

## **SETTLEMENT AND RELEASE AGREEMENT**

The parties to this Settlement and Release Agreement are Clark County ("Claimant"), and Trenchless Evolutions, LLC ("Released Party"). Claimant is being represented by the Office of the District Attorney, Clark County. Released Party is represented by the law firm of Morris, Sullivan and Lemkul, LLP.

Claimant and Released Party are collectively referred to as the "Settling Parties."

### **I. RECITALS**

- A. During September of 2018, Trenchless Evolutions, LLC<sup>1</sup>, on behalf of Cox Communications, was completing work in the Clark County right of way at the intersection of Maryland Pkwy and Desert Inn Rd pursuant to Encroachment Permit PW-18-14658.
- B. Claimant alleges that, on September 18, 2018, Trenchless Evolutions, LLC ruptured a water main, which caused a large amount of water to flow under the intersection Maryland Pkwy and Desert Inn Rd. and the surrounding right of way, traffic signal improvements, curbs, sidewalks, and other related appurtenances and improvements owned and maintained by Clark County ("The Incident").
- C. Claimant alleges that The Incident resulted in damage to the right of way, traffic signal improvements, curbs, sidewalks, and other related appurtenances and improvements owned and maintained by Clark County ("Subject Claim").
- D. This Agreement is the result of arms-length negotiations between the Settling Parties, which were conducted in good faith within the meaning of Nevada Revised Statute (NRS) 17.245 et seq.
- E. The Settling Parties now wish to fully and finally settle their respective differences and buy their respective peace through this settlement, which is intended to fully and finally resolve all liability of the Released Party with respect to all claims that may have been alleged or could have been alleged by Claimant regarding the Subject Claim and or The Incident.
- F. This Agreement also pertains to the Released Party's past, present, and future parent companies, divisions, subsidiaries, affiliates, related corporations and entities, members, stock holders, directors, officers, agents, employees, employers, assigns, attorneys (including the law firm of Morris, Sullivan and Lemkul, LLP), legal representatives, affiliated corporations and

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<sup>1</sup> In 2018, Trenchless Evolutions, LLC was called the Boring Company, LLC. It subsequently changed its name. Trenchless Evolutions, LLC's entity form, Contractor's licenses, and State identification numbers remained the same. Trenchless Evolutions, LLC's contractors license numbers are 0070314, 0076990, and 0076991. Its Nevada business ID is NV20061437210 and its State of Nevada entity number is E0047362006-7.

other affiliated entities, insurance carriers (including Navigators Specialty Insurance Company), administrators, partners, joint venturers, indemnities, and obligees.

- G. This Release provided by the Claimant, set forth in paragraph IV., also extends to Cox Communications, CoxCom, LLC and their past, present, and future parent companies, divisions, subsidiaries, affiliates, related corporations and entities, members, stock holders, directors, officers, agents, employees, employers, assigns, legal representatives, affiliated corporations and other affiliated entities, insurance carriers administrators, partners, joint venturers, indemnities, and obligees. These entities are intended beneficiaries of the consideration paid on behalf of Released Party and the release provided by Claimant.

## **II. NO ADMISSION**

By entering into this Agreement, the Settling Parties are not admitting the sufficiency of any claims, allegations, assertions, contentions, defenses, or positions of any other party regarding the Subject Claim. The Settling Parties desire to resolve the Subject Claim in an amicable fashion and pursuant to NRS 17.245 et seq. The Settling Parties have entered into this Agreement in good faith and with a desire to settle all issues and to execute a release as set forth herein.

*NOW, THEREFORE, in consideration of the foregoing facts and of the agreements set forth herein, the Settling Parties agree as follows:*

## **III. CONSIDERATION**

Trenchless Evolutions, LLC through its insurance Company, Navigators Specialty Insurance Company, agrees to pay to Claimant the total sum of Eight Hundred and Twenty-Five Thousand Dollars and Zero Cents (\$825,000). The settlement draft will be made payable to "Clark County Department of Public Works" and will be paid within 60 days of final approval of the settlement by the Clark County Board of County Commissioners on behalf of Claimant.

## **IV. RELEASES**

- A. In consideration for the payment outlined above, on behalf of itself and all predecessors, successors, assigns, related or affiliated entities, and insurers, Claimant releases and forever discharges Released Party, Cox Communications, CoxCom, LLC, and their past, present, and future parent companies, divisions, subsidiaries, affiliates, related corporations and entities, members, stock holders, directors, officers, agents, employees, employers, assigns, attorneys (including the law firm of Morris, Sullivan an Lemkul, LLP), legal representatives, affiliated corporations and other affiliated entities, insurance carriers (including Navigators Specialty Insurance Company), administrators, partners, joint venturers, indemnities, and obligees, from any and all claims, obligations, demands, liens and liabilities of whatsoever kind and nature, in law, at equity or otherwise, whether known or unknown, existing or contingent from the beginning of time until the execution of this Agreement arising out of the Subject Claim, The Incident, and the facts underlying the Subject Claim or The Incident.

- B. This release includes, but is not limited to, any past, present, or future, fixed or contingent, matured or un-matured, liquidated or un-liquidated, known or unknown, claims, causes of action, cross-claims, liabilities, obligations, rights, demands, subrogation claims, damages, requests, suits, fees, costs, actions, administrative proceedings, or orders, of whatever nature, character, type or description, whenever and however occurring, whether in law or in equity, and whether sounding in tort, contract, nuisance, trespass, negligence, strict-liability, consumer legal remedy, fraud, wrongful death, misrepresentation, subrogation or any federal or state statutory or common law claim or remedy of any type arising from the Subject Claim.
- C. Claimant further agrees to be fully responsible for payment of any monies owing and due by Claimant to any person or entity, including that which may be in existence now or following execution of this Agreement, as a result of this settlement and/or as a result of the Subject Claim.
- D. With respect to each of the releases set forth above, Claimant understands and expressly agrees that this Agreement extends to all claims whatsoever, whether known or unknown, suspected or unsuspected, discovered or undiscovered, past, present, or future, or which are or could have ever been asserted against Released Party by Claimant at any time in relation to the facts or issues concerning the Subject Claim.
- E. The foregoing releases notwithstanding, the Settling Parties acknowledge that this Agreement applies only to the Subject Claim and does not pertain to claims made by third-party property owners, utilities or other government entities for damages arising from The Incident to property not owned or maintained by Clark County.

## **V. ADDITIONAL AGREEMENTS**

### **A. Attorneys' Fees:**

The Settling Parties will bear their own attorneys' fees and costs arising out of or connected with the issues of the Subject Claim and this Agreement, including the negotiation, drafting, and execution of this Agreement and all matters arising out of or connected therewith. However, in the event any action or proceeding is brought by any party to enforce this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs, including expert witness fees, incurred in that action or proceeding in addition to all other relief to which the prevailing party may be entitled.

### **B. Independent Counsel:**

The Settling Parties represent and warrant that they have been advised by, or had the opportunity to obtain advice from, independent counsel regarding the force and effect of entering into this Agreement. The Settling Parties expressly state that they have read this Agreement and have consulted, or had the opportunity to consult, their respective attorneys of record concerning all portions of this Agreement and the Releases set forth herein.

C. Construction of Agreement:

It is presumed that each party has cooperated in the drafting and preparation of this Agreement and therefore any construction made by a court of law as to the Settling Parties' intent or the language used shall not be presumptively construed against any of the parties.

D. Authorized Persons:

All persons executing this Agreement on behalf of any person or entity represents and warrants, for the benefit of each of the Settling Parties, that such person is duly and legally authorized or empowered to execute this Agreement and perform all duties and obligations on behalf of that person or entity. Such representations and warranties survive the full execution of said performance under this Agreement.

E. Cooperation:

The Settling Parties agree to fully cooperate with each other in providing and/or executing documents required for the completion and/or entry of this Agreement.

**VI. REPRESENTATIONS AND WARRANTIES**

The Settling Parties represent, warrant, and agree with each other as follows:

- A. Prior to executing this Agreement, the Settling Parties sought, or had the opportunity to seek, independent legal advice from attorneys of their choice with respect to the advisability of entering into this Agreement.
- B. Except as expressly stated in this Agreement, none of the Settling Parties have made any statement or representation to any other party about any fact relied upon in entering into this Agreement. By executing this Agreement or in making the settlement provided for herein, no party to this Agreement relies upon any statement, representation, or promise of any other party.
- C. There is no agreement or understanding between the Settling Parties relating to the Subject Claim other than referred to in this Agreement.
- D. Each party and their respective attorneys have investigated, to the extent each party deemed necessary, the facts pertaining to the underlying dispute of this Agreement and its related matters.
- E. All terms of this Agreement are contractual and are the result of arms-length and good faith negotiations between the Settling Parties.
- F. Claimant represents and warrants that it is the sole and lawful owner of all rights and interests in and to every claim and other matters which it has released herein.

- G. Each of the Settling Parties has carefully read, knows, and understands, the contents of this Agreement.
- H. Each party has full authority to enter into this Agreement and each party executing this Agreement in a representative capacity expressly represents and warrants that the representing party is empowered or authorized to do so.

## **VII. MISCELLANEOUS**

### **A. Integration and Modification:**

This Agreement constitutes a single, integrated contract expressing the entire Agreement of the Settling Parties. No covenants, agreements, representations, or warranties of any kind have been made by any party, except as set forth in this Agreement. All prior discussions and negotiations are merged into and superseded by this Agreement. Amendments to or modifications of this Agreement are binding only upon a signed writing by all Settling Parties.

### **B. Severability:**

If a Court determines that any provision of this Agreement is void, voidable or unenforceable, the remaining portions shall remain in full force and effect.

### **C. No Waiver of Obligation Under This Agreement:**

Nothing contained herein shall be construed to release or discharge any obligation of any party arising under this Agreement.

### **D. Choice of Law and Forum:**

This Agreement shall be construed and controlled by the laws of the State of Nevada. Venue for any dispute or matter related to this Agreement shall be with the District Court of Nevada, Eighth Judicial District Court (i.e. Clark County, Nevada).

### **E. Counterparts:**

This Agreement may be executed in one or more counterparts, but all of which when taken together shall constitute one instrument.

### **F. Good Faith Compliance:**

The Settling Parties agree to cooperate in good faith and to do everything necessary to effectuate this Agreement and its terms. If a party needs to file a motion for good faith settlement determination, the Settling Parties agree to cooperate and that this Agreement may need to be disclosed.

### **G. Interpretation:**

Headings contained in this Agreement are for reference purposes only and do not affect the meaning or interpretation of this Agreement. No provision of this Agreement is to be

interpreted for or against any party because that party or its legal representative drafted such provision.

H. Effectiveness:

This Agreement is effective following execution by Claimant.

I. Public Record

Released Parties acknowledge that the terms of this Settlement may not be confidential in accordance with NRS 41.0375 and are subject to public disclosure in accordance with the Nevada Open Meeting Law.

J. No Third-Party Beneficiary

This Agreement shall not bestow any rights upon any third party, other than the Settling Parties and the entities identified in this agreement, which include, but are not limited to, Cox Communications, LLC, CoxCom, LLC, and their related entities as set forth more fully in paragraph IV.A.

*IN WITNESS WHEREOF*, the Settling Parties have executed this Agreement on the dates set forth below:

{SIGNATURE PAGES TO FOLLOW}

**CLARK COUNTY'S SIGNATURE:**

CLARK COUNTY, a political subdivision  
of the State of Nevada

ATTEST

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Marilyn K. Kirkpatrick,  
Chair, Board of County Commissioner

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Lynn Marie Goya  
County Clerk

APPROVED AS TO FORM:



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Laura C. Rehfeldt  
Deputy District Attorney

**TRENCHLESS EVOLUTIONS, LLC'S SIGNATURE:**

ON BEHALF OF TRENCHLESS EVOLUTIONS, LLC:

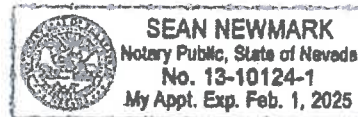
Signature: [Signature]

Name: Brian Kelly

STATE OF Nevada County of Clark

This document was acknowledged before me the undersigned, a Notary Public on this 11 day of October, 2021 by, Brian Scott Kelly

[Signature]  
Notary Public



My Commission Expires: Feb 1, 2025

APPROVED AS TO FORM:

[Signature]

MORRIS, SULLIVAN & LEMKUL  
Christopher A. Turtzo, Esq.  
Counsel for Trenchless Evolutions, LLC



## DISCLOSURE OF OWNERSHIP/PRINCIPALS

<b>Business Entity Type (Please select one)</b>						
<input type="checkbox"/> Sole Proprietorship	<input type="checkbox"/> Partnership	<input checked="" type="checkbox"/> Limited Liability Company	<input type="checkbox"/> Corporation	<input type="checkbox"/> Trust	<input type="checkbox"/> Non-Profit Organization	<input type="checkbox"/> Other
<b>Business Designation Group (Please select all that apply)</b>						
<input type="checkbox"/> MBE	<input type="checkbox"/> WBE	<input type="checkbox"/> SBE	<input type="checkbox"/> PBE	<input type="checkbox"/> VET	<input type="checkbox"/> DVET	<input type="checkbox"/> ESB
Minority Business Enterprise	Women-Owned Business Enterprise	Small Business Enterprise	Physically Challenged Business Enterprise	Veteran Owned Business	Disabled Veteran Owned Business	Emerging Small Business
<b>Number of Clark County Nevada Residents Employed:</b>				35		
<b>Corporate/Business Entity Name:</b> Trenchless Evolutions LLC						
<b>(Include d.b.a., if applicable)</b>						
<b>Street Address:</b>		11200 Playa Bonita Ave		<b>Website:</b> Trenchlessevolutions.com		
<b>City, State and Zip Code:</b>		Las Vegas NV 89138		<b>POC Name:</b> Brian Kelly <b>Email:</b> brian@trenchlessevolutions.com		
<b>Telephone No:</b>		702 953-1488		<b>Fax No:</b> 702 929-3211		
<b>Nevada Local Street Address:</b> <b>(If different from above)</b>				<b>Website:</b>		
<b>City, State and Zip Code:</b>				<b>Local Fax No:</b>		
<b>Local Telephone No:</b>				<b>Local POC Name:</b> <b>Email:</b>		

All entities, with the exception of publicly-traded and non-profit organizations, must list the names of individuals holding more than five percent (5%) ownership or financial interest in the business entity appearing before the Board.

Publicly-traded entities and non-profit organizations shall list all Corporate Officers and Directors in lieu of disclosing the names of individuals with ownership or financial interest. The disclosure requirement, as applied to land-use applications, extends to the applicant and the landowner(s).

Entities include all business associations organized under or governed by Title 7 of the Nevada Revised Statutes, including but not limited to private corporations, close corporations, foreign corporations, limited liability companies, partnerships, limited partnerships, and professional corporations.


Full Name	Title	% Owned (Not required for Publicly Traded Corporations/Non-profit organizations)
Brian Kelly	Managing Member	50
Jeffrey Hallden	Managing Member	50

**This section is not required for publicly-traded corporations. Are you a publicly-traded corporation?**

☐ Yes ☒ No

- Are any individual members, partners, owners or principals, involved in the business entity, a Clark County, Department of Aviation, Clark County Detention Center or Clark County Water Reclamation District full-time employee(s), or appointed/elected official(s)?  
☐ Yes ☒ No (If yes, please note that County employee(s), or appointed/elected official(s) may not perform any work on professional service contracts, or other contracts, which are not subject to competitive bid.)
- Do any individual members, partners, owners or principals have a spouse, registered domestic partner, child, parent, in-law or brother/sister, half-brother/half-sister, grandchild, grandparent, related to a Clark County, Department of Aviation, Clark County Detention Center or Clark County Water Reclamation District full-time employee(s), or appointed/elected official(s)?  
☐ Yes ☒ No (If yes, please complete the Disclosure of Relationship form on Page 2. If no, please print N/A on Page 2.)

I certify under penalty of perjury, that all of the information provided herein is current, complete, and accurate. I also understand that the Board will not take action on land-use approvals, contract approvals, land sales, leases or exchanges without the completed disclosure form.

 Signature	Brian Kelly Print Name
President Title	10/8/21 Date