

WATER SYSTEM MANAGEMENT AGREEMENT

North Beach Water District, a Washington municipal corporation (**NBWD**) and Surfside Homeowners Association, a Washington non-profit corporation (**SHA**) which owns a water system known as Surfside Homeowners Association Water System (**System**) enter into this Water System Management Agreement (“**Agreement**”) as set forth herein.

RECITALS

- A. On February 22, 2011, **NBWD** and **SHA** entered into an Interim Management Agreement to provide management services to oversee the Surfside Homeowners Association Water System.
- B. On July 16, 2012, the parties amended the Interim Management Agreement to so that the Agreement automatic renewed for successive one-year terms, commencing on August 1, and end on July 31
- C. **NBWD** and **SHA** wish to enter into a new Agreement.

AGREEMENT

In consideration of the mutual promises and covenants contained herein, the parties agree as follows:

1. SERVICES PROVIDED:

- 1.1. In consideration of the payment of fees described in section 3 (**PRICE FOR SERVICES**), **NBWD** will serve as **System** manager. **SHA**'s contact shall be William Neal (**Neal**) and shall perform services to **SHA** as provided in this Agreement, except when he is “unavailable for service” for reasons such as; on leave, is away for training, or is ill. **Neal** will use a high degree of skill and care as an expert in water system management and supervision. **NBWD** will authorize **Neal** sufficient time each week, at **Neal**'s good judgment, to provide services described below. **Neal**, except times when he is unavailable for service, will be on call 24 hours a day, 7 days a week for emergencies involving the System. An “emergency” shall be the failure or imminent failure of any vital component of the System, in the opinion of **Neal**. **SHA** and **NBWD** agree that **Neal** will provide **System** supervision and management in accord with industry standards and with specific **System** operation needs. **NBWD** services will include, but not be limited to, the following:
- 1.2. **Neal** will prepare and manage a schedule for operation and maintenance of **System** in accordance with accepted public health practices and the **System**'s approved Water System Plan. Under the direction of **Neal**, **SHA**'s staff will operate and maintain the **System**;
- 1.3. **Neal** will examine and interpret all incoming correspondence concerning System, will communicate the meaning and significance of the correspondence to **SHA**, and will respond to correspondence.

- 1.4. **Neal** will prepare a monthly report for **SHA** on System observations and operation. **Neal** will present the report to **SHA**'s board of Trustees at their regular monthly board meeting unless excused for good cause by the Board President from attending a meeting.
- 1.5. **Neal** will manage **SHA** approved **System** capital improvement projects including planning, overseeing and inspection of work. It will also include coordinating with vendors, contractors, engineers, consultants, regulators, and others as needed to facilitate the successful completion of the project.

2. TERM OF AGREEMENT AND EFFECTIVE DATES:

Subject to paragraph 11 (TERMINATION), this Agreement will be for a term of three (3) years commencing August 1, 2015 and shall renew automatically for successive three-year periods.

3. PRICE FOR SERVICES:

- 3.1. From the date of approval of this Agreement, for services described in section one of this Agreement, **SHA** agrees to pay **NBWD** the sum of five thousand (\$5,000) per month.
- 3.2. Commencing January 1, 2016, for services described in section one of this Agreement, **SHA** agrees to pay **NBWD** a total of sixty two thousand four hundred dollars (\$62,400) a year to be paid in twelve installments of five thousand two hundred dollars (\$5,200) each. The first installment being due on the 10th day of January, 2016 and successive payments being due the 10th day of each following month.
- 3.3. Commencing January 1, 2017, for services described in section one of this Agreement, **SHA** agrees to pay **NBWD** a total of sixty four thousand two hundred dollars (\$64,200) a year to be paid in twelve installments of five thousand three hundred fifty dollars (\$5,350) each. The first installment being due on the 10th day of January, 2017 and successive payments being due the 10th day of each following month.
- 3.4. Commencing January 1, 2018, for services described in section one of this Agreement, **SHA** agrees to pay **NBWD** a total of sixty six thousand dollars (\$66,600) a year to be paid in twelve installments of five thousand five hundred dollars (\$5,550) each. The first installment being due on the 10th day of January, 2018 and successive payments being due the 10th day of each following month.
- 3.5. For each year thereafter, unless otherwise amended by mutually agreement, the fee for services described in section one of this Agreement shall increase three percent (3.5%) per year.
- 3.6. **SHA** will reimburse **NBWD** for its reasonable direct costs incurred in performing services under this Agreement, including but not limited to out-of-area lodging and per diem, mileage, and similar items. All direct costs will be reimbursed at actual amounts incurred, supported by invoices or statements. Mileage will be reimbursed at the current

Internal Revenue Service standard mileage rate for business miles driven. Notwithstanding the foregoing provisions of this paragraph **3.2**, **NBWD** will not be entitled to any payment from **SHA** for any costs related to employment of **Neal** by **NBWD**, including, but not limited to, taxes, withholding, fringe benefits, education expenses or any other expense which **NBWD** would incur in the absence of this Agreement.

- 3.7. **NBWD** will **not** generate invoices for the payments identified in paragraphs 3.1. **NBWD** will generate invoices for payments under paragraph **3.2**. All invoices submitted to **SHA** by the fifth (5th) day of the month will be due by the twenty-fifth (25th) day of the same month. All payments more than thirty (30) days in arrears will bear interest at a rate of eighteen percent (18%) per annum.

4. LIMITATION OF SERVICE:

- 4.1. **NBWD**'s responsibility is limited to the services of this Agreement.
- 4.2. **NBWD** has no responsibility in the event that **System**'s water source is interrupted, volume thereof is reduced, or the water is contaminated. **NBWD** has no responsibility to construct or install new or replacement facilities and structures of any kind. **SHA** will be responsible for financing of new or replacement facilities and structures and for all repairs to facilities and structures. All liabilities and obligations of the **System** will remain with **SHA**. **SHA** will keep in full force and effect during this Agreement general and commercial liability insurance with respect to its obligations under this Agreement in amounts and coverages reasonably approved by **SHA**.
- 4.3. **SHA** understands that **NBWD** is subject to state statutes and case authority regarding municipalities, including but not limited to the Public Records Act. And that such state statutes and case authority may supersede, govern, and modify **NBWD**'s duties and responsibilities under this **Agreement**.

5. LICENSE:

For the duration of this Agreement, **SHA** hereby grants **NBWD** license to enter onto all premises, easements, and properties of **SHA** to perform **NBWD**'s duties and responsibilities under this Agreement. This license is limited to **Neal** or other **NBWD** employees approved by **SHA** and limited to easements and premises directly related to the **System**.

6. INDEMNIFICATION:

Each party will defend, indemnify and hold harmless the other party, its officers, agents and employees, from and against any and all claims, including third party claims, costs, judgments or damages, including attorney's fees, arising out of the negligent acts or omissions of the party, its officers, agents and employees, in connection with this **Agreement**. The parties hereby waive, but only as to each other, their immunity from suit under industrial insurance, Title 51 RCW. This waiver of immunity was mutually negotiated by the parties. This paragraph will survive any termination or expiration of this Agreement.

7. CONSTRUCTION:

This Agreement is being entered into and will be construed and interpreted in accordance with the laws of the State of Washington.

8. INDEPENDENCE OF PARTIES:

In executing this Agreement, the parties are independent and acting solely for their own accounts, and nothing in this Agreement will cause them to be construed as partners, joint ventures, or having any other relationship under which either party could be deemed to be the agent of the other or as creating any rights in any third parties.

9. SEVERABILITY:

The invalidity, illegality, or unenforceability of any provision hereof will not in any way affect, impair, invalidate, or render unenforceable this Agreement or any other provision thereof.

10. WAIVER:

Failure on the part of either party to exercise or any delay in exercise of any rights hereunder will not act as a waiver thereof; nor will any waiver of acceptance of any partial, single, or delayed performance of any term or condition of this Agreement operate as a continued waiver or waiver any subsequent breach thereof.

11. TERMINATION:

The Agreement may be terminated by either **NBWD** or **SHA** upon fifteen (15) days written notice. In the event that **Neal** is no longer employed by **NBWD**, this Agreement may be terminated by **SHA** immediately upon written notice to **NBWD**.

12. INTEGRATION:

This Agreement integrates the understanding of the parties. It supersedes and cancels all prior negotiations, correspondence and communications between the parties with respect to the terms and conditions of this Agreement. No oral modifications of, or amendment to, this Agreement will be effective; however, this Agreement may be modified by written agreement signed by both parties to this Agreement.

13. INTERPRETATION OF FAIR CONSTRUCTION OF CONTRACT:

This Agreement has been reviewed and approved by the parties. In the event it should be determined that any provision of this Agreement is uncertain or ambiguous, the language in all parts of this Agreement will be in all cases constructed as a whole according to the fair meaning and not strictly construed for or against either party.

14. WARRANTIES AND REPRESENTATIONS:

SHA hereby warrants and represents **NBWD** that **SHA** either possesses or will possess valid and sufficient authority to provide water to the entire **System**.

IN WITNESS WHEREOF, the parties have signed this agreement on the dates below.

North Beach Water District:

William Neal, General Manager

Date: _____

Surfside Homeowners Association:

_____, President Board of Trustees

Date: _____