

**HIGHLINE WATER DISTRICT
King County, Washington**

RESOLUTION 20-1-28A

RESOLUTION AUTHORIZING A SETTLEMENT AGREEMENT BETWEEN HIGHLINE WATER DISTRICT AND REED TRUCKING & EXCAVATING, INC. RELATING TO PROJECT 19-3 SR 516/SR 99 & 9TH PLACE S WATER MAIN REPLACEMENT

WHEREAS, the parties to this Agreement are Highline Water District, a Washington municipal corporation (the "District") and Reed Trucking & Excavating, Inc. a Washington corporation ("Reed Trucking"); and

WHEREAS, except as expressly noted herein, the parties enter into this Agreement to fully and finally settle with prejudice all claims and controversies by and between them arising out of or connected with a certain public works contract, Project No. HWD 19-03 (the "Contract"), between the District and Reed Trucking for construction work to be performed by Reed Trucking and/or its subcontractors with regard to a project known as "SR 516 / SR 99 & 9th Place S. Water Main Replacement" (the "Project"); and

WHEREAS, during the course of work on the Project, disputes arose between Reed Trucking and the District regarding compensation and other issues related to the Project and under the Contract, including all those issues and disputes referred to in letters exchanged between the District and Reed Trucking (collectively, "Claims"). Among other things, Reed Trucking claimed that it was owed additional compensation for delays caused by unanticipated site conditions. Among other things, the District claimed that Reed Trucking failed to timely achieve substantial completion or final completion, thereby entitling the District to assess liquidated damages and alleged damage to pavement in a certain cul-de-sac due to the fault of Reed Trucking, its employees and/or agents ("pavement / cul-de-sac damage"). The parties each denied the claims asserted by the other; and

WHEREAS, the District has closed out the Project and formally accepted the work, and is in the process of releasing the statutory retainage in accordance with the Contract documents and applicable law; and

WHEREAS, the parties have reached a basic tentative agreement of all Claims, subject to approval by the District Board of Commissioners (the "Board").

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of Highline Water District, King County, Washington, as follows:


1. The General Manager or designee is authorized to execute the Settlement Agreement and Mutual Releases (**Exhibit A**, incorporated herein in full by this reference) for a not to exceed amount of \$20,000.00 including taxes less five percent (5%) statutory retainage to be paid on or before February 10, 2020.
2. Payment of the Settlement Amount shall be payable to Linville Law Firm Trust Account, and shall be tendered to legal counsel for Reed Trucking & Excavating, Inc.
3. The General Manager and legal are authorized to make minor changes to the Agreement.

**HIGHLINE WATER DISTRICT
King County, Washington**

RESOLUTION 20-1-28A

ADOPTED BY THE BOARD OF COMMISSIONERS of Highline Water District, King County, Washington, at an open public meeting held on the **28th** day of **January 2020**.

BOARD OF COMMISSIONERS



Vince Koester, President



Polly Daigle, Commissioner



Kathleen Quong-Vermeire, Commissioner



Todd Fultz, Secretary



Daniel Johnson, Commissioner

EXHIBIT A

SETTLEMENT AGREEMENT AND MUTUAL RELEASES

This Settlement Agreement and Mutual Releases (“Agreement”) is entered into by and between the parties as of the 29th day of January, 2020.

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 are as follows:
 - 1.1. Highline Water District, a Washington municipal corporation (the “District”);
and
 - 1.2. Reed Trucking & Excavating, Inc. a Washington corporation (“Reed Trucking”).
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 between them arising out of or connected with a certain public works contract, Project No. HWD 19-03 (the “Contract”), between the District and Reed Trucking for construction work to be performed by Reed Trucking and/or its subcontractors with regard to a project known as “SR 516 / SR 99 & 9th Place S. Water Main Replacement” (the “Project”).
3. **DISPUTES.** During the course of work on the Project, disputes arose between Reed Trucking and the District regarding compensation and other issues related to the Project and under the Contract, including all those issues and disputes referred to in letters exchanged between the District and Reed Trucking (collectively, “Claims”). Among other things, Reed Trucking claimed that it was owed additional compensation for delays caused by unanticipated site conditions. Among other things, the District claimed that Reed Trucking failed to timely achieve substantial completion or final completion, thereby entitling the District to assess liquidated damages and alleged damage to pavement in a certain cul de sac due to the fault of Reed Trucking, its employees and/or agents (“pavement / cul de sac damage”). The parties each denied the claims asserted by the other.

The District has closed out the Project and formally accepted the work, and is in the process of releasing the statutory retainage in accordance with the Contract documents and applicable law.

The parties have reached a basic tentative agreement of all Claims, subject to approval by the District Board of Commissioners (the “Board”). At a public meeting on January 28, 2020, the Board voted to authorize settlement upon the terms set forth in this Agreement.

4. **TERMS OF AGREEMENT.** In order to avoid the expense and uncertainty of potential litigation, and without admitting liability to any party, the parties to this Agreement agree as follows:
 - 4.1. In full and final settlement of all Claims, the District shall pay to Reed Trucking the sum of Twenty Thousand and no/100 Dollars (\$20,000.00), including all applicable taxes (the “Settlement Amount”), less five per cent (5%) statutory retainage, said sum to be paid on or before February 10, 2020. Payment of the Settlement Amount shall be payable to “Linville Law Firm Trust Account,” and shall be tendered to legal counsel for Reed Trucking.

4.2. The District will continue to process the final close-out of the Project, in accordance with the Contract documents and applicable law. The District will release the Project retainage (which is unrelated to the Settlement Amount) and the retainage withheld from the Settlement Amount in accordance with its obligations under applicable law.

5. **MUTUAL GENERAL RELEASES.** Except as set forth herein, the parties to this Agreement hereby waive, release, acquit and discharge all claims (“Released Claims”) against each other which relate to or arise out of the Contract, the Project and/or the Claims. Released Claims shall include, without limitation, all claims asserted or that could have been asserted by or against the parties to this Agreement and their respective agents, employees, officers, directors, shareholders, representatives, consultants, sub-consultants, insurers, sureties, attorneys, predecessors, successors, transferees, assigns, general partners, limited partners and related entities arising out of or relating to the Contract, the Project and/or the Claims.

Released Claims shall not extend to any claims or obligations that arise out of this Agreement or any other document executed or delivered pursuant to this Agreement or any claims for personal injury or property damage, although the parties represent that they have no present knowledge at this time of any such claims other than the alleged pavement / cul de sac damage, which is being released as part of this Agreement.

Released Claims shall not extend to any continuing warranty or other obligations of Reed Trucking and/or its surety per the Contract documents.

The parties agree that, with the exception of any specific manufacturers’ warranties that have not yet expired, all manufacturers’ warranty obligations of Reed Trucking under the Contract and related to the Project have been satisfied.

The parties fully acknowledge, understand and agree that, except as set forth herein, they are giving up all of their rights of any kind against each other through the effective date of this Agreement, known or unknown.

6. **NO ADMISSION OF LIABILITY.** This Agreement shall not constitute or be construed as an admission of liability, fault or responsibility on the part of any party, each of whom 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. **GOVERNING LAW; ATTORNEYS’ FEES.** This Agreement shall be construed and enforced in accordance with, and governed by, the laws of the State of Washington, and venue of any litigation arising out of this Agreement shall be in King County Superior Court. In the event of a dispute between the parties regarding the interpretation or enforcement of this Agreement, the prevailing party shall be entitled to an award of reasonable attorneys’ fees and costs.

9. **SEVERABILITY.** If any provision of this Agreement is deemed unlawful or unenforceable, such provision shall be fully severable, and the remainder of this Agreement shall be in full force and

effect with the automatic addition of a provision as similar in its terms to such unlawful or unenforceable provision as may be possible to make such provision lawful and enforceable.

10. NO WAIVER. Any failure by any party to enforce any provision of this Agreement, or to require at any time performance by any other party of any of the provisions hereof during the pendency of this Agreement, shall in no way affect the validity of this Agreement, nor any part hereof, and shall not be deemed a waiver of the rights of any party hereinafter to enforce any and each such provision.

11. FURTHER ASSURANCES. The parties to this Agreement agree to execute any further documents, and take any further actions, as may be reasonable and necessary in order to carry out the purpose and intent of this Agreement.

12. 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.

13. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement of the parties on all these subjects. 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.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed at _____, Washington, effective the date first above mentioned.

HIGHLINE WATER DISTRICT

**REED TRUCKING & EXCAVATING,
INC.**

Matt Everett, General Manager

Shawn Reed, President

361796.003.504

Agenda Item No.: 5.1

Agenda Date: 01/28/20

Reviewed By: JD/M.E.

RE: Authorize Settlement Agreement between Highline Water District and Reed Trucking and Excavating, Inc. relating to Project 19-3 SR5 16/SR 99 & 9th Place S Water Main Replacement

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

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

ATTACHMENTS:

1. Resolution 20-1-28A
2. Exhibit A - Settlement Agreement and Mutual Releases

COMMENTS:

Highline Water District and Reed Trucking & Excavating, Inc. have reached a basic tentative agreement of all Claims, subject to the approval by the District Board of Commissioners.

The General Manager and District Engineer recommend approval of this resolution.