

**HIGHLINE WATER DISTRICT**  
**King County, Washington**

**RESOLUTION 10-5-26B**

**RESOLUTION AUTHORIZING A PAYMENT AGREEMENT BETWEEN  
THE HIGHLINE WATER DISTRICT AND SEGALE PROPERTIES, LLC  
REGARDING THE TUKWILA SOUTH PROJECT**

**WHEREAS**, the District has a franchise ("Franchise") dated December 2, 1991, from the City of Tukwila ("City") which authorizes the District to construct, operate, maintain, repair and replace water mains and facilities (collectively "Water Facilities") in, under, along and through City right-of-way pursuant to the terms and conditions of the Franchise; provided the Franchise also requires the District at its expense to raise, lower or move its Water Facilities located in City right-of-way or to place such Water Facilities in a location to accommodate City improvements to or work in City right-of-way.

**WHEREAS**, the District presently maintains an eight (8) inch water main and related facilities ("Existing Water Facilities") in Southcenter Parkway and Frager Road as such City right-of-way is presently constructed and aligned.

**WHEREAS**, the City entered into a development agreement dated June 10, 2009, as amended ("Development Agreement"), with Segale which provides for the development of certain real property known as the "Tukwila South Property" as a project known as the "Tukwila South Project" as further described in the Development Agreement; and the Development Agreement provides, in part, for the installation of certain street and utility infrastructure by the City and Segale as described in the Development Agreement, and, specifically, the realignment, relocation and extension of Southcenter Parkway located in the vicinity of the Tukwila South Property ("SCP Project").

**WHEREAS**, the Development Agreement requires the City to prepare a final design of the SCP Project, including utilities such as water, sewer, stormwater and other utilities necessary to serve the Tukwila South Project and to bid and undertake the construction of the SCP Project as a City public works project; and the Development Agreement in Section 4.3.4 requires Segale to obtain water service from the District and to pay all costs related to the design and construction of the water system upgrades necessary to serve the Tukwila South Project; and the City now requires the District to relocate its Existing Water Facilities and construct new water mains and facilities necessary to serve the SCP project ("Highline Work") as such facilities are described in an Interlocal Agreement dated the \_\_\_ day of May, 2010, by and between the City and the District, a copy of which is attached hereto as **Exhibit A** and incorporated herein by this reference ("Interlocal Agreement").

**WHEREAS**, the Highline Work includes both the relocation of the Existing Water Facilities in Southcenter Parkway and Frager Road due to the relocation of such City right-of-way as provided for in the Franchise (the "Franchise Work") and also the design and construction

**HIGHLINE WATER DISTRICT**  
**King County, Washington**

**RESOLUTION 10-5-26B**

of oversized water mains with greater capacity than the Existing Water Facilities to serve Segale's Tukwila South Project (the "Oversizing Work"); provided, that the Franchise requires the District to pay for the cost and expense of the Franchise Work and the Development Agreement and the Interlocal Agreement require Segale to pay for the cost and expense of the Oversizing Work.

**WHEREAS**, the Development Agreement in Section 4.3.4.1 provides that the City will include the Highline Work in its SCP Project as a bid additive and account for and invoice the District separately for the Highline Work, and the City and the District have entered into the Interlocal Agreement which requires the District to reimburse the City for the cost of the Highline Work; provided, the Development Agreement and the Interlocal Agreement also provide that the District shall enter into a separate agreement with Segale pursuant to which Segale shall reimburse the District for the cost of the Oversizing Work; provided further, the Development Agreement requires Segale to provide the City with a letter of credit in the amount of 110% of the estimated cost of the Oversizing Work as security for payment of those costs, and in the event that the District fails to reimburse the City for the cost of the Oversizing Work pursuant to the terms of the Interlocal Agreement, the City may draw upon the letter of credit as provided for in the Development Agreement.

**WHEREAS**, Highline and Segale have agreed that of the final cost of the Highline Work and associated administrative costs ("Highline Work Final Cost"), the District is responsible to pay fifty-one (51) per cent of the Highline Work Final Cost ("Franchise Final Cost") and Segale is responsible to pay forty-nine (49) per cent of the Highline Work Final Cost ("Oversizing Final Cost").

**WHEREAS**, the City competitively bid the construction of the SCP Project, included the Highline Work in such project bid as a separate additive bid schedule, and the apparent lowest responsible bidder submitted a bid for the Highline Work in the amount of One Million Three Hundred Sixty Seven Thousand Nine Hundred Thirty Dollars and Ninety-Four Cents (\$1,367,930.94), including applicable Washington State sales tax. The City and the District have negotiated an administration fee in the Interlocal Agreement for an amount not to exceed eight (8) per cent of the additive bid schedule, which amount is One Hundred Nine Thousand Four Hundred Thirty Four Dollars and Forty Eight Cents (\$109,434.48), resulting in a Highline Work Bid Cost ("Highline Work Bid Cost") of One Million Four Hundred Seventy Seven Thousand Three Hundred Sixty Five Dollars and Forty Two Cents (\$1,477,365.42); and the City agreed in the Interlocal Agreement to include the Highline Work in the SCP Project on the condition that the District reimburse the City for the cost of the Highline Work on the terms and conditions set forth in the Interlocal Agreement.

**WHEREAS**, the District and the City agreed in the Interlocal Agreement that the City should include the Highline Work in the SCP Project and the District agreed to reimburse the

**HIGHLINE WATER DISTRICT  
King County, Washington**

**RESOLUTION 10-5-26B**

City for the cost of the Highline Work as provided in the Interlocal, including that the City award the SCP Project contract resulting in the Highline Work Bid Cost and that the City require Segale to provide the City with a letter of credit as provided for in Section 4.3.4.1 of the Development Agreement in the amount of Seven Hundred Ninety Six Thousand Two Hundred Ninety Nine Dollars (\$796,299.00), which amount is 110% of forty-nine (49) per cent of the Highline Work Bid Cost.

**WHEREAS**, Segale will agree to reimburse the District for the cost of the Oversizing Work so that the District may then reimburse the City for the full cost of the Highline Work when invoiced by the City for the Highline Work Final Cost as that amount is determined pursuant to the Interlocal Agreement; and the District has agreed in the Interlocal Agreement to reimburse the City for the full cost of the Highline Work, including the Oversizing Work, on the condition that, upon the District's receipt of an invoice from the City the Highline Work Final Cost pursuant to Section 2.7 of the Interlocal Agreement, the District shall pay the Highline Work Final Cost to the City in full within forty-five (45) days of the receipt of such City invoice, provided, that upon Highline's receipt of the City invoice for the Highline Work Final Cost, Highline shall promptly invoice Segale for the Oversizing Final Cost and if Segale fails to pay the Oversizing Final Cost to the District within twenty (20) days of Segale's receipt of the Highline Work Final Cost invoice from the District, then District shall promptly notify the City of Segale's failure to timely pay the District and the District is then only required to pay the City the Franchise Work Final Cost as determined in the Interlocal Agreement and shall have no further obligation or duty to pay the Oversizing Final Cost to the City; but in that event, the City shall have the right pursuant to the Development Agreement to draw upon the letter of credit as provided in Section 4.8.4 of such agreement to recover and be reimbursed by Segale for the Oversizing Final Cost.

**WHEREAS**, the Plans and Specifications for the Highline Work have been prepared by the City's consulting engineers ("Consulting Engineers") generally in accordance with the 2008 State of Washington Standard Specifications for Road, Bridge and Municipal Construction and the District's standard specifications as provided by the District to the Consulting Engineer ("Plans and Specifications"). The Interlocal Agreement provides that the City shall invoice the District for the City's costs incurred from the Consulting Engineer to prepare the Plans and Specifications on a time and materials basis, and that the District shall pay the City invoice for such costs within forty five (45) days of receipt, provided the District's obligation to pay the costs of such work shall not exceed One Hundred Sixteen Thousand Seven Hundred Fifty Six Dollars (\$116,756.00) ("Design Work Cost"); and the City has advised the District that the Design Cost Work is \$116,756. Highline and Segale have agreed that Highline is responsible to pay Ninety Three Thousand Three Hundred and Seventy Eight Dollars (\$93,378.00) of the Design Work Cost ("District Design Work Cost") and Segale is responsible to pay Twenty Three Thousand Three Hundred and Seventy Eight Dollars (\$23,378) of the Design Work Cost ("Segale

**HIGHLINE WATER DISTRICT**  
**King County, Washington**

**RESOLUTION 10-5-26B**

Design Work Cost") to prepare the Highline Work Plans and Specifications referenced in the Interlocal Agreement. Accordingly, this Agreement provides for Segale's payment to the District of the Segale Design Work Cost following the District's receipt of an invoice from the City for the Design Work Cost.

**WHEREAS**, Section 4.2 of the Development Agreement provides for the modification of a levee system on a portion of the Tukwila South Property for the Tukwila South Project and provides for the removal of an existing levee located on the Tukwila South Property and the relocation and construction of a new levee generally located in the area between S. 200th Street and S. 204th Street on the Tukwila South Property (referred to as the "Levee Modification" in the Development Agreement) in the area as depicted on **Exhibit B** attached hereto and incorporated herein by this reference.

**WHEREAS**, the District presently maintains an eighteen (18) inch water main in S. 204th Street and in the area between S. 204th Street and S. 200th Street within an easement having King County Recording No. 6291827 ("Easement") as depicted on **Exhibit B** ("Existing Water main"). Pursuant to the Levee Modification, Segale proposes to construct a new levee on top of and adjacent to the Existing Water main and to enhance an existing wetland ("Wetland") over a portion of the Existing Water main. The construction and existence of the Levee Modification and Wetland will compromise the integrity of the Existing Water main and the District's access thereto. Therefore, the Parties have agreed that the District shall install a new eighteen (18) inch water main as described on **Exhibit C** attached hereto and incorporated herein by this reference in Orillia Road in the area as depicted on **Exhibit B** ("Orillia Road Extension"), and that the District and Segale equally share the cost of the Orillia Road Extension (as further defined in this Agreement) to replace the Existing Water main. The Parties have also agreed that, following the District's completion of the Orillia Road Extension, the District shall terminate and release the Easement which will no longer be needed for the District's purposes. The District shall also shut off the existing eighteen (18) inch water main between S. 200th Street and S. 204th Street at the District's expense prior to Segale commencing work in that area within thirty (30) days of the receipt of written notice from Segale requesting such shut-off.

**WHEREAS**, to control and provide adequate water pressure to the Tukwila South Project, it is necessary to construct two pressure reducing valve stations as described on **Exhibit C** attached hereto and incorporated herein by this reference ("PRV Work") in the area as depicted on **Exhibit B**. The Parties have agreed that the District shall install the PRV Work in the area as depicted on **Exhibit B** and that the District and Segale equally share the cost of the PRV Work (as further defined in this Agreement). The Parties have also agreed that the District shall construct the Orillia Road Extension and the PRV Work as part of the same public works project

**HIGHLINE WATER DISTRICT  
King County, Washington**

**RESOLUTION 10-5-26B**

("Public Works Project") and equally share the total cost and expense of the Public Works Project (as further defined in this Agreement).

**WHEREAS**, a portion of the District's water system consisting of approximately eight hundred (800) linear feet of eight (8) inch cast iron water main located in Southcenter Parkway/Frager Road in the area generally depicted on **Exhibit B** and more specifically described on **Exhibit E** attached hereto and incorporated herein by this reference ("SCPW/Frager Water main") may be compromised by the development of the Tukwila South Project. Therefore, the Parties have agreed that Segale shall abandon the SCPW/Frager Water main at Segale's sole cost and expense within seven (7) years of the date of this Agreement or, if Segale desires to continue to receive water service from the District's water system in the area of and adjacent to the SCPW/Frager Water main, Segale shall replace the SCPW/Frager Water main at Segale's sole cost and expense with new eight (8) inch ductile iron water main, or other size water main in accordance with the District's then applicable standard water main details and specifications.

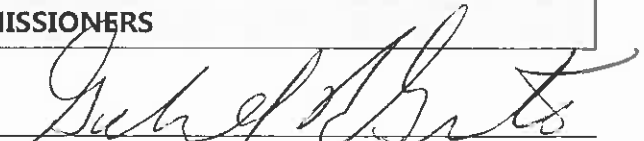
**NOW THEREFORE, BE IT RESOLVED:**

1. The General Manager or designee is authorized to enter into an Agreement with Segale Properties, LLC for the Tukwila South Project (attached as Exhibit A and herein incorporated by this reference) with the provision that the General Manager or the District's Legal Counsel is authorized to make minor changes to the agreement if required.

**ADOPTED BY THE BOARD OF COMMISSIONERS** of Highline Water District, King County, Washington, at a Special Workshop Open Public Meeting held this **26th** day of **May 2010**.


**BOARD OF COMMISSIONERS**

  
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