

ORIGINAL

 ORIGINAL

SETTLEMENT AGREEMENT

This Settlement Agreement (hereinafter “Settlement Agreement”) is made and entered into by and between Dover Bay Property Owners Association, an Idaho non-profit corporation, including the Dover Bay Design Review Board (collectively “DBPOA”) and the City of Dover, Idaho, a political subdivision (“City”), collectively referred to as “the Parties.”

1. Background. On or about October 22, 2020, DBPOA filed a Complaint against the City, Bonner County District Court Case No. CV09-20-1407 (the “Lawsuit”). DBPOA amended its Complaint on February 22, 2021 (the “Amended Complaint”). The City answered and denied liability. DBPOA and the City met for mediation with the Hon. Steve Verby (ret.) as the mediator. The Parties now desire to settle the Lawsuit and the causes of action asserted therein without admitting liability or incurring further risk and expense.

2. The Project. The City or its contractors will design, build, construct and install a 12-inch diameter water transmission line (“the 12-inch line”) that runs from the City’s water storage reservoir (also called the “Essex Tank”) to the intersection of Railroad Avenue and Dover Bay Parkway in the Dover Bay Planned Unit Development (the “Project”), subject to the terms of paragraph three below. The Project will include connecting the line to the existing 12-inch pipe located in or around that intersection. The Project will resemble the drawing in Exhibit 1. Within the PUD, the Project will not include any permanent above-ground structures or improvements of any kind, including signage. The 12-inch line will consist of C900 PVC pipe with fittings and is equal to or better than the specifications shown in Exhibit 2, (which shows only part of the Project.). Upon completion of the Project design, the City will promptly provide DBPOA with a redline or overlap showing how the Project design varies from the design shown on Exhibit 2 and provide DBPOA an electronic copy of the Project design. The Project will be at City expense. The City may seek reimbursement from the Dover Urban Renewal Agency for all or part of the Project expense.

3. The railroad crossing and casing. The Project will include crossing under the BNSF Railway Company train tracks in the location of the current crossing. The crossing under the railroad tracks currently consists of a metal sleeve, 24 inches in diameter, containing at least two 8-inch water lines. The City will install a third line within the sleeve. This third line will have a diameter that is the largest available consistent with remaining volume within the 24 inch sleeve and that will fit within the sleeve. This third line will be of a diameter up to 12 inches, but a minimum of 8 inches. The parties believe there may be a spare 8-inch diameter pipe stored in the casing under the crossing. If a line of a larger diameter will not fit within the volume of the 24-inch casing after subtracting the space taken by the other two existing lines then the City may use the spare 8-inch line, rather than installing a larger line. However, if the spare 8-inch line can be removed and a line of a larger diameter can be installed in the remaining space within the sleeve then the City will remove the spare 8-inch line and install a third line of a larger diameter

up to 12 inches. If during the City's investigation or work on the Project it is discovered that installation of the minimum 8-inch line in the casing is unlikely to deliver the fire flow to the Dover Bay PUD that is scenario 1E, shown on Exhibit 1, then the City will install a separate 12-inch line under the railroad tracks in a separate casing after permitting from the railroad. Including a 12-inch pipe under the tracks in a separate casing is an approach referred to on Exhibit 1 as scenario 1D. Upon opening the sleeve at the north side of the railroad tracks, the City will provide to DBPOA a detailed inspection report of the condition of the sleeve and its contents, which shall include photographs. The Project will be at City expense. The City may seek reimbursement from the Dover Urban Renewal Agency for all or part of the Project expense.

4. Payment. The Project will include construction of the 12-inch line from the City's water storage reservoir to the intersection of 4th Avenue and Roosevelt Street in Dover, Idaho, subject to the terms of Paragraph 2. The Project will also include construction of the 12-inch line from the intersection of 4th Avenue and Roosevelt Street to the existing 12-inch water distribution line in the intersection of Railroad Avenue and Dover Bay Parkway, as shown on Exhibit 2. Upon completion of the 12-inch line section from the reservoir to the intersection of 4th Avenue and Roosevelt and commencement of trenching toward Dover Bay Parkway, the DBPOA will pay the City \$50,000. Payment will be by check made payable to the "City of Dover."

5. Timeline. The City shall complete the Project by or before December 31, 2023 subject to contractor availability and weather. As used here, the word "complete" shall mean the City's receipt of full and final payment notice from all Project contractors. The City shall provide DBPOA with copies of all such notices within seven days of receipt. In the event that the City needs to bore a new casing under the railroad tracks and requests additional time due to circumstances beyond its control relating to permitting by the railroad, the City agrees to immediately notify DBPOA and the parties agree to expedited mediation with Hon. Steve Verby for resolution of that issue. Notwithstanding, the City agrees to pursue completion of all phases of the Project in good faith and with deliberate speed.

6. Dismissal of Lawsuit. The Parties will, within three days of the full execution of this Agreement submit a stipulated motion and order dismissing the Lawsuit without prejudice with each side bearing its own attorney fees and costs. (TR)

7. Release. The Parties irrevocably and unconditionally release and forever discharge each other, and their officers, council members, and board members, from all liability for the causes of action alleged in the Lawsuit. This release does not include a release of claims not stated as causes of action in the Lawsuit or any claims in *DBPOA v. City of Dover*, Bonner County cause No. CV-09-20-1371; or *Dover Bay Marina, LLC v. City of Dover*, Bonner County cause Nos. CV-09-22-0072 and CV-09-22-0073.

8. No Admission. Neither this Settlement Agreement nor compliance with it shall be construed as an admission by the Parties, or their employees, board members, councilpersons, agents or successors of any liability whatsoever, or as admission by the Parties of any violation of

the rights of the Parties, violation of any order, law, statute, duty or contract whatsoever. The Parties specifically disclaim any liability to the other Parties for any alleged violation of their rights, or for any alleged violation of any order, law, statute, duty or contract on the part of the Parties, or their employees, board members, councilpersons, agents or successors.

9. Successors and Assigns. This Settlement Agreement shall be binding upon the Parties and upon their successors and assigns. The Parties warrant that they have not transferred to any person or entity any rights or causes of action, or claims released by this Settlement Agreement.

10. Severability. Should any provision of this Settlement Agreement be declared or be determined by any court of competent jurisdiction to be illegal, invalid, or unenforceable, the legality, validity and enforceability of the remaining parts, terms or provisions shall not be affected thereby, and said illegal, unenforceable, or invalid term, part or provision shall be deemed not to be a part of this Settlement Agreement, *provided however* that the entire Settlement Agreement is void if any such declaration relieves the City of its obligation hereunder to complete the Project, or for DBPOA to make payment as provided in Paragraph 4.

11. Entire Agreement and Modification. The Parties represent and acknowledge that in executing this Settlement Agreement they do not rely and have not relied upon any representation or statement made by the other Party or by the other Party's attorneys with regard to the subject matter or effect of this Settlement Agreement or otherwise, other than those specifically stated in this written Settlement Agreement. This Settlement Agreement sets forth the entire agreement between the Parties and fully supersedes all prior agreements and understandings, written or oral, between the Parties hereto pertaining to the subject matter hereof. For clarity only, this Settlement Agreement does not supersede the DBPOA CC&Rs or Design Guidelines; the Development Agreement; Mediated Settlement Agreement, Agreement in Principle; City's Ordinances; or the Findings, Conditions & Conclusions Regarding the Dover Bay Planned Unit Development with respect to any matter not released in this Settlement Agreement. This Settlement Agreement may only be amended or modified by a writing signed by the Parties. Any waiver of any provision of this Settlement Agreement shall not constitute a waiver of any other provision of this Settlement Agreement, unless expressly so indicated.

12. Interpretation and Governing Law. This Settlement Agreement shall be interpreted in accordance with the plain meaning of its terms and not strictly for or against any of the Parties. This Settlement Agreement is made and entered into in Idaho, and shall in all respects be interpreted, enforced, and governed by and under the laws of Idaho.



13. Enforcement. It is further understood and agreed that if, at any time, a violation of any term of this Settlement Agreement is asserted by any Party, that Party shall have the right to seek specific performance of that term and/or any other necessary and proper relief, including but

not limited to damages, from any court of competent jurisdiction, and the prevailing Party shall be entitled to recover its reasonable costs and attorneys' fees.

14. Counterparts. This Settlement Agreement may be executed in counterparts, and each counterpart, when executed, shall have the efficacy of a second original. Photographic or facsimile copies of any such signed counterparts may be used in lieu of the original for any purpose.

15. Subject to Approval. This Agreement shall not be binding unless approved by the City Council of Dover and the Board for the DBPOA. Those signing below agree to seek such approval from their respective boards at the soonest opportunity.

This Settlement Agreement is effective and entered as follows:

Dated: <u>3/26/22</u>	DOVER BAY PROPERTY OWNERS ASSOCIATION By:  Name: <u>Ralph Stegner</u> Title: <u>PRESIDENT DBPOA</u>
Dated: <u>3/24/22</u>	CITY OF DOVER By:  Name: <u>George E. Esbridge</u> Title: <u>MAYOR</u>