EXHIBIT 5

ORDER ENFORCING SETTLEMENT AGREEMENT

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

Docket No. 22-4503

IN THE MATTER OF THE BOND FORFEITURE
QUALITY LANDSCAPE AND NURSERY, INC.
LMO ET1496

STATE OF WYOMING	)	**IN THE DISTRICT COURT**
	)	
COUNTY OF CARBON	)	**SECOND JUDICIAL DISTRICT**
THE GOVERNING BODY OF THE TOWN OF SARATOGA, WYOMING, a Wyoming municipal corporation,	)	**CV-2009-0284**
Plaintiff,	)	
vs.	)	
RANDY W. STEVENS, RANDY W. STEVENS LIVING TRUST, by and through its Trustee, Randy W. Stevens, and QUALITY LANDSCAPE & NURSERY, INC.,	)	
Defendants.	)	

STATE OF WYOMING } ss.
COUNTY OF CARBON }
FILED

MAY 13 2013

DEBORAH D. OLSON
CLERK OF DISTRICT COURT
BY _____
DEPUTY

ORDER ENFORCING SETTLEMENT AGREEMENT

THIS MATTER came before the Court on *Defendants' Motion to Enforce Settlement Agreement*, filed on March 21, 2013. Plaintiff, the Town of Saratoga, filed a response to the motion on April 19, 2013. The Court held a hearing on the matter on May 8, 2013. Prior to the hearing, the parties agreed to present their respective evidence and arguments in the form of proffers. Having considered the parties' proffers, the arguments of counsel, and the record herein, the Court finds, concludes, and orders as follows:

A. FACTS

1. The parties have been before the Court many times since this case was commenced in 2009. The Court directs the reader to the multi-volume court file for the complete factual history of this litigation. Here, the Court will limit its factual recitation to those facts relevant to the instant motion.

2. On August 27, 2012, Defendants filed an *Application for Mandatory Injunction; Motion for Order of Default*. There, Defendants alleged that the Town had failed to commence work on the alleyway reconstruction as required by the parties' *Consent Decree* (dated June 21, 2010).

3. The Court set the *Application for Mandatory Injunction; Motion for Order of Default* to be heard on January 4, 2013.

4. On January 4, 2013, prior to the scheduled hearing, the parties engaged in settlement negotiations. Counsel for the parties then informed the Court that the parties had settled the pending *Application for Mandatory Injunction; Motion for Order of Default*. Consequently, the scheduled hearing was vacated.

5. The settlement agreement was not reduced to writing at that time, nor was the agreement read into the record.

6. Subsequently, Defendants prepared a proposed "Stipulated Order on Defendants' Application for Mandatory Injunction and Motion for Order of Default" and submitted it to the Town for approval.

7. The Town has refused to execute the proposed Stipulated Order, contending that it

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includes additional terms to which the parties never agreed.

8. On March 21, 2013, Defendants filed the instant *Motion to Enforce Settlement Agreement*, bringing the matter before the Court for consideration.

B. APPLICABLE LAW

9. A settlement agreement is a contract and, therefore, subject to the same legal principles that apply to any contract. *Matter of Estate of McCormick,* 926 P.2d 360, 362 (Wyo. 1996).

10. The Court possesses the authority to enforce a settlement to which the parties agreed.

> The power of a trial court to enter a judgment enforcing a settlement agreement has its basis in the policy favoring the settlement of disputes and the avoidance of costly and time-consuming litigation. To effectuate this policy, the power of a trial court to enforce a settlement agreement has been upheld even where the agreement has not been arrived at in the presence of the court nor reduced to a writing. *Wyoming Sawmills, Inc. v. Morris,* 756 P.2d 774, 779 (Wyo.1988) (quoting with approval *Kukla v. Nat'l Distillers Products Co.,* 483 F.2d 619, 621 (6th Cir.1973)); *see also Matter of Estate of McCormick,* 926 P.2d at 362-63.

In re Estate of Maycock, 2001 WY 103, ¶ 13, 33 P.3d 1114, 1117 (Wyo. 2001).

11. "The existence of a contract requires a meeting of the minds of the parties to it." *Wyoming Sawmills, Inc. v. Morris*, 756 P.2d 774, 775 (Wyo. 1988). "Whether a contract has been entered into depends on the intent of the parties and is a question of fact, *United States Through Farmers Home Administration v. Redland,* Wyo., 695 P.2d 1031 (1985), and this is so with reference to oral contracts." *Id.* "Whether an oral contract exists, its terms and conditions and the intent of the parties are questions of fact. *Id.* (quoting *Richardson v. Green,* Wyo., 644 P.2d 778, 779 (1982)).

C. ANALYSIS

12. Here, the parties agree that they engaged in negotiations and reached a settlement agreement. (Defs.' Mot. to Enforce Settlement Agreement at ¶¶ 11-12; Pl.'s Resp. to Defs.' Mot. to Enforce Settlement Agreement at 1, 3.) Additionally, on January 4, 2013, counsel for the parties informed the Court that they had reached a settlement agreement. Consequently, the Court finds that the parties intended to and did enter into an oral settlement agreement.

13. The primary question currently before the Court concerns the parties' disagreement over a few limited terms of that settlement. Specifically, in the Town's *Response to Defendants' Motion to Enforce Settlement Agreement*, it argues that it never agreed to:

    (a) Segregate the topsoil from the fill dirt,
    (b) Remove the existing sheer piling retaining wall, and
    (c) Survey the lots.

14. The parties agree to the remaining terms of their settlement.

15. At the May 8, 2013 hearing, the parties focused their attention and arguments on the sheer piling retaining wall. Specifically, Defendants argue that the Town agreed to remove the wall. Mr. Stevens contends that during settlement negotiations, he asked about the sheer piling retaining wall, and the Town responded to the effect, "If it's not already down, it's going to be." Based on this alleged response, Defendants assert that the Town agreed to deconstruct the sheer piling retaining wall.

16. When the Court asked about supporting the existing structures and land upon removal of

the sheer piling retaining wall, Defendants stated a rock gabion wall, which was first proposed by the Town's engineer, Chuck Bartlett, would be the appropriate alternative retaining structure.

17. The Town, however, contends that it never agreed to nor even contemplated removing the sheer piling wall.

18. The only reasonable interpretation of this agreement is that set forth by the Town. The issue of the retaining wall already has been litigated by the parties and decided by this Court. Chuck Bartlett (Town Engineer) initially proposed a rock gabion wall as part of the Town's plans for the alleyway reconstruction. The parties agreed to the rock gabion in the earlier *Consent Decree*. However, the Town deviated from that plan and installed the sheer piling retaining wall instead of the rock gabion. Consequently, Defendants complained to the Court of the Town's unilateral decision to deviate from the original plan. The Court held the deviation to be a violation of the *Consent Decree*, but found the variation to be *de minimus* and reasonable. (Court's Findings of Fact, Conclusions of Law and Order at 9-10.) Thus, the sheer piling retaining wall was approved *ex post facto* and permitted to remain.

19. Defendants' current assertion that the Town has subsequently agreed to remove the sheer piling retaining wall and replace it with a rock gabion retaining wall is simply unreasonable. With the history of this retaining wall in mind, it is not reasonable to believe that the Town agreed to replace the retaining wall after it had paid Reiman Corporation to install the sheer piling wall and after the matter was fully litigated. Further, the Court will not re-litigate the matter of the retaining wall now.

20. Therefore, the Court finds that the terms of the parties' most recent agreement are those set forth by the Town. Specifically, the additional terms claimed by Defendants were not agreed to by the Town and, accordingly, shall not be included within the parties' settlement agreement. The parties do not dispute the remaining terms of their agreement.

D. ORDER

21. **IT IS THEREFORE ORDERED** that the *Defendants' Motion to Enforce Settlement Agreement*, filed on March 21, 2013, is hereby **GRANTED IN PART AND DENIED IN PART**.

22. **IT IS FURTHER ORDERED** that the terms of the parties' most recent settlement agreement are those set forth by the Town of Saratoga.

23. **IT IS FURTHER ORDERED** that the Court approves the parties' settlement terms and conditions to which they agreed, which are set forth as follows:

a. Within forty-five (45) days from the date of this Order Enforcing Settlement Agreement, the Town shall construct and install, at its own expense, a dirt access ramp or roadway to the front end of the Defendants' storage container currently facing ease and situated on the southern edge of the Defendants' real property. The Town shall notify the Defendants in writing when such access ramp has been completed. The Town is not required to later remove such ramp or roadway, or to re-contour or re-grade the property to its pre-construction state.

b. Within fifteen (15) days following the Defendants' receipt of the Town's notice that it has completed the dirt access ramp, the Defendants shall, at their own expense, remove all personal property and effects currently stored inside the storage container to facilitate the removal and relocation of the storage container by the Town. The Defendants shall notify the Town in writing when the storage container has been emptied and is ready for relocation. The Defendants shall further indemnify and hold the Town harmless for any and all damage to any personal property and effects remaining in the storage container which might or could result from the removal and relocation of the storage container by the

Town, including any damage to the container itself.

c. Within forty-five (45) days following the Town's receipt of the Defendants' notice that the storage container has been emptied, the Town shall, at its own expense, remove and relocate the storage container from its present location to that area of the Defendants' property indicated on the attached photograph, marked as "Attachment 1." If additional dirt work is required in order to move the container as per this agreement, the Town shall, at its own expense, prepare a dirt access ramp or roadway to facilitate removing and relocating the container. The Town is not required to later remove any dirt access ramp or roadway, or to re-contour or re-grade the property to its pre-construction state.

(i) Prior to relocating the storage container, the Town shall notify the Defendants in writing of the date the Town will relocate the storage container.

(ii) The Town shall, at its own expense, smooth and prepare the site for placement of the storage container where indicated on "Attachment 1." Any dirt that needs to be removed from the new location site shall be transported to the Defendants' deposit site, which is within one (1) mile of the alleyway. The Defendants shall further indemnify and hold the Town harmless for any and all damage which might or could result from the removal and relocation of the storage container, including any damage to the container itself.

d. On or before one-hundred forty (140) days from the date of this Order Enforcing Settlement Agreement, the Town shall, at its own expense, complete reconstruction of the alleyway adjacent to Lots One (1) through Ten (10), inclusive, Block Eleven (11), Riverside Addition to the Town of Saratoga, Carbon County, Wyoming, in accordance with the finished contours and grades approved by this Court in the Order entered herein on March 1, 2011, as modified by the now-approved sheet piling retaining wall. The Town shall in good faith use its best efforts to complete reconstruction of the alleyway prior to the designated construction deadline. The Town shall notify the Defendants in writing of the date the Town proposes and/or intends to commence reconstruction of the alleyway.

e. The notice provisions of the parties' *Consent Decree* are hereby amended by this Order Enforcing Settlement Agreement to require that all notices by and between the parties as described herein shall be sent by and to the counsel of record for the Town and the Defendants only.

24. **IT IS FINALLY ORDERED** that the parties shall each bear their own costs, expenses, and attorneys' fees incurred, if any, in the resolution of this issue.

DATED this 13th day of May, 2013.

WADE E. WALDRIP
DISTRICT COURT JUDGE

Copies to: Richard Rideout, Counsel for Plaintiff
James Salisbury & Don Riske, Counsel for Defendants

State of Wyoming } SS
County of Carbon }

Certified To Be A Full
True and Correct Copy

Deborah D. Olson
Clerk of District Court
By: _____ Deputy
Dated 13 Day May 2013

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12/01/2012
ATTACHMENT 1