

**HIGHLINE WATER DISTRICT
King County, Washington**

RESOLUTION 22-8-17B

RESOLUTION AUTHORIZING A SETTLEMENT AGREEMENT BETWEEN HIGHLINE WATER DISTRICT AND THE CITY OF TUKWILA TO SETTLE THE MATTER OF UNINTENDED WATER DELIVERY 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 pursuant to the terms of the Intertie Agreement; and,

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

WHEREAS, the Parties wish to resolve all claims amongst Cascade Water Alliance, 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 their supply contract, and any claims arising from these events (the "Potential Litigation"), and avoid litigating these matters; and,

WHEREAS, Highline and SPU have entered into a settlement agreement, Cascade and SPU have entered into a settlement agreement, and Highline and Tukwila proposes 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 22-8-17B

NOW, THEREFORE, BE IT RESOLVED:

1. The General Manager or designee is authorized to execute the Settlement Agreement between Highline Water District and the City of Tukwila, 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

Polly Daigle, President

DocuSigned by:

Vince Koester

Vince Koester, Commissioner

DocuSigned by:

Kathleen Quong-Vermeire

Kathleen Quong-Vermeire, Commissioner

DocuSigned by:

Daniel Johnson

Daniel Johnson, Secretary

DocuSigned by:

Todd Fultz

Todd Fultz, Commissioner

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into as of _____, 2022 (the “Effective Date”) between Highline Water District, a Washington municipal corporation (“Highline”) and the City of Tukwila, a Washington municipal corporation (“Tukwila”) (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 July 2013, the Seattle Public Utilities Department (“Seattle” or “SPU”) and Cascade executed the 2nd Amended and Restated Declining Block Water Supply Agreement between The City of Seattle and Cascade Water Alliance (“Block Contract”), which provides that Seattle shall sell to Cascade and Cascade shall purchase from Seattle, according to the terms of the Agreement, a wholesale supply of water for resale to Cascade members and prohibits Cascade or its members (“Cascade Members”) from selling water supplied under the Block Contract within Seattle’s Service Area Boundary unless Cascade obtains Seattle’s prior written consent and an equivalent amount of Base Block will be converted to Supplemental Block; and
2. WHEREAS, in accordance with the Block Contract, SPU delivers the water (“Block Water”) directly to Cascade Members at the Points of Delivery listed in *Exhibit II* of the Block Contract (May 11, 2020 version). The Cascade Members then deliver the water for retail service within their respective service areas; and
3. WHEREAS, Tukwila is a Cascade Member; and
4. 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
5. WHEREAS, the Intertie is the subject of an Agreement for Emergency Sale of Water between the District and the City dated March 31, 2000 (“Intertie Agreement”); and
6. WHEREAS, in 2017, SPU contacted Tukwila and asked that Tukwila make arrangement for alternative points of delivery during a planned shutdown while SPU performed repairs for the periods of July 21 to 22, 2017 and September 26 to October 10, 2017; and
7. WHEREAS, Tukwila did make alternative arrangements. To accommodate SPU’s need, Tukwila arranged for Highline to supply the Block Water to Tukwila during those periods through the Intertie at South 180th Street and Andover Park West; and
8. WHEREAS, a malfunction occurred, and the Intertie remained open after October 10, 2017, resulting in 187,586 CCF of Block Water unintentionally delivered to Tukwila from Highline in 2017 to mid-2018 (“Unintentionally Delivered Water”); and
9. WHEREAS, Cascade paid Seattle for Block Water purchase consistent with the terms of the Block Contract, which amount was not altered by the decreased volume associated with the Unintentionally Delivered Water because the minimum Block Water purchase commitment was not reached; and
10. WHEREAS, Highline paid Seattle for its metered consumption pursuant to its Partial Requirements Contract with Seattle at rates then in effect, and then Highline submitted an

3. No Payment to SPU for Return of Water. SPU shall not invoice Highline for the return of the Unintentionally Delivered Water to be received by Highline from Tukwila through the intertie, as described in Sections 2 of this Agreement.
4. Reporting. Highline shall provide annual updates to SPU regarding the return of water described in Section 2. Highline's annual updates shall provide meter data and any other detailed information documenting the volume of water provided by Tukwila to Highline through the intertie and water return status.
5. Non-Waiver of Partial Requirements Contract Provisions. Highline acknowledges and agrees that (a) this settlement is a compromise of a disputed claim, (b) its receipt of water from Tukwila through the intertie for non-emergency reasons is inconsistent with the terms of the Partial Requirements Contract, (c) this Agreement does not obviate, waive, or invalidate any Party's obligations set forth in the Partial Requirements Contract, and (d) Seattle's 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 Partial Requirements Contract.
6. Release. In consideration for the return of water set forth in this Agreement, and in consideration for the mutual promises herein, the Parties, on their own behalves and on behalf of their respective insurers, principals, affiliates, employees, directors, officers, elected officials, agencies, agents, predecessors, successors, assigns and attorneys hereby mutually and fully release each other and their respective insurers, principals, affiliates, 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 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 Litigation.

In giving this release, each Party acknowledges that facts, circumstances or claims that arise from or relate to the 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 insurers, principals, affiliates, employees, directors, officers, elected officials, agencies, agents, 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.

Additionally, Highline in consideration for the return of water set forth in this Agreement, and in consideration for the mutual promises herein, on its own behalf and on behalf of its respective insurers, principals, employees, directors, officers, elected officials, predecessors, successors, assigns and attorneys hereby fully releases Cascade Water Alliance and its respective insurers, principals, employees, directors, officers, elected officials, agencies,

agents, predecessors, successors, assigns and attorneys from any and all claims, causes of action, demands, and liabilities, including claims for reimbursement, allocation or reallocation of payments, equitable relief, or any other claim or act that is known, existing, or should have been known, in connection to the Litigation.

7. 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 7 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.
8. 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.
9. Attorneys' fees and costs. Each Party will bear its own attorneys' fees and costs related to or incurred in the negotiation of this Agreement.
10. No Admission. This Agreement is a compromise of disputed claims. Accordingly, the 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.
11. 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.
12. 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.
13. 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 principals, affiliates, successors, assigns, trustees, administrators, insurers, officers, directors, elected officials, attorneys, agents, predecessors, successors, assigns, and employees.
14. 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.
15. 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 Partial Requirements Contract or the Parties' respective rights and obligations under said contracts 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.

16. Effective Date, Counterparts. This Agreement is effective upon the signatures of all the Parties. 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.
17. 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.
18. Captions. Captions and titles are for convenience only and shall have no effect on the construction or interpretation of any part hereof.

SIGNATURES

Highline Water District:

By _____ Date _____
General Manager

The City of Seattle, Seattle Public Utilities:

By _____ Date _____
General Manager

Agenda Item No.: 5.2
Agenda Date: 08/17/22
Reviewed By: ASD

Re: Authorize a settlement agreement between Highline Water District and the City of Tukwila to settle the matter of unintended water delivery 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 22-8-17B
2. Attachment 1 - Settlement Agreement (Highline/City of Tukwila)

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").

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Highline and SPU have entered into a settlement agreement, Cascade and SPU have entered into a settlement agreement, and Highline and Tukwila proposes a settlement agreement, each to resolve all claims regarding the Potential Litigation.