

### December 30, 2019

Washington State Dig Law Safety Committee P.O. Box 749 Poulsbo, WA 98370

Sent via Email: wsdlsafetycommittee@gmail.com

RE:

Complaint Case 19-095; Seattle Public Utilities vs. Able Concrete Designs, LLC

SPU Claim No. RC-19-111 Location: 111 E Hamlin St. Date of Loss: October 19, 2018 Total Damages: \$2,432.60

### Statement of Seattle Public Utilities (SPU)

Dear WSDLSC Representative:

On October 19, 2018, SPU received a report that an Able Concrete Designs, LLC crew sawed through and damaged a SPU 2-inch fire water service line at the above location. SPU crews responded and repaired the damage. Total repair costs were \$2,432.60.

It was later discovered that the damage did not occur from sawing concrete, but instead when an Able Concrete Designs employee drove a stake through the line in order to set forms for the pouring of concrete. See Photo of punctured pipe RC-19-111.jpg. (Submitted by Chris Hutyler.)

On August 26, 2019, I mailed a cover letter, invoice, and documentation regarding a damage claim to Able Concrete Designs LLC. I noted in my letter that I had found no evidence that any locate had been called in to Washington One Call. There was no payment or response. See 8.26.19 Seattle Public Utilities damage claim RC-19-11.pdf.

I called the Able Concrete Designs office on October 21, 2019 and left a detailed voice message asking for the status of payment and locate information, as my research of *Washington One Call from September 1, 2018 through October 19, 2018 revealed no locate was requested by Able Concrete Designs, nor by any other contractor for the type of work that was being performed.* At that time, it was my belief that Able Concrete Designs had violated RCW 19.122.030 by failing to request a locate through Washington One Call. There was no response to my telephone message.

On October 30, 2019, I mailed a past due notice letter to Able Concrete Designs, again requesting payment and explaining that treble damages could be billed under RCW 19.122.070 (2). Again, there was no response. See 10. 30. 19 Past Due letter to Able Concrete RC-19-11.pdf.

On October 31, 2019, I called the Able Concrete Designs office. There was no answer and I could not leave a voice message because the voice mailbox was full.

On November 18, 2019, I spoke by telephone with Matt Herron, representative for the property owner/developer, 111 Hamlin, LLC, and also with Chris Hutyler of Hutyler Consulting, who acted as the general contractor. I also sent a complaint to the Washington State Dig Law Safety Committee via the web site: www.washington-ucc.org.

On November 26, 2019, I made a request for contact with Able Concrete Designs' "Contact Us" fillable form on the internet at ableconcretedesigns.com asking for someone to contact me about this damage claim and I requested the status of payment.

On that same day, I received an email from Amber Anderson at Able Concrete Designs stating: "Again, for the 3rd time. We were not responsible for where the GENERAL CONTRACTOR wanted us to work. We were working UNDER THEM. Please contact THEM for payment. This is not our responsibility. It was their project, their bond, their insurance and their responsibility. Please send me verification of zero balance. Thank you." See 11. 26. 19 ABLE CONCRETE RESPONSE NO. 1 re Past due invoice email.

NOTE: This was the *first time* I'd ever heard from anyone at Able Concrete Designs.

On December 12 and 18, 2019, I received photographs of the area where the damage occurred from Chris Hutyler of Hutyler Consulting. This is when I became aware that <u>Able Concrete</u> <u>Designs had driven a stake into the service line that was directly next to a water utility cover,</u> which acts as a locate under RCW 19.122.030 (9). In addition to not calling in a locate request, it seems that Able Concrete Designs had ignored clear indication that service lines were exactly where they were working. See IMG\_8622.jpg <u>and</u> Google view 111 E Hamlin St.jpg. (Photo submitted Chris Hutyler.)

On December 30, 2019, I sent a letter and invoice to the property owner/developer at the time the damage occurred, 111 Hamlin, LLC's registered agent, Matt Herron. SPU is now pursuing this debt against both Able Concrete Designs and 111 Hamlin, LLC. See 12.30.19 FINAL demand-Jetter & invoice to 111 Hamlin LLC with attachments.

I look forward to participating in the teleconference on Thursday, January 9, 2020 at 1:30 p.m. I kindly ask if you should become aware that Able Concrete Designs, LLC will have legal counsel present during this teleconference, that you notify me, so that I may have counsel from the Seattle City Attorney's Office present as well.

Respectfully submitted,

Brenda L David Senior Risk Analyst





December 30, 2019

111 Hamlin, LLC 565 13<sup>th</sup> Ave. Seattle, WA 98122-5554

Attn: Matt Herron, Registered Agent

Sent via Email: matt@47northdevelopment.com

RE:

SPU Claim No. RC-19-111 Location: 111 E. Hamlin St. Date of Loss: October 19, 2018 Total Damages: \$2,432.60

Dear Mr. Herron:

Here is where we are with this damage claim:

First, I need you to understand that *this invoice is not a fine or penalty*. The amount billed is the actual cost of repair that SPU bore as a result of Able Concrete Design's damage. We are a rate payer-based system. If I am unable to recover monies for damaged assets, then our rate payers cover those costs. At the end of the day, I do my best to fulfill that responsibility and prevent our rate payers from protecting the bottom line of private developers, property owners, and contractors.

Aside from responsibility of drainage and wastewater assets, SPU is responsible for maintaining and repairing approximately 1,800 miles of water pipeline, 20,000 valves, 18,000 fire hydrants, 180,000 water service connections, and dozens of other water facilities. Any time there is damage to any SPU asset, crews must be pulled from regularly assigned work and reassigned to fix the damage, which is the case here. This was not a repair that could be scheduled down the road, given the size of the line and the volume of water. As such, it was scheduled as soon as possible and there was some labor at premium pay as a result.

The contractor you paid, Able Concrete Designs, LLC, violated locate law under RCW 19.122. This is a serious violation, and as a result, there has been a telephonic hearing scheduled for January 9, 2020 at 1:30 p.m. with the Washington State Dig Law Safety Committee under Complaint Case 19-095, Seattle Public Utilities vs. Able Concrete Designs, LLC. Aside from not calling in a locate at all, which every contractor is required to do, the Able Concrete worker drove a stake directly into a 2-inch fire water service line that was sitting directly next to a water utility cover.

The Able Concrete Design employee absolutely should have known there was a water line where they were driving their stake into the ground. It was right next to a utility cover. Not to mention, the site plans include those same water lines as would the SPU Drainage Wastewater map that is automatically sent out with every locate request; except that here a locate was never requested. Able Concrete Design's actions defy any reasonable explanation.

I wanted to clarify one other point of confusion that was raised with respect to this claim previously, specifically the mention that SPU had not marked the pavement in blue near the damaged fire

service line under previous locates called in by other contractors. <u>Under the Utility Locate Law,</u> 1 <u>utility covers (like the one at issue here) are considered a locate marking in and of themselves.</u> So, in other words, where there are other means to identify a water service, we are not absolutely required to mark in blue paint. Nonetheless, this is a moot point for the situation at hand, given Able Concrete Designs never called in a locate with respect to the work that damaged SPU's asset.

I've discussed this at length with my supervisor, Eric Duncan, Claims and Litigation Supervisor. Moving forward, we will continue seeking payment from Able Concrete Designs, LLC as the subcontractor who damaged the line, and have now also invoiced 111 Hamlin, LLC as the property owner/developer at the time the damage occurred. It is our understanding that 111 Hamlin, LLC paid Able for this project, and property records indicate that 111 Hamlin, LLC turned a substantial profit from the development of this property. We are not pursuing Hutyler Consulting at this time.

If the matter remains unpaid, then SPU will pursue the matter further against Able Concrete Designs and 111 Hamlin, LLC, which will include legal action. At that time, we may pursue treble damages as allowed by RCW 19.122.070<sup>2</sup> (for a total of \$7,297.80).

SPU renews our request for payment of \$2,432.60 to cover the damage that 111 Hamlin, LLC's sub-contractor caused. I am attaching a copy of the invoice to 111 Hamlin, LLC.

Please remit payment to: Seattle Public Utilities

PO Box 94647

Seattle, WA 98124-4647

Be sure to note the SPU Claim No. RC-19-111 and Invoice No. SU1002894 on your check.

Entire RCW here:

https://app.leg.wa.gov/RCW/default.aspx?cite=19.122.030

Full text: https://app.leg.wa.gov/RCW/default.aspx?cite=I9.122.070

<sup>&</sup>lt;sup>1</sup>See RCW 19.122.030 (9) which states in part:

<sup>&</sup>quot;... (9) A facility operator *is not required to comply* with subsection (4) of this section with respect to service laterals conveying only water if their presence can be determined from other visible water facilities, such as *water meters*, *water valve covers*, *and junction boxes* in or adjacent to the boundary of an excavation area identified under subsection (1) of this section."

<sup>&</sup>lt;sup>2</sup>Able Concrete Design's actions are considered willful and malicious under the Utility Locate Law RCW 19.122.070 (2), and as such, are subject to treble (triple) damages. See RCW 19.122.070 (2):

<sup>&</sup>quot;...(2) Any excavator who willfully or maliciously damages a marked underground facility is liable for treble the costs incurred in repairing or relocating the facility. *In those cases in which an excavator fails to notify known facility operators or a one-number locator service, any damage to the underground facility is deemed willful and malicious and is subject to treble damages for costs incurred in repairing or relocating the facility."* 

Please feel free to call me if you have any questions. I thank you for your prompt attention to this matter.

Best regards,

Brenda L David Senior Risk Analyst

α Amber Anderson - office@ableconcretedesigns.com Chris Hutyler - chutman@gmail.com

### **INVOICE**



Treasury Dept Accts Receivable, PO Box 94626, Seattle WA 98124-6926

Invoice #: SU1002894
Invoice Date: 8/23/19
Page: 1 of 1

SEATTLE PUBLIC UTILITIES

Customer #: C10043684 - 1

Reference #: RC-19-111

Payment Terms: Net 30

Due Date: 9/22/19

**AMOUNT DUE:** \$2,432.60

Past due balances may be subject to late fee penalties and interest. For billing questions, please call 206-615-1449.

Line	Description	Quantity	Unit Amt	Net Amount
1	DAMAGE CLAIMS	1.00	2,432.60	2,432.60
	REPAIR DAMAGED FIRE LINE WATER SERVICE			
			Subtotal:	2,432.60
			Total Amount:	\$2.432.60

SPU CLAIM # RC-19-111 LOCATION: 111 E. HAMLIN ST. DATE OF LOSS: OCT 19,2018

111 HAMLIN, LLC

SEATTLE, WA 98122-5554

ATTN: MATT HERRON

565 13TH AVE

IF YOU HAVE ANY QUESTIONS REGARDING THIS CLAIM, PLEASE CONTACT BRENDA DAVID @ BRENDA.DAVID@SEATTLE.GOV

RETURN THIS PORTION WITH YOUR PAYMENT - Please do not write messages on the bill stub, instead write to us on a separate sheet of paper.

Payments can be made at Seattle Municipal Tower, 4th floor Customer Service Center - 700 5th Ave, Seattle, WA 98124-4214. Hours: M-F 8am to 5pm



Treasury Dept Accts Receivable PO Box 94626 Seattle WA 98124-6926 Invoice #: SU1002894 Customer #: C10043684 - 1 Reference #: RC-19-111 Due Date: 9/22/19 Amount Due: \$2,432.60

Amount Due: \$2,432.60 Enter amount Paid \$\_\_\_\_

Write invoice number on check. Please do not send cash.

Make check payable and mail to:

City of Seattle Treasury Dept Accts Receivable

PO Box 94626

Seattle WA 98124-6926

111 HAMLIN, LLC 565 13TH AVE SEATTLE, WA 98122-5554 ATTN: MATT HERRON



### **PAST DUE NOTICE**

October 30, 2019

Able Concrete Designs LLC 16633 244<sup>th</sup> Pl. SE Issaquah, WA 98027-8438 Attn: Accounts Payable

RE:

SPU Claim No. RC-19-111 Location: 111 E Hamlin St. Date of Loss: October 19, 2018 Total Damages: \$2,432.60

Dear Accounts Payable:

On August 26, 2019, I mailed you a cover letter, invoice, and documentation regarding a damage claim against Able Concrete Designs LLC. As previously noted, on October 19, 2018, SPU received a report that an Able Concrete Designs crew sawed through and damaged a SPU 2-inch fire water service line at the above location.

Total repair costs were \$2,432.60. I called your office on October 21, 2019 and left a detailed message asking for the status of payment and locate information, as my research of *Washington One Call from September 1, 2018 through October 19, 2018 revealed no locate was requested by Able Concrete Designs, nor by any other contractor for the type of work your crew was performing.* If, in fact, this work was performed without a locate request, this is a serious violation of Washington State Law, specifically, RCW 19.122.070, which states in part:

(2) ... In those cases in which an excavator fails to notify known facility operators or a one-number locator service, any damage to the underground facility is deemed willful and malicious and is subject to treble damages for costs incurred in repairing or relocating the facility. (Emphasis added.) Treble (triple) damages in this matter would be \$7,297.80.

Please remit \$2,432.60 to:

Seattle Public Utilities

PO Box 94647

Seattle, WA 98124-4647

Be sure to note the SPU Claim No. RC-19-111 and Invoice No. SU1002894 on your check. If you have any questions, please feel free to contact me at (206) 684-4549 or via email at Brenda.David@seattle.gov. If I do not hear from you or this matter remains unpaid by November 15, 2019, further collection action will be taken, which may include rebilling this matter in the amount of \$7,297.80. If you have already sent payment, please disregard this notice and we thank you.

Sincerely,

Brenda L David Senior Risk Analyst INVOICE



# City of Seattle

ABLE CONCRETE DESIGNS LLC

ISSAQUAH WA 98027-8438

16633 244TH PL SE

T. . . ury Dept Accta Receivable, PO Box 114826, Seattle WA 1181248928

Invoice#:

SU1002894

Invoice Date:

8/23/19

Page:

1 of 1

SEATTLE PUBLIC UTILITIES

Customer#:

C10043684 - 1

Reference #: **Payment Terms:** 

RC-19-111 Net30

Due Date:

9/22/19

AMOUNT DUE:

\$2,432.60

Past due balances may be subject to late fee penalties and interest. For billing questions, please call 206-615-1449.

Line	Description	Quantity	Unit Amt	NetAmount
1	DAMAGE CLAIMS	1.00	2,432.60	2,432.60
	REPAIR DAMAGED FIRE LINE WATER SERVICE			
			Subtotal:	2,432.60
			Total Amount:	\$ 2, 4 32 .6 0

SPU CLAIM# RC-19-111 LOCATION: 111 E HAMLIN ST. DATE OF LOSS: OCT 19,2018

IF YOU HAVE ANY QUESTIONS REGARDING THIS CLAIM, PLEASE CONTACT BRENDA DAVID@ BRENDA.DAVID@SEATTLE.GOV

يرسك RETURN THIS PORTION WITH YOUR PAYMENT PINN do not wiff 9 meuaga on the bill stub, InstNd wrl • bus on • s .. , a • . , - , Olim Payments can be made at SHttle Municillal Toww, 4" floor Customer sevice Center 100 5" Ave, Sffttle, WA 911%44%14 Hours: 11F 111mlb 5pm



## **City of Seattle**

Treasury Dept Accts Receivable POBox94626 Seattle WA 98124-6926

Invoice#: SU1002894 Customer#: C10043684 - 1 Reference #: RC-19-111 Due Date: 9/22/19 Amount Due: \$2,432.60

Enter amount Paid \$
While Inyoice number on check-Please do not send cash.

Make check payable and mail to:

City of Seattle

Treasury Dept Accts Receivable

PO Box94626

Seattle WA 98124-6926

ABLE CONCRETE DESIGNS LLC 16633 244TH PL SE ISSAQUAH WA 98027-8438

### wsdlsafetycommittee@outlook.com

From: Amber Anderson <office@ableconcretedesigns.com>

Sent: Tuesday, November 26, 2019 3:07 PM

**To:** David, Brenda **Subject:** Past due invoice

### **CAUTION: External Email**

Again, for the 3rd time. We were not responsible for where the GENERAL CONTRACTOR wanted us to work. We were working UNDER THEM. Please contact THEM for payment.

This is not our responsibility. It was their project, their bond, their insurance and their responsibility. Please send me verification of zero balance. Thank you.

Sent from my Verizon, Samsung Galaxy smartphone





