

SETTLEMENT AGREEMENT AND RELEASE OF CERTAIN CLAIMS

This SETTLEMENT AGREEMENT AND RELEASE OF CERTAIN CLAIMS (this “Agreement” or “Settlement Agreement”) is made and entered into effective as of this 6 day of March, 2024 (the “Effective Date”), by and between SOUTH UTAH VALLEY ELECTRIC SERVICE DISTRICT (“SESD”) on the one hand, and on the other hand SALEM CITY (“Salem”). SESD and Salem may be referred to herein individually as a “Party” and collectively as the “Parties.”

RECITALS

A. **WHEREAS**, SESD is an electric improvement district defined under Utah Code Ann. § 17B-2a-406, that provides electric service to customers within its district boundary (“SESD’s District”) in South Utah County, including certain customers located within the municipal boundaries of Salem;

B. **WHEREAS**, Salem is an incorporated municipality located in South Utah County that has provided electric service to customers within its municipal boundaries since 1912;

C. **WHEREAS**, Salem desires to provide electric service to all customers located within its municipal boundaries, including customers that currently receive electric service from SESD;

D. **WHEREAS**, certain disputes have arisen among the Parties regarding their respective rights and obligations to provide electric service to customers located within SESD’s District in areas that have been annexed into Salem and that are, as of the Effective Date of this Agreement, now within Salem’s municipal boundaries;

E. **WHEREAS**, the Parties have previously entered into that certain agreement between SESD and Salem that was executed on or about March 25, 1998 (the “1998 Agreement”). The Parties dispute their respective performance, rights, and obligations arising under the 1998 Agreement. These disputes, among others, are at issue in a legal action currently pending in the Fourth Judicial District Court, Utah County, State of Utah (the “District Court”), titled South Utah Valley Electric Service District v. Payson City and Salem City, Consolidated Case No. 180400994 (the “Lawsuit”);

F. **WHEREAS**, the Parties desire to avoid the inconvenience and expense of further litigation on the issues addressed herein and the Parties therefore desire to settle and dismiss with prejudice certain claims in the Lawsuit as specified herein. This Agreement resolves some, but not all, of the pending disputes between the Parties. This Agreement resolves all disputes between the parties with respect to the provision of electric service to all customers in annexations that pre-date the execution date of the 1998 Agreement, including, but not limited to, the following annexations: Salem Pond Meadows (1991), South Fields (1992), Maughn-Stubbs (1992), Gabbitas (1995) (the “Pre-1998 Annexations”), as well as the following annexations that post-date the execution date of the 1998 Agreement: Lewis (1999), Davis (2000), Zzorro (2005), Zzorro 3

(2005), Glead (2007), Lyman (2008), West Ballard (2008), Wright Addition (2008), and Mower (2016) (the “Post-1998 Annexations”). Together, the Pre-1998 Annexations and the Post-1998 Annexations shall be referred to as the “1998 Agreement Annexations”;

G. **WHEREAS**, The Parties intend that Salem shall provide electric service to all customers located within the 1998 Agreement Annexations. Consistent with Utah Admin. Code R746-310-1 (2023), the term “customer” shall mean a person, firm, partnership, company, corporation, organization, or governmental agency supplied with electrical power by an electrical utility, at one location and at one point of delivery;

H. **WHEREAS**, the District Court has issued a ruling and order on January 10, 2022 titled *Ruling and Order On Motion for Partial Summary Judgment Regarding 1998 Agreement* (the “1998 Order”), which: (1) recognizes Salem’s right to immediately provide electric service to all customers, including to customers presently served by SESD, located within all areas annexed into Salem’s municipal boundaries for which Salem has previously provided a reimbursement payment to SESD but has not yet taken over electric service to all customers in the 1998 Agreement Annexations; (2) requires Salem to reimburse SESD for any physical facilities SESD has installed to serve its customers in the 1998 Agreement Annexations since receiving reimbursement, but for which complete and final reimbursement has not yet been made to SESD; and (3) requires SESD to transfer facilities and the provision of electric service to all of the customers in the 1998 Agreement Annexations to Salem;

I. **WHEREAS**, SESD has transferred to Salem certain facilities related to the provision of electric service to all existing electric customers of SESD located in the 1998 Agreement Annexations. The term “facility” or “facilities” as used in this Agreement shall mean and refer to power lines, transformers, switch gears, poles, wires, guy anchors, conductors, cables, other related physical equipment, or rights-of-way or easements or other rights or interests necessary to provide access to areas in which such physical equipment is located to allow for the operation and maintenance of such equipment. SESD also hereby transfers to Salem the right and obligation to provide all electric service to all existing and potential future electric customers in the 1998 Agreement Annexations. The Parties also agree to terminate the 1998 Agreement and to replace it with this Agreement on the following terms:

TERMS

NOW, THEREFORE, in consideration of the foregoing Recitals, and the mutual promises, covenants, and undertakings contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

Section 1. Termination of the 1998 Agreement. To the extent not already resolved by separate agreement, terminated or voided, the Parties hereby terminate the 1998 Agreement. The Parties agree that this Settlement Agreement shall govern electric service, facility transfer, and reimbursement payments in areas of SESD’s District in all 1998 Agreement Annexations.

Section 2. Mutual Release of 1998 Agreement Claims. Excepting only the Parties' respective obligations arising under this Agreement, each Party does hereby remise, release, acquit and forever discharge the other Party (including its respective present and former affiliates, insurers, owners, agents, employees, attorneys, heirs, assignees and any successors in interest) of and from all causes of action, suits, debts, sums of money, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims and demands whatsoever, in law or in equity, as it pertains to the 1998 Agreement and the 1998 Agreement Annexations. The release referenced in this Section does not resolve or dispose of any claims, rights, obligations, or disputes between the Parties regarding the provision of electric service to customers not located in the 1998 Agreement Annexations.

Section 3. Agreement Not an Admission. The Parties hereby acknowledge that neither this Agreement nor the consideration paid hereunder, nor the acceptance of the same, may be treated as an admission of any legal responsibility, liability, wrongdoing or fault of any kind whatsoever; such responsibility, liability, wrongdoing and fault being expressly denied.

Section 4. Dismissal of Certain Claims. The Parties agree to dismiss, with prejudice, their claims pending in the Lawsuit related to the alleged breach of the 1998 Agreement, including their claims for breach of contract, breach of the implied covenant of good faith and fair dealing, and claims seeking declaratory judgment, within five (5) business days of: (i) the Parties' execution of this Agreement; and (ii) SESD's receipt of the 1998 Agreement Annexations Payment (defined below). Each Party shall bear its own attorneys' fees, costs, and expenses incurred in relation to the claims in the Lawsuit regarding the 1998 Agreement and the 1998 Agreement Annexations.

Section 5. Electric Service in 1998 Agreement Annexations. Salem agrees to pay to SESD the amount set forth in Section 5.1 and acknowledges its prior receipt from SESD of certain facilities dedicated to serve all current and future customers in the 1998 Agreement Annexations. SESD agrees to receive from Salem the amount set forth in Section 5.1 and acknowledges Salem's ownership and right to possess, control, maintain, and operate certain facilities dedicated to serve all current and future customers in the 1998 Agreement Annexations, which SESD transferred to Salem prior to the Effective Date. SESD also transfers to Salem the right and obligation to provide all electric service to all existing and potential future electric customers in all 1998 Agreement Annexations.

5.1 **Payment to SESD.** Within thirty (30) days of the Effective Date, Salem shall pay to SESD \$162,000.00 for all costs associated with Salem's provision of electric service to all customers in the 1998 Agreement Annexations (the "1998 Agreement Annexations Payment"). Salem agrees to pay and SESD agrees to accept the 1998 Agreement Annexations Payment as full payment and satisfaction of all amounts owed by Salem to SESD pursuant to the 1998 Agreement, Utah Code § 10-2-421 (2024), any applicable law, and/or this Agreement in connection with providing or taking over the right to provide any electric services of any type to any past, current, or future customer within any 1998 Agreement Annexation. No additional compensation or payment of any amount or type

shall be owed or paid by Salem to SESD in connection with Salem's provision of any electric services to past, current, or future customers in the 1998 Agreement Annexations.

5.2 Facility Ownership. The Parties acknowledge prior disputes regarding the ownership of certain facilities regarding the 1998 Agreement Annexations. The Parties resolve those disputes by acknowledging Salem's ownership and right to possess, control, maintain, and operate certain facilities dedicated to serve all current and future customers in the 1998 Agreement Annexations, which SESD transferred to Salem prior to the Effective Date (the "Transferred Facilities"). SESD waives any right or claim to own, operate, use, relocate, maintain, construct, or improve such facilities. To the extent that SESD has recorded any rights of way or easements with respect to the Transferred Facilities, it shall deliver to Salem a quitclaim deed transferring SESD's interest in that right of way or easement to Salem.

5.3 As-Is Transaction. Other than as expressed elsewhere in Section 5.2, each Party acknowledges that the Parties have not made, do not make and specifically negate and disclaim any representations, warranties, promises, covenants, agreements or guarantees of any kind or character whatsoever, whether express or implied, oral or written, past, present or future, of, as to, concerning or with respect to the value, nature, quality or conditions of, or any other matter with respect to the Transferred Facilities. No person acting on behalf of any Party is authorized to make, and by execution hereof each Party acknowledges that no person has made, any representation, agreement, statement, warranty, guaranty or promise regarding the Transferred Facilities; and no such representation, agreement, statement, warranty, guaranty or promise, if any, made by any person acting on behalf of any Party shall be valid or binding upon such Party. Each Party acknowledges and agrees that it is relying solely on its own knowledge and investigation of the Transferred Facilities and not on any information provided by the other Party. Salem has accepted the Transferred Facilities and waives all objections and claims against SESD arising from or relating to the Transferred Facilities. Each Party further acknowledges and agrees that to the maximum extent permitted by law, that the prior assignment and transfer of the Transferred Facilities is made on an "as is" condition and basis with all faults. Notwithstanding any other statement to the contrary in this Section 5.3, SESD warrants that it had title to the facilities transferred by it to Salem and warrants that transfer of the facilities did not and will not breach any contract or other legal arrangement and that no other party has any claim of ownership or lien, encumbrance, or other interest in any of the Transferred Facilities. Notwithstanding other provisions of this Section, SESD shall retain title to all PCB contaminated transformers. SESD will remove said transformers at the time Salem identifies a PCB contaminated transformer included in the Transferred Facilities.

Section 6. SESD Access to Electric Facilities. Salem shall provide to SESD continuing and ongoing access to all SESD electric facilities located within Salem's municipal boundaries, including such SESD electric facilities which are located within or pass through any 1998 Agreement Annexation, so long as SESD maintains ownership of such electric facilities, to

ensure SESD may continue to maintain, rely upon, and make all necessary improvements and repairs to such electric facilities. In the event Salem requests that any SESD electric facilities be relocated, Salem agrees to: (1) fully reimburse SESD for the reasonable costs of relocating such electric facilities; and (2) ensure SESD is provided all necessary easements and legal rights to ensure SESD may maintain and rely upon the relocated SESD electric facilities.

Section 7. Governing Law. This Agreement shall be governed by and interpreted and construed pursuant to the laws of the Utah without giving effect to any conflicts of law principles.

Section 8. Multiple Counterparts. This Agreement may be executed in counterparts, each of which may be executed and delivered via PDF electronic delivery with the same validity as if it were an ink-signed document and each of which shall be effective and binding on the Parties as of the Effective Date. Each such counterpart shall be deemed an original and, when taken together with other signed counterparts, shall constitute one and the same Agreement.

Section 9. Authority of Signatories. Each of the signatories to this Agreement represents and warrants that he or she is duly and fully authorized to act for the Party on whose behalf he or she signs this Agreement and that any and all required consents, authorizations or approvals have been obtained by or on behalf of such Party.

Section 10. Representation of Counsel. The Parties acknowledge that they have received the advice of legal counsel in connection with this Settlement Agreement and that they have entered into this Settlement Agreement after having consulted with their legal counsel.

Section 11. Construction. Each Party hereto has cooperated in the drafting and preparation of this Agreement. In any construction to be made of this Agreement, the same shall not be construed against any Party on the ground that said Party drafted this Agreement.

Section 12. Further Assurances. Each Party will use reasonable efforts and exercise reasonable diligence to accomplish and effect any action contemplated by this Agreement, and will execute and deliver all further documents as may reasonably be requested by the other Party in order to fully carry out the actions contemplated by this Agreement.

Section 13. No Third-Party Beneficiaries. The Agreement shall not create any rights in any third party that may attempt to claim a right or benefit hereunder.

Section 14. Entire Agreement. Unless otherwise noted herein, this Agreement is the exclusive understanding and agreement of the Parties and supersedes all prior negotiations and prior agreements between the Parties with respect to all or any part of the issues and disputes specifically resolved herein. All waivers or modifications of the provisions of this Agreement shall be in writing and shall be signed by the appropriate representatives of each Party.

IN WITNESS WHEREOF the undersigned Parties do hereby execute this Agreement as of the Effective Date.

SOUTH UTAH VALLEY ELECTRIC SERVICE DISTRICT

Raymond Loveless, Chairman

Print Name

Authorized Agent of South Utah Valley Electric Service District

Attest:

Mark Holdaway, Clerk

SALEM CITY



Kurt L. Christensen, Mayor



Print Name

Authorized Agent of Salem City

Attest:



Jeff Nielson, City Recorder