

CRAIG T. JACOBSEN #5492
498 NORTH KAYS DRIVE, SUITE 230
KAYSVILLE, UTAH 84037
TELEPHONE: (801) 953-9501
FACSIMILE: (801) 621-2693
E-MAIL: ctjacobsenlegal@gmail.com

Attorneys for Plaintiff

**IN THE SECOND JUDICIAL DISTRICT COURT
IN AND FOR WEBER COUNTY STATE OF UTAH**

THE FRANK S. BLAIR LIMITED
PARTNERSHIP,

Plaintiff,

v.

CENTRAL WEBER SEWER
IMPROVEMENT DISTRICT; WHITAKER
CONSTRUCTION CO., INC.; and Does 1
through 5,

Defendants.

COMPLAINT

Case No. _____

Judge _____

JURY TRIAL DEMANDED

Tier 3

The Plaintiff, The Frank S. Blair Limited Partnership ("Blair"), by and through its undersigned attorney of record, alleges claims against the Defendants, Central Weber Sewer Improvement District (the "Sewer District") and Whitaker Construction Co., Inc. ("Whitaker"), as follows:

THE PARTIES

1. Blair is a Utah family limited partnership, which for all facts and matters alleged herein, acted through its agent, Frank S. Blair.¹

2. The Sewer District is a special district organized and existing under state law. The District provides sewer treatment service for approximately 185,000 people located in Weber and Davis Counties. As a special district, the Sewer District has the power to condemn private property.

3. Defendant Whitaker is a Utah corporation, doing business in Utah.

4. Defendant Does 1 through 5 are certain known and unknown individuals and/or entities having knowledge regarding allegations in this Complaint and/or who might have been involved in the events that have resulted in the damages alleged herein to have been suffered by Blair. Plaintiffs will amend this Complaint if and when the names of additional parties are identified through discovery.

JURISDICTION, GOVERNING LAW AND VENUE

5. This Court has personal jurisdiction over both the Sewer District and Whitaker, as well as all other defendants that may later be named, because they either are a political sub-entity or quasi-governmental entity of the State of Utah, reside within the State, or are doing business within the State.

6. The claims asserted are governed by Utah common and statutory law.

¹ At various places in this Complaint, the term "Blair" is used interchangeably to connote the actions of Mr. Blair, for and on behalf of the Plaintiff or to reference the Plaintiff itself.

7. Subject matter jurisdiction is vested in this Court pursuant to Utah Code Ann. § 78A-5-102.

8. Venue is proper in this Court pursuant to Utah Code Ann. ¶ 78B-3-301 and 307(1)(a), because the action pertains to real property located within Weber County and because the acts alleged herein creating Blair's cause of action occurred primarily in Weber County, Utah.

NATURE OF CLAIMS

9. This lawsuit arises out of a project undertaken by the Sewer District, which impacted Blair's real property. Blair seeks damages for the Sewer District's taking of the property. Additionally, Blair seeks damages from Whitaker's unauthorized possession and use of Blair's real property for its benefit while installing the sewer line for the Sewer District. Alternatively, Whitaker was unjustly enriched at Blair's expense as a result of its use of Blair's real property and should compensate Blair for such use.

GENERAL ALLEGATIONS

10. Blair owns certain real property located in the vicinity of from 1200 West to Interstate I-15, at approximately 750 to 800 North, Marriott-Slaterville, Utah (hereafter referred to as the "Blair Property" or the "Property"). In the year 2000, a member of the Sewer District's board of directors informed Blair that the Sewer District was going to run a large sewer line in a generally east to west direction through the entirety of the Blair Property. Based on the description given by the Sewer District, Blair objected. The Sewer District's response was that it did not matter that he objected; the Sewer District would condemn the land and proceed with the project.

11. In approximately 2003, Blair received a conceptual drawing depicting the Sewer District's plan. Blair again objected, pointing out that the proposed sewer line could run along 400 North, thereby minimizing the impact upon the Blair Property. Blair retained a land planner and engineer, who prepared and presented an alternative, better option for the new sewer line to Mike Cobie, an engineer for the Sewer District and Jim Kennion, an acquisitions manager for the Sewer District. As a result of the communications and interchanges, the Sewer District acknowledged the feasibility of Blair's proposal.

12. The Sewer District's making public its plans to install a new sewer line through the entirety of the Blair Property created a de-facto cloud on the title to the Property, yet the Sewer District did not move forward with the proposal. Prospective buyers were hesitant to purchase the Blair Property because they could not predict exactly where or how the new line would be laid. The direct result of the uncertainty caused Blair to lose opportunities to sell all or a portion of the Property.

13. Finally, in 2013, after a decade of uncertainty, the Sewer District undertook a project known as the "BDO Outfall Project," which involved installation of a main sewer line, designed and constructed to relieve a portion of the sanitary sewer flow from the original outfall sewer line that ran from Ogden, west to the Weber River. The project increased sewer capacity for those being serviced. The Sewer District retained Whitaker as the general contractor for construction of the project. In the interim, 400 North had been widened by twenty feet and the new sewer line could have run along the road, as originally proposed by Blair. However, ultimately the sewer line ran through the Blair Property.

14. In the summer of 2013, a representative of the Sewer District contacted Blair and represented that Blair either could enter into an agreement entitled "Right of Entry and Occupancy Agreement," by which Blair would grant the Sewer District certain defined rights with respect to the Blair Property or the Blair Property would be subject to eminent domain and a potential condemnation action. A copy of the Right of Entry and Occupancy Agreement that was presented to Blair is attached hereto as Exhibit A, although the parties later executed the Agreement. The Sewer District retains the executed version of the Agreement.

15. The Right of Entry and Occupancy Agreement provides that "[t]his Agreement is made under threat of eminent domain and in anticipation of a possible condemnation action by the District and is intended to provide for the entry and occupancy of the Property pending further negotiations resulting in the formal grant of an easement on the Property[.]" Exhibit A, Right of Entry and Occupancy Agreement, ¶ 1. Blair felt comfortable executing the Right of Entry and Occupancy Agreement, because the Agreement specifically provided that as a property owner, Blair "has not waived any claim to compensation or damages as a result of the acquisition of the easement by the District or as a result of the District's breach or default of its obligations under this Agreement[.]" *Id.* In addition, Paragraph 4 of the Right of Entry and Occupancy Agreement provides that if the parties could not reach a satisfactory settlement regarding the fair compensation to be paid by the Sewer District to Blair for permanently occupying the Blair Property, the Sewer District would proceed at once to commence and diligently prosecute a condemnation proceeding. *Id.*, ¶ 4.

16. For purposes of this action, it is crucial to note that the Right of Entry and Occupancy Agreement was limited in scope. Among other relevant provisions, Paragraph 5(f) of the Agreement states that damage to the Blair Property "must be reasonably repaired and restored by the [Sewer] District or at the [Sewer] District's expense." Paragraph 5(g) provides that the Sewer District "agrees to keep its construction activities within the designated easement or temporary construction easement and not to encroach or use any of Property Owner's land lying outside of the Property for construction-related purposes. The [Sewer] District acknowledges that additional compensation will be paid for resulting damages should the [Sewer] District or its contractors conduct operations on the Property Owner's land outside of the easements described...[.]" Paragraph 5(g) further carves out the possibility that the Sewer District's contractor, Whitaker, could enter into a separate agreement with Blair, providing, "Notwithstanding the foregoing, the [Sewer] District's contractor may make separate written arrangements with the Property Owner that will allow the use of additional land belonging to Property Owner."

17. With respect to using part of the Blair Property as a staging area, paragraph 5(h) of the Right of Entry and Occupancy Agreement states, " The [Sewer] District agrees that its contractor shall stockpile the top soil on the Property Owner's land at a reasonable location designated by the Property Owner and replace the top soil over the disturbed area as part of the restoration after construction is complete. The District acknowledges that the Property Owner may make arrangements with the contractor to place fill material ... on the Property Owner's land at locations reasonably designated by the Property owner[.]"

18. The Sewer District also was aware that the contractor, Whitaker, had an obligation to remove construction debris as part of the restoration of the Blair Property following completion of the project. Right of Entry and Occupancy Agreement, paragraph 5(i).

19. Blair and the Sewer District executed the Right of Entry and Occupancy Agreement in August of 2013. Following execution of the Right of Entry and Occupancy Agreement, an agent of Whitaker by the name of Clyde Brown approached Blair, requesting use of the Blair Property that would exceed the scope permitted by the Right of Entry and Occupancy Agreement. Blair indicated that he would agree to Whitaker's request, in return for Whitaker providing, among other things, the following consideration:

a. Construction of a box culvert and extending utilities under the culvert at 1500 West and Four Mile Creek. [Blair] to reimburse Whitaker for cost of materials including the culvert itself.

b. Installation of approximately ten 54-inch pipes behind barns at approximately 463 North 1200 West, and ten more at approximately 1450 West (next to the high school) and Four Mile Creek.

c. Relocation of an irrigation ditch to coincide with fence lines or permanent sewer easement in specified places (to be ascertained at a later date).

d. Installation of two drains from sewer line to Four Mile Creek and one drain line to the Partnership's north property line at the I-15 freeway and one from the I-15 freeway to 1800 West along the north property line. Blair to reimburse Whitaker for cost of materials.

e. Installation of two manholes at 1350 West and 1500 West.

20. On several occasions, Whitaker, through Mr. Brown and another representative by the name of Branson Yantes, indicated Blair's requested terms were acceptable. The value of the consideration that Blair should have received from Whitaker is no less than \$120,000.

21. Thereafter, Whitaker possessed and used the Blair Property in excess of the extent to which it could have used the Property pursuant to the terms of the Right of Entry and Occupancy Agreement between Blair and the Sewer District.

22. On November 1, 2013, Blair returned a completed document to Whitaker entitled "Temporary access agreement for use of property" [sic], a form document originally provided by Whitaker to Blair, which was a form document provided to Blair by Whitaker. The form contained blanks that were filled in by Blair prior to sending it to Whitaker. Prior to returning the document to Whitaker, Blair filled in the blanks and attached an additional sheet outlining the consideration to be received by Blair from Whitaker. Thereafter, Whitaker continued to possess and use the Blair Property, knowing that Blair expected to be compensated for such use and knowing that Blair was granting such use only contingent upon receiving the consideration set forth in the aforesaid document provided by Blair to Whitaker.

23. After already possessing and using the Property beyond the scope originally contemplated by the parties, Whitaker disavowed that the parties had any agreement and that it would not honor the commitments made by its representatives to Blair.

24. Despite disavowing a contract with Blair, Whitaker continued to possess and/or use the Blair Property until the late spring or early summer of 2016.

25. During the time that Whitaker was in possession of the Blair Property, it improperly left gates open, allowing the cattle that were on the Blair Property to wander out of the Property, onto Interstate I-15, the neighboring golf course and 400 North. Whitaker damaged the fences that enclosed the Blair Property. Whitaker left pit holes open at night and failed to replace

manhole covers. Whitaker improperly interfered with the irrigation of the Blair Property. It failed to establish temporary ditches to assist the irrigation flow in the areas where construction work impeded the prior waterways. Most of the pasture on the Blair Property dried up and died from a lack of irrigation.

26. Whitaker used portions of the Blair Property for staging and construction that exceeded the area/portions of the Property contemplated by the Right of Entry and Occupancy Agreement.

27. Blair commenced legal action against Whitaker on July 28, 2015, in a lawsuit filed in this Court, captioned as *The Frank S. Blair Limited Partnership v. Whitaker Construction Co. Inc.*, Case No. 150904684 (“Lawsuit 1”). Ultimately, Blair did not continue to prosecute Lawsuit 1 because Whitaker was still in possession of the Blair Property and Blair could not correctly ascertain damages until Whitaker completed work, including mitigation of the Blair Property. Lawsuit 1 was dismissed without prejudice.

28. After Lawsuit 1 was dismissed, Blair and Whitaker renewed discussions regarding the relationship and Whitaker’s obligations. In April of 2016, the parties entered into an agreement entitled “Partial Settlement Agreement and Limited Release.” Whitaker paid Blair \$35,000 as a settlement payment to be used to “repair and restore” areas disturbed by Whitaker’s construction activities on the Blair Property. Blair granted Whitaker a limited release, releasing Whitaker from claims related solely to reparation and restoration of topsoil in the disturbed areas of the Property. Other than this payment, Whitaker has failed to compensate Blair for its unauthorized use and possession of the Blair Property and for damages resulting therefrom.

29. Whitaker relinquished possession and control of the Blair Property in the late spring of 2016.

FIRST CAUSE OF ACTION
(Unjust Enrichment/Whitaker)

30. Blair re-alleges by this reference the preceding paragraphs of this Complaint as if fully set forth herein.

31. Whitaker used and occupied the Blair Property in a manner that exceeded the rights granted to it indirectly by Blair under the Right of Entry and Occupancy Agreement between Blair and the Sewer District.

32. Whitaker knew that in return for the additional use and occupancy of the Blair Property beyond those areas in which Blair had authorized possession, that Blair expected to receive fair and just consideration.

33. Knowing that Blair expected to receive this consideration, Whitaker occupied and used the Blair Property from August of 2013 until late Spring of 2016.

34. Whitaker disavows ever entering into a contract with Blair. Therefore, Whitaker was unjustly enriched by its actions to Blair's detriment and it would be unjust and inequitable for Blair not to be compensated for Whitaker's use and possession of the Blair Property that was not otherwise authorized by the Right of Entry and Occupancy Agreement.

35. Whitaker unjust enrichment was no less than \$100,000. Accordingly, Blair is entitled to judgment against Whitaker in the amount of at least \$100,000.

SECOND CAUSE OF ACTION
(Trespass/Whitaker)

36. Blair re-alleges by this reference the preceding paragraphs of this Complaint as if fully set forth herein.

37. From some time shortly after August of 2013, until late spring of 2016, Whitaker was in possession and control of the Blair Property. Blair permitted such use, possession and control of the Property only on the condition that Whitaker would provide the consideration contemplated within the document entitled "Temporary access agreement for use of Property." Whitaker has subsequently disavowed having entered into any agreement or contract with Blair related to its possession, use and control of the Blair Property.

38. Because Whitaker disavows any agreement with Blair governing and defining its possession, use and control of the Blair Property, Whitaker was in trespass of the Blair Property, which invasion infringed upon Blair's right of possession and enjoyment of the Property.

39. Whitaker's trespass damaged the Blair Property and permanently devalued it, making the Property less marketable for its highest and best use.

40. Whitaker's trespass continued at least until it relinquished possession, control and use of the Blair Property in approximately June of 2016.

41. Blair is entitled to an award of damages to be determined at trial against Whitaker as a result of Whitaker's trespass.

THIRD CAUSE OF ACTION
(Breach of Contract/Sewer District)

42. Blair re-alleges by this reference the preceding paragraphs of this Complaint as if fully set forth herein.

43. Blair agreed to enter into the Right of Entry and Occupancy Agreement because it provided that the Sewer District would negotiate final compensation for a permanent easement through the Blair Property that would compensate Blair fully for the diminution in value of the Property as a result of the new sewer line running through the Property. Indeed, Paragraph 4 of the Right of Entry and Occupancy Agreement provides that if the parties could not reach a satisfactory settlement regarding the fair compensation to be paid by the Sewer District to Blair for permanently occupying the Blair Property, the Sewer District would proceed at once to commence and diligently prosecute a condemnation proceeding. *Id.*, ¶ 4. The Sewer District has always been fully aware that Blair had not been fully compensated for its permanent occupancy of the Blair Property. However, the Sewer District has made no effort to negotiate a fair and full compensation to Blair, thereby breaching its obligations under the Right of Entry and Occupancy Agreement either to reach an agreement with Blair to pay the required additional compensation or to commence a condemnation proceeding as required by Paragraph 4 of the Agreement. Blair has suffered damages exceeding \$2,000,000 as a result of the Sewer District's failure either to pay for a permanent easement for its occupation of the Property or to commence and condemnation proceeding in accordance with State law.

44. In addition to the compensation provisions under the Agreement, the Right of Entry and Occupancy Agreement placed other requirements upon the Sewer District. These additional contractual obligations are set forth in Paragraph 5 of the Agreement. Paragraph 5(f) of the Agreement states that damage to the Blair Property "must be reasonably repaired and restored by the [Sewer] District or at the [Sewer] District's expense." Paragraph 5(g) provides that the Sewer District "agrees to keep its construction activities within the designated easement or temporary construction easement and not to encroach or use any of Property Owner's land lying outside of the Property for construction-related purposes. The [Sewer] District acknowledges that additional compensation will be paid for resulting damages should the [Sewer] District or its contractors conduct operations on the Property Owner's land outside of the easements described...[.]"

45. The Sewer District has breached these contractual obligations by, among other things:

- failing to keep the construction activities within the designated easement/temporary construction easement;
- damaging the Blair Property in areas outside of the designated easement(s); and
- permitting Whitaker to conduct operations on ground outside of the designated easement(s).

46. As a direct and proximate result of the Sewer District's breaches, Blair has been damaged in an amount to be proven at trial.

47. The Sewer District's numerous actions, constitute not only breach the Right of Entry and Occupancy Agreement, but also a taking of the Blair Property. Among these actions are the following:

a. The Sewer District and/or its agents and contractor(s) occupied the Blair Property for longer than the eighteen months contemplated in the Right of Entry and Occupancy Agreement.

b. The Sewer District took a temporary easement during the period of occupation and construction.

c. The Sewer District, through its contractor, laid the sewer line too shallow, thereby necessitating pressurized lines for future development and even diminishing the developability of the Blair Property and, therefore, its fair market value.

d. The potential number of developable lots has been reduced due to the manner in which the sewer line was laid across the Blair Property.

e. The sewer line failed to follow property lines as the parties had discussed and as the Sewer District had acknowledged would result in less encroachment upon the Blair Property.

f. Blair was damaged by the delay in commencing the project, after making the project public knowledge, thereby causing the Blair Property to have a cloud on title and/or its marketability for a period of approximately ten years.

g. The sewer line has restricted the flow of water through historical flow lines in times of high water tables.

h. The sewer line has diminished the volume of water that can be pumped from existing wells.

i. The Sewer District took a de-facto permanent easement through the Blair Property.

48. Paragraph 4 of the Right of Entry and Occupancy Agreement expressly provides that the parties entered into the Agreement “without prejudice to the rights of [Blair] to contest the total amount of compensation to be paid ... for the easement through the Property.” See Exhibit A. Given the failure of the Sewer District to make even a token effort to compensate Blair fully, Blair seeks redress through this action.

49. Blair is entitled to just and full compensation of an amount of no less than \$2,000,000 for the Sewer District’s taking and other actionable activities, as well as its failure properly to supervise and control Whitaker.

FOURTH CAUSE OF ACTION
(Taking/Sewer District)

50. Blair re-alleges by this reference the preceding paragraphs of this Complaint as if fully set forth herein.

51. The Sewer District’s numerous actions constitute a taking of the Blair Property. Among these actions are the following:

a. The Sewer District and/or its agents and contractor(s) occupied the Blair Property for longer than the eighteen months contemplated in the Right of Entry and Occupancy Agreement.

b. The Sewer District took a temporary easement during the period of occupation and construction.

c. The Sewer District, through its contractor, laid the sewer line too shallow, thereby necessitating pressurized lines for future development and even diminishing the developability of the Blair Property and, therefore, the fair market value of the Property.

d. The potential number of developable lots has been reduced due to the manner in which the sewer line was laid across the Blair Property.

e. The sewer line failed to follow property lines as the parties had discussed and as the Sewer District had acknowledged would result in less encroachment upon the Blair Property.

f. Blair was damaged by the delay in commencing the project, after making the project public knowledge, thereby causing the Blair Property to have a cloud on title and/or its marketability for a period of approximately ten years.

g. The sewer line has restricted the flow of water through historical flow lines in times of high water tables.

h. The sewer line has diminished the volume of water that can be pumped from existing wells.

i. The Sewer District took a de-facto permanent easement through the Blair Property.

52. Paragraph 4 of the Right of Entry and Occupancy Agreement expressly provides that the parties entered into the Agreement “without prejudice to the rights of [Blair] to contest the

total amount of compensation to be paid ... for the easement through the Property.” It has now been more than two years since the Sewer District’s contractor, Whitaker, has completed its work and ended its occupation of the Blair Property, but the Sewer District has made no attempt to offer fair compensation to Blair for its taking, beyond the token amount paid when the Right of Entry and Occupancy Agreement was executed.

53. Blair is entitled to just compensation of an amount of no less than \$2,000,000 for the Sewer District’s taking and other actionable activities, as well as its failure properly to supervise and control Whitaker.

PRAYER FOR RELIEF

WHEREFORE, Blair prays for judgment against Whitaker as follows:

1. An award of damages in an amount to be proven at trial, but in no event less than \$100,000;
2. An award of costs and of pre-judgment and post-judgment interest; and
3. Such other and further relief as the Court may deem just and proper.

Blair further prays for judgment against the Sewer District as follows:

1. An award of damages in an amount to be proven at trial, but in no event less than \$2,000,000;
2. An award of costs and of pre-judgment and post-judgment interest;
3. An award of attorney’s fees as permitted by applicable statute;
4. Such other and further relief as the Court may deem just and proper.

JURY DEMAND

Plaintiffs hereby demand a trial by jury.

DATED this 15th day of December, 2018.

/s/ Craig T. Jacobsen

Craig T. Jacobsen
Attorney for Plaintiff

Plaintiff's Address:

The Frank S. Blair Limited Partnership
Attention: Frank S. Blair
2731 Sky View Drive
Layton, UT 84040

EXHIBIT A

Robert H See p. 3 items G. & H. *

RIGHT OF ENTRY AND OCCUPANCY AGREEMENT

This **RIGHT OF ENTRY AND OCCUPANCY AGREEMENT** (this "Agreement") between _____ (the "Property Owner"), and the Central Weber Sewer Improvement District, an improvement district and political subdivision of the State of Utah (the "District"), is effective as of the date set forth on the signature pages hereof.

1. **Grant of Right of Entry and Occupancy.** The Property Owner hereby grants to the Central Weber Sewer Improvement District (the "District") and its contractors permission to enter upon and take possession of real property owned by Property Owner which is described in attached Exhibit A (the "Property") which is incorporated herein by this reference, and to commence construction of a public works facility consisting of a wastewater outfall pipeline (the "pipeline") to the District's sewer treatment plant located in Marriott-Slaterville, Utah, subject to the terms and conditions contained herein. The pipeline and related and appurtenant facilities are referred to herein as the "project." This Agreement is made under threat of eminent domain and in anticipation of a possible condemnation action by the District and is intended to provide for the entry and occupancy of the Property pending further negotiations resulting in the formal grant of an easement on the Property or the filing and pursuit of condemnation proceedings and possible alternative informal proceedings as provided for in this Agreement. The Property Owner understands and agrees that, by executing this Agreement, the Property Owner has waived and abandoned all defenses to the acquisition by the District of a permanent and perpetual pipeline easement and a temporary construction easement through the Property, but has not waived any claim to compensation or damages as a result of the acquisition of the easement by the District or as a result of the District's breach or default of its obligations under this Agreement; *provided, however*, the Property Owner will not be deemed to have waived any of its defenses in the event the District abandons the project or does not commence or complete construction within a reasonable period of time pursuant to Utah Code Ann. § 78B-6-520.

2. **Initial Compensation.** It is understood and agreed that the sum of _____ will be paid to the Property Owner as consideration for entering into this Agreement. Notwithstanding any other provision of this Agreement to the contrary, the amount paid to the Property Owner hereunder shall be deducted from any final settlement, award of arbitration, or other determination of just compensation which is negotiated or is determined in an eminent domain action should one be pursued to acquire the easement that is determined to be necessary for the project. Even though the amount paid for the purposes of this Agreement will be credited against the compensation required for the easement, it will be inadmissible as evidence of the value of the easement or the amount of damages to which the Property Owner is entitled in any subsequent process used to establish the value of the easement or the amount of compensation that may be due to the Property Owner.

3. **Title.** The parties to this Agreement understand that a title report may indicate that other third parties may have a claim to part of the proceeds being paid by the District to the Property Owner under this Agreement. It is not the intent of this Agreement to properly assess potential third-party claims. If it is determined prior to the grant of the final easement or conclusion of an eminent domain proceeding that part of the compensation paid to the Property Owner herein should properly be paid to other third parties, then the Property Owner shall refund

the amount of any excess payment received by the Property Owner based upon the amount received by the Property Owner and the relative values of the easement through the portion of the Property owned by the Property Owner and the portion of the Property owned by the third party. Any grant of an easement shall supersede the Property Owner's title undertakings under this paragraph 3.

4. **Final Compensation.** It is understood and agreed that this Agreement is granted without prejudice to the rights of the Property Owner, pending any settlement, to contest the total amount of compensation to be paid the Property Owner for the easement through the Property. If a satisfactory settlement cannot be agreed upon, the District will, upon notice from the Property Owner that the amount of compensation offered and/or other proposed settlement terms are not acceptable, or at its own election, proceed at once to commence and diligently prosecute a condemnation proceeding in the appropriate court for a judicial determination of such compensation. If requested to do so by the Property Owner, the District will, prior to commencing a condemnation proceeding, enter into a mediation or arbitration procedure provided for in Utah Code Annotated Sections 78B-6-522 and 13-43-204 through the Office of the Property Rights Ombudsman.

5. **Agreements by the District.** In addition to the other provisions of this Agreement, the District agrees to the following:

(a) The District agrees reflect on the contract documents the final depth of the pipeline through the Property, a copy of the contract documents will be provided for review by the Property Owner on request.

(b) The District agrees to notify the Property Owner of the construction schedule, which will not be longer than eighteen (18) months, once the schedule is known. The District recognizes that, should construction take place other than during that time period, the Property Owner may incur additional damages due to crop loss and interference with access to real property owned by the Property Owner outside the Property for which additional compensation will be paid. The District agrees that compensation in this Agreement is partly based is an eighteen (18) month temporary construction easement for the period of construction plus a maximum of eighteen (18) months (or a maximum of two years total) and to the extent the period for the construction easement required by the District exceeds that period, additional compensation will be due.

(c) The easement document, whether it be negotiated or court ordered, will acknowledge the right of the Property Owner and its successors to utilize the easement area in ways that do not interfere with the District's use and enjoyment of its pipeline easement, including the right to build paved and unpaved roads across the easement, the right to install utilities within the easement that do not unduly interfere with the operation, repair, maintenance or replacement of the District's pipeline, the right to place landscaping (including farm crops) and parking areas over the easement, and the right to fence off all or part of the easement as part of Property Owner's or such successors farming or other activities provided that the District is given reasonable access to its easement, but not the right to construct any building or structure within the permanent easement area.

(d) The District agrees, in the contract for the initial construction of the pipeline through the easement, that its contractor will be responsible for security of the construction site during construction and will be responsible for loss of animals or damage to property or equipment resulting from negligence on the part of the contractor, including the contractor's employees and subcontractors, and that the Property Owner will be a third party beneficiary of such undertaking by the contractor. The District agrees to indemnify and hold Property Owner harmless for any injury, whether personal or otherwise, caused by the District or any of its contractors, subcontractors, or other agents during construction provided, however, that in doing so the District shall not waive or relinquish any defense or limitation that otherwise would be available to the District under the Governmental Immunity Act of Utah, Utah Code Ann. § 63G-7-101 *et seq.*

(e) The District has obtained an appraisal for both the permanent easement and the temporary construction easement described on attached Exhibit A. The District recognizes that the Property Owner may be eligible to have an additional appraisal conducted at the District's expense if the Property Owner request it and the Office of the Property Rights Ombudsman (or a mediator or arbitrator appointed by that office) considers the appraisal to be reasonably necessary to resolve the issue of just compensation.

(f) The District acknowledges that damage caused to the Property Owner's land as a result of the construction of the project must be reasonably repaired and restored by the District or at the District's expense. This obligation includes, but is not limited to, restoration of the Property Owner's irrigation structures and fences, the leveling of the land following construction to permit proper irrigation and cultivation and any appropriate ripping of the soil to correct compaction resulting from or incidental to the construction.

(g) The District agrees to keep its construction activities within the designated easement or temporary construction easement and not to encroach or use any of Property Owner's land lying outside of the Property for construction related purposes. The District acknowledges that additional compensation will be paid for resulting damages should the District or its contractors conduct operations on the Property Owner's land outside of the easements described in attached Exhibit A (excluding the placement of top soil or fill material outside of the easement areas as directed or as allowed by the Property Owner). Notwithstanding the foregoing, the District's contractor may make separate written arrangements with the Property Owner that will allow the use of additional land belonging to Property Owner.

(h) The District agrees that its contractor shall stockpile the top soil on the Property Owner's land at a reasonable location designated by the Property Owner and replace the top soil over the disturbed area as part of the restoration after construction is complete. The District acknowledges that the Property Owner may make arrangements with the contractor to place fill material (other than top soil which is to be replaced or contaminated soil which is to be hauled away) on the Property Owner's land at locations reasonably designated by the Property Owner (but the contractor may not be required to deposit such material in any location that would require an Army Corps of Engineers permit or increase the contractor's costs).

(i) The District agrees that its contractor will remove construction debris as part of the contractor's restoration of the land after construction is complete.

6. **Recording.** The District may record this Agreement in the office of the Weber County Recorder. In the alternative, at the District's request, the Property Owner agrees to execute and deliver, in recordable form, a notice or memorandum of this Agreement, which may be recorded in the office of the Weber County Recorder. If an Easement is executed and delivered to the District prior to the recordation of this Agreement or of a notice or memorandum of this Agreement, the District may elect solely to record the Easement.

7. **Effective Date; Additional Compensation.** The effective date of this Agreement shall be the date this Agreement has been executed by both the Property Owner and the District, as shown below, and that date shall be the date of value for fair market valuation purposes in the context of settlement negotiations, arbitration, or an eminent domain proceeding, should one be necessary, unless the parties agree in writing to a different date for purposes of valuation. It is understood that, according to state law, any additional compensation that is ordered to be paid to the Property Owner for the acquisition of the easement may include interest at an annual rate of 8 % on any additional compensation that is determined to be payable to the Property Owner over and above that paid with this Agreement, calculated from the date of this Agreement.