

SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE (the “Agreement”) is entered into by and between DAWN R. FOX, ROWAN COUNTY, NORTH CAROLINA and the CITY OF SALISBURY, NORTH CAROLINA, and is effective as of the last date herein below signed.

DAWN R. FOX, ROWAN COUNTY, and the CITY OF SALISBURY are referred to individually as a “Party” or jointly as the “Parties.”

RECITALS

WHEREAS, DAWN R. FOX filed a Verified Complaint styled *Dawn R. Fox, Plaintiff v. Rowan County and Salisbury-Rowan Utilities, a division of City of Salisbury*; 20-CVS-749 in Rowan County Superior Court (the “Civil Action”), in which she asserted claims for inverse condemnation, trespass, breach of contract, negligence, private nuisance, and alleged violation of the North Carolina Constitution associated with the discharge of certain water onto her property;

WHEREAS, DAWN R. FOX, ROWAN COUNTY, and the CITY OF SALISBURY wish to resolve all disputes between them, specifically including the Civil Action, on the terms provided for in this Agreement; and

WHEREAS, as evidenced by their signatures hereto, DAWN R. FOX, ROWAN COUNTY, and the CITY OF SALISBURY warrant and represent to each other that they have been fully informed and have full knowledge of the terms, conditions, and effects of this Agreement.

To avoid the time, expense, and uncertainty of litigation, the Parties enter into this Agreement to fully settle all claims, causes of action, and disputes the Parties have arising out of or relating to the Civil Action or the assertions and allegations therein.

In consideration of the mutual promises herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Terms of Settlement.

A. ROWAN COUNTY and the CITY OF SALISBURY shall pay to DAWN R. FOX the combined sum of Sixty Thousand Dollars and Zero Cents (\$60,000.00). Such sum may be payable to DAWN R. FOX via separate checks respectively from ROWAN COUNTY and the CITY OF SALISBURY, which, in combination, shall comprise the sum of Sixty Thousand Dollars and Zero Cents (\$60,000.00).

B. This sum of Sixty Thousand Dollars and Zero Cents (\$60,000.00). to be paid to DAWN R. FOX shall be allocated as follows: \$0.25 per square foot for actual surveyed square footage contained within the easement area discussed in subparagraph 1.D. below. The remainder of the Sixty Thousand Dollars and Zero Cents (\$60,000.00) not allocated to the purchase of the easement area shall constitute payment for past damages to, and loss of use of, the real property owned by DAWN R. FOX.

C. ROWAN COUNTY shall cause to be paid the water tap fee (whatever that amount may be) on behalf of DAWN R. FOX, or otherwise reimburse DAWN R. FOX for the cost of such water tap fee.

D. DAWN R. FOX shall convey to ROWAN COUNTY a 25-foot wide easement running from her property line along Long Ferry Road to the creek located in the rear of her property (the exact metes and bounds of such easement to be specified following a survey to determine the path of an underground water line transporting water discharged from the water line discharge pump/release valve located alongside Long Ferry Road to the creek in the rear of DAWN R. FOX's land to be installed on/under this 25-foot wide easement), such easement allowing ROWAN COUNTY necessary access to construct/install a water line and to thereafter operate such water line in order to discharge water expelled by a release valve located alongside Long Ferry Road to a creek located in the rear of DAWN R. FOX'S property, and to conduct necessary maintenance and upkeep of the underground water line.

E. It is agreed and stipulated that the water being discharged from the water line discharge pump/release valve located alongside Long Ferry Road, such water to be transported to the creek in the rear of DAWN R. FOX's land by way of the water line to be installed on/under this 25-foot wide easement discussed in Paragraph 1.D., above is being discharged by ROWAN COUNTY, and not by DAWN R. FOX, and that DAWN R. FOX otherwise has no dominion or control over such water discharge.

F. The language of the easement referenced in Paragraph 1.D. above shall make it clear that the water being transported/transferred through the water line is public water being discharged by ROWAN COUNTY, and that DAWN R. FOX has no ownership interest in, nor any control over, such public water, to include its discharge.

G. ROWAN COUNTY shall cause to be installed, at its expense and pursuant to its design and planning, a water line transporting water expelled by a release valve located alongside Long Ferry Road to a creek located in the rear of DAWN R. FOX'S property, such water line running underground along the 25-foot easement conveyed by DAWN R. FOX to ROWAN COUNTY described in Paragraph 1.C. above.

H. ROWAN COUNTY shall provide DAWN R. FOX with at least forty-eight (48) hours' notice before coming onto DAWN R. FOX's land to inspect, maintain or repair the underground water line, unless emergency/exigent conditions make such advance notice impossible or impractical.

I. DAWN R. FOX (and any and all future owners, heirs, assigns, etc. of DAWN R. FOX'S land) agrees to indemnify ROWAN COUNTY (including any successor owner of ROWAN COUNTY'S water system) for any damage to, or repair costs for, the underground waterline caused by, or resulting from, DAWN R. FOX, her animals, or any third party DAWN R. FOX allows over the 25-foot wide easement are, with the same responsibility and obligation passing along to and any and all future owners, heirs, assigns, etc. of DAWN R. FOX'S land.

J. The Parties acknowledge that the CITY OF SALISBURY, through its enterprise utility known as Salisbury-Rowan Utilities, presently contracts with ROWAN COUNTY to operate ROWAN COUNTY'S water system. For purposes of this Agreement, ROWAN COUNTY shall include any contractor(s), contract operator(s), and successor owner(s) of ROWAN COUNTY'S water system. The Parties acknowledge,

however, that nothing in this Agreement shall require the CITY OF SALISBURY to perform the obligations of ROWAN COUNTY under this Agreement.

2. No Admission of Liability. The Parties agree that this settlement is the result of a compromise of disputed claims, and that no consideration or concession provided by any Party should be construed as an admission of liability or any obligation owing on the part of that Party.

3. Dismissal of Civil Action. The Parties agree that the Civil Action is fully resolved on the terms provided for in this Agreement. DAWN R. FOX further agrees she will not re-file or otherwise cause to be reinstated the Civil Act, which has been voluntarily dismissed without prejudice, nor will she file any other lawsuit or pursue any other litigation relating to or arising from the discharge of water from a waterline on her property.

4. Costs and Attorneys' Fees. The Parties shall each bear their own costs and attorneys' fees in connection with this matter, with the mediator's fee(s) split evenly between the Parties.

5. Binding Effect. This Agreement shall inure to the benefit of and shall bind the heirs, predecessors, successors, assigns, agents, and representatives of the Parties hereto.

6. Severability. If any provision of this Agreement is declared void or unenforceable, the remaining provisions shall survive and continue in full force and effect.

7. **Choice of Law.** This Agreement shall be interpreted, applied, and enforced in accordance with and under the laws of the State of North Carolina, and any dispute or alleged breach of this Agreement shall be filed in the Superior Court of Rowan County.

8. **Representation.** Each Party has consulted with, or had the opportunity to consult with, an attorney of their choice regarding this Agreement prior to its execution. Each has been afforded a full opportunity to read, review, and consider this Agreement. Each has had the opportunity to and has negotiated the Agreement terms.

9. **Complete Agreement.** This Agreement contains the complete understanding of the Parties, and no other promises or covenants now exist other than as set forth herein. There can be no oral modifications to this Agreement, and any amendment must be in writing and signed by the Parties.

10. **Counterparts; Signatures.** This Agreement may be executed in any number of counterparts and by each of the undersigned on separate counterparts, and each such counterpart shall be deemed to be an original, but all such counterparts put together shall constitute but one and the same Agreement. Delivery of this Agreement by Portable Document Format (“pdf”) or other similar format shall be an acceptable form of delivery and shall be deemed to be an original. Either Party may provide a facsimile or electronic signature of its execution of this Agreement and the other Party shall accept the same as an original. Each person signing the Agreement represents hereby that they have the authority to execute the Agreement for the Party for whom they sign.

11. **Acknowledgment.** The Parties acknowledge they have read this Agreement and fully understand it and execute the same voluntarily and of their own free will and, by executing this Agreement, signify their assent to and willingness to be bound by the Agreement terms.

IN WITNESS WHEREOF, the Parties voluntarily execute this Agreement effective as of the last date below written.



Date: 12-22-2022

DAWN R. FOX

ROWAN COUNTY

Printed Name: _____

Signature: _____ Date: _____

Title: _____

CITY OF SALISBURY

Printed Name: _____

Signature: _____ Date: _____

Title: _____