

**NORTH BEACH WATER DISTRICT
PACIFIC COUNTY, WASHINGTON**

RESOLUTION 22-2014

A RESOLUTION OF THE NORTH BEACH WATER DISTRICT OF PACIFIC COUNTY, WASHINGTON, REVOKING AN INTERIM WATER SYSTEM MANAGEMENT AGREEMENT AND APPROVING A WATER SYSTEM MANAGEMENT AGREEMENT BETWEEN SURFSIDE HOMEOWNERS ASSOCIATION AND NORTH BEACH WATER DISTRICT.

WHEREAS, on January 11, 2011, the Board of Commissioners (BOARD) adopted Resolution 02-2011 adopting an employment agreement with William Neal (NEAL) for the position of General Manager of North Beach Water District (DISTRICT); and

WHEREAS, on February 22, 2011, the BOARD adopted Resolution No. 04-2011 approving an Interim Water System Management Agreement (AGREEMENT) with Surfside Homeowners Association (SURFSIDE) whereby the parties mutually agreed, contingent on the terms and conditions of the AGREEMENT, that the DISTRICT will assign Neal and SURFSIDE will retain NEAL as SURFSIDE's Water System Manager from March 1, 2011 to July 31, 2012; and

WHEREAS, on July 16, 2012, the BOARD adopted Resolution No 12-2012 amending the AGREEMENT whereby the parties mutually agreed to extend the term and effective dates of the AGREEMENT from August 1, 2012 through July 31, 2013, and shall be extended automatically for successive one-year terms; and

WHEREAS, the BOARD and SURFSIDE desire to enter into a new Agreement; now, therefore

BE IT RESOLVED, by the Board of Commissioners of North Beach Water District, Pacific County, Washington, as follows:

Section 1. Resolutions 02-2011 and 04-2011 are hereby revoked.

Section 2. The Water System Management Agreement (MANAGEMENT AGREEMENT) between the DISTRICT and SURFSIDE, attached hereto and incorporated herein as Exhibit "A" is hereby approved.

Section 3. The General Manger is hereby authorized to execute the MANAGEMENT AGREEMENT.

Section 4. The General Manager is directed by the BOARD to faithfully diligently and competently perform the duties and obligations due under the terms and conditions of the MANAGEMENT AGREEMENT.

Adopted by the Board of Commissioners of North Beach Water District, Pacific County, Washington at its regular meeting held on the **19th day of October, 2015.**

Brian Sheldon, Commissioner
Position #1

Gwen Brake, Commissioner
Position #2

Glenn Ripley, Commissioner
Position #3

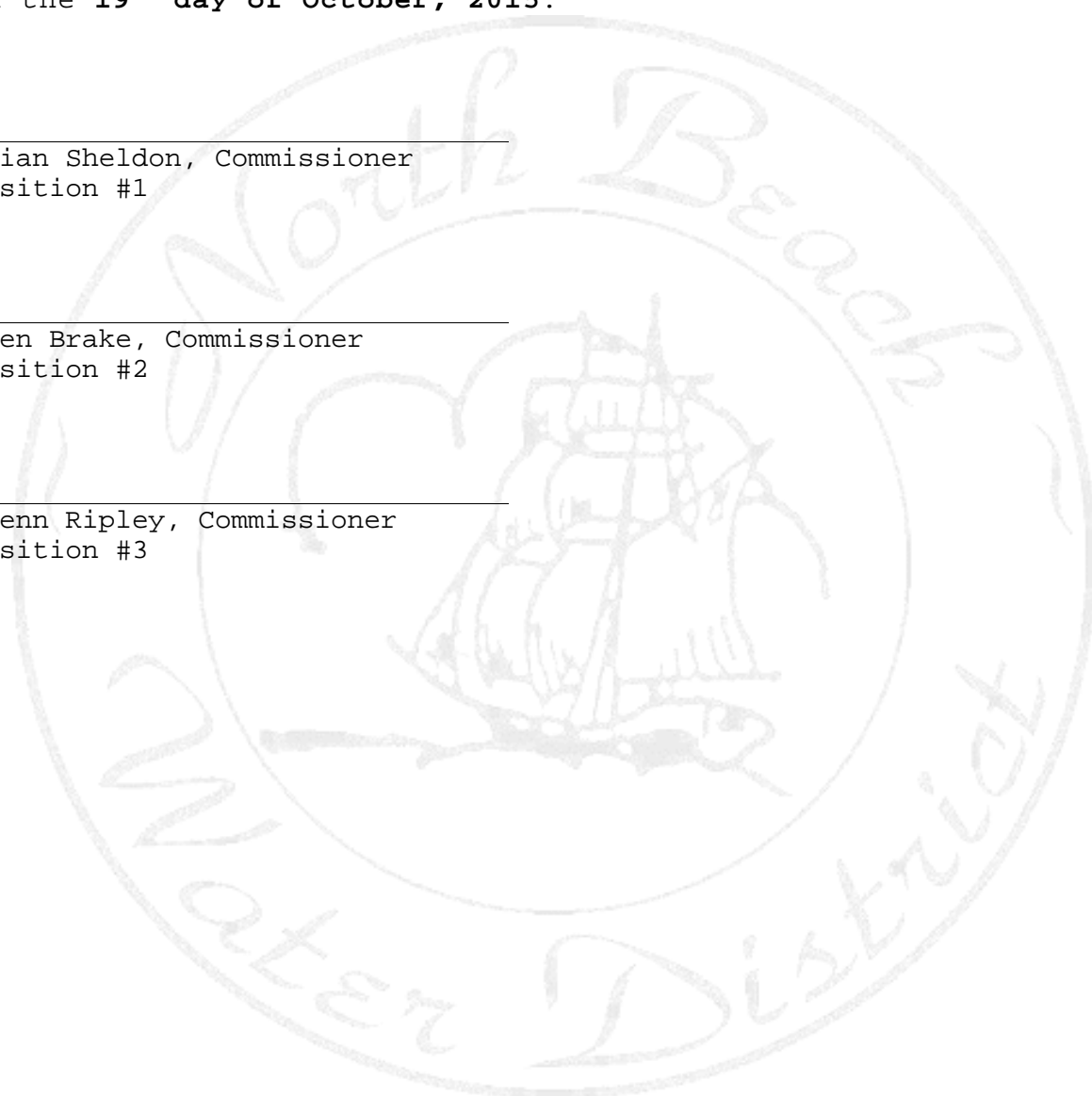


EXHIBIT "A"

WATER SYSTEM MANAGEMENT AGREEMENT

North Beach Water District, a Washington municipal corporation (**NBWD**) and Surfside Homeowners Association, a Washington non-profit corporation (**SURFSIDE**) 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 **SURFSIDE** entered into an Interim Management Agreement to provide management services to oversee the **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 **SURFSIDE** 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** shall assign and authorize William Neal (**NEAL**) to serve as **SYSTEM** manager providing supervision to **SYSTEM** staff and management of **SYSTEM**. **NEAL** shall perform services to **SURFSIDE** 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**. **SURFSIDE** 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**, **SURFSIDE**'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 **SURFSIDE**, and will respond to correspondence.
 - 1.4. **NEAL** will prepare a monthly report for **SURFSIDE** on **SYSTEM** observations and operation. **NEAL** will present the report to **SURFSIDE**'s board of Trustees at their regular monthly board meeting unless **excused for good cause by the Board President from attending a meeting**.

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- 1.5. **NEAL** will manage **SURFSIDE** approved **SYSTEM** capital improvement projects including analyzing the need for and proposing potential System capital improvement projects; planning; overseeing and inspection of work. **NEAL** will also coordinate with vendors, contractors, engineers, consultants, regulators, and others as needed to facilitate the successful completion of the project.
- 1.6. **NEAL** is authorized to make purchases and enter into contracts on behalf of **SURFSIDE** for necessary equipment and services for the **SYSTEM** in amounts of less than \$3,000.00 without approval of the **SURFSIDE** Board or office manager. The division of purchases or contracts into portions to fall below \$3,000.00 is not permitted.

2. TERM OF AGREEMENT AND EFFECTIVE DATES:

Subject to paragraph 11 (TERMINATION), this **AGREEMENT** will be for a term of one (1) year commencing October 1, 2015 and shall renew automatically for successive one-year periods.

3. PRICE FOR SERVICES:

- 3.1. For the services described in section one of this **AGREEMENT**, **SURFSIDE** agrees to pay **NBWD** the sum of five thousand (\$5,000) per month commencing October 2015 through December 2015 and \$5,450.00 per month for each month commencing January 2016 through December, 2021. After December 2021, the monthly fee shall remain unchanged (\$5,450.00) unless changed in writing by mutual agreement of **SURFSIDE** and **NBWD**. Each of these monthly payments is due on the 10th day of the month.
- 3.2. **SURFSIDE** 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 **SURFSIDE** 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**.
- 3.3. **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 **SURFSIDE** 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. **SURFSIDE** will be responsible for financing of new or replacement facilities and

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structures and for all repairs to facilities and structures. All liabilities and obligations of the **SYSTEM** will remain with **SURFSIDE**. **SURFSIDE** will keep in full force and effect during the term of this **AGREEMENT** general and commercial liability insurance with respect to the **SYSTEM** in amounts and coverages reasonably approved by **NBWD**. **NBWB** shall keep in full force and effect during the term of this **AGREEMENT** general and commercial liability insurance with respect to its obligations under this **AGREEMENT** in amounts and coverages reasonably approved by **SURFSIDE**.

- 4.3. **SURFSIDE** 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**, **SURFSIDE** hereby grants **NBWD** license to enter onto all premises, easements, and properties of **SURFSIDE** to perform **NBWD**'s duties and responsibilities under this **AGREEMENT**. This license is limited to **NEAL** or other **NBWD** employees approved by **SURFSIDE** 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 acceptance of any partial, single, or delayed

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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 **SURFSIDE** upon thirty (30) days written notice. In the event that **NEAL** is no longer employed by **NBWD**, this **AGREEMENT** may be terminated by **SURFSIDE** 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 construed as a whole according to the fair meaning and not strictly construed for or against either party.

14. WARRANTIES AND REPRESENTATIONS:

SURFSIDE hereby warrants and represents **NBWD** that **SURFSIDE** either possesses or will possess valid and sufficient authority to provide water to the entire **SYSTEM**. **NBWD** warrants that **NEAL** has, and **NBWD** shall cause **NEAL** to continuously maintain, all licenses and authorizations required for him to be the manager/chief operator of the **SYSTEM** and to perform the services as specified in this **AGREEMENT**, and **NBWD** shall cause **NEAL** to complete all trainings and take all other steps necessary to maintain such permits and authorizations.

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

North Beach Water District:

_____ Date: _____
William Neal, General Manager

Surfside Homeowners Association:

_____ Date: _____
Jim Flood, Board President

_____ Date: _____
George Miller, Board Secretary