

**HIGHLINE WATER DISTRICT  
King County, Washington**

**RESOLUTION 13-2-6B**

**RESOLUTION AUTHORIZING SETTLEMENT AGREEMENT BETWEEN HIGHLINE WATER DISTRICT AND MCCLURE AND SONS, INC. RELATING TO CONSTRUCTION CONTRACT #11-70-14 (PROJECT 07-2 MCMICKEN HEIGHTS WELL AND TREATMENT PLANT)**

**WHEREAS**, by passage of Resolution 11-5-18B, the Board of Commissioners awarded construction contract #11-70-14 to McClure and Sons, Inc. for Project 07-2 McMicken Heights Well and Treatment Plant; and

**WHEREAS**, the Highline Water District and McClure and Sons, Inc. desire to enter into this Agreement to fully and finally settle with prejudice all claims and controversies by and among them arising out of or connected with certain construction work performed by McClure and Sons, Inc. (Contractor) for the District pursuant to a certain written contract dated on or about the 11th day of May, 2011, for certain construction work entitled "McMicken Heights Well and Treatment Plant", designed and administered by the District's consulting engineer, RH2 Engineering, Inc.; and

**WHEREAS**, the Settlement Agreement, attached as **Exhibit A** and incorporated herein by this reference, sets forth the terms and conditions of a binding settlement for all claims and defenses asserted; and

**WHEREAS**, be it resolved that the General Manager, and other authorized legal counsel for the District, are hereby authorized and directed to undertake all necessary required actions to effectuate said Settlement Agreement on behalf of the Highline Water District.

**NOW, THEREFORE, BE IT RESOLVED:**

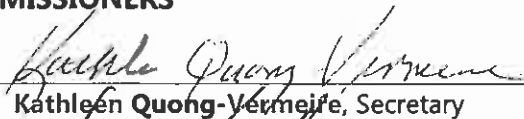
The Board of Commissioners authorizes the General Manager or designee to execute the Settlement Agreement and Mutual Releases referenced herein with McClure and Sons, Inc. relating to Project 07-2 McMicken Heights Well and Treatment Plant.

**ADOPTED BY THE BOARD OF COMMISSIONERS** of Highline Water District, King County, Washington, at an Open Public Meeting held this **6th** day of **February 2013**.

**BOARD OF COMMISSIONERS**



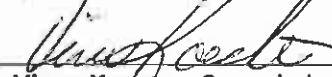
Daniel Johnson, President



Kathleen Quong-Vermeire, Secretary



Gerald R. Guite, Commissioner



Vince Koester, Commissioner



George Landon, Commissioner

SETTLEMENT AGREEMENT AND MUTUAL RELEASES

This Settlement Agreement and Mutual Releases ("Agreement") is entered into by and between the Parties for the purposes set forth herein.

In consideration of the release of certain claims, and the mutual covenants and promises contained herein, the sufficiency of which are hereby acknowledged, the Parties to this Agreement agree as follows:

1. PARTIES. The Parties to this Agreement (individually a "Party" and collectively the "Parties") are as follows:

1.1. Highline Water District, a Washington municipal corporation ("District"); and

1.2. McClure and Sons, Inc., a Washington corporation ("Contractor").

2. PURPOSE. Except as expressly noted herein, the Parties enter into this Agreement to fully and finally settle with prejudice all claims and controversies by and among them arising out of or connected with certain construction work performed by the Contractor for the District pursuant to a certain written contract ("Contract") dated on or about the 11th day of May, 2011, for certain construction work entitled "McMicken Heights Well and Water Treatment Plant" ("Project"), designed and administered by the District's consulting engineer, RH2 Engineering, Inc. ("Engineer").

3. DISPUTES. Among other things, the District claims that the Contractor failed to timely complete its work on the Project, which included delay in treatment plant operation due to pipe internal coating failure, and that the District incurred costs and damages related to such performance issues; the Contractor disputes the District's claims.

4. TERMS OF AGREEMENT. In order to avoid the expense and uncertainty of potential litigation, and without admitting liability to any Party, the Parties agree that the final payment to the Contractor shall be reduced by One Hundred Seventy Three Thousand Eight Hundred and 00/100 Dollars (\$173,800.00) to resolve the disputes set forth in paragraph 3 above. Therefore, the final payment to the Contractor, exclusive of retainage (which shall be paid in accordance with applicable law), and including all applicable taxes shall be in the amount of Fifty Five Thousand Six Hundred Eighty-Five and 35/100 Dollars (\$55,685.35), representing the amount otherwise due and owing to the Contractor, less the amount of the deduction agreed to herein.

5. MUTUAL GENERAL RELEASES. Except as set forth herein, the Parties hereby release, acquit and discharge all claims ("Released Claims") against each other which relate to or arise out of the Contract and/or the Project. "Released Claims" include, without limitation, all claims asserted or that could have been asserted against the Parties and their respective agents, employees, officers, directors, shareholders, representatives, insurers, sureties, attorneys, predecessors, successors, transferees, assigns, general partners, limited partners and related entities arising out of or relating to the Contract and/or the Project. Released Claims shall not extend to any of the following:

5.1. Any claims that arise out of this Agreement or out of any of the other documents executed or delivered pursuant to this Agreement.

5.2. Any of the Contractor's warranty obligations under the Contract for work performed by, or at the direction of, the Contractor or its subcontractors, suppliers, agents, employees or representatives.

The Parties fully understand that, except as set forth herein, they are giving up all of their rights of any kind against each other, known or unknown, including those related in any way to the Contract and/or the Project.

6. NO ADMISSION OF LIABILITY. This Agreement does not constitute and shall not be construed as an admission of liability, fault or responsibility on the part of either of the Parties, who continue to deny all liability and disclaim all responsibility. Among other things, the Parties have entered into this Agreement as the compromise of various disputes, solely for the purpose of avoiding the expense and uncertainty of potential litigation.

7. AUTHORITY. The Parties each represent and warrant that they have full power and actual authority to enter into this Agreement and to carry out all actions required of them by this Agreement. All persons executing this Agreement in a representative capacity represent and warrant that they have full power and authority to bind their respective corporations, partnerships and/or entities.

8. COUNTERPARTS. This Agreement may be executed in any number of identical counterparts, notwithstanding that all Parties have not signed the same counterpart, with the same effect as if all Parties had signed the same document. All counterparts shall be construed as and shall constitute one and the same agreement.

9. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement of the Parties on regarding the matters addressed in this Agreement. This Agreement may not be modified, interpreted, waived or revoked orally, except by a writing signed by all parties. This Agreement supersedes and replaces all prior agreements, discussions and representations on all these subjects, any and all of which are merged into, and superseded by this Agreement. No Party is entering into this Agreement in reliance on any oral or written promises, inducements, representations, understandings, interpretations, or agreements, other than those contained in this Agreement and any Exhibits hereto.

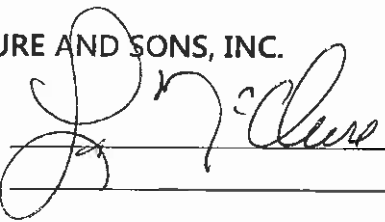
10. ACCESS TO COUNSEL. The Parties acknowledge that both Parties have reviewed this Agreement with their respective legal counsel and fully understand the Agreement. In construing the Parties' intent with regard to this Agreement, no greater or stricter construction of any term or provision shall be asserted against the drafter of the Agreement.

11. EFFECTIVE DATE. This Agreement shall be effective upon the later date by which it is signed by both of the Parties ("Effective Date").

**HIGHLINE WATER DISTRICT**

By:         Matt Everett          
Its:         General Manager          
Dated:   

**MCCLURE AND SONS, INC.**

By:                   
Its:     
Dated:         1-24-13