


**Approval of Water System Agreement with North Beach Water District
Resolution 04-2008**

Resolution No. 04 - 2008


Be it resolved that on this date Monday, February 18, 2008 at a regular monthly board meeting of the North Beach Public Development Authority (NBPDA), the Board of Directors of NBPDA approved the Interlocal Agreement Between North Beach Public Development Authority and North Beach Water District Regarding Temporary Operation and Maintenance of the North Beach Water Supply System, attached to this Resolution, and authorized R D Williams, its President, to sign the Agreement on behalf of the Board of Directors, upon issuance by the Pacific County Canvassing Board of a certification that the ballot proposition for the formation of the North Beach Water District was approved by a majority of the voters of the District at the special election on February 19, 2008.

Passed and approved this 18th day of February, 2008


R D Williams, President


Tom Downer, Treasurer


Jim Hagen, Director


Richard Schroeder, Director


Brad Weatherby, Director

I, Celsa Johnson, duly appointed Secretary to the Board of the North Beach Public Development Authority (NBPDA) do hereby certify that the above is a true and correct copy of a resolution passed and approved by the Board of Directors of the NBPDA on this 18th day of February, 2008

Date: February 18, 2008


Celsa Johnson, Secretary to the Board

**INTERLOCAL AGREEMENT BETWEEN NORTH BEACH PUBLIC DEVELOPMENT
AUTHORITY AND NORTH BEACH WATER DISTRICT
REGARDING TEMPORARY OPERATION AND MAINTENANCE OF WATER
SUPPLY SYSTEM**

THIS AGREEMENT ("Agreement") is made and entered into this _____ day of February 2008, by and between NORTH BEACH PUBLIC DEVELOPMENT AUTHORITY ("PDA") and NORTH BEACH WATER DISTRICT ("District"), both Washington municipal corporations.

RECITALS

A. Pursuant to Pacific County Ordinance No. 155, as amended, which authorized the establishment and chartering of public authorities, and Pacific County Resolution No. 2004-74, which approved the charter and rules and regulations of the PDA, the PDA was established and created to undertake, assist with and facilitate the improvement of municipal water and/or fire suppression service for the unincorporated communities on the Long Beach Peninsula north of Cranberry Road.

B. To carry out its purpose, the PDA acquired the water supply systems of the Pacific Water Company and the Ocean Park Water Company, which serve approximately 2300 residences and 300 businesses within the territory of the PDA ("water system").

C. The PDA was formed for a limited period of time, with the intent and understanding that a water-sewer district would be formed for the purpose of taking over the water system functions and duties of the PDA.

D. Pursuant to Resolution No. 2007-64, the Board of Pacific County Commissioners approved a petition to form the North Beach Water District (generally located between the Pacific Ocean and Willapa Bay and between 295th on the North and 179th on the South, excluding Sections 3, 10 and 15 of Township 11 North, Range 11W., W.M.), and called a special election on February 19, 2008 for the formation of the District and the election of the commissioners.

E. On February ___, 2008, the Pacific County Canvassing Board certified that the formation of the District had been approved by a majority of the voters in the District. Pursuant to RCW 57.04.060, the District became a municipal corporation of the state of Washington on February ___, 2008.

F. The Boards of the PDA and the District deem it in the best interest of the PDA, the District and the water system customers to transfer ownership, operation and maintenance of the water system from the PDA to the District in an orderly manner over a period of several weeks. Therefore, the Boards of the Parties desire to have the PDA continue to operate and

maintain temporarily the water system until a formal transfer of the ownership, operation and maintenance of the water system by subsequent agreement between the Parties.

G. The Parties are authorized by RCW 57.08.044 and Chapter 39.34 RCW to enter into an interlocal agreement to carry out the temporary services stated above.

AGREEMENT

Now, therefore, in consideration of the following terms and conditions, the PDA and the District agree as follows:

1. Ownership and Transfer of Water System. The Parties acknowledge that the PDA is the owner of the water system until the District acquires the water system from the PDA. The Parties agree that the PDA will convey to the District all of the assets and liabilities of the water system, subject to assumption or assignment of the water system liabilities of the PDA, including but not limited to a Public Works Trust Fund loan, an outstanding Water Revenue Bond, a tractor lease and a copier lease. The specific terms and conditions of the conveyance shall be set forth in a subsequent agreement between the Parties.

2. Operation and Maintenance of Water System. The PDA shall operate and maintain the water system in substantially the same manner as on the effective date of this Agreement, and in accordance with this Agreement, applicable laws and regulations, applicable agreements and covenants, and best management practices. The PDA shall not construct or install any modifications or improvements to the water system without the written consent of the District. Except in an emergency, the PDA shall advise the District five (5) working days in advance of any repair over the amount of \$5,000.00.

3. PDA Employees and Consultants. PDA employees shall remain under the exclusive direction and control of the PDA. The PDA shall not create any new employee positions, hire replacement employees, or modify the terms and conditions of employment for PDA employees without the written consent of the District. The PDA shall not enter into any contract for the provision of new consultant services, or change consultants, without the written consent of the District.

4. Payment for Services. For the maintenance and operation services provided by the PDA under this Agreement, the District shall pay to the PDA an amount equal to the salaries and benefits of the PDA employees. Within seven (7) calendar days of the effective date of this Agreement, the PDA shall provide to the District a statement of the titles, salaries and benefit costs of all PDA employees. The PDA shall send a monthly invoice for the services to the District, in a format agreed to by the Parties. The District shall approve the invoice within 30 days of receipt in accordance with applicable claim request procedures. Any invoice not paid within the 30-day period shall become delinquent and shall accrue interest at the rate of twelve (12) percent per annum until fully paid. The District shall pay the invoice by authorizing the PDA to deduct from revenues of the water system the amount of the

approved invoice.

5. Records. The PDA shall maintain time and expense records for the services performed under this Agreement and shall provide them to the District upon request.

6. Insurance. The PDA shall continue to maintain insurance for the activities and services under this Agreement in the type and amount maintained by the PDA on the effective date of this Agreement.

7. Notices. All notices and other communications under this Agreement shall be in writing and shall be deemed to have been duly given if personally delivered or mailed with postage prepaid:

7.1 If to the PDA, to:

North Beach Public Development Authority
P.O. Box 618
Ocean Park, WA 98640
Attention: _____

or to such other person or place as the PDA shall furnish to the District in writing, with a copy to:

David O. Thompson
K & L Gates Preston Gates Ellis LLP
925 Fourth Avenue, Suite 2900
Seattle, WA 98104

7.2 If to the District, to:

North Beach Water District
P.O. Box 618
Ocean Park, WA 98640
Attention: _____

or to such other person or place as the District shall furnish to the PDA in writing, with a copy to:

Rod P. Kaseguma
Inslee, Best, Doezie & Ryder, P.S.
777 - 108th Avenue NE, Suite 1900
Bellevue, WA 98009-9016

Notices shall be deemed given upon personal delivery or, if mailed, upon the earlier of actual receipt or three (3) business days after the date of mailing.

8. Effective Date; Term. This Agreement shall become effective upon the date above and shall remain in effect through June 30, 2008.

9. Indemnification and Hold Harmless. The PDA shall indemnify, defend and hold harmless the District from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands or judgments, including without limitation reasonable attorney's fees, arising out of or in any way connected with the water system or the performance of services under this Agreement, except to the extent that such damage or injury is caused by or the result of the District's negligence or intentional malfeasance.

The District shall indemnify, defend and hold harmless the PDA from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands or judgments, including without limitation reasonable attorney's fees, arising out of or in any way connected with the water system or the performance of services under this Agreement, except to the extent that such damage or injury is caused by or the result of the PDA's negligence or intentional malfeasance.

10. Enforceability/Specific Performance. The rights granted herein and the indemnifications, covenants, agreements, obligations and reservations made or referenced in this Agreement are of a special and unique kind and character and, if there is a breach by either Party of the rights granted or the indemnifications, covenants, agreements, obligations and reservations made hereunder, the other Party shall be entitled to enforce such rights by specific performance and such other legal or equitable relief as provided under the laws of the State of Washington.

11. Waiver. Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Agreement unless stated to be such through written approval of the non-breaching district, which shall be attached to this Agreement.

12. Entire Agreement. This Agreement contains the entire written agreement of the districts and supersedes all prior discussions. This Agreement may be amended only in writing, signed by both Parties.

13. Further Acts. Each Party shall execute, acknowledge and deliver upon demand by the other any document or take such other reasonable actions which the other Party reasonably deems necessary or desirable to evidence or effectuate the rights herein conferred or to implement or consummate the purposes and intents of the Parties, so long as such imposes no greater burden upon such Party than is imposed hereunder.

14. Attorneys Fees and Costs. If any litigation or other proceeding is commenced by either Party to enforce or interpret any provision of this Agreement, the prevailing Party in such litigation or other proceeding shall be entitled to receive, in addition to all other sums and relief, its reasonable costs and attorneys' fees incurred both at and in preparation for such trial or other proceeding and any appeal therefrom or review thereof.

15. Governing Law and Venue. This Agreement has been executed under and shall be construed and enforced in accordance with the laws of the State of Washington. If there is any litigation or other proceeding to enforce or interpret any provisions within this Agreement, jurisdiction shall be in the courts of the State of Washington and venue shall be in Pacific County.

16. Successors and Assigns. All of the provisions, conditions, regulations and requirements contained in this Agreement shall be binding upon the successors and assigns of the Parties.

17. Administrator. For purposes of RCW 39.34.030, the administrator of this Agreement shall be the Chairman of the Board of Commissioners of the District.

IN WITNESS WHEREOF, the districts have caused this Agreement to be executed by their authorized representatives on the date first above written.

NORTH BEACH PUBLIC
DEVELOPMENT AUTHORITY

NORTH BEACH WATER DISTRICT

By _____
Its President

By _____
Its Chairman