

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

**RESOLUTION NO. 20-2009**

**A RESOLUTION OF THE BOARD OF COMMISSIONERS OF NORTH  
BEACH WATER DISTRICT, PACIFIC COUNTY, WASHINGTON,  
ADOPTING THE GENERAL MANAGER EMPLOYMENT AGREEMENT.**

**WHEREAS**, the North Beach Water District (District) has employed Michael Berlien as its General Manager; and

**WHEREAS**, the District desires to enter into an Employment Agreement with Mr. Berlien; therefore;

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

The Board adopts the attached Employment Agreement signed and dated this 20<sup>th</sup> day of July, 2009, which is to be offered to Mr. Berlien for his signature.

ADOPTED by the Board of Commissioners of North Beach Water District, Pacific County, Washington at its regular meeting held on July 20, 2009.



Brian Sheldon, Commissioner Position #1



Gwen Brake, Commissioner Position #2



R D Williams, Commissioner Position #3

**EMPLOYMENT AGREEMENT BETWEEN**  
**THE NORTH BEACH WATER DISTRICT**  
**AND MICHAEL BERLIEN**

- 1. The Parties.** The parties to this employment agreement (Agreement) are the North Beach Water District (NBWD) Board of Commissioners (BOARD), and Michael J. Berlien (MR. BERLIEN).
  - a. NBWD is dedicated to providing public water services to the greater Ocean Park, Washington area.
  - b. MR. BERLIEN is the current General Manager of NBWD, and is currently employed under the terms of an employment agreement dated November 7, 2007.
- 2. Offer.**
  - a. The BOARD offers continued employment to MR. BERLIEN as the General Manager of NBWD solely under the terms and conditions of this Agreement.
  - b. MR. BERLIEN accepts continued employment as the NBWD General Manager solely under the terms and conditions of this Agreement and agrees to be bound hereby.
  - c. Both the BOARD and MR. BERLIEN agree that this Agreement is of mutual benefit to both parties.
- 3. Scope of Work.** MR. BERLIEN shall perform the functions and duties of the NBWD General Manager, to include but not be limited to:
  - a. the operation and organization of all aspects of NBWD's water system including the maintenance of professional certifications as required by regulatory authority to operate the NBWD water system;
  - b. management and oversight of project funding; including identification of funding sources, the pursuit of such funds as directed, and management of funds in alignment with approved project activities;
  - c. implementation of marketing plans and strategies as directed;
  - d. the monitoring, analysis and reporting of current national, state and local issues that impact NBWD;
  - e. oversight of the budget process including annual budget development, and support of state and other audits of NBWD;
  - f. supervision of the NBWD staff of professional, technical and administrative employees to include the authority to evaluate and discipline employees, based on a needs assessment;
  - g. interface with the BOARD as necessary to meet staffing needs;
  - h. performance of other duties as assigned by the BOARD.
- 4. Standard of Professional Services.** MR. BERLIEN agrees as follows:



- a. MR. BERLIEN shall devote his full business time to NBWD's business and affairs.
  - b. MR. BERLIEN shall perform his duties in compliance with applicable laws, regulations, and NBWD policy.
  - c. MR. BERLIEN shall obtain approval in writing from the BOARD to sit on corporate, civic or charitable BOARDS or committees.
- 5. Hours of Work.** The parties agree that this position is full time and exempt from the provisions of collective bargaining representation. The position often requires the MANAGER to work before and beyond the scheduled business hours and occasionally on weekends and holidays. MR. BERLIEN shall receive holiday and jury duty benefits, as stated in NBWD's Employee Policies and Procedures Manual. The sick leave, compassionate leave and the vacation leave policy set forth in the NBWD Policies & Procedures Handbook shall not apply. MR. BERLIEN shall cause to be maintained a written record of time taken as Personal Time Off.
- 6. Status.** The employment of MR. BERLIEN shall at all times be at the pleasure of the BOARD.
- a. This status shall also be known as "at will" employment. The BOARD shall not require "cause" or "just cause" for dismissal or discipline of MR. BERLIEN.
  - b. Nothing in this Agreement is intended to or shall alter said status. Alteration of said status shall not be implied by any action taken by any officer, employee, or agent of NBWD and shall be accomplished only by a written amendment to this Agreement signed by all parties hereto.
  - c. MR. BERLIEN shall report to the BOARD or such other person as designated by the Board.
- 7. Compensation.** MR. BERLIEN will receive compensation as follows:
- a. Base Salary. MR. BERLIEN will continue to receive his current annual base salary (Base Salary) of \$82, 897.
    - i. Annual COLA and/or Merit increases shall be determined by the BOARD. COLA will be equivalent to that awarded to other NBWD employees for any given year.
    - ii. The BOARD may, but is not required to, conduct an annual performance review each year that MR. BERLIEN is employed by NBWD.
    - iii. The Base Salary shall be paid in substantially equal monthly increments and may be paid at more frequent intervals at the discretion of the Board.
    - iv. If the BOARD adjusts MR. BERLIEN's salary, the adjustment shall be in writing and appended to this Agreement.

- b. Fringe Benefits: MR. BERLIEN will receive the following fringe benefits, which may be adjusted or eliminated at the BOARD's discretion.
- i. *Personal Time Off*. MR. BERLIEN shall accrue 50 hours of paid personal time off (PTO) per quarter up to an annual total of 200 hours.
    - 1. This leave may be taken at MR. BERLIEN's discretion.
    - 2. Sick leave, compassionate leave, and vacation time off shall be calculated in MR. BERLIEN's PTO.
    - 3. MR. BERLIEN shall strive to schedule and take PTO in a manner that causes the least interference with the operations of NBWD.
    - 4. For PTO used in excess of two consecutive days, notice of PTO usage will be provided to the Board via E-Mail a minimum of one week prior to planned usage except for emergency needs. Requests for PTO usage may be denied if it is deemed that MR. BERLIEN's absence may place the water system operation in jeopardy.
    - 5. MR. BERLIEN's unused PTO shall be used each year prior to December 31<sup>st</sup>. If MR. BERLIEN wishes to carry over some portion of his PTO into the following year, he can only do so with permission of the Board. In the event he fails to seek permission to carry over unused PTO, or if permission is denied for any reason, then any unused PTO shall be paid to MR. BERLIEN in the last pay period of the year at his then current salary.
    - 6. Upon termination of employment per Section-9, MR. BERLIEN shall receive unused PTO pay, including 50 hours for the quarter in which he is dismissed, up to 200 hours at his then current salary.
  - ii. *Insurance Coverage*. NBWD will provide MR. BERLIEN with medical, dental, vision and life insurance, in the same amount and at the same benefit level as provided to all other employees.
  - iii. *Washington State Retirement (PERS Plan)*. MR. BERLIEN will be allowed to participate in the PERS plan in accordance with state law. MR. BERLIEN shall make contributions to the Plan in accordance with state law.
  - iv. In compensation for PERS contributions for the year 2008 and the first half of 2009; Mr. BERLIEN shall receive \$2,452 ((6.13% of \$80k) early 2008)), and \$6,191 ((8.31% of \$80,000 and \$82,897) 2008-2009) for a total of \$8,643 to be



deposited in the 457B Plan upon acceptance of this agreement by all parties.

- v. *Expenses.* MR. BERLIEN shall be reimbursed for all reasonable expenses he incurs in connection with his NBWD duties upon presentation of documentation to the BOARD.
- vi. *Vehicle.* The BOARD will make a vehicle available to MR. BERLIEN for use to, from and during the course of carrying out his duties for NBWD.
- vii. *Professional Development.* Subject to approval in advance by the BOARD, NBWD will pay certain professional dues, tuition and subscriptions for MR. BERLIEN and for his participation in certain national, regional, state and local associations and organizations, including Community Memberships, when the Board finds such expenses necessary and desirable for MR. BERLIEN's continued professional growth and advancement, and/or for the benefits to NBWD.
- viii. *No Oral Award of Benefits.* NBWD may agree to provide further benefits to MR. BERLIEN only by written amendment to this Agreement and approved by the Board.

**8. Confidentiality.** This paragraph shall remain effective during and after the termination date of this Agreement.

- a. MR. BERLIEN will exercise the utmost professional care to protect any and all information that is normally considered confidential and private to a water district.

**9. Renewal or Termination.** This Agreement shall commence upon signing of all parties and expire on December 31, 2012, four years from the Effective Date, January 1, 2009.

a. *Renewal:* In the event either party desires to terminate or modify the provisions of this agreement, written notice of such intention will be delivered to the other party a minimum of (6) months, (180 days) prior to the expiration date or this agreement will be extended one (1) additional year. This agreement will continue thereafter on an annual basis until the proper written notice to terminate or modify is provided.

b. In the event that MR. BERLIEN elects to voluntarily terminate his employment with NBWD prior to December 31, 2012, he shall give six (6) months (180 days) written notice to the BOARD. If MR. BERLIEN provides this notice and remains employed by NBWD for the entire six (6) months (180 days), then NBWD shall pay MR. BERLIEN a severance amount equal to four months salary and benefits at his current rate. The BOARD may forgive some of this notice period, and adjust the four month severance amount accordingly to allow an earlier

departure of MR. BERLIEN at the Board's discretion. If MR. BERLIEN does not provide 6 months (180 days) written notice, he will not be entitled to the severance set forth above, although the Board retains the right to provide a limited severance amount at its discretion.

c. General Termination:

In the event MR. BERLIEN is terminated by the DISTRICT before the expiration of the aforesaid term of employment or any other subsequent period and during such time MR. BERLIEN is willing and able to perform the duties as General Manager, then in that event the NBWD agrees to pay MR. Berlien a lump sum cash payment equal to MR. BERLIEN's salary and benefits for a period of (4) months at his then-existing rate for all compensation and fringe benefits to which MR. BERLIEN would have been entitled hereunder but for such termination.

d. Termination: Death, Disability, Material Breach, or Conviction of a Crime.

The provisions contained in Section A hereof notwithstanding, the NBWD may terminate this agreement immediately, upon occurrence of any of the following events:

- i. The death of MR. BERLIEN
- ii. The expiration of a (90) day period during which MR. BERLIEN is substantially unable or unwilling to perform his duties.
- iii. The material breach by MR. Berlien of any covenant, term, or condition of this agreement, including but not limited to Paragraph 8 of this agreement, unless waived by the NBWD in writing.
- iv. Conviction of any misdemeanor, felony or crime of moral turpitude.

In the event this Agreement is terminated by NBWD pursuant to the provisions of this Section 9-d, the severance pay provisions contained in Section 9 herein shall not apply.

**10. Return of Property.** Upon notice of dismissal or resignation, or sooner upon request of the BOARD, MR. BERLIEN shall return all files, correspondence, memoranda, computer software and print-outs, work papers, files, client lists, equipment and other tangible things which are the property of NBWD. MR. BERLIEN agrees that all systems, documents, reports, and compilations of whatsoever kind or nature developed during the performance of the work undertaken pursuant to this Agreement shall belong to or become the property of the NBWD to be used and retained without payment of any fee or license of any kind whatsoever by the NBWD. MR. BERLIEN agrees that upon notice or termination, or upon his



determination to resign from NBWD no copies, original documents, or other similar items will be removed from NBWD, no electronic files will be transmitted or deleted, and MR. BERLIEN agrees to return all items previously removed from NBWD.

**11. Disputes – Remedies.** The parties agree that disputes concerning interpretation of the meaning of any of the terms of this contract, scope of the duties to be performed under this contract, or other question relating to the performance of the terms of this contract shall be subject to arbitration according to the follow procedures; however, the parties agree to make any and all reasonable attempts to resolve disputes amongst themselves before moving forward with arbitration. Either party may initiate arbitration. The initiating party must first provide the other written notice of such setting forth with specificity the nature of the dispute. An arbitrator will be selected through agreement of both parties. In the event agreement cannot be reached within 15 days, each party shall select a representative to work on their behalf to select an arbitrator. Arbitration costs will be paid by the non-prevailing party, or shall be divided equally between the two parties if the arbitration results in a divided decesion. The arbitrator is empowered to determine all issues including employment duties and employment status during the arbitration process. Within thirty (30) days of the conclusion of the hearing, the arbitrator will decide the dispute by issuing a written decision. The arbitrator's decision will be final and binding upon the parties hereunder and enforceable, if necessary, in a court of law.

**12. Attorneys Fees.** The prevailing party shall recover reasonable costs and reasonable attorneys' fees in any lawsuit or arbitration arising out of or relating to this Agreement.

**13. Indemnity.** The Board agrees that NBWD will defend, hold harmless and indemnify MR. BERLIEN from any and all third party demands, claims, suits, actions, damages, costs, charges, and expenses, including court costs and attorney's fees; provided that the incident out of which such demands has arisen occurred while MR. BERLIEN is acting within the scope of his employment and per associated laws.

**14. Successors and Assigns.**

- a. MR. BERLIEN shall not assign his rights and duties under this Agreement.
- b. NBWD may assign its rights and duties to any successor.

**15. No Third Party Beneficiaries.** This Agreement is not intended to, nor shall it create any third party beneficiary or any contractual or other right for any third party.

**16. Controlling Law and Forum.** Washington State law shall govern this Agreement and court venue shall be Pacific County, except that should the NBWD seek injunctive relief, it may file such action in whichever venue it determines that relief might most effectively be obtained.

**17. Sufficiency of Consideration.** The parties hereto agree that the mutual covenants contained in this Agreement constitute sufficient consideration and that they are bound by each term and condition.

**18. Entire Agreement.** This Agreement is the entire agreement between the parties relating to the continued employment of MR. BERLIEN. This Agreement supercedes all other discussions and understandings between the parties and shall supercede the "Employment Agreement for MR. BERLIEN" dated November 7, 2007, to which North Beach Public Development Authority and MR. BERLIEN were the parties. This Agreement may not be amended, waived, modified or terminated unless in writing and signed by both parties.

**19. Severability.** If any provision, or any portion thereof, contained in this Agreement is held to be unconstitutional, invalid, or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.

**20. Waiver.** Neither NBWD's failure to insist on MR. BERLIEN's strict performance of any provision of this Agreement, nor its delay or forbearance of its objections to MR. BERLIEN's performance shall be construed as a waiver of any of its rights under this Agreement. NBWD's waiver of any right or remedy in one or more instances shall not absolve MR. BERLIEN of later strict performance.

**21. Survivability of Terms.** In any case where a duty set forth in this Agreement is reasonably understood by the nature of the duty to extend beyond the termination of this Agreement, said duty shall survive this Agreement, whether or not expressly so stated herein.

**22. Effective Date of the Agreement.** This Agreement shall be effective upon signing of all parties.



MR. BERLIEN AGREES THAT HE HAS HAD AMPLE OPPORTUNITY TO REVIEW THIS AGREEMENT WITH AN ATTORNEY AND/OR ANY OTHER REPRESENTATIVES OF HIS CHOICE AND HAS EXERCISED HIS OPTION AS TO THIS RIGHT TO SEEK OR NOT SEEK REVIEW FREELY AND WITHOUT DURESS.

DATED THIS 20<sup>th</sup> DAY OF July, 2009.

North Beach Water District

By:

  
MICHAEL J. BERLIEN

  
Brian Sheldon, Commissioner Position #1

Gwen Brake, Commissioner Position #2

  
R.D. Williams, Commissioner Position # 3