

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Penalty Assessment  
Against

AERO CONSTRUCTION

In the amount of \$20,000

DOCKET DG-180992

SETTLEMENT STIPULATION AND  
AGREEMENT

**I. INTRODUCTION**

1           This settlement stipulation and agreement (the “Agreement”) is entered into by both parties to this proceeding for the purpose of resolving all issues raised in the above docket. The Agreement is a “full settlement” as defined in WAC 480-07-730(1) because it is entered into by all parties and resolves all issues raised in the docket.

2           This Agreement is subject to the review and disposition by the Washington Utilities and Transportation Commission (“Commission”) to determine whether it complies with the applicable legal requirements and whether approval of the Agreement is consistent with the public interest. WAC 480-07-740–750.

**II. PARTIES**

3           The parties to this Agreement are Aero Construction (“Aero Construction” or “the Company”), and Staff of the Washington Utilities and Transportation Commission (“Commission Staff”) (collectively, “the Parties”).

**III. BACKGROUND**

4           Aero Construction is a construction company whose excavations (as defined in RCW 19.122.020(8)) are subject to the Underground Utility Damage Prevention Act, codified as chapter 19.122 RCW. The Commission administers and enforces the Act.

5 Pursuant to the Act, before an excavator commences any excavation, it must mark the boundary of the excavation area with white paint and provide notice of the planned excavation to a one-number locator service within two to ten business days before the scheduled date for the commencement of the excavation. RCW 19.122.030.

6 On January 23, 2019, the Commission served a penalty assessment of \$20,000 against Aero Construction for three alleged violations of RCW 19.122.030(2), for failing to provide the required notice to a one-number locator service not less than two business days before excavating, and one alleged violation of RCW 19.122.030(6)(c), for failing to provide additional notification of continued excavation to facility operators using the one-call notification system. The recommended penalties were assessed pursuant to RCW 19.122.055 for failure to notify a one-number locator service and causing damage to a hazardous liquid or underground gas facility. The penalty assessment alleged the following three violations:

1. \$5,000 penalty for the violation of RCW 19.122.030(2), which occurred on April 27, 2017;
2. \$5,000 penalty for the violation of RCW 19.122.030(6)(c), which occurred on July 26, 2017; and
3. \$10,000 penalty for the violation of RCW 19.122.030(2), which occurred on August 30, 2018.

7 On February 5, 2019, Aero Construction filed a contest of penalties and requested a hearing to contest the second and third violation.

8 On February 26, 2019, the Commission issued a Notice of Brief Adjudicative Proceeding. This notice scheduled a hearing for April 18, 2019, and set a deadline of April 11, 2019 to file any documents for consideration. On March 12, 2019, the Parties attended a settlement conference to resolve the disputed issues in this docket number. On

March 13, 2019, the Parties agreed to the terms of the Agreement.

#### IV. AGREEMENT

9           The Parties have reached an agreement on the issues raised in the above docket and present this Agreement for the Commission's consideration and approval. The Parties therefore adopt the following Agreement, which the Parties enter into voluntarily, to resolve the matters in dispute between them and to expedite the orderly disposition of this proceeding.

10           Aero Construction admits to the following violations:

- The violation of RCW 19.122.030(2) that occurred on April 27, 2017; and
- The violation of RCW 19.122.030(6)(c) that occurred on July 26, 2017.

11           The Parties stipulate that Aero Construction did not commit the alleged violation of RCW 19.122.030(2) that occurred on August 30, 2018. The Parties stipulate to this in light of the explanation Aero Construction gave to Commission Staff at the settlement conference that occurred on March 12, 2019, and to aid in the orderly settlement of this proceeding.

12           The Parties agree that Aero Construction will pay a penalty of \$7,500 for the two violations admitted to. The Parties further agree that Aero Construction will pay the Commission \$5,000 of the \$7,500 penalty within thirty (30) days after the Commission enters an order approving the Agreement. The Parties further agree that the remaining \$2,500 of the penalty will be suspended upon the condition that Aero Construction commits no further violations of chapter 19.122 RCW within twelve (12) months from the date the Agreement is approved.

13           Staff confirms that it will not pursue further enforcement against Aero Construction arising out of any of the allegations set forth in the penalty assessment.

14 Aero Construction commits that it will attend Washington 811 safety trainings on April 12, July 26, and October 18, 2019, to better train its staff on locate practices and procedures.

15 Aero Construction commits to making a good faith effort to comply with chapter 19.122 RCW going forward. This term includes continually updating the internal policies within the Company when deemed necessary by the Company to comply with chapter 19.122 RCW.

## **V. GENERAL PROVISIONS**

16 The Parties agree that this Agreement is in the public interest. The Parties further agree that this Agreement constitutes a settlement of all contested issues between them in this proceeding. The Parties understand that this Agreement is not binding unless and until accepted by the Commission. If the Commission does not accept this Agreement, including all of its terms and conditions without change, then the Parties shall be free to assert their pre-settlement positions.

17 The Parties agree to cooperate in submitting this Agreement promptly to the Commission for acceptance. The Parties agree to support adoption of this Agreement in proceedings before the Commission. No party to this Agreement or its agents, employees, consultants, or attorneys will engage in advocacy contrary to the Commission's adoption of this Agreement.

18            Nothing in this Agreement shall limit or bar any other entity from pursuing legal remedies against Aero Construction or Aero Construction's ability to assert defenses to such claims.

19            The Parties have entered into this Agreement to avoid further expense, inconvenience, uncertainty, and delay. The Parties recognize that this Agreement represents a compromise of the Parties' positions. As such, conduct, statements, and documents disclosed during negotiations of this Agreement shall not be admissible as evidence in this or any other proceeding, except in any proceeding to enforce the terms of this Agreement or any Commission order fully adopting those terms. This Agreement shall not be construed against either party because it was a drafter of this Agreement.

20            By executing this Agreement, no Party shall be deemed to have approved, admitted, or consented to the facts, legal principles, methods, or legal theories employed in arriving at the terms of this Agreement, nor shall this Agreement be used by any Party, or otherwise be binding on the Parties hereto, for resolving issues in any other proceeding, except to the extent expressly set forth in the Agreement.

21            The Parties have negotiated this Agreement as an integrated document to be effective upon execution. This Agreement supersedes all prior oral and written agreements on issues addressed herein. Accordingly, the Parties recommend that the Commission adopt this Agreement in its entirety.

22            The Parties may execute this Agreement in counterparts and as executed shall constitute one agreement. A signed signature page sent by facsimile or email is as effective as an original document.

23 The Parties shall take all actions necessary as appropriate to carry out this Agreement.

24 In the event that the Commission rejects all or any portion of this Agreement, or accepts the settlement upon conditions not proposed in this Agreement, each party reserves the right to withdraw from this Agreement by written notice to the other party and the Commission. Written notice must be served within 10 business days of service of the Order rejecting part or all of this Agreement or imposing conditions not proposed in this Agreement. In such event, neither party will be bound or prejudiced by the terms of this Agreement, and the Parties agree to request the prompt reconvening of a prehearing conference and to cooperate in developing a procedural schedule.


Respectfully submitted this 22 day of March 2019.

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION

AERO CONSTRUCTION

ROBERT W. FERGUSON  
Attorney General

\_\_\_\_\_  
Add Name of Owner/Representative  
Title: President

  
\_\_\_\_\_  
JOE DALLAS  
Assistant Attorney General  
Counsel for Utilities and Transportation  
Commission Staff

Dated: March \_\_\_\_, 2019

Approved as to form:

Dated: March 22, 2019

\_\_\_\_\_  
JEFFREY C. WISHKO  
Anderson Hunter Law Firm  
Counsel for Aero Construction

Dated: March \_\_\_\_, 2019

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ROBERT W. FERGUSON  
Attorney General

\_\_\_\_\_  
JOE DALLAS  
Assistant Attorney General  
Counsel for Utilities and Transportation  
Commission Staff


Dated: March \_\_\_\_\_, 2019

AERO CONSTRUCTION

  
\_\_\_\_\_  
Add Name of Owner/Representative  
Title: President

Dated: March 22, 2019

Approved as to form:

  
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JEFFREY C. WISHKO  
Anderson Hunter Law Firm  
Counsel for Aero Construction

Dated: March 22, 2019