless designated as an exclusive remedy in this Agreement.

H. Dispute Resolution. The Parties agree to fulfill the terms of this Agreement expeditiously and in good faith and may seek to use mediation or other alternative forms of dispute resolution prior to initiating legal or equitable action for its enforcement or breach. However, nothing in this Agreement or this Paragraph requires the use of alternative dispute resolution.

I. Counterparts. The Parties agree that this Agreement and any subsequent documents to effectuate the terms of this Agreement may be executed by counterparts and a copy or electronic version is acceptable as if an original.

IN WITNESS WHEREOF, the parties hereto have set their hands and subscribed their signatures this ____ day of August, 2020.

For **WASHOE COUNTY:**

By: _____
Robert Lucey, Chair
Washoe County Board of Commissioners

For **OSCAR AND BETTY DYKES:**

By: _____
Oscar Dykes

By: _____
Betty Dykes