

**HIGHLINE WATER DISTRICT
King County, Washington**

RESOLUTION 22-8-17A

RESOLUTION AUTHORIZING A SETTLEMENT AGREEMENT BETWEEN HIGHLINE WATER DISTRICT AND SEATTLE PUBLIC UTILITIES REGARDING THE MATTER OF UNINTENDED WATER DELIVERY FROM HIGHLINE TO TUKWILA THROUGH THE INTERTIE BETWEEN THE AGENCIES

WHEREAS, Tukwila and Highline have an intertie connection of their water systems located at or in the vicinity of South 180th Street and Andover Park West in Tukwila, Washington ("Intertie"); and,

WHEREAS, in 2017, SPU contacted Tukwila and asked that Tukwila make arrangement for alternative points of delivery during a planned shutdown while Seattle Public Utilities ("SPU") performed repairs for the periods of July 21 to 22, 2017 and September 26 to October 10, 2017; and,

WHEREAS, Tukwila did make alternative arrangements. To accommodate SPU's need, Tukwila arranged for Highline to supply water to Tukwila during those periods through the Intertie; and,

WHEREAS, a malfunction occurred, and the Intertie remained open after October 10, 2017, resulting in 187,586 CCF of water unintentionally delivered ("Unintentionally Delivered Water") to Tukwila from Highline in 2017 to mid-2018; and,

WHEREAS, Highline paid SPU for its metered consumption pursuant to its Partial Requirements Contract at rates then in effect, and then Highline submitted an invoice to Tukwila for payment for the Unintentionally Delivered Water; and,

WHEREAS, Tukwila disputed the invoice and have proposed to resolve the matter by returning the Unintentionally Delivered Water; and

WHEREAS, Highline and SPU wish to resolve all claims between Highline and SPU, and Highline and the Cascade Water Alliance related to the Unintentionally Delivered Water, including SPU's invoices to Highline, Highline payments to SPU, and any other claims between Highline and SPU and between Highline and Cascade Water Alliance arising from these events (the "Litigation"), and avoid litigating these matters; and

WHEREAS, Highline and Tukwila have reached a settlement agreement, each to resolve all claims regarding the Potential Litigation; and,

WHEREAS, the Parties do not admit any issue of law, fact, or liability.

HIGHLINE WATER DISTRICT King County, Washington

RESOLUTION 22-8-17A

NOW, THEREFORE, BE IT RESOLVED:

1. The General Manager or designee is authorized to execute the Settlement Agreement between Highline Water District and the Seattle Public Utilities, attached hereto as **Attachment 1**.
2. The General Manager and/or the District's legal counsel are authorized to make minor changes to the Agreement if required.

ADOPTED BY THE BOARD OF COMMISSIONERS of Highline Water District, King County, Washington, at an open public meeting held this **17th** day of **August 2022**.

BOARD OF COMMISSIONERS

DocuSigned by:

 Polly Daigle, President

DocuSigned by:

 Daniel Johnson, Secretary

DocuSigned by:

 Vince Koester, Commissioner

DocuSigned by:

 Todd Fultz, Commissioner

DocuSigned by:

 Kathleen Quong-Vermeire, Commissioner

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into as of _____, 2022 (the “Effective Date”) between the Highline Water District (“Highline”) and The City of Seattle, by and through its Seattle Public Utilities Department (“Seattle” or “SPU”) (collectively the “Parties,” and each a “Party”) to settle the matter related to unintended water delivery through the intertie further described herein, including all claims that were asserted or that could have been asserted among the Parties in this matter.

RECITALS

1. WHEREAS, on or about December 2001, SPU and Highline executed the City of Seattle Contract Partial Requirements Contract for the Supply of Water to the Highline Water District (“Partial Requirements Contract”), which provides that Seattle shall supply sufficient water to supplement Highline’s existing water resources, and that Highline shall purchase all supplemental wholesale water needs from Seattle; and
2. WHEREAS, there is an intertie between Highline and the City of Tukwila (“Tukwila”), governed by an intertie agreement between Highline and Tukwila; and
3. WHEREAS approximately 187,586 CCF of water was unintentionally delivered to Tukwila from Highline between 2016 and 2017 (“Unintentionally Delivered Water”); and
4. WHEREAS, Highline paid Seattle for its metered consumption pursuant to the Partial Requirements Contract at rates then in effect and then requested payment from Tukwila for the Unintentionally Delivered Water; and
5. WHEREAS, Tukwila disputed the invoice and Highline filed a pre-litigation claim against Tukwila; and
6. WHEREAS, Tukwila and Highline have proposed to resolve the matter by returning the Unintentionally Delivered Water; and
7. WHEREAS, Highline and SPU wish to resolve all claims between Highline and SPU, and Highline and the Cascade Water Alliance related to the Unintentionally Delivered Water, including SPU’s invoices to Highline, Highline payments to SPU, and any other claims between Highline and SPU and between Highline and Cascade Water Alliance arising from these events (the “Litigation”), and avoid litigating these matters; and
8. WHEREAS, the Parties do not admit any issue of law, fact, or liability.

NOW THEREFORE, in consideration of the covenants, agreement, and representations set forth in this Agreement, the Parties agree as follows:

AGREEMENT

1. Recitals. The Recitals above are restated and incorporated as part of this Agreement.
2. Return of Water. Parties agree that Highline may accept the equivalent of the Unintentionally Delivered Water from Tukwila through the intertie. Parties further agree that Highline may participate in a water pump test resulting in a de minimis exchange of water between Tukwila and Highline.

invoice to Tukwila for payment for the Unintentionally Delivered Water pursuant to the terms of the Intertie Agreement; and

11. WHEREAS, Tukwila disputed the invoice, and Highline filed a pre-litigation claim and Public Records Act request against Tukwila; and
12. WHEREAS, the Parties wish to resolve all claims amongst Cascade, Tukwila, Highline, and SPU related to the Unintentionally Delivered Water, including all issues identified in the October 12, 2021 Cascade letter to SPU, Highline's invoices to Tukwila, Cascade's payments to SPU under the Block Contract, and any claims arising from these events (the "Potential Litigation"), and avoid litigating these matters; and
13. WHEREAS, Highline and SPU have entered into a settlement agreement, Cascade and SPU have entered into a settlement agreement, and Highline and Tukwila have entered into a settlement agreement, each to resolve all claims regarding the Potential Litigation; and
14. WHEREAS, the Parties do not admit any issue of law, fact, or liability.

NOW THEREFORE, in consideration of the covenants, agreement, and representations set forth in this Agreement, the Parties agree as follows:

AGREEMENT

1. Recitals. The Recitals above are restated and incorporated as part of this Agreement.
2. Return of Water. Parties agree that Tukwila shall return the equivalent of the Unintentionally Delivered Water to Highline through the Intertie. The Parties acknowledge and agree that the return of the Unintentionally Delivered Water may occur over one or more years. Parties further agree that Cascade may allow Tukwila to participate in a water pump test resulting in a de minimis exchange of water between Tukwila and Highline.

In the event Tukwila is unable for any reason to return the full amount of the Unintentionally Delivered Water to Highline, then this Agreement shall be null and void and Highline shall have the right to seek payment or other legal consideration from Tukwila for the remaining amount of the Unintentionally Delivered Water. In such case, Highline and Tukwila agree to engage in good faith negotiations with each other to arrive at a mutually agreeable alternative pursuant to which Highline is compensated for the remaining amount of the Unintentionally Delivered Water. Highline's claim against Tukwila relating to the Unintentionally Delivered Water shall be preserved and tolled for a period of one (1) year following the determination that Tukwila is unable to return the Unintentionally Delivered Water to Highline as originally contemplated under the terms this Agreement.

3. Reporting. Tukwila, or Cascade on Tukwila's behalf, shall provide occasional courtesy updates to SPU regarding the volume of water returned to Highline under Section 2 of this Agreement. Upon SPU's request, Tukwila, or Cascade on Tukwila's behalf shall provide meter data and any other detailed information documenting the volume of water returned to Highline under Section 2 of this Agreement. After Tukwila returns the total amount of Unintentionally Delivered Water to Highline, Tukwila, or Cascade on Tukwila's behalf shall promptly notify SPU that the intertie has been positively closed and restored to normal standby operation consistent with the terms of the Intertie Agreement approved by Seattle.

4. Non-Waiver of Block Contract Provisions. The Parties acknowledge and agree that (a) this settlement is a compromise of the Potential Litigation, (b) other than the return of the equivalent of the Unintentionally Delivered Water, the provision of water from Tukwila to Highline through the Intertie for non-emergency reasons is inconsistent with the terms of the Block Contract, (c) this Agreement does not obviate, waive, or invalidate Tukwila's obligations set forth in the Block Contract or Highline's obligations under the Partial Requirements Contract, and (d) the Parties' acceptance of this Agreement shall not be deemed a waiver of any preceding or succeeding breach or default of the same or any other provision, term, or condition of the Block Contract or Partial Requirements Contract, as applicable.

5. Release. In consideration for the return of water to Highline under Section 2 of this Agreement, and in consideration for the mutual promises herein, the Parties, on their own behalves and on behalf of their respective member agencies, insurers, subsidiaries, principals, affiliates, employees, directors, officers, elected officials, agencies, agents, predecessors, successors, assigns and attorneys hereby mutually and fully release each other and their respective partners, member agencies, insurers, subsidiaries, joint venture members, principals, affiliates, shareholders, employees, directors, officers, elected officials, agencies, agents, predecessors, successors, assigns and attorneys from any and all claims, proofs of claim, liens, indebtedness, grievances, charges, causes of action, obligations, demands or liabilities, whether now known or unknown, asserted or unasserted, accrued or unaccrued, fixed or contingent, and whether sounding in contract, tort, statute or otherwise, that arise from or relate to the Potential Litigation, including, without limitation any and all claims for defense costs, indemnity payments, settlement payments, damages, reimbursement, allocation or reallocation of payments, equitable relief, fines or other relief based upon any allegation of or actual breach of contract, any other claim or cause of action, or any act or failure to act in connection with, or arising out of the Potential Litigation, subject to the limitations provided in Section 2 relating to the potential that Tukwila may not be able to return the Unintentionally Delivered Water to Highline.

In giving this release, each Party acknowledges that facts, circumstances or claims that arise from or relate to the Potential Litigation may exist that they do not presently know of or suspect to exist and that they have taken that possibility into account. Each of the Parties nevertheless intends this release to be a full, final and complete mutual release of each other Party, and each of their respective partners, member companies, subsidiaries, shareholders, joint venture members, insurers, members, officers, principals, affiliates, employees, officers, directors, elected officials, agencies, predecessors, successors, assigns and attorneys and agree that the release given herein will be and remain in effect notwithstanding the discovery or existence of any additional or different facts, circumstances or claims.

6. Admissibility. The Parties agree that this Agreement and any acts done in the performance of this Agreement shall not be admissible, discoverable, or relevant in any case or proceeding as evidence of the rights, duties, or obligations of the Parties; provided, however, that nothing contained in this Paragraph 6 shall be interpreted to restrict the right of any Party to use this Agreement as evidence of the rights, duties or obligations created by this Agreement. This Agreement shall not be used as a standard by which other matters may be judged.

7. Effectuation. The Parties agree to cooperate with each other in the execution of the terms of this Agreement and to do all things and take all additional actions as may be reasonably necessary to effectuate the transactions contemplated in this Agreement.
8. Attorneys' fees and costs. Each Party will bear its own attorneys' fees and costs related to or incurred in the negotiation of this Agreement.
9. No Admission. This Agreement is a compromise of disputed claims. Accordingly, the payments and considerations provided for herein are not intended to and shall not be construed as an admission or acknowledgement by any of the Parties of liability or of the merits or validity of any other Party's claims.
10. Representations. The Parties each represent and warrant that they have each read and understand this Agreement, that they have each had the opportunity to consult with counsel of their own choosing before executing it and that none of them is relying on any representations by any other Party or other Party's counsel as to the legal effect of this Agreement.
11. Authority. Each signatory of the Agreement represents and warrants that he/she has full power and authority to enter into and deliver this Agreement on whose behalf he/she signs and that the Party on whose behalf he/she signs has not sold, assigned, transferred, conveyed or otherwise disposed of any claim, demand or right surrendered by virtue of this Agreement.
12. Binding Effect. This Agreement is binding on and shall inure to the benefit of each of the Parties hereto and to their respective present and future member companies, subsidiaries, principals, affiliates, successors, assigns, trustees, administrators, insurers, officers, directors, elected officials, attorneys, agents, predecessors, successors, assigns, and employees.
13. Amendments. This Agreement may not be amended, changed, modified, released or discharged except by a writing signed by duly authorized representatives of each of the Parties hereto.
14. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior oral and written agreements with respect to the matters provided for herein. It is understood and agreed, however, that this Agreement is not intended, nor shall it be construed to supersede, amend, alter, modify or change, in whole or in part, any of the terms or conditions of the Block Contract or the Parties' respective rights and obligations under said contract and any other contracts. Each of the Parties covenants that it has not entered into this Agreement as a result of any representation, warranty, agreement, promise or inducement other than as may be specifically provided herein.
15. Effective Date, Counterparts. This Agreement is effective only upon the occurrence of (1) the date of signatures of both the Parties and (2) effective date of the settlement agreement between Highline and SPU and (3) the settlement agreement between Cascade Water Alliance

and SPU, each regarding the Potential Litigation. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. Facsimile and electronic copies of the Parties' signatures shall be treated as if they are originals.

16. Law, Jurisdiction, and Venue. This Agreement shall be governed, construed and enforced in accordance with the laws of the State of Washington. The venue of any action brought hereunder shall be in the Superior Court of King County.

17. Captions. Captions and titles are for convenience only and shall have no effect on the construction or interpretation of any part hereof.

CITY OF TUKWILA

HIGHLINE WATER DISTRICT

By _____
Allan Ekberg, Mayor

By _____
Jeremy DelMar, General Manager

Dated: _____

Dated: _____

ATTEST

Christy O'Flaherty, City Clerk

APPROVED AS TO FORM

APPROVED AS TO FORM

Kari L. Sand, City Attorney

Eric Frimodt, District legal counsel

Agenda Item No.: 5.1
Agenda Date: 08/17/22
Reviewed By: [Signature]

Re: Authorize a settlement agreement between Highline Water District and Seattle Public Utilities regarding the matter of unintended water delivery from Highline to Tukwila through the intertie between the agencies.

CATEGORY	
<i>Executive</i>	<input checked="" type="checkbox"/>
<i>Administrative</i>	<input type="checkbox"/>
<i>Engineering/Operations</i>	<input type="checkbox"/>

FINANCIAL			
<i>Expenditures?</i>	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
<i>Budgeted?</i>	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
<i>Amount:</i> \$ _____			

ATTACHMENTS:

1. Resolution 22-8-17A
2. Attachment 1 - Settlement Agreement (Highline/SPU)

COMMENTS:

Tukwila and Highline have an intertie connection of their water systems located at or in the vicinity of South 180th Street and Andover Park West in Tukwila, Washington ("Intertie").

A malfunction occurred, and the Intertie remained open after October 10, 2017, resulting in 187,586 CCF of water unintentionally delivered ("Unintentionally Delivered Water") to Tukwila from Highline in 2017 to mid-2018.

Tukwila disputed the invoice and have proposed to resolve the matter by returning the Unintentionally Delivered Water.

Highline and SPU wish to resolve all claims between Highline and SPU, and Highline and the Cascade Water Alliance related to the Unintentionally Delivered Water, including SPU's invoices to Highline, Highline payments to SPU, and any other claims between Highline and SPU and between Highline and Cascade Water Alliance arising from these events (the "Litigation"), and avoid litigating these matters.

Highline and Tukwila have reached a settlement agreement, each to resolve all claims regarding the Potential Litigation.