

COPY

AGREEMENT

BETWEEN

**FLOOD CONTROL ZONE DISTRICT NO. 1
OF PACIFIC COUNTY, WASHINGTON**

AND

SURFSIDE HOMEOWNERS' ASSOCIATION

FOR THE

**SURFSIDE
I LANE SUB-BASIN
STORMWATER MANAGEMENT PLAN**

MAY 1998

AGREEMENT

This Agreement is entered into by and between Pacific County Flood Control Zone District No. 1, (hereinafter referred to as the "DISTRICT"), and the Surfside Homeowners' Association, (hereinafter referred to as the "SHOA"), for the purpose of managing the discharge of stormwater at the Surfside I Lane Sub-Basin.

WHEREAS, the DISTRICT was created by the Pacific County Board of Commissioners on September 18, 1961, under the provisions of Chapter 86.15 RCW to address flood control and stormwater control issues; and

WHEREAS, the DISTRICT is a quasi-municipal corporation with general authority to exercise all the powers vested in a county for flood water or storm water control purposes, provided that, in exercising such powers, all actions be taken in the name of the Flood Control Zone District No. 1; and

WHEREAS, the SHOA is a legal entity covered under the provisions of Chapter 64.38 RCW; and

WHEREAS, the DISTRICT desires to mitigate a potential public welfare and safety hazard caused by periodic flooding of the Surfside I Lane Sub-Basin (hereinafter referred to as the "Basin"); and

WHEREAS, the Basin is defined as that area, which due to topography, contributes and concentrates surface water runoff within that geographical area defined generally as bounded by 300th Street on the north, J Place on the east, Joe Johns Road to the south, and a sand ridge to the west ; and

WHEREAS, the Board of Supervisors of the DISTRICT has adopted the Comprehensive Flood Hazard Management Plan for the Surfside Basin dated March, 1996; and

WHEREAS, said Comprehensive Flood Hazard Management Plan includes alternatives for relieving local flooding in the Basin; and

WHEREAS, the DISTRICT has reviewed said alternatives and recommends as most feasible the alternative to discharge surface water runoff from the Basin to the Surfside Canal (hereinafter referred to as the "Surfside Canal"); a surface water body maintained by the SHOA, and

WHEREAS, the Surfside Canal may act as a source of recharge for groundwater in the area; and

WHEREAS, the SHOA Water Department operates three shallow aquifer potable water well fields adjacent to the Surfside Canal as described in the SHOA 1994 Water System Comprehensive Plan; and

AGREEMENT

WHEREAS, the SHOA requires protection of their water resources from potential degradation of water quality due to discharge from the Basin; and

WHEREAS, it is in the best interest of the parties to mutually agree upon a plan for management of stormwater within the Basin in a manner which protects the safety of the traveling public, the health of all area residents, and the quality of the water resources of the SHOA; and

WHEREAS, the DISTRICT has proposed stormwater management improvements (hereinafter referred to as the "Project") which incorporate "best management practices" to reasonably ensure that the discharge will meet the surface water quality standards of the State as defined in Chapter 173-201A WAC (or as subsequently amended) and adequately protect the SHOA drinking water resources; and

WHEREAS, said Project is defined in the "Surfside I Lane Sub-Basin Stormwater Management Plan" (hereinafter referred to as the "Plan"), prepared by the Pacific County Department of Public Works and dated August, 1997, attached hereto as Exhibit A; and

WHEREAS, adequate hydraulic capacity exists in the South Surfside Outfall (hereinafter referred to as the "Outfall") to receive and discharge stormwater runoff from the Basin; and

WHEREAS, said Outfall was constructed in 1996 by the SHOA at a cost of \$222,474.09; and

WHEREAS, since the DISTRICT did not participate in the funding of said Outfall, the DISTRICT will need to purchase capacity in the Outfall; and

WHEREAS, it is in the best interest of the parties to share in the use of the Outfall as the most cost-effective method of providing discharge of stormwater runoff from the Basin to the Pacific Ocean; and

NOW THEREFORE, in consideration of the promises and terms contained herein, the parties agree as follows:

1. DISTRICT Responsibilities

A. Design, Construct, Operate and Maintain Project

The DISTRICT has designed and will construct, operate and maintain the Project in conformance with the Plan, attached hereto as Exhibit A. The Project will include the following enhancements: (1) inlet discharge volume controls; (2) oil/water separation; (3) water quality treatment; and (4) elevation control. Specific details of the Project are delineated in the Plan. Water pool levels shall be maintained at the elevations stated in the Plan. The design incorporates mechanical means to shut off discharge to the Surfside Canal.

AGREEMENT

B. Obtain Permits

The DISTRICT will obtain necessary permits for said construction, including easements from property owners to construct, operate and maintain said facility, all according to the Plan. The DISTRICT will comply with the provisions of said permits, Pacific County Shorelines Master Program and Pacific County Critical Areas and Resource Lands Ordinance.

C. Restrict Basin Modification

The DISTRICT will not modify, cause to be modified, or authorize modification of the Basin or stormwater management system so as to convey flow from adjacent drainage basins to the Surfside Canal and/or Outfall, unless all criteria listed below are met:

1. A modification to this Agreement is executed by the parties;
2. Source surface waters meet the discharge limits specified in subparagraph 1.E., below, based on background monitoring conducted in accordance with subparagraph 1.F., below;
3. The Stormwater Management Plan (hereinafter referred to as the "Plan"), dated August of 1997, addresses source controls, source monitoring, and detection monitoring;
4. Additional compensation is made to the SHOA for additional Outfall capacity as defined in subparagraph 4.A., below; and
5. Adequate hydraulic capacity exists in the Surfside Canal and the Outfall.

This subparagraph shall not apply if the DISTRICT chooses to acquire the Surfside Canal and/or Outfall via eminent domain. The DISTRICT currently has no plans to exercise its eminent domain authority.

D. Implement Source Controls

The DISTRICT will implement the following "source control best management practices" within the Basin by:

1. Administering relevant provisions of the DISTRICT's Land Alteration and Drainage Ordinance No. 1 within the Basin; and
2. Constructing, operating, and maintaining all other source controls as defined in the Plan.

The County and the Pacific County Board of Health will administer the provisions of Pacific County Board of Health Ordinance No. 3A regarding On-site Sewage Disposal Regulations, as may be periodically amended, within the Basin.

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E. Not Exceed Discharge Limits

The DISTRICT has designed and will construct, operate, and maintain a stormwater management system within the Basin so as not to exceed the water quality criteria established by WAC 173-201A. Among other things, WAC 173-201A includes the following discharge limits:

(1) Fecal Coliform: (a) not greater than a geometric mean value of 50 colonies/100 mL, and (b) not more than 10 percent of all samples obtained for calculating the geometric mean value shall exceed 100 colonies/100 mL.

(2) Nitrates: 1.5 mg/L.

F. Conduct Background Monitoring

The DISTRICT has conducted background monitoring of the source surface waters proposed for discharge from the Project, in accordance with the Plan.

The background monitoring program consisted of periodic monitoring of surface waters and water supply wells for fecal coliforms, COD, Ammonia, and Nitrates. The DISTRICT retained the Pacific County Department of Health to collect water samples and submit them for testing at an independent laboratory. Four sampling events were conducted between March 1997 and March 1998. Samples were taken from several locations within the Basin; the area between Joe Johns Road and 295th Street and the area between 295th Street and 300th Street, as per the Plan.

The DISTRICT will prepare a report summarizing the results of the background monitoring. A copy of the background monitoring report and laboratory analyses will be submitted to the SHOA.

Stormwater shall not be initially discharged from the Basin to the Surfside Canal until background monitoring confirms that source surface waters do not exceed the discharge limits specified in subparagraph 1.E., above.

G. Conduct Detection Monitoring

The DISTRICT will conduct detection monitoring of the effluent discharge from the Project. The DISTRICT has prepared a monitoring plan (the Plan) showing the proposed locations for detection monitoring. A copy of the monitoring plan has been provided to the SHOA for its review and comment. The SHOA has agreed to the content of the Plan.

The detection monitoring program will consist of periodic monitoring for fecal coliforms. A minimum of two samples will be taken during each monitoring event: (1) from a sampling station immediately downstream of the pond south of 295th Street, and (2) from a sampling station immediately upstream of the discharge to the Surfside Canal. The DISTRICT will collect samples and submit them for testing at an independent laboratory or at Pacific County Department of Health laboratory.

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For the first six months of operation, sampling and analysis will be conducted monthly. Thereafter, sampling and analysis will be conducted three times per year; in February, July and October.

The DISTRICT will perform a statistical analysis of the results of detection monitoring to detect any statistically significant change in effluent discharge parameters. A statistical methodology appropriate for this application will be selected by the DISTRICT. Based on the statistical analysis, if a statistically significant increase in discharge parameters is detected, frequency of monitoring will be increased to monthly.

The SHOA will be welcome to observe the DISTRICT's sampling and/or conduct independent sampling and independent laboratory analysis. All laboratory reports will be submitted to both the DISTRICT and the SHOA. The DISTRICT shall give the SHOA five business days notice prior to the taking of a sampling.

H. Respond to Detection Monitoring

If laboratory analysis of detection monitoring conducted by the DISTRICT results in pollutant concentrations exceeding the discharge limits specified in subparagraph 1.E., above, the DISTRICT will close the effluent valve or gate and stop discharge as soon as possible, but not later than 24 hours after notification of laboratory analysis results. Discharge will be prohibited pending completion of verification monitoring and/or corrective action as specified in subparagraphs 1.J. and 1.K., respectively.

I. Respond to Reasonable Basis for Concern

If the SHOA has a reasonable basis to believe that discharge will create an imminent hazard to public health, the SHOA may halt the discharge immediately. An imminent hazard to public health means that individuals are likely to come into contact with (1) radiation, (2) pathogenic organisms, or (3) toxic, hazardous, or dangerous chemicals that will endanger their health upon incidental contact.

If discharge is halted by the SHOA for a reasonable basis as defined above, the DISTRICT will immediately conduct verification monitoring as specified in subparagraph 1.J. If any sample taken during verification monitoring exceeds discharge limits specified in subparagraph 1.E. above, the DISTRICT will implement corrective action as specified in subparagraphs 1.K. below. Discharge will be prohibited pending completion of corrective action as specified in subparagraph 1.K. If any sample taken during verification monitoring exceeds discharge limits specified in subparagraph 1.E., all costs of verification monitoring and corrective action shall be the sole responsibility of the DISTRICT.

If verification monitoring results in concentrations below the discharge limits specified in subparagraph 1.E. above, the DISTRICT will immediately restore discharge to the Surfside Canal. In this instance, all costs of verification monitoring shall be the sole responsibility of the SHOA.

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J. Conduct Verification Monitoring

If detection monitoring results in concentrations exceeding the discharge limits specified in subparagraph 1.E., above, the DISTRICT will immediately conduct additional sampling and laboratory analysis to verify previous results.

Verification monitoring will consist of monitoring for fecal coliforms, COD, Ammonia, and Nitrate. A minimum of two samples will be taken during each monitoring event: (1) from a sampling station immediately downstream of the pond south of 295th Street, and (2) from a sampling station immediately upstream of the discharge to the Surfside Canal. The DISTRICT will collect samples and submit them for testing at an independent laboratory.

~~Verification monitoring will be conducted by the DISTRICT daily for a minimum of three days. If any sample taken during verification monitoring exceeds discharge limits specified in subparagraph 1.E., above, the DISTRICT will implement corrective action as specified in subparagraphs 1.K., below.~~

If verification monitoring results in concentrations below the discharge limits specified in subparagraph 1.E., above, the DISTRICT will immediately restore discharge to the Surfside Canal.

K. Take Corrective Action

Corrective action will include continued verification monitoring on a daily basis; identification and elimination of source(s) of pollutants; implementation of source controls or other Best Management Practices accepted by WDOE; and/or modification of the Project facilities. Corrective actions proposed and taken will be reported immediately to the SHOA office in writing.


Discharge will not be restored until corrective actions are implemented and/or verification monitoring results in concentrations below the discharge limits specified in subparagraph 1.E., above, based on laboratory analysis. In addition, frequency of detection monitoring will be increased to monthly for a period of at least six (6) months.

If detection monitoring results in concentrations below the discharge limits specified in subparagraph 1.E., above, during the six-month period, monitoring frequency may be reduced to three times per year.

 L. Compensate the SHOA for Outfall Capacity

The DISTRICT will compensate the SHOA for Outfall capacity as specified in subparagraph 4.A.

 M. Compensate the SHOA for Maintaining Outfall

~~The DISTRICT will compensate the SHOA for maintaining, extending, repairing, cleaning, and replacing the Outfall as specified in subparagraph 4.B.~~ 

AGREEMENT

N. Additional Improvements Within the Surfside Basin

The DISTRICT recognizes the SHOA's desire for drainage improvements within the Surfside Basin in addition to the improvements defined in the Plan. These improvements include:

1. Skating Lake Culvert Replacement: replace the existing, deteriorated culvert with a culvert sized to carry the flow from its tributary basin;
2. M Place Basin Improvements: construct a storm drain system within the basin that discharges to the Skating Lake/Espy Slough outlet channel or other suitable discharge point;
3. Sand Road Basin Berm Repair: restore the sand berm between the Sand Road Basin and the North Surfside Sub-basin; and
4. Deer/Bear Lakes Channel Maintenance: clean the existing channel draining Deer and Bear lakes into Skating Lake, and remove obstructions to flow.

The DISTRICT will revise its 1998-2003 Capital Improvement Plan to include said improvements in accordance with the following schedule:

Project	Anticipated Completion Date
Skating Lake Culvert Project	1999
M Place Basin Improvements	2001
Sand Road Basin Berm Repair	1998
Deer/Bear Lakes Channel Maintenance	1999

Said improvements will be funded solely from revenues of the DISTRICT as may be generated pursuant to Chapter 86.15 RCW. The method of generation of revenue by the DISTRICT within the Surfside Basin shall be consistent with methods used elsewhere in the DISTRICT. Although the DISTRICT retains the right to impose a special assessment or surcharge on the entirety of the Surfside Basin for constructing and maintaining these projects and improvements, the DISTRICT currently has no plans to do so. Nevertheless, no special assessment or surcharge shall be imposed exclusively on the SHOA and/or any SHOA members for these projects and improvements. Nor shall any special assessment or surcharge be imposed on the Surfside Basin unless similar assessments or surcharges are imposed on other basins within the DISTRICT.

The SHOA recognizes that implementation of said improvements requires significant engineering, permitting, regulatory review, and public process. Further, the DISTRICT currently has insufficient financial capability to complete said improvements in accordance with the anticipated completion schedule. Lastly, such improvements are inherently subject to legal challenge and regulatory appeal beyond the control of the DISTRICT. Therefore, the

AGREEMENT

DISTRICT cannot ensure that said improvements will be implemented by the anticipated completion date specified in the above schedule. Failure of the DISTRICT to meet the anticipated completion dates shall not be considered cause for termination under subparagraph 5.A.

Notwithstanding the above, the DISTRICT will make a good faith effort to complete said improvements, pursuant to available funding. Work has begun on the Sand Road Basin Berm Repair project. Water quality sampling necessary to gain regulatory authorization to construct the Skating Lake Culvert Replacement project also is underway.

2. SHOA's Responsibilities

A. Accept Stormwater Discharge

The SHOA will accept stormwater from the Project which does not exceed the discharge limits specified in subparagraph 1.E., above, from the Project to be discharged to the Outfall.

B. Monitor Surfside Canal

The SHOA will perform sampling and laboratory analysis of the Surfside Canal in accordance with its agreement with Pacific County, as referred to in Exhibit E of the Plan.

C. Operate and Maintain Surfside Canal and Outfall

The SHOA will operate and maintain the Surfside Canal and Outfall so as to maintain adequate hydraulic capacity and will ensure that the Outfall is in good repair. The SHOA shall provide staffing, equipment, materials and supplies necessary for routine operation and maintenance of the Outfall. The Outfall shall be operated by the SHOA according to established and proven methods so as to ensure continuing adequate performance. The SHOA shall perform operation and maintenance under this Agreement in accordance with the standards of the utility industry. All workers and contractors shall be skilled in their trades.

D. Invoice DISTRICT for Requested Compensation

The SHOA will submit proper invoices to the DISTRICT for its costs and the services rendered to maintain the Outfall in accordance with subparagraphs 4.B. and 4.C. of this Agreement.

E. Insure Outfall

The SHOA will maintain the present insurance coverage on the Outfall and the canal as long as the coverage is available at a reasonable premium. A copy of the current coverage is attached marked Exhibit C. The DISTRICT shall be named a beneficiary on the policy.

3. General Provisions

A. Entire and Complete Agreement

AGREEMENT

This Agreement constitutes the entire and complete agreement and final expression of the parties with respect to the subject matter it contains, and supersedes all prior or contemporaneous agreements, understandings, arrangements, commitments, and representations, whether oral or written. In the event of any conflict between the language set forth in this Agreement or any of the exhibits hereto, the language in the Agreement shall prevail and this Agreement shall be interpreted as if that conflicting language was not a part of the agreement between the parties.

B. Severability

If any Agreement provision is for any reason determined to be invalid, illegal or unenforceable under any applicable law, the remaining provisions of the Agreement shall remain in effect and bind the parties; however, the parties shall negotiate in good faith to amend the Agreement to effectuate the intent of any invalid, illegal, or unenforceable provision, if permissible under applicable law.

C. No Third Party Beneficiaries

This Agreement is entered into by the parties in their respective capacities, and is not intended to nor does it create any third party beneficiaries or rights in any public or private person.

D. No Personal Liability

This Agreement is not intended to create or result in any personal liability for any public official, SHOA employee, Pacific County employee, or DISTRICT employee, or agent of the SHOA, Pacific County, or DISTRICT, nor shall the Agreement be construed to create that liability.

E. Cooperation

Parties shall use reasonable efforts to cooperate with each other and to respond to each party's requests for information and assistance, consistent with the provisions of this Agreement.

F. Dispute Resolution and Enforcement

Prior to raising by motion or complaint or other legal proceeding that there is a violation of this Agreement, or any other alleged failure to perform any obligation imposed hereby, the concerned party shall notify the other party (in writing) of its claim. The parties then shall meet and discuss the issue within 10 days of the postmark or delivery of the written notification, whichever is earlier.

1. If no resolution can be reached after consultation, the concerned party may pursue any remedies available by law; provided, it so notifies the alleged breaching party (in writing) in advance.
2. In an emergency, either party is free to apply to a court or an appropriate administrative agency for injunctive relief. However, the parties are obligated to follow the dispute-resolution terms of this Section upon resolution of the emergency.

AGREEMENT

3. By mutual agreement the parties may submit any dispute to mediation and/or arbitration with the rules and the selection of a hearing officer to be established by the parties. The costs of the dispute resolution process shall be borne equally by the parties, but neither party shall be responsible for the other party's attorney fees.
4. If either party (1) brings a lawsuit to enforce any provision of this Agreement or (2) appeals a decision of a trial court regarding this Agreement, the prevailing party in any such action shall be entitled to reasonable attorney fees, reasonable expert witness fees, and court costs.
5. The terms of this Agreement shall remain in full force while any dispute is pending, excepting any temporary relief granted under subparagraph 3.F.2., above.

G. Venue, Applicable Law and Personal Jurisdiction

In the event that either party deems it necessary to institute legal action or proceedings to enforce any right or obligation under the Agreement, the parties agree that any such action will be initiated in the Superior Court of the State of Washington for Pacific County. The parties agree that all questions will be resolved by application of Washington law and that the parties to such action will have the right of appeal from such decisions of the Superior Court in accordance with the laws of the State of Washington. The parties hereby consent to the personal jurisdiction of the Superior Court of the State of Washington, situated in Pacific County.

H. Modification

This Agreement may be modified only by the express written agreement of the parties.

I. Counterparts and Effective Date

This Agreement may be executed in counterparts and each executed counterpart shall have the same force and effect as an original instrument upon the effective date of the Agreement. This Agreement shall become effective as to all parties upon the date of signature of the party last in time to sign.

AGREEMENT

J. Binding Effect

This Agreement shall bind and inure to the benefit of the successors or assigns of the parties hereto.

K. Indemnification

To the extent that the Constitution and laws of the State of Washington permit, each party shall indemnify and hold the other harmless from and against any liability for any or all injuries to persons or property arising from intentional tort(s), or negligent act(s) or omission(s), or strict liability of that party or that party's agents or employees arising out of this Agreement.

If a legal action is instituted that challenges the validity of this Agreement, the DISTRICT shall be solely responsible for defending the SHOA in court. The DISTRICT shall have total discretion in determining how it will represent the SHOA, but the quality of representation shall not fall below the standards articulated in the Rules of Professional Conduct for lawyers. Any judgment rendered against the SHOA as a result of any lawsuit challenging the validity of this Agreement shall be the exclusive responsibility of the SHOA.

L. Dissolution of the SHOA

If the SHOA becomes insolvent, is dissolved, or otherwise becomes impaired to the extent that it cannot perform its services under this Agreement, all of the duties, rights, and remedies of the SHOA under this Agreement shall remain in full force and effect and shall be transferred to its successor or assigns. If the SHOA is dissolved without successor or assign, the DISTRICT shall have the authority to operate and maintain the Outfall and have the first right to purchase the Outfall for its depreciated value.

M. Dissolution of the DISTRICT

If the DISTRICT becomes insolvent, is dissolved, or its flood control functions and powers relative to this Agreement are taken from the DISTRICT by legislative act, by referendum of the people, or by agreement, all of the duties, rights, and remedies of the DISTRICT under this Agreement shall remain in full force and effect and shall be transferred to: (1) the successor to the DISTRICT as specified by legislative act, by the referendum or by the agreement by which the DISTRICT is dissolved; or (2) if no successor to the DISTRICT is specified by the relevant legislation, referendum, or agreement, Pacific County shall be the successor to the DISTRICT under this Agreement.

Pacific County through a supplemental agreement with the Surfside Homeowners' Association has agreed to be bound by the terms of this subparagraph.

4. **Compensation**

A. Compensation for Outfall Capacity

AGREEMENT

The DISTRICT will pay to the SHOA a one-time outfall capacity purchase fee of \$24,249.68 for which the SHOA hereby grants the DISTRICT permission to connect the Project to the Surfside Canal and to discharge stormwater thereto in accordance with the Plan and this Agreement. The analysis and calculation of the capacity purchase fee is provided in Exhibit B.

One-half of the \$24,249.68 capacity purchase fee will be due upon the signing of this Agreement, and the remainder will be payable at the date of initiation of operation of the Project by the DISTRICT, which is defined as the date on which the Project begins discharge to the Outfall. If the last-half amount due the SHOA remains unpaid for thirty (30) days following said due date, the DISTRICT will pay to the SHOA interest on the amount unpaid, ~~from its due date until paid, at the rate of twelve percent (12%) per annum; such full~~ payment to be made, in any event, no later than 12 months after when due.

B. Compensation for Outfall Maintenance

The DISTRICT will reimburse the SHOA for the actual expenses of maintenance of the Outfall as defined in subparagraph 1.M, provided that such costs are reasonable. Expenses eligible for reimbursement shall include labor costs, including wages, salaries, benefits and other related employee expenses; equipment; outside services; and operating materials and supplies.

These costs to be reimbursed are more precisely defined as follows:

1. Labor rates shall consist of base salary costs plus a markup of 40% of actual gross salary for fringe benefits, taxes, industrial insurance, medical premiums, overhead and administrative costs. Base salary costs shall be determined by the SHOA in accordance with their policies and practices.
2. Equipment shall mean any mechanical equipment or tools necessary to effectuate maintenance. The rates as set forth in the Pacific County Department of Public Works Equipment Rental Rate Schedule shall be the maximum rates allowable for equipment of modern design and in good working order. Such rates shall be full compensation for fuel, oil, lubrication, repairs, maintenance, and all other costs associated with furnishing and operating the equipment.
3. Outside services shall mean labor and services performed by non-SHOA employees to provide maintenance of the Outfall under this Agreement. Compensation for outside services will be determined by the SHOA's actual cost. To document charges for outside services, the SHOA shall provide a copy of all bills and/or invoices.
4. Materials and supplies shall mean those items required for the operation, maintenance, extension, restoration, or replacement of the Outfall. Compensation for materials and supplies will be based on actual invoice costs including freight and handling costs and taxes. To document charges for operating materials and supplies, the SHOA shall provide with its invoice a copy of invoices for said supplies and materials.

AGREEMENT

C. Invoices

The SHOA shall submit to the DISTRICT invoices for services rendered to maintain the Outfall and for which compensation is requested in accordance with subparagraph 4.B. Invoices shall be in a format acceptable to the DISTRICT and accompanied by supporting documentation to substantiate services performed by the SHOA under this Agreement. The DISTRICT shall pay the SHOA for the invoiced services within forty-five (45) days of receiving the invoice. If any amount due the SHOA remains unpaid following said due date, the DISTRICT will be charged with, and pay to the SHOA, interest on the amount unpaid, from its due date until paid, at the interest rate of twelve percent (12%) per annum. The DISTRICT shall reimburse the SHOA for all undisputed invoices no later than 12 months after submitted.

The DISTRICT shall have the right to dispute unreasonable invoices, in whole or in part. The DISTRICT may withhold payment of any disputed amount until the dispute is settled in accordance with subparagraph 3.F.

5. **Termination**

A. Termination for Cause

1. Either party to this Agreement may terminate this Agreement upon breach by the other party providing that the terminating party first provides written notice of such breach to the other party and such breach has not been corrected within 45 days.
2. In the event of termination under this Section, the SHOA will, if requested by the DISTRICT, continue to provide the services specified under this Agreement for a period of at least one hundred eighty (180) days beyond the set date of termination. During the 180-day period the parties shall be bound to the terms of this Agreement.

B. No-fault Termination

1. The DISTRICT may terminate this Agreement if the SHOA is prevented from providing its services under this Agreement as a direct result of legislative order, change in law, act of God, hurricane, tsunami, flood, landslide, earthquake, act of public enemy, war, blockade, or similar occurrence that directly affects the operation of any facilities under this Agreement.
2. The DISTRICT may terminate this Agreement if it elects to utilize other facilities to provide the services of this Agreement.
3. In the event of termination under this Section, the provisions of subparagraphs 1.M. and 4.B. shall survive, and the DISTRICT will continue to compensate the SHOA for maintaining, extending, repairing, cleaning, and replacing the Outfall as defined under subparagraph 4.B.

AGREEMENT

4. The DISTRICT shall provide the SHOA ninety (90) days written notice of intent to terminate this Agreement under subparagraph 5.B.

C. Right to Claim

The parties retain the right to pursue any cause of action or assert any claim or remedy it may have against the other party despite its termination of the Agreement.

6. **Non-waiver of Breach**

Failure to enforce any provision of this Agreement shall not constitute forfeiture of the right to pursue any cause of action or assert any claim or remedy it a party may have against the other party under this Agreement.

7. **Effective Date and Term of Agreement**

This Agreement shall be in full force and effect and binding upon its execution and, unless terminated as provided in this Agreement, shall remain in effect in perpetuity from the date of execution.

8. **Notification Requirements**

All notices required under this Agreement shall be sent to the parties' addresses listed on the signature page of this Agreement, unless said addresses have changed and written notification has been made to the other party. If the notice is mailed, it shall be sent by certified mail, return receipt requested.

AGREEMENT

IN WITNESS WHEREOF, the Surfside Homeowners' Association and Flood Control Zone District No. 1 of Pacific County, Washington, have caused this Agreement to be executed this 19 day of September, 1998.

BOARD OF TRUSTEES
SURFSIDE HOMEOWNERS'
ASSOCIATION

Rene Selig
Rene Selig, President

Dana Newton
Dana Newton, Vice President

Norman Poulshock
Norman Poulshock, Secretary

Ruby Moore
Ruby Moore, Treasurer

Ed Crain
Ed Crain

Bill Davis
Bill Davis

Jack Hendrickson
Jack Hendrickson

Jack Warren Stan Nesbitt
Jack Warren Stan Nesbitt

Vivian Wattum
Vivian Wattum

BOARD OF SUPERVISORS
FLOOD CONTROL ZONE DISTRICT #1
PACIFIC COUNTY, WASHINGTON

Jon C. Kaino Jr.
Jon Kaino, Jr.

Bud Cuffel
Bud Cuffel

Pat Hamilton
Pat Hamilton

ATTEST:

Kathy Noren 9/22/98
Kathy Noren

APPROVED AS TO FORM:

EX

IN WITNESS WHEREOF, the Surfside Homeowners' Association and Pacific County, Washington, have caused this Agreement to be executed this 19 day of September, 1998.

BOARD OF TRUSTEES
SURFSIDE HOMEOWNERS'
ASSOCIATION

Rene' Selig
Rene' Selig, President

Dana Newton
Dana Newton, Vice President

Norman Poulshock
Norman Poulshock, Secretary

Ruby Moore
Ruby Moore, Treasurer

Ed Crain
Ed Crain

Bill Davis
Bill Davis

Jack Hendrickson
Jack Hendrickson

~~Jack Warren~~
Vivian Wattum
Vivian Wattum

BOARD OF COUNTY COMMISSIONERS
PACIFIC COUNTY, WASHINGTON

Jon C. Kaino Jr.
Jon Kaino, Jr., Chairman

Bud Cuffel
Bud Cuffel, Commissioner

Pat Hamilton
Pat Hamilton, Commissioner

ATTEST:

Kathy Noren 9/22/98
Kathy Noren, Clerk of the Board

APPROVED AS TO FORM:

EXHIBIT A PROJECT STORMWATER MANAGEMENT PLAN

AGREEMENT
BETWEEN
PACIFIC COUNTY, WASHINGTON
AND
SURFSIDE HOMEOWNERS' ASSOCIATION

This Agreement is entered into by and between Pacific County, Washington and the Surfside Homeowners' Association for the purpose of establishing Pacific County as a possible successor in interest to Flood Control Zone District No. 1 of Pacific County in its agreement with the Surfside Homeowners' Association regarding management of stormwater within the Surfside I Lane Sub-Basin.

WHEREAS, the Flood Control Zone District No. 1 desires to mitigate a potential public welfare and safety hazard caused by periodic flooding of the Surfside I Lane Sub-Basin; and

WHEREAS, the Flood Control Zone District No. 1 has proposed stormwater management improvements which mitigate said hazards and which discharge surface water runoff from the Sub-Basin to the Surfside Canal and the Surfside Outfall; and

WHEREAS, the Flood Control Zone District No. 1 and the Surfside Homeowners' Association have entered into an Agreement regarding management of stormwater within the Sub-Basin;

NOW THEREFORE, in consideration of the promises and terms contained herein, the parties agree as follows:

Pursuant to subparagraph 3.M. of the Agreement between Flood Control Zone District No. 1 of Pacific County and the Surfside Homeowners' Association dated September 1998, Pacific County hereby enters into a supplemental agreement with the Surfside Homeowners' Association. Pacific County agrees to be bound by the terms of subparagraph 3.M. If the Flood Control Zone District No. 1 is dissolved, and a successor organization does not exist, for the sole purpose of carrying out the above-referenced agreement, Pacific County agrees to become the successor in interest of Flood Control Zone District No. 1. Surfside Homeowners' Association agrees to continue to fulfill its obligations under the Agreement referenced above. If Pacific County takes over the obligations of the Flood Control Zone District No. 1, Pacific County also agrees to be bound by the above referenced Agreement.

IN WITNESS WHEREOF, the Surfside Homeowners' Association and Pacific County, Washington, have caused this Agreement to be executed this 19 day of September, 1998.

BOARD OF TRUSTEES
SURFSIDE HOMEOWNERS'
ASSOCIATION

Rene Selig
Rene' Selig, President

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Dana Newton, Vice President

Norman Poulshock
Norman Poulshock, Secretary

Ruby Moore
Ruby Moore, Treasurer

Ed Crain
Ed Crain

Bill Davis
Bill Davis

Jack Hendrickson
Jack Hendrickson

~~Jack Warren~~
Vivian Wattum
Vivian Wattum

BOARD OF COUNTY COMMISSIONERS
PACIFIC COUNTY, WASHINGTON

Jon C. Kaino Jr.
Jon Kaino, Jr., Chairman

Bud Cuffel
Bud Cuffel, Commissioner

Pat Hamilton
Pat Hamilton, Commissioner

ATTEST:

Kathy Noren 9/22/98
Kathy Noren, Clerk of the Board

APPROVED AS TO FORM:

EXHIBIT B OUTFALL CAPACITY PURCHASE ANALYSIS

Purpose and Methodology.

The Surfside Homeowners' Association (SHOA) operates and maintains the South Surfside Outfall (Outfall) to the Pacific Ocean from the Surfside Canal. In 1996, the Outfall was constructed by the SHOA at a cost of \$222,474.09, as shown in the following table.

Item	Cost
Engineering - Gray & Osborne, Inc.	\$11,955.51
Construction - Volker Stevin	\$204,685.25
SHOA Water Department:	
Labor	\$4,394.40
Surface Restoration	\$1,358.93
Permits	\$80.00
Total	\$222,474.09

Source: Personal correspondence with Mike Zitur, August 6, 1997.

As the I Lane Sub-basin Project area is not located within the SHOA limits, the residents did not participate in the initial funding of the Outfall. Therefore, the Flood Control Zone District No. 1 of Pacific County (FCZD#1) needs to purchase capacity in the Outfall.

Compensation will be prorated based on the design flow of the Project and that of the discharge capacity of the Outfall.

Project Design Flow

As stated in Table 4.2 of the Stormwater Management Plan (Appendix A), the peak discharge rate from the North Pond Outlet Structure for the 25-year, 24-hour design storm event is 6.93 cubic feet per second (cfs).

Outfall Capacity

The outfall pipe is a 42-inch diameter, smooth bore, steel pipe from the Canal to the shoreline of the Pacific Ocean. A shear gate is installed at the pipe inlet in order to control the surface water elevation of the canal. A 42-inch tide gate is installed at the pipe outlet.

Manning's Equation [$V=(1.49/n)(R^{2/3})(S^{1/2})$] was used to estimate the open channel, full flow capacity of the outfall pipe. The capacity was determined as 63.55 cfs. Calculations are included in Exhibit 4 of the Stormwater Management Plan (Appendix A).

Using the 25YR, 24HR (Type 1A) stormwater event, the North Pond Outfall from the I Lane Sub-basin is estimated to contribute an additional 6.93 cfs into the canal or approximately 10.90% of the estimated capacity.

Flow Proration/Capacity Purchase

The project design flow is 10.90 percent of the outfall capacity. Based on flow proration and a project cost of \$222,474.09, the FCZD#1 must compensate the SHOA for Outfall capacity in the amount of \$24,249.68.