

tory limits. If requested by Client, Client shall be named as additional insured with respect to Consultant's liability insurance coverage above. Consultant waives subrogation against Client as to said policies. Consultant shall provide Client with certificates of insurance showing compliance with requirements prior to commencing work, if requested.

15. **Indemnity:** Subject to the terms and limitations of this Agreement, Consultant will indemnify and hold harmless Client, its shareholders, officers, directors, employees, and agents from and against any and all claims, suits, liabilities, damages, expenses (including without limitation reasonable attorney's fees and defense costs) and other losses (collectively "Losses") only to the extent caused by the Consultant's negligence in the performance of this Agreement.

Client will indemnify and hold harmless Consultant, its subconsultants and subcontractors, and all of their respective shareholders, directors, officers, licensed professionals, employees, and agents (collectively "Consultant Entities") from and against any and all Losses except to the extent caused by the sole negligence of Consultant Entities. In addition, except to the extent caused the Consultant's Entities' sole negligence, Client will defend, indemnify and hold harmless Consultant Entities from and against any and all Losses arising from or related to the existence, disposal, release, discharge, treatment or transportation of Hazardous Materials or Wastes, or the exposure of any person to Hazardous Materials or Wastes, or the degradation of the environment due to the presence, discharge, disposal, release of or exposure to Hazardous Materials or Wastes. For this Agreement, Hazardous Materials are defined as of any toxic substances, chemicals, radioactivity, pollutants or other materials, in whatever form or state, known or suspected to impair the environment in any way whatsoever, including, but not limited to, substances defined, designated or listed in any federal, state or local law, regulation or ordinance.

Client and Consultant intend that Consultant's services will not subject Consultant's individual employees, officers or directors to any personal liability. Therefore, and notwithstanding any other provisions of this Agreement, Client agrees as its sole and exclusive remedy to direct or assert any claim, demand or suit only against the business entity identified as "Consultant" on the first page of this Agreement.

The provisions of this Section 15 will survive the expiration or termination of this Agreement. If Consultant provides services to Client that the parties do not confirm through execution of an amendment to this Agreement, the provisions of this Section 15 will apply to such services as if the parties had executed an amendment.

The parties have mutually negotiated the provisions contained in this Section and it is the intent of both parties that this section provide the broadest scope of indemnity permitted by R.C.W. 4.24.115.

16. **Limitation of Remedies:** **In consideration for Client obtaining a lower fee from Consultant and other valuable consideration, Client agrees that to the fullest extent permitted by law its total cumulative remedies from Consultant, its subconsultants and subcontractors, and all of their respective shareholders, directors, officers, licensed professionals, employees, and agents is limited to the fee charged to Client under this Agreement or \$50,000, whichever is higher, for any and all of Client's injuries, damages, claims, losses, expenses, disputes, or claimed expenses arising out of this Agreement from any cause or causes, including but not limited to, Consultant's negligence, errors, omissions, breach of contract, breach of warranty, strict liability, negligent misrepresentation, statutory liability, or other acts giving rise to liability based on contract, tort or statutory. Upon Client's written request, Consultant and Client may agree to increase the limitation to a greater amount or waive this provision in exchange for a negotiated increase in Consultant's fee, provided that the parties amend this Agreement in writing, as provided in Section 2 of this Agreement. This provision takes precedence over any conflicting provisions of this Agreement.**

17. **Consequential Damages:** Client and Consultant mutually agree to waive any and all claims for consequential damages for all claims, losses, disputes, breaches, or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement in accordance with the termination provisions in this Agreement.
18. **Suspension or Termination:** Client may, upon ten days written notice at any time, suspend Consultant's services. Consultant may terminate this Agreement if Client suspends the services for more than 60 days, in which case Client shall pay Consultant for all costs of services performed to the date of termination. If Client suspends Consultant's services, or if Client or others delay Consultant's services, then Client and Consultant agree to equitably adjust the time for completion of services and Consultant's compensation for the additional labor, equipment, and other charges associated with maintaining Consultant's workforce for Client's benefit during the delay or suspension, and any charges incurred by Consultant for demobilization and subsequent remobilization.

Either party may terminate this Agreement or an amendment, without cause, with ten days written notice; provided, however, Client shall pay Consultant for all cost of services performed through the date of termination. In the event Client requests termination of this Agreement prior to completion of work, Consultant reserves the right to complete such analyses and records as may be necessary to protect Consultant's professional reputation and to complete a report of work performed to-date. A termination fee to cover the costs incurred thereof—equal to as much as 10% of the charges incurred up to the termination date—may be charged at the Consultant's discretion and added to the cost of services performed through the termination date.

In the event of a material breach of this Agreement, the non-breaching party may terminate this Agreement if the breaching party fails to cure the breach within ten days following delivery of the non-breaching party's written notice of the breach to the breaching party. The termination notice must state the basis for the termination. The Agreement may not be terminated for cause if the breaching party cures the breach within the ten-day period.

19. **Construction/Project Procedures:** Consultant shall not manage or supervise construction, or implement or be responsible for health and safety procedures nor be responsible for the health and safety of persons other than its own employees or agents on or about the construction/subject site; shall not be responsible for the acts or omissions of contractors or other parties working on the Project; and shall not have control or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs. Consultant's testing, observations, or evaluations on the Project, either full- or part-time, shall not relieve such other parties from their responsibility for performing their work in accordance with applicable plans, specifications, and regulations.
20. **Construction/Project Costs:** Statements of probable cost prepared by Consultant represent Consultant's best judgment as a design professional familiar with the industry. It is recognized, however, that neither Consultant nor Client has control over the cost of labor, materials or equipment, over other contractors' methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, Consultant cannot and does not warrant or represent that proposals, bids, or actual costs will not vary from statement of probable costs or evaluations prepared by Consultant.
21. **Ownership and Use of Documents:** The statements, conclusions, and recommendations provided by Consultant upon the completion of this Project are to be exclusively used within the context of the Project. They will be based upon generally accepted hydrogeological practices and will be the result of analysis by the Consultant. The project report, and its attachments, will be for the exclusive use of Client. Unless specifically stated elsewhere in this Agreement, no warranty, expressed or implied, will be made.

Unless otherwise agreed in writing, all documents and information prepared by Consultant, including, but not limited to, reports, boring logs, maps, field notes, field data, calculations, drawings, specifications, and other work (collectively known as "Documents"), but not including Samples, will remain the property of Consultant. Consultant has sole discretion to dispose of or retain Documents, provided Consultant will retain pertinent summaries and reports relating to services performed for Client under this Agreement for a period of five years following submission of Consultant's report. During this five-year period, copies of said summaries or reports will be available to Client for the reasonable cost of their reproduction and delivery, unless such cost is proscribed in Section 5. Consultant retains the right to use Documents for any purpose.

Except as otherwise agreed to by Client and Consultant, all Documents prepared by Consultant are solely for use by Client and will not be provided by either party to any other person or entity without Consultant's prior written consent and receipt of additional compensation. Client has the right to reuse the Documents for purposes reasonably connected with the Project provided by this Agreement. However, any reuse, or adaptation for other than the specific purpose intended, by Client, or any party obtaining Documents through Client, without written verification by Consultant will be at Client's sole risk and without liability to Consultant. Client agrees to defend, indemnify and hold harmless Consultant, its officers, employees and shareholders from and against all claims, damages, losses and expenses, including attorney's fees, arising from any person or entity claiming to rely upon information or opinions contained in Documents without first having obtained Consultant's prior written consent.

22. **Project Files:** On the request of Client, Consultant shall provide copies of design calculations used for design recommendations made to Client. Upon reasonable notice to the Consultant, Client representative may inspect at Consultant's premises Consultant's Project files for Client and financial and employment records relating to Consultant's services for Client for a period of up to three years following termination of this Agreement.
23. **Defense of Claims:** At Client's request, and only if Client and Consultant first agree on compensation to Consultant, Consultant will assist Client in reviewing and evaluating claims and disputes, preparing information for Client's legal counsel, providing services as witness in litigation or arbitration to which Client is a party, and providing other services in connection with actual or potential claims or disputes arising out of the Project, regardless of whether or not Consultant is named in such legal action. In no case shall Consultant be obligated to provide such services until the method of compensation therefore is agreed. If Consultant is determined to be responsible for the claim, dispute or litigation, it shall remit back to Client the amounts paid under this section.
24. **Dispute Resolution:** If a dispute arises out of or relates to this Agreement, or the breach thereof, and the dispute cannot be settled through negotiation, Consultant may compel the parties to participate in a mediation administered by the American Arbitration Association under its Construction Industry Mediation Procedures. If mediation is not successful, Consultant may compel any matter to arbitration by filing and serving a written notice of arbitration on all of the parties no later than ninety days after the later of filing and service of the complaint or the conclusion of the mediation. The arbitration shall be administered by the American Arbitration Association under its Construction Industry Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction.
25. **Governing Law:** This Agreement shall be governed by the laws of the State of Washington and venue shall be in Pierce County, Washington.
26. **Additional Taxes:** Consultant's costs can be adversely affected through the imposition of new, additional, or retroactive taxes or charges, therefore, Client shall pay Consultant for any additional taxation charges over those currently in effect or for taxes retroactively determined to be due on services rendered or on products delivered by Consultant to Client, which are actually incurred.

- 27. **Compliance with Laws:** Consultant hereby agrees to comply with federal, state and local laws, rules and ordinances applicable to the Project and to this Agreement.
- 28. **Precedence:** This Agreement takes precedence over any inconsistent or contradictory provisions contained in any Exhibits to this Agreement, or any proposal, purchase order, requisition, notice to proceed, or other document regarding Consultant’s services.

The parties hereto execute this Agreement by signature of their respective authorized officers or representatives, effective as of the date shown above.

Consultant: **Robinson Noble, Inc.**

Client: **North Beach Water District**

Joseph E. Becker, President

Printed Name and Title

Date

Signature

Date