

**CITY OF EVERETT / HOS BROTHERS CONSTRUCTION  
OVER-PRESSURIZATION EVENT – FEBRUARY 3, 2023  
SETTLEMENT AGREEMENT**

**WHEREAS:**

**A.** Hos Bros Construction Inc. (“Hos Brothers”) entered into a subcontract with a third party with respect to the Soundview Project, which is a private development in Everett. Under this subcontract, Hos Brothers installed certain piping, fittings, and related water facilities routing municipal water in or around the Soundview Technology Center.

**B.** On February 3, 2023, the City of Everett (“City”) received notice that some Everett residents were experiencing higher than normal water pressure and resulting damage to pipes and water heaters associated with work on the Soundview Project (the “Over-Pressurization Event”).

**C.** Upon investigation, it was found that the Over-Pressurization Event occurred after valves were operated at the Soundview Project before the set point had been calibrated on the water-supply line’s pressure reducing valve (“PRV”). The City and Hos Brothers dispute whether either of them is at fault for the Over-Pressurization Event.

**D.** In connection with the Over-Pressurization Event, some Everett residents, or their insurers, have already asserted (or may in the future assert) claims for property damage arising from the Over-Pressurization Event. In this Settlement Agreement, all such past, present, and future Over-Pressurization Event claims by residents, or their insurers, are referred to as “Residential Claims,” and these residents are referred to as “Residential Claimants.”

**E.** The City and Hos Brothers dispute liability for the Over-Pressurization Event, but have determined to resolve the Residential Claims efficiently and expeditiously without incurring unnecessary litigation costs, expenses, and attorney fees.

**F.** It is further recognized that other third parties may have liability or fault, which has not yet been determined or adjudicated.

**NOW, THEREFORE, IT IS AGREED BY THE UNDERSIGNING PARTIES:**

**1. The Parties.** The Parties to this Settlement Agreement are the City of Everett and Hos Bros Construction, Inc., which are referred to as either a “Party” singularly or the “Parties” collectively.

**2. Effective Date.** The Effective Date of this Settlement Agreement is the date of last signature by either Party to this Settlement Agreement.

**3. Residential Claims.** This Settlement Agreement contains the Parties’ settlement procedures for all Residential Claims, including those Residential Claims that

may have already been reported or asserted against the City and/or Hos Brothers and all Residential Claims that may be asserted against the City and/or Hos Brothers in the future.

**4. Claims Adjustment Procedure.** The Parties recognize that each of them, through their respective “Designee,” should have an opportunity to review the Residential Claims in accordance with the following Claims Adjustment Procedure:

**a. Claim Filings.** For each Residential Claim filed with the City in accordance with RCW 4.96.020 on the required Tort Claim Form, the City or the City Designee shall forward that documentation to the Hos Brothers Designee identified in Section 9 below.

**b. Claim Documentation.** For each Residential Claim filed, the City or the City Designee will gather the claim documentation that it determines is sufficient to proceed with adjustment of the Residential Claim.

**c. Claim Analysis.**

**(i) Adjustment Standards.** In making the adjustments described herein, the Parties agree to use recognized standards for the adjustment of real and personal property liability claims, and consideration will be given to the age and condition of personal property to arrive at an actual cash value for those items where depreciation may be applied (the “Adjustment Standards”).

**(ii) City Initial Recommendation.** After documentation has been gathered and reviewed, the City or the City Designee shall prepare a draft report of its findings and propose a recommended settlement amount in accordance with the Adjustment Standards, and shall forward the report and recommendation to the Hos Brothers Designee for review and consideration. Hos Brothers or the Hos Brothers Designee shall within 14 days inform the City’s Designee if Hos Brothers or the Hos Brothers’ Designee agrees with the City’s recommendation or wishes to meet to discuss the Residential Claim in accordance with the Adjustment Standards. If Hos Brothers agrees with the City’s recommended settlement amount, that amount shall be the agreed “Adjusted Settlement Amount” for resolution of the Residential Claim. If Hos Brothers does not agree with the City’s recommended settlement amount, the Parties shall confer in good faith regarding an Adjusted Settlement Amount for that Residential Claim.

**(iii) Residential Claimant Reimbursement.** After determination of an agreed Adjusted Settlement Amount for a Residential Claim, the City shall offer the Adjusted Settlement Amount to the Residential Claimant, on the condition that the Residential Claimant executes a “Residential Claimant Release” in substantially the form attached

hereto as **Exhibit A** or such other form as the Parties may mutually agree in writing from time to time. If the Residential Claimant in question accepts the offered Adjusted Settlement Amount and returns to the City an executed Residential Claimant Release, then the City shall within two weeks issue to such Residential Claimant a “Settlement Payment” in the amount of the Adjusted Settlement Amount. If the Residential Claimant in question declines the offered Adjusted Settlement Amount or refuses to return to the City an executed Residential Claimant Release, then the City and Hos Brothers shall confer in good faith regarding revision of the Adjusted Settlement Amount or how otherwise to proceed in accordance with the Adjustment Standards with respect to such Residential Claimant.

- (iv) **Resolution of Disputes Regarding Adjustment of a Residential Claim.** If the Parties for any reason do not agree on an Adjusted Settlement Amount or revision thereof, and this disagreement remains unresolved for more than 30 days, then either Party may refer the matter to a mutually agreed arbitrator, who shall summarily on review of submitted documents (which shall include each Party’s proposed Adjusted Settlement Amount or revision thereof) determine in accordance with the Adjustment Standards which of the two Parties’ proposed Adjusted Settlement Amounts or revision thereof is to be offered to the Residential Claimant. This determination shall be final and binding on the Parties unless both Parties agree in writing to reject the determination. The arbitrator’s cost shall be borne by the Party whose proposed Adjusted Settlement Amount or revision thereof was not selected by the arbitrator.
- (v) **Apportionment and Reimbursement.** After issuing a Settlement Payment to a Residential Claimant, the City shall notify Hos Brothers’ Designee of such payment and provide Hos Brothers’ Designee with a copy of the associated executed Residential Claimant Release and documentation showing costs incurred by the City for adjustment services for that Residential Claim provided by any third-party adjuster. Within 15 days after Hos Brothers’ Designee receives notice of the City’s issuance of a Settlement Payment and a copy of the associated executed Residential Claim Release, Hos Brothers shall issue a “Reimbursement Payment” to the City in the amount of the sum of (A) fifty percent (50%) of the City’s Settlement Payment to the Residential Claimant and (B) fifty percent (50%) of the City’s incurred reasonable costs for third-party adjustment services on that Residential Claim.
- (vi) The Parties agree that the adjustment and settlement processes set forth in this Section 4 are subject to the joint defense or common

interest protection or privilege. The Parties shall, subject to applicable law, keep confidential all documents and records created by either Party (or by a Party's agents or contractors) in connection with (A) the adjustment of Residential Claims, (B) the determination of settlement amounts for Residential Claims, or (C) the arbitration process set forth in subsection 4(iv).

**5. Settlement Consideration.** The Parties acknowledge and agree that the City's and Hos Brothers' respective payments made pursuant to Section 4 above are good and valuable consideration for this Settlement Agreement, given the risks and costs associated with potential litigation, which is intended to be avoided by this Settlement Agreement. It is agreed that, upon the City's receipt of the Reimbursement Payment associated with a Residential Claim, such Residential Claim is released under the terms set forth in Section 6 herein, irrespective of whether any other Residential Claim has not been resolved.

**6. Releases.**

**a. Persons/Entities Released.** Unless specifically excepted in this Settlement Agreement, the following persons and entities are released in accordance with subsection (b) below: the City, Hos Brothers Construction Inc. ("Hos Bros"), the Hos Brothers Designee(s), American Alternative Insurance Corp. ("AAIC"), Gallagher Bassett ("GB"), excess insurers, reinsurers, and each of their respective past and present owners, elected officials, officers, managers, employees, agents, attorneys, representatives, and insurers, and further including their present and future parent and subsidiary companies, affiliates, related entities, predecessors, successors, assigns, spouses, directors, servants, heirs, executors, administrators, and beneficiaries (collectively the "Party Releasees").

**b. Claims Released.** The Party Releasees as to each other are released and discharged fully and completely from and against each and every Residential Claim for which (i) the City has issued to the Residential Claimant a Settlement Payment, (ii) the City has obtained an executed Residential Claimant Release, and (iii) the City has received a full Reimbursement Payment from Hos Brothers (the "Released Residential Claims"). Such release encompasses without limitation any and all liability, rights, claims, demands, actions, judgments, and causes of action, in law or in equity, under statutory or common law, contractual or extra-contractual, known or unknown, past, present or future, claimed or unclaimed, direct or indirect, fixed or contingent, liquidated or uncertain, latent or patent, of any kind whatsoever, arising out of or in any way relating to the Released Residential Claims and the Claims Adjustment Procedure with respect to such Released Residential Claims, regardless of whether any such Released Residential Claim is for or comprises property damages, personal injury, torts, statutory claims, environmental claims or damages, attorney fees, costs, hedonic, punitive, or administrative damages or any other type of damages related to or arising from the Released Residential Claims.

**c. Claims Not Released.** The Parties understand and agree that third parties to this Settlement Agreement may have liability for the Residential Claims and other matters that may be associated with the Over-Pressurization Event or the Soundview Project. This Settlement Agreement does not release, waive, or affect any claims or rights associated with the Over-Pressurization Event or the Soundview Project other than as between the settling Parties as set forth herein. The Parties reserve all rights to assert claims to enforce the terms of this Settlement Agreement.

**7. No Admission of Fault or Liability.** This Settlement Agreement shall not be used by either Party as evidence of fault or liability as against the counter-Party except to enforce the terms of this Settlement Agreement. The Parties stipulate and agree that the settlement allocation herein shall not be interpreted or construed or used as evidence of the counter-Party's share or putative share of fault, other than to enforce the terms of this Settlement Agreement.

**8. Other Claims and Lawsuits.** The Parties covenant and agree that neither Party has or will file a lawsuit against the other associated with or related to any Residential Claim except to enforce the terms of this Settlement Agreement.

**9. Party Designees.** The Parties each respectively appoint the following Designees for the purposes of receiving the notices and communications set forth in this Settlement Agreement:

**a. The City of Everett Designee(s)**

**Name: Christine Muth-Schulz**

**Address: 2930 Wetmore Ave., 10-C  
Everett, WA 98201**

**Email Address: [cschulz@everettwa.gov](mailto:cschulz@everettwa.gov)**

**Telephone Number: 425-257-8702**

**b. Hos Bros Construction Inc. Designee(s)**

**Name: Donna M. Chamberlin**

**Address: Lewis Brisbois Bisgaard & Smith, LLP**

**1111 3<sup>rd</sup> Avenue, Suite 2700**

**Seattle, Washington 98101**

**Email Address: [Donna.Chamberlin@lewisbrisbois.com](mailto:Donna.Chamberlin@lewisbrisbois.com)**

**Telephone Number: (206) 508-1930**

**10. Waiver.** The waiver or indulgence of any breach or condition precedent of this Settlement Agreement shall not be deemed or construed as a waiver of any other breach or condition precedent; nor shall any breach or waiver of a condition precedent affect the enforceability of the remainder of this Settlement Agreement.

**11. Conferences Between the Parties.** If and when the Parties are required by this Settlement Agreement to confer regarding a matter, such conference shall be by telephone, videoconference, or in person, unless the parties agree otherwise.

**12. Survival.** This Settlement Agreement shall survive the cessation of each Party's obligations hereunder.

**13. Contract Integration.** The Parties understand and agree that this Settlement Agreement represents a fully integrated contract which supplants and fully replaces any previous communication or writing between the Parties concerning the settlement terms.

**14. Amendments.** No amendments, modifications, addenda, or revisions shall be made to this Settlement Agreement unless mutually agreed to by the parties in writing.

**15. Use of Titles.** The Parties understand and agree that the titles in this Settlement Agreement are for the purpose of organization only and are not to be used to interpret the Settlement Agreement.

**16. Severability.** Should any part of this Settlement Agreement be deemed unenforceable or substituted, the remaining parts of this Settlement Agreement shall remain valid and enforceable by substituting terms as appropriate for the set-aside or substituted part of the Settlement Agreement.

**17. Attorney Fees and Costs.** Each Party to this Settlement Agreement agrees to carry the burden of its own attorney fees and costs, including the cost of any litigation associated with the enforcement of the terms of this Settlement Agreement.

**18. Governing Law and Venue.** This Settlement Agreement shall be construed, interpreted, applied, and governed under the laws of the State of Washington, and exclusive jurisdiction and venue for any action related to this Settlement Agreement shall lie in the state or federal courts located in or with jurisdiction over Snohomish County, Washington.

**19. Dispute Resolution.** The Parties agree to work in good faith to resolve any dispute that pertains to, arises from, or is associated with the Over-Pressurization Event, this Settlement Agreement, and/or the Claims Adjustment Procedure. Should either Party have a dispute, such Party shall contact the counter-Party's Designee in writing (including by email), providing sufficient facts and notice to enable the Parties to confer on the issues. The Parties shall confer in good faith to resolve the dispute at least 30 days in advance of the filing any lawsuit concerning the dispute. Regardless of the foregoing, disputes concerning claims adjustment will be resolved in accordance with Section 4(c)(iv).

**20. Records Cooperation.** Hos Brothers acknowledges and agrees that the City is subject to the Washington Public Records Act. This Settlement Agreement is not confidential. Hos Brothers will cooperate with the City so that the City may comply with its obligations under the Washington Public Records Act.

**21. Binding on Others.** The terms of this Settlement Agreement are binding upon the heirs, successors, affiliated entities, executors and personal representatives of any Party to this Agreement.

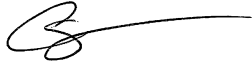
**22. Reliance on Own Counsel.** Each Party represents, acknowledges, and agrees that it has entered into this Settlement Agreement based upon consultation with and the advice of its own attorney, and that it has read and understands this Settlement Agreement, or has been given the opportunity to have its attorney explain the meaning and effect of this Settlement Agreement, and fully accepts the terms of this Settlement Agreement.

**23. Form of Execution.** This Settlement Agreement is signed with AdobeSign, which is fully binding.

**24. Signatory Representations.** The undersigned declare and represent that they are competent and duly and actually authorized to enter into this Settlement Agreement for the Party herein for which they are signing.

IT IS SO AGREED:

**CITY OF EVERETT  
WASHINGTON**



\_\_\_\_\_  
Cassie Franklin, Mayor

05/20/2024

\_\_\_\_\_  
Date

ATTEST

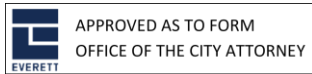


\_\_\_\_\_  
Office of the City Clerk

**HOS BROS CONSTRUCTION INC.**

Signature: *Russell Proctor*  
\_\_\_\_\_

Name of Signer: Russell Proctor  
Title of Signer: Chief Financial Officer





**EXHIBIT A  
FORM RESIDENTIAL RELEASE**

**PROPERTY DAMAGE RELEASE**

Property Address: \_\_\_\_\_ Everett, Washington.

The undersigned, \_\_\_\_\_, being of lawful age and for the sole consideration of \_\_\_\_\_ dollars (\$ \_\_\_\_\_) (the "Settlement Amount"), for the undersigned and for the undersigned's executors, heirs, administrators, marital community, agents, successors and assigns, and on behalf of any other person having a claim or right in the property located at the address shown above, hereby releases, acquits and forever discharges the City of Everett, Hos Brothers, and each of their past, present and future agents, servants, employees, administrators, representatives, insurers (including without limitation American Alternative Insurance Corp. ("AAIC")), heirs and successors of and from any and all claims, actions, causes of action, demands, rights, damages, costs, loss of service, expenses and compensation of any nature whatsoever that the undersigned now has or that may hereafter accrue, whether based on a tort, contract, statutory or other theory of recovery, arising from or in any way related to an occurrence on or about February 3, 2023 at or near the address shown above, including without limitation all claims asserted in Tort Claim No. \_\_\_\_\_ filed with the City of Everett. The undersigned acknowledges and agrees that the release set forth above is a general and global release.

The undersigned expressly waives and releases any and all claims for damages that may exist as of the effective date of this release, but that the undersigned does not know of or suspect to exist, and which, if known, would materially affect the undersigned's decision to enter into this settlement.

The undersigned directs that the City of Everett pay the Settlement Amount as follows: \$ \_\_\_\_\_ to \_\_\_\_\_.

The undersigned is solely responsible for paying all costs, materials, contractor and materialmen fees, and lien claims for work, labor and material set forth and relate to Tort Claim No. \_\_\_\_\_.

It is understood and agreed that this settlement and payment of the Settlement Amount are not to be construed as an admission of liability by any parties hereby released, and that said releasees expressly deny liability to the undersigned and intend merely to avoid litigation.

*[signature on following page]*

The undersigned further declares and represents that no promise, inducement or agreement not herein expressed has been made to the undersigned, that this Release contains the entire agreement between the parties hereto, and that the terms of this Release are contractual and not a mere recital.

THE UNDERSIGNED HAS READ THE FOREGOING RELEASE AND FULLY UNDERSTANDS IT.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

at \_\_\_\_\_ [City], Washington.












# Over-Presurization Settlement Agreement\_SD.


Final Audit Report

2024-05-20

Created:	2024-05-16
By:	Marista Jorve (mjorve@everettwa.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAApj976Ovt02bwKWABjUlw5lbpnk7iIKp

## "Over-Presurization Settlement Agreement\_SD." History

-  Document created by Marista Jorve (mjorve@everettwa.gov)  
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-  Document emailed to Tim Benedict (TBenedict@everettwa.gov) for approval  
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-  Email viewed by Tim Benedict (TBenedict@everettwa.gov)  
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-  Document approved by Tim Benedict (TBenedict@everettwa.gov)  
Approval Date: 2024-05-16 - 4:56:32 PM GMT - Time Source: server
-  Document emailed to russellp@hosbros.com for signature  
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-  Email viewed by russellp@hosbros.com  
2024-05-17 - 3:08:58 PM GMT
-  Signer russellp@hosbros.com entered name at signing as Russell Proctor  
2024-05-17 - 10:12:57 PM GMT
-  Document e-signed by Russell Proctor (russellp@hosbros.com)  
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-  Document emailed to Cassie Franklin (cfranklin@everettwa.gov) for signature  
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 Document emailed to Marista Jorve (mjorve@everettwa.gov) for signature

2024-05-20 - 3:45:21 PM GMT

 Document e-signed by Marista Jorve (mjorve@everettwa.gov)

Signature Date: 2024-05-20 - 3:51:14 PM GMT - Time Source: server

 Agreement completed.

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