

## **AGREEMENT**

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by and between the CITY OF LANGLET, a non-charter code city, organized and existing under the laws of the State of Washington (hereinafter referred to as the "CITY", and SANDY POINT OWNERS ASSOCIATION, a Washington nonprofit corporation (hereinafter referred to as the "ASSOCIATION").

## **WITNESSETH**

WHEREAS, the CITY owns and operates a water supply system (hereinafter referred to as the "City water system"), which includes, without limitation, water source and supply facilities, transmission pipelines, storage facilities, pumping plants, distribution mains and appurtenances, and other attendant facilities:

WHEREAS, the ASSOCIATION is a Washington nonprofit corporation whose members own real property within that portion of unincorporated Island County, Washington, which is more particularly described on EXHIBIT A, attached hereto and incorporated herein by reference;

WHEREAS, the CITY has for many decades provided domestic water service to members of the ASSOCIATION through a water main owned by the ASSOCIATION (hereinafter referred to as the "ASSOCIATION'S water main"), which is connected to the City water system at the corner of Wateredge Drive and Wilkenson Road, and a water meter has been installed at said point of connection; and

WHEREAS, THE PARTIES DESIRE TO RENEW THEIR CURRENT Agreement providing for domestic water service from the City water system to property owned by members of the ASSOCIATION and situated within the area more particularly described on EXHIBIT A attached hereto, subject to certain terms and conditions; and

WHEREAS, the ASSOCIATION's water main is an 8" main on which are located five (5A) standard fire hydrants, four within the area described on EXHIBIT A attached hereto and one located outside that area with the Wateredge Drive right-of-way; and

WHEREAS, since those five hydrants are the only hydrants on the CITY'S water system which are metered to a private customer, the CITY and the ASSOCIATION agree that the ASSOCIATION would be inequitably treated if it had to pay for fire-fight water which passes through those five hydrants; and

WHEREAS, the CITY and the ASSOCIATION agree that both would benefit in terms of safety and reliability were the CITY to perform the same hydrant maintenance and flushing of the five (5) standard hydrants on the ASSOCIATION water main as it does for all other CITY hydrants.

NOW, THEREFORE, in consideration of the covenants and agreements herein contained, and mutual benefits, the receipt and adequacy of which are hereby acknowledged, the parties hereby covenant and agree as follows:

1. Provision of Water from the City Water System to the ASSOCIATION. Subject to the terms and conditions of this Agreement, the CITY hereby grants the ASSOCIATION the non-exclusive right to take water from the City water system to provide domestic water service to members of the ASSOCIATION to serve their respective properties situated within the area more particularly described on EXHIBIT A attached hereto. PROVIDED, HOWEVER, that no water provided pursuant to this Agreement shall be used for industrial or commercial purposes.
2. Geographical Area Served. All water taken from the City water system pursuant to this Agreement shall be used to serve only real property situated within the area more particularly described on EXHIBIT A attached hereto.
3. Payment for Water Services. During the term of this Agreement, the ASSOCIATION shall pay the CITY for water according to the adopted rates and formula established by the CITY pursuant to Section 13.01.460 Langley Municipal Code for metered water service outside the City limits. PROVIDED, THAT the "minimum billing fee" component shall be calculated by multiplying the number of dwelling units served within the real property situated within the real property within the area more particularly described on EXHIBIT A attached hereto by the per dwelling unit fee established within the City's fee schedule. As used in this Agreement, the term "dwelling unit" shall mean

one or more rooms designed or used by an individual or family for residential purposes,, including, without limitation, a house, apartment, condominium unit, or duplex unit, having water use facilities equivalent in extent to a normal dwelling.

4. Adjustment of Rates. Payment to the CDITY by the ASSOCIATION under this Agreement shall be automatically adjusted by any and each of the following events:
  - a. Any change in the total number of dwelling untis served by water taken from the City's water system pursuant to the Agreement; and
  - b. Any change (by City Ordinance) of the rate for metered service outside the City limits as contained within the City's Fee Schedule.
5. Number of Dwelling Units Served by the City Water Pursuant to this Agreement. The ASSOCIATION hereby represents that 56 dwelling units will be served by the City water system pursuant to this Agreement on its effective date. The Association agrees to immediately notify the CITY of any and all future connections made by ot through the ASSOCIATION'S water main.
6. Term and Cancellation. This Agreement shall be for a term of five (5) years, commencing on the first day of the month following the date first written above. PROVIDED, HOWEVER, that this Agreement may be terminated by either party on two year's written notice given as herein provided, it being expressly understood and agreed that both parties shall have the absolute right to terminate this Agreement and all rights hereunder at any time upon the giving of such notice.
7. Improvement, Repair, and Maintenance of the ASSOCIATION'S Water Main. The CITY shall not be required to improve, alter replace, or repair the ASSOCIATION's water main, or any service pipeline or other attendant facility connect thereto. The ASSOCIATION, at the ASSOCIATION'S expense, shall be solely responsible for the maintenance, repair, and replacement of the ASSOCIATION'S water main and any service pipeline or other attendant facility connected thereto. The ASSOCIATION shall at all times maintain the ASSOCATION'S water main and attendant facilities in sale and good operating condition and repair.

8. Water Meter. The CITY, at its expense, shall maintain in good operating condition the water meter which services the ASSOCIATION'S water main. If a new meter is required, the cost thereof shall be paid by the CITY, PROVIDED, HOWEVER, THAT if the meter is lost, damaged or broken by carelessness or negligence of the ASSOCIATION or its members, employees, contractors, or agents, the meter shall be replaced by or under the direction of the CITY and the cost thereof charged against the ASSOCIATION.
9. Fire Hydrants and firefighting water costs. The CITY, at its expense, shall perform an annual inspection and flushing of the five (5) standard fire hydrants attached to the ASSOCIATION'S water main unless more frequently needed as determined by the City's Director of Public Works to improve water quality. The ASSOCIATION shall not be charged for any water which flows through the five (5) hydrants on the ASSOCIATION'S water main, whether that water is used in the annual flushing or for fire suppression.
10. Default. Time shall be of the essence in performance of the terms and conditions of this Agreement. In the event the ASSOCIATION shall fail to make any payment to keep and perform any of the other covenants and agreements herein contained, and such default shall continue for thirty (30) days after written notice thereof to the ASSOCIATION, the CITY may, at its option and without prejudice to any other remedy which it might otherwise have for such default, thereupon terminate this Agreement on further written notice.
11. Indemnity Agreement. The ASSOCIATION shall save and hold the CITY harmless from, and shall indemnify the CITY against any and all claims, demands, actions, or liabilities caused by or occurring by reason of any act or omission of the ASSOCIATION, its agents or employees, arising out of or in connection with the performance or subject matter of this Agreement.

The ASSOCIATION shall be required to indemnify the CITY in those cases where damages have been caused by the concurrent negligence of the CITY and the ASSOCIATION, its agents or employees. In those cases, the liability of the

ASSOCIATION for indemnification shall be limited to that portion of the damages caused by the negligence of the ASSOCIATION, its agents or employees.

In all other cases (except those cases where the damages were caused by the sole negligence of the CITY), the ASSOCIATION shall be required to totally indemnify the CITY whether or not the ASSOCIATION was solely responsible for the damages.

The ASSOCIATION has not duty to indemnify the City where damages were caused by the sole negligence of the CITY.

12. Shortage of Water. In the event of a shortage of water, the CITY shall make available to the ASSOCIATION only that surplus of water over the needs of customers within the CITY limits.